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THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
PATRICIA WALTON	)	OEA Matter No. J-0014-15
Employee	)	
	)	
v.	)	Date of Issuance: February 12, 2015
	)	
OFFICE OF THE STATE SUPERINTENDENT	)	Lois Hochhauser, Esq.
OF SCHOOLS	)	Administrative Judge
Agency	)	
Patricia Walton, Employee, <i>Pro Se</i>	)	
Hillary Hoffman-Peak, Agency Representative	)	

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

Patricia Walton, Employee, filed a petition with the Office of Employee Appeals (OEA) on November 8, 2014, appealing the issuance of a letter of reprimand by the Office of the State Superintendent of Schools, Agency, on October 24, 2014. At the time of the issuance of the letter of reprimand, Employee was held the position of customer service representative. The matter was assigned to me on November 19, 2014.

Upon review of the petition, I issued an Order notifying Employee that this Office's jurisdiction was at issue since she was appealing the issuance of a reprimand, which is not included in D.C. Official Code §1-606.03(a) as a matter which can be appealed to this Office. I further advised her that employees have the burden of proof on all jurisdictional issues. Employee was given a deadline of January 5, 2015 to submit argument in support of her position regarding this Office's jurisdiction. On January 5, 2015, Employee requested an extension of time in order to allow her additional time to retain counsel. The request is granted; and an Order was issued on January 12, 2015 extending the deadline until February 11, 2015. Employee filed a timely submission on February 5, 2015. The record closed on February 11, 2015.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should the petition be dismissed?

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Pursuant to OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), employees have the burden of proof on all issues of jurisdiction. This burden must be met by a “preponderance of the evidence” which is defined in OEA Rule 628.2 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.”

The jurisdiction of this Office is set forth in D.C. Official Code §1-606.03(a) which states in pertinent part:

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]...

In her February 5, 2015 submission, Employee, citing *N.L.R.B. v. Weingarten*, 420 U.S. 251 (1975), argued that she was entitled to union representation at a meeting with Agency because she believed that the meeting could result in the imposition of an adverse action. She asked that the statement of Rubin Young, former Union representative, which she attached to the submission, be considered. In his statement, Mr. Young asserted that it was unfair for Agency to issue a letter of reprimand since, citing *Weingarten*, Employee had a reasonable expectation that an adverse action could be imposed as the result of a meeting with her supervisor and therefore was entitled to the union representation she requested. He asserted that the collective bargaining agreement between Agency and the Union, also provides for such representation.

The Administrative Judge considered Employee’s submission, including Mr. Young’s statement. Although she may be correct that *Weingarten* and/or the collective bargaining agreement provides her with the right to union representation under the circumstances presented, the argument does not create jurisdiction where none exists. The statutory language cited above, does not include the issuance of a letter of reprimand as an “adverse action for cause” that can be appealed to this Office. Employee had the burden of proof on the issue of jurisdiction. The Administrative Judge concludes that she failed to meet this burden, and that therefore, this petition for appeal should be dismissed.

### **ORDER**

It is hereby:

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE:

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Lois Hochhauser, Esq.  
Administrative Judge