

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Office of Personnel

This Instruction should be filed behind
the divider for Part III of DPM
Chapter(s) 16

District Personnel Manual Issuance System

DPM Instruction No. 16-5

SUBJECT: Hearing Procedures—Removal Actions

Date: May 31, 2000

NOTE: This instruction supersedes DPM Instruction No. 16-4, dated January 21, 1993. However, even though Instruction 16-4 no longer has general applicability, it may be retained separately for use in cases where a disinterested designee may be required by a collective bargaining agreement.

A. Applicability

These procedures apply to any adversary hearing conducted by a hearing officer in an agency subject to the Mayor's personnel authority, pursuant to § 1612.5 of the D.C. personnel regulations. These procedures, which only apply to removal actions, constitute the internal rules and regulations required by D.C. Code § 1-606.4(a) (1999 Repl.).

B. Definitions

Hearing officer—the attorney who is conducting the adversary hearing.

Respondent—the employee charged.

C. General Provisions

1. Hearings pursuant to these procedures are not subject to the rules governing "contested cases" under the District of Columbia Administrative Procedure Act.
2. In general, all material and relevant evidence or testimony shall be admissible, but may be excluded if unduly repetitious. However, at his or her discretion, the hearing officer may be guided by and apply the District of Columbia rules of evidence to the extent that he or she believes their application would promote the presentation of reliable evidence.
3. Except as provided herein, hearings shall be closed to the public. A representative from the agency is permitted to be present. Whenever provided by a collective bargaining agreement, a representative of a labor organization is permitted to be present. The hearing officer may permit other persons to attend the hearing at the request of the respondent or his or her representative.

Note: DPM Instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employees under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart 1, § 1.3.]

Inquiries: Office of Policy and Performance Management (202) 442-9644

Retain Until Superseded

4. The respondent may be present at the hearing and may be represented by an attorney or other person of the respondent's choice, pursuant to § 1610 of the D.C. personnel regulations. The agency may have a presence at the hearing through a designated employee or official as well as be represented by an attorney or other person of the agency's choice (including the designated employee or official).
5. The hearing officer shall leave the record open for at least three days (or for a longer period if the hearing officer finds it to be reasonable under the circumstances) to receive additional written evidence, which becomes part of the adverse action case file.
6. The agency's case shall be based on the record, including the transcript of the agency representative's examination of witnesses called by the respondent, and the agency may submit additional written evidence (including affidavits, written statements of witnesses, documentary evidence, and any other form or depiction of evidence) after the hearing to rebut testimony and documentary evidence that the respondent presented at the hearing. The respondent's case will be based on the record, and the respondent may submit additional documentary evidence after the hearing that was not reasonably available to the respondent at the time of the hearing. Any additional written evidence submitted by the agency to rebut testimony and any additional documentary evidence by the respondent must be submitted within three workdays of the conclusion of the hearing or within the time provided by the hearing officer if greater than three days.
7. The hearing officer shall not entertain testimony or oral argument involving questions of substantive law or interpretation of personnel regulations or procedures. Such matters should be addressed in writing.
8. The respondent, or his or her representative, may present any documentary or other evidence, and may present any witnesses whose testimony is relevant, material, and not unduly repetitious. This does not include the right to call the proposing or deciding official.
9. Except for the respondent, witnesses shall be excluded from the hearing when not actually testifying, unless the hearing officer allows or directs otherwise.
10. Any witnesses shall be required to testify under oath or affirmation, which shall be administered by the hearing officer.
11. The hearing may be conducted in the respondent's absence if the respondent's representative is present.
12. The hearing officer must remain impartial, and may ask questions of witnesses.
13. The hearing officer must ensure that the respondent, or his or her representative, and the agency are notified in writing of the date, time, and place of the hearing, at least five days in advance thereof. (See Attachment No. 1, Sample Notice of Hearing.)
14. The hearing officer shall review and consider all of the following:
 - the proposed action, and all materials in the proposed removal or summary removal action case file relied upon to support the proposed or summary action;
 - the respondent's written answer, if there is one;
 - all evidence and arguments presented during the hearing;

- all additional written rebuttal evidence submitted by the agency prior to the closing of the record; and
 - all additional documentary evidence submitted by the respondent after the hearing, and prior to the closing of the record, that was not reasonably available to the respondent at the time of the hearing.
15. The hearing officer shall conduct the hearing in an orderly manner. The suggested sequence for conducting a hearing, as indicated in Part E, below, may be used as a guide for this purpose.

D. Record of Hearing

1. The hearing officer shall arrange for a verbatim transcript of the hearing.
2. Changes in the official transcript shall be made only when they involve errors affecting substance. A request to correct the transcript must be filed with the hearing officer within five days after receipt of the transcript. The hearing officer's report and recommendation to the deciding official need not be delayed for receipt of the transcript or for any changes therein.
3. The transcript shall become an official part of the record.

E. Conducting a Hearing

The following is a suggested sequence for conducting a hearing.

1. Call the hearing to order.
2. State that the hearing will be closed to the public, and witnesses excluded (unless otherwise determined by the hearing officer).
3. If the respondent requests that the public and/or witnesses be allowed to attend the hearing, ask for reasons, and make your ruling on this question. Unless you have ruled otherwise, exclude the public and witnesses, and direct the witnesses to wait in a specified location and not to discuss the case among themselves. Note for the record whether the public, witnesses, or both were allowed to attend the hearing and, if so, the reason.
4. State that the purpose of the hearing is to permit the hearing officer to obtain additional information so that a recommendation can be submitted to the deciding official.
5. State that the hearing will be conducted in accordance with DPM Instruction No. 16-5.
6. Request parties present to identify themselves.
7. State that charges and specifications are as in the notice letter.
8. State that the charges, the answer (if any), and all other matters now in the record, as well as all evidence introduced, will be considered.
9. Ask if the respondent cares to make an opening statement.
10. The respondent may now present evidence, including testimony of witnesses, in whatever sequence the respondent feels is reasonable. The hearing officer is to swear in witnesses.

11. Ask if the respondent cares to make a closing statement.
12. Ask if the respondent has anything further to add.
13. State that the record will remain open for three days (or for whatever additional period the hearing officer determines reasonable) to allow the respondent to submit additional documentary evidence not available to the respondent at the time of the hearing and to also allow the agency to submit additional written evidence to rebut the testimony and documentary evidence presented at the hearing.
14. State that the hearing is now concluded.

F. Effective Date

This instruction is effective immediately.



Milou Carolan
Director of Personnel

Attachment: Sample Notice of Hearing

SAMPLE NOTICE OF HEARING

TO: (Name of Employee/Agency)

FROM: (Hearing Officer)

SUBJECT: Notice of Hearing - Proposed (Removal or Summary Removal) Action on
 (Employee's Name)

An adversary hearing will be held in the above matter at (time) on (date) at (location) . This hearing is being conducted pursuant to § 1612.6 of the D.C. personnel regulations.

Attached for your information is a copy of the hearing procedures, DPM Instruction No. 16-5.

Should you need to contact me regarding the hearing, I can be reached at (location) on (telephone) .