

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of the adoption of the following amendments to 3 DCMR Chapter 11, "Recall of Elected Officials." The Board took final rulemaking action with respect to these amendments at a regular meeting on Thursday, June 5, 2008.

The amendments clarify that the acceptance of recall measures is conditioned upon the timely filing of pertinent campaign finance documents.

A Notice of Proposed Rulemaking with respect to these amendments was published in the D.C. Register on April 11, 2008 at 55 D.C.R. 3892. No comments were received concerning these rules. These amendments will be effective upon publication of this notice in the D.C. Register.

Section 1100 of Chapter 11 of 3 DCMR, "Commencement of the Recall Process," shall be amended to read as follows:

- 1100.1 In order to commence recall proceedings against an elected official, a registered qualified elector shall file a notice of intention to recall with the Board in accordance with the provisions of this chapter and D.C. Code §1-1001.17 (2001 Ed.).
- 1100.2 In accordance with the provisions of D.C. Code §1-1001.17(a) (2001 Ed.), the Board shall not accept a notice of intention to recall the Delegate to the U. S. House of Representatives.
- 1100.3 In accordance with the provisions of D.C. Code §1-1001.17(c) (2001 Ed.), the Board shall not accept a notice of intention to recall which is filed within the first or last three hundred sixty-five (365) days of the term of an elected official, other than a member of an Advisory Neighborhood Commission, or within the same period after a recall election which was decided in the official's favor.
- 1100.4 In accordance with the provisions of D.C. Code §1-1001.17(c) (2001 Ed.), the Board shall not accept a notice of intention to recall a member of an Advisory Neighborhood Commission, which is filed within the following timeframes:
- (a) During the first six (6) months of the Commissioner's term of office;
 - (b) During the last six (6) months of the Commissioner's term of office; or
 - (c) Within six (6) months after a recall election has been decided in favor of the Commissioner.

- 1100.5 A separate notice of intention to recall shall be filed for each officer sought to be recalled.
- 1100.6 The notice of intention to recall shall contain the following:
- (a) The name and title of the elected officer sought to be recalled;
 - (b) A statement not more than two hundred (200) words in length, which gives the reasons for the proposed recall;
 - (c) The name, telephone number, and residence address of each proposer of the recall;
 - (d) If the officer was elected to represent a Single-Member District, an affidavit that each proposer is a registered qualified elector in the Single-Member District of the commissioner whose recall is being sought;
 - (e) If the officer was elected to represent an election ward or school district, an affidavit stating that each proposer is a registered qualified elector in the election ward or school district of the elected officer whose recall is sought;
or
 - (f) If the officer was elected at-large, an affidavit that each proposer is a registered qualified elector of the District.
- 1100.7 Upon submission of a notice of intention to recall, the Board shall issue a receipt to the proposer or his or her representative.
- 1100.8 Within five (5) calendar days of the filing of the notice, the Board shall serve, personally or by certified mail, a copy of the notice of intention on the elected officer sought to be recalled.
- 1100.9 Within ten (10) calendar days after the filing of the notice of intention, the elected officer sought to be recalled may file with the Board a response in accordance with the provisions of D.C. Code §1-1001.17(d) (2001 Ed.), a copy of which shall be served on the proposer by the Board.
- 1100.10 The proposer of a recall measure for any elected officer, other than a member of an Advisory Neighborhood Commission, shall file a verified statement of contributions with the Office of Campaign Finance.
- 1100.11 For the purposes of this chapter, the term “verified statement of contributions,” in accordance with D.C. Code §1-1001.17(i)(1)(A) (2001 Ed.), shall consist of the following:

- (a) The statement of organization, under D.C. Code §1-1102.04 (2001 Ed.);
and
- (b) The report(s) of receipts and expenditures, under D.C. Code §1-1102.06
(2001 Ed.).

1100.12 Upon receipt of each recall measure, the Board shall refuse to accept the measure if the Board finds that the proposer has not filed a verified statement of contributions by no later than ten (10) days after the filing of the recall measure.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 920 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Prevocational Services, a habilitative service provided to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 21, 2007 (54 DCR 12347). Comments were received and considered. The December 21st rulemaking changed the rules previously published at 54 DCR 2343 (March 16, 2007) to increase the daily limit to eight (8) hours, to establish a minimum staffing ratio, and to require the development of a service plan with measurable outcomes that will more clearly define the service being provided. This rulemaking further changes the December 21st rulemaking to define the component of the required vocational assessment, to remove the requirement that the vocational assessment must find that the person is not expected to join the general work force or participate in a sheltered workshop for one year, to delete the definition of situational or functional assessment, to replace the requirement for an annual functional assessment with a requirement to assess progress annually based on vocational preferences and goals as specified in the person's individual support plan, and to expand the requirement that a person on the executive staff have specific academic credentials so that the requirement encompasses all staff.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 18, 2008 (53 DCR 004392). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

Section 920 (Prevocational Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

920 PREVOCATIONAL SERVICES

920.1 Prevocational services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based

Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

920.2 To be eligible for prevocational services under the Waiver, a vocational assessment must be submitted or provided within the first ninety (90) days of participation that includes the following:

- (a) Employment-related strengths and weaknesses (*e.g.*, task focus);
- (b) Available natural/community supports;
- (c) Personal concerns and preferences; and
- (d) Accommodations and supports that may be required on the job.

920.3 Prevocational services are designed to prepare a person for paid or unpaid employment, but not to develop a specific job skill.

920.4 Prevocational services eligible for reimbursement shall be as follows:

- (a) Prevocational assessment activities, including assessments provided at community businesses and other community resources;
- (b) Social skills training, including but not limited to the following:
 - (1) Learning to interpret instructions;
 - (2) Interpersonal relations;
 - (3) Communication;
 - (4) Respecting the rights of others; and
 - (5) Problem solving;
- (c) The development of work skills, which shall include, at a minimum, teaching the person the following concepts:
 - (1) Compliance with employer instructions;
 - (2) Attendance;
 - (3) Task completion; and
 - (4) On-the-job safety;
- (d) Coordination of:

- (1) Time-limited volunteering and other prevocational skills training indicated in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care; and
 - (2) Transportation to community activities necessary to carry out this service through the Medicaid Non-Emergency Transportation Broker.
- 920.5 An assessment must be conducted at least annually by the provider to evaluate each individual's acquisition of employment-related skills based on the person's vocational preferences and goals as specified in the person's IHP or ISP and Plan of Care.
- 920.6 Each prevocational provider shall develop an individualized plan for each person that is in keeping with their interests, preferences, choices, goals and prioritized needs. The activities in the plan shall be functional, chosen by the person, and provide a pattern of life experiences common to other persons of their age and the community at large. The plan must identify specific measurable outcomes for the development of vocational skills that are consistent with goals of the IHP or ISP and Plan of Care.
- 920.7 Prevocational services may be provided in non-facility-based or facility-based settings.
- 920.8 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or state and local laws and regulations.
- 920.9 Before a provider of prevocational services may pay a person wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.
- 920.10 Prevocational services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.*), or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.*) (hereinafter the "Acts"). Each person receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and IHP or ISP and Plan of Care.
- 920.11 All prevocational providers shall deliver appropriate services to persons requiring physical assistance to facilitate their participation in prevocational

services activities. All prevocational providers shall ensure that each person has access to first aid.

920.12 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each person's IHP or ISP and Plan of Care. All prevocational services shall be reflected on the IHP or ISP and Plan of Care as habilitative rather than explicit employment objectives.

920.13 Each prevocational services provider shall:

- (a) Be a non-profit, home health or social service agency or other business entity;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Prevocational Services under the Waiver;
- (c) Maintain a copy of the IHP or ISP and Plan of Care approved by the Department on Disability Services (DDS);
- (d) Ensure that all prevocational services staff are qualified and properly supervised;
- (e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care
- (f) Participate in the annual IHP or ISP and Plan of Care meeting or case conferences when indicated;
- (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine;
- (h) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as set forth in 29 CFR § 1910.1030; and
- (i) Maintain a staff-to-person ratio as indicated in the IHP or ISP and Plan of Care up to a maximum ratio of one to four (1:4) that ensures that the service meets the person's individual needs and is provided appropriately and safely.

920.14 Each provider of prevocational services shall demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide prevocational services for individuals with mental

retardation with varying habilitation needs. The staff must have at least one (1) individual with a Master's degree in Vocational Rehabilitation or a similar discipline and four (4) years of combined supervisory, administrative, and "job coaching" or experience providing employment services to persons with disabilities.

920.15 Each person providing prevocational services for a provider under section 920.13 shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the person to whom services are provided;
- (c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
- (d) Have a high school diploma or general educational development (GED) certificate;
- (e) Have at least one (1) year of experience working with persons with mental retardation;
- (f) Agree to carry out the responsibilities to provide services consistent with the person's IHP or ISP;
- (g) Complete pre-service and in-service training approved by DDS;
- (h) Have the ability to communicate with the person to whom services are provided;
- (i) Be able to read, write, and speak the English language; and
- (j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

920.16 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2) years of combined supervisory and "job coaching" or experience providing employment services to persons with disabilities.

- 920.17 Prevocational services shall not be provided at the same time as day treatment, supported employment, or day habilitation services.
- 920.18 The reimbursement rate for prevocational services shall be fifteen dollars and eighty cents (\$15.80) per hour. Services shall be provided for a maximum of eight (8) hours a day, not including travel time. The billable unit of service for prevocational services shall be fifteen (15) minutes. The reimbursement rate for prevocational services shall be three dollars and ninety-five cents (\$3.95) per billable unit. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.
- 920.19 Prevocational providers shall submit to the DDS a completed Prevocational Individualized Services Person Quarterly Report, no later than the 15th day of January, April, July, and October, for the preceding three (3) month period. The report shall include the following information for each participant served:
- (a) Name of the person;
 - (b) Community inclusion opportunities;
 - (c) Volunteer activities;
 - (d) Prevocational facility and non-facility-based activities; and
 - (e) Progress to achieving outcomes from individualized plan developed in accordance with section 920.6.
- 920.20 No payment shall be made for routine care and supervision, which is the responsibility of the family or group home provider.

920.99 DEFINITIONS

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

Communicable Disease – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family – Any person who is related to the person receiving services by blood, marriage or adoption.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to section 946 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Residential Habilitation Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for residential habilitation services provided by qualified professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which were approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, with an effective date of November 20, 2007.

A notice of emergency and proposed rulemaking was published on December 28, 2007 (54 DCR 12670). No comments were received. The December 28th rulemaking changed the previously published rules at 54 DCR 4394 (May 11, 2007). This rulemaking further changes the December 28th rulemaking to use a fifteen (15) minute billing unit, to adjust rates to prevent duplicate billings for services for individuals whose participation in day/vocational activities exceeds the five (5) hour per day five (5) day per week schedule used in the rate methodology for residential habilitation services, and to require the provider to give ninety (90) days written notice to the government and thirty (30) days written notice to the participants of the intent to terminate residential habilitation services. The new residential habilitation services rules provide a blend of the previously-available services under the former Waiver (*i.e.*, Homemaker Services, Chore Services, Adult Companion Services, and Personal Care Services). This service delivery approach will address the problems encountered, such as different provider qualifications and restrictions for each service when multiple provider agencies and support staff are needed to deliver supports to Waiver participants. The rule is intended to resolve staffing issues which have made it difficult to effectively support individuals in group homes. Residential habilitation service is a twenty-four (24) hour service limited to licensed homes which are owned, leased or otherwise operated by the provider. The reimbursement rates have been modified based on the new rate setting methodology and the collapsing of services into daily rates based on acuity. The acuity system is based on the intensity of staffing required for each group home.

A notice of emergency and proposed rulemaking was published in the *DC Register* on April 18, 2008 (55 DCR 004399). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *DC Register*.

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

946 RESIDENTIAL HABILITATION SERVICES

- 946.1 Residential habilitation services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 946.2 In order to qualify for reimbursement under this section, residential habilitation services shall be provided in a Group Home for Mentally Retarded Persons (GHMRP) or similarly licensed group home in other states. Each GHMRP located in the District of Columbia shall be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), no later than sixty (60) days after approval as a Medicaid provider and comply with the requirements set forth in Chapter 35 of Title 22 of the District of Columbia Municipal Regulations (DCMR), except as set forth in these rules. In order to qualify for reimbursement under this section, residential habilitation services shall be delivered in a GHMRP or group home licensed or certified in other states that can serve four (4) to six (6) persons.
- 946.3 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and be consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state provider shall comply with the following additional requirements:
- (a) Remain in good standing in the jurisdiction where the program is located;
 - (b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action plan, if applicable, to the Department on Disability Services (DDS); and
 - (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews.
- 946.4 Residential habilitation services shall only be available to a person with a demonstrated need for continuous training, assistance, and supervision, and shall be authorized and provided in accordance with the person's current Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care.

946.5 Each provider of residential habilitation services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the person to reside in the community. To accomplish these goals, the provider shall:

- (a) Use observation, conversation, and other interactions as necessary to develop a functional analysis of the person's capabilities within the first month of the person's residency;
- (b) Prepare a support plan with measurable outcomes using the functional analysis, the IHP or ISP and Plan of Care, and other information available to develop and maintain as appropriate the skills necessary to enable the person to reside in the community while maintaining their health and safety; and
- (c) Report quarterly to the person, family, guardian, and DDS Case Manager the outcomes of the programming and support provided to help the person to achieve the identified outcomes.

946.6 Each provider of residential habilitation services shall ensure that each person receives hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following areas:

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

946.7 Each provider of residential habilitation services shall ensure that each resident receives the professional services required to meet his or her goals as

identified in the person's IHP or ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines or services:

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

946.8 Each provider of residential habilitation services shall ensure the provision of transportation services to enable persons to gain access to Waiver and other community services and activities. The provider shall comply with the requirements governing transportation services set forth in section 1903 of Title 29 DCMR if providing transportation services.

946.9 The minimum daily ratio of on-duty direct care staff to persons present in each GHMRP that serves persons who are not determined by DDS to have higher acuity shall not be less than the following:

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

946.10 Each provider of residential habilitation services shall be a social services agency as described in section 1903.1 of Title 29 DCMR. In addition, the provider shall:

- (a) Be a member of the resident's interdisciplinary team;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for residential habilitation Services under the Waiver;
- (c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
- (d) Have a current Human Care Agreement with DDS for the provision of residential services;
- (e) Ensure that all residential habilitation services staff are qualified and properly supervised to include having a plan to provide staff interpreters for non-English speaking persons;

- (f) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
- (g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
- (h) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC);
- (i) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds;
- (j) Ensure that each residence is accessible to public transportation and emergency vehicles;
- (k) Ensure that each group home is barrier-free if needed by the person;
- (l) Maintain a written staffing plan;
- (m) Provide a written staffing schedule for each site where services are provided;
- (n) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551 *et seq.*);
- (o) Ensure that each staff member has been screened for communicable disease, in accordance with the guidelines issued by the CDC;
- (p) Meet the DDS Basic Assurances set forth in the Human Care Agreement;
- (q) Provide DDS and the Medical Assistance Administration, Department of Health, with at least ninety (90) days advance written notice of intent to terminate residential habilitation services; and
- (r) Provide persons receiving residential habilitation services with at least thirty (30) days advance written notice prior to the effective date of the termination of services in the form prescribed by DDS and be responsible for notifying DDS of those persons who are undergoing treatment of an acute condition.

946.11 Each person providing residential habilitation services for a provider under section 946.10 shall meet all of the requirements in Chapter 19 to Title 29 DCMR, section 1911.

946.12 Each provider shall cooperate with DDS case management in providing access and information as requested for case management visits and reviews.

946.13 Each provider of residential habilitation services shall review the person's IHP or ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary. The provider shall propose modifications to the IHP or ISP and Plan of Care, as appropriate. The results of these reviews shall be submitted to the case manager within thirty (30) days of the end of each quarter. Each provider shall participate in IHP or ISP and Plan of Care development so that community integration goals are clearly defined. Each

provider shall also assist in the coordination of all services that a person may receive.

- 946.14 Each provider of residential habilitation services shall maintain progress notes on a weekly basis, or more frequently if indicated, which include: progress in meeting each goal in the ISP; any unusual health or behavioral events or change in status; a recording of visitors and the person's participation in the visit; a listing of all community activities attended by the person and the response to those activities; and any matter requiring follow-up on the part of the service provider or DDS. Each provider shall also maintain participant attendance rosters on a daily basis and current financial records of expenditures of public and private funds for each person.
- 946.15 Each provider of residential habilitation services shall maintain all records and reports for at least six (6) years after the person's date of discharge.
- 946.16 Residential habilitation services shall not be reimbursed when provided by a member of the person's family.
- 946.17 Reimbursement for residential habilitation services shall not include:
- (a) Cost of room and board;
 - (b) Cost of facility maintenance, upkeep and improvement; and
 - (c) Activities for which payment is made by a source other than Medicaid.
- 946.18 The reimbursement rate for residential habilitation services is calculated based on the staff being awake while on duty and shall include:
- (a) All supervision of direct support staff;
 - (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of Health Management Care Plan;
 - (c) Transportation to day programs, employment, professional appointments, community outings and events;
 - (d) Programmatic supplies; and
 - (e) General and administrative fees for Waiver services.
- The billable unit of service for residential habilitation services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.
- 946.19 The reimbursement rate for residential habilitation services for a GHMRP with four (4) individuals shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred seventeen dollars (\$217.00) for a direct care staff support ratio of 1:4 for all awake and overnight hours billable in quarter hour units of two dollars and twenty-six cents (\$2.26) per unit;
- (b) The Moderate Support Level 2 daily rate shall be three hundred forty-four dollars (\$344.00) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and fifty-eight cents (\$3.58) per unit;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred eighty-four dollars (\$484.00) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and four cents (\$5.04) per unit;
- (d) The Intensive Support daily rate shall be five hundred sixty-one dollars (\$561.00) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and eighty-five cents (\$5.84) per unit; and
- (e) There shall be a specialized service rate determined through a negotiated request for proposals process when determined necessary by DDS to serve individuals with extraordinary medical and/or behavioral health needs.

946.20

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

- (a) The Basic Support Level 1 daily rate shall be two hundred seventy-two dollars (\$272.00) for a direct care staff support ratio of 1:5/6 staff awake overnight and 2:5/6 during all awake hours when individuals are in the home billable in quarter hour units of two dollars and eighty-three cents (\$2.83) per unit;
- (b) The Moderate Support Level 2 daily rate shall be three hundred sixty-seven dollars (\$367.00) for a direct care staff support ratio of 2:5/6 staff awake overnight and 2:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of three dollars and eighty-two cents (\$3.82) per unit;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred forty-four dollars (\$444.00) for a staff support ratio of 2:5/6 staff awake overnight and 3:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of four dollars and sixty-three cents (\$4.63) per unit;

- (d) The Intensive Support daily rate shall be five hundred fifty-five dollars (\$551.00) for increased direct care staff support for sleep hours to 2:5/6 for staff awake overnight support and 4:5/6 during all awake hours when individuals are in the home and adjusted for increased absenteeism billable in quarter hour units of five dollars and seventy-four cents (\$5.74) per unit; and
- (e) There shall be a specialized service rate determined through a negotiated request for proposals process when determined necessary by DDS to serve individuals with extraordinary medical and/or behavioral health needs.

946.21 Acuity evaluation to set support levels shall be determined by a committee appointed by the Director of DDS that shall review current staffing levels, available health and behavioral records, and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires increased supports. Individuals may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.

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

- (a) Environmental accessibility adaptation;
- (b) Vehicle modifications;
- (c) Supported living;
- (d) Respite;
- (e) Host home;
- (f) Live-in caregiver;
- (g) In-home supports;
- (h) Personal Emergency Response System; or
- (i) Transportation.

946.23 Residential habilitation services shall not be billed when the person is hospitalized, on vacation, or for any other period in which the person is not residing at the GHMRP. The reimbursement rates assume a ninety-three (93) percent annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays. Daily activities such as day treatment, day habilitation services, prevocational services, supported employment services, or employment are typically scheduled for five (5) hours per day five (5) days per week, and scheduling day activities in excess of five (5) hours per day five (5) days per week shall result in an hour-for-hour decrease in the residential habilitation services reimbursement. Reimbursement shall be calculated based on the time the person is scheduled to be in his or her place of residence, except the provider may include the time that the individual is being transported by the provider to

day programs, employment, professional appointments, community outings and events.

- 946.24 Direct care staff shall be dressed, alert, and maintain support logs during the entire shift of awake hours. The provider shall maintain a log of scheduled activities that specifies when the person is scheduled to be in his or her home on a daily basis.

946.99 DEFINITIONS

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

Awake – For purposes of staffing and determining the reimbursement rates for residential habilitation services, awake hours of the day with absence from day program, weekend, or holiday shall be approximately 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be approximately 6:00 am to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

Communicable Disease – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Community Integration – Participation in events outside of the person's place of residence that may include shopping, dining, attending movies, plays, and other social events. The plan from section 946.13 should identify community and social events appropriate for the person.

Direct Care Staff – Individuals employed to work in the GHMRP who render the day-to-day, personal assistance that persons require in order to meet the goals of his or her IHP or ISP and Plan of Care.

Family – Any person who is related to the person receiving services by blood, marriage, or adoption.

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

Health Management Care Plan- A written document designed to evaluate an individual's health care status and to provide recommendations regarding the treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, individuals responsible for carrying out

interventions, and individuals responsible for providing evaluation of outcomes and timeframes.

Individual – individual participant enrolled in the Waiver receiving services.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

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

Overnight – For purposes of staffing and determining the reimbursement rates for residential habilitation services, the overnight period shall be approximately from 10:00 p.m. to 6:00 a.m.

Person/ Participant– An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Waiver.

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Progress Notes – Notes that observe (1) progress in meeting each goal in the IHP or ISP and Plan of Care, which is the responsibility of the residence; (2) the list of community activities for the week and the participant's response to each activity; (3) any unusual health events; (4) any visitors the participant received; and (5) anything requiring follow-up or action.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of sections 3(b), 5(3)(D), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137, D.C. Official Code §§ 50-921.02(b), 50-921.04(3)(D)(i), and 50-921.05); Mayor's Order 2007-179 (June 12, 2002); and section 2(b) of the Motor Vehicle Parking Regulation Amendment Act of 1999, effective May 9, 2000, (D.C. Law 13-97), hereby gives notice of the adoption, on an emergency basis, of amendments to Title 18, "Vehicle and Traffic Regulations," Chapter 24, "Residential Permit Parking." The amendments will eliminate the two (2) hour grace period on certain blocks within Ward 1 of the District of Columbia. The amendments will also correct a numbering error pertaining to the subsection immediately preceding subsection 2411.20.

Emergency and proposed rules were published in the D.C. Register on March 14, 2008, at 55 DCR 2634, and became effective on that date. This final rulemaking notice corrects two (2) typographical errors made in the notice of emergency and proposed rulemaking. Residential Permit Parking restrictions shall apply to the 1400 block of Harvard and Monroe Streets, not the 14000 block of those streets. These rules become effective upon publication in the D.C. Register.

Title 18 DCMR, Section 2411, **RESIDENTIAL PERMIT PARKING**, is amended to read as follows:

The subsection immediately preceding subsection 2411.20 ("2411.19[sic]") is renumbered as subsection 2411.21 and amended by adding the following:

2411.21 F. These blocks in the Northwest Quadrant will be included in the Residential Permit Parking Program and will be restricted, where appropriate, with "Zone 1 Permitted Parking Only, 7 A.M. to 8:30 P.M., Monday through Saturday."

STREET	BLOCKS IN RESIDENTIAL PROGRAM	SIDE
Harvard	1100, 1200, 1300, 1400, 1500	North Side
Irving Street	1100, 1200, 1300	North Side
Park Road	1100, 1200, 1300	North

		Side
Monroe Street	1100, 1200, 1300, 1400, 1500	North Side

2411.21 G. These blocks in the Northwest Quadrant will be included in the Residential Permit Parking Program and will be restricted, where appropriate, with "Zone 1 Permitted Parking Only, 9 A.M. to 4:30 P.M., Monday through Saturday."

STREET	BLOCKS IN RESIDENTIAL PROGRAM	SIDE
Kenyon Street	1100, 1200, 1300	North Side

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**NOTICE OF FINAL RULEMAKING**

The Board of Directors ("Board") of the District of Columbia Water and Sewer Authority ("Authority"), pursuant to the authority set forth in the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Code § 34-2201.01 et seq.) at its regular meeting held on June 5, 2008 took final action to adopt the following amendments to the Water and Sanitation Regulations (21 DCMR) Chapter 52, "D.C. Water and Sewer Authority Personnel Regulations" and replace the current regulations with new regulations. The final rules amend and supersede the existing Personnel Regulations, located at 21 DCMR, Chapter 52.

The Authority's proposed rulemaking was originally published in the February 29, 2008 (55 DCR 2076) edition of the District of Columbia Register. Comments on these proposed rules were received and considered prior to finalizing the regulations. No changes have been made to the substance of the proposed regulations. Clarifying changes were made to the regulations, which do not substantially alter or change the intent, meaning, or application of the proposed rules.

These final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 21 DCMR, Chapter 52, the D. C. WATER AND SEWER AUTHORITY PERSONNEL REGULATIONS are amended and superseded to read as follows:

TITLE 21. WATER AND SANITATION**CHAPTER 52 D. C. WATER AND SEWER AUTHORITY PERSONNEL REGULATIONS****5201. GENERAL PROVISIONS**

5201.1 The purpose of the District of Columbia Water and Sewer Authority Personnel Regulations (the "Regulations"), issued by the Board of Directors (the "Board") of the District of Columbia Water and Sewer Authority (the "Authority"), is to establish guidelines, including policies and procedures relating to personnel matters including, but not limited to, the recruitment, employment, compensation, advancement, hiring, retention and termination of Authority employees pursuant to D. C. Code § 43-1672 et seq., the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, D. C. Law 11-111, April 18, 1996" (the "Enabling Act").

The Authority's personnel regulations and personnel policies and procedures are not a contract(s) of employment. Neither the Regulations nor the personnel policies and procedures guarantee any fixed terms and conditions of employment. Employment with the Authority is not guaranteed for any specific time and may be terminated by the Authority for any lawful reason. The Authority reserves the right to, in its sole discretion, modify, rescind, delete, or otherwise change the provisions of these Regulations and/or its personnel policies and procedures at any time, with or without notice, except as where required by law.

- 5201.2 It is the Authority's policy to conduct all personnel actions without regard to race; color; religion; sex; national origin; age; disability; or any other legally protected class in accordance with federal and District of Columbia law.
- 5201.3 The Board delegates to the General Manager the authority to develop, implement and enforce personnel policies and procedures. The General Manager may delegate this authority to subordinate managers.
- 5201.4 The General Manager is responsible for recommending to the Board new personnel regulations or modifications of existing personnel regulations.
- 5201.5 Provisions of a properly executed collective bargaining agreement will take precedence over any provision in this chapter which conflicts with or is contrary to contract provisions.
- 5201.6 If any provision in this chapter is deemed invalid, void or unenforceable by a court of competent jurisdiction, the chapter shall be construed as though the provision does not appear. Any such finding by a court of competent jurisdiction shall not affect the validity of any other provision, section, paragraph, or sentence of this chapter.
- 5201.7 The Authority retains sole control of management rights, in accordance with applicable laws, rules, and regulations, which include, but are not limited to:
- (a) Directing employees of the Authority;
 - (b) Hiring, promoting, transferring, assigning, and retaining employees in positions within the Authority, and suspending, demoting, discharging, or taking other disciplinary action against employees;
 - (c) Relieving employees of duties because of lack of work or other causes;
 - (d) Maintaining the efficiency of the Authority's operations, the extent of usage and the nature of all equipment, and the standards for workmanship;
 - (e) Determining the mission of the Authority, its budget, and its organization;
 - (f) Determining the number of employees, including the number, type and grade of

positions assigned to the organization unit, work project or tour of duty;

- (g) Deciding the technology to be used in performing its work;
- (h) Defining and carrying out internal security practices;
- (i) Taking whatever actions may be necessary to carry out the mission of the Authority in emergency situations; and
- (j) Altering, amending, modifying, or eliminating the manner in which the activities of the Authority are conducted, including the composition and size of the work force carrying on those activities as prescribed by law.

5201.8 Falsification or misrepresentation of any information provided to the Authority may result in disciplinary action up to and including termination and/or may result in criminal prosecution. Where the information is provided in connection with an employment or promotion application, the applicant may also be disqualified from selection.

5202. Recruiting and Hiring

5202.1 Authority staff shall be employed in the following employment categories:

- (a) At-Will – Positions that serve at the pleasure of the General Manager. At-will positions are not covered by the disciplinary, non-union appeals, and reduction in force regulations and policies and procedures. The General Manager may designate any non-union position as “at-will.”
- (b) Regular – All positions that are not at-will.
- (c) The Authority may add additional employment categories as may be needed from time to time.

5202.2 Employee classifications:

- (a) Temporary - Employees who are hired to perform work for a specified period of time or for a specific project. Temporary employee’s assignment may end at any time, with or without cause and with or without notice. Temporary employees are not covered by the Authority’s disciplinary, non-union appeals, and reduction in force regulations and policies and procedures.
- (b) Intern - High school or college students on a work-study or other formal learning and work experience program who may receive course credit and/or pay for limited periods of employment. Interns are not covered by the Authority’s disciplinary, non-union appeals, and reduction in force regulations and policies and procedures.

- (c) Full-time - An employee who is hired to work a regularly scheduled workweek of forty (40) or more hours or regularly scheduled to work 80 hours in a two workweek pay period.
- (d) Part-time - An employee who is hired to work a regularly scheduled workweek of less than twenty (20) hours, or works 1,040 hours per year or less. Part-time employees are not covered by the Authority's disciplinary, non-union appeals, and reduction in force regulations and policies and procedures.
- (e) Probationary – All new full-time employees in regular positions and all full-time employees who accept a regular position must serve a probationary period of not less than twelve (12) months. Any employee hired is a new Authority employee and must satisfy the probationary period requirement regardless of prior government service. Completion of the probationary period means that, in the judgment of the Authority, the employee has performed in an acceptable manner for a minimum of twelve (12) months. The Authority, in its discretion, may extend a probationary period up to ninety (90) days. If an employee does not complete the probationary period, the Authority may terminate his/her employment. A decision to terminate a probationary employee is not subject to appeal.

5202.3 Vacancies will generally be posted for a minimum of ten (10) working days before a job is offered. Vacancies for positions designated as scarce skills, or in situations where posting of the vacancy for ten (10) working days is determined by the General Manager to be impossible or impractical, a vacancy may be posted for less than ten (10) working days before a job is offered. The General Manager may appoint senior management staff, executive staff, and make emergency staff appointments without the necessity of posting the vacancy or competing the position.

5202.4 The Authority's Human Resources Department is responsible for recruiting candidates to fill new and vacant positions including, but not limited to, recruitment, applicant processing, screening interviews, reference checks, medical examinations, job offers, compensation and benefits processing, and employment records. These responsibilities may be delegated by the General Manager to another organizational component, as deemed appropriate.

5202.5 As part of the selection process, all applicants who have been conditionally offered employment with the Authority will undergo a pre-employment medical evaluation that will include, among other things, drug screening. Any applicant whose medical evaluation indicates the presence of illegal drugs or an inability to perform the essential functions of a position due to mental and/or physical conditions which cannot be reasonably accommodated, will not be employed by the Authority.

5202.6 Relatives of employees are eligible for employment by the Authority provided that such employment does not create a supervisory relationship in which the employees are in one another's chain of command. For purposes of this section, "relative" is defined as

spouse, parent, parent-in-law, child, step-child, sister, brother, brother-in-law, sister-in-law, step-parent, daughter-in-law, son-in-law, niece, nephew, first cousin, grandparent or grandchild, or any other related or unrelated individual that resides in the same household as the employee. If a supervisory relationship is created between employees who are related, at the Authority's discretion, one employee may be reassigned non-competitively to another position selected by the Authority for which the employee is qualified where involuntary displacement of another employee does not result. This reassignment may be conducted without regard to any posting or recruitment requirements. If a position cannot be identified, or reassignment is impossible or impractical, one employee will be required to separate from his or her Authority employment.

5203. Deleted.

5204. Leaves, Holidays and Other Absences

- 5204.1 The rate of accrual of annual and sick leave will be determined by the Board.
- 5204.2 The use and carry-over of annual and sick leave will be determined by the General Manager or his designee.
- 5204.3 The Board of Directors of the Authority will determine the number of holidays that are granted to employees each year. The General Manager will establish the schedule of holidays and shall determine the leave year.
- 5204.4 The Authority recognizes the following types of un-accrued leave that may be granted to eligible employees in qualifying circumstances:
- (a) Leave of Absence Without Pay.
 - (b) Federal and District of Columbia Family and Medical Leave.
 - (c) Jury Duty Leave of Absence.
 - (d) Military Leave of Absence.
 - (e) Administrative Leave.
 - (f) Bereavement Leave.
 - (g) Leave approved by the Board of Directors.

5205. Compensation and Benefits

- 5205.1 Benefits

- (a) Full-Time Regular employees may be eligible for medical, life and other benefits offered by the Authority and benefits mandated by federal and District of Columbia laws.
- (b) At-Will employees may be eligible for medical, life and other benefits offered by the Authority and benefits mandated by federal and District of Columbia laws.
- (c) Interns, part-time and temporary employees are ineligible for Authority benefits except as required by applicable federal and District of Columbia laws.

5205.2 Responsibility for Salary Administration

- (a) When appropriate, the Authority's compensation decisions will be based on the Authority's overall financial condition and a review of pay ranges for similar jobs in the labor market.
- (b) The Human Resources Department is responsible for reviewing compensation and for evaluating and assigning a job grade and salary range to each job category. It is the policy of the Authority that job grades and salary ranges be commensurate with each position's responsibilities and performance requirements. The Authority will be guided by the principle of equal pay for equal work. The Human Resources Department is responsible for developing and administering a job evaluation program, including regular review and reevaluation of position descriptions.
- (c) The salary range for each job description will have a minimum and a maximum value.

5205.3 Premium Pay:

- (a) The Authority may provide premium pay for hours worked on holidays and Sundays.
- (b) The Authority may provide for shift pay differentials.

5205.4 Deductions may be made from an employee's wages as required or permitted under the law.

5205.5 The General Manager may authorize individual or work group incentive compensation adjustments for outstanding performance, or as recognition for suggestions, work process improvements, operational savings, development of equipment or processes, and the like. The incentive compensation program may include skill-based pay, merit pay, gainsharing, and be in the form of lump sum bonus payments and temporary or permanent adjustments. The General Manager may also award lump sum bonus payments to employees who have demonstrated superior performance.

5205.6 The Authority may offer health insurance, dental benefits, optical benefits, life insurance, disability coverage, accidental death and dismemberment coverage, and such other benefits

as may be determined by the Authority, and may contribute to insurance coverage for employee, depending upon, among other things, the financial status of the Authority.

5205.7 An eligible employee who has voluntarily terminated his/her employment and who is rehired within six (6) months of the effective date of his/her resignation may receive full credit for prior employment in determining annual leave accrual, restoration of sick leave balance, eligibility for Authority contributions to the retirement program, and eligibility for other fringe benefits.

5205.8 The Authority may reimburse employees for expenses incurred for school or training programs which are related to the employee's present work requirements, or constitute continuing education in the employee's field, or for career development. Reimbursement may be made for tuition, books and travel expenses, subject to the following conditions:

- (a) The training or educational program must be pre-approved by the Authority in the manner required by the Authority in order to be eligible for reimbursement.
- (b) The amount and conditions of reimbursement payments shall be determined by the General Manager or his designee.

5206. Reassignments

The Authority may temporarily reassign an employee to another position to meet a temporary employment need.

5207 Layoff and Recall

5207.1 Definitions

- (a) When used in this chapter, the following terms shall have the meaning ascribed:

Best qualified - an individual whose qualifications, including, but not limited to, the assessment of relevant education, work experience, skills, performance, attendance and any applicable test results are ranked the highest overall among all individuals who apply for or are considered for an Authority position, utilizing practices and procedures set forth in the Authority's Recruitment, Selection and Hiring Personnel Policy and Procedure.

Competing employee - an employee in tenure group I, II, or III.

Competitive area - the organizational boundaries within the Authority in which a reduction in force is conducted.

Competitive level - a grouping of similar positions (in a competitive area) within which employees compete for retention.

Days - calendar days.

Displaced employee - a former employee who was separated by a reduction in force.

Minimally qualified - an individual who meets the minimum qualifications and requirements that a candidate must meet for a given position as described on a Vacancy Announcement.

Obligated position - a position to which an employee has restoration rights under the provisions of the Uniformed Services Employment and Reemployment Rights Act, [38 U.S.C. §§ 4301](#) et seq.

Preference eligible - a veteran preference eligible as defined in [§ 2108 of title 5 U.S.C.](#) and § 5207.13 of this chapter.

Released employee - an employee who has been reached for release from his or her competitive level.

Retention register - the listing of employees occupying positions in a competitive level by tenure group and reduction in force service computation date.

Retention standing - the employee's standing on the retention register in relation to other competing employees within his or her competitive level.

Temporary appointment - an appointment with a specific time limitation of one (1) year or less.

Tenure group - the retention group in which competing employees shall be categorized according to their current type of appointment.

5207.2 ACTIONS COVERED

The Authority shall follow the Regulations set forth in this section when releasing a competing employee from his or her competitive level pursuant to a reduction in force. The General Manager shall determine, within his discretion, whether the release of such employee is required. Factors the General Manager shall consider include, but are not limited to, the following:

- (a) Lack of work;
- (b) Shortage of funds;
- (c) Reorganization or realignment; or
- (d) The exercise of restoration rights as provided by the Uniformed Services Employment and Reemployment Rights Act, [38 U.S.C. § 4301](#) et seq.

5207.3 ACTIONS NOT COVERED

Section 5207 shall not apply to the following actions by the Authority:

- (a) The termination of a temporary promotion;
- (b) The return of an employee to the position from which the employee was promoted on a temporary basis;
- (c) Termination of a temporary appointment;
- (d) Reduction in grade as a result of a position classification/job evaluation action affecting the employee's position;
- (e) Demotion as a result of reclassification, change in qualification standards or error in the application of either of the following:
 - 1. Reclassification or qualification standards; or
 - 2. Time-in-grade requirements for promotion;
- (f) The separation of an employee or a change in an employee's position or grade as a result of an action taken pursuant to the Authority's disciplinary rules; or
- (g) Separation of an employee who is not within reach for release from his or her competitive level for refusal to accept a reassignment either to a vacant position or to an encumbered position in his or her competitive level through displacement action.

5207.4 GENERAL PROVISIONS

- (a) The need to apply reduction in force procedures shall not suspend the Authority's authority and responsibility to discipline, remove, demote, or reassign any employee.
- (b) The retroactive reinstatement of a person who was separated by a reduction in force under these Regulations may only be made on the basis of a finding of harmful error as determined by the Authority or the Office of Employee Appeals ("OEA"). A finding of "harmful error" shall be made where the separation procedures set forth herein were not properly applied, such that the employee should not have been released from his or her competitive level.
- (c) During a reduction in force, the Authority may increase or decrease the number of positions previously identified for abolishment.

5207.5 DETERMINING RETENTION STANDING

The retention standing of each competing employee shall be determined on the basis of

tenure of appointment, length of creditable service, veterans preference, residency preference, and relative work performance, and on the basis of other selection factors as provided in these Regulations. Together, these factors shall determine whether an employee is entitled to compete with other employees for employment retention and, if so, with whom, and whether the employee is retained or released.

5207.6 COMPETITIVE AREA

- (a) The Authority is considered a competitive area for purposes of a reduction in force under this section. Lesser competitive areas within the Authority may, however, be established by the General Manager.
- (b) The General Manager may establish lesser competitive areas within the Authority by submitting a written request to the Authority's Board of Directors that includes all of the following:
 - 1. A description of the proposed competitive area or areas which includes a clearly stated mission statement, the operations, functions, and organizational segments affected;
 - 2. An organizational chart of the Authority which identifies the proposed competitive areas; and
 - 3. A justification for the need to establish a lesser competitive area.
- (c) Any lesser competitive area shall be no smaller than a major subdivision of the Authority or an organizational segment that is clearly identifiable and distinguished from others in the Authority in terms of mission, operation, function, and staff.
- (d) The Board of Directors shall publish the competitive area or areas in which the reduction in force will be conducted.
- (e) Employees in one competitive area shall not compete with employees in another competitive area.

5207.7 COMPETITIVE LEVELS

- (a) The General Manager or Director of Human Resources shall determine the positions which comprise the competitive level in which employees shall compete with each other for retention.
- (b) Assignment to a competitive level shall be based upon the employee's position of record.
- (c) An employee's position of record is the position for which the employee receives pay or the position from which the employee has been temporarily reassigned or

promoted on a temporary basis.

- (d) A competitive level shall consist of all positions in the competitive area identified pursuant to § 5207.6 in the same pay system, grade or class, and series, if applicable, which are sufficiently alike in qualification requirements, duties and responsibilities so that the incumbent in any one (1) position could perform successfully the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.
- (e) The composition of a competitive level shall be determined on similarity of the qualification requirements, including selection factors, to perform the major duties of the position successfully, the title and series, if applicable, of the positions, and other factors prescribed in this section and § 5207.8.

5207.8 SEPARATE COMPETITIVE LEVELS

- (a) Separate competitive levels shall be established for the following:
 - 1. Positions under different pay schedules;
 - 2. Positions filled on a seasonal basis;
 - 3. Positions filled on a part-time basis;
 - 4. Positions filled on an intermittent basis;
 - 5. Positions filled by supervisors or managers; and
 - 6. Positions filled by employees in a formally designated trainee or developmental program having all the characteristics covered in § 5207.8(c).
- (b) Employees whose official position descriptions have the same title, any applicable series, and grade, but who have specialties which are identified on their position descriptions, in accordance with applicable classification standards, shall be assigned to separate competitive levels.
- (c) A position shall be considered as being formally designated in a trainee or developmental program if it has all the following characteristics:
 - 1. The program was designed to meet the Authority's needs and requirements for the development of skilled personnel;
 - 2. The program was formally designated, with its provisions made known to employees and supervisors; and

3. The program is developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression.

5207.9 RETENTION REGISTER

- (a) A retention register shall be established by the Director of Human Resources whenever a competing employee is to be released from his or her competitive level.
- (b) A separate retention register shall be prepared for each competitive level in the competitive area.
- (c) The retention register shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level.
- (d) Each competitive level shall be identified by the title, any applicable series, and grade of the position(s) which composed the competitive level.
- (e) When a competitive level consists of two (2) or more different titles, each position title shall be identified on the retention register.
- (f) The retention register for each competitive level shall list all positions in the competitive level. A written justification shall be attached to the retention register when positions of the same title, grade, and series, if applicable, are placed in different competitive levels.
- (g) The retention register shall include all of the following:
 1. The name of each competing employee in the competitive level, whether in duty status or paid or unpaid leave status;
 2. The name of each competing employee in the competitive level who is in a leave-without-pay status based upon receipt of disability compensation benefits;
 3. The name of each competing employee detailed or temporarily reassigned from the competitive level;
 4. The name of each competing employee temporarily promoted from the competitive level by a temporary promotion; and
 5. The name of each competing employee on a temporary assignment from the competitive level to a governmental entity, an institution of higher education, or a private sector organization.
- (h) An employee on military duty with restoration rights shall not be placed on a

retention register.

- (i) An employee who has received a written decision to demote him or her shall compete for retention in the position to which he or she will be demoted.
- (j) At the bottom of the retention register, or on a separate list appended to the retention register, in the order set forth below, shall be the following:
 - 1. The name and expiration date of the appointment or reassignment of each employee serving in a position in the competitive level who is in a specifically limited temporary appointment or on a temporary reassignment;
 - 2. The name and expiration date of promotion of each employee serving in a position in the competitive level on a temporary promotion; and
 - 3. The name of each employee serving in a position in the competitive level with a current performance rating of Unsatisfactory.

5207.10 RETENTION STANDING: TENURE GROUPS

- (a) The name of each competing employee shall be listed on the retention register in the order of his or her retention standing.
- (b) Competing employees shall be categorized on a retention register in the groups listed in §5207.10(c) on the basis of tenure of employment, including additional credit as provided in §§ 5207.13, 5207.14 and 5207.15.
- (c) The retention register groups, in descending order of retention standing, shall be tenure group I, group II, and group III.
- (d) Within each group, employees shall be listed by their reduction in force service computation date, as defined in § 5207.12(b), beginning with the earliest date.
- (e) Tenure group I shall include each employee (other than an employee in group II or group III) who is not serving a probationary period.
- (f) Tenure group II shall include the following:
 - 1. Each employee serving a probationary period; and
 - 2. Each employee who has completed his or her probationary period and who is in an obligated position.
- (g) Tenure group III shall include each employee serving under an indefinite appointment.

5207.11 NONCOMPETING EMPLOYEES

- (a) An employee serving under a temporary appointment shall be a noncompeting employee in a reduction in force and shall be terminated ahead of any competing employee in his or her competitive level without regard to length of creditable service or preference eligibility, unless the positions in the competitive level are not affected by the reduction in force.
- (b) An employee with an Unsatisfactory performance rating shall be a noncompeting employee in a reduction in force and shall be terminated ahead of any competing employee in his or her competitive level without regard to length of creditable service or preference eligibility, unless the positions in the competitive level are not affected by the reduction in force.
- (c) To ensure that noncompeting employees are separated ahead of competing employees, they shall be listed separately below group III employees on the retention register or on a separate list appended to the retention register, as provided in § 5207.9(j).

5207.12 RETENTION STANDING: LENGTH OF CREDITABLE SERVICE

- (a) A reduction in force service computation date shall be established for each competing employee as specified in this section.
- (b) An employee's reduction in force service computation date shall be the date which reflects total creditable service plus additional service credit, if applicable, for veterans preference, residency preference and Outstanding performance preference (as provided for in § § 5207.13, 5207.14 and 5207.15); that date shall be one (1) of the following:
 - 1. For employees hired after November 20, 1998, the date of hire with the Authority;
 - 2. For employees hired on or before November 20, 1998, the "Service Computation Date" as previously computed by the District of Columbia Office of Personnel in accordance with the then applicable Federal or District laws or rules.

5207.13 RETENTION STANDING: VETERANS PREFERENCE

- (a) For purposes of this section, veterans preference eligibility shall be determined in accordance with federal law and regulations issued thereunder by the U.S. Office of Personnel Management.
- (b) Pursuant to the regulations referred to in § 5207.13(a), a retired member of a military service shall be considered a preference eligible individual under this section only if

he or she meets at least one (1) of the following conditions:

1. The employee's military retirement is based on disability that either:
 - A. Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or
 - B. Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by [§ § 101](#) and [301 of title 38, U.S. Code](#);
 2. The employee's military service does not include twenty (20) or more years of full-time active service, regardless of when performed. However, this total does not include periods of active service for training; or
 3. The employee has been employed continuously since November 30, 1964, in a position without a break in service of more than thirty (30) days.
- (c) An employee who would otherwise be considered a preference eligible individual under conditions in § § 5207.13(b)(1) or (2) shall not be considered a preference eligible individual for purposes of this section if the employee retired at or above the rank of major or its equivalent.
- (d) A preference eligible individual having a service-connected disability of thirty percent (30%) or more shall be credited with eight (8) years of additional service.
- (e) A preference eligible individual who is not covered by subsection 5207.13(d) shall be credited with four (4) years of additional service.

5207.14 RETENTION STANDING: RESIDENCY PREFERENCE

- (a) Three (3) years of additional service shall be credited to each competing employee who is eligible for a residency preference as provided in § 5207.14(b).
- (b) Residency preference eligibility in a reduction in force shall be afforded to all of the following:
 1. Each competing employee who is a bona fide resident of the District of Columbia;
 2. Each competing employee who is not a resident of the District of Columbia, but who was hired by the Water and Sewer Utility Administration of the District of Columbia before January 1, 1980, and has continued employment with the Authority without a break in service of one (1) workday or more since that date; and

3. Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health & Human Services at St. Elizabeth's Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has continued employment without a break in service of one (1) workday or more since that date.

5207.15 RETENTION STANDING: PERFORMANCE RATING

- (a) Each employee who has a current performance rating of "Outstanding" shall be credited with four (4) years of additional service.
- (b) The current performance rating shall be the most recent performance rating preceding the date of the reduction in force notice.
- (c) To be credited under § 5207.15(a), the performance rating must have been officially acted upon with all the necessary approvals, received in the Office of Human Resources no later than thirty (30) days before the close of business of the day immediately before the reduction in force notice is issued.
- (d) A performance rating received by the Office of Human Resources after the date specified in § 5207.15(c) shall not change the employee's retention standing.

5207.16 EFFECTIVE DATE OF RETENTION STANDING

- (a) The retention standing of each employee released from his or her competitive level shall be determined as of the date of release.
- (b) When the Authority discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction in force action in accordance with the employee's true retention standing as of the effective date established under this section.

5207.17 RELEASE FROM COMPETITIVE LEVEL

- (a) A competing employee shall not be released from a competitive level while any of the following is retained in that level:
 1. An employee with a specifically limited temporary appointment;
 2. An employee with a specifically limited temporary promotion; or
 3. An employee with an "Unsatisfactory" performance rating.
- (b) A competing employee shall not be released from a competitive level while an employee with lower retention standing is retained in that level, except as required

under § 5207.18 when an employee is retained under a mandatory exception.

- (c) Competing employees shall be selected for release from a competitive level in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register.
- (d) When one (1) or more, but not all, employees with the same reduction in force service computation dates in the same tenure group must be released from a competitive level, the ties shall be broken as follows:
 - 1. The employee who encumbers the position to be abolished shall be released;
 - 2. If still tied, the employee who has the least service in the Authority shall be released; and
 - 3. If still tied, the last digit of the social security number shall be used, and the employee with the lowest last digit shall be released.
- (e) When an employee is selected for release from his or her competitive level, he or she shall be separated from service with the Authority.

5207.18 MANDATORY EXCEPTIONS

- (a) When employees are released from their competitive levels under § 5207.17, the special retention preferences outlined in this section shall be applicable.
- (b) Each tenure group I or II preference eligible employee entitled to retention for one (1) year after restoration under the Uniformed Services Employment and Reemployment Rights Act, [38 U.S.C. § § 4301](#) et seq., shall be retained over other employees in his or her tenure group for the retention period.
- (c) Each tenure group I or II non-preference eligible employee entitled to retention for either six (6) months or one (1) year after restoration under the Uniformed Services Employment and Reemployment Rights Act, [38 U.S.C. § § 4301](#) et seq., shall be retained over other employees in his or her tenure group for the retention period.
- (d) The retention register shall indicate the reasons for any deviation from the regular order of selection required by this section.

5207.19 NOTICE TO EMPLOYEES

- (a) Each competing employee selected for release from his or her competitive level under this section shall be entitled to written notice at least thirty (30) full days before the effective date of the employee's release.
- (b) The notice to the employee shall specify the effective date of the employee's release

from his or her competitive level.

- (c) A notice shall expire when followed by the action specified in the notice, or in an amendment made to the notice before the Authority takes the action.

5207.20 CONTENT OF NOTICE

- (a) Each notice shall state the following:
1. The specific action to be taken and its effective date;
 2. The employee's competitive area, competitive level, tenure group, and reduction in force service computation date;
 3. The place where the employee may inspect the regulations and records pertinent to his or her case; and
 4. The reasons for retaining a lower-standing employee in the same competitive level, if applicable.
 5. The employee's reemployment priority rights are governed by § 5207.24.
 6. The employee's appeal rights are governed by § 5207.23.
- (b) A notice may be either a complete single notice, or a notice with an attachment containing the above-listed information.

5207.21 RECORDS

- (a) The Human Resources Department shall maintain the correct records needed to determine the retention standing of competing employees.
- (b) The Human Resources Department shall allow inspection of retention registers and related records by the following:
1. An employee who is affected by the reduction in force (or his or her representative);
 2. A supervisor or manager whose unit is affected by the reduction in force;
 3. The Office of Employee Appeals; and
 4. Others who are determined by the Authority to have a legitimate need to review these materials in order to carry out their official duties.
- (c) All registers and records relating to an employee shall be preserved intact for at least

one (1) year from the date the employee is issued a specific reduction in force notice, or until any appeal is decided, whichever is later.

5207.22 SEVERANCE PAY

- (a) An employee separated pursuant to Section 5207 of these Regulations who has at least 12 months of continuous service on the date of separation shall be entitled to severance pay, as provided in this subsection 5207.22, except that the total severance pay received after October 18, 1998, over an employee's career in the District of Columbia government, including any independent agency, shall not exceed twenty-six (26) weeks of pay at the rate of basic pay received immediately before separation.
- (b) Creditable Service
 - 1. In computing an employee's creditable service for severance pay purposes, all service that is creditable for annual leave accrual purposes is included as creditable service for severance pay purposes; however, military service is not to be counted unless it interrupts otherwise creditable civilian service.
 - 2. Additional service credit shall be provided as follows:
 - A. Four (4) years for an employee who qualifies for veterans preference as provided in §5207.13; and
 - B. Three (3) years for an employee who qualifies for residency preference as provided in §5207.14.
 - 3. In computing an employee's total years of creditable civilian service, twenty-five percent (25%) of a year is to be credited for each three (3) months of service that exceeds one (1) full year or more.
- (c) Computation of Severance Pay
 - 1. Severance pay shall be calculated as follows:
 - A. Base severance pay is computed on the basis of one (1) week's basic pay at the rate received by the employee immediately before separation for each year of creditable service up to and including ten (10) years and two (2) week's of basic pay at the rate received by the employee immediately before separation for each year of creditable service beyond ten (10) years; and
 - B. An age allowance computed on the basis of ten percent (10%) of the total base severance pay for each year by which the recipient's age on the date of separation exceeds forty (40) years.

2. The age allowance specified in subsection 5207.22(c)1.B. shall be computed on an employee's total years of age over age forty (40), by providing credit at the rate of twenty-five percent (25%) of a year for each three (3) months that the employee's age exceeds age forty (40).
3. Basic pay means the regular or base salary or wages paid by the Authority to an individual immediately before separation, specifically excluding overtime, compensatory time, gainsharing, awards, bonuses, on-call pay, call-in pay, call-back pay, hazard pay, differentials, and premium pay.
4. If the severance pay based on age and service exceeds twenty-six (26) weeks of pay at the employee's rate of basic pay received immediately before separation, the severance pay payable will be limited to the twenty-six (26) weeks of pay.

(d) Payment

1. General Provisions

- A. Severance payments will be paid in installments on the same pay period intervals as if the individual were still employed until the severance pay is exhausted.
- B. If the individual dies before severance pay is exhausted, the payments will be continued to the survivor of the individual until exhausted.
- C. Severance payments are subject to all applicable federal, District of Columbia, and state employment taxes.

2. Restrictions

- A. Severance pay is not a basis for calculation for payment of any other type of Authority or Federal Government benefits, and it may not be included in the basis for computation of such benefits. A period covered by severance pay is not a period of Authority service or employment.
- B. Employees who are receiving disability compensation based on the individual's compensable injury either under [D.C. Code § 1-623.01](#) et seq. or the Authority's Worker's compensation provider are not eligible for severance pay.

5207.23 APPEALS

Neither the establishment of a competitive area smaller than WASA, nor the determination that a specific position is to be abolished, nor separation pursuant to these regulations, nor

the determination of severance pay, shall be subject to review except that:

- (a) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV-A of the Comprehensive Merit Personnel Act (as amended), the D.C. Whistleblower Protection Act, [D.C. Code § § 1- 615.51 - 1-615.59 \(2001\)](#) (as amended), or [§ 2-1403.03 of the D.C. Code \(2001\)](#) (as amended), the D.C. Human Rights Act (as amended).
- (b) An employee affected by the abolishment of a position may file with the Office of Employee Appeals a complaint contesting the improper application of the separation procedures under these regulations related to implementation of an employee's entitlement to one round of lateral competition in positions in the employee's competitive level as provided in § § 5207.1 to 5207.18.
- (c) An employee selected for separation may file with the Office of Employee Appeals a complaint contesting improper application of the procedures implementing an employee's right to be given notice of at least thirty (30) days before the effective date of his or her separation as provided in § 5207.19.

5207.24 REEMPLOYMENT PRIORITY PROGRAM

- (a) The Authority shall establish and maintain a reemployment priority list in which it separates tenure group I and II employees.
- (b) A tenure group I employee's name shall remain on the reemployment priority list for two (2) years, and a tenure group II employee's name for one (1) year, from the date he or she was separated from his or her competitive level.
- (c) Employees covered under the provisions of this section shall be entered automatically on the list immediately after it has been determined that the employee is to be adversely affected by the reduction in force and not later than issuance of the notice of reduction in force.
- (d) The employee's name shall be entered on the Authority's reemployment priority list for all positions for which the employee is minimally qualified as follows:
 - 1. At his or her current grade level; and
 - 2. At any lower grade acceptable to the employee.
- (e) The Authority may delete an employee's name from the list when he or she declines a non-temporary position with a tour of duty similar to the position from which he or she was separated and a representative rate at the same as or higher than that of the position from which he or she was separated.

5207.25 APPOINTMENT FROM REEMPLOYMENT PRIORITY LIST

- (a) When a qualified person is available on the Authority's reemployment priority list, a Permanent Full-Time position shall not be filled except as provided in § 5207.26, and shall not be filled by the following:
 - 1. A new appointment;
 - 2. Transfer; or
 - 3. Reemployment of a person not on the Authority's reemployment priority list.
- (b) Subsection (a) of this section shall not apply when all qualified persons on the reemployment priority list decline or fail to respond to offers of employment.
- (c) In selecting employees on the priority list from among those adversely affected by the reduction in force, but who have not yet been separated, offers of employment shall be made according to the employees' relative standing in their competitive levels. In this regard, a lower standing employee shall not be offered a position if a higher standing employee qualifies for the position, unless
 - 1. the higher standing employee declines the position; or
 - 2. the lower standing employee is the best qualified.
- (d) The order of priority in selecting from the priority list shall be as follows:
 - 1. For positions from which separated, offers of employment shall be made according to the displaced employee's relative standing in his or her competitive level. In this regard, a lower standing displaced employee shall not be offered a position if a higher standing displaced employee qualifies for the position, unless:
 - A. the higher standing employee declines the position; or
 - B. the lower standing employee is the best qualified.
 - 2. For positions other than from which separated, preference shall be given to a tenure group I displaced employee over a tenure group II displaced employee, without regard to his or her relative standing within the tenure group, unless the tenure group II displaced employee is the best qualified.
- (e) An employee who is separated from an at-will position shall not be entitled to priority placement consideration to Permanent Full-Time positions.
- (f) The Authority may appoint a person not on the priority list or a person on the list with lower standing than others on the list only when it is necessary to obtain an employee

for duties that cannot be taken over without undue interruption to the Authority by a person on the list with higher standing than the person appointed.

- (g) The determination of whether an individual is "qualified" is to be made in accordance with the Authority's established standard hiring practices as provided in the Authority's Recruitment, Selection and Hiring Personnel Policy and Procedure.

5207.26 PRIORITY PLACEMENT CATEGORIES AND ORDER OF PRIORITY

- (a) Priority placement category 1 shall consist of the following:
 - 1. An employee or ex-employee entitled to statutory veteran's restoration rights under federal law, [38 U.S.C. § 4301](#) et seq., and as described in § 5214 of the Authority's Personnel Regulations; or
 - 2. An employee separated as a result of a compensable injury entitled to return to duty in accordance with the provisions of § 5214 of the Authority's Personnel Regulations.
- (b) Placement of an individual in priority placement category 1 shall be effected or considered in accordance with applicable statutory rights or orders or judgments pertaining thereto, and shall be effected as mandated.
- (c) Priority placement category 2 shall consist of the following:
 - 1. A current employee whose name has been entered on the Authority's reemployment priority list in accordance with § 5207.24;
 - 2. A former employee whose name has been entered on the Authority's reemployment priority list in accordance with § 5207.24;
 - 3. An employee entitled to placement or promotion consideration because of violation of or failure to adhere to law, regulation, or procedures for promotion of Permanent Full-Time employees; and
 - 4. An employee separated as the result of a compensable injury as described in § 5214.5 who was not placed within the two (2) years set forth in § 5214.19, for a period of one (1) year following expiration of the two-year (2-year) period.
- (d) Placement of an individual in priority placement category 2 shall be subject to the following:
 - 1. Except for a person in category 1 or an individual described in § 5207.26(e), no person shall be selected ahead of an individual in category 2 unless the selecting official justifies the nonselection in writing and obtains the approval

of the Human Resources Director or his or her designee;

2. Each individual shall be referred for positions in the order listed in § 5207.26(c).

(e) A current Permanent Full-Time employee, provided he or she is qualified, may be selected for a position for which a category 2 candidate described in § 5207.26(c)(3) or (4) has been referred; and the selection shall not need to be justified in writing.

5208. Performance

The Authority will maintain a performance management system.

5209 Disciplinary Process

5209.1 Employees will comply with the Authority's regulations, policies and procedures, and performance standards and requirements. Employees may be subject to disciplinary action up to and including termination for any failure to comply with such regulations, policies and procedures, and performance standards and requirements.

5210 Non-Union Appeals

5210.1 This regulation applies only to non-union full-time employees in regular positions who have completed their probationary period.

5210.2 A non-union full-time employee in a regular position who has completed his or her probationary period has the right to appeal a final disciplinary action resulting in a suspension for a period greater than 30 days or termination.

5210.3 All employees may appeal their annual performance rating in accordance with the Authority's personnel policies and procedures.

5211 Job Safety

5211.1 The Authority will develop, implement and maintain procedures which will provide for the safe performance of all work assignments.

5211.2 Employees are expected to comply with all safety rules, immediately report unsafe conditions to an Authority official, and avoid conduct which would create a risk to themselves or their co-workers.

5211.3 The Authority will implement a drug-free workplace program.

5212 Employee Access to Official Personnel Records

5212.1 The official personnel record of each employee of the Authority will be maintained by the

Human Resources Department.

- 5212.2 An employee's official personnel record may be disclosed to the employee, supervisors and management, or any representative of the employee's choice upon written request. All such disclosures should be made in the presence of a representative of the Authority or as required by law.
- 5212.3 Information considered by the Authority to be confidential in nature and which may be a part of an official personnel record, will be maintained in a separate file and will not be disclosed to any individual, including the employee, except where required by law.
- 5212.4 An Employee may request that information be added to or removed from his or her official personnel record. The addition or removal of such materials shall be made at the Authority's sole discretion.

5213 Conflict of Interest

- 5213.1 Authority employees shall not participate in transactions that may result in a conflict of interest or the apparent conflict of interest between the private interests of the employee and the public interests of the Authority. Specifically:
- (a) No employee may have a direct or indirect financial interest in any transaction that directly conflicts with the employee's responsibilities for the Authority.
 - (b) No employee may solicit or accept, directly or indirectly, on their own behalf or on behalf of a relative, any gift, gratuity, favor, compensation, offer of employment, or any other thing having more than a nominal monetary value from any person, corporation, or other entity having or seeking to have contractual, business, or financial relationship with the Authority.
- 5213.2 Political activities of employees of the Authority are subject to provisions of the Hatch Act Reform Amendment Act of 1993. This Act and the regulations which implement it govern employee political activities.
- 5213.3 Authority employees may engage in outside employment or private business provided they meet the following conditions:
- (a) An Authority employee may not engage in any outside employment or other activity which interferes with the full and proper discharge of his or her duties and responsibilities as an Authority employee.
 - (b) Each independent outside professional activity shall be conducted on the employee's own time without the use of Authority facilities, funds, supplies, staff or resources unless the activities are authorized and approved by the Authority in writing before they are initiated.

- (c) Each outside professional activity is not in conflict with any activity or policy of the Authority.
- (d) Any outside employment, private business activity or other interest shall not impair an employee's mental or physical capacity to such an extent that he or she can no longer carry out his or her duties and responsibilities as an Authority employee in a proper and efficient manner.

5213.4 An employee of the Authority who worked for a contractor or was a contractor doing business with the Authority is prohibited from supervising, directing or reviewing the work of such contractor. The General Manager may, under circumstance deemed to be in the best interests of the Authority, waive this prohibition.

5213.5 The relative of an Authority employee as defined in § 5202.6 may not work for a contractor on a project at the Authority for which the Authority employee has any direct responsibility or supervision.

5213.6 No Authority employee or authorized representative shall disclose proprietary or confidential information belonging to the Authority to any person other than Authority employees and authorized representatives who need access to the information as part of their duties for the Authority.

5213.7 Conflicts of Interest for Former Employees

- (a) A former employee, who voluntarily leaves their employment with the Authority in good standing, is prohibited for 18 months after leaving their employment with the Authority, from working for a contractor on an Authority project on which the employee directly worked. The General Manager may reduce this limitation period if it is determined that it is in the best interests of the Authority after a review and recommendation by the General Counsel.
- (b) Any person whose employment is terminated by the Authority other than pursuant to a reduction in force, is permanently barred from working on any Authority contract or project.

5214 Restoration to Duty

5214.1 Eligible employees returning to work after military duty and eligible employees returning to work after the termination of workers' compensation disability benefits will be restored to duty as required by law.

5215 Severance Pay not Pursuant to a Reduction in Force

5215.1 In accordance with criteria adopted by the Board of Directors, severance pay may be authorized by the General Manager to Authority employees who are voluntarily or involuntarily separated from Authority employment when the General Manager determines

that it is in the Authority's best interest. Severance pay under this Section applies to non-union full-time employees in regular and at-will positions who were not separated from employment as part of a reduction in force.

- 5215.2 The General Manager will determine the schedule and amounts to be paid to employees pursuant to the terms of this section. When the General Manager has determined that severance pay will be offered to employees, the General Manager may authorize a continuation of the employee's medical and life insurance coverage. The Authority's contribution to premiums will be paid for the same period as severance pay.
- 5215.3 The General Manager may provide employees involuntarily separated from Authority employment with out-placement assistance and/or other benefits, if the General Manager considers that it is in the best interest of the Authority.