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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 2401-0136-10
DELIAH EDWARDS,)	
Employee)	
)	Date of Issuance: June 6, 2012
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
Agency)	Monica Dohnji, Esq.
)	Administrative Judge

Deliah Edwards, Employee *Pro Se*
W. Iris Barber, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 5, 2009, Deliah Edwards (“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”) action of abolishing her position through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was an ET-15 English Teacher at Jefferson Middle School (“Jefferson”). Employee was serving in Education Service status when her position was abolished.

I was assigned this matter on February 6, 2012. On February 10, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. Both parties have complied. After reviewing the record, I have determined that there are no material facts in dispute and therefore a hearing is not warranted. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.¹

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02², which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

Specifically, section § 1-624.08 states in pertinent part that:

¹ See Agency's Answer, Tab 1 (December 16, 2009).

² D.C. Code § 1-624.02 states in relevant part that:

(a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:

- (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
- (2) One round of lateral competition limited to positions within the employee's competitive level;
- (3) Priority reemployment consideration for employees separated;
- (4) Consideration of job sharing and reduced hours; and
- (5) Employee appeal rights.

(a) ***Notwithstanding*** any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 2000, and each subsequent fiscal year, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) ***Notwithstanding*** any rights or procedures established by any other provision of this subchapter, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*,³ the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency.” The Court also found that both laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”⁴

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*,⁵ DCPS conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.” The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the Act”) instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”⁶ The Court stated

³ No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

⁴ *Id.* at p. 5.

⁵ 960 A.2d 1123, 1125 (D.C. 2008).

⁶ *Id.*

that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”⁷

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.⁸ The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”⁹ Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”¹⁰

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹¹ Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding,’ suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level.

Employee’s Position

In her petition for appeal, Employee submits that she was “accessed [sic] from Eastern Senior High School...and appointed to Jefferson Middle School a week before the opening of school.”¹² She explains that while she was accepted at Jefferson, the “acting principal, Stephanie Patton...expressed that she did not have an English position available.”¹³ Employee also notes that, while an English Teacher position eventually became available, she was not offered the position. She further notes that she was not assigned to a personal work space, computer, classroom or office, and she had to share a desk with a Special Education teacher. Employee also asserts that upon her termination as a result of the RIF, she inquired about the results of her competitive level form and she was informed by the principal that the forms were unavailable to view unless she decided to appeal the RIF decision. Employee notes that she was told by the principal that funding and seniority were the deciding factors in the RIF decision. However, she maintains that she was a certified teacher with more seniority than two (2) other English

⁷ *Id.*

⁸ *Id.*

⁹ *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

¹⁰ *Id.*

¹¹ *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

¹² Petition for Appeal (November 5, 2009).

¹³ *Id.*

teachers. Employee also asserts that there “are two uncertified English teachers on staff...” and that the principal only accepted her assignment at Jefferson because “she knew my time at the school was limited on the school’s budget.”¹⁴ Employee further submits the following:

- 1) That Agency violated and discriminated “against her rights as an ET-15 employee during the RIF process implemented in October 2009.”
- 2) That she “was ranked as an English teacher but assigned within the school as a Special Education Teacher...” by the principal. Employee explains that she “held no English classes as a General Education Teacher” while at Jefferson. She further notes that she worked directly with the Special Education department and co-taught with a Special Education Teacher per the principal’s instructions.
- 3) That she was never observed formally or informally by any member of the administration.
- 4) That she had more seniority than two of the teachers and she did not hold an English teacher position, and thus, should not have been ranked with the other English teachers.
- 5) That the information contained within her competitive level form was erroneous and false. She notes that the competitive level document is based on discrimination and was improperly implemented.
- 6) That new teachers were hired following the RIF.
- 7) That she was entitled to priority re-employment; however, DCPS has not considered her for any of the English or Special Education positions she has applied to following the RIF. She explains that about a week after the RIF, she received an email from DCPS inquiring whether she wanted to remain in the pool of applicants, to which she responded in the affirmative, but has never received any further information from DCPS regarding a permanent re-employment.
- 8) That after the RIF, she became certified as a Special Education Teacher and was sub-contracted by DCPS; however, she was one of three employees who were later terminated. Employee states that she “equally question[s] that selection process due to the fact that the Summer School Coordinator, Arden Matthew, was not allowed to offer feedback regarding the teacher selection and no representatives from DCPS visited... or observed any teachers or classrooms.”
- 9) That the RIF was used by DCPS as a method “to reorganize the school system while violating teachers’ rights and promoting [a] less expensive workforce.” Employee requests that she be returned to her ET-15 English teacher position; the RIF be expunged from her record and she be made whole including previous years of teaching counter,

¹⁴ *Id.*

awarded all benefits and salaries as an ET-15 teacher and any other actions deemed appropriate.¹⁵

Agency's Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her separation. Agency asserts that there were four (4) ET-15 English Teacher positions at Jefferson, and one (1) position was identified as the position that would be subject to the RIF. Agency maintains that it utilized the proper competitive factors in implementing the RIF and that Employee was the lowest ranked ET-15 English Teacher, and was terminated as a result of the round of lateral competition.¹⁶

Analysis

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS is authorized to establish competitive areas when conducting a RIF so long as those areas are based “upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office.” For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and
3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.¹⁷

Here, Jefferson was identified as a competitive area, and ET-15 English Teacher was determined to be the competitive level in which Employee competed. Employee has not provided any credible evidence that she was placed in the wrong competitive level. According to the Retention Register provided by Agency,¹⁸ there were four (4) ET-15 English Teachers subject to

¹⁵ Employee's Brief (March 27, 2012).

¹⁶ Agency's Brief (March 5, 2012).

¹⁷ *Id.* at pp 2-3. School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

¹⁸ *Id.* at Exhibit A. The Original Retention Register submitted by Agency was illegible. Thus, on June 1, 2012, the undersigned emailed both parties, requesting that Agency submits a legible copy of the Retention Register by June 4, 2012. On June 1, 2012, Agency submitted an email along with a .pdf copy of the Retention Register.

the RIF. Of the four (4) filled positions,¹⁹ one (1) was identified to be abolished. Because Employee was not the only ET-15 English Teacher within her competitive level, she was, therefore, required to compete with other employees in one round of lateral competition. According to Title 5, DCMR § 1503.2 *et al.*:

If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
- (b) Significant relevant contributions, accomplishments, or performance – (10%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
- (d) Length of service – (5%).²⁰

¹⁹ Agency's Answer, at Tab 2 (December 16, 2009) notes that, the "purpose of the RIF was to reduce filled positions to meet the reduction target...." According to the Retention Register, there were five (5) ET-15 English Teacher positions at Jefferson, however, one (1) position was vacant when the RIF was conducted, and as such, was not included in the RIF.

²⁰ It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.²¹ Agency cites to *American Federation of Government Employees, AFL-CIO v. OPM*, 821 F.2d 761 (D.C. Cir. 1987), wherein the Office of Personnel Management was given “broad authority to issue regulations governing the release of employees under a RIF...including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority.” I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a CLDF in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Jefferson was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the “length of service” category was completed by the Department of Human Resources (“DHR”).

Employee received a total of twenty-three and a half (23.5) points on her CLDF and was therefore ranked the lowest in her competitive level. Employee’s CLDF stated, in pertinent part, the following:

“Delilah Edwards assists students in learning, but does not address classroom needs independently. She does not take on a primary role in student learning. This year she was allowed to pursue her interest in taking the role of supporting inclusion throughout the school but has failed to meet the needs of the students who need support in English. The needs of the school in English are not being addressed by Delilah because she chooses to support areas that are not as critical as English. She has not demonstrated using to data to [sic] increase student achievement through re-teaching and tiered interventions. She has not demonstrated classroom readiness as an English teacher. She has not addressed the development of instructional practice in English Language Arts.”²²

Office or school needs

This category is weighted at 75% on the CLDF and accounts for any factors that may have an impact on the success of the school such as; curriculum, specialized education, degrees, licenses or areas of expertise. Employee received a total of three (3) points out of a possible ten (10) points in this category, resulting in a weighted score of twenty-two and a half (22.5); a score much lower than other employees within her competitive level. In her brief, Employee asserts that the comments in her CLDF are erroneous and false.²³ She goes on to provide justifications

²¹ Agency Brief at pp. 4-5 (March 5, 2012).

²² *Id.* at Exhibit B.

²³ Employee’s Brief, *supra*.

for some of the comments made by the principal in this section. She also submits that she has a Bachelors degree, a Masters degree, and is currently completing her Doctorate program. However, Employee has failed to provide any evidence to highlight how the degree translates into her classroom expertise. Moreover, because Employee received a total of three (3) points in this category, it can be reasonably assumed that her degrees were taken into consideration in the calculation of the awarded points. Also, there is no indication that any supplemental evidence would supplant the higher score received by the other employees in her competitive level who were not separated from service pursuant to the RIF. Further, it is within the principal of Jefferson's managerial expertise to assign numeric values to this factor. As such, this Office cannot substitute its judgment for that of the principal at Jefferson.

Significant relevant contributions, accomplishments, or performance

This category is weighted at 10% on the CLDF. Employee received zero (0) points in this area. This category includes factors such as student outcomes, rating, awards, attendance etc. Employee did not provide any documentation to supplement additional points being awarded in this area. Moreover, it is within the principal's managerial discretion to award points in this area given her independent knowledge of the employees and student body.

Relevant supplemental professional experiences as demonstrated on the job

This category accounts for 10% of the CLDF. Employee did not provide any documentation to supplement additional points being awarded in this area. Moreover, it is within the principal of Jefferson's managerial expertise to assign numeric values to this factor.

Length of service

This category accounts for 5%. It was completed by DHR and was calculated by adding the following: 1) years of experience; 2) military bonuses; 3) D.C. residency points; and 4) rating add—four years of service was given for employees with an “outstanding” or “exceeds expectations” evaluation within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Here, Employee's Service Computation Date (“SCD”) is listed as 2007. Employee contends that she has more seniority than two (2) other teachers. While I agree with this assertion, according to the Retention Register and the CLDF, both employees received a lower score than Employee for years of experience. However, these employees received much higher scores in the other CLDF categories. Also, an employee's seniority only counts towards the length of service category which has a total weight of only 5% of the overall CLDF. Moreover, Employee has not provided supporting documentary evidence to support any additional points being awarded in this category. Employee received two (2) points for Years of Experience. Employee did not receive any points for Veterans preference and D.C. residency. She did not receive an “outstanding” or “exceeds expectations” performance rating for the prior year, and therefore, did not receive the additional four years. Employee received a weighted total of one

(1) point in this category. She does not contest the points awarded. Therefore, I find that Agency properly calculated this number.

Employee also alleges that she “was ranked as an English teacher but assigned within the school as a Special Education Teacher...” by the principal. Employee explains that she “held no English classes as a General Education Teacher” while at Jefferson. She further notes that she worked directly with the Special Education department and co-taught with a Special Education teacher per the principal’s instructions. However, Employee has failed to submit any credible evidence or supporting documentation to substantiate or corroborate these assertions. Moreover, nothing within the record shows that Employee was placed in the wrong competitive level. The Retention Register, CLDF and Employee’s personnel record all list Employee’s position of record as an ET-15 English Teacher.

Employee argues that she was never observed formally or informally by any member of the administration. The undersigned notes that the criteria Agency instructed the principals to use in ranking employees did not require a formal observation of employees.²⁴ Specifically, in the Office or School Needs category, principals were instructed to assign scores “reflect[ing] [the] best judgment of the extent to which the person meets the particular needs of [the] school.”²⁵

In reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency’s position regarding the principal’s authority to utilize discretion in completing an employee’s CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997), the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that “school principals have total discretion to rank their teachers” and noted that performance evaluations are “subjective and individualized in nature.”²⁶ Employee has a total score of twenty-three and a half (23.5) points after all of the factors outlined above were tallied and scored. The next lowest colleague who was retained received a total score of fifty-four and a half (54.5) points. Employee has not proffered any other evidence to suggest that a further re-evaluation of her CLDF scores would result in a different outcome in this case.²⁷ Accordingly, I find that the principal of Jefferson had discretion in completing Employee’s CLDF as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. I therefore find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) Days Notice Requirement

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that “an employee selected for separation shall

²⁴ Agency’s Answer, Tab 2, Attachment B (December 16, 2009).

²⁵ *Id.*

²⁶ *See also American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

²⁷ *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, the D.C. Official Code § 1-624.08(e) which governs RIFs provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added). Here, Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009. The notice stated that Employee's position was being abolished as a result of a RIF. The Notice also provided Employee with information about her appeal rights. Employee has not alleged that she did not receive a written thirty (30) days notice prior to the effective date of the RIF. Thus, it is undisputed that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

RIF Rationale

Employee alleges that the Agency used the RIF as a method to reorganize the school system, while violating teachers' rights and promoting a less expensive workforce. However, Employee has not provided any credible evidence to support this contention. Furthermore, OEA has consistently held that, how Agency elects to spend its funds on personnel services or how Agency elects to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge ("AJ") has any control.²⁸ Additionally, in *Anjuwan v. D.C. Department of Public Works*,²⁹ the D.C. Court of Appeals ruled that OEA lacked authority to determine whether an agency's RIF was bona fide. The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement the RIF..."³⁰ The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds...[or] management decisions about which position should be abolished in implementing the RIF."³¹ OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services.

Discrimination

Employee makes a blanket assertion that the RIF was based on discrimination. D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of the OHR is to "secure an end to unlawful discrimination in employment...for any reason other than that of individual merit." Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.³² Additionally, District Personnel Manual ("DPM") § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. Moreover, the Court in *Anjuwan* held that OEA's authority over RIF matters is narrowly prescribed.³³ This Court explained that, OEA

²⁸ *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

²⁹ 729 A.2d 883 (December 11, 1998).

³⁰ *Id.* at 885.

³¹ *Id.*

³² D.C. Code §§ 1-2501 *et seq.*

³³ 729 A.2d 883 (December 11, 1998).

lacks the authority to determine broadly whether the RIF violated any law except whether “the Agency has incorrectly applied...the rules and regulations issued pursuant thereto.” This court further explained that OEA’s jurisdiction cannot exceed statutory authority and thereby, OEA’s authority in RIF cases is to “determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs.” *Citing Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*³⁴ stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is “contending that he was targeted for whistle blowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation...”³⁵ In the instant case, Employee simply alleges that the RIF was based on discrimination. However, Employee has failed to provide any credible evidence to substantiate this assertion. Moreover, Employee’s claim as described in her submissions to this Office do not allege any whistle blowing activities as defined under the Whistleblower Protection Act nor does it appear to be retaliatory in nature. Consequently, I find that Employee’s claim falls outside the scope of OEA’s jurisdiction.

Priority Re-employment

Employee also argues that she was entitled to priority re-employment, but DCPS has not considered her for any of the English or Special Education positions she has applied to following the RIF. She explains that about a week after the RIF, she received an email from DCPS inquiring whether she wanted to remain in the pool of applicant, and to which she responded in the affirmative, but has never received any further information from DCPS regarding a permanent re-employment. She notes that DCPS hired new teachers after the RIF. As discussed above, § 1-624.08 and not § 1-624.02 applies to the instant RIF. Section 1-624.08 does not require an agency to engage in priority re-employment procedures. However, in conducting the instant RIF, Agency maintains that it complied with 5 DCMR Chapter 15 which addresses the issue of priority re-employment.³⁶ Furthermore, the RIF Notice from Agency specifically informed Employee that she could apply for any job vacancies within Agency or the District government, and that she would be considered for priority re-employment. However, it further explained that, this did not guarantee re-employment. Also, Employee has provided no credible evidence to show that she was qualified for the available positions, but was simply not considered for priority re-employment. Considering as much, I conclude that Employee’s argument regarding priority re-employment is wholly unsubstantiated.

Grievances

Employee also submits that new teachers were hired after the RIF. She also contends that, while she was assigned to Jefferson as an English teacher, she never served as an English teacher because she was assigned within the school as a Special Education teacher by the principal, and

³⁴ 730 A.2d 164 (May 27, 1999).

³⁵ *El-Amin*; citing *Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

³⁶ Agency’s Brief at p.8 (March 5, 2012).

she was not assigned a work space, computer or classroom. She also maintains that she was singled out to be on the RIF list from the first day of school as she was told by the principal at Jefferson that there was no English teacher position available. Employee also questions her 2011 termination as a sub contractual Special Education teacher for DCPS following the 2009 RIF. Complaints of this nature are grievances, and do not fall within the purview of OEA's scope of review. In addition, this Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at an agency.³⁷ Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after she properly received one round of lateral competition and a timely thirty (30) days legal notification was properly served. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in her removal is upheld.

ORDER

It is hereby **ORDERED** that Agency's action separating Employee pursuant to a RIF is **UPHELD**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge

³⁷ *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).