VOL. 73 – NO. 44 OCTOBER 30, 2026

# District of Columbia REGISTER

## HIGHLIGHTS

- D.C. Council schedules a public hearing to discuss expanding the range of health professionals authorized to assist patients in completing, executing, and complying with a Medical Orders for Scope of Treatment (MOST) Form (Bill 26-0798)
- D.C. Council schedules a public oversight hearing on academic achievement in the District of Columbia
- Office of the Chief Financial Officer releases the sum and special real property tax rates for Tax Year 2026
- Office of the Chief Financial Officer announces increases for the Tax Year 2027 homestead deduction and senior income threshold
- Department of Energy and Environment announces asbestos abatement fee adjustments for Fiscal Year 2027
- Department of Health announces funding availability for lead poisoning prevention outreach and collaboration with new and expectant parents, and physicians
- Department of Insurance, Securities and Banking updates the rules that govern filings that issuers must submit for certain types of securities offerings
- Executive Office of the Mayor announces funding availability for the FY2027 Community Pride Investment Fund
- District Department of Transportation extends the submission deadline for the Transportation Alternatives Program 2027-2028 Grant

# DISTRICT OF COLUMBIA REGISTER

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**OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES**

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**ADMINISTRATOR**

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AN ACT

**D.C. ACT 26-444**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**OCTOBER 21, 2026**

To amend the Universal Paid Leave Amendment Act of 2016 to prohibit private disability insurance providers from reducing short-term disability benefits based on actual or estimated paid leave benefits to which an eligible individual may be entitled to from the District, regardless of the jurisdiction in which the insurance policy was issued or written; and to amend the Insurance Trade and Economic Development Amendment Act of 2000 to make the prohibition on offsetting or reducing benefits under a private market short-term disability insurance policy based on estimated or actual benefits received under the Universal Paid Leave Amendment Act of 2016 enforceable under that law, regardless of the jurisdiction in which the insurance policy was issued or written.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Short-Term Disability Insurance Benefit Protection Clarification Amendment Act of 2026".

Sec. 2. Section 107(j)(1) of the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.07(j)(1)), is amended to read as follows:

"(j)(1) No insurer may offset or reduce benefits or income available to an eligible individual under an individual or group policy for temporary or short-term disability insurance based on estimated or actual benefits the eligible individual may or does receive under this act, regardless of the jurisdiction in which such policy was issued, executed, written, or delivered.".

Sec. 3. Section 120a of the Insurance Trade and Economic Development Amendment Act of 2000, effective November 13, 2021 (D.C. Law 24-45; D.C. Official Code § 31-2231.20a), is amended as follows:

(a) Subsection (a) is amended to read as follows:

"(a) No insurer may offset or reduce benefits or income available to an eligible individual under a temporary or short-term disability insurance policy, based on estimated or actual benefits the eligible individual may or does receive under the Universal Paid Leave Amendment Act of

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2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01 *et seq.*), regardless of the jurisdiction in which such policy was executed, written, or delivered.".

(b) Subsection (c) is amended to read as follows:

"(c) For the purposes of this section, the term:

"(1) "Eligible individual" shall have the same meaning as provided in section 101(6) of the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01(6)).

"(2) "Self-insured employer" shall have the same meaning as provided in section 101(19A) of the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01(19A)).".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by Mayor, action by the Council to override veto) and a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
OCTOBER 21, 2026

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 26-445**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**OCTOBER 21, 2026**

To amend the Food Policy Council and Director Establishment Act of 2014 to change the timeline for the Food Policy Council annual report from annually to triennially and expand the authority of the Food Policy Council to evaluate food procurement practices for District agencies and contractors that regularly purchase food and beverages.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Food Policy Council Procurement Amendment Act of 2026".

Sec. 2. The Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-311 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 48-311) is amended as follows:

(1) Paragraph (1) is redesignated as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

"(1) "Covered agency" means a District agency or agency contractor that regularly procures food or beverages. The term "covered agency" shall not include a District agency or agency contractor that procures food or beverages solely for vending machines or one-off catering services for events.".

(b) Section 3(c) (D.C. Official Code § 48-312(c)) is amended to read as follows:

"(c) Beginning September 30, 2027, and every 3 years thereafter, the Food Policy Council shall provide a report to the Council on the state of the local food system across the District. The report shall assess District food access, including an identification of low food access areas, and the state of the local food economy, and provide policy recommendations to improve the local food economy and food access, including priorities for local investments.".

(c) Section 5 (D.C. Official Code § 48-314) is amended as follows:

(1) Subsection (b) is amended as follows:

(A) Paragraph (5) is amended by striking the phrase "; and" and inserting a semicolon in its place;

(B) Paragraph (6) is amended by striking the period and inserting the phrase "; and" in its place.

(C) A new paragraph (7) is added to read as follows:

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"(7) Oversee efforts to improve the quality of food purchased by covered agencies and to ensure food procured by covered agencies aligns with District requirements, standards, and goals regarding nutrition, the local economy, and environmental sustainability.".

(2) New subsections (c) and (d) are added to read as follows:

"(c) To achieve the objectives set forth under subsection (b)(7) of this section, the Office shall:

"(1) Advise covered agencies on developing solicitations and contracts that:

"(A) Align with District laws, standards, and goals regarding nutrition, the local economy, and environmental sustainability; and

"(B) Require vendors to regularly report on purchased food products to enable assessment of compliance with purchasing goals;

"(2) Collaborate with the Office of Contracting and Procurement to ensure that food service solicitations reach a wide audience of high-quality prospective vendors, including both for-profit and non-profit vendors;

"(3) Serve on evaluation panels to contribute industry and food sector subject matter expertise in procurement determinations;

"(4) Consolidate food purchasing data from all covered agencies to track District-wide performance on District laws, standards, and goals for food procurement; and

"(5) Develop and maintain food procurement standards, practices, and templates to be used in all procurements, in collaboration with the Department of Health, Department of Small and Local Business Development, Department of Energy and the Environment, and Office of Contracting and Procurement.

"(d) All covered agencies and the Office of Contracting and Procurement shall provide all data regarding food procurement to the Office that are necessary for the Office to fulfill its functions under subsection (c) of this section.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect after approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto) and a 30-day period of congressional review

ENROLLED ORIGINAL

as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
OCTOBER 21, 2026

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 26-446**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**OCTOBER 21, 2026**

To amend, on a temporary basis, section 1507 of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001 to change the date by which the Prearrest Diversion Task Force shall issue initial recommendations for prearrest diversion of certain misdemeanor offenses and categories of persons to July 2026.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Prearrest Diversion Task Force Recommendations Temporary Amendment Act of 2026".

Sec. 2. Section 1507 of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective June 8, 2024 (D.C. Law 25-175; D.C. Official Code § 22-4237), is amended as follows:

(a) Subsection (g) is amended by striking the phrase "Within 3 months after the applicability date of section 29 of the Secure DC Omnibus Amendment Act of 2024, passed on 2nd reading on March 5, 2024 (Enrolled version of Bill 25-345)," and inserting the phrase "No later than June 2025," in its place.

(b) Subsection (h) is amended by striking the phrase "Within one year after the applicability date of section 29 of the Secure DC Omnibus Amendment Act of 2024, passed on 2nd reading on March 5, 2024 (Enrolled version of Bill 25-345)," and inserting the phrase "No later than July 31, 2026," 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 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

(a) 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 a 60-day period of congressional

ENROLLED ORIGINAL

review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)).

(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
OCTOBER 21, 2026

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 26-447**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**OCTOBER 21, 2026**

To amend, on a temporary basis, An Act To create a Department of Corrections in the District of Columbia and the Corrections Oversight Improvement Omnibus Amendment Act of 2022 to designate the Department of Corrections as the District agency to provide a free appropriate public education under the Individuals with Disabilities Education Act and District law to certain individuals in its custody and detained in its secure facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Special Education for Young Adults in the Custody of the Department of Corrections Temporary Amendment Act of 2026".

Sec. 2. Section 2(b) of An Act To create a Department of Corrections in the District of Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.02(b)), is amended as follows:

(a) Paragraph (9) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(b) The first paragraph (10) is amended by striking the period and inserting a semicolon in its place.

(c) The second paragraph (10) is redesignated as paragraph (11).

(d) Paragraph (11) is amended by striking the period and inserting the phrase "; and" in its place.

(e) A new paragraph (12) is added to read as follows:

"(12) During school years 2025-2026 and 2026-2027, provide a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*) ("IDEA"), and District law, to individuals with disabilities who are in its custody and detained in its secure facilities from the age of 18 through the end of the individual's eligibility for FAPE under the IDEA and District law.".

Sec. 3. Amendatory section 2 within section 10(a) of the Corrections Oversight Improvement Omnibus Amendment Act of 2022, effective April 21, 2023 (D.C. Law 24-344; 70 DCR 635), is amended as follows:

ENROLLED ORIGINAL

(a) Paragraph (12) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(b) Paragraph (13) is amended by striking the period and inserting the phrase "; and" in its place.

(c) A new paragraph (14) is added to read as follows:

"(14) During school years 2025-2026 and 2026-2027, provide a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*) ("IDEA"), and District law, to individuals with disabilities who are in its custody and detained in its secure facilities from the age of 18 through the end of the individual's eligibility for FAPE under the IDEA and District law.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

(a) 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 a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)).

(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
OCTOBER 21, 2026

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 26-448**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**OCTOBER 21, 2026**

To amend, on a temporary basis, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to amend the definition of an unlicensed establishment to include establishments that sell Schedule I substances or products that contain Schedule I substances, to extend the expiration dates of conditional licenses for medical cannabis cultivation centers, retailers, internet retailers, manufacturers, couriers, and testing laboratories for an additional year, to clarify that a conditional license applicant may submit a zoning certificate instead of a certificate of occupancy with their permanent license application, to clarify the distance requirements between retailers and internet retailers and schools and recreation centers, to authorize enforcement actions to be taken against all unlicensed establishments beginning on April 1, 2025, regardless of whether the unlicensed establishments have an application pending before the Alcoholic Beverage and Cannabis Board, to authorize certain enforcement actions before April 1, 2025, against an unlicensed establishment that has an application before the Alcoholic Beverage and Cannabis Board if the unlicensed establishment sells a Schedule I substance or a product that contains a Schedule I substance, to authorize summary closures and related enforcement actions to continue for as long as the imminent danger to the public persists and is likely to recur, and to allow the Alcoholic Beverage and Cannabis Administration and Metropolitan Police Department to take related enforcement actions against a licensed medical cannabis establishment that engages in certain unlawful activity.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Cannabis Licensing and Unlicensed Establishment Enforcement Clarification Temporary Amendment Act of 2026".

Sec. 2. The Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 7-1671.01) is amended as follows:

(1) A new paragraph (2B) is added to read as follows:

"(2B) "Cannabis product" means a product derived from or composed of cannabis, in part or in whole.".

(2) A new paragraph (20B-i) is added to read as follows:

"(20B-i) "Schedule I substance" means a controlled substance listed in section 204 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-902.04), or rules implementing that section.".

(3) Paragraph (22) is amended to read as follows:

"(22) "Unlicensed establishment" means:

"(A) A sole proprietorship, partnership, or other business entity that:

"(i) Sells, exchanges as part of a commercial transaction, or delivers cannabis and cannabis products;

"(ii) Operates at or delivers from a specific location in the District; and

"(iii) Is not licensed by ABCA as a cultivation center, retailer, internet retailer, manufacturer, courier, or testing laboratory; or

"(B) For purposes of section 9(c-1), (g), (h), and (i), a sole proprietorship, partnership, or other business entity that:

"(i) Sells, exchanges as part of a commercial transaction, or delivers Schedule I substances or products that contain Schedule I substances; and

"(ii) Operates at or delivers from a specific location in the District.".

(b) Section 7 (D.C. Official Code § 7-1671.06) is amended as follows:

(1) Subsection (k) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase "a 2-year conditional license" and inserting the phrase "a conditional license valid for up to 3 years" in its place.

(B) Paragraph (2) is amended as follows:

(i) The lead-in language is amended by striking the phrase "shall have 2 years from the date of ABC Board approval" and inserting the phrase "shall have until the end of the term of the conditional license" in its place.

(ii) Subparagraph (C) is amended by striking the phrase "certificate of occupancy" and inserting the phrase "zoning certificate or certificate of occupancy" in its place.

(C) Paragraph (3) is amended to read as follows:

"(3) The holder of a conditional license shall not engage in purchasing, possessing, cultivating, manufacturing, or selling of medical cannabis, cannabis products, or Schedule I substances.".

(D) Paragraph (4) is amended by striking the phrase "after a period of 2 years" and inserting the phrase "before the end of the term of the conditional license" in its place.

(2) Subsection (k-1) is amended to read as follows:

"(k-1) A one-year conditional license that was in effect as of December 17, 2024, and that automatically converted to a 2-year conditional license, shall automatically convert to a 3-year conditional license, expiring 2 years after the date the original conditional license was set to expire, at no additional cost and without additional ABC Board approval.".

(3) Subsection (l) is amended by striking the phrase "A one-year conditional license" and inserting the phrase "A conditional license" in its place.

(4) Subsection (q) is amended to read as follows:

"(q)(1)(A) A retailer or internet retailer shall not locate within any residential district or within 400 feet of a preschool, primary or secondary school, or recreation center; except, that a license holder or an applicant who has applied prior to December 17, 2024, shall not be permitted to locate within 300 feet of a preschool, primary or secondary school, or recreation center.

"(B) Notwithstanding subparagraph (A) of this paragraph, an unlicensed establishment license holder or applicant that applied for a retailer or internet retailer license during the 90-calendar-day open application period set forth in section 7a(a)(1) shall be permitted to locate within 300 feet of a preschool, primary or secondary school, or recreation center where the main entrance to the preschool, primary school or secondary school, or recreation center is actually on or occupies ground zoned commercial or industrial according to the official atlases of the Zoning Commission of the District of Columbia.

"(2) A retailer or internet retailer that received a license in compliance with paragraph (1) of this subsection shall not have to relocate to renew its license at its existing location if a preschool, primary or secondary school, or recreation center subsequently locates within 400 feet of its facility.".

(c) Section 7b (D.C. Official Code § 7-1671.06b) is amended by adding a new subsection (a-1) to read as follows:

"(a-1) Notwithstanding any other provision of this section, an unlicensed establishment may be summarily closed and padlocked, without a prior hearing, pursuant to section 9(g) after April 1, 2025, if, after an inspection, ABCA determines that the unlicensed establishment presents an imminent danger to the health or safety of the public as described in section 9(g)(2).".

(d) Section 9 (D.C. Official Code § 7-1671.08) is amended as follows:

(1) Subsection (b) is amended by redesignating the second paragraph (1) as paragraph (2).

(2) A new subsection (c-1) is added to read as follows:

"(c-1) It shall be a violation of this act for a licensed establishment or an unlicensed establishment, regardless of whether the unlicensed establishment has an application pending before the ABC Board, to sell, exchange as part of a commercial transaction, or deliver Schedule I substances or products that contain Schedule I substances.".

(3) Subsection (g) is amended as follows:

(A) Paragraph (1) is amended as follows:

(i) Strike the phrase "this title" and insert the phrase "this act" in its place.

(ii) Strike the phrase "cannabis and cannabis products" and insert the phrase "cannabis, cannabis products, Schedule I substances, or products that contain Schedule I substances" in its place.

(B) A new paragraph (6) is added to read as follows:

"(6) The ABC Board may continue the summary closure, padlocking of the premises, and seizure of cannabis, cannabis products, Schedule I substances, and products containing Schedule I substances until the imminent danger that triggered the summary closure is abated. Even if the imminent danger that triggered the summary closure is abated, the ABC Board may continue the summary closure, the padlocking of the premises, and the seizure of cannabis, cannabis products, Schedule I substances, and products containing Schedule I substances, if the ABC Board determines, in its reasonable judgment, the imminent danger is likely to recur.".

(4) A new subsection (g-1) is added to read as follows:

"(g-1)(1) The ABC Board may summarily close and order the padlocking, by ABCA or MPD without a prior hearing, of a licensed establishment, and ABCA or MPD may seize all cannabis, cannabis products, Schedule I substances, and products containing Schedule I substances found at the premises, if, after an inspection, ABCA determines that the licensed establishment presents an imminent danger to the health and safety of the public for the reasons set forth in subsection (g)(2)(C) through (G) of this section.

"(2) ABCA shall provide the licensed establishment's owner and the property owner with written notice of the summary closure and the right to request a hearing.

"(3) The owner of the licensed establishment shall have 5 business days after service of the notice of summary closure to request a hearing with the ABC Board, which shall hold a hearing within 5 business days of a timely request.

"(4) The ABC Board shall issue a written decision within 5 business days after the hearing, or if no hearing is requested, within 10 business days after the service of the notice.

"(5) The ABC Board may continue the summary closure, padlocking of the premises, and seizure of cannabis, cannabis products, Schedule I substances, and products containing Schedule I substances until the imminent danger that triggered the summary closure is abated. Even if the imminent danger that triggered the summary closure is abated, the Board may continue the summary closure, the padlocking of the premises, and the seizure of cannabis, cannabis products, Schedule I substances, and products containing Schedule I substances, if the ABC Board determines, in its reasonable judgment, the imminent danger is likely to recur.".

(5) Subsection (h) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(h)(1) ABCA or the Metropolitan Police Department may post signage at the site of the unlicensed establishment or licensed establishment indicating that activity that violates this act has been found to have occurred at the establishment.".

(B) Paragraph (2) is amended by striking the phrase "unlicensed establishment" and inserting the phrase "unlicensed establishment or licensed establishment" in its place.

(6) Subsection (i)(1) is amended to read as follows:

"(i)(1) An ABCA investigator may test cannabis and cannabis products found at a licensed establishment or unlicensed establishment to quantify their THC content and may, to the extent the investigator has probable cause to do so, test other substances and products found at a licensed establishment or unlicensed establishment for the presence and quantity of a Schedule I substance.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

(a) 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 a 30-day period of congressional

ENROLLED ORIGINAL

review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

(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
OCTOBER 21, 2026

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 26-449**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**OCTOBER 22, 2026**

To amend, on an emergency basis, due to congressional review, the Office of Citizen Complaint Review Establishment Act of 1998 to expand the membership of the Police Complaints Board and to allow the Office of Police Complaints' Executive Director to initiate their own complaint if they discover evidence of abuse or misuse of police powers that was not alleged in the original complaint, including the failure to intervene or report to a supervisor when another officer used excessive force, engaged in other forms of misconduct, or violated a rule or regulation; and to amend Chapter 3 of Title 14 of the District of Columbia Official Code to clarify that certain provisions only apply to a victim who is under the age of 18.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Comprehensive Policing and Justice Reform Technical Congressional Review Emergency Amendment Act of 2026".

Sec. 2. The Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1101 *et seq.*), is amended as follows:

(a) Section 4 (D.C. Official Code § 5-1103) is amended by adding a new paragraph (3B) to read as follows:

"(3B) "MPD" means the Metropolitan Police Department.".

(b) Section 5(a) (D.C. Official Code § 5-1104(a)) is amended by striking the phrase "There is established a Police Complaints Board ("Board"). The Board shall be composed of 5 members, one of whom shall be a member of the MPD, and 4 of whom shall have no current affiliation with any law enforcement agency." and inserting the phrase "There is established a Police Complaints Board. The Board shall be composed of 9 members, which shall include one member from each Ward and one at-large member, none of whom, after the expiration of the term of the currently serving member of the MPD, shall be affiliated with any law enforcement agency." in its place.

(c) Section 8 (D.C. Official Code § 5-1107) is amended as follows:

(1) A new subsection (g-1) is added to read as follows:

"(g-1)(1) If the Executive Director discovers evidence of abuse or misuse of police powers that was not alleged by the complainant in the complaint, the Executive Director may:

"(A) Initiate the Executive Director's own complaint against the subject police officer; and

"(B) Take any of the actions described in subsection (g)(2) through (6) of this section.

"(2) The authority granted pursuant to paragraph (1) of this subsection shall include circumstances in which the subject police officer failed to:

"(A) Intervene in or subsequently report any use of force incident in which the subject police officer observed another law enforcement officer, including an MPD officer, utilizing excessive force or engaging in any type of misconduct, pursuant to MPD General Order 901.07, its successor directive, or a similar local or federal directive; or

"(B) Immediately report to their supervisor any violations of the rules and regulations of the MPD committed by any other MPD officer, and each instance of their use of force or a use of force committed by another MPD officer, pursuant to MPD General Order 201.26, or any successor directive.".

(2) Subsection (h) is amended by striking the phrase "subsection (g)" and inserting the phrase "subsection (g) or (g-1)" in its place.

Sec. 3. Chapter 3 of Title 14 of the District of Columbia Official Code is amended as follows:

(a) Section 14-310(b)(4) is amended as follows:

(1) Subparagraph (B) is amended by striking the phrase "whom the victim has" and inserting the phrase "whom a victim under 18 years of age has" in its place.

(2) Subparagraph (C) is amended by striking the phrase "the victim" and inserting the phrase "a victim who is under 18 years of age" in its place.

(b) Section 14-311(b)(4) is amended as follows:

(1) Subparagraph (B) is amended by striking the phrase "with whom the victim has" and inserting the phrase "with whom a victim under 18 years of age has" in its place.

(2) Subparagraph (C) is amended by striking the phrase "the victim" and inserting the phrase "a victim who is under 18 years of age" in its place.

(c) Section 14-312(b)(5) is amended as follows:

(1) Subparagraph (B) is amended by striking the phrase "with whom the sexual assault victim has" and inserting the phrase "with whom a sexual assault victim under 18 years of age has" in its place.

(2) Subparagraph (C) is amended by striking the phrase "the sexual assault victim" and inserting the phrase "a sexual assault victim who is under 18 years of age" in its place.

ENROLLED ORIGINAL

Sec. 4. Applicability.

(a) Section 2 shall expire on the applicability date of section 105 of the Comprehensive Policing and Justice Reform Amendment Act of 2022, effective April 21, 2023 (D.C. Law 24-345; 70 DCR 6316).

(b) Section 3 shall expire on the applicability date of section 4 of the Leading Education Access for Reentry and Necessary Success ("LEARNS") Amendment Act of 2026, enacted on July 2, 2026 (D.C. Act 26-368; 73 DCR 9419).

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. 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 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

UNSIGNED

Mayor
District of Columbia
OCTOBER 21, 2026

**ENROLLED ORIGINAL**

AN ACT

# D.C. ACT 26-450

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

## OCTOBER 21, 2026

To amend, on an emergency basis, section 2a of the Performance Parking Pilot Zone Act of 2008 to require the Department of Small and Local Business Development to award a $1 million dollar grant in Fiscal Year 2027 to the Duke Business Improvement District Corporation; and to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Duke District BID Grantmaking Emergency Amendment Act of 2026".

Sec. 2. Section 2a(c)(4)(A) of the Performance Parking Pilot Zone Act of 2008, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 50-2531.01(c)(4)(A)), is amended to read as follows:

"(4)(A) Notwithstanding paragraph (3) of this subsection, within the first quarter of Fiscal Year 2027, the Department of Small and Local Business Development shall award a grant in the amount of $1 million from the Fund to support the Duke Business Improvement District Corporation, d/b/a Duke District BID, to improve conditions for property owners, businesses, residents, and visitors within the Greater Shaw/U Street area.".

Sec. 3. Amendatory section 2a(c)(4)(A) in section 6302(c)(3) of the Performance Parking Zone Fund Modification Amendment Act of 2026, enacted on August 14, 2026 (D.C. Act 26-418; 73 DCR 11735), is amended to read as follows:

"(4)(A) Notwithstanding paragraph (3) of this subsection, within the first quarter of Fiscal Year 2027, the Department of Small and Local Business Development shall award a grant in the amount of $1 million from the Fund to support the Duke Business Improvement District Corporation, d/b/a Duke District BID, to improve conditions for property owners, businesses, residents, and visitors within the Greater Shaw/U Street area.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

ENROLLED ORIGINAL

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 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
OCTOBER 21, 2026

**ENROLLED ORIGINAL**

A RESOLUTION

26-529

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2026

To declare the existence of an emergency, due to congressional review, with respect to the need to amend section 1507 of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001 to change the date by which the Prearrest Diversion Task Force shall issue initial recommendations for prearrest diversion of certain misdemeanor offenses and categories of persons to July 2026.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Prearrest Diversion Task Force Recommendations Congressional Review Emergency Declaration Resolution of 2026".

Sec. 2. (a) On July 14, 2026, the Council passed the Prearrest Diversion Task Force Recommendations Emergency Amendment Act of 2026, effective July 30, 2026 (D.C. Act 26-386; 73 DCR 11163) ("emergency act"), which expires on October 28, 2026.

(b) On September 22, 2026, the Council passed the Prearrest Diversion Task Force Recommendations Temporary Amendment Act of 2026, enacted on October 21, 2026 (D.C. Act 26-446; __ DCR ___) ("temporary act"), which does not yet have a projected law date.

(c) Congressional review emergency legislation is necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary act.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Prearrest Diversion Task Force Recommendations Congressional Review Emergency Amendment Act of 2026 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

26-530

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2026

To declare the existence of an emergency, due to congressional review, with respect to the need to amend An Act To create a Department of Corrections in the District of Columbia and the Corrections Oversight Improvement Omnibus Amendment Act of 2022 to designate the Department of Corrections as the District agency to provide a free appropriate public education under the Individuals with Disabilities Education Act and District law to certain individuals in its custody and detained in its secure facilities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Special Education for Young Adults in the Custody of the Department of Corrections Congressional Review Emergency Declaration Resolution of 2026".

Sec. 2. (a) On July 14, 2026, the Council passed the Special Education for Young Adults in the Custody of the Department of Corrections Emergency Amendment Act of 2026, effective July 30, 2026 (D.C. Act 26-387; 73 DCR 11165) ("emergency act"), which expires on October 28, 2026.

(b) On September 22, 2026, the Council passed the Special Education for Young Adults in the Custody of the Department of Corrections Temporary Amendment Act of 2026, enacted on October 21, 2026 (D.C. Act 26-447; __ DCR ___) ("temporary act"), which does not yet have a projected law date.

(c) Congressional review emergency legislation is necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary act.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Special Education for Young Adults in the Custody of the Department of Corrections Congressional Review Emergency Amendment Act of 2026 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

26-533

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2026

To confirm the appointment of Niranjan Adhikari as a member of the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Niranjan Adhikari Confirmation Resolution of 2026".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Niranjan Adhikari
Massachusetts Avenue, NW
Washington, DC 20005
(Ward 2)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), for a term to end December 31, 2027.

Sec. 3. The Council shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Mayor.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

26-534

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2026

To confirm the appointment of Monika Nemeth as a member of the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Monika Nemeth Confirmation Resolution of 2026".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Monika Nemeth
Alton Place, NW
Washington, DC 20008
(Ward 3)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), for a term to end December 31, 2028.

Sec. 3. The Council shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Mayor.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

26-535

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2026

To declare the existence of an emergency with respect to the need to approve Contract No. CW130810 with Capitol Paving of D.C., Inc. and Modification Nos. M01 and M02 thereto, and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW130810 with Capitol Paving of D.C., Inc. and Modification Nos. M01 and M02 Approval and Payment Authorization Emergency Declaration Resolution of 2026".

Sec. 2.(a) There exists an immediate need to approve Contract No. CW130810 with Capitol Paving of D.C., Inc. and Modification Nos. M01 and M02 thereto, and to authorize payment for the goods and services received and to be received under the contract.

(b) On November 7, 2025, the Office of Contracting and Procurement ("OCP"), on behalf of the Department of Public Works, awarded Letter Contract CW130810 to Capitol Paving of D.C., Inc., to perform snow and ice removal services in the not-to-exceed amount of $1 million.

(c) On January 22, 2026, OCP definitized emergency Contract No. CW130810, increasing the estimated amount by $3,717,000, to a total estimated amount of $4,717,000.

(d) On June 1, 2026, by Modification M01, OCP increased the estimated amount of the contract by $283,000, to a total estimated amount of $5 million.

(e) On June 1, 2026, OCP executed Modification M02, an administrative modification to change the price schedule, but did not increase the estimated amount of the contract.

(f) Council approval is necessary because the value of the contract is more than $1 million during a 12-month period.

(g) Council approval is necessary to allow the continuation of these vital services. Without Council approval, Capitol Paving of D.C., Inc. cannot be paid for goods and services provided in excess of $1 million for the period from November 7, 2025, through November 6, 2026.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the

**ENROLLED ORIGINAL**

Contract No. CW130810 with Capitol Paving of D.C., Inc. Approval and Payment Authorization Emergency Act of 2026 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

26-536

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2026

To declare the existence of an emergency with respect to the need to amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to clarify that a transition committee may be organized on behalf of the Mayor-elect and to adopt the definition of "Mayor-elect" provided in the Mayoral Transition Act of 2026; and to amend the Official Correspondence Regulations to adopt the same definition of "Mayor-elect".

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Mayoral Transition Emergency Declaration Resolution of 2026".

Sec. 2. (a) The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq*.), uses the term "Mayor-elect" but does not define it. Further, the definition of "transition committee" allows a committee to be organized on behalf of the Mayor but does not expressly mention the Mayor-elect.

(b) The Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 *et seq*.), also use, but lack a definition of, the term "Mayor-elect".

(c) These omissions create uncertainty about when a person qualifies as Mayor-elect, if a transition committee can be organized on behalf of the Mayor-elect, and whether and when the Mayor-elect may mail materials as official mail.

(d) In the Mayoral Transition Act of 2026, effective October 2, 2026 (D.C. Law 26-189; 73 DCR 11735), the Council defined "Mayor-elect" as a person certified by the Board of Elections as the successful candidate of the 2026 general election or, before certification, the person announced and published by the Board of Elections as the unofficial winner of the 2026 general election with a margin of victory of at least 2% of the votes cast. That definition, however, was not incorporated into the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq*.), or the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 *et seq*.).

(e) The accompanying emergency legislation clarifies existing law by incorporating that definition into the ethics and campaign finance provisions, expressly includes "Mayor-elect" in

the definition of "transition committee," and applies the same definition to the provision authorizing the Mayor-elect to use official mail.

(f) With the November 2026 general election approaching, these ambiguities must be resolved before the transition begins. As the October 20 Additional Legislative Meeting is the last chance the Council will have to make these statutory clarifications, emergency legislation is necessary to provide clear and consistent rules for the Mayor-elect's transition activities during the limited period between the election, certification, and the beginning of the next mayoral term.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Mayoral Transition Emergency Amendment Act of 2026 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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

**COUNCILMEMBER CHRISTINA HENDERSON, CHAIRPERSON**
**COMMITTEE ON HEALTH**
**ANNOUNCES A PUBLIC Hearing**

**ON**

B26-0167- Personal Medical Record Fee Exemption Amendment Act of 2025
B26-0798 - Health-Care Decisions Amendment Act of 2026

**ON**

**Thursday, December 3, 2026, 10:00 a.m.**
Hybrid in Room 500 and Virtual via Zoom
To Watch Live:
https://dccouncil.gov/council-videos/
https://www.christinahendersondc.com/live
https://www.youtube.com/@cmchenderson

Councilmember Christina Henderson, Chair of the Committee on Health, announces a public hearing on B26-0167 - Personal Medical Record Fee Exemption Amendment Act of 2025 and B26- 0789 - Health-Care Decisions Amendment Act of 2026. The hearing will be held on Thursday, December 3, 2026, 10:00a.m., hybrid in Room 500 of the John A. Wilson Building, and Virtual via Zoom.

The stated purpose of B26-0167 is to prohibit health care entities from charging a fee for personal medical records requested by an individual to support a claim under the Social Security Act or for any other federal or District needs-based benefit program.

The stated purpose of B26-0798 is to expand the range of health professionals authorized to assist patients in completing, executing, and complying with a Medical Orders for Scope of Treatment (MOST) Form.

Witnesses may appear either in-person or virtually using the Zoom platform. Unless otherwise stated in pre-hearing instructions, witnesses will have 3 minutes to speak. The public should sign up at https://lims.dccouncil.gov/Hearings by 5pm on. Tuesday December 1, 2026, **Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding.** We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business

days may not be fulfilled. If you have additional questions, please email Ange Joseph, Legislative Assistant at acjoseph@dccouncil.gov.

Testimony should be submitted through the Council's Hearing Management System https://lims.dccouncil.gov/hearings in advance of the roundtable. Testimony will be publicly accessible upon Committee review. If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Statements for the record should be submitted through the Hearing Management System. The record will close at 5:00pm on Thursday December 17, 2026.

# 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 26-806, "Mary Cuthbert Way Designation Act of 2026"**
**Bill 26-807, "Constance "Connie" Mobley Way Designation Act of 2026"**
**Bill 26-810, "Veola Jackson Way Designation Act of 2026"**
**Bill 26-814, "Delores Tucker Way Designation Act of 2026"**
**Bill 26-817, "Electric Way Designation Act of 2026"**
**Bill 26-838, "Kentrell Devaughn Way Designation Act of 2026"**
**Bill 26-839, "Johnny Gant Way Designation Act of 2026"**
**Bill 26-811, "Opening of Streets, Designation of Opened Streets, and Closing of a Portion of a Street in Square 1112-E Act of 2026"**
**Bill 26-812, "Elimination and Establishment of the Highway Plan in Square 5963, Lots 801, 802, and 803, S.R. 26-00076, Act of 2026"**

on

**Thursday, November 19, 2026 at 2:30 p.m.**

**Council Chambers, Room 500 (Track A)**
**John A. Wilson Building**
**1350 Pennsylvania Avenue NW**
**DC Council Website (www.dccouncil.gov)**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 26-806,** the "Mary Cuthbert Way Designation Act of 2026," **Bill 26-807,** the "Constance "Connie" Mobley Way Designation Act of 2026," **Bill 26-810,** the "Veola Jackson Way Designation Act of 2026," **Bill 26-814**, the "Delores Tucker Way Designation Act of 2026," **Bill 26-817,** the "Electric Way Designation Act of 2026," **Bill 26-838,** the "Kentrell Devaughn Way Designation Act of 2026," **Bill 26-839,** the "Johnny Gant Way Designation Act of 2026," **Bill 26-811,** the "Opening of Streets, Designation of Opened Streets, and Closing of a Portion of a Street in Square 1112-E Act of 2026," and **Bill 26-812**, the "Elimination and Establishment of the Highway Plan in Square 5963, Lots 801, 802, and 803, S.R. 26-00076, Act of 2026." The hearing will be held at **2:30 p.m. on Thursday, November 19, 2026.**

The stated purpose of Bill 26-806 is to symbolically designate the 600 Block of Alabama Avenue, S.E., as Mary Cuthbert Way. The stated purpose of Bill 26-807 is to symbolically designate the unit block of Atlantic Street, S.E., as Constance "Connie" Mobley Way. The stated purpose of Bill 26-810 is to symbolically designate C Street, NE, between 4th Street, NE and 6th Street, NE, as Veola Jackson Way. The stated purpose of Bill 26-814 is to symbolically designate Euclid Street, N.W. between Georgia Avenue, N.W. and Sherman Avenue, N.W. as Delores Tucker Way. The stated purpose of Bill 26-817 is to symbolically designate the public alley system within Square 1030 abutting Lots 812 and 814 as Electric Way. The stated purpose of Bill 26-838 is to symbolically designate 45th Street NE, between Douglass Street NE and Quarles Street NE in Ward 7, as Kentrell Devaughn Way. The stated purpose of Bill 26-839 is to symbolically designate 50th Street NE, between East Capitol Street NE and Ames Street NE in Ward 7, as Johnny Gant Way.

The stated purpose of Bill 26-811 is to approve the opening of streets in Square 1112-E, to designate the opened streets as 20th Street, S.E, 21st Street, S.E., Burke Street, S.E., 20th Place, S.E., 21st Place, S.E., C Place, S.E., and C Street, S.E, and to approve the closing of a portion of 20th Street, S.E. These streets proposed for opening and designation are within the area generally known as Hill East which was transferred to the District from the federal government and is currently being redeveloped. Council action is necessary to open new streets. The stated purpose of Bill 26-812 is to remove from the plan for the extension of a permanent system of highways (commonly referred to as the highway plan) a portion of 7th Street, S.E., located on Lots 801, 802 and 803 in Square 5963, and to establish on such plan a portion of Valley Avenue S.E., on Lot 801 in Square 5963. This legislation would facilitate the renovation of Hart Middle School in Ward 8.

Those who wish to testify must register using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings by **5:00 p.m. on Tuesday, November 17, 2026**. **Testimony is limited to four minutes**. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding by emailing cow@dccouncil.gov. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled. Witnesses will receive instructions on how to participate by Zoom prior to the hearing. If you have additional questions, please contact Evan Cash, Committee and Legislative Director, at (202) 724-8196 or cow@dccouncil.gov.

Public witnesses may participate in person or virtually via the Internet on the Zoom Video Conference platform. Testimony should be submitted through the Council's Hearing Management System (https://lims.dccouncil.gov/hearings) in advance of the hearing. That testimony will be publicly accessible upon Committee review. If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Statements for the record should be submitted through the Hearing Management System or left by voicemail by calling (202) 430-6948 (up to 3 minutes which will be transcribed). The record will close at 5:00 pm on November 30, 2026.

# COUNCIL OF THE DISTRICT OF COLUMBIA
# COMMITTEE OF THE WHOLE
# NOTICE OF A PUBLIC OVERSIGHT HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON**
**COMMITTEE OF THE WHOLE**
**ANNOUNCES A PUBLIC OVERSIGHT HEARING**

on

**Academic Achievement in the District of Columbia**

on

**Wednesday, December 9, 2026, at 10:00 a.m.**

**Room 500 (Track A)**
**John A. Wilson Building**
**1350 Pennsylvania Avenue, NW**
**Washington, DC 20004**
**DC Council Website (www.dccouncil.gov)**

Council Chairman Phil Mendelson announces a public oversight hearing before the Committee of the Whole on the topic of *Academic Achievement in the District of Columbia*. The public hearing will be held on **Wednesday, December 9, 2026, at 10:00 a.m.**

The purpose of this hearing is to examine the academic achievement of students in the District of Columbia Public Schools (DCPS) and the District's Public Charter Schools (DCPCS) sectors. Specifically, this oversight hearing will focus on DCPS's and DCPCS's performance and their plans for continued improvement following the release of the 2026 Comprehensive Assessments of Progress in Education (CAPE) results. This hearing is an opportunity to discuss steps the education agencies are taking to improve literacy and numeracy skills and improve academic performance overall. The Committee holds a hearing on this matter annually.

Those who wish to testify must register using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings no later than **5:00 p.m. on Monday, December 7, 2026**. **Testimony is limited to three minutes**. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding by emailing cow@dccouncil.gov. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled. Witnesses will receive instructions on how to participate by Zoom prior to the hearing. If you have additional questions, please get in touch with Aliyah McNeely, Legislative Policy Advisor, at (202) 724-7130 or amcneely@dccouncil.gov.

Public witnesses will participate in-person or virtually via the Internet on the Zoom Video Conference platform. Those who wish to submit testimony for the record may do so by using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings or by leaving a voicemail at (202) 430-6948 (up to 3 minutes which will be transcribed). Testimony will be publicly accessible upon Committee review. **The record will close at 5:00 pm on Wednesday, December 23, 2026.**

# COUNCIL OF THE DISTRICT OF COLUMBIA
# COMMITTEE OF THE WHOLE
# NOTICE OF A PUBLIC OVERSIGHT HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON**
**COMMITTEE OF THE WHOLE**
**ANNOUNCES A PUBLIC OVERSIGHT HEARING**

on

**Bill 26-420 - Student Identification Card Act of 2025**

**And**

**Bill 26-856 - Expanding Access for Student Identification Empowers Readers (EASIER) Act of 2026**

on

**Friday, December 11, 2026, at 10:00 a.m.**

**Room 412 (Track B)**
**John A. Wilson Building**
**1350 Pennsylvania Avenue, NW**
**Washington, DC 20004**
**DC Council Website (www.dccouncil.gov)**

Council Chairman Phil Mendelson announces a public oversight hearing before the Committee of the Whole on the topic of *Bill 26-420 Student Identification Card Act of 2025 and Bill 26-856 Expanding Access for Student Identification Empowers Readers (EASIER) Act of 2026.* The public hearing will be held on **Friday, December 11, 2026, at 10:00 a.m.**

The stated purpose of Bill 26-420 is to require the Mayor to ensure that local education agencies issue student identification cards to middle school and high school students. The stated purpose of Bill 26-856 is to require student identification cards issued under the Student Identification Card Act of 2025 to be included free of charge and include all the functionality of a District of Columbia Public Library card. It would also enable access to Department of Parks and Recreation facilities, convey how to contact the national Suicide & Crisis Lifeline, and be provided free of charge.

Those who wish to testify must register using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings no later than **5:00 p.m. on Wednesday, December 9, 2026**. **Testimony is limited to three minutes**. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding by emailing cow@dccouncil.gov. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled. Witnesses will receive instructions on how to participate by Zoom prior to the hearing. If you have additional questions, please get in touch with Aliyah McNeely, Legislative Policy Advisor, at (202) 724-7130 or amcneely@dccouncil.gov.

Public witnesses will participate in-person or virtually via the Internet on the Zoom Video Conference platform. Those who wish to submit testimony for the record may do so by using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings or by leaving a voicemail at (202) 430-6948 (up to 3 minutes which will be transcribed). Testimony will be publicly accessible upon Committee review. **The record will close at 5:00 pm on Wednesday, December 23, 2026**.

# COUNCIL OF THE DISTRICT OF COLUMBIA
# COMMITTEE OF THE WHOLE
# NOTICE OF A JOINT PUBLIC ROUNDTABLE

1350 Pennsylvania Avenue, NW, Washington, DC 20004 **RECONVENED**

**CHAIRMAN PHIL MENDELSON**
**COMMITTEE OF THE WHOLE**
**AND**
**COUNCILMEMBER JANEESE LEWIS GEORGE**
**COMMITTEE ON FACILITIES**
**ANNOUNCE A JOINT PUBLIC ROUNDTABLE (RECESSED)**
on

**"Stuck on the Ground Floor: Out-of-Service Elevators in the District of Columbia's Public Schools"**

on

**Wednesday, November 18, 2026, at 2:30 p.m.**

**Room 412 (Track B)**
**John A. Wilson Building**
**1350 Pennsylvania Avenue, NW**
**Washington, DC 20004**
**DC Council Website (www.dccouncil.gov)**

Council Chairman Phil Mendelson and Councilmember Janeese Lewis George announce a roundtable for agency representatives and invited witnesses jointly held by the Committee of the Whole and the Committee on Facilities on "Stuck on the Ground Floor: Out-of-Service Elevators in District of Columbia's Public Schools**."** The roundtable will be held at **2:30 p.m. on Wednesday, November 18, 2026. This hearing is a continuation of (recessed from) of the October 8th hearing, "Stuck on the Ground Floor: Out-of-Service Elevators in the District of Columbia's Public Schools."**

At the beginning of the 2026-2027 school year, a number of school communities reached out to Council expressing frustration and concern about non-operable elevators in their school buildings. Functioning elevators are not just a convenience; they are a matter of access. Students with disabilities' civil rights are violated when they cannot access their legally mandated free and appropriate education due to broken elevators. The Committee is deeply concerned that the Department of General Services (DGS) and District of Columbia Public Schools (DCPS) have not been able to ensure a basic and critical service such as elevator maintenance. For many schools, the broken elevators were not a surprise, as the schools had notified DGS and DCPS months, if not years, before the school year began. The purpose of this Joint Hearing is to address widespread elevator failures in public schools, understand how, if at all, DGS and DCPS prioritize repairs, why elevators remain out-of-service, and to identify next steps to ensure this issue does not continue.

**This hearing is limited to agency representatives and invited witnesses.** However, anyone who wishes to submit testimony for the record may do so by using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings or by leaving a voicemail at (202) 430-6948 (up to 3 minutes which will be transcribed). Testimony will be publicly accessible upon Committee review. **The record will close at 5:00 pm on Wednesday, December 2, 2026**. If you have additional questions, please contact Bijan Verlin, Legislative Policy Advisor, at (202) 724-4865 or bverlin@dccouncil.gov.

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ON**
**10/30/2026**

**Notice is hereby given that:**

**License Number: ABRA-078895** **License Class/Type: B / Retail - Grocery**

**Applicant: Target Corporation**

**Trade Name: Target Store T-2259**

**SMD: 1A05**

**Has applied for the renewal of an alcoholic beverage license at the premises:**

**3100 14TH STREET NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:**
**12/14/2026**

**A HEARING WILL BE HELD ON:**
**1/4/2027**

**AT 10:00 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**

| Days | Hours of Operation | Hours of Sales/Service |
|---|---|---|
| Sunday: | 7 am - 12 am | 7 am - 12 am |
| Monday: | 7 am - 12 am | 7 am - 12 am |
| Tuesday: | 7 am - 12 am | 7 am - 12 am |
| Wednesday: | 7 am - 12 am | 7 am - 12 am |
| Thursday: | 7 am - 12 am | 7 am - 12 am |
| Friday: | 7 am - 12 am | 7 am - 12 am |
| Saturday: | 7 am - 12 am | 7 am - 12 am |

**ENDORSEMENT(S): Tasting**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ON**
**10/30/2026**

**Notice is hereby given that:**

**License Number: ABRA-080595** **License Class/Type: B / Retail - Class B**

**Applicant: Travel Traders Retail, Inc**

**Trade Name: The Market**

**SMD: 6E08**

**Has applied for the renewal of an alcoholic beverage license at the premises:**

**400 NEW JERSEY AVENUE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:**
**12/14/2026**

**A HEARING WILL BE HELD ON:**
**1/4/2027**

**AT 10:00 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**

| Days | Hours of Operation | Hours of Sales/Service |
|---|---|---|
| Sunday: | 6 am - 11 pm | 7 am - 10 pm |
| Monday: | 6 am - 11 pm | 7 am - 10 pm |
| Tuesday: | 6 am - 11 pm | 7 am - 10 pm |
| Wednesday: | 6 am - 11 pm | 7 am - 10 pm |
| Thursday: | 6 am - 11 pm | 7 am - 10 pm |
| Friday: | 6 am - 11 pm | 7 am - 10 pm |
| Saturday: | 6 am - 11 pm | 7 am - 10 pm |

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ON**
**10/30/2026**

**Notice is hereby given that:**

**License Number: ABRA-118815** **License Class/Type: B / Internet**

**Applicant: R & L Bubbles, LLC**

**Trade Name: R & L Bubbles**

**SMD: 5C04**

**Has applied for the renewal of an alcoholic beverage license at the premises:**

**3521 V STREET NE**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:**
**12/14/2026**

**A HEARING WILL BE HELD ON:**
**1/4/2027**

**AT 10:00 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**

| Days | Hours of Operation | Hours of Sales/Service |
|---|---|---|
| Sunday: | Closed - Closed | Closed - Closed |
| Monday: | 9am - 5pm | 9am - 5pm |
| Tuesday: | 9am - 5pm | 9am - 5pm |
| Wednesday: | 9am - 5pm | 9am - 5pm |
| Thursday: | 9am - 5pm | 9am - 5pm |
| Friday: | 9am - 5pm | 9am - 5pm |
| Saturday: | Closed - Closed | Closed - Closed |

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ON**
**10/30/2026**

**Notice is hereby given that:**

**License Number: ABRA-129916** **License Class/Type: B / 25 Percent**

**Applicant: MSD RCOF DC HOTEL OpCo, LLC**
**Trade Name: Waldorf Astoria Washington DC**
**SMD: 2C03**

**Has applied for the renewal of an alcoholic beverage license at the premises:**

**1100 PENNSYLVANIA AVENUE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:**
**12/14/2026**

**A HEARING WILL BE HELD ON:**
**1/4/2027**

**AT 10:00 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**

| Days | Hours of Operation | Hours of Sales/Service |
|---|---|---|
| Sunday: | 7 am - 12 am | 7 am - 12 am |
| Monday: | 7 am - 12 am | 7 am - 12 am |
| Tuesday: | 7 am - 12 am | 7 am - 12 am |
| Wednesday: | 7 am - 12 am | 7 am - 12 am |
| Thursday: | 7 am - 12 am | 7 am - 12 am |
| Friday: | 7 am - 12 am | 7 am - 12 am |
| Saturday: | 7 am - 12 am | 7 am - 12 am |

**ENDORSEMENT(S): Tasting**

FOR FURTHER INFORMATION CALL: (202) 442-4423

## ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

## NOTICE OF PUBLIC HEARING

****READVERTISMENT**

| | |
|---|---|
| Placard Posting Date: | October 30, 2026 |
| Protest Petition Deadline: | December 14, 2026 |
| Roll Call Hearing Date: | January 4, 2027 |
| Protest Hearing Date: | February 10, 2027 |

| | |
|---|---|
| License No.: | ABRA-126772 |
| Licensee: | Embers, LLC |
| Trade Name: | Embers |
| Registration/License Type: | Medical Cannabis Retailer |
| Address: | 1921 18th Street N.W. |
| Contact: | Barry Doyle; 202-669-2821; Barry1111@gmail.com |

WARD 2 ANC 2B SMD 2B08

Notice is given that the above-named medical cannabis retailer applicant has requested a transfer license to be located at **1921 18th Street N.W.** Pursuant to Title 22-C of the DCMR (Medical Cannabis Program) objectors are entitled to be heard regarding the new license application. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the petition deadline. The **Roll Call Hearing is scheduled for January 4, 2027 at 10 a.m., Suite 4200-A, 899 North Capitol Street N.E., Washington, DC, 20002**. The **Protest Hearing date** is scheduled for **February 10, 2027 at 1:30 p.m.** All hearings before the Board are conducted virtually.

**NATURE OF OPERATION**

The medical cannabis retailer applicant is requesting to relocate its operations **1921 18th Street N.W.** The proposed facility with approximately 1,320 square feet of space will provide cannabis flowers, cannabis concentrates, and a line of edible products and home delivery services to registered patients in Washington, D.C. The applicant is requesting delivery and education tasting endorsements.

**HOURS OF OPERATION FOR RETAILER**

Sunday – Saturday 9 am – 11 pm

**HOURS OF RETAILER SALES OPEN TO THE PUBLIC**

Sunday – Saturday 9 am – 11 pm

**HOURS OF DELIVERY FOR RETAILER**

Sunday – Saturday 9 am – 9 pm

## ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

## NOTICE OF PUBLIC HEARING

****RESCIND****

| | |
|---|---|
| Placard Posting Date: | October 2, 2026 |
| Protest Petition Deadline: | November 16, 2026 |
| Roll Call Hearing Date: | December 7, 2026 |
| Protest Hearing Date: | January 13, 2027 |

| | |
|---|---|
| License No.: | ABRA-126772 |
| Licensee: | Embers, LLC |
| Trade Name: | Embers |
| Registration/License Type: | Medical Cannabis Retailer |
| Address: | 1921 18th Street N.W. |
| Contact: | Barry Doyle; 202-669-2821; Barry1111@gmail.com |

WARD 2 ANC 2B SMD 2B08

Notice is given that the above-named medical cannabis retailer applicant has requested a transfer license to be located at **1921 18th Street N.W.** Pursuant to Title 22-C of the DCMR (Medical Cannabis Program) objectors are entitled to be heard regarding the new license application. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the petition deadline. The **Roll Call Hearing is scheduled for December 7, 2026 at 10 a.m., Suite 4200-A, 899 North Capitol Street N.E., Washington, DC, 20002**. The **Protest Hearing date** is scheduled for **January 13, 2027 at 1:30 p.m.** All hearings before the Board are conducted virtually.

**NATURE OF OPERATION**

The medical cannabis retailer applicant is requesting to relocate its operations **1921 18th Street N.W.** The proposed facility with approximately 1,320 square feet of space will provide cannabis flowers, cannabis concentrates, and a line of edible products and home delivery services to registered patients in Washington, D.C. The applicant is requesting delivery and education tasting endorsements.

**HOURS OF OPERATION FOR RETAILER**

Sunday – Saturday 9 am – 11 pm

**HOURS OF RETAILER SALES OPEN TO THE PUBLIC**

Sunday – Saturday 9 am – 11 pm

**HOURS OF DELIVERY FOR RETAILER**

Sunday – Saturday 9 am – 9 pm

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

| | |
|---|---|
| Placard Posting Date: | October 30, 2026 |
| Protest Petition Deadline: | December 14, 2026 |
| Roll Call Hearing Date: | January 4, 2027 |
| Protest Hearing Date: | February 10, 2027 |
| | |
| License No.: | ABRA-137741 |
| Licensee: | Guest Services, Inc. |
| Trade Name: | Island Time Bar and Grill |
| License Class: | Retailer's Class "C" Tavern |
| Address: | 1450 George Washington Memorial Parkway, S.W. |
| Contact: | Matthew Minora, Esq.: (202) 625-7700, mminora@malliosobrien.com |

WARD 2 ANC 2A SMD 2A01

Notice is hereby given that this licensee has applied for a new 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 on January 4, 2027, at 10 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled for **February 10, 2027, at 1:30 p.m.**

**NATURE OF OPERATION**

New Retailer's Class "C" Tavern with seating for 40 and a capacity of 80 inside the premises. Request for two outdoor Summer Garden spaces, one with 110 seats and the other with 500 seats. Overall Total Occupancy Load of 690 throughout the entire premises. The Licensee is also requesting the Holiday Extension of Hours Endorsement and an Entertainment Endorsement inside of the premises and for the outdoor Summer Gardens.

**HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES AND FOR THE OUTDOOR SUMMER GARDENS**

Sunday through Saturday 10am – 9pm

**HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES AND FOR THE OUTDOOR SUMMER GARDENS**

Sunday through Saturday 11am – 7pm

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

| | |
|---|---|
| Placard Posting Date: | October 30, 2026 |
| Protest Petition Deadline: | December 14, 2026 |
| Roll Call Hearing Date: | January 4, 2027 |
| Protest Hearing Date: | February 10, 2027 |
| | |
| License No.: | ABRA-137415 |
| Licensee: | Kneads Navy Yard, LLC |
| Trade Name: | Kneads Bakeshop |
| License Class: | Retailer's Class "C" Restaurant |
| Address: | 221 Tingey Street, S.E. |
| Contact: | Cameron Mixon, Esq.: (202) 686-7600, cmixon@theveritaslawfirm.com |

WARD 8 ANC 8F SMD 8F02

Notice is hereby given that this licensee has applied for a new 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 on January 4, 2027, at 10 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled for **February 10, 2027 at 1:30 p.m.**

**NATURE OF OPERATION**

New Retailer's Class "C" Restaurant with a Seating Capacity of 120, Total Occupancy Load of 175, and a Sidewalk Café with 100 Seats.

**HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES AND FOR THE OUTDOOR SIDEWALK CAFE**

Sunday through Thursday 7am – 12am, Friday and Saturday 7am – 1am

## ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

## NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

| | |
|---|---|
| Placard Posting Date: | October 30, 2026 |
| Protest Petition Deadline: | December 14, 2026 |
| Roll Call Hearing Date: | January 4, 2027 |
| Protest Hearing Date: | February 10, 2027 |

| | |
|---|---|
| License No.: | ABCA-136838 |
| Licensee: | Nugg Heaven, LLC |
| Trade Name: | The Dispensary |
| Registration/License Type: | Medical Cannabis Retailer |
| Address: | 1383-1385 H Street N.E. |
| Contact: | Colenester Jones; 202-733-8299; coljones0121@gmail.com |

WARD 6 ANC 6A SMD 6A06

Notice is given that the above-named medical cannabis retailer applicant has requested a new license to be located at **1383-1385 H Street N.E.** Pursuant to Title 22-C of the DCMR (Medical Cannabis Program) objectors are entitled to be heard regarding the new license application. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the petition deadline. The **Roll Call Hearing is scheduled for January 4, 2027 at 10 a.m., Suite 4200-A, 899 North Capitol Street N.E., Washington, DC, 20002**. The **Protest Hearing date** is scheduled for **February 10, 2027 at 1:30 p.m.** All hearings before the Board are conducted virtually.

**NATURE OF OPERATION**

The medical cannabis retailer applicant is requesting to locate its operations **1383-1385 H Street N.E.** The proposed facility with approximately 2,140 square feet of space will provide cannabis flowers, cannabis concentrates, and a line of edible products and home delivery services to registered patients in Washington, D.C. The applicant is requesting delivery and education tasting endorsements.

**HOURS OF OPERATION FOR RETAILER**

Sunday – Saturday 8 am – 11 pm

**HOURS OF RETAILER SALES OPEN TO THE PUBLIC**

Sunday – Saturday 10 am – 10 pm

**HOURS OF DELIVERY FOR RETAILER**

Sunday – Saturday 10 am – 10 pm

## ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

## NOTICE OF PUBLIC HEARING

****RESCIND****

| | |
|---|---|
| Placard Posting Date: | October 2, 2026 |
| Protest Petition Deadline: | November 16, 2026 |
| Roll Call Hearing Date: | December 7, 2026 |
| Protest Hearing Date: | January 13, 2027 |

| | |
|---|---|
| License No.: | ABCA-136838 |
| Licensee: | Nugg Heaven, LLC |
| Trade Name: | The Dispensary |
| Registration/License Type: | Medical Cannabis Retailer |
| Address: | 1383-1385 H Street N.E. |
| Contact: | Colenester Jones; 202-733-8299; coljones0121@gmail.com |

WARD 6 ANC 6A SMD 6A06

Notice is given that the above-named medical cannabis retailer applicant has requested a new license to be located at **1383-1385 H Street N.E.** Pursuant to Title 22-C of the DCMR (Medical Cannabis Program) objectors are entitled to be heard regarding the new license application. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the petition deadline. The **Roll Call Hearing is scheduled for December 7, 2026 at 10 a.m., Suite 4200-A, 899 North Capitol Street N.E., Washington, DC, 20002**. The **Protest Hearing date** is scheduled for **January 13, 2027 at 1:30 p.m.** All hearings before the Board are conducted virtually.

**NATURE OF OPERATION**

The medical cannabis retailer applicant is requesting to locate its operations **1383-1385 H Street N.E.** The proposed facility with approximately 2,140 square feet of space will provide cannabis flowers, cannabis concentrates, and a line of edible products and home delivery services to registered patients in Washington, D.C. The applicant is requesting delivery and education tasting endorsements.

**HOURS OF OPERATION FOR RETAILER**

Sunday – Saturday 8 am – 11 pm

**HOURS OF RETAILER SALES OPEN TO THE PUBLIC**

Sunday – Saturday 10 am – 10 pm

**HOURS OF DELIVERY FOR RETAILER**

Sunday – Saturday 10 am – 10 pm

**BOARD OF ZONING ADJUSTMENT**
**NOTICE OF VIRTUAL PUBLIC HEARING**

**TIME AND PLACE: Wednesday, January 27, 2027, @9:30 a.m.**
**Via WebEx:** https://dcoz.dc.gov/BZA01-27-2027
**Via Telephone: 202-860-2110 Access Code: 2310 655 3296**
**Via YouTube: https://www.youtube.com/c/DCOfficeofZoning**
**Instructions:** https://dcoz.dc.gov/release/virtual-public-hearings
**Witness Sign Up:** https://dcoz.dc.gov/service/sign-testify

**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.

**WARDS TWO & FIVE**

| | |
|---|---|
| **Application of:** | **Proper Shaw Cafe, LLC** |
| **Case No.:** | **19607A** |
| **Address:** | 1545 New Jersey Avenue, N.W. (Square 510-E, Lot 800) |
| **ANC:** | **2G & 5E** |
| **Relief:** | Modification with Hearing to:<br>• Board of Zoning Adjustment Order No. 19607 (pursuant to Subtitle Y § 704)<br>Use Variance from:<br>• The matter of right uses of Subtitle U § 301 (pursuant to Subtitle X § 1002) |
| **Project:** | To modify Board of Zoning Adjustment Order Number 19607, to construct an outdoor seating area to an existing full-service restaurant in the RF-1 zone. |

**WARD THREE**

| | |
|---|---|
| **Appeal of:** | **Michael Cueter and Frank Madeline Baum** |
| **Appeal No.:** | **21523** |
| **Address:** | 3733 Benton Street N.W. (Square 1301, Lot 1028) |
| **ANC:** | **3B** |
| **Relief:** | Appeal pursuant to:<br>• The provisions of Subtitle X § 1100 |
| **Appeal from:** | The decision made on May 19, 2026, by the District of Columbia Department of Buildings Zoning Administrator, to issue Building Permit Number B2506021. |

## WARD SIX

| | |
|---|---|
| **Application of:** | **Devon Hinojosa** |
| **Case No.:** | **21542** |
| **Address:** | 1236 D Street, S.E. (Square 1017, Lot 69) |
| **ANC:** | **6B** |
| **Relief:** | Special Exception under:<br>• The rear addition requirements of Subtitle E § 207.5 (pursuant to Subtitle X § 901.2) |
| **Project:** | To construct a two-story, rear addition to an existing, attached, two-story, principal dwelling unit in the RF-1 zone. |

## WARD SIX

| | |
|---|---|
| **Application of:** | **D.C. Department of General Services** |
| **Case No.:** | **21544** |
| **Address:** | 635 North Carolina Avenue, S.E. (Square 872, Lot 62) |
| **ANC:** | **6B** |
| **Relief:** | Special Exception from:<br>• The loading requirements of Subtitle C § 901.1 (pursuant to Subtitle C § 909 and Subtitle X § 901.2) |
| **Project:** | To construct a two-story public recreation and community center to an existing, one-story public recreation and community center in the MU-4 zone. |

**PLEASE NOTE:**

This public hearing will be held virtually through WebEx. Information for parties and the public to participate, view, or listen to the public hearing will be provided on the Office of Zoning website and in the case record for each application or appeal by the Friday before the hearing date. Visit https://dcoz.dc.gov/watchlive.

The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11.

To review an application and exhibits in the case record, visit the Interactive Zoning Information System ("IZIS") at https://dcoz.dc.gov/CaseRecord.

Individuals and organizations interested in any application may testify at the public hearing via WebEx or by phone and are strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing on OZ's website at https://dcoz.dc.gov/service/sign-testify or by calling Robert Reid at 202-727-5471. Pursuant to Subtitle Y, Chapter 2, the Board may impose time limits on the testimony of all individuals and organizations.

Individuals and organizations may also submit written comments to the Board by uploading submissions via IZIS at https://app.dcoz.dc.gov/Login.aspx or sent by email to bzasubmissions@dc.gov. Written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing. If you are unable to use either of these means of submission, please contact Robert Reid at (202) 727-5471 for further assistance.

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

**Do you need assistance to participate?**

*Amharic*

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

*Chinese*

**您需要有人帮助参加活**动吗？
**如果您需要特殊便利**设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

*French*

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*Korean*

참여하시는데 도움이 필요하세요?
특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

*Spanish*

¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

*Vietnamese*

Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

**MICHELLE POURCIAU - CHAIRPERSON**
**JONATHAN GOLDSTEIN - VICE-CHAIRPERSON**
**ROBYN WELLS - MEMBER**
**MELISSA LINDSJO - MEMBER, NATIONAL CAPITAL PLANNING COMMISSION**
**A PARTICIPATING MEMBER OF THE ZONING COMMISSION**
**KEARA M. MEHLERT, SECRETARY, BOARD OF ZONING ADJUSTMENT**
**SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this hearing to the Office of Open Government at opengovoffice@dc.gov .

**BOARD OF ZONING ADJUSTMENT**
**NOTICE OF VIRTUAL PUBLIC HEARING**

**TIME AND PLACE: Wednesday, February 3, 2027, @9:30 a.m.**
**Via WebEx:** https://dcoz.dc.gov/BZA02-03-2027
**Via Telephone: 202-860-2110 Access Code: 2315 101 0112**
**Via YouTube: https://www.youtube.com/c/DCOfficeofZoning**
**Instructions:** https://dcoz.dc.gov/release/virtual-public-hearings
**Witness Sign Up:** https://dcoz.dc.gov/service/sign-testify

**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.

**WARD FOUR**

| | |
|---|---|
| **Application of:** | **Montez Miller** |
| **Case No.:** | **21545** |
| **Address:** | 1316 Van Buren Street, NW (Square 2785, Lot 37) |
| **ANC:** | **4A** |
| **Relief:** | Use Variance from:<br>• The accessory apartment owner occupancy requirements of Subtitle U § 253.5 (pursuant to Subtitle X § 1002) |
| **Project:** | To construct an accessory apartment in an existing, detached, two-story plus basement, principal dwelling unit in the R-1B zone. |

**WARD FIVE**

| | |
|---|---|
| **Application of:** | **818 21ST NE DC, LLC** |
| **Case No.:** | **21547** |
| **Address:** | 818 21st Street, N.E. (Square 4495, Lot 10) |
| **ANC:** | **5D** |
| **Relief:** | Special Exception under:<br>• The rear addition requirements of Subtitle E § 207.5 (pursuant to Subtitle X § 901.2)<br>Special Exception from:<br>• The roof top or upper floor element requirements of Subtitle E § 204.1 (pursuant to Subtitle E § 204.4 and Subtitle X § 901.2) |
| **Project:** | To construct a third story addition and a three-story plus cellar rear addition, and convert to a 3-unit apartment house, to an existing, attached, two-story plus cellar, principal dwelling unit in the RF-4 zone. |

**WARD FIVE**

| | |
|---|---|
| **Application of:** | **816 21ST NE DC, LLC** |
| **Case No.:** | **21548** |
| **Address:** | 816 21st Street, N.E. (Square 4495, Lot 11) |
| **ANC:** | **5D** |
| **Relief:** | Special Exception under:<br>• The rear addition requirements of Subtitle E § 207.5 (pursuant to Subtitle X § 901.2)<br>Special Exception from:<br>• The roof top or upper floor element requirements of Subtitle E § 204.1 (pursuant to Subtitle E § 204.4 and Subtitle X § 901.2) |
| **Project:** | To construct a third story addition and a three-story plus cellar rear addition, and convert to a 3-unit apartment house, to an existing, attached, two-story plus cellar, principal dwelling unit in the RF-4 zone. |

## WARD TWO

| | |
|---|---|
| **Application of:** | **436 DC Fee Owner, LLC** |
| **Case No.:** | **21550** |
| **Address:** | 436 11th Street, NW (Square 322, Lot 813) |
| **ANC:** | **2C** |
| **Relief:** | Special Exception under:<br>• The penthouse requirements of Subtitle C § 1501.1(d) (pursuant to Subtitle X § 901.2)<br>Special Exception from:<br>• The penthouse enclosing wall requirements of Subtitle C § 1503.1 (pursuant to Subtitle C § 1506 and Subtitle X § 901.2) |
| **Project:** | To construct an eating and drinking establishment in a new penthouse with roof deck, to an existing, attached, hotel in the D-7 zone. |

**PLEASE NOTE:**

This public hearing will be held virtually through WebEx. Information for parties and the public to participate, view, or listen to the public hearing will be provided on the Office of Zoning website and in the case record for each application or appeal by the Friday before the hearing date. Visit https://dcoz.dc.gov/watchlive.

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**Do you need assistance to participate?**

*Amharic*

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የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

*Chinese*

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*French*

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*Korean*

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*Spanish*

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*Vietnamese*

Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

**MICHELLE POURCIAU - CHAIRPERSON**
**JONATHAN GOLDSTEIN - VICE-CHAIRPERSON**
**ROBYN WELLS - MEMBER**
**MELISSA LINDSJO - MEMBER, NATIONAL CAPITAL PLANNING COMMISSION**
**A PARTICIPATING MEMBER OF THE ZONING COMMISSION**
**KEARA M. MEHLERT, SECRETARY, BOARD OF ZONING ADJUSTMENT**
**SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this hearing to the Office of Open Government at opengovoffice@dc.gov .

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

**TIME AND PLACE:** **December 14, 2026, @ 4:00 p.m.**
**WebEx or Telephone – Instructions will be provided on the OZ website by Noon of the Hearing Date**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**Z.C. Case No. 26-03 (Michael W. Williams – Zoning Map Amendment at 934 Eastern Avenue, N.E. (Square 5203, Lot 851)**

**THIS CASE IS OF INTEREST TO ANC 7C**

**Oral and Written Testimony**

• All who wish to testify in this case are **strongly encouraged** to sign up to do so **at least 24 hours prior to the start of the hearing** on OZ's website at https://dcoz.dc.gov/service/sign-testify – see below: *How to participate as a witness – oral statements*. **On the day of the hearing**, call 202-727-0789 to sign up to testify.

• All written comments and/or testimony **must be submitted to the record at least 24 hours prior to the start of the hearing** – see below: *How to participate as a witness – written statements*

On March 23, 2026, the Zoning Commission (the "Commission") received an application from Michael W. Williams (the "Applicant") requesting approval of a Zoning Map amendment (the "Application") for the property located at 934 Eastern Avenue, N.E. (Square 5203, Lot 851) (the "Property"). The Application proposes to rezone the Property from the R-3 zone to the RA-1 zone.

The Property comprises approximately 17,550 square feet of land area, making it one of the largest lots in the square—five to ten times larger than many of the other R-3 zoned properties in the immediate vicinity. Square 5203 is characterized by a mix of low-density and low- to moderate density residential zoning and includes properties zoned both R-3 and RA-1. The Property is designated as Moderate Density Residential on the Future Land Use Map and as a Neighborhood Enhancement Area on the Generalized Policy Map of the Comprehensive Plan.

The Office of Planning submitted its report in support of setting the Application down for a public hearing on June 12, 2026. The OP report stated that on balance the map amendment would not be inconsistent with the Comprehensive Plan, including when viewed through a racial equity lens, and would not be appropriate for IZ Plus. At its July 16, 2026 public meeting, the Commission voted to set down the Application for a public hearing. On September 21, 2026, the Applicant submitted a revised pre-hearing statement.

This virtual public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, of the District of Columbia Municipal Regulations).

**How to participate as a witness – oral presentation**

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case **are strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ's website at https://dcoz.dc.gov/ or by calling Sharon Schellin at (202) 727-0340 in order to ensure the success of the new virtual public hearing procedures.

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 Commission must base its decision on the record before them. Therefore, **all written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing.** The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

Pursuant to Subtitle Z § 408.4, 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.

**How to participate as a witness - written statements**

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact the Office of Zoning at (202) 727-6311 for further assistance.

**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 Subtitle Z § 404.1.

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 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 OZ at dcoz@dc.gov or at (202) 727-6311.

Except for an 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, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 - Party Status Application, a copy of which may be**

**downloaded from OZ's website at**: https://app.dcoz.dc.gov/Help/Forms.html. This form may be obtained from OZ at the address states below.

**"Great weight" to written report of ANC**

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, an ANC that wishes to participate in the hearing must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

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

**ANTHONY J. HOOD, ROBERT E. MILLER, JOSEPH S. IMAMURA, GWEN MARCUS WRIGHT AND CHRISTINE BRUINS ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

**Do you need assistance to participate?** If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

**¿Necesita ayuda para participar?** Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

**Avez-vous besoin d'assistance pour pouvoir participer ?** Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

**참여하시는데 도움이 필요하세요?** 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

**您需要有人帮助参加活动吗？**如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面**之前提前五天与** Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov 这些是免费提供的服务

**Quí vị có cần trợ giúp gì để tham gia không?** Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

**ለመሳተፍ ዕርዳታ ያስፈልግዎታል?** የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

**DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

**NOTICE OF FINAL RULEMAKING**

**Introduction/Overview**

The Commissioner of the Department of Insurance, Securities and Banking ("Department"), pursuant to the authority set forth in Section 705 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5607.05), hereby gives notice of her adoption of the following amendments to Chapter 2 (Registration of Securities Offerings) of Title 26-B (Securities) of the District of Columbia Municipal Regulations ("DCMR").

This rulemaking revises rules that govern filings that issuers must submit for certain types of securities offerings. Under the existing rules of the Department, issuers who intend to offer or sell certain covered securities under Section 18(b)(3) or (b)(4)(A) through (C) of the federal Securities Act of 1933, approved May 27, 1933 (48 Stat. 85; 15 U.S.C. § 77r), must submit notice filings to the Department and pay filing fees. The existing rules set forth certain requirements and procedures for notice filings for covered securities falling under the specified provisions of the Securities Act of 1933. However, the existing rules do not provide sufficiently specific information about initial, amendment, renewal, and exit filings and the fees charged. The amendments in this rulemaking clearly specify the requirements for those filings.

In addition, the amendments add rules for a specific subset of covered securities that fall within the ambit of the rule. In particular, the amendments specify procedures for: (1) securities offerings made under Tier 2 of the U.S. Securities and Exchange Commission's (SEC) Regulation A (17 CFR § 230.251 *et seq*.) and Sections 18(b)(3) of the Securities Act of 1933; and (2) securities offerings made under the SEC's regulation crowdfunding rules (17 CFR § 227.100 *et seq*.) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933. The provisions for securities issued under Regulation A and the SEC regulation crowdfunding rules largely follow model rules approved by the North American Securities Administrators Administration (NASAA) that are intended for states to use as a model for adopting regulations governing these filings.

Similarly, the amendments clarify the rules issuers must follow for notice filings relating to federal covered securities under § 18(b)(4)(D) of the Securities Act of 1933 and SEC Regulation D (17 CFR § 230.500 *et seq*.), including initial, amendment, renewal, and exit filings.

Finally, this rulemaking repeals 26-B DCMR § 244, which governs filings falling under former Rule 505 of SEC Regulation D, 17 CFR § 230.05. Rule 505 of SEC Regulation D has been repealed by the SEC, which, in turn, renders 26-B DCMR § 244 obsolete.

A Notice of Proposed Rulemaking in this rulemaking proceeding was published in the *District of Columbia Register* on January 9, 2026, at 73 DCR 000403. However, that notice inadvertently omitted several technical revisions and citations that were corrected in a Notice of Second Proposed Rulemaking published in the *District of Columbia Register* on June 12, 2026, at 73 DCR 008551. No comments were received after publication of the original notice of proposed rulemaking or the notice of second proposed rulemaking.

No changes have been made to the text of the rules as proposed in the Notice of Second Proposed Rulemaking. The rules were adopted as final by the Commissioner on August 27, 2026, and shall become effective upon publication of this notice in the *District of Columbia Register*.

## Amendments

**Chapter 2, REGISTRATION OF SECURITIES OFFERINGS, of Subtitle B, SECURITIES, of Title 26, INSURANCE, SECURITIES, AND BANKING, of the DCMR is amended as follows:**

**Sections 241 is renamed and amended to read as follows:**

### 241 NOTICE FILING OF SECURITIES COVERED UNDER SECTIONS 18(B)(3) AND 18(B)(4)(A)–(C) OF THE SECURITIES ACT OF 1933

241.1 **General Notice Filing Requirements for Certain Federal Covered Securities**

Pursuant to § 308(e) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5603.08(e)), the following provisions apply to offerings of federal covered securities made under § 18(b)(3) or (b)(4)(A)–(C) of the Securities Act of 1933, approved May 27, 1933 (48 Stat. 85; 15 U.S.C. § 77r(b)(3), (b)(4)(A)–(C)), with the exception of offerings specifically governed by § 241.2 and 241.3:

(a) **Initial Filing**. An issuer that intends to offer or sell federal covered securities under § 18(b)(3) or (b)(4)(A)–(C) of the Securities Act of 1933 shall submit a notice filing to the Department. A notice filing shall consist of the following:

(1) A copy of each document filed with the Securities and Exchange Commission (SEC) with respect to the offer or sale of the securities;

(2) A completed North American Securities Administrators Association (NASAA) U-2 Uniform Consent to Service of Process Form, available on the Department's website; and

(3) Payment of the filing fee prescribed by § 249.7.

(b) **Renewal**. If the issuer renews a previous offering of federal covered securities falling under this subsection for any additional period, the issuer shall submit a renewal notice filing to the Department on or before the expiration of the previous notice filing. A renewal notice filing shall consist of the following:

(1) A copy of each document filed with the SEC with respect to the renewal of the offering; and

(2) Payment of the filing fee prescribed by § 249.7.

(c) **Amendment**. An issuer may amend a notice filing previously filed under this subsection (to increase the amount of securities offered or for other reasons) by submitting an amendment notice filing to the Department. An amendment notice filing shall consist of the following:

(1) A copy of each document filed with the SEC with respect to the amendment of the offering; and

(2) Payment of the filing fee prescribed by § 249.7.

(d) **Exit Report**. An issuer shall submit an exit report to the Department within thirty (30) days of termination or completion of a federal covered securities offering falling under this subsection. An exit report shall disclose the aggregate sales (dollar value and volume of shares or units) of the securities sold to all investors generally as well as to District of Columba residents specifically.

241.2 **Notice Filing Requirements for Regulation A – Tier 2 Offering**

Pursuant to § 308(e) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5603.08(e)), the following provisions apply to offerings made under Tier 2 of the SEC's Regulation A (17 CFR § 230.251 *et seq*.) and Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(3)):

(a) **Initial filing**.

(1) An issuer that intends to offer or sell federal covered securities under Tier 2 of Regulation A and Section 18(b)(3) of the Securities Act of 1933 in the District of Columbia shall submit a Regulation A – Tier 2 notice filing at least twenty-one (21) calendar days before the initial offer or sale in the District. A Regulation A – Tier 2 notice filing shall consist of the following:

(A) A completed NASAA Uniform Notice Filing of Regulation A – Tier 2 Offering Form;

(B) A completed NASAA U-2 Uniform Consent to Service of Process Form; and

(C) The filing fee prescribed by § 249.7.

(2) An initial notice filing filed under this paragraph shall expire twelve (12) months after the date of the filing with the Department.

(b) **Renewal**. For each additional twelve (12)-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A shall renew its notice filing by filing a Regulation A – Tier 2 renewal notice filing on or before the expiration of the previous notice filing. A Regulation A – Tier 2 renewal notice filing shall consist of the following:

(1) A completed NASAA Uniform Notice Filing of Regulation A – Tier 2 Offering form marked "renewal"; and

(2) The fee prescribed by § 249.7.

(c) **Amendment**. An issuer may amend a previously filed Regulation A – Tier 2 notice filing (to increase the amount of securities offered or for other reasons) by submitting a Regulation A – Tier 2 amendment notice filing to the Department. A Regulation A – Tier 2 amendment notice filing shall consist of the following:

(1) A completed NASAA Uniform Notice Filing of Regulation A – Tier 2 Offering Form marked "amendment"; and

(2) Payment of the filing fee prescribed by § 249.7.

(d) **Exit report**. An issuer shall submit an exit report to the Department within 30 days of termination or completion of a Regulation A – Tier 2 offering. An exit report shall disclose the aggregate sales (dollar value and volume of shares or units) of the securities sold to all investors generally as well as to District of Columba residents specifically.

241.3 **Notice Filing Requirement for Federal Crowdfunding Offerings**

Pursuant to § 308 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5603.08), the following provisions apply to offerings made under the Securities and Exchange Commission's (SEC) regulation crowdfunding rules (Regulation CF), (17 CFR § 227.100 *et seq*.) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C. §§ 77r(b)(3) and (b)(4)(C)):

(a) **Initial filing.**

(1) An issuer that offers or sells securities in the District of Columbia (the "District") in an offering that is exempt from state registration under Regulation CF, and that either (1) has its principal place of business in the District or (2) sells fifty percent (50%) or greater of the aggregate amount of the offering to residents of the District shall submit a Regulation CF notice filing to the Department. A Regulation CF notice filing shall consist of the following:

(A) A completed NASAA Uniform Notice of Federal Crowdfunding Offering Form (Form U-CF);

(B) A completed NASAA U-2 Uniform Consent to Service of Process Form; and

(C) The filing fee prescribed by § 249.7 of this Title.

(2) (A) If the issuer has its principal place of business in the District, the Regulation CF notice filing shall be filed with the Department when the issuer makes its initial filing concerning the offering with the SEC.

(B) If the issuer does not have its principal place of business in the District, but residents of the District have purchased fifty percent (50%) or more of the aggregate amount of the offering, the Regulation CF notice filing shall be made within thirty (30) days after the issuer becomes aware that such purchases have met this threshold.

(C) If the issuer does not have its principal place of business in the District and does not sell fifty percent (50%) or more of the aggregate amount of the offering to residents of the District, the issuer is not required to file a Regulation CF notice filing with the Department.

(3) An initial Regulation CF notice filing filed under this paragraph shall expire twelve (12) months after the date of the filing with the Department.

(b) **Renewal**. For each additional twelve (12)-month period in which a Regulation CF offering that required an initial notice filing with the Department is continued, an issuer may renew its notice filing by filing a Regulation CF renewal notice filing on or before the expiration of the previous notice filing. A Regulation CF renewal notice filing shall consist of the following:

(1) A completed NASAA Uniform Notice of Federal Crowdfunding Offering Form (Form U-CF) marked "renewal"; and

(2) The fee prescribed by § 249.7.

(c) **Amendment**. An issuer may amend a previously filed Regulation CF notice filing (to increase the amount of securities offered or for other reasons) by submitting an Regulation CF amendment notice filing to the Department. An amendment notice filing shall consist of the following:

(1) A completed NASAA Uniform Notice of Federal Crowdfunding Offering Form (Form U-CF) marked "amendment"; and

(2) The fee prescribed by § 249.7 of this Title.

(d) **Exit report**. An issuer shall submit an exit report to the Department within thirty (30) days of termination or completion of a Regulation CF offering that required an initial notice filing with the Department. An exit report shall disclose the aggregate sales (dollar value and volume of shares or units) of the securities sold to all investors generally as well as securities sold to District of Columba residents specifically.

**Section 242 is amended to read as follows:**

**242 NOTICE FILING FOR SECURITIES COVERED UNDER SECTION 18(B)(4)(D) – SEC REGULATION D**

242.1 Pursuant to § 308(d) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5603.08(d)), the following provisions apply to offerings of federal covered securities made under §18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(3)):

(a) **Initial Filing**. An issuer that intends to offer or sell federal covered securities under § 18(b)(4)(D) of the Securities Act of 1933, shall submit a notice filing to the Department. A notice filing shall consist of the following:

(1) A copy of each document filed with the Securities and Exchange Commission (SEC) with respect to the offer or sale of the securities;

(2) A completed North American Securities Administrators Association (NASAA) U-2 Uniform Consent to Service of Process Form; and

(3) Payment of the filing fee prescribed by § 249.7.

(4) An initial notice filing filed under this subsection shall be effective for twelve (12) months from the date of the filing with the Department.

(b) **Renewal**. If the issuer renews a previous offering under this section for any additional period, the issuer shall submit a renewal notice filing to the Department on or before the expiration of the previous notice filing. A renewal notice filing shall consist of the following:

(1) A copy of each document filed with the SEC with respect to the renewal of the offering; and

(2) Payment of the filing fee prescribed by § 249.7.

(c) **Amendment**. An issuer may amend a previously filed notice filing (to increase the amount of securities offered or for other reasons) by submitting an amendment notice filing to the Department. An amendment notice filing shall consist of the following:

(1) A copy of each document filed with the SEC with respect to the amendment of the offering; and

(2) Payment of the filing fee prescribed by § 249.7 of this Title.

(d) **Exit report**. An issuer shall submit an exit report to the Department within thirty (30) days of termination or completion of an offering that required an initial notice filing with the Department. An exit report shall disclose the aggregate sales (dollar value and volume of shares or units) of the securities sold to all investors generally as well as to District of Columba residents specifically.

**Section 244, LIMITED OFFERING EXEMPTION (SEC RULE 505), of Chapter 2, REGISTRATION OF SECURITIES OFFERINGS, of Subtitle B, SECURITIES, of Title 26, INSURANCE, SECURITIES, AND BANKING, of the District of Columbia Municipal Regulations is repealed and reserved.**

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**

**NOTICE OF FINAL RULEMAKING**

**RM49-2026-01, PUBLIC UTILITY TARIFF FILING REQUIREMENTS AND REGULATIONS,**

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802 and 2-505 of the District of Columbia Code,[1] of its final rulemaking action adopting amendments to Sections 4900 (Applicability) and 4901 (Tariff Applications) of Chapter 49 (Public Utility Tariff Filing Regulations) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR).

2. On April 3, 2026, the Commission published a Notice of Proposed Rulemaking (NOPR) in the *District of Columbia Register* proposing certain amendments to Chapter 49.[2] The initial changes included language specifying when a proposed tariff or tariff amendment may take effect as provided in new Subsection 4901.2(b)(1) and (2). In addition, the proposed revised Subsection 4901.2(f) was meant to provide increased specificity on work papers utilities must submit with their tariff filings.

3. The Potomac Electric Power Company (Pepco or Company) filed comments in response to the initial NOPR.[3] Pepco proposed additional language to "Applicability" in Section 4900.1 and to the previously proposed amendments to provide for an explicit exception to tariff filings that are required by law, citing as examples the Sustainable Energy Trust Fund and the Mayor's Energy Surcharge Fund (both of which go into effect by law on October 1 each year), and laws that require rates to go into effect on the date the rate is filed, such as the District of Columbia's Power Line Undergrounding Initiative (DC PLUG) Underground Rider and Underground Project Charge.[4] Pepco also requested clarification as to the process for providing supporting documentation that includes electronic links in the tariff filing and clarity on whether the processes used by the Company meet the requirements proposed in Chapter 49 given data limitations and cost, and for the period of time these links need to be accessible.[5]

4. On July 31, 2026, the Commission published a second NOPR inviting comment on Pepco's proposed changes.[6] No Comments were filed in response to the second NOPR and no substantive changes have been made to the rulemaking. Accordingly, the Commission adopted

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1 D.C. Official Code § 34-802 and § 2-505.

2 73 *DC Reg*. 005782 - 005783 (April 3, 2026).

3 *RM49-2026-01*, *In the Matter of Public Utility Tariff Filing Regulations*, Potomac Electric Power Company's Comments (*RM49-2026-01)*, filed May 4, 2026 (Pepco's Comments).

4 Pepco's Comments at 1-2.

5 Pepco's Comments at 2.

6 73 *DC Reg*. 010860 - 010862 (July 31, 2026).

the rules as final at the Commission's October 21, 2026, Open Meeting and they will become effective upon publication of this Notice of Final Rulemaking in the *District of Columbia Register*.

**Chapter 49, PUBLIC UTILITY TARIFF FILING REGULATIONS, is amended as follows:**

**Section 4900, APPLICABILITY, is amended as follows:**

4900.1 Application. Except as provided by law, this chapter provides rules governing public utility tariff applications and filings in the District of Columbia. This chapter shall not apply to the tariff filings of non-utility energy suppliers and competitive local exchange carriers.

…

**Section 4901, TARIFF APPLICATIONS, is amended as follows:**

…

4901.2 A public utility submitting an application for approval of a new tariff or tariff amendment, except that which is a compliance tariff, must also submit a proposed draft notice of proposed tariff and a proposed draft notice of final tariff for the proposed tariff or tariff amendment. The notice shall include the following details:

…

(b) The effective date of the proposed tariff or tariff amendment;

(1) Except as provided by law, the effective date of the proposed tariff or tariff amendment shall not be fewer than thirty (30) days from the date of the proposed tariff or tariff amendment filing;

(2) Except as provided by law, if final Commission action on a proposed tariff or tariff amendment occurs subsequent to the effective date of the proposed tariff or tariff amendment, the proposed tariff or tariff amendment shall not take effect until the date of publication of a notice of final tariff in the *District of Columbia Register*.

…

(f) All relevant supporting documentation and work papers. The supporting documentation shall include a link in the tariff filing to supporting workbooks, with formulas intact in their native file format that is directly accessible without registration or other preconditions. The link to work papers and supporting documentation shall be accessible until such time the Commission has taken final action on a proposed tariff or tariff amendment with the publication of a notice of final tariff.

…

**A TRUE COPY:** **BY DIRECTION OF THE COMMISSION:**

**CHIEF CLERK:** **BRINDA WESTBROOK-SEDGWICK**
**COMMISSION SECRETARY**

## DEPARTMENT OF HEALTH CARE FINANCE

## PUBLIC NOTICE OF OPPORTUNITY TO VERIFY RECEIPT OF SUBMITTED COMMENTS FOR NOTICE OF PROPOSED RULEMAKING ON PRIVATE DUTY NURSING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in 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)), an Act to enable the District of Columbia (District) 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) and Mayor's Order 2024-115, dated July 1, 2024, hereby gives notice of an opportunity to verify receipt of submitted comments during a previous public comment period on DHCF's Notice of Proposed Rulemaking (NOPR) on private duty nursing requirements at 29 DCMR § 947.

The Department of Health Care Finance (DHCF) has been made aware of a possible delay in the receipt of public comments submitted to the DHCFPubliccomments@dc.gov email inbox during the public comment period. DHCF confirms that the designated inbox is currently receiving messages and that all individuals who submitted comments during the public comment period have been identified.

DHCF is providing an opportunity for individuals who submitted comments on the NOPR for 29 DCMR § 947, published in the *District of Columbia Register* on May 22, 2026, at 73 DCR 007904, to resubmit their comments to DHCFPubliccomments@dc.gov. The resubmission period will remain open for thirty (30) days following publication of this notice in the D.C. Register. The purpose of this resubmission period is to ensure that all comments were successfully received. DHCF will issue a personalized, non-autogenerated email acknowledging receipt of each resubmitted comment.

This resubmission period is not intended to solicit new comments. It is intended solely to verify that the comments reviewed and addressed by DHCF accurately reflect the comments submitted during the public comment period. Individuals resubmitting comments should include digital evidence of the email originally sent to the DHCFPubliccomments@dc.gov inbox. This verification process applies only to comments submitted through the DHCFPubliccomments@dc.gov email address; commenters who submitted their comments by other means do not need to resubmit them.

If you have any questions, please contact Mario Ramsey, Associate Director, Division of Regulation and Policy Management, Health Care Policy and Research Administration, Department of Health Care Finance, at 441 4th Street, Suite 900S, Washington, DC 20001, mario.ramsey@dc.gov or 202-899-3652.

## DEPARTMENT OF HEALTH CARE FINANCE

## NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance ("DHCF"), pursuant to the authority set forth in 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)), and 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 § 1-307.06), and Mayor's Order 2024-115, dated July 1, 2024, hereby gives notice of his intent to adopt the following amendments to Section 9503 (Citizenship or Satisfactory Immigration Status) of Chapter 95 (Medicaid Eligibility) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations ("DCMR") in not less than thirty (30) days from the date of publication of this notice in the *District of Columbia Register*.

DHCF is the single state agency for the administration of the State Medicaid program under Title XIX of the Social Security Act and Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act in the District. As the single state agency, DHCF is also responsible for supervising and administering the District of Columbia State Plan for Medical Assistance pursuant to 42 U.S.C. § 1396 *et seq.*.

Consistent with federal requirements under 42 C.F.R. § 435.406, DHCF requires U.S. citizenship and satisfactory immigration status as one of the conditions for Medicaid eligibility. Under federal law, qualified aliens, defined under 8 U.S. Code § 1641, previously satisfied immigration status requirements for Medicaid eligibility.

However, under Section 71109 of the 2025 Budget Reconciliation Act (H.R. 1), approved July 4, 2025 (Pub. L. 119-21; amending 42 U.S.C. § 1396b(v)), the definition for qualified aliens who are eligible for Medicaid was amended, effective October 1, 2026, to include only:

(1) Aliens lawfully admitted for permanent residence as an immigrant as defined by Sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA), approved June 27, 1952 (Pub. L. 82-414; 8 U.S.C. § 1101(a)(15) and (20));
(2) Cuban and Haitian entrants as defined in paragraph 1 or 2(A) of Section 501(e) of the Refugee Education Assistance Act of 1980, approved October 10, 1980 (Pub. L. 96-422; 8 U.S.C. § 1522 note); and
(3) Individuals lawfully residing in the United States in accordance with a Compact of Free Association referred to in Section 402(b)(2)(G) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), approved August 22, 1996 (Pub. L. 104-193; 8 U.S.C. § 1612(b)(2)(G)).

Lawfully residing non-citizens who are under age twenty-one (21) or pregnant individuals, pursuant to 1903(v)(4) of the Social Security Act, continue to be eligible as long as they meet all other Medicaid eligibility factors.

This proposed rule will align the District's Medicaid regulations with the recent change to federal law by modifying the regulatory list of the groups of individuals who satisfy citizenship or

immigration status with the requirements set forth under H.R. 1. Accordingly, under the amended rule the following individuals will no longer meet satisfactory immigration status, unless they adjust their immigration status to Lawful Permanent Resident (LPR) as described under Sections 101(a)(15) and 101(a)(20) of INA:

(1) Refugees;

(2) Humanitarian parolees;

(3) Asylum grantees;

(4) Certain abused spouses and children;

(5) Trafficking victims;

(6) Aliens granted conditional entry prior to 1980;

(7) Individuals granted withholding of removal;

(8) American entrants pursuant to Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988 (as contained in Section 101(e) of Pub. L. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988, Pub. L. 100-461, as amended); and

(9) Native Americans/Alaska Natives born in Canada, as described under Section 289 of INA.

Lastly, DHCF proposes a technical amendment to subsection 9503.8 to correct the misspelling of Guam and mispunctuation of Swains Island.

If adopted, DHCF projects a net decrease in aggregate Medicaid expenditures of approximately seventeen million dollars ($17,000,000) in Fiscal Year 2027, with a net increase in local expenditures of approximately twelve million dollars ($12,000,000).

**Chapter 95, MEDICAID ELIGIBILITY, of Title 29, PUBLIC WELFARE, of the DCMR is amended to read as follows:**

**Section 9503, CITIZENSHIP OR SATISFACTORY IMMIGRATION STATUS, is amended as follows:**

**Subsection 9503.2 is amended as follows:**

9503.2 Beginning October 1, 2026, the following groups of individuals satisfy citizenship or satisfactory immigration status requirements for Medicaid:

(a) A U.S. citizen or national as described in § 9503.8, or a naturalized citizen under 8 C.F.R. § 316;

(b) Lawful Permanent Residents (LPRs) (aliens lawfully admitted for permanent residence as immigrants as defined by Sections 101(a)(15) and (a)(20) of the Immigration and Nationality Act (INA), approved June 27, 1952 (Pub. L. 82-414; 8 U.S.C. § 1101(a)(15) and (a)(20)) (subject to any applicable requirements described under § 9503.4);

(c) Cuban or Haitian entrants as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, approved October 10, 1980 (Pub. L. 96-422; 8 U.S.C. § 1522 note); and

(d) An individual who lawfully resides in the United States in accordance with a Compact of Free Association referred to in Section 402(b)(2)(G) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), approved August 22, 1996 (Pub. L. 104-193; 8 U.S.C. § 1641(b)(2)(G)).

(e) Lawfully residing aliens who are under the age of twenty-one (21) or pregnant women, pursuant to Section 1903(v)(4) of the Social Security Act (42 U.S.C. § 1396b(v)(4)), including such individuals who are:

(1) Qualified aliens, as defined in 8 U.S.C. § 1641(b) and (c);

(2) In a valid nonimmigrant status, as defined in 8 U.S.C. § 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. § 1101(a)(17)) (includes worker visas, student visas, and citizens of Micronesia, the Marshall Islands, and Palau);

(3) Paroled into the U.S. in accordance with 8 U.S.C. § 1182(d)(5) for less than one (1) year, except for individuals paroled for prosecution, for deferred inspection, or pending removal proceedings;

(4) Granted temporary resident status in accordance with 8 U.S.C. § 1160 or 1255a;

(5) Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. § 1254a, or have pending applications for TPS and have been granted employment authorization;

(6) Granted employment authorization under 8 C.F.R § 274a.12(c);

(7) Family Unity beneficiaries in accordance with Section 301 of the Immigration Act of 1990, Pub. L. 101-649, as amended;

(8) Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(9) Granted Deferred Action status;

(10) Granted an administrative stay of removal under 8 C.F.R § 241 (issued by the Department of Homeland Security);

(11) The recipient of an approved visa petition or who has a pending application for adjustment to lawful permanent resident status;

(12) The recipient of a pending application for asylum under 8 U.S.C. § 1158, or for withholding of removal under 8 U.S.C. § 1231, or under the Convention Against Torture who have been granted employment authorization; or are under the age of fourteen (14) and have had an application pending for at least one-hundred eighty (180) days;

(13) Granted withholding of removal;

(14) Children who have a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. § 1101(a)(27)(J);

(15) Lawfully present in American Samoa under the immigration laws of American Samoa; or

(16) Victims of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, approved October 28, 2000 (Pub. L. 106-386, as amended; 22 U.S.C. § 7105(b)).

**Subsection 9503.8 is amended to read as follows:**

9503.8 An individual shall qualify as a U.S. citizen if the individual was born in one of the fifty (50) states or the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands or Northern Mariana Islands. Nationals from American Samoa or Swains Island are regarded as U.S. citizens for purposes of Medicaid eligibility. A child of a U.S. citizen born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

Comments on the subject matter of this proposed rule shall be submitted, in writing, to Melisa Byrd, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, 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 *District of Columbia Register*. Additional copies of the proposed rule may be obtained from the above address.

# THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

## NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2018 Repl.)), hereby gives notice of its intent to adopt the following amendments to Chapter 62 (Eligibility), Chapter 63 (Applications, Waiting List, and Tenant Selection), Chapter 64 (Occupancy Standards and Unit Offers), Chapter 65 (Income and Rent Determinations), Chapter 66 (Verification). Chapter 67 (Leasing and Inspections), Chapter 68 (Reexaminations), Chapter 70 (Assistance Animals & Pets), Chapter 77 (Transfer Policy), Chapter 78 (Lease Terminations), and Chapter 81 (Program Administration) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to address and satisfy the requirements of the Unites States Department of Housing and Urban Development to enable DCHA to obtain new shortfall federal funding in support of DCHA's affordable housing federal programs and to implement other changes, including those changes required by The Housing Opportunity Through Modernization Act of 2016 ("HOTMA").

This rulemaking amends the Admissions and Continued Occupancy Plan, published via Notice of the Final Rulemaking in the *District of Columbia Register* on May 15, 2026 at 73 DCR 007351.

**Chapter 62, ELIGIBILITY, is amended as follows:**
**Section 6201, DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS, is amended as follows:**

**Subsection 6201.26 is amended as follows:**

6201.26 A "minor" is a member of the family household other than the family head or spouse, who is under eighteen (18) years of age. However, minors who are emancipated under state law may be designated as a cohead.

**Section 6202, BASIC ELIGIBILITY CRITERIA, is amended as follows:**

**A new subsection 6202.37 is added to read as follows:**

6202.37 Upon the effective date determined by HUD for MTW agencies, families must meet asset and real property ownership restriction requirements at the time of admission. Families will be ineligible to receive assistance if:

(a) The family's net assets exceed the HUD-published asset limitation amount (adjusted annually by HUD); and/or

(b) The family has real property that is suitable for occupancy by the family as a residence and the family has:

i. A present ownership interest in the real property;

ii. A legal right to reside in the real property; and

iii. The effective legal authority to sell (based on state, District, or local laws of the jurisdiction where the property is located) the real property.

**A new subsection 6202.38 is added to read as follows:**

6202.38 The "real property" restriction does not apply to:

(a) Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;

(b) Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;

(c) Any family that is offering the property for sale; or

(d) Any person who is a victim of domestic violence, dating violence, sexual assault, and/or stalking.

(When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, DCHA will comply with all the confidentiality requirements under VAWA. DCHA will accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.)

**A new subsection 6202.39 is added to read as follows:**

6202.39 A property is not considered "suitable for occupancy" unless the family demonstrates that it:

(a) Does not meet the disability-related needs for all family members;

(b) Is not sufficient for the size of the family based on the subsidy standards noted in §5301;

(c) Is geographically located so as to be a hardship for the family (e.g., there is DCHA's sole determination an unreasonable distance between the real property and a family member's work, school, health care provider, or other necessary service)

(d) Is not safe to reside in because of the physical condition of the property; and/or

(e) Is not a property that a family may reside in under the state, District, or local laws of the jurisdiction where the property is located.

**A new subsection 6202.40 is added to read as follows:**

6202.40 The value of any real property that meets at least one exception under § 6202.39 will be included in the family's assets unless it is specifically excluded by HUD.

**Section 6203, DENIAL OF ADMISSION, is amended as follows:**

**Subsection 6203.5(i) is amended to read as follows.**

6203.5 (i) Does not meet the asset restriction requirements under § 6202.37

**Subsection 6203.5(j) is amended to read as follows:**

6203.5 (j) In making its decision to deny admission, where allowable by HUD, DCHA shall consider the factors discussed in § 6203.13. Upon consideration of such factors, DCHA may, on a case-by-case basis, decide not to deny admissions; and

**New subsection 6203.5(k) is added to read as follows:**

6203.5 (k) DCHA shall consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

**Chapter 63, APPLICATIONS, WAITING LIST, AND TENANT SELECTION, is amended as follows:**

**Section 6302, THE APPLICATION PROCESS, is amended as follows:**

**Subsection 6302.3 is amended to read as follows:**

6302.3 As of the effective date of the ACOP, as amended, DCHA shall commence the process of transitioning of the remaining applicants on the community-wide waitlist for public housing to the DCHA site-based waiting lists. DCHA will no longer maintain one community-wide waitlist for public housing applicants once DCHA changes to site-based waiting lists.

**Subsection 6302.4 is amended to read as follows:**

6302.4 DCHA will manage and maintain site-based waiting lists; applicants can apply for up to five (5) sites/properties of their choice. Persons on the community-wide waiting list at the time of change to site-based waiting lists will be given the first opportunity to select which site-based waiting lists to join prior to opening the lists to the public.

**Section 6303, TENANT SELECTION, is amended as follows:**

**6303.7 is amended to read as follows:**

6303.7 DCHA has already established a local elderly preference for certain site-based waiting lists and may establish a local limited elderly family preference to be used in conjunction with a returning former resident of the site. The established local elderly preference sites include, but are limited to, Edgewood Senior, Triangle View, Victory Square, Kenilworth 166 and The Asberry (Barry Farm Phase 1B) communities. Notwithstanding anything to the contrary in this ACOP, the definition of "elderly person" to be used at Kenilworth 166 and The Asberry (Barry Farm Phase 1B) sites shall be, under DCHA's approved MTW policy, a person who is at least fifty-five (55) years of age and an "elderly family" shall be a family in which the head of household, co-head of household, or spouse is an elderly person.

(a) If there are not enough elderly families to occupy the units at these sites, DCHA may allow near-elderly families to occupy the units. Near-elderly family means a family whose head, spouse, or co-head is at least fifty (50) years old, but is less than fifty-five (55) years old.

(b) If there are an insufficient number of elderly families and near-elderly families for the units in a development designated for elderly families, DCHA must make available to all other families any unit that is ready for re-rental and has been vacant for more than sixty (60) consecutive days.

**Subsection 6303.9 is amended to read as follows:**

6303.9 DCHA has established a limited local preference for families, including single member households, referred by the District's Coordinated Assessment and Housing Placement (CAHP) process as follows:

(a) The CAHP Administrator will ensure that referrals are assessed to need no ongoing services to sustain their housing successfully or have the opportunity through CAHP to reconnect with the appropriate level of services deemed necessary to be successful in housing.

(b) The limited local preference will apply to up to fifty percent (50%) of the vacant, ready to rent, studio/0-bedroom units at DCHA public housing sites. At DCHA's sole discretion, and subject to availability, the preference may extend to additional bedroom sizes at public housing sites. In such case, DCHA will notify the partner agencies that it will

accept referrals for additional bedroom sizes.

(c) DCHA will accept applications under this limited local preference continuously until reaching the established limit identified in subsection (b), regardless of whether the waiting list is closed to other applicants.

(d) DCHA and one or more partner agencies will enter into Memoranda of Agreement or Understanding to document roles and responsibilities with respect to referrals and applications for this limited local preference.

(e) Notwithstanding subsection (a)-(d) above, applicants who meet the criteria for this limited local preference shall be evaluated for eligibility for the Public Housing Program under the standard rules and regulations of the Public Housing Program.

(f) Applications for this preference will only be received through the Coordinated Assessment and Housing Placement (CAHP) process; families may not apply directly to DCHA for housing pursuant to this preference.

(g) If a family is on DCHA's public housing waiting list and separately is referred by a partner agency pursuant to this section, the family will be removed from the waiting list if and when they are housed pursuant to the preference.

(h) This preference will terminate at the earliest to occur of the following (a) fifty percent (50%) of the vacant, ready to rent studio/0-bedroom units have been leased by eligible referrals using this preference or (b) September 30, 2027, unless the DCHA Board extends the date in (b).

**Subsection 6303.10 is amended to read as follows:**

6303.10 HUD requires that extremely low-income families make up at least forty (40) percent of the families admitted to public housing during DCHA's fiscal year. Extremely low-income families are those with annual incomes at or below the federal poverty level or thirty percent (30%) of the area median income, whichever number is higher. To ensure this requirement is met, DCHA may skip non-extremely low-income families on the waiting list in order to select an extremely low-income family.

**Subsection 6303.11 is amended to read as follows:**

6303.11 Admissions of extremely low-income families to the DCHA's HCV program during a DCHA fiscal year that exceed the seventy-five percent (75%) minimum target requirement for the voucher program, shall be credited against the DCHA's basic targeting requirement in the public housing program for the same fiscal year. However, under these circumstances the fiscal year credit to the public housing

program must not exceed the lower of:

(a) Ten percent (10%) of public housing waiting list admissions during the DCHA fiscal year;

(b) Ten percent (10%) of waiting list admissions to DCHA's HCV program during the DCHA fiscal year; or

(c) The number of qualifying low-income families who commence occupancy during the DCHA fiscal year public housing units located in census tracts with a poverty rate of thirty percent (30%) or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

**Subsection 6303.12 is amended to read as follows:**

6303.12 DCHA shall monitor progress in meeting the extremely low income family requirement throughout the fiscal year. Extremely low income families shall be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

**Subsection 6303.13 is amended to read as follows:**

6303.13 [RESERVED]

**Subsection 6303.14 is amended to read as follows:**

6303.14 DCHA has received approval from HUD to establish a local definition of elderly. Accordingly, an elderly family means a family whose head, spouse, co-head, or sole member is a person who is at least fifty-five (55) years of age. Disabled family means a family whose head, spouse, co-head, or sole member is a person with disabilities.

**Subsection 6303.15 is amended to read as follows:**

6303.15 [RESERVED]

**Subsection 6303.16 is amended to read as follows:**

6303.16 [RESERVED]

**Subsection 6303.17 is amended to read as follows:**

6303.17 DCHA may not discriminate against elderly or disabled families that include children in accordance with the Fair Housing Amendments Act of 1988 and other applicable law.

**Subsection 6303.18 is amended to read as follows:**

6303.18 DCHA may designate projects or portions of a public housing project specifically for elderly or disabled families. DCHA must have a HUD-approved designated housing plan before the designation may take place.

**Subsection 6303.19 is amended to read as follows:**

6303.19 Among the designated developments, DCHA must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, DCHA may allow near-elderly families to occupy the units. Near-elderly family means a family whose head, spouse, or co-head is at least fifty (50) years old, but is less than fifty-five (55) years old.

**Subsection 6303.20 is amended to read as follows:**

6303.20 If there are an insufficient number of elderly families and near-elderly families for the units in a development designated for elderly families, DCHA must make available to all other families any unit that is ready for re-rental and has been vacant for more than sixty (60) consecutive days.

**Subsection 6303.21 is amended to read as follows:**

6303.21 The decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse effect on their admission or continued occupancy in public housing or their position on or placement on the waiting list. However, this protection does not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area.

**Subsection 6303.22 is amended to read as follows:**

6303.22 The protection discussed in § 6303.18 does apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project.

**Subsection 6303.23 is amended to read as follows:**

6303.23 [RESERVED]

**Subsection 6303.24 is amended to read as follows:**

6303.24 DCHA's admission policy must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of the

DCHA's deconcentration policies must be included in its MTW plan.

**Subsection 6303.25 is amended to read as follows:**

6303.25 DCHA's deconcentration policy must comply with its obligation to meet the income targeting requirement.

**Subsection 6303.26 is amended to read as follows:**

6303.26 Developments subject to the deconcentration requirement are referred to as "covered developments" and include general occupancy (family) public housing developments. The following developments are not subject to deconcentration and income mixing requirements:

(a) Developments operated by DCHA with fewer than one hundred (100) public housing units;

(b) Mixed population or developments designated specifically for elderly or disabled families;

(c) Developments operated by DCHA with only one general occupancy development;

(d) Developments approved for demolition or for conversion to tenant-based public housing; and

(e) Developments approved for a mixed-finance plan using HOPE VI or public housing funds.

**Subsection 6303.27 is amended to read as follows:**

6303.27 To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered developments, DCHA must comply in order with the following steps:

(a) DCHA will determine the average income of all families residing in all DCHA covered developments.

(b) DCHA will determine the average income of all families in all covered developments on an annual basis.

(c) DCHA will determine the average income (or median income, if median income was used in § 6303.26(b)) of all families residing in each covered development.

(d) In determining average income for each development, DCHA may adjust

its income analysis for unit size.

(e) DCHA will determine the average income of all families residing in each covered development (not adjusting for unit size) on an annual basis.

(f) DCHA will then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from eighty-five to one hundred fifteen percent (85% to 115%) of the average family income determined in § 6303.24(a) or (b). However, the upper limit must never be less than the income at which a family would be defined as an extremely low-income family (federal poverty level or thirty percent (30%) of median income, whichever number is higher);

(g) If covered developments have average incomes outside the EIR, DCHA will then determine whether or not these developments are consistent with its local goals and annual plan; and

(h) If the income profile for a covered development is not explained or justified in the annual plan submission, DCHA will include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing.

**Subsection 6303.28 is amended to read as follows:**

6303.28 DCHA's deconcentration policy may include, but is not limited to the following:

(a) Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities;

(b) Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments;

(c) Establishing a preference for admission of working families in developments below the EIR;

(d) Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration; and

(e) Providing other strategies permitted by statute and determined by DCHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and DCHA strategic objectives.

**Subsection 6303.29 is amended to read as follows:**

6303.29 For developments outside the EIR, DCHA shall take the following actions to provide for deconcentration of poverty and income mixing:

(a) Continue employment and self-sufficiency efforts for residents living in public housing to increase family's income;

(b) Utilize local preferences (if any) and income targeting to admit families whose income exceed thirty percent (30%) of the area median income (AMI); and

(c) Select ELI families ahead of other eligible families on an as-needed basis to ensure the income-targeting requirement is met.

**Subsection 6303.30 is amended to read as follows:**

6303.30 A family has the sole discretion whether to accept an offer of a unit made under the DCHA's deconcentration policy. DCHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the DCHA's deconcentration policy.

**Subsection 6303.31 is amended to read as follows:**

6303.31 If, at annual review, the average incomes at all general occupancy developments are within the EIR, DCHA will be considered to be in compliance with the deconcentration requirement and no further action is required.

**Subsection 6303.32 is amended to read as follows:**

6303.32 [RESERVED]

**Subsection 6303.33 is amended to read as follows:**

6303.33 Families will be selected from the waiting list based on the waiting list position assigned by random selection method (if the waiting list was opened for a finite period) or by date and time of application (if the waiting list is open continuously). When selecting applicants from the waiting list, DCHA shall match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. DCHA shall offer the unit to the applicant who qualifies for that unit size or type, or that requires the accessibility features based upon date and time of the application:

(a) By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application; and

(b) Factors such as deconcentration or income mixing, and income targeting shall also be considered in accordance with HUD requirements and DCHA policy.

**Subsection 6303.34 is amended to read as follows:**

6303.34 DCHA shall notify the family in writing when they are selected from the waiting list. DCHA may contact the family by first-class mail, email, and/or phone.

**Subsection 6303.35 is amended to read as follows:**

6303.35 The notice shall inform the family of the following:

(a) Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview;

(b) Who is required to attend the interview;

(c) Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation;

(d) Documents that must be provided at the interview to document eligibility for a preference, if applicable; and

(e) Other documents and information that should be brought to the interview.

**Subsection 6303.36 is amended to read as follows:**

6303.36 If a notification letter is returned to DCHA with no forwarding address, the family shall be removed from the waiting list without further notice.

**Subsection 6303.37 is amended to read as follows:**

6303.37 The failure of the applicant to respond to the DCHA notice sent pursuant to § 6303.33 prevents DCHA from making an eligibility determination; therefore, no informal hearing shall be offered.

**Subsection 6303.38 is amended to read as follows:**

6303.38 Being invited to attend an interview does not constitute admission to the program.

**Subsection 6303.39 is amended to read as follows:**

6303.39 Families selected from the waiting list are required to participate in an eligibility interview.

(a) All adult members of the household must attend the eligibility appointment;

(b) The interview shall be conducted only if the head of household or spouse or co-head provides appropriate documentation of legal identity. If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained;

(c) Pending disclosure and documentation of social security numbers, DCHA shall allow the family to retain its place on the waiting list for thirty (30) calendar days. If not, all household members have disclosed their SSNs at the next time a unit becomes available, DCHA shall offer a unit to the next eligible applicant family on the waiting list;

(d) The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family shall pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, DCHA shall provide the family with a written list of items that must be submitted;

(e) Any required documents or information that the family is unable to provide at the interview must be provided within ten (10) business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family shall be sent a notice of denial;

(f) DCHA will permit the family to have an advocate, interpreter, or other assistant assist the family with the application and the interview process;

(g) Interviews shall be conducted in English. For LEP applicants, DCHA shall provide translation and interpretation services in accordance with § 6104, and as necessary, may reschedule the interview to accommodate the provision of such services; and

(h) If the family is unable to attend a scheduled interview, the family should contact DCHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, DCHA shall send another notification letter with a new interview appointment time. Applicants who fail to attend two (2) scheduled interviews without DCHA approval shall be removed from the waiting list. The second appointment letter shall state that failure to appear for the appointment without a request to reschedule shall be interpreted to mean that the family is no longer interested. Such failure to act on the part of the

applicant prevents DCHA from making an eligibility determination, therefore DCHA shall not offer an informal hearing.

**Subsection 6303.40 is amended to read as follows:**

6303.40 [RESERVED]

**Subsection 6303.41 is amended to read as follows:**

6303.41 DCHA shall notify a family in writing of their eligibility within ten (10) business days of the determination and shall provide the approximate date of occupancy insofar as that date can be reasonably determined.

**Subsection 6303.42 is amended to read as follows:**

6303.42 DCHA shall expedite the administrative process for determining eligibility to the extent possible for applicants who are admitted to the public housing program as a result of an emergency transfer from another DCHA program.

**Subsection 6303.43 is amended to read as follows:**

6303.43 At final determination of eligibility, as applicants are pulled from the waiting lists and forwarded for lease-up, DCHA extended the length of time to one hundred eighty (180) days that the verified application data is deemed valid per its approved MTW policy.

**Subsection 6303.44 is amended to read as follows:**

6303.44 DCHA determines that the family is ineligible, DCHA shall send written notification of the ineligibility determination within ten (10) business days of the determination. The notice shall specify the reasons for ineligibility and shall inform the family of its right to request an informal hearing.

**Subsection 6303.45 is amended to read as follows:**

6303.45 If DCHA uses a criminal record or sex offender registration information obtained under 24 CFR Part 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before DCHA can move to deny the application.

**Subsection 6303.46 is amended to read as follows:**

6303.46 DCHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with VAWA, at the time the applicant is provided assistance or at the time the applicant

is denied assistance. This notice must be provided in both of the following instances:

(a) When a family actually begins receiving assistance (lease execution); or

(b) When a family is notified of its ineligibility.

**Chapter 64, OCCUPANCY STANDARDS AND UNIT OFFERS, is amended as follows:**

**Section 6400, INTRODUCTION, is amended as follows:**

**Subsection 6400.1 is amended to read as follows:**

6400.1 This chapter contains policies for assigning unit size and making unit offers. DCHA's waiting list and selection policies are contained in Chapter 63. Together, Chapters 63 and 64 of the ACOP comprise DCHA's Tenant Selection and Assignment Plan (TSAP).

**Subsection 6400.2 is amended to read as follows:**

6400.2 Policies in this chapter are organized in two sections:

(a) Occupancy Standards. Section 6401 contains DCHA's standards for determining the appropriate unit size for families of different sizes, compositions, and types; and

(b) Unit Offers. Section 6402 contains DCHA's policies for making unit offers, and describes actions to be taken when unit offers are refused.

**Section 6401, OCCUPANCY STANDARDS, is amended as follows:**

**Subsection 6401.7 is amended to read as follows:**

6401.7 The following requirements apply when DCHA determines unit size for the family:

(a) Children related to a household member by birth, adoption, or court awarded custody will be considered when determining unit size;

(b) Foster children will be considered when determining unit size. The family may add foster children to the household as long as it does not overcrowd the unit based on DCHA's occupancy standards;

(c) Children away at school, but for whom the unit is considered the primary residence, and children temporarily placed outside the home, will be considered when determining unit size;

(d) Children in the process of being adopted will be considered when determining unit size; and

(e) Children who will live in the unit less than fifty percent (50%) of the time will not be considered when determining unit size.

**Subsection 6401.8 is amended to read as follows:**

6401.8 Generally, DCHA shall assign one (1) bedroom for each two (2) persons within the household, regardless of age, sex, relationship, or marital status, except in the following circumstances:

(a) Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family;

(b) Single person families will be allocated a zero (0) or one (1) bedroom;

(c) DCHA shall reference the following standards in determining the appropriate unit bedroom size for a family:

| BEDROOM SIZE | MINIMUM NUMBER OF PERSONS | MAXIMUM NUMBER OF PERSONS |
|---|---|---|
| 0 | 1 | 1 |
| 1 | 1 | 2 |
| 2 | 2 | 4 |
| 3 | 3 | 6 |
| 4 | 4 | 8 |
| 5 | 6 | 10 |
| 6 | 8 | 12 |

**Subsection 6402.5 is amended to read as follows:**

6402.5 DCHA shall offer two (2) units within the development(s) selected by the applicant. If more than one unit of the appropriate type and size is available, the first unit to be offered will be the first unit that is ready for occupancy. DCHA will offer a studio apartment to a one-person household if available and ready for occupancy at the time of unit offer. If a one-person applicant household refuses an offer of a studio apartment solely due to the size of the unit, DCHA will not consider the unit offer refusal to be for good cause (unless the applicant is approved for a reasonable accommodation for a larger unit).

**Chapter 65, INCOME AND RENT DETERMINATIONS, is amended as follows:**

**Section 6502, DETERMINING ANNUAL INCOME, is amended as follows:**

**Subsection 6502.11 is amended to read as follows:**

6502.11 HOTMA removed the statutory authority for the Earned Income Disallowance (EID). The EID ended as of December 31, 2025.

**Subsection 6502.12 is amended to read as follows:**

6502.12 [RESERVED]

**Subsection 6502.13 is amended to read as follows:**

6502.13 [RESERVED]

**Subsection 6502.15 is amended to read as follows:**

6502.15 If a business entity (e.g., limited liability company or limited partnership) owns an asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward the market value of family assets.

**Section 6503, DETERMINING ASSET INCOME, is amended as follows**

**Subsection 6503.14 is amended to read as follows:**

6503.14 If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of the market value of family assets for the family.

**Section 6504, ANNUAL INCOME EXCLUSIONS, is amended as follows:**

**Subsection 6504.3(a) is amended to read as follows:**

6504.3 (a) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of family assets under 24 CFR § 5.603(b):

(1) Distributions of the principal or corpus of the trust; and

(2) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

**Subsection 6504.26(g) is amended to read as follows:**

(g) Lump-sum additions to family assets, including but not limited to lottery or other contest winnings.

**Section 6505, ADJUSTED INCOME, is amended as follows:**

**Subsection 6505.8 is amended to read as follows:**

6505.8 Unreimbursed health and medical care expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed ten percent (10%) of annual income.

**Subsection 6505.13(c) is amended to read as follows:**

(c) In combination with any medical expenses, exceed ten percent (10%) of annual income; and

**Subsection 6505.24 is amended to read as follows:**

6505.24 Upon implementation of the increase in the threshold for unreimbursed health and medical care expenses and/or disability assistance expenses, families will have phase-in relief if they qualify.

(a) A family will be considered a "qualifying family" for phased-in relief if at their last reexamination prior to implementation of this provision:

(i) The family received a deduction for unreimbursed health and medical care and/or reasonable attendant car or auxiliary apparatus expenses; and

(ii) The family's expenses exceeded five (5) percent of the family's annual income.

(b) For qualifying families:

(i) At the family's first regular recertification on/after implementation, DCHA will deduct unreimbursed health and medical care expenses and/or disability assistance expenses that exceed five (5) percent of the family's annual income and switch the family to annual recertifications;

(ii) Twelve (12) months after the family's first regular recertification on/after implementation, DCHA will deduct unreimbursed health and medical care expenses and/or disability assistance expenses that exceed 7.5 percent of the family's annual income;

(iii) Twenty-four months after the family's first regular recertification on/after implementation, DCHA will deduct unreimbursed health and

medical care expenses and/or disability assistance expenses that exceed ten percent (10%) percent of the family's annual income

(c) Upon implementation of the new ten percent (10%) threshold families will not qualify for phased-in relief if:

(i) They are new admissions to the HCV program;

(ii) They are current participants whose unreimbursed health and medical care expenses and/or disability assistance expenses did not exceed five percent (5%) of their annual income; or

(iii) They are current participants who had no unreimbursed health and medical care expenses and/or disability assistance expenses at their last reexamination prior to implementation.

(d) Upon implementation, any family may request an interim to account for any increase in unreimbursed health and medical care expenses and/or disability assistance expenses.

**Subsection 6505.25 is amended to read as follows:**

6505.25 "Child-care expenses" are defined as amounts anticipated to be paid by the family for the care of children under thirteen (13) years of age where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further their education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child-care. In the case of child-care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

**Subsection 6505.26 is amended to read as follows:**

6505.26 Child-care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household. However, child-care expenses for foster children that are living in the assisted family's household are included when determining the family's child-care expenses.

**Subsection 6505.27 is amended to read as follows:**

6505.27 The family must identify the family member(s) enabled to work, seek work or further their education.

**Subsection 6505.28 is amended to read as follows:**

6505.28 In evaluating the family's request, DCHA shall consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child,

and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

**Subsection 6505.29 is amended to read as follows:**

6505.29 If the child-care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination.

**Subsection 6505.30 is amended to read as follows:**

6505.30 If the child-care expense being claimed is to enable a family member to further their education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

**Subsection 6505.31 is amended to read as follows:**

6505.31 If the child-care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child-care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

**Subsection 6505.32 is amended to read as follows:**

6505.32 When a family member looks for work or furthers their education, there is no cap on the amount that may be deducted for child-care – although the care must still be necessary and reasonable.

**Subsection 6505.33 is amended to read as follows:**

6505.33 The earned income used for this purpose is the amount of earned income verified after any income exclusions are applied.

**Subsection 6505.34 is amended to read as follows**:

6505.34 DCHA must not limit the deduction to the least expensive type of child-care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working.

**Subsection 6505.35 is amended to read as follows:**

6505.35 The type of care to be provided is determined by the tenant family. The DCHA may not refuse to give a family the child-care expense deduction because there is an adult family member in the household that may be available to provide child-care.

**Subsection 6505.36 is amended to read as follows:**

6505.36 For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child-care.

**Subsection 6505.37 is amended to read as follows:**

6505.37 The costs of general housekeeping and personal services are not eligible. Likewise, child-care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child-care to relatives who do not live in the unit are eligible; and

**A new subsection 6505.38 is added to read as follows:**

6505.38 If a child-care provider also renders other services to a family or child-care is used to enable a family member to conduct activities that are not eligible for consideration, DCHA shall prorate the costs and allow only that portion of the expenses that is attributable to child-care for eligible activities. Unless otherwise specified by the child-care provider, the calculation is based upon the number of hours spent in each activity and/or the number of persons under care.

**A new subsection 6505.39 is added to read as follows:**

6505.39 A family whose eligibility for the child-care expense deduction is ending may receive a hardship exemption to continue receiving a child-care expense deduction when the family no longer has a member that is working, looking for work, or seeking to further their education, and the deduction is necessary because the family is unable to pay their rent.

(a) A family will be determined by DCHA to be "unable to pay their rent" in such circumstances when the family's total unreimbursed child care expenses are at least Two Thousand Dollars ($2,000) per year and the family owes no balance to DCHA.

(b) Relief for an approved hardship exemption includes a continuation of the child care exemption for a period of up to ninety (90) days. DCHA, at its sole discretion, may extend the hardship exemption for one additional 90-day period based on family circumstances.

**Section 6506, CALCULATING RENT, is amended as follows:**

**Subsection 6506.2(d) is amended to read as follows:**

(d) The minimum rent of Fifty Dollars ($50).

**Subsection 6506.5 is amended to read as follows:**

6506.5 The minimum rent for the District of Columbia is Fifty Dollars ($50)

**Subsection 6506.7 is amended to read as follows:**

6506.7 DCHA will grant an exemption from payment of the minimum rent if the family is unable to pay the minimum rent because of a financial hardship when the family experiences one of the following ("qualifying hardship"):

(a) The family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996 ( In such a case, the hardship will only be considered to exist if the loss of eligibility affects the family's ability to pay the minimum rent);

(b) The family would be evicted because it is unable to pay the minimum rent;

(c) The income of the family has decreased because of changed circumstances, including loss of employment;

(d) A death has occurred in the family (In such a case, the family must provide DCHA with written information as to how the death created a financial hardship); and/or

(e) Other circumstances determined by DCHA or HUD.

**Subsection 6506.8 is amended to read as follows:**

6506.8 If the family requests a financial hardship exemption, DCHA will suspend the minimum rent requirement beginning the month following the family's request and continuing until DCHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

**Subsection 6506.9 is amended to read as follows:**

6506.9 If DCHA determines that a qualifying hardship is temporary, it will:

(a) Not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption;

(b) Reinstate the minimum rent from the beginning of the suspension at the end of the 90-day suspension; and

(c) Offer the family a reasonable repayment agreement for the amount of back rent owed by the family.

**Subsection 6506.10 is amended to read as follows:**

6506.10 If DCHA determines there is no qualifying hardship exemption, DCHA will:

(a) Reinstate the minimum rent, including back rent owed from the beginning of the suspension; and

(b) Require the family to pay the back rent.

**Subsection 6506.11 is amended to read as follows:**

6506.11 If DCHA determines that a qualifying hardship is long term, DCHA will exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying hardship.

**Subsection 6506.12 is amended to read as follows:**

6506.12 The financial exemption only applies to payment of the minimum rent and not to the other elements used to calculate the total tenant payment.

**Subsection 6506.43 is amended to read as follows:**

6506.43 [RESERVED]

**Subsection 6506.44 is amended to read as follows:**

6506.44 [RESERVED]

**Subsection 6506.49 is amended to read as follows:**

6506.49 [RESERVED]

**Subsection 6506.50 is amended to read as follows:**

6506.50 [RESERVED]

**Subsection 6506.52 is amended to read as follows:**

6506.52 [RESERVED]

**Chapter 66, VERIFICATION, is amended as follows:**

**Section 6601, GENERAL VERIFICATION REQUIREMENTS, is amended as follows:**

**Subsection 6601.43(b) is amended to read as follows:**

(b) Market value of family assets total Fifty Thousand Dollars ($50,000) or less.

**Chapter 67, LEASING AND INSPECTIONS, is amended as follows:**

**Section 6700, INTRODUCTION, is amended as follows:**

**Subsections 6700.2 and 6700.3 are deleted.**

**Section 6703, SMOKING POLICY, is amended as follows:**

**Subsection 6703.99 is reordered as subsection "6703.8"**

**Chapter 68, REEXAMINATIONS, is amended as follows:**

**Section 6800, INTRODUCTION, is amended as follows:**

**Subsection 6800.2 is amended to read as follows:**

6800.2 [RESERVED]

**Subsection 6800.3(b) is amended to read as follows:**

(b) Section 6802 describes DCHA's policy concerning flat rents.

**Section 6801, REGULAR REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS, is amended as follows:**

**Subsection 6801.2 is amended to read as follows:**

6801.2 [RESERVED]

**Subsection 6801.3 is amended to read as follows:**

6801.3 For all residents of public housing, DCHA must conduct an annual review of community service requirement compliance.

**Section 6802, REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS, is renamed FLAT RENTS.**

**Subsection 6802.1 is amended as follows:**

6802.1 Upon approval of the FY 2027 MTW Plan: DCHA will implement the policy as follows:

(a) New Admissions: All households admitted after the effective date of HUD approval will be placed in income-based rent only. The flat rent option will no longer be offered at admission.

(b) Current flat rent households: Households that are currently paying flat rent will transition to income-based rent as indicated in §6802.2.

**Subsection 6802.2 is amended as follows:**

6802.2 In order to mitigate the impact on current households who pay flat rents, DCHA will implement a phased-in transition process. Upon the household's next regular or interim reexamination, the household will begin a three-year phase in process according to the following schedule:

(a) Year 1: Current flat rent + 33% of difference in income-based rent;

(b) Year 2: Current flat rent + 66% of difference in income-based rent;

(c) Year 3: Full income-based rent.

**Subsection 6802.3 is amended as follows:**

6802.3 Additionally, prior to implementation, DCHA will notify all affected households of the policy change, explain the transition process, and provide information on how their rent will be calculated after the transition. Any household transitioning to income-based rents who believes it is experiencing extraordinary financial distress, may request hardship consideration pursuant to DCHA's policies.

**Subsection 6802.4 is amended to read as follows:**

6802.4 [RESERVED]

**Subsection 6802.5 is amended to read as follows:**

6802.5 [RESERVED]

**Subsection 6802.6 is amended to read as follows:**

6802.6 [RESERVED]

**Subsection 6802.10 is amended to read as follows:**

6802.10 [RESERVED]

**Subsection 6802.11 is amended to read as follows:**

6802.11 [RESERVED]

**Subsection 6802.12 is amended to read as follows:**

6802.12 [RESERVED]

**Subsection 6802.13 is amended to read as follows:**

6802.13 [RESERVED]

**Subsection 6802.14 is amended to read as follows:**

6802.14 [RESERVED]

**Subsection 6802.15 is amended to read as follows:**

6802.15 [RESERVED]

**Subsection 6802.16 is amended to read as follows:**

6802.16 [RESERVED]

**Subsection 6802.17 is amended to read as follows:**

6802.17 [RESERVED]

**Subsection 6802.18 is amended to read as follows:**

6802.18 [RESERVED]

**Subsection 6802.19 is amended to read as follows:**

6802.19 [RESERVED]

**Section 6803, INTERIM REEXAMINATIONS, is amended as follows:**

**Subsection 6803.5 is amended to read as follows:**

6803.5 All families must report all changes within thirty (30) calendar days in family and household composition that occur between reexaminations (or annual updates). Changes may be reported in writing by mail, email, or in-person.

**Subsection 6803.9 is amended to read as follows:**

6803.9 With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request DCHA approval to add a new family member or other household member (live-in aide, foster child, or foster adult). DCHA will only approve an adult family member to join the household if they are immediate family members (defined as parent, sibling, or child) of the head or co-head of household and it does not change the unit size the family qualifies for.

**Subsection 6803.16 is amended to read as follows:**

6803.16 [RESERVED]

**Subsection 6803.17(a) is amended to read as follows:**

(a) [RESERVED]

**Subsection 6803.18 is amended to read as follows:**

6803.18 [RESERVED]

**Subsection 6803.19 is amended to read as follows:**

6803.19 Upon approval of the FY 2027 MTW Plan families are required to report all increases in income between regular reexaminations, and DCHA will process an interim reexamination for those increases.

**Subsection 6803.20 is amended to read as follows:**

6803.20 The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination. DCHA must process the request if the family reports and provides verification of a change that results in a reduced family income, except for where allowed under DCHA's approved MTW policy.

**Section 6805, OVER-INCOME FAMILIES, is amended as follows:**

**Subsection 6805.1 is amended to read as follows:**

6805.1 An "over-income family" is defined as a family with an annual income which exceeds the over-income limit. The over-income limit is calculated by multiplying the applicable income limit for a very low-income family, as defined in 24 CFR § 5.603(b), by a factor of 2.4. The over-income rule applies to all public housing program families, including families in the Family Self-Sufficiency (FSS) program.

**Subsection 6805.11(a) is amended as follows:**

(a) Will continue to pay their rent; and

**Chapter 70, ASSISTANCE ANIMALS AND PETS, is amended as follows:**

**Section 7003, PET POLICIES FOR ALL DEVELOPMENTS, is amended as follows:**

**Subsection 7003.2(a) is amended to read as follows:**

(a) The pet is not "a common household pet" as defined in §7003.9(a)

**Section 7003.9(c)(1) is amended as follows:**

**Subsection (c)(1) is deleted and remaining subsections renumbered accordingly.**

**Section 7004, PET DEPOSITS AND FEES, is amended as follows:**

**Subsection 7004.3(b) is amended to read as follows:**

7004.3 (b) The amount of the deposit is the lower of fifteen percent (15%) of the unit's Small Area Fair Market Rent or One Hundred Dollars ($100) in addition to any other required deposits;

**Chapter 77, TRANSFER POLICY, is amended as follows:**

**Section 7701, EMERGENCY TRANSFERS, is amended as follows:**

**Subsection 7701.5(f) is created to read as follows:**

(f) DCHA may transfer residents to alleviate a verified threat of physical harm or criminal activity. Such circumstances may, at DCHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, or a hate crime. DCHA will verify such threats in coordination with DCHA's Office of Public Safety.

**Subsection 7701.10 is amended to read as follows:**

7701.10 DCHA will pay or reimburse the reasonable costs of temporarily accommodating the tenant and of long-term transfers, if any, for emergency transfers which are initiated and required by DCHA defined in § 7701.5(a), 7701.5(b), 7701.5(c), and 7701.5(e);

**Section 7702, DCHA-REQUIRED TRANSFERS, is amended as follows:**

**Section 7702.1(e) is amended as follows:**

**Subsection (e) is deleted and remaining subsections (f) and (g) are renumbered as (e) and (f).**

**Subsection 7702.10 is amended to read as follows:**

7702.10 DCHA will pay or reimburse the reasonable costs of transfers that DCHA requires, except that residents are required to bear the cost of occupancy standards transfers. DCHA will not pay or reimburse the cost of transfers requested by the tenant, as described in 7703.

**Section 7703, TRANSFERS REQUESTED BY TENANTS, is amended as follows:**

**Section 7703.7(e) is amended as follows:**

**Subsection (e) is deleted and remaining subsection (f) is renumbered as (e).**

**Section 7704, TRANSFER PROCESSING, is amended as follows:**

**Subsection 7704.2(c) is amended to read as follows:**

(c) A family that receives a written notice of a new dwelling unit offer and refuses the offer without good cause as defined in § 7704.3 shall be issued a Notice to Quit or Cure.

**Chapter 78, LEASE TERMINATIONS, is amended as follows:**

**Section 7801, TERMINATION BY TENANT, is amended as follows:**

**Subsection 7801.4(c) is amended to read as follows:**

(c) The applicant to be made Lessee, and if applicable, the other remaining household members must be eligible for continued occupancy and not be in serious violation of the material terms of the Dwelling Lease. DCHA will screen the application in accordance with federal law and regulations as well as Chapter 62. In addition, the applicant to be made lessee must be an adult family member (i.e., co-head, spouse, full-time student or other adult) who was part of the original household or approved by DCHA to be added to the

household at least 12 months before the original head of household passed or vacated the unit, DCHA may permit exception to this requirement if the original head of household was admitted less than 12 months prior to passing or vacating the unit. Applicant(s) will be notified in writing of the disposition of the application:

**Chapter 81, PROGRAM ADMINISTRATION, is amended as follows:**

**Section 8100, INTRODUCTION, is amended as follows:**

**Subsection 8100.1(b) is amended to read as follows:**

(b) [RESERVED]

**Section 8102, ESTABLISHING FLAT RENTS, is renamed [RESERVED].**

**Subsections 8102.1 through and including 8102.10 are deleted.**

**Section 8105, RECORD KEEPING, is amended as follows:**

**Subsection 8105.1(c) is amended as follows:**

(c) In addition, DCHA will keep the following records for at least three (3) years:

(1) An application from each ineligible family and notice that the applicant is not eligible;

(2) Lead-based paint records as required by 24 CFR 35, Subpart B;

(3) Documentation supporting the establishment of utility allowances and surcharges;

(4) Accounts and other records supporting DCHA budget and financial statements for the program;

(5) Complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule;

(6) Confidential records of all emergency transfers related to VAWA requested under DCHA's Emergency Transfer Plan and the outcomes of such requests; and

(7) Other records as determined by DCHA or as required by HUD.

All persons desiring to comment on these proposed rules must submit comments in writing, no later than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*, to the following: District of Columbia Housing Authority, Office of the General Counsel, 300 7th Street, SW, Washington, D.C. 20024 or in the alternative to email comments to PublicationComments@dchousing.org. Copies of these proposed regulations may be obtained without charge at the above-described address.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2026-109
October 26, 2026

**SUBJECT:** Delegation — Authority to Announce and Support the 2026 United States Marine Corps Toys for Tots Campaign

**ORIGINATING AGENCY:** Executive Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6), and under 6B DCMR § 1805.10, it is hereby **ORDERED** that:

1. The Chief of the Fire and Emergency Medical Services Department ("Fire and EMS Chief") is delegated the authority of the Mayor to announce and support the 2026 United States Marine Corps Toys for Tots Campaign. This delegation includes authorization for the Fire and EMS Chief to announce the 2026 United States Marine Corps Toys for Tots Campaign in a Special Order sent to Fire and Emergency Medical Services Department employees.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

**MURIEL BOWSER**
**MAYOR**

**ATTEST:** Kimberly A. Bassett
**KIMBERLY A. BASSETT**
**SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA**

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

**NOTICE OF PUBLIC HEARINGS**
**CALENDAR**

**WEDNESDAY, NOVEMBER 4, 2026**
**899 NORTH CAPITOL STREET NE, SUITE 4200 A-B**
**WASHINGTON, DC 20002**

**Donovan W. Anderson, Chairperson**
**Members: Silas Grant, Jr., Teri Janine Quinn, Ryan Jones,**
**David Meadows and James Turner**

**Show Cause Hearing (Status)** **10:30 AM**

**Case # 26-CMP-00065**
Qui Qui Shaw LLC t/a Qui Qui Shaw
3227 Georgia Ave NW
License #133570
Retailer CR
ANC 1E
**Substantial Change in Operation Without Board Approval, No ABC Manager on Duty**

**Show Cause Hearing (Status)** **10:30 AM**

**Case # 26-CMP-00082**
Alive Entertainment of DC, LLC t/a Kick Axe Throwing/Throw Social DC
1401 Okie Street NW
License #133556
Retailer CT
ANC 5D
**Failed to Follow Board Order No. 2024-921**

Board's Calendar
November 4, 2026

**Show Cause Hearing (Status)** **10:30 AM**

**Case # 26-CMP-00064**
AMML, LLC t/a Lupo Osteria
4814 MacArthur Blvd NW
License #101833
Retailer CR
ANC 3D
**Substantial Change in Operation Without Board Approval**

**Show Cause Hearing (Status)** **10:30 AM**

**Case # 25-CC-00013**
TAQUERIA AL LADO, LLC t/a Taqueria Al Lado
1792 Columbia Road NW
License #117216
Retailer CR
ANC 1C
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age**

**Show Cause Hearing (Status)** **10:30 AM**

**Case # 26-CIT-00146**
Scorpio Entertainment, LLC t/a Scorpio Entertainment
1309 5th Street NE
License #130195
Retailer Caterer
ANC 5D
**Failed to File a Caterers Report**

Board's Calendar
November 4, 2026

**Show Cause Hearing (Status)** **10:30 AM**

**Case # 26-CMP-00059**
Hiwot Ethiopian Restaurant & Market, LLC t/a Hiwot Ethiopian Restaurant, Market, and Dream Lounge
5333 Georgia Ave NW
License #100297
Retailer CR
ANC 4D
**Failed to Maintain on Premises Three Years of Adequate Books and Records Showing All Sales**

**Show Cause Hearing** **10:30 AM**

**Case # 26-CMP-00009**
1714 C, LLC t/a Rosemarino D'Italia
1714 C Street NW
License #109613
Retailer CT
ANC 7D
**Substantial Change in Operation Without Board Approval (Two Counts), Failed to Follow Board Order No. 2023-535, Provided False or Misleading Information**

***This hearing has been rescheduled to a date to be determined.***

**Show Cause Hearing** **10:30 AM**

**Case # 25-CC-00008**
GG Liquors and Wine, LLC t/a Cavalier Wine and Liquors
3514 14th Street NW
License #85968
Retailer A
ANC 1A
**Sale to Minor Violation, No ABC Manager on Duty, Failed to Take Steps Necessary to Ascertain Legal Drinking Age**

Board's Calendar
November 4, 2026

**Show Cause Hearing** **10:30 AM**

**Case # 26-CMP-00043**
Kathmandu Tapas & Cocktails, LLC t/a Kathmandu Tapas & Cocktails
1342 U Street NW
License #132050
Retailer CR
ANC 1B
**Violation of Settlement Agreement**

**I. ADMINISTRATIVE AGENDA**

During this portion of the meeting, the Board will review and vote on matters indicated on its previously published agendas. The Board will vote and decide these matters based on agency materials and the filings of parties without oral presentations or appearance by the parties.

**II. BOARD RECESS – 12:00 PM**

**III. AFTERNOON SESSION**

**Protest Hearing** **1:30 PM**

**Case # 26-PRO-00049**
Sunflower Inc. t/a Flavors of India/Marshall's Bar
2524 L Street NW
License #91022
Retailer CT
ANC 2A
**Application to Renew the License**

Board's Calendar
November 4, 2026

***This meeting will be conducted virtually and livestreamed on ABCA's YouTube channel at: https://www.youtube.com/@ABCA_DC.
ABCA's offices are located at 899 North Capitol Street NE, Suite 4200 A-B, Washington DC 20002.***

****This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.***

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

**NOTICE OF MEETING**
**ALCOHOL LICENSING CANCELLATION AGENDA – CLASS B LICENSES**

**WEDNESDAY, NOVEMBER 4, 2026**
**899 NORTH CAPITOL STREET, N.E., SUITE 4200-B, WASHINGTON, DC 20002**

The ABC Board will be Cancelling the following licenses for the reasons outlined below:

ABRA-017772 - **Manhattan Market** - B - Retail - Grocery - 2647 CONNECTICUT AVENUE NW
[Licensee did not renew.]

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ABRA-021578 - **Dupont Market** - B - Retail - Grocery - 1807 18TH STREET NW
[Licensee did not renew.]

---

ABRA-023503 - **Missouri Avenue Market** - B - Retail - Grocery - 5900 GEORGIA AVENUE NW
[Licensee did not renew.]

---

ABRA-082376 - **Lena Market** - B - Retail - Class B - 1206 UNDERWOOD STREET NW
[Licensee did not renew.]

---

ABRA-092730 - **Wagshal's** - B - Retail - Full Service Grocery - 3201 NEW MEXICO AVENUE NW
[Licensee did not renew.]

---

ABRA-095169 - **Shaw Howard Deli** - B - Beer and Wine - 1911 7TH STREET NW
[Licensee did not renew.]

---

ABRA-095245 - **Minnesota Store** - B - Retail - Class B - 3728 MINNESOTA AVENUE NE
[Licensee did not renew.]

---

ABRA-101706 - **Wagshal's** - B - Retail - Full Service Grocery - 4857 MASSACHUSETTS AVENUE NW
[Licensee did not renew.]

---

ABRA-104694 - **Union Kitchen Grocery** - B - Retail - Full Service Grocery - 1251 9TH STREET NW
[Licensee did not renew.]

---

ABRA-107663 - **Officina** - B - Retail - Full Service Grocery - 1120 MAINE AVENUE SW
[Licensee did not renew.]

---

ABRA-109297 - **Pho Viet USA Inc.** - B - Retail - Grocery - 2628 11TH STREET NW
[Licensee did not renew.]

---

ABRA-112618 - **No Rules Distributors** - B - Wholesaler - 1701 FLORIDA AVENUE NW
[Licensee did not renew.]

---

ABRA-116836 - **Yang's Market** - B - Retail - Grocery - 138 U STREET NE
[Licensee did not renew.]

---

ABRA-119369 - **Whispering Grapes** - B - Wholesaler - 1200 UPSHUR STREET NW
[Licensee did not renew.]

---

ABRA-122483 - **Habesha Market & Carry-Out Restaurant** - B - Beer and Wine - 1919 9TH STREET NW
[Licensee did not renew.]

---

ABRA-122502 - **Friendship Heights Convenience Store** - B - Retail - Class B - 5252 WISCONSIN AVENUE NW
[Licensee did not renew.]

---

ABRA-122598 - **VinBoheme** - B - Internet - 645 TAYLOR STREET NE
[Licensee did not renew.]

---

ABRA-128500 - **Fizzesse** - B - Internet - 5909 BLAIR ROAD NW

[Licensee did not renew.]

---

ABRA-129523 - **Mott's Market** - B - Retail - Class B - 233 12TH STREET SE
[Licensee did not renew.]

---

ABRA-133642 - **Mastiha Taverna** - B - Beer and Wine - 1309 5TH STREET NE
[Licensee did not renew.]

---

ABRA-134142 - **Filomena Emporium** - B - Beer and Wine - 1063 WISCONSIN AVENUE NW
[Licensee did not renew.]

---

**In accordance with the Open Meetings Act (D.C. Official Code §2-571 *et. seq*.) this meeting may be closed to consult with an attorney to obtain legal advice pursuant to §2-575(b)(4)(A). The Board's vote will be held in an open session and the public is permitted to attend. This meeting is governed by the Open Meetings Act. Please address any questions or concerns arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.**

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION**
**ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

**NOTICE OF MEETING**
**ALCOHOL LICENSING CANCELLATION AGENDA – CLASS C AND D LICENSES**

**WEDNESDAY, NOVEMBER 4, 2026**
**899 NORTH CAPITOL STREET, N.E., SUITE 4200-B, WASHINGTON, DC 20002**

The ABC Board will be Cancelling the following licenses for the reasons outlined below:

ABRA-132777 - **Eunoia Restaurant -** Retail - C - Tavern - 320 FLORIDA AVENUE NE
[Licensee did not pay the second-year annual fee.]

---

ABRA-104782 - **Hush Harbor -** Retail - C - Tavern - 1337 H STREET NE
[Licensee did not pay the second-year annual fee.]

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ABRA-112519 - **Kraken Axes -** Retail - C - Tavern - 840 E STREET NW
[Licensee did not pay the second-year annual fee.]

---

ABRA-115385 - **Boulevard Lounge -** Retail - C - Tavern - 6233 GEORGIA AVENUE NW
[Licensee did not pay the second-year annual fee.]

---

ABRA-118307 - **Mosaico by Arepa Zone -** Retail - C - Tavern - 1280 4TH STREET NE
[Licensee did not pay the second-year annual fee.]

---

ABRA-119877 - **Qategna Cafe -** Retail - C - Tavern - 1207 TUCKERMAN STREET NW
[Licensee did not pay the second-year annual fee.]

---

ABRA-125727 - **IL Supremo Italian Restaurant & Bar -** Retail - C - Tavern - 3209 MOUNT PLEASANT STREET NW
[Licensee did not pay the second-year annual fee.]

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ABRA-129940 - **The Ugly Duckling -** Retail - C - Tavern - 1550 7TH STREET NW
[Licensee did not pay the second-year annual fee.]

---

ABRA-130697 - **Otis.@12 -** Retail - C - Tavern - 3625 12TH STREET NE
[Licensee did not pay the second-year annual fee.]

---

ABRA-131764 - **Port Royal -** Retail - C - Tavern - 1118 9TH STREET NW
[Licensee did not pay the second-year annual fee.]

---

ABRA-132056 - **Tavern Eighteen -** Retail - C - Tavern - 2621 CONNECTICUT AVENUE NW
[Licensee did not pay the second-year annual fee.]

---

ABRA-132346 - **TBD -** Retail - C - Tavern - 3632 GEORGIA AVENUE NW
[Licensee did not pay the second-year annual fee.]

---

**In accordance with the Open Meetings Act (D.C. Official Code §2-571 *et. seq*.) this meeting may be closed to consult with an attorney to obtain legal advice pursuant to §2-575(b)(4)(A). The Board's vote will be held in an open session and the public is permitted to attend. This meeting is governed by the Open Meetings Act. Please address any questions or concerns arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.**

**OFFICE OF THE CHIEF FINANCIAL OFFICER**
**Office of Revenue Analysis**

# NOTICE OF INCREASES FOR THE TAX YEAR 2027 HOMESTEAD DEDUCTION AND SENIOR INCOME THRESHOLD

**The Real Property Tax**

## I. The Homestead Deduction Amount

Per the D.C. Code § 47-850, et seq., the annual Homestead Deduction amount for tax year 2027 is adjusted in the following manner

| | |
|---|---|
| The Washington Area Average CPI value for Tax Year 2011: | 235.46 |
| The Washington Area Average CPI value for Tax Year 2026: | 331.77 |
| The percent change in the index during the above time period: | 40.90% |

**Therefore, effective Tax Year 2027 (beginning October 1, 2026):**

- **the Homestead Deduction amount will be[1] $95,100.00**

## II. The Senior Citizen or Disabled Real Property Tax Relief Income Threshold

Per the D.C. Code § 47-863, the maximum household annual gross income for the real property tax senior citizen or disabled tax relief for tax year 2027 is adjusted in the following manner

| | |
|---|---|
| The Washington Area Average CPI value for Tax Year 2013: | 245.28 |
| The Washington Area Average CPI value for Tax Year 2026: | 331.77 |
| The percent change in the index during the above time period: | 35.26% |

**Therefore, effective Tax Year 2027 (beginning October 1, 2026):**

- **the maximum household federal adjusted gross income for the real property tax senior citizen or disabled tax relief shall be[2] $169,050.00**

[1] Annual dollar amount changes are rounded down to the nearest $50.00 increment.
[2] Annual dollar amount changes are rounded down to the nearest $50.00 increment.

| A Summary of Homestead Deduction and Senior Income Threshold Amounts for Tax Year 2027 | | | |
|---|---|---|---|
| | **Base Amounts** | **CPI Adjustment Factor** | **Tax Year 2027 Amounts** |
| Homestead Deduction | $67,500.00 | 1.4090 | $95,100.00 |
| | | | |
| Senior Citizen Maximum Income Threshold | $125,000.00 | 1.3526 | $169,050.00 |

Source: U.S. Bureau of Labor Statistics, data accessed October 14, 2026

**OFFICE OF THE CHIEF FINANCIAL OFFICER**
**Office of Revenue Analysis**

# NOTICE OF SUM AND SPECIAL REAL PROPERTY TAX RATES FOR TAX YEAR 2027

## I. Sum Tax Rates (comprising both general real property and special real property tax rates) for Tax Year 2027

| Real Property Tax Class | Sum Tax Rates Per $100 of Assessed Value |
|---|---|
| **Class 1A** (residential-occupied, not Class 1B) | $0.85 |
| **Class 1B** (residential-occupied with two or fewer dwelling units) | |
| First $2,645,000.00 in taxable assessed value | $0.85 |
| Portion of taxable assessed value greater than $2,645,000.00 | $1.00 |
| **Class Two** (commercial property) | |
| Assessment value less than or equal to $5 million | $1.65 |
| Assessment value greater than $5 million but less than or equal to $10 million | $1.77 |
| Assessment value greater than $10 million | $1.89 |
| **Class Three** (vacant buildings) | $5.00 |
| **Class Four** (blighted buildings) | $10.00 |

## II. Special Real Property Tax Rates for Tax Year 2027

**BOND ACT REQUIREMENT**
**Certification of Debt Service Requirement**

In Tax Year 2027, **twenty-three and sixty-two hundredths' percent (23.62%)** of total real property tax collections, by class, shall be dedicated to the repayment of General Obligation Bonds. The special real property tax rates (which are subsets of the applicable sum tax rates in Section I) according to tax classification for Tax Year 2027 are as follows:

| **Real Property Tax Class** | **Special Tax Rates Per $100 of Assessed Value** |
|---|---|
| **Class 1A** (residential-occupied, not Class 1B) | $0.201 |
| **Class 1B** (residential-occupied with two or fewer dwelling units) | |
| First $2,645,000.00 in taxable assessed value | $0.201 |
| Portion of taxable assessed value greater than $2,645,000.00 | $0.236 |
| **Class Two** (commercial property) | |
| Assessment value less than or equal to $5 million | $0.390 |
| Assessment value greater than $5 million but less than or equal to $10 million | $0.418 |
| Assessment value greater than $10 million | $0.446 |
| **Class Three** (vacant buildings) | $1.181 |
| **Class Four** (blighted buildings) | $2.362 |

## OFFICE OF THE DEPUTY MAYOR FOR EDUCATION

## NOTICE OF PUBLIC MEETING

### 2026-27 Uniform Per Student Funding Formula (UPSFF) Working Group Session 4

The Office of the Deputy Mayor for Education (DME) and The Office of the State Superintendent of Education (OSSE) will hold the third meeting of the UPSFF Working Group on Tuesday, November 10th, 2026, from 3 p.m. to 5 p.m. EST. Community members are encouraged to join the webinar. Register to attend the meeting virtually here.

### AGENDA

I. Welcome & UPSFF Working Group Overview
II. Career and Technical Education (CTE) CTE State Funding Model Review
III. CTE and Advanced Technical Center (ATC) Data and Model Exploration
IV. Public Comment
V. Reminders & Adjourn

The Office of the State Superintendent of Education (OSSE) is convening a Uniform Per Student Funding Formula (UPSFF) Working Group pursuant to section 112(c) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999 (DC Law 12-207; DC Official Code § 38-2911(c)).

**Date:** **November 10, 2026**
**Time:** **3:00 p.m. – 5:00 p.m.**
**Location:** **Virtual**

*Community members are encouraged to join. | Register to attend the meeting virtually here.

**For more information:** Contact the working group facilitators at Gabriel.Montague@dc.gov or Troy.Eckles@dc.gov with any questions.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.

## D.C. STATE BOARD OF EDUCATION

## NOTICE OF PUBLIC MEETING

The D.C. State Board of Education's College, Career, and Life-Readiness Committee will hold a regular meeting on **Tuesday, November 24 at 5:00pm.**

Meeting materials will be posted on the State Board's meeting DropBox at: https://bit.ly/SBOEMeetingDocs.

The meetings will be conducted remotely via Zoom, and members of the public are invited to join the meeting webinar and observe at: https://dc-gov.zoom.us/j/86114715860. A password is not required to attend. Recordings of the meetings will be uploaded to the State Board's YouTube page.

Below is a draft agenda for the committee's meetings.

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**DRAFT AGENDA**

I. Establishment of a Quorum
II. Topics Referred to Committee
III. Committee Project Updates
IV. New Business
V. Adjournment

*Please note*: This agenda is subject to change.

---

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.

## BOARD OF ELECTIONS

## CERTIFICATION OF ANC/SMD VACANCY

In accordance with D.C. Official Code § 1-309.06(d)(2), the District of Columbia Board of Elections hereby gives notice that a vacancy exists in the office of Advisory Neighborhood Commissioner for the following Single Member District:

**8D06**

Pursuant to D.C. Official Code § 1-309.06(d)(1), vacancies on Advisory Neighborhood Commissions cannot be filled when the vacancies occur within the 6-month period prior to a general election. As this vacancy occurred within the 6-month period prior to a general election, no petitions will be made available for the purposes of filling it at this time, and the office shall remain vacant for the remainder of the term of office.

For more information, the public may contact the D.C. Board of Elections via the information below:

**D.C. Board of Elections**
**1015 Half Street SE, Suite 750**
**Washington, DC 20003**

**Phone: 202-727-2525**

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | |
|---|---|
| In the Matter of: | |
| EMPLOYEE[1], Employee | OEA Matter No. 1601-0001-26 |
| v. | Date of Issuance: August 28, 2026 |
| D.C. FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT, Agency | MICHELLE R. HARRIS, ESQ. Senior Administrative Judge |

Employee, *Pro Se*
Madeline Terlap, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On October 6, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Fire and Emergency Medical Services Department's ("Agency" or "DCFEMS") decision to remove him from service effective September 6, 2025. OEA issued a letter on October 7, 2025, requiring Agency to file an Answer to Employee's Petition for Appeal. Agency filed its Answer to Employee's Petition for Appeal on November 6, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on November 6, 2025. On November 12, 2025, I issued an Order Convening a Prehearing Conference in this matter for December 10, 2025.

On December 10, 2025, both parties appeared for the Prehearing Conference. During the Prehearing Conference, I found that because there was a Fire Trial Board Panel ("Panel") hearing in this matter, that OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department,* 801 A.2d 86 (D.C. 2002). As a result, the parties were ordered to submit briefs addressing whether: (1) the Fire Trial Board Panel's decision was supported by substantial evidence; (2) whether there was a harmful procedural error; and (3) whether Agency's action was done in accordance with all laws and/or regulations.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

On August 26, 2025, I issued a Post Prehearing Conference Order codifying the verbal order from the Prehearing Conference and setting the briefing schedule. Accordingly, Agency's brief was due on or before February 20, 2026, Employee's brief was due on or before April 3, 2026, and Agency had the option to submit a sur-reply brief by or before April 24, 2026. Both parties submitted all briefs in accordance with the prescribed deadlines. The record is now closed.

## JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUES

1. Whether the Fire Trial Board's decision was supported by substantial evidence;
2. Whether there was harmful procedural error;
3. Whether Agency's action was done in accordance with all applicable laws or regulations.

## BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## STATEMENT OF THE CHARGES

In a Final Agency Decision: Termination Notice dated August 27, 2025, Employee was charged with the following:

> In Case Numbers U-25-016, U-25-038, and U-25-063, The Trial Board recommended termination for all charges brought against you. In case U-25-

[2] OEA Rule "Definitions § 699.1."

016 you failed to report for duty at the proper place and time on October 13, 2024. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII §2.2 (f)(1) (Attendance-related offenses, including: Unexcused Tardiness.) *See also* DPM § 1605.4(f)(1); *See also* DPM § 1607.2(f)(1)(a).

In case U-25-038 you failed to report for duty at the proper place and time on November 2, 2024. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII §2.2 (f)(1) (Attendance-related offenses, including: Unexcused Tardiness.) *See also* DPM § 1605.4(f)(1); *See also* DPM § 1607.2(f)(1)(a).

In case U-25-063 you failed to report for duty at the proper place and time on December 12, 2024. This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII §2.2 (f)(1) (Attendance-related offenses, including: Unexcused Tardiness.) *See also* DPM § 1605.4(f)(1); *See also* DPM § 1607.2(f)(1)(a).

SUMMARY OF THE TESTIMONY

On April 24, 2025, Agency held a Fire Trial Board Panel hearing. During the hearing, testimony and evidence was presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as "Tr."), generated and reproduced as a part of the Adverse Action Panel hearing.

*Agency's Case in Chief*

Lieutenant Brian Kalb ("Lt. Kalb") Tr. Pp. 18-58

Lt. Kalb has been with DCFEMS for over 20 years and is currently assigned to Truck 15, Platoon #4. Tr. 19. He testified that he had this same assignment from October 2024 to December 2024 and affirmed that Employee was assigned to his platoon. Tr. 19. Lt. Kalb stated that Employee joined Truck 15 in and around September 2024 or early October 2024. Tr. 20. Lt. Kalb affirmed that he was Employee's direct supervisor. Lt. Kalb explained that he was responsible for a lineup, which was basically a roll call for all the members assigned in the firehouse that day. Tr. 20. He affirmed that he became aware that Employee did not show up on time for duty. He explained that usually employees arrive a few minutes before duty reporting time, which was 0700. Tr. 21. He said that if he could not find an employee, then a lineup is held. Lt. Kalb recalled that Employee was first tardy in October 2024. He identified Agency's Exhibit 1 as his endorsement of Employee's special report. Tr. 23. He explained that this report detailed what happened and that Employee was not present at 0700 for lineup. He also noted that a phone call was made to Employee and that the date of this incident was October 13, 2024. Tr. 23.

Lt. Kalb further explained that when a firefighter is running late for work, the Department does allow standbys with the approval of the company officer. Tr. 24. He noted that it is the responsibility of the member to arrange a standby. He also cited that if there is a medical issue, then sick leave may be utilized. Tr. 24. He affirmed that the Order Book indicates that a member has this responsibility. Tr. 25. Lt. Kalb testified that he did not hear from Employee until 7:45am on the October 13, 2024. He affirmed that Employee was tardy in November 2024. Lt. Kalb identified Agency's Exhibit 2 as documentation that Employee was absent from lineup on November 2, 2024. Tr. 26. He identified the document as the copy of the company journal that logs all daily events at the firehouse. Tr. 27. He affirmed that the journal cites to a call to Employee, but that the call went unanswered and a voicemail was left. Tr. 27. Lt. Kalb further testified that Employee reported for duty at 10:55am on November 2, 2024. Tr. 27. Lt. Kalb noted that he submitted a report for Employee's tardiness for that date. Tr. 28. Lt. Kalb affirmed that the journal reflected his notation that he counseled Employee about the importance of reporting on time for duty. Tr. 29. In reading the document, he cited that his notes indicated that "he had no way to determine when [Employee] was discharged from Kaiser due to the doctor's treatment verification was electronically signed and sent to at 1525 hours on 11-2 of '24." Tr. 29. Lt. Kalb affirmed that he had received that document from Employee. Tr. 30. He testified that he had asked Employee for the document through the day. He testified that he could not authenticate the document because it was sent at 3pm in the afternoon. Tr. 31. While it was not a standard practice to provide a verification form, Lt. Kalb noted that he would try to help his employees, so if they had something saying they were discharged because they were at urgent care etc., he would note that reason. Tr. 31.

Lt. Kalb testified that he did not know if Employee went to the Police Fire Clinic ("PFC"). Tr. 32. Lt. Kalb stated that while a PFC visit may not necessarily excuse an AWOL charge, it might prevent it in the first place. Tr. 34. Lt. Kalb testified that there was a time in December 2024 when Employee was tardy and identified Agency's Exhibit 3 as the report he prepared noting that Employee was tardy on December 12, 2024. Tr. 36-37. Lt. Kalb testified that he spoke to Employee and that Employee explained to him that his tardiness was due to "a psychological or something that was going on in his life that caused him to stress." Tr. 38. Lt. Kalb said he asked Employee if he was able to continue his tour of duty and Employee indicated that he could. Tr. 38. He also asked Employee if he needed peer support and Employee told him that he "had prior scheduled appointment with the PFC psychiatrist." Tr. 39. Lt. Kalb affirmed that he has previously written up members for tardiness prior to Employee. Tr. 39. He affirmed that he is required to cite the member for AWOL when they are tardy. Tr. 39. Lt. Kalb testified that a member's tardiness impacts the entire firehouse and the responsibilities required. Tr. 40.

On cross examination, Lt. Kalb testified that he did not know Employee before he was assigned to Truck 15. Tr. 41. He cited that he learned that Employee was hospitalized before the reassignment only after Employee told him a little background about it and how he had difficulties while at Engine 4. Tr. 41. Lt. Kalb affirmed that he told the Employee during that conversation that the "past is the past, and this would be a fresh start at Truck 15." Tr. 42. He affirmed that he encouraged members to give Employee a chance. He also affirmed that during his first three months, Employee was more reserved. Tr. 43. Lt. Kalb affirmed that Employee was AWOL for two hours on October 13, 2024, and was AWOL for five hours on November 2, 2024. Tr. 43-44. In review of Agency's Exhibit 1 page 57 for November 2nd, Lt. Kalb affirmed that he saw where

Employee was still asleep due to medication and that on page 59 he had gone to Kaiser on November 1st. Tr. 45. Lt. Kalb affirmed that Employee was cited for two hours of AWOL on December 2, 2024. Tr. 46. He affirmed that Employee remained on full duty at Truck 15 into March 2025, and that his last AWOL was in December 2024. Tr. 47. Lt. Kalb testified that DCFEMS has punitive and non-punitive AWOL. He cited that Employee had not had any punitive AWOLs since the December 12, 2024, date. Tr. 47-48.

Lt. Kalb affirmed that Employee did not have any performance issues and got along with everyone at the firehouse. Tr. 48. He also cited that to the best of his knowledge, Employee had been honest with him. Lt. Kalb testified that he would like to see Employee return to full duty, and he doesn't hold anything personal against him and has no problem with him returning to Truck 15. Tr. 49. He affirmed that he would not have any concerns if Employee returned to Truck 15. Tr. 49. On redirect, Lt. Kalb stated that he knew Employee had some issues while at Engine 4. Tr. 50. Lt. Kalb cited that he believed that Employee having three AWOLs within three months was an unusual amount of AWOL. Tr. 51. When asked by the Panel about Employee's leave, Lt. Kalb cited that when Employee came to Truck 15, he "was already in a…like a pay-back sick leave status, so he had negative sick leave balance…" Tr. 53. He reiterated that he talked to Employee about his first AWOL and advised him of the importance of timely arrivals etc. Tr. 55 Lt. Kalb cited that he could not speak for the other members regarding the standby status. Tr. 57.

*Employee's Case in Chief*

Employee Tr. Pp. 59 – 172

Employee testified that he joined DCFEMS on March 6, 2017. He cited that he always wanted to help people and that's why he joined. Tr. 60. After he completed his training at the academy, he went to Engine 4, as it was the first all-Black firehouse. Tr. 60. Initially, Employee cited that he had good support at Engine 4. He testified that once his original officer left, he had challenges with the new officer. Tr. 61. He identified Employee' Exhibit 1 as his transfer request dated August 1, 2022. Tr. 61. He cited that Lt. Ridgeway, Cpt. Steinberg and Chief Coombs approved his request. Tr. 61. He was not transferred in 2022 or 2023. He testified that in 2023, things got really bad for him at Engine 4. Tr.62. He was referred to the behavioral health coordinate because Lt. Ridgeway felt like he was going to commit suicide. Tr. 62. He also noted that his cousin was working with him and he went to Lt. Ridgeway to say he thought something deeper was going on with Employee. Tr. 63. He affirmed that on November 7, 2023, he was placed on FD12 and was taken to the hospital. Tr. 63 He was required to take an extended limited duty status after that hospitalization. Tr. 63. He identified Employee's Exhibit 2 as his limited duty certification form. Tr. 64. He also identified Employee's Exhibit 3 as the stress first aid program of Bulletin No. 42. Tr. 65. He noted that in November 2023, his stress color was "red". He affirmed that he sought therapy while he was on limited duty status. He started at the PFC but was told he would need more intense therapy because he had severe depression. Tr. 66. He then sought therapy at Kaiser through his health insurance. Tr. 66. He explained how the treatment worked and what he learned while in therapy at Kaiser. Tr. 66-68. He testified that it was his goal to return to full duty at Engine 4 because he wanted to show other people there that he was not the problem. Tr. 68. He was cleared to return to full duty once his stress color was "green." Tr. 70. He did not return to Engine 4 once he was return to full duty.

Employee identified Employee's Exhibit 4 as the special order 2024-227 which showed reassignments and the starting dates. Tr. 71. He read the first highlighted sentence which stated reassignments were effective at 0700 hours on Sunday, September 24, 2024. Tr. 71. Employee also confirmed that his name appeared in this list and that he was assigned Truck 15. Tr. 72. He was a bit panicked, nervous and anxious because he had not had much time to prepare and he had not previously been detailed to a truck. Tr. 72. He spoke with Chief Poles about the reassignment and Chief Poles told him that they thought it would be a good fit for him. Tr. 73. Employee testified that when he first arrived at Truck 15, his sick leave balance was in the negative due to a cancer scare. Tr. 75. He cited that following hospitalization and treatment, he had to pay back time, so that is why he had negative sick leave. Employee testified that he did not report for duty at 0700 on October 13, 2024, as required. He failed to report to work on time because he overslept. Tr. 77. He explained that because of his anxiety, he stayed up throughout the night. Tr. 78. He affirmed that he called his officer at 7:45am and reported for duty that day at 8:30am and assumed duty at 9:00am. He affirmed that he was officially AWOL for the first two hours on October 13, 2024. Tr. 70.

Employee also affirmed that he was supposed to report to work at 0700 hours on November 2, 2024, but he did not report on time because he was at Kaiser. Tr. 79. Employee explained that the night before he had a real bad migraine so he went to seek treatment but did not think he would be there overnight. He also stated that Kaiser gave him morphine which made him go to sleep. Tr. 79. He affirmed that his Lieutenant was first notified that he was asleep at the hospital at 8:15am, and that he reported to quarters at 10:55am and assumed duty at 12:30pm. Tr. 80. Employee also testified that he did not report for duty at 0700 on December 12, 2024. Employee explained that he had spoken with his therapist who told him that he sounded depressed. He said he went to sleep and did wake up, despite hearing his alarms. He heard his doorbell ringing and it was Engine 10 waking him up. Tr. 82. He called his Lieutenant at 0721 hours, reported at 0814 hours and assumed duty at 0900 hours that day. Tr. 82. He affirmed that he was AWOL for two hours that day. Tr. 82. Employee explained that he and Lt. Kalb talked, and Lt. Kalb told him that he was here to help and that he should become more comfortable. He also stated that Lt. Kalb told him to come to the Christmas party and to bring his partner as well. Employee explained that he talked to his partner, and he agreed to come to the Christmas party, so they both attended. Tr. 83. Employee explained that following that, he has had a great experience and loves Truck 15. He never thought he would be on a truck, but he really enjoyed it and felt comfortable bringing his partner to work related events, and in the past he did not feel comfortable. Tr. 84-85. Employee explained that his first chief made him feel uncomfortable about his sexuality. Tr. 86.

Employee went on to explain that his family had some concerns while he was at Engine 4, but Truck 15 felt like family. Tr. 89. Employee affirmed that after his last AWOL in December 2024, he remained on full duty with Truck 15 until March 2025. Tr. 90. He stated that he was not AWOL during that timeframe. He noted that his stress color was "green" and that he began to learn how to handle things more. Tr. 91. He agreed that Chief Coombs was right that Truck 15 was a good fit for him. Tr. 92. He affirmed that he continues to see his therapist at Kaiser. Employee testified that he was on light duty but wants to return to full duty and give his all.

On cross examination, Employee identified the October 13, 2024 AWOL memorandum. Tr. 94. He affirmed that he wrote that he overslept and did not activate his alarm and that it was a mistake he did not plan on repeating. Tr. 94. He affirmed that he again overslept in December 2024. He affirmed that he heard Lt. Kalb's testimony that he could not verify the doctor's note from the November 2, 2024 AWOL. Tr. 94. Employee testified that Lt. Kalb had to email his doctor for the note. He cited that the original note he gave Lt. Kalb just showed his discharge time and not that he had been treated overnight. Tr. 97. Employee affirmed that he received notification of the charges against him in January 2025. He cited that he recently had a copy of Agency's Exhibit 2. Tr. 99. Employee testified that he had contacted Kaiser, and they had not responded with his full medical records as requested. Tr. 99. Employee affirmed that the first note that he sent on November 2, 2024, was not in the record. Tr. 100-101.

Employee testified that he pled guilty to all three charges and that there was no need for him to fight after he gave them all the documentation, so he didn't know what to do. Tr. 102. Employee explained that he was not trying to make any excuses, but that he is not in the same space. Tr. 102-103. Employee affirmed that he was receiving mental health treatment in September 2024 and was seeing his Kaiser therapist. Tr. 103. He was not sure of the exact date he talked to his therapist about his concerns of being reassigned. Employee affirmed that he was not disputing the AWOL charges, but that he should be given a lesser penalty because he was going through mental health challenges during the time. Tr. 105. He also explained that he has ongoing mental health challenges, but he continues to work through it. Tr. 106-107. He also noted that his stress levels have been more balanced and that even through the process, he hasn't been angry or sad. Tr.108-109. Employee explained that when he first started at the new assignment, he still had bad anxiety. Tr. 109-110. He didn't trust "higher ups" and so he remained quiet and dealt with as much as he could. Tr. 111.

Employee testified that the DCFEMS can be confident that he has changed because he is in a good place and continues to work on what he needs to be a good firefighter/member. He reiterated that he loves Truck 15 and he wants a chance to go back. Employee testified that a lesser penalty could be that he "got hours", but that termination is not appropriate in the circumstances. Tr. 113. Employee identified (Agency's Exhibit 4) a Final Decision for a 12-hour suspension for AWOL on May13, 2022. He affirmed that he was AWOL because he overslept. Tr. 114. He also identified an official reprimand for AWOL on October 12, 2022, and a final agency decision imposing another 12-hour suspension for AWOL on October 28, 2022. Tr. 116-117. Employee affirmed that charge was because he failed to notify his supervisor that he was on leave for a doctor's appointment. Tr. 118. He also identified another official reprimand for AWOL on December 3, 2022, where he was AWOL for two hours due to his having overslept. Tr. 118. Employee again identified a final notice for a 12-hour suspension for AWOL on February 12, 2023, which was because he did not report for duty on time. Tr. 119. Employee also identified a final decision imposing a 36-hour suspension for AWOL on July 15, 2023, and another 12-hour suspension for AWOL which he served on October 21, 2024.

Employee affirmed that there were nine (9) previous disciplinary actions, six (6) of which were for AWOL. Tr. 123. He affirmed that the penalty did get more severe for each infraction. Tr. 124. Employee affirmed that the November 2, 2024 AWOL was not for mental health. Tr. 127. Employee also explained that he was not aware that he had slept so long when given morphine.

Tr. 129. Employee explained that he had a migraine on November 1, 2024, and his usual medicine didn't work. Tr. 131. He determined he would go to Kaiser to get checked out because of the pounding. Tr. 132. He and his partner biked to the Kaiser hospital. Tr. 132. Employee testified that he didn't call his officer on the night of November 1, 2024, because he planned on going to work the next day. Tr. 133. He stated that his partner was awake on November 2, 2024, but cited that Employee was coherent, so he couldn't wake him. Tr. 133. Employee affirmed that he did contact his supervisor prior to 0700 on November 2, 2024. Tr. 134. Employee affirmed that he was AWOL on October 13, 2024, because of a death in the family and that he overslept due to not activating his alarm. Tr. 139. Employee explained that because he dealt with mental illness, experiences of loss impacted him mentally. Tr. 139-140. Employee affirmed that he started with Agency on March 6, 2017, and that 0700 hours has always been his duty schedule. Tr. 141. Employee explained that he did not always set nightly alarms. Tr. 141-142. Employee also iterated that 2022 was one of his worst years with DCFEMS. Tr. 145. Employee affirmed that he was aware that oversleeping and being late for duty could lead to disciplinary action. Tr. 148. Employee agreed that he was warned that he could be subject to discipline for oversleeping etc. Tr. 149. He asserted that he overslept due to medication. Tr. 149. He testified that he was not on the medicine when he received the December 2024 AWOL because they had determined the medicine was too strong.

On redirect, Employee testified that the previous disciplinary actions did not occur after his long term limited duty status that followed his FD-12 and hospitalization. Tr. 151. When asked by the Panel if he had received an official diagnosis, Employee explained that he was told he suffered from severe depression. Tr. 151. He affirmed that the PFC was aware of this diagnosis. Tr. 152. Employee also noted that he is not on a prescribed medication on a regular basis. Tr. 153. Employee explained to the Panel that regarding the AWOL that he received after the death of his cousin, he didn't have any bereavement days and did not want to exhaust the sick leave that he still didn't have, so he knew he had to go to work. Tr. 154. Employee did affirm that he had previously done "day off trades." Tr. 155-156. Employee testified that he had been on light duty since March 2025 due to the trial board hearing. He testified that prior to the beginning of his tenure in 2017, he had not had any mental health challenge/history. Tr. 156-157.

Employee explained that the onset of his mental health challenges began in and around 2021. He explained that he had some health issues and the challenges with Engine 4 precipitated his mental health illness challenges. Tr. 158. The Panel asked Employee about the November 2024 AWOL where he went to Kaiser and was AWOL for five hours. Employee stated that he did not leave Kaiser and he called Lt. Kalb when he was leaving Kaiser and that it was still in the morning. Tr. 159. Employee explained that when he left Kaiser, he went home to shower and dress and then reported to work. Tr. 159. Employee affirmed that he was provided with discharge papers when he left the hospital. He said he had those but needed a doctor's note because the discharge papers had HIPPA protected information. Tr. 160. Employee cited that Lt. Kalb received the original doctor's note which gave the time he was leaving the hospital. Tr. 162. Employee also affirmed to the Panel that he had been coming into work regularly and was happy at Truck 15 and he has had details at other stations. Tr. 163. Employee affirmed that if he were detailed elsewhere that he would be able to cope if given the opportunity. Tr. 165. Employee affirmed to the Panel that he submitted a transfer request in August 2022, and submitted another, but did not know what happened to it. Tr. 168-169. Employee stated that he submitted one to Lt. O'Brien and Lt.

Ridgeway. Tr. 169. Employee affirmed to the Panel that he did exercise the Department's standby procedures when he was at Engine 4. Tr. 171.

Stephen Gallo ("Gallo") Tr. 173- 187

Gallo testified that he has been a firefighter with DCFEMS for approximately a year and a half, joining in December 2023. He noted that his current rank is a firefighter/EMT. Tr. 174. Gallo explained that he is assigned to Engine 26, Platoon No. 4. He first met Employee when he was assigned to Truck 15 in October 2024. Tr. 174. Gallo explained that he had heard about Employee because he had friend at Engine 4. Tr. 174. He was skeptical because of what he had heard, but when he met Employee, he found all that to be wrong. Gallo stated that Employee was a great employee and that he got to know him "pretty well working in an ambulance for 24 hours." Tr. 175. Gallo stated that Employee was a little reserved when he first came to Truck 15, but later he opened up a lot more and became involved in the house. Tr. 175. He said Employee had a positive attitude and that his performance on the truck most recently had been good. Tr. 176-177. Gallo testified that since January 2025, he has had no reason to doubt Employee's reliability, citing that he is extremely helpful and kind. He stated that he would like to see Employee returned to full duty.

On cross examination, Gallo was asked if he was familiar with Order Book Article 7. After it was explained that it relates to AWOL and discipline, Gallo noted he had a rough time frame of the dates that Employee was AWOL. Tr. 180. He also noted he was informed that Employee had prior disciplinary actions since 2022, six of which were for AWOL. Tr. 180. He did not know that Employee had served a cumulative of 72 hours of suspension and received two reprimands for AWOL. Tr. 181. Gallo explained that he is former military, so he takes AWOL seriously. He testified that knowing Employee's story, he believes that context matters in this situation. Tr. 181. Gallo did not know that Employee had pleaded guilty to the AWOL charges. Gallo stated that he believed mental health plays a role based on his own experience with familiar members. Tr. 183. When asked by the Panel if the entire shift know of Employee's challenges, Gallo answered that Employee had shared with those he felt comfortable with. Tr. 184. Gallo testified that he sees Employee usually show up for work around 6:15am for the Truck and 6:20/6:30am for the ambulance. He has also seen Employee report at 6:00am. Gallo noted that the time members show up varies but everyone is supposed to be there by 0700. Tr. 186. Gallo testified that standbys can be found if needed. Tr. 187.

Lieutenant Mark Johnson ("Lt. Johnson") Tr. Ppg 188-196

Lt. Johnson testified that he joined DCFEMS in September 2008 and became a Lieutenant in December 2024. Tr. 188. He is currently assigned to Engine 26 and Platoon No. 4. Tr. 18. He first met Employee shortly after he arrived at Engine 26. He affirmed that Employee was on full duty at the firehouse when he started in December 2024 through March 2025. Lt. Johnson testified that he had a great experience working with Employee and that he did everything he was supposed to do. Tr. 190. He noted that Employee is a great EMT and is an asset to the Department. Tr. 190. He also noted that Employee has a great attitude, never complained and contributed to all his responsibilities. Tr. 190-191. Lt. Johnson was not aware of any performance related issues for Employee since he has been working with him. Tr. 191. He testified that Employee shared with

him about some mental health experiences and counseling that he was in. Tr. 191. He affirmed that Employee got along with everyone. Tr. 192. Lt. Johnson testified that he did not believe Employee should be terminated for the AWOL charges because there were extenuating circumstances and there are other types of disciplinary actions. Tr. 192.

On cross examination, Lt. Johnson stated that he was not aware that Employee was pleading guilty to the AWOL charges. He affirmed he was aware of Order Book Article 7 regarding AWOL. Lt. Johnson testified that he was aware of Employee's previous disciplinary history but was not aware that he had served a cumulative of 72 hours suspension and had two reprimands for AWOL. Tr. 194. He agreed that showing up late for duty inconveniences other members. Tr. 195. Lt. Johnson cited that Employee had shared with him about the mental health challenges he had dealt with. Tr. 196.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. The Panel found for Case Numbers U-25-016, U-25-038, and U-25-063 that[3]:

1. "[Employee] has demonstrated a persistent pattern of unexcused tardiness, which has negatively affected the Department's operational efficiency and ability to uphold its mission.
2. His repeated failure to report for duty on time compromises the reliability and effectiveness of emergency response services.
3. [Employee] has not made improvements or learned from his previous incidents.

Upon consideration and evaluation of all of the testimony and factors, the Panel unanimously found Employee guilty on all three (3) charges. The Panel cited that it reviewed all of the testimony and documents in the record. Following its review and consideration of the *Douglas* Factors, the Panel unanimously recommended that Employee be terminated from DCFEMS.[4]

## ANALYSIS AND CONCLUSIONS[5]

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department.*[6] According to the *Pinkard* decision, OEA has a limited role where a departmental hearing has been held. The D.C. Court of Appeals held that while OEA generally has jurisdiction over employee appeals from a final agency decision

[3] The Panel issued a decision for all three (3) cases. Each decision was substantially similar and incorporated the same record/evidence in its review of the Employee's matter. Further, the *Douglas* factor analysis for each case number was the same as well.
[4] Agency Answer at Tabs 13-16 (November 16, 2025).
[5] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[6] 801 A.2d 86 (D.C. 2002)

involving adverse actions under the CMPA[7], in a matter where a departmental hearing has been held:

> "OEA may not substitute its judgement for that of an agency. Its review of the agency decision…is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations."

Further, the Court of Appeals held that OEA's power to establish its own appellate procedures is limited by the agency's collective bargaining agreements. As a result, and in accordance with *Pinkard*, an Administrative Judge of OEA may not conduct a de novo hearing in an appeal before them, but rather, must base their decision on the record when all of the following conditions are met:

1. The appellant (employee) is an employee of the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department;
2. The employee has been subject to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard* i.e. "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing has been held, any further appeal shall be based solely on the record established in the Department hearing"; and
5. At the agency level, employee appeared before a panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action of the deciding official that resulted in an adverse action being taken against employee.

In this case, Employee is a member of the D.C. Fire and Emergency Medical Services Department (DCFEMS) and was the subject of an adverse action. Further, DCFEMS' collective bargaining agreement contains language similar to that found in *Pinkard*; and Employee appeared before a Trial Board Panel, which held a hearing. Based on the documents of record, and the position of the parties as stated in the briefs submitted herein, the undersigned finds that all the aforementioned criteria are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of whether the Trial Board Panel's findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

*Whether the Panel's Decision was supported by Substantial Evidence*

Pursuant to *Pinkard*, the undersigned must determine whether the Panel's ("Panel") findings were supported by substantial evidence.[8] "Substantial evidence" is defined as "such

[7] *See.* D.C. Code §§ 1-606.02 (a)(2). 1-606.03(a)(c); 1-606.04 (2001).
[8] *Elton Pinkard v. DC Metropolitan Police Department*, 801 A.2d at page 91. (2002).

relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[9] If the [Panel] findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record[10] to support findings to the contrary.[11]

Employee avers that the "Agency's narrative presents a pattern of misconduct while omitting critical facts central to this case: a documented hostile work environment beginning in 2022, repeated transfer requests, medically documented mental health treatment, medication-induced impairment, and a full 9 months of successful, incident-free service."[12] Employee asserts that Agency presents the AWOL incidences "totaling nine hours as evidence of unreliability."[13] Employee also argues that the Agency improperly relied on "stale disciplinary actions" which "improperly inflates the appearance of a patter of misconduct and undermines the fairness of the proceeding."[14] Employee reiterates that the Panel failed to account for the period of time for which he was receiving "medically documented mental health treatment."[15] As such, Employees maintains that the conduct was not "willful misconduct but rather a direct consequence of a medical condition and prescribed treatment." To this end, Employee avers that "Agency's reliance on outdated disciplinary actions, combined with its failure to properly consider the medical and workplace factors underlying the conduct, constitutes a clear misapplication of factors and renders the penalty of termination excessive, arbitrary, and unsupported by the record."[16]

Agency asserts that there was substantial evidence to support the Panel's decision in this matter. Agency avers that 6-B DCMR §1602.1 permits agencies to discipline employees for cause.[17] Agency also asserts that "Employee pled guilty to all three charges…[t]herefore there is substantial evidence to support the Panel's findings that Agency had cause to discipline Employee in all three cases."[18] Agency argues that because cause was determined, it has the "primary discretion in assessing the degree of discipline the conduct warrants." Agency maintains that termination was an appropriate penalty in this matter and that Employee's past disciplinary record, which included "nine (9) instances of discipline in three years, including six (6) instances of AWOL, show that he is unreliable and prone to excessive tardiness."[19] Agency avers that the Panel did a thorough review and consideration of all the Douglas factors in this matter, and that Employee's past disciplinary record made Douglas Factor 3 aggravating. Agency also asserts that Employee's mental health issues and medical challenges were considered in review of the Douglas factors. This noted, Agency avers that "it was Employee's responsibility to make sure he showed up for work on time, and nothing out of Employee's control prevented him from doing so." As such, Agency contends that the Panel "properly determined that mitigating circumstances did not

[9] *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 at 985 (D.C. 2002).
[10] Employee's Brief at Page 19 (December 27, 2022).
[11] *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1189 (D.C. 1989).
[12] Employee's Response at Pages 1 -2 (April 6, 2026).
[13] *Id.* at Page 3.
[14] *Id.* at Page 5.
[15] *Id.*
[16] *Id*. at Page 6.
[17] Agency's Brief at Page 7. (February 20, 2026).
[18] *Id*.
[19] *Id.*

exist to excuse the AWOLs Employee incurred on October 13, 2024, November 2, 2024, or December 16, 2024.[20]

Agency also avers that Employee's claims that the Panel "relied on stale discipline" in consideration of *Douglas* factor 3 to be false.[21] Agency argues that the "oldest instance of discipline the Panel relied upon was from an AWOL incident on May 13, 2022 (U-22-491) for which he received a 12-hour suspension served on March 13, 2023."[22] Agency also avers that Employee's reliance on witness testimony in his ability to perform does not change the Panel's findings as it related to *Douglas* factor 5, in that it determined that "Employee's AWOLs significantly undermined his ability to do his job."[23] Agency maintains that it considered Employee's mental health challenges, but determined this were not mitigating circumstances to excuse the conduct.[24] Agency avers that "the Panel did consider Employee's life and job-related tensions…"[25]

In review of the record and the transcript of the Trial Boad hearing, I find the Panel's factual findings to be consistent with the testimony and evidence provided during the Trial Board Hearing. Further, the Panel was actively engaged in the hearing and asked questions of the witnesses and Employee. I find that the Panel conducted a thorough and conscientious review of the *Douglas* factors in making its final determinations the charges. It is also of note that Employee pled guilty to all the charges. Wherefore, the undersigned finds that Employee's claims that Agency lacked substantial evidence to be unsupported by the record presented. For the reasons as previously noted, I find that Agency has met is burden for substantial evidence in the charges against Employee.

***Whether there was harmful procedural error.***

In accordance with *Pinkard* and OEA Rule 631.3, the undersigned is required to evaluate and make determinations as to whether there are any harmful procedural errors in the administration of the instant action. OEA Rule 634.6 provides as follows: "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action."

Employee avers that Agency "failed to consider Exhibits 7-11, undermining the fairness of the proceeding and constituting harmful procedural error."[26] Employee argues that this failure "to consider key evidence, properly apply the law, and include relevant exhibits materially affected the outcome." Agency asserts that Employee failed to identify procedural errors. Agency avers that "Exhibits 8 and 9 *were* included in the record and considered by the Panel…[w]ith regard to

[20] *Id*. at Pages 8-12.
[21] Agency' Sur Reply Brief at Page 2.
[22] *Id*.
[23] *Id*.
[24] *Id.* at Page 3.
[25] *Id*. at Page 4.
[26] Employee's Response at Page 3. (April 6, 2026).

Exhibits 7, 10 and 11, even if they were admitted into evidence, they would not have had an effect on the Panel's decision because they did not excuse or mitigate Employee's AWOLs."[27] Agency also avers that Employee, who was represented by counsel at the hearing, "did not provide any medical documentation besides what is included in the record." As such, Agency avers that Employee's claim that the case cannot be fairly evaluated is unsupported by the record.[28] Agency also maintains that "even though Employee had ample opportunity to produce supporting medical documentation at the hearing, he failed to do so."[29]

Pursuant to *Pinkard*, the undersigned must determine whether the was harmful procedural error in Agency's administration of the instant action. In accordance with the previously cited OEA rule, I find that the record does not support Employee's claims of harmful procedural error. Further, the undersigned noted in review of the transcript of the Panel hearing that Employee was represented by counsel before that tribunal. The record is void of any evidence to suggest that there was an error that substantially harmed employee's rights or significantly impacted Agency's decision to terminate Employee from service. As a result, I find that there were no harmful procedural errors committed in the administration of the adverse cation.

**Whether Agency's action was done in accordance with applicable laws or regulations (Appropriateness of Penalty).**

Employee avers that the Panel did not give due consideration to the *Douglas* factors in its determination to separate him from service. Specifically, Employee avers that Agency failed to consider his medically documented mental health challenges and treatment. Employee also avers that Agency failed to consider the testimony of other members who cited that he could perform his job well. Employee also avers that Agency's reliance on "stale discipline" gave a "narrative" that "presents a pattern of misconduct while omitting critical facts central to the case…"[30] Employee also avers that Agency violated the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA) in its administration of the instant action. To this end, Employee maintains that Agency's penalty of termination was unwarranted and that he should be reinstated to his position of record.

Agency avers that its decision to terminate Employee from service was in accordance with all applicable laws, rules and regulations. Further, Agency asserts that "agencies are permitted to discipline an employee when there is cause to do so."[31] Agency further cites that "once cause is established, an agency has primary discretion in assessing the degree of discipline that the conduct warrants."[32] Agency argues that "termination was the reasonable and appropriate penalty for Employee's misconduct in all three cases."[33] It maintains that the Panel conducted a conscientious review of the *Douglas* Factors and found that Employee's past disciplinary record made Factor 3 'aggravating.' Agency asserts that the Panel's findings that Employee was prone to "excessive tardiness" was supported by the record. Agency contends that Employee's claims regarding

[27] Agency's Sur Reply brief at Page 5. (April 24, 2026).
[28] *Id.*
[29] *Id*.
[30] Employee's Response at Page 1 (April 6, 2026).
[31] Agency Brief at Page 7 (February 20, 2026).
[32] *Id. citing* to *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1984).
[33] *Id*. at Page 7.

Agency's violation of the ADA and/or FMLA to be unsupported allegations.[34] Agency also avers that "Employee never requested an accommodation or medical leave, and Agency has no obligation to proactively provide an employee with an accommodation or medical leave without a request."[35] Agency maintains that its action of terminating Employee from service was an appropriate penalty in the circumstances and in accordance with all applicable regulations. As such, Agency asserts that Employee's termination should be upheld.

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[36] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[37] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[38] In the instant matter, I find that Agency followed all appropriate laws, rules and regulations in its administration of the instant action. Further, I find that Employee's claims regarding the *Douglas*[39] Factors reflect a disagreement with

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[34] Agency's Sur Reply at Page 5 (April 24, 2026).

[35] *Id*.

[36] *See also. Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

[37] *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[38] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

[39] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and it's relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;

the Agency's determinations in this matter, and the record does not support a finding that the Agency's actions were otherwise arbitrary or capricious. Additionally, I find that the record is clear that the Panel gave due consideration and review to the *Douglas* factors in making its determinations and findings, and in sustaining the charges. Accordingly, for the aforementioned reasons, I find that Agency's action of terminating Employee from service should be upheld.

ORDER

Based on the foregoing, it is **ORDERED** that Agency's action of terminating Employee from service is hereby **UPHELD**.

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris, Esq.
Senior Administrative Judge

6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE,[1] | ) | |
| Employee | ) | OEA Matter No. 1601-0029-25 |
| | ) | |
| v. | ) | Date of Issuance: August 12, 2026 |
| | ) | |
| D.C. METROPOLITAN POLICE DEPARTMENT, | ) | NATIYA CURTIS, Esq. |
| Agency | ) | Administrative Judge |
| | ) | |

Daniel J. McCartin, Esq., Employee Representative
Michele McGee, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On March 7, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Metropolitan Police Department's ("Agency" or "MPD") decision to terminate him from his position as a Police Officer effective February 7, 2025.[2] On March 10, 2025, OEA issued a Request for Agency's Answer to Employee's Petition for Appeal and required that Agency submit its answer by April 9, 2025. Agency submitted its Answer on April 9, 2025.

This matter was assigned to the undersigned Administrative Judge ("AJ") on April 10, 2025. On April 22, 2025, I issued an Order Scheduling a Prehearing Conference for May 22, 2025, with Prehearing Statements due by May 15, 2025. On April 30, 2025, Employee, by and through his representative, filed a Consent Motion to continue the Prehearing Conference citing scheduling conflicts. On May 1, 2025, I issued an Order which granted Employee's Consent Motion and rescheduled the Prehearing Conference for June 3, 2025. Prehearing Statements were due by May 27, 2025. Employee submitted his Prehearing Statement on May 27, 2025. On that same date, Agency filed a Consent Motion to Extend the Filing Deadlines for Prehearing Statements and to Reset the Prehearing Conference to a date after June 6, 2025. Agency cited that more time was required to prepare its Prehearing Statement. In an Order dated May 30, 2025, the undersigned granted Agency's Consent Motion and rescheduled the Prehearing Conference for June 20, 2025.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Employee's Petition for Appeal, p. 2 (March 7, 2025).

Prehearing Statements were due by June 13, 2025.[3] Agency submitted its Prehearing Statement by the deadline.

Both parties appeared for the Prehearing Conference on June 20, 2025. During the Prehearing Conference, I found that because there was an Adverse Action Panel hearing ("Adverse Action Panel" or "Trial Board") in this matter, that OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. Metropolitan Police Department,* 801 A.2d 86 (D.C. 2002). As a result, on June 24, 2025, the undersigned issued a Post Prehearing Conference Order, requiring the parties to submit briefs addressing whether: (1) the Trial Board's decision was supported by substantial evidence; (2) whether there was harmful procedural error; and (3) whether Agency's action was done in accordance with all laws and/or regulations. Agency's brief was due by August 8, 2025. Employee's brief was due by September 4, 2025. Agency's sur-reply brief was due by September 25, 2025. On August 7, 2025, Agency Filed a Consent Motion to Extend the Filing Deadlines for Agency's Brief citing that more time was required to prepare its brief and requested an extension to August 15, 2025. In an order dated August 8, 2025, the undersigned granted Agency's Consent Motion and reset the briefing schedule. Agency's brief was now due by August 15, 2025. Employee's brief was due by September 11, 2025, and Agency's sur-reply was due by October 2, 2025. Agency filed its brief on August 15, 2025 and Employee filed his brief on September 9, 2025.

On October 2, 2025, Agency filed a Consent Motion to Extend Filing Deadline for Agency's Sur Reply Brief. On October 7, 2025, the undersigned issued an Order Regarding Agency's Consent Motion to Extend Deadline and granted Agency's Consent Motion. Agency's sur-reply was now due by October 17, 2025. On October 16, 2025, Agency filed an additional Consent Motion to Extend Filing Deadlines for Agency's Sur-Reply, citing competing deadlines. On October 17, 2025, I issued an Order granting Agency's Motion. Agency's sur-reply was due by October 24, 2025. Agency submitted its sur-reply on October 24, 2025. On June 29, 2026, I issued an Order to Supplement the Record. Agency's brief was due by July 17, 2026, and Employee's Brief was due by July 31, 2026. In lieu of submitting briefs, Agency filed a statement on July 16, 2026, noting that both parties consented to the use of MPD General Order 120.21, that became effective on November 22, 2022.[4] The record is now closed.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUES

1) Whether the Trial Board's decision was supported by substantial evidence;
2) Whether there was harmful procedural error;
3) Whether Agency's action was done in accordance with applicable laws or regulations.

[3] The undersigned provided Employee the option to revise his Prehearing statement and resubmit by the prescribed deadline.

[4] The charged misconduct occurred between October 2021 and March 2022. Thus, the undersigned required the parties to address whether General Order 120.21 with an effective date of November 22, 2022, applies to this appeal.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[5]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

STATEMENT OF THE CHARGES[6]

According to the Trial Board's Findings, Agency terminated Employee effective February 7, 2025[7] based on the following charges and specifications, which are reprinted in pertinent part below:[8]

**Charge 1:** Violation of General Order Series 120.21, Attachment A, Part 24, which states, "*Any conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."*

Specification 1:

> Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with Ms. [J.], at least twice a week.

**Charge 2:** Violation of General Order 120.21, Attachment A, 16, which states, *"Failure to Obey Orders and Directives issued by the Chief of Police."*

Specification 1:

[5] OEA Rule § 699.1.
[6] Agency's Answer to Petition for Appeal, Tab 6, p. 1060 (April 9, 2025).
[7] Agency's Brief, p. 5 (August 15, 2025).
[8] Agency's Answer to Petition for Appeal, Tab 6, pp. 1084-1094 (April 9, 2025).

Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. You admitted that there was no official or duty-related purpose for your presence at your home, and you failed to notify an official or the dispatcher of your whereabouts. You failed to request permission to leave your assigned patrol area from an on-duty official or the dispatcher. This misconduct is further defined as a Violation of General Order GO-PER 201.26, V, B, 12, which states, "*Members shall constantly patrol their assigned area unless otherwise directed and shall not return to the station except on official business and approved by an official*."

Specification 2:

Specifically, on August 31, 2023, you accessed several reports in the Mark43 RMS related to Ms. [J.]. You had no official law enforcement purpose for accessing these reports. This misconduct is further defined as Violation of General Order GO-PER 401.01, IV, J. which states, "*Members shall restrict their use of Records Management System (RMS) to official law enforcement purposes. Under no circumstances shall members access RMS for personal use or inquiries.*"

Specification 3:

Specifically on September 23, 2023, you accessed several reports in the Mark43 RMS related to Ms. [J.]. You had no official law enforcement purpose for accessing these reports. This misconduct is further defined as Violation of General Order GO-PER 401.01, IV, J. Which states, "*Members shall restrict their use of Records Management System (RMS) to official law enforcement purposes. Under no circumstances shall members access RMS for personal use or inquiries.*"

Specification 4:

Specifically on September 29, 2023, you accessed several reports in the Mark43 RMS related to Ms. [J.]. You had no official law enforcement purpose for accessing these reports. This misconduct is further defined as Violation of General Order GO-PER 401.01, IV, J. Which states, "*Members shall restrict their use of Records Management System (RMS) to official law enforcement purposes. Under no circumstances shall members access RMS for personal use or inquiries.*"

**Charge 3:** Violation of General Order 120.21, Attachment A, Part 11, which states, "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or agency's ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*

Specification 1:

> Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with [Ms. J.], at least twice a week.

**Charge 4:** Violation of General Order 120.21, Attachment A, 14, which states, "*Neglect of duty to which assigned, or required by rules and regulations adopted by the Department."*

Specification 1:

> Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. This was neglectful of your duties as a patrol officer to patrol your assigned area, respond to calls for service, and assist citizens.

The panel unanimously found Employee guilty of all charges and specifications.

## SUMMARY OF THE TESTIMONY

On October 29, 2024, Agency held an Adverse Action Panel hearing in this matter. During the hearing, testimonial and documentary evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as "Tr."), generated and reproduced as part of the Adverse Action Panel hearing.[9]

*Agency's Case-in-Chief*

Sergeant Jabari Welch ("Sgt. Welch") – Tr. pp. 33-93

Sgt. Welch is the Sergeant at Patrol Services with the Metropolitan Police Department ("MPD"). Prior to this assignment Sgt. Welch was assigned to the Internal Affairs Division where he investigated serious misconduct cases assigned to him by MPD. Tr. 33-34. Sgt. Welch testified that he handled a misconduct investigation regarding Employee. Tr. 34. He indicated that the initial complaint against Employee was filed by Ms. J., and he reviewed the allegations that were listed in the complaint and proceeded with his investigation from there. Tr. 34-35. Sgt. Welch noted that as part of his investigation he interviewed Ms. J. two times, once by phone and once in person. Tr. 35. Sgt. Welch affirmed that upon interviewing Ms. J, he discovered information that led him to believe that Employee may have violated MPD's General Orders. Sgt. Welch testified that Ms. J. indicated that Employee resided in the Second police District; yet, while on duty Employee would

[9] Agency's Answer Tab 5, p. 1419 (April 9, 2025).

respond to his apartment approximately four (4) to five (5) time per week where he and Ms. J would engage in sexual acts while Employee was still on duty. Tr. 36-37.

When asked how Ms. J. knew that Employee was on duty, Sgt. Welch noted that Ms. J. stated that Employee had his police radio, his firearm, and helmet with him because he was a mountain bike officer. Sgt. Welch noted that Ms. J. also stated that the length of time Employee spent at home varied depending on the day, and his need to respond to calls for service. Sgt. Welch testified that Ms. J. noted in her interview that the time period that Employee reported to his apartment was between October 2021 through April 2022. Tr. 37.

Sgt. Welch confirmed that he also interviewed Employee two (2) times as part of the investigation. Tr. 39. Sgt. Welch stated that Employee noted in his interview that he would walk to his residence while on duty, which was approximately two (2) blocks from the Second police District station. Tr. 39-40. Sgt. Welch noted that Employee stated in his interview that he would pick up food before going to his residence, take his lunch break at his residence and engage in sexual acts with Ms. J. while there. Tr. 40. Sgt. Welch noted that Employee indicated that he did not request a "10-70" or lunch break to the dispatcher at the time he was inside his apartment. Tr. 40-41. Sgt. Welch further noted that Employee stated that he responded to his residence approximately twice a week and admitted that he did not notify an official of his whereabouts, which is required when an officer goes on lunch break. Tr. 41-42.

Sgt. Welch testified that Employee was assigned to patrol PSA 206 and his home was located in PSA 204. Sgt. Welch affirmed that it is problematic that an officer would leave their assignment to go to a different PSA without notifying an official. Tr. 42. Sgt. Welch affirmed that Employee did not notify any official that he was going to another PSA to go home. Tr. 43. Sgt. Welch noted that Employee indicated that he spent approximately forty-five minutes at home. Sgt. Welch clarified that an officer is provided a thirty-minute lunch break. Tr. 43.

Sgt. Welch further testified that Employee noted that he engaged in sexual activity with Ms. J. from October 2021 to March 2022. Tr. 47. Sgt. Welch affirmed that at the conclusion of his investigation, that he recommended the charges against Employee be sustained. Tr. 47-48.

On cross-examination, Sgt. Welch affirmed that the investigation was initiated based on an "OPC" complaint filed by Ms. J. and was referred to him to investigate what Ms. J alleged in the complaint. Tr. 50-51. Sgt. Welch affirmed that the narrative section of his investigative report stated that there was an ongoing custody dispute between Employee and Ms. J and she alleged that Employee threatened her on August 25, 2023. Sgt. Welch also affirmed that Ms. J. alleged that Employee "keeps asking for my address. He's aware I have it concealed for safety on court documents." Sgt Welch additionally agreed that Ms. J. further alleged that Employee was using his police influence to harass her and that Employee was putting their children in danger. Tr. 53-54. Sgt. Welch testified that during Ms. J's interview, "she confirmed that there were no specific threats that were made by [Employee]." Sgt. Welch affirmed that Employee and Ms. J. were authorized by court to communicate regarding the welfare of their children, and that Child and Family Services concluded that the physical abuse allegations submitted by Ms. J. were unsupported and the case was closed. Tr. 55. Sgt. Welch affirmed that his investigation revealed that Employee obtained Ms. J.'s address from a mobile app for their children's daycare provider,

which requires them to update their home address, and that Ms. J. did not have her address restricted from public access through D.C. Superior Court. Tr. 56. Sgt. Welch affirmed that all of the allegations that Ms. J. made were investigated and found to have no veracity. Tr. 57-58.

Sgt. Welch further affirmed that that Sgt. Nguyen interviewed Ms. J. because Ms. J. contacted him and made a complaint that Employee had attempted to intimidate her, yet Sgt. Nguyen found no evidence of intimidation. Tr. 58-59. When questioned whether Employee was granted a temporary protective order against Ms. J. for threatening Employee with a knife, Sgt. Welch answered affirmatively. Sgt. Welch further affirmed that Employee was granted a civil protection order against Ms. J. on September 29, 2023, and Ms. J.'s attempt to file a protective order against Employee was denied. Tr. 60.

Sgt. Welch also testified that he interviewed Employee regarding the allegations that Employee engaged in sexual activities while on duty. Tr. 72. Sgt. Welch affirmed that Employee explained that there was an overlap in shifts, and at the time of the investigated misconduct, Employee was working a midnight tour. Sgt. Welch agreed that the evening and midnight shifts "overlap by several hours, between the midnight roll-call and the evening checkoff." Tr. 73. Sgt. Welch affirmed that Employee explained in his interview that his apartment was one or two blocks from the station, and at times during the overlap he would go home to take a lunch break and engage with Ms. J. Tr. 74. Sgt. Welch agreed that his investigation uncovered that Employee only took these breaks during the overlap period from October 2021 through March 2022. Tr. 74. Sgt. Welch affirmed that his investigation started at the end of 2023 and concluded on January 6, 2024, so the instances of misconduct occurred approximately three (3) years prior to the conclusion of his investigation. Tr. 75-76.

Sgt. Welch noted that his investigation did not reveal any instances from October 2021 to March 2022 where Employee missed a call for service. Sgt. Welch affirmed that Ms. J. advised him that Employee would come home approximately four (4) to five (5) times per week. Tr. 76. Sgt. Welch testified that in their separate interviews, Employee and Ms. J. offered varying times as to how frequent Employee came home to engage in sexual intercourse with Ms. J. Sgt. Welch testified that this is why he put an approximate frequency in his report. Tr. 78-79. Sgt Welch testified that in his last interview with Employee, Employee stated that he had intercourse with Ms. J. Thursdays, Fridays, and sometimes Saturdays. Sgt. Welch stated that Thursdays and Fridays would be two days. Tr. 80.

On redirect examination, Sgt. Welch affirmed that Employee admitted to having sex on duty while at his home with Ms. J. on multiple occasions during a six (6) month time period. Tr. 81-82. Sgt. Welch agreed that when shifts overlap, officers are not allowed to do whatever they want. Tr. 83. He agreed that the requirement that an officer notify dispatch even if they go on lunch break applies even when they are in an overlap between shifts. Tr. 83.

Sgt. Welch affirmed to the Panel that this was not an attendance fraud case. He agreed that if he was investigating serious misconduct that any new additional allegation that came forward while conducting an investigation would also be investigated. Tr. 85. Sgt. Welch testified that he did not pull a call for service history or any roll call to show what Employee's assignments were during the six (6) month period that Employee was engaged in this misconduct. He affirmed that

looking back, they should have been included in his investigation. Tr. 88-89. Sgt. Welch further affirmed to the Panel that many officers request a lunch break during their shift.

J.J. ("Ms. J.") – Tr. pp. 94-118

Ms. J. testified that Employee is the father of her twins. She affirmed that at one time they were in a romantic relationship. Tr. 94. Ms. J. testified that she stayed at Employee's house one (1) or two (2) days a week, or sometimes the full week. She noted that she started staying at Employee's house shortly after she became pregnant with their twins, in August of 2021, and stopped staying at his house after she had the children in April 2022. Tr. 95-96. Ms. J. testified that Employee's house was located on Wisconsin Avenue approximately three (3) blocks from the police station where Employee worked. Tr. 96.

Ms. J. testified that Employee would come home during his shift and bring her food sometimes. Ms. J. further noted that most times he came back with or without food and played video games for a little while or engaged in intercourse with her. Ms. J. stated that most nights, Employee came home. Tr. 97. Ms. J. noted that the length of time that Employee stayed home varied. She indicated that sometimes he rushed back out and other times he would stay just long enough to eat. Tr. 98. She further cited that at other times he would stay home for a few hours. She testified that the longest amount of time that Employee stayed home was approximately two (2) hours but added that she would often fall asleep, so she was not sure of his departure time. Ms. J. testified that they would engage in intercourse approximately two (2) to three (3) times a week while Employee was on duty. Tr. 98-99. Ms. J. indicated that Employee did not stay home for long periods all the time. She testified that, from what she could tell, it seemed like he would leave if "a call came through or something." Tr. 100. She testified that when Employee came to the house, he was dressed in full uniform with a police radio. Tr. 100-101.

Ms. J. indicated that Employee played video games most times he came home and would play for approximately twenty (20) minutes to two (2) hours. Tr. 102. She testified that he would leave for work around 8:10 and come back before midnight.

On cross-examination, Ms. J. affirmed that she also stayed at Employee's house on the days that he was not working. She further affirmed that because she fell asleep when Employee came home, she could not be certain of his departure time. She also agreed that at times Employee would only be home long enough to drop off food. Tr. 105.

When questioned by the Panel, Ms. J. testified that she became pregnant in August 2021 but did not start staying with Employee until October 2021, when she started getting sick. She noted that she stopped staying with Employee shortly before she had the children in April of 2022. Tr. 106. She testified that she stopped staying with Employee because he asked her to move in with him, then seemed on the fence about it. She testified that in May of 2022, he dropped her off at her apartment and "disappeared." Ms. J. noted that shortly thereafter, Employee remarried his ex-wife. Tr. 107-108. Ms. J. testified that approximately one (1) year later he resurfaced and they became involved in a custody battle. Tr. 108. Ms. J. noted that she was aware that Employee was breaking a rule when he came home on duty. Tr. 115-116.

*Employee's Case-in-Chief*

Employee Tr. Pp. 176-227

Employee testified that he has been employed with MPD since July 29, 2020, and was assigned to the Second District ("2D"). Tr. 176-178. Employee stated that after he finalized his divorce in August 2021, he met Ms. J. around this time. Employee testified that during the time period in question, it was a bad time for him mentally. He testified that his dad was sick, and he was by himself during the pandemic. Tr. 179-180. He noted that he tried to "deal with things by myself and that's why I ended up in this predicament instead of realizing earlier that I should try and fix things." Tr. 180. He further testified that he did not see his children very much. Employee indicated that it was a bad time for him, but he went to work and did his job to the best of his ability. Tr. 181.

He affirmed that his divorce was finalized in August of 2021 and that was also around the time that he met Ms. J. Tr. 181. He further affirmed that he and Ms. J. have twins together. Tr. 181-182. Employee agreed that in late 2021 and early 2022 that there were times he would go home to his apartment during the shift turnovers. He testified that his apartment at that time was one block away from the station. Employee stated that he worked the midnight tour and there were three shift changes. Tr. 182. Employee explained that a shift overlap meant that he would go to work and the evening shift would still be working until approximately two to three hours later when the shift changed. He testified that during the overlap period, officers had to wait for their vehicles to come in and that it would be roughly two (2) hours before they received their vehicles. Tr. 182-184. He testified that sometimes during the overlap period, he would go home and eat and at times engage in sexual acts with Ms. J. Employee also noted that Ms. J's testimony that he would be home for two hours was not accurate. He stated that at most, he was home for forty (40) minutes, which was more than the time he was allotted, but not two (2) hours. Employee testified that he had to get back to work to get his vehicle, so he would return around that time. Tr. 185. Employee noted that there were no times when a supervisor was looking for him, calling him over his radio, or trying to determine his location. Employee stated that the walk from his apartment to the station was three minutes. Tr. 186.

Employee affirmed that he understood the seriousness of his conduct and the allegations in this matter. Tr. 187. Employee acknowledged that he made a mistake and it was in bad judgment. Tr. 187-188. Her further acknowledged that he is in a better place now because he had his family back and his kids were doing great. Tr. 188.

On cross-examination, Employee testified regarding his patrol area and affirmed that he was assigned a particular area to patrol for his shift. Tr. 213. Employee affirmed that he was assigned to PSA 206 during the relevant time period, and his residence was in PSA 204. Tr. 213. Employee agreed that he was supposed to remain in PSA 206 while he was on duty, and patrol in that area. Tr. 214. Employee affirmed that he told Internal Affairs that there were times when he was at home for a 45-minute period, which exceeds the amount of time that he was allowed for lunch break. He further agreed that when he left work to go home, he did not notify dispatch, command staff, or an official. Tr. 215-216. Employee noted that he would clock in by going to roll call, and at some point after, he would walk to his personal residence. He testified that this occurred approximately

two (2) or three (3) times a week, but he could not recall the exact number of times. Tr. 218. Employee further affirmed that there were times that he left work and engaged in intercourse with Ms. J. Tr. 219-220. He also noted that at times he would stop at Giant grocery store or CVS pharmacy to get food and bring it home. Tr. 221-222. He testified that he would spend approximately seven to ten minutes at one of these stores. He affirmed that he knew that he was breaking the rules by going home without informing his official and agreed it would take him longer to respond to an emergency while he was at home Tr. 223-226. Employee testified that he regrets his actions. Tr. 227.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. The Panel found the following:[10]

1. Officer [Employee] was appointed to the Metropolitan Police Department on August 7, 2010,[11] and was assigned to the Second District.
2. Officer [Employee] was served with the Notice of Adverse Action, to include the charges and specifications, on February 8, 2024. In that notice, the Department proposed to terminate his employment.
3. Officer [Employee] has no prior history of Adverse Action within the last three years.
4. Officer [Employee] received two Achievement Metals for work in the Second District during his tenure with the Department.
5. Officer [Employee] and Ms. J. met in August 2021 and began a romantic relationship. Ms. J. became pregnant and lived with Officer [Employee] during her pregnancy and gave birth to their twins in April 2022.
6. Between October 2021 through March 2022, Officer [Employee] while on-duty, during the shift overlap engaged in sexual acts with Ms. J., and other personal business inside his apartment approximately twice a week.
7. Officer [Employee] on multiple occasions, did not make his whereabouts known to his officials, obtain permission to depart from work to return to his residence, and did not notify the dispatcher before or while at his apartment to engage in personal business during this time period.
8. On August 25, 2023, Ms. J. contacted 2d Sergeant Nguyen and related to him information about her child custody matters with Officer [Employee].
9. On September 12, 2023, Officer [Employee] and Ms. J. were involved in an incident in Hyattsville, Maryland, at Kaiser Permanente, related to medical care involving their child.
10. On September 19, 2023, Officer [Employee] was granted a Temporary Protection Order (TPO) at DC Superior Court. Also that day, Ms. J. Filed for a TPO, but the order was denied at DC Superior Court.

[10] Agency's Answer, Tab 6, p. 1082 (April 9, 2025).
[11] Employee testified that he has been Employed with MPD since July 29, 2020, but stated in his Petition for Appeal that he has was an Officer for twelve years.

11. On September 19, 2023, Officer [Employee] called for MPD assistance with child custody exchange, resulting in a report being generated for Family Disturbance with CCN 23-157-[###].
12. On September 25, 2023, MPD received a citizen complaint, identified as a jurisdictional referral, from the DC Office of Police Complaints (OPC), alleging misconduct by Officer [Employee].
13. On September 29, 2023, Incident Summary #23-003657 was generated by MPDs Internal Affairs Division as a result of the OPC referral, initiating the investigation into Officer [Employee]'s alleged misconduct. As part of this investigation, additional allegations of misconduct were identified. These additional allegations were subsequently sustained in the Final Investigative Report prepared by IAD Agent Welch. Further, the sustained allegations form the charges and specifications included in the Notice of Adverse Action served upon Officer [Employee] in this matter.
14. [Employee] accessed MPD's databases on August 31st, September 23rd, and September 29th of 2023 to view MPD reports involving Ms. [J] for court matters where he was an involved person.

The Panel reviewed the evidence and unanimously found that there was a preponderance of evidence to sustain all charges and found Employee Guilty of the charges and specifications. In reaching a determination, the Panel noted that it considered the initial plea entered into the record by Employee of "guilty with explanation." In addition to making the findings of fact, the Panel also weighed the offenses against the relevant *Douglas* factors[12] and concluded that termination was the appropriate penalty for these offenses.[13]

[12] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[13] Employee's Petition for Appeal, pp. 644-653 (March 7, 2025)(page numbers not in the original but included for ease of reference).

ANALYSIS AND CONCLUSIONS OF LAW[14]

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[15] OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D.C. Court of Appeals found that while OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the Comprehensive Merit Personnel Act ("CMPA"), in a matter where a departmental hearing has been held, The Court of Appeals concluded that:

> "OEA may not substitute its judgment for that of an agency. Its review of the agency's decision is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations."

Additionally, the Court of Appeals found that OEA's broad power to establish its own appellate procedures is limited by Agency's Collective Bargaining Agreement. Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met:

1. The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
2. The employee has been subject to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and
5. At the agency level, employee appeared before a panel that, conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against employee.

In this case, Employee is a member of the D.C. Metropolitan Police Department ("MPD") and was the subject of an adverse action; MPD's collective bargaining agreement contains language similar to that found in *Pinkard.* Employee appeared before an Adverse Action Panel, which held a hearing on October 29, 2024. Based on the documents of record, and the position of the parties as stated during the Prehearing Conference held in this matter and in the briefs submitted

[14] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[15] 801 A.2d 86 (D.C. 2002).

herein, the undersigned finds that all of the criteria noted above are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of whether the Adverse Action Panel's findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

***Whether the Adverse Action Panel's decision was supported by substantial evidence***

Pursuant to *Pinkard*, the undersigned must determine whether the Adverse Action Panel's ("Panel") findings were supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[16] If the Panel's findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record to support findings to the contrary.[17]

Agency asserts that the evidence and testimony support the charges and specifications. Agency specifies that from October 2021 through March 2022, "for nearly six (6) months, Employee went to work, left in the middle of his shift, went home, had sex, and later returned to work."[18] Agency avers that "Employee would spend approximately 45 minutes at his residence and additional time walking to and from his residence, which would occasionally involve a 7 to 10 minute detour to shop at Giant or CVS."[19] Agency maintains that Employee did not let his supervisors or the dispatcher know that he was leaving work to go home, and thus abandoned his duties.[20] Agency notes that Employee's conduct violated MPD General Orders and impacted his ability to provide police services. Agency further indicates that Employee admitted to leaving his assigned patrol area while on duty to take a break. Thus, Agency asserts that there is substantial evidence to support the assessed charges.[21]

Agency avers that Employee's misconduct also constituted neglect of duty because Employee left the police station and during that time was not providing police services. Agency maintains that Employee's actions also constituted conduct detrimental to the reputation of MPD because General Order 120.21 prohibits conduct which is "detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force." Agency further cites that "Employee's decision to repeatedly violate MPD orders to go home to have sex on duty is indefensible. The reputations of both Employee and MPD are negatively impacted by Employee's misconduct." Agency maintains that Employee repeated his misconduct "over and over again for 23 weeks (46 known occurrences)" and thus termination was the appropriate penalty.[22]

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[16] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[17] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).
[18] Agency's Prehearing Statement, pp. 4, 5 (June 11, 2025).
[19] Agency's Brief, p. 6 (August 15, 2025).
[20] Agency's Prehearing Statement p. 5 (June 11, 2025).
[21] *Id*.
[22] *Id*. at 6-7.

Employee asserts that Agency did not provide substantial evidence that Employee engaged in sexual activity at least twice a week, as Employee testified that he did not remember how many times and could not agree to twice a week.[23] Employee further asserts that the "Department could not point to a single instance where [Employee] missed a call for service or single instance where a supervisor was looking for [Employee] and could not find him.". Employee maintains that the alleged misconduct only occurred during the shift overlap period, when Employee had to wait for the prior shift to return with patrol cars.[24]

***Charge 1, Specification 1-Conduct Detrimental***

> **Charge 1:** Violation of General Order Series 120.21, Attachment A, Part 24, which states, "*Any conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."*
>
> Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with Ms. [J.], at least twice a week.

I find that the evidence supports Charge 1 Specification 1. In the Internal Affairs investigation and at the Adverse Actional Panel Hearing, Employee admitted that he would leave work without permission and while on duty, walk to his home which was outside of his patrol area, and at times would engage in sexual acts with Ms. J. In the Involved Member Statement within the Agency's Final Investigative Report, "[Employee] recalled that during the overlap shift…[he] advised that he would take his lunch break at home. [Employee] confirmed that he did not advise the dispatcher, nor did he notify an on-duty official, at times when he took a lunch break at his apartment." Employee further "confirmed that he engaged in sexual intercourse in his apartment with Ms. [J], while on duty, approximately twice per week. [Employee] explained that he and Ms. [J] only engage in sexual acts in his apartment during the overlap shift."[25]

Similarly, at the Adverse Action Hearing, Employee affirmed that in late 2021 and early 2022 that there were times he would go home to his apartment during the shift turnovers. He testified that his apartment at that time was one (1) block away from the station.[26] Employed noted that sometimes he would go home and eat and at times engaged in sexual acts with Ms. J. He stated that at most, he was home for forty (40) minutes, which was more than the time he was allotted.[27]

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[23] Employee's Brief p. 4-5 (September 9, 2025).
[24] Employee's Prehearing Statement, p. 7 (May 27, 2025).
[25] Agency's Answer, Tab 1 (p 17)(page numbers not in the original been included for ease of reference).
[26] Tr. 182, 185
[27] Employee further asserts that Agency did not have substantial evidence that he engaged in sexual acts with Ms. J twice a week; however, during the internal investigation, he "confirmed that he engaged in sexual intercourse with Ms. J. twice per week" during the overlap shift. While Employee testified at the hearing that he could not remember how many times, the statement he gave during the internal investigation was closer to the time the misconduct occurred. Thus, the undersigned finds his statements during the internal investigation are sufficient to support a finding that he engaged with Ms. J. approximately twice per week. (Agency's Answer, Tab 1, p. 17) (April 9, 2025).

He affirmed that he knew that he was breaking the rules by going home without informing his official and agreed it would take him longer to respond to an emergency while he was at home.[28]

The undersigned finds that Employee's admission that he repeatedly engaged in the misconduct described and was aware that his actions were against Agency rules is sufficient to support Charge 1. A reasonable mind would agree that an Officer leaving their duty post to engage in sexual activity, in direct violation of Agency rules and without permission would meet the standard of detrimental conduct. Thus, the undersigned finds that Agency has met its burden of proof for Charge 1, specification 1.

***Charge 2, Specification 1-Failure to Obey Orders and Directives[29]***

> **Charge 2:** Violation of General Order 120.21, Attachment A, 16, which states, *"Failure to Obey Orders and Directives issued by the Chief of Police."*
>
> Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. You admitted that there was no official or duty-related purpose for your presence at your home, and you failed to notify an official or the dispatcher of your whereabouts. You failed to request permission to leave your assigned patrol area from an on-duty official or the dispatcher. This misconduct is further defined as a Violation of General Order GO-PER 201.26, V, B, 12, which states, "*Members shall constantly patrol their assigned area unless otherwise directed and shall not return to the station except on official business and approved by an official*."

Concerning Charge 2, *"Failure to Obey Orders and Directives issued by the Chief of Police"* the undersigned finds that the record contains substantial evidence to support this charge. At the Trial Board Hearing, Employee affirmed that he was assigned to Police Service Area ("PSA") 206 during the relevant time period, and his residence was in PSA 204.[30] Employee agreed that he was supposed to remain in PSA 206 while he was on duty, and patrol in that area. Employee testified that he left his assigned duty station approximately two (2) to three (3) times a week and went home for approximately forty-five minutes to engage in personal activities, including eating lunch. While Employee asserted that there were no times when a supervisor was looking for him, calling him over his radio, or trying to determine his location, the fact remains that he was not constantly patrolling his assigned area and did not have permission to leave to report home.[31] Thus, the undersigned finds that there is substantial evidence to support that Employee failed to obey Orders and Directives issued by the Chief of Police.

***Charge 3, Specification 1-Conduct Unbecoming; Charge 4, Specification 1-Neglect of Duty***

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[28] Tr. 223-226.
[29] The undersigned will not consider Specifications 2 through 4, under Charge 2 because these charges resulted in a five-day suspension and thus do not fall within the jurisdiction of this Office.
[30] Tr. 213
[31] Tr. 186

**Charge 3:** Violation of General Order 120.21, Attachment A, Part 11, which states, "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or agency's ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*

Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, and engaged in sexual acts with Ms. [J.], at least twice a week.

**Charge 4:** Violation of General Order 120.21, Attachment A, 14, which states, "*Neglect of duty to which assigned, or required by rules and regulations adopted by the Department."*

Specification 1: Specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. This was neglectful of your duties as a patrol officer to patrol your assigned area, respond to calls for service, and assist citizens.

I similarly find that Agency had substantial evidence in the record to support Charge 3, Specification 1; and Charge 4, Specification 1. Employee admitted to his misconduct, as noted above. Employee further affirmed at the Trial Board Hearing that he was assigned a particular patrol area for his shift, and his residence was in a different patrol area. Employee affirmed that he told Internal Affairs that there were times when he was at home for a forty-five (45)-minute period, which exceeds the thirty (30) minutes that he was allotted for lunch break. He further agreed that when he left work to go home, he did not notify dispatch, command staff, or an official. Employee noted that he would clock in by going to roll-call, and approximately two (2) or three (3) times a week he would walk home after and go to his personal residence and engage in sexual acts with Ms. J. He testified that this occurred, but he could not recall the exact number of times.[32] The undersigned finds that Employee's admission is sufficient to support a finding that he neglected his duty to which he was assigned by abandoning his assigned post without permission several times over a period of six months. The undersigned further finds that there is sufficient evidence to support that abandoning his post to engage in sexual acts is conduct unbecoming of a police officer whose job duties include providing service to the community to which he is assigned. Accordingly, I have determined that there is substantial evidence to support these charges.

Employee conversely asserts that despite the charges, "…the evidence presented at the Trial Board hearing confirmed that there is not a single instance where [Employee] missed a call for service or a single instance where a supervisor was looking for him and could not find him."[33] Employee further notes that the alleged misconduct only occurred during the shift overlap period, when Employee had to wait for the prior shift to return with patrol cars.[34] The undersigned finds that Employee's argument is misguided. Employee seems to imply that because he was fortunate enough not to miss a call for service and that no one noticed his absences, that the evidence does

[32] Tr. 213-220.
[33] Employee's Prehearing Statement, pp. 4-7 (May 27, 2025).
[34] *Id*. at 7.

not support the charges. The fact that Employee was never counted as missing or missed a call for duty is more indicative of Agency's capacity to sufficiently staff its ranks and does not diminish the severity of the misconduct. Employee affirmed at the Trial Board Hearing that he knew that he was breaking the rules by going home without informing his official and agreed it would take him longer to respond to an emergency while he was at home.[35] Consequently, the undersigned finds that Employee's admissions of misconduct support the charges Agency assessed.

***Whether there was harmful procedural error***

In accordance with *Pinkard* and OEA Rule 634.6, the undersigned is required to evaluate and make a finding of whether agency committed harmful error. OEA Rule 634.6 provides that "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless." OEA Rule 699 notes "Harmless error shall mean an error in the application of a District agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take action."

I find that Employee has not alleged any procedural errors, and accordingly, I conclude that there was no harmful procedural error in this matter.

**Whether Agency's action (termination) was in accordance with law or applicable regulation**

Agency's actions of charging Employee with violations of MPD's General Orders was in accordance with law or applicable regulation. Employee was afforded a Hearing by an Adverse Action Panel, and had his appeal reviewed by the Chief of Police.[36] Further, as discussed above, the evidence supports a finding that Employee violated MPD's General Order Series, discussed above. Thus, I find that Agency's act of termination was in accordance with law or applicable regulation.

*Whether the Penalty was Appropriate*

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Illustrative Actions ("TIA"); whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[37]

Employee avers that the penalty was not in accordance with the law or applicable regulations. Employee asserts that the Employee's misconduct does not warrant termination under the Table of Penalties because the charges do not fall within a penalty tier that warrants

[35] Tr. 223-227.
[36] Employee's Petition for Appeal, p. 672 (March 7, 2025).
[37] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C. Reg. 352 (1985).

termination. Employee also asserts that consistent with comparative discipline, Employee's misconduct warrants no more than suspension.[38]

Employee maintains that Agency has not proved that Employee's misconduct as assessed in Charge 1-Specification 1, Charge 3-Specification 1, and Charge 4-Specification 1 were Tier 4 offenses, and thus subject to termination. Employee asserts that under the Table of Penalties, detrimental conduct, conduct unbecoming, and neglect of duty are non-categorized offenses. He notes examples of Tier 4 offenses include inappropriate contact with a victim (conduct detrimental), providing information to a suspect regarding a confidential informant (conduct unbecoming), and failing to take a sexual assault report (neglect of duty). Employee argues that by contrast, examples of a Tier 2 level offense, which is subject to a presumptive penalty of one (1) to five (5) days suspension includes leaving an assignment without authorization or failing to attend an outside jurisdiction criminal trial.[39] Employee suggests that his alleged misconduct is "more appropriately characterized as a Tier 2 offense under the Table of Penalties, namely leaving an assignment without authorization" or a Tier 3 offense.[40]

Agency asserts that in assessing Employee's penalty, the Panel considered that Employee's misconduct was repetitive and over a period of six (6) months. Agency notes that the Panel was further swayed by Employee's testimony that he did not have a fear of being caught.[41]

The undersigned finds that the penalty of termination for Charges 1, 3, and 4 is supported by the relevant facts and within the range allowed by the Table of Penalties. Under the Table of Penalties found in General Order Series 120.21, Attachment A, the penalty range for 'detrimental conduct' is Tier 1 to termination; for 'conduct unbecoming' the penalty range is Tier 2 to termination; and for 'neglect of duty' the penalty range is Tier 1/2, Tier 2/3, Tier 3/termination. The Table of Penalties for "uncategorized offenses" such as those discussed above provides examples and a presumptive penalty for each tier.[42]

Further, Section 120.21 B provides that "The following Table of Penalties Guide shall be used as specified in this order. The Table is intended to be a more specific application of the offenses listed in Part A *for the most commonly occurring misconduct*. Use of this guide shall be mandatory as applicable… However, the Chief of police, or his or her designee may, without regard to the provisions of this section, in extraordinary circumstances when confronted by unique factual situation, determine that a penalty greater than that established in the Table of Penalty shall be imposed, provided that such authority finds that, under all the circumstances of the case, the aggravating considerations outweigh the mitigating considerations. Such consideration shall be set forth on the record with particularity, and such finding shall be made by a preponderance of the evidence." (Emphasis added).

Here, the Panel reasoned that termination was appropriate for the above charges. "The Panel evaluated the significant recurrence of the misconduct specific to the Termination Tier

[38] Employee's Petition for Appeal, Attachment 5, p. 656 (March 7, 2025).
[39] Employee's Prehearing Statement, p. 4 (May 27, 2025).
[40] *Id*.
[41] Agency's sur reply, pp. 9-11 (October 24, 2025).
[42] MPD General Order 120.21, Attachment A (November 22, 2022).

offenses and noted that the behavior took place with regular frequency, and was done while [Employee] was on duty, and occurred over an extended period of time, namely six months."[43] Thus, while Employee asserts that his misconduct is more akin to a Tier 2 offense, which has a presumptive penalty of suspension for one (1) to five (5) days, or a Tier 3 offense, which has a presumptive penalty of suspension for 11 to 30 days, the presumptive penalties do not explicitly consider repetitive misconduct, repeated over a six-month period. Thus, Employee's conduct cannot be considered commonly occurring misconduct and accordingly does not fit neatly into the examples of misconduct provided in the Table of Penalties. Further, Chief of Police Pamela A. Smith reasoned that "[the] sustained charges are non-categorized offenses and based on the scope, repetition, intentionality, and the egregiousness of Officer [Employee's] misconduct, I have concluded that termination is the only appropriate penalty."[44] Thus, the record supports with particularity that the recurrence of Employee's behavior is an aggravating factor. Accordingly, the undersigned finds that Agency's penalty selection is not an abuse of discretion or clear error of judgment and is within the range allowed by the Table of Penalties.

Employee further avers that Agency proposed suspension days for Charge 2, Specification 1 instead of termination, despite this charge "being virtually identical" to Charges 1, 3, and 4, Specifications number 1 for which the Agency proposed termination. Employee indicates that Agency "never articulated why this analysis did not apply equally to Charge Nos. 1, 3, and 4, which charged [Employee] with the exact same conduct." [45]

Agency asserts that "Charge 2, Specification 1, relates to Employee's repeated misconduct of leaving his patrol area and returning to his residence twice-weekly while on duty… While similar, the Conduct Unbecoming, Conduct Detrimental, and Neglect of Duty Charges address the additional fact that Employee returned home twice a week to have sex."[46]

In Charge 2, Agency assessed that Employee violated General Order 120.21, Attachment A, 16, which states, *"Failure to Obey Orders and Directives issued by the Chief of Police."* It supported this charge with Specification 1, which states, "specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week. You admitted that there was no official or duty-related purpose for your presence at your home, and you failed to notify an official or the dispatcher of your whereabouts. You failed to request permission to leave your assigned patrol area from an on-duty official or the dispatcher. This misconduct is further defined as a Violation of General Order GO-PER 201.26, V, B, 12, which states, "*Members shall constantly patrol their assigned area unless otherwise directed and shall not return to the station except on official business and approved by an official*."

The Panel articulated that it determined suspension days based on the amount of visits he had with Ms. J. The Panel provided the following analysis to support the penalty of suspension:

[43] Agency's Answer, Tab 6, p. 1090 (April 9. 2025).
[44] Employee's Petition for Appeal, Attachment 6, pp.671-673 (March 7, 2025).
[45] Employee's Prehearing Statement, p. 9 (May 27, 2025).
[46] Agency's sur reply, pp. 8-9 (October 24, 2025).

> "The Panel estimated the misconduct took place twice per week, over the period of 26 weeks, with testimony from [Employee] 'there were times we didn't even see each other… Three weeks at a time," from which the Panel reduced three weeks from the count…." Thus, in assessing the penalty of a 46-day suspension, "[t]he Panel subtracted the 3 weeks [Employee] testified to there being a period where visits did not occur. Subsequently, the Panel counted 26 weeks, minus 3 weeks, leaving 23 weeks of visits occurring 2 times per week, for a total of 46 visits, conservatively. As such, the Panel recommended one day of suspension for each visit, violation"[47] (Agency's Answer. (Panel Findings under Douglas Factor 7).

Based on this analysis, it appears that Agency deduced that Employee only went home during the times Ms. J. was present. Thus, while Charge 2 is similar to Charges 1, 3, and 4, Charge 2 only considers Employee's misconduct of traveling home, instead of constantly patrolling his assigned area, and does not consider his sexual engagement with Ms. J. Specification 1 supports this notion as it states, "specifically, during the six-month time period between October 2021 through March 2022, you admitted that you responded to your residence, while on duty, in the District of Columbia, at least twice a week…." but does not include any reference to Employee engaging in sexual intercourse with Ms. J. Thus, while similar, Charge 2 does not consider the additional misconduct of having sex while on duty. Accordingly, I find that Charge 2, specification 1, can reasonably warrant a lesser penalty. Agency assessed one day of suspension for each visit home, which falls within the Tier 3 aggravated penalty range of 30-day suspension to termination. Accordingly, I find that the Penalty for Charge 2, specification 1, is supported by the evidence and within the range allowed by the Table of Penalties.[48]

*Douglas* Factors

Employee argues that Agency's action of termination was improper because Agency failed to properly analyze and weigh the *Douglas* factors and that the penalty of termination was "outside of the tolerable limits of reasonableness."[49] As noted in *Douglas*, the question is whether "managerial judgment has been properly exercised within the tolerable limits of reasonableness."[50] It must be clear that agency "conscientiously consider[ed] the relevant factors and did strike a responsible balance within tolerable limits of reasonableness."[51]

I find that Agency's analysis for *Douglas* factors 1, 2, 3, 4, 5, 8, 9, and 11 is well-reasoned, supported by the evidence, and is within the tolerable limits of reasonableness. While Employee may not agree with the analysis and conclusions reached by Agency, this alone is not sufficient to overturn Agency's findings concerning these factors.

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[47] Agency's Answer to the Petition for Appeal, p. 548 (April 9, 2025).
[48] MPD General Order 120.21, Attachment A (November 22, 2022).
[49] Employee's Prehearing Statement, p. 10 (May 27, 2025).
[50] *Douglas v. Veterans Administration,* 5 M.S.P.R. at 329.
[51] *See*. *Alphonso Bryant v. Office of Employee Appeals*, Memorandum Opinion and Order, Civil Action No.: 2009 CA 006180, citing *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985) (quoting *Douglas v. Veterans Administration*, 5 M.S.P.R. at 332-33)

Disparate Treatment

*Douglas* Factor 6 requires an assessment of the consistency of the Penalty with those imposed upon other Employees of the same or similar offense. The Panel held this to be a neutral factor. Employee asserts that comparative discipline reflected that other officers with similar charges were not terminated. Employee notes that he "presented a spreadsheet of all the discipline imposed by the Department for the past three years, which showed that there was ***not a single case*** in which neglect of duty resulted in termination."[52] Employee further asserts that a comparable case involved a detective visiting another detective's residence on two occasions to engage in sexual intercourse while on duty. Employee asserts that this detective received a twelve (12) day suspension.[53]

In assessing *Douglas* factor 6 and the comparative discipline cases, the Panel concluded that … "no case solely aligned with the instant case such that it was to be given more consideration than another." The Panel further reasoned that it "evaluated the significant recurrence of the misconduct specific to the Termination Tier offenses and noted that the behavior took place with a regular frequency, was done while [Employee] was on duty, and occurred over a specific period of time, namely six-months." The Panel indicated that it "took note of the difficulties [Employee] was experiencing in his personal life when these offenses took place, and credit[ed] his efforts to seek counseling and reconcile the relationship with his wife."[54]

OEA's Board has held that [an agency must] apply practical realism to each [disciplinary] situation to ensure that employees receive fair and equitable treatment where *genuinely similar cases are presented*. (Emphasis added). It is not sufficient for an employee to simply show that other employees engaged in misconduct and that agency was aware of it, the employee must also show that the circumstances surrounding the misconduct are *substantially similar* to his own. Normally, in order to show disparate treatment, the employee must demonstrate that he or she worked in the same organizational unit as the comparison employees and that they were subject to [disparate] discipline by the same supervisor [for the same offense] within the same general period.[55]

Here Employee and Agency presented several comparator employees; however, Employee has not shown that both Employee and the comparator employees were disciplined by the same supervisor, for the same offense. Further, none of the comparators had repeated their misconduct weekly over a period of approximately six months. The comparator whose charged misconduct was most aligned with Employee's misconduct engaged in sexual intercourse while on duty two times and was suspended for twelve days. In comparison, Employee was found to have traveled home while on duty approximately 46 times; thus, this misconduct is not *substantially similar*. Further, while Employee presented a spreadsheet of comparators charged with misconduct resulting from adverse actions from 2021 to 2023, it is not apparent from this spreadsheet that the

[52] Employee's Brief, p. 18 (September 9, 2025).
[53] *Id*.
[54] Agency's Answer, Tab 6, p. 1090 (April 9, 2025).
[55] *Employee v. Metropolitan Police Department*, OEA Matter No. 1601-0035-25 (November 12, 2025) (*Citing Jordan v Metropolitan Police Department,* OEA Matter No. 1601-0285-94, Opinion and Order on Petition for Review (September 29, 1995).

charged Employee traveled outside of their PSA without permission while on duty and engaged in sexual intercourse. Accordingly, the comparator employees' misconduct cannot be determined to be *substantially similar* to Employee's misconduct.[56] Further, while the majority of the comparators presented in the spreadsheet received suspension days, some comparators were terminated including for failure to take police action, and overlapping hours, suggesting that termination can be a penalty for Neglect of Duty under some circumstances. Thus, the undersigned finds that Employee has not met the burden discussed above to shift the burden to Agency to produce evidence that establishes a legitimate reason for imposing a different penalty than the comparable employees received. Accordingly, the undersigned further finds that Employee has not provided sufficient evidence to support a finding of disparate treatment in the instant matter.

*Douglas* factor 10 evaluates an Employee's potential for rehabilitation. Agency found this factor to be aggravating. Agency asserts that "Employee engaged in the misconduct freely and repeatedly, with full knowledge that he was violating MPD's rules."[57] The Panel assessed that Employee cannot be rehabilitated because he "engaged in this intentional misconduct freely, and continued to engage without fear of being caught." Agency asserts that due to the "prolonged involvement in misconduct of this magnitude" that Employee cannot be reformed.[58]

Employee asserts that Agency misapplied *Douglas* Factor 10 because the misconduct occurred several years ago, and Employee continued to work after the misconduct, with no additional disciplinary issues, and thus he has already been rehabilitated. Employee avers that this factor should be mitigating because "…no actual impact on [Employee's] ability to perform his duties has resulted or is likely to result in the future from the past conduct at issue."[59]

As noted in *Douglas*, the question is whether "managerial judgment has been properly exercised within the tolerable limits of reasonableness."[60] It must be clear that agency "conscientiously consider[ed] the relevant factors and did strike a responsible balance within tolerable limits of reasonableness."[61] The undersigned finds that Agency's managerial judgment is within tolerable limits of reasonableness in finding that *Douglas* factor 10 is aggravating. Employee asserts that he has been rehabilitated as evidenced by his continued employment as an MPD officer for years after the misconduct was discovered, his participation in therapy, and reconciliation with his wife.[62] The Panel noted under *Douglas* factor 10 that it considered the recurrence of the misconduct for months and Employee's admission that he had no fear of being caught in assessing that Employee "cannot be permitted to continue serving the community in a position of trust."[63] While it is honorable that Employee has taken accountability for his actions, has not received further discipline outside of this misconduct and has participated in measures of self-help, Agency may still reasonably establish that Employee's actions preclude him from further

[56] Employee's Petition for Appeal, Exhibit, 5p. 199-216 (March 7, 2025).
[57] Agency's sur reply (October 24, 2025).
[58] Agency's Answer, Tab 6 pp. 1092-1093 (April 9, 2025).
[59] Employee's Brief, p. 14 (September 9, 2025).
[60] *Douglas v. Veterans Administration,* 5 M.S.P.R. at 329.
[61] *See*. *Alphonso Bryant v. Office of Employee Appeals*, Memorandum Opinion and Order, Civil Action No.: 2009 CA 006180, citing *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985) (quoting *Douglas v. Veterans Administration*, 5 M.S.P.R. at 332-33).
[62] Employee's Prehearing Statement, p. 10 (May 27, 2025).
[63] Agency's Answer, Tab 6 pp. 1092-1093 (April 9, 2025).

serving in a position of trust.[64] Thus, the record supports Agency's assessment that this factor is aggravating.

Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no harmful procedural error. Further, the undersigned notes that removal is within the range of penalties for the charges assessed against Employee. Accordingly, I find that termination was an appropriate penalty. Consequently, the undersigned concludes that the Agency's action should be upheld.

## ORDER

Based on the foregoing, it is **ORDERED** that Agency's action of terminating Employee from service is hereby **UPHELD**.

FOR THE OFFICE: /s/ Natiya Curtis
NATIYA CURTIS, Esq.
Administrative Judge

[64] Employee's Prehearing Statement, p. 6 (May 27, 2025).

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE[1] | ) | OEA Matter No. 1601-0044-26 |
| Employee | ) | |
| v. | ) | Date of Issuance: August 7, 2026 |
| | ) | |
| METROPOLITAN POLICE DEPARTMENT, | ) | MONICA DOHNJI, ESQ. |
| Agency | ) | Senior Administrative Judge |
| | ) | |

Daniel J. McCartin, Esq., Employee Representative
Robert Rich, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On March 20, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the Metropolitan Police Department's ("Agency" or "MPD") decision to place her on Indefinite Suspension Without Pay, effective March 6, 2026. OEA issued a Request for Agency Answer to Petition for Appeal on March 20, 2026. Agency filed its Answer to the Petition for Appeal on April 20, 2026.

This matter was assigned to the undersigned on April 20, 2026. The undersigned issued an Order on May 12, 2026, scheduling a Status/Prehearing Conference for June 2, 2026. Both parties were present for the scheduled conference. Thereafter, on June 9, 2026, the undersigned issued a Post Status/Prehearing Conference Order requiring the parties to submit briefs. Agency's brief was due by June 30, 2026; Employee's brief was due by July 22, 2026; and Agency had the option to file a sur-reply brief by August 5, 2026. Both parties timely filed their required briefs. On August 3, 2026, Employee filed a Notice of Dismissal stating that "the parties in the above-captioned case have reached a settlement. Accordingly, [Employee] hereby moves to dismiss the above-captioned case." The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

ISSUE

Whether Employee's Petition for Appeal should be dismissed.

ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code §1-606.06(b) (2001) states in pertinent part that:

> If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the [Administrative Judge] shall dismiss the appeal with prejudice.

In the instant matter, since the parties have reached a settlement agreement, and Employee has requested that this matter be dismissed, I find that Employee's Petition for Appeal should be dismissed.

ORDER

It is hereby **ORDERED** that Employee's Notice of Dismissal is **GRANTED** and the Petition for Appeal in this matter is **DISMISSED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji_____
MONICA DOHNJI, Esq.
Senior Administrative Judge

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operations Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | |
|---|---|
| In the Matter of: | |
| | OEA Matter No. 1601-0051-25 |
| EMPLOYEE[1], Employee | |
| | Date of Issuance: August 5, 2026 |
| v. | |
| | Michelle R. Harris, Esq. |
| D.C. METROPOLITAN POLICE DEPARTMENT, Agency | Senior Administrative Judge |

Daniel J. McCartin, Esq., Employee Representative
Jeremy Greenberg, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On June 20, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Metropolitan Police Department's ("Agency" or "MPD") decision to remove him from service. OEA issued a letter on June 20, 2025, requiring Agency to file an Answer to Employee's Petition for Appeal. Agency filed its Answer to Employee's Petition for Appeal on July 18, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on July 23, 2025. On July 25, 2025, I issued an Order Convening a Prehearing Conference in this matter for August 26, 2025. Prehearing statements were due by or before August 19, 2025. Both parties submitted their Prehearing statements as required. Additionally, on August 19, 2025, Agency filed a Consent Motion to Substitute the Record to remove documents that contained Personal Identifying Information ("PII").

On August 26, 2025, both parties appeared for the Prehearing Conference. During the Prehearing Conference, I found that because there was an Adverse Action Panel hearing in this matter, OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department,* 801 A.2d 86 (D.C. 2002). As a result, the parties were ordered to submit briefs addressing whether: (1) the Adverse Action Panel's decision was

[1]Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

supported by substantial evidence; (2) whether there was a harmful procedural error; and (3) whether Agency's action was done in accordance with all laws and/or regulations.

On August 26, 2025, I issued an Order codifying the verbal order from the Prehearing Conference and setting the briefing schedule. Accordingly, Agency's brief was due on or before October 10, 2025, Employee's brief was due on or before November 14, 2025, and Agency had the option to submit a sur-reply brief by or before December 5, 2025. Both parties submitted all briefs in accordance with the prescribed deadlines. The record is now closed.

## JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUES

1. Whether the Adverse Action Panel's decision was supported by substantial evidence;
2. Whether there was harmful procedural error;
3. Whether Agency's action was done in accordance with all applicable laws or regulations.

## BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## STATEMENT OF THE CHARGES

[2] OEA Rule "Definitions § 699.1."

In a Proposed Notice of Adverse Action dated May 17, 2024, Employee was charged with the following:

> **Charge No 1:** Violation of General Order Series 120.21, Attachment A, Part A-6, which states, "*Violation of General Order Series 120.21, Attachment A, 6, which states, Engaging in conduct which constitutes a crime*."
>
> Specification No 1**:** In that on September 16, 2023, you committed larceny by shoplifting two pairs of Beats Headphones from the Fort Carson PX in violation of the UCMJ Article 121, Larceny and Wrongful Appropriation. You were observed in memorialized CCTV footage tampering with a theft detection device in an attempt to intentionally avoid detection while committing the Larceny. The value of the merchandise was $318.00.
>
> **Charge No. 2:** Violation of General Order Series 120.21 Attachment A, Part A-16, which states, "*Failure to obey orders or directives issued by the Chief of Police."*
>
> Specification No. 1: In that, you failed to notify the Metropolitan Police Department (MPD) of your arrest by military authorities on September 16, 2023. The MPD learned of your arrest one-hundred and sixteen (116) days after your arrest during a database integrity check. This misconduct is further described in General Order 120.20 Park II, 1 which *states, "When a sworn member is involved in misconduct (as defined in part II B 3 of this order) outside of the District of Columbia, whether on or off duty: 1. The member shall, as soon as practicable, notify the watch commander of his or her element through the CIC who shall notify IAD. IAD shall respond as may be appropriate under particular circumstances."*
>
> **Charge No. 3:** Violation of General Order Series 120.21, Attachment A, #11, which reads "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would affect adversely the employee's or the agency's ability to perform effectively, or violations of any law of the United States or any law, municipal ordinance, or regulation of the District of Columbia."*
>
> Specification No. 1: In that on September 16, 2023, you were arrested for larceny after stealing two pairs of Beats Headphones from the Fort Carson PX. Following your arrest, you failed to make any notification to the MPD as required. Your criminal conduct and subsequent failure to report were unbecoming of an MPD Officer and brought discredit upon yourself and the MPD.

SUMMARY OF THE TESTIMONY

On March 20, 2025, Agency held an Adverse Action Panel hearing. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as "Tr."), generated and reproduced as a part of the Adverse Action Panel hearing.

*Agency's Case in Chief*

Agent Richard Ehrlich ("Ehrlich") Tr. Pp. 18 – 34

Ehrlich is assigned to the Internal Affairs Division and has been in this role for approximately 10 years. Tr. 19-20. He was assigned to investigate the allegations related to Employee. Ehrlich explained that he completed an investigation initiated by Agent MacDonald ("MacDonald") before he retired. Tr. 20. Ehrlich affirmed that he reviewed an investigative report and related documents completed by MacDonald. Ehrlich confirmed that Agency's Exhibit 2, starting at Bates No. 9, was MacDonald's report. Tr. 21. He did not find any errors in MacDonald's report. Ehrlich testified that Agency Exhibit 3, at Bates No. 88 was the supplemental report that he completed regarding Employee. Tr. 21.

Ehrlich explained that Employee was on military leave in Colorado. While there, Employee was at the PX on a US Air Force military base and was caught shoplifting headphones. Tr.22. Ehrlich testified that Employee did not tell MPD that he had been arrested for that offense as required. Ehrlich could not recall if the Air Force took any disciplinary action against Employee. Tr. 23. Ehrlich further explained that his investigation included an exchange of emails between himself and Mr. Larson, who was the manager of the PX. Tr. 23. He cites that Agency MacDonald's findings included video from the PX and documents related to Employee's military service. He affirmed that those were listed on Bates No. 22. Tr. 23. He also affirmed that his own findings were reflected on page 90 of that document. Tr. 23.

Ehrlich testified that based on the investigation, on September 16, 2023, Employee went into a PX on Fort Carson. He had been called to active duty and was assigned to the Air Force Academy, and he was receiving medical treatment at Fort Carson. Tr. 24. Ehrlich cited that Employee took two "Beats" headphones, by removing them from inventory control and placing them in the pocket of his cargo pants. Tr. 24. Ehrlich cited that this activity was caught on video and that Employee was stopped as he walked past the final register at the PX. Ehrlich noted that the conclusion that Employee had stolen the headphones was from the video recording. Tr. 24. [Video was Played]. Ehrlich identified Employee in the video and the actions around the Beats headphones. Ehrlich testified that Employee's body language in the video did not indicate that he just forgot that he put the Beats in his pocket. Tr. 27. Ehrlich affirmed that Employee was interviewed during IAD's investigation into this matter and stated at the end of the interview that he had stolen the headphones. Tr. 28. Ehrlich reiterated that he was not sure of what action the military took against Employee related to the theft but asserted that he was arrested by the military police on Fort Carson. Tr. 29. Ehrlich noted that MPD did not find out about Employee's arrested until approximately nine (9) or ten (10) months after the incident occurred, during a routine record search. Tr. 29. Ehrlich recalled that Employee was issued a Civil Recovery Notice for the funds, but he did not know the outcome of the miliary arrest. Tr. 30. Ehrlich cited that Employee did not

challenge the Civil Recovery Notice and that the military recovered the money from Employee's retirement account. Tr. 30.

On cross-examination, Ehrlich testified that he did not conduct the investigation into the case nor did he interview Employee. [Audio of interview was played]. Ehrlich affirmed that in the audio recording, MacDonald was clarifying the record that Employee was never criminally charged. Tr. 31. Ehrlich was asked to review a statement by Nicholas Jefferson. Ehrlich read aloud that the statement indicated that "approximately 10 minutes later, he paid for the second black Beats headphone. After paying for the item, he began to walk through exit of the PX." Tr. 33-34. Ehrlich cited that he did not know if Employee actually paid for the black Beats headphones. Tr. 34. He affirmed that the personal property inventory listed for Employee included black beats headphones. Tr. 34.

*Employee's Case in Chief*

Master Sergeant Rhode Jadotte ("Jadotte") Tr. Pp. 36 – 43

Jadotte testified that he has been a member of the U.S. Air Force National Guard for approximately 16 years. Tr. 37. He cited that he and Employee enlisted together with the New York National Guard around 2017 and that they worked together in the Air National Guard. Tr. 37. Jadotte described several different assignments and deployments that he and Employee did together. He noted that he never had any issues with Employee, and that he "does what he's supposed to do." Tr. 37-39. Jadotte further testified that he was aware of the disciplinary charges but stands by his testimony about Employee. He reiterated that Employee is a hard worker, resilient and that he would "go to war with [Employee] any day." Tr. 40. On cross-examination Jadotte testified that his civilian occupation is with the West Virginia State Police. Tr. 41. He noted that in his experience with the West Virginia State Police it is not appropriate to steal. Tr. 41. Members of the Panel inquired with Jadotte about if a member in the West Virginia State Police faced similar charges as Employee, if that would "sway [his]judgment or trust." Tr. 42. Jadotte answered that there might be, however there are those who have retained employment after counseling and guidance etc. Tr. 42. He cited that he believed if Employee was given a second chance, he would be "squared away again." Tr. 43.

Master Sergeant Joel Rodriquez ("Rodriquez") Tr. 45 – 51

Rodriquez testified that he has been a member of the Air National Guard for 12 years. He stated that he has known Employee for a little over six (6) years through "multiple TDYs and missions." Tr. 47. Rodriquez testified that he didn't have any issues with Employee and that he overall "embodied the Air Force qualities and values at the time." Tr. 47. He affirmed that Employee's background with the police department was helpful in his Air Force duties. Tr. 47. Rodriquez cited that Employee was helpful in training the other security force members in their unit. He also noted that Employee had a good work ethic. Tr. 48. Rodriquez testified that he was aware that this was a disciplinary proceeding wherein Employee had been charged for stealing headphones. Tr. 49. Rodriquez cited that he cannot speak for Employee's actions regarding the headphones but iterated that his interactions with Employee made him believe that Employee was a hardworking individual and upheld his values. Rodriquez cited that he does not condone stealing,

but cited that Employee was reprimanded and lost rank, so he was disciplined. Tr. 50. He stated that Employee had a "good heart and was a good person overall." Tr. 50. On cross-examination, Rodriquez testified that his civilian career is an engineer. Tr. 51.

Sergeant Noe Tattegrain ("Tattegrain). Tr. Pp. 53 – 59

Tattegrain testified that he was employed with the Air National Guard and worked with Employee. Tr. 53-54. He stated that he has known Employee for nine (9) years and that they had multiple tours together. Tr. 54. Tattegrain further testified that his impression of Employee was that he was hardworking, always on time and always volunteering, so he was respected as an airman. Tr. 54. Tattegrain stated that his understanding of the instant disciplinary proceeding was that Employee made a mistake. Tr. 55. He said that he didn't know why the mistake was made, but it was not normal for Employee. He testified that knowing the situation of the headphones did not change his testimony about Employee. On cross-examination, Tattegrain stated that his civilian position is a New York Police Department ("NYPD") Officer. He noted that he did not think it was appropriate for a member of law enforcement to commit theft. Tr. 56. He reiterated that he never knew Employee to do something like that. Tr. 57. When asked by the Panel whether in his role as an officer if he would want someone like Employee, Tattegrain noted that he would "because I'll dig deep into their history and see the reason. I believe in people getting a second chance." Tr. 58. When the Panel asked if a plumber or child caretaker had come into his home while he was off duty and stolen from him, if he would rehire them, Tattegrain answered "no." Tr. 58.

Employee Tr. Pp. 61 – 93

Employee testified that after college, one of his professors encouraged him to join the miliary. Tr. 61-63. He enlisted and part of his training included Security Force, which is law enforcement in the military. Tr. 63. He stated that he enjoyed his work and missions and his goal was to go to officer school. He explained that after several years, one of his supervisors, who was a former NYPD officer, encouraged him to join law enforcement outside of the military. Tr. 64. He testified that he took the New York State Trooper exam and passed and was on a waiting list. He stated that another supervisor told him that D.C. was hiring, so he took the test and physical exam and passed. Tr. 65. He explained that he did not have any family in D.C., but felt it was similar to military assignments. Tr. 66. He testified that when he completed his training at the Academy, COVID hit and military service was needed. He volunteered and went back to New York. Tr. 66. He said that following each assignment he would return to MPD. Tr. 67.

Employee identified exhibits that reflected his service commendations and related awards he received while with the Air National Guard. Tr. 68. He testified that in August of 2023, he was deployed to the Air Force Academy in Colorado. He explained that he was an augmentee because they were short on "manpower." Employee further testified that the night before the September 16, 2023, incident, he had worked long hours and did not receive a lot of sleep. He said he felt lightheaded and had a headache and notified supervisors that he needed assistance. He said that around 9am on September 16, 2023, he vomited. He explained that it was the weekend, so the medical was closed, so he drove to Fort Carson for a military hospital. He said that while driving, he decided to stop at the PX so that he could get something to eat. He testified that that is when

the incident with him putting the headphones in his pocket occurred. He cited that he "…didn't have the intention of not paying for them. I had some issues going on, family and personal issues going on at the time, but nowhere near I had any financial issues…" Tr. 73. He reiterated that he did not have any financial issues that would "push [him] to do anything that is shameful." Tr. 74. Employee asserted that he recalled paying for the car charger and the headphones that day. Tr. 74. He explained that he put the headphones in his pocket because he was looking for other items, but he didn't know why he did. He stated that he didn't "have any real [sic] reason to put those headphones in [his] pocket, not for [him] not to pay for them." Tr. 74. He further explained that when he got to the counter to purchase, he did not realize that he had items in his pockets that he did not pay for. Tr. 74.

Employee testified that in review of the CCTV footage, when he was leaving someone approached him and identified himself as store security. He said that person told him that he had items in his pocket he didn't pay for to which he replied "No". Tr. 75. Employee explained that the security officer reiterated that he did, and Employee then felt the bump and realized it. He said he told the officer that he didn't realize and that he would go back and pay for it, but the officer said that he had already crossed the liner. Tr. 75. Employee said that the Air Force gave him an "Article 15" which is an administrative decision and he was demoted one rank. He was never criminally prosecuted for this incident. Tr. 75-76. He was arrested by military police that day but was released to his supervisors. He stated that his supervisor took him to the hospital that day and also got him something to eat. Employee further explained that about a week prior, he was diagnosed with Type 1 Diabetes. He also had some issues with his parents and son. Tr. 76-77. He cited that he received assistance through the military for his health. Tr. 78-79.

Employee stated that the reason he said he had committed larceny in his IAD interview was because the CCTV video of the incident showed him leaving the store with the item in his pocket. Tr. 79. Employee also testified that he did not promptly notify MPD of the incident because he was embarrassed and ashamed of himself. Tr. 80. Employee also noted that he went to EAP counseling. Employee explained that he wants to be an officer with MPD. He said that he was working toward owning property and wanted to continue to work on his dream of becoming a detective at MPD. Tr. 82. He explained that he knows he made mistakes, but that he is willing to continue to work with counseling so that he remains an officer with MPD. Tr. 83.

On cross-examination, Employee explained that he pled guilty with explanation because he was not criminally charged nor were there any criminal charges brought against him. Tr. 85. He affirmed that he agreed to having committed larceny. Tr. 85. He also affirmed that he paid for one set of headphones that day but did not pay for two others. Employee cited that the CCTV shows he is peeling something off, but he does not recall if he was peeling off the theft protection devices on the boxes. He testified that he was touching it but did not take it off. Tr. 85. He affirmed that he was disciplined for another issue and that one of the charges was also a failure to report. Employee explained that he spoke with his union representative and his lawyer, and then MPD was made aware of the other incident. Tr. 86. Employee identified Agency Exhibit 2 as his past discipline record and that the previous incident was noted as DRD 141-23. Tr. 87. He also affirmed that the disposition date of that incident was May 4, 2023. Tr. 87.

The Panel asked Employee when he last had an alcoholic beverage before going to the PX that day. Employee stated that he did not have alcohol that day. He cited that he had taken Tylenol the day of the incident. He also affirmed that he had a previous incident that he did not inform the MPD of in a timely manner. Tr. 91. Employee also cited to the Panel that he was assigned to the Seventh District (7D) at the time of the investigation. Employee affirmed that he was disciplined by his watch commander. Employee did not know why the $200 restitution was taken out of his retirement account or if it was common for this to occur with the Air National Guard. Tr. 93. Employee also testified that the Air National Guard demoted him because of the incident and because he had a previous incident as well. Tr. 93-95. Employee explained to the Panel that in review of the CCTV that he did not have any intention of not paying and he was not going through a financial hardship at the time. Tr. 96. Employee affirmed that his position in the military had been as staff sergeant. Employee told the Panel that in that role, he should have "sounded the alarm" on himself as he knew he was "going through some stuff." Tr. 97. Employee iterated that he had not been involved in any other misconduct Tr. 98. The Panel again inquired about the $200 restitution. Employee cited that he went through the administrative process with the military, but he didn't know that the money would come out of his pay. Tr. 99.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. The Panel found the following[3]:

1. [Employee] was appointed to the Metropolitan Police Department in 2019 and is currently assigned to the Seventh District as a patrol officer.
2. [Employee] is also a member of the New York State Air National Guard.
3. On August 1, 2023, [Employee] was given military orders. These orders were good through September 29, 2023, for a total of sixty calendar days. [Employee] responded to the U.S. Air Force Academy in Colorado to assist the 10th SSF with law enforcement duties.
4. On September 16, 2023, [Employee] began his tour of duty at 0430 hours. At approximately 0800 [Employee] began feeling sick and reported his illness to his command. At approximately 0900 he was sent off his post to report to medical.
5. His current assignment did not have medical open on the weekends, so [Employee] was sent to Fort Carson to seek medical attention.
6. [Employee] entered the Fort Carson PX before seeking medical attention to pick up some food and other items he needed.
7. [Employee] is on PX CCTV looking at several pairs of headphones. [Employee] is observed on CCTV placing one pair of headphones into his cargo pockets.
8. [Employee] is seen on PX CCTV looking at another pair of headphones. [Employee] is seen peeling off an inventory control sticker from the headphone box.
9. [Employee] is seen on CCTV placing that same box of headphones into his cargo pants pocket.
10. [Employee] then approached the register and purchased one pair of headphones and one car charger.

[3] Agency Answer at Attachment 4 - Adverse Action Panel Findings of Fact and Conclusion of Law dated April 10, 2025. (July 18, 2025).

11. After making the purchase, [Employee] leaves the store with two other pairs of headphones still in his cargo pockets, unpaid for.
12. After leaving the store, [Employee] is stopped by an Exchange Safety and Security Associate who advises him that he had unpaid for items in his cargo pockets. [Employee] is then escorted to the loss prevention office.
13. While in the loss prevention office, Fort Carson Military Police were contacted, and [Employee] was placed under arrest for Larceny.
14. [Employee] was then released to his military command supervisor.
15. [Employee] failed to notify MPD of his arrest. [Employee] admitted to failing to notify MPD of his arrest stating that he did so because he was embarrassed.
16. When interviewed by MPD Agent MacDonald, [Employee] admitted to stealing the headphones.
17. MPD was made aware of [Employee's] arrest 116 days after the arrest as a result of a records check through the LInX system.
18. On January 10, 2024, after being made aware of the arrest, Agent MacDonald obtained Incident Summary Number 24000105 to conduct an investigation.
19. On April 3, 2024, Agent MacDonald submitted his Final Investigative Report with Recommendations regarding the alleged Misconduct of [Employee].

Upon consideration and evaluation of all of the testimony and factors, the Panel found Employee guilty on all three (3) charges. The Panel cited that it reviewed all of the testimony and documents and concluded that Employee "acted inappropriately when he stole headphones from the Fort Carson Post Exchange." Further the Panel concluded that Employee "acted inappropriately by withholding his arrest from MPD and failing to follow orders and notify his command." The Panel also noted that the "action of committing larceny and withholding the arrest information calls [Employee's] character and judgment into question and adversely affects his ability to perform the job effectively." Following its review and consideration of the *Douglas* Factors, the Panel unanimously recommended that Employee be terminated from MPD.[4]

## ANALYSIS AND CONCLUSIONS[5]

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department.*[6] According to the *Pinkard* decision, OEA has a limited role where a departmental hearing has been held. The D.C. Court of Appeals held that while OEA generally has jurisdiction over employee appeals from a final agency decision involving adverse actions under the CMPA[7], in a matter where a departmental hearing has been held:

[4] Recommendations for Charges were: Charge 1, Specification 1: Guilty-Tier 4- Termination; Charge 2 Specification 1: Guilty-Tier 3 (Aggravating Penalty) – 30 Day Suspension; Charge 3, Specification 1: Guilty-Tier 4- Termination.
[5] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[6] 801 A.2d 86 (D.C. 2002).
[7] *See.* D.C. Code §§ 1-606.02 (a)(2). 1-606.03(a)(c); 1-606.04 (2001).

> "OEA may not substitute its judgement for that of an agency. Its review of the agency decision…is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations."

Further, the Court of Appeals held that OEA's power to establish its own appellate procedures is limited by the agency's collective bargaining agreements. As a result, and in accordance with *Pinkard*, an Administrative Judge of OEA may not conduct a de novo hearing in an appeal before them, but rather, must base their decision on the record when all of the following conditions are met:

1. The appellant (employee) is an employee of the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department;
2. The employee has been subject to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard* i.e. "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing has been held, any further appeal shall be based solely on the record established in the Department hearing"; and
5. At the agency level, employee appeared before a panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action of the deciding official that resulted in an adverse action being taken against employee.

In this case, Employee is a member of the D.C. Metropolitan Police Department ("MPD") and was the subject of an adverse action; MPD's collective bargaining agreement contains language similar to that found in *Pinkard*; and Employee appeared before an Adverse Action Panel, which held a hearing. Based on the documents of record, and the position of the parties as stated during the Prehearing Conference held in this matter and in the briefs submitted herein, the undersigned finds that all of the aforementioned criteria are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of whether the Adverse Action Panel's findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

*Whether Adverse Action Panel's Decision was supported by Substantial Evidence*

Pursuant to *Pinkard*, the undersigned must determine whether the Adverse Action Panel's ("Panel") findings were supported by substantial evidence.[8] "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[9] If the [Adverse Action Panel] findings are supported by substantial evidence, then the undersigned

[8] *Elton Pinkard v. DC Metropolitan Police Department*, 801 A.2d at page 91. (2002).
[9] *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 at 985 (D.C. 2002).

must accept them even if there is substantial evidence in the record[10] to support findings to the contrary.[11]

Employee avers that the Agency's action of terminating him from service for Charge 1, Specification 1 is not supported by substantial evidence.[12] Employee contends that the facts and circumstances around this charge do not support a termination. Employee asserts that he "testified that he did not realize that he still had additional headphones in his pocket when he proceeded toward the exit of the PX, and he offered to pay for them after the security guard stopped him."[13] Employee further asserts that this incident was "thoroughly investigated by the U.S. Air National Guard" and that they ultimately chose not to "charge or prosecute [Employee] for any crimes."[14] Employee also adds that the U.S. Air National Guard did not terminate him for this incident and the only penalty received was a "demotion of one rank."[15] Employee avers that he was never indicted or convicted of any crimes, and as such "MPD's guilty findings for Charge No. 1, Specification No. 1 for "engaging in conduct that constitutes a crime" are not supported by the evidence."[16] Similarly, Employee avers that there is not substantial evidence to support termination for Charge No. 3, Specification 1. Employee asserts that the testimonial evidence reflects that his "conduct in this matter stemmed from a serious emotional distress and deep personal shame rather than an act of willful misconduct." Employee further maintains that he has consistently demonstrated a "proactive commitment to personal accountability and recovery." As such, Employee maintains that termination was not supported by the evidence.[17]

Agency avers that there was substantial evidence to support the charges and termination. Agency contends that "there is substantial evidence in support of each of the charges levied against Employee..[v]ideo evidence showed theft, and Employee admitted to theft."[18] Further, Agency argues that "separate from the video evidence presented before the Adverse Action Panel (Panel) show his theft of two sets of headphones, Employee pled guilty or admitted to the underlying conduct."[19] Agency avers that "Employee's admission alone meets Agency's burden that its decision that Employee engaged in conduct which constitutes a crime was sufficiently supported."[20] Agency asserts that Employee now "appears to challenge MPD's findings by claiming (1) that he lacked the requisite intent to commit larceny and (2) he was not criminally charged with a crime." Agency contends that these claims are without merit. Agency further argues that Employee's testimony that "he didn't realize" that he had two sets of headphones in his pockets are self-serving.[21] That noted, Agency also asserts that the Adverse Action Panel concluded that Employee had the intent to steal as he is seen on the "CCTV removing the theft protection device before placing the property in [his] pocket." Further, the Panel determined that

[10] Employee's Brief at Page 19 (December 27, 2022).
[11] *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1189 (D.C. 1989).
[12] Employee's Brief at Page 4 (November 13, 2025).
[13] *Id*.
[14] *Id*. at page 5.
[15] *Id*.
[16] *Id*. at Page 6.
[17] *Id.* at Page 7.
[18] Agency's Brief at Page 4 (October 10, 2025).
[19] Agency Sur-Reply Brief at Page 1 (December 4, 2025).
[20] *Id*. at Page1-2. Citing to *Employee v Metro. Police Dept*, OEA Matter No. 1601-0072-22R23, *Opinion and Order on Remand* (September 18, 2025).
[21] *Id*. at Page 2.

Employee purchased one set but then proceeded through "all points of sale leaving the store, only stopping when an Exchange Safety and Security Associate stopped [him]."[22] Agency also contends that the charge of "engaging in conduct which constitutes a crime does not require a criminal case being prosecuted..[t]he charge merely requires that an employee engage in *conduct* that constitutes a crime."[23] (Emphasis in original). Agency also avers that General Order 120.21's "definition of cause includes any act or omission, whether occurring on or off duty, which constitutes a crime, *whether or not such act or omission results in a conviction*."[24] (Emphasis in original). To this end, Agency asserts that "the military's decision to handle Employee's theft administratively rather than through the criminal process has no bearing on whether Employee engaged in conduct that constitutes a crime."[25]

After reviewing the record, and the arguments presented by the parties in their briefs submitted before this Office, the undersigned finds that the Adverse Action Panel met its burden of substantial evidence. The parties had an opportunity to present testimonial and documentary evidence and had the ability to call witnesses and to cross-examine witnesses during the Panel hearing. Employee had the opportunity to call any witnesses and was represented by counsel who cross-examined Agency's witnesses. Further, a review of the transcript indicated that the Panel was engaged in the hearing, asked relevant questions and made credibility determinations for the witnesses, supported by sufficient evidence in making those determinations. Further, the Panel's findings and determinations reflect due consideration of all testimonial, video and documentary evidence presented in the record. There was no evidence in the record to suggest that the Panel's findings were unfounded, nor were they arbitrary or capricious. This noted, I find that Employee's assertions regarding a lack of substantial evidence for Charge 1, Specification 1; and Charge 3, Specification 1, to be unsupported by the record. The undersigned reviewed the CCTV footage that was reviewed and considered by the Panel in making its determinations. The footage shows Employee's actions of putting the headphones in his pockets and exhibit actions that support the Panel's findings regarding the tampering with the theft protection devices. Further, Employee's claims that the U.S. Air National Guard did not charge him criminally nor did they terminate him from service do not stand to undermine the Panel's findings as it relates to the instant matter. While it is unfortunate that Employee was facing emotional distress and personal issues at the time of the incident, it does not stand to challenge the substantiality of the evidence related to the charges.

Accordingly, I find the Panel's factual findings to be consistent with the testimony provided during the Adverse Action Hearing. Wherefore, the undersigned finds that Employee's claims that Agency lacked substantial evidence to be unsupported by the record presented. For the reasons as previously noted, I find that Agency has met is burden for substantial evidence in the charges against Employee.

***Whether there was harmful procedural error.***

In accordance with *Pinkard* and OEA Rule 631.3, the undersigned is required to evaluate and make determinations as to whether there are any harmful procedural errors in the

[22] *Id*.
[23] *Id*. at Page 2-3.
[24] *Id*. at Page 3.
[25] *Id.*

administration of the instant action. Here, Employee does not raise any issues regarding procedural errors on the part of the Agency.[26] Further, the undersigned noted in review of the transcript of the Adverse Action Panel Hearing, that Employee was represented by counsel before that tribunal. As a result, I find that there were no harmful procedural errors committed in the administration of the adverse cation.

**Whether Agency's action was done in accordance with applicable laws or regulations (Appropriateness of Penalty).**

Employee asserts that Agency's termination action was not "legally permissible" because "MPD failed to properly analyze and weigh the *Douglas* factors."[27] Employee avers that in consideration of *Douglas* [28], OEA "has the authority to modify or reduce agency-imposed penalties when a penalty is found to be unreasonable."[29] Employee argues that in review of the *Douglas* factors in this matter that the Agency engaged in an analysis process wherein MPD's considerations, (in the Notice, Panel Findings, and Chief of Police) exhibit a "mechanical evaluation based on preordained formula."[30] Employee asserts that this failure justifies a reversal of the termination action. Employee asserts that *Douglas* Factor 1 was misapplied as aggravating and that the Panel failed to consider his testimony that "he did not realize he still had headphones in his pocket."[31] Employee asserts that at most this should have been characterized as "neutral" as Employee was not charged with a crime and also "immediately offered to resolve the incident."[32] Likewise, Employee asserts that Agency misclassified *Douglas* factor 2 as aggravating solely based on the fact that he is a police officer, without consideration that he was not in a supervisory position. Employee argues that *Douglas* Factor 4, past disciplinary history was also categorized incorrectly as aggravating, because he only had one (1) sustained misconduct in the past three (3)

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[26] Employee's Brief at Page 7 Part B (November 13, 2025).
[27] Employee's Brief at Page 7 (November 13, 2025).
[28] *See*. *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and it's relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[29] *Id.*
[30] *Id*. at Page 9.
[31] *Id*. at Page 10.
[32] *Id*.

years and it was unrelated to the instant action.[33] Employee contends that *Douglas* factor 4 should not have been aggravating, as he presented evidence of work commendations and his past reliability.[34] Employee also asserts that *Douglas* factor 5 being assessed as aggravating is unsupported by the record and that Agency failed to cite to any evidence in the record that he "eroded the Department's confidence in his ability to satisfactorily perform his duties and responsibilities."[35]

Employee also avers that in relation to *Douglas* Factor 6 that Agency failed to appropriately consider the Table of Penalties. Specifically, Employee assert that Agency classified his misconduct as a Tier 4 offense without due consideration of Tier 3 level assessment. As such, Employee asserts that Agency failed to comply with its Table of Penalties and its choice is "not supported by the evidence."[36] Employee maintains that in relation to *Douglas* Factor 7, he provided comparative discipline which Agency failed to consider. Employee also asserts that Agency's position that comparators are inapplicable because the discipline occurred under another Chief to be unsustainable in consideration of this factor. As such, Employee maintains that Agency's failure resulted in their actions that were "outside of the tolerable limits of reasonableness by failing to adequately consider prior comparable discipline cases." Employee asserts that Agency's determination to make *Douglas* Factor 8 – notoriety, as aggravating to again fail to meet the tolerable limits of reasonableness. Employee asserts that the Panel determined that he had the "potential to harm the agency's reputation" but failed to provide evidence to support actual impact on Department. Employee also contends that Agency had a duty under *Douglas* Factor 10 to consider his potential for rehabilitation. Instead, Employee avers that Agency "ignored all the evidence and found this to be an aggravating factor."[37] Employee cites to his testimony about seeking counseling and services and that the Panel's failure to consider this was an error. He also avers that his issues stemmed from "deep emotional distress," and Agency "relied on conclusory statements without any reference to evidence" that he could be rehabilitated as a police officer.[38]

Likewise, Employee asserts that Agency failed to give due consideration to mitigating circumstances as required by *Douglas* Factor 11 and merely determined this to be a neutral factor. Employee reiterated that he was facing emotional distress and close family members were facing challenging health diagnoses and he was also unable to see his children for an extended period.[39] Employee also contends that Agency abused its discretion in consideration of *Douglas* 12-the adequacy of alternative sanctions. Employee asserts that MPD "simply stated that termination is the only effective deterrent but provides no explanation of why a lesser penalty could not equally deter [Employee] or other MPD employees, from committing this kind of conduct."[40] Employee maintains that Agency failed to administer this action in accordance with applicable laws, rules and regulations and that the termination was not an appropriate penalty in the consideration of the record.

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[33] *Id*. at Page 11.
[34] *Id*. at Pages 11-15. Employee also provides reference to the character witnesses that testified at the Panel hearing.
[35] I*d*. at 16.
[36] *Id*. at 16-15.
[37] *Id*. at 19.
[38] I*d*. at 20.
[39] *Id*. at 21.
[40] *Id.*

Agency avers that its decision to terminate Employee from service was in accordance with all applicable laws, rules and regulations. Further, Agency asserts that "it is well settled that a review of an agency-imposed penalty will only be made to determine if the agency conscientiously considered all the relevant factors and exercised management discretion within the tolerable limits of reasonableness."[41] Agency contends that both the Adverse Action Panel ("Panel") and the Chief of Police "consciously considered each of the relevant *Douglas* factors in rendering their determinations."[42] Agency maintains that the determinations that *Douglas* factors 1, 2, and 5 were "aggravating because Employee's theft was unacceptable for a member of law enforcement and thereby led Agency to question Employee's judgment."[43] Agency also cites that the Chief of Police reviewed and questioned the Panel's determinations for *Douglas* Factors 2, 4, 5, 6, 7,8,10 and 11.[44] Ultimately, the Chief of Police "rejected Employee's arguments and terminated Employee consistent with the Panel's findings." Agency rejects Employee's claim regarding a misapplication of *Douglas* Factor 2, given that he was not in a supervisory role, and notes that "as a rule, law enforcement officer may be held to a higher standard than typical employees, thereby supporting Agency's determination."[45] Likewise, Agency avers that it did not misapply *Douglas* Factor 4 in consideration of Employee's work record..[46] Agency also cites that the character witnesses presented by Employee during the Panel hearing all testified that they "did not believe it was appropriate for any law enforcement officer to commit theft like Employee committed."

Agency also avers that Employee's claim that *Douglas* Factor 5 was misapplied because it didn't impact his ability to do his job is unfounded. Agency asserts that both the Panel and the Chief of Police had discretion in those determinations. Agency also rejects that Employee's claim that the Table of Penalties was misapplied in categorizing his offenses as Tier 4. Agency contends that the Table of Penalties "clearly lists engaging in conduct which constitutes a crime as a Tier 4 offense subject to termination." As it relates to *Douglas* Factor 7, Agency asserts that Employee's claim that it should have been categorized as "mitigating" because they failed to consider examples of comparative discipline to be unsupported. Agency argues that "the Panel noted, the penalty proposed was consistent with that imposed on other employees and thus appropriately found the factor neutral."[47] Agency maintains that it appropriately considered *Douglas* Factor 8 in categorizing it as aggravating and disagrees with Employee's claim that his "arrest by the military lacks sufficient notoriety" to support that categorization. Agency asserts that even though Employee's misconduct was not "public," "disciplinary proceedings are not a secret."[48] Regarding *Douglas* Factor 10, Agency cites that while it "commends Employee for seeking treatment, *Douglas* factor 10 requires MPD to consider an employee's potential for rehabilitation as a police officer, not his own efforts at self-improvement." Similarly, Agency asserts that its determinations for *Douglas* Factor 11 were based on substantial evidence and it heard and considered the testimony regarding Employee's personal and familial challenges.[49]

[41] Agency's Brief at Page 5 (October 10, 2025).
[42] *Id*. at Page 6.
[43] *Id*.
[44] *Id*.
[45] *Id.*
[46] *Id.*
[47] *Id*. at Page 7.
[48] *Id.* at Pag 8.
[49] *Id*. at Page 9.

Agency also contends in relation to Employee's arguments around *Douglas* Factor 3 that Employee provides "no authority that an employee's past discipline must be related to his current misconduct."[50] Agency cites that such a claim "defies logic." Further, Agency argues that there is no authority which requires it to articulate "why it considered its charge of conduct unbecoming a tier 4 offense rather than a tier 3 offense."[51] Agency maintains that as it relates to Employee's claims regarding *Douglas* factor 12 that it "only needs to show that a penalty is reasonable, not that a lesser penalty could not suffice."[52] As such Agency asserts that its action was administered in accordance with all applicable laws, rules and regulations and the termination action should be sustained.

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[53] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[54] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[55] In the instant matter, I find that Agency followed all appropriate laws, rules and regulations in its administration of the instant action. Further, I find that Employee's claims regarding the *Douglas* Factors reflect a disagreement with the Agency's determinations in this matter, and the record does not support a finding that the Agency's actions were otherwise arbitrary or capricious. Additionally, I find that the record is clear that the Panel and the Chief of Police gave due consideration and review to the *Douglas* factors in making its determinations and findings; and in ultimately sustaining the charges. Accordingly, for

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[50] Agency Sur-Reply at Page 4-5 (December 4, 2025).
[51] *Id*.
[52] *Id*. at Page 5.
[53] *See also. Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).
[54] *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[55] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

the aforementioned reasons, I find that Agency's action of terminating Employee from service should be upheld.

ORDER

Based on the foregoing, it is **ORDERED** that Agency's action of terminating Employee from service is hereby **UPHELD**.

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris, Esq.
Senior Administrative Judge

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and on the Office of Employee Appeals' website. Parties should promptly notify the Chief Operations Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE[1], | ) | OEA Matter No. 1601-0063-25 |
| Employee | ) | |
| | ) | Date of Issuance: August 5, 2026 |
| v. | ) | |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | MICHELLE R. HARRIS, Esq. |
| Agency | ) | Senior Administrative Judge |
| | ) | |

Employee, *Pro Se*
Angel Cox, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On August 1, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to terminate her from her position as a Teacher due to a "Developing" IMPACT rating for three (3) consecutive school years – 2022-2023; 2023-2024; and the 2024-2025 school years. . On August 1, 2025, OEA issued a letter requiring Agency to file its Answer to Employee's Petition for Appeal. Agency filed its Answer on September 2, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on September 3, 2025. On September 3, 2025, I issued an Order scheduling a Prehearing Conference in this matter for October 2, 2025. Prehearing Statements were due by or before September 26, 2025. Both parties appeared for the Prehearing Conference on October 2, 2025, as required. During the conference, the undersigned determined that additional time was needed for Employee to seek clarification regarding her union's representation in this matter. As a result, on October 2, 2025, I issued a Post Prehearing Conference Order scheduling a Status Conference for October 22, 2025.

Both parties appeared for the Status Conference as required. During that conference, the undersigned determined that briefs were required. A Post Status Conference Order for Briefs was issued on October 22, 2025. Agency's brief was due by or before December 12, 2025, Employee's brief was due by or before January 26, 2026, and Agency had the option to submit a sur-reply brief by or before February 13, 2026. All briefs and submissions have been received as required. Upon

[1]Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

review of the submissions and record, I determined that an evidentiary hearing was not warranted. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE(S)

Whether Agency's action of terminating Employee from service through IMPACT was done in accordance with all applicable laws, rules or regulations. If so, whether the penalty of termination was appropriate.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean: the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

**Summary of the Parties' Positions**

Agency's Position

Agency asserts that its action of separating Employee from service was for cause and done in accordance with all applicable laws, rules and regulations. Agency asserts that Employee was employed as an Educational Aide at Turner Elementary School during the 2022-2023, school year.[3] Agency further notes that Employee was later employed as a Math Teacher at Walker Jones Education Campus during the 2023-2024 and 2024-2025 school years. Agency contends that for the 2022-2023 school year, Employee was subject to the IMPACT standards applicable to Group 17 since she was an Educational Aide. Agency further cites that Group 17 employees were evaluated on three (3) components which included: Educational Aide Standards, Commitment to

[2] OEA Rule "Definitions § 699.1."
[3] Agency's Brief (December 15, 2025).

the School Community and Core Professionalism.[4] Agency avers that Employee was evaluated for all three (3) components and received a 'Developing' rating for the 2022-2023 school year.

Agency further notes that for the school years of 2023-2024, and 2024-2025, Employee was subject to the IMPACT standards applicable to Group 1 employees. Agency asserts that "DCPS followed the same standards and procedures for evaluating each Group 1 worker, including [Employee]." Agency provides that employees in Group 1 were evaluated on five (5) components in both applicable school years.[5] Agency also cites that "School-based personnel assessed through IMPACT ultimately receive a final IMPACT score at the end of the year based on the following scores:

Highly Effective: 350-400 points
Effective: 301-349 points
Developing: 250-300 points
Minimally Effective: 200-249 points
Ineffective: 100-199 points

Agency contends that Employee was observed and evaluated on all the required components. Agency asserts that Employee received a "Developing" rating during the 2023-2024, and the 2024-2025 school years. As a result, Agency cites that Employee's scores reflected three (3) years of Developing ratings. Further, Agency notes that it notified Employee at the end of the 2023-2024 school year, that if she received another Developing rating or if her IMPACT rating

[4] *Id*. Agency also notes the following: 1

1. Educational Aide Standards: These standards define excellence for educational aides in DCPS. They make up 90% of the IMPACT score.
2. Commitment to the School Community: This is a measure of the extend to which the Educational Aide supports and collaborates with the school community. This component makes up 10% of the IMPACT score.
3. Core Professionalism: This is a measure of four basic professional requirements for all school-based personnel. This component is scored different from the other components.

[5] Agency cites that the Group 1 components were as follows:

1. Essential Practices (EP): This is a measure of a teacher's instructional practices. This component makes up 40% of a Group 1 employe's IMPACT score.
2. Student Achievement Date – Two student achievement measures: Individual Value-Added Student Data (IVA) and Teacher-Assessed Student Achievement Data (TAS) make up 40% of Group 1employee's IMPACT scores.

a. Individual Value-Added Student Data (IVA): This is a measure of the impact a teacher has on student learning over the course of the school year, as evidenced by the DC CAPE assessment. This component makes up 25% of a Group 1 employee's IMPACT score.
b. Teacher-Assessed Student Achievement Data (TAS): This is a measure of students' learning over the course of the year as evidenced by various assessments. This component makes up 15% of a Group 1 employee's IMPACT score.

3. Student Surveys of Practice (SSP) – This is a measure of instruction culture, as assessed by an employee's students. This component makes up10% of a Group 1 employee's IMPACT score.
4. Commitment to School Community (CSC): This is a measure of the extent to which school-based personnel support and collaborate with their colleagues and their school's community. This component makes up 10% of a Group Employee's IMPACT score.
5. Core Professionalism: This is a measure of four basic professional requirements for all school-based personnel. This component is scored differently from others, which is why it is not represented in the pie chart.

declined, that she would be subject to separation from DCPS. Agency cites that there are twenty (20) IMPACT groupings of DCPS employees. It reiterates that as an Educational Aide, Employee was classified in Group 17 for 2022-2023 school year.[6] Agency also asserts that the Group 17 employees are subject to two (2) assessment cycles. Here, Agency provides that for the 2022-2023 school year, the first cycle ended in January and the second ended in June. Employee received a final IMPACT score of 265, which was classified as 'Developing." Employee's final score for the 2023-2024 school year, following her assessments in Group 1 was rated as 'Developing' and for the 2024-2025 school year Employee's score was also rated as 'Developing.' Agency avers that "per IMPACT policy and standards, a Developing rating "signifies performance that is below expectations." Further, Agency contends that "IMPACT policy and standard stipulate that an employee is subject to separation if their final IMPACT rating remains at the Developing level for three (3) consecutive school years."[7] As a result, Agency avers that it operated within the authority of its process and had cause to terminate Employee from service due to her three (3) consecutive Developing ratings.

Agency argues that Employee's claims that she was evaluated in Cycle 1 of February 2024 "only after a short period of instructional time" are not supported by the record. Further Agency contends that Employee's claims that she was "not provided with a coaching or placed with a support or improvement plan to guide her" are also not supported. Agency asserts that prior to becoming a teacher, "[Employee] was employed with DCPS as an Educational Aide…[g]iven her late start date of December 2023 [Employee] was considered a late hire in the school year." Agency avers that Employee's observation window was extended, such that instead of being observed in January 2024, she was observed in February 2024.[8] Agency also argues that Employee was assigned to Kathryn Kranz, Math Instructional Coach, who met with [Employee] through the school year "to provide her with targeted and individual support strategies to support her in improving her instruction and developing her professional practice." Agency contends that there are "approximately thirty (30) pages of emails between Ms. Kranz and [Employee], memorializing the various meetings and methods of support provided to [Employee]."[9]

Agency asserts that Ms. Kranz affirmed that she was familiar with Employee and that at the request of the Walker Jones administration, she provided support to Employee.[10] Ms. Kranz also provided specific dates, during the 2024-2025 school year the she and Employee met regularly. Agency avers that Ms. Kranz assisted Employee with "lesson planning and aligning her lessons to a provided objective calendar to ensure that she was providing the support and instruction her students needed."[11] Agency also asserts that during the 2024-2025 school year, Employee received a ten (10) point deduction due to unexcused late arrivals. Agency avers that "these deductions were justly assessed with school policy and Guidebook guidelines."[12] Agency iterates that at the conclusion of the 2024-2025 school year, "Employee received a rating of 'Developing', which subjected her to termination."

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[6] *Id*.
[7] Agency's Brief (December 15, 2025).
[8] Agency Brief at Page 6.
[9] *Id.*
[10] Affidavit of Kathryn Kranz (December 22, 2025).
[11] *Id.*
[12] Agency's Brief at Page 6 (December 15, 2025).

Agency also avers that because DCPS has the authority to establish IMPACT, pursuant to OEA rulings, this Office's role is to "interpret and enforce" the Collective Bargaining Agreement (CBA). To this end, Agency maintains that Employee failed to meet "certain DCPS work performance standards." Agency also contends that "merely disagreeing with a principal is not enough to overturn an evaluation…[t]here must be evidence that directly controverts the principal's evaluation."[13] Agency maintains that Employee was provided "consistent information and assessments about how DCPS viewed her performance." Agency asserts that the "IMPACT Guidebook clearly informed Employee that the consequences for low IMPACT ratings would lead to termination of her employment with DCPS."[14] As such, Agency avers that its action of terminating Employee from service should be upheld.

Employee's Position

Employee asserts that she should be reinstated with DCPS. She provides that she was "initially employed by DCPS as a Paraprofessional, a position [she] held for approximately nine (9) years."[15] Employee cites that during her time as a Paraprofessional, she "gained extensive experience supporting instruction and students." She stated that her responsibilities and duties in this role were "supportive in nature and performed under the direction of a certified classroom teacher." Employee avers that "it was only toward the end of my paraprofessional services that [she] received her first "Developing" rating."[16] Employee further notes that she later "transitioned into a Teacher position with DCPS after becoming a certified teacher." She cites that she served as a certified teacher for approximately one and a half years. Employee states that her responsibilities as a teacher included "independent instructional planning, classroom management, responsibility for student outcomes, and professional practice."[17] Employee also avers that she was not provided with coaching or placed on a support or improvement plan which may have helped her professional development.[18]

Employee avers that "as a teacher [she] was evaluated under the DCPS IMPACT system…[i]t was only after assuming the Teacher role that [she]received IMPACT "Developing' ratings under teacher-specific standards."[19] Employee argues that while she did receive three (3) "Developing" ratings, "these ratings did not occur with the same role or classification." She asserts that one (1) rating was while she was employed as a paraprofessional and that two (2) other Developing ratings occurred while she was a Teacher. Employee argues that "because the paraprofessional and teacher positions involve distinct job duties, responsibilities and evaluation criteria, these ratings should not be combined or treated as consecutive within a single classification…[e]ach rating must be evaluated within the context of the role in which it was received."[20]

[13] *Id*. at Page 7.
[14] *Id.*
[15] Employee's Affidavit (February 6, 2026).
[16] *Id*.
[17] *Id*.
[18] Employee's Petition for Appeal at #14. (August 1, 2025).
[19] *Id*.
[20] *Id*. at Pages 1-2.

Employee also contends that she informed school administrators that her late arrivals during the 2022-2023 school year were "the result of transportation issues through the Office of the State Superintendent of Education ("OSSE") for my son…" Employee avers that even with these challenges, she "generally arrived at work before students entered the building and fulfilled [her] instructional responsibilities for the school day." Employee provides that "similar circumstances applied during the 2023-2024 school year at Walker Jones Education Campus, when [she] became a Teacher." Employee asserts that she began her work at Walker Jones on December 10, 2023, and shortly thereafter there was winter break, and as a result, she "did not have a meaningful opportunity to begin teaching, implement instruction, or establish student relationships until January 2024, which limited the timeframe available for evaluation."[21] Employee also contends that during the 2024-2025 school year at Walker Jones, she continued to face challenges with OSSE transportation for her son. She avers that she "proactively communicated with school administration regarding these issues and requested reasonable flexibility so that [she] could report to work on time." Employee cites that she was "permitted to return home to transport her son to school if the bus did not arrive and she also arranged for a neighbor to watch her son so she could meet her professional obligations. Employee avers that she always acted in good faith and requests reinstatement to a "different DCPS placement, consistent with [her] qualifications and experience.

**Governing Authority**

District of Columbia Municipal Regulation ("DCMR") 5-E DCMR §§1306.1, and 1306.4-5 gives the Superintendent authority to set procedures for evaluating Agency's employees. The above-referenced DCMR sections provide that each employee shall be evaluated each semester by an appropriate supervisor and rated annually prior to the end of the year, based on procedures established by the Superintendent. 5-E DCMR 1401 provides in pertinent part as follows:

> 1401.1: Adverse action shall be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious.
>
> 1401.2: For purposes of this section, "just cause for adverse action" may include, but is not necessarily limited to, one (1) or more of the following grounds:
>
> > (c) Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment.

Furthermore, the D.C. Code § 1-616.52(d) states, in pertinent part:

> Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take

[21] *Id*. at Page 2.

> precedence over the procedures of this subchapter for employees in a bargaining unit represented by a labor organization.

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, which states in part:

> Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluation of District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18.

Accordingly, Agency was granted the authority to develop its own evaluation process and tool for evaluating Agency employees and exercised this management prerogative when it created the IMPACT evaluation system. As a result, in consideration and review of this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether Agency's termination of Employee pursuant to her IMPACT rating was supported by just cause.

**The IMPACT Process**

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2022-2023, 2023-2024, and 2024-2025 school years. According to the record, Agency conducts annual performance evaluations for all its employees. Agency utilized IMPACT as its evaluation system for all school-based employees.[22]

Employee's position for the 2022- 2023 school year was as an Educational Aide at Turner Elementary School, and she was within Group 17. According to the IMPACT process, Group 17 employees had two (2) assessment cycles typically in January and June. Here, Employee was assessed during Cycle 1 and Cycle 3 for the 2022-2023 school year.[23] For the 2023-2024 and 2024-2025 school years, Employee was employed as a Teacher and she was in Group 1. Group 1 employees were also subject to two (2) assessment cycles. In the 2023-2024 year, the two cycles were conducted in February and May. For the 2024-2025 school year, Group 1 employees were assessed in January and May.

For Group 17 (Educational Aide) Employee was assessed on a total of three (3) IMPACT components, namely:

1. Educational Aide Standards: These standards define excellence for educational aides in DCPS. They make up 90% of the IMPACT score.
2. Commitment to the School Community: This is a measure of the extend to which the Educational Aide supports and collaborates with the school community. This component makes up 10% of the IMPACT score.

[22] Agency's Brief, *supra*.
[23] Agency's Answer.

3. Core Professionalism: This is a measure of four basic professional requirements for all school-based personnel. This component is scored different from the other components.

For Group 1 (Teachers) Employee was assessed on a total of five (5) IMPACT components, namely:

1. Essential Practices (EP): This is a measure of a teacher's instructional practices. This component makes up 40% of a Group 1 employe's IMPACT score.
2. Student Achievement Date – Two student achievement measures: Individual Value-Added Student Data (IVA) and Teacher-Assessed Student Achievement Data (TAS) make up 40% of Group 1employee's IMPACT scores.
    a. Individual Value-Added Student Data (IVA): This is a measure of the impact a teacher has on student learning over the course of the school year, as evidenced by the DC CAPE assessment. This component makes up 25% of a Group 1 employee's IMPACT score.
    b. Teacher-Assessed Student Achievement Data (TAS): This is a measure of students' learning over the course of the year as evidenced by various assessments. This component makes up 15% of a Group 1 employee's IMPACT score.
3. Student Surveys of Practice (SSP) – This is a measure of instruction culture, as assessed by an employee's students. This component makes up10% of a Group 1 employee's IMPACT score.
4. Commitment to School Community (CSC): This is a measure of the extent to which school-based personnel support and collaborate with their colleagues and their school's community. This component makes up 10% of a Group Employee's IMPACT score.
5. Core Professionalism: This is a measure of four basic professional requirements for all school-based personnel. This component is scored differently from others, which is why it is not represented in the pie chart.

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year of either:[24]

1) Ineffective = 100-199 points (immediate separation from school);
2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of 'Minimally Effective' for two (2) consecutive years are subject to separation from the school system);
3) Developing = 250-299 points (Individuals who receive a rating of 'Developing' for three (3) consecutive years are subject to separation from the school system);
4) Effective = 300-349 points; and
5) Highly Effective = 350-400 points.

[24] *See*. Employee's Petition for Appeal and Agency Answer. Employee's final ratings were: SY'2022-2023: 265; SY'2023-2024: 276; SY' 2024-2025: 277. Based on the IMPACT scoring rubric, all these scores fall within the 'Developing' rating.

The IMPACT process also provides that employees are entitled to a conference with the administrator as part of each assessment cycle. It further notes that if the administrator makes at least two attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or is unresponsive, the assessment will be valid without the conference. Valid attempt methods include, but are not limited to, phone calls, text messages, emails, notes in your school inbox, and/or in-person conversations.

***ANALYSIS***[25]

In the instant matter, Employee was evaluated under the aforementioned IMPACT provisions for her roles as an Educational Aide and as a Teacher. Employee does not dispute that she received three (3) Developing ratings but contends that because the positions were differently classified, they should not have been treated consecutively in terms of review. Employee asserts that regarding her first term as a Teacher, that she began her tenure on December 10, 2023, but was evaluated shortly thereafter in February 2024. She also cites that she was not provided with coaching or placed on an improvement plan which might have supported her professional development. Agency asserts that it followed all appropriate guidelines as noted in the IMPACT guidelines. Agency further avers that Employee had notice of the ratings and that those ratings made her subject to termination. In review of the record, the undersigned finds that for school year 2022-2023, Employee was evaluated with Group 17, as she was classified as an Educational Aide. Pursuant to the IMPACT evaluation criteria for Group 17 and following the two (2) required cycle evaluations and conferences, Employee received a "Developing" rating for the 2022-2023 school year.[26] Employee received a notice dated July 1, 2023, regarding her Developing rating. Employee was then assigned as a Teacher at Walker Jones and was assessed in Group 1 for the 2023-2024, school year. Following the requisite cycle evaluations and conferences pursuant to the IMPACT process, Employee received a notice on July 1, 2024, that she had been rated as "Developing" for that school year.[27] Employee was again assessed and evaluated in Group 1 for the 2024-2025 school year, as she remained a Teacher at Walker Jones. Following the required cycle evaluations and conferences, Employee was provided a final notice that she had been rated as "Developing" for the 2024-2025 school year. Further, that notice provided that because Employee had been rated as "Developing" for three (3) consecutive school years, she was subject to termination.[28]

Employee asserts that because she was in a different classification for one (1) of the three (3) school years, that she should not be considered as having had "consecutive developing ratings". Further, Employee asserts that the school administrators knew that her unexcused tardies were due to transportation issues. She also notes that she was not provided with coaching to assist her and improve her professional capacities. Agency asserts that pursuant to the IMPACT guidelines, an employee that receives a Developing rating for three (3) consecutive school years is subject to

[25] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See. Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[26] Agency Answer at Tab 9 and Tab 10.
[27] Agency Answer at Tab 5 and Tab 6.
[28] Employee's Petition for Appeal at Final Notice.

separation from DCPS. Agency avers that Employee was given notice by and through the IMPACT guidebook and the notices regarding her developing ratings. Further, Agency provides that Employee was provided with coaching and instructional support throughout her tenure with DCPS. The IMPACT guidebooks clearly provide that three (3) consecutive developing ratings subject an employee to separation.[29] Further, Employee does not dispute that she received the Developing ratings but rather, she cites that it should not have been considered consecutively and that she also did not receive instructional coaching to help her improve. In review of the record, the undersigned finds that there are several emails and correspondence to support that Employee was provided with instructional support. Further, it was noted in Employee's evaluation reviews of ways she might improve. Additionally, the IMPACT Guidebook does not specify or require that an employee be employed in the same classification for three (3) years. Instead, it cites that any employee who receives three (3) consecutive "Developing" ratings is subject to separation.

This Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[30] As performance evaluations are "subjective and individualized in nature,"[31] this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."[32] I find that the record reflects that Agency properly utilized its IMPACT process to evaluate Employee's performance. There is nothing in the record to reflect any contradictions or other issues. Further, the record does not reflect that Employee failed to receive coaching. As a result, I find that Agency has met its burden and that Agency's action was done for cause and in accordance with the guidelines of its IMPACT process. Consequently, I further find that Agency's action of terminating Employee from service following her receipt of three (3) consecutive "Developing" ratings should be upheld.

ORDER

Based on the foregoing, it is **ORDERED** that the Agency's action of terminating Employee from service through IMPACT is hereby **UPHELD.**

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris, Esq.
Senior Administrative Judge

[29] Agency Answer at Tab 12, Tab 8 and Tab 4 – IMPACT Guidebook.
[30] *See. Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); *see also Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[31] *See also American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).
[32] *See. Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and on the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE[1], | ) | OEA Matter No. 1601-0064-25 |
| Employee | ) | |
| | ) | Date of Issuance: August 28, 2026 |
| v. | ) | |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | MICHELLE R. HARRIS, Esq. |
| Agency | ) | Senior Administrative Judge |
| | ) | |

Employee, *Pro Se*
Gehrrie Bellamy, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On August 1, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to remove her from her position as a Teacher. Employee was terminated after receiving a "Minimally Effective" rating under the IMPACT evaluation during the 2024-2025 school year. The effective date of termination was August 1, 2025. Following a letter from OEA dated August 1, 2025, Agency filed its Answer to Employee's Petition for Appeal on August 21, 2025. This matter was assigned to the undersigned Senior Administrative Judge on August 22, 2025. On August 27, 2025, I issued an Order Convening a Prehearing Conference in this matter for September 25, 2025.

Both parties appeared for the Prehearing Conference on September 25, 2025. Following the Prehearing Conference, I issued an Order the same day requiring the parties to submit briefs addressing whether Agency's termination of Employee through IMPACT was done in accordance with all applicable laws, rules and regulations. Accordingly, Agency's brief was due on or before October 24, 2025, and Employee's brief was due on or before November 21, 2025. Agency had the option to submit a sur-reply brief on or before December 12, 2025. On October 23, 2025, Agency filed a Request for an Extension. Agency cited therein that more time was needed due to the unavailability of a key witness due to jury duty. On October 24, 2025, Employee filed an

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

Opposition to Agency's request. Employee noted that while she respected the requirement of civic duty, it was unlikely that the witness had been serving continuously since September 25, 2025. She also noted that further delay caused her hardship in prolonging this matter. On October 24, 2025, I contacted the parties via email to ascertain whether they could meet for Status Conference. The parties were available to meet on October 29, 2025. Both parties appeared on October 29, 2025. During that time, the undersigned determined that the parties had not engaged in discovery and Agency also asserted that it could not ascertain when the key witness would be available. During the Conference, the undersigned ordered Agency's representative to find out the specific availability of the witness and report to the undersigned by or before the close of business on October 31, 2025. On October 30, 2025, Employee emailed the undersigned and indicated that she had contacted the school, and the witness' jury duty did not start until October 21, 2025. Based on Employee's email, the undersigned required Agency to provide all relevant information related to its timeline for contacting this witness. Agency responded on October 30, 2025, citing that they had begun outreach on October 20, 2025, and that Agency's representative contacted the Principal and found out that the witness had returned from jury duty on October 24, 2025.

As a result, I issued an Order on October 31, 2025, requiring Agency to submit its brief by November 6, 2025. Employee's brief was now due by November 28, 2025, and Agency's sur-reply brief was due by December 12, 2025. Agency submitted its brief as required. On December 1, 2025, Employee emailed the undersigned citing that she had received Agency's brief via mail on November 26, 2025. She cited that she did not receive all the attachments that were included in the electronic version that Agency had sent. The undersigned advised Employee that should she need an extension to submit her brief; she would need to submit a written request. On December 2, 2025, Agency filed a Motion to Limit Public Commentary, citing therein that Employee had made disparaging comments about witnesses and DCPS on social media.[2] On December 5, 2025, I issued an Order scheduling a Status Conference for December 16, 2025. On December 11, 2025, Agency filed a Request for an Extension to file a Sur-Reply, citing that Employee had not filed her brief and as such, it could not adequately prepare for its sur-reply brief. The undersigned cited that this would be addressed in the Status Conference scheduled for December 16, 2025.

On December 16, 2025, Agency appeared for the Status Conference, but Employee did not. Further, as of the date of the Status Conference, Employee had not submitted her brief nor was there any record of a request submitted for an extension of time to file. As such, on December 16, 2025, I issued an Order for Statement of Good Cause to Employee for her failure to submit her brief as required and for her failure to appear for the December 16, 2025, Status Conference. Employee's statement for good cause and brief was due on or before January 6, 2026. On January 5, 2026, Employee emailed the undersigned and Agency's representative with a courtesy copy of her Motion to Accept Late Filing for Good Cause. Employee cited therein that ongoing challenges following her separation from Agency were the reason for her late filing. Further, Employee cited therein that she would not submit any further documentation and would rely on the existing record, while addressing "procedural deficiencies" in Agency's response. Agency's representative sent an email on January 12, 2026, citing that they had received Employee's statement. I responded to

[2] In its Sur-Reply Brief, Agency asserted that Employee's "attempt to publicly besmirch the Agency," was not apart of the record. Agency further noted that while it discovered a video on a social media public platform, it "did not reference the video Employee made in its initial Brief, nor did Agency amend its brief to reference the video." To this end, the undersigned finds that this issue is MOOT.

that email and noted that the hard copy of Employee's brief for the record had not yet been received at OEA. I noted that once I received the hard copy for the record, I would issue an Order regarding Agency's deadline to submit a sur-reply brief. Employee did not submit the hard copy of her Motion.[3] As a result, on January 22, 2026, I issued an Order requiring Employee to file her brief as required by OEA rules by February 2, 2026, and set a deadline of February 9, 2026, for Agency to submit its sur-reply brief.

Employee did not submit a hard copy of her January 5, 2026 Motion. As such, the undersigned will accept Employee's electronic submission and it will become part of the record. Agency submitted its sur-reply brief by the prescribed deadline. Upon review of the record and the parties' submissions, I determined that an Evidentiary Hearing was not warranted. The record is now closed.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUE

Whether Agency's action of terminating Employee from service through IMPACT was done in accordance with all applicable laws, rules or regulations.

## BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean: the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[4]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

[3] During this timeframe, the undersigned received "undeliverable" email messages when attempting to respond to Employee's email.
[4] OEA Rule "Definitions § 699.1."

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

**Summary of the Parties' Positions**

Agency's Position

Agency provides that Employee was hired by DCPS on or around September 25, 2022. Agency asserts that Employee was a Teacher at Harriet Tubman Elementary school for the 2022-2023, 2023-2024, and 2024-2025, school years. Agency further asserts that it utilized the IMPACT guidelines for those school years and cites that Employee was in Group 2b, which covers teachers.[5] Agency further notes that for the 2022-2023, 2023-2024, and 2024-2025, school years, "Group 2b workers were evaluated on four (4) components."[6] The four (4) components that were evaluated for this group were:

1. Essential Practices (EP): This is a measure of the instructional expertise and made up 65% of the total IMPACT score.
2. Teacher-Assessed Student Achievement Data (TAS): This is a measure of your students' learning over the course of the year, as evidenced by rigorous assessments other than the PARCC and made-up 15% of the total IMPACT score.
3. Student Surveys of Practice (SSP): This is a measure of the students' evaluation of their teacher. Students in grades 3 and up take a survey once a year and rank the extent to which they agree with certain statements about their teacher's performance. This component makes up 10% of the IMPACT score.
4. Commitment to the School Community: This measure of extent to which the Educational Aide supports and collaborates with the school community. This component makes up 10% of the IMPACT score.
5. Core Professionalism: This is a measure of four basic professional requirements for all school-based personnel. This component is scored differently from others, which is why it is not represented in the pie chart.

Agency asserts that Employee was evaluated on all four (4) of the IMPACT components. Agency contends that Employee received a "Developing" rating during the 2022-2023 school year. Agency maintains that Employee was provided notice that "if she received anything lower than "Developing" for the following school year, she would be subject to termination."[7] Agency provides that during the 2023-2024 school year, Employee received a "Minimally Effective" rating, which is lower than a "Developing" rating. However, Agency notes that Employee was notified that she would be exempt from termination but would need to receive an "Effective" or higher rating in the 2024-2025 school year to remain at DCPS.[8] Agency asserts that in the 2024-2025 school year, Employee received a "Minimally Effective" rating, which led to her termination effective August 1, 2025.

[5] Agency's Brief at Page 1 (November 6, 2025). *Agency filed another copy on November 7, 2026, but it is a duplicate of the November 6th filing.
[6] *Id.*
[7] *Id*. at Page 2.
[8] Agency's Prehearing Statement. (September 19, 2025).

Agency cites that the IMPACT for "Teacher (Group 2b) consists of two (2) assessment cycles, with the first assessment usually taking place in January and the second in June of each year."[9] Agency iterates that Employee was provided notice that she would have to receive a final IMPACT rating of Effective or Highly Effective for the 2024-2025 school year in order to remain at DCPS. At the end of the 2024-2025, school year Employee was rated as "Minimally Effective." Agency maintains that Employee was observed and had conferences with her evaluators regarding the IMPACT assessment. Agency avers that Employee did not raise any concerns to the IMPACT team during any of the school years of her evaluations.[10]

Agency maintains that it "fairly and accurately evaluated Employee." Agency asserts that it followed all the IMPACT guidelines and that these guidelines were also provided to Employee at the beginning of the school year. Agency asserts that Employee's claim that "Principal Amanda Delabar, Employee's evaluator, provided no guidance or direction as to where she was faltering at work," to be "patently false." Agency contends that "Employee's evaluations were not only the required 30 minutes in length, but Principal Delabar and Assistant Principal Alysha Christopher, Employee's other evaluator, took copious notes for each evaluation, and regurgitated those notes in each of Employee's areas where she was observed and evaluated under the "Evidence" section."[11] Agency further argues that "the notes were not merely an overview; they were exact and concise, and even had examples of what Principal Delabar and Assistant Principal Christopher witnessed during the observations to indicate as a reference."[12] Agency also avers that Employee "received a 10 point deduction due to an unexcused late arrival during the 2023-2024 school year."[13] Additionally, Agency provides that Employee received "a total of 20 points deducted for the 2024-2025 school year" for an unexcused late arrival and for leaving work early without permission.[14]

Agency asserts that Employee received support for her job performance. Agency contends that "Employee was provided with an abundance of support, both from her Principal and Assistant Principal." Agency notes that Employee was also a part of "LEAP which is a group of teachers in Employee's teaching block that meet weekly to collaborate and lesson plan."[15] Agency cites that LEAP is "led by Instructional Coach Susannah Schantz, who offered Employee copious amounts of support, both inside the group and individually."[16] Agency submitted an Affidavit from Ms. Schantz wherein she noted that Employee was a part of the group. She further cited that she and Employee "met often, sometimes weekly, where [she] assisted [Employee] with lesson planning and aligning her lessons to a provided objective calendar to ensure that she was providing the support that the students needed."[17] Agency avers that Ms. Schantz also noted in her Affidavit that she supported Employee for the three (3) school years while she was employed at Harriet Tubman Elementary. Agency also provides an Affidavit from Principal Amanda Delabar and Assistant Principal Alysha Christopher who both evaluated Employee during the IMPACT Process

[9] *Id*.
[10] *Id*. at Page 3.
[11] Agency's Brief at Page 5 (November 6, 2025).
[12] *Id*.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Agency provides an Affidavit of Susannah Schantz. *See.* Agency Brief at Attachments.
[17] *Id.* at Affidavit of Susannah Schantz.

and cited to the support offered to Employee.[18] Agency cites that, Principal Delabar noted that she was the principal at Harriet Tubman for the 2023-2024 and 2024-2025 school years and that she observed and assessed Employee during that school year. Agency asserts that Principal Delabar asserted in her Affidavit that she "met with [Employee] to discuss ways to ensure that she had complete lesson plans for her students, and often during those meetings [Employee] would either show up without a lesson plan for us to review or had expectations that someone would do them for her." Principal Delabar also stated that Employee met with an Instructional Coach and was also provided additional support in planning times. She also noted that she offered weekly lesson plan reviews to Employee and feedback. Assistant Principal Christopher also noted her evaluations and observations of Employee. Assistant Principal Christopher cited that she and Principal Delabar both decided to have Employee return after the 2023-2024 school year, despite a decline in her performance. Christopher noted that she and Principal Delabar met with Employee to ask how she would like to receive feedback in order to allow her to meet the requirement to receive an IMPACT rating of Effective or Highly Effective for the 2024-2025 school year. Agency avers that despite the support, Employee's IMPACT rating declined to Minimally Effective in the 2023-2024 school year, but "DCPS decided to allow her another opportunity to improve over the course of the following school year."[19] Agency also states that to "ensure Employee's successful outcome, she was allowed the opportunity to collaborate on the creation of an Improvement Plan ("IP") to be used during the 2024-2025 school year." Agency provides that this plan was created with Employee, the Principal, Assistant Principal and Employee's Union.[20]

Agency asserts that despite this support, Employee failed to meet DCPS performance standards and that she was appropriately separated from service. Agency asserts that OEA's review of this matter is not to substitute its judgment for that of the Agency, but rather OEA is limited to "determining if managerial discretion has been legitimately invoked and properly exercised."[21] Agency also asserts that pursuant to the Court of Appeals decision in *Shaibu v D.C. Public Schools*, that "substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation."[22] As such, Agency avers that "merely disagreeing with a principal is not enough to overturn an evaluation."[23] Agency contends that IMPACT is a "totality of an employee's work performance for an entire year."[24] This stated, Agency reiterates that Employee "failed to meet certain DCPS standards" and "Employee's evaluation is a totality of the 5 IMPACT evaluation factors."[25] Agency maintains that its actions was done in accordance with IMPACT and that the termination should be upheld.

Employee's Position

Employee asserts that her termination was "procedurally flawed and substantially unjustified." She avers that the "IMPACT evaluation system, as implemented in [her] case, did not

[18] Agency Brief at Affidavits of Amanda Delebar and Alysha Christopher. (November 6, 2025)
[19] *Id*. at Page 6.
[20] *Id*.
[21] *Id*. citing to *Wooden v. DCPS,* OEA Matter No 1601-0152-11 (March 27, 2014; and *Chamblee v DCPS*, OEA Matter No. 1601-0346-10 (January 9, 2014).
[22] *Id*. at Page 7. Citing *to Shaibu v D.C. Public Schools*, Case No. 2012 CA 003606 P (January 29, 2013).
[23] *Id.*
[24] Agency's Sur-Reply Brief at Page 2. (February 9, 2026).
[25] *Id*.

reflect the realities of [her] instructional effectiveness or comply with the policies and obligations set forth by DCPS."[26] Employee contends that during the two years, she "taught students who achieved measurable academic progress." She further notes that "100% of [her] students met or exceeded their annual growth goals on the iReady diagnostic assessments." Employee avers that after she received her first Minimally Effective rating, the school principal "explicitly stated that [she] would receive coaching to support areas of improvement." Employee cites that coaching was never provided to her, despite her repeated requests for "clarification, support, and follow-up, no formal coach, modeling, or targeted professional development was offered."[27] Employee argues that this failure to provide her coaching and support "contradicts the DCPS commitment to improving teacher performance through targeted interventions; especially for educators rated less than Effective." Employee also avers that the feedback that she received was "vague and difficult to apply to [her] practice."

Employee argues that she "documented multiple efforts to engage with administrators in good faith to better understand and act on the feedback provided," but cites that her efforts were "largely ignored or brushed aside." Employee also cites that she believes the scores she received "reflect bias on the part of school administration and do not accurately or fairly represent [her] effectiveness as an educator." She specifically states that "the data show clear discrepancy between administrator-scored measures and student achievement outcomes, raising serious concerns about the integrity of evaluations." She avers that her student-centered measure, TAS, "remains strong and improving." Employee also asserts that the Core Professionalism ("CP") scores deductions were "issued without discussion or prior warning." She provides that she "received a CP deduction for a single late arrival (8:19am) without conversation or context, despite extensive after-school tutoring and summer PD involvement." Employee contends that this "punitive approach stands in contrast to the supposed developmental nature of the IMPACT framework."[28]

Employee maintains she was not provided with appropriate support, despite her requests. She avers that instead of support, she received an "objective calendar as substitute for individualized support." She further asserts that this document did not "contain actionable guidance related to lesson planning, pacing or instructional strategies." She contends that instead of "targeted support" she received vague and insufficient feedback that did not support her professional growth. Employee also avers that she was met with hostile responses to her request for collaborative planning. Employee asserts that in a meeting with Principal Delabar regarding an outline for a week of instruction, Employee asked Principal Delabar for clarification. Employee asserts that "rather than answering, Principal Delabar became visibly and audibly upset and threatened to send [her] home, stating that [she] was not prepared to teach." Employee cites that she left the "meeting in tears but continued to teach for the day." She avers that other interactions again displayed the "vague, inconsistent, and often punitive feedback [she] received rather than actional coaching or professional support."[29] She also cites that the calendar invitations from the Principal were marked as "coaching" but there was "no formal coaching plan or documented instructional support put in place." Employee avers that these sessions instead "functioned more

[26] Employee's Petition for Appeal at Attachments. (August 1, 2025).
[27] *Id.*
[28] *Id.*
[29] *Id.*

as evaluative check-ins with inconsistent feedback and no clear growth plan or goals." Employee also provides that support was delayed at times, which also shows a lack of "proactive support."

Employee also contends that the review of her lesson plans was also inconsistent and would instead be framed as her being unprepared for her lessons plans, "even though the issues stemmed from unclear systems and not from a lack of planning on [her] part." Employee further avers that Principal Delabar also cancelled scheduled observations and coaching, which occurred "shortly after[she] requested a voluntary transfer to another school due to concerns about the effectiveness of the coaching [she ] was receiving." Employee argues that "this incident further illustrates a pattern [she] experienced through the school year when [she] demonstrated initiative and asked for meaningful, developmental support, it was either delayed, denied or withdrawn with little to no explanation." Employee also asserts that documentation from her Union reflects that she "repeatedly voiced these concerns to administration directly and requested appropriate support aligned with [her] IMPACT growth areas." Employee maintains that "the absence of a responsive, actionable growth plan, the failure to honor promised coaching, and the dismissive nature of administrative responses represent a procedural failure in the implementation of IMPACT, as well as a disregard for professional responsibility to support teacher development." To this end, Employee avers that the Agency's decision to terminate her from service should not be sustained and she should be reinstated to service.

**Governing Authority**

District of Columbia Municipal Regulation ("DCMR") 5-E DCMR §§1306.1, and 1306.4-5 gives the Superintendent authority to set procedures for evaluating Agency's employees. The above-referenced DCMR sections provide that each employee shall be evaluated each semester by an appropriate supervisor and rated annually prior to the end of the year, based on procedures established by the Superintendent. 5-E DCMR 1401 provides in pertinent part as follows:

> 1401.1: Adverse action shall be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious.
>
> 1401.2: For purposes of this section, "just cause for adverse action" may include, but is not necessarily limited to, one (1) or more of the following grounds:
>
> > (c) Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment.

Furthermore, the D.C. Code § 1-616.52(d) states, in pertinent part:

> Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter for employees in a bargaining unit represented by a labor organization.

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, which states in part:

> Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluation of District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18.

Accordingly, Agency was granted the authority to develop its own evaluation process and tool for evaluating Agency employees and exercised this management prerogative when it created the IMPACT evaluation system. As a result, in consideration and review of this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether Agency's termination of Employee pursuant to her IMPACT rating was supported by just cause.

**The IMPACT Process**

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2022-2023, 2023-2024, and the 2024-2025 school year. According to the record, Agency conducts annual performance evaluations for all its employees through IMPACT and Agency utilized IMPACT as its evaluation system for all school-based employees.[30] Employee's position as a Teacher was categorized in Group 2b for the IMPACT ratings for all the applicable school years. The components considered for Groub 2b are:

1. Essential Practices (EP): This is a measure of the instructional expertise and made up 65% of the total IMPACT score.

2. Teacher-Assessed Student Achievement Data (TAS): This is a measure of your students' learning over the course of the year, as evidenced by rigorous assessments other than the PARCC and made up 15% of the total IMPACT score.

3. Student Surveys of Practice (SSP): This is a measure of the students' evaluation of their teacher. Students in grades 3 and up take a survey once a year and rank the extent to which they agree with certain statements about their teacher's performance. This component makes up 10% of the IMPACT score.

4. Commitment to the School Community: This measure of extent to which the Educational Aide supports and collaborates with the school community. This component makes up 10% of the IMPACT score.

5. Core Professionalism: This is a measure of four basic professional requirements for all school-based personnel. This component is scored differently from others, which is why it is not represented in the pie chart.

[30] Agency's Brief, *supra*.

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year of either[31]:

1) Ineffective = 100-199 points (immediate separation from school);
2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of 'Minimally Effective' for two (2) consecutive years are subject to separation from the school system);
3) Developing = 250-299 points (Individuals who receive a rating of 'Developing' for three (3) consecutive years are subject to separation from the school system);
4) Effective = 300-349 points; and
5) Highly Effective = 350-400 points.

The IMPACT process also provides that employees are entitled to a conference with the administrator as part of each assessment cycle. It further notes that if the administrator makes at least two (2) attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or is unresponsive, the assessment will be valid without the conference. Valid attempt methods include, but are not limited to, phone calls. text messages, emails, notes in your school inbox, and/or in-person conversations.

***ANALYSIS[32]***

In the instant matter, Employee was separated from service following an IMPACT score of Minimally Effective for the 2024-2025 school year, a Minimally Effective rating for the 2023-2024 school year and a Developing rating for the 2022-2023 school year. Agency avers that Employee was provided notice regarding IMPACT and that a decline in performance could result in her separation from DCPS. Agency avers that it followed all the required procedures in its administration of the IMPACT process and that separation was warranted given Employee's decline in performance. Agency further contends that Employee's claims that she was not provided coaching or instructional support to be unsupported by the record. Agency maintains that the school administration provided Employee with an "abundance of support" both from the Principal and the Assistant Principal. Agency also cites that Employee was a part of the LEAP group lead by Instructional Coach Susannah Schantz who "offered Employee copious amounts of support both inside the group and individually." Ms. Schantz submitted an affidavit which noted her meetings with Employee, the support offered and noted that she supported Employee during all three (3) school years.

Employee avers that she was improperly terminated. She argues that she was not provided with sufficient and consistent support to help improve her performance and professional growth.

[31] *See*. Agency's Brief at Tabs 3-6 (November 6, 2025); and Employee's Petition for Appeal at Attachments (August 1, 2025). Employee's final ratings were: SY'2022-2023: 289; SY'2023-2024: 222; SY' 2024-2025: 219. Based on the IMPACT scoring rubric, Employee received a Developing rating, followed by two (2) Minimally Effective ratings for the aforementioned school years.

[32] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See. Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

Employee avers that any support or feedback that was provided was vague and inconsistent. She avers that she sought "targeted" support and made requests for instructional coaching that was not provided. Employee asserts that the administration's actions do not reflect the developmental purpose of the IMPACT process and as such, she contends that the IMPACT procedure was not appropriately followed in her evaluative process. Employee also avers that other measures of her student's success were not appropriately considered in review of her IMPACT scores.

IMPACT scores are set forth through a rubric designed for the different groups established within the system. However, Agency is given great discretion in establishing its scoring and policies for its implementation of IMPACT.[33] The record reflects that Employee was a Teacher at Harriet Tubman Elementary School for the 2022-2023, 2023-2024, and 2024-2025 school years. Further, the record reflects that she was evaluated in Group 2b for the IMPACT evaluations and conferences. The record also reflects that Employee received the two (2) cycle assessments during each of the relevant school years.[34] During the first year that Employee was rated (2022-2023 school year), she received a 'Developing' rating. Employee received notice in a letter dated July 1, 2023, that a decline in ratings could lead to separation. The following school year (2023-2024), Employee's rating declined and she was rated as "Minimally Effective." In a letter dated July 1, 2024, Employee was notified of her Minimally Effective rating and that she would be subject to separation, but that an exemption was provided for her to return for the following 2024-2025 school year. However, that letter noted that Employee must receive an IMPACT rating of Effective or Highly Effective, or she would be separated from service.[35] On July 1, 2025, Employee received a notice that her IMPACT rating for the 2024-2025 school year was again rated as "Minimally Effective" and as a result, she would be separated from DCPS.

In review of the record, the undersigned finds that Agency's administration of the IMPACT process for all three (3) school years was done in accordance with the guidelines and requirements of the IMPACT process. Further, the undersigned finds that Employee was evaluated for two (2) cycles in each school year and she received the requisite conferences. While Employee avers that she was not provided with adequate support or instructional coaching, the undersigned finds that the record indicates otherwise. The record reflects comments and feedback related to Employee's performance and notes areas for improvement. That noted, Employee does not dispute the IMPACT ratings in and of themselves, but rather cites that insufficient, vague and/or the lack of professional support resulted in her IMPACT scores. In this view, Employee avers that the comments and evaluations of the Principal and Assistant Principal did not align with the purpose of the IMPACT process for professional development. Further Employee averred that the evaluators failed to give due considerations of other measures of her student's success in their evaluation of her performance.

This Office has held, consistent with the rulings made by the D.C. Superior Court in *Shaibu v. District of Columbia Public Schools*[36], that "substantial evidence for a positive

[33] *Shaibu v D.C. Public Schools*, Case No. 2012 CA 003606 P (January 29, 2013). The Court held that principals enjoy near total discretion in ranking their teachers when implementing performance evaluations.
[34] During the 2022-2023 school year, Employee was evaluated in Cycles 1 and 3. During the 2023-2024 and 2024-2025 school years, Employee was evaluated in Cycles 1 and 2.
[35] Agency Brief at Tab 4.
[36] Case No. 2012 CA 003606 P (January 29, 2013).

evaluation does not establish a lack of substantial evidence for a negative evaluation." Further, the Court cited that, "it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal's] evaluation but that would support a better overall evaluation."[37] The court further noted that if the factual basis of the "Principal's evaluation were true, the evaluation was supported by substantial evidence." Additionally, it highlighted that "principals enjoy near total discretion in ranking their teachers"[38] when implementing performance evaluations." Here, I find that there is substantial evidence in the record to support the evaluations and the subsequent scores in the administration of the IMPACT process. While Employee does not agree, consistent with the findings in *Shaibu*, I find that the record supports "just cause" for her separation from service due to her "Developing" and "Minimally Effective" IMPACT scores. I also find that Employee was provided sufficient notice that she could be subject to separation for her IMPACT scores, in the IMPACT guidebook for each year, and the final IMPACT notification letters she received for each year of her IMPACT evaluations in the applicable school years.

Further, this Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[39] As performance evaluations are "subjective and individualized in nature,"[40] this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."[41] As a result, I find that Agency has shown it followed the IMPACT process as required. Accordingly, I find that Agency's decision to separate Employee from service due to her IMPACT scores should be sustained.

ORDER

Based on the foregoing, it is **ORDERED** that Agency's action of terminating Employee from service pursuant to IMPACT is hereby **UPHELD.**

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris
Senior Administrative Judge

[37] *Id.* at 6.
[38] *Id*. *Citing Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).
[39] *See. Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); *see also Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[40] *See also. American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).
[41] *See. Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | |
| EMPLOYEE[1], Employee | OEA Matter No.: 2401-0014-22R26 |
| v. | Date of Issuance: August 31, 2026 |
| D.C. DEPARTMENT OF FORENSIC SCIENCES, Agency | MICHELLE R. HARRIS, ESQ. Senior Administrative Judge |

Ryan E. Griffin, Esq., Employee Representative
Amanda Kenner, Esq., Agency Representative

## INITIAL DECISION ON REMAND

### INTRODUCTION AND PROCEDURAL HISTORY

On November 29, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting District of Columbia Department of Forensic Sciences' ("Agency") decision to separate her from her position as a Forensic Scientist pursuant to a Reduction-in-Force ("RIF"). Employee was RIF'd effective October 22, 2021. On December 6, 2021, OEA issued a Request for Agency Answer to Petition for Appeal. On December 28, 2021, Agency submitted its Motion to Dismiss Employee's Petition for Appeal stating that Employee's Petition for Appeal was untimely. This matter was assigned to the undersigned on January 19, 2022. On January 21, 2022, Employee filed an Opposition to Agency's Motion to Dismiss. On January 27, 2022, the undersigned issued an Order on Jurisdiction and Convening a Prehearing Conference noting that OEA maintained jurisdiction over this matter. A Prehearing Conference was held in this matter on February 24, 2022, via Webex.[2] After several conferences, an Evidentiary Hearing was held on March 21, 2023. The parties submitted their respective closing arguments on June 2, 2023. Thereafter, I issued an Initial Decision ("ID") on August 24, 2023, upholding Agency's decision to RIF Employee.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] On May 3, and May 19, 2022, Agency filed a Motion to Consolidate this matter with another similar matter assigned to the undersigned. This Motion is hereby DENIED. The facts of the cases do not warrant consolidation. However, for the purposes of the record regarding the RIF, the AJs assigned to these matters before this Office elected to hold a joint Evidentiary Hearing to address issues identified regarding the administration of the RIF.

Employee appealed the ID to the District of Columbia Superior Court and on December 16, 2025, the Court issued an Order and remanded the Case to OEA.[3] Specifically, D.C. Superior Court Judge Oler remanded the matter to OEA "to determine (1) whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021; (2) whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list, and (3) if there were any vacancies at DFS for which [Employee] was qualified but not given priority consideration, determine the appropriate remedy."

On December 30, 2025, I issued an Order requiring the parties to submit briefs addressing the issues identified by the D.C. Superior Court. Agency's brief was due by or before January 30, 2026, and Employee's Brief was due by or before February 27, 2026. Agency had the option to file a sur-reply brief by or before March 16, 2026. On January 15, 2026, the parties filed a Consent Motion to Extend the briefing deadline. On January 16, 2026, I issued an Order granting the Motion. Agency's brief was now due by or before February 13, 2026, Employee's brief was due by March 13, 2026, and Agency's sur-reply brief was now due by or before March 27, 2026. The parties submitted their briefs in accordance with the prescribed deadline. I have determined that an Evidentiary Hearing is not warranted. The record is now closed.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUES

(1) Whether Employee was placed on the ARPP list for priority reemployment by the RIF notice date of September 22, 2021; and (2) Whether Employee was given priority reconsideration for vacancies within the entirety of DFS during the period between the RIF Notice date and the date Employee was placed on the ARPP list; and (3) If there were any vacancies for which Employee was qualified, but not given priority consideration, OEA shall determine the appropriate remedy.

## BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[4]

[3] [*Employee*] *v. D.C. Department of Forensic Sciences.*, No. 2024-CAB-000336 (December 16, 2025).
[4] OEA Rule § 699.1.

OEA Rule § 631.2 *id.* states:

> ***For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing***. The agency shall have the burden of proof as to all other issues. (Emphasis added).

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

**Summary of Agency's Position**

Agency cites that it "acknowledges that the Employee was placed on the ARPP list on October 23, 2021, but that the only positions available within the entirety of DFS during the RIF notice period from September 22, 2021 and October 22, 2021, were Human Resource Specialist positions for which the Employee was not qualified, and thus no remedy is available."[5] Agency asserts that it "incorporates all facts and arguments made in its original brief filed on May 6, 2022."[6] Agency provides that Employee was separated from "her Career Service position at FEU on October 22, 2021 pursuant to the RIF." Agency further avers that the Initial Decision upheld the RIF and Agency's action, but the matter was remanded to OEA following the Superior Court's decision that "the record does not support any conclusion that DFS met the deadline for placing Employee of the ARPP list, or that any delay in placing the Employee on the ARPP list after the RIF notice date was harmless error."[7] Agency avers that "Employee's termination should be upheld because Employee did not qualify for any of the vacancies available during the RIF notice period, and thus any error by DFS to timely place Employee on the ARPP list was harmless."

Agency contends that Employee was placed on the ARPP list on October 23, 2021, a delayed placement that "was harmless error because there were no vacancies at DFS between September 22, 2021, and October 22, 2021 that Employee was qualified to fill."[8] Agency cites that "6 DPM §2426.3 states that [a]n employee…who has reinstatement eligibility to the Career Service and who is separated from his or her competitive level shall be eligible for priority consideration, under the agency reemployment program and the displaced employee program, for positions for which [he or she is] qualified, at grades no higher than the grade last held under a Career Appointment…or at any lower grade acceptable to employee." To this end, Agency avers that "Employee became entitled to priority reemployment consideration at DFS only for positions in which she was qualified when the RIF notice was issued on September 22, 2021."[9] Agency asserts that "OEA must determine whether there were vacancies for which [Employee] was entitled to priority consideration during the period of September 22, 2021, and October 22, 2021." Agency cites that Employee "was previously employed by FEU as a Forensic Science Technician and thus would have potentially qualified to receive priority consideration for vacancies in other agency units that employ forensic scientists…[h]owever, the only vacant positions that existed at DFS between September 22, 2021, and October 22, 2021, were Level 13 Human Resource Specialist positions in the Human Resources Department."[10] Agency maintains that Employee "was not

[5] Agency's Brief in Response to the Office of Employee Appeals Order at Page 1 (February 12, 2026).
[6] *Id*. at Page 2.
[7] *Id*.
[8] *Id*. at Pag 3.
[9] *Id*.
[10] *Id.*

qualified to fill a Human Resource Specialist role, based on her CV and lack of experience in human resources."[11]

Agency further asserts that it "made the determination to eliminate the FEU and all positions and RIF 11 employees." Agency avers that it "evaluated employees impacted by the RIF for other vacancies with the agency and found that no positions were suitable."[12] Agency notes that "pursuant to rules and regulations regarding agency RIF, all employees were then added to the retention register." Agency avers that "any delay in placing Employee on the ARPP list on behalf of the agency was harmless error, because Employee did not qualify for any vacancies at DFS between the RIF notice date and effective date."[13] Agency argues that "because Employee did not qualify for the positions, she was not entitled to receive priority reconsideration." Agency asserts that "any procedural error in affording Employee priority consideration was harmless error because Employee was not qualified to fill the open positions."[14]

Agency further argues that it was under "no obligation to give Employee priority reemployment consideration for positions between August 10, 2021, to September 21, 2021."[15] Agency avers that in accordance with "Section 8(d) of E-DP Instruction No. 8-69, 9-36, &36-11, [e]mployees who are issued a RIF letter are to be given priority consideration for all agency vacancies *that are open during the RIF notice period* (before separation.)" (Emphasis added in submission). Agency asserts that the "Superior Court subsequently ordered OEA to determine whether there were vacancies within DFS for which the [Employee] was entitled to priority consideration during the period of September 22, 201, and October 22, 2021."[16] Agency argues that "Employee now attempts to expand the scope of both the Opinion and OEA Order by contending that she was entitled to priority reemployment consideration from the moment that DFS Interim Director Crispino proposed the RIF to the Mayor's Office."[17] Agency contends that "this is outside the scope of the issue on remand, but it is inconsistent with the arguments that Employee has made since filing her Petition for Appeal in November 2021…[i]t is also inconceivable that the agency would be able to give priority reemployment consideration prior to knowing whether or not the RIF was approved."[18] Agency notes that Employee attempts to expand the scope through her claim that DFS "hired two forensic scientist and a laboratory coordinator on September 13, 2021." Agency also notes that Employee claims that it hired "at least four ore forensic scientist between September 27, 2021, and October 25, 2021."[19] Agency cites that Employee references the "Public Body Employee Information as of December 31, 2021, as posted on the DCHR website" to support her claim.[20] Agency avers that this list "does not reflect the job openings that existed at DFS during the RIF notice period -or even the time since August 10, 2021…[t]he document merely lists the date that a DFS employee officially started their position,

[11] *Id.*

[12] *Id.*
[13] *Id.*
[14] *Id*. at Page 4.
[15] Agency's Sur-Reply Brief at Page 1 (March 27, 2026).
[16] *Id*. at Page 2.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

having completed the necessary onboarding and background checks, which may take months to complete."[21]

Agency also asserts that it has met the requirements regarding Employee's claim that it has the burden to "demonstrate with reasonable certainty (e.g. through contemporaneous human resources records) that none of these vacancies were open during the pertinent period despite the fact that all of these new employees commenced their employment around this time."[22] Agency cites that in its Exhibit 2, "the date that each one of these positions was posted and open for application" was provided. Further, Agency asserts that this chart reflects that "the latest opening of a forensic scientist position was August 6, 2021, several days earlier than the earliest possible date that Employee contends should be considered."[23] Agency avers that it provided the positions that were open during the RIF period. It further cites that a Declaration from DFS Human Resources Director Quiyana Hall, explains how each of the documents were created. Agency reiterates that "the only positions that were open at DFS over this period were for Human Resource Specialists." Agency also asserts that "although it did not believe that it was under any legal obligation to give affected FEU employees priority reemployment consideration because the lesser competitive area no longer existed, [it] still conducted a review of all affected employees with agency openings."[24]

Agency argues that Employee's new claim that "she was placed on the DFS ARPP list on November 15, 2021, as opposed to October 23, 2021," is incorrect. Agency avers that the Superior Court's Opinion cites that "[Employee's] ARPP registration sheet indicates that her date of registration onto the ARPP list was October 23, 2021, more than one month after DFS issued the RIF notice."[25] Agency asserts that Employee incorrectly relies upon the ARPP/DEP Registration Sheet and that the ARPP is "distinguished from the Displaced Employee Program (DEP), which is managed by DCHR, because ARPP is maintained by the terminating agency." Agency cites that "Employee now contends that she was not placed on the DFS ARPP list until November 15, 2021, because DCHR Specialist Kelli Johnson did not sign her ARPP/DEP Registration Sheet until November 15, 2021." Agency iterates that "this is not evidence that this is the date that the Employee was placed on DFS' ARPP list, as the list is maintained by the Agency, not DCHR."[26]

Agency reiterates that Employee was not eligible for any vacancies so its delay in placing her on the ARPP constitutes harmless error. Agency asserts that "D.C. Mun Reg. 6-B §2405.7 provides that 'to be harmful, an error shall be of such magnitude that in its absence the employee would not have been released from his or her competitive level.'" Agency disagrees with Employee's contention that the delayed placement was not harmless "because DFS -meaning that DFS filled vacancies-two laboratory personnel and two forensic scientists during a period that precedes both the RIF approval date and RIF notice date." Agency reiterates that "the forensic scientists listings that Employee identified from the Public Body of Information reflected the *start dates* of already hired applicants, whose positions were posted months earlier; not the dates for which those positions were open." (Emphasis added in original). Agency maintains that the only

[21] *Id.*
[22] *Id.*
[23] *Id*. at Pages 2-3, citing Exhibit 2.
[24] I*d*. at Page citing to Exhibit 3.
[25] *Id*. at Page 3.
[26] *Id*. at Page4.

vacancies available during the RIF period were for Human Resource specialists.[27] Agency also disagrees with Employee's claim that it did not consider "transferable skills, resume, previous job history, educational background, certifications, or professional memberships." Agency avers that pursuant to DFS RIF procedures applicable at that time, all DFS employees:

> "Should update their CVs on a continual basis to reflect training events that occur and submit them…to their respective unit folder on the Public Quality Drive and immediate supervisor. At minimum, the employee shall annually update their CV and submit it to their respective unit folder on the Public Quality Drive and their immediate supervisor by January 15 of year. DOM14 at 2."[28]

Agency avers that Employee "maintained a detailed CV on the DFS Public Drive that summarized her education, training, and experience until the time of termination." Agency further asserts that pursuant to "DFS policy, it was Employee's responsibility to keep those record updated on the DFS Public Drive, updating her CV at least once annually."[29] Agency maintains that Employee's CV "does not included any human resource experience."[30] Agency maintains that its delayed placement of Employee of the ARPP was harmless and disagrees with Employee's contention that she "is entitled to make-whole relief because DFS' procedural errors were not harmless" Agency asserts that D.C. Mun. Reg 6-B §2405.7 provides that: "The retroactive reinstatement of a person who was separated by a reduction in force under this chapter may only be made on the basis of a finding of harmful error…To be harmful, an error shall be of such a magnitude that in its absence the employee would not have been released from his or her competitive level."[31]

Agency avers that its actions complied with the applicable regulations. Agency maintains that because there were no vacancies for which Employee was suited, its delayed placement would not have otherwise prevented her separation from DFS. Agency asserts that Employee's claim also "ignores the fact that Employee *was* afforded consideration for agency-wide vacancies, as DFS asserted that it reviewed each affected employee's qualifications to open vacancies…" (Emphasis in original). Agency further argues that "Employee's conclusion that she is entitled to make-whole relief assumes that priority consideration equates to automatic reemployment."[32] Agency notes that "employees on the ARPP and DEP registers must still compete with other public and internal qualified candidates; and are not guaranteed reemployment within an agency, no matter the occupational series and grade of the position."[33] Agency maintains that the delayed placement on the ARPP list does not meet the threshold for a finding of harmful error, because "it does not establish that but-for Employee's delayed placement on the ARPP list, she would have remained employed at DFS." As such, Agency avers that its delayed placement was harmless error and "there is no further relief that DFS must provide under law."[34]

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[27] *Id*.
[28] *Id*. at Page 5.
[29] *Id.* at Page 5.
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id*. at Page 6.

**Summary of Employee's Position**

Employee asserts that Agency "now concedes that it failed to place [her] on the priority reemployment list." Employee cites that "DFS cannot carry its burden of proving harmless error because it cannot show that no vacancies existed with DFS during the relevant period."[35] Employee maintains that she was "harmed by the Agency's failings, and appropriate make-whole relief is therefore warranted."[36] Employee cites that in "2021, DFS lost its accreditation due to management failures and structural problems." Further, Employee asserts that "on August 10, 2021, DFS Interim Director Crispino sent the Mayor's Office a proposed reduction in force (RIF) order, proposing to eliminate [Employee's] position and those of nine of her Firearms Exam Unit colleagues."[37] Employee also notes that on "September 9, 2021, the D.C. Department of Human Resources (DCHR) approved DFS's Proposed RIF Order…and on September 22, 2021, DFS issued [Employee's] RIF notice. Employee avers that while this was happening, "Agency was continuously hiring – before, during, and after the RIF in 2021."[38] Employee contends that "in the period when DFS submitted its RIF proposal and when it notified [her], the Agency filled at least four vacancies, including at least two forensic scientist positions."[39] Employee argues that Agency continued to fill positions after she received notification that her position was being eliminated.[40] Employee cites that she was terminated effective October 22, 2021 and was not placed on the Agency Reemployment Priority Program ("ARPP") list until after she was separated from service.[41] Employee avers that the HR Specialist who filled out the form for the ARPP and DEP list completed it on November 15, 2021, while backdating it to October 23, 2021.[42]

Employee asserts that Agency has the burden to prove that it complied with all RIF procedures and "any other defenses or arguments it may raise."[43] Employee further avers that "Agency's burden of proof therefore applies with equal force to its assertion of 'harmless error', which requires an affirmative showing that there were 'no vacancies' at DFS through the RIF notice period."[44] Employee cites that Agency "now asserts that she "was placed on the ARPP list on October 23, 2021." Employee contends that this was "the day *after* [her] employment ended, and more than a month after she received her RIF notice on September 22, 2021."[45] (Emphasis in original). Employee contends that "DFS's list placement obligation arose even earlier (when DFS first determined in August 2021 that she was slated to be RIFed), and that DFS's claims that she was placed on the list on October 23, 2021, are inaccurate (since the record shows that this did not actually occur until mid-November 2021)."[46] Employee argues that she was not given priority consideration for any vacancies because "the mechanism for receiving priority consideration is

[35] Employee's Brief at Page 1. (March 13, 2026).
[36] *Id.*
[37] *Id. at* Page 2.
[38] *Id*.
[39] *Id.* at Pages 2-3. Employee identifies the name of those employees in here brief. For the purposes of this decision, their names will only be identified with their first and last initials. Employee asserted that the two Forensic Scientists hired were A.G. and R.Z.
[40] *Id.* at Page 3. Employee avers that K.W. started on September 27, 2021, K.B and N.W. started on October 12, 2021, and T.W. and E.V. started on October 25, 2021.
[41] *Id*. at Page 3.
[42] *Id.*
[43] *Id*. at Page 5.
[44] *Id*.
[45] *Id*. at Page 6
[46] *Id*.

placement on the ARPP list, which DFS failed to do."[47] Employee further avers that Agency "makes no claim that it actually provided [her] with priority consideration during this period, nor does it point to any record evidence that would support such a claim."[48] Employee argues that DFS cannot claim harmless error because "the available evidence shows that vacancies did arise during the period [Employee] should have been receiving priority reconsideration."[49]

Employee contends that in order for Agency to meet a burden of proof for harmless error in this matter, "it would need to show that no vacancies existed at agency during the RIF notice period before Employee was placed on the list."[50] Employee further argues that the date for consideration for vacancies is August 10, 2021, through November 15, 2021. Employee asserts that because of the DPM §2427.5, Agency's obligations are "broader" in the context of the determination of when the RIF would impact the employee. To this end, Employee asserts that "DFS must have determined that [Employee] would be adversely affected by the reduction in force at the latest by August 10, 2021, when Interim Director Crispino transmitted his RIF authorization Memo proposing elimination of the FEU to the Mayor's Office."[51] Employee avers that the Superior Court "has already correctly recognized that August 10, 2021, rather than September 22, 2021, is the appropriate start date for the priority consideration period."[52] Employee also asserts that "DFS's contention regarding the lack of non-HR vacancies is directly contradicted by available evidence, while its contention about [Employee's] supposed lack of HR qualifications is entirely unsupported."[53] Employee asserts that between August 10, 2021, and November 15, 2021, Agency filled vacancies for Forensic Scientists, which was her position. Employee also provides that there is "publicly available hiring data showing that additional positions were filled during this time."[54] Employee avers that "in total, the available evidence suggests that at least nine started in forensic science-related positions during the period [she] should have been receiving priority consideration."[55]

Employee also argues that Agency "does not even acknowledge, much less address, any of this evidence…[i]nstead, it merely asserts that the 'only vacant positions that existed at DFS between September 22, 2021, and October, 22, 2021, were level 13 Human Resource Specialist positions'".[56] Employee cites that Agency only provides an "undated, unlabeled, and unsigned spreadsheet or chart attached to its brief, which purports to show that five Human Resources vacancies arose in October 2021."[57] Employee further contends that "to the extent that Agency Attachment 2 can be considered "evidence" at all, it at most suggests that human resources vacancies arose during the pertinent period."[58] Employee provides that this "carries absolutely no probative value on the relevant question of whether any other non-human resources vacancies

[47] I*d*. citing to DPM §2427.5 Employee asserts that this provision provides that employees "shall be entered automatically on the reemployment priority list immediately after it has been determined that the employee is to be adversely affected by the reduction in force and not later than the issuance of the notice of the reduction in force."
[48] *Id*. at Page 7.
[49] *Id.* at Page 8.
[50] *Id*.
[51] *Id*. at Page 9.
[52] *Id.* citing to *Marso Super. Ct. Decision.*
[53] *Id.* at Page 10.
[54] *Id.*
[55] *Id.* at Page 11.
[56] *Id.*
[57] *Id.*
[58] *Id.* at Page 12.

arose during this time because there is nothing in either the administrative record or the attachment to even remotely suggest that the report/chart was generated/compiled in a manner that would enable it to speak to this question."[59] Employee also avers that DFS's claims that she was not qualified for HR positions to be "entirely speculative, since its fails to identify any evidence as to what qualifications were actually required."[60] Employee asserts that Agency has not provided what the educational requirements were, or what HR experience was required for those positions. As such, Employee maintains that Agency's harmless error argument must fail.

Employee avers that because Agency's harmless error claim is insufficient, "the presumptive remedy for an unlawfully conducted RIF is make-whole relief including reinstatement and backpay."[61] Employee argues that if DFS "had complied with the law, [she] would have had, at minimum, the opportunity to be considered on a priority basis for the numerous forensic science-related vacancies that occurred."[62] Employee further contends that "given her excellent performance record, and because there is no evidence that she was unqualified for any of these positions, the priority consideration process, if properly followed, would have prioritized her placement above all of the outside candidates who were actually hired, allowing [Employee] to maintain her employment."[63] Employee cites that the relief is straightforward and that "OEA has consistently recognized, the appropriate way to remedy a termination resulting from an improperly executed RIF is to reverse the termination, offer the employee reinstatement to their prior position or a comparable one, and aware fully backpay and back-benefits from the date of separation, less appropriate deductions for interim earnings."[64] As such, Employee maintains that Agency committed harmful error in its delay to place her on the AARP list and that this failure is only remedied by make-whole relief and the reversal of the termination in this matter.

## ANALYSIS[65]

The RIF Authorization Memo (Administrative Order No. DFS-2021-01) dated August 10, 2021, stated that the RIF was conducted for "a lack of work due to the loss of accreditation as required pursuant to D.C. Official Code § 5-1501(d)(1)." On December 16, 2025, the D.C. Superior Court Judge remanded the matter to OEA "to determine (1) whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021; (2) whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list, and (3) if there were any vacancies at DFS for which [Employee] was qualified but not given priority consideration, determine the appropriate remedy."

1) **Whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021.**

[59] *Id.*
[60] *Id.* at Page 13.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id*. at Page 14.
[65] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

Here, Agency has conceded, and both parties agree that DFS did not place Employee on the ARPP list for priority reemployment consideration by September 22, 2021. Agency asserted that it placed Employee on the ARPP list on October 23, 2021, almost a month after the relevant September 22, 2021, date. Consequently, I find that Employee was not placed on the ARPP list for priority reemployment consideration by September 22, 2021.

**2) Whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list.**

Because Agency asserted it did not place Employee on the ARPP list on September 22, 2021, I find that Employee was not given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and October 23, 2021, the date Employee was placed on the ARPP list. In consideration of this, I find that priority reconsideration for Employee for any vacancies that existed at DFS between September 22, 2021, and October 23, 2021, could not have reasonably occurred without Employee being on the ARPP list during that period. This noted, the undersigned finds that Employee's contention that her placement on the ARPP list should have occurred by August 10, 2021, to be misguided. Here, the RIF notice was dated as of September 22, 2021. I find that until that timeframe, Agency had no obligation to place employees on the ARPP list, as the RIF may not have been otherwise approved or administered until the notice date. While Employee cites to DPM §2427.5, to support the contention that August 10, 2021, the date the RIF Authorization Memo was submitted to Mayor's Office for approval should be considered as the beginning of the relevant RIF period. I find that the record does not support that date. Further, the Superior Court noted in its Remand to the OEA that the date timeframe was September 22, 2021, through October 23, 2021. As such, the undersigned finds that to be the applicable timeframe for consideration in this matter.

**3) If there were any vacancies at DFS for which Employee was qualified, but not given priority consideration, determine the appropriate remedy.**

Here, Agency argued that it had only five (5) human resources vacancies during the relevant period of September 22, 2021, to October 23, 2021, all of which Employee did not qualify for.[66] Therefore, Agency's lack of priority reemployment consideration for these vacancies was harmless error. Agency asserts that even though it did not place Employee on the ARPP list until October 23, 2021, DFS "still conducted a review of all affected employees with agency openings."[67]Agency maintained that its failure to timely place Employee on the ARPP list was harmless error, because Employee did not qualify for any of the human resources vacancies, and as such, was not entitled to priority consideration.

Employee on the other hand asserted that based on publicly available hiring data, nine (9) forensic science related positions were available at Agency between August 10, 2021, through November 15, 2021. Employee asserts that because the ARPP/DEP list was not signed until November 15, 2021, then that timeframe should be considered. Agency provides a declaration

[66] *See*. Agency's Brief at Attachment 2. (February 13, 2026).
[67] Agency sur-reply at Page 3. (March 26, 2026).

from its Director of Human Resources, outlining the data available. Therein, it shows that the positions for which Employee references were vacancies that were filled in response to job postings that occurred prior to the RIF period.[68] A review of the record and the dates provided therein, corroborates the Agency's claims that these forensic scientist positions were not vacant during the relevant period of September 22, 2021, to October 23, 2021. Employee avers that Agency's attachments and exhibits do not support DFS's claims regarding the vacancies and cites that the evidence is probative to meet the Agency's burden of proof that its delay in placing Employee on the ARPP list was harmless error. Further, Employee argues that Agency's claim that Employee was not qualified for the HR vacancies was "speculative" as there is no evidence to suggest that it considered her experience and background, nor did Agency provide the requirements and requisite education for the HR specialist vacancies.

In consideration of the record, I find there were five (5) vacancies at Agency between the period of September 22, 2021, to October 22, 2021, and all those positions were Human Resource Specialist positions. Further, these vacancies were posted by DFS in a time period between October 7, 2021, and October 20, 2021. Agency avers that Employee "maintained a detailed CV on the DFS Public Drive that summarized her education, training, and experience until the time of termination." Agency further asserted that pursuant to "DFS policy, it was Employee's responsibility to keep those records updated on the DFS Public Drive, updating her CV at least once annually."[69] Agency maintains that Employee's CV "does not include any human resource experience."[70] As a result, it was determined that Employee was not qualified to fill the vacancies available at DFS during the RIF notice period. Employee does not cite any human resource related experience. Wherefore, I conclude that while there were vacancies at Agency during the relevant period, they were HR related positions that Employee did not qualify for. I also find that because Employee did not qualify for these vacancies, she was not entitled to priority reemployment consideration and Agency's delay to place Employee on the ARPP list constitutes harmless error.[71] Accordingly, I find the facts in this matter warrant the invocation of a harmless error review.

The OEA Board in *Kyle Quamina v. Department of Youth Rehabilitation Services,*[72] addressed this issue of harmless error. It noted that "… an agency's violation of a statutory procedural requirement does not necessarily invalidate the agency's adverse action. Based upon the aforementioned facts in this matter, I find that a review of harmless error is warranted. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, the OEA Board has applied a two-prong analysis: (1) whether Agency's error caused substantial harm or prejudice to Employee's rights; ***and*** (2) whether such error significantly affected Agency's final decision to suspend Employee."[73] (Emphasis added). In applying this two-prong analysis to the instant matter, the undersigned finds that Agency's failure to place Employee on the ARPP list during the relevant time did not cause substantial harm or prejudice to Employee.

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[68] *Id*. at Exhibit 1 and 2.
[69] *Id*. at Page 5.
[70] *Id.*
[71] OEA Rule 631.3 provides that: "[n]otwithstanding any other provisions of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take action."
[72] OEA Matter No. 1601-0055-17, Opinion and Order on Petition for Review (April 19, 2019).
[73] *Id*.

Further, the delay in the placement would not have otherwise prevented Employee's separation from service because there were no available vacancies at DFS for which she was qualified. Consequently, I find that Agency's delay in placing Employee on the ARPP list during the RIF notice period did not significantly affect Agency's decision to RIF Employee.

Additionally, the D.C. Superior Court in *Richard McCraw v. Department of Forensic Sciences*[74], held that:

> "even assuming that Petitioner could identify a defect in the timing or mechanics of ARPP/DEP processing, Petitioner has not demonstrated harmful error. See 6-B DCMR § 2405.7. The priority-reemployment provisions intend to give displaced employees preferential consideration for vacancies, but the record supports OEA's finding that DFS had no vacancies appropriate for affected FEU employees at the time of the RIF. Without evidence of an available position that Petitioner would have obtained during the notice period, the Court cannot conclude that any asserted ARPP/DEP error was outcome-determinative. Further, Petitioner argues that DFS was prohibited from filling positions with new appointees when qualified persons were available on the reemployment priority list. See DPM § 2428.1. OEA found, and the record supports, that the relevant competitive area for purposes of this RIF was the FEU and that FEU positions were abolished. Petitioner has not identified a career service position within that competitive area that DFS filled in a manner prohibited by § 2428.1 during the relevant period. Accordingly, Petitioner has not demonstrated a legal violation warranting reversal or remand."

In review of the totality of the record and in consideration of the Superior Court's finding in *McGraw v. Department of Forensic Sciences*, I find that Agency's delay in placing Employee on the ARPP list was harmless error as this delay did not cause substantial harm or prejudice to Employee's rights and did not significantly affect Agency's final decision to RIF Employee. I further find that Agency's action of separating Employee from service in accordance with the instant RIF should be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of separating Employee pursuant to a RIF is **UPHELD**.

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris, Esq.
Senior Administrative Judge

[74] No. 2024-CAB-000344 (April 17, 2026). It should be noted that Employee and the employee in *McCraw* were similarly situated. They both were subject to separation pursuant to the same RIF authorization. Additionally, the employee in *McGraw* and Employee held the same positions with Agency, this RIF occurred at the same time, and they were both in the same competitive area and competitive level.

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | |
| EMPLOYEE[1], Employee | OEA Matter No.: 2401-0016-22R26 |
| v. | Date of Issuance: August 6, 2026 |
| D.C. DEPARTMENT OF FORENSIC SCIENCES, Agency | MONICA DOHNJI, ESQ. Senior Administrative Judge |

Ryan Griffin, Esq., Employee Representative
Renee Mims, Esq., Agency Representative

## INITIAL DECISION ON REMAND

### INTRODUCTION AND PROCEDURAL HISTORY

On November 29, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting District of Columbia Department of Forensic Sciences' ("Agency" or "DFS") decision to separate him from his position as a Forensic Scientist pursuant to a Reduction-in-Force ("RIF"). Employee was RIF'd effective October 22, 2021. On December 6, 2021, OEA issued a Request for Agency Answer to Petition for Appeal. On December 28, 2021, Agency submitted its Motion to Dismiss Employee's Petition for Appeal stating that Employee's Petition for Appeal was untimely. This matter was assigned to the undersigned on January 19, 2022. On January 21, 2022, Employee filed an Opposition to Agency's Motion to Dismiss. On January 27, 2022, the undersigned issued an Order on Jurisdiction and Convening a Prehearing Conference noting that OEA maintained jurisdiction over this matter. A Prehearing Conference was held on February 24, 2022, via WebEx. Subsequently, I issued an order requiring the parties to submit written briefs. Both parties submitted their respective briefs.[2] After several conferences, an Evidentiary Hearing was held on March 21, 2023. The parties

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

[2] On May 3, and May 19, 2022, Agency filed a Motion to Consolidate this matter with another similar matter assigned to the undersigned. This Motion was DENIED. The facts of the cases did not warrant consolidation. However, for the purposes of the record regarding the RIF, the AJs assigned to these matters before this Office elected to hold a joint Evidentiary Hearing to address issues identified regarding the administration of the RIF.

submitted their respective written closing arguments on June 2, 2023. Thereafter, I issued an Initial Decision ("ID") on August 23, 2023, upholding Agency's decision to RIF Employee.

Employee appealed the ID to the District of Columbia Superior Court and on October 20, 2025, this Court issued a Memorandum Opinion and Order granting Employee's Petition for Review in Part, and remanded the Case to OEA.[3] Specifically, the D.C. Superior Court Judge remanded the matter to OEA "to determine (1) whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021; (2) whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list, and (3) if there were any vacancies at DFS for which [Employee] was qualified but not given priority consideration, determine the appropriate remedy." Accordingly, on November 3, 2025, I issued an Order requiring the parties to submit written briefs addressing the above-mentioned issues. Both parties submitted their respective briefs as required. Upon further review of the record, the undersigned issued an Order for Supplemental Documentation on March 17, 2026, requiring Agency to submit additional documentation. On March 30, 2026, Agency filed a Motion for Clarification of OEA's Order for Supplemental Documentation. On March 31, 2026, the undersigned issued an Order granting Agency's Motion for Clarification. Agency's brief was due by April 24, 2026, and Employee had the option to submit a sur-reply brief by May 15, 2026. Both parties have filed their respective briefs. The record is now closed.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUE

1) Whether Employee was placed on the ARPP list for priority reemployment consideration by September 22, 2021.
2) Whether Employee was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list. And
3) If there were any vacancies at DFS for which Employee was qualified but not given priority consideration, what is the appropriate remedy.

## BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

[3] *Employee v. D.C. Office of Employee Appeals, et. al.*, No. 2024-CAB-337 (October 20, 2025).

> That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW[4]

D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF. On August 10, 2021, Administrative Order No. DFS-2021-01 authorizing a RIF pursuant to D.C. Code § 1-624.02; Chapter 24, Reduction-In-Force of Title 6 of the District of Columbia Municipal Regulations ("DCMR"); and Mayor's Order 2008-91, dated June 26, 2008, was issued. The RIF Authorization Memo ("Memo") stated that the RIF was conducted for "a lack of work due to the loss of accreditation as required pursuant to D.C. Official Code § 5-1501.06(d)(1)." Following an investigation into an alleged misconduct in the Firearm Examination Unit ("FEU"), Agency's Forensic accreditation was suspended effective April 12, 2021. The entire Firearms Examination Unit was abolished because of the loss of accreditation. Employee was a Forensic Science Technician in the Firearms Examination Unit. Employee is a member of the National Association of Government Employees ("NAGE") which has a Collective Bargaining Agreement with Agency. Agency issued a written RIF Notice on September 15, 2021, to Employee, with an effective RIF date of October 22, 2021. The D.C. Superior Court Judge remanded this matter to OEA "to determine (1) whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021; (2) whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list, and (3) if there were any vacancies at DFS for which [Employee] was qualified but not given priority consideration, [and] determine the appropriate remedy."

**Summary of Agency's Position**

Agency concedes that it placed Employee on the ARPP list on October 23, 2021, but asserts that the delayed placement was harmless error. Agency explains that there were no vacancies at Agency between September 22, 2021, and October 22, 2021, that Employee was qualified to fill.[5] Agency avers that Employee became entitled for priority reemployment considerations at Agency for positions he qualified for when the RIF notice was issued on September 21, 2021. Agency argues that Employee was only entitled to receive priority consideration for any vacancies that existed at Agency during the RIF notice period that he was

[4] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See*. *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[5] Agency's Brief (December 8, 2025).

qualified for. Agency maintains that as a Forensic Science Technician in the Firearms Examination Unit ("FEU"), Employee would have potentially qualified to receive priority reemployment consideration for vacancies in other Agency units that employ Forensic Scientists. Nonetheless, Agency asserts that there were no vacancies at Agency for which Employee qualified between September 22, 2021, to October 22, 2021. Agency explains that the only positions available at DFS during the relevant period were for human resources specialists in the Human Resources Department. Agency cites that although individuals were hired during the relevant time period, no vacancies existed during this time for which Employee could be considered. As such, the delayed placement on the ARPP list was harmless error given the determination that there were no vacancies for which Employee qualified and entitled to priority reemployment consideration during the RIF notice period.[6]

Additionally, Agency argues that Employee's placement on the ARPP list on October 23, 2021, is evidence that he was given priority reemployment consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date Employee was placed on the ARPP list.[7]

Agency also argues that because no vacancies existed across DFS that Employee was qualified to fill during the relevant period of September 22, 2021, to October 23, 2021, the delay to place Employee on the ARPP list was harmless. Agency contends that pursuant to Departmental Operations Manuals 14 ("DOM14"), it was Employee's responsibility to maintain a detailed CV on the DFS Public Drive that summarized his education, training and experience until the time of his termination. Agency avers that in reviewing Employee's resume, it did not denote any human resources experience as described in the Human Resources Specialists positions available during the relevant period. Therefore, Agency asserts that Employee was not qualified to fill the vacancies available at DFS during the RIF notice period due to his lack of human resources management experience and specialization.[8] Regarding Employee's assertion that he applied for a Fusion Analyst position at Homeland Security and Emergency Management Agency ("HSEMA") and he was not hired for the position or provided a written justification; Agency contends that DFS only has control over its own agency and not over any other District or non-District agency.[9]

Agency further asserts that Employee was given priority reemployment consideration for any vacancies that arose before and immediately after he was terminated for which he was qualified, and he was found ineligible to fill such vacancies due to his lack of qualifications. Agency reiterates that when it represented that there were no vacancies, it implied that there were no vacancies for which Employee qualified. Agency concedes that it did not place Employee on the ARPP during the relevant period but explains that this was harmless error as there were no available vacancies during the relevant timeframe for which Employee was qualified. Agency cites that its delay in placing Employee on the ARPP list during the relevant timeframe did not

[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] *Id*.

cause substantial harm or prejudice to Employee's rights or affect Agency's decision to terminate Employee.[10]

Agency argues that only HR vacancies existed during the relevant timeframe, which Employee was not qualified to fill. Agency explains that the point of contention is not whether individuals were hired, but rather, whether vacancies existed for which Employee should have received priority consideration for during the relevant timeframe. Agency argues that the hiring data is not prove that vacancies existed during the relevant period. Agency asserts that Employee's argument "erroneously conflates filled positions with vacancies and fails to account for the windows between posting vacancies, conducting interviews, performing background checks and other preliminary steps that occur prior to hiring employees, underestimating how long the entire process can take between posting and filling a position." Agency asserts that Employee is not entitled to a make-whole relief as it has met its burden of proving harmless error and Employee has already received all the relief that he could be entitled to and there's no further relief that Agency must provide or can provide by law.[11]

**Summary of Employee's Position**

Employee argues that Agency has conceded that it did not place him on the ARPP during the relevant timeframe of September 22, 2021, to October 23, 2021. Employee avers that the only disputed question on remand was whether Employee was prejudiced by Agency's failure to place him on the ARPP list during the relevant timeframe or whether it was harmless error. Employee states that Agency cannot carry its burden of harmless error because it cannot prove that no vacancies existed within DFS during the relevant period. Employee asserts that publicly available hiring data and Agency's own admissions show that Agency continued to hire forensic scientists during the relevant period. Employee cites that he was well qualified for these positions, thus, an appropriate make-whole relief is warranted.[12]

Employee asserts that Agency placed him on the ARPP list on November 15, 2021, nearly a month after his termination.[13] Employee also cites that Agency conceded that it did not provide him priority consideration for any vacancies that existed prior to his termination. Employee contends that there were numerous vacancies at Agency during the time he should have been on the ARPP list from August 10, 2021, to November 15, 2021. Employee asserts that Agency filled positions during this period; to include at least six (6) Forensic Scientist positions and he did not receive priority consideration.[14] Employee avers that he is entitled to 'make-whole' relief, to include reinstatement and back pay because Agency's failure to follow RIF procedures were anything but harmful. Employee cites that if Agency had followed the RIF procedures, he would have at least had the opportunity to be considered on a priority basis for the numerous vacancies at Agency.[15]

[10] Agency's Reply Brief in Response to Brief of Employee on Remand to OEA (January 21, 2026).
[11] *Id.*
[12] Brief of Employee on Remand to OEA (January 9, 2026).
[13] *Id*.
[14] *Id*.
[15] *Id*.

Employee avers that because Agency now concedes that at least some vacancies did arise somewhere in DFS during the relevant period, Agency has failed to pass the harmless error test as articulated by the D.C. Superior Court and this alone should be sufficient to defeat Agency's harmless error defense. Employee asserts that he qualified for the forensic scientist positions that were available at Agency. Employee cites that had Agency complied with the law, he would have at the very minimum had the opportunity to be considered on a priority basis for the numerous vacancies that occurred. He notes that given his excellent performance record and the lack of evidence that he was not qualified for the vacancies, the priority consideration process would have prioritized his placement above all the outside candidates who were hired for the forensic scientist positions, allowing Employee to maintain his employment, which is what the RIF regulation was designed to do. Employee states that the entire process was irredeemably flawed and he was wrongfully terminated as a result. As such, Employee requests that this Office reverse his termination, reinstate him to his prior position of record or a comparable position, and award him full back pay and benefits.[16]

Employee asserts that Agency provided documentation stating that seven (7) forensic scientist positions were available at Agency from June 17, 2021, to August 6, 2021, however, Agency failed to indicate the dates for which the hiring decisions were made or offers extended for these positions. Employee contends that Agency's Exhibit 3 is insufficient to determine whether the identified forensic scientist vacancies remained unfilled into the RIF period. Employee cites that the 'Posting Closed' information in Agency's Exhibit 3 is an irrelevant data point as a vacancy continues to 'exist' or be 'available' until it is filled.[17]

Employee also asserts that Agency also produced a list of five (5) HR vacancies for the period of September 22, 2021, to October 23, 2021, but the record is not clear as to whether Agency's query only captured vacancies with a posting date falling within the search period or whether it captured vacancies that were posted prior to September 22, 2021, but remained opened beyond that date. Employee argues that Agency's supplemental documentation is insufficient to carry Agency's burden of proof as Agency's Exhibit 2 is insufficient to demonstrate that no previously opened vacancies extended into the RIF period.[18]

**ANALYSIS**

The RIF Authorization Memo (Administrative Order No. DFS-2021-01) dated August 10, 2021, stated that the RIF was conducted for "a lack of work due to the loss of accreditation as required pursuant to D.C. Official Code § 5-1501(d)(1)." On October 20, 2025, the D.C. Superior Court Judge remanded the matter to OEA "to determine (1) whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021; (2) whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list, and (3) if there were any vacancies at DFS for which [Employee] was qualified but not given priority consideration, [and to] determine the appropriate remedy."

[16] *Id.*
[17] *Id.*
[18] *Id.*

1) **Whether [Employee] was placed on the ARPP list for priority reemployment consideration by September 22, 2021.**

Here, Agency has conceded that it did not place Employee on the ARPP list for priority reemployment consideration by September 22, 2021. Agency asserted that it placed Employee on the ARPP list on October 23, 2021, almost a month after the relevant September 22, 2021, date. Therefore, I conclude that Employee was not placed on the ARPP list for priority reemployment consideration by September 22, 2021.

2) **Whether [Employee] was given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and the date [Employee] was placed on the ARPP list.**

Because Agency asserted it did not place Employee on the ARPP list on September 22, 2021, I find that Employee was not given priority consideration for any vacancies that existed at DFS during the RIF notice period between September 22, 2021, and October 23, 2021, the date Employee was placed on the ARPP list. Accordingly, I conclude that it would be impossible to provide Employee with priority consideration for vacancies that existed at DFS between September 22, 2021, and October 23, 2021, without Employee being on the ARPP list during that period.

3) **If there were any vacancies at DFS for which Employee was qualified, but not given priority consideration, determine the appropriate remedy.**

Here, Agency argued that it had only five (5) human resources vacancies during the relevant period of September 22, 2021, to October 23, 2021, all of which Employee did not qualify for. Therefore, Agency's lack of priority reemployment consideration for these vacancies was harmless error. Agency contended that had Employee been afforded priority reemployment considerations for the human resources positions that were open at Agency during the RIF notice period, he would have been disqualified because of his lack of qualifications and experience. Agency noted that Employee is not entitled to reinstatement at Agency or reconsideration for a position in which he did not qualify, and that priority reemployment consideration does not equate to automatic reemployment. Therefore, Agency maintained that its failure to timely place Employee on the ARPP list was harmless error, because Employee did not qualify for any of the human resources vacancies, and as such, was not entitled to priority consideration.

Employee on the other hand asserted that based on publicly available hiring data, Agency filled several positions, including at least six (6) forensic scientist positions that he qualified for. Employee further asserted that Agency's submitted documentation, specifically Agency's Exhibit 3, failed to indicate the dates for which the hiring decisions were made or offers extended for these forensic scientist positions. Pursuant to Agency's Exhibit 3 as attached to its Supplemental Brief submitted on April 21, 2026, there were seven (7) forensic scientist vacancies at Agency between the period of May 24, 2021, and August 6, 2021. While Agency does not dispute Employee's assertion that forensic scientist positions which he qualified for were filled during the relevant timeframe Agency argues that these positions were *not vacant* during the relevant timeframe, and that only HR vacancies existed during that timeframe, which

Employee was not qualified to fill. (Emphasis added). Agency explains that the point of consideration is not whether individuals were hired, but rather, whether vacancies existed for which Employee should have received priority consideration for during the relevant timeframe. The record supports Agency's assertion that these forensic scientist positions were not vacant during the relevant period of September 22, 2021, to October 23, 2021, as provided by the D.C. Superior Court Judge.

Employee also argued that Agency's Exhibit 2 which details the list of five (5) HR vacancies for the period of September 22, 2021, to October 23, 2021, is not clear as to whether Agency's query only captured vacancies with a posting date falling within the search period or whether it captured vacancies that were posted prior to September 22, 2021, but remained opened beyond that date. Employee asserted that Agency's supplemental documentation is insufficient to carry Agency's burden of proof.

Based on a review of the record, there were five (5) vacancies at Agency between the period of September 22, 2021, to October 22, 2021. These positions were all human resources specialist positions, and they were posted by Agency between October 7, 2021, and October 13, 2021. Agency averred that in reviewing Employee's resume, it did not denote any human resources experience as described in the Human Resources Specialists positions available during the relevant period. Therefore, Agency concluded that Employee was not qualified to fill the vacancies available at DFS during the RIF notice period due to his lack of human resources management experience and specialization. Employee does not deny that his CV on file did not include any human resources experience. Consequently, I conclude that while there were vacancies at Agency during the relevant period, Employee did not qualify for the vacancies. I also find that because Employee did not qualify for these vacancies, he was not entitled to priority reemployment consideration and Agency's delay to place Employee on the ARPP list constitutes harmless error.[19] Accordingly, I find the facts in this matter warrant the invocation of a harmless error review.

The OEA Board in *Kyle Quamina v. Department of Youth Rehabilitation Services,*[20] addressed this issue of harmless error. It noted that "… an agency's violation of a statutory procedural requirement does not necessarily invalidate the agency's adverse action. Thus, the facts in this matter warrant the invocation of a harmless error review. In determining whether Agency has committed a procedural offense as to warrant the reversal of its adverse action, this Board will apply a two-prong analysis: whether Agency's error caused substantial harm or prejudice to Employee's rights *and* whether such error significantly affected Agency's final decision to suspend Employee."[21] In applying this two-prong analysis to the instant matter, the undersigned finds that Agency's failure to place Employee on the ARPP list during the relevant time did not cause substantial harm or prejudice to Employee. As previously noted, while there

[19] OEA Rule 631.3 provides that: "[n]otwithstanding any other provisions of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take action."
[20] OEA Matter No. 1601-0055-17, Opinion and Order on Petition for Review (April 19, 2019).
[21] *Id.*

were vacancies at Agency during the relevant period, Employee did not qualify for the vacancies, therefore, he was not eligible for priority consideration. Further, the delay in placing Employee on the ARPP list during the relevant period did not affect Agency's decision to terminate Employee. Therefore, I conclude that Agency's delay in placing Employee on the ARPP list during the RIF notice period did not significantly affect Agency's decision to RIF Employee.

Additionally, the D.C. Superior Court in *Richard McCraw v. Department of Forensic Sciences*[22], held that:

> "even assuming that Petitioner could identify a defect in the timing or mechanics of ARPP/DEP processing, Petitioner has not demonstrated harmful error. See 6-B DCMR § 2405.7. The priority-reemployment provisions intend to give displaced employees preferential consideration for vacancies, but the record supports OEA's finding that DFS had no vacancies appropriate for affected FEU employees at the time of the RIF. Without evidence of an available position that Petitioner would have obtained during the notice period, the Court cannot conclude that any asserted ARPP/DEP error was outcome-determinative. Further, Petitioner argues that DFS was prohibited from filling positions with new appointees when qualified persons were available on the reemployment priority list. See DPM § 2428.1. OEA found, and the record supports, that the relevant competitive area for purposes of this RIF was the FEU and that FEU positions were abolished. Petitioner has not identified a career service position within that competitive area that DFS filled in a manner prohibited by § 2428.1 during the relevant period. Accordingly, Petitioner has not demonstrated a legal violation warranting reversal or remand."

Accordingly, in consideration of the above and the record as a whole, I find that Agency's delay in placing Employee on the ARPP list is harmless error as this delay did not cause substantial harm or prejudice to Employee's rights and did not significantly affect Agency's final decision to RIF Employee. Wherefore, I also find that Agency's action of separating Employee from service in accordance with a RIF should be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of separating Employee pursuant to a RIF is **UPHELD**.

FOR THE OFFICE:

/s/ Monica N. Dohnji__
MONICA DOHNJI, Esq.
Senior Administrative Judge

[22] No. 2024-CAB-000344 (D.C. Super. Ct. April 17, 2026). It should be noted that Employee and the employee in *McCraw* were similarly situated as they were both RIF'd pursuant to the same RIF authorization, at the same time, from the same Agency, same position and they were both within the same competitive area and competitive level.

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | |
| EMPLOYEE[1], Employee | OEA Matter No. 2401-0052-25 |
| v. | Date of Issuance: August 6, 2026 |
| DISTRICT OF COLUMBIA PUBLIC SCHOOLS, Agency | MONICA DOHNJI, ESQ. Senior Administrative Judge |

Employee, *Pro Se*
Gehrrie Bellamy, Esq., Agency's Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On June 30, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to separate him from his position as a Restorative Justice Coordinator ("RJC") at Cleveland Elementary School ("Cleveland") pursuant to a Reduction-in-force ("RIF"). Employee was RIF'd effective June 27, 2025. On June 30, 2025, OEA issued a Request for Agency Answer to Petition for Appeal. On July 23, 2025, Agency filed its Answer to Employee's Petition for Appeal. I was assigned this matter on July 28, 2025.

On August 11, 2025, I issued an Order requiring the parties to submit written briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. After reviewing the record, on January 8, 2026, I issued an Order requiring Agency to submit the 'Retention Register' Agency established for Employee's competitive level in the instant RIF. Agency filed a Request for Clarification on January 14, 2026. On January 21, 2026, the undersigned issued an Order in response to Agency's Request for Clarification. Agency submitted its 'Retention Register' on January 22, 2026. Employee filed a response to Agency's 'Retention Register' on February 2, 2026. Agency filed its Sur Reply Brief on February 25, 2026. On March 4, 2026, Employee filed Appellant's Supplemental Motion to Compel and Challenge to RIF Scoring Determination.[2] Agency filed a Motion to Strike and

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] I hereby find that Employee's Motion is now **MOOT**.

Request to Close Record on March 5, 2026.[3] The undersigned issued an Order on March 9, 2026, scheduling a Prehearing Conference in this matter for April 21, 2026, with Prehearing Statements due April 13, 2026. While Agency timely submitted its Prehearing Statement as requested, Employee did not submit a Prehearing Statement. Both parties were present at the April 21, 2026, Prehearing Conference. During the scheduled conference, Agency requested additional time to submit the 'Retention Register', and Employee also requested additional time to file his Prehearing Statement. This request was granted verbally during the Prehearing Conference. Both parties have submitted the required documentation. After considering the arguments herein and the record, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

## FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

The authority for conducting a RIF is primarily set forth in two statutes, D.C. Official Code §§ 1-624.02 and 1-624.08. Because the primary reason for the instant RIF was reorganization of functions and/or budgetary shift[4], I have determined that D.C. Code § 1-624.02 is the more applicable statute in the instant RIF. A RIF pursuant to D.C. Official Code § 1-624.02 (a) shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veteran's preference, and relative work performance;
(2) One round of lateral competition limited to positions within the employee's competitive level;
(3) Priority reemployment consideration for employees separated;
(4) Consideration of job sharing and reduced hours; and
(5) Employee appeal rights. D.C. Official Code § 1-624.02.

The following findings of fact, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF.

[3] I hereby find that Agency's Motion is now **MOOT**.
[4] Agency's Answer to Petition for Appeal at Exhibit 1 (July 23, 2025).

***Agency's Position***[5]

Agency states that pursuant to FY'2026 Reorganization, it had authority to conduct the instant RIF and in separating Employee, it complied with the procedures required. Agency avers that "[p]rior to the start of the 2025-26 school year, the Chancellor of the District of Columbia Public Schools ("DCPS") authorized a RIF of school-based staff to "eliminate positions for the 2026 fiscal year that are not required due to programmatic (i.e., a reorganization of function) and budgetary shifts."" Agency states that the instant RIF was conducted pursuant to D.C. Code § 1-624.02, § 1-624.03, and 5E DCMR Chapter 15.

Agency asserts that Employee was a Restorative Justice Coordinator at Cleveland Elementary School ("Cleveland") during the 2025-2026 school year. Agency cites that Cleveland was determined to be a competitive are and Employee's position, Restorative Justice Coordinator, was identified as a position that would be subject to the RIF. Agency asserts that at the time of the RIF, Employee was one (1) of two (2) employees in the Restorative Justice Coordinator position assigned to Cleveland, as such, this position underwent lateral competition and a rubric was generated. Agency cites that pursuant to the rubric, Employee was not retained. Agency avers the Employee was notified on May 12, 2025, that he would be separated from service with DCPS effective June 27, 2025.

Agency also asserts that the May 12, 2026, RIF separation notice informed Employee that they would be given priority for selection into any vacancies available at any school throughout DCPS. Agency cites that prior to Employee's position being reduced, it considered job sharing and reduction of hours as an alternative. However, a determination was made that these were not options due to school's operation. Agency maintains that it followed all appropriate law rules and regulations in the administration of the instant RIF.

Additionally, Agency contends that District employees can be RIF'd while on protected leave. Further, Agency avers that pursuant to D.C. Code §1-624.04, OEA's jurisdiction of RIFs is narrowly prescribed and limited to a review of to determine whether Agency had incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant to this subchapter. Thus, Agency asserts that OEA's review is based on the procedures. Agency maintains that the instant RIF was administered appropriately and should be upheld.

***Employee's Position***[6]

Employee contends that the RIF was improper and retaliatory. Employee asserts that there were two (2) Restorative Justice Coordinator positions at Cleveland and his position was eliminated while the other employee was retained. Employee states that Agency did not fully consider his job performance, tenure or his overall contributions to the school community. Employee asserts that he was RIF'd while on approved FMLA leave and as such, he states that

[5] *Id. See also*. Agency's Brief (September 2, 2025).
[6] Petition for Appeal (June 30, 2025). *See also*. Employee's September 17, 2025, Statement; Employee's February 2, 2026, Statement; Appellant's Supplemental Motion to Compel and Challenge to RIF Scoring Determination (March 4, 2026); and Employee's RIF Appeal Statement (May 4, 2026).

Agency's decision was made "with poor judgement and possibly bad intent, without following the proper procedures or fully considering DCPS policies and standards."

Employee cites that he was assigned a score of 65 and the other Restorative Justice Coordinator who was retained was assigned a score of 91. Employee notes that "the rationale, metrics, rubric, and weighting used derive these scores have not been disclosed, thereby denying the Appellant the opportunity to meaningfully challenge the determination." He states that he received a 'Highly Effective' IMPACT rating from Cycle 1 of the school year.

Employee also avers that while the RIF notice was issued on May 2, 2025, because he was on FMLA leave, he did not receive the RIF notice until May 12, 2025. He asserts that he was not informed prior to his leave that he was under consideration for a RIF. Employee avers that the delay in receiving the RIF notice undermines the requirement for timely and fair notice and raises due process concerns.

Employee also avers that the record shows a lack of transparency in the retention standing between the two (2) Restorative Justice Coordinators at Cleveland. Specifically, Employee explains that the narrative supporting the retained employee's performance and the narrative Agency used to support its decision to RIF Employee are very similar. He avers that there are sections where the narrative of both Restorative Justice Coordinators is nearly identical, yet the ratings vary significantly. Employee argues that this raises concerns regarding the scoring which appears to be the most critical basis supporting the RIF decision. Employee further notes that the DCPS Behavior Task Force was abolished in 2023, yet the retained employee's evaluation included a reference to serving on this task force which was dismantled more than a year before his tenure started at Cleveland.

## ANALYSIS[7]

### *Round of Lateral Competition*

To determine if Agency conducted the instant RIF properly, the undersigned must evaluate whether Agency, pursuant to D.C. Official Code § 1-624.02(a)(1) and (2), met the requirements for lateral competition. The District Personnel Manual ("DPM") provides that each personnel authority has the responsibility to establish the competitive levels, and that these levels shall be based upon employee's position of record.[8] Additionally, the DPM requires that the competitive levels be "sufficiently alike" in the qualification requirements, such that an incumbent of one position could successfully perform the duties and responsibilities of any of the other positions.[9] Generally, an employee's position of record is shown through the issuance of an

[7] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[8] 6-B DCMR §§§ 2410.1, 2410.2, 2410.3.
[9] 6-B DCMR § 2410.4.

SF-50 Notification of Personnel Action.[10] Pursuant to 5 DCMR §1501.1, the "Superintendent is authorized to establish competitive areas based upon all or clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office."[11]

In the instant matter, the April 30, 2025, Memorandum that authorized the instant RIF provided that the competitive areas, which were established on a school-by-school basis, would include Cleveland.[12] Additionally, the Restorative Justice Coordinator position was identified as a competitive level that would be eliminated by the RIF. This Memorandum also provided a list of factors to be considered if the decision to RIF was to be made between employees in the same competitive area and competitive level. These factors included: (1) Relevant Significant contributions, accomplishments or performance; (2) Office or school needs; (3) Relevant supplemental professional experience as demonstrated on the job; and (4) Length of Service.

According to the Retention Register provided by Agency, there were two (2) Restorative Justice Coordinators subject to the RIF. Of the two (2) Restorative Justice Coordinator positions, one (1) position was identified to be abolished. Because Employee was not the only Restorative Justice Coordinator within his competitive level, he was required to compete with other employees in one round of lateral competition. According to the April 30, 2025, Memorandum, and Title 5, DCMR § 1503.2 *et al.*:

> If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
>
> (a) Significant relevant contributions, accomplishments, or performance;
>
> (b) Office or school needs;
>
> (c) Relevant supplemental professional experiences as demonstrated on the job;
>
> (d) Length of service.

Additionally, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

[10] *See Armeta Ross v. D.C. Office of Contracting & Procurement*, OEA Matter No. 2401-0133-09-R11 (April 8, 2013).
[11] *See* 5-E DCMR §1501.1
[12] Agency's Answer, *supra*, at Exhibit 1. The Memorandum was signed by the Chancellor on May 2, 2025.

(a) Significant relevant contributions, accomplishments, or performance – Determined by the employee's IMPACT Performance (50%).

(b) Office or school needs – selected by the principal based on additional contribution an employee has made to the school – (20%).

(c) Relevant supplemental professional experiences as demonstrated on the job –Selected by principal based on unique skills/qualifications an employee brings to the role beyond minimum job requirements (20%).

(d) Length of service – Determined by the employee's DCPS start date with bonuses awarded for DC residents (10%).

***Competitive Level Documentation Form***

Agency employs the use of a Competitive Level Documentation Form ("CLDF") in cases where employees subject to a RIF must compete against each other in lateral competition.

1. ***Significant relevant contributions, accomplishments, or performance***

This category is weighted at 50% on the CLDF. Pursuant to the RIF authorization Memorandum, this category was determined by the employee's IMPACT Performance. Here, Employee received a Highly effective IMPACT rating with a score of 50, which is the maximum number of points awarded in this category. The other Restorative Justice Coordinator, who was retained by Agency also received a score of 50.[13]

2. ***Office or school needs***

This category is weighted at 20% on the CLDF and is determined by the principal based on additional contribution an employee has made to the school. Here, Employee received a rating of 'medium' and a score of 10. The other Restorative Justice Coordinator retained by Agency received a score of 20 for this category.

3. ***Relevant supplemental professional experiences as demonstrated on the job***

This category accounts for 20% of the CLDF and selected by principal based on unique skills/qualifications an employee brings to the role beyond minimum job requirement. Here, Employee received a rating of 'low' with a score of 0. The other Restorative Justice Coordinator retained by Agency received a score of 20 for this category.

4. ***Length of service***

[13] *See.* Agency's Reduction Rubric (April 22, 2026).

This category accounts for 10%. It was completed by Human Resource. Here, Employee received a score of five (5) in this category. The other Restorative Justice Coordinator retained by Agency received a score of one (1) for this category. Employee does not contest the calculation of the points awarded. Therefore, I find that Agency properly calculated this number.

Employee received a total of sixty-five (65), while the Restorative Justice Coordinator retained by Agency received a total score of ninety-one (91). Therefore, I find that Employee ranked the lowest in his respective competitive level. In reviewing the documents of record, Employee argues that there are sections where the narrative of both Restorative Justice Coordinators is nearly identical, yet their ratings vary significantly. Employee avers that this raises concerns regarding the scoring which appears to be the most critical basis supporting the RIF decision. While I find that some of Agency's scoring appears to contradict the description as provided by the principal in some sections; I also find that it is within the principal of Cleveland's managerial expertise and discretion to assign numeric values to these factors.[14]

Moreover, in *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997), the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."[15] According to the Retention Register, Employee received a total score of sixty-five (65) after all of the factors outlined above were tallied and scored. The next lowest colleague who was retained received a total score of ninety-one (91) points. Employee has not proffered any evidence to suggest that a re-evaluation of his CLDF scores would result in a different outcome in this case.[16]

Accordingly, I find that the principal of Cleveland had discretion in completing Employee's CLDF, because they were in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. Therefore, the undersigned finds that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.02.

***Priority Reemployment***

D.C. Official Code § 1-624.02(a)(3) provides that employees separated pursuant to a RIF under this section are to be afforded consideration for priority reemployment. In the RIF notice dated May 12, 2025, Agency indicated that Employee's position had been eliminated, but that

[14] For instance, Employee received a rating of 'low' and a score of '0' for 'relevant supplemental professional experiences as demonstrated on the job', yet the principal noted in support of this score that Employee "has a lot of experience as a behavior professional in DCPS. He has previously served on a task force with central office to support student behavior and well-being. In [school year] 23-24 he served as a member of the Whole Child Model Design Team." *Id*.

[15] *See also American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

[16] *See Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

there may be positions at other schools for which Employee may be qualified.[17]Agency included information regarding upcoming staffing fairs and information regarding assistance to help Employee find employment. Further, the notice indicated that Employee could apply for any vacancies at Agency or within District Government that may arise in the future.[18] Additionally, the notice indicated that Employee could apply for job vacancies at DCPS or within the District as they arise, and that he would receive "some priority consideration", but was not guaranteed reemployment.[19] Accordingly, I find that Agency complied with the RIF requirement to consider Employee for priority reemployment.

***Consideration of Job Sharing***

Pursuant to D.C. Official Code § 1-624.02(a)(4) and DPM Section 2404, OEA has held that when a RIF is conducted, an Agency should consider job sharing and reduced hours for employees separated pursuant to the RIF.[20] The DPM addresses Agency's responsibility for considering job sharing and reduced working hours. Specifically, DPM section 2404.1 provides:

> An employee may be assigned to job sharing or reduced working hours, provided the following conditions are met:
>
> (a) The employee is not serving under an appointment with specific time limitation; and
>
> (b) The employee has voluntarily requested such an assignment in response to agency's request for volunteers for the purpose of considering the provisions of subsection 2403.2(a) of this chapter in order to preclude conducting, or to minimize the adverse impact of, a reduction in force.

Furthermore, DPM section 2403.2 provides that, "[a]n Agency may, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency."[21] OEA has held that job sharing considerations should be made during the administration of a RIF.[22] In the instant matter, Agency asserts that it considered job sharing and reduced hours, and included notice of that in the May 12, 2025, notice to Employee. Agency maintains that prior to Employee's position being reduced, it considered job sharing and reduction of hours as an alternative. However, a determination was made that these were not options due to school's operation. Accordingly, I find that Agency considered job sharing and reduced hours as required.

***Notice/Employee Appeal Rights***

[17] Agency Answer, *supra*, at Exhibit 3.
[18] *Id.*
[19] *Id.*
[20] *Ramon Griffin v. District of Columbia Public Schools*, OEA Matter No. 2401-0085-19 (January 22, 2020).
[21] *Id.*
[22] *Id.*

D.C. Official Code § 1-624.02(a)(5) states that Agency must provide employees separated pursuant to a RIF their appeal rights. Each employee separated pursuant to a RIF shall be entitled to written notice at least thirty (30) days before the employee's separation from service.[23] Here, Employee contends that while the RIF notice was issued on May 2, 2025, because he was on FMLA leave, he did not receive the RIF notice until May 12, 2025. The RIF notice is dated May 12, 2025, and Employee asserts that he received the Notice on May 12, 2025. The effective date of the RIF was June 27, 2025.[24] Therefore, the undersigned finds that this timeline from May 12, 2025, to June 27, 2025, provided Employee with more than the thirty (30) days' notice required by the statute.

***Retaliation/Post RIF Activity-Job Postings***

Employee submits that the RIF was retaliatory in nature. To establish a retaliation claim, the party alleging retaliation must demonstrate the following: (1) s/he engaged in a protected activity by opposing or complaining about employment practices that are unlawful under the District of Columbia Human Rights Act ("DCHRA"); (2) her/his employer took an adverse personnel action against her/him; and (3) there existed a causal connection between the protected activity and the adverse personnel action.[25] A prima facie showing of retaliation under DCHRA gives rise to a presumption that the employer's conduct was unlawful, which the employer may rebut by articulating a legitimate reason for the employment action at issue.[26] Here, Employee does not state any protected activity that he was engaged in or that Agency took an adverse personnel action against him. I find that the instant RIF was effectuated across DCPS and the competitive area where Employee was employed. There is no evidence in the record to suggest that Employee was singled out; rather his position was deemed as one of those within his competitive area that would be eliminated through the RIF. Consequently, I find that Employee's claims are unsubstantiated.

***Family Medical Act Leave ("FMLA")***

Employee asserts that he was RIF'd while on approved FMLA leave and as such, Agency's decision was made "with poor judgement and possibly bad intent, without following the proper procedures or fully considering DCPS policies and standards." Agency acknowledges that Employee was on FMLA but argues that District employees can be RIF'd while on protected leave. In *Phillipa Mezile v. Department of Disability Services*,[27] the OEA Administrative Judge ("AJ") noted that FMLA does not delay a RIF. While citing to *Price v. Washington Hosp. Ctr.*, 321 F. Supp. 2d 38, 45 (D.D.C. 2004), the AJ in *Mezile*, *supra*, stated as follows:

> Plaintiff argued that Defendant violated her statutorily protected rights under FMLA and DCFMLA (District of Columbia Family Medical Leave Act) when it terminated her employment pursuant to a RIF while she was on approved medical

[23] *See.* DPM § 2422.
[24] Agency's Answer, *supra*, at Exhibit 3.
[25] *Vogel v. District of Columbia Office of Planning*, 944 A.2d 456 (D.C. 2008).
[26] *Id.*
[27] *Phillipa Mezile v. Department of Disability Services*, OEA Matter No. 2401-0158-09R12 (October 10, 2012).

> leave. In addressing this allegation, the court cited 29 C.F.R. § 825.216(a)(1)[28] and held that " . . . Plaintiff cannot demonstrate that the elimination of her position pursuant to a RIF while she was on medical leave violated either medical leave statute" because " . . . [she] ha[d] no greater right to reinstatement or to other benefits and conditions of employment than if [she] had been continuously employed during the FMLA leave period ... "[29] Therefore, since Defendant eliminated her position pursuant to a RIF, the court ruled that Defendant's responsibility to continue her FMLA ceased at the time she was laid off.
>
> The court in *Ilhardt v. Sara Lee Corp.*, 118 F.3d 1151 (7th Cir. 1997) had the same ruling. In this case, plaintiff claimed that defendant violated her FMLA rights after refusing to return her to work after maternity leave. However, the court cited the Department of Labor Regulation, *supra*, and held that "… [defendant] had no obligation to reinstate [her] because an employer's responsibility to continue FMLA leave and restore an employee "cease at the time the employee is laid off."[30]

Based on the reasoning above, I disagree with Employee's assertion that Agency could not abolish his position while he was on FMLA. For the reasons outlined above, I find that Agency's RIF action was conducted in accordance with all applicable laws, rules and regulations. Accordingly, I find that Agency's action of separating Employee from service pursuant to the instant RIF should be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of separating Employee pursuant to a RIF is **UPHELD.**

FOR THE OFFICE:

/s/ Monica N. Dohnji___
MONICA DOHNJI, Esq.
Senior Administrative Judge

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[28] C.F.R. § 825.216(a)(1) provides that:

> An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:
>
> > (1) ***If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employer's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee cease at the time the employee is laid off,*** provided the employer has no continuing obligations under a collective bargaining agreement or otherwise… (Emphasis added).

[29] *Id*. at 47.

[30] *Id*. at 1157.

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE[1], | ) | |
| Employee | ) | OEA Matter No. 2401-0074-25 |
| | ) | |
| v. | ) | Date of Issuance: August 28, 2026 |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | |
| Agency | ) | Michelle R. Harris, Esq. |
| | ) | Senior Administrative Judge |
| | ) | |

Victoria Watson, Esq. Employee Representative
Angel Cox, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On August 27, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") action of abolishing her position as a Behavior Technician through a Reduction-In-Force ("RIF"). The effective date of the RIF was August 1, 2025. On August 28, 2025, OEA sent a letter requesting Agency submit an Answer on or before September 27, 2025. Agency filed its Answer to Employee's Petition for Appeal on September 20, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on September 30, 2025. On October 2, 2025, I issued an Order Convening a Prehearing Conference in this matter for October 29, 2025. Prehearing Statements were due on or before October 22, 2025. The parties appeared for the scheduled Prehearing Conference. Agency's representative cited during the Prehearing Conference that she was currently on medical leave until November 18, 2025. As a result, the undersigned advised the parties that the Prehearing Conference would be rescheduled for a later date. As a result, on October 29, 2025, I issued a Post Prehearing Conference Order rescheduling the Prehearing Conference to December 4, 2025. Prehearing Statements were now due by or before November 24, 2025. Both parties submitted their Prehearing Statements as required.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

On December 4, 2025, the parties appeared for the rescheduled Prehearing Conference. That same day, I issued a Post Prehearing Conference Order requiring the parties to submit briefs in this matter. Agency's brief was due on or before January 16, 2026, Employee's brief was due on or before February 6, 2026, and Agency had the option to submit a sur-reply brief on or before February 20, 2026. Agency submitted its brief as required. On February 17, 2026, the undersigned received email correspondence from the OEA operations team citing that a representative for Employee had contacted the Office. I responded and noted to the parties that a Status Conference was warranted to ensure that the parties were on the same page. Following an exchange of emails with the parties, I issued an Order on February 24, 2026, scheduling a Status Conference for March 11, 2026. Both parties appeared for the March Status Conference as required. That same day, I issued a Post Status Conference Order which revised the briefing schedule. As a result, Employee's brief was now due by or before April 2, 2026, and Agency had the option to submit a sur-reply brief by or before April 20, 2026. Employee filed his brief as required. Agency did not file a sur-reply brief. Upon review of the parties' submission and the record, I have determined that an Evidentiary Hearing in this matter is not warranted. The record is now closed.

## JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

## FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The authority for conducting a RIF is primarily set forth in two statutes, D.C. Official Code §§ 1-624.02 and 1-624.08. Because the instant RIF was conducted to "eliminate positions that would be redundant or unnecessary following a reorganization of functions"[2], I have determined that D.C. Official Code § 1-624.02 is the more applicable statute in the instant RIF. A RIF pursuant to D.C. Official Code § 1-624.02 (a) shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veteran's preference, and relative work performance;
(2) One round of lateral competition limited to positions within the employee's competitive level;
(3) Priority reemployment consideration for employees separated;
(4) Consideration of job sharing and reduced hours; and
(5) Employee appeal rights. D.C. Official Code § 1-624.02.

The following findings of fact, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process

[2] Agency's Prehearing Statement at Page 5 (November 24, 2025).

with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a RIF.

***Agency's Position***

Agency states that it had authority to conduct the instant RIF and in separating Employee, it complied with the required RIF procedures. Agency provides that Employee worked for Agency as a Behavior Technician and was assigned to Kelly Middle School for the 2024-2025 school year.[3] Agency cites that "prior to the start of the 2025-2026 school year, the Chancellor authorized a Reduction-in-Force (RIF) of school-based staff at 115 schools due to a reorganization of functions and budgetary shifts."[4] Agency further cites that "DCPS made reductions on a school-by-school basis" pursuant to this RIF. Agency also notes that the Chancellor designated all 115 schools "included in the RIF process as a separate competitive area for said process."[5] Agency further provides that the Chancellor also "identified particular positions as separate competitive levels."[6] Agency cites that during the 2024-2025 school year, "Kelly was a school that was designated for a reduction of Behavior Technicians."[7] Agency maintains that "there was a need to reduce the number of Behavior Technician positions from seven (7) to two (2) due to budgetary concerns and the programmatic needs of the school."[8] Agency asserts that in "response to the RIF, the Agency completed Reduction Rubrics for the Behavior Technician competitive group." Agency further provides that the competitive group included "the Employee and four (4) other Behavior Technicians."[9] All the five (5) employees in the competitive group were rated in four (4) areas: "(1) Relevant Significant contributions, accomplishments or performance as determined by their IMPACT performance; (2) Office of School Needs; (3) Relevant supplemental professional experience as demonstrated on the job, and (4) Length of service."[10]

Agency cites that the Principal of Kelly, Mr. Cox was responsible for the completion of the Reduction Rubric. Agency asserts that "Employee's Reduction Score was 41, one of the three (3) lowest scores." Agency avers that the other employees who were reduced (AW and CS.2)

[3] Agency's Brief at Page 1 January 20, 2026). Agency also notes that Employee's responsibilities included "transitioning students, monitoring and documenting behavioral trends, and implementing appropriate interventions to respond to student behaviors among other things."
[4] *Id*.
[5] *Id*. at Page 2.
[6] *Id*. Agency also notes that "when deciding between employees in the same competitive area and level, each school was required to consider four factors to determine which position should be eliminated: a) significant relevant contributions, accomplishments, or performance; b)relevant supplemental professional experience as demonstrated on the job; c) office or school needs, including: curriculum specialized education, degrees, licenses or areas of expertise and; d) length of service, using a standardized rubric with the weight for each factor as indicated..". See also Agency Exhibit 3.
[7] *Id*.
[8] In Agency's Answer filed on September 30, 2025, Agency provides that "Employee and four (4) other Behavior Technicians (C.S.1, C.S.2, D.C. and P.M) were considered. Agency also avers that there were five (5) Behavior Technicians impacted by the instant RIF. In its Prehearing Statement submitted on November 24, 2025, and its subsequent brief filed on January 20, 2026,Agency cites to five (5) Behavior Technicians. This noted, Agency's Exhibit 10 attached to the November 24, 2025 Prehearing Statement reflects seven (7) Behavior Technician positions at Kelly Middle School. This stated, for the purposes of this Initial Decision, the undersigned will consider the five (5) Behavior Technicians (Employee and four (4) others) that comprise the position based competitive area.
[9] Agency identifies the other Behavior Technicians by initials: C.S (1); C.S.(2)., P.M, and A.W.
[10] *Id.*

received scores of 35 and 50, respectively.[11] Regarding Employee's scores, Agency asserts that Rubric 1 accounted for 50% of the final score and considers the IMPACT score. Agency cites that Employee "was trending Effective and the other two (2) Behavior Technicians who were reduced CS (2) and A.W., were trending Effective and Developing, respectively." Agency further provides that the two (2) Behavior Technicians who were retained, C.S.(1) and P.M., "were trending Effective and Developing, respectively." For Rubric 2, the office or school needs, Agency asserts that additional contributions that employees made were considered and this score accounted for 20% of the final score. Agency asserts that for Rubric 2, Employee "received a "low" rating…[t]he employee does not have any additional contributions to the school."[12] Agency notes that A.W. also received a low rating, but that C.S.(1) and P.M. received "high" ratings for Rubric 2.[13] Agency avers that Rubric 3 considered the "relevant supplemental professional experience as demonstrated on the job." This had a 20% weight for the final score and "rates unique skills and qualifications that an employee brings to his or her role beyond the minimum job qualifications."[14] Agency avers that Employee received a "low" rating for this score, as did C.S. (2) and A.W., but P.M. received a high rating. For Rubric 4, length of service, had a 10% weight for the final score. Agency asserts that "Employee had one of the shortest tenures/lengths of service, 1-9 years." Agency cites that A.W. and C.S(2), had 10-19 years of service, and 20+ years of service, respectively.[15] It further notes that C.S. (1) and P.M., had 10-19 years of service and 1-9 years of service, respectively.[16]Agency maintains that follow the completion of the Reduction Rubic, Employee was reduced. Agency avers that it provided notice to Employee in or around May 12, 2025, that "his position as a Behavior Technician was being reduced…and his separation would be effective August 1, 2025." Agency also provides that it "outlined that to help Employee find a position for the 2025-2026 school year, the Instructional Teacher Acquisition and Retention team would be holding in-person hiring fairs on Wednesday, May 28, 2025, and Wednesday, July 9, 2025."[17]

Agency avers that the RIF in the instant matter was conducted in accordance with all applicable laws, rules and regulations. Agency contends that the Chancellor has the authority to establish competitive areas pursuant to D.C. Municipal Regulations §5E-1501. Further, Agency avers that it made reductions on a school-by-school basis. Agency further asserts that it "defined competitive areas for the RIF as schools where the number of positions for non-instruction staff for the 2025-2026 school year exceeded the number of positions available for the 2025-2026 school year."[18] Agency cites that the instant RIF was approved by the DCPS Chancellor on August 30, 2025.[19] Agency further notes that "the school-based staff Reduction-in-Force Authorization Memorandum ("RIF Memorandum") was created in accordance with D.C. Code and D.C. Municipal Regulations to establish an orderly procedure for the termination of the employment of DCPS employees due to the lack of funds, lack of work, or reorganization of functions."[20] Agency also notes that the RIF Memorandum "identified the competitive areas, competitive levels and

[11] *Id.*
[12] *Id.*
[13] *Id.* at Page 3.
[14] *Id*.
[15] *Id.*
[16] *Id.*
[17] *Id*.
[18] *Id*. at Page 4.
[19] *Id*. at Page 4.
[20] I*d*.

competitive factors and competitive level documentation forms."[21] Agency contends that the RIF was conducted "pursuant to the D.C. Code §§ 1-624.02, 1-624.03 and D.C. Municipal Regulations §5E-15, and pursuant to the authority delegated to the Chancellor by Mayor's Order 2007-186 (August 10, 2007)."[22] Agency maintains that the instant RIF "was led to eliminate positions that would be redundant or unnecessary due to budgetary reasons or following a reorganization of functions." Agency further cites that it conducted the instant RIF pursuant to D.C. Code §1-624.02(a) which includes:

> (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans' preference, and relative work performance;
> (2) One round of lateral competition limited to positions within the employee's competitive level;
> (3) Priority reemployment consideration for employees separated;
> (4) Consideration of job sharing and reduced hours; and
> (5) Employee appeal rights.

Agency asserts that with regard to lateral competition, the April 30, 2025 RIF Memorandum, DCPS "outlined the schools and positions that would be subject to the reduction-in-force." This included Kelly Middle School and it was subject to the RIF because of budgetary reasons and programmatic shifts. Agency maintains that it completed the reduction rubric for each of the employees in the competitive group and that they were assessed in four (4) areas. Agency again notes that Employee received the lowest score of 41 following the completion of the rubric. Agency further provides that the Behavior Technicians who were retained, C.S. (1) and P.M., received overall scores of 85 and 71, respectively. Agency also notes that in consideration of priority reemployment, in the RIF notice dated May 12, 2025, "the Agency indicated that the Employee's position had been eliminated, but that there may be positions at other schools for which the Employee may be qualified."[23] Agency also asserts it provided information about staffing fairs and maintains that notice indicated that "Employee would be given priority for selection into any 2025-2026 vacancies at schools throughout DCPS."[24] Agency also contends that while job sharing considerations were made pursuant to D.C. Code §1-624.02(a)(4), that it was ultimately determined that job sharing and reduced hours "were not effective options for the schools operation."[25] Agency also maintains that it gave Employee the notice required by the code provisions. Agency asserts that pursuant to D.C. Code 1-624.02(a)(5), employees are "entitled to written notice at least fifteen (15) days before the employee's separation from service." Agency cites that in the instant matter, Employee received notice on May 12, 2025, that he would be separated pursuant to RIF effective August 1, 2025. As such, Agency maintains it provided the requisite notice of the RIF.

Agency asserts that Employee contends that he was "not given consideration for priority reemployment when he was deemed ineligible for hire [as a] Special Education Teacher." Agency

[21] *Id*. at Page 5.
[22] *Id.*
[23] *Id*. at Page 6.
[24] *Id*.
[25] I*d*.

further asserts that Employee's claim that he "was selected for the Special Education Teacher position through the Principal's Choice process only to be told by Central Office that I was barred from employment without explanation," is a management hiring decision to which OEA has no jurisdiction.[26] Agency avers that Employee "cannot backdoor an appeal of this nature by labeling it an appeal of a RIF." Further, Agency also cites that an employee "who is separated due to a RIF may receive consideration for priority reemployment for positions at his grade level at the time of separation and at any lower grade level acceptable to the employee."[27] Agency reiterates that Employee was a Behavior Technician which is a grade EG-5 position and a Teacher position is a grade ET-15, "which is a higher grade level than the position Employee held at the time of the RIF."[28] This noted, Agency contends that "Employee was not entitled to consideration for priority reemployment into a teacher position."

Agency contends that pursuant to D.C. Code §1-624.04, the Office of Employee Appeals is "limited in its review of RIF appeals." Agency asserts that an employee may file with OEA if they believe an agency "incorrectly applied the provision of this subchapter or the rules and regulations pursuant to this chapter." As such, Agency maintains that OEA is "limited to determining whether Agency properly followed D.C. Code §1-624.04 and the D.C. Municipal Regulations §5E §§1503 and 1506."[29] Agency avers that its RIF was in accordance with the applicable regulations and Employee was appropriated separated from service and that this action should be upheld.

***Employee's Position***

Employee asserts that during the 2023-2024 school year, he began work as a Behavior Technician, EG-5 at Kelly Miller Middle School.[30] Employee avers that during his "two years at Kelly Miller, [he] significantly contributed to the school community and connected with his students." He further cites that "outside of his assigned duties, [he] worked with the behavioral emotional support ("BES") students and assisted with crisis intervention."[31] Employee also provides that he started with Kelly Miller as an "Office Clerk and continued helping with registrar and attendance duties even during this tenure as a Behavioral Technician." Employee notes that "on December 5, 2024, Kelly Miller placed [him] on administrative leave pending an investigation after there was an altercation between [Employee] and Donnell Cox, Kelly Miller Principal."[32] Employee also cites that on February 25, 2025, he received a five (5) day suspension. Employe contends that on "May 15, 2025, approximately two months after his return from suspension, DCPS sent [him] notice that his position would be abolished through a RIF."[33] Employee avers that from "May 2025 to July 31, 2025, [he] completed a summer assignment at Hart Middle School, as Kelly Miller did not have summer school."

[26] *Id*. at Page 7.
[27] *Id.*
[28] *Id.*
[29] *Id*. at Page 8.
[30] Employee's Response Brief at Page 1.
[31] I*d.*
[32] *Id*. at Page 2.
[33] *Id.*

Employee avers that "DCPS rated the Behavior Technicians as a competitive level by the factors." Employee notes that Mr. Cox, completed the Reduction Rubric and that Employee received a final score of 41. Employee also asserts that "relying on the understanding that he was on a priority reemployment list, [he] attended hiring fairs and applied to numerous vacancies, including sending resumes directly [to] principals."[34] Employe avers that he "either did not receive confirmation responses or received processing errors of his applications."[35] Employee also notes that during this timeframe, he passed a teacher's exam and began applying for teaching positions. He avers that he still received error messages. Employee asserts that the principal at Phelps ACE High School selected him for a teaching position as at "9th grade SPED ELA Teacher, through the Principal's Selection Process, a program in which a principal can directly request to hire an employee or prioritize their application."[36] Employee cites that "the principal received an issue processing [him], so the principal went to the DCPS central office." Employee asserts that the principal was told by the central office that "she could not hire [him]; however, the office would not give her further information as to why."[37] Employee contends that on August 22, 2025, "only 21 days after the effectuation of the RIF, [he] went to the DCPS central office…[t]he central office notified [him] to go to LMER because the only information they could see in the computer system was that [he] was ineligible for rehire until February 2028."[38]

Employee contends that OEA has jurisdiction over his matter. He asserts that he "is not challenging the act of non-selection after the RIF, but rather that the Agency did not place him on the priority reemployment list as required by the RIF procedure and RIF notice."[39] Employee notes that "EDPM 2427.5 dictates that an "an employee covered under the provisions of this section shall be entered automatically on the reemployment priority list immediately after it has been determined that the employee is to be adversely affected by the reduction in force and not later than the issuance of the notice of the reduction in force"."[40] Employee avers that "complaining about positions listed after the RIF is indeed post-RIF activity outside of OEA jurisdiction, but here [he] is objecting to the RIF procedures itself of failure to place him on the priority list."[41] Employee maintains that he "was not on the priority list for one or two years if DCPS deemed him "ineligible for rehire" for almost three years until 2028."[42] Employee maintains that "while the DCPS Notice of RIF claimed that [he] would in fact be on the priority reemployment list, the ineligible for rehire label merely 21 days after the RIF occurred contradicts that notice."[43]

Employee also claims that additional discovery and leave to amend to address the issue of "whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations" is warranted. Employee cites that he only retained counsel after he filed his initial brief and "he did not intend for the language of his brief to indicated that he was only appealing the decision not to select him after the priority

[34] *Id*.
[35] *Id*. at Page 3.
[36] *Id*.
[37] *Id.*
[38] *Id.*
[39] *Id.* at Page 4.
[40] *Id.*
[41] *Id.* at Pages 4-5.
[42] *Id*. at Page 5.
[43] *Id.*

reemployment program, although he acknowledges that the language can be reasonably read as such."[44] Employee avers that DCPS did not conduct the RIF in accordance with the applicable regulations. He cites that Agency did not "follow the applicable rule and regulations for the round of lateral competition and priority reemployment consideration for employees separated."[45] He also asserts that while the Chancellor identified the 115 schools and individual positions to be competitive areas, that he did not receive notification of his competitive area or level.[46] This stated, Employee also asserts that the lateral competition considerations were improper. Employee avers that "Agency must still consider each statutorily mandated factor, regardless of the Agency's discretion to rate competing employees and create criteria to evaluate such employees."[47]

Employee asserts that competitive rubric considerations made by agency are "minimal at best." Employee also avers that "the first factor accounts for any factor that may have an impact on the success of the school or the achievement of the students at school." Employee asserts that he received an "effective" rating but cites that it appears that the "first and second" categories are essentially combined for one category, and that the category worth 20 percent also dictates the category worth 50 percent."[48] Employee also avers that Agency "did not note [his] impact on school culture by supporting the BES students and start the cheer team for the first factor." Employee also assert that for the second factor, he had "significant additional contributions to the school, such as (1) BES support and leaving his assigned duties to complete crisis intervention when needed, (2) registrar and attendance assistance, (3)staff wellness team member, (44) lunch duty monitoring, (5) cheer team support and (6) after school duty, so much that [he] rarely took lunch breaks so he could accomplish all of these extracurriculars."[49] Employee asserts that these involvements also support notions for the other rubric factors. Employee also avers that regarding length of service, while it was accurate for him to receive the 1–9-year rating, that "Agency should have noted whether in this category or another that [he] served Kelly Miller for the longest tenure compared to his comparators." Employee also avers that it is of note that the persons responsible for completing the retention scores, Principal Cox, was also the person Employee had an altercation with.[50] Employee avers that "Mr. Cox has discretion in assigning retention scores; however, RIF procedure requires Mr. Cox to properly exercise that discretion."[51] To this end, Employee asserts that "assign[ing] different scores for identical contributions amount competing employees was an improper exercise of his discretion…[c]onsequently, re-evaluation of [Employee's] scores may result in a different outcome in his case. As a result, Employee contends that OEA has jurisdiction over his claims and that DCPS did not appropriately administer the instant RIF.

## ANALYSIS[52]

[44] *Id*. at Page 6.
[45] *Id.* at Page 7.
[46] *Id*.
[47] *Id*. at Page 8.
[48] *Id.*
[49] *Id*. at page 9.
[50] *Id.* at Page 10.
[51] *Id*.
[52] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See. Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014)

***Round of Lateral Competition***

In order to determine if Agency conducted the instant RIF properly, the undersigned must evaluate whether Agency, pursuant to D.C. Official Code § 1-624.02(a)(1) and (2), met the requirements for lateral competition. The DPM provides that each personnel authority has the responsibility to establish the competitive levels, and that these levels shall be based upon employee's position of record.[53] Additionally, the DPM requires that the competitive levels be "sufficiently alike" in the qualification requirements, such that an incumbent of one position could successfully perform the duties and responsibilities of any of the other positions.[54] Generally, an employee's position of record is shown through the issuance of an SF-50 Notification of Personnel Action.[55] Pursuant to 5 DCMR §1501.1, the "Superintendent is authorized to establish competitive areas based upon all or clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office."[56]

In the instant matter, the April 30, 2025, Memorandum that authorized the instant RIF provided that the competitive areas, which were established on a school-by-school basis for 115 to include Kelly Miller Middle School; and included specific positions as competitive areas, to include Behavior Technicians.[57] Based on Employee's SF-50 at the time the RIF was conducted, he was a Behavior Technician.[58] As a result of the RIF, Employee's position was eliminated, and he was separated from service. Here the Agency established a Reduction Rubric for the assessment of lateral competition for the five (5) behavior technicians at Kelly Middle School. The rubric included four (4) factors, and each employee was provided a rating for each rubric and received an overall final score. Kelly could only retain two (2) behavior technicians following the RIF. The principal, Mr. Cox, was responsible for the completion of the Reduction Rubric. Following the review, Employee received a score of 41. The employees who were retained received scores of 71 and 85. While Employee avers that the rubric was not appropriately considered, there is no evidence in the record to support this contention. Here, it is clear that Employee was scored and rated, and that his score of 41 was one of the lowest, thus subjecting him to separation from service pursuant to the RIF. As a result, I find that Agency properly conducted the round of lateral competition pursuant to the aforementioned code provisions.

***Consideration of Job Sharing***

Pursuant to D.C. Official Code § 1-624.02(a)(4) and DPM Section 2404, OEA has held that when a RIF is conducted, an Agency should consider job sharing and reduced hours for employees separated pursuant to the RIF.[59] The DPM addresses Agency's responsibility for considering job sharing and reduced working hours. Specifically, DPM section 2404.1 provides:

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(citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[53] 6-B DCMR §§§ 2410.1, 2410.2, 2410.3.

[54] 6-B DCMR § 2410.4.

[55] *See. Armeta Ross v. D.C. Office of Contracting & Procurement*, OEA Matter No. 2401-0133-09-R11 (April 8, 2013).

[56] *See.* 5-E DCMR §1501.1.

[57] Agency's Brief at Exhibit 3.

[58] *Id*. at Exhibit 13.

[59] *Ramon Griffin v. District of Columbia Public Schools*, OEA Matter No. 2401-0085-19 (January 22, 2020).

> An employee may be assigned to job sharing or reduced working hours, provided the following conditions are met:
>
> (a) The employee is not serving under an appointment with specific time limitation; and
>
> (b) The employee has voluntarily requested such an assignment in response to agency's request for volunteers for the purpose of considering the provisions of subsection 2403.2(a) of this chapter in order to preclude conducting, or to minimize the adverse impact of, a reduction in force.

Furthermore, DPM section 2403.2 provides that, "[a]n Agency may, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency ."[60] As previously stated, OEA has held that job sharing considerations should be made during the administration of a RIF.[61] In the instant matter, Agency asserts that while job sharing considerations were made pursuant to D.C. Code §1-624.02(a)(4), that it was ultimately determined that job sharing and reduced hours "were not effective options for the schools operation."[62] Further, notice was provided in the May 12, 2025, letter regarding the job sharing considerations. Accordingly, I find that Agency considered job sharing and reduced hours as required.

***Priority Reemployment***

D.C. Official Code § 1-624.02(a)(3) provides that employees separated pursuant to a RIF under this section are to be afforded consideration for priority reemployment. In the RIF notice dated May 15, 2023, Agency indicated that Employee's position had been eliminated, but that there may be positions at other schools for which Employee may be qualified.[63] Agency included information regarding upcoming staffing fairs and information regarding assistance to help Employee find employment. Of note, the notice specifically cited that Employee would be provided priority consideration for any vacancies. Employee asserts that he was hired but later deemed "ineligible for hire" and as such, this exhibits that he was not put on the priority reemployment list. Employee cites that he passed his teacher's exam following the RIF notice. He notes that he applied but would get error messages for positions but ultimately was hired at Phelps as a Special Education Teacher.

However, Employee contends that the central office cited that he was ineligible for rehire until 2028. Agency asserts that Employee's ineligibility is a management hiring decision that is not a part of the jurisdiction for OEA in review of RIFs. Further, Agency asserts that the position Employee was hired for was a higher grade than that of the Behavior Technician position for which he was RIFed. The undersigned agrees with Agency that Employee's post hire ineligibility

[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Agency's Brief.

determination is not in this Office's jurisdiction. In review of the RIF procedures itself, Employee was provided the requisite information and notice regarding his priority reemployment considerations pursuant to the RIF. The subsequent decision regarding hiring is not a determination for this tribunal. Accordingly, I find that Agency complied with the RIF requirement to consider Employee for priority reemployment.[64]

***Notice/Employee Appeal Rights***

D.C. Official Code § 1-624.02(a)(5) states that Agency must provide employees separated pursuant to a RIF their appeal rights. Each employee separated pursuant to a RIF shall be entitled to written notice at least thirty (30) days before the effective date of the employee's separation from service.[65] Here, Employee was notified that he was subject to separation from service pursuant to a RIF in a Notice dated May 12, 2025, and the effective date of separation was August 1, 2025.[66] Therefore, the undersigned finds that this timeline provided more than the thirty (30) days' notice required by the statute.

ORDER

It is hereby **ORDERED** that Agency's action of separating Employee pursuant to a RIF is **UPHELD.**

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris, Esq.
Senior Administrative Judge

[64] For these reasons, the undersigned finds that Employee's request for additional discovery and leave to address whether Agency conducted the RIF in accordance with all applicable laws, rules and regulations to have been duly addressed via his Responsive Brief filed on April 6, 2026, as well as in his previously submitted filings before this Office.
[65] *See.* DPM § 2422.
[66] Agency' Brief at Exhibit 10.

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE[1], | ) | OEA Matter No. J-0041-26 |
| Employee | ) | |
| v. | ) | Date of Issuance: August 12, 2026 |
| | ) | |
| D.C. DEPARTMENT OF FOR-HIRE VEHICLES, | ) | MONICA DOHNJI, Esq. Senior Administrative Judge |
| Agency | ) | |
| | ) | |

Employee, *Pro Se*
Zita Orji, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On March 13, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the D.C. Department of For-Hire Vehicles' ("DFHV" or "Agency") decision not to rescind her resignation and reinstate her to her previous position of record. OEA issued a Request for Agency Answer to Petition for Appeal on March 13, 2026. Thereafter, on April 9, 2026, Agency filed its Answer to Petition for Appeal citing therein that OEA does not have jurisdiction over voluntary resignations and that its decision not to reinstate Employee does not constitute an adverse action within OEA's jurisdiction.

This matter was assigned to the undersigned Senior Administrative Judge on April 13, 2026. Subsequently, the undersigned issued an Order on April 30, 2026, requiring Employee to address the jurisdiction issue raised by Agency in its April 13, 2026, submissions. Employee's brief on jurisdiction was due on or before May 18, 2026, and Agency had the option to file a reply brief on or before June 2, 2026. While Employee filed her brief as required, on May 28, 2026, Agency filed a Motion for Extension of Time seeking a 30-day extension of the June 2, 2026, sur-reply brief deadline. The undersigned issued an Order on June 8, 2026, granting Agency's motion and setting the deadline to submit Agency's optional sur-reply brief to July 2, 2026. Agency submitted its brief as required. After considering the parties' arguments as presented in their

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

## JURISDICTION

The jurisdiction of this Office pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

## ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

## BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW[3]

Employee worked for Agency as a Supervisory Human Resources ("HR") Specialist effective August 4, 2019. Employee's position was classified as Management Supervisory Service ("MSS") position. On October 3, 2024, Agency's Chief of Staff, Dory Peters ("Mr. Peters") assigned Employee to approve another employee's timesheet in PeopleSoft. On October 23, 2025, Employee met with Mr. Peters regarding discrepancies with the other employee's timekeeping. Employee's concerns were escalated to Agency's director and eventually to the Assistant City Administrator, Christopher Rodriquez ("Mr. Rodriquez"), who directed Agency to continue approving the employee's timesheets.[4] Employee did not request that the task be reassigned to

[2] OEA Rule § 699.1.
[3] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[4] *See* Agency Answer (April 9, 2026). *See. also*. Agency's Reply (July 2, 2026).

another employee. Instead, on February 2, 2026, Employee informed Mr. Peters via email that "I am writing to formally share my decision to resign from my position as the HR supervisor with DC Department of For Hire Vehicles – effective February 13, 2026."[5] Thereafter, on February 5, 2026, Employee provided another written notice to Agency confirming her resignation. Employee cited in the February 5, 2026, notice that she was resigning due to "ongoing unethical practices and intolerable working environment."[6] On March 9, 2026, Employee emailed Mr. Peters seeking reinstatement to her former Supervisory HR Specialist position. Mr. Peters responded to Employee's email on March 10, 2026, informing her that reinstatement was not an option because her previous position was an MSS position.[7]

**Employee's Position**

Employee asserts that OEA has jurisdiction over this matter because her resignation was not voluntary. Employee cites that she was "constructively discharged after being subjected to intolerable working conditions arising from her cooperation in a Board of Ethics and Government Accountability (BEGA) investigation and [her] refusal to participate in improper timekeeping practices."[8] Employee explains that "constructive discharge exists where working conditions become so intolerable that a reasonable person would feel compelled to resign."[9] Employee asserts that dismissing her appeal at this state would be premature as she has alleged sufficient facts to establish a basis for OEA's jurisdiction.[10]

**Agency's Position**

Agency argues that Employee's separation from Agency was a result of her voluntary resignation and not an Agency initiated adverse action subject to OEA's jurisdiction.[11] Agency asserts that OEA's jurisdiction is strictly limited to a final decision involving (1) a performance rating which results in removal of the employee; (2) an adverse action for cause which results in removal; (3) a reduction in grade; (4) a suspension for ten (10) days or more; (5) a reduction-in-force; or (6) a placement on enforced leave for ten (10) days or more, and none of these appealable actions occurred in the current matter.[12] Agency explains that the record clearly demonstrates that Employee voluntarily resigned from her position by submitting a written resignation on February 2, 2026, with an effective date of February 13, 2026. Agency further cites that the resignation was initiated solely by Employee and not the result of any final Agency decision or disciplinary action. Agency maintains that because Employee did not experience an appealable adverse action as defined by D.C. Official Code § 1-606.03 and 6-B DCMR § 604.1, OEA lacks jurisdiction over this matter.[13]

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[5] Agency Answer at Tab 2.
[6] *Id*.
[7] *Id*. at Tab 3.
[8] Employee's Response to Order to Show Cause Regarding Jurisdiction (May 11, 2026).
[9] *Id*.
[10] *Id*.
[11] *See* Agency Answer (April 9, 2026). *See. also*. Agency's Reply (July 2, 2026).
[12] *Id*.
[13] *Id*.

Agency further contends that Employee has not established that her resignation constituted a constructive removal because there is no evidence of coercion, misrepresentation, or an objectively intolerable working condition created by Agency. Agency denies that it coerced Employee into resigning, issued any ultimatum, or otherwise pressured her to separate from service. Agency cites that Employee has not demonstrated that she was subjected to objectively intolerable working conditions. Agency states that such a showing requires conditions so severe that a reasonable person would have felt compelled to resign, not merely ordinary workplace frustrations. Agency maintains that there were no changes to Employee's duties, work environment or employment conditions that would rise to that level. Agency notes that Employee performed her duties in a full-time telework capacity, thereby undermining any claim that she was subjected to a hostile or oppressive work environment.[14]

Additionally, Agency argues that Employee's subjective belief that she was subjected to intolerable working conditions when she refused to participate in 'unethical timekeeping practices' is misplaced and unsupported by the record. It avers that Employee has failed to demonstrate that 'unethical timekeeping practices' existed prior to her resignation or that Agency forced her to participate in the alleged 'improper practices.' Agency explains that the BEGA's investigation into the timesheet matter had not concluded at the time of Employee's resignation and remains ongoing, with no findings or determination of wrongdoing issued to date. Agency asserts that "even accepting Employee's assertions as true, being instructed to perform duties she believed to be improper, without more, does not constitute coercion, duress, or an ultimatum sufficient to render her resignation involuntary." Agency concludes that "because Employee has failed to present any evidence of coercion, misrepresentation, or intolerable working conditions, she cannot establish that her resignation was involuntary. Accordingly, Employee has not demonstrated a constructive removal, and that OEA lacks jurisdiction over this appeal."[15]

Agency also asserts that its decision not to reinstate Employee does not constitute an adverse action within the jurisdiction of OEA, as it is a discretionary employment determination rather than a removal or other appealable action. Agency reiterates that OEA's jurisdiction is limited to appeals from final agency decisions involving specific adverse actions, including removal, suspension of ten (10) days or more, reduction in grade, reduction-in-force, or placement on enforced leave. Agency explains that "a decision not to reinstate a former employee following a voluntary resignation does not constitute any of the enumerated adverse actions within OEA's jurisdiction. While reinstatement may be available in certain contexts as an equitable remedy, it is not automatic or guaranteed." According to Agency, "Employee voluntarily resigned from her position effective February 13, 2026, thereby ending her employment relationship with Agency. Her subsequent request, submitted nearly one month later, sought reemployment, not the reversal of an adverse action. Agency's determination that Employee was not eligible for reinstatement therefore does not constitute a removal, suspension, reduction in grade, or any other appealable action under the governing statute and regulations. OEA has consistently held that it lacks jurisdiction over claims that do not involve an appealable adverse action and has no authority to review discretionary personnel determinations of this nature."[16]

[14] *Id*.
[15] *Id*.
[16] *Id*.

Analysis

The threshold issue in this matter is one of jurisdiction. This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[17], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating which results in removal of the employee;
(b) An adverse action for cause which results in removal;
(c) A reduction in grade;
(d) A suspension for ten (10) days or more;
(e) A reduction-in-force; or
(f) A placement on enforced leave for ten (10) days or more.

Moreover, DPM § 631.2 provides that ". . . for appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction." This Office has no authority to review issues beyond its jurisdiction.[18]

***Resignation***

In accordance with DPM Instruction Nos. 8-53, 9-25, 36-3 and 38-12, resignations are considered to be "voluntary separations." These separations are "initiated by the employee, not the employing agency or personal authority." Further, these instructions provide that a separation is deemed to be voluntary if the employee is free to choose, understands the transaction, is given a reasonable time to make his or her choice and is allowed to set the effective date of the action.[19] Further, in accordance with the D.C. Court of Appeals, the OEA Board has held that the "test to determine voluntariness is an objective one that, considering all the circumstances, the employee was prevented from exercising a reasonably free and informed choice."[20] Citing to *District of Columbia Metropolitan Police Department v. Stanley*, the OEA Board further noted that, as a general principle, an employee's decision to resign is considered voluntary "if the employee is free to choose, understands the transaction, is given a reasonable time to make his choice, and is permitted to set the effective date. With meaningful freedom of choice as the touchstone, courts have recognized that an employee's resignation may be involuntary if it is induced by the employer's application of duress or coercion, time pressure, or the misrepresentation or

[17] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[18] *See. Employee v. D.C. Fire & Medical Emergency Services,* OEA Matter No. 1601-0080-24 (September 24, 2024); *Employee v. Department of Public Works,* OEA Matter No. J-0076-25, *Opinion and Order on Petition for Review* (June 4, 2026).
[19] *See.* DPM Instructions Nos. 8-53, 9-25, 36-3 and 38-12 (March 26, 2008).
[20] *Morris Yarborough v. Department of Public Works*, OEA Matter No. J-0022-19, *Opinion and Order on Petition for Review* (January 14, 2020), citing *District of Columbia Metropolitan Police Department v. Stanley*, 942 A.2d 1172, 1175-1176 (2008).

withholding of material information."[21] In the instant matter, Employee does not dispute that she resigned from her position. Employee provided a resignation notice to Agency via email on February 2, 2026, and again on February 5, 2026. This notice provided an effective date of her resignation as February 13, 2026, and was submitted in writing to Agency's Chief of Staff, Mr. Peters. The resignation notices indicated that Employee understood and choose to take the action.

Approximately one (1) month later, on March 9, 2026, Employee emailed Mr. Peters notifying him of her intention to rescind her resignation. Ultimately, Employee's request to rescind her resignation was denied. Employee argues that her resignation was not voluntary because she was constructively discharged after being subjected to intolerable working conditions arising from her cooperation in a BEGA investigation and her refusal to participate in improper timekeeping practices. The question of whether a resignation is voluntary or involuntary has been considered in several cases before this Office.[22] When determining whether a resignation was voluntary or involuntary, this Office aligns with the seminal case in the federal sector on this issue, *Christie v. United States*.[23] In *Christie*, the plaintiff claimed that she was wrongfully separated from the government by means of a coerced resignation. The U.S. Court of Claims held that, as a matter of law, the plaintiff's resignation was voluntary. Christie was a Veteran's preference employee of the U.S. Navy Department. She was issued an advance notice of proposed removal for cause for attempting to inflict bodily injury on her supervisor. She denied the charge. The agency issued a final decision to remove Christie but allowed her an opportunity to accept a discontinued service retirement instead of being fired. Christie resigned and accepted the retirement benefit. Then, she filed an appeal with the U.S. Civil Service Commission (CSC). The CSC dismissed the appeal for lack of jurisdiction and the plaintiff appealed to the U.S. Court of Claims. In finding that the resignation was voluntary, the Court of Claims held that employee resignations are presumed to be voluntary.[24] The Court further stated:

> "This presumption will prevail unless plaintiff comes forward with sufficient evidence to establish that the resignation was involuntarily extracted. Plaintiff had the opportunity to rebut this presumption before the CSC…. Upon review of the facts as they appear in the record before the CSC, it is clear the plaintiff has failed to show that her resignation was obtained by external coercion or duress. Duress is not measured by the employee's subjective evaluation of the situation. Rather, the test is an objective one. While it is possible plaintiff, herself, perceived no viable alternative but to tender her resignation, the record evidence supports CSC's finding that plaintiff chose to resign and accept discontinued service retirement rather than challenge the validity of her proposed discharge for cause. The fact remains, plaintiff had a choice. She could stand pat

[21] *Id*.
[22] *See.*, e.g., *Alston v. D.C. Office of Department of Contracting and Procurement*, OEA Matter No. 1601-0010-09 (May 5, 2009); *Moore v. Office of the State Superintendent of Education*, OEA Matter No. J-0114-14 Initial Decision (September 25, 2014).
[23] *Christie v. United States,* 518 F.2d. 584 (Ct. Cl. 1975).
[24] *Alston v. D.C. Office of Department of Contracting and Procurement*, OEA Matter No. 1601-0010-09 Initial Decision (May 5, 2009).

> and fight. She chose not to. Merely because plaintiff was faced with an inherently unpleasant situation in that her choice was arguably limited to two unpleasant alternatives does not obviate the involuntariness of her resignation. This Court has repeatedly upheld the voluntariness of resignations where they were submitted to avoid threatened termination for cause. Of course, the threatened termination must be for good cause in order to precipitate a binding, voluntary resignation. But this "good cause" requirement is met as long as plaintiff fails to show that the agency knew or believed that the proposed termination could not be substantiated."[25]

"It is incumbent on the employee; therefore, to present sufficient evidence to prove that his or her resignation was involuntary."[26] Additionally, the Court in *Stanley*, *supra*, held that "the fact that an employee is faced with an inherently unpleasant situation or that his choice is limited to two unpleasant alternatives is not enough by itself to render the employee's choice involuntary." Therefore, in accordance with DPM Instructions and case law, OEA would only retain jurisdiction over a resignation if the aforementioned issues regarding coercion, duress or constructive discharge had occurred.

In the instant matter, Employee asserts that she was constructively discharged after being subjected to intolerable working conditions arising from her cooperation in a BEGA investigation and her refusal to participate in improper timekeeping practices. However, Employee has not otherwise provided evidence of how her resignation was a constructive discharge, such as how and what steps Agency took to subject her to intolerable working conditions. Further, Employee has failed to provide evidence that her resignation was coerced or a result of duress. As a result, I find that Employee's resignation was voluntary and this Office has consistently held that it lacks jurisdiction over voluntary resignations.[27]

***Request for Reinstatement***

As was previously noted, approximately one (1) month after Employee informed Agency of her intent to resign and the effective date of her resignation, Employee requested "consideration for reinstatement to the position of Human Resources Supervisor, with the DFHV." Agency asserts that its decision not to reinstate Employee does not constitute an adverse action within the jurisdiction of OEA, as it is a discretionary employment determination rather than a removal or other appealable action. Agency restates that OEA's jurisdiction is limited to appeals from final agency decisions involving specific adverse actions, including removal, suspension of ten (10) days or more, reduction in grade, reduction-in-force, or placement on enforced leave. Agency explains that a decision not to reinstate a former employee following a voluntary resignation does not constitute any of the enumerated adverse actions within OEA's jurisdiction. I must agree with

[25] *Christie v. United States,* 518 F.2d. 584, 587-588 (Ct. Cl. 1975).

[26] *Moore v. Office of the State Superintendent of Education*, OEA Matter No. J-0114-14 Initial Decision (September 25, 2014).

[27] *Evans v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0055-11, *Opinion and Order on Petition for Review* (December 10, 2014).

Agency. Because I have found that Employee's resignation was voluntary, and Employee was not subjected to an adverse action for which she prevailed, I conclude that OEA does not have jurisdiction over Employee's request for reinstatement.

Mr. Peters, in his March 10, 2026, email to Employee cited that "I wanted to reach out to let you know that we've carefully reviewed your request for reinstatement. After discussing your situation with DCHR, we were informed that reinstatement is unfortunately not an option for MSS positions." Accordingly, I find that Agency had the discretion to reinstate Employee after she voluntarily resigned, and it chose not to do so.[28]

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *id*, as that "degree of relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue." Based on the foregoing, I conclude that Employee has not met the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Monica N. Dohnji___
MONICA DOHNJI, Esq.
Senior Administrative Judge

[28] Assuming *arguendo* that Employee's resignation was a result of a constructive discharge, I find that this Office would still not have jurisdiction over Employee because her position was an MSS position. This Office had consistently held that it lacked jurisdiction over MSS employee. In *Grant v. District of Columbia*, 908 A.2d 1173, 1178 (D.C. 2006), the District of Columbia Court of Appeals held that "while the CMPA and its implementing regulations provide procedural protections to Career Service employees who are subject to adverse employment actions (such as notice and hearing rights, and the right to be terminated only for cause), MSS employees are statutorily excluded from the Career Service and thus cannot claim those protections." Additionally, the Court in *Evans v. District of Columbia*, 391 F. Supp. 2d 160 (2005), reasoned that because MSS employees serve "at-will", they have no property interest in their employment because there is no objective basis for believing that they will continue to be employed indefinitely. Based on the foregoing, I conclude that since Employee's last position of record was an MSS position, I cannot adjudicate her appeal, and it therefore must be dismissed for lack of jurisdiction.

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operations Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| EMPLOYEE[1], | ) | |
| Employee | ) | OEA Matter No. J-0042-26 |
| | ) | |
| v. | ) | Date of Issuance: August 5, 2026 |
| | ) | |
| D.C. DEPARTMENT OF TRANSPORTATION, | ) | |
| Agency | ) | Michelle R. Harris, Esq. |
| | ) | Senior Administrative Judge |
| | ) | |

Employee, *Pro Se*
Kathleen Miskovsky Black, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On March 13, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Department Transportation's ("Agency or DDOT") decision to terminate him from his position as a Safety Technician/Crossing Guard. The effective date of his termination was April 2, 2021.[2] Following a letter dated March 13, 2026, from OEA requesting an Answer in this matter, Agency filed an Answer on April 13, 2026. Agency cited therein that Employee's Petition for Appeal was untimely filed and that OEA lacks jurisdiction over this matter. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on April 17, 2026. On April 22, 2026, I issued an Order requiring the parties to address the jurisdiction issued raised by Agency in its Answer. Employee's brief was due by or before May 15, 2026, and Agency's response was due by or before June 1, 2026. Employee filed responses in this matter on May 7, 2026, May 20, 2026, and June 2, 2026. Agency filed its response on June 1, 2026. After considering the parties' arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Employee was terminated for the following cause of action: "(1) Attendance-related offense: Unauthorized absence of five (5) workdays or more, pursuant to DPM §1605.4 (f)(4).

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[3]

OEA Rule § 631.2 *id.* states:

***For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing***. The agency shall have the burden of proof as to all other issues. (Emphasis added).

JURISDICTION

For the reasons explained below, the jurisdiction of this Office has not been established in this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Safety Technician/Crossing Guard. In a Final Notice dated March 26, 2021, Employee was terminated from service effective April 2, 2021. Employee was terminated for the following cause of action: *"Attendance-related offense: Unauthorized absence of five (5) workdays or more, pursuant to DPM §1605.4 (f)(4).* On March 13, 2026, Employee filed his Petition for Appeal at OEA.

**Employee's Position**

Employee avers that he was wrongfully terminated because the Agency failed to provide "proper and timely notice of this action."[4] Employee asserts that the Agency "claims the notice was sent in February 2021, [h]owever, the paperwork produced by the Agency lists 250 M Street, SE address-a headquarters that was not officially open or occupied until late February 2021."[5] Additionally, Employee argues that the Agency "actively concealed [his] employment status" and that he was not notified of the separation from service until August 27, 2021.[6] Employee also notes

[3] OEA Rule § 699.1.
[4] Employee's Petition for Appeal. (March 13, 2026).
[5] Employee's Brief on Jurisdiction (May 7, 2026).
[6] *Id.*

that he was on "active workers' compensation leave" during this entire period and through June 2022. Employee avers that during his "repeated attempts to obtain the basis for this removal starting in August 2021, the Agency withheld [his] personnel file until March 2022." As such, Employee contends that the "statutory clock must be tolled as the Agency's action occurred while [he] was in protected medical status." Employee also avers that he sought assistance from his Union to try to resolve the matter administratively. Employee cites that he tried to engage in a grievance process but "was met with further administrative silence." Employee argues that his "Union's failure to respond or act left [him] with no choice but to seek direct relief from OEA."[7] Employee avers that he was denied due process in that he did not receive a pre-termination hearing which violates his "Loudermill and Weingarten" rights. Employee further maintains that his matter is subject to equitable tolling under OEA Rule 631.2, as the delay was a direct result of the Agency's relocation, concealment actions and exhaustion of other avenues.

Employee also avers that there is a record of "systemic due process violations, intentional suppression of material evidence and fraudulent misrepresentation by representatives of the District Department of Transportation (DDOT) and associated union representation."[8] Employee asserts that on April 8, 2021, he sent an email to Dena Thweatt with the subject line of "work" and that this communication "explicitly notified her that [he] was on active Workers' Compensation protective status."[9] Employee further avers that the Agency "fabricated an AWOL charge claiming [he] missed 53 days of work between December 7, 2020, and January 29, 2021, which is a "flat out legal impossibility." Employee maintains that he was on "fully approved active Workers' Compensation protective status through the District government." Employee also avers that the Department of Human Resources ("DCHR"), coded his termination as "misconduct." Employee further avers that he failed to receive fair representation by his Union Representative, Debra Walker.

Employee also asserts that the District is "attempting to enforce a strict, unyielding double standard before this Office." He argues that they demand adherence to a calendar deadline but systematically failed to follow the applicable regulations. Employee asserts that he is filing a "federal-level criminal and civil violation packet into the record." Employee claims that this packet will provide evidence of the fraudulent actions of the Agency.[10]

**Agency's Position**

Agency asserts OEA lacks jurisdiction over this matter because Employee's Petition for Appeal ("PFA") was untimely filed. Agency avers that Employee's PFA was filed "more than four years" between the Agency action and the date of the filing. Agency cites Employee was a Safety Technician at DDOT. Agency further notes that on February 3, 2021, it provided Employee with a "15 day advance written notice of its proposal to remove him from his position."[11] Agency contends that following a review from a Hearing Officer, the Agency issued a final notice of

[7] *Id.*
[8] Employee's "Formal Rebuttal and Exclusion of Fraudulent Timeline. (May 20, 2026).)
[9] *Id*.
[10] Employee's Formal Counter-Objection and Mandatory Notice of Evidence Injection Regarding Bad-Faith Administrative Timelines (June 2, 2026).
[11] Agency's Reply to Employee's Brief on Jurisdiction at Pages 1-2 (June 1, 2026).

separation on March 26, 2021.[12] Agency denies all of Employee's claims regarding the 250 M Street address appearing on the final notice and the claims that it "actively concealed" Employee's employment status.[13] Further, Agency asserts that at issue is whether Employee timely filed the instant appeal to this Office.

Agency maintains that pursuant to the March 26, 2021 Final Notice, Employee was separated from service effective April 2, 2021. Agency avers that "the latest possible date Employee had notice of his removal, was by Employee's own admission, August 27, 2021."[14] This noted, Agency contends that while it does not concede that Employee did not have notice of his removal when he was served in March 2021, "even taking August 27, 2021, as the date when Employee knew of his removal, a total of one thousand six hundred and fifty-nine (1659), or four years, six (6) months, and fourteen (14) days elapsed between August 27, 2021, and March 13, 2026, the date when Employee filed the instant appeal."[15] Agency further avers that Employee has shown that there was a failure of service and offers no evidence to support that the "Agency's address change had any impact on its ability to serve Employee with the documents related to his termination."[16] Agency reiterates Employee's own admission of notice on August 27, 2021, but avers he still did not file until March 2026. Agency also maintains that Employee has provided no evidence of his "protected status" at the time of his removal, and it denies any claims that it "actively concealed his employment status."[17] Agency also asserts that Employee's claims regarding his efforts with his union are not relevant to the issue of the filing of his appeal.

Agency maintains that it administered the termination action in accordance with all applicable laws, rules and regulations. Further, Agency asserts that Employee's claims regarding "Loudermill/Weingarten" are unfounded. Agency asserts that in the Proposed Notice, "Agency advised Employee of his right [to] provide a response…"[18] Agency avers that Employee never submitted a response, and the Hearing Officer review the relevant documents and "recommended that the proposed action be upheld."[19] Agency also argues that equitable tolling should not be applied here. Agency asserts that this Office has held that OEA Rule 604.2, "may be subject to equitable tolling because rules that govern timeliness submissions are claims processing, rather than jurisdictional rules."[20] Agency contends that the "District of Columbia Court of Appeals has subsequently determined that equitable tolling is not available where claims processing rules are phrased in an unqualified manner."[21] Agency avers that "here, OEA Rule 604.2 is phrased in an qualified manner," given that the rule cites that a Petition for Appeal "must" be filed within 30

[12] *Id*. at Page 2.
[13] *Id*. at Page 3.
[14] *Id.* at Page 4.
[15] *Id*. at Pages 4-5.
[16] *Id*. at Page 5.
[17] *Id*.
[18] *Id*. at Page 6.
[19] *Id*. at Page 6.
[20] *Id.* at Page 7. Citing to *Employee v. District Department of Transportation*, OEA Matter No. J-0042-26 (June 29, 2022). The undersigned would note the Agency has cited to the instant matter. It appears that Agency may otherwise be referring to *Employee v. DDOT, OEA Matter No. 1601-0045-22*, which was issued before this Office on June 29, 2022.
[21] *Id*. citing to *Advisory Neighborhood Comm'n 2C v. D.C. Alcoholic Beverage & Cannabis BD*, 343 A.2d. 561, 572 (D.C. 2025).

days of the effective date of the action.[22] As such, Agency asserts that Employee's Petition for Appeal was not filed in a timely manner and must be dismissed for lack of jurisdiction.

**Jurisdiction**

This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[23], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

OEA Rule § 631.2., 6-B DCMR Ch. 600 (December 27, 2021), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant rule 631.1, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue." This Office has no authority to review issues beyond its jurisdiction.[24] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[25]

***Filing of Petition for Appeal***

Agency asserts that Employee's Petition for Appeal should be dismissed because it was filed over four years after the effective date of termination. Employee does not dispute this late filing claim but cites to administrative errors for the reason for the delay. Employee's termination was effective April 2, 2021, but Employee did not file his Petition for Appeal at OEA until March 13, 2026. OEA has held that a"[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within *thirty (30) calendar*

[22] *Id.*
[23] *See also*. Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[24] *See. Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[25] *See. Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

*days of the effective date of the action being appealed*."[26] (Emphasis added). The D.C. Court of Appeals in *Yordanos Sium v. Office of State Superintendent of Education*, 218 A.3d 228 (D.C. 2019)[27], held that the presumption regarding filing deadlines is that they are not jurisdictional, but waivable claims-processing rules. In support of this position, the Court relied heavily on the ruling in *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015) that filing deadlines in particular are quintessential claim-processing rules, which seek only to promote the orderly progress of litigation, and generally do not have jurisdictional force. (citing *Wong,* 135 S.Ct. at 1632 (quoting *Henderson, 562 U.S.* at 435, 131 S.Ct. 1197). In *Sium*, the Court reasoned that even procedural rules codified in statutes are non-jurisdictional in character. It found that if a deadline is contained in a statute **and** its language is mandatory, it *may* be jurisdictional (Emphasis added). The Court held that D.C. Code § 1-606.03(a), which provides that any appeal shall be filed within 30 days of the effective date of the appealed action, meets both requirements. However, it opined that more is required.

Relying on *Mathis*, the D.C. Court of Appeals held that for a filing deadline to be deemed a jurisdictional bar, the traditional tools of statutory construction must also make clear that the legislature intended it to serve this purpose. The D.C. Court of Appeals saw no indication that the D.C. City Council affirmatively sought to curtail OEA's jurisdiction; therefore, it ruled that the 30-day deadline to file appeals at OEA is not jurisdictional. As a result, OEA cannot dismiss a late-filed appeal outright. However, OEA can dismiss the appeal if the Agency seasonably objects to the untimeliness of Employee's filing as a defense, as held in *Brewer v. D.C. Office of Employee Appeals*, 163 A.3d 799 (D.C. 2017).

In *Brewer*, the D.C. Court of Appeals held that as a claims-processing rule, a 30-day deadline is subject to equitable tolling. However, in accordance with the *Mathis* holding, claims-processing rules may be tolled (or relaxed or waived) if equity compels such a result (*See Neill v. District of Columbia Public Employee Relations Bd.,* 93 A.3d 229, 238 (D.C.2014), (explaining that claim-processing rules "may be relaxed or waived"). The Court in *Brewer* reasoned that *equitable tolling turns on balancing the fairness to both parties and that equity aids the vigilant*. Therefore, where a timing rule should be tolled turns on (1) whether there was unexplained or undue delay and (2) whether tolling would work an injustice to the other party (*See. Simpson v. District of Columbia Office of Human Rights,* 597 A.2d 392 (D.C.1991) and *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015)). (Emphasis added). Furthermore, the Court held that consideration of the importance of ultimate finality in legal proceedings can also be considered when making a determination on tolling a deadline.

In the instant matter, Employee cites that the reasons for his untimely filing were the Agency's failures to provide timely notice of the separation and that its action took place while he was on "Workers' Compensation protected status." To support this contention, Employee avers that the Agency used an address of 250 M Street, in the beginning of February 2021, but cites that the address was not active until later in February of that year. Employee also asserts that he did not receive the notice until August 2021 and that he attempted to engage in a grievance process. Employee further cites that he was on the Workers Compensation protected status until June 2022.

[26] D.C. Code §1-606.03.
[27] *See also*. *Kevin Baldwin v DC Office of Employee Appeals and DC Department of Youth Rehabilitation Services*, DC Court of Appeals No. 18-CV-1134 (May 7, 2020).

As was previously cited, the Court noted in *Brewer* that considerations of equitable tolling for deadlines include a review of the explanation of the delay and whether the tolling would result in prejudice to the other party. Here, Employee filed his Petition five (5) years following the effective date of the action. Further, by Employee's own admission, instead of filing at OEA in August 2021 when he received notice, he instead tried to seek an "administrative resolution through his Union."

This tribunal has no jurisdiction over any claims of a failure of representation by an employee's union. Further, Agency seasonably objected to the untimeliness of Employee's filing as a defense, explaining that "equitable tolling" does not apply in this instance. Agency cites that while OEA Rule 604.2 may be subject to tolling considerations because of "rules that govern timeliness of submissions are claims processing rather than jurisdiction rules; the Court of Appeals has "subsequently determined that equitable tolling is not available when claims processing rules are phrased in an "unqualified manner."[28] In the instant matter, I find that Employee's claims are not subject to equitable tolling and that the filing of the Petition for Appeal nearly five years after the effective date of the action is untimely. Even in consideration of Employee's admission of the receipt of notice on August 27, 2021, I find that the filing of the appeal on March 13, 2026, does not meet the "vigilance" standard prescribed by the Court in *Brewer* to warrant a consideration of equitable tolling. Accordingly, I further find that Employee's Petition for Appeal in this matter was not filed in accordance with the prescribed timeline required by all applicable laws, rules and regulations. As a result, this Office lacks jurisdiction over this matter. For the reasons cited above, I find that Employee has not met the burden of proof that OEA has jurisdiction over this matter and this matter must be dismissed.

ORDER

It is hereby **ORDERED** that the Petition for Appeal in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

***/s/ Michelle R. Harris***
Michelle R. Harris, Esq.
Senior Administrative Judge

[28] Agency's Reply to Employee's Brief on Jurisdiction at Page 7 (June 1, 2026).

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | OEA Matter No.: J-0056-26 |
| EMPLOYEE,[1] | ) | |
| Employee | ) | |
| | ) | Date of Issuance: August 31, 2026 |
| v. | ) | |
| | ) | |
| D.C. PUBLIC SCHOOLS, | ) | NATIYA CURTIS, Esq. |
| Agency | ) | Administrative Judge |
| | ) | |

Employee, *Pro Se*
Gehrrie Bellamy, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On April 17, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to terminate her from her position as a Substitute Teacher, effective March 26, 2026, for corporal punishment. OEA issued a letter dated April 17, 2026, requesting that Agency file an Answer on or before May 17, 2026. Agency filed its Answer to Employee's Petition for Appeal on March 18, 2026. This matter was assigned to the undersigned Administrative Judge ("AJ") on May 18, 2026.

On May 22, 2026, I issued an Order for Briefs on Jurisdiction,[2] requiring the parties to submit briefs in this matter. Employee's brief was due by June 9, 2026, and Agency's brief was due by June 23, 2026. On June 10, 2026, Employee filed a Motion to extend the deadline for her brief to November 1, 2026[3], but did not provide cause as to why she required a prolonged

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency cited in its Answer and Motion to Dismiss that this Office lacks jurisdiction in this matter because Employee was in a temporary position as a substitute teacher. (*Agency's Answer and Motion to Dismiss Petition for Appeal* (May 18, 2026)).
[3] Employee initially emailed the undersigned on Jube 5, 2026 requesting an extension. I informed the parties that substantive filings were not permitted by email and informed Employee that she must submit her Motion for extension in writing and by mail or hand-delivery.

extension.[4] On June 16, 2026, Agency filed an objection to Employee's Motion.[5] On June 18, 2026, I granted Employee's Motion in part and provided an extension to July 9, 2026. Agency's response was now due by or before July 30, 2026. Employee did not file her brief as required. On July 17, 2026, Agency filed a Motion for Enlargement of Time, citing that it had not received Employee's Brief and therefore was unable to prepare its response by July 30, 2026. On July 30, 2026, I issued an Order for Statement of Good Cause to Employee, requiring her to submit her Brief on Jurisdiction and a Statement regarding her failure to comply with the June 18, 2026, Order.

To date, Employee has not submitted a statement of good cause or a Brief on Jurisdiction, as required by the July 30, 2026, Order.[6]Accordingly, the undersigned will decide this matter on the record available to date. I have determined that an Evidentiary Hearing is not required. The record is now closed.

## JURISDICTION

The jurisdiction of this Office has not been established in this matter.

## ISSUE

Whether this Appeal should be dismissed for lack of jurisdiction.

## BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence.
>
> Preponderance of the evidence shall mean: That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

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[4] On June 11, 2026, I reached out to the parties by email and noted that I would schedule a Status Conference in this matter and proposed dates for the Conference. On June 16, 2026, Employee responded and stated that she was unable to meet with me and asked me to call her representative. I responded to the parties and advised Employee that her representative must submit a Designation of Employee representative form and noted where to find the form and how to submit it. To date, there is no Designation of Employee Representative form in the record, nor has Employee's representative submitted any notice of appearance in this matter.

[5] Agency cited that the length of extension Employee requested was unreasonable, as the date requested was almost five (5) months away.

[6] On August 8, 2026, Employee emailed the undersigned and Agency and noted that her attorney advised her "not to make any pretrial statements until my trial has concluded" and requested that OEA reserve her filing to be presented at a later date.

For Appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

**Employee's Position**

Employee asserts that she was wrongfully terminated and that the allegations of corporal punishment are false. Employee maintains that she was attempting to keep a child from hurting himself.[7]

**Agency's Position**

Agency asserts that Employee was terminated because it was reported that she assaulted a student while in a school library. Agency asserts that Employee was a substitute teacher and thus OEA lacks jurisdiction over Employee's Appeal and moves for summary judgment. Agency notes that OEA's jurisdiction is limited in this matter because Employee was a temporary Employee and not a career service permanent Employee. Agency asserts that as a substitute teacher, Employee was "appointed to a Wages as Earned ("WAE") position with a Not-to-Exceed date of June 27, 2025." Agency further asserts that "WAE appointments are, by definition, temporary and do not confer permanent status within the Career or Educational Services." Agency argues that because Employee did not hold a permanent position, she is not afforded the "statutory protections afforded to permanent employees, including appeal rights before the OEA, which is expressly reserved for permanent employees."[8]

***Analysis***

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.[9] This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code § 1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and the OPRAA conferred jurisdiction on this Office to hear appeals, with some exceptions. According to the rules of this Office, established at 6-B of the District of Columbia Municipal Regulation ("DCMR") Chapter 600, Rule 604.1 states this Office has jurisdiction in matters involving District Government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;

[7] Employee's Petition for Appeal, p. 2 (April 17, 2026).
[8] Agency's Answer and Motion to Dismiss Employee's Petition for Appeal, pp. 1-2 (May 18, 2026).
[9] *See. Banks v. District of Columbia Public Schools,* OEA Matter No. 1602-0030-90*, Opinion and Order on Petition for Review* (September 30, 1992).

(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

In the instant matter, the undersigned agrees with Agency's assertion that OEA lacks jurisdiction over this matter. The record reflects that Employee was a substitute teacher and thus was a temporary employee.[10] Her offer letter reflects that she was paid only for her hours worked with no guaranty of employment.[11] While Employee's termination letter notes she was removed from the substitute teacher list for cause, OEA has consistently held that OEA lacks jurisdiction over temporary employees.[12] Thus, I find that Employee was not in a permanent status at the time of her removal. As such, I further find that this Office cannot hear the merits of Employee's appeal. Thus, Agency's Motion to Dismiss is hereby granted.

Alternatively, even if Employee's Petition for Appeal could be reviewed on the merits, she has failed to prosecute her appeal. OEA Rule 624.3, DCMR Ch. 600, et seq (December 27, 2021) grants an Administrative Judge the authority to "…dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal, including but not limited to, a failure to "*Submit required documents after being provided with a deadline for such submission* (emphasis added).[13] Further, this Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents.[14] Employee was warned in the Order for Statement of Good Cause issued on July 30, 2026, that failure to comply with the Order could result in sanctions, including dismissal. As of the date of this decision, Employee has not provided a written response to the July 30, 2026, Order.[15] Accordingly, I find that Employee's inaction would present an additional and valid basis for dismissing this matter.

[10] Agency's Answer and Motion to Dismiss Employee's Petition for Appeal, Tab 2 (May 18, 2026).
[11] *Id*.
[12] *Employee v. University of the District of Columbia*, OEA Matter No. J-0003-19, *Opinion and Order on Petition for Review* (December 3, 2019); *Employee v. Metropolitan Police Department*, J-0053-24 (August 13, 2024); *Employee v. D.C. Department of Parks and Recreation*, OEA Matter No. J-0056-25 (September 29, 2025).
[13] Rule 624.3(a).
[14] See *Employee v. District of Columbia Youth Rehabilitation Services*, OEA Matter No. J-0072-26 (August 14, 2026).
[15] Employee responded by email that she was advised not to prosecute her appeal until a criminal proceeding had concluded; yet, Employee did not comply with an Order to provide an Employee Designation of Representative form (or any proof that she was being represented). She also failed to comply with OEA Rule, 608.8 which provides, in part, that "a party must submit two (2) hard copies of any pleading, motion, exhibit or witness list, discovery response, or any written submission, either by mail or hand-delivery to the Office. The copies must be received by the Office on or before the prescribed deadline." While the undesigned advised Employee of this submission Rule, she continued to reply by email and failed to submit a written response to the July 30, 2026 Order.

ORDER

It is hereby **ORDERED** that Agency's Motion to Dismiss is **GRANTED** and Employee's Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

**/s/ Natiya Curtis**
Natiya Curtis Esq.
Administrative Judge

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them 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**

**THE OFFICE OF EMPLOYEE APPEALS**

| | |
|---|---|
| In the Matter of: | |
| | OEA Matter No.: J-0072-26 |
| EMPLOYEE[1], Employee | |
| | Date of Issuance: August 14, 2026 |
| v. | |
| DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES, Agency | MICHELLE R. HARRIS, ESQ. Senior Administrative Judge |

Employee, *Pro Se*
Zita Oriji, Esq., Agency Representative

## INITIAL DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

On June 1, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Youth Rehabilitation Services' ("Agency" or "DYRS") decision to remove him from service. Following a letter from OEA dated June 2, 2026, requesting an Answer in this matter, Agency filed its Answer and Motion to Dismiss on July 2, 2026. Agency noted in its Answer and Motion to Dismiss that OEA lacks jurisdiction over this matter. Agency cited that Employee's position was classified as Management Supervisory Service ("MSS") at the time of his termination and MSS employees do not have appeal rights before this Office. Further, Agency noted that Employee also made claims for payment of unpaid wages, which is not within OEA's jurisdiction. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on July 2, 2026.

On July 7, 2026, I issued an Order requiring the parties to submit briefs addressing the jurisdiction issue raised by Agency. Employee's brief was due by or before July 27, 2026, and Agency's brief was due by or before August 10, 2026. Employee did not submit his brief by the prescribed deadline. Consequently, on July 28, 2026, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit his brief and a statement regarding his failure to submit the brief by the July 27, 2026, deadline. Employee's brief and statement of good

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

cause were due by or before August 10, 2026. As of the date of this decision, Employee has not submitted a response as required. The record is now closed.

## JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUE

Whether this appeal should be dismissed for failure to prosecute.

## BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 624.3 states in relevant part that "if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

(a) Appear at a scheduled proceeding after receiving notice;
(b) *Submit required documents after being provided with a deadline for such submission*; or
(c) Inform this Office of a change of address which results in correspondence being returned."[2] (Emphasis Added)

[2] OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.[3] In the instant matter, Employee was provided notice in the July 7, 2026, and July 28, 2026, Orders that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. Employee's response to each of these orders were required to ensure an appropriate review and resolution of the matter. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 624.3. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

***/s/ Michelle R. Harris***
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge

[3] *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

**DEPARTMENT OF EMPLOYMENT SERVICES**

**NOTICE OF PUBLIC MEETING**

**District of Columbia Commission on Poverty**

**October 27, 2026**

**3pm-4:30pm (Virtual) You can obtain the virtual link currently through Open DC.**

The Poverty Commission will have 19 Community Representatives: 11 At-large Representatives and 8 Ward Representatives. The Commission will have 8 non-voting ex-officio members. We will meet the fourth Tuesday of each month for our public meeting. It will be a hybrid format. The virtual link will be provided 24 hours before the meeting. The meeting will take place from 1pm-4pm. You can find the link located at Open DC.

The purpose of the commission is to study issues surrounding poverty; evaluate current and previous poverty-reduction initiatives in the District and throughout the country to determine their effectiveness; and based on the Commission's research and evaluations, make comprehensive and continuing recommendations to the Mayor and the Council for strengthening and enhancing the economic status of persons in poverty in the District through initiatives that will also improve individuals' educational, wellness, and housing outcomes.

"This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov." 3 DCMR § 10409.2"

Virtual:
Registration Link Available Here

**AGENDA**

| | | |
|---|---|---|
| I. | Opening of Meeting & Roll Call | 3:00 PM |
| II. | Review and Approval of April Meeting Minutes | 3:05 PM |
| III. | Chairperson's Report | 3:10 PM |
| IV. | Discussion and Updates | 3:15 PM |
| | a. Recap 10/20 Listening Session | |
| | b. New Fiscal Year Plan and Pending Government Transition | |
| V. | Adjournment | 4:30 PM |

## DEPARTMENT OF ENERGY AND ENVIRONMENT

### PUBLIC NOTICE

### Asbestos Abatement Fees Adjustments for Fiscal Year 2027

Notice is hereby given that, pursuant to 20 DCMR 800.5(f), the Department of Energy and Environment (DOEE) intends to increase asbestos abatement fees, effective November 1, 2026.

The new fees will be as follows:

1) For projects removing between 161 and 1,600 square feet, or 261 and 2,600 linear feet, or up to 35 cubic feet of RACM, the fee will be $681.00.

2) For projects removing greater than 1,600 square feet, 2,600 linear feet, or 350 cubic feet of RACM, the fee will be $1,191.00.

3) A one-year blanket permit fee for a business entity that has entered into a contract for asbestos abatement at a specific site will be $1,191.00.

Any questions should be addressed to:

Constantine Unanka
Chief, Permitting and Auditing Branch
Lead-Safe and Healthy Housing Division
Department of Energy and Environment
1200 First Street, NE, 5th Floor
Washington D.C. 20002
(202) 442-7626

## DEPARTMENT OF ENERGY AND ENVIRONMENT

## PUBLIC NOTICE

Notice is hereby given that, pursuant to 20 DCMR § 210, the Air Quality Division (AQD) of the Department of Energy and Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington DC, is proposing to issue an air quality permit (No. 7442) to CBNA Halmar Clean Rivers JV, to operate one 40 kWe MQ Power diesel-fired non-emergency generator set, model DCA45SSIU4F, powered by a 65.7 bhp Isuzu engine with serial number 4LE2-879257, at the Potomac River Tunnel project, CSO 022 site, 2800 Virginia Avenue NW, Washington, DC. The contact person for the facility is Raoul Fernandez, Project Manager at r.fernandez@cbna-construction.us or by telephone (401) 919-8547.

The proposed emission limits are as follows:

a. Emissions from this generator shall not exceed those in the following table as tested pursuant to the applicable test methods in 40 CFR 1039, Subpart F [40 CFR 60.4200(a)(1)(i), 40 CFR 60.4200(a)(2)(i), 40 CFR 60.4201(a), 40 CFR 60.4204(b), 40 CFR 1039.101(a), (b), and (e)]:

| | **Pollutant Emission Limits (g/kW-hr)** | | |
|---|---|---|---|
| **Emission Standard Type** | NOx+NMHC | CO | PM |
| Transient and Steady State | 4.7 | 5.0 | 0.03 |
| Not-to-Exceed | 5.9 | 6.3 | 0.05 |

b. Visible emissions shall not be emitted into the outdoor atmosphere from the engine, except that discharges shall be permitted for two (2) minutes during any start-up, cleaning, adjustment of combustion or operational controls, or regeneration of emissions control equipment; provided, that such discharges shall not exceed twenty-seven percent (27%) opacity (unaveraged). [20 DCMR 606.1 and 606.2(d)]

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]

Violation of the requirements of this condition that occur as a result of unavoidable malfunction, despite the conscientious employment of control practices, shall be an affirmative defense for which the owner or operator shall bear the burden of proof. A malfunction shall not be considered unavoidable if the owner or operator could have taken, but did not take, appropriate steps to eliminate the malfunction within a reasonable time, as determined by the Department. [20 DCMR 903.13(b)]

*This condition is District enforceable only.*

d. The Permittee shall comply with the requirements for crankcase emissions, adjustable parameters, prohibited controls, and defeat devices specified in 40 CFR 1039.115. [40 CFR 60.4201(a), 40 CFR 60.4204(b)]

The estimated maximum potential emissions from the generator set are as follows:

| Pollutant | Potential Emissions (tons per year) |
|---|---|
| Total Particulate Matter (PM Total) | 0.009 |
| Oxides of Sulfur ($SO_x$) | 0.59 |
| Oxides of Nitrogen ($NO_x$) | 1.43 |
| Volatile Organic Compounds (VOC) | 0.08 |
| Carbon Monoxide (CO) | 0.004 |

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 9:00 A.M. and 5:00 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) 498-8143 or stephen.ours@dc.gov. Copies of the draft permit and related technical support memorandum are also available at: https://doee.dc.gov/service/public-notices-hearings.

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 before taking final action on the permit application.

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
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington DC 20002
stephen.ours@dc.gov

**No comments or hearing requests submitted after November 30, 2026 will be accepted**.

For more information, please contact Stephen S. Ours at (202) 498-8143 or stephen.ours@dc.gov.

**DISTRICT OF COLUMBIA**
**BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

**NOTICE OF MEETING**

The District of Columbia Board of Ethics and Government Accountability will hold a meeting at the Board of Ethics and Government Accountability, 1030 15th Street, NW, Suite 700 West, on November 5, 2026, at 10:00 a.m. and virtually. Below is a draft agenda for the meeting. A final meeting agenda will be posted on the Board's website at www.bega.dc.gov on the day of the meeting.

Members of the public are welcome to observe the meeting virtually or in person. In order to attend the meeting virtually, please visit:

Click here to join the meeting
Meeting ID:268 923 289 794 16
Passcode:hZ2aX3Xm
Download Teams | Join on the web
**Join by phone: 1-202-594-9550**
Phone Conference ID: 769 509 439#

Questions about the meeting may be directed to bega@dc.gov.

**AGENDA**

I. Call to Order

II. Ascertainment of Quorum

III. Adoption of the Agenda/Approval of Minutes

IV. Report by the Director of Open Government

A. OMA/FOIA Advice
B. Public Meeting Monitoring
C. Training/Outreach
D. Legislation and Litigation Update
E. Administrative Matters

V. Report by the Director of Government Ethics

A. Update on Status of Office of Government Ethics Investigations
B. Trainings/Outreach
C. Advisory Opinions/Advice
D. Legislative/ Rulemaking Updates
E. Administrative Matters

F. Financial Disclosure
G. Lobbyist Registration and Reporting
H. Public Investigations

VI. Public Comment

VII. Executive Session (non-public) to discuss ongoing, confidential investigations pursuant to D.C. Official Code § 2-575(b)(14), to consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body pursuant to D.C. Official Code § 2-575(b)(4)(A), to discuss personnel matters including the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials pursuant to D.C. Official Code § 2-575(b)(10), and to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13).

VIII. Resumption of Public Meeting

IX. Discussion of any remaining public items

X. Adjournment

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.

**FRIENDSHIP PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

**Family Education Coordinator**

Friendship Public Charter School is seeking bids from prospective vendors to provide:

- Family Education Coordinator services designed to: educate parents, caregivers, and alumni on what quality means in DC, how families can support Friendship school quality and student outcomes, and how decisions about schools are made; develop a bench of family leaders; and bring their perspective to school, network, and city decision makers.

The competitive RFP can be found on FPCS website at: http://www.friendshipschools.org/procurement. Proposals are due no later than **4:00 P.M., EST, Friday November 20, 2026**. Questions and Proposals should be submitted on-line at: Procurementinquiry@friendshipschools.org. All bids not addressing all areas as outlined in the RFP will not be considered. No proposals will be accepted after the deadline.

**DEPARTMENT OF HEALTH CARE FINANCE**
**NOTICE OF PUBLIC MEETING**

**Department of Health Care Finance Pharmacy and Therapeutics Committee**

The Department of Health Care Finance (DHCF) Pharmacy and Therapeutics Committee (Committee), pursuant to the requirements of Mayor's Order 2007-46, dated January 23rd, 2007, hereby announces a public meeting of the Committee to obtain input on the review and maintenance of a Preferred Drug List (PDL) for the District of Columbia. The meeting will be held **Thursday, December 3rd, 2026** at **2:00 PM virtually** via webinar.

**Please note to attend the meeting virtually**, **you will have to register at website:**
https://primetherapeutics.zoom.us/webinar/register/WN_pXPtfF-PQIuw2R4XKUgZJQ

Once registered you will receive an email with instructions on how to attend the webinar.

The Committee will receive public comments from interested individuals on issues relating to the topics or class reviews to be discussed at this meeting. The clinical drug class review for this meeting will include:

Angiotensin Modulator Combinations
Angiotensin Modulators
Antianginal Agents (Ranexa)
Antibiotics, Topical
Anticoagulants
Antihypertensives, Sympatholytics
Antipsoriatics, Oral
Antipsoriatics, Topical
Antiviral Agents, Oral (HSV & Influenza)
Antiviral Agents, Topical
Beta-Blockers
Bile Salts
Calcium Channel Blockers
Hemophilia Agents
Hepatitis B Agents
Hepatitis C Agents
HIV and AIDS Treatments
Immunomodulators, Atopic Dermatitis
Immunomodulators, Topical
Lipotropics, Others
Lipotropics, Statins
Methotrexate
Platelet Aggregation Inhibitors
Rosacea Agents, Topical
Sickle Cell Anemia Agents

Any person or organization who wishes to make a presentation to the DHCF P&T Committee should furnish his or her name, address, telephone number, and name of organization represented by calling (202) 442-9076 **no later than 4:45 PM Tuesday, November 24th, 2026**. The person or organization may also submit the aforementioned information via e-mail to Charlene Fairfax (charlene.fairfax@dc.gov).

**An individual wishing to make an oral presentation to the Committee will be limited to three (3) minutes**.

A person wishing to provide written information should supply a copy of the written information for the Committee **no later than 4:45 PM Tuesday, November 24th, 2026. Handouts are limited to no more than two standard 8-1/2 by 11-inch pages of "bulleted" points (or one page front and back).** The ready-to-disseminate, written information should be emailed to charlene.fairfax@dc.gov **to arrive no later than Tuesday, November 24th, 2026**.

## DEPARTMENT OF HEALTH CARE FINANCE

## PUBLIC NOTICE OF OPPORTUNITY TO VERIFY RECEIPT OF SUBMITTED COMMENTS FOR NOTICE OF PROPOSED RULEMAKING ON PRIVATE DUTY NURSING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in 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)), an Act to enable the District of Columbia (District) 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) and Mayor's Order 2024-115, dated July 1, 2024, hereby gives notice of an opportunity to verify receipt of submitted comments during a previous public comment period on DHCF's Notice of Proposed Rulemaking (NOPR) on private duty nursing requirements at 29 DCMR § 947.

The Department of Health Care Finance (DHCF) has been made aware of a possible delay in the receipt of public comments submitted to the DHCFPubliccomments@dc.gov email inbox during the public comment period. DHCF confirms that the designated inbox is currently receiving messages and that all individuals who submitted comments during the public comment period have been identified.

DHCF is providing an opportunity for individuals who submitted comments on the NOPR for 29 DCMR § 947, published in the *District of Columbia Register* on May 22, 2026, at 73 DCR 007904, to resubmit their comments to DHCFPubliccomments@dc.gov. The resubmission period will remain open for thirty (30) days following publication of this notice in the D.C. Register. The purpose of this resubmission period is to ensure that all comments were successfully received. DHCF will issue a personalized, non-autogenerated email acknowledging receipt of each resubmitted comment.

This resubmission period is not intended to solicit new comments. It is intended solely to verify that the comments reviewed and addressed by DHCF accurately reflect the comments submitted during the public comment period. Individuals resubmitting comments should include digital evidence of the email originally sent to the DHCFPubliccomments@dc.gov inbox. This verification process applies only to comments submitted through the DHCFPubliccomments@dc.gov email address; commenters who submitted their comments by other means do not need to resubmit them.

If you have any questions, please contact Mario Ramsey, Associate Director, Division of Regulation and Policy Management, Health Care Policy and Research Administration, Department of Health Care Finance, at 441 4th Street, Suite 900S, Washington, DC 20001, mario.ramsey@dc.gov or 202-899-3652.

## DEPARTMENT OF HEALTH

## PUBLIC NOTICE

The District of Columbia Board of Nursing ("Board") hereby gives notice of its upcoming meeting, pursuant to Section 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b).

The Board meets bi-monthly on the first Wednesday of every other month from 9:00 AM to 12:00 PM. The Board meeting will take place on Wednesday, November 4, 2026. The meeting will be open to the public from 9:30 AM until 10:00 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 10:00 AM to 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be held via videoconference.

The detailed agendas for all open (public) session meetings and videoconference and telephone information will be posted at least one business day before the meeting on the DC Health website at https://dchealth.dc.gov/node/149382

**DC DEPARTMENT OF HEALTH**

**Environmental Health Administration**

**NOTICE OF FUNDING AVAILABILITY (NOFA)**

**FO# EHA-LPPOC-11.13.26**

**Lead Poisoning Prevention Outreach and Collaboration**

The District of Columbia, Department of Health (DC Health) is requesting proposals from qualified applicants to provide services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of DC Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DC Health terms and conditions for applying for and receiving funding.

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|---|---|
| Funding Opportunity Title: | Lead Poisoning Prevention Outreach and Collaboration |
| Funding Opportunity Number: | EHA-LPPOC-11.13.26 |
| DC Health Administrative Unit: | Environmental Health Administration |
| DC Health Program Bureau | Office of Environmental Protection |
| Funding Opportunity Contact: | Christina Willut, Program Manager<br>Doh.leadsafety.ehagrants@dc.gov |
| Funding Opportunity Description: | Funding under this RFA will support the informing of low-income residents in Wards 1, 4, and 5 about their children's potential exposures to lead and how to protect them. Focus should be placed on the African immigrant community and Spanish-speaking households. |
| Eligible Applicants | • Nonprofit organizations<br>• Faith-based organizations |
| Anticipated # of Awards: | One (1) Award |
| Anticipated Amount Available: | $35,424 |
| Annual Floor Award Amount: | $35,424 |
| Annual Ceiling Award Amount: | $35,424 |
| Legislative Authorization | Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 247b(k)(2)], as amended |

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| Associated CFDA# | 93.197 |
| Associated Federal Award ID# | NUE2EH001487 |
| Cost Sharing/Match Required? | No |
| RFA Release Date: | November 13, 2026 |
| Letter of Intent Due date: | Not Applicable |
| Application Deadline Date: | December 11, 2026 |
| Application Deadline Time: | 3:00 p.m. |
| Links to Additional Information about this Funding Opportunity | DC Grants Clearinghouse<br>https://communityaffairs.dc.gov/content/community-grant-program#4<br><br>DC Health EGMS<br>https://egrantsdchealth.my.site.com/sitesigninpage |

Notes:

1. DC Health 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.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DC Health grant funding.
4. Applicants must have a Tax ID#, and be registered in the federal Systems for Award Management (SAM) with an active UEI# to be registered in DC Health's Enterprise Grants Management System.

**DC DEPARTMENT OF HEALTH**

**Environmental Health Administration**

**NOTICE OF FUNDING AVAILABILITY (NOFA)**

**FO# EHA-LPPONEP-11.13.26**

**Lead Poisoning Prevention Outreach for New and Expectant Parents**

The District of Columbia, Department of Health (DC Health) is requesting proposals from qualified applicants to provide services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of DC Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DC Health terms and conditions for applying for and receiving funding.

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| Funding Opportunity Title: | Lead Poisoning Prevention Outreach for New and Expectant Parents |
| Funding Opportunity Number: | EHA-LPPONEP-11.13.26 |
| DC Health Administrative Unit: | Environmental Health Administration |
| DC Health Program Bureau | Office of Environmental Protection |
| Funding Opportunity Contact: | Christina Willut, Program Manager, Doh.leadsafety.ehagrants@dc.gov |
| Funding Opportunity Description: | The purpose of this funding is to provide education and outreach activities focused on lead poisoning prevention for expectant parents and new parents in Washington, DC. Expectant and new parents are an ideal audience for lead poisoning prevention efforts because children 0 to 6 years of age face a particularly high risk of harm from lead exposure. |
| Eligible Applicants | • Nonprofit organizations<br>• Faith-based organizations |
| Anticipated # of Awards: | One (1) Award |
| Anticipated Amount Available: | $35,424.00 |
| Annual Floor Award Amount: | $35,424.00 |
| Annual Ceiling Award Amount: | $35,424.00 |

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| Legislative Authorization | Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 247b(k)(2)], as amended |
| Associated CFDA# | 93.197 |
| Associated Federal Award ID# | NUE2EH001487 |
| Cost Sharing/Match Required? | No |
| RFA Release Date: | November 13, 2026 |
| Letter of Intent Due date: | Not Applicable |
| Application Deadline Date: | December 11, 2026 |
| Application Deadline Time: | 3:00 p.m. |
| Links to Additional Information about this Funding Opportunity | DC Grants Clearinghouse https://communityaffairs.dc.gov/content/community-grant-program#4<br><br>DC Health EGMS https://egrantsdchealth.my.site.com/sitesigninpage |

Notes:

1. DC Health 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.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DC Health grant funding.
4. Applicants must have a Tax ID#, and be registered in the federal Systems for Award Management (SAM) with an active UEI# to be registered in DC Health's Enterprise Grants Management System.

**DC DEPARTMENT OF HEALTH**

**Environmental Health Administration**

**NOTICE OF FUNDING AVAILABILITY (NOFA)**

**FO# EHA-LPPOP-11.13.26**

**Lead Poisoning Prevention Outreach to Physicians**

The District of Columbia, Department of Health (DC Health) is requesting proposals from qualified applicants to provide services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of DC Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DC Health terms and conditions for applying for and receiving funding.

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|---|---|
| Funding Opportunity Title: | Lead Poisoning Prevention Outreach to Physicians |
| Funding Opportunity Number: | EHA-LPPOP-11.13.26 |
| DC Health Administrative Unit: | Environmental Health Administration |
| DC Health Program Bureau | Office of Environmental Protection |
| Funding Opportunity Contact: | Christina Willut, Program Manager, Doh.leadsafety.ehagrants@dc.gov |
| Funding Opportunity Description: | The purpose of this funding is to promote awareness and education about childhood lead poisoning prevention among physicians in the District of Columbia. Of particular interest is increasing awareness of the District of Columbia's "Twice by Two" law, which requires children to be tested for blood lead levels once between 6 and 14 months of age and again between 22 and 26 months of age. |
| Eligible Applicants | • Nonprofit organizations<br>• Universities/educational institutions |
| Anticipated # of Awards: | One (1) Award |
| Anticipated Amount Available: | $35,424.00 |
| Annual Floor Award Amount: | $35,424.00 |
| Annual Ceiling Award Amount: | $35,424.00 |

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|---|---|
| Legislative Authorization | Section 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 247b(k)(2)], as amended |
| Associated CFDA# | 93.197 |
| Associated Federal Award ID# | NUE2EH001487 |
| Cost Sharing/Match Required? | No |
| RFA Release Date: | November 13, 2026 |
| Letter of Intent Due date: | Not applicable |
| Application Deadline Date: | December 11, 2026 |
| Application Deadline Time: | 3:00 p.m. |
| Links to Additional Information about this Funding Opportunity | DC Grants Clearinghouse https://communityaffairs.dc.gov/content/community-grant-program#4<br><br>DC Health EGMS https://egrantsdchealth.my.site.com/sitesigninpage |

Notes:

1. DC Health 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.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DC Health grant funding.
4. Applicants must have a Tax ID#, and be registered in the federal Systems for Award Management (SAM) with an active UEI# to be registered in DC Health's Enterprise Grants Management System.

**LAYC CAREER ACADEMY PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS (RFP)**

**Student Information System (SIS)**

LAYC Career Academy, in accordance with section 2204 (c) of the District of Columbia School Reform Act of 1995, solicits proposals for the following services:

- **Student Information System (SIS)**

  LAYC Career Academy is seeking competitive bids for a single firm to provide, implement, migrate, integrate, train, and support a modern SIS for School Year 2027-28 and beyond. The selected SIS will serve as LAYCCA's authoritative system of record for student and academic information, replacing LAYCCA's current enrollment/re-enrollment process. LAYC Career Academy enrolls up to 200 adult learners and has an annual budget of approximately $5M.

Full RFP available upon request. Proposals should be submitted in PDF format via email to ericka@laycca.org by no later than 5:00pm EST on Friday, November 20, 2026.

Please specify “Proposals for a Student Information System” in the subject line. No phone calls or late responses.

Interested parties will state their credentials and qualifications and provide appropriate licenses, references, certifications, insurances, proposed costs, and work plan. Please include any pertinent disclosures that may be present.

## DEPARTMENT OF LICENSING AND CONSUMER PROTECTION

### District of Columbia Board of Accountancy

### NOTICE OF PUBLIC MEETING

The District of Columbia Board of Accountancy ("Board") hereby gives notice of its upcoming meeting, pursuant to section 406 of the Open Meetings Act of 2010, effective January 19, 2011 (D.C. Law 18-350; D.C. Official Code § 2-576). The proposed agenda for each meeting will be posted on the Department of Licensing and Consumer Protection's website at www.dlcp.dc.gov and the Office of Open Government's website at https://www.open-dc.gov/public-bodies/meetings, not less than forty-eight (48) hours before the meeting.

**The Board will hold its upcoming meeting on Friday, November 6, 2026, at 9:00 a.m.**

The Board holds its meetings on the first Friday of each month at 9 a.m. The meetings are open to members of the public virtually via Zoom. For additional information, please contact Ms. Angela Meggett-Strudwick, Board Administrator, at (202) 899-3473 or angela.meggett-strudwick@dc.gov.

### DRAFT AGENDA

1. Call to Order – 9:00 a.m.
2. Attendance
3. Comments from the Public
4. Review Meeting Minutes
5. Applications for Licensure
6. Old Business
7. New Business
8. Motion - Executive Session, which is closed to the public, in order to consult with our attorneys to seek legal advice; to discuss disciplinary matters; and to deliberate upon decisions in adjudication actions and proceedings, as provided by D.C. Official Code § 2-575(b)(4)(A), (b)(9), (13), and (14). We will resume the public portion of the meeting at the conclusion of the executive session. Please stand by for our return if you are participating online.
9. Adjourn – Next Scheduled Meeting – January 8, 2027, at 9:00 a.m. via Zoom

**Join the Meeting**
Link to Join: DC Board of Accountancy Public Meeting Link

***This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at open.govoffice@dc.gov.***

## DEPARTMENT OF LICENSING AND CONSUMER PROTECTION

## NOTICE OF PUBLIC MEETING

### District of Columbia Board of Architecture, Interior Design and Landscape Architecture

The District of Columbia Board of Architecture, Interior Design and Landscape Architecture ("Board") hereby gives notice of its regular meeting, pursuant to the section 406 of the Open Meetings Act of 2010, effective January 19, 2011 (D.C. Law 18-350; D.C. Official Code § 2-576). The proposed agenda for each meeting will be posted on the Department of Licensing and Consumer Protection's website at www.dlcp.dc.gov and the Office of Open Government's website at https://www.open-dc.gov/public-bodies/meetings, not less than forty-eight (48) hours before the meeting.

**The Board will hold its next meeting on Friday, November 6, 2026, at 9:30 a.m.**

The Board holds its meetings once a month on a Friday at 9:30 a.m. The meetings are open to members of the public virtually through Zoom. For additional information, please contact Ms. Avis B. Pearson, Board Administrator, at (202) 615-2331 or avis.pearson@dc.gov.

**Draft Agenda**

1. Call to Order – 9:30 a.m.
2. Attendance
3. Comments from the Public
4. Approval of Minutes
5. Old Business
6. New Business
7. Motion - Executive Session, which is closed to the public, in order to consult with our attorneys to seek legal advice; to discuss disciplinary matters; and to deliberate upon decisions in adjudication actions and proceedings, as provided by D.C. Official Code § 2-575(b)(4)(A), (b)(9), (13), and (14). We will resume the public portion of the meeting at the conclusion of the executive session. Please stand by for our return if you are participating online.
8. Adjourn
9. The next regularly scheduled meeting – TBD (December 2026 Recess).

**Join the meeting:**
https://dc-gov.zoom.us/j/86449334647?pwd=8s2NEjYrXBOMRt9Vy7ctx8VqVHtZpM.1
**Webinar ID:** 864 4933 4647**; Passcode:** 110626

***This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at open.govoffice@dc.gov.***

## DEPARTMENT OF LICENSING AND CONSUMER PROTECTION

### District of Columbia Board of Barber and Cosmetology

### NOTICE OF PUBLIC MEETING

The District of Columbia Board of Barber and Cosmetology ("Board") hereby gives notice of its upcoming meeting, pursuant to section 406 of the Open Meetings Act of 2010, effective January 19, 2011 (D.C. Law 18-350; D.C. Official Code § 2-576). The proposed agenda for each meeting will be posted on the Department of Licensing and Consumer Protection's website at www.dlcp.dc.gov and the Office of Open Government's website at https://www.open-dc.gov/public-bodies/meetings, not less than forty-eight (48) hours before the meeting.

**The Board will hold its upcoming meeting on Monday, November 2, 2026, at 10:00 a.m.**

The Board holds its meetings on the first Monday of each month at 10:00 a.m. The meetings are open to members of the public virtually via Zoom. Please direct all inquiries and questions for public comment to Ms. Kimberly Troxler, Board Administrator, at (202) 805-8239 or kimberly.troxler@dc.gov.

### DRAFT AGENDA

1. Call to order – 10:00 a.m.
2. Attendance
3. Comments from the public
4. Motion - Executive Session, which is closed to the public, in order to consult with our attorneys to seek legal advice; to discuss disciplinary matters; and to deliberate upon decisions in adjudication actions and proceedings, as provided by D.C. Official Code § 2-575(b)(4)(A), (b)(9), (13), and (14). We will resume the public portion of the meeting at the conclusion of the executive session. Please stand by for our return if you are participating online.
5. Approval of the minutes – October 5, 2026
6. Correspondence
7. Board committees
8. Old business
9. New business
10. Recommendations/Actions
11. Adjourn
12. Next scheduled board meeting – December 7, 2026, at 10:00 a.m. via Zoom.

**Meeting Login Information:**
https://dc-gov.zoom.us/j/89459981450?pwd=gCnirrLVMykcl1wyeK0vPRDVt3bG08.1
**Webinar ID:** 894 5998 1450; **Passcode:** 11022026

****This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.***

## DEPARTMENT OF LICENSING AND CONSUMER PROTECTION

## NOTICE OF PUBLIC MEETING

### District of Columbia Board of Funeral Directors

The District of Columbia Board of Funeral Directors ("Board") hereby gives notice of its regular meeting, pursuant to section 406 of the Open Meetings Act of 2010, effective January 19, 2011 (D.C. Law 18-350; D.C. Official Code § 2-576). The proposed agenda for each meeting will be posted on the Department of Licensing and Consumer Protection's website at www.dlcp.dc.gov and the Office of Open Government's website at https://www.open-dc.gov/public-bodies/meetings, not less than forty-eight (48) hours before the meeting.

**The Board will hold its upcoming meeting on Thursday, November 5, 2026, at 1:00 p.m.**

The Board holds its meetings on the first Thursday of every month at 1:00 p.m. The meetings are open to members of the public virtually through Zoom. For additional information, please contact Ms. Allison Wade, Board Administrator, at (202) 369-0135 or allison.wade@dc.gov.

### DRAFT MEETING AGENDA

1. Call to Order – 1:00 p.m.
2. Attendance
3. Comments from the Public
4. Approval of October 3, 2026, meeting minutes
5. Legislative Updates
6. Old Business
7. New Business
   Motion - Executive Session, which is closed to the public, in order to consult with our attorneys to seek legal advice; to discuss disciplinary matters; and to deliberate upon decisions in adjudication actions and proceedings, as provided by D.C. Official Code § 2-575(b)(4)(A), (b)(9), (13), and (14). We will resume the public portion of the meeting at the conclusion of the executive session. Please stand by for our return if you are participating online.
8. Applications
9. Complaints
10. Additional updates/discussion
11. Recommendations
12. Adjourn – Next Scheduled Meeting – December 3, 2026, at 1:00 p.m. via Zoom

**Meeting Login Information:**
https://dc-gov.zoom.us/j/88220238648

***This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at open.govoffice@dc.gov.***

**EXECUTIVE OFFICE OF THE MAYOR MURIEL BOWSER**

**NOTICE OF FUNDING AVAILABILITY**

**FY2027 Community Pride Investment Fund (CPIF)**

**A. Background Information**

In Fiscal Year 2026, the Council passed legislation that requires the Office of Lesbian, Gay, Bisexual, Transgender, and Questioning Affairs (LGBTQ Community Grant Emergency Amendment Act of 2026) to implement a grant in Fiscal Year 2027 to a grantee for the purpose of subgranting support to programs that promote the welfare of the lesbian, gay, bisexual, transgender, and questioning community. Through this grant, one organization will be selected to be funded to make subgrants that support programs that improve the health, safety, economic opportunity, civic participation, and overall well-being of LGBTQ residents of the District of Columbia.

The Executive Office of Mayor Muriel Bowser (EOM) is soliciting grant applications for its FY2027 Community Pride Investment Fund from qualified organizations whose primary mission includes providing community philanthropic funding and that has a demonstrated track record in grantmaking and fundraising. The selected grantee must use 90 percent of the awarded funds to issue subgrants to other nonprofit organizations delivering programs within the District that support the LGBTQ community, consistent with the Act and rules established by the Office with advice from the Advisory Committee to the Office of LGBTQ Affairs. The remaining balance of the grant may be used by the grantee to cover administrative or other fees necessary to implement the program.

In addition, the grantee must undergo an annual audit and submit quarterly reports to the Office detailing its financial status and use of grant funds. The grantee is responsible for providing grantmaking, technical assistance, and capacity-building support to community-based organizations.

To be awarded this grant, the non-profit organization must demonstrate in its application how it will manage the following agreement expectations:

- 90 percent of the funds to be sub granted to other non-profit organizations within the District that provide community programming (guidelines for the programming are listed in Section C);
- Annual audits and quarterly reports to be submitted to the Office for checks on financial health and use of the grant funds;
- Grantmaking, technical assistance, and capacity-building support to community-based organizations; and
- Use of the 10% of the funds to be used by the non-profit for indirect costs including administrative or other fees incurred by the administration of this grant.

**B. Funding Priorities**

EOM seeks applications from qualified organizations that will administer the FY2027 Community Pride Investment Fund in a manner that is equitable, transparent, community-informed, and

responsive to the needs of the District's LGBTQ community. Applicants should demonstrate how they will advance all of the following funding priorities:

**Equitable Grantmaking.** The selected grantee will administer a competitive and transparent subgrant program that invests at least ninety percent (90%) of awarded funds in nonprofit organizations serving the District's LGBTQ community. Applicants should demonstrate their ability to design and implement equitable funding processes, reduce barriers to participation, conduct fair and objective proposal reviews, and ensure compliance with all applicable District requirements.

**Community Engagement.** The selected grantee should demonstrate a commitment to engaging the District's LGBTQ community throughout the grantmaking process. Applicants should describe how they will incorporate community input, collaborate with the Office and Advisory Committee to the Office of LGBTQ Affairs pursuant to District law, and ensure transparency and accountability in funding decisions.

**Capacity Building and Technical Assistance.** In addition to administering subgrants, the selected grantee will provide technical assistance and organizational capacity-building support to strengthen nonprofit organizations serving the District's LGBTQ community. Applicants should demonstrate their experience and plans for providing resources such as grantmaking guidance, organizational development, financial management support, strategic planning, compliance assistance, and other services that improve the long-term sustainability and effectiveness of community-based organizations.

**Financial Stewardship and Grant Administration.** Applicants must demonstrate strong financial management practices and experience administering public or philanthropic funding. The selected grantee will be responsible for maintaining effective internal controls, monitoring subgrantee performance, complying with reporting and audit requirements, and ensuring responsible stewardship of public funds in accordance with District laws, regulations, and the terms of the grant agreement.

**Community Impact and Sustainability.** Applicants should demonstrate how their subgrant approach will strengthen the District's LGBTQ nonprofit ecosystem and promote the long-term well-being of LGBTQ residents. Demonstrated activities could include, but are not limited to, conducting landscape analyses, clear understanding of this Funding opportunity alongside other District grant funding, and using public-private partnerships to leverage funding. Preference will be given to organizations with a demonstrated record of philanthropic leadership, successful fundraising, and the ability to leverage partnerships and additional resources to maximize the impact and sustainability of the Community Pride Investment Fund.

**C. Target Population**

The Fund is intended to strengthen the network of nonprofit organizations that serve LGBTQ residents of the District. The selected grantee will administer a competitive subgrant program that supports community-based organizations providing programs, services, and initiatives that improve the health, safety, economic opportunity, civic engagement, cultural vitality, and overall well-being of LGBTQ District residents.

Priority for subgrants should be given to organizations that primarily serve District residents and demonstrate meaningful engagement with LGBTQ communities, particularly those that have historically experienced barriers to resources and opportunities. The subgrant program should

promote equitable access to funding and support a diverse network of organizations representing the breadth of the District's LGBTQ community.

While the primary beneficiaries of this grant are nonprofit organizations receiving subgrants, the ultimate target population is LGBTQ residents of the District of Columbia who will benefit from expanded, accessible, and culturally responsive programs and services funded through the LGBTQ Community Fund.

**D. Eligibility Criteria**

1. The organization is a CBO with a Federal 501(c)(3) tax-exempt status and is licensed as a business with the District of Columbia's Department of Licensing and Consumer Protection (DLCP);
2. The organization's principal place of business must be located in the District of Columbia. If the business is a national or regional organization, it must have a location in the District through which it provides services;
3. The organization must provide grant opportunities to partner organizations the deliver direct services to District residents;
4. All services and programming funded by the grant must be provided within the District of Columbia;
5. The organization must be currently registered and in good standing with DLCP and the Office of Tax and Revenue. Applicants must maintain their good standing status with the aforementioned entities throughout the pre-award process and the grant's performance period;
6. Applicants shall provide an affidavit regarding any debarments, suspensions, or defaults with the Office of Contract and Procurement;
7. Applicants shall provide an affidavit certifying that they are eligible for a grant under D.C. Code § 1-328.15(d), regarding contributions and solicitation of contributions to a covered recipient[2];
8. *(This requirement applies only to current District grantees.)* Current grantees must be:
    a. Current on all District grant reporting obligations for the FY2026 grant cycle;
    b. In good standing with the District's legal requirements, including those imposed by any grants or contracts; and
    c. Progress reports must reflect substantial progress towards the goals of the grant agreement.
9. The organization must have a primary mission to provide philanthropic funding to the LGBTQ community.
10. The non-profit organization must have a substantial history of demonstrated record of success in grantmaking, including management (such as grant agreements and/or MOUs) and grantmaking in the range of $20,000-100,000+.
11. The organization must demonstrate the ability to create and manage large fundraising initiatives (seven-figures), including multiple account management, staffing plans, and fiscal partners.

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[2] Please see D.C. Code § 1-328.11(3) for the definition of covered recipient.

**E. Important Dates**

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|---|---|
| **Release Date of RFA:** | Friday, November 13, 2026 |
| **Availability of RFA:** | The request for application (RFA) will be posted on the Executive Office of the Mayor's Community Grant Program website and the Mayor's Office on Volunteerism & Partnerships (Serve DC's) electronic grant clearinghouse which can accessed here: https://communityaffairs.dc.gov/content/community-grant-program |
| **Amount of Awards:** | The total amount of funding for this grant is $980,000 with $98,000 to be awarded to the grantee and $882,000 to be sub granted to community organizations. |
| **Application Deadline:** | Applications must be submitted via ZoomGrants by **November 27, 2026, at 5:00 PM ET**. No exceptions to the deadline will be made. |
| **Length of Awards:** | Grant awards are for FY 2027<br>Execution of the Grant Agreement – September 30, 2027 |
| **Pre-Bidders Conference:** | Tuesday, November 17, 2026<br>2:00 PM - 3:00 PM<br>899 North Capitol Street Northeast<br>First Floor Bloomingdale Room<br>Washington, DC 20002<br>**Register at https://s.dc.gov/FY27CPIF** |
| **EOM Grants Contact:** | Caterina Abruzzo<br>Chief Partnerships Officer<br>Executive Office of the Mayor (EOM)<br>Phone: 202-710-8798<br>Email: EOM.Grants@dc.gov<br>(Please note the grant name in the subject line of your email when contacting us, "FY27 CPIF Question") |

**This NOFA does not commit the District government to make an award. The District government reserves the right to issue addenda and/or amendments to this NOFA or to rescind this NOFA.**

## DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

## NOTICE OF PETITION TO AMEND CHARTER GRADES SERVED, ENROLLMENT CEILING INCREASE, & FACILITY MONUMENT PCS

**SUMMARY:** The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to submit comment on a request from Monument Academy Public Charter School (Monument PCS) to amend its charter agreement by expanding its grades served, increasing its enrollment ceiling, and adding a second facility. The school submitted its application on August 10, 2026, then revised the proposed location in an addendum on September 23, 2026. In response to this update, PCSB is extending the public comment window until October 26, 2026, when it will hold a public hearing on the request.

Monument PCS seeks approval to make the following changes.

- Add grades 9–12, starting with grades 9 and 10 in school year (SY) 2027–28 and reaching maturation through grade 12 in SY 2029–30.
- Increase its enrollment ceiling from 172 to 280 over a three-year period beginning in SY 2027–28.
- Operate an additional facility at 2100 New York Avenue NE (Ward 5) for the proposed high school residential program.[1]

In its 12th year of operation, Monument PCS educates 133 students in grades 5–8 at 500 19th Street NE (Ward 7). At that location, Monument PCS operates a weekday residential boarding program for all students.

**PUBLIC MEETINGS:** The public hearing will be on October 26, at 6 p.m. The vote will be on November 30, at 6 p.m. Please visit https://dcpcsb.org/events to register to attend the meeting.

**HOW TO SUBMIT PUBLIC COMMENTS:** To ensure your comment is processed and reviewed,[2] please use one of the methods below:

1. Sign up to testify during the public hearing by going to https://dcpcsb.org/public-comment. Click on the "Sign up to Testify at the Meeting" tab to fill out the form. The deadline to sign up to testify is noon on October 26, 2026.
2. Submit a written comment identified via
    a. Online form at https://dcpcsb.org/public-comment

[1] Previously, the school entered a letter of intent to locate at 1920 Bladensburg Road NE (Ward 5). The two sites are 0.2 miles apart and located in the same neighborhood cluster.
[2] DC PCSB reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all your submission that it may deem to be inappropriate for publication, such as obscene language.

b. Postal Mail, Hand Delivery, or Courier: Attn: Public Comment, DC Public Charter School Board, 100 M Street SE, Suite 400 Washington, DC 20003

Please note DC PCSB accepts written comments on or before 11:59 p.m. October 25, 2026 (the day before the public hearing).

3. Submit audio testimony by phone: Call (202) 328-2660 and select option 2. You will have up to five minutes to record your testimony. Please note that all comments will be transcribed and made available to the public upon receipt.

**FOR FURTHER INFORMATION OR QUESTIONS, CONTACT** Hannah Cousino, Director, School Performance Department, at hcousino@dcpcsb.org.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**PUBLIC EMPLOYEE RELATIONS BOARD**

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| American Federation of Government Employees, Local 2725, AFL-CIO,<br><br>Complainant<br><br>v.<br><br>District of Columbia Department of Energy and Environment<br><br>Respondent | PERB Case No. 26-U-21<br><br>Opinion No. 1964 |

**DECISION AND ORDER**

## I. Statement of the Case

On February 3, 2026, the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) filed an unfair labor practice complaint (Complaint) against the District of Columbia Department of Energy and Environment (DOEE). The Complaint asserts that DOEE violated D.C. Official Code §§ 1-617.04(a)(1) and (a)(5) of the Comprehensive Merit Personnel Act (CMPA) by failing to provide requested information relating to the separation of a union represented employee from their term appointment. The requested information included the basis for the separation decision, funding and budgeting information specific to the position, comparator information regarding other term employees, internal decision-making communications, renewal practices, and identification of decision makers.[1] On February 17, 2026, DOEE filed its answer and affirmative defenses (Answer), asserting that the Complaint should be dismissed for failure to provide any facts evidencing a violation of the CMPA.

On May 8, 2026, PERB issued a letter requesting the parties brief the following issues: (1) whether comparator data, internal communications, and decision-making records, are relevant and necessary to the representational duties of a union when requested to investigate the separation of bargaining unit member; (2) whether the basis for separation provides a defense to the production of otherwise relevant information. AFGE filed its brief on June 3, 2026, and DOEE filed its brief on June 4, 2026.

## I. Background

The following facts are undisputed. On January 8, 2025, AFGE submitted a Request for Information (RFI) to DOEE regarding the separation of a union represented employee following

[1] Complaint at 3.

the expiration of the employee's term appointment.[2] In the RFI, AFGE requested information the Union alleges is necessary regarding DOEE's determination the employee's non-extension.[3] This information included whether the decision was lawful or otherwise motivated by improper considerations.[4] DOEE refused to provide the requested information, as it claimed that the expiration of a term employee's appointment was not subject to the grievance process.[5] Following a response from AFGE, DOEE reaffirmed its refusal, asserting that term appointments automatically expire under District personnel regulations and that DOEE was not required to justify non-extension of an expired term-appointment.[6] DOEE provided AFGE with publicly available budget documents as well as a generic position description, but refused to provide specific internal information requested by AFGE.[7]

## II. Discussion

This dispute arises from AFGE's allegation that DOEE violated D.C. Official Code §§ 1-617.04(a)(1), and (5) by refusing to provide information to AFGE that was relevant and necessary to its performance of statutory representational duties. Section 1-617.04(a)(1) prohibits interference, restraint, or coercion regarding the exercise of rights guaranteed by that subchapter. Section 1-617.04(a)(5) prohibits agencies from refusing to bargain collectively in good faith with the exclusive representative. An agency has an obligation to furnish information a union requests that is both relevant and necessary to the union's role in processing a grievance, in pursuing an arbitration proceeding, or in collective bargaining. Failure to do so is an unfair labor practice.[8]

In the Complaint, AFGE asserts that DOEE had no basis to categorically refuse to comply with AFGE's RFI and did not assert any specific privilege or confidentiality basis for withholding the information.[9] AFGE argues that the requested information was relevant and necessary to its performance of statutory representational duties, and that by refusing to comply, DOEE committed an unfair labor practice.[10] The requested information included the basis for the separation decision, funding and budgeting information specific to the position, comparator information regarding other term employees, internal decision-making communications, renewal practices, and identification of decision makers.[11] AFGE asserts that DOEE's decision not to furnish the requested documents made it so the Union could not determine whether DOEE's decision not to extend the term appointment was lawful, or whether it was motivated by improper considerations.[12] In its Answer, DOEE asserts that the Complaint should be dismissed because

[2] Complaint at 2-3.
[3] Complaint at 3.
[4] Complaint at 3.
[5] Complaint at 3.
[6] Complaint at 3.
[7] Complaint at 4.
[8] *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch*., 61 D.C. Reg. 1537, Slip Op. 1448, PERB Case No. 04-U-25 (2014).
[9] Complaint at 4.
[10] Complaint at 3.
[11] Complaint at 3.
[12] Complaint at 3.

AFGE has failed to provide any facts evidencing a violation of the CMPA.[13] DOEE argues that the only facts listed are that AFGE submitted an RFI and that DOEE refused to provide certain portions of the RFI.[14] Further, DOEE argues that it substantially complied with the RFI by providing budgetary information and that it had no duty to produce the remainder of the requested information.[15]

The Board requested the parties brief two specific issues regarding this matter:

1) Whether comparator data, internal communications, and decision-making records are relevant and necessary to the representational duties of a union when requested to investigate the separation of a bargaining unit member; and
2) Whether the basis for separation provides a defense to the production of otherwise relevant information.

AFGE submitted its brief on June 3, 2026, arguing that comparator data, internal communications, and decision-making records are relevant and necessary to the Union's representational duties because it has a statutory responsibility to investigate issues involving bargaining unit employees.[16] The Union argues that this information is relevant and necessary to its investigation regarding the separation of a bargaining unit employee and to determine whether DOEE violated the CMPA or the parties' collective bargaining unit, and that the information AFGE requested was directly connected to its duty as a representative.[17] AFGE contends that this information is necessary to determine whether similarly situated term employee's contracts were renewed or extended and to determine whether the decision was free from improper considerations or motives.[18] The Union further argues that internal communications are relevant and necessary to understand the reasoning surrounding the separation, whether protected activity was a consideration, and who participated in the decision making.[19] The Union adds that decision-making records are relevant and necessary because they allow AFGE to evaluate whether the separation was automatic as DOEE alleges, or whether it was for a different reason.[20] AFGE argues that DOEE's basis for the employee's separation does not provide a defense to the Agency's refusal to provide the requested documents because it conflates the merits of the underlying personnel action with DOEE's separation obligation.[21] Lastly, AFGE argues that DOEE's partial response to the RFI did not satisfy the Union's request, as the provided documents were generic and unspecific.[22]

DOEE submitted its brief on June 4, 2026 arguing that the requested information is not relevant to AFGE's representation of its bargaining unit member.[23] The Agency argues that the decision not to extend an employee's term appointment is not an adverse action and is therefore

[13] Answer at 3.
[14] Answer at 3.
[15] Answer at 3.
[16] AFGE's Brief at 4.
[17] AFGE's Brief at 5.
[18] AFGE's Brief at 5.
[19] AFGE's Brief at 5.
[20] AFGE's Brief at 5.
[21] AFGE's Brief at 6.
[22] AFGE's Brief at 7.
[23] DOEE's Brief at 3.

not grievable under the collective bargaining agreement or the District of Columbia District Personnel Manual.[24] DOEE asserts that therefore the information regarding its decision not to extend is not relevant for AFGE.[25] The Agency further argues that the basis for the employee's separation provides a defense to the production of the requested information due to the nature of the term appointment having an expiration date.[26] DOEE argues that based on precedent, an agency only has a duty to produce information that is relevant and necessary to a union's role in processing a grievance, in pursing an arbitration proceeding, or in collective bargaining, and that since this matter simply involved the expiration of a term appointment, the Agency does not have a duty to provide the requested information.[27] DOEE did not raise confidentiality as a defense in this matter, therefore the defense is waived.

The instant Complaint argues that DOEE refused to provide relevant and necessary documentation in response to their RFI. An agency has an obligation to furnish requested information that is both relevant and necessary to the union's role in processing a grievance, in pursuing an arbitration proceeding, or in collective bargaining.[28] The Board is unpersuaded by DOEE's argument that the Agency is not required to fulfill AFGE's request because a grievance did not exist at the time the RFI was submitted. In this instance, AFGE has demonstrated that their request for information was both relevant and necessary to their duty to investigate a bargaining unit member's separation and in determining whether to process a grievance.

In submitting the RFI, AFGE sought information on internal processes to determine whether the term appointment of its bargaining unit member was terminated due to improper considerations, such as retaliation for protected activity or other unlawful motives. DOEE's position, that the non-extension was simply due to the contract term, does not negate the Union's duty to investigate.

Moreover, AFGE also sought comparator data for the purpose of determining whether the agency applied its stated rationale consistently. The Board has followed the FLRA in holding that "a union must provide management with an explanation of how requested information relates to the union's representational duties."[29] AFGE articulated its particularized need for comparator data to confirm equal treatment of bargaining unit members and to determine whether to process a grievance.[30]

Additionally, the Board finds that decision-making records were relevant and necessary to AFGE's role in processing a potential grievance, as it would provide additional context for the

[24] DOEE's Brief at 3.
[25] DOEE's Brief at 4.
[26] DOEE's Brief at 4.
[27] DOEE's Brief at 4 citing *AFCME Local 2743 v. D.C. Department of Buildings*, PERB Case No. 24-U-05, Slip Op. No. 1894 (2024).
[28] *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch*., 61 D.C. Reg. 1537, Slip Op. No. 1448 at 4, PERB Case No. 04-U-25 (2014).
[29] *AFCME Local 2743 v. D.C. Department of Buildings*, PERB Case No. 24-U-05, Slip Op. No. 1894 at 4 (2024)(citing NLRB v. FLRA, 952 F.2d 523, 532 (D.C. Cir. 1992).
[30] *AFCME Local 2743 v. D.C. Department of Buildings*, PERB Case No. 24-U-05, Slip Op. No. 1894 at 4 (2024)

potential preparation of a grievance in this matter.[31] In an analogous case, the Board found that an unfair labor practice occurred "where the agency failed to provide requested information concerning the agency's decision to implement a RIF involving the union's bargaining unit members."[32] The Complaint sufficiently alleged such a claim, and DOEE has not presented any viable defense to production of the requested information.[33]

The Board finds that the information requested by AFGE was relevant and necessary to its role in processing a potential grievance, as to a bargaining unit employee's separation—even via non-extension of a term.

## III. Conclusion

The Board finds that DOEE violated D.C. Official Code §§ 1-617.04(a)(1), and (a)(5) of the CMPA by failing to provide the information AFGE requested.

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. The District of Columbia Department of Energy and Environment shall cease and desist from refusing to furnish information relevant and necessary to the representational duties of the American Federation of Government Employees, Local 2725; and

2. The District of Columbia Department of Energy and Environment shall provide all information requested in January 8, 2026 Request for Information submitted by the American Federation of Government Employees, Local 2725; and

3. The District of Columbia Department of Energy and Environment shall conspicuously post the attached Notice where notices to employees are normally posted. The Notice shall be posted within ten (10) days from the issuance of this Decision and Order and shall remain posted for thirty (30) consecutive days.

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[31] *FOP/MPD Labor Committee v. DC MPD*, 60 D.C. Reg. 5337 (2013), Slip Op. No. 1374 at 16, PERB Case No. 06-U-41 (2013) (finding that a request for documentation regarding the evaluation and decision-making process was relevant and necessary to FOP's legitimate collective bargaining functions and in preparing a grievance.)

[32] *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch*., 61 D.C. Reg. 1537, Slip Op. No. 1448 at 4, PERB Case No. 04-U-25 (2014).

[33] *Jenkins and McKinnon v. DOC*, 65 Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (2018) (citing PERB Rule 520.6 that provides that an answer to an unfair labor practice complaint shall include a statement of any affirmative defenses and finding that Respondent waived its affirmative defenses by failing to raise it in their answer). *See also American Medical Response West and United Emergency Medical Service Workers, AFSCME Local 4911*, *AFL-CIO*, 366 NLRB No. 146 (2018) (finding that the Respondent did not specifically argue a confidentiality defense in providing requested information, and therefore the Board found that the Respondent had waived that defense.)

4. Within fourteen (14) days from the date of this Decision and Order, the District of Columbia Department of Energy and Environment shall notify the Public Employee Relations Board in writing that the attached Notice has been posted accordingly.

5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Peter Winkler and Members Lee Clark, Mary Anne Gibbons, and Renee Bowser.

September 17, 2026

**Washington, D.C.**

## APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision file an appeal.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**PUBLIC EMPLOYEE RELATIONS BOARD**

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| American Federation of Government Employees, Local 2725, AFL-CIO<br><br>Complainant<br><br>v.<br><br>District of Columbia Department of Health<br><br>Respondent | PERB Case No. 24-U-41<br><br>Opinion No. 1965 |

**DECISION AND ORDER**

This matter is before the Board on remand from the District of Columbia Superior Court (Superior Court). On April 26, 2026, the court issued an Order[1] reversing Opinion No. 1898 and remanding this matter back to PERB. Consistent with that Order, the decision in Opinion No. 1898 is reversed.

In Opinion No. 1898, the Board found that under the CMPA, there is no pre-arbitration remedy available to a party claiming arbitration was invoked over a contractually inarbitrable grievance.[2] It found that such questions of arbitrability shall initially be resolved by the arbitrator and if a party disagrees with an arbitrator's conclusion regarding arbitrability, it may file an Arbitration Review Request (ARR) with the Board.[3] The Board further found that where a party seeks pre-arbitration relief, it may submit a motion to stay arbitration to the Superior Court for judicial determination in accordance with the Arbitration Act.[4] The Board found that DOH did not avail itself of either option and therefore committed an unfair labor practice by failing to bargain in good faith with AFGE over work assignments and ordered the parties to arbitrate the dispute.[5] The Superior Court found this decision clearly erroneous and did not consider the Board's assertion raised on appeal that DOH's failure to engage in arbitration or seek a stay of arbitration repudiated the CBA.[6] The

[1] April 26, 2026 Memorandum Opinion and Order issued in District of Columbia Superior Court case number 2020-CA-004379-M, *District of Columbia Department of Health v. District of Columbia Public Employee Relations Board*.
[2] *AFGE, Local 2725 v. DOH*, 72 D.C. Reg. 1579 (2025) Slip Op. 1898 at 3, PERB Case No. 24-U-41 (2024) (citing *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO v. D.C. Pub. Sch*., 77 A.3d 441, 451 (D.C. 2013).
[3] *AFGE, Local 2725 v. DOH*, Slip Op. 1898 at 3 (citing *AFSCME, Council 20 v. D.C. Gen. Hosp. & OLRCB, 36 D.C. Reg. 7101,* Slip Op. No. 227, PERB Case No. 88-U-29 (1989) and *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO,* 77 A.3d at 447.)
[4] *AFGE, Local 2725 v. DOH*, Slip Op. 1898 at 4 (citing D.C. Official Code § 16-4407).
[5] *Id*.
[6] Memorandum Opinion and Order at 3 (*District of Columbia Department of Health v. District of Columbia Public Employee Relations Board*, 2020-CA-004379-M).

Superior Court found that the decision was predicated on the rationale that AFGE could force DOH to engage in arbitration and exercise its right to appeal the award by simply filing a request for arbitration.[7] The Superior Court held that it is the appropriate venue to determine whether the CBA contained a duty to arbitrate a given dispute. Accordingly, Opinion No. 1898 is reversed.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Board's decision in Opinion No. 1898 is hereby reversed and dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Peter Winkler and Members Lee Clark, Mary Anne Gibbons, and Renee Bowser.

September 17, 2026

**Washington, D.C.**

[7] *Id.*

## APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision file an appeal.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**

**NOTICE OF FINAL TARIFF**

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

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code and in accordance with Section 2-505 of the District of Columbia Official Code,[1] of its final tariff action to approve the Potomac Electric Power Company's (Pepco or Company) proposed Standard Offer Service (SOS) – Rider SOS tariff amendment.

2. On July 10, 2026, Pepco filed a proposed Rider SOS.[2] Pepco's proposed tariff amendment updates the retail transmission rates included in the Rider SOS "to reflect the current Federal Energy Regulatory Commission (FERC) approved wholesale transmission rates, which went into effect June 1, 2026."[3] Pepco estimates the impact of its proposed change in retail transmission rates to a Residential SOS customer using six hundred fourteen (614) kWh per month to be a decrease of $0.51 per month.[4]

3. Pepco states that the current Pepco Zone FERC-approved wholesale transmission rates for the period June 1, 2026, through May 31, 2027, include the following items:

a. Pepco's and the Southern Maryland Electric Cooperative's FERC-approved formula rates as delineated in Attachment H-9A and Attachment H-9C of the PJM Open Access Transmission Tariff (OATT); and

b. Transmission Enhancement Charges pursuant to Schedule 12 of the PJM OATT.

4. Pepco's proposal will amend the following tariff pages, which contain the revised retail transmission rates:

**ELECTRICITY TARIFF, P.S.C. of D.C. No. 1**
**(Former) One Hundred-Eighty-Third Page No. R-1**
**One Hundred-Eighty-Sixth Page No. 2**
**One Hundred-Seventy-Ninth Page No. 2.1**
**One Hundred-Seventy-Seventh Page No. 2.2**
**Eighteenth Page No. R-19**

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1 D.C. Code § 2-505; D.C. Code § 34-802.

2 *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia* (*Formal Case No. 1017*), Potomac Electric Power Company's Proposed Standard Offer Service – Rider SOS, filed July 10, 2026 (Pepco's Rider SOS).

3 Pepco's Rider SOS at 1.

4 Pepco's Rider SOS at 5.

**Seventeenth Page No. R-19.1**
**Eighth Page No. R-20**
**Eighth Page No. R-20.1**
**Forty-Ninth Page No. R-41**
**Forty-Seventh Page No. R-41.1**
**Forty-Seventh Page No. R-41.2**
**Forty-Seventh Page No. R-41.3**
**Forty-Seventh Page No. R-41.4**
**Forty-Seventh Page No. R-41.5**
**Nineteenth Page No. R-41.5a**

**(New) One Hundred-Eighty-Fourth Page No. R-1**
**One Hundred-Eighty-Seventh Page No. 2**
**One Hundred-Eightieth Page No. 2.1**
**One Hundred-Seventy-Eighth Page No. 2.2**
**Nineteenth Page No. R-19**
**Eighteenth Page No. R-19.1**
**Ninth Page No. R-20**
**Ninth Page No. R-20.1**
**Fiftieth Page No. R-41**
**Forty-Eighth Page No. R-41.1**
**Forty-Eighth Page No. R-41.2**
**Forty-Eighth Page No. R-41.3**
**Forty-Eighth Page No. R-41.4**
**Forty-Eighth Page No. R-41.5**
**Twentieth Page No. R-41.5a**

5. On August 14, 2025, the Commission published a Notice of Proposed Tariff (NOPT) in the *D.C. Register*, inviting public comments for a thirty (30) day period on Pepco's Rider SOS.[5] No comments were filed in response to the NOPT.

6. The Commission, at its regularly scheduled open meeting held on October 21, 2026, approved Pepco's proposed tariff amendment that updates the Company's retail transmission rates consistent with the current FERC-approved wholesale transmission rates. This amendment will become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

[5] 73 *D.C. Reg.* 011464-011466 (August 14, 2026).

**A TRUE COPY:** **BY DIRECTION OF THE COMMISSION:**

**CHIEF CLERK:** **BRINDA WESTBROOK-SEDGWICK**
**COMMISSION SECRETARY**

**DISTRICT DEPARTMENT OF TRANSPORTATION**

**NOTICE OF FUNDING AVAILABILITY (NOFA)**

**Transportation Alternatives Program 2027-2028 Grant *(extension)***

**Request for Application Release Date: September 28, 2026**
**Application Submission Deadline: November 30, 2026**

(Washington D.C.) The District Department of Transportation (DDOT) will be accepting applications for the Transportation Alternatives Program (TAP) starting in September 2026. TAP is a reimbursable federal aid funding program for transportation-related projects designed to expand transportation options and support "alternatives" to vehicle travel. The program aims to expand travel choice, strengthen the local economy, improve the quality of life, and protect the environment by supporting non-traditional projects linked to the transportation system. A total of approximately $2,951,200 will be available through a citywide competitive process for qualifying projects.

TAP has a two-year solicitation cycle which means projects for both FY27 and FY28 will be selected through the application cycle. Awarded projects will be funded in either FY27 or FY28 based on project readiness and availability of funds, so Applicants should be prepared that they might not receive funding until 2028. Applicants may apply for multiple phases of the same project in one application such as design in FY27 and construction in FY28.

Applicants are encouraged to reach out to DDOT in advance of submitting an application.

Applications will be accepted from **September 28, 2026 – November 30, 2026.**

Projects must (1) advance the planning, design, construction engineering, or construction of surface transportation projects, and (2) qualify under eligible activities such as: projects geared towards bicycle and pedestrian activities, community improvements, environmental mitigation, and recreational trails. The projects must be consistent with the mission, policies, and plans of District agencies (e.g. moveDC, Sustainable DC, etc.).

Eligible project sponsors include regional transportation authorities, transit agencies, natural resource or public land agencies, school districts and agencies, and other appropriate local or regional governmental entities located in Washington, D.C. Nonprofit entities responsible for the administration of local transportation safety programs are eligible to apply if partnering with eligible sponsors.

Online applications, details about eligible activities, sponsors, and further submittal information can be found online at http://ddot.dc.gov/page/transportation-alternatives-program.

For additional details, please contact Transportation.Alternatives@dc.gov.

**NOTICE OF NON-DISCRIMINATION**

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, status as a victim of an intrafamily offense, 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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ይህ ሰነድ ጠቃሚ መረጃ ይዟል። በአማርኛ እርዳታ ከፈለጉ ወይም ስለዚህ ማስታወቂያ ጥያቄ ካለዎት በ 202-527 – 5633 ይደውሉ። የትኛውን ቋንቋ እንደሚናገሩ ለደንበኞች አገልግሎት ተወካይ ይንገሩ። ያለምንም ክፍያ አስተርጓሚ ይመደብልዎታል። እናመሰግናለን።

**重要通知**

**本文件包含重要資訊。如果您需要用（中文）接受幫助或者對本通知有疑問，請電洽** 202-527 - 5633。**請**

**告訴客**戶服務部代表**您所**說的語言，會免費向**您提供口譯員服務。謝謝！**

**AVIS IMPORTANT**

Ce document contient des informations importantes. Si vous avez besoin d’aide en Français ou si vous avez des questions au sujet du présent avis, veuillez appeler le 202-527 - 5633. Dites au représentant de service quelle langue vous parlez et l’assistance d’un interprète vous sera fournie gratuitement. Merci.

**안내**

이 안내문은 중요한 내용을 담고 있습니다. 한국어로 언어 지원이 필요하시거나 질문이 있으실 경우 202-527 – 5633 로 연락을 주십시오. 필요하신 경우, 고객 서비스 담당원에게 지원 받고자 하는 언어를 알려주시면, 무료로 통역 서비스가 제공됩니다. 감사합니다.

**AVISO IMPORTANTE**

Este documento contiene información importante. Si necesita ayuda en Español o si tiene alguna pregunta sobre este aviso, por favor llame al 202-527 - 5633. Infórmele al representante de atención al cliente el idioma que habla para que le proporcione un intérprete sin costo para usted. Gracias.

**THÔNG BÁO QUAN TRỌNG**

Tài liệu này có nhiều thông tin quan trọng. Nếu quý vị cần giúp đỡ về tiếng Việt, hoặc có thắc mắc bề thông báo này, xin gọi 202-527 - 5633. Nói với người trả lời điện thoại là quý vị muốn nói chuyện bằng tiếng Việt để chúng tôi thu xếp có thông dịch viên đến giúp quý vị mà không tốn đồng nào. Xin cảm ơn.

**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 by Microsoft Teams on Thursday, November 5, 2026, at 9:30 a.m. The meeting will be held in the boardroom (2nd floor) at 1385 Canal Street, S.E., Washington, D.C. 20003. The Interim Chief Executive Officer and General Manager invites the public to attend the meeting via livestream. Please see the website for remote access information for this meeting. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com that will also contain a link to the livestream.

For additional information, please contact Debra Mathis, Acting Board Secretary at (202) 787-2331 or Debra.Mathis@dcwater.com.

**DRAFT AGENDA**

| | | |
|---|---|---|
| 1. | Call to Order | Board Chairperson |
| 2. | Roll Call | Board Secretary |
| 3. | Approval of October 8, 2026 Meeting Minutes | Board Chairperson |
| 4. | Committee Report(s) | Committee Chairperson(s) |
| 5. | Chief Executive Officer's Report | Interim Chief Executive Officer and General Manager |
| 6. | Action Items<br>Joint-Use<br>Non-Joint-Use | Board Chairperson |
| 7. | Other Business | Board Chairperson |
| 8. | Adjournment | Board Chairperson |

*This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.*

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

**BOARD OF DIRECTORS**

**NOTICE OF PUBLIC MEETING**

**Executive Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Executive Committee will hold a meeting via Microsoft Teams on Thursday, November 12, 2026, at 1:00 p.m. This meeting will **not** be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. The Interim Chief Executive Officer and General Manager invites the public to attend the meeting via Microsoft Teams. Below is the draft agenda for this meeting. Please see the final agenda posted to DC Water's website at www.dcwater.com, which will include remote access information for this meeting.

For additional information, please contact Debra Mathis, Acting Board Secretary at (202) 787-2331 or Debra.Mathis@dcwater.com.

**DRAFT AGENDA**

| | |
|---|---|
| 1. Call to Order | Committee Chairperson |
| 2. Executive Session | Committee Chairperson |
| 3. Adjournment | Committee Chairperson |

*This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.*

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

**BOARD OF DIRECTORS**

**NOTICE OF PUBLIC MEETING**

**Human Resources and Labor Relations Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will hold a meeting via Microsoft Teams on Thursday, November 12, at 9:30 a.m. This meeting will **not** be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. The Interim Chief Executive Officer and General Manager invites the public to attend the meeting via Microsoft Teams. Below is the draft agenda for this meeting. Please see the final agenda will be posted to DC Water's website at www.dcwater.com, which will include the remote access information for this meeting.

For additional information, please contact Debra Mathis, Acting Board Secretary at (202) 787-2331 or Debra.Mathis@dcwater.com.

**DRAFT AGENDA**

| | |
|---|---|
| 1. Call to Order | Committee Chairperson |
| 2. Action Items | Chief People and Inclusion Officer and EVP, People and Talent |
| 3. Other Business | Committee Chairperson |
| 4. Executive Session | Committee Chairperson |
| 5. Adjournment | Committee Chairperson |

*This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov***.**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**BOARD OF ZONING ADJUSTMENT**

**BZA Application No. 21209**
**304, 306, 308 K Street, LLC**
**Rear 304, 306, and 308 K Street NE, (Square 774, Lot 65)**

**HEARING DATE**: October 7, 2026[1]
**DECISION DATE**: October 7, 2026

## SUMMARY ORDER

**RELIEF REQUESTED.** The application requests the following relief in order to subdivide an alley record lot into three alley record lots and to construct a new two-story attached principal dwelling on each new record lot in the RF-1 zone:

- Special exception from the new alley record lot access requirements of Subtitle U § 600.1(f)(6)(A) and (B), pursuant to Subtitle U § 601.1(f) and Subtitle X § 901.2 (*24 feet minimum required, 10 feet proposed – all lots*)
- Special exception from the public alley width frontage requirements of Subtitle C § 306.1(a) and (b), pursuant to Subtitle C § 306.5 and Subtitle X § 901.2 (*24/15 feet minimum required, 10 feet proposed – all lots*)
- Special exception from the alley lot minimum side yard requirements of Subtitle E § 5100.2(c), pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*5 feet minimum, 0 feet proposed – Lot C*)
- Special exception from the minimum alley centerline setback requirements of Subtitle E § 5100.2(e), pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*7.5 minimum required, 5 feet proposed – Lot A*)

The zoning relief requested in this case was self-certified. (Exhibit 86 – Lot A, Exhibit 87 – Lot B, Exhibit 88 – Lot C.)[2]

[1] The Application was postponed six times and administratively rescheduled twice from the original public hearing date of March 19, 2025.

[2] The Applicant withdrew area variance requests from the minimum lot dimension requirements of Subtitle E § 202.1 and from the new alley record lot requirements of Subtitle C § 306.1(a), (b), and (c) requested in Exhibit 24; following the publication of Zoning Commission Order No. 25-06 Regulations Governing Alley Lots, the Applicant amended their request to include special exception requests from the alley lot minimum yard requirements of Subtitle E § 5100.2(c) and the alley lot minimum alley centerline setback requirements of Subtitle E § 5100.2(e). The Applicant also updated their special exception request from the residential use of an alley lot requirements from Subtitle U § 600.1(f)(4)(B) to Subtitle U § 600.1(f)(6)(A) and (B).

**PARTIES**. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 6C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING**. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 8, 2025, at which a quorum was present, the ANC voted to support the application. (Exhibit 64.)[3] The ANC report raised no issues or concerns.

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted two reports to the record:

- The original OP report, dated October 24, 2025, bifurcated their recommendation by relief type, recommending denial of the area variances, but if the Board determined the variance criteria met then recommending approval of the special exceptions. (Exhibit 56.)
- The supplemental OP report, dated September 25, 2026, recommended approval of the application. (Exhibit 89.)[4]

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 55.)

**PERSONS IN SUPPORT**. The Board received six letters from neighbors and one organizational letter in support from the Capitol Hill Restoration Society (CHRS) in support of the application. (Exhibits 29, 58, 74.)

## CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and

[3] ANC 6C submitted their report prior to the amendments to the relief, however, the proposed project did not change.

[4] The OP report cited the relief from the alley lot minimum yard requirements as Subtitle E § 5100.1(d), the correct citation for the regulation is Subtitle E § 5100.2(c).

- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

## DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special exception from the new alley record lot access requirements of Subtitle U § 600.1(f)(6)(A) and (B), pursuant to Subtitle U § 601.1(f) and Subtitle X § 901.2 (*24 feet minimum required, 10 feet proposed – all lots*)
- Special exception from the public alley width frontage requirements of Subtitle C § 306.1(a) and (b), pursuant to Subtitle C § 306.5 and Subtitle X § 901.2 (*24/15 feet minimum required, 10 feet proposed – all lots*)
- Special exception from the alley lot minimum side yard requirements of Subtitle E § 5100.2(c), pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*5 feet minimum, 0 feet proposed – Lot C*)
- Special exception from the minimum alley centerline setback requirements of Subtitle E § 5100.2(e), pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*7.5 minimum required, 5 feet proposed – Lot A*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 60 of the record, as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE**: **5-0-0** (Paul Goldstein, Melissa Lindsjo, Michelle Pourciau, Robyn Jackson Wells, and Anthony J. Hood to APPROVE)

**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:** October 14, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-

YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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**

**BZA Application No. 21490**
**District Line Development, LLC**
**827 and 829 Upshur Street, N.W. (Square 3024, Lots 71 and 72)**

**HEARING DATE**: September 23, 2026
**DECISION DATE**: October 7, 2026

## SUMMARY ORDER

**RELIEF REQUESTED.** The application requests the following relief in order to consolidate two existing one-story buildings (retail) on two contiguous record lots and construct a two-story addition (providing seven dwelling units) above the two existing one-story retail buildings in the MU-4 zone:

- Special Exception from the minimum vehicle parking requirements of Subtitle C § 701.5, pursuant to Subtitle C § 703.2 and Subtitle X § 901.2 (*1 space required, 0 existing, 0 proposed*)
- Special Exception from the lot occupancy requirements of Subtitle G § 210.1, pursuant to Subtitle G § 5200.1 and Subtitle X § 901.2 (60% *permitted, 99% existing, 99% 1st floor and 75% for 2nd and 3rd floors proposed*)

The zoning relief requested in this case was self-certified. (Exhibit 4.)

**PARTIES**. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 4C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING**. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2026, at which a quorum was present, the ANC voted to support the application. (Exhibit 26.) The ANC report raised no unresolved issues or concerns.

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted a report recommending approval of the application. (Exhibit 18.)

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not

result in any adverse impacts to the District's transportation network. (Exhibit 19.)

**PERSONS IN SUPPORT**. The Board received seven letters in support of the application (Exhibits 27-33.)

**PERSONS IN OPPOSITION**. The Board received one letter from neighbors in opposition to the application. (Exhibit 23.)

**OTHER PUBLIC INPUT**. One neighbor, Maggie Dart-Padover, testified at the hearing in support of the application.

## CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

## DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception from the minimum vehicle parking requirements of Subtitle C § 701.5, pursuant to Subtitle C § 703.2 and Subtitle X § 901.2 (*1 space required, 0 existing, 0 proposed*)
- Special Exception from the lot occupancy requirements of Subtitle G § 210.1, pursuant to Subtitle G § 5200.1 and Subtitle X § 901.2 (60% *permitted, 99% existing, 99% 1st floor and 75% for 2nd and 3rd floors proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the revised plans shown in Exhibit 36A of the record, as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE**: **4-0-1** (Robyn Jackson Wells, Michelle Pourciau, Paul Goldstein, and Christine Bruins to APPROVE; Melissa Lindsjo abstaining)

**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:** October 14, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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**

**BZA Application No. 21493**
**3621 T ST, LLC**
**3621 T Street, N.W. (Square 1296, Lot 340)**

**HEARING DATE**: October 7, 2026
**DECISION DATE**: October 7, 2026

## SUMMARY ORDER

**RELIEF REQUESTED.** The application requests the following relief in order to construct a third story plus roof deck and three-story plus cellar rear addition, to an existing two-story plus cellar, principal row dwelling with a new one-story accessory structure (garage) in the rear yard in the R-3/GT zone:

- Special exception under the rear addition requirements of Subtitle D § 207.5, pursuant to Subtitle X § 901.2 (*10 ft maximum permitted, 18 ft. proposed*)

The zoning relief requested in this case was self-certified. (Exhibit 10.)

**PARTIES**. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 2E, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING**. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC did not submit a report to the record for this application.

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted two reports to the record:

- The original OP report, dated September 28, 2026 recommended approval of the relief requested, and expressed its opinion that additional relief is needed from Subtitle D §1105.2 (Accessory Buildings side lot line setback). (Exhibit 19.)
- The supplemental OP report, dated October 1, 2026, noted that the applicant submitted revised plans meeting the side yard requirements, obviating the need for the additional relief referenced in the original report. (Exhibit 21.) OP remained in support of the relief requested.

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT did not submit a report to the record for this application.

## CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

## DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special exception under the rear addition requirements of Subtitle D § 207.5, pursuant to Subtitle X § 901.2 (*10 ft maximum permitted, 18 ft. proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the revised plans shown in Exhibit 20 of the record, as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE**: **5-0-0** (Michelle Pourciau, Anthony J. Hood, Paul Goldstein, Robyn Jackson Wells, and Melissa Lindsjo to APPROVE)

**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:** October 14, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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**

**BZA Application No. 21498**
**Ronald Briscoe**
**1608 27th Street, SE (Square 5585, Lot 6)**

**HEARING DATE**: October 7, 2026
**DECISION DATE**: October 7, 2026

## SUMMARY ORDER

**RELIEF REQUESTED.** The application requests the following relief in order to construct a fourth story addition plus roof deck, to an existing semi-detached, two-story plus basement (3 stories) flat in the RA-1 zone:

- Area Variance from the maximum height and number of stories requirements of Subtitle F § 203.2, pursuant to Subtitle X § 1002 (*3 stories maximum permitted; 3 stories existing; 4 stories proposed*)

The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibits 4, 4A.)

**PARTIES**. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 7B, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING**. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC did not submit a report to the record.

ANC 7B03 Commissioner Travis Swanson submitted a letter in support of the application. (Exhibit 19.)

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted a report recommending approval of the application. (Exhibit 21.)

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 22.)

## CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested variance relief can be granted because:

- There exists an exceptional or extraordinary situation or condition related to the property;
- The exceptional condition creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations;
- The relief can be granted without substantial detriment to the public good; and
- The relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

## DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Area Variance from the maximum height and number of stories requirements of Subtitle F § 203.2, pursuant to Subtitle X § 1002 (*3 stories maximum permitted; 3 stories existing; 4 stories proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 3 of the record, as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE**: **5-0-0** (Michelle Pourciau, Melissa Lindsjo, Paul Goldstein, Robyn Jackson Wells, and Anthony J. Hood to APPROVE)

**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:** October 14, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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**

**BZA Application No. 21499**
**Mark Sherman and Edith Shine**
**408 Constitution Avenue NE, (Square 814, Lot 15)**

**HEARING DATE**: October 7, 2026
**DECISION DATE**: October 7, 2026

## SUMMARY ORDER

**RELIEF REQUESTED.** The application requests the following relief in order to construct a one-story screened rear porch addition (previously a deck), to an existing two-story plus cellar principal row dwelling in the RF-1/CAP zone:

- Special exception from the lot occupancy requirements of Subtitle E § 210.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*60% max permitted, 64.7% existing, 66.2% proposed*)

The zoning relief requested in this case was self-certified. (Exhibit 4.)

**PARTIES**. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 6C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING**. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2026, at which a quorum was present, the ANC voted to support the application. (Exhibit 26.) The ANC report raised no issues or concerns.

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted a report recommending approval of the application. (Exhibit 22.)

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT did not submit a report to the record.

**ARCHITECT OF CAPITOL ("AOC") REPORT.** AOC submitted a report indicating it had no objection to the application because it concluded that the relief would not adversely affect the public health, safety, and general welfare of the U.S. Capitol Precinct and area adjacent to this jurisdiction. (Exhibit 18.)

**PERSONS IN SUPPORT**. The Board received two letters from neighbors and one organizational letter from the Capitol Hill Restoration Society (CHRS) in support of the application. (Exhibits 19-21.)

## CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

## DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special exception from the lot occupancy requirements of Subtitle E § 210.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*60% max permitted, 64.7% existing, 66.2% proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 6 of the record, as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE**: **5-0-0** (Melissa Lindsjo, Michelle Pourciau, Paul Goldstein, Robyn Jackson Wells, and Anthony J. Hood to APPROVE)

**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:** October 14, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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**

**BZA Application No. 21502**
**SSDS1, LLC**
**800 10th Street, N.E. (Square 933, Lot 54)**

**HEARING DATE**: October 7, 2026
**DECISION DATE**: October 7, 2026

## SUMMARY ORDER

**RELIEF REQUESTED.** The application requests the following relief in order to construct a third story and a three-story rear addition plus penthouse and cellar, and convert to a flat, an existing semi-detached, two-story plus cellar, principal dwelling unit in the RF-1 zone:

- Special Exception under the roof top or upper floor element requirements of Subtitle E § 204.1, pursuant to Subtitle E § 204.4 and Subtitle X § 901.2
- Special Exception from the lot occupancy requirements of Subtitle E § 210.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*60% maximum permitted, 48% existing, 68.2% proposed*)
- Special Exception from the penthouse setback requirements of Subtitle C § 1504.1(c), pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2 (*8'-2" required (1:1 height to setback ratio for a side building wall that faces a public alley); 6' 4" proposed setback from southern side wall)*
- Special Exception under the penthouse height requirements of Subtitle C § 1501.1(c), pursuant to Subtitle X § 901.2 (*35' building height permitted; 43' 2" proposed (35' building plus 8' 2" penthouse*)

The zoning relief requested in this case was self-certified. (Exhibit 11.)

**PARTIES**. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 6A, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

**NOTICE OF THE APPLICATION AND PUBLIC HEARING**. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

**ANC REPORT.** The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 10, 2026, at which a quorum was present, the ANC voted to refrain from commenting on the application. (Exhibit 20.)

**OFFICE OF PLANNING ("OP") REPORT.** OP submitted a report recommending approval of the application. (Exhibit 23.)

**DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT.** DDOT did not submit a report to the record for this application.

**PERSONS IN SUPPORT**. The Board received three letters from neighbors in support of the application. (Exhibits 16-18.)

**OTHER PUBLIC INPUT**. The Capitol Hill Restoration Society submitted a letter to the record in opposition to the application. (Exhibit 22.)

## CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

## DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception under the roof top or upper floor element requirements of Subtitle E § 204.1, pursuant to Subtitle E § 204.4 and Subtitle X § 901.2
- Special Exception from the lot occupancy requirements of Subtitle E § 210.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*60% maximum permitted, 48% existing, 68.2% proposed*)
- Special Exception from the penthouse setback requirements of Subtitle C § 1504.1(c), pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2 (*8'-2" required (1:1 height to setback ratio for a side building wall that faces a public alley); 6' 4" proposed setback from southern side wall)*
- Special Exception under the penthouse height requirements of Subtitle C § 1501.1(c), pursuant to Subtitle X § 901.2 (*35' building height permitted; 43' 2" proposed (35' building plus 8' 2" penthouse*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans in Exhibits 5 and 42A, as required under Subtitle Y §§ 604.9 and 604.10.

**VOTE**: **5-0-0** (Paul Goldstein, Robyn Jackson Wells, Michelle Pourciau, Melissa Lindsjo, and Anthony J. Hood to APPROVE)

**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:** October 14, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

**BOARD OF ZONING ADJUSTMENT**
**NOTICE OF VIRTUAL PUBLIC MEETING**

**TIME AND PLACE: Wednesday, January 27, 2027, @ 9:30 a.m.**
**Via WebEx:** https://dcoz.dc.gov/BZA01-27-2027
**Via Telephone: 202-860-2110 Access Code: 2313 879 1085**
**Via YouTube: https://www.youtube.com/c/DCOfficeofZoning**

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

**EXPEDITED REVIEW**

**WARD SIX**

| | |
|---|---|
| **Application of:** | **Letitia H. White, Trustee** |
| **Case No.:** | **21539** |
| **Address:** | 114 3rd Street SE (Square 788, Lot 57) |
| **ANC:** | **6B** |
| **Relief:** | Special Exceptions from:<br>• The rear yard requirements of Subtitle E § 207.1 (pursuant to Subtitle E § 5201 and Subtitle X § 901.2)<br>• The accessory structure maximum building area requirements of Subtitle E § 5003.1 (pursuant to Subtitle E § 5201 and Subtitle X § 901.2) |
| **Project:** | To construct a second story accessory dwelling unit to an existing, detached, accessory garage, in the rear of an existing, attached, two-story, principal dwelling unit in the RF-1/CAP zone. |

**PLEASE NOTE:**
This public meeting will be held virtually through WebEx for the Board to deliberate on or decide the items listed on the agenda. Public testimony is not taken at a public meeting session. Information for the public to view or listen to the public meeting is listed above and will be provided on the Office of Zoning website by the Friday before the meeting date. Visit https://dcoz.dc.gov/watchlive.

The public meeting in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11.

*Expedited Review Applications:*
Expedited Review applications will remain on the public meeting agenda unless a request for party status is filed in opposition, or if a request to remove the application from the agenda is made by: (1) a Board member; (2) Office of Planning; (3) an affected ANC or affected Single Member District; (4) the Councilmember representing the area in which the property is located, or representing an area located within two-hundred feet of the property; or (5) an owner or occupant of any property located within 200 feet of the property.

The removal of the application from the Expedited Review Calendar will be announced as a preliminary matter on the scheduled decision date and then rescheduled for a public hearing on a later date. Notice of the rescheduled hearing will be posted on the Office of Zoning website calendar at https://app.dcoz.dc.gov/Home/Calendar and on a revised public hearing notice in the OZ office. If an applicant fails to appear at the public hearing, this application may be dismissed.

Individuals and organizations may also submit written comments to the Board by uploading submissions via the Interactive Zoning Information System ("IZIS") at https://app.dcoz.dc.gov/Login.aspx or sent by email to bzasubmissions@dc.gov. Written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing. If you are unable to use either of these means of submission, please contact Robert Reid at (202) 727-5471 for further assistance

*Modification Without Hearing Applications:*
Per Subtitle Y § 703, requests for party status as well as responses and comments from non-parties are not permitted for modification without hearing cases.

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

**Do you need assistance to participate?**

*Amharic*
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

*Chinese*
**您需要有人帮助参加活**动吗？
**如果您需要特殊便利**设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

*French*

Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

*Korean*

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

*Spanish*

¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

*Vietnamese*

Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

**MICHELLE POURCIAU - CHAIRPERSON**
**JONATHAN GOLDSTEIN - VICE-CHAIRPERSON**
**ROBYN WELLS, MEMBER**
**MELISSA LINDSJO – MEMBER, NATIONAL CAPITOL PLANNING COMMISSION**
**A PARTICIPATING MEMBER OF THE ZONING COMMISSION**
**KEARA M. MEHLERT, SECRETARY TO THE BZA**
**SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov .

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**
**NOTICE OF FILING**
**Z.C. Case No. 13-14F**
**TC McMillan West Owner LLC & TC McMillan South Owner LLC dba Trammell Crow Company**
**(PUD Modification with Hearing @ Square 3128, Lots, 803 & 812)**
**October 29, 2026**

**THIS CASE IS OF INTEREST TO ANCs 1E & 5E**

On October 13, 2015, the Office of Zoning received an application from TC McMillan West Owner, LLC and TC McMillan South Owner, LLC d/b/a Trammell Crow Company (the "Applicant") for approval of a modification to a previously approved planned unit development ("PUD") for the above-referenced property.

The subject properties are located in northwest Washington, D.C. (Wards 1 and 5) and are part of a PUD approved by Z.C. Case No. 13-14(6). The properties, identified as Parcels 1 and 3 and consisting of Lots 803 and 812 in Square 3128, were rezoned to the CR zone (now MU-10) pursuant to the approved PUD-related map amendment. The Applicant is proposing "**modifications** to (1) Allow a broader range of principal uses on both Properties, and (2) Allow modifications to the site plan, form, and overall architectural design of development on P1 (including to the design of the Parcel 1 Building, if ultimately developed) that are necessary in response to any changes in principal use. The Application also seeks **flexibility** to: (1) Reduce the size (height and density) of the Parcel 1 Building based on changes to the principal use, (2) Adjust the exterior elements and materials of the Parcel 1 Building, (3) Clarify the use categories that satisfy the current minimum ground floor retail requirements on the Properties, (4) Reduce the amount of parking and loading provided on both Properties, in response to changes in the building program, to no less than the minimum amounts required under ZR16, and (5) Update the construction phasing and deadlines for filing a building permit application for P1, and filing a Second-Stage PUD application for P3."

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**
**NOTICE OF FILING**
**Z.C. Case No. 26-11**
**(GS Development Services NE, LLC – Text Amendment to Subtitle C § 1507.3)**
**October 29, 2026**

**THIS CASE IS OF INTEREST TO ALL ANCs.**

On October 16, 2026, the Office of Zoning received an application from GS Development Services Northeast, LLC (the "Petitioner") for approval of a Text Amendment to Subtitle C § 702.4.

The Petitioner's proposed text amendment would clarify that housing developed on behalf of a local university for its own use is not subject to contribute to Housing Production Trust Fund for penthouse space. The Petitioner states in its petition that:

> *The proposed exemption is modeled on the existing exemption for University Housing in the Inclusionary Zoning ("IZ") regulations at Subtitle C § 1001.6(c). The Zoning Regulations already recognize that housing built exclusively for a university's students, faculty, or staff should not bear affordable housing obligations designed for market-rate development. The proposed amendment would extend this settled policy to the affordable housing linkage in Subtitle C § 1507. The conversion clause ensures that the District's affordable housing interests remain protected if the housing is ever repurposed for another use.* (Exhibit 2)

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES**

# DISTRICT OF COLUMBIA REGISTER
# 2026 AGENCY SUBMISSION DEADLINE SCHEDULE

The *District of Columbia Register* is published weekly on Fridays including on public holidays that fall on a Friday. The deadline for submitting notices for publication by District agencies, boards, commissions, and public charter schools is **THURSDAY**, noon of the **PREVIOUS** week. For example, the deadline for the January 16, 2026 *District of Columbia Register* is noon on Thursday January 8, 2026.

The deadline for a Register to be published during a week that has an official District of Columbia holiday is WEDNESDAY noon of the PREVIOUS week. For example, Monday, January 19, 2026 (Martin Luther King Jr. Day) is an official District of Columbia holiday therefore, the deadline for the January 23, 2026 *District of Columbia Register* is noon on Wednesday, January 14, 2026.

If an official government holiday falls on a Thursday, the deadline for submitting documents is WEDNESDAY. Because Thursday, January 1, 2026 is New Years Day, the deadline for the January 9, 2026 *District of Columbia Register* is noon on Wednesday, December 31, 2025.

Because Thursday, November 26, 2026 is Thanksgiving Day, the deadline for submitting documents for the December 4, 2026 *District of Columbia Register* is noon on Wednesday, November 25, 2026.

**Documents that are uploaded after the noon deadline will be published in the next edition of the Register.**

**The DC Register Submission Deadline Schedule is published at the end of each Register.**

The Office of Documents also publishes the Submission Deadline Schedule on the DCRegs Home page at https://dcregs.dc.gov:




Since the deadline changes for a Register to be published during a week that has an official District of Columbia Government holiday, the 2026 holiday schedule is provided here for your convenience.

| 2026 District of Columbia Government Holiday Schedule | |
|---|---|
| New Year's Day | Thursday, January 1, 2026 |
| Dr. Martin Luther King, Jr.'s Birthday | Monday, January 19, 2026 |
| Washington's Birthday | Monday, February 16, 2026 |
| DC Emancipation Day | Thursday, April 16, 2026 |
| Memorial Day | Monday, May 25, 2026 |
| Juneteenth National Independence Day | Friday, June 19, 2026 |
| Independence Day (Observed) | Friday, July 3, 2026 |
| Labor Day | Monday, September 7, 2026 |
| Indigenous Peoples' Day | Monday, October 12, 2026 |
| Veterans Day | Wednesday, November 11, 2026 |
| Thanksgiving Day | Thursday, November 26, 2026 |
| Christmas Day | Friday, December 25, 2026 |

Below is the 2026 District of Columbia Register Submission Deadline schedule.

# OFFICE OF DOCUMENTS AND ADMINSTRATIVE ISSUANCES
# DISTRICT OF COLUMBIA REGISTER
# 2026 AGENCY SUBMISSION DEADLINE SCHEDULE

| D.C. Register Issue | | Submission Deadline | |
|---|---|---|---|
| Vol. 73/1 | January 2, 2026* | Wednesday | December 24, 2025 |
| Vol. 73/2 | January 9, 2026 | Wednesday | December 31, 2025 |
| Vol. 73/3 | January 16, 2026 | Thursday | January 8, 2026 |
| Vol. 73/4 | January 23, 2026* | Wednesday | January 14, 2026 |
| Vol. 73/5 | January 30, 2026 | Thursday | January 22, 2026 |
| Vol. 73/6 | February 6, 2026 | Thursday | January 29, 2026 |
| Vol. 73/7 | February 13, 2026 | Thursday | February 5, 2026 |
| Vol. 73/8 | February 20, 2026* | Wednesday | February 11, 2026 |
| Vol. 73/9 | February 27, 2026 | Thursday | February 19, 2026 |
| Vol. 73/10 | March 6, 2026 | Thursday | February 26, 2026 |
| Vol. 73/11 | March 13, 2026 | Thursday | March 5, 2026 |
| Vol. 73/12 | March 20, 2026 | Thursday | March 12, 2026 |
| Vol. 73/13 | March 27, 2026 | Thursday | March 19, 2026 |
| Vol. 73/14 | April 3, 2026 | Thursday | March 26, 2026 |
| Vol. 73/15 | April 10, 2026 | Thursday | April 2, 2026 |
| Vol. 73/16 | April 17, 2026* | Wednesday | April 8, 2026 |
| Vol. 73/17 | April 24, 2026 | Wednesday | April 15, 2026 |
| Vol. 73/18 | May 1, 2026 | Thursday | April 23, 2026 |
| Vol. 73/19 | May 8, 2026 | Thursday | April 30, 2026 |
| Vol. 73/20 | May 15, 2026 | Thursday | May 7, 2026 |
| Vol. 73/21 | May 22, 2026 | Thursday | May 14, 2026 |
| Vol. 73/22 | May 29, 2026 * | Wednesday | May 20, 2026 |
| Vol. 73/23 | June 5, 2026 | Thursday | May 28, 2026 |
| Vol. 73/24 | June 12, 2026 | Thursday | June 4, 2026 |
| Vol. 73/25 | June 19, 2026* | Wednesday | June 10, 2026 |
| Vol. 73/26 | June 26, 2026 | Thursday | June 18, 2026 |
| Vol. 73/27 | July 3, 2026 * | Wednesday | June 24, 2026 |
| Vol. 73/28 | July 10, 2026 | Thursday | July 2, 2026 |
| Vol. 73/29 | July 17, 2026 | Thursday | July 9, 2026 |
| Vol. 73/30 | July 24, 2026 | Thursday | July 16, 2026 |
| Vol. 73/31 | July 31, 2026 | Thursday | July 23, 2026 |
| Vol. 73/32 | August 7, 2026 | Thursday | July 30, 2026 |
| Vol. 73/33 | August 14, 2026 | Thursday | August 6, 2026 |
| Vol. 73/34 | August 21, 2026 | Thursday | August 13, 2026 |
| Vol. 73/35 | August 28, 2026 | Thursday | August 20, 2026 |
| Vol. 73/36 | September 4, 2026 | Thursday | August 27, 2026 |
| Vol. 73/37 | September 11, 2026* | Wednesday | September 2, 2026 |
| Vol. 73/38 | September 18, 2026 | Thursday | September 10, 2026 |
| Vol. 73/39 | September 25, 2026 | Thursday | September 17, 2026 |
| Vol. 73/40 | October 2, 2026 | Thursday | September 24, 2026 |
| Vol. 73/41 | October 9, 2026 | Thursday | October 1, 2026 |
| Vol. 73/42 | October 16, 2026* | Wednesday | October 7, 2026 |
| Vol. 73/43 | October 23, 2026 | Thursday | October 15, 2026 |
| Vol. 73/44 | October 30, 2026 | Thursday | October 22, 2026 |
| Vol. 73/45 | November 6, 2026 | Thursday | October 29, 2026 |
| Vol. 73/46 | November 13, 2026* | Wednesday | November 4, 2026 |
| Vol. 73/47 | November 20, 2026 | Thursday | November 12, 2026 |
| Vol. 73/48 | November 27, 2026* | Wednesday | November 18, 2026 |
| Vol. 73/49 | December 4, 2026 | Wednesday | November 25, 2026 |
| Vol. 73/50 | December 11, 2026 | Thursday | December 3, 2026 |
| Vol. 73/51 | December 18, 2026 | Thursday | December 10, 2026 |
| Vol. 73/52 | December 25, 2026* | Wednesday | December 16, 2026 |
| Vol. 74/1 | January 1, 2027* | Wednesday | December 23, 2026 |

*Weeks with District of Columbia Government public holidays. Last Updated December 5, 2025