

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to 17 DCMR Chapter 69 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of these changes is to clarify the types of continuing education credits that are acceptable as a prerequisite for renewal or reinstatement of a license.

Notice of Proposed Rulemaking was published in the D.C. Register on June 19, 2009 at 56 DCR 004763. No comments were received and no changes have been made to the rules as they were proposed. These rules shall become effective on publication in the D.C. Register

**Chapter 69 (Psychology) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:**

**Sections 6906.5 is amended to read as follows:**

6906.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 who submits an application to reactivate a license that has been inactive up to a maximum of two (2) years shall submit proof of having completed fifteen (15) approved continuing education credits for each inactive year. An applicant whose license was inactive for more than two (2) years shall retake and pass the D.C. jurisprudence examination and shall complete the number and type of continuing education credits required by Board which shall be determined on a case-by-case basis.

**Sections 6906.6 is amended to read as follows:**

6906.6 To qualify for a license, a person who submits an application for reinstatement of a license that has been expired up to a maximum of two (2) years shall submit proof of having completed fifteen (15) approved continuing education credits for each year the license was expired. An applicant whose license was expired for more than two (2) years shall retake and pass the D.C. jurisprudence examination, and complete the number and type of continuing education credits required by the Board, which shall be determined on a case-by-case basis.

**Sections 6906.7 is amended to read as follows:**

**6906.7** An applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each continuing education program or activity:

- (a) The name and address of the sponsor of the program;
- (b) The name of the program, its location, a description of the subject matter covered, a complete schedule with time allotments for each topic or subtopic and lunch or breaks, and the name of each instructor or speaker;
- (c) The date(s) on which the applicant participated in the program;
- (d) The hours of continuing education credit claimed; and
- (e) A copy of the continuing education completion verification document that includes the sponsor's signature and seal.

6906.8 [REPEALED]

**Section 6906.9 is amended to read as follows:**

- 6906.9 A licensee shall complete three (3) continuing education credits in each of the following:
- (a) Ethics or risk liability; and
  - (b) Cultural competence.

**Section 6907.2 is amended to read as follows:**

- 6907.2 The Board may approve the following types of continuing education programs if the programs meet the requirement of § 6907.3:
- (a) A seminar or workshop;
  - (b) An education program given at a conference;
  - (c) In-service training; and
  - (d) An online or home study course; or
  - (e) An undergraduate or graduate course given at an accredited college or university provided that the undergraduate course shall be acceptable only if the Board determines that the course is required or needed by the licensee as an introductory component of a professional development plan for the purpose of entering an area of psychology for which the licensee is currently not qualified to practice independently.

**Section 6907.3 is amended to read as follows:**

6907.3 To qualify for Board approval, a continuing education program shall do the following:

- (a) Be current in its subject matter;
- (b) Be developed by qualified individuals of whom one shall be a psychologist; ;
- (c) Be taught or facilitated by at least one qualified individual; and
- (d) Meet one of the following requirements:
  - (1) Be administered by an accredited college or university;
  - (2) Be approved by a Board-recognized psychology organization, accredited health care facility, or other legally constituted organization; or
  - (3) Be submitted by the program sponsor to the Board for review no less than sixty (60) days prior to the date of the presentation and be approved by the Board before the program or activity starts. The program or activity shall include each of the following:
    - (A) The sponsor's name and address;
    - (B) The program's name;
    - (C) The location;
    - (D) A description and specific goals;
    - (E) The target audience's maximum size and professional level (Master's or doctorate);
    - (F) The program's tentative or actual schedule, including the allotted time for lunch, breaks and topic headings or subheadings;
    - (G) An appropriately constructed evaluation form and continuing education completion verification document;
    - (H) The name and credentials of each instructor or speaker including relevant education, training, research, publications, work samples(s), honor or awards, special recognition and, if applicable;

- (I) The evaluation results of comparable programs or activities previously conducted.

**Section 6907.4 is amended to read as follows:**

6907.4 The Board shall maintain a list of approved continuing education programs on its website.

**Section 6907.6 is amended to read as follows:**

6907.6 The Board may approve the following continuing education activities:

- (a) Serving as an instructor or speaker at a conference, seminar, workshop, or in-service training;
- (b) Being the author or coauthor of an article (including “critiques” and “responses”) or a book review in a professional journal or periodical, or author or coauthor of a book or book chapter;
- (c) Serving as an editor (including “associate” and “junior” levels) for a professional journal, periodical or book;
- (d) Serving as an article reviewer for a professional journal or periodical; or
- (e) Having developed an online or home study continuing education course.

**Section 6908.2 is amended to read as follows:**

6908.2 For approved undergraduate or graduate courses taken for educational credit, each semester credit hour shall constitute five (5) continuing education credits and each quarter-hour credit shall constitute seven and one-half (7-1/2) continuing education credits.

6908.3 [REPEALED]

**Section 6908.4 is amended to read as follows:**

6908.4 The Board may grant a maximum of ten (10) continuing education credits per licensure period to an applicant who participates in one or more in-service education programs.

**Section 6908.7 is amended to read as follows:**

6908.7 The amount of continuing education credit that may be granted is fifty percent

(50%) of the amount of actual presentation time.

**Add a new section 6908.11 to read as follows:**

- 6908.11 The Board may grant continuing education credits for the following activities:
- :
- (a) For serving as a reviewer of articles submitted for publication, one (1) continuing education credit may be granted for each article reviewed up to a maximum of three (3) articles;
  - (b) For providing a published critique or response to a published article, one (1) continuing education credit may be granted up to a maximum of three critiques or responses;
  - (c) For publishing an article, a maximum of three (3) continuing education credits may be granted;
  - (d) For publishing a book, a maximum of fifteen (15) continuing education credits may be granted;
  - (e) For serving as a co-editor of a published book, a maximum of fifteen (15) continuing education credits may be divided among the co-editors with each co-editor receiving at least three (3) continuing education credits;
  - (f) For publishing a book chapter, a maximum of three (3) continuing education credits may be granted;
  - (f) For reviewing a book, a maximum of three (3) continuing education credits may be granted;
  - (h) For serving as a senior editor for a journal or periodical, a maximum of twelve (12) continuing education credits may be granted;
  - (i) For serving as an associate editor for a journal or periodical, a maximum of nine (9) continuing education credits may be granted;
  - (j) For serving as a junior (or comparable level) editor, six (6) continuing education credits may be granted;
  - (k) For serving as a speaker or instructor for a seminar, workshop, conference or in-service training, a maximum of six (6) continuing education credits per total presentation time may be granted; or

- (1) For serving as a developer of an online or home study continuing education course, a maximum of three (3) continuing education credits per course may be granted.

**Add a new section 6908.12 to read as follows:**

6908.12 A licensee shall receive no more than fifteen (15) continuing education credits for any combination of the activities listed in § 6908.11 or for completing any combination of online and home study courses.

**Add a new section 6908.13 to read as follows:**

6908.13 No continuing education credit shall be awarded for any activity of a licensee if either of the following is true:

- (a) The activity is an expected responsibility of a paid position held by the licensee (such as a professor on a tenure track publishing an article); or
- (b) The licensee received compensation for the activity (including honoraria) or the licensee shall receive compensation in the future.

**Section 6999 is amended to read as follows:**

6999.1 As used in this chapter, the following terms shall have the meanings ascribed:

**Continuing education** – an ongoing process consisting of formal learning activities that: (1) are relevant to psychological practice, education and science; (2) enable psychologists to keep pace with emerging issues and technologies; and (3) allow psychologists to maintain, develop and increase competencies to improve services to the public and enhance contributions to the profession.

**DEPARTMENT OF HEALTH  
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Notice of Proposed Rulemaking was published in the D.C. Register on June 19, 2009 at 56 DCR 004769. Comments were received and considered but no changes have been made to the rules as they were proposed. These rules shall become effective on publication in the D.C. Register

**Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:**

**I. The table of contents is amended as follows:**

**A. A new chapter heading is added to read as follows:**

**CHAPTER 85           LICENSED, REGISTERED, OR CERTIFIED HEALTH  
PROFESSIONAL CRIMINAL BACKGROUND CHECKS**

**B. Section headings for Chapter 85 are added to read as follows:**

8500	General Provisions
8501	Background Check Requirement
8502	Fees
8503	Recordkeeping
8504	Out of State Applicants
8505	Unreadable Fingerprints
8506	Board Review
8599	Definitions

**8500.           GENERAL PROVISIONS**

8500.1           These rules are promulgated pursuant to the "Licensed Health Professional Criminal Background Check Amendment Act of 2006", effective March 6, 2007, (D.C. Law 16-222, D.C. Official Code § 3-1205.22 *et seq.*) (hereinafter "the Act").

8500.2 Chapters 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) shall supplement this chapter.

### **8501 BACKGROUND CHECK REQUIREMENT**

8501.1 Each applicant for an initial license, registration, or certification; renewal of a license, registration, or certification; reinstatement of a license registration or certification; or person going from an inactive status to active status shall obtain a criminal background check. An initial applicant for licensure, registration, or certification who does not undergo a criminal background check shall not be issued a license, registration or certification until the background check has been completed.

8501.2 Criminal background checks shall be conducted in accordance with Metropolitan Police Department (MPD) and Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment, by means of fingerprint and National Criminal Information Center checks and procedures.

8501.3 The FBI criminal background check shall disclose the criminal history of the prospective applicant for the previous seven (7) years, in all jurisdictions within which the prospective applicant has worked or resided within the seven (7) years prior to the check. The MPD shall conduct a criminal background check that shall disclose misdemeanor violations, if any, of District law.

8501.4 An applicant who is obtaining a license, registration, or certification by endorsement shall not be required to undergo a criminal background check provided that a criminal background check was previously done on the applicant within four (4) years prior to the date of submission of the application.

8501.5 A licensee, registrant, or certification holder shall be required to undergo a subsequent criminal background check every four (4) years from the date of the licensee's registrant's or certification holder's previous background check.

### **8502 FEES**

8502.1 An applicant for a license, registration, or certification shall pay the processing fee that is established by the Health Professional Licensing Administration through rulemaking.

### **8503 RECORDKEEPING**

- 8503.1 The Health Professional Administration shall maintain, in the personnel record of each applicant covered by these rules, the following:
- (a) The date of licensure, registration, or certification;
  - (b) The date on which a criminal background check was requested;
  - (c) The date on which the results of the criminal background check were received;
  - (d) Official documentation of the criminal background check results;
  - (e) Any sworn statements submitted by the applicant; and
  - (f) Documentation of any actions taken against the applicant as a result of information obtained from the criminal background check.

- 8503.2 The Health Professional Licensing Administration shall not disclose criminal background check records obtained for the purpose of licensure, registration, or certification except:
- (a) To the Director or his or her designee during an official inspection or investigation of a facility;
  - (b) To the person who is the subject of the criminal background check;
  - (c) To comply with a court order; or
  - (d) To any person, with the written consent and authorization of the person who is the subject of the criminal background check.

**8504 OUT OF STATE APPLICANTS**

- 8504.1 An applicant for a license, registration, or certification who is not domiciled in the metropolitan Washington, D.C. area shall do the following:
- (a) Request a fingerprint package from the Health Professional Licensing Administration;
  - (b) Take the fingerprint card to the local or state police agency and be fingerprinted; and
  - (c) Mail the completed fingerprint card in the supplied envelope to the Health Professional Licensing Administration.

**8505 ILLEGIBLE FINGERPRINT CARDS**

- 8505.1 If an applicant's fingerprint card is rejected two (2) or more times by the Metropolitan Police Department because the prints are unreadable, an applicant shall come the District of Columbia to have the Metropolitan Police Department conduct a fingerprint scan. The applicant shall be responsible for paying all costs associated with the scan.

**8506 BOARD REVIEW**

- 8506.1 Results of a criminal background check shall be forwarded to the Board regulating the health profession in which the applicant desires to be licensed, registered, or certified. The Board shall utilize the information contained in the criminal background check, along with other information supplied in the application, to make a determination as to whether the applicant shall be licensed, registered, or certified.

**8599 DEFINITIONS**

- 8599.1 For the purposes of this Chapter, the following terms shall have the meanings ascribed:

**Act-** Licensed Health Professional Criminal Background Check Amendment Act of 2006

**Applicant** – A person applying for a license, registration, or certification to practice a health profession in the District of Columbia.

**Criminal background check** -- an investigation into a person's history to determine whether, within the seven (7) years preceding the background check, the person has been convicted of a crime in the District of Columbia or in any other state or territory of the United States where such person has worked or resided.

**Director** - the Director of the Department of Health or his or her designee.

**Health professional** - a person who holds a license, certificate, or registration issued under the authority of this subtitle or the Act.

**D.C. OFFICE OF HUMAN RIGHTS**

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**NOTICE OF FINAL RULEMAKING**

The Director of the Office of Human Rights and the Commission on Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), hereby give notice of the adoption of the following amendments to Chapter 5, Employment Guidelines, of Title 4 (Human Rights) of the District of Columbia Municipal Regulations (DCMR). The principal purpose of the amendments is to provide guidelines for the protected category of genetic information and the rights of breastfeeding mothers under the protected category of sex or gender. A number of technical amendments to other provisions of this chapter were also made.

A Notice of Proposed Rulemaking was published on May 1, 2009, in the D.C. Register at 56 DCR 3505. No public comments were received, and no changes have been made since publication. These final rules will be effective upon publication of this notice in the *D.C. Register*.

**CHAPTER 5 EMPLOYMENT GUIDELINES**

500	Purpose
501	Fair Recruitment
502	Specifications in Advertisements
503	Prehire Inquiries
504	Employment Testing
505	Compensation
506	Terms, Conditions, Rights, and Privileges of Employment
507	Age Guidelines
508	Family Responsibilities Guidelines
509	Genetic Information
510	Marital Status Guidelines
511	Matriculation Guidelines
512	National Origin Guidelines
513	Personal Appearance Guidelines
514	Disability Guidelines
515	Political Affiliation Guidelines
516	Religion Guidelines
517	Sex Guidelines
518	Breastfeeding Guidelines
519	Sexual Orientation Guidelines
520	Exceptions
599	Definitions

**500 PURPOSE**

- 500.1 In order to meet the obligations set forth in the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) (Act), the District of Columbia Office of Human Rights (Office) and the District of Columbia Commission on Human Rights (Commission) have adopted this chapter for the following purposes:
- (a) To resolve a number of issues which have been or may be raised before them;
  - (b) To provide advice to interested parties as to how they intend to interpret the law in cases which arise before them; and
  - (c) To assist in the internal processing of cases through Office and Commission procedures with respect to discrimination against any individual in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.
- 500.2 In general, the Office and the Commission adopt and incorporate by reference current regulations of the federal Equal Employment Opportunity Commission (EEOC) and shall follow general principles of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) wherever applicable in interpreting the Act, unless specific regulations in this chapter state the contrary.
- 500.3 Each employer shall provide an employment atmosphere free from discrimination.

**501 FAIR RECRUITMENT**

- 501.1. Each employer shall conduct recruitment and institute hiring practices in such a way as to assure that members of the protected classes as defined in § 599 are given fair notice of job vacancies, are given opportunities to apply for vacancies, and are given consideration for employment in all vacancies on bases which do not discriminate on grounds prohibited by law.
- 501.2 Hiring and job assignment practices shall include steps designed to assure that the effects of past exclusion of minorities, women, disabled persons, or other protected classes from all or part of the employer's work force are not carried forward into the future.

**502 SPECIFICATIONS IN ADVERTISEMENTS**

- 502.1 The prohibition on discriminatory employment advertising pursuant to D.C. Official Code § 2-1402.11(a)(4)(B) shall apply not only to the content of individual advertisements, but also to the placement of advertisements in columns classified according to race, color, religion, national origin, sex, age, marital status, personal

appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.

- 502.2 No advertisement, notice, or publication form shall set forth any *prima facie* discriminatory specification. The general test of whether the advertisement, notice, or publication form is lawful is whether it contains, either explicitly or implicitly, a barrier to applicants of a particular protected class. For example, a help-wanted ad for a “stenographer under 35,” or for a “bellboy,” or for a “young man,” or for a “young woman” is unlawful.
- 502.3 A newspaper or other advertising medium may rely on an employer’s written certification that the job is not covered by Title I of the Act, or is exempt from D.C. Official Code § 2-1402.11(a)(4)(B), because of business necessity.
- 502.4 Job titles which indicate a sex preference shall not be used unless based on a business necessity. When a substitute, non-discriminatory job title is not available, the body of the ad, notice, or form, shall specify that both males and females will be considered for employment, for example, Male/Female, M/F, M-F, Man/Woman or M/W.
- 502.5 An employer may lawfully fail or refuse to hire an individual who does not meet the *bona fide* physical requirements of a job. However, this action shall be based on the individual’s actual failure to meet the requirement and not on the employer’s assumption that persons of a certain protected class cannot meet the requirements.

### **503 PREHIRE INQUIRIES**

- 503.1 All aspects of prehire inquiries shall be free of discrimination on the basis of grounds protected by Title I of the Act. The term “prehire inquiries” includes questions asked on application forms, questions asked in employee interviews, or any other kind of inquiries before selection, including medical examinations.
- 503.2 The absence of any reasonable explanation for questions that identify an applicant’s membership in a protected class may be viewed as evidence of discrimination since the inquiries have nothing to do with job performance.
- 503.3 Inquiries necessary for compliance with affirmative action requirements of the federal or District of Columbia governments, or when taking remedial action to correct the effects of past discrimination, or when taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities for a protected group, are legal, in accordance with D.C. Official Code § 2-1402.53(a).
- 503.4 Inquiries as to age shall be limited to whether an applicant is between eighteen (18) and sixty-five (65) years of age, unless otherwise provided by law. No applicants shall be required to provide evidence of age or date of birth except in circumstances in which age is a business necessity.

- 503.5 An employer shall not require information of a member of one class which he or she would not require of a member of another class. For example, an employer shall not ask an older applicant questions regarding health, if the employer does not question younger applicants in the same way.
- 503.6 Pre-employment medical inquiries, or inquiries as to whether an applicant is disabled or to the severity of the disability, shall not be allowed except as provided in § 513.
- 503.7 It shall be unlawful to request from an applicant, at his or her expense, his or her record of arrests.
- 503.8 Processing and retention of applications and the information in the applications shall be done equally without regard to a person's membership in a protected class. Processing and retention of applications and the information in the applications for other lawful purposes, such as the purposes noted in § 503.3, shall be legal, in accordance with D.C. Official Code § 2-1402.53(a).

#### **504 EMPLOYMENT TESTING**

- 504.1 The Office and the Commission adopt and incorporate by reference the *Uniform Guidelines on Employee Selection Procedures* adopted by the EEOC and published at 29 CFR § 1607.
- 504.2 Any testing for disability shall be done in accordance with § 513.

#### **505 COMPENSATION**

- 505.1 It is unlawful to discriminate in compensation on the basis of membership in any class protected by Title I of the Act. This prohibition shall apply to practices supported by a union contract providing for discriminatory compensation.
- 505.2 For the purposes of this chapter, "compensation" is defined as all types and methods of remuneration paid to or on behalf of an employee for employment, including wages, uniforms, overtime pay, paid vacations and holidays, paid leaves of absence (except as otherwise herein provided under guidelines for specific protected classes), paid lunch periods, and paid rest or coffee breaks. Commissions, draws, advances, and guarantees are also compensation.
- 505.3 Insurance, retirement, and benefit plans shall be considered a form of compensation if an employer contributes to them. Any differential in these forms of compensation shall be unlawful if the differential determined on the basis of membership in a class protected by Title I of the Act. In order to justify a differential in compensation, an employer shall have a non-discriminatory basis for the differential.
- 505.4 Differentials in compensation that flow from the effects of unlawful past discrimination and which are based on membership in the classes protected by Title I of the Act, shall be unlawful, including those resulting in some disadvantage in a merit, incentive, or seniority plan.

- 505.5 The Office and the Commission shall make a determination as to whether discrimination exists in compensation by weighing the following criteria:
- (a) The type of job; and
  - (b) The skill, effort, and responsibility involved in performing the job.
- 505.6 Insurance, retirement, and welfare plans shall not discriminate on the basis of membership in any class protected by Title I of the Act, except as in the following:
- (a) Any *bona fide* employment benefit plan, such as a retirement pension or insurance plan which is specifically exempt under the provisions of the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 *et seq.*); and
  - (b) Insurance plans which are otherwise lawful and which are based on actuarial tables that limit or deny coverage to certain types of disability.
- 505.7 If an employer contributes to an employee benefit plan, the employer shall furnish equal benefits for all protected classes even if the employer's contribution is greater for one class than for another.
- 505.8 Employees in protected classes shall not be required to make greater contributions in order to receive equal benefits. If family insurance is provided, that insurance shall provide the coverage for all protected classes and cannot provide only individual coverage for certain protected classes, for example, women or divorced persons.
- 505.9 Employee benefit plans shall be illegal if they favor survivors of male employees over those of female employees, or vice versa. Nothing in this subsection shall be considered to preclude the operation of a *bona fide* waiting period clause.

**506 TERMS, CONDITIONS, RIGHTS, AND PRIVILEGES OF EMPLOYMENT**

- 506.1 An employee is entitled to equal treatment in all those aspects of employment protected under Title I of the Act. The following are examples of terms, conditions, rights, and privileges:
- (a) Rotation of shifts;
  - (b) Dress and appearance;
  - (c) Use of company facilities;
  - (d) Trial periods on jobs;
  - (e) Hours of work;
  - (f) Office sponsored or endorsed social functions;
  - (g) Rest or lunch periods and other breaks; and

(h) Leaves-of-absence, vacations, other benefits.

- 506.2 A discriminatory practice shall include, but is not limited to, any practice or policy used by an employer to distinguish, set apart, or show a difference in treatment or which operates to the disadvantage of a protected group without a valid business necessity.
- 506.3 It shall be a discriminatory practice to require employees to use only the English language while on the employer's premises.
- 506.4 It shall be viewed as a discriminatory practice to allow employees of one class to be addressed only by the titles of "Mr.," "Mrs.," "Miss," or "Ms." while allowing employees of another class to be addressed by their first names.
- 506.5 An employer shall be responsible for the discriminatory actions of its supervisory personnel. An employer shall also be responsible for the discriminatory actions of its other employees of which it knew or should have known.
- 506.6 Codes for dress and appearance shall be applied equally to all employees performing the same kind of work. Any restriction or limitation on dress or appearance shall be a result of a reasonable business purpose. In the absence of a reasonable business purpose, an employer shall not refuse to allow an employee to wear a hair or dress style symbolic of national origin, religion, or race.
- 506.7 All facilities shall be available to all employees on a non-discriminatory basis. This includes lunchrooms, snackbars, recreation areas, and off-site facilities provided by an employer, such as employee social clubs, health clubs, swimming pools, etc. Locker rooms, restrooms, and shower rooms may be lawfully segregated based on sex.
- 506.8 It shall be a discriminatory practice for an employer to seek to evade responsibility for discrimination by transferring the use or control of facilities to employees or employee groups.
- 506.9 It shall be the responsibility of the employer to use all reasonable means to assure the full and equal participation of a member of a protected class in a work unit in which members of that protected class were not previously employed.
- 506.10 Employers shall secure all personnel files and other documents which contain information which is susceptible to use for a discriminatory purpose and shall allow access to the files only on a "need to know" basis.
- 506.11 Post-hiring inquiries shall not be used for discriminatory purposes.

## **507 AGE GUIDELINES**

- 507.1 The Office and the Commission adopt and incorporate by reference the guidelines on age discrimination promulgated by the EEOC and published at 29 CFR § 1625.

**508 FAMILY RESPONSIBILITIES GUIDELINES**

508.1 Family responsibilities are not job-related and shall be impermissible considerations for employment decisions. The fact that an employee or applicant has to support a person or persons in a dependent relationship, irrespective of the age of the individual in the dependent relationship or the reasons for the dependency, shall not be used as a reason to fail to hire the applicant or fail to retain or promote the employee, nor shall that fact be otherwise used to discriminate against the employee or applicant with respect to the terms and conditions of employment.

508.2 A dependent relationship includes the relationship of a caregiver who:

- (a) Contributes to the ongoing support and care of a child for whom the employee or applicant assumes parental responsibility; or
- (b) Contributes to the ongoing support and care of an individual who is related by blood, legal custody, or marriage; or
- (c) Contributes to the ongoing support and care of a person with whom the employee or applicant shares a residence and maintains a domestic partnership as defined in D.C. Official Code § 32-701(4).

508.3 An employee or applicant who is a caregiver for a person in a dependent relationship is entitled to equal treatment in the terms, conditions, and privileges of employment, including those benefits listed in § 506.1.

**509 GENETIC INFORMATION**

509.1 The Office and Commission adopt and incorporate by reference any guidelines adopted by the EEOC pursuant to the Genetic Information Nondiscrimination Act of 2008 (Pub. L. No. 110-233; 122 Stat. 881).

509.2 The following actions or practices shall be prohibited:

- (a) It is a discriminatory practice for an employer, employment agency, or labor organization to do the following:
  - (1) Requesting or requiring a genetic test of, or administering a genetic test to, an employee or applicant for employment or membership; and
  - (2) Seeking to obtain, obtaining, or using genetic information of an employee or applicant for employment.
- (b) It is a discriminatory practice for an employment agency to fail or refuse to refer any individual for employment or otherwise discriminate against any individual because of genetic information of the individual.
- (c) It is a discriminatory practice for a labor organization to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member.

- (d) It is a discriminatory practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to discriminate against any individual because of the individual's genetic information in admission to, or employment in, any program established to provide apprenticeship or other training or retraining.
- (e) It is a discriminatory practice for an employer to use family medical history in making employment decisions.
- (f) It is a discriminatory practice for an employer to request information about family medical history pre-employment or post-employment, including through any type of medical examination required of employees for the purpose of determining continuing fitness for duty.

509.3 An employer, employment agency, or labor organization may use genetic testing or information for the following reasons:

- (a) With the written and informed consent of the employee or applicant for employment, to determine the existence of a *bona fide* occupational qualification; or
- (b) To investigate a workers' compensation or disability compensation claim, or determine an employee's susceptibility or exposure to potentially toxic substances in the workplace.

509.4 If determining an employee's susceptibility or level of exposure to potentially toxic substances in the workplace, the employee shall provide, in writing, his or her informed consent. The genetic information shall be provided to the employee in writing as soon as it is available, and the genetic information shall not be disclosed to any other person.

509.5 A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following requirements is met:

- (a) The request is made in writing, and complies with local or federal law with respect to the protection of human subjects;
- (b) The plan or issuer clearly indicates to each participant or beneficiary, or in the case of a minor child, to the parent or legal guardian of such beneficiary, to whom the request is made that:
  1. Compliance is voluntary; and
  2. Non-compliance will have no effect on enrollment status or premium or contribution amounts; and
- (c) No genetic information collected or acquired for these purposes shall be used for eligibility purposes.

- 509.6 The following are not considered genetic information for purposes of this chapter:
- (a) Information about an applicant's or employee's current health status, which includes information about sex, age, physical exams, and chemical, blood, or urine analyses;
  - (b) Genetic services or health services provided by the employer, including genetic tests, provided to obtain or interpret genetic information for diagnostic or therapeutic purposes, or for purposes of genetic education or counseling; and
  - (c) Results obtained from tests for abuse of alcohol or drugs.
- 509.7 If an employer, employment agency, or labor organization obtains protected genetic information when seeking current health status information, the genetic information will be subject to the same restrictions that apply to genetic information generally.
- 509.8 If genetic information is obtained for any lawful reason, it shall be stored in a separate confidential file, not in the employee's general personnel file.

## **510 MARITAL STATUS GUIDELINES**

- 510.1 Recruiting methods for all job classifications shall not include a preference for a specific marital status. For example, an employer shall not advertise, "Excellent opportunity for a single person who enjoys travel" or "Stable, married person preferred."
- 510.2 Questions pertaining solely to marital status shall be eliminated from applications for employment, unless the employer can show a business necessity for the inquiry.
- 510.3 Decisions on hiring, promotion, compensation, lay-off, and other terms and conditions of employment shall not be related to marital status.

## **511 MATRICULATION GUIDELINES**

- 511.1 An employer shall not use different pay scales for students performing the same work duties as other employees with the same experience, skills, work schedule, hours, and the like, unless those differences are made pursuant to either of the following:
- (a) A federal government or District government approved summer job program; or
  - (b) "Student certificate" programs issued by the U.S. Department of Labor under the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).
- 511.2 An employer shall not set aside specific job classifications for students in order to give low compensation to all persons in such job classification; provided, that an employer shall not be prohibited from creating jobs for the purpose of providing financial assistance to students. For example, a school may provide research or teaching assistantships to students while compensating researchers or instructors, hired solely for the purpose of their contribution to the school, at a higher scale.

511.3 An employer shall not refuse to hire or discharge a person because he or she is a part-time student if the matriculation status does not interfere with that person's ability to efficiently and effectively perform the duties of the job. An employer shall not assume that an applicant will be unable to work full-time and be a matriculant in a school or college.

511.4 An employer shall grant reasonable periods of leave to an employee for the purpose of registration in a school or college when reasonable accommodation can be made.

## **512 NATIONAL ORIGIN GUIDELINES**

512.1 The Office and Commission adopt and incorporate by reference the guidelines on National Origin Discrimination promulgated by the EEOC and published at 29 CFR § 1606.

## **513 PERSONAL APPEARANCE GUIDELINES**

513.1 It shall be considered a violation of Title I of the Act to discriminate against any individual on the basis of outward appearance for purposes of recruitment, hiring, or promotion. However, an employer may prescribe standards of appearance or dress for personnel which serve a reasonable business purpose; for example, to identify its employees to the public by means of a distinctive uniform, or to maintain a neat and clean appearance.

513.2 An employer may also prescribe standards of appearance or dress for personnel in order to prevent a danger to the health, welfare, or safety of employees or customers; for example, requiring head or hand coverings in food service jobs, or prohibiting loose items of clothing in jobs where the items become caught in machinery.

513.3 Characteristics such as hair or dress style may be symbolic of race, national origin, or religion, and action to limit or prevent their use shall constitute a form of discrimination, unless the employer can show a reasonable business purpose.

## **514 DISABILITY**

514.1 Except as otherwise provided in this chapter, the Office and the Commission adopt and incorporate by reference the provisions promulgated by the EEOC and published at 29 CFR § 1613.701 *et seq.*

514.2 Employment agencies which fail to accept applications, refer equally, or provide placement services for persons with disabilities shall be engaging in a discriminatory practice.

514.3 Pre-employment inquiries may allow inquiry into the physical condition or past medical history of an individual for purposes allowed by § 503.3 or based on a business necessity. Where general characteristics of a physical condition would disqualify an applicant for a job, for example, where a person with a minor visual impairment or history of seizures applies for a driver position, the employer shall ascertain whether the

individual's specific condition prohibits him or her from meeting a necessary standard for safety or job performance.

- 514.4 No employer shall refuse to hire a person with a disability when lack of such disability is required for a secondary portion of the job and when reasonable accommodation can be made through minor job restructuring.
- 514.5 Tests offered applicants and employees shall be related to the job. For example, it shall be a discriminatory practice to give a blind person a vision test when sight is not required for the job.
- 514.6 If health and insurance benefits are provided to employees for some disabilities, they shall be provided for all disabilities having a similar anticipated cost. This shall not prevent exclusions based on the cost of service to the individual, but it does prevent exclusions based on the number of individuals to be serviced.
- 514.7 Excessive absenteeism, even if caused by injury or illness, may be grounds for termination if it interferes significantly with or causes an undue hardship upon the performance of duty.
- 514.8 The use of non-discriminatory selection procedures shall not relieve employers, unions, or employment agencies of other legal obligations to take positive action in affording employment and training to persons with disabilities.
- 514.9 Before a business necessity may excuse discrimination against a person with a disability, it shall be found that there is no alternative to the particular practice, or that a reasonable accommodation cannot be made.
- 514.10 Where an employee's specific physical or mental disability precludes the normal operation of a business or particular activity in existing structures, reasonable accommodation shall be made, where possible, through modifications in job description, workplace design, or physical renovation. In determining whether a modification is a reasonable accommodation, the Office and Commission shall consider factors such as the following:
- (a) The nature and cost of the modification;
  - (b) The number of people, both those with and without disabilities, who would benefit by the modification;
  - (c) The benefits or detriments resulting from the modification with regard to the type and composition of the business and the physical structure and layout of the workplace; and
  - (d) When new construction, substantial redesign or remodeling, etc., occurs, whether the modification should provide for increased physical accessibility.

514.11 Preferences of employees, tenants, patrons, clients, or other individuals that exclude persons with disabilities shall not be considered within the purview of business necessity.

514.12 Employers shall retain employees who have become disabled while on the job so long as reasonable accommodation can be made.

### **515 POLITICAL AFFILIATION GUIDELINES**

515.1 An employer, other than a political organization, shall not discharge, refuse to hire, or otherwise discriminate against an employee with respect to employment because of the employee's present or past political affiliation or lack of political affiliation.

515.2 Mere membership in a political party having unlawful goals shall not suffice to justify discrimination in employment unless that prohibition is required by federal or District law.

515.3 An employer shall not retaliate against an employee for failure to vote for a designated candidate. This shall not prevent an employer or employee from expressing support for any candidate unless prohibited under federal or District civil service laws.

515.4 An employer shall not require employees to contribute to fundraising campaigns of any political party or candidate or to provide any type of support for any political party or candidate.

### **516 RELIGION GUIDELINES**

516.1 The Office and Commission adopt and incorporate by reference the guidelines on religious discrimination promulgated by the EEOC and published at 29 CFR § 1605.

### **517 SEX GUIDELINES**

517.1 The Office and Commission adopt and incorporate by reference the guidelines on sex discrimination promulgated by the EEOC and published at 29 CFR § 1604.

517.2 Recruiting methods for all job classifications shall be without regard to sex, except where sex is a business necessity.

517.3 Hiring, assignment, promotion, compensation, lay-off, and all terms, conditions, and privileges of employment shall not be based on the sex of an individual, unless sex is a business necessity. Employers shall not permit creation of a working environment which is hostile, intimidating, or offensive, or otherwise allows harassment related to sex.

517.4 Women shall not be rejected for employment, suspended or discharged from employment, or required to take leave involuntarily solely on account of pregnancy.

- 517.5 Medically verifiable disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery from those disabilities are, for all job-related purposes, to be treated as temporary disabilities under any health or temporary disability insurance policies or sick leave plans available in connection with employment.
- 517.6 Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance policies or sick leave plans, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.
- 517.7 Sick leave plans shall not exclude illness connected with pregnancy.
- 517.8 It shall be considered a discriminatory practice for a person in an employment relationship to overtly threaten or adversely affect another person's employment status for failure to engage in sexually-related activity on or off the job.
- 517.9 It shall be a discriminatory practice for an employer to discriminate between men and women with regard to fringe benefits.
- 517.10 Fringe benefits for the purpose of this section, shall include, but not be limited to, such items as medical, hospital, accident, and life insurance, retirement benefits, profit-sharing and bonus plans, and leave.
- 517.11 No employer shall condition fringe benefits to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, since such a practice discriminatorily affects the rights of women employees, and "head of household" or "principal wage earner" status bears no relationship to job performance. Any such practice shall be viewed as a *prima facie* violation of the prohibitions against sex discrimination contained in Title I of the Act.
- 517.12 It shall be a discriminatory practice for an employer to make available fringe benefits for the spouses and families of employees of one sex, where the same benefits are not made available for the spouses and families of another sex. An example of such an employment practice is a situation in which the spouses of female employees receive benefits for all temporary disabilities, but the spouses of male employees receive benefits for all disabilities but pregnancy.
- 517.13 It shall not be a defense under Title I of the Act to a charge of sex discrimination in fringe benefits that the cost of the benefits is greater with respect to one sex than the other.
- 517.14 It shall be a discriminatory practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex.

517.15 Insurance plans, including, but not limited to, endowment policies and annuity contracts, shall provide for equal benefits for members of both sexes, even if the employer's contribution is greater for one sex than it is for another. Employees in protected classes shall not be required to make greater contributions in order to receive equal benefits.

## **518 BREASTFEEDING GUIDELINES**

518.1 The Office and the Commission adopt this section for the following purposes:

- (a) To implement the provisions of the Act regarding discrimination based on breastfeeding in employment, housing, public accommodations, or educational institutions, including all agencies of the District of Columbia government and its contractors or grantees;
- (b) To provide guidance with regard to the requirements of the law to all employers, housing providers, businesses, organizations, educational institutions, and District government agencies and contractors seeking compliance with the law;
- (c) To educate the public on the behaviors, conduct, and actions that constitute unlawful discrimination based on breastfeeding;
- (d) To ensure that breastfeeding mothers and their children are treated with dignity and respect; and
- (e) To guide the internal processing of complaints filed with the Office.

518.2 The Office shall provide information to employers and employees regarding their rights and obligations under this section. Employers shall conspicuously post and maintain in the workplace a notice containing this information.

518.3 Each employer shall create a policy with respect to its employees who are breastfeeding mothers; provided, that such policy shall not contain any rules or guidelines which dictate whether the mother's breast, or any part of it, is uncovered during or incidental to the breastfeeding of her child. The policy shall be posted along with the notice required by § 518.2.

518.4 A breastfeeding mother shall have rights to include, but not be limited to, the following:

- (a) The right to breastfeed her child in any location, public or private, where she has the right to be with her child;
- (b) The right to breastfeed or express breast milk in accordance with this section, notwithstanding any other provision of District of Columbia law governing indecent exposure or the definition of the private or intimate parts of a female person, including that portion of the breast that is below the top of the areola;

- (c) The right to be free from any workplace disciplinary action because of the exposure of any part of her breast during breastfeeding or while expressing breast milk;
- (d) The right to be free from harassment or ridicule in the workplace because of her breastfeeding or expressing breast milk; and
- (e) The right to workplace accommodations while breastfeeding or expressing breast milk.

518.5 Employers shall accommodate breastfeeding employees by taking steps including, but not limited to, the following:

- (a) Affording reasonable daily break periods, paid or unpaid, so that the employee may breastfeed her child or express breast milk to maintain milk supply or relieve physical discomfort; provided, that an employer may require that such break periods run concurrently with any break periods already afforded; provided further, that an employer shall not be required to provide breastfeeding-related break periods if doing so would create an undue hardship;
- (b) Affording flexible schedule, job-sharing, or telecommuting arrangements, if none are already afforded, unless doing so would create an undue hardship; and
- (c) Making reasonable efforts to provide a sanitary room or other location in close proximity to the work area, other than a bathroom or toilet stall, where an employee can breastfeed or express breast milk in privacy and security. The location:
  - (1) May include a childcare facility in close proximity to the work area; or
  - (2) If at the work area, shall have adequate lighting, ventilation, and an electrical outlet (if necessary for a pumping device), and may, but not be required to have, a lock for privacy, a sink with a safe water source, a comfortable chair, a small table, and a clock; and
- (d) Allowing the employee to bring into the workplace a small refrigerator or freezer to store breast milk.

518.6 It shall be a discriminatory practice:

- (a) For a childcare facility to discriminate based on whether a child is on breast milk or formula; and
- (b) For an employer, employment agency, or labor organization to refuse to hire or employ, to bar or discharge from employment, to withhold pay, demote, or penalize a breastfeeding employee because the employee breastfeeds or expresses milk in the workplace, or otherwise to deny the employee any right provided under this section.

- 518.7 The procedure for resolving cases involving breastfeeding shall include the following:
- (a) An aggrieved person shall file a written complaint with the Office alleging a violation of this section within one (1) year of the occurrence or the discovery of the occurrence;
  - (b) The Office shall docket the complaint within five (5) days of its receipt of the complaint and shall complete the investigation within thirty (30) days of its commencement or as soon as practicable thereafter;
  - (c) The complaint shall be considered dismissed if no probable cause is found, and the complainant may seek judicial review in the Superior Court for the District of Columbia;
  - (d) If the Office determines that probable cause exists that discrimination based on a breastfeeding, the matter shall be sent to conciliation to determine if the parties wish to conciliate; and
  - (e) If the parties do not conciliate, or do not reach an agreement within thirty (30) days of the commencement of conciliation, the case will be sent to the Commission for adjudication under its policies and procedures. The Commission will seek to expedite the proceedings, when practicable.

518.8 When used in this section, the following terms shall the following meaning:

- (a) Reasonable efforts - any effort that would not impose an undue hardship on the operation of an employer's business.
- (b) Undue hardship - any action that requires significant difficulty or expense when considered in relation to factors such as the size of an employer's business, its financial resources, and the nature and structure of its operation.

## **519 SEXUAL ORIENTATION GUIDELINES**

- 519.1 No employer shall discharge, suspend, refuse to hire or promote an individual, or subject an individual to different terms, conditions, and privileges of employment because of his or her sexual orientation.
- 519.2 Employers shall not dismiss, suspend, refuse to hire or promote any person on the basis of an employee's open or suspected sexual orientation and nonconformity to the stereotyped characterization of masculine or feminine behavior.
- 519.3 Employers shall apply the same standards of acceptable on-the-job conduct to all employees regardless of sexual orientation, and the same procedures and standards for discipline and dismissal employed shall be applied equally to all, regardless of sexual orientation.

- 519.4 Questions by an employer which compel answers concerning the sexual orientation of an employee shall be considered *prima facie* evidence of discrimination.
- 519.5 Employers or employment agencies shall not collect or disseminate information about the sexual orientation or practices of employees.
- 519.6 The use of derogatory or insulting language about or directed at an employee on the premises by the employer and other employees because of an employee's open or suspected sexual orientation shall be considered *prima facie* evidence of discrimination.

## **520 EXCEPTIONS**

- 520.1 An employer may observe the conditions of a *bona fide* seniority system or a *bona fide* employee benefit system such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of Title I of the Act; provided, that no employee seniority system or benefit plan shall excuse the failure to hire any individual.
- 520.2 An employer may hire and employ employees on the basis of their membership in a class protected by Title I of the Act in special instances where sex, national origin, religion, disability, or other protected status is a business necessity for the normal operation of the particular business or enterprise.
- 520.3 Any religious or political organization, or any organization for charitable or educational purposes which is operated, supervised, or controlled by, or is operated in connection with, a religious or political organization may limit employment or give preferences to persons of the same religion or political persuasion as is calculated by such organization to promote the religious or political principles for which it is established or maintained.
- 520.4 Any practice which has a discriminatory effect and which would otherwise be prohibited by Title I of the Act shall not be deemed unlawful if it can be established that:
- (a) The practice is not intentionally devised or operated to contravene the prohibitions of Title I of the Act; and
  - (b) The practice can be justified as a business necessity.
- 520.5 For purposes of this chapter, a "business necessity" exception shall be applicable only in the individual case where it can be proved that, without such exception, the business cannot be conducted. A "business necessity" exception shall not be justified by the factors of increased cost to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, customers, or any other persons.

**599 DEFINITIONS**

599.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

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

**Age** - between the ages of eighteen (18) and sixty-five (65), unless otherwise prohibited by law.

**Breastfeed** - to provide breast milk from a mother's breast or to express breast milk into a container or bottle.

**Child care facility** - any establishment or business providing supervision and care of minors during the day or evening, with the exception of public or privately regulated schools. The term child care facility also includes child develop centers as defined in D.C. Official Code § 4-401(2).

**Color** - skin pigmentation, including variations in skin pigmentation.

**Disability**- as defined in section 3 of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102).

**Discrimination** - the act of distinguishing, or setting apart, or showing a difference in treatment which operates to the disadvantage of a protected group without a valid business necessity.

**Discriminatory practice** - any direct or indirect exclusion, segregation, limitation, refusal, denial, or any other distinction or preference in the treatment of a person or persons because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, disability , matriculation, or political affiliation.

**Employee** - any individual employed by, in the past or present, or seeking employment from, an employer, including, but not limited to, an individual seeking membership in any professional association and a person seeking employment through an employment agency or labor organization.

**Employer** - any person who, for compensation, employs an individual, except for the employer's parents, spouse, children or domestic servants engaged in work in and about the employer's household; any person acting in the interest of such employer, directly or indirectly; and any professional association. The term employer also includes the District of Columbia government and its boards, commissions, departments, agencies, including the public school system.

**Employment agency** - any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees, opportunities to work for an employer, and includes an agent of such a person.

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

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

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

**Genetic test** - an analysis of human chromosomes, genes, gene products, or genetic information that is used to identify the presence or absence of inherited or congenital alterations in genetic material that are associated with disease or illness. A genetic test shall not include a test for the presence of illegal drugs, routine physical measurements, or chemical, blood or urine analysis, unless conducted purposefully to obtain genetic information. A genetic test also does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

**Health benefit plan** - any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term health care benefit plan does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee benefit plans, pursuant to contracts with the United States government; Medicare supplemental or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as supplemental to liability insurance; insurance arising out of workers compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance; or life insurance.

**Health insurer** - any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital, a medical services corporation, a fraternal benefits society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of the Department of Insurance, Securities, and Banking.

**Labor organization** - any organization, agency, employee representation committee, group, association, or plan in which employees participate directly or indirectly; and which exists for the purpose, in whole or in part, of dealing with employers or any agent thereof, concerning grievances, labor disputes, wages, rates of pay, hours, or other terms, conditions, or privileges of employment; any conference, general committee, joint or system board, or joint council that is subordinate to a national or international organization.

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

**Matriculation** - the condition of being in a college or university; in a business, nursing, professional, secretarial, technical or vocational school; or in an adult educational program on a full- or part-time basis.

**National origin** - the state, country, or nation in which a person or his or her ancestors were born.

**Person** - any individual, firm, partnership, mutual company, joint stock company, corporation, association, organization, unincorporated organization, labor union, government agency, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, trustee in bankruptcy, committee, assignee, officer, employee, principal or agent, legal or personal representative, real estate broker or salesman, or any agent or representative of any of the foregoing.

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

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

**Protected classes** - bases of unlawful discrimination prohibited by Title I of the Act.

**Race** - for the purpose of Title I of the Act, race is not limited to the state of being a member of a particular race, but also includes relationships with members of a different race, such as the race of a spouse or associate, where such relationship is the basis for discrimination.

**Religion** - a personal set or institutionalized system of attitudes, beliefs, and practices relating to a supernatural force or being, or its equivalent in secular faiths, including the presence or absence of commitment or devotion to any faith. Religion includes moral or ethical beliefs as to what is right and wrong, which beliefs are sincerely held with the strength of traditional religious views.

**Sex** - the state of being male or female and conditions associated therewith. Sex includes the state of being a member of a sub-group of one sex, such as a pregnant female.

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

**Underwriting** - with respect to a group health plan or health insurance coverage offered in connection with a group health plan, rules for, or determination of, eligibility (including enrollment and continued eligibility) for the benefits under the plan or coverage; the computation of premium or contribution amounts under the plan or coverage; the application of any pre-existing condition exclusion under the plan or coverage; and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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NOTICE OF FINAL RULEMAKING

The Acting State Superintendent of Education, pursuant to the authority set forth in Section 3(b) (11) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§38-2602 (b) (11) (2008 Supp.)), hereby gives notice of a final rulemaking to amend Title 5, Chapter 22, of the *District of Columbia Municipal Regulations* (DCMR), entitled “Grades, Promotion, and Graduation” as provided herein. Chapter 22, Section 2203 is effective as a final rule the date of publication in the *D.C. Register*.

The proposed regulation was published for public comment in the *D.C. Register* at 56 DCR 4393 (June 5, 2009). All comments received have been considered. The State Board of Education approved the rule as final at a regularly scheduled public meeting on July 15, 2009. The final regulation is being adopted in substantially the same form as proposed. The rule does not affect any other graduation requirements currently in place and applicable to students in the District of Columbia Public Schools and public charter schools in the District of Columbia.

**Title 5 DCMR, Chapter 22, Section 2203 is amended to add a new paragraph (d) to subsection 2203.1 to read as follows:**

- (d) For all students entering the 9<sup>th</sup> grade beginning school year 2009-2010, one of the three lab science units, required by paragraph (a) of this subsection, shall be a course in Biology.

**OFFICE OF TAX AND REVENUE**

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**NOTICE OF FINAL RULEMAKING**

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The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code § 47-885, as amended by Section 155 of the District of Columbia Appropriations Act 2001, approved November 22, 2000 (114 Stat. 2476; Pub. L. 106-522) and the Office of the Chief Financial Officer, Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of this final action to adopt rules amending section 331.4 of Chapter 3 to Title 9 of the District of Columbia Municipal Regulations (DCMR) and section 332.5 of Chapter 3 of Title 9 DCMR, as published in the Notice of Emergency and Proposed Rulemaking in the 56 *D.C. Register* 4128 (May 22, 2009).

This final rulemaking clarifies OTR's intent to recommence enforcement of the ten percent (10%) penalty for the failure to file or timely file the income-expense form with respect to 9 DCMR § 331.4. For the Tax Year 2009 filing, an additional grace period is required in order to properly administer the application of the penalty so that taxpayers are not unduly burdened. Additionally, the amendment to 9 DCMR § 332.5 is a conforming amendment in furtherance of the final rulemaking in the 56 *D.C. Register* 1487 (Feb. 13, 2009).

No comments were received concerning the proposed rulemaking. This final rulemaking is identical to the published text of the emergency and proposed rulemaking. This final rulemaking shall become effective upon publication of this notice in the *D.C. Register*.

**Amendments**

1. Section 331.4 of Chapter 3 of Title 9 DCMR is amended by adding immediately before the period the phrase “; provided that the request for waiver of penalty concerning the income-expense form due on April 1, 2008 may be submitted to the Deputy Chief Financial Officer through April 1, 2009”.
2. Section 332.5 of Chapter 3 of Title 9 DCMR is amended by striking the phrase “March 15th” and inserting the phrase “April 1st”.

**OFFICE OF TAX AND REVENUE**

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**NOTICE OF FINAL RULEMAKING**

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The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code §§ 47-916 and 47-920, as amended by Section 155 of the District of Columbia Appropriations Act 2001, approved November 22, 2000 (114 Stat. 2476; Pub. L. 106-522) and the Office of the Chief Financial Officer, Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of this final action to adopt rules amending section 602.7 of Chapter 6 to Title 9 of the District of Columbia Municipal Regulations (DCMR), as published in the Proposed Rulemaking in the 56 *D.C. Register* 4394 (June 5, 2009).

This final rulemaking clarifies OTR's intent with respect to 9 DCMR § 602.7 and fosters uniform application of transfer and recordation taxes when the consideration is higher than the nominal value. OTR will continue to assess transfer and recordation taxes on the actual consideration paid when sales price of property is above nominal value. Additionally, this amendment makes 9 DCMR § 602.7 consistent with D.C. Official Code §§ 47-903(a)(1) and 42-1103(a)(1)(A) which provide that the imposition of transfer and recordation taxes is on the consideration paid when such consideration is not nominal.

No comments were received concerning the proposed rulemaking. This final rulemaking is identical to the published text of the proposed rulemaking. This final rulemaking shall become effective upon publication of this notice in the *D.C. Register*.

**Amendment:**

Section 602.7 of Chapter 6 of Title 9 DCMR is amended by striking the phrase "and the transfer tax shall be based on the higher of the assessed value or sales price".

**UNIVERSITY OF THE DISTRICT OF COLUMBIA****NOTICE OF FINAL RULEMAKING**

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under §201(a) of the District of Columbia Public Postsecondary Education Reorganization Act Amendments (“Act”) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code § 38-1202.01), and D.C. Official Code § 38-1202.06, hereby amends Section 728 of Chapter 7 of Title 8, DCMR entitled “Tuition and Fees,” effective upon publication of this notice in the D.C. Register. The purpose of the rule is to amend two (2) fees, the student health insurance fee and the Tuition Management System fee. These two (2) fees are not subject to the University’s control and accordingly are not appropriate to be listed on a fixed-cost basis in the tuition and fee schedule.

The Board of Trustees of the University of the District of Columbia hereby amends Section 728 of the Title 8, DCMR, as follows:

**Section 728.4**

Amend § 728.4(q) (Student Health Insurance) by striking “\$175.00” and inserting in its place “Varies.”.

Amend § 728.4(t) (Tuition Management System) by striking “\$30.00” and inserting in its place “Varies.”.