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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 1601-0059-18
JENNIFER HIGGINS,	)	
Employee	)	
	)	Date of Issuance: November 16, 2018
v.	)	
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
_____	)	Administrative Judge
Jennifer Higgins, Employee, <i>Pro se</i>		
Lynette A. Collins, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

Jennifer Higgins (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on July 16, 2018, challenging the District of Columbia Public Schools’ (“Agency”) decision to remove her from her position as a School Phycologist pursuant to an IMPACT rating. Employee’s removal was effective July 27, 2018. Agency filed its Answer on August 21, 2018. I was assigned this matter on September 4, 2018.

An Order scheduling a Prehearing Conference was issued on September 27, 2018. A Prehearing Conference was convened on November 5, 2018. Agency’s representative was present; however, Employee failed to appear. Thus, a Show Cause Order was issued on the same date ordering Employee to provide a statement of good cause for failing to appear at the November 5, 2018 Prehearing Conference. Employee had until November 13, 2018 to respond to the Show Cause Order.<sup>1</sup> To date, Employee has failed to respond to the Show Cause Order. The record is now closed.

<sup>1</sup> The Show Cause Order stated that Employee had until November 12, 2018, to respond to the Show Cause Order. However, because November 12 was a holiday (Veterans Day), Employee submission should have been filed no later than the next business day, November 13, 2018.

## JURISDICTION

As explained below, the jurisdiction of this Office has not been established.

## ISSUE

Whether this matter should be dismissed for failure to prosecute.

## BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.<sup>2</sup> “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.

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.<sup>3</sup>

## ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3<sup>4</sup> provides that the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant if a party fails to take reasonable steps to prosecute or defend an appeal. 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>5</sup>

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submissions.<sup>6</sup> Here, a Prehearing Conference was convened on November 5, 2018, where Employee failed to appear. Agency’s representative was present. Because Employee failed to appear, a Show Cause Order was issued for her to provide a statement of good cause to failing to appear. To date, Employee has not contacted this office regarding her failure to appear nor has she responded to the November 5, 2018 Show Cause Order.

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<sup>2</sup> 59 DCR 2129 (March 16, 2012).

<sup>3</sup> OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

<sup>4</sup> 59 DCR 2129 (March 16, 2012).

<sup>5</sup> OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

<sup>6</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).

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 621. Thus, Employee's appeal must be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge