

D.C. OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), hereby gives notice of the intent to amend Chapter 1 (Complaints of Discrimination in the District of Columbia Government) of Title 4 (Human Rights) of the District of Columbia Municipal Regulations (DCMR). The principal purposes of the amendment are to clarify the time for filing complaints with the Office of Human Rights, add new protected categories, and clarify the roles of the participants in the complaint process. Other substantive changes will be made to Chapter 1 as well, including the addition of new sections on mediation and criminal background checks.

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

Chapter 1 of Title 4 DCMR is deleted in its entirety and amended to read as follows:

**CHAPTER 1 COMPLAINTS OF DISCRIMINATION IN THE
DISTRICT OF COLUMBIA GOVERNMENT**

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100 SCOPE

- 100.1 The provisions of this chapter shall apply to all District government agencies subject to the Act.

101 COVERAGE

- 101.1 The provisions of this chapter shall govern the processing of any complaint involving discrimination on grounds of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.
- 101.2 The procedures set forth in this chapter shall apply to matters presently pending or hereafter filed with a District government agency.
- 101.3 Nothing in this chapter shall be construed to supersede any federal or District law, nor to invalidate any proceedings commenced under the authority of any prior regulations.
- 101.4 Sexual harassment shall be deemed to be a form of sex discrimination which is prohibited under District laws and regulations, including this chapter.
- 101.5 Employees of the District government shall have certain rights to file complaints with the United States Equal Employment Opportunity Commission (EEOC) pursuant to § 706 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, and to pursue remedies provided for in the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 626 and 633.

102 POLICY

- 102.1 It shall be the policy of the Government of the District of Columbia in connection with any aspect of District government employment to do the following:
 - (a) To prohibit sexual harassment;
 - (b) To prohibit retaliation for filing Equal Employment Opportunity (EEO) complaints;
 - (c) To provide equal employment opportunity for all persons; and
 - (d) To prohibit discrimination in employment because of race, race, color, religion,

national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.

- 102.2 Sufficient resources shall be provided to administer the District's EEO program in a positive and effective manner.
- 102.3 A continuing program shall be conducted to eradicate every form of prejudice or discrimination with any aspect of District government employment based upon race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.
- 102.4 The head of each District government agency subject to the Act shall be required to take affirmative action within that agency to assure equal opportunity in every aspect of employment.

103 RESPONSIBILITIES OF THE DIRECTOR

- 103.1 In addition to other duties, for purposes of this chapter, the Director shall advise the Mayor with respect to the preparation of plans, procedures, regulations, reports and other matters pertaining to the provisions of this chapter.
- 103.2 The Director shall prepare all reports in connection with the EEO program as may be required by the Mayor or the EEOC.
- 103.3 The Director shall recommend changes in policy, practices, and procedures designed to eliminate discriminatory practices and to improve the Mayor's program for equal employment opportunity.
- 103.4 The Director shall establish a system for periodically evaluating the effectiveness of the District government's overall EEO program, including the rules, and when appropriate report to the Mayor with recommendations for any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed to carry out the provisions of this chapter.
- 103.5 The Director shall prepare the model for affirmative action programs.
- 103.6 The Director shall consult with agency heads regarding the suitability of persons appointed or designated, or pending appointment or designation, as departmental EEO Officers and EEO Counselors.
- 103.7 The Director shall issue guidelines and procedures for counseling by an EEO Counselor of any aggrieved employee or applicant for employment who contends that he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression,

familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, or place of residence or business in connection with any aspect of District government employment.

- 103.8 The Director shall receive and investigate complaints of alleged discrimination in personnel matters, from employees who contend that they have been discriminated against in connection with any aspect of District government employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability.
- 103.9 The Director shall publicize to all District government employees the address of the Office of Human Rights (OHR), as well as the names, agency addresses, and phone numbers of all District EEO Counselors and EEO Officers.
- 103.10 The Director shall submit to the Director of the Department of Human Resources for prior review all recommendations of in-depth investigative or statistical reports when the recommendations or reports relate to or would affect in any manner programs involving the employment, employee relations, or other personnel actions of the District government.
- 103.11 The Director shall designate, when necessary in the interest of fairness and justice, At-Large EEO Counselors to handle EEO problems on an informal basis. An At-Large EEO Counselor need not be an employee of the agency for which counseling service is provided. The OHR Compliance Officer may also take on this role.

104 RESPONSIBILITIES OF AGENCY HEADS

- 104.1 Each District agency head shall do the following:
- (a) Be personally responsible and accountable for execution of the EEO program within his or her agency;
 - (b) Establish procedures, consistent with § 103.7, whereby each complaint is reviewed promptly and processed promptly at every subsequent stage and cause agency records to reflect each date of review and the action taken;
 - (c) Appoint or designate one (1) or more EEO Officers and EEO Counselors;
 - (d) Upon request of the Director, consult with him or her regarding the suitability of persons appointed or designated EEO Officers and EEO Counselors and, upon request, review appointments or designations and advise the Director of the determination. Consultation between agency heads and the Director prior to the appointment or designation of EEO Counselors and EEO Officers is encouraged;

- (e) Publicize to agency employees by posting on agency bulletin boards, the following:
 - (1) The name, office address, and telephone number of each agency EEO Counselor and the organizational units served;
 - (2) Inform employees that they may contact an EEO Counselor outside their organizational unit if desired; and the time limit for contacting an EEO Counselor;
 - (3) The availability of the EEO Counselor to counsel an employee or qualified applicant for employment who believes he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability in connection with any aspect of District government employment; and
- (f) Inform employees and applicants of the requirement of consulting with an EEO Counselor within one hundred eighty (180) days of an alleged unlawful employment practice.

104.2 Each District government agency head shall also publicize to all agency employees and post permanently on official bulletin boards the name, address, and telephone number of the OHR Director, each agency EEO Officer, and the agency EEO Counselors.

104.3 Each District government agency head shall make reasonable accommodation for the religious needs of applicants and employees, including the needs of those who observe the Sabbath on a day other than Sunday, when that accommodation can be made without undue disruption to the business of the agency.

105 PRE-COMPLAINT PROCESSING

105.1 An employee or applicant who believes that he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, matriculation, political affiliation, genetic information, and disability in connection with any aspect of District government employment shall consult an EEO counselor within one hundred-eighty (180) days of the occurrence of the alleged unlawful discriminatory practice, except that a complaint of sexual harassment may be filed directly with OHR.

105.2 After being consulted by a complainant, the EEO Counselor shall do and document the following:

- (a) Make a thorough review of the circumstances underlying the complaint,

including the treatment of members of the complainant's group, if any, identified by the complaint, as compared with the treatment of other employees in, or applicants to, the organizational unit in which the alleged discrimination occurred;

- (b) Examination all pertinent records; and
- (c) Review of any policies and practices related to the work situation or application process which may constitute, or appear to constitute, discrimination, even though they have not been expressly cited by the complainant.

105.3 The EEO Counselor shall also do the following:

- (a) Advise the applicant or employee of the right to representation of his or her own choosing or through a Collective Bargaining Agreement;
- (b) Counsel the complainant or his or her representative concerning the issues of the matter;
- (c) Seek a solution of the matter on an informal basis; and
- (d) Keep a record of counseling activities so as to brief the agency or EEO Officer periodically of those activities.

105.4 The EEO Counselor shall, insofar as is practicable, conduct the final interview with the complainant and/or his or her representative not later than thirty (30) days after first being consulted by the complainant.

105.5 During the final interview, the EEO Counselor shall provide to the complainant and/or his or her representative written notice of the complainant's right to file a formal complaint with the Director within fifteen (15) days of the final interview, if the matter has not been resolved to complainant's satisfaction.

105.6 A formal complaint to the Director shall be filed by the complainant within fifteen (15) days after the final interview has been conducted by the EEO Counselor.

105.7 Formal complaints filed after the fifteen (15) day period specified in § 105.6 shall be deemed untimely and dismissed as such by the Director.

105.8 In any event, a Complainant may file a formal complaint with the Director between the 30th and 60th day of first consulting with the EEO Counselor.

105.9 Formal complaints filed beyond the sixty (60) day period specified in § 105.8 shall be deemed untimely and dismissed as such by the Director.

105.10 Although the EEO Counselor should attempt to offer consultation on a confidential

basis, he or she may disclose to the OHR Director and to the head of the cited agency circumstances surrounding the complaint that include, but are not limited to, safety, criminal actions, or patterns or practices of discriminatory or harassing conduct by the agency or any of its cited employees or managers.

105.11 The EEO Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal and shall be given the assistance and cooperation of the agency in connection with the performance of his or her duties under this chapter.

105.12 At any stage in the proceeding under this chapter, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing or through a Collective Bargaining Agreement.

105.13 If the complainant is an employee of the District government, he or she shall have a reasonable amount of official time for preparation and presentation of his or her complaint.

105.14 If the complainant designates an employee of the District government as his or her representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time to prepare and present the matter.

105.15 The Director may request that an adverse action be held in abeyance, unless he or she determines that it is shown that immediate and irrevocable harm to the agency will result or there will be a substantial interference with the efficient operation of the agency.

106 FILING AND PRESENTATION OF COMPLAINTS

106.1 A verified and written complaint of discrimination shall be submitted by the complainant to the Director within fifteen (15) days of the date of the Complainant's final interview with the EEO Counselor.

106.2 The time limit for filing may be extended by the Director for good cause shown.

106.3 Upon filing of a complaint, the Director shall provide a copy to the head of the agency in which the complainant is employed or, in the case of an applicant, to which the complainant applied.

106.4 The Director may dismiss or reject a complaint of discrimination for the following reasons:

- (a) It is not timely filed;
- (b) The allegations fall outside the scope of this chapter;

- (c) OHR does not have jurisdiction over the Complainant or the Respondent; or
 - (d) The Complainant fails to prosecute or respond to inquiries from the investigator or mediator regarding the complaint within a prescribed time limit.
- 106.5 In the event of a rejection or dismissal of a complaint, the Director shall transmit the decision by letter to the complainant or his or her representative. The letter shall contain notice of the complainant's right to request reconsideration or the reopening of the case by the Director pursuant to § 114.4. A copy of the decision shall also be transmitted to the head of the respondent agency or to his or her designee.
- 106.6 In order to resolve each complaint expeditiously, the Complainant and the District government shall proceed with the complaint without undue delay so that the complaint is resolved, insofar as practicable, within one hundred eighty (180) days after its receipt by the Director, including the time spent processing the complaint by the Hearing Examiner.
- 106.7 The Complainant shall be responsible for prosecuting the complaint without undue delay so as to permit resolution of the complaint within the prescribed time limits.
- 106.8 The Complainant shall provide reasonable assistance and all pertinent information to OHR staff in processing the complaint.
- 106.9 The Director may dismiss a complaint pursuant to § 106.4(d) or, in his or her discretion, adjudicate the complaint on the basis of the existing record, if sufficient information for that purpose is available.
- 106.10 Officers and employees of District government agencies in which a complaint arises under this chapter shall not cause hardship, delay, or interference with the efforts of the EEO Counselor, the complainant or the complainant's representative, OHR staff members, or the Hearing Examiner, in their efforts and activities to process the complaint to a resolution.
- 106.11 All District agencies shall make every effort to make available as witnesses at hearings those employees whose testimony is determined to be necessary by the Hearing Examiner.
- 106.12 A complaint may be amended by the Complainant at any time prior to the issuance of a probable cause finding.
- 106.13 An amendment shall be in writing and verified, and shall be submitted by the complainant or the Complainant's representative to the Director.
- 106.14 When an amendment is filed, the Director shall serve a copy of the amendment upon the Respondent within five (5) work days of the amendment.

106.15 The respondent shall, within five (5) work days after service of the amendment, file an answer to the amendment.

107 MEDIATION

107.1 The Complainant and Respondent must attend a mandatory mediation session to be held on a mutually agreed upon date.

107.2 A Mediator shall be appointed by the Director, or his designee from a list of individuals qualified in alternative dispute resolution.

107.3 Prior to beginning the mediation session, the Mediator shall require both parties and their representatives to sign an agreement that all aspects of the mediation are to be kept confidential.

107.4 No aspect of the mediation shall become a part of the investigative record, and the Mediator shall not be called as a witness in any later proceeding between the parties.

107.5 During the mediation, the parties shall discuss the issues in the complaint in an effort to reach an agreement that satisfies the interest of all concerned parties.

107.6 The parties shall have forty-five (45) days from the date of the initial mediation session within which to mediate a settlement. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint.

107.7 OHR may initiate a preliminary investigation before the conclusion of the mediation proceedings. If the parties are finalizing a settlement agreement, the respondent may request an extension of time in which to file an answer.

107.8 If an agreement is not reached, OHR shall proceed with an investigation of the complaint.

108 INVESTIGATION

108.1 Each complaint shall be promptly investigated by OHR.

108.2 The investigator assigned to a case is authorized to administer oaths and require that the statement of a witness shall be under oath or affirmation, without a pledge of confidence.

108.3 A witness shall not be subjected to any form of restraint, interference, coercion, discrimination, or reprisal because of consultation with or information provided to the OHR staff.

- 108.4 Pursuant to a Freedom of Information Act (FOIA) request, the Director or his designee shall arrange to furnish the Complainant, the Complainant's representative, the appropriate agency EEO Officer, or the agency head a copy of the investigative file at the end of the reconsideration period.
- 108.5 The investigator, upon completion of the investigation, shall submit to the Director, through its Office of General Counsel, a written statement of proposed findings of fact, conclusions, and recommendations.
- 108.6 The activities of the Director under this chapter shall be considered investigations or examinations of municipal matters within the meaning of D.C. Official § 1-301.21 (2001) and D.C. Official Code § 5-1021 (2001), and the Director and hearing examiners shall possess the powers vested in the Mayor by those statutes.

109 ADJUSTMENT OF COMPLAINTS

- 109.1 At any time during the course of the investigation of a complaint under § 107, the Director may review the investigative file and may propose terms for adjustment of the complaint to the head of the agency in which the complaint arose.
- 109.2 Every effort shall be made to adjust a complaint informally. For example, a complaint may be settled through voluntary action of an agency head to correct the situation out of which the complaint arose, and the complaint withdrawn by the Complainant.
- 109.3 If an adjustment of the complaint is achieved, the terms of the adjustment shall be reduced to writing and made part of the complaint file. A copy of the terms of adjustment shall be given to the agency EEO Officer and the complainant and his or her representative, and the complaint file shall be closed.
- 109.4 Where a complaint has not been settled, dismissed, or the subject of a summary determination, the Director may, after investigative efforts, determine whether probable cause exists to believe that a violation has occurred. A determination as to probable cause shall be based on, and limited to, evidence obtained by OHR and does not reflect any judgment on the merits of allegations not addressed in the determination.
- 109.5 A Letter of Determination (LOD) incorporating the probable cause decision and the basis for the finding shall be served on the Complainant, his or her representative, and the respondent agency, along with a notice inviting the parties to conciliate.
- 109.6 The Respondent agency shall, within fifteen (15) days of receipt of the LOD, notify the Director in writing of its decision to enter into conciliation.
- 109.7 If the Respondent agency accepts the invitation to conciliate and the Complainant agrees, the Director or his or her designee shall set a date for a post-determination conciliation conference to be held within twenty (20) days of the receipt of the agency's acceptance.

- 109.8 If the parties cannot agree to a settlement, or if the agency fails to respond within the fifteen (15) days prescribed in § 108.6, or declines the invitation to conciliate, the Director or his or her designee shall notify the complainant in writing of the opportunity for a hearing or the right of the complainant to a summary determination as provided in § 109.
- 109.9 The Complainant shall have fifteen (15) days from the receipt of the notice prescribed in § 108.8 to notify the Director in writing of his or her request for a hearing before an independent hearing examiner or for a summary determination.
- 110 SUMMARY ACTION ON COMPLAINTS**
- 110.1 After the probable cause determination and failure of the conciliation efforts, the Director may make a summary determination on the merits of a complaint based solely upon information in the complaint file.
- 110.2 A summary determination is a second review and consideration of the facts to determine if the probable cause determination is appropriate. The summary determination does not review any of the no probable cause findings. It may result in an affirmation or reversal of the original probable cause decision.
- 110.3 The Director may designate an independent reviewer to analyze the facts and make a recommendation as to whether probable cause exists to believe that discrimination has occurred.
- 110.4 In making a summary determination, the Director may issue an order to the agency head requiring appropriate remedial action, including, but not limited to, hiring, reinstatement, promotion, rescission of adverse action, or award of compensatory credits which are authorized by existing personnel regulations and statutes.
- 110.5 The Director may issue an order dismissing the complaint for lack of probable cause to credit the allegations.
- 110.6 Any order issued by the Director shall be in writing and shall advise the complainant and the agency head of their right to request reconsideration or the reopening of the case by the Director pursuant to § 114.
- 110.7 Within fifteen (15) days after issuance of any order by the Director, either party may request reconsideration or the reopening of the case pursuant to § 114.4.
- 110.8 If the Director determines that a matter is not appropriate for summary determination, the Complainant shall be advised of the right to a formal hearing before an independent hearing examiner, with a subsequent decision by the Director based upon the Hearing Examiner's report and recommendations.

- 110.9 The Complainant shall have fifteen (15) days from receipt of the notice to notify the Director whether or not he or she wishes to have a hearing.
- 110.10 If the Complainant fails to respond to the hearing request within fifteen (15) days in accordance with § 109.9, the Director may make a determination on the merits of the complaint, based solely upon information in the complaint file, and may dismiss the complaint or order remedial action.

111 CONDUCT OF HEARINGS BY HEARING EXAMINERS

- 111.1 The Director or the assigned Hearing Examiner shall notify all necessary parties in writing that a hearing will be held.
- 111.2 Hearings shall be held by a qualified Hearing Examiner, who shall not be an employee of the agency in which the complaint arose, and who shall not have investigated the complaint or taken or reviewed an action giving rise to the complaint being heard.
- 111.3 The Director shall select a Hearing Examiner qualified to conduct a hearing on a discrimination complaint either from among impartial employees, including OHR employees, or from outside contractors of the District government.
- 111.4 In addition to any other power specified in this chapter, a Hearing Examiner shall have the power to do the following:
- (a) Hold a hearing on the issue of the probable cause finding.
 - (b) Hold pre-hearing conferences to narrow the issues of the complaint, provide notice and information of the hearing procedure, and to take other actions deemed necessary to expedite the hearing;
 - (c) Administer oaths and affirmations;
 - (d) Examine and cross-examine witnesses;
 - (e) Request the issuance of subpoenas authorized under this chapter;
 - (f) Rule upon offers of proof and receive evidence;
 - (g) Regulate the course and conduct of the hearing, including the following:
 - (1) Continuing the hearings to a later date or different place by announcement at the hearings or other appropriate notice;
 - (2) Taking official notice of any material fact;
 - (3) Ruling upon the admissibility of evidence and testimony;

- (4) Determining whether the hearing will be open to the public; and
- (5) Taking appropriate measures to assure that there shall be no interference with the orderly conduct of the hearing; and
- (h) Prepare and deliver to the Director a Hearing Examiner's report, which shall include a brief and concise statement of the history of the subject matter of the hearing, findings of fact, conclusions of law, analysis, and a recommendation or proposed order.
- (i) If either party fails to respond to the Hearing Examiner's requests for information or hearing, the Hearing Examiner shall request that the Director issue an Order;
- (j) If either party fails to respond to the Order of the Director without reasonable excuse, the Director may issue a determination against the non-responsive party.

111.5 The Director shall transmit the complaint file to the Hearing Examiner.

111.6 The Hearing Examiner shall review the complaint file to determine whether further investigation is needed before scheduling the hearing.

111.7 If the Hearing Examiner determines that further investigation is needed, the Hearing Officer shall either return the complaint file to the Director for further investigation or arrange with the Director for the appearance of witnesses necessary to supply the needed information at the hearing.

111.8 The Hearing Examiner shall schedule the hearing for a convenient time and place.

111.9 The Director shall provide the Hearing Examiner adequate space, appurtenances, and services necessary for the hearing.

112 HEARING PROCEDURES

112.1 The Hearing Examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents.

112.2 The Hearing Examiner shall permit wide latitude in the introduction of evidence, but shall exclude irrelevant and unduly repetitious evidence.

112.3 The Hearing Examiner shall receive only evidence which may have a bearing upon the complaint or upon any other employment policy or practice related to the complaint.

112.4 District government employees shall be required to serve as witnesses at hearings held under the provisions of this chapter. Absence from regular duty to serve as a witness shall be without charge to leave or loss in pay.

- 112.5 Witnesses may be requested by either party, subject to the approval of the Hearing Examiner of the reasons given by either party as to the need for the witnesses.
- 112.6 The Hearing Examiner shall request the Director to make available at the hearing as a witness, through subpoena, any District government employee whose appearance is deemed necessary.
- 112.7 The Hearing Examiner shall request the Director to make available at the hearing any other person, through subpoena, whose appearance the Hearing Examiner deems necessary.
- 112.8 The denial of a request for the appearance of a person as a witness by the Hearing Examiner shall include the reasons for denial and shall be entered into the record of the hearing.
- 112.9 Requests for witnesses may be submitted to the Director in writing by either party not later than three (3) working days in advance of the scheduled hearing date.
- 112.10 Each agency head shall make employees available to serve as witnesses whenever it is administratively possible and practicable to do so.
- 112.11 Reasons for denial by an agency head of a request for the service of an employee as a witness shall be sent in writing to the Director, along with a copy to the Hearing Examiner for inclusion in the complaint record and the hearing record.
- 112.12 If the agency head's explanation is deemed inadequate, the Hearing Examiner shall so advise the Director and request the Director to order, through subpoena, the employee to be made available as a witness at the hearing.
- 112.13 An agency head shall be required to make the employee available when directed by notice from the Director.
- 112.14 If the agency head's explanation is adequate, the Hearing Examiner shall insert it in the record of the hearing, provide a copy to the requesting party and the agency, and make arrangements to secure testimony from the employee through written interrogatories.
- 112.15 Witnesses shall not be subjected to restraint, interference, coercion, discrimination, intimidation, or reprisal in connection with their testimony.

113 RECORDS AND TRANSCRIPTS OF HEARINGS

- 113.1 Each hearing shall be recorded and transcribed verbatim.
- 113.2 The record shall consist of the complaint file, exhibits, transcripts, and all other documents submitted to and accepted by the Hearing Examiner related to the subject

matter of the hearing and made a part of the record.

113.3 The Director shall be responsible for the reproduction of records, at the expense of the respondent agency.

113.4 A copy of the verbatim transcript, along with copies of each document made a part of the record by the Hearing Examiner, shall be furnished to the parties or their representatives, the agency involved, if not a party, the Hearing Examiner, and the Director.

114 FINDINGS AND RECOMMENDATION OF THE HEARING EXAMINER

114.1 Within thirty (30) days after receipt of the transcript or post hearing submissions, whichever is later, the Hearing Examiner shall transmit to the Director the following:

- (a) The complaint file;
- (b) The record of the hearing;
- (c) A report, including a brief and concise statement of the history of the subject matter of the complaint;
- (d) Findings of fact;
- (e) Conclusions of law; and
- (f) Analysis, recommendations, or proposed order.

114.2 A copy of the Hearing Examiner's report shall be transmitted to the parties or their representatives and, if not a party, to the agency involved, including a notice of the date on which the report was transmitted to the Director.

114.3 Any party who is aggrieved by the adoption of the Hearing Examiner's report and proposed recommendation or order, may, within twenty (20) days after receipt of the report, submit to the Director, OHR, a proposed substitute order or findings, along with arguments in support of the proposed substitute.

115 FINAL DECISION OF THE DIRECTOR

115.1 Following receipt of the Hearing Examiner's recommendations or proposed decision or order, and any argument or proposed substitute order or findings submitted by a party, the Director shall do one of the following:

- (a) Render a final decision which may adopt, reject, or modify the decision of the Hearing Examiner; or

- (b) Remand the matter for further hearings.
- 115.2 If the Director rejects or modifies the recommended decision of the Hearing Examiner, the final decision of the Director shall set forth in detail the specific reasons for rejection or modification.
- 115.3 The final decision of the Director shall be served on the parties or their representatives and, if not a party, the agency involved.
- 115.4 Either party may file a written request with the Director for reconsideration or to reopen the case within fifteen (15) days from the date of issuance of the final decision.
- 115.5 A request for reopening will only be considered if the requesting party demonstrates that there is newly discovered evidence that is competent, relevant, and material and was not reasonably discoverable prior to issuance of the final decision by the Director and that such evidence, if credited, would alter the ultimate outcome in the case.
- 115.6 The final decision of the Director on a complaint for which there has been no hearing shall be transmitted by letter to the parties or their representatives and, if not a party, to the agency involved, stating the basis for the decision, including the findings of fact, analysis, and conclusions of law.
- 115.7 The letter transmitting the final decision of the Director shall advise the parties of their right to request reconsideration or the reopening of the case pursuant to § 114.4 or to seek judicial review of the decision by a court of competent jurisdiction.
- 115.8 If either party requests reconsideration or the reopening of the case pursuant to § 114.4, and the Director determines that the case should be reconsidered or reopened, the Director shall inform the parties that the case is being reconsidered or reopened and that the final decision previously issued by the Director is vacated.
- 115.9 If neither party requests reconsideration or the reopening of the case pursuant to § 114.4, the final decision of the Director shall become the final administrative action of the District government fifteen (15) days after issuance of the decision, and the parties shall be deemed to have exhausted all administrative remedies.
- 115.10 If the Director decides not to grant a request for reconsideration or to reopen a case, the Director shall so notify the parties in writing, and at the time the notification is issued, the decision previously issued shall become the final administrative action of the District government.
- 115.11 If no action is taken on a request for reconsideration or to reopen a case within one hundred twenty (120) days, the request shall be deemed disapproved and the decision previously issued shall become the final administrative action of the District government.

115.12 In the interests of justice, the Director may *sua sponte* reopen or reconsider any case in which the Director has issued a decision at any time prior to the filing of an appeal by either party with a court of competent jurisdiction.

115.13 If the Director decides to reconsider or reopen a case pursuant to § 114.12, the Director shall inform the parties that the case is being reconsidered or reopened and that the decision previously issued by the Director is vacated.

116 APPEALS

116.1 An appeal from the final decision of OHR may be taken to the Superior Court of the District of Columbia.

116.2 Pursuant to § 109 and § 113, the final decisions of the Director include a summary determination or the final determination after the hearing examiner's recommendation.

116.3 The party must file a Petition for Review with the Clerk of the Civil Division within thirty (30) days after service of notice of the final decision.

117 THE COMPLAINT FILE

117.1 The Director shall establish and maintain a complaint file containing all documents pertinent to each complaint.

117.2 The complaint file shall not contain any document that has not been made available to the complainant. The complaint file shall include, as a minimum, copies of the following:

- (a) The complaint;
- (b) The written report of the EEO Counselor to the agency EEO Officer on all pre-complaint counseling efforts made with regard to the complainant's case;
- (c) The investigative file;
- (d) A signed written statement of the complainant or the complainant's representative, if the complaint is withdrawn by the complainant;
- (e) The written record of adjustment, if the complaint is adjusted informally under the provisions of this chapter;
- (f) A copy of the letter from the Director notifying the complainant of the proposed disposition of the complaint and of the right to a hearing, or a decision by the Director without a hearing if no adjustment of the complaint is reached;
- (g) A copy of the letter to the complainant transmitting the decision of the Director

when the decision is made without a hearing under the provisions of this chapter;

- (h) The record of the hearing, including the Hearing Examiner's findings, analysis, and recommended decision on the merits of the complaint if a hearing was held; and
- (i) A copy of the letter to the complainant transmitting the decision of the Director if the decision is made after a hearing.

118 COMPLAINTS OF SEXUAL HARASSMENT

- 118.1 OHR shall receive complaints and allegations involving sexual harassment directed against officers and employees of the District government.
- 118.2 Allegations of sexual harassment shall be fully investigated, and corrective or disciplinary action taken if warranted.
- 118.3 Complaining parties shall be required to swear or affirm that the facts stated in the complaint are true to the best of the person's belief, knowledge, and information.
- 118.4 The complaint file, including all information and documents pertinent to a complaint, shall be confidential.
- 118.5 Only complaints of sexual harassment that concern incidents which occurred within a period of one (1) year immediately prior to the date the complaint is filed shall be considered.
- 118.6 An investigation shall be conducted of those complaints which are filed by a present or former employee within one (1) year of the last alleged occurrence.
- 118.7 Complaints shall be investigated and processed in accordance with the procedures and authorities set forth in this chapter.
- 118.8 Each agency shall follow the District government's sexual harassment policy, reflected in Mayor's Order 2004-177 (October 20, 2004), and promulgate internal procedures for an employee to follow when filing a complaint with an EEO Counselor.
- 118.9 Agency heads who have complaints of sexual harassment brought to their attention shall promptly investigate and attempt to resolve the complaints.
- 118.10 If a resolution cannot be reached within an agency within sixty (60) days, the agency head shall refer the complaint to OHR.
- 118.11 An employee may file a complaint directly with OHR, even if he or she does not bring an internal complaint to the agency EEO Counselor or an EEO Counselor in another District government agency.

119 FREEDOM FROM REPRISAL OR INTERFERENCE

- 119.1 Witnesses and those who serve in EEO capacities, such as EEO Officers and EEO Counselors, or those who are involved in any other way in the EEO program or complaint process shall be free from restraint, interference, coercion, discrimination and reprisals at any stage in the presentation of a complaint at either the informal or formal phase or in the performance of their EEO-related duties.
- 119.2 Anyone coming within the scope of § 118.1 who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this section or in the performance of his or her EEO related duties, may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to applicable sections of this chapter.
- 119.3 In order to avoid any suggestion of restraint, interference, coercion, discrimination, or reprisal, no information of any kind relating to a complaint of discrimination, or the fact that an employee has made an allegation of discrimination, shall be placed in the employee's personnel records, except any personnel actions taken as a result of final order by the Director which have been upheld on appeal.

120 REMEDIAL ACTION: APPLICANTS FOR EMPLOYMENT

- 120.1 When the Director finds that an applicant for employment has been discriminated against and, except for that discrimination, would have been hired, the agency involved shall offer the applicant employment of the type and grade denied at the first opportunity that the employment becomes available.
- 120.2 The agency's offer of employment shall be made in writing.
- 120.3 The individual shall have fifteen (15) days from receipt of the offer within which to accept or decline the offer.
- 120.4 Failure to notify the agency of a decision to accept employment within the fifteen (15) day period shall be considered a refusal of the offer, unless the individual can show that circumstances beyond his or her control prevented a timely response.
- 120.5 If the offer is accepted, the appointment shall be retroactive to the date the applicant would have been hired, and backpay may be awarded for the retroactive period, but not to exceed two (2) years prior to the date the complaint was filed, and subject to any appropriate deductions required by law or regulation. During the period of retroactivity, the complainant shall be deemed to have performed services for all purposes, except for meeting service requirements for completion of a probationary or trial period.
- 120.6 If the offer is declined, the respondent agency shall award the complainant backpay subject to the limitations of § 119.5 and shall notify the complainant in its offer, of his

or her right to this award in the event the offer is declined.

120.7 When the Director finds that discrimination existed at the time the applicant was considered for employment, but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he or she had been considered initially and for which he or she is qualified before consideration is given to other candidates.

120.8 If the individual is not selected, the agency shall record the reasons for non-selection.

120.9 If no vacancy exists, the agency shall give the applicant priority consideration for the next vacancy for which he or she is qualified.

121 REMEDIAL ACTIONS: EMPLOYEES

121.1 When the Director finds that an employee of an agency was discriminated against and as a result of that discrimination was denied an employment benefit, or was subjected to an adverse administrative decision, the agency shall take remedial actions which shall include one (1) or more of the following, but need not be limited to, these actions:

- (a) Retroactive promotion, when the record clearly shows that but for the discrimination the employee would have been promoted to a higher grade; provided, that the backpay liability may not accrue from a date more than two (2) years prior to the date the discrimination complaint was filed, or the actual date he or she would have been promoted;
- (b) If a finding of discrimination was not based on a complaint, the backpay liability may not accrue from a date earlier than two (2) years prior to the date the finding of discrimination was recorded, or the actual date the employee would have been promoted, whichever is the shorter period;
- (c) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, when the record shows that discrimination existed at the time selection for promotion was made, but it is clear that except for the discrimination the employee would have been promoted. If the individual is not selected, the agency shall record the reasons for nonselection;
- (d) Cancellation of an unwarranted personnel action and restoration of withheld benefits that would have accrued to the employee;
- (e) Expungement from the agency's records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action; and
- (f) Full opportunity to participate in the employee benefit denied the employee (e.g.,

training, preferential work assignments, overtime scheduling), or a reasonable substitute.

- 121.2 Application of the provisions of § 120.1 shall be waived whenever the Director and the agency head concerned agree that sufficient and appropriate opportunities will be available to provide relief to the complainant if his or her complaint is sustained, or whenever the agency head effects the action on a temporary basis and the temporary action is made specifically subject to termination if the complainant's assertion of discrimination is upheld.
- 121.3 In cases where an appointment has proceeded to a point that a third party might be aggrieved if no basis is proved for the allegation of discrimination, a temporary appointment or promotion shall be effected.
- 121.4 When corrective action is ordered by the Director in connection with resolving a complaint, the Director shall transmit a copy of the corrective order to the head of the agency concerned, and the corrective action ordered shall be taken without delay by the agency head.
- 121.5 If the agency head fails to comply with the corrective order within the stated time frame, the Director shall certify the order to the City Administrator, who shall direct the agency head to comply with the order.

122 THIRD PARTY ALLEGATIONS OF DISCRIMINATION

- 122.1 This section shall apply to general allegations by organizations or other third parties of discrimination in personnel matters within an agency of the District government which are unrelated to an individual complaint of discrimination.
- 122.2 The organization or other third party shall state the allegation with sufficient specificity, so that the agency may investigate the allegations.
- 122.3 The agency may require additional specificity as necessary to proceed with its investigation.
- 122.4 The agency shall establish a file on each general allegation, and this file shall contain copies of all material used in making the decision on the allegation.
- 122.5 The agency shall furnish a copy of this file to the party submitting the allegation and shall make it available to the Director for review on request.
- 122.6 The agency shall notify the party submitting the allegation of its decision, including any corrective action taken on the general allegations, and shall furnish to the Director or the City Administrator, on request, a copy of its decision.
- 122.7 If the third party disagrees with the agency decision, it may within thirty (30) days after

receipt of the decision, request the Director to review it.

- 122.8 The request shall be in writing and shall set forth with particularity the basis for the request.
- 122.9 Upon receipt of the request, the Director shall make, or require the agency to make, any additional investigation he or she deems necessary.
- 122.10 The Director shall issue a decision on the allegation ordering corrective action, as he or she considers appropriate.
- 122.11 Pursuant to § 114.4, either the third-party complainant or the agency may request the Director to reconsider the decision or to reopen the matter.

123 DISCRIMINATION COMPLAINTS IN OTHER PROCEEDINGS

- 123.1 Whenever an issue of discrimination as specified in § 101.1 is raised by a party in a grievance or adverse action proceeding before any appropriate agency of the District government, the hearing office shall inform the person raising the complaint of discrimination that the complaint will not be admitted as an issue in the grievance or adverse action proceeding and that the complaint should be submitted to the Director.

124 CRIMINAL BACKGROUND CHECKS

- 124.1 If an applicant to District government is denied employment, or if an employee is terminated because of information from a criminal background check, the applicant or employee may file a complaint with OHR.
- 124.2 The complaint may allege discrimination with respect to the denial of employment or termination, or it may allege a non-discriminatory, but allegedly unfair basis.
- 124.3 The complaint must be filed within one hundred eighty (180) days of the denial of employment or termination.
- 124.4 The applicant or employee is not required to file an initial complaint with an agency EEO Counselor. He or she may file directly with OHR.
- 124.5 If the applicant or employee files directly with OHR, he or she must do the following:
- (a) Submit a pre-complaint questionnaire by mail, online, or in person; and
 - (b) Schedule an appointment with an intake officer.
- 124.6 The case will be assigned to an investigator, who will request information from both parties and submit an investigative report and recommendation to the OHR Office of General Counsel (OGC).

124.7 OGC will submit an LOD to the Director for review, approval, and issuance to the parties.

199 DEFINITIONS

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

Act - the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code § 2-1401.01 *et seq.*).

Age - eighteen (18) years of age or older, except that, in a case of employment, age shall be defined as eighteen (18) to sixty-five (65) years of age, unless otherwise defined by law.

Agency - any office, department, division, board, commission or other agency of the government of the District of Columbia with respect to which the Mayor or the Council are authorized by law to establish administrative procedures.

Day - a calendar day, unless otherwise specified.

Director - the Director of OHR, or his or her designee.

Domestic partnership - the same meaning as that defined in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)).

EEO Counselor - an individual appointed by the agency head, or his or her designee, to provide informal counseling in response to a complaint of discrimination by an employee or applicant and to conduct an informal inquiry with the affected parties, as directed.

EEO Officer - an individual appointed by the agency head, or his or her designee, to supervise the EEO Counselors, prepare EEO reports, and conduct discrimination investigations, as directed.

Employee - any individual employed by or seeking employment from an agency of the District of Columbia government.

Familial status - one or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.

Family responsibilities - the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of the number of such persons,

including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

Gender identity or expression - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

Genetic information - information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

Intrafamily offense - an offense as defined in D.C. Official Code § 16-1001(5).

Marital status - the state of being married, in a domestic partnership, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

Matriculation - the condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program.

OHR - the District of Columbia Office of Human Rights, as established by section 202 of the Act (D.C. Official Code § 2-1411.01).

Personal appearance - the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

Disability - a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such an impairment or being regarded as having such an impairment.

Political affiliation - the state of belonging to or endorsing any political party.

Religion - any institutionalized system or personal set of attitudes, beliefs, and practices which relate to moral or ethical standards.

Sexual harassment - unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the following occurs:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- (b) Submission to or rejection of such conduct by an employee is used as the basis for

employment decisions affecting the employee; or

- (c) The conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment may include, but is not limited to, verbal harassment or abuse, subtle pressure for sexual activity, patting or pinching, brushing against another employee's body, and demands for sexual favors.

Sexual orientation - male or female homosexuality, heterosexuality and bisexuality, by preference or practice.

Source of income - the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Office of the General Counsel, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF PROPOSED RULEMAKING

**FORMAL CASE NO. 982, IN THE MATTER OF THE INVESTIGATION OF
POTOMAC ELECTRIC POWER COMPANY REGARDING INTERRUPTION
TO ELECTRIC ENERGY SERVICE;**

**FORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION
OF PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND
APPROVAL OF MERGER TRANSACTION**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,¹ of its intent to adopt the following amendment to Chapter 36, Electricity Quality of Service Standards ("EQSS") codified in Title 15 of the District of Columbia Municipal Regulations ("DCMR"),² in not less than 30 days from publication of this Notice of Proposed Rulemaking ("Notice") in the *D.C. Register*. The Commission proposes this amendment in order to ensure compliance with the EQSS. Interested persons are invited to comment on the amendment proposed herein.

3606 Compliance Reporting

3606.1 The electric utility and all electricity suppliers shall collect and retain accurate data demonstrating compliance with the measures in this chapter. Data is to be collected on a monthly basis in a format established by Commission order.

- (a) The electric utility and all electricity suppliers shall submit monthly reports to the Commission on a quarterly basis pursuant to the following schedule: the report for the months of January, February, and March shall be submitted on April 30; the report for the months of April, May, and June, on July 30; the report for the months of July, August, and September, on October 30; and the report for the months of October, November, and December, on January 30 of the following year.
- (b) If the electric utility or any electricity supplier fails a measure in a quarterly report, the electric utility or electricity supplier shall file an explanation for the failure and a plan to remedy the failure in

¹ D.C. Official Code, 2001 Ed. § 2-505.

² See 55 *D.C. Register* 1943-1960 (February 29, 2008).

the following quarterly report. If the failure is due to customer error, or an unforeseeable event, the electric utility or electricity supplier may request a waiver of the performance standard in its filing. The request for a waiver shall contain a detailed explanation of the reasons for granting such a waiver.

- (c) The electric utility and all electricity suppliers shall retain reporting data for seven years in the event of an audit by the Commission.

2. Comments on the Notice of the modifications to the EQSS proposed herein must be made in writing to Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. All comments must be received within 30 days, and replies within 45 days, of the date of publication of this Notice in the *D.C. Register*. Once the comment period has expired, the Commission will take final rulemaking action.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION OF
PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND APPROVAL OF
MERGER TRANSACTION

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,¹ of its intent to act upon the Revised Tariff Application of the Potomac Electric Power Company ("Pepco" or "Company")² in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. On May 9, 2008, Pepco filed a filed a Revised Tariff on behalf of the Smart Meter Pilot Program ("SMPPPI")³. In its Revised Tariff Application, the Company proposes to correct page R-44-2 of the PowerCentsDC Project Rider by changing the LMP price factor for the HP-AE rate from 127.27% to 127.75%.⁴

3. Accordingly, Pepco seeks authority to revise and put into service the provision in the following tariff page contained in its May 9, 2008 tariff filing:

POTOMAC ELECTRIC POWER COMPANY, P.S.C. of D.C. No. 1
3rd Revised Page No. R-44.2

4. The Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday or may be viewed on the Commission's website at www.dcpsc.org. Copies of the tariff pages are also available upon request, at a per-page reproduction cost.

¹ D. C. Code, 2001 Ed. § 2-505.

² *Formal Case No. 1002, In the Matter of the Joint Application of Pepco and the New RC, Inc. for Authorization and Approval of Merger Transaction ("F.C. 1002")*, SMPPPI Revised Tariff, filed May 9, 2008 ("Revised Tariff Application").

³ SMPPPI is comprised of the following entities: Pepco; District of Columbia Office of the People's Counsel ("OPC"); District of Columbia Consumer Utility Board ("CUB"); International Brotherhood of Electrical Workers Local 1900 ("IBEW"); and the Commission. The SMPPPI program, operating under the name PowerCentsDC™, is a pilot program to test the concept of different types of time-based rates in assisting residential customers in the District of Columbia to better manage their electricity bill.

⁴ *F.C. 1002*, Revised Tariff Application.

5. Comments on the proposed Revised Tariff Application must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment period has expired, the Commission will take final action on Pepco's Revised Tariff Application.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176) and amended by the Public Education Reform Amendment Act of 2007, (D.C. Law 17-9), D.C. Official Code § 38-2602(b)(11)) (2007 Supp), hereby gives notice of her intent to adopt this proposed rulemaking to amend Chapter 16 of Title 5 of the *District of Columbia Municipal Regulations* (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of the proposed regulation is to amend Section 1667, entitled "Administrative Services Credentialing", to establish the credentials that will be required of candidates seeking to qualify for a position as a principal, assistant principal, director, or other school operating officer at a public school in the District of Columbia.

Section 1667 of Title 5 of the DCMR is amended to read as follows:

5-1667 ADMINISTRATIVE SERVICES CREDENTIAL

- 1667.1 An individual must have an Administrative Services Credential to serve as a principal, assistant principal, director, or instructional leader at a public school in the District of Columbia.
- 1667.2 The Office of the State Superintendent of Education (OSSE) shall issue an Administrative Services Credential in accordance with the provisions of this Section.
- 1667.3 To qualify for an Administrative Services Credential, the candidate must have:
- (a) Earned an advanced degree from an accredited institution of higher education; or successfully completed the initial licensure requirements of a program for educational administrators approved by the OSSE in accordance with subsection 1667.7 of this chapter;
 - (b) Successfully completed two years of school-based experience in one of the following: elementary, secondary, or university-level classroom based teaching, other instructional teaching experience, guidance counseling, social work, psychological services, or rehabilitative services for students with disabilities; and
 - (c) Successfully completed the School Leaders Licensure Assessment (SLLA), with a qualifying score determined by the State Superintendent of Education.

- 1667.4 At the request of a local education agency located in the District of Columbia (LEA), the State Superintendent of Education may waive the requirements of paragraphs (a) and (b) of subsection 1667.3 of this chapter;
- 1667.5 The term of the Administrative Services Credential shall be five calendar years from the date of issuance, unless a shorter term is prescribed by the State Superintendent of Education. The Administrative Services Credential is renewable upon completion of two hundred (200) hours of professional activities and services that contribute to performance and effectiveness as an educational administrator. The State Superintendent of Education shall specify which professional activities and services qualify toward renewal under this subsection.
- 1667.6 Candidates who hold a valid administrative services license from another state or jurisdiction within the United States of America, and have not taken the SLLA, shall be eligible for a non-renewable Provisional Administrative Services Credential that expires within two calendar years from the date of issuance or any shorter term prescribed by the State Superintendent of Education.
- 1667.7 The State Superintendent of Education shall develop policies or directives setting forth objective and verifiable standards for the approval, renewal, and revocation of approval by the OSSE of programs for educational administrators that qualify candidates to earn an Administrative Services Credential pursuant to subsection 1667.3(a) of this chapter. Only programs sponsored by an institution of higher education, a non-profit organization, or LEA may be considered for approval pursuant to this subsection by the OSSE. Any approval granted by the OSSE pursuant to this subsection, shall specify which requirements must be successfully completed to qualify a candidate for the Administrative Services Credential pursuant to subsection 1667.3(a) of this chapter. Any such programs in existence as of the date of the final approval of this rule, shall maintain their qualified status pursuant to subsection 1667.3(a) of this chapter, for the duration of the term of their current approval as a qualified program.
- 1667.8 Each candidate for an Administrative Services Credential shall be required to undergo a criminal history record check prior to receiving the credential, and may be required to submit to additional checks for purposes of renewing or continuing to hold the credential. The State Superintendent of Education shall develop policies or directives setting forth objective and verifiable criteria for the review of such records. Only criminal convictions and pending charges shall be taken into account with regard to criminal background information in determining whether or not an individual is qualified to hold the credential.

Persons wishing to comment on these proposed rules should submit their comments in writing to Deborah A. Gist, State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C., 20001, Attn: Ms. Erica Wesley. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the DC Register. Copies of this emergency and proposed rule may be obtained by writing to the above address, or by calling the Office of the State Superintendent of Education at (202) 727-6436.