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

In the Matter of:	)	
	)	OEA Matter No.: 1601-0071-22
EMPLOYEE <sup>1</sup> ,	)	
Employee	)	
	)	Date of Issuance: October 25, 2022
v.	)	
	)	
DISTRICT OF COLUMBIA	)	MICHELLE R. HARRIS, ESQ.
PUBLIC SCHOOLS,	)	Administrative Judge
Agency	)	
	)	
	)	
	)	

Employee, *Pro Se*  
Nicole C. Dillard, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 2, 2022, 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 remove her from service. Employee was terminated after receiving an “Ineffective” rating under the IMPACT evaluation during the 2021-2022 school year. The effective date of Employee’s termination was July 30, 2022. Following a letter from OEA dated August 2, 2022, requesting an Answer in this matter, Agency filed its Answer and Motion to Dismiss on September 1, 2022. Agency cited therein that Employee was in probationary status at the time of separation, and that OEA lacked jurisdiction to adjudicate this matter. This matter was assigned to the undersigned Administrative Judge on September 2, 2022.

On September 8, 2022, I issued an Order requiring the parties to submit briefs regarding the jurisdiction issue raised by Agency. Employee’s brief was due on or before September 26, 2022. Agency’s response was due on October 11, 2022. Employee did not submit her brief as required. On October 4, 2022, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit her brief, along with a statement of good cause for her failure to submit her brief by the prescribed deadline. Employee’s statement for good cause and brief were due on or before October 14, 2022. As of the date of this decision, Employee has not submitted a brief as required by the September 8, 2022, and October 4, 2022 Orders. The record is now closed.

**JURISDICTION**

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<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

The jurisdiction of this Office has not been established in this matter.

### ISSUE

Whether this appeal should be dismissed for failure to prosecute.

### BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for 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 631.2 *id.* states:

For appeals filed under §604.1, 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 624.3 states in relevant part that the “if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. 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; or
- (c) Inform this Office of a change of address which results in correspondence being returned.”<sup>2</sup> (Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.<sup>3</sup> In the instant matter, Employee was provided notice in the September 8, 2022, and October 4, 2022, Orders that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in her Petition for Appeal. Further, courtesy copies of all Orders were sent to the email addresses of record. 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 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 624.3.

<sup>2</sup> OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).

<sup>3</sup> *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).

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:

/s/ Michelle R. Harris  
MICHELLE R. HARRIS, ESQ.  
Administrative Judge