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

In the Matter of:)	
)	OEA Matter No. J-0093-16
NINA SMITH,)	
Employee)	
)	Date of Issuance: December 14, 2016
v.)	
)	Michelle R. Harris, Esq.
DISTRICT OF COLUMBIA)	Administrative Judge
PUBLIC SCHOOLS,)	
Agency)	
Nina Smith, Employee, <i>Pro Se</i>)	
Carl K. Turpin, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 7, 2016, Nina Smith (“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 position as a Teacher. This matter was assigned to the undersigned Administrative Judge (“AJ”) on October 6, 2016. On October 14, 2016, Agency filed its Answer and Motion to Dismiss Employee’s Petition for Appeal.

On October 27, 2016, I issued an Order directing Employee to address the jurisdiction issue raised by Agency in its Answer and Motion to Dismiss. Employee’s brief was due on or before November 9, 2016. Additionally, Agency had the option to submit a response to Employee’s brief on or before November 21, 2016. Employee did not submit her brief by the deadline. Consequently, on November 21, 2016, I issued an Order for Statement of Good Cause to Employee.¹ Employee was ordered to submit her brief, and a statement of good cause based on her failure to provide a response to the October 27, 2016 Order. Employee had until December 5, 2016, to respond. To date, Employee has not responded to either Order. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

¹ Agency submitted its response to the October 27, 2016 Order on November 21, 2016.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

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.

OEA Rule 628.2 *id.* states:

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 621.3 states in relevant part that the “Administrative Judge, 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.”²

Further, OEA Rule 621.3 indicates that a 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;
- (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.³

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 a submission.⁴ In the instant matter, Employee was provided notice in both the October 27, 2016, and November 21, 2016 Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. Additionally, all Orders were sent via postal mail service to the address provided by Employee in her Petition for Appeal. A response to each of these Orders was required to ensure an appropriate review and resolution of the matter. Accordingly, I find that Employee has not

² OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

³ *Id.*

⁴ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge