

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board ("Board"), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2001) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules that replace existing section 306 of Title 23 DCMR and impose a limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in a portion of East Dupont Circle, which shall be known as the East Dupont Circle Moratorium Zone, for a three (3) year period.

On November 24, 2004 the Board received a joint request from the Dupont Circle Citizens Association ("DCCA") and the Dupont Circle Merchants and Professional Association ("DC MAP") to extend the existing East Dupont Circle Moratorium Zone for a six-month period ("Petitioners' moratorium request"). The Board subsequently held a public hearing on the joint petition on January 19, 2005, pursuant to the requirements of D.C. Official Code § 25-354 (2001). At the January 19, 2005 hearing, the Board heard testimony, including from Advisory Neighborhood Commission ("ANC") 2B Chairperson Darren Bowie, that a number of residents and businesses wished to provide additional comments to the Board on the Petitioners' moratorium request. As a result, the Board voted seven (7) to zero (0) on January 19, 2005, to keep the record open for additional comments from the public on the Petitioners' moratorium request until April 19, 2005, with the Board rendering a decision on the Petitioners' moratorium request by May 19, 2005. Additionally, the Board voted on January 19, 2005, to extend the existing East Dupont Circle Moratorium Zone on an emergency basis based upon testimony provided to the Board by the Petitioners at the public hearing, as well as letters submitted in favor of extending the moratorium by various District of Columbia residents. Specifically, the Board found that the present conditions in the East Dupont Circle Moratorium Zone, as listed above, justified an extension of the moratorium pending the closing of the comment period regarding the Petitioners' moratorium request on April 19, 2005 and subsequent Board decision by May 19, 2005.

A second public hearing was held by the Board, pursuant to D.C. Official Code § 25-354 (2001), on May 11, 2005, to receive additional comments from the public on the Petitioners' moratorium request. Specifically, the second hearing was conducted in response to a written request from the Petitioners, dated March 21, 2005, for an additional hearing to present evidence on issues raised by their proposed extension of the East Dupont Circle Moratorium Zone. The Petitioners' March 21, 2005 letter also contained two (2) separate proposals that included recommendations that differed from their original joint petition to the Board to renew the East Dupont Circle Moratorium Zone in its current form for six (6) months. For example, DCCA's and DC MAP's revised proposals contained requests to modify provisions of the existing moratorium as well as to change the time period for the new moratorium to five (5) and three (3) years, respectively. As a result, the Board voted on Wednesday, March 23, 2005 to extend the comment period on the Petitioners' moratorium request until May 11, 2005, to provide members of the public with

sufficient time to comment on the Petitioners' original moratorium request as well as the two separate proposals contained in the Petitioners' March 21, 2005 letter.

The Board received a significant amount of detailed testimony and comments, both in favor and in opposition to (1) the Petitioners' original moratorium request and (2) DCCA's and DC MAP's separate proposals contained in the Petitioners' March 21, 2005 letter. For example, the Board received comments from Ward Two Councilmember Jack Evans, ANC 2B, the Office of Planning, the Metropolitan Police Department ("MPD"), the Bay State Tenants' Association, Inc., the Restaurant Association of Metropolitan Washington ("Restaurant Association"), as well as numerous Dupont Circle residents and other District of Columbia organizations. The Board found the testimony and comments provided in response to the Petitioners' original November 24, 2004 moratorium request, as well as the two separate proposals contained in the Petitioners' March 21, 2005 letter, to warrant imposing a limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in the East Dupont Circle Zone, based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001).

In reaching its decision, the Board gave great weight to the written recommendations of ANC 2B as required by section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d)(3) (2001), as amended, and D.C. Official Code § 25-609 (2001). ANC 2B voted to extend the existing East Dupont Circle Moratorium by a 6-3 vote taken at a duly called public meeting on March 9, 2005. In reviewing the recommendation of ANC 2B as well as the proposals submitted by the Petitioners, the Board finds based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001), that the testimony and evidence put forward by DCCA, ANC 2B, and various individual residents located in or in proximity to the East Dupont Circle Moratorium Zone reveals that significant problems with peace, order, and quiet, particularly with respect to late night noise, litter, public urination, and vehicular and pedestrian safety, as well as parking problems continue to exist, particularly after 8 p.m., in the East Dupont Circle Moratorium Zone. For example, the testimony of Frank Hornstein with regard to the DCCA Dupont East Parking Survey revealed that there are significant residential parking and vehicular and pedestrian safety problems, including illegal parking, caused in part by patrons of ABC establishments on the 17th Street, N.W., corridor. Additionally, the DCCA Dupont East Parking Survey revealed that parking problems are at their worst in the East Dupont Moratorium Zone between 8 p.m. and Midnight. These residential parking and vehicular and pedestrian safety problems were also supported by testimony and written comments from various nearby residents, such as Judith Neibrief, Ralph Johanson, and Lex Rieffel. The Board did not find, however, that the ABC establishments in the East Dupont Circle Moratorium Zone are adversely affecting real property values in the surrounding area.

Additionally, the testimony provided by MPD, including Lieutenant Bryan Christian, Third District, whose comments were endorsed by Charles H. Ramsey, Chief of Police, MPD, revealed a number of significant public safety issues, including illegally parked vehicles by patrons of ABC establishments along with vehicular traffic congestion problems in the East Dupont Circle Moratorium Zone. Additionally, Lieutenant Christian indicated that Patrol Service Area 306, which contains the area of the East Dupont Circle Moratorium, experiences a significant number

of quality of life crimes and related problems, including drinking in public, public urination, and panhandling, as well as problems with litter caused by patrons of the ABC establishments who leave empty alcohol bottles on the ground. Finally, Lieutenant Christian indicated that there is a high level of noise pollution as a result of the ABC establishments in this area.

Currently, there are nineteen (19) ABC licenses located in the East Dupont Circle Moratorium Zone. The Board found the testimony of ANC 2B and DCCA -- in recommending that revoked or cancelled licenses be permitted to be replaced by licensees of the same class and sub-class -- to support maintaining the current limit of nineteen (19) ABC licenses permitted to be issued in the East Dupont Circle Moratorium Zone. However, the Board found the testimony and comments it received to reveal that there is both a need and neighborhood support to modify the existing number of Class CR or Class DR licenses in the East Dupont Circle Moratorium Zone. Specifically, testimony provided by DC MAP established that there are existing food establishments in the East Dupont Circle Moratorium Zone that (1) have neighborhood support; (2) operate as restaurants, and (3) would not likely have a significant adverse effect on peace, order, and quiet, or residential parking and vehicular and pedestrian safety, should they obtain a Class CR or Class DR license. For example, the Board received both testimony and signed petitions, including from numerous residents in ANC 2B, in support of an ABC license for the existing neighborhood restaurant Pasha Bistro located at 1523 17th Street, N.W., which testimony revealed has been a positive addition to the neighborhood. Additionally, the Board heard testimony and received comments from residents who believed that more Class CR and Class DR retailer's licenses should be permitted. For example, Dupont resident Robert Barker noted that the 17th Street, N.W., business district has remained flat and stated that he would like to see new and improved restaurants come to the 17th Street, N.W., area. Furthermore, the Board received testimony and comments from Lynne Breaux, Executive Director, Restaurant Association Metropolitan Washington, and Paul Cohn, Capital Restaurant Concepts, Ltd., about the need to provide new fine dining restaurants an opportunity to locate in the East Dupont Circle Moratorium Zone. After considering this testimony, the Board has decided to modify the existing moratorium to permit the issuance of three (3) additional Class CR or Class DR retailer's licenses and to place a limit on the number of retailer's licenses in the East Dupont Circle Moratorium Zone as follows: Class A – Two (2); Class B – Two (2); Class CR or Class DR – Sixteen (16); Class CT or Class DT – Two (2); Class CN or DN – Zero (0); and Class CX or Class DX – Zero (0). While the testimony presented at the May 11, 2005 hearing established that a significant number of patrons walk to the ABC establishments located in the East Dupont Circle Moratorium Zone, the Board believes that it is necessary to allow only three (3) additional Class CR or Class DR licenses in light of the fact that permitting more than three (3) new Class CR or Class DR licenses would cumulatively start to have a direct adverse impact on the limited amount of parking currently available, as well as increase the amount of noise, such as the noise generated by an increase in the amount of outdoor seating, in the East Dupont Circle Moratorium Zone.

ANC 2B voted on March 9, 2005 in favor of a four (4) year extension of the East Dupont Circle Moratorium, whereas the modified requests of DCCA and DC MAP urged for a five (5) year and three (3) year extension, respectively. After evaluating all the testimony and comments, the Board concluded that a three (3) year extension period, as sought by DC MAP, is the most appropriate. Specifically, comments from ANC 2B, Councilmember Evans, and various

residents revealed that ANC 2B has appointed a committee to examine the creation of a zoning overlay in the 17th Street, N.W., corridor as an acceptable long-term substitute for an ABC moratorium. The Board concluded that a three (3) year extension should be sufficient to determine whether progress can be made in creating a zoning overlay. Furthermore, the testimony of DC MAP, licensed establishments, and individual residents revealed that while problems with criminal activity, litter, noise, parking, and vehicular and pedestrian safety still exist in the East Dupont Circle Moratorium Zone to justify imposing a limit on the number of licenses issued, these problems appear to be decreasing and worth re-examining at the end of a three (3) year moratorium period. Specifically, the testimony of DC MAP and several East Dupont Circle businesses and residents revealed that the number of patrons visiting the East Dupont Circle Moratorium Zone has started to decline, in part due to the moratorium as well as the surrounding commercial growth of nearby areas with new ABC establishments including both the U Street, N.W., and 14th Street, N.W., corridors.

ANC 2B recommended four (4) modifications to the existing moratorium, all of which are supported by DCCA. First, ANC 2B requested that the holder of an existing Class DR license be permitted to request a change of license class to Class CR. The Board found merit in creating this exception based upon the testimony and comments it received on this issue, including from ANC 2B Commissioner Ramon Estrada, DCCA, DC MAP, the Restaurant Association, and Johnny Monis, who is the chef/owner of Komi located at 1509 17th Street, N.W.

Second, ANC 2B recommended that “[i]f a license used at a location within the East Dupont Circle Moratorium Zone is transferred outside the East Dupont Circle Moratorium Zone or is revoked or otherwise cancelled, a license of the same class and sub-class as that license may be transferred to a location within the East Dupont Circle Moratorium Zone.” This recommendation is intended to prevent the overall number of licensed establishments from being reduced merely because an existing licensee goes out of business. Commissioner Ramon Estrada’s testimony indicated that the ANC’s recommendation was limited to transfers of existing licenses to ensure that the licensee had a track record that could be examined by ANC 2B. The Board, based upon testimony submitted by the Restaurant Association and individual residents, however, finds that allowing a license application to be filed in these circumstances by either a new or existing license holder is a more equitable approach – provided that the granting of the license application will not exceed the number of licenses permitted in the East Dupont Circle Moratorium Zone for that particular class or sub-class.

Third, ANC 2B recommended that the holder of a Retailer’s license Class C or Class D within the East Dupont Circle Moratorium Zone should be able to apply for outdoor seating in public space. The Board agrees with this recommendation, which was supported by DCCA, as the Board found it helpful in clarifying that the existing prohibition on lateral expansion is not intended to apply to outdoor seating in public space.

Fourth, ANC 2B recommended that ABC licensees within the East Dupont Circle Moratorium Zone not be permitted to request a transfer or change of license class to Class CT or Class CN. This recommendation was also supported by DCCA and several nearby residents. In light of the Board’s decision to allow for three (3) additional Class CR or Class DR licenses, the Board found merit in not allowing restaurants to convert to tavern or nightclub licenses. Specifically,

not permitting establishments licensed as restaurants to change their class of license to taverns or nightclubs will help to limit further problems of late night noise in the neighborhood, of which numerous nearby residents complained. Prohibiting conversion of restaurant licenses to tavern or nightclub licenses will also help to focus new restaurants on their food sale requirements in order to qualify as restaurants in the neighborhood. The Board did not adopt the suggested prohibition on transfers contained in this modification, as it was inconsistent with other language supported by ANC 2B and DCCA, which permitted applications to be filed for a transfer of ownership and in some cases a transfer to a new location.

The Board also heard testimony from several licensees, including John Colameco, Owner, Peppers Restaurant; Paul Katinas, Owner, Annie's Paramount Steak House; and Dimitri and George Mallios, Owners, Trio Restaurant, requesting that the Board not renew or, alternatively, that the Board relax the existing limitations on lateral expansion as contained in the DCCA petition. For example, the testimony of Dimitri and George Mallios revealed that they were in favor of lifting or modifying the lateral expansion prohibition to allow them to expand Trio Restaurant into an existing frame shop. Additionally, the testimony of John Colameco indicated that he desired to expand Peppers Restaurant to include, among other things, outdoor roof deck seating. However, based upon the testimony and written comments from ANC 2B, DCCA, and various residents, the Board determined that failing to renew the existing lateral expansion prohibition as contained in DCCA's petition would adversely affect (1) peace, order and quiet, and (2) residential parking and vehicular and pedestrian safety in the East Dupont Circle Moratorium Zone. Specifically, the testimony of resident David Mallof revealed that removing the lateral expansion provision would dramatically increase the existing number of ABC licensed seats in the East Dupont Circle Moratorium Zone, having an adverse impact on peace, order, and quiet, including late night noise, and residential parking. In light of the testimony of Mr. Mallof and several licensees, the Board concluded that removing the lateral expansion prohibition would result in a much greater adverse impact to the neighborhood under D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001) than allowing three (3) additional Class CR or Class DR licenses in the East Dupont Circle Moratorium Zone. The Board notes that D.C. Official Code § 25-351(a)(2) provides the Board with the authority to renew the lateral expansion prohibition as it allows the Board to declare a moratorium on the issuance of licenses that constitute a substantial change.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23:DCMR (2004).

The emergency action is necessary to: (1) ensure that the limitations placed on the issuance of new retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX are not exceeded; and (2) prevent the filing of license applications involving lateral expansion requests, which the Board has determined pursuant to D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001) would:

- (1) have an adverse effect on peace, order, and quiet; and
- (2) have an adverse effect on residential parking needs and vehicular and pedestrian safety.

These emergency rules were adopted by the Board on May 18, 2005. The rules became effective on that date. The emergency rules will expire 120 days from the date of effectiveness or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. The Board also gives notice of its intent to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 306 to read as follows:

306. EAST DUPONT CIRCLE MORATORIUM ZONE

306.1 A limit shall exist on the number of retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 17th and Q Streets, N.W., Washington, D.C., as follows: Class A – Two (2); Class B – Two (2); Class CR or Class DR – Sixteen (16); Class CT or Class DT – Two (2); Class CN or DN – Zero (0); and Class CX or Class DX – Zero (0). This area shall be known as the East Dupont Circle Moratorium Zone.

306.2 The East Dupont Circle Moratorium Zone is more specifically described as beginning at New Hampshire Avenue and S Street; East on S Street to 17th Street; South on 17th Street to Riggs Place; East on Riggs Place to 16th Street; South on 16th Street to P Street; West on P Street to 18th Street; North on 18th Street to New Hampshire Avenue; and Northeast on New Hampshire Avenue to S Street, N.W.

306.3 All hotels, whether present or future, shall be exempt from the East Dupont Circle Moratorium Zone.

306.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a Retailer's license Class A, B, CR, CT, DR, or DT located within the East Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.

306.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the East Dupont Circle Moratorium Zone to a new location within the East Dupont Circle Moratorium Zone.

306.6 A license holder outside the East Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the East Dupont Circle Moratorium Zone unless the transfer will not exceed the number of licenses permitted in the East Dupont Circle Moratorium Zone for that particular class or sub-class, as set forth in Section 306.1.

306.7 Subject to the limitation set forth in Section 306.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.

306.8 No licensee in the East Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CT, DT, CN, or DN.

306.9 As of December 19, 2000, and at any time during the pending or renewed effective dates of the East Dupont Moratorium Zone established by this section, current holders of a Retailer's license Class A, B, C, or D within the East Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, the prior owner or occupant of which has not held within the last five (5) years a Retailer's license Class A, B, C, or D, or which has had a certificate of occupancy or building permit held in the name of any person other than the current holder of a Retailer's license Class A, B, C, or D within the East Dupont Moratorium Zone at any time within a period of five (5) years. Nothing in this section shall prohibit the Board from approving any application pending prior to December 19, 2000, subject to the requirements of Title 25 of the District of Columbia Official Code, nor shall this section prohibit holders of a Retailer's license Class C or D from applying for outdoor seating in public space.

306.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

Copies of the proposed rulemaking can be obtained by contacting Fred Moosally, General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the above address.

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101 et seq., hereby gives notice of emergency and proposed rulemaking action taken by the Board at its meeting held on June 13, 2005, to amend Chapters 25 and 30 of the Board Rules (Title 5 of the D.C. Municipal Regulations). These amendments, if enacted, will effect the following actions: (1) clarify that the timeframe in which a student with a disability may be placed in an alternative educational setting as a means of discipline is forty-five (45) school days and not forty-five (45) calendar days and include the infliction of "serious bodily injury upon another person" as another reason placing a student in an alternative educational setting; (2) enact a change in the definition of "developmental delay" required by the U.S. Office of Special Education (OSEP); (3) establish that a child's obtaining a GED does not end a Local Education Agency's (LEA's) obligation to provide that child with a Free Appropriate Public Education (FAPE), another amendment required by OSEP; (4) change the site at which some parents who wish to have their children assessed for suspected disabilities are to submit such requests; (5) eliminate the "severe discrepancy" requirement to determine whether a child has a Specific Learning Disability (SLD); (6) eliminate the requirement of benchmarks or short term objectives as a mandatory part of the IEP; (7) change the requirement for transition assessments from age fourteen to age sixteen; (8) change the requirement that procedural safeguards be provided to parents whenever an evaluation or reevaluation is conducted or at every meeting to one time a year, consistent with the IDEA Reauthorization; and (9) modify, consistent with the IDEA Reauthorization, the applicable forty-five (45) day timeline requirements for a due process hearing to commence thirty (30) days after the filing of the due process complaint in order to allow for case resolution through the Resolution Session or mediation.

The emergency is necessitated by the need to preserve the public welfare by: 1) clarifying the timeframe that the placement can be changed as a form of discipline for a student with a disability and including the infliction of serious bodily injury upon another person as a basis for disciplining child with a disability; 2) ensuring that requests for special education evaluations for District children are submitted to locations best equipped to handle these requests effectively and efficiently; 3) effecting changes in Board Rules required by the OSEP as a condition of continued federal special education funding for DCPS; 4) eliminating benchmarks and short term objectives as a mandatory part of the IEP; 5) changing the age for transition assessments from age fourteen to age sixteen; 6) changing the requirement that procedural safeguards be given to parents only one time a year; and 7) modifying the forty-five (45) day timeline requirements for a due process hearing consistent with the IDEA Reauthorization.

The emergency rulemaking took effect following approval by the Board at its meeting of June 13, 2005. It shall expire within 120 days of June 13, 2005 or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first. The Board also gives notice of its intent to take final rulemaking action to adopt this emergency and proposed rulemaking in not less than thirty (30) days from the publication of this notice in the D.C. Register.

Amend Section 2510.2 (b) as follows:

2510.2 DCPS may order a change in the placement of a child with a disability:

(b) To an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) **school** days if:

(1) The student carries **or possesses** a weapon **on school grounds** ~~to school~~ or to a school function; or

(2) The student knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance while at school or at a school function; or

(3) **The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. "Serious bodily injury" is defined as substantial risk of death; extreme physical pain; protracted and obvious disfigurement; loss or impairment of bodily function.**

Amend Section 3001.1 as follows:

3001.1 Developmental Delay-a condition in which a child, three through seven years of age:

(a) experiences severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures, in one or more of the following areas:

1. Physical development;
2. Language and communication development;
3. Social or emotional development;

4. ~~Sensory motor integration development~~ **Cognitive development;** or

5. Adaptive development; and

(b) due to the delay(s) described above, requires special education and related services.

No child shall be classified as having "Developmental Delay" based solely on deficits in the area of social and/or emotional development.

"Developmental Delay" does not apply to children with the following disabilities:

- (a) autism;
- (b) traumatic brain injury;
- (c) mental retardation;
- (d) emotional disturbance;
- (e) other health impairment;
- (f) orthopedic impairment;
- (g) visual impairment, including deafness;
- (h) hearing impairment, including deafness; or
- (i) speech/language impairment.

Amend Section 3002.2(c) as follows:

3002.2(c) The LEA shall not be obligated to provide FAPE to children with disabilities who have graduated from high school with a regular high school diploma. This provision does not apply to children with disabilities who have graduated, but who have not been awarded a regular high school diploma. ~~In the District, the achievement of the GED is the equivalent of graduating with a regular high school diploma.~~

Amend Sections 3004.1 (c) and (d) as follows:

3004.1 **Referral to IEP Team**

- (c) ~~If the child to be referred resides in the District attends a D.C. public school or is enrolling in a D.C. public school at the time this referral is made, this referral shall be submitted by his or her parent to the building principal of his or her home school, even if he or she does not attend or wish to attend this facility, on a form to be supplied to the parent by the home school at the time of the parent's request.~~
- (d) ~~If the child to be referred is a ward of the District residing outside of the city, this referral shall be submitted to the principal of a site designated by the Superintendent. If the child to be referred does not attend a D.C. public school and the parent does not register the child to attend a D.C. public school at the time the referral is made, this referral shall be submitted by the parent to a site designated by the Superintendent on a form to be supplied to the parent by that site at the time of the parent's request.~~

Amend Sections 3006.4 (a), (b) and (c) as follows:

3006.4 The IEP team shall determine that a child has a **Specific Learning Disability (SLD)** if:

~~(a) the child does not achieve commensurate with the child's age and ability levels in one or more of the areas listed below, when provided with learning experiences appropriate for the child's age and ability levels a disorder is manifested in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.~~

~~(b) the child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas Disorder includes such conditions as:~~

- ~~(1) oral expression perceptual disabilities;~~
- ~~(2) listening comprehension brain injury;~~
- ~~(3) basic reading skills minimal brain dysfunction;~~
- ~~(4) reading comprehension dyslexia and;~~
- ~~(5) written expression developmental aphasia;~~
- ~~(6) mathematics calculation; or~~
- ~~(7) mathematics reasoning; and~~

~~(c) the severe discrepancy between ability and achievement is not primarily the result of Disorder does not include a learning problem that is primarily the result of:~~

- (1) a visual, hearing or motor ~~impairment~~ **disability**;
- (2) mental retardation;
- (3) emotional disturbance; or
- (4) environmental, cultural or economic disadvantage.

(d) In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

Amend Section 3009.1 (c) as follows:

3009.1(c) The IEP for a child with a disability shall include:

(a) A description of the child's **present levels of academic achievement** ~~educational performance~~ **and functional performance**, including how the child's disability affects the child's involvement and progress in the general **education** curriculum (the same curriculum as for non-disabled children), ~~and the method and date of determining performance and for~~ **children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;**

(b) For preschool children, as appropriate, a description of how the disability affects the child's participation in appropriate activities;

(c) A statement of measurable annual goals, including ~~benchmarks or short-term objectives related to~~ **academic and functional goals, designed to:**

- (1) Meeting the child's needs that result from the child's disability; to enable the child to be involved in and **make** progress in the general **education** curriculum; and
- (2) Meeting each of the child's other educational needs that result from the child's disability.

(d) A statement of the special education and related services and supplementary aids and services, **based on peer-reviewed research to the extent practicable**, to be provided to the child, or on behalf of the child, and a

statement of the program modifications or support for school personnel that will be provided for the child:

- (1) To advance appropriately toward attaining the annual goal;
- (2) To be involved and **make** progress in the general **education** curriculum in accordance with §3011.1 of this Chapter and to participate in extracurricular and other nonacademic activities; and
- (3) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this section.

(e) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular **general education** class and in the activities described in § (d) of this subsection.

(f) A statement of any individual ~~modification in the administration of District-wide assessments of achievement that are needed in order for the child to participate in the assessment.~~ **appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with the guidelines established for alternate assessments;**

(g) If the IEP Team determines that the child may not participate in all, or part of, **shall take an alternate assessment or** a particular District-wide assessment of student achievement, a statement by the team of:

(1) ~~Why the assessment, or part of the assessment is not appropriate for the child~~ **the child cannot participate in the regular assessment;** and

(2) ~~How the child will be assessed~~ **the particular alternate assessment selected is appropriate for the child.**

(h) The projected date for the beginning of the service and modifications described in §(d) of this section and the anticipated frequency, location, and duration of those services and modifications

(i) A statement of how the child's progress toward the annual goals will be measured and how the child's parent will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their non-disabled child's progress, of:

(1) The child's progress toward annual goals; and

(2) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year

Amend Section 3009.3 as follows:

3009.3 The IEP for a child with a disability, beginning at age fourteen, and younger if determined by the IEP team to be appropriate ~~not later than the first IEP to be in effect when the child is sixteen (16), and updated annually thereafter,~~ shall include a statement of the transition services needs of the child under the applicable components of the IEP that focus on the child's course of study (such as participation in advanced placement courses or a vocational education program) **appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.**

Amend Section 3020.1 as follows:

3020.1 ~~The LEA shall provide a copy of the procedural safeguards to the parents of a child with a disability when the LEA:~~

~~(a) Receives the initial referral for an assessment;~~

~~(b) Conducts an evaluation;~~

~~(c) Provides the parents with notice of an IEP meeting;~~

~~(d) Conducts a reevaluation; and~~

~~(e) Receives a request for mediation or a due process hearing as described in this Chapter.~~

Procedural Safeguards.

(a) Copy To Parents – A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one (1) time a year, except that a copy also shall also be given to the parents:

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint for a due process hearing as described in this Chapter; and

(iii) upon a request by a parent.

(b) Internet Website -- A local educational agency may place a current copy of the procedural safeguards notice on its Internet website.

Amend Section 3030.1 as follows:

3030.1 **Preliminary Matters:**

(a) Prior to the opportunity for an impartial due process hearing, the LEA shall convene a Resolution Session with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the complaint. The Resolution Session:

- (i) shall convene within fifteen (15) days of receiving notice of the parents' complaint;
- (ii) shall include a representative of the agency who has decision making authority on behalf of such agency;
- (iii) may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
- (iv) must provide the parents of the child an opportunity to discuss their complaint and the facts that form the basis of the complaint and the LEA an opportunity to resolve the complaint unless the parents and the LEA agree in writing to waive such session, or agree to use the mediation process.

(b) **WRITTEN SETTLEMENT AGREEMENT.**--In the case that a resolution is reached to resolve the complaint at a meeting described in section 3030.1(a), the parties shall execute a legally binding agreement that is—

- (1) signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- (2) enforceable in any State court of competent jurisdiction or in a District Court of the United States.

(c) **REVIEW PERIOD.**--If the parties execute an agreement pursuant to Section 3030.1(b), either party may void such agreement within three (3) business days of the agreement's execution by written notice to the opposing party.

(d) **Hearing:** If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the complaint, the SEA shall assign a qualified impartial hearing officer to conduct a due process hearing in accordance with the Act. An impartial hearing officer shall conduct a due process hearing and issue a written decision not later than ~~forty-five days after the receipt of the request for a hearing~~ forty-five (45) days after the expiration of the thirty (30) day resolution period.

Written comments on the emergency and proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Director, D.C. Board of Education, 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 17 of the Nurse Staffing Agency Act of 2003 (hereinafter "the Act"), effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.*, at 44-1051.17, and in accordance with Mayor's Order 2004-83, dated May 21, 2004, hereby gives notice of his adoption, on an emergency basis, of the following amendments to Chapter 49 of Title 22 of the District of Columbia Municipal Regulations, governing the licensure and operating standards for nurse staffing agencies.

Final rules to establish licensure and operating standards for nurse staffing agencies were published on November 19, 2004, at 51 DCR 10633. Continued consultation between the Department of Health and affected stakeholders has resulted in agreement to modify a small number of provisions in the previously-published rules. These amendments would: (1) reduce the amount of the annual license renewal fee; (2) provide that the nursing staff supervisor, a licensed registered nurse, does not have to be a full-time employee; and (3) extend the permissible period for pre-employment communicable disease screening.

Emergency action is necessary to effectuate the agreement reached between the Department of Health and the affected stakeholders, while at the same time enabling the Department to adhere to its planned implementation schedule and thus to promptly effectuate the regulatory requirements of the Act and its accompanying regulations. For the benefit of consumers, health-care providers and potential nurse staffing agency licensees, these amendments should be effective and in place as soon as possible.

The emergency rules were adopted on April 8, 2005, and became effective on that date. The emergency rules will expire 120 days from the date of adoption, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health, pursuant to the authority noted above, also gives notice of his intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this Notice in the *D.C. Register*.

Chapter 49 of Title 22 of the DCMR is amended as follows:

Section 4902.2 is amended to read as follows:

4902.2 The fee for each renewal license shall be \$500.

Section 4904.2 is amended to read as follows:

4904.2 All nursing personnel and health aides, as defined in the Act and in these rules, must be evaluated by and must report to a Registered Nurse licensed in the District of Columbia who is an employee of the nurse staffing agency. Each nurse staffing agency must have at least one supervisory employee, qualified as described herein, accessible by and available to the agency and to its staff at all times.

Section 4904.7 is amended to read as follows:

4904.7 At the time of initial employment of each employee or staff member for whom it is reasonably foreseeable that he or she will come into contact with one or more patients, the nurse staffing agency must verify that the employee or staff member has been screened for communicable disease within the previous twelve (12) months, or according to superseding time guidelines issued by the federal Centers for Disease Control and Prevention, and that the employee or staff member is certified to be free of communicable disease.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be submitted to Denise S. Pope, Administrator, Health Care Regulation & Licensing Administration, Department of Health, 825 North Capitol Street, N.E., 2nd Floor, Washington, D.C. 20002, or electronically to denise.pope@dc.gov. Copies of the proposed rules may be obtained by writing to the address shown above.