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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
NICK JAMILIA)	OEA Matter No. 1601-0014-06
Employee)	
)	Date of Issuance: January 17, 2006
v.)	
)	Daryl J. Hollis, Esq.
)	Senior Administrative Judge
DOAR PUBLIC CHARTER SCHOOL)	
_____)	
Agency)	

Francine Weiss, Esq., Employee Representative
Kristin Going, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

On November 21, 2005, Employee, a Teacher at Doar Public Charter School (Doar), filed a petition for appeal from Doar's action removing him for violating the school's policy on corporal punishment.

This matter was assigned to me on December 22, 2005. The file contained Doar's "Motion to Dismiss Petition for Appeal." In pertinent part, that motion reads as follows:

Petitioner's appeal must be dismissed because [OEA] does have *in personam* jurisdiction over D. C. Public Charter Schools or their employees. [OEA] Rule 604.1 . . . provides that the OEA

has jurisdiction to hear the appeals of “any District of Columbia employee.” D.C. public charter school employees are not government employees because, under Section 38-1802.04 of the D.C. Code, “[a] public charter school shall be exempt from District of Columbia statutes, policies, rules, and regulations established for the District of Columbia public schools by the Superintendent, Board of Education, Mayor, District of Columbia Council, or Authority, except as otherwise provided in the school’s charter or this subchapter.” The school’s charter does *not* provide that the school is subject to District of Columbia statutes, policies, rules, and regulations governing District of Columbia public schools. Therefore, petitioner is not a government employee, and the OEA has no jurisdiction to hear an appeal of his discharge.

(emphasis in original). (citations omitted).

By my Order dated December 22, 2005, Employee was ordered to respond to Doar’s Motion to Dismiss by the close of business on January 12, 2006. On January 12th, Ms. Weiss submitted Employee’s response. That response reads in part as follows:

District of Columbia law does not preclude teachers at District of Columbia charter schools from being considered employees of the District of Columbia and thereby receiving coverage at the [OEA]. Such teachers could be considered employees if their school charter so provides. Doar has provided Employee’s counsel the Doar charter and it does not provide such coverage. Therefore, the employee does not oppose the Agency’s motion to dismiss.

(emphasis added). (citations omitted).

Because the case could be decided based on the parties’ submissions and the relevant statutes, no proceedings were held. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal must be dismissed for lack of jurisdiction.

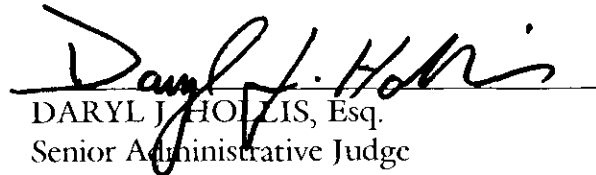
ANALYSIS AND CONCLUSIONS

OEA Rule 629.2, 46 D.C. Reg. 9317 (1999) provides that the employee shall have the burden of proof as to issues of jurisdiction. Here, Doar has moved for dismissal of the case on the grounds that Employee is not a "government employee" and thus cannot appeal his dismissal to this Office. Employee does not object to Agency's motion. Further, I have reviewed the cited statutes and they substantiate Doar's claim. Therefore, I conclude that this appeal must be dismissed for lack of jurisdiction.

ORDER

It is hereby ORDERED that this appeal is DISMISSED.

FOR THE OFFICE:


DARYL J. HOLLIS, Esq.
Senior Administrative Judge