

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

IN RE: MICHAEL REDMOND,

Respondent

**Michael Redmond
30 MESSER ST
PROVIDENCE, RI 02909**

**615 BARNES ST NE
WASHINGTON, DC 20019-1877**

**4916 KENTUCKY AVE
NASHVILLE, TN 37209**

mikedutk@gmail.com

CASE No.: 22-0001-F

NOTICE OF VIOLATION

Pursuant to the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01, et seq.), the Director of Government Ethics completed a preliminary investigation and presented evidence to the Board of Ethics and Government Accountability (the “Ethics Board”) that there is reason to believe the Respondent named above violated the District Code of Conduct.

The Ethics Board has reason to believe Respondent, Michael Redmond violated sections of the District Code of Conduct based on the following facts and evidence uncovered during the preliminary investigation and presented evidence to the Ethics Board that:

1. Respondent was a District government employee from 2014 to 2020.
2. Respondent served as the DC Public Schools (“DCPS”) Assistant Principal at Kramer Middle School (“Kramer”) for the 2019-2020 school year and part of the 2020-2021 school year.
3. As Assistant Principal, Respondent was a full-time District government employee and his tour of duty included normal school hours.
4. Respondent earned an annual salary of \$125,434 as an Assistant Principal for DCPS.
5. Respondent began working as a Principal with Providence Public Schools’ E Cubed Academy in Providence, Rhode Island on July 22, 2020, while he was still employed with DCPS.
6. Respondent admitted to working a second full-time job with Providence Public Schools while serving as Assistant Principal at Kramer from July 22, 2020 until November 30, 2020, approximately seventeen (17) weeks.
7. Respondent worked on weekdays from 8:30 am until 3:15 pm at Providence Public Schools while working weekdays from 8:45 am to 3:15 pm for DCPS.
8. Respondent reported to his Providence Public Schools position in-person and simultaneously worked virtually as Assistant Principal at Kramer.
9. Respondent resigned from DCPS on November 30, 2020.
10. Respondent earned approximately \$41,000 in District government wages while maintaining simultaneous full-time employment at Providence Public Schools.

CHARGES

Respondent violated the following provision of the District of Columbia Code of Conduct:

Count 1: Engaging in outside employment or activities, including seeking or negotiating for employment, that conflicted with Respondent's official government duties and responsibilities in violation of District Personnel Manual ("DPM") § 1800.3(j).

Respondent violated this rule when he engaged in seeking and negotiating for full time employment with Providence Public Schools that consisted of the same work schedule as his DCPS tour of duty.

Count 2: Engaging in any outside employment, private business activity, or other interest that is reasonably likely to interfere with the employee's ability to perform his or her job, or which may impair the efficient operation of the District government in violation of DPM § 1807.1(a).

Respondent violated this rule when he conducted in-person duties and responsibilities as the Principal for Providence Public Schools' E Cubed Academy during the same tour of duty that he worked remotely as Assistant Principal at Kramer from July 22, 2020 until November 30, 2020, a total of 17 weeks.

Count 3: Using government time or resources for other than official business, or government approved or sponsored activities in violation of DPM § 1807.1(b).

Respondent violated this rule when he conducted in-person duties and responsibilities as the Principal for Providence Public Schools' E Cubed Academy during the same tour of duty that he worked remotely as Assistant Principal at Kramer from July 22, 2020 until November 30, 2020, a total of 17 weeks. During that time, Respondent submitted time and attendance hours for his bi-weekly DCPS

paycheck, when in fact he was physically working at E Cubed Academy during those same hours.

Count 4: Receiving compensation for [outside] teaching activities during regular working hours, without using annual leave, compensatory leave, exempt time off, or leave without pay in violation of DPM § 1807.2.

Respondent violated this rule by receiving pay for his duties as the Principal of E Cubed Academy while he was on duty as the Assistant Principal at Kramer from July 22, 2020 until November 30, 2020, a total of 17 weeks.

Respondent shall file with the Ethics Board and serve a copy upon the Director of Government Ethics, a written response that states in short and plain terms his defenses to the violation alleged and shall admit or deny the averments, set forth in each numbered paragraph above, upon which the notice of violation relies. Respondent shall serve his response within (15) days after the service of the Notice of Violation upon him. Accordingly, Respondent shall submit his response, either electronically or in hard copy, no later than the close of business on **Thursday, November 25, 2021**. If submitted in hard copy via U.S. mail, Respondent must allow enough time for mailing delays in that the written response must be received by the Ethics Board and the Director of Government Ethics no later than close of business on **Thursday, November 25, 2021**.

Responses submitted via U.S. mail or in person shall be separately addressed to Norma Hutcheson, BEGA Chairperson, and Ashley Cooks, Acting Director of Government Ethics at 441 4th Street, N.W., Suite 830 South, Washington, D.C. 20001. If submitted electronically, Respondent may email his response to lynn.tran@dc.gov, ashley.cooks@dc.gov and asia.stewart-mitchell@dc.gov.

Once Respondent has submitted his response or failed to submit a response by the due date provided, the Board shall send a Notice of Hearing to Respondent. The Notice of Hearing will provide the time, date, and location of the hearing; reference applicable statutes, rules, or regulations, state the purpose of the hearing, advise Respondent that he may be represented by counsel or other representative of his choosing, and advise Respondent that he may bring witnesses. Evidence at the hearing shall be taken in conformity with D.C. Official Code § 2-509(b).

A copy of the Ethics Board's rules, 3 DCMR Section 5500 *et. seq.*, which provide a description of Respondent's right to a hearing, all procedural rights available to Respondent at the hearing, and a description of the applicable law and regulations that govern the disposition of the Notice of Violation should Respondent choose not to file a response or fail to appear at a scheduled hearing, is attached to this Notice of Violation and herein incorporated by reference.

This Notice of Violation is effective upon approval of the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairperson below, as of the date indicated below.

APPROVED:



Norma Hutcheson
Chair, Board of Ethics and Government Accountability
#22-0001-F
AC/ASM

____11-4-21____
Date

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on the 4th day of November 2021, she served the “Notice of Violation” by causing true copies thereof to be sent to the following person at his respective email address:

Michael Redmond
mikedutk@gmail.com

A handwritten signature in blue ink, appearing to read 'Asia Stewart-Mitchell', with a horizontal line drawn through the middle of the signature.

ASIA STEWART-MITCHELL
Supervisory Attorney, Office of Government Ethics

**CHAPTER 55 BOARD OF ETHICS AND GOVERNMENT
ACCOUNTABILITY: HEARING PROCEDURES**

5500 GENERAL PROVISIONS

- 5500.1 The provisions of this chapter shall govern the procedures of the Board of Ethics and Government Accountability when conducting adversarial hearings and other meetings pursuant to the authority set forth in the Government Ethics Act of 2011 (Act), Title II of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 et seq.) (2012 Supp.).
- 5500.2 In any conflict within this chapter between general and specific provisions, the specific provisions shall govern.
- 5500.3 In any conflict between this chapter and the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq.* (2011 Repl.), the D.C. Administrative Procedure Act shall govern.
- 5500.4 The Director of Government Ethics (Director) shall issue, and from time to time revise, complaint forms and instructions to ensure presentation of adequate information required for the understanding and processing of complaints. All such materials shall be available on the Board's website.
- 5500.5 The Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

5501 COMPUTATION OF TIME

- 5501.1 In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.
- 5501.2 The last day of the computed period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

5501.3 When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation unless an applicable statute expressly provides otherwise.

5501.4 For the purposes of this chapter, "legal holiday" includes the following:

- (a) New Year's Day;
- (b) Martin Luther King's Birthday;
- (c) President's Day;
- (d) District of Columbia Emancipation Day;
- (e) Memorial Day;
- (f) Independence Day (4th of July);
- (g) Labor Day;
- (h) Columbus Day;
- (i) Veterans Day;
- (j) Thanksgiving Day;
- (k) Christmas Day; and
- (l) Any other day designated a legal holiday by the President of the United States or the District of Columbia government.

5501.5 When an act is required or allowed to be done at or within a specified time, the Board may at any time in its discretion and for cause shown, do either of the following:

- (a) With or without motion or notice, order the period enlarged, if a request for enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order; or
- (b) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

5502 NOTICE OF HEARINGS

5502.1 The parties shall be given sufficient opportunity to prepare for the hearing.

5502.2 The Board shall send a notice of hearing to the party or parties involved which shall:

- (a) Provide the time, date, and location of the hearing;
- (b) Reference applicable statutes, rules, or regulations;
- (c) State the purpose of the hearing;
- (d) Advise the party or parties that they may be represented by counsel or other representative of their choosing; and
- (e) Advise the party or parties that they may bring witnesses.

5503 APPEARANCES AND REPRESENTATION

5503.1 In a proceeding before the Board, any person or party may appear on his or her own behalf.

5503.2 Any person or party may be represented by any other person duly authorized in writing to do so.

5503.3 The authorization shall be on a form prescribed by the Board and shall state either that the individual is an attorney duly licensed to practice law in the District, or if not an attorney, that the authorization includes the power of the agent or representative to bind the person in the matter before the Board.

5503.4 If any person or party waives the right to be present at a hearing or fails to appear at a hearing, the Board may proceed ex parte, unless the Board extends the time of the hearing or unless the person's appearance is required by statute.

5504 SERVICE OF PAPERS

5504.1 Any paper required to be served upon a party shall be served upon him or her or upon the representative designated by him or her, or on any person otherwise designated by law to receive service of papers.

5504.2 When a party has appeared through an attorney or representative, service shall be made upon the attorney or representative of record.

5504.3 Service may be made by personal delivery, by mail, by email, or as otherwise authorized by law.

5504.4 Service upon a party shall be completed as follows:

- (a) By personal delivery, on handing the paper to the person to be served, or leaving it at his or her office with his or her administrative assistant or time clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, by leaving it at his or her usual place of residence with some person of suitable age and discretion then residing in that place;
- (b) By email, by sending the paper electronically to his or her District Government email address or to the email address of his or her attorney or representative as listed on the written appearance submitted pursuant to § 5503.
- (c) By mail, on deposit in the United States mail, properly stamped and addressed; or
- (d) Upon being served in the specific manner prescribed by an order of the Board made in any proceeding.

5504.5 Where there are numerous parties to a proceeding, by written order the Board may make special provisions regarding the service of papers.

5504.6 Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document served.

5504.7 Proof of service may be made by any of the following means:

- (a) Written acknowledgment of the party served or his or her attorney of record;
- (b) The certificate of the attorney of record if he or she has made the service; or
- (c) The certificate of the person making the service.

5504.8 For the purposes of this chapter, the phrase "filing with the Board," means the actual delivery to, and physical receipt by, the Board of pleadings and other papers.

5504.9 All documents filed with the Board relating to a hearing or formal investigation shall bear a caption which identifies the subject of the investigation, the Board's case or reference number, and the title of the pleading or document.

5504.10 All documents filed with the Board shall be printed on letter-sized paper using a font no smaller than 12 point.

5505 RECORD OF MEETINGS AND HEARINGS

- 5505.1 All meetings whether open or closed shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.
- 5505.2 For all open meetings or hearings, copies of records shall be made available for public inspection according to the following schedule;
- (a) For a meeting, a copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting.
 - (b) For an adversarial hearing, a copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.
 - (c) At the discretion of the Board, electronic recordings of the hearing may be posted on the Board's website.
- 5505.3 The minutes of Board meetings shall include the vote of each member of any ruling of the Board.
- 5505.4 Copies of the official transcript shall be available to parties and to the public upon payment to the Board of the charges fixed for the copies.
- 5505.5 Changes in the official transcript may be made only when they involve errors affecting substance and upon the filing of a motion by a party to correct a transcript with the Board.
- 5505.6 Copies of the motion to correct a transcript shall be served simultaneously on all opposing parties or legal representatives.
- 5505.7 Objections to the motion to correct a transcript shall be filed with the Board within five (5) days and served upon the parties.
- 5505.8 The transcript may be changed by the Board at a public meeting to reflect any corrections.

5506 MEETINGS AND HEARINGS

- 5506.1 Hearings shall be scheduled as needed for the purpose of receiving evidence and testimony on specific matters.
- 5506.2 Meetings and hearings shall be held at the time and place the Board or the Chairperson designates.

- 5506.3 A member absent at the decision meeting on any matter may cast an absentee vote only if the member attended all other of the meetings or hearings on a matter before Board.
- 5506.4 A member attending the decision meeting and having read the transcript and reviewed the complete record may vote even though that member may not have attended any or all of the prior meetings or hearings on a matter before the Board.
- 5507 EVIDENCE**
- 5507.1 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b) (2011 Repl.).
- 5507.2 The Board may permit rebuttal evidence.
- 5507.3 Any party objecting to the admissibility of evidence shall state the grounds of the objection(s) relied upon.
- 5507.4 A party may place on the record a statement summarizing any evidence excluded by the Board.
- 5507.5 If excluded evidence consists of documentary evidence, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.
- 5507.6 The Board, in its discretion, may receive into evidence certified copies of documents in place of the originals.
- 5507.7 If a party is offering materials contained in a book or larger document, that party shall plainly designate the relevant portions. The remaining material contained in that book or document shall be excluded.
- 5507.8 No document or other writing shall be accepted for the record after the close of the hearing, except with the consent of the Board after due notice to the opposing parties and only when the receipt of the document will not unfairly affect the interest of a party.
- 5507.9 During an adversarial hearing under § 5517, witnesses may be examined or cross-examined by the Board, the Director, respondent, or any party so designated by the Board pursuant to this chapter.
- 5507.10 During a meeting to consider a rulemaking conducted under § 5520, witnesses may be examined only by the Board.

5507.11 The Board may admit hearsay evidence during an adversarial hearing if it determines it will be relevant and material to the resolution of any factual issue in dispute in the matter before the Board.

5508 COMMENCEMENT OF ADVERSARIAL HEARING

5508.1 An adversarial hearing before the Board shall be commenced by the filing of a written notice of violation in the name of the Board, which shall be signed by the Chairperson.

5508.2 The employee(s) or official(s) that is (are) the subject of the notice of violation shall be referred to as the Respondent(s) in the notice of violation.

5508.3 The Board may consolidate notice of violations if they relate to the same actions or events or raise common questions of law or fact.

5509 GENERAL RULES OF PLEADING

5509.1 A notice of violation shall contain the following:

- (a) A short and plain statement of the grounds upon which the Board's jurisdiction depends;
- (b) The full names, residence addresses, position, title, agency, and telephone numbers of the respondent;
- (c) A clear and concise statement of facts which are alleged to constitute a violation of the law;
- (d) A description of the respondent's right to a hearing and all procedural rights available to the respondent at the hearing;
- (e) A description of the applicable law and regulations that govern the disposition of the notice of violation should the respondent choose not to file a response or fail to appear at a scheduled hearing; and
- (f) The deadline for filing a response.

5509.2 A respondent shall file with the Board, and serve a copy upon the Director and any other respondents identified in the notice of violation, a response that states in short and plain terms his or her defenses to each violation alleged and shall admit or deny the averments upon which the notice of violation relies. A respondent shall serve his or her response within fifteen (15) days after the service of the notice of violation upon him or her.

- 5509.3 If a respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state. This statement shall have the effect of a denial.
- 5509.4 When a respondent intends in good faith to deny only a part of an allegation, he or she shall specify so much of the allegation as is true and shall deny only the remainder.
- 5509.5 A respondent may, unless he or she intends in good faith to controvert all the allegations of a pleading, deny as specific denials of designated allegations or paragraphs, or the respondent may generally deny all the allegations except the designated allegations or paragraphs as the respondent expressly admits.
- 5509.6 When a respondent intends to controvert all the allegations of the preceding pleading, including allegations of the grounds upon which the Board's jurisdiction depends, the respondent party may do so by general denial. If a respondent chooses not to file a response, the Board shall treat such action as a general denial.
- 5509.7 A respondent shall raise any of the following defenses at the time he or she files a response:
- (a) Lack of jurisdiction over the subject matter;
 - (b) Lack of jurisdiction over the person;
 - (c) Insufficiency of process; or
 - (d) Insufficiency of service of process.
- 5509.8 The Director shall file any opposition to a § 5509.7 defense raised by a respondent within ten (10) days after service of a response on the Board.
- 5509.9 No technical forms of pleadings or motions shall be required.
- 5509.10 The Board or respondent may set forth two (2) or more statements of a charge, challenge, or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses.

5510 SIGNING OF PLEADINGS

- 5510.1 Each pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his or her individual name, and the attorney's address, email address, and telephone number shall be stated.

- 5510.2 A party who is not represented by an attorney shall sign each pleading and state his or her address, email address, and telephone number.
- 5510.3 Except when otherwise specifically provided by law, pleadings need not be verified or accompanied by affidavit.
- 5510.4 The signature of an attorney shall constitute a certificate by that attorney that he or she has read the pleading; that to the best of his or her knowledge, information, and belief there are grounds to support it; and that it is not interposed for delay.

5511 PRE-HEARING CONFERENCES AND DISCOVERY

- 5511.1 Prior to any scheduled adversarial hearing, the Board may require that the respondent or his or her attorney or representative appear for a pre-hearing conference with the Director to consider the following:
- (a) Simplification of the issues;
 - (b) The necessity or desirability of amendments to the pleadings;
 - (c) The possibility of obtaining the admission of facts and documents which will avoid unnecessary proof;
 - (d) Limitation of the number of witnesses; and
 - (e) Other matters which may aid in the disposition of the notice of violation.
- 5511.2 The Board may require the Director and the respondent(s) to submit a pre-hearing statement to the Board which recites the action taken at the conference, the amendments allowed to the pleadings by agreement of the parties, and the agreements made by the parties as to any of the matters considered which limit the issues for hearing to those issues not disposed of by admissions or agreements of counsel or parties.
- 5511.3 Upon the request of the respondent, the Director must disclose to the respondent and make available for inspection, copying, or photographing any relevant written or recorded statements made by the respondent and any books, papers, documents, photographs, tangible objects, or other evidence which is in the possession of the Director and which:
- (a) The Director intends to introduce at the hearing; or
 - (b) Are material to the preparation of the respondent's defense.

- 5511.4 Upon the request of the Director, the respondent must disclose to the Director and make available for inspection, copying or photographing any evidence that the respondent intends to introduce at the hearing.
- 5511.5 The Director and the respondent shall exchange a list of expected witnesses that may be called at the hearing.
- 5511.6 The disclosures required by §§ 5511.3, 5511.4, and 5511.5 shall be completed no later than ten (10) days in advance of the adversarial hearing.
- 5511.7 In its discretion, the Board may exclude the introduction of evidence or the testimony of witnesses that a party failed to disclose as required by §§ 5511.3, 5511.4, and 5511.5.
- 5511.8 The Board may issue a pre-hearing order concerning the timing and manner of discovery and any pretrial motions or orders.

5512 STIPULATIONS

- 5512.1 Apart from stipulations reached during or as a result of the pre-hearing conference, the parties may stipulate in writing at any stage in the proceeding or orally during the hearing any relevant fact or the contents or authenticity of any document.
- 5512.2 Post-conference stipulations may be received as evidence.
- 5512.3 Parties may also stipulate the procedure to be followed in the proceeding and such stipulation may, on motion of all parties, be approved by the Board and govern the conduct of the proceeding.

5513 CONTINUANCES

- 5513.1 A hearing scheduled to be conducted before the Board shall not be delayed by a continuance unless a motion for the continuance is made not less than five (5) days before the scheduled hearing date.
- 5513.2 A continuance shall not be granted unless the motion for continuance, in the Board's opinion, sets forth good and sufficient cause for the continuance.
- 5513.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as sufficient cause for continuance unless set forth in a motion filed promptly after notice of the hearing has been given.

5514 NONAPPEARANCE OF PARTIES AND DEFAULTS

- 5514.1 The Board may wait a reasonable length of time for a party to appear before beginning a proceeding. After a reasonable time, however, if a party who has received notice has not appeared, the Chairperson may proceed as follows:
- (a) The Chairperson may proceed with the hearing, obtain the testimony of those persons present, and, on the basis of the testimony and the record, the Board may issue a decision in the case; or
 - (b) The Chairman, for good and sufficient cause, may postpone the hearing without taking testimony.

5515 RESERVED

5516 INTERPRETERS

- 5516.1 The Board shall ascertain before the hearing whether an interpreter will be required and make appropriate arrangements.
- 5516.2 An oath or affirmation shall be administered to the interpreter orally or in writing.

5517 SPECIFIC RULES OF HEARING PROCEDURE

- 5517.1 All parties shall have the right to produce evidence and witnesses on their behalf and to rebut or explain testimony or evidence against them.
- 5517.2 All parties have the right to cross-examine other parties and witnesses and to offer argument or explanation in support of their positions or contentions.
- 5517.3 A party may cross-examine any other party or person, except that the Board, through the Chairman, may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious.
- 5517.4 Witnesses shall be examined and cross-examined orally under oath or affirmation.
- 5517.5 The order of procedure for presenting evidence at the hearing shall be as follows:
- (a) Call to order and opening statements by the Chairperson and members of the Board;
 - (b) Introductory statement by Director or staff;
 - (c) Consideration of pending motions and procedural matters;
 - (d) The Director's case;
 - (e) The respondent's case; and

(g) Any rebuttal offered by the Director.

5517.6 If there is more than one respondent, the respondents shall stipulate their order of presentation. If the respondents are unable to agree, the Chairperson shall set the order.

5517.7 In an adversarial hearing no decision or order of the Board shall be made except upon the exclusive record of the proceedings before the Board.

5518 BURDEN OF PROOF

5518.1 In all cases involving a notice of violation, the Director has the burden of persuading the Board that a violation has occurred by substantial evidence.

5518.2 The Director has the burden of producing evidence of a prima facie case that a respondent has committed a violation. Whenever a respondent asserts an affirmative defense to a notice of violation, the respondent will bear the burden of producing sufficient evidence to establish the affirmative defense.

5519 POST-HEARING PROCEDURES: GENERAL

5519.1 The record shall be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the Board.

5519.2 Prior to filing the final decision, the Board may, on its own motion, reopen the record and require further hearing or briefing on designated issues before the Board.

5519.3 Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or his or her legal representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.

5520 PROPOSED FINDINGS

5520.1 The Board may request parties to submit proposed findings of fact and conclusions of law for the consideration of the Board within the time as the Chairperson may direct.

5520.2 Copies of proposed findings and conclusions shall be served by each party upon all other parties.

5521 FINAL DECISION

- 5521.1 Within a reasonable time after the conclusion of the hearing, the Board shall render its decision setting forth findings of fact and conclusions of law and giving the reasons for the decision.
- 5521.2 There shall be a written decision setting forth findings of fact and conclusions of law and giving the reasons for the decision.
- 5521.3 The conclusions or opinion in the decision shall be governed by and based upon all the evidence adduced at the hearing.
- 5521.4 A decision shall be supported by substantial evidence on the record. Pursuant to the substantial evidence rule, courts shall uphold an administrative determination of fact if on the entire record the determination is rationally supportable and could have been arrived at reasonably.
- 5521.5 The decision shall include a description of any action(s) the Board takes pursuant to § 5402 (Disposition).
- 5521.6 The decision shall include an instruction that the respondent shall refer to § 5404 to determine the respondent's right to appeal.
- 5521.7 The decision shall be served promptly on all parties or their attorneys or representatives. In its discretion, the Board may announce its decision at a public hearing.

5522 RECONSIDERATION

- 5522.1 A motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding pursuant to § 5517 shall be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties. The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding that is filed prior to the order having become final.
- 5522.2 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.
- 5522.3 Within seven (7) days after a motion has been filed and served, any other party may file a response in opposition to or in support of the motion.
- 5522.4 Neither the filing nor the granting of the motion shall stay a decision unless the Board orders otherwise.
- 5522.5 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.

5523 SUBPOENAS AND DEPOSITIONS

5523.1 The Board may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence.

5523.2 Each subpoena issued by the Board shall include the following:

- (a) The name of the respondent;
- (b) The title of the action;
- (c) A specification of the time allowed for compliance with the subpoena;
- (d) A command to the person to whom it is directed to attend and give testimony at a time and place specified in the subpoena; or
- (e) A command to the person to whom it is directed to produce and permit inspection and copying of the books, papers, documents, or tangible things designated in the subpoena.

5523.3 Any party may, by a written motion, request the Board to subpoena particular persons or evidence.

5523.4 A request for subpoena shall state the relevancy, materiality, and scope of the testimony or documentary evidence sought; including, as to documentary evidence, the identification of all documents desired and the facts to be proven by them in sufficient detail to indicate materiality and relevancy.

5523.5 Any person to whom a subpoena is directed may, prior to the time specified in the subpoena for compliance, request the Board to quash or modify the subpoena.

5523.6 Any application to quash a subpoena shall be accompanied by a brief statement of the reasons supporting the motion to quash.

5523.7 The Board may quash or modify the subpoena upon a showing of good cause.

5523.8 Upon written notice the Board may order testimony to be taken by deposition, before any person who is designated by the Board to administer oaths.

5524 SERVICE OF SUBPOENA OR NOTICE OF DEPOSITION

5524.1 A subpoena or notice of deposition may be served by any person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena or notice upon a person named therein shall be made by delivering a copy of the subpoena to the person and, if the person's attendance is commanded, by

tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or the District of Columbia or an officer or agency thereof, fees and mileage need not be tendered.

5524.2 Witnesses are entitled to a witness fee of forty dollars (\$40) per day and the cost of public transportation to the proceeding or a mileage fee calculated at seventeen cents (17¢) per mile.

5524.3 Service of a subpoena or notice and fees to an individual may be made by any of the following means:

- (a) Handing the subpoena or notice to the person;
- (b) Leaving the subpoena or notice at the person's District Government office with the person in charge of the office;
- (c) Leaving the subpoena or notice at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing in that dwelling place or abode; or
- (d) Mailing the subpoena or notice by registered or certified mail to the person at the person's last known address.

5524.4 When the person to be served is not an individual, a copy of the subpoena or notice of the deposition and fees shall be delivered by one (1) of the following ways:

- (a) Handing the subpoena or notice to a registered agent for service;
- (b) Handing the subpoena or notice to any officer, director, or agent in charge of any office of that person; or
- (c) Mailing the subpoena or notice by registered or certified mail to the representative at his or her last known address.

5524.5 The individual serving a subpoena shall file with the Board a return of service setting forth the facts establishing proper service.

5524.6 The Board may, upon the failure by any person to obey a subpoena served upon that person, apply to the D.C. Superior Court for an order requiring the person to appear before the Board to give testimony, produce evidence, or both. If a person fails to obey the order without an adequate excuse, the Board may apply for an order that the person be held by the court for contempt.

5525 RULEMAKING HEARINGS

- 5525.1 At its discretion, the Board may from time to time schedule public hearings to obtain comment on a proposed rulemaking. The rules of procedure set forth in this section shall apply to rulemaking hearings.
- 5525.2 Any person may appear at a rulemaking hearing and may present, within the time limits determined by the Board, evidence, testimony, or argument that is relevant and not unduly repetitious.
- 5525.3 No person shall have the standing of a party in a rulemaking hearing.
- 5525.4 In those instances in which a petition for rulemaking has been filed with the Board by a member of the public pursuant to the District of Columbia Administrative Procedure Act, and where the Board in its discretion schedules a public hearing, the order of procedure at the hearing shall be as follows:
- (a) Call to order and opening statement by the Chairperson and Board members;
 - (b) Introductory statement by the Director, General Counsel, or other staff designated by the Board;
 - (c) Consideration of pending motions and procedural matters;
 - (d) Petitioner's case;
 - (e) Persons in support of the petition; and
 - (f) Persons in opposition to the petition.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Board of Ethics and Government Accountability at bega@bega.dc.gov. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to bega@dc.gov or by mail to the Board of Ethics and Government Accountability, Attn: Robert J. Spagnoletti, Chairman, One Judiciary Square, 441 Fourth Street, NW, Suite 830 South, Washington, D.C. 20001, no later than thirty (30) days after the publication of this notice in the *D.C Register*.