

## DISTRICT OF COLUMBIA PUBLIC SCHOOLS

NOTICE OF FINAL RULEMAKING

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to Section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172(c) (2012 Repl.)), and Mayor's Order 2007-186, dated August 10, 2007, hereby gives notice of the adoption of the following rule to add a new Section 405 (Third Party Grievance Procedure) of Chapter 4 (Community Involvement in Education) of Subtitle E, Title 5 (Education), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rule is to amend the language regarding the procedures for the filing, investigation, and resolution of complaints or grievances filed by parents, guardians, visitors and others in cases of discrimination, bullying, or harassment. The amendment is necessary because DCPS must ensure that its grievance procedures contain language that satisfies requirements set forth by the U.S. Department of Education, Office of Civil Rights.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 27, 2013 at 60 DCR 13425. No changes have been made to the text of the proposed rules. Additionally the "Parents, Guardians and Visitors Grievance Procedure Regulations Approval Resolution of 2013" was submitted to the Council on September 24, 2013 (PR-20-460). The Council has neither approved nor disapproved during the 45-day period of review and these rules are therefore deemed approved, pursuant to Section 103 of the Act. These rules were adopted as final on February 6, 2014 and will be effective upon publication in the *D.C. Register*.

**Section 405 (Parent, Guardian and Visitor Grievance Procedure) of Chapter 4 (Community Involvement in Education) of Subtitle E (Original Title 5), Title 5 (Education) of the DCMR is added to read as follows:**

**405 GRIEVANCE PROCEDURE FOR PARENTS, GUARDIANS, AND VISITORS**

405.1 The grievance procedure set forth in this section shall apply to all grievances or complaints brought for any suspected violation of the following laws:

- (a) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- (b) Title II of the Americans with Disabilities Act of 1990, which also prohibits discrimination on the basis of disability;
- (c) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- (d) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on

the basis of race, color, and national origin;

- (e) The District of Columbia Human Rights Law, Title 2, Chapter 14 of the D.C. Official Code, which prohibits discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, source of income, and disability; or
- (f) The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

405.2 The grievance procedure set forth in this section shall apply to all grievances filed by any individual other than a student or employee of the District of Columbia Public Schools. This includes but is not limited to parents, guardians, and school visitors. Grievances and complaints regarding students shall be governed by the procedures contained in Chapter B-24 of this title. Grievances and complaints regarding employees shall be governed by Chapter E-8 of this title.

405.3 The grievance procedure set forth in this section shall also apply to all grievances or complaints brought in the following instances:

- (a) Where it is alleged that the rights of an individual are being denied or abridged;
- (b) Where it is alleged that any individual is being subjected to an arbitrary or unreasonable regulation, procedure, or standard of conduct;
- (c) Where an individual is a victim of bullying or harassment, including sexual harassment; and
- (d) Any other violation of a right granted by law that does not have a specific grievance procedure or hearing process provided in this title.

405.4 No individual shall be discriminated against, or otherwise subjected to retaliation, on the basis of an individual's filing of a grievance pursuant to this section or an individual's participation in a grievance process.

405.5 An individual bringing a grievance about an issue set forth in § E-405.1 or § E-405.3 of this section shall follow the procedures contained in this section. A grievance may be filed on behalf of another individual by attorney or an authorized representative.

- (a) The individual bringing the grievance (the grievant) may make an informal complaint to the principal or other school official in charge of the program or activity. If the grievant makes a complaint to a teacher or

administrator other than the principal or official in charge of the program or activity, that person shall, with the permission of the grievant, advise the principal or official in charge of the program or activity of the nature of the complaint.

- (b) If the principal is the subject of the grievant's complaint or otherwise involved in the circumstances surrounding the complaint, the grievant shall make an informal complaint to the Instructional Superintendent with jurisdiction over the principal's school.
- (c) The person who receives the informal grievance shall investigate and attempt to resolve the problem through informal means, including but not limited to, meetings, conferences, and discussions. The person shall also make written documentation of all steps taken to investigate the matter.
- (d) A resolution in the informal process shall be proposed, or a decision issued, by the principal or other school official to the grievant within ten (10) school days of the day that the grievant made the informal complaint. The appropriate Instructional Superintendent shall be informed of the informal grievance and investigation and may be consulted by the principal or other school official in an attempt to resolve the grievance.
- (e) A grievant who is dissatisfied with the outcome of -- or chooses not to use -- the informal process, may file a written grievance with the Instructional Superintendent with jurisdiction over the school or other responsible school official. Written grievances must be filed within forty-five (45) calendar days of the incident or circumstance being grieved or ten (10) calendar days of the completion of the informal process, if any, whichever is longer. The timeframes for submission shall be tolled in instances where the grievant did not comprehend or was not aware of the harassment.
- (f) All complaints should include the following information, to the extent that is known by the grievant:
  - (1) The name and address of the grievant;
  - (2) The grievant's affiliation with the school (parent, guardian, volunteer or other);
  - (3) The date, approximate time, and location of the incident;
  - (4) The type of bullying or harassment that was involved in the incident;
  - (5) The identity of the person(s) who committed the alleged acts of

- harassment;
- (6) If the alleged harassment was directed towards other person(s), the identities of such persons;
  - (7) Whether any witnesses were present, and their identities; and
  - (8) A specific factual description of the incident, including any verbal statements or physical contact.
- (g) The Instructional Superintendent or other school official shall attempt to resolve the written grievance by beginning a formal investigation, including but not limited to conducting conferences with the grievant(s), students, parents, teachers, other school officials, and other involved parties and, when applicable, consultation with legal counsel, or the Section 504 Coordinator. The investigation shall also include the examination of any information submitted by the grievant and interviews with any witnesses identified by the grievant.
  - (h) The Instructional Superintendent shall provide the grievant with the evidence or documentation presented by the school and shall give the grievant the opportunity to rebut such evidence.
  - (i) The Instructional Superintendent or other school official who investigates a written grievance shall provide a written response to the grievant and the school principal.
  - (j) The written response shall be provided within ten (10) school days of the receipt of the written grievance; the parties should be notified if the investigation will take longer, including the reasons for the delay and the anticipated time frame.
  - (k) If the grievant is not satisfied with the response of the Instructional Superintendent, the grievant may file an appeal with another school official designated by the Chancellor. The appeal shall be filed within ten (10) calendar days of receipt or notice of the initial response.
  - (l) The designated school official shall attempt to resolve the grievance by reviewing the Instructional Superintendent's investigation and findings, and conducting further investigation of the grievance, including meeting with all involved parties and consulting with legal counsel as appropriate.
  - (m) The designated school official shall provide a written response to the grievant and the school principal within ten (10) school days of the receipt of the appeal.

- (n) If the grievant is not satisfied with the response or the designated school official is unable to achieve an adequate resolution, either the grievant or designated school official may, within ten (10) calendar days of the written response, request that the grievance be brought before a grievance review panel to ensure appropriate and fair resolution of the grievance. The panel shall be comprised of three (3) persons appointed by the Chancellor or designee, and may include the Section 504 Coordinator, the Title IX Coordinator, individuals from the DCPS Office of Compliance, Office of the General Counsel, other Instructional Superintendents or school officials, and other disinterested persons with training and knowledge about the issues raised by the grievance.
- (o) In all cases brought before the review panel, the panel shall provide the designated school official with written findings and recommendations for suggested implementation by the Instructional Superintendent and the principal; a copy of the written findings and recommendations shall also be issued to the grievant. The findings and recommendations shall be issued within ten (10) school days of receipt by the panel of the request referenced in §E-405.5(n) of this section.
- (p) Within five (5) days of receipt of the findings and recommendations, the designated school official shall issue a final administrative decision, which shall be the final administrative decision of the school system. The designated school official shall provide written notice of the decision to the grievant, the Instructional Superintendent, and the principal, and if appropriate, the grievant's attorney or authorized representative.
- (q) A grievant may also file a complaint directly with the U.S. Department of Education, Office of Civil Rights without utilizing, or following the completion of, the procedures contained in this section. See <http://www.ed.gov/ocr/complaintprocess.html> or call (202) 453-6020 for further information.
- (r) A grievant may also file a complaint directly with the District of Columbia Commission on Human Rights without utilizing or following the procedures contained in this section. Nothing in this section supersedes the rights or requirements for filing complaints with the District of Columbia Commission on Human Rights. See <http://www.ohr.dc.gov> or call (202) 727-4559 for further information.