

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF FINAL RULEMAKING

Pursuant to the authority set forth in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, as added by section 861 of the Legal Service Establishment Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-260, D.C. Official Code § 1-608.61 (2001), and as added by section 881 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002, effective July 25, 2002, D.C. Law 14-182, D.C. Official Code § 1-608.81 (2001) (collectively, the Act), the Attorney General hereby gives notice of his adoption of the following amendments to Chapter 36 of the District of Columbia Personnel Regulations, pertaining to the Legal Service (Legal Service Rules).

These rules clarify the employment status of an attorney who, because of administrative action or other circumstances affecting him or her, has lost his or her qualification as an attorney in good standing of the District of Columbia Bar and who therefore cannot fully comply with the requirements of the Act. This amendment to the Legal Service Rules clarifies the authority of the Attorney General, under the Act, to take action to prevent an attorney in the Office of the Attorney General from being paid or providing legal services to the District government when that attorney does not qualify to receive a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals because that attorney has been suspended or a more serious sanction has been imposed on them by the D.C. Court of Appeals. A Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on March 24, 2006 at 53 DCR 2265. These final rules will become effective upon publication of this notice in the D.C. Register.

Chapter 36 of the D.C. Personnel Regulations is amended as follows:

The table of contents is amended as follows:

By adding the phrase: "3618 Attorney Good Standing in the D.C. Bar Requirement--Office of the Attorney General for the District of Columbia".

A new section 3618 is added to read as follows:

**3618 ATTORNEY GOOD STANDING IN THE D.C. BAR REQUIREMENT---
OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF
COLUMBIA**

3618.1 The provisions of this section shall be applicable to each attorney appointed to the Legal Service who is employed by the Office of the Attorney General for

the District of Columbia and who is required to be a member of the District of Columbia Bar as a prerequisite of employment. This section is also applicable to an individual who is a member in good standing of the bar of another jurisdiction and who has filed a timely application for admission to the District of Columbia Bar.

- 3618.2 An appointee to a Legal Service position shall remain a member in good standing of the District of Columbia Bar during his or her employment in the Legal Service. An appointee who is a member in good standing of the bar of another state or territory and who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar shall present a certificate of good standing to the Office of the Attorney General upon notification of his or her admission to the District of Columbia Bar, within five (5) business days of such notification, and such admission shall occur within 360 days of the appointee's initial employment as a attorney by the District government. The appointee shall thereafter remain a member in good standing of the District of Columbia Bar.
- 3618.3 An appointee to a Legal Service position shall notify the Attorney General immediately of any sanction proposed by the D.C. Office of Bar Counsel, any hearing regarding any proposed disciplinary action, or any disciplinary action taken by the D.C. Court of Appeals against that attorney.
- 3618.4 An appointee to a Legal Service position who is suspended from practice by the D.C. Court of Appeals shall not remain in an attorney position in the Office of the Attorney General during the suspension period. The Attorney General may, at his or her discretion, request the re-assignment of such an appointee to a non-attorney position in the Office of the Attorney General.
- 3618.5 An appointee to a Legal Service position shall not be compensated for services provided pursuant to the appointee's employment as an attorney in the Office of the Attorney General unless such an individual is duly licensed and authorized to practice as an attorney under the law of the District of Columbia. This prohibition shall not apply to an appointee who is a member in good standing of the bar of another state or territory who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar and such admission has occurred within 360 days of the appointee's initial employment as a attorney by the District government.

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The Board of Education ("Board"), pursuant to the authority set forth in the D.C. Code, 2001 Edition, §38-101 & 38-102 et seq., hereby gives notice of final rulemaking action taken by the Board at its meeting held on May 15, 2006 to amend Chapter 10 of the Board Rules (Title 5 of the D.C. Municipal Regulation).

This amendment, if enacted, will effect the following actions: Authorize the Superintendent to establish a fee of not less than \$30.00 and not more than \$125.00 per application to individuals who seek educational credentials under the state licenses approved by the Board of Education. This rulemaking will also establish a fund especially designated as the State Certification Service Fee Fund.

The final rulemaking will take effect upon the publication of a Notice of Final Rulemaking in the D.C. Register. Proposed rulemaking on this subject was published in the D.C. Register on March 31, 2006 and no comments were received.

Amend § 5-1001.19

Each application submitted to the State Education Agency, Office of Academic Credentials and Standards for processing shall be accompanied by a fee established by the Chief State School Officer and shall be in an amount of not less than thirty dollars (\$30.00) and not more than one hundred twenty five dollars (\$125.00). Prior to January 1 of each year, the Chief State School Officer shall determine the amount of revenue which will be required to properly administer the certification provisions for the ensuing fiscal year, and shall establish the application processing fee for such year in the amount deemed necessary for such purposes. The application processing fee shall become effective on July 1 of each year.

(a) All revenue collected by the Chief State School Officer regarding certification services shall be deposited in the State Certification Service Fee Fund.

- 1. The State Certification Service Fee Fund shall be separate from the Local Operating Funds of the District of Columbia.**
- 2. The State Certification Service Fee Fund shall not revert to the General Fund Balance of the District of Columbia at the end of any fiscal year or at any other time.**

(b) All revenue collected by the Chief State School Officer regarding certification services shall be continuously available for the uses and purposes directly related to State Education Agency, Office of Academic Credentials and Standards activities which include but are not limited to:

1. travel,
2. professional training,
3. meetings,
4. stipends,
5. honorariums
6. professional organization membership dues,
7. day-to-day office operational needs,
8. reimbursements, and
9. maintenance of records by the State Education Agency, Office of Academic Credentials and Standards as authorized and approved by the Chief State School Officer or his/her designee.

Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, §§38-101 & 38-102 et seq., hereby gives notice of final rulemaking action taken by the Board at its meeting held on Monday, May 15, 2006 to amend Chapter 38 of the Board Rules (Title 5 of the D.C. Municipal Regulations).

These amendments will effect the following actions: 1) Provide parents of District of Columbia students school choice options where schools have been determined persistently dangerous and 2) Mandate certain corrective actions for any Local Education Agency identified as persistently dangerous.

The final rulemaking will take effect upon the publication of a Notice of Final Rulemaking in the *D.C. Register*. Proposed rulemaking on this subject was published in the *D.C. Register* on March 31, 2006.

Amend Chapter 38 as follows:

Amend Section 3804.1, .2, .3 (a), (b) & (c) and .4 as follows:

3804.1 ~~Pursuant to the requirements of P.L. 107-110, the District of Columbia Public Schools acting as the State Educational Agency (SEA) shall identify, by July 1 of each year, all public schools within District of Columbia LEAs that are "persistently dangerous" pursuant to criteria established by the SEA and set forth in subsection 3804(e).~~

3804.1 The District of Columbia Public Schools acting as the State Educational Agency (SEA) shall identify, by July 1 of each year, all public schools within District of Columbia's Local Education Agencies (LEAs) and all public charter schools that are "persistently dangerous" pursuant to criteria established by the SEA and set forth in subsection (3). The identification of "persistently dangerous" schools shall not include juvenile detention facilities.

3804.2 By July 1, the SEA also shall send a letter of concern to each **public charter school, LEA and school administrator** whose

statistics for the previous year indicate that his or her schools are at risk of being identified as persistently the following year.

3804.3

A school is determined to be persistently dangerous if the annual number of officially reported violent crimes against students, on the school grounds, during school operating hours, over a period of two consecutive years is:

(a) **equal to or greater than five (5)**, for schools with enrollments of 500 students or less, or

(b) **equal to or greater than 1%** of the school's official membership, for schools with enrollments of 501 students or more, and

(c) ~~The above criterion is effective beginning with the 2004-2005 school year.~~

Includes any of the crimes of murder, attempted murder, first or second degree sexual assault, assault with intent to kill, and assault with intent to commit first or second degree sexual abuse.

3804.4

~~Juvenile detention facilities are exempt from the provisions of this section.~~

The above criterion is effective beginning with the 2005-2006 school year.

Amend Section 3808.4 as follows:

The SEA shall remove a school's designation as persistently dangerous if the annual number of documented reported violent crimes against students on the school grounds, during school operating hours, over a period of two consecutive years following its designation is:

(a) **Less than five**, for schools with enrollments of 500 students or less; or

(b) **Less than 1%** of the school's official membership for schools with enrollments of 501 students or more; and

(c) **Does not include any of the crimes of murder, attempted murder, first or second degree sexual assault, assault with intent to kill, and assault with intent to commit first or second degree sexual abuse.**

Add Sections 3808.6 and 3808.7

3808.6 **The LEA shall become eligible for SEA intervention and support when any of the crimes of murder, attempted murder, first or second degree sexual assault, assault with intent to kill, and assault with intent to commit first or second degree sexual abuse is committed at a school.**

3808.7 **The LEA or public charter school shall be subject to the weighted policy for certain crimes, which is defined as follows:**

(a) The LEA or public charter school shall automatically exceed the threshold for crime for any school year in which any of the crimes listed in 4(c) is committed and will be required to begin corrective action and will be eligible for support from the LEA and SEA if the crime is committed on school grounds, during school operating hours.

(b) The LEA or public charter school shall continue corrective action for the remainder of the school year the offense occurred, and the entire school year immediately following the offense.

(c) A school required to implement corrective action because of the commission of any of the crimes listed in 4(c) is subject to the same requirements of any other LEA or public charter school that is in year one of identification as a persistently dangerous school except for the school wide transfer option.

Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

OFFICE OF RISK MANAGEMENT**NOTICE OF FINAL RULEMAKING**

The Director of the Office of Risk Management (ORM), Executive Office of the Mayor, pursuant to the authority set forth in section 2344 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-623.44 (2001); section 7 of Reorganization Plan No.1 of 2003 for the Office of Risk Management, effective December 15, 2003, and Mayor's Order 2004-198 (December 14, 2004), hereby gives notice of the adoption of the following new Chapter 31 to Title 7 of the *District of Columbia Municipal Regulations (DCMR)*. Final action to adopt these rules was taken on May 3, 2006.

Emergency and proposed rules were published in 52 DCR 5481, June 10, 2005, 52 DCR 5771, June 17, 2005, 52 DCR 8964, October 7, 2005, and 53 DCR 940, February 10, 2006. No substantive changes have been made to the proposed rules; grammatical and technical corrections, however, have been incorporated into the final rulemaking. These final rules will be effective upon publication of this notice in the *D.C. Register*.

A new Chapter 31 is added to 7 DCMR, as follows:

Chapter 31**Office of Risk Management****Termination, Suspension or Reduction of Disability Compensation Benefits for District Employees****3100 Applicability**

- 3100.1 The provisions of Chapter 31 are applicable to the District of Columbia's (District) Disability Compensation Program (Program), administered by the Office of Risk Management (ORM). To the extent that there is a conflict between the rules set forth herein and other rules in Chapter 1 of this title, the rules in Chapter 31 shall control with respect to any matter that is within the jurisdiction of the ORM.
- 3100.2 ORM has oversight and administrative responsibility for the Program, including decisions on requests for reconsideration of Initial Determinations (IDs) and Eligibility Determinations (EDs) rendered by the ORM.
- 3100.3 All employees, contractors, sub-contractors, and agents, acting for or on behalf of the District to implement the Program pursuant to the Act, including third party administrators, shall comply with these rules.

- 3100.4 Nothing in these rules, or any instructions or attachments related thereto, shall be interpreted as:
- (a) Creating an entitlement or property interest in any employee, contractor, sub-contractor, or agent to whom these rules are applicable;
 - (b) Making any person or entity a third-party beneficiary to any contract with the District or with any of its contractors or sub-contractors;
 - (c) Establishing a standard of care; or
 - (d) Limiting the District's ability to amend, modify, or rescind these rules, consistent with any applicable law, including the Act and the District of Columbia Administrative Procedure Act, approved October 21, 1968, 82 Stat. 1203, D.C. Official Code § 2-551 *et seq.* (2001), binding case law, government contract provisions and modifications, and applicable judgments or settlements.

3101 through 3130 Reserved

3131 Procedures for New Claims

- 3131.1 The District government is responsible for receiving first reports of injuries, administering claims and making compensability and continued eligibility determinations.
- 3131.2 Claims properly and timely reported by employees that meet the requirements of the Act shall be covered by the Program.
- 3131.3 The Program shall make IDs concerning new claims for compensation benefits, including decisions to accept or deny new claims.
- 3131.4 The employer shall report the claim to ORM, by telephone within twenty-four (24) hours of the incident, injury or death. No later than three (3) days after the initial report, the employer shall report the claim, in writing, within three (3) days using Form 1, the Employer and Employee First Report of Injury or Occupational Disease, and Form 2, Supervisor's Report.
- 3131.5 Form 1 shall contain the following information:
- (a) The name and address of the employer;
 - (b) The name and address of the employee;
 - (c) The year, month, day and hour when the injury or death occurred;

- (d) The name and telephone number of the employee's supervisor;
- (e) The employee's occupation at the time of the injury or death;
- (f) The employee's wage/base salary information;
- (g) The length of employee's employment;
- (h) The location of the accident; and
- (i) A description of the events which resulted in the death, injury or disease; type of injury; and the body parts affected.

3131.6 Form 2 shall contain the following information:

- (a) Whether the supervisor witnessed the accident;
- (b) Whether the employee reported the accident or injury, and to whom;
- (c) Whether an incident report was prepared in connection with the injury or death;
- (d) The nature of the injuries the employee complained of;
- (e) Whether the employee has been placed on Continuation of Pay (COP);
- (f) Whether the employee was in the performance of duty at the time of injury or death;
- (g) A description of the events which resulted in the death, injury or disease; and
- (h) An attached copy of the employee's position description and all incident reports.

3131.7 The Employer shall complete and submit supplemental reports to the ORM as requested. Said reports shall contain:

- (a) Statements from witnesses confirming or refuting the employee's allegations concerning the accident or injury;
- (b) Statements, where requested, to give additional details of the accident or incident;

- (c) Statements regarding whether the employee had a similar disability prior to the alleged injury, and, if so, full details of the prior disability or incident and associated medical reports; and
- (d) Statements of other injuries or accidents of a similar character and the full details.

3131.8 The Employer shall complete Form CA-3, Report of Return to Duty.

3131.9 The Employee or his/her representative shall complete Form CA-7, Claim for Compensation, Part A, Employee Statement. The notice shall:

- (a) Be in writing;
- (b) State the name and address of the employee;
- (c) State the year, month, day, and hour when and the particular locality where the injury or death occurred;
- (d) State the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause;
- (e) State the employee's official job title, grade/step, and number of hours scheduled to work per day;
- (f) State the employee's health benefit plan and code;
- (g) State whether the employee has optional life insurance;
- (h) State whether a claim has been made against a third party as a result of the injury, illness or death;
- (i) State the names, relationship, and birth dates of employee's dependents, and/or the amount of support paid for dependents not living with the employee;
- (j) Be signed by, and contain the address of, the individual giving the notice;
- (k) In the case of the death of an employee, the individual filing the Form CA-7 shall provide documentation establishing the relationship to the deceased. Documentation may include a certified copy of a
 - 1. birth certificate,
 - 2. marriage license, or
 - 3. other documentation satisfactory to ORM.

- (l) Have attached, proof of dependency, for example, birth certificates and court orders; and
 - (m) Have attached a copy of the employee's last pay stub.
- 3131.10 The employee shall complete a Medical Authorization and Release of Confidential Information Form as provided by ORM.
- 3131.11 The employee shall have his physician complete and return to the ORM, a Form 3, Physician's Report of Employee's Injury and Disability.
- 3131.12 The employee shall submit proper medical documentation as requested by the ORM to support the employee's ongoing disability and absence from work. These documents shall include, but not be limited to the following:
- (a) Statements and medical documentation regarding any similar disability that occurred prior to the alleged injury;
 - (b) Statements and medical documentation regarding any other injury or accident of a similar character; and
 - (c) A written statement showing why there was a delay in seeking medical care.
- 3131.13 ID benefits may be based, in whole or in part, upon the following factors:
- (a) The employee's lack of a compensable injury;
 - (b) The employee's abandonment of the claim;
 - (c) The employee's failure to cooperate with treatment or rehabilitation recommendations, or with Program requirements for providing information; or
 - (d) Any other grounds, such as fraud, that reasonably demonstrate that the employee is not entitled to benefits under the Act.
- 3131.14 A new claim shall be denied or controverted when an employee fails to cooperate, by following the procedures set forth in this chapter.
- 3131.15 Within thirty (30) days after the Program receives a new claim for compensation benefits compensable under the Act, the Program shall issue an ID providing notice to the employee furnishing or authorizing payment for services, appliances, supplies, reasonable transportation, and expenses incidental thereto. Within thirty (30) days after the Program receives a new

claim for compensation benefits that is not compensable under the Act, the Program shall issue an ID providing notice to the employee denying or controverting such claim.

3131.16 The ID is effective unless the employee succeeds on a request for reconsideration as provided in subsection 3134, or the Program revises the ID pursuant to section 3134.

3131.17 Medical reports used in connection with an ID shall meet the requirements of subsection 3160.

3132 Procedures for Existing Claims

3132.1 The Program shall review EDs for compensation benefits, including decisions to terminate, suspend, or modify benefits.

3132.2 The Program shall adjust a claim using information from the treating physician who provides medical treatment to the employee for an injury or disability and from any Additional Medical Examination (AME) report. An AME shall consist of a case file review, and/or an in-person assessment or examination, by a qualified health professional other than the treating physician.

3132.3 An AME report shall be conclusive and responsive to the requests from the Program as part of a complete professional evaluation. Prior to any determination of coverage based upon the recommendation(s) of an AME, the injured employee's treating physician shall have thirty (30) days from receipt of a copy of the AME to submit written comments to the Program regarding the AME finding(s).

3132.4 Upon a request from the Program, the employee and the treating physician shall provide copies of all the employee's medical records regardless of the source of the record(s) or the medical condition(s) addressed in the records. The Program shall take appropriate steps to ensure that the medical records provided to it are maintained in a confidential manner.

3132.5 An employee who is receiving benefits under the Program shall not be the subject of an ED unless and until there is sufficient evidence to support the issuance of an ED pursuant to the Act and this section.

3132.6 An ED may be based, in whole or in part, upon the following factors:

- (a) The death of the employee;
- (b) The clear evidence that employee has returned to work;

- (c) The employee's conviction of fraud in connection with the claim;
- (d) The employee's failure to participate in vocational rehabilitation or to cooperate with the Program's request for a physical examination;
- (e) The cessation or lessening of a compensable injury;
- (f) The condition is no longer causally related to the employment;
- (g) The condition has changed from a total disability to a partial disability;
- (h) The employee has returned to work on a full-time or part-time basis notwithstanding individuals directed to undergo vocational rehabilitation under section 2304 of the Act;
- (i) The Program determines based upon strong compelling evidence that the ID was in error; and
- (j) Any other ground demonstrating that the Act requires the employee's benefits to be modified, such as abandonment of the claim, retirement of the employee, or clear evidence that the employee has knowingly and willfully received benefits to which he or she was not entitled under the Act.

3132.7 With the exception of the factors set forth in subsection 3132.6 (a)-(d), compensation benefits subject to an ED shall not be modified until the period for requesting reconsideration set forth in section 3134 has elapsed with no Request for Reconsideration being received by the ORM, or until a timely Request for Reconsideration has been decided by the ORM, whichever is earlier.

3132.8 A claim shall be deemed abandoned or subject to modification for non-cooperation when the employee fails to return required forms for an existing claim, the Program has made at least two (2) attempts to contact the employee and request such forms, and at least fourteen (14) calendar days prior to the issuance of the notice, the Program sends the employee a warning letter explaining why the Program believes the employee is not cooperating or has abandoned the claim, what the employee must do in order to comply, and describing the consequences of failing to cooperate or abandonment.

3132.9 In making its determinations regarding whether a claim should be the subject of an ED, the Program shall consider all relevant evidence in the claim file, including all relevant medical evidence. In weighing medical evidence, the Program shall give great weight to the opinion(s) of the treating physician, unless there are compelling reasons for rejecting such

opinion(s), in which case, the opinion(s) of another physician may be given greater weight. Such reasons may include:

- (a) Sketchiness, vagueness, and imprecision in the reports of the treating physician;
- (b) The fact that the opinion(s) of the treating physician is not supported by medically acceptable clinical and laboratory diagnostic techniques;
- (c) The fact that the opinion(s) of the treating physician is inconsistent with the other substantial evidence of record; or
- (d) The existence of an AME report from a physician with superior, relevant, professional knowledge, who examined the employee personally and reviewed all relevant, available medical records, and diagnostic studies.

3132.10 If, pursuant to subsection 3132.9, the Program does not give great weight to the opinion(s) of a treating physician, the notice required by section 3133, informing the employee of the ED, shall explain why the Program took such action in connection with its decision.

3132.11 The ED is effective unless the employee succeeds on a request for reconsideration under section 3134 or the Program revises the ED.

3132.12 Medical reports used in connection with an ED shall meet the requirements of section 3160.

3133 Program Notices of Initial Determinations and Eligibility Determinations

3133.1 The Program shall issue a notice regarding each ID and ED pursuant to this section. A notice of an ID or ED shall be issued using a standard form developed by the Program that informs the employee of the right to request reconsideration. Sample notices shall be published in the *District's Personnel Manual*.

3133.2 A notice shall contain a narrative description of the rationale for the decision, shall cite relevant portions of the supporting documentation or claim file, and shall be accompanied by supportive documentation.

3133.3 A notice shall be sent to the claimant's last known address by first class U.S. mail, postage prepaid. A certificate of service shall be executed by the Program at the time of mailing.

- 3134 Reconsiderations of Initial Determinations and Eligibility Determinations**
- 3134.1 An employee who is dissatisfied with an ID or ED may either submit a request for reconsideration to the ORM, or, appeal the ID or ED as provided in the Act, but not both at the same time.
- 3134.2 An employee shall be entitled to receive continued benefits pending a decision on a request for reconsideration unless:
- (a) The employee has died;
 - (b) The employee has returned to work;
 - (c) The claim has been controverted;
 - (d) The employee's compensation benefits have been suspended for non-cooperation;
 - (e) The employee is no longer entitled to augmented compensation pursuant to the Act;
 - (f) The employee has voluntarily retired and been awarded retirement benefits in lieu of disability compensation benefits;
 - (g) The employee knowingly and willfully received benefits to which he or she was not entitled under the Act; or
 - (h) The claim has been abandoned, as defined in subsection 3132.8.
- 3134.3 If a request for reconsideration is properly and timely submitted pursuant to this section, the ORM may affirm, modify, vacate, or remand the ID or ED for further examination by claims examiners within the Program, in full, or in part.
- 3134.4 A request for reconsideration shall be written and shall contain medical, vocational, or factual justification.
- 3134.5 A Request for Reconsideration shall be delivered to the ORM by hand, or by United States Mail, postage prepaid, within thirty (30) days of the date of issuance of the ID or ED that is the subject of the Request for Reconsideration. If a Request for Reconsideration is hand-delivered, the ORM shall provide the claimant with a dated receipt. Requests for Reconsideration shall not be accepted by facsimile or email.

- 3134.6 If the ORM receives a Request for Reconsideration after the 30th day following the issuance of the ID or ED, it shall deny the Request for Reconsideration as untimely without ruling on the merits.
- 3134.7 An employee may request a waiver of the filing deadline in subsection 3134.6 on the grounds that good cause existed during the thirty (30) days following the ID or ED decision sufficient to justify the ORM's late receipt of the Request for Reconsideration. The employee shall provide factual justification and supporting documentation required by ORM to support the request for the waiver. In no event shall a request for a waiver of the deadline be considered after one hundred eighty (180) days from the date of issuance of an ID or ED.
- 3134.8 The ORM shall rule on the merits of a Request for Reconsideration. The standard to prevail on a Request for Reconsideration shall be preponderance of the evidence, based on the Act, best practices, and applicable case law. If the ORM's decision on the Request for Reconsideration is based in whole or in part on medical information, the ORM shall, in making its ruling, adhere to the requirements of subsection 3132.9.
- 3134.9 If the ORM grants a Request for Reconsideration and the employee has been receiving continued benefits during the pendency of the ORM's decision, such benefits shall continue without interruption. If the employee has not been receiving benefits during the pendency of the ORM's decision, all current and any retroactive benefits due to the employee shall be paid.
- 3134.10 If the ORM denies a Request for Reconsideration, the ORM shall direct the Program to issue a new ID or ED from which the employee shall have thirty (30) calendar days from the date of the ORM's reconsideration decision to appeal to the Department of Employment Services (DOES).
- 3134.11 The ORM shall, using a standard form developed by the ORM, provide a brief written explanation of its decision and serve a copy on the employee.
- 3134.12 The ORM decision shall not be binding upon a DOES Administrative Law Judge.

3135 through 3159 Reserved

3160 Required Contents of Medical Reports from Physicians

- 3160.1 The following information shall be included in a medical report from a physician that is used by the Program in connection with an ID, ED, or other Program decision affecting employee benefits:

(a) Date(s) of examination and treatment;

- (b) History given by the employee;
- (c) Physical findings;
- (d) Results of diagnostic tests;
- (e) Diagnosis;
- (f) Course of treatment;
- (g) Description of any other conditions found but not due to the claimed injury;
- (h) Treatment given or recommended for the claimed injury;
- (i) Physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;
- (j) Extent of disability affecting the employee's ability to work due to the injury;
- (k) Prognosis for recovery; and
- (l) All other material findings.

3160.2 Medical reports that fail to meet the requirements of this section may be deemed to be invalid and compensation claims based thereon may be denied.

3161 Employee and Attorney Access to Program Claims Files

3161.1 An employee and his or her attorney shall have access to the Program's file pertaining to his or her claim. The Program's files pertaining to disability compensation claims are District of Columbia property.

3161.2 An employee and his or her attorney may contact the Program to request an appointment to review the Program's file and make one copy of the documents at the employee's expense at reasonable rates set by the Program. The Program shall schedule an appointment to be held at a mutually convenient time within five (5) business days of receiving the employee's request.

3162 Payment of Compensation Benefits on Remand from Appeal

3162.1 The Program shall pay compensation to the employee pursuant to an Order of an Administrative Law Judge (ALJ), and provided the employee, within fifteen (15) days of the Order, has submitted:

- (a) Verification of the disability for the period specified in the Order; and
- (b) Verification of lost wages for the period specified in the Order, including but not limited to, all wage documentation for the period (i.e., pay stubs, W-2 or 1099 income tax forms, and/or other related income earnings statements).

3163 through 3197 Reserved**3198 Computation of Time**

3198.1 Any days required to be counted shall be counted commencing with the day after the date referenced in the rule.

3198.2 If the deadline for any activity falls on a Sunday, holiday, or a day that is normally a business day but on which the District government is otherwise closed, such as for snow or other emergency, the deadline will be continued to the next business day.

3199 Definitions

3199.1 When used in this chapter, the following terms shall have the following meanings:

Act – Title XXIII of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-623.01 *et seq.* (2001).

Best practices – practices that reflect well-established methods of adjustment for weighing evidence, consulting industry reference materials, seeking advice from medical consultants, and engaging in the other steps of adjustment commonly known in the disability compensation field.

Claim File - all program documents, materials, and information, written and electronic, pertaining to a claim, excluding that which is privileged or confidential by law or custom within the workers' compensation industry.

Controversion – holding a claim in abeyance due to insufficient information to either accept or deny.

Eligibility Determination (ED) – a decision concerning, or that results in, the termination, suspension or reduction of a claimant's existing disability compensation benefits, excluding *de minimus* modifications and corrections of technical errors that affect five percent (5%) or less of the claimant's monetary benefits.

Good Cause – “excusable neglect,” as defined in the Federal Rules of Civil Procedure, Rule 6(b)(2) and interpretive case law.

Initial Determination (ID) – a decision regarding initial eligibility for benefits under the Act, including decisions to accept, deny, or controvert new claims, pursuant to this subchapter.

Medical opinion – a statement from a physician, psychiatrist, psychologist or other acceptable medical source that reflects judgments about the nature and severity of an impairment, including: symptoms, diagnosis and prognosis, physical or mental restrictions, and what the employee is capable of doing despite his or her impairments.

Office of Risk Management (ORM) - the agency within the Government of the District of Columbia that is responsible for the District of Columbia's Disability Compensation Program or its designee.

Qualified health professional – includes a surgeon, podiatrist, dentist, clinical psychologist, optometrist, orthopedist, neurologist, psychiatrist, chiropractor or osteopathic practicing within the scope of their practice as defined by state law. The term includes a chiropractor only to the extent that reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Mayor.

Treating physician – the physician, psychiatrist, psychologist, or other medical source who provided the greatest amount of treatment and who had the most quantitative and qualitative interaction with the employee.