

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF FINAL RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in sections 8(a)(7) and 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code §§ 2-1831.05(a)(7) and (b)(7) (2007 Repl. & 2011 Supp.)), hereby gives notice of the adoption of the following amendments to chapter 29, Office of Administrative Hearings: Rules for Rental Housing, Public Benefits, and Unemployment Insurance Cases, of title 1 of the District of Columbia Municipal Regulations (DCMR).

These rules establish new procedures that govern cases referred to OAH by the District of Columbia Public Schools (DCPS). An emergency and proposed rulemaking was published in the *D.C. Register* on December 23, 2011, at 58 DCR 11122. Emergency rules were adopted on December 20, 2011, and became effective on that date. A second proposed rulemaking was issued on March 16, 2012, at 59 DCR 2162, which contained revisions made after considering comments received and superseded the previous proposed rulemaking. Comments were again received; however, no further changes have been made to the rules at this time following the second proposed rulemaking. This final rulemaking was adopted on April 17, 2012, and will become effective upon publication in the *D.C. Register*.

The title of Chapter 29, Office of Administrative Hearings: Rules for Rental Housing, Public Benefits, and Unemployment Insurance Cases, of title 1 DCMR is amended to read as follows:

**CHAPTER 29 OFFICE OF ADMINISTRATIVE HEARINGS: RULES
FOR DCPS, RENTAL HOUSING, PUBLIC BENEFITS,
AND UNEMPLOYMENT INSURANCE CASES**

Chapter 29, Office of Administrative Hearings: Rules for Rental Housing, Public Benefits, and Unemployment Insurance Cases, of Title 1 DCMR is amended by adding the following sections 2900 through 2909 to read as follows:

2900 DCPS Hearings – Scope

2900.1 Sections 2900 through 2909 govern procedures in cases referred to OAH by the District of Columbia Public Schools (DCPS).

2900.2 For procedural issues not covered in Sections 2900 through 2909, the rules in Chapter 28 apply.

2900.3 OAH is not required to follow any other procedural rules adopted by DCPS in cases referred to OAH by DCPS.

2901 DCPS Student Discipline Cases – Referrals

- 2901.1 DCPS may refer a student discipline case to OAH, for an Administrative Law Judge to hold a hearing and to decide:
- (a) The material facts;
 - (b) Whether required due process procedures, including notice and the opportunity to respond to the charges, have been followed or have been waived, including whether there was prejudicial failure to follow procedures identified in 5 DCMR B § 2505; and
 - (c) Whether the facts show that the student committed any of the violations upon which a proposed disciplinary action is based and the proper Tier for any violation, as specified in 5 DCMR B § 2502.
- 2901.2 DCPS shall refer a student discipline case by filing with OAH a copy of the notice of recommended action provided to the adult student, or a minor student’s parent or guardian. The hearing notice shall contain the hearing date and state the consequences of failing to attend the hearing.

2902 DCPS Student Discipline Cases – Hearings

- 2902.1 An adult student, or a minor student’s parent or guardian, may request DCPS to postpone the hearing for not more than five (5) school days if necessary to prepare for the hearing or provide for the attendance of necessary parties or witnesses.
- 2902.2 The parties may, but are not required, to file exhibits and witness lists in advance of the hearing.
- 2902.3 DCPS shall allow an adult student, or a minor student’s parent or guardian, to inspect and copy the student’s disciplinary file before the hearing.
- 2902.4 DCPS shall make the student’s disciplinary file electronically available to OAH. OAH shall make copies of the disciplinary file available at the hearing to DCPS and the adult student or the minor student’s parent or guardian. Either party may move to introduce all or part of the disciplinary file into evidence at the hearing.
- 2902.5 The parties shall have all rights set forth in Subsection 2821.5 at a hearing.
- 2902.6 In addition to the representatives listed in Sections 2833 and 2835, an adult student or a minor student’s parent or guardian may select another person to represent a student at a hearing. Such a representative is subject to Subsections 2835.12 through 2835.14.

2902.7 The hearing shall be closed to the public unless the adult student or the minor student's parent or guardian requests the hearing be open to the public.

2902.8 A party who fails to appear for a scheduled hearing may ask OAH, in writing, for a new hearing date. The request must be filed within one (1) school day after the scheduled hearing date. The Administrative Law Judge may grant a new hearing date for good cause shown.

2903 DCPS Student Discipline Cases – Decisions

2903.1 After the close of the record in a student discipline case, the Administrative Law Judge shall issue Findings of Fact and Conclusions of Law on the issues identified in Subsection 2901.1.

2903.2 The Administrative Law Judge shall issue the findings of fact and conclusions of law within one (1) school day after the close of the record. OAH shall provide a copy to DCPS, which shall include it with the final decision sent to the adult student, the minor student's parent or guardian and any authorized representative.

2903.3 In all student discipline cases, DCPS shall be bound by the Administrative Law Judge's Findings of Fact and Conclusions of Law and shall have no authority to reverse or modify the findings of fact and conclusions of law.

2903.4 If the Administrative Law Judge concludes that the student committed any of the violations upon which the disciplinary action is based, the Administrative Law Judge shall make a recommendation for the appropriate discipline within the Tier found to be proper considering the factors in 14 DCMR B2500.9. OAH will return the case to DCPS for it to decide the appropriate discipline.

2903.5 If the Administrative Law Judge concludes that due process was denied or that the student did not commit any of the violations upon which the disciplinary action is based, OAH will return the case to DCPS for appropriate action.

2903.6 Because OAH must return these cases to DCPS for further action, the Administrative Law Judge's decision is not a final disposition of the matter, and a statement of appeal rights is not required by Subsection 2830.1.

2904 DCPS Student Discipline Cases – Reconsideration

2904.1 No party in a student discipline case shall have the right provided by Section 2828 to file a motion for reconsideration or for a new hearing or a motion for relief from a final order.

2904.2 If the adult student or minor student's parent or guardian did not receive actual notice of the hearing and DCPS has issued a final notice of disciplinary action, the adult student or minor student's parent or guardian may file a request for

reconsideration with DCPS and request that DCPS vacate the final notice and refer the case back to OAH for a hearing and to vacate the Findings of Fact and Conclusions of Law. When it decides such a request, DCPS may order a new hearing or DCPS may ask for OAH to decide whether to grant a new hearing.

2905 DCPS Contested Residency Cases – Referrals

2905.1 DCPS may refer a contested residency case to OAH for a final decision.

2906 DCPS Contested Residency Cases – Beginning a Case

2906.1 DCPS shall refer a contested residency case to OAH by filing a copy of the request for review that it received, along with a statement that DCPS requests OAH to hear and to decide the case.

2907 DCPS Contested Residency Cases – Hearings

2907.1 In all contested residency cases, OAH shall set the hearing date and issue the hearing notice.

2907.2 The rules in Chapter 28 apply to all hearings in contested residency cases, except that parties should file and serve the witness lists and exhibit lists required by Subsection 2821.2 no later than three (3) days before the hearing date.

2908 DCPS Contested Residency Cases – Final Orders

2908.1 The presiding Administrative Law Judge shall issue a final order in all contested residency cases, which shall include the statement of appeal rights required by Subsection 2830.1.

2909 DCPS Cases – Confidentiality of the Record

2909.1 The OAH record in any case referred by DCPS is confidential. Only the following persons may have access to that record:

- (a) The adult student;
- (b) The minor student's parent, guardian, or representative;
- (c) Any person who has the written consent of the adult student or the minor student's parent or guardian; and
- (d) School officials with a legitimate interest.

Section 2999, Definitions, is amended as follows:

The first sentence in section 2999, Definitions, is assigned subsection 2999.1 so that it reads as follows:

2999.1 Unless otherwise provided, the definitions in Chapter 28 apply to this Chapter.

The second sentence in section 2999, Definitions, is assigned subsection 2999.2 so that it reads as follows:

2999.2 For purposes of this Chapter, the term:

The following definitions are added in alphabetical order:

Contested residency case means a case in which an adult student or a minor student's parent or guardian has filed, pursuant to 5 DCMR E§ 2009.3, a request for review of a decision by DCPS that a student is not entitled to tuition-free education because the student is not a resident of the District of Columbia.

DCPS means District of Columbia Public Schools.

Disciplinary file means any and all tangible evidence, in DCPS's possession, which forms the basis for the school's decision to propose the specific disciplinary action, including, but not limited to, student, staff and other witness statements, incident reports, photographs, police reports, and security camera footage. Nothing in these rules prohibits DCPS from redacting any information it deems confidential or protected.

School day means a day that school is open, whether or not students are attending, but does not include any day that OAH is closed.

Student discipline case means a case in which DCPS seeks to expel a student or to suspend a student for at least eleven (11) days.