

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)
In the Matter of:	)
	) OEA Matter No. 1601-0099-08
BRUNO MPOY	)
Employee	) Date of Issuance: September 10, 2008
	)
v.	) Sheryl Sears, Esq.
	) Administrative Judge
DISTRICT OF COLUMBIA	)
PUBLIC SCHOOLS	)
Agency	)
_____	)

E. Ned Sloan, Esq., Employee Representative  
Harriet E. Segar, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND FINDINGS OF FACT

Bruno MpoY (“Employee”) is a Special Education Teacher at D.C. Public Schools (“Agency”). Agency suspended Employee from May 23, 2008 through June 6, 2008. Citing 5 D.C. Municipal Regulations, §1401.2 (e), Agency charged Employee with insubordination. Agency alleged that on Tuesday, February 5, 2008 and February 12, 2008, he failed to follow instructions issued by his supervisor to conduct a classroom observation. Employee’s suspension lasted for five working days.

JURISDICTION

The jurisdiction of this Office is established by D.C. Official Code § 1-606.03 (2001). As will be explained in detail below, the Office does not have jurisdiction over the instant appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

OEA Rule 629.1, 46 D.C. Reg. at 9317, provides that the burden of proof with regard to material issues of fact presented by appeals before this Office is by a “preponderance of the evidence.” Preponderance of the evidence is defined as “that degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.” In accordance with OEA Rule 629.2, *id.*, “the employee shall have the burden of proof as to issues of jurisdiction. . .” Therefore, it is the burden of the appellant to show that this Office has jurisdiction over her appeal.

D.C. Official Code § 1-606.03 (2001), establishes the jurisdiction of this Office as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or *suspension for 10 days or more* . . . or a reduction in force [RIF] . . . (Emphasis added.)

According to the letter issued by Agency entitled “notice of suspension,” Employee was suspended for five days. However, this Office, in accordance with the above statutory provision, only has the authority to review a suspension of ten days or more. It is outside of the authority of this Office to review the instant matter. For that reason, this appeal must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that Employee’s petition for appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ., ADMINISTRATIVE JUDGE