

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0066-23
)	
v.)	Date of Issuance: December 27, 2023
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
)	

Employee, *Pro Se*
Angel Cox, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 5, 2023, 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 from her position as a teacher, effective August 4, 2023. Employee was terminated for receiving a final IMPACT rating of “Ineffective” for the 2022-2023 school year. OEA issued a Request for Agency Answer to Petition for Appeal on September 6, 2023. Agency filed its Answer to Employee’s Petition for Appeal on October 6, 2023. Agency noted therein that Employee was a probationary Employee at the time of her termination and therefore, she cannot appeal this termination to OEA. This matter was assigned to the undersigned on October 6, 2023.

Subsequently, I issued an Order on October 11, 2023, scheduling a Status/Prehearing Conference in this matter for November 8, 2023. Employee filed a request to continue the scheduled Status/Prehearing Conference on November 7, 2023. This request was granted in an Order dated November 8, 2023, and the Status/Prehearing Conference was rescheduled for November 21, 2023. Both parties were in attendance at the rescheduled conference. Employee admitted during the November 21, 2023, Conference that she was a probationary employee at the time of her termination.

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

Thereafter, I issued an Order on November 21, 2023, requiring Employee to address the jurisdictional issue raised by Agency in its Answer. Employee's response was due on or before December 5, 2023.² Employee did not comply with the November 21, 2023, Order. Thereafter, on December 7, 2023, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the November 21, 2023, Order. Employee had until December 21, 2023, to respond to the Statement of Good Cause Order. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

JURISDICTION

As explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.³

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 624.3, DCMR Ch. 600, et seq (December 27, 2021) grants an Administrative Judge ("AJ") the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ "in the exercise of sound discretion may dismiss the action or rule for the appellant" if a party fails to take reasonable steps to prosecute or defend an appeal.⁴ Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;

² A courtesy copy of this Order was emailed to the parties on November 28, 2023.

³ OEA Rule § 699.1.

⁴ OEA Rule 624.3.

- (b) *Submit required documents after being provided with a deadline for such submission* (emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submissions.⁵ Here, Employee was provided notice in both the November 21, 2023; and December 7, 2023, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These responses were required for a proper resolution of this matter. I find that Employee's failure to prosecute her appeal is a violation of OEA Rule 624. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, this matter should be dismissed for her failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

⁵ *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).