

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
STEPHANNIE HUEY,)	
Employee)	OEA Matter No. 1601-0113-15
)	
v.)	
)	Date of Issuance: April 18, 2017
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Stephanie Huey (“Employee”) worked as a Math Teacher with the D.C. Public Schools (“Agency”). On July 10, 2015, Agency issued a notice of termination to Employee. The notice provided that under IMPACT, Agency’s assessment system for school-based personnel, employees who receive a final IMPACT rating of Ineffective were subject to termination. Employee was rated Ineffective for the 2014-2015 school year. As a result, she was terminated effective August 7, 2015.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on July 27, 2015. She argued that she was wrongfully terminated as the result of subjective evaluations. Accordingly, she requested that her termination be overturned and that she be

¹ *Petition for Appeal*, p. 2-8 (July 27, 2015).

transferred to another school.²

Agency filed a response to Employee's Petition for Appeal and Motion to Dismiss on September 2, 2015. It provided that it properly removed Employee after she received an Ineffective rating. Moreover, Agency explained that Employee was still in her probationary period when she was terminated. As a result, it asserted that OEA did not have jurisdiction because it could not consider appeals of probationary employees. Therefore, it requested that Employee's Petition for Appeal be dismissed.³

On November 2, 2015, the Administrative Judge ("AJ") issued her Initial Decision. The AJ found that OEA did not have jurisdiction. She held that the Office's jurisdiction was established in the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA") and Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA") which provided that OEA could consider appeals of permanent employees in Career and Education Services who are not serving in a probationary period. The AJ noted that Employee's offer letter specifically informed her that her employment status was probationary for a period of two school years. Therefore, she ruled that OEA lacked jurisdiction over the appeal because Employee served in her position for less than two years. Accordingly, she ordered that Agency's removal action be upheld.⁴

On November 10, 2015, Employee filed her Petition for Review. She states that according to District Personnel Manual ("DPM") § 811.1, she fell under a class of excluded employees. Employee explains that she is not a probationary employee but a permanent, tenured employee. Additionally, she states that OEA does have jurisdiction over her appeal.

² *Id.* at 2.

³ *District of Columbia Public Schools' Motion to Dismiss and Answer to Employee's Petition for Appeal*, p. 1-5 (September 2, 2015).

⁴ *Initial Decision*, p. 1-5 (November 2, 2015).

Accordingly, Employee requests that the AJ reconsider her decision.⁵

Agency filed a Response to Employee's Petition for Review on November 16, 2015. It maintains that the AJ's findings are based on substantial evidence and that the AJ correctly held that Employee was a probationary employee. Therefore, Agency requests that Employee's Petition for Review be dismissed.⁶

Chapter 5-E of the District of Columbia Municipal Regulations ("DCMR") specifically applies to D.C. Public School employees. Chapter 5-E DCMR, section 1307.3 provides that "an initial appointee to the ET salary class shall serve a two (2) year probationary period requirement." In its Answer to Employee's Petition for Appeal, Agency contends that Employee was hired in the ET salary class.⁷ Employee does not dispute this claim. Thus, because she was hired in the ET salary class, Employee was required to serve a two-year probationary period, in accordance with the regulation. Moreover, as the AJ held, Employee's offer letter clearly provides that she was to serve a two-year probation.⁸ OEA has consistently held that we do not have jurisdiction over matters involving probationary employees.⁹ Therefore, the AJ's decision to dismiss Employee's appeal was based on substantial evidence.¹⁰

As for Employee's claim that she fell under the status of excluded employees, DPM

⁵ *Employee's Petition for Review*, p. 1-3 (November 10, 2015).

⁶ *District of Columbia Public Schools' Response to Petition for Review*, p. 3 (November 16, 2015).

⁷ *District of Columbia Public Schools' Motion to Dismiss and Answer to Employee's Petition for Appeal*, p. 2 (September 2, 2015).

⁸ *Initial Decision*, p. 4 (November 2, 2015).

⁹ *Tiffany Shaw v. District of Columbia Public Schools*, OEA Matter No. J-0139-15 (January 12, 2016); *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11, *Opinion and Order on Petition for Review* (September 8, 2012); *Jason Codling v. Office of the Chief Technology Officer*, OEA Matter No. J-0151-09, *Opinion and Order on Petition for Review* (December 6, 2010); *Susan Wallace v. D.C. Public Schools*, OEA Matter No. J-0009-05 (January 31, 2006); *Elliott Duvall v. D.C. Department of Youth Rehabilitative Services*, OEA Matter No. J-0008-06 (January 24, 2006); *Day v. Office of the People's Counsel*, OEA Matter No. J-0009-94, *Opinion and Order on Petition for Review*, (July 10, 1995); and *Jones v. District of Columbia Lottery Board*, OEA Matter No. J-0231-89, *Opinion and Order on Petition for Review* (August 19, 1991).

¹⁰ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.

section 811.1 specifically applies to those employed by the Office of State Superintendent of Education. Section 811.1 provides the following:

An individual appointed, or one reappointed noncompetitively . . . to a position within the Educational Service in the Office of the State Superintendent of Education (OSSE) shall serve without tenure, except for the following “Excluded Employees”

Because Employee was employed by the District of Columbia Public Schools, this section is not applicable to her.

Employee was still a probationary employee at the time of removal because she had yet to complete the two-year probationary period. OEA does not have jurisdiction over matters involving probationary employees. Therefore, Employee’s Petition for Review is denied.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.