CHILD SUPPORT GUIDELINE COMMISSION

NOTICE OF PUBLIC MEETING TO RECEIVE COMMENTS ON INITIAL RECOMMENDATIONS

Pursuant to D.C. Code § 16.916.02 (2003), on December 31, 2003, the District of Columbia Child Support Guideline Commission issued initial recommendations to the Mayor regarding changes to the District's Child Support Guideline.

To review the report containing the recommendations, please contact the Child Support Enforcement Division, Office of Corporation Counsel, 441 4th Street NW, 5th Floor North, Washington, DC, 20001, (202) 724-2131.

The Commission will hold a public meeting to receive comments on its initial recommendations as follows:

When: Thursday, February 12, 2004
8:00 – 10:00 am

Where: Child Support Enforcement Division
Office of Corporation Counsel
441 4th Street NW, 5th Floor North, Conference Room A
Washington, DC 20001

Anyone who wishes to comment on the initial recommendations is invited to present such comments at the public meeting and/or submit the comments in writing. Oral and written comments will be accepted as follows:

1. Oral Comments: If you wish to present oral comments at the meeting, advance sign-up is strongly encouraged and five minute time limits will be imposed. To sign up, please contact Kristin Henrikson at 2/661-5958 or **khenrikson@legalaiddc.org** at least two days in advance of the meeting. If you are unable to sign up in advance, the Commission will make every effort to receive your comments, but cannot guarantee that it will have time to do so.

2. Interpreters: Interpreters will be provided upon request. If you need an interpreter or other accommodation, please contact Kristin Henrikson.

3. Written Comments: If you wish to present written comments, either in addition to or in place of oral comments, nine (9) copies are requested and the deadline for submission is February 5, 2004. You may submit your written comments at the meeting or by mail as follows:

Child Support Guideline Commission
c/o Laurie Ensworth
Child Support Enforcement Division
Office of Corporation Counsel
441 4th Street NW, Suite 550 North
Washington, DC 20001

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

BOARD FOR

THE CONDEMNATION OF INSANITARY BUILDINGS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs, in accordance with section 742 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, as amended, D.C. Code section 1-1504 (1999 Repl.), hereby gives notice that the Board for the Condemnation of Insanitary Buildings' (BCIB) regular meetings will be held on the dates listed below for calendar year 2004, (the second and fourth Wednesday of each month). The meetings will begin at 10:00 a.m. in Room 7221 of 941 North Capitol Street, NW, Washington, D.C. 20002.

2004

January 14th	July 14th
January 28th	July 28th
February 11th	August 11th
February 25th	August 25th
March 10th	September 8th
March 24th	September 22nd
April 14th	October 13th
April 28th	October 27th
May 12th	November 10th
May 26th	November 24th
June 9th	December 8th
June 23rd	December 22nd

* * * * * *

These regularly scheduled meetings of the BCIB are open to the public. Please call the Building Condemnation Division on (202) 442-4322 or 442-4486 for further information or for changes in this schedule.

THE DISTRICT OF COLUMBIA BOARD OF EDUCATION

Schedule for Receiving and Approving Applications by the Board of Education to Establish Public Charter Schools in the District of Columbia

Pursuant to the District of Columbia School Reform Act of 1995, as amended, The District of Columbia Board of Education announces the schedule for receiving and approving applications to establish public charter schools in the District of Columbia in School Year 2005-2006. A public charter school shall be organized under the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-501 et seq.)

Application Process published in the D.C. Register, placed on the web site and disseminated in the community	January 7, 2004
Deadline for submission of Phase I (prospectus)	February 25, 2004
Review of Prospectus applications by panel	Feb. 27-March 9, 2004
Meeting held with successful applicants from Phase I	March 12, 2004
Report given to State Board of Education on the number of applicants moving into Phase II	March 17, 2004
Deadline for submission of Applications	June 25, 2004
Review of applications by review panel(s)	June 29-July 20, 2004
State Board of Education conducts public hearing	July/August 2004 (date to be established)
State Board of Education approves or denies applications for establishing public charter schools in SY 2005	September 2004
State Board of Education approves or denies conditional applications (if any) for establishing public charter schools in SY 2005	December 2004

For further information, contact:
Ms. Mary Bunn, Coordinator
Board of Education Public Charter Schools
(202) 442-5195

BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in fifteen (15) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code §1-309.06(d)(2);2001 Ed.

VACANT: **1C05**

Petition Circulation Period: **Tuesday, December 23, 2003 thru Monday, January 12, 2004**
Petition Challenge Period: **Thursday, January 15, 2004 thru Thursday, January 22, 2004**

VACANT: **7D07**

Petition Circulation Period: **Wednesday, December 24, 2003 thru Tuesday, January 13, 2004**
Petition Challenge Period: **Friday, January 16, 2004 thru Friday, January 23, 2004**

VACANT: **3D07, 3D08, 3E05**
5C10, 5C11
6B11
8B03, 8C05, 8C06

Petition Circulation Period: **Monday, December 29, 2003 thru Tuesday, January 20, 2004**
Petition Challenge Period: **Friday, January 23, 2004 thru Wednesday, January 29, 2004**

VACANT: **2A06**
4A05
8E01

Petition Circulation Period: **Tuesday, December 30, 2003 thru Tuesday, January 20, 2004**
Petition Challenge Period: **Friday, January 23, 2004 thru Thursday, January 29, 2004**

VACANT: **3B02**

Petition Circulation Period: **Monday, January 5, 2004 thru Monday, January 26, 2004**
Petition Challenge Period: **Thursday, January 29, 2004 thru Wednesday, February 4, 2004**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N

For more information, the public may call 727-2525.

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of: RACHEL L. CLAY Employee v. COUNCIL OF THE DISTRICT OF COLUMBIA Agency	OEA Matter No. 1602-0045-87R99 Date of Issuance: December 18, 2003

OPINION AND ORDER
ON
PETITION FOR REVIEW No. 3

Employee began working for the District government in 1964 as a Clerk-Typist with the Department of Public Welfare. She received several promotions within various agencies of the government and eventually began working for Agency on March 19, 1972 in the Office of the Secretary as an Administrative Aide (Steno). At the time of this appointment, Agency issued to Employee a Form 1 to effect the appointment. A Form 1 is the District government's

personnel form that officially documents a change to an employee's work status. This document stated that the position to which Employee had been appointed was classified as an "Excepted Position."

On February 13, 1975, Agency issued Employee another Form 1.[1] This Form 1 continued to classify Employee's position as "Excepted" and stated in the "Remarks" section that "[a]s a member of the D.C. Council Staff, appointee serves at the will of the appointing authority and this appointment is subject to termination at the pleasure of the Council." Agency issued Employee another Form 1 on May 17, 1976.[2] The "Remarks" section of this Form 1 stated, again, that Employee served at the will of the appointing authority and that the appointment was subject to termination at the pleasure of the Council.

Subsequently, Agency promoted Employee to the position of Legislative Information Aide. The Form 1 documenting this promotion, issued July 4, 1976, classified the position as "Excepted" and, in the "Remarks" section, contained the exact same language found in the Form 1s issued February 13, 1975 and May 17, 1976. Employee received another promotion on June 5, 1977, to the position of Legislative Services Specialist. The Form 1 issued for this appointment classified the position as "Excepted" and contained the same language in the "Remarks" section as that found in the earlier Form 1s.

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[1] It is unclear from the record as to why Agency issued Employee this Form 1.

[2] This particular Form 1 was issued to document Employee's return to duty after having been on a four-month leave without pay absence.

Ultimately, Agency promoted Employee to a supervisory position. This promotion took effect January 29, 1978, and although this position bore the same title as her previous position, Legislative Services Specialist, Employee did not serve in a supervisory capacity until this time. The Form 1 documenting this appointment classified the position as "Excepted" and contained the same language found in the "Remarks" section of the earlier Form 1s.

On April 5, 1984, Agency issued to Employee a Form 1 that documented a change in the title of Employee's position from Legislative Services Specialist to Supervisory Legislative Services Specialist. The document stated that the position was classified as "Excepted" and the "Remarks" section contained the same at-will language as the earlier Form 1s.

Believing that Agency had improperly effected a change to her employment status when it issued the April 5, 1984, Form 1, Employee filed a grievance with Agency. Specifically, Employee thought that on January 1, 1980, her position had been transferred into the Career Service by operation of the Comprehensive Merit Personnel Act (CMPA) and that Agency's attempt to classify her position as "Excepted" pursuant to the April 5, 1984, Form 1 was a wrongful reclassification.[3] Pursuant to Agency's grievance procedures, Agency appointed a hearing examiner to consider Employee's grievance and make a "non-binding recommendation

[3] January 1, 1980, has been a pivotal date in this appeal. Prior to this date all District government employees were governed by the federal civil service system. On January 1, 1980, the District implemented its own personnel system that was separate and distinct from the federal civil service system. The federal civil service two-category position classification system was replaced by a four-category system: Career Service, Excepted Service, Educational Service, and Executive Service.

to the Chairman regarding disposition of the complaint." On July 3, 1986, the designated hearing examiner found that Employee's position was indeed an Excepted Service position. Nevertheless, in view of Employee's service record with the District government, the hearing examiner recommended that Employee be issued a new Form 1 that would render her position "Career Status–Incumbent Only". On January 9, 1987, the Council's Chairman issued a final decision denying Employee's grievance. Thereafter, on January 27, 1987, Employee filed an appeal with the Office of Employee Appeals (OEA). On December 31, 1990, while her appeal was still pending at OEA, Agency removed Employee from her position. As a result, the Administrative Judge permitted Employee to amend her appeal to include the termination so that both the grievance and the termination could be considered simultaneously.

This appeal has traveled a circuitous path and has had several decisions issued along the way. This Office issued an Initial Decision on July 8, 1992. In that decision, the Administrative Judge found that even though "from March 19, 1972 through December 31, 1979, Employee [had] occupied several 'Excepted positions' under the federal classification system[,]. . .Employee automatically became a member of the Career Service" on January 1, 1980. The Administrative Judge reasoned that pursuant to D.C. Code § 1-602.4(c) (1987), Employee could not have, on January 1, 1980, transferred into the Educational Service, nor could she have transferred into the service created, by this section, for attorneys or for those

employees receiving a special appointment.[4] Thus the Administrative Judge reversed Agency's decision that had placed Employee in the Excepted Service and Agency's action terminating Employee. We upheld this decision in an Opinion and Order issued June 18, 1993.

Agency appealed our decision to the District of Columbia Superior Court and in an Order issued June 22, 1995, that court affirmed our decision. On appeal to the District of Columbia Court of Appeals, the court reversed that decision and remanded the appeal to this Office. The Court of Appeals held in *Council of the District of Columbia v. Clay*, 683 A.2d 1385 (D.C. 1996), that Employee did not become a member of the Career Service on January 1, 1980. The court relied on D.C. Code § 1-602.4(c)and stated that "[b]ecause [this section], by its terms conferred on [Employee] only those protections to which she was entitled prior to January 1, 1980, and because [Employee] did not enjoy, in 1979, the right not to be terminated without cause, it follows that the enactment of [this section] did not invest her with

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[4] D.C. Code § 1-602.4(c)(1987) states in pertinent part as follows:

> On January 1, 1980, all persons employed by the District of Columbia government, including those persons employed by the District of Columbia government on the date that this chapter becomes effective. . .shall automatically transfer into the appropriate personnel system as established pursuant to subchapters VIII [Career Service] and IX [Educational Service] of this chapter or § 1-610.4 [special appointments] or 1-610.9 [attorneys]. The classification of and compensation for the position assumed upon transfer, and the rights and benefits inhering in such position, shall be at least equal to the classification, compensation, rights and benefits associated with the position from which said employee is transferred. The rights and benefits protected under this subsection shall be only those applicable to said employees under the provisions of personnel laws and rules and regulations in force on December 31, 1979: Provided, however, that no employee covered under the provisions of this subsection shall be reduced in pay except as provided. . . .

such a right. . . .[T]he only reasonable import of the entire provision is that the transferred employee receives all of the rights and benefits that he or she enjoyed in the federal service or in the pre-CMPA Career Service, but no additional rights or benefits." *Id.* at 1390.

In an Initial Decision on Remand issued May 12, 1997, the Administrative Judge held that by virtue of the court's decision in *Clay*, Agency's decision that Employee was properly placed in the Excepted Service must be sustained. Further, the Administrative Judge held that Agency's decision to summarily dismiss Employee must also be sustained. Employee appealed that decision to us. In Employee's Petition for Review of that decision, Employee argued, *inter alia*, that Agency committed substantive violations of some rights that Employee presumably enjoyed prior to the enactment of the CMPA, that Agency committed procedural violations in the classification of Employee's position, and that the CMPA and the Home Rule Act (the law which mandated that the District devise its own personnel system) were unconstitutional. On October 10, 1997 we issued an Opinion and Order on Petition for Review No. 2. In this decision we found that the Court of Appeals had considered all of these arguments and had rejected each one by holding that Employee's position was properly classified in the Excepted Service. Thus we saw no need to reconsider these arguments but instead denied Employee's Petition for Review and upheld the Initial Decision on Remand.

Employee again filed an appeal with the Superior Court. In an Order issued November 3, 1998, the court remanded the appeal to this Office with instructions to consider whether Employee should be given Career Service status notwithstanding the statute that properly

placed Employee in the Excepted Service. On September 11, 2000, the Administrative Judge issued an Initial Decision on Remand II. In that decision the Administrative Judge considered three specific arguments posited by Employee: that Employee was similarly situated to other Agency employees who had been given Career Service Status and thus Employee should also have been given Career Service status; that Employee was entitled to Career Service status based on her reasonable reliance on past administrative practices of Agency; and that Employee was entitled to Career Service status based on the principle of "administrative collateral estoppel." With respect to the first two arguments, the Administrative Judge found that Employee was not similarly situated to the other Agency employees who had been given Career Service status and neither did Employee have a reasonable basis for relying upon certain past practices of Agency. As for Employee's third argument, the Administrative Judge found that based on the facts of this case, the collateral estoppel principle was not available to Employee. In that none of these arguments could confer upon Employee the Career Service status she sought, the Administrative Judge once again upheld Agency's action placing Employee in the Excepted Service.

Employee has once again filed a Petition for Review. In this Petition for Review, Employee again argues that she is entitled to Career Service status. Specifically, Employee states that she had certain rights prior to enactment of the CMPA and that Agency could not deprive her of those rights; that Agency committed certain errors in implementing its personnel policies; and that the CMPA and the Home Rule Act are unconstitutional. Employee does not

challenge the Administrative Judge's conclusions regarding the three specific arguments addressed most recently in the Initial Decision on Remand II.

We believe there is no legal nor factual basis for granting Employee's Petition for Review. As we stated in our October 10, 1997, Opinion and Order on Petition for Review No. 2, Employee has already put forth these arguments before the Court of Appeals. That court rejected each one. In fact, Employee has even sought to appeal the Court of Appeals' decision to the United States Supreme Court. The Supreme Court denied Employee's Petition for Certiorari, thereby effectively upholding the Court of Appeals decision. The Court of Appeals decision, which placed Employee in the Excepted Service, has not been overturned. Moreover, our review of the record indicates that Employee has made these arguments countless times before this Office during various stages of this protracted appeal. There is no compelling reason for us to reconsider these arguments. Therefore, we will deny Employee's Petition for Review and uphold the Initial Decision on Remand II.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

RECUSED
Erias A. Hyman, Chair

Horace Kreitzman

Brian Lederer

Keith E. Washington

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.

Certificate of Service

I certify that the attached **OPINION AND ORDER** was sent by regular mail this day to:

Rachel L. Clay
89 54th Street, SE
Washington, DC 20019

BRUCE COMLY FRENCH, ESQ.
7174 FORT AMANDA ROAD
LIMA, OH 45806-4154

213

BRIAN FLOWERS
OFFICE OF DOCUMENTS
441 4TH STREET, N.W.
ROOM 520
WASHINGTON, DC 20001

455

Katrina Hill
Clerk

December 18, 2003
Date

Department of Housing and Community Development

Postponement of the January 10th and January 13th Public Hearings on Section 108 and DC USA

The District has decided to postpone the public hearings on the proposed Section 108 Loan Guarantee application for the DC USA project, in order to evaluate and reflect on all anticipated projects on which the District contemplates use of the Section 108 Loan Guarantee program. The planned public hearings will be held in the spring of 2004, by which time the District will announce a comprehensive approach to using the Section 108 program to promote critical economic development projects throughout the city. The District maintains that the power of the Section 108 program should be used to deliver the maximum economic development benefits to District residents.

The District is postponing both the public hearing on January 10th, 2004, at the True Reformer Building on U Street, N.W., and the public hearing on January 13th, 2004, at the Matthews Memorial Baptist Church, on Martin Luther King, Jr., Ave., S.E., across from the Anacostia Metro Station. Notice of the hearings originally appeared in the D.C. Register on December 5th, 2003, and was titled ***"The District's Draft HUD Section 108 Loan Guarantee Application for the DC USA Project and Modification to the FY 2004 Consolidated Plan Action Plan."***

For comments or questions, please Beatrix Fields or Pamela Hillsman, at the Department of Housing and Community, at 202-442-7252 and 202-442-7256, respectively; and Michael Jasso or Alex Nyhan, in the Office of the Deputy Mayor for Planning & Economic Development, at 202-724-7014 and 202-724-7150, respectively.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
CORRECTED ORDER NO. 03-14-A
Z.C. Case No. 03-14
(Text Amendment – 11 DCMR § 3202.5(a))
July 31, 2003

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

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