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

_____	)	
In the Matter of:	)	
	)	
TIFFANY SHAW,	)	
Employee	)	
	)	OEA Matter No. J-0139-15
v.	)	
	)	Date of Issuance: January 12, 2016
D.C. PUBLIC SCHOOLS,	)	
Agency	)	MICHELLE R. HARRIS, Esq.
_____	)	Administrative Judge
Tiffany Shaw, Employee <i>Pro Se</i>		
Carl K. Turpin, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 9, 2015, Tiffany Shaw (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate her. I was assigned this matter on October 7, 2015.

Agency’s Answer was due on or before October 19, 2015. On October 19, 2015, Agency filed a Motion for Leave to File Answer. Agency filed a Second Motion for Leave to File Answer on October 23, 2015. On October 28, 2015, I issued an Order Compelling Agency’s Answer on or before November 2, 2015. Agency filed its Answer on November 2, 2015.<sup>1</sup> Agency noted in its Answer to Employee’s Petition for Appeal that OEA does not have jurisdiction to hear this matter because Employee was in probationary status at the time of termination. Consequently, on December 16, 2015, I issued an Order directing Employee to submit a brief addressing the jurisdiction issue raised by Agency in its Answer. Employee’s brief was due on or before January 4, 2016. Agency had the option to submit a response. On January 4, 2016, Employee filed her response. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

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<sup>1</sup> An Order to Show Cause was issued to Agency on December 4, 2015 for failure to respond to the October 28, 2015 Order. However, Agency did file its Answer on November 2, 2015. It was later determined that an internal office processing error failed to capture this filing in the record.

## JURISDICTION

The jurisdiction of this Office has not been established in this matter.

## ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

## FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as an Educational Aide for ten (10) months.<sup>2</sup> In a Final Agency Decision, Employee was notified that due to an Ineffective IMPACT<sup>3</sup> score rating for the 2014-2015 school year, she would be terminated effective August 7, 2015.

### ***Employee's Position***

Employee asserts in her Petition for Appeal that she was unfairly terminated based on her IMPACT scores. Employee indicates that she was not given the appropriate training to support higher IMPACT scores.

### ***Agency's position***

Agency asserts in its Answer that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee was in probationary status at the time of her termination, and therefore OEA has no jurisdiction over this appeal.<sup>4</sup> Agency indicates that Employee had only been working for ten (10) months at the time of her termination. Further, Agency asserts that Employee received an Ineffective IMPACT rating for her final score and pursuant to the IMPACT process, she was terminated effective August 7, 2015.<sup>5</sup>

### ***Jurisdiction***

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1<sup>6</sup>, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or

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<sup>2</sup> Employee's Petition for Appeal (September 9, 2015).

<sup>3</sup> IMPACT is the effectiveness assessment system which the D.C. Public Schools used for the 2014-2015 school year to rate the performance of school-based personnel.

<sup>4</sup> Agency's Answer to Employee's Petition for Appeal (November 2, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that “[t]he employee shall have the burden of proof as to issues of jurisdiction...” Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as “[t]hat 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.” This Office has no authority to review issues beyond its jurisdiction.<sup>7</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>8</sup>

In the instant matter, the undersigned agrees with Agency’s assertion that OEA does not have jurisdiction over this matter. Chapter 8, Section 814.3 of the District Personnel Manual provides in pertinent part, “that a termination during a probationary period is not appealable or grievable.” Thus, an appeal to this Office by an employee who is classified in probationary status at the time of termination must be dismissed for lack of jurisdiction.<sup>9</sup> Additionally, Employee does not dispute that she was on probation at the time of her termination. Employee noted in her response dated January 4, 2016, that “there is no dispute that I was a probationary employee at the time of termination.”<sup>10</sup> This Office has consistently held that an appeal to OEA by an employee serving in probationary status must be dismissed for lack of jurisdiction.<sup>11</sup> For these reasons, I find that OEA lacks the jurisdiction to adjudicate this matter.

### ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge

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<sup>7</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>8</sup> See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

<sup>9</sup> *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).

<sup>10</sup> Employee’s Letter in Response to December 16, 2015 Order (January 4, 2016).

<sup>11</sup> *Day v. Office of the People’s Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review* (August 19, 1991).