

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 10 of the Health Care Benefits Expansion Act of 1992 (“Act”) (D.C. Law 9-114; D.C. Official Code § 32-709), and Mayor's Order 2002-56, dated March 4, 2002, and in accordance with section 3(i) of the Act (D.C. Official Code § 32-702(i); 56 DCR 4269), hereby gives notice of his intent to adopt the following amendment to Title 29 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 proposed rulemaking would amend section 8001 to establish the initial list of jurisdictions that recognize relationships that are substantially similar to domestic partnerships in the District.

Pursuant to section 10(b) of the Act, these rules will not become effective before the later of thirty (30) days from the date of publication in the *D.C. Register*, forty-five (45) days from the transmittal to the Council, or the date of approval of these rules by Council resolution.

Section 8001 of Title 29 (Public Welfare) (May 1987) of the DCMR is amended by adding new subsections 8001.6 through 8001.10 to read as follows:

- 8001.6 Persons registered together in a domestic partnership or a similar legally recognized relationship, other than marriage, in a jurisdiction outside the District of Columbia shall also be recognized as domestic partners in the District, provided that their relationship was registered in one of the following jurisdictions:
- (a) California (Domestic Partnership under California Family Code § 297 *et seq.*);
 - (b) Colorado (Designated Beneficiary Agreement under Colorado Revised Statutes § 15-22-101 *et seq.*);
 - (c) Connecticut (Civil Union under Connecticut General Statutes § 46b-38aa *et seq.*);
 - (d) Hawaii (Reciprocal Beneficiary under Hawaii Revised Statutes Annotated § 572C-1 *et seq.*);
 - (e) Nevada (Domestic Partnership under Senate Bill 283 amending Title 11 of the Nevada Revised Statutes Annotated, effective October 1, 2009);
 - (f) New Hampshire (Civil Union until January 1, 2010, under New Hampshire Revised Statutes Annotated § 457:46);
 - (g) New Jersey (Domestic Partnership under New Jersey Annotated Statutes § 26:8A-1 *et seq.* and Civil Union New Jersey Annotated Statutes § 37:1-1 *et seq.*);

- (h) Oregon (Domestic Partnership under the Oregon Family Fairness Act, House Bill 2007);
- (i) Vermont (Civil Union under Vermont Statutes Annotated § 15-1201 *et seq.*);
- (j) Washington (Domestic Partnership under Annotated Revised Code of Washington § 26.60.010 *et seq.*); and
- (k) Great Britain (Civil Partnership under the Civil Partnership Act, 2004, ch. 33 (Eng.) *et seq.*) and relationships in other countries recognized as equivalent to United Kingdom Civil Partnerships, except marriage, under Schedule 20 as follows:
 - (1) Andorra (Unio estable de parella);
 - (2) Australia (Tasmania) (Significant Relationship);
 - (3) Belgium (Wettelijke samenwoning or gesetzliches zusammenwohnen);
 - (4) Canada (Nova Scotia) (Domestic Partnership);
 - (5) Canada (Quebec) (Union Civile or Civil Union);
 - (6) Denmark (Registreret Partnerskab);
 - (7) Finland (Rekisterity parisuhde or registrerad partnerskap)
 - (8) France (Pacte Civil de Solidarit);
 - (9) Germany (Lebenspartnerschaft);
 - (10) Iceland (Staðfesti Samvist);
 - (11) Luxembourg (Partenariat Enregistré or Eingetragene Partnerschaft);
 - (12) Netherlands (Geregistreerd Partnerschap);
 - (13) New Zealand (Civil Union);
 - (14) Norway (Registrert Partnerskap);
 - (15) Sweden (Registrerat Partnerskap).

8001.7 The Director may periodically certify and de-certify relationships in other jurisdictions that may be recognized as domestic partnerships in the District by

publishing a notice of certification or de-certification in the *D.C. Register*.
Certification or de-certification shall be effective upon publication of the notice.

- 8001.8 Certification of a jurisdiction shall be based on the similarity of the relationship in that jurisdiction to the rights and responsibilities of marriage under the laws of that jurisdiction.
- 8001.9 De-certification shall occur when a jurisdiction abolishes the relationship or converts prior registrations to marriage.
- 8001.10 A person registered in one of the relationships and in one of the jurisdictions listed in § 8001.6 or subsequently certified under § 8001.7 shall be recognized in the District as if the registration had been made originally in the District as a domestic partnership. Registration in one of the relationships and one of the jurisdictions shall not require further registration in the District.

All persons wishing to comment on the proposed rulemaking shall submit written comments no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 A.M. and 5:00 P.M. Monday through Friday, excluding holidays, at the address listed above.

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Section 3 (b) of the District of Columbia State Education Office Establishment Act of 2000, (D.C. Law 13-176; D.C. Official Code § 38-2602 (b) (11) (2008 Supp.); and pursuant to the District of Columbia School Reform Act of 1995, effective April 26, 1996 (110 Stat.1321; D.C. Official Code § 38-1802.02 (19))(2008 Supp.); hereby gives notice of her intent to revise Section 3019, in Chapter 30 of Title 5 of the *District of Columbia Municipal Regulations* (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this proposal is to revise Title 5, Chapter 30, Section 3019 of the DCMR with a clear enunciation of charter schools' special education responsibilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (IDEA), and the District of Columbia School Reform Act of 1995, effective April 26, 1996 (110 Stat.1321; D.C. Official Code § 38-1802.02 (19)) (2008 Supp.). This proposal reflects public comments that the Office of the State Superintendent (OSSE) received on its earlier proposal, including written submissions and a public hearing held on August 18 and 20, 2009. 56 DCR 4773 (June 19, 2009).

Federal and local law require all LEAs in the District of Columbia eligible for IDEA Part B funding to ensure that all children with disabilities, ages three (3) through twenty-one (21) years of age, who are residents or wards of the District of Columbia, have available to them a free appropriate public education (FAPE). Under IDEA, an LEA must perform child find activities to identify and evaluate children who may have a disability and require special education and related services, develop Individualized Education Programs (IEPs) for eligible children, and provide special education and related services in the least restrictive environment (LRE), regardless of the nature or severity of the disability. An LEA must ensure that a continuum of alternative placements as defined by IDEA, is available to meet the needs of children with disabilities for special education and related services. Federal and District of Columbia laws and regulations prohibit discriminatory practices by LEAs against children with disabilities. Failure to conform to these legal requirements may subject LEAs to sanctions, including discontinuation of federal funding under IDEA Part B.

An emergency rule remains in effect until it expires on December 7, 2009, or is superseded by the adoption of a permanent final rule, whichever occurs first. *See 56 DC Register 6242* (Aug. 7, 2009).

Section 3019 of Chapter 30 of Title 5 of the DCMR is amended to read as follows:**3019 CHARTER SCHOOLS**

3019.1 Enrollment in a public charter school shall be open to all residents and wards of the District of Columbia regardless of disability or special needs. A public charter school in the District of Columbia may not deny enrollment or otherwise

discriminate in its admissions policies or practices on the basis of a child's disability or status as a child with special needs, the child's need or potential need for special education services, supplementary aids or services, or any other accommodation.

3019.2 Pursuant to D.C. Code § 38-1802.02(19), each public charter school shall elect to have the District of Columbia Public Schools (DCPS) serve as its Local Education Agency (LEA) for purposes of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, (a District Charter), or shall be an independent Local Education Agency (an LEA Charter).

3019.3 *Responsibilities of LEA Charters.* Each LEA Charter is responsible for compliance with all requirements applicable to an LEA under the IDEA and its implementing regulations (34 C.F.R. Part 300), and local laws, regulations and policies, including, without limitation, the following:

- (a) *Least Restrictive Environment.* An LEA Charter shall ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. Special classes, separate schooling, or other practices involving removal of children with disabilities from the regular education environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (b) *Evaluation and Reevaluation.* An LEA Charter shall evaluate and reevaluate enrolled children in accordance with the IDEA, local law and state policy.
- (c) *Special Education and Related Services.* An LEA Charter shall develop and implement an IEP for an eligible child within the timelines set by IDEA, local law and state policy, and shall provide special education and related services consistent with that IEP.
- (d) *Statewide Assessments.* Consistent with Title 5 DCMR Chapter 5-23A, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in the statewide student assessments. In particular, an LEA Charter shall:
 - (1) Ensure that each of its District of Columbia resident children and wards, including those placed in a nonpublic school setting, participates in the annual SEA-approved statewide assessments, according to the procedures and guidelines issued by the OSSE.
 - (2) Administer the SEA-approved statewide alternative assessment only in the limited circumstances allowed under state guidelines and only to those children whose IEP specifically requires and

deems the child eligible according to state guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP an alternative assessment may not be substituted for the standard statewide assessment.

- (3) Ensure that the statewide assessments are administered according to the state test security guidelines.
 - (4) Ensure that in the event a child enrolled in its school is placed in a nonpublic special education school under procedures set forth in this Chapter, the child shall continue to participate in the statewide assessment. Consistent with 20 U.S.C. § 6311 and the District of Columbia's accountability workbook, the score of each LEA Charter child placed in a nonpublic school shall be included in the calculations used for the statewide assessment of the LEA Charter and the determination of Adequate Yearly Progress for the LEA Charter.
- (e) *Policies and procedures.* An LEA Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under 34 C.F.R. §§ 300.101 through 300.163, and §§ 300.165 through 300.174.
- f) *Annual Reporting Requirements.* An LEA Charter shall conform to the annual reporting requirements of the IDEA.
- (1) Pursuant to 34 C.F.R. §§ 300.640 through 300.644, an LEA Charter shall count the number of children with disabilities receiving special education and related services as of December 1 of each year and shall report and certify to the SEA each year the information required by 20 U.S.C. § 1418 (Section 618 of the IDEA) no later than the first Tuesday in January.
 - (2) The LEA Charter shall certify to the SEA that the information provided under 20 U.S.C. § 1418 of the IDEA is an accurate and unduplicated count of children with disabilities receiving special education and related services.
- (g) *Special Education Data System (SEDS).* An LEA Charter shall fully utilize, implement and enter accurate and complete data into the state-designated District-wide special education data system for all aspects of special education practice, and ensure that an accurate, complete and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those placed in a nonpublic school.

- (h) *Due Process Complaints.* Pursuant to 20 U.S.C. § 1415(a), an LEA Charter shall establish and implement policies and procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). An LEA Charter is responsible for responding to any due process complaint made in respect of a child enrolled in the LEA Charter, including any child who attends a nonpublic school. The Student Hearing Office, located within the OSSE, will continue to adjudicate due process complaints.
- (i) *Mediation.* Pursuant to 20 U.S.C. § 1415(e), an LEA Charter shall ensure that procedures are established and implemented to allow parties to dispute any matter, including matters arising prior to the filing of the due process complaint, to resolve such disputes through a mediation process. The mediation process shall be available to a parent of a child enrolled in the LEA Charter, including any child who attends a nonpublic school. The OSSE shall maintain a list of qualified mediators and shall bear the cost of the mediation process.

3019.4 *Responsibilities of District Charters.* In the event that a public charter school elects, pursuant to D.C. Official Code § 38-1802.02(19), to have DCPS serve as its LEA for purposes of the IDEA, DCPS shall be the LEA responsible for meeting the requirements applicable to an LEA under the IDEA, Part B and its implementing regulations (34 C.F.R. Part 300), as well as all local laws, regulations and policies, in regards to the children enrolled in the District Charter. Each District Charter shall follow the policies, procedures and guidelines established by DCPS for the referral of individual child needs and IEP matters to DCPS to be addressed consistent with the requirements of IDEA. Referrals shall include, without limitation, requests for evaluations, due process complaints, requests for mediation and implementation of Hearing Officer Determinations, for all children enrolled in the District Charter. In addition, a District Charter shall:

- (a) *State-wide Assessments.* Consistent with 5 DCMR Chapter 5-23A, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in state-wide assessments. In particular, a District Charter shall:
 - (1) Ensure that each of its District of Columbia resident children, including those placed in a nonpublic school setting participates in the annual SEA-approved statewide assessments, according to the procedures and guidelines issued by the OSSE.
 - (2) Administer the SEA-approved statewide alternative assessment only in the limited circumstances allowed under state guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state guidelines for

participation in the alternative assessment. Unless specifically required by a child's IEP, an alternative assessment may not be substituted for the standard statewide assessment.

- (3) Ensure that SEA-approved statewide assessments are administered according to the OSSE's test security guidelines.
 - (4) Ensure that in the event a child enrolled in its school is placed in a nonpublic special education school under procedures set forth in this Chapter, the child shall continue to participate in the SEA-approved statewide assessment. Consistent with 20 U.S.C. § 6311 and the District's accountability workbook, the score of each District Charter child placed in a nonpublic school shall be included in the calculations used for the statewide assessment of DCPS and the determination of Adequate Yearly Progress for DCPS.
- (b) *Policies and procedures.* A District Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under 34 C.F.R. §§ 300.101 through 300.163, and §§ 300.165 through 300.174.
- (c) *Annual Reporting Requirements.* A District Charter shall conform to the annual reporting requirements of the IDEA.
- (1) Pursuant to 34 C.F.R. §§ 300.640 through 300.644, a District Charter shall count the number of children with disabilities receiving special education and related services as of December 1 of each year and shall report and certify to the DCPS each year the information required by 20 U.S.C. § 1418 (Section 618 of the IDEA) in sufficient time for DCPS to be able to report such data to the OSSE no later than the first Tuesday in January. Pursuant to 34 C.F.R. §§ 300.640 through 300.644, DCPS shall count the number of children with disabilities enrolled in DCPS and District Charters who are receiving special education and related services as of December 1 of each year and shall report and certify to the SEA each year the information required by 20 U.S.C. § 1418 (Section 618 of the IDEA) no later than the first Tuesday in January.
 - (2) The District Charter shall certify to DCPS that the information provided under 20 U.S.C. § 1418 of the IDEA is an accurate and unduplicated count of children with disabilities receiving special education and related services, such that DCPS can make the same certification to the OSSE as required by the IDEA.

- (d) *Special Education Data System (SEDS).* A District Charter shall fully utilize, implement and enter accurate and complete data into the state-designated District-wide special education data system for all aspects of special education practice, and ensure that an accurate, complete and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those placed in a nonpublic school.

3019.5 *Changes in enrollment.* Transfers between LEA Charters, District Charters and DCPS shall be conducted as follows, whether the change in enrollment is initiated by the parent or results from the procedures established by DCPS for District Charters:

- (a) In the event a child with a disability transfers from one LEA to another, the sending LEA shall provide a copy of the child's records to the receiving LEA, including any IEP for that child, within 10 days of receipt of notice of enrollment of the child in the receiving LEA.
- (b) The sending LEA and receiving LEA shall cooperate fully in the transfer of all child records.
- (c) In the event a child transfers between an LEA Charter, a District Charter or DCPS, after an evaluation or reevaluation process has begun, but prior to its conclusion, the receiving LEA shall be responsible for completing the evaluation process and fully implementing a resulting IEP in the event one is required. The sending LEA shall cooperate fully to ensure all relevant information follows a child to his or her new school.
- (d) Pursuant to 34 C.F.R. § 300.323(e), in the event a child with an IEP in effect transfers between an LEA Charter, a District Charter or DCPS, the receiving LEA is responsible upon enrollment for ensuring that the child receives special education and related services according to the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of IDEA.

3019.6 *Agreements Between LEA Charters.* Pursuant to 34 C.F.R. § 300.208, any LEA, including an LEA Charter, may use its IDEA Part B funding to establish and implement cost or risk sharing funds, consortia, or cooperatives working in a consortium with other LEAs to pay for high cost special education and related services.

3019.7 *IEP Team Recommendation.* Pursuant to 34 C.F.R. § 300.323(c)(2), if an IEP team at an LEA Charter recommends special education and related services for an enrolled child with a disability that the LEA Charter does not immediately have available, the LEA Charter, as soon as possible following the development of the IEP, is responsible for making these services available in accordance with the

child's IEP, which may be arranged through an agreement with another LEA or through other appropriate means.

3019.8

Maintaining Placement in the Least Restrictive Environment. Pursuant to 34 C.F.R. § 300.114, no child enrolled in a public charter school shall be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

- (a) *District Charters.* If a District Charter anticipates that it may be unable to meet its obligation to provide a free appropriate public education (FAPE) to a child with a disability currently enrolled in its program, it shall make an appeal to DCPS consistent with the policies, procedures and guidelines established by DCPS for District Charters.
- (b) *LEA Charters.* If an LEA Charter anticipates that it may be unable to meet its obligation to provide a free appropriate public education (FAPE) to a child with a disability currently enrolled in its school:
 - (1) The LEA Charter shall contact the OSSE for technical assistance regarding the provision of FAPE to the child within the LEA Charter;
 - (2) As soon as any member of the IEP team has reason to suspect that the LEA Charter may be unable to meet its obligation to provide FAPE, the LEA Charter shall provide notice to the OSSE at least thirty (30) days prior to the IEP meeting at which a possible change in placement to a more restrictive environment will be discussed;
 - (3) The IEP team may request an expedited IEP meeting (i.e., within less than the thirty (30) day notice period) and the OSSE may grant the request upon a showing of good cause by the IEP team, as determined by the OSSE;
 - (4) The OSSE shall make a recommendation regarding the ability of the LEA Charter to provide FAPE to the child within the LEA Charter;
 - (5) Upon completion of the placement review process consistent with this subsection, if the IEP team for a child enrolled in the LEA Charter makes a placement decision that cannot be implemented within the LEA Charter, the OSSE shall make a location assignment for the placement of the child;

- (6) The OSSE shall provide an opportunity for input from the parent(s) with regard to the location assignment for the placement of the child; and
- (7) The OSSE shall be responsible for making the final decision regarding the location assignment.

3019.9 *Placements from LEA Charters into Nonpublic Schools.* If a child's placement is changed to a nonpublic school (whether by reason of a Hearing Officer Determination, Settlement Agreement, or a placement decision by the IEP Team at the LEA Charter), a child enrolled in an LEA Charter shall remain enrolled in and is the responsibility of the LEA Charter, unless and until his or her parent re-enrolls him/her into another LEA (be it another LEA Charter, a District Charter or DCPS).

- (a) When a child enrolled in an LEA Charter is placed in a nonpublic school in order to ensure the provision of a free appropriate public education (FAPE), the LEA Charter shall:
 - (1) Transition the child back to the less restrictive and more integrated environment as soon as practicable;
 - (2) At all times while the child is placed at the nonpublic school, maintain the capacity to serve the child at the LEA Charter (i.e., hold an open seat for the child) unless and until the child's parent enrolls the child in another LEA; and
 - (3) Continue to monitor each child's academic and social-emotional progress at the nonpublic school.
- (b) To facilitate the return of the child, as soon as appropriate, to the charter school environment, the LEA charter may apply in writing to the Public Charter School Board for an increase in enrollment capacity above the limit set by the school's charter for each child enrolled in the LEA charter and receiving services at a nonpublic school.
- (c) In the event that an LEA Charter enrolled child with special needs attending a nonpublic school has not transitioned out of a nonpublic school within 120 days of the end of the school year in which the child will exceed the maximum age range for children served by the LEA Charter as specified in its charter, the LEA Charter shall:
 - (1) Provide written notification to the child's parent(s) or guardian(s) of their responsibility to enroll the child at another public charter school or into DCPS; and

- (2) Shall provide such notification at least 90 days prior to the end of a school year.
- (d) Pursuant to 34 C.F.R. § 300.114 and 34 C.F.R. § 300.325(c), responsibility for compliance with Part B of IDEA and local law and regulations for a child placed into a nonpublic school remains with the LEA in which the child was most recently enrolled (the sending LEA) – either an LEA Charter or, in the case of a District Charter, DCPS – unless and until the child’s parent or guardian voluntarily re-enrolls the child into another LEA. Such responsibility includes, but is not limited to evaluating the child, attending IEP meetings, monitoring progress, assessments and accountability as required under the Elementary and Secondary Education Act, and developing a plan for the child’s return from the nonpublic school to the LEA Charter.
- e) Pursuant to D.C. Official Code § 38-2907, tuition payments for District of Columbia children with disabilities placed in nonpublic schools are state level costs and are not the responsibility of the LEA Charter

3019.10

Hearing Officer Determinations and Settlement Agreements. A final Hearing Officer Determination (HOD) or Settlement Agreement (SA) resulting from the filing of a due process complaint and a Settlement Agreement resulting from mediation shall be binding upon the parties to the due process complaint and/or Settlement Agreement.

- (a) In the event a child with a disability who is the subject of a HOD or SA transfers to a new LEA Charter in the District of Columbia during the term of the HOD or SA, the new LEA Charter shall comply with § 3019.5(d) and shall cooperate with the LEA bound by the HOD or SA in the implementation of the HOD or SA. The responsibility for implementation of the HOD or SA shall remain at all times with the LEA that was a party to the HOD or SA. In no event shall implementation of the HOD or SA interfere with the new LEA Charter’s ability to provide a free appropriate public education (FAPE) to the child.
- (b) In the event a child with a disability who is the subject of a HOD or SA transfers to a new District Charter during the term of the HOD or SA, DCPS shall comply with § 3019.5(d). DCPS and the District Charter shall cooperate with the LEA bound by the HOD or SA in the implementation of the HOD or SA. The responsibility for implementation of the HOD or SA shall remain at all times with the LEA that was a party to the HOD or SA. In no event shall implementation of the HOD or SA interfere with the new District Charter’s ability to provide FAPE to the child.

3019.11 *Charter School Closures:* Under the circumstances where a District Charter or LEA Charter closes and ceases to operate, in full or in part, for any reason, including without limitation voluntary or involuntary revocation of the school's charter, pursuant to District of Columbia law regarding compulsory school attendance, (D.C. Official Code § 38-202), the parent of a child who previously was enrolled in the closed District Charter or LEA Charter will be responsible for enrolling the child in another LEA.

3019.12 *Definitions.* Except as otherwise stated herein, all terms used in this Section have the meanings assigned by DC Official Code § 38-2561 *et seq.* and IDEA, 20 U.S.C. § 1401 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300.

Location assignment – Location assignment refers to the actual school site or facility at which the child will receive his/her instruction.

Placement – As used herein, placement has the meaning consistent with 34 C.F.R. Part 300 and refers to, without limitation, the learning environment classified by level of restrictiveness (e.g. general education classroom, special education/resource classroom, or private facility).

State – As used herein, state means the District of Columbia.

Persons wishing to comment on this rule should submit their comments in writing to Kerri L. Briggs, PhD., State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C. 20001, Attn: Jessica Morffi, Title 5, Chapter 30, Subsection 3019; or osse.publiccomment@dc.gov. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may be obtained from the OSSE website at www.osse.dc.gov or upon request at the above referenced location.

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)(2008 Supp.), hereby gives notice of her intent to adopt amendments to Chapter 30 of Title 5 of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed rule sets forth the procedures regarding resolution meetings and due process hearings and decisions following the filing of an administrative due process complaint against a public education agency. A proposed rule was previously published in the D.C. Register for public comment on May 29, 2009. (*See* 56 DC Register 4208.) After the thirty (30) day comment period, public hearings were held on the proposed rule as required by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., 34 C.F.R. §300.165. This re-proposal of the rule takes into account comments made during the prior public comment period and public hearings.

Section 3030 of Title 5 of the DCMR is amended as follows:

- 3030 **Resolution Meeting, Due Process Hearing, and Final Decision Procedure**
- 3030.1 Resolution meeting. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the local education agency ("LEA") shall convene a resolution meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process complaint. The resolution meeting need not occur if the parent and the LEA agree in writing to waive such meeting, or agree to use the mediation process described in § 3028 of this Chapter:
- (a) The meeting shall include a representative of the LEA who has decision making authority on behalf of such LEA;
 - (b) The meeting may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
 - (c) The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint, so that the LEA has an opportunity to resolve the dispute that forms the basis of the due process complaint.
- 3030.2 Relevant Team Members. The parent and the LEA shall determine the relevant members of the IEP Team to attend the resolution meeting.

- 3030.3 Resolution period. If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.
- 3030.4 Except as provided in § 3030.8, the timeline for issuing a final decision under § 3030.11 begins at the expiration of the 30-day period identified in § 3030.3.
- 3030.5 Except where the parties have jointly agreed to waive the resolution process or to use mediation, when a parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that a hearing officer order a continuance to delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request must include evidence of the LEA's reasonable measures to convene a resolution meeting with the parent documented using the procedures in § 3026.4. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.
- 3030.6 If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable measures have been made (and documented using the procedures in § 3026.4), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.
- 3030.7 If the LEA fails to hold the resolution meeting specified in § 3030.1 within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
- 3030.8 Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 3030.11 starts the day after one of the following events:
- (a) Both parties agree in writing to waive the resolution meeting;
 - (b) Either the mediation or resolution meeting starts but, before the end of the 30-day period, the parties agree in writing that no agreement is possible;
 - (c) Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or LEA withdraws from the mediation process.
- 3030.9 Written Settlement Agreement. If a resolution to the dispute is reached at the meeting described in § 3030.1, the parties shall execute a legally binding agreement that is:
- (a) Signed by both the parent and a representative of the LEA who has the authority to bind such LEA; and

- (b) Enforceable in any State court of competent jurisdiction or in a District Court of the United States.
- 3030.10 Agreement Review Period. If the parties execute an agreement pursuant to § 3030.9, either party may void such agreement within three (3) business days of the agreement's execution. The party who voids the agreement shall provide written notice to all other parties to the agreement.
- 3030.11 Due Process Hearing. Not later than forty-five (45) days after the expiration of the thirty (30) day resolution period or any adjusted time period described in § 3030.8:
 - (a) A final decision shall be reached in the hearing; and
 - (b) A copy of the decision shall be mailed to each of the parties, or alternatively may be transmitted electronically or by facsimile if all parties to the due process complaint consent.
- 3030.12 Extension of timeline. An impartial hearing officer may, for good cause shown, grant specific extensions of time beyond the periods set forth in § 3030.11 at the request of either party.
- 3030.13 Hearing Officer Determination (HOD). The HOD must be in writing. The hearing officer must include the following in the HOD:
 - (a) The identity of the parties;
 - (b) The identity of the student, which shall include the student's name, student ID number, date of birth, and attending school;
 - (c) The case number;
 - (d) Findings of fact and conclusions of law, separately stated;
 - (e) The final determination;
 - (f) What must be done by each party, where applicable, to carry out the decision, including the establishment of timelines for each step or action, and by whom;
 - (g) Any appeal rights; and
 - (h) The Hearing Officer's signature, which must be dated and which may be designated by electronic signature.
- 3030.14 Burden of proof. The burden of proof shall be the responsibility of the party seeking relief; either the parent of a child or the LEA. Based solely upon the evidence presented at the hearing, an impartial hearing officer

shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

- 3030.15 Publication of HODs. After deleting personally identifiable information from hearing decisions, the Student Hearing Office of the District of Columbia shall transmit the findings and decisions to the SEA Advisory Panel and make the findings and decisions available to the public.

Persons wishing to comment on this proposed rule should submit their comments in writing to Kerri L. Briggs, Ph.D., State Superintendent of Education, 441 4th Street, N.W., Suite 350N, Washington, D.C. 2001, Attn: Proposed Rule 3030; Jessica Morffi; or osse.publiccomment@dc.gov. All comments must be received no later than 30 days after publication of this notice in the *D.C. Register*. Copies of this rulemaking amendment and related information may be obtained by writing to the above address, by calling the Office of the State Superintendent of Education at (202) 727-6436, or on the OSSE website at www.osse.dc.gov.

OFFICE OF TAX AND REVENUE
NOTICE OF PROPOSED RULEMAKING

The Office of Tax and Revenue ("OTR"), pursuant to the authority set forth in D.C. Official Code § 47-1335 (2001), Section 155 of the District of Columbia Appropriations Act, 2001, approved November 22, 2000 (114 Stat. 2476; P.L. 106-522, D.C. Official Code § 1-204.24c (2001)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of its intent to amend Chapter 3, REAL PROPERTY TAXES, of Title 9 of the District of Columbia Municipal Regulations ("DCMR"), by making a new rule as section 317.1, Tax Sale Threshold.

Only those real properties where taxes are delinquent in the amount of \$1200 or more shall be sold at tax sale. The efficacy of the tax sale is balanced between generation of tax revenue and the cost of employee hours devoted to the administration of the tax sale process, including the timely issuance of redemption refunds to tax sale purchasers. The threshold that would be set by this rulemaking is necessary to maximize the efficient operation of the tax sale by limiting the number of real properties sold to those with larger liabilities so that the tax sale may be efficiently administered.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D. C. Register*.

A new section 317 of Chapter 3 of Title 9 DCMR is added to read as follows:

Section 317. Tax Sale Threshold.

317.1 Only those real properties owing at least \$1,200 and advertised to be sold at the September 2009 tax sale shall be auctioned at the continuation of the September 9, 2009 tax sale which shall begin on November 30, 2009. As a continuation of the September 2009 tax sale, the November 2009 tax sale shall be under the same terms, conditions and amounts of the September 2009 tax sale, subject to the threshold provided by this regulation.

Comments on this proposed rulemaking should be submitted in writing to Mr. Robert McKeon, Deputy Chief Counsel, Office of Tax and Revenue, 941 North Capitol Street, NE, 8th Floor, Washington, DC 20002, not later than thirty (30) days after publication of this notice in the *D. C. Register*. Copies of this rule and related information may be obtained by writing to the person at the address stated herein.