THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No. 1601-0125-08
MARIO SANCHEZ	)	
Employee	)	Date of Issuance: January 23, 2009
v.	)	Sheryl Sears, Esq.
	)	Administrative Judge
DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	
Agency	)	

Mario Sanchez, Employee, *Pro Se*
Harriet E. Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND FINDINGS OF FACT

Mario Sanchez ("Employee") was an Instructional Paraprofessional for the District of Columbia Public Schools. ("DCPS" or "Agency"). By letter dated June 13, 2008, Agency notified Employee that he would be removed effective on June 20, 2008, for alleged failure to meet qualification requirements outlined in the *No Child Left Behind Act* of 2001.

On July 28, 2008, Employee filed an appeal with the Office of Employee Appeals ("the Office"). Employee did not deny Agency's claim that he lacked full credentials for his position. However, he argued that the World Education Services of Bowling Green Station, New York, New York failed to evaluate his credits in a timely fashion.

On November 18, 2008, Kaya Henderson, Deputy Chancellor, issued a certificate deeming Employee a "Highly Qualified Instructional Paraprofessional" with all of the requirements for instructional paraprofessionals "outlined in Section 1119 of the *No Child Left Behind Act* of 2001."

Agency challenged the jurisdiction of this Office over Employee's appeal on the grounds that, at the time of the separation, he was an "at will" employee. This Judge

ordered the parties to convene for a pre-hearing conference on January 12, 2009. Attorney Segar appeared on behalf of Agency accompanied by Bobbie Hoye, Esq. Employee did not attend.

This appeal presented no factual disputes that required resolution by a hearing. Therefore, none was convened. This decision is based upon the record of documentary evidence and written legal arguments by the parties. The record is now closed.

BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that "[t]he employee shall have the burden of proof as to issues of jurisdiction . . ." Pursuant to OEA Rule 629.1, *id*., the applicable standard of proof is by a "preponderance of the evidence." OEA Rule 629.1 defines a preponderance of the evidence 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." Employee must prove, by a preponderance of the evidence, that this Office has jurisdiction over his appeal.

JURISDICTION

For the reasons set forth in the "Analysis and Conclusion" section below, this Office does not have jurisdiction over Employee's appeal.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS

It is undisputed that Employee, at the time of his removal, did not meet all of the requirements to qualify for his position. For that reason, instead of holding "career" status, he was an "at will" employee. Under the law, the difference is crucial.

Chapter 16 of the District Personnel Manual (DPM) contains the rules and regulations that implement the law of employee discipline. Section 1600.1 of the DPM limits the application of those provisions to employees "of the District government *in the Career Service.*" (Emphasis added.) In accordance with §1601.1, no career service employee may be "officially reprimanded, suspended, reduced in grade, removed, or placed on enforced leave, except as provided in this chapter or in Chapter 24 [the provisions for conducting a reduction in force] of these regulations." The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, "a final agency decision" effecting "an adverse action for cause that results in removal."

However, these protections are only afforded to career service employees. Section 1601.1 of the District Personnel Manual (DPM) distinguishes career service employees from at will employees. It states that "[e]xcept as otherwise required by law,

an employee not covered by §1600.1 is an *at will employee* and may be subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority." (Emphasis added). An at will employee may be terminated at any time and "for any reason at all." *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), ___ D.C. Reg. ___ ( ).

Employee was required to have certain credentials for his position. Although he did achieve them, it was well after his removal. At the time of the separation, Employee was an at-will employee subject to removal at the will of the agency with no recourse. According to the applicable laws, rules and regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, this appeal must be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE: _____

SHERYL SEARS, ESQ.