

# Variation to Executive Service Separation Pay Provisions



## District Personnel Bulletin No. 4-46

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Effective Date	Expiration Date	Related DPM Chapters
12/19/2014	<b>December 31, 2014</b>	<b>4, 9, 10</b>

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### Overview

The Mayor, on behalf of the District of Columbia government, recognizes the extraordinary public service provide by Jesús Aguirre, both as the Director for the Department of Parks and Recreation and the State Superintendent of Education. Accordingly, it is appropriate to provide Mr. Aguirre with the customary compensation provided to agency heads who leave District government service as a result of a change in city administrations. To that end, this bulletin provides the required notice and justification for varying from section 1008.4(a) of the District Personnel Manual by exempting Mr. Aguirre from its application and authorizing separation pay of up to 12 weeks.

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### Jesús Aguirre

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On July 13, 2010, Jesús Aguirre was officially appointed as the Director for the Department of Parks and Receptions (DPR), in the Executive Service. Under his guidance, Mr. Aguirre transformed an agency of over 1000 full- and part-time employees by establishing a focus on outcomes-based programs, staff professional development, and an overall emphasis on providing equal access to high-quality recreation and leisure programing to all residents and visitors of the District. He oversaw the implementation of several capital projects worth over \$60 million, one of which is the largest playground-improvement project in the District's history called the Play DC initiative; and led DPR through a national accreditation process that

will place the agency in the top 5 percent of all parks and recreation agencies in terms of quality of operations.

On July 26, 2013, the then State Superintendent of Education for the District of Columbia unexpectedly left District government service. The State Superintendent serves as the District's representative to the U.S. Department of Education as DC's Chief School Officer, directing statewide public education policy for early childhood, K-12, and higher education. The Superintendent is also responsible for managing federal funding to support educators, overseeing school transportation for District children with special needs, engaging stakeholders and preparing students for success both within and beyond the classroom. This position is vital to the District's educational success and long-term interests.

Mr. Aguirre's background includes extensive experience in school and district operations, new teacher development, as well as in the creation of school-wide literacy and character development programs that also support English Language Learners. As a life-long educator, Mr. Aguirre began his career as a middle school science teacher in South Central Los Angeles in the early 1990s. Shortly thereafter, in 1995, he co-founded one of the first charter schools in the state of Arizona, a dual-language immersion school serving an under-resourced community of Phoenix, and served as the Executive Director of the school for 10 years before relocating to Washington, DC.

Effective August 13, 2007, Mr. Aguirre worked with the Chancellor of the District of Columbia Public Schools (DCPS) to create a new division – the Office of School Operations – charged with supporting principals and instructional superintendents and allowing them to focus on instruction. In addition to direct support to schools in the role of Director of DCPS School Operations, Mr. Aguirre also oversaw school security, technology, food service, annual budget development and enrollment functions (including the out-of-boundary lottery and the annual enrollment audit).

Mr. Aguirre's background in education systems made him the ideal individual to lead the Office of the State Superintendent. As a result, Mayor Gray asked Mr. Aguirre to take on this vital role and he agreed. On October 1, 2013, Mr. Aguirre was officially appointed to the position, which is in the Excepted Service.

As a part of the transition between the Gray and Bowser administrations, Mr. Aguirre's District appointment will expire at the end of 2014. In total, Mr. Aguirre has served the District of Columbia for over seven years. He served in the Executive Service for three years prior to this appointment to the Excepted Service, where he has been serving for little more than one year.

## DPM Section 1008

Under the Comprehensive Merit Personnel Act, an individual who serves in the Executive Service and has at least one year of District service may receive up to 12 weeks of separation pay. Excepted Service employees may receive no more than ten weeks of separation pay. Payment of separation pay is wholly within the discretion of the Mayor.

Section 6B-1008 of the District of Columbia Municipal Regulations places additional restrictions on the payment of separation pay to former Executive Service employees. In particular, 6B DCMR § 1008.4 states that: “[s]eparation pay shall not be payable to any individual who ... [a]ccepts an appointment to another position in the District government.”

Accordingly, strict application of the District Personnel Manual dictates that Mr. Aquirre receive ten weeks of separation pay instead of 12 because he agreed to fulfill the District’s immediate need for an experienced educator to serve as the Superintendent. Given the circumstances, such an inflexible interpretation would create inequitable results.

## Basis for Variation

The Director of the Department of Human Resources may grant a variation from the strict application of a provision within the District Personnel Manual whenever a deviation is consistent with the spirit of the regulations, the efficiency of District government and the promotion and protection of the Executive and/or Excepted Service.

In this case, an Executive Service employee agreed to fulfil an immediate public need for a qualified educator who could lead the Office of the State Superintendent. Mr. Aquirre was properly confirmed and appointed to the Executive Service as an agency head for DPR, where he served with distinction, and then duly carried out the Mayor’s request that he serve as the agency head for OSSE. Irrespective of the technical distinctions between Executive and Excepted Service types, Mr. Aquirre was nominated and confirmed, and served at the pleasure of the Mayor in all practical respects.

Therefore, a variation is justified under the circumstances because –

- Mr. Aquirre’s acceptance of the Superintendent position aided in the efficient appointment of a qualified and experienced individual to immediately serve as the State Superintendent;
- It will preserve the integrity of the Executive Service by providing an appropriate compensation package to an individual who fully carried out his duties and responsibilities within that service;
- It is limited to the unique facts and circumstances described in this bulletin; and
- It is within the spirit of the regulation, which is aimed at foreclosing separation pay to former agency heads who choose to pursue a long-term career in another service.

## Variance Granted

For the reasons outlined in this bulletin, the Director for the Department of Human Resources waives the application of 6B DCMR § 1008.4 for purposes of establishing appropriate separation pay levels for Mr. Jesús Aguirre, who formally served in the Executive Service under this Administration as the Director for the Department of Parks and Recreations.

Based on this variance, and in accordance with all other applicable laws and regulations, Mr. Jesús Aguirre may receive up to 12 weeks of separation pay upon separation from District government service.

## Legal Authorities

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- **D.C. Code § 1-604.06**, *Personnel Authority*
- **D.C. Code § 1-609.03(f)**, *Excepted Service – Separation Pay*
- **D.C. Code § 1-610.51**, *Executive Service – Policy and Scope*
- **D.C. Code § 1-610.58**, *Executive Service - Separation Pay*
- **6B DCMR § 400**, *Variations*
- **6B DCMR § 913**, *Excepted Service – Separation Pay*
- **6B DCMR § 1008**, *Executive Service – Separation Pay*



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