

**DISTRICT OF COLUMBIA BOARD OF EDUCATION**

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**NOTICE OF FINAL RULEMAKING**

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The District of Columbia Board of Education ("Board") pursuant to the authority set forth in D.C. Code, §§ 38-101 & 38-102 hereby gives notice of final rulemaking action taken by the Board at its meeting held on March 21, 2007 to amend Chapter 22 of the Board Rules (Title 5 of the D.C. Municipal Regulations).

This amendment will effect the following actions: 1.) Amend the promotion and retention policy to contain standard-based criteria for the promotion of students in grades pre-kindergarten through 12<sup>th</sup> grade; 2.) Establish criteria to identify students at risk of not meeting or exceeding subject or grade-level standards such that the students who do not meet the promotion standards risk retention at critical grade level junctures; 3.) Raise the graduation requirements to ensure that all students master the core academic subjects and 4) Make necessary technical amendments.

The final rulemaking will take effect upon its publication in the *D. C. Register*. The Notice of Proposed Rulemaking was published in the *D. C. Register* on May 19, 2006 at 53 DCR 4149.

**GRADES, PROMOTION, AND GRADUATION**

Amend 5 DCMR, Chapter 2200 to read as follows:

- 2200 REPORTING
- 2200.1 The marking or grading system of the D.C. Public Schools shall be designed to report fairly and accurately student progress and student achievement.
- 2200.2 All policies on marks (grades) and student progress reporting shall be established by the Board of Education and implemented by the Superintendent of Schools.
- 2200.3 The Superintendent of Schools shall establish the form(s) for the reporting of marks (grades) and student progress.
- 2200.4 The primary responsibility for evaluating the work of the student shall rest with the teacher.
- 2200.5 All students shall receive instruction leading to the achievement of the District of Columbia Public Schools (DCPS) content standards.
- (a) English Language Learners (ELL) shall receive specialized instruction leading to the development of English language skills and the mastery of academic content. A student's mark (grade) in the content area shall not reflect the student's acquisition of English language skills but rather achievement of the content standards.

- (b) Students with disabilities shall receive instruction consistent with the DCPS standards. Individualized Education Plan (IEP) teams or student support teams in the case of 504 eligible students shall determine appropriate accommodations and curricular modifications where necessary. A student's mark (grade) shall not reflect that accommodations have been made.

2200.6 At the elementary level; pre-kindergarten through fifth (5<sup>th</sup>) grade; marks (grades) of 1 through 4 shall be assigned by the teacher to indicate the degree of achievement by a student of the standards in each content area as follows:

- 4 = exceeds the standard (Advanced);
- 3 = meets the standard (Proficient);
- 2 = approaches the standard (Basic); and
- 1 = does not meet the standard (Below Basic).

For skills or/expectations within subject areas, sub-marks shall be given as follows:

- s = secure;
- d = developing;
- b = beginning; and
- n = not introduced.

2200.7 At the Secondary level; sixth (6<sup>th</sup>) grade through twelfth (12<sup>th</sup>) grade; marks/ grades of A through F shall be assigned by the teacher to indicate the degree of achievement by a student of the content standards in each course. Results of the end of course exam will count for no more than 20% of the final grade. Marks (grades) shall be as follows:

- A = 93 to 100,
- A- = 90 to 92;
- B+ = 87 to 89;
- B = 83 to 86;
- B- = 80 to 82;
- C+ = 79 to 77;
- C = 73 to 76;
- C- = 70 to 72;
- D+ = 67 to 69;
- D = 64 to 66; and
- F = 63 and below.

	Credit	GPA	On Grade	Honors*	AP* or IB*	
A(93%to 100%)	Yes	Yes	4.0	4.5	5.0	
A-(90% to 92%)	Yes	Yes	3.7	4.2	4.7	
B+(87%to 89%)	Yes	Yes	3.3	3.8	4.3	
B (83% to 86%)	Yes	Yes	3.0	3.5	4.0	
B-(80% to 82%)	Yes	Yes	2.7	3.2	3.7	
C+(77%to 79%)	Yes	Yes	2.3	2.8	3.3	
C (73% to 76%)	Yes	Yes	2.0	2.5	3.0	
C-(70% to 72%)	Yes	Yes	1.7	2.2	2.7	
D+(67%to 69%)	Yes	Yes	1.0	1.5	2.0	
D (64% to 66%)	Yes	Yes	1.0	1.5	2.0	
F 63% & below	No	0				
W	No	Null				
L (late entry)	No	Null				Converts to AUD (audit) at end of following advisory if course is not completed
I (incomplete.)	No	Null				Converts to F (63%) after 10 school days if coursework is not completed
M (medical)	No	Null				
P (pass)	Yes	Null				
AUD (audit)	No	Null				
S – satisfactory	No	Null				For use in homeroom or other non-academic time
U-unsatisfactory	No	Null				

\*Honors: Intense courses which cover more content in greater depth than general courses of same subject;

\*Advanced Placement: College level courses following The College Board guidelines and testing system;

\*International Baccalaureate: Intense program of study following requirements of the International Baccalaureate Organization.

2200.8 Marks (grades) in courses failed and retaken for credit in grades kindergarten through 12 shall not replace previously earned marks (grades) for any given course, but are included in the student's cumulative Grade Point Average (GPA). Marks (grades) earned in extended education programs such as Summer School, STAY School and Evening Credit Recovery courses have the same credit and GPA value as standard year courses.

2200.9 Mid and end of advisory reporting on student progress: Parents and students will be informed in writing on a regular basis of the progress made toward achieving the content standards. Toward that end, principals are responsible for effectively implementing the following process:

- (a) Parents must be notified, by the end of September, of the name and contact information for the school staff member they should call about concerns impacting their child's academic progress (academic, social or behavioral).
- (b) If, by the mid-point of an advisory, a teacher considers a student at risk of failing to meet the standards, the teacher shall notify the parent, in writing, and if appropriate refer the student to the student support team.

When a student has been identified as at risk of failing to meet the content standards, the principal, teacher(s) (bilingual/English as a Second Language (ESL) special education teacher where appropriate) and other designated staff shall work with the parents and the student to identify appropriate interventions. They may consider a variety of options including but not limited to:

1. examining and altering current instructional strategies or materials;
  2. tutoring (during or after school);
  3. a change in schedule;
  4. referral to other support, social service or health-related services;
  5. problem-solving with other students or individuals who may have an impact on the student's achievement;
  6. a change in teacher; and
  7. targeted instruction.
- (c) If, by the close of the advisory, the problem persists and the student receives a mark (grade) of 2 or 1 at the elementary level or D or F at the secondary level in any of the core subjects, additional options will be considered, including:
1. referral to additional researched-based support options or alternative programs for more intensive services (pre-referral documentation must provide evidence that other interventions have been attempted);
  2. access to additional instructional time (during the day, extended day or summer school); and
  3. referral to student support team.

- (d) If, by the end of the academic year, the student fails to meet the content standards, an intervention plan will be developed by the current teacher and implemented during the summer and the following academic year.
- (e) Parents will be engaged in the consideration of additional researched based intervention strategies and will be informed, in writing, of any decisions resulting from the researched based intervention strategies.

2200.10 Teachers shall provide marks (grades) for each student and the school system shall issue report cards after the end of each advisory or/marketing period documenting the student's progress toward achieving the content standards. Report cards shall be distributed no later than 10 to 12 working days after the end of the advisory.

2200.11 All students who have not met the standards in a course or in a grade shall be notified no later than the last day of school in order to ensure timely enrollment in Summer School.

## 2201 PROMOTION

2201.1 Promotion shall be defined as the movement of students to higher grade levels or/course levels and to graduation from high school in accordance with DC School Board Policy.

2201.2 Promotions shall be made at the end of the school year. Special promotions may be made at any time with the documented assessment conducted and certified by the Chief Academic Officer and the written approval of the Regional Superintendent whose jurisdiction encompasses the school that the student attends.

2201.3 Students with disabilities, identified through the Individuals with Disabilities in Education Act (IDEA) 2004, are eligible for promotion as determined in accordance with the goals and objectives, accommodations and modifications as it relates to the content standards developed and agreed upon by the IEP Team. For English Language Learners, any decision on retention must be made in conjunction with the bilingual/ English Second Learner (ESL) teacher.

2201.4 A student may only be retained at grades three (3), five (5) and eight (8) with the following requirements:

- (a) A student cannot be retained more than once during his enrollment in the District of Columbia Public Schools unless there is a comprehensive review by multiple school personnel and approval from the Regional Superintendent whose jurisdiction encompasses the school the student attends; and
- (b) If a student does not meet all requirements for promotion, but moves on to middle or high school because s/he has been previously retained, the principal must submit a report to the receiving school detailing all unmet requirements. This report must be received by June 30 and updated at the close of summer school. For students who move prior to the end of the school year, the report must be provided to the

receiving school within thirty (30) calendar days of the student's enrollment in the school. Students in this situation will be enrolled in support services in the receiving school.

- 2201.5 Students who do not achieve the grade level content standards at the end of the academic year will be given additional support as defined in DCMR 2200.9. Only when all other interventions have been unsuccessful, and the student has not made sufficient academic progress during the course of a school year in the gate grades of three (3), five (5), or eight (8), will the student be considered for retention. A review team consisting of the principal, a guidance counselor, the student support team, the student's teachers, and his/her parent shall review all potential retentions. Principals have the final authority for all first time promotion/retention decisions. The review team will include the liaison teacher for any student with an IEP and a bilingual/ESL teacher for any student enrolled in a bilingual or ESL program.
- 2201.6 Promotion of students in pre-kindergarten through fifth (5<sup>th</sup>) grade to the next level shall include consideration of the following criteria. Students shall receive:
- (a) Proficient or advanced marks in the core subjects of:
    - 1. Reading/language arts;
    - 2. Mathematics;
    - 3. Science; and
    - 4. Social studies.
  - (b) Achievement of the goals of the intervention learning plan where applicable;
  - (c) Meet the requirements of the system's attendance policy;
  - (d) If a student in pre-kindergarten or kindergarten has met the proficiency requirements in the core subject areas but is not functioning at a skill level deemed ready for promotion to kindergarten or first grade by a teacher or a parent in the areas of physical, social or emotional development, an option of repeating a pre-kindergarten or kindergarten may be considered without being regarded as a retention.
- 2201.7 Promotion of students in grades six through eight to the next level shall include consideration of the following criteria: Students shall:
- (a) Complete three courses in English Language Arts;
  - (b) Complete three courses in mathematics;

- (c) Complete three courses in science;
- (d) Complete three courses in social studies;
- (e) Achieve the goals of the intervention learning plan where applicable; and
- (f) Meet the requirements of the system's attendance policy.

2201.8 Students may complete the high school graduation requirements over a three, four, or five year period, depending upon the time and support they need to complete graduation requirements as stated in their individualized graduation plan signed and verified by the counselor. The following guidelines shall apply for testing purposes where a grade definition is required:

- (a) Any student who earns six (6) Carnegie Units by completing content standards of the required courses including units in ninth (9<sup>th</sup>) grade English and Algebra I, shall be eligible to be classified as a tenth (10<sup>th</sup>) grade student.
- (b) Any student who earns twelve (12) Carnegie Units by completing content standards of the required courses including tenth (10<sup>th</sup>) grade English, shall be eligible to be classified as an eleventh (11<sup>th</sup>) grade student.
- (c) Any student who earns eighteen (18) Carnegie Units by completing content standards of the required courses including eleventh (11<sup>th</sup>) grade English, shall be eligible to be classified as a twelfth (12<sup>th</sup>) grade student.

Delete Sections 2201.9 and 2201.10

2202 GRADUATION: GENERAL POLICY

2202.1 Each student who meets the following requirements shall be eligible to receive a high school diploma:

- (a) Achievement of course content standards as required for the diploma, as set forth in §2203.1; 2203.2; 2203.3 and 2203.4; and
- (b) Enrollment and regular attendance in the DC Public Schools for a minimum of eight (8) consecutive months prior to graduation.

2202.2 Each student who meets the requirements set forth in this section shall be certified as eligible to receive the high school diploma by the principal or other person in charge of the school or program in which the student is enrolled.

2202.3 The high school diploma shall be conferred upon the student by the Superintendent of Schools or the Superintendent's designee in the name of the Board of Education, upon certification.

2202.4 Each diploma shall bear the signature of the Superintendent of Schools and the seal of the Board of Education.

- 2202.5 No student shall receive a high school diploma unless the student has first completed all requirements for the diploma.
- 2202.6 If a student does not meet the requirements set forth in §2202.1, 2203.2, 2203.3 or 2203.4, the procedures in §2202.7 through §2202.9 shall apply.
- 2202.7 If the prior academic record of a transfer student and the course work and skill level achievement of the student during enrollment in the D.C. Public Schools are satisfactory, the student may be granted an exemption from the requirement of § 2201.1(b) by the Regional Superintendent whose jurisdiction encompasses the school which the student attends, the principal or other person in charge of the school or program in which the student is enrolled.
- 2202.8 The course work credits received by the student prior to transfer into D.C. Public Schools may be used to meet the D.C. Public Schools graduation requirements of that school system upon verification of successful completion of this comparable course work.
- 2202.9 If the D.C. Public School student is receiving a diploma from another school system but is unable to attend graduation exercises held by the school system, the student may be allowed to participate in the graduation exercises of the D.C. Public School being attended upon the approval of the Superintendent of Schools.

2203 GRADUATION: ACADEMIC REQUIREMENTS

- 2203.1 The following course work shall be required of students who enrolled in 9<sup>th</sup> grade in school year 2007-2008 and thereafter in order to be certified as eligible to receive the high school diploma. At the beginning of the 9<sup>th</sup> grade, students shall develop a graduation plan pacing the courses they will take to complete high school. This shall be done with the assistance and signed approval of the school counselor.
- 2203.2 A total of twenty-four (24) Carnegie Units shall have been satisfactorily completed as follows:

(a) The following Carnegie Units in the corresponding subjects shall be required:

COURSES	UNITS
English	4.0
Mathematics must include Algebra 1*; Geometry and Algebra II at a minimum	4.0
Science to include three lab sciences	4.0
Social Studies to include World History 1 and 2; US History; US Government and DC History	4.0
World Language	2.0

Art	0.5
Music	0.5
CTE and or college level courses **	2.0
Physical Education/Health	1.5
Electives	1.5
Total	24
100 Hours of volunteer community service; requirements shall be established by the Superintendent	
Students must complete at least one credit bearing course during the third or subsequent SHS years that requires a culminating composition or project that is formally presented.	
All eleventh 11 <sup>th</sup> graders must write a coherent thesis that conveys a clear and distinctive position (11.W-E.2.) All twelfth 12 <sup>th</sup> graders must write and present a cogent thesis (12.W-E.3.)	

- (b) All students must enroll in Algebra no later than 9<sup>th</sup> grade commencing with the 2007-2008 school year; and
- (c) The Career/Technology Education (CTE) and college level course requirement shall be met by identified AP, IB, HI-SCIP and CTE courses as well as courses taken at accredited colleges.

2203.3 The Superintendent of Schools may establish specialized or career focused programs or courses of study, which lead to the high school diploma in accordance with 2203.4. These courses of study can include academic, performing arts, science and mathematics, career or vocational education focuses or other areas of concentration. The programs or courses of study may require additional coursework.

2203.4 Electives taken to fulfill the requirements of section 2203.2 shall be required to be taken in courses established by the Superintendent for each area of concentration in order to receive certification in the area of concentration.

2203.5 Each student who completes the requirements for specialized courses of study shall receive appropriate recognition on the student's diploma.

2203.6 A student with special needs who does not achieve a diploma, as set forth in § 2203.4 shall be eligible to receive a Certificate of Individual Educational Program (IEP) completion. The decision to pursue a program leading to an IEP Certificate of Completion shall be made by the IEP team including the parent(s) and where possible, the student.

The decision shall be made no earlier than the 9<sup>th</sup> grade and shall be attached in writing to the student's Individualized Education Program (IEP). DCPS shall comply with the Individuals with Disabilities Act, 2004 (IDEA) as addressed in DCMR, Title V, Chapter 30; with regards to appropriate transition assessments.

2203.7 Graduation Requirements from Previous Years: The following coursework shall be required of students who enrolled in 9<sup>th</sup> grade prior to 1983 in order to be certified as eligible to receive the high school diploma:

- (a) A total of seventeen point five (17.5) Carnegie Units; and
- (b) The Carnegie Units shall include 4 Carnegie Units in English; 1 in US History; .5 in US Government; 1 in Mathematics and 1 in Science; one point five in Health/Physical Education and eight point five electives.

2203.8 The following coursework shall be required of students who enrolled in 9<sup>th</sup> grade between 1984 and 1992 in order to be certified as eligible to receive a diploma.

- (a) A total of twenty point five (20.5) Carnegie Units; and
- (b) The Carnegie Units shall include 4 in English; 1 in Foreign Language; .5 in DC History- Government; 1 in US History; .5 in US Government; 2 in Mathematics; 2 in Science; 1.5 in Health/Physical Education; 1 in Life Skills Seminar and 7 Electives.

2203.9 The following coursework shall be required of students entering 9<sup>th</sup> grade between the school year 1992-1993 and school year 2006-2007 in order to be certified as eligible to receive the high school diploma.

- (a) A total of twenty-three and one-half (23 ½) Carnegie Units shall have been completed.
- (b) The following Carnegie Units in the corresponding subjects shall be required:

COURSES	UNITS
Art	0.5
Career/Vocational Education	1.0
Electives	4.5
English	4.0
Foreign Languages	2.0
Health & Physical Education	1.5
Mathematics (including elementary Algebra or its equivalent)	3.0
Music	0.5
Science (including one year of lab science)	3.0
Social Studies to include D.C. History, World Geography and US Government (each .5), US History and World History	3.5

(each 1)	
Total	23.5

- (c) One and one-half (1 ½) Carnegie Units in health and physical education shall not be required for the evening program high school diploma; and
- (d) One hundred (100) hours of community service shall be required for graduation.

2204 GRADUATION STATUS OF STUDENTS

- 2204.1 Each adult student, or the parent or guardian of a minor student, shall be informed in writing not later than ten (10) days after the close of the third (3rd) advisory period of the student's graduation status.
- 2204.2 The notice required by this section shall include a warning that the student may not be eligible for graduation in June, if applicable.

2205 OFFICIAL LIST OF GRADUATES

- 2205.1 The Superintendent of Schools shall annually compile and present to the Board of Education at its June regular meeting, the names of all students who have been certified as eligible to receive the high school diploma by the appropriate principal or other person in charge of the school or program in which the student is enrolled.
- 2205.2 Upon official receipt of the list of students receiving diplomas, the Board of Education shall act to enter the names in the official journal of the Board of Education.

2206 DIPLOMAS AND GRADUATION EXERCISES

- 2206.1 The receipt of a high school diploma, a Certificate of Attainment or a Certificate of Individualized Education Program by an eligible student shall not be contingent upon the payment of any fee or other consideration, except the payment of non-resident tuition fees required by statute and the provisions of Chapter 20 of this title.
- 2206.2 Graduation exercises shall be held only to confer the high school diploma.
- 2206.3 Exercises held to formally award Certificates of Attainment and Certificates of Individualized Education Program shall be in accordance with procedures established in the Superintendent of Schools. Exercises held to formally acknowledge promotion, as defined in § 2201, shall not include the wearing of cap and gown, rental of facilities, or the assessment of any class fees.

2207 CLASS FEES

- 2207.1 The assessment of a class fee to cover expenses in connection with graduation exercises shall be permitted subject to the requirements and restrictions set forth in this section.

- 2207.2 The maximum amount of the class fee shall be uniformly established by the Superintendent of Schools.
- 2207.3 The appropriate Assistant Superintendent shall be authorized to exempt a student from the payment of the class fee in instances of hardship.
- 2207.4 The expense of caps and gowns, yearbook subscriptions, proms, class gifts, and other activities that may be associated with graduation shall not be included in the class fee.
- 2207.5 Activities such as those listed in § 2207.4, if offered, shall be made available to students on an individual basis at the option of each student.
- 2207.6 The decisions whether to wear cap and gown, and whether to utilize rental facilities for graduation exercises, shall involve school staff, students, and parents or guardians.
- 2207.7 No student shall be required to wear a cap and gown in order to participate in graduation exercises.
- 2208 CLASS GIFTS
- 2208.1 The decision whether to present a class gift shall involve school staff, students, and parents or guardians.
- 2208.2 Class gifts to the school, if any, shall consist of or be paid for only by donations, including the creative work of students.
- 2208.3 Class gifts shall not be made to any individual(s).

Delete Sections 2209 and 2299

## DEPARTMENT OF HEALTH

## NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 946 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid program for Residential Habilitation Services provided by qualified professionals to participants with mental retardation in the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules by requiring providers to: (1) eliminate the caps for nursing services and preventive, consultative, and crisis support services; (2) delete the prohibition of concurrent billing for personal care services and residential habilitation services; and (3) authorize the expansion of services in the State of Maryland consistent with the terms and conditions of an agreement between the District of Columbia and Maryland governing oversight and provider standards. The elimination of the caps for nursing and crisis services and the removal of the prohibition of concurrent billing will ensure that persons with intensive service needs receive the necessary supports, in addition to the habilitation services, to remain in a community-based setting.

Many providers have opened facilities in neighboring jurisdictions in response to the need to obtain affordable housing. The amendment will authorize the expansion of services in the State of Maryland consistent with the terms and conditions of an agreement between the District of Columbia and Maryland governing oversight and provider standards. The expansion of service providers will allow the Waiver to serve additional clients in need of residential habilitation services.

A notice of emergency and proposed rulemaking was published on December 22, 2006 (53 DCR 10147) in the *D.C. Register*. Comments were received. No substantive changes have been made. Section 946.5 was amended to clarify that each out-of-state provider must remain in good standing and comply with all laws in the jurisdiction where services are provided. A technical correction was made to change the term "client" to "consumer" where indicated in the rules. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 946 (Residential Habilitation Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

**SECTION 946 RESIDENTIAL HABILITATION SERVICES**

- 946.1 Residential habilitation services shall be reimbursed by the Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a group home for mentally retarded persons (GHMRP).
- 946.3 Each GHMRP located in the District of Columbia shall be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*) no later than sixty (60) days after approval as a Medicaid provider and comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations, except as set forth in these rules.
- 946.4 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state.
- 946.5 Each out-of-state provider shall comply with the following additional requirements:
- (a) Remain in good standing and comply with all laws and rules in the jurisdiction where the program is located;
  - (b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action to the Department on Developmental Disabilities (DDS);
  - (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and
  - (d) To the extent possible, address issues raised by family members and the community.
- 946.6 Residential habilitation services shall only be available to a consumer with a demonstrated need for continuous training, assistance, and supervision, and shall be authorized and provided in accordance with the consumer's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP).
- 946.7 Each provider of residential habilitation services shall assist in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social skills necessary to enable the consumer to reside in the community.

946.8 Each provider of residential habilitation services shall ensure that each consumer receives training and habilitation, as indicated in the IHP or ISP, which may include, but not be limited to the following areas:

- (a) Eating and drinking;
- (b) Toileting;
- (c) Personal hygiene;
- (d) Dressing;
- (e) Grooming;
- (f) Monitoring health and physical condition and assistance with medication or other medical needs;
- (g) Communications;
- (h) Interpersonal and social skills;
- (i) Home management;
- (j) Employment and work adjustment;
- (k) Mobility;
- (l) Time management;
- (m) Financial management;
- (n) Academic and pre-academic skills;
- (o) Motor and perceptual skills;
- (p) Problem-solving and decision-making;
- (q) Human sexuality;
- (r) Aesthetic appreciation; and
- (s) Opportunity for social, recreational, and religious activities utilizing community resources.

946.9 Each provider of residential habilitation services shall ensure that each consumer receives the professional services required to meet his or her goals as identified in the consumer's IHP or ISP. Professional services may include, but are not limited to the following disciplines or services:

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

946.10 Each provider of residential habilitation services shall ensure the coordination of transportation services that enables the consumer to gain access to Waiver and

other community services and activities. Each provider of transportation services shall have a current District of Columbia Medicaid Provider Agreement that authorizes the provision of transportation services under the Waiver.

- 946.11 The minimum daily ratio of on-duty, direct care staff to consumers in each GHMRP that serves severely physically handicapped consumers, consumers who are aggressive, assaultive or security risks, consumers who manifest severely hyperactive or psychotic-like behavior, and other consumers who require considerable adult guidance and supervision shall not be less than the following:
- (a) 1:4 during the waking hours of the day, approximately 6:00 a.m. to 10:00 p.m., when consumers remain in the GHMRP during the day; and
  - (b) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.
- 946.12 The minimum daily ratio of on-duty direct care staff to consumers present in each GHMRP that serves consumers who require training in basic independent-living skills shall not be less than the following:
- (a) 1:6 during the waking hours of the day, approximately 6:00 a.m. to 2:00 p.m., when consumers remain in the GHMRP during the day;
  - (b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m.; and
  - (c) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.
- 946.13 The minimum daily ratio of on-duty direct care staff to consumers in each GHMRP that serves consumers who are in day programs such as sheltered workshops, vocational training, supported, or competitive employment programs, and who have acquired basic independent living and survival skills shall not be less than 1:6 at all times that consumers are in the GHMRP.
- 946.14 The minimum daily staffing levels set forth in sections 946.11 through 946.13 in each GHMRP shall be increased if required by the consumer, as indicated in the consumer's IHP or ISP.
- 946.15 Each provider of residential habilitation services shall:
- (a) Be a non-profit or other business entity;
  - (b) Be a member of the interdisciplinary team;
  - (c) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation services under the Waiver;
  - (d) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by the Department on Disability Services (DDS) for each consumer;
  - (e) Have a current Human Care Agreement with DDS for the provision of residential services;

- (f) Ensure that all residential habilitation services staff are qualified and properly supervised to include having a plan to provide staff interpreters for non-English speaking consumers;
- (g) Ensure that the service provided is consistent with the consumer's IHP or ISP;
- (h) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (i) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC);
- (j) Ensure that each staff member or employee has been screened for communicable disease six (6) months prior to providing services to any client, in accordance with the guidelines issued by the CDC, and that each employee or staff member is certified to be free of communicable disease;
- (k) Ensure compliance with DDS's policies governing reporting of unusual incidents, human rights, behavior management, and protection of consumer's funds;
- (l) Recommend that each residence is accessible to public transportation and emergency vehicles;
- (m) To the extent possible, obtain a residence that is handicapped accessible and barrier-free; and
- (n) Maintain a written staffing plan and provide a written staffing schedule for each site where services are provided.

946.16

Each person providing residential habilitation services for a provider under section 946.15 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be screened annually for communicable disease, according to the guidelines issued by the CDC and demonstrate that he or she is free of communicable disease;
- (c) Be able to read and write the English language and otherwise communicate with the consumer;
- (d) Agree to carry out the responsibilities to provide residential habilitation services consistent with the consumer's IHP or ISP and Plan of Care;
- (e) Have a high school diploma or general educational development (GED) certificate;
- (f) Have a minimum of one (1) year work experience with consumers with mental retardation; and
- (g) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 et seq.).

- 946.17 Each client's case manager shall monitor the delivery of services by conducting visits at least eight (8) times per calendar year to ensure that services are delivered in accordance with the IHP, ISP and Plan of Care.
- 946.18 Each provider of residential habilitation services shall review the consumer's ISP goals, objectives, and activities at least quarterly and more often, as necessary. The provider shall propose modifications to the ISP, as appropriate. The results of these reviews shall be submitted to the case manager within thirty (30) days of the end of each quarter. Each provider shall participate in ISP development so that community integration goals are clearly defined. Each provider shall also assist in the coordination of all services that a client may receive.
- 946.19 Each provider of residential habilitation services shall maintain progress notes on a monthly basis or more frequently if indicated on the ISP, and maintain financial records of expenditures of public funds for each consumer.
- 946.20 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the consumer's date of discharge.
- 946.21 Residential habilitation services shall not be reimbursed when provided by a member of the consumer's family.
- 946.22 Reimbursement for residential habilitation services shall not include:
- (a) Cost of room and board;
  - (b) Cost of facility maintenance, upkeep and improvement; or
  - (c) Activities or supervision for which payment is made by a source other than Medicaid.
- 946.23 The reimbursement rate for residential habilitation services shall be one hundred twenty dollars (\$120) per day, per consumer.
- 946.24 Each provider of residential habilitation services shall coordinate the delivery of necessary preventative, consultative, and crisis support services, personal care services, attendant care services, and skilled nursing services from approved Waiver providers of those services based on the requirements of the ISP.
- 946.25 Residential Habilitation Services shall not be billed concurrently with the following Waiver services:
- (a) Environmental accessibility adaptation;
  - (b) Homemaker;
  - (c) Family training;
  - (d) Independent habilitation;
  - (e) Respite;
  - (f) Chore;

- (g) Adult companion; or
- (h) Personal Emergency Response System (PERS).

946.26 Residential habilitation services shall not be billed when the consumer is hospitalized, on vacation, or for any other period in which the consumer is not residing at the GHMRP.

## 946.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

**Consumer**-an individual who has mental retardation and has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

**Communicable Disease**-that term as set forth in Title 22 DCMR, § 201.

**Direct Care Staff**- individuals employed to work in the GHMRP who render the day-to-day, personal assistance clients require in order to meet the goals of their IHP or ISP.

**Group Home for Mentally Retarded Persons (GHMRP)**- a community residence facility, other than an intermediate care facility for persons with mental retardation, that provides a home-like environment for at least four (4) but no more than six (6) related or unrelated mentally retarded individuals who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

**Individual Habilitation Plan (IHP)**-that term as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.3).

**Individual Support Plan (ISP)**- the successor plan to the Individual Habilitation Plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

**Interdisciplinary Team**- a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive client evaluation while participating in the development, implementation, and monitoring of the client's IHP or ISP.

**Plan of Care**- a written document prepared by the DDS Waiver unit which describes medical and other services to be furnished to the client, the frequency of the services, and the type of provider to furnish the services. The Plan of Care shall be consistent with the IHP and ISP.

**Practical Nurse**- a person licensed or authorized to practice practical nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986,

(D.C. Law 6-99; D.C. official Code §§ 3-1201 *et seq.*) or licensed as a practical nurse in the jurisdiction where services are provided.

**Registered Nurse-** a person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, (D.C. Law 6-99; D.C. official Code §§ 3-1201 *et seq.*) or licensed as a registered nurse in the jurisdiction where services are provided.

**BOARD OF REVIEW FOR ANTI-DEFICIENCY VIOLATIONS****NOTICE OF FINAL RULEMAKING**

The Board of Review for Anti-Deficiency Violations (the "Board"), pursuant to the authority set forth in Mayor's Order 2004-125, August 2, 2004, hereby gives notice of the adoption of the following Guidelines (the "Guidelines") by adding a new Chapter 11 to Title 1, DCMR, entitled "Guidelines of the Board of Review for Anti-Deficiency Violations." Pursuant to the District Anti-Deficiency Act of 2002, effective April 4, 2003 (D.C. Law 14-285; D.C. Official Code § 47.355.01 *et seq.* (2005 Repl.)) (the "Act"), the Board is to advise and make recommendations to the Mayor, the Chief Financial Officer, the Inspector General and the Council of the District of Columbia concerning reported violations of the Act by officers and employees of the District of Columbia government. The purpose of the Guidelines is to establish the Board's operating procedures regarding the Board's duties pursuant to the Act.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 13, 2004. The Board amended and re-issued the Guidelines, on an emergency basis, on January 17, 2007 and re-published the Guidelines in a second Notice of Emergency and Proposed Rulemaking on March 16, 2007 at 54 DCR 2384. The Guidelines, as amended, reflect changes to the Act made pursuant to the Anti-Deficiency Act Revision Act of 2006, effective March 14, 2007 (D.C. Law 16-293; 54 DCR 1083). The amendments to the Act affect the kinds of anti-deficiency violations subject to the Board's review and the procedures to be followed by the Board during any such review. Final action to adopt these rules was taken on May 2, 2007. The final rules shall become effective upon publication in the *D.C. Register*.

**CHAPTER 11      GUIDELINES OF THE BOARD OF REVIEW FOR  
ANTI-DEFICIENCY VIOLATIONS****1100              SOURCE OF AUTHORITY**

1100.1            The Board of Review for Anti-Deficiency Violations of the Government of the District of Columbia ("Board") was established by the Mayor of the District of Columbia ("Mayor"), pursuant to the District Anti-Deficiency Act of 2002 ("Act"), as amended, effective April 4, 2003 (D.C. Law 14-285; D.C. Official Code § 47.355.01 *et seq.* (2005 Repl.)), Mayor's Order 2003-60, dated May 16, 2003, and Mayor's Order 2003-156, dated November 7, 2003.

1100.2            These Guidelines are issued pursuant to the authority vested in the Mayor by sections 422(2), (6) and (11) of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2), (6) and (11) (2001). Pursuant to Mayor's Order

2004-125, dated August 2, 2004, the Mayor has delegated to the Board the authority to promulgate these Guidelines.

**1101 PURPOSE**

1101.1 The purpose of these Guidelines is to implement the authority delegated to the Board by establishing an effective, efficient, and fair system of independent review and resolution of reported violations of the Act.

1101.2 The purpose of the Board is to advise and make recommendations to the Mayor, the Chief Financial Officer (“CFO”), the Inspector General (“IG”), and the Council of the District of Columbia (“Council”) with respect to reported anti-deficiency violations by officers and employees of the government of the District of Columbia (“District”). Because maintaining the fiscal integrity of the District government is of paramount importance, it is critical that reports of violations of the Act be evaluated by a credible, independent investigative board, which will assess culpability and recommend appropriate action.

1101.3 The Act does not grant the Board the authority to review, investigate, determine violations of or recommend action regarding violations of the District’s procurement laws. In addition, although several of the prohibited actions contained in the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2006), are repeated in the Act, the Act does not grant the Board the authority to review, investigate, determine violations of or recommend action regarding violations of the federal Anti-Deficiency Act.

**1102 MEMBERS**

1102.1 The direction, control, and management of the affairs and funds of the Board shall be vested in the members, who shall pursue such policies and activities in accordance with the provisions of the relevant laws of the District of Columbia and the United States.

1102.2 Pursuant to Mayor’s Order 2003-156, the Board is comprised of five (5) District government employees (“Members”), as follows: two (2) representatives who serve at the pleasure of the CFO, one (1) of whom shall serve as Chairperson of the Board; two (2) representatives who serve at the pleasure of the Mayor; and one (1) representative who serves at the pleasure of the IG.

1102.3 Each Member shall be appointed to a term of three (3) years. The Chairperson may excuse a Member from a meeting of the Board for an emergency reason. Any Member who fails to attend three (3) consecutive meetings shall be deemed removed from the Board, and a vacancy created.

Such vacancies shall be filled by the appropriate appointing authority as outlined in section 1102.2.

- 1102.4 A Member may resign at any time by giving notice thereof in writing to that Member's appointing authority, with a courtesy copy to the Chairperson of the Board.
- 1102.5 A Member may serve beyond the end of his or her term until re-appointed, or replaced, by the appropriate appointing authority as outlined in section 1102.2. No person may serve more than two (2) full terms.
- 1102.6 The officers of the Board shall be a Chairperson and a Vice-Chairperson, and such other officers as may from time to time be deemed advisable by the Board. Unless otherwise provided in the Act or these Guidelines, such officers shall be chosen by a majority vote of the Board.
- 1102.7 Unless otherwise provided in the Act or these Guidelines, the officers of the Board shall hold their offices for such terms as shall be determined from time to time by the Board and shall exercise such powers and perform such duties as shall be specified by the Board and, if not inconsistent therewith, as are customarily exercised by corporate officers holding such offices.
- 1102.8 The officers of the Board shall hold office until their successors are chosen and qualified. Unless otherwise provided in the Act or these Guidelines, any officer may be removed at any time by a majority of the Members, with or without cause, and any vacancy occurring in any office may be filled by the vote of a majority of the Members.

### **1103 MEETINGS OF THE BOARD**

- 1103.1 The Chairperson of the Board shall preside at all meetings of the Board at which he or she is present and shall perform such other duties as may be required of him or her by the Board.
- 1103.2 The Vice-Chairperson of the Board shall, in the absence of the Chairperson, preside at meetings of the Board and shall perform such other duties as may be required of him or her by the Board.
- 1103.3 Meetings of the Board may be called at the discretion of the Chairperson or at the request of any two Members. At least forty-eight (48) hours in advance of each meeting of the Board, notice shall be given to each Member.
- 1103.4 Notice of a meeting of the Board shall specify the date, time and place of the meeting. The notice may be delivered by methods including, but not

limited to, telephone, email, government mail or announcement at a previous meeting. A Member may waive notice of any meeting by written statement filed with the Secretary. Attendance at a meeting also shall constitute a waiver of notice.

1103.5 The Board shall convene within sixty (60) days of receipt of a notice of a violation to investigate the causes of the violation.

1103.6 Meetings of the Board shall be closed except to those requested to attend or as otherwise specified in these Guidelines.

#### **1104 QUORUM**

1104.1 Except as otherwise provided in the Act or in these Guidelines, three (3) Members shall constitute a quorum for the Board to conduct a meeting or for the transaction of business.

1104.2 No Member may vote on any matter by proxy or by any attorney-in-fact.

1104.3 No vacancy in Membership shall impair the right of a quorum to exercise all rights and perform all duties of the Board.

1104.4 Any Member may participate in a meeting of the Board, or a committee of the Board, by means of a conference telephone or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting.

#### **1105 CONFLICT OF INTEREST**

1105.1 The Board shall consider all reported anti-deficiency violations in a fair and impartial manner. A Member who has a personal conflict, or the appearance thereof, in the resolution of any reported violation shall not participate in the Board's review of the matter. Examples of personal conflict include, but are not limited to: familial relationship or friendship with a party or parties accused of the violation or making the accusation of the violation; having witnessed or participated in events material to the inquiry from a non-neutral perspective; being a party to the inquiry or having the potential of providing information relevant to the inquiry; or having a financial interest in the outcome of the inquiry.

1105.2 Any person involved in the reported violation may file a challenge for cause against a Member. The challenge must be filed with the Chairperson (or the Vice Chairperson if the Chairperson is challenged) in writing within ten (10) working days of the point at which the individual filing the challenge becomes aware of potential personal conflict of the

Member or prior to the reported violation being considered by the Board, whichever is earlier. The challenge must describe in detail the basis for the personal conflict.

1105.3 If a Member is challenged for cause, the Chairperson shall contact the challenged Member as soon as possible. If the Member agrees that the challenge is for good cause, or otherwise agrees to remove himself/herself from the particular inquiry, the Member shall remove himself/herself from the particular inquiry. If the challenged Member does not agree that the challenge is for good cause, the Chairperson shall poll the other Members, and if a Quorum agrees that the challenge is for good cause or otherwise removes himself/herself from the particular inquiry, the Chair shall notify the challenged Member and remove the Member from that inquiry. If a challenge to a Member is rejected under the above procedure, the written challenge and the Member's written response, as well as the official minutes of the meeting at which the matter was considered, shall be incorporated in the investigative file as part of the record.

1105.4 Should any Member be removed or remove himself/herself from consideration of a reported violation due to challenge or voluntary removal on the Member's own initiative, the matter shall proceed before a quorum of the Board.

## 1106 COMPENSATION

Members of the Board shall serve without compensation (beyond their salaries as employees of the District government), except that a Member may be reimbursed for reasonable expenses incurred in the authorized execution of official Board duties, if approved in advance by the CFO or his/her designee.

## 1107 ORGANIZATION

1107.1 The Board may establish committees as needed, including standing committees. The Board shall determine who shall be members of any such committees. Committees may include District government employees who are not Members, provided that each committee is chaired by a Member. Unless specified by the Board, the individual committees shall determine the dates, times, and locations of meetings and whether or not to keep records of committee meetings.

1107.2 The Board may establish its own bylaws and rules of procedure.

**1108 ADMINISTRATION**

- 1108.1 The Office of the Chief Financial Officer (“OCFO”) shall provide administrative and staff support to the Board.
- 1108.2 The OCFO shall designate an OCFO employee to serve as Staff Director of the Board. The Staff Director may designate an OCFO employee to serve as Secretary of the Board, as well as to coordinate administrative and substantive support from other District employees to the Board. Board staff will assist the Board in carrying out its duties and responsibilities, including providing the necessary support to the Board to obtain information needed to perform its review. The Board, however, shall not delegate core responsibilities, such as the assessment of culpability, the determination of any justification for a violation, the determination that no violation actually occurred or the recommendation of disciplinary or other action.
- 1108.3 The Secretary shall be responsible for keeping accurate minutes of the proceedings of all meetings of the Board. This includes providing administrative support associated with the needs of the Board, such as arranging meetings, and providing notices of meetings.
- 1108.4 Upon majority vote of the Members present at a duly called meeting at which a quorum is present, the Staff Director and the Secretary of the Board may be removed from these positions at any time, without cause.
- 1108.5 The Board shall continuously maintain in the District a principal office at such place as may be designated by the Members.
- 1108.6 The Board staff shall create a case file for each report, designate a case number, and enter the case in a database. The Chairperson or his or her designee will notify the Members when a report of a violation has been received and will schedule, in consultation with Members, the earliest possible date for the Members to meet.

**1109 LEGAL ADVICE**

- 1109.1 The Board may consult with and seek advice from the Office of the Attorney General (“OAG”), in coordination with the Office of General Counsel for the Chief Financial Officer, in the course of the Board’s review of each reported violation.
- 1109.2 In making recommendations for disciplinary action, the Board may consult with and seek advice from the District of Columbia Office of Personnel and/or the applicable personnel authority for the subject agency.

**1110 INVESTIGATIVE ASSISTANCE**

The Board shall seek investigative assistance, as necessary, from the Office of the Inspector General (OIG), the OCFO, the OAG, and other agencies of the District government in the course of the Board's review of a reported violation.

**1111 ACCESS TO DISTRICT OF COLUMBIA RECORDS**

In executing its responsibilities, the Members and the representatives of and investigators for the Board are authorized to:

- (a) Access all facilities, files, and databases of District government agencies in order to obtain files, electronic and paper records, reports and documents, and other material available to District government agencies, which may relate to the Board's inquiry into a reported violation of the Act.
- (b) Request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Board, as provided in Mayor's Order 2003-156, from any District, federal, state, or local government agency.
- (c) Seek information from parties outside the District government, including government contractors, which may be relevant to an investigation.

**1112 RESPONSIBILITIES OF EMPLOYEES OF THE DISTRICT OF COLUMBIA TO THE BOARD**

1112.1 Inquiries by the Board are official inquiries by the District Government. All officers, employees, and members of boards, commissions, and councils of the District government are required to respond to questions truthfully, whether orally or in writing, and must provide documents and other matters of official interest when requested by a representative of the Board. No employee shall prevent or prohibit the Board from initiating, carrying out, or completing any investigation within the jurisdiction of the Board.

1112.2 Because all materials provided during employment by the District government are the property of the District government, an employee must provide all documents produced while on the job to the Board or its investigators as requested.

**1113 VIOLATIONS**

1113.1 The following actions are defined as “violations” by the Act and in these Guidelines and must be reported promptly to the CFO (or to the IG if there would be a conflict of interest for the CFO) for referral to the Board:

- (a) Making or authorizing an expenditure or obligation exceeding an amount available in an appropriation for an agency or fund.
  - (1) For purposes of operating appropriations, the Act will be enforced at the levels of agency, fund, and program. For grants and Special Purpose Revenue, “fund” means each grant and Special Purpose Revenue fund detail, respectively.
  - (2) For purposes of capital appropriations, the Act will be enforced at the levels of implementing agency, fund, and project. In accordance with applicable law, agencies may make capital expenditures up to the amount available, by fund and project, in all prior and current years.
- (b) Obligating the District for the payment of money before an appropriation is made or before a certification of the availability of funds is made, unless authorized by law.
- (c) Approving a disbursement without appropriate authorization. Appropriate authorization means:
  - (1) The signature of an authorizing official of the agency;
  - (2) The signature of the agency chief financial officer certifying the availability of funds;
  - (3) The signature of a contracting officer indicating through a valid purchase order or contract that the disbursement is authorized; and
  - (4) A valid invoice.
- (d) Deferring the recording of a transaction incurred in the current fiscal year to a future fiscal year.
- (e) Allowing an expenditure or obligation to exceed apportioned amounts.

- (1) For purposes of operating appropriations, the Act will be enforced at the level of agency, by fund by quarter.
  - (2) Adherence to apportionment will be defined as not exceeding apportionment. All overspending will be recognized as a violation of the Act.
- (f) Not submitting a required plan or projection in a timely manner.
  - (g) Knowingly reporting incorrectly on spending to date or on projected total annual spending.
  - (h) Failing to adhere to a spending plan for any of the first three (3) quarters of a fiscal year through overspending that is greater than (A) five percent (5%) of the agency's budget, or (B) one million dollars (\$1,000,000), regardless of the percentage. For purposes of operating appropriations, the Act will be enforced at the level of agency and fund.

**1114****PROCEDURES FOR REPORTS TO THE BOARD**

## 1114.1

The standard process for the Board learning of a violation is through the receipt of a report of a violation from the CFO on a form that the Board shall prescribe. However, the Board may also receive a report from the IG in instances where there is a conflict of interest for the CFO. The CFO (or IG) shall conduct a preliminary investigation and provide the Board, at a minimum, with the following information:

- (a) The appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred;
- (b) The name(s), position(s), and agency(ies) of the employee(s) involved with the violation;
- (c) All facts pertaining to the violation, including the type of violation (for example, over-obligation of an appropriation), the primary reason or cause, valid justification, and any germane report by the agency's fiscal official and/or the agency's counsel;
- (d) A statement from the responsible employee(s) that fully addresses the employee's actions in the matter so that the Board has the benefit of the employee's description of what transpired, the basis for the employee's action, mitigating factors, justification, and other relevant factors when it considers culpability and recommends appropriate administrative action. If an employee declines to provide a written statement, the agency head (or

Deputy Mayor, if the agency head is the alleged violator) shall provide a written statement to that effect;

- (i) In the case where an employee is suspected of willfully and knowingly violating the Act, a statement as to whether, and when, this matter has been reported to the IG and/or the United States Attorney for the District of Columbia;
- (j) A statement regarding the adequacy of the system of administrative controls;
- (k) A statement of any additional action taken by, or at the direction of, the agency head (or Deputy Mayor, as appropriate), including any new safeguards provided to prevent recurrence of the same type of violation; and
- (l) If another agency is involved, a statement concerning the steps taken to coordinate the report with the other agency.

1114.2 In extraordinary circumstances, the Board may vote to accept a report from an alternative source.

## **1115 REVIEW OF REPORTS**

1115.1 Upon receipt of a report of a violation, and in any event within sixty (60) days of learning of a violation, the Chairperson shall convene the Board to investigate the causes of the violation.

1115.2 If the report is complete, and if the Board does not determine that no violation actually occurred, the Board will proceed to assess the culpability of the responsible employees and recommend appropriate disciplinary action.

1115.3 If the report is not complete or if facts in dispute require further investigation, the Board will determine whether to direct additional inquiry.

1115.4 The Board shall promptly notify an employee that a violation has been reported, that the Board has received the report, and that the matter is under the purview of the Board. This notification shall describe the role of the Board and any rights that the employee may have regarding the Board's investigation of the reported violation.

1115.5 When the Board meets to evaluate a report, no employees other than members of the Board are entitled to be present. However, upon request by an employee who is subject to disciplinary action under the Act, the

Board may allow the employee to appear before the Board. The Board may require any employee of the District government, including any employee who is the subject of a report, to appear before the Board.

#### **1116 ASSESSMENT AND EVALUATION OF PENALTIES**

- 1116.1 In recommending disciplinary action, the Board shall consult with legal and personnel professionals, as needed.
- 1116.2 The Board may recommend that no action be taken where it finds a justification for the violation. Justification may include overspending as a result of court orders, entitlements, or explicit authorization in an appropriations act.
- 1116.3 The decision of the Board to adopt a report of its findings and recommendations is determined by an affirmative vote of at least three (3) Members present.
- 1116.4 The Board has adopted a table of penalties for violations, intended to be used as a non-binding guide that categorizes violations under the three (3) broad headings of Reporting, Budget Adherence, and Accounting and Disbursement. Within each category, the Board has prescribed penalties for first, second and third violations, including: a letter of warning, official reprimand, ten (10)-day suspension, demotion, and termination of employment (removal). [*See "Table of Appropriate Penalties", attached.*]

#### **1117 REFERRAL OF POTENTIAL CRIMINAL VIOLATIONS**

- 1117.1 The Board shall report any reported violation reasonably believed to be a violation of criminal law to the IG, in accordance with established policies and procedures. The Board shall send copies of all relevant files to the IG (or the U.S. Attorney for the District of Columbia), maintain a record of each referral, and ascertain and record the disposition of each referred matter.
- 1117.2 If the IG declines in writing to pursue the matter, the Board shall resume consideration of the violation.

#### **1118 REPORTING RESULTS OF BOARD'S INVESTIGATION**

- 1118.1 The Chairperson shall issue the Board's findings and recommendations to the agency head or Deputy Mayor involved.
- 1118.2 Within thirty (30) days of receipt of the findings and recommendations of the Board, the agency or Deputy Mayor shall notify the Board in writing of the actions taken or to be taken.

1118.3 Upon receipt of the agency’s or Deputy Mayor’s response, the Board shall issue a report, determined by an affirmative vote of at least three Members present, to the Council indicating the violation, the name, and the title of the employee or employees who were responsible for the violation, any justification, and a statement of the action taken or proposed to be taken.

**Table of Appropriate Penalties**

<b>Violation</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>
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**Reporting**

Not submitting a required plan or projection in a timely manner	Tier 1 e.g., Letter of Warning	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand
Knowingly reporting incorrectly on spending to date or on projected total annual spending	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand	Tier 3 e.g., 10 Day Suspension

**Budget Adherence**

Failing to adhere to a spending plan	Tier 1 e.g., Letter of Warning	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand
Allowing an expenditure or obligation to exceed apportioned amounts	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand	Tier 3 e.g., 10 Day Suspension
Making or authorizing an expenditure exceeding an amount available in an appropriation or fund			
Program level	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand	Tier 3 e.g., 10 Day Suspension
Agency level	Tier 2 e.g., Official Reprimand	Tier 2 e.g., Suspension	Tier 3 e.g., Demotion / Removal
Obligating the District for the payment of money before an	Tier 1 e.g., Letter of	Tier 2 e.g., Official	Tier 3 e.g., 10 Day

appropriation is made or before a certification of the availability of funding is made unless authorized by law	Warning	Reprimand	Suspension
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**Accounting and Disbursement**

Approving a disbursement without appropriate authorization	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand	Tier 3 e.g., 10 Day Suspension
Deferring recording a transaction incurred in the current fiscal year to a future fiscal year	Tier 1 e.g., Letter of Warning	Tier 2 e.g., Official Reprimand	Tier 3 e.g., 10 Day Suspension

**1199 DEFINITIONS**

1199.1 For purposes of this chapter, the terms:

- (a) "Agency" means an agency, office, department, board, commission, or independent agency or instrumentality of the District government.
- (b) "Apportionment" means the division of an agency's appropriated budget authority by periods within a fiscal year.
- (c) "Appropriation" means authority to spend funds appropriated by Congress and financed by District revenues.
- (d) "Capital project" means the development, modernization, or replacement of facilities and infrastructure used for public purposes.
- (e) "Disbursement" means the outflow or payment of cash, whether by check or electronic transfer of funds.
- (f) "Employee" means an individual who performs a function of the District government, including a contract employee (excluding independent contractors), and who receives compensation for the performance of that function
- (g) "Encumbrance" means an amount of funds committed for the payment of goods and services ordered but not yet received.

- (h) “Expenditure” means a payment for goods or services received.
- (i) “Full Time Equivalent (FTE)” means an employment indicator that translates the total number of hours worked in a year by all employees, including part-time workers, to an equivalent number of work years. For example, one FTE equals 2,080 hours and .75 FTE equals 1,566 hours.
- (j) “Fund” means a budgeting and accounting device used to establish accounts for separating revenues and their related obligations, and expenditures for one purpose from those revenues, obligations, and expenditures for other purposes.
- (k) “Grant” means a contribution of assets (usually cash) by one government unit to another government unit or organization. Typically, these contributions are made to local governments from state and federal governments for specified purposes.
- (l) “Manager” means an individual chosen or appointed to manage, direct, or administer some affairs of the agency, including the expenditure of funds.
- (m) “Nonpersonal services” means a budget category that includes budget objects for reporting other than personnel-related expenditures. Nonpersonal services includes supplies, utilities, communications, and rent, other services and charges, subsidies and transfers, equipment rental, and debt service.
- (n) “Object class” means a budgetary classification that breaks down the general budget categories of personal services and nonpersonal services into more specific types of expenditure, such as Fringe Benefits (Object Class 14) or Supplies (Object Class 20).
- (o) “Obligations” means the amount of expenditure already made as well as the cost of commitments requiring future payments.
- (p) “Operating budget” means the budget that encompasses the day-to-day District government activities. The operating budget includes employee salaries, supplies, and other non-personnel items related to current activities. The operating budget also includes debt services and overhead costs related to daily operations.
- (q) “Personal services” means a budget category that includes budget objects for reporting personnel-related expenditures.

- (r) “Program” means the highest level, for budgeting and expenditure control, within the agency that the District government uses for a specific purpose for appropriated budget authority. A program may consist of multiple activities, which combined achieve the stated purpose and goals.
- (s) “Reprogramming” means a specific kind of authorized budget change to reallocate funds to or from an agency’s budget, without a new appropriation.
- (t) “Revenues” means the annual income or receipts of the District from taxes, charges, grants, and investments.
- (u) “Spending plan” means an agency’s projection by month of planned spending by object class, by fund.