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

In the Matter of:	)	
	)	OEA Matter No. J-0051-16R17
JENNIFER COHEN,	)	
Employee	)	
	)	Date of Issuance: April 6, 2017
v.	)	
	)	Michelle R. Harris, Esq.
DISTRICT OF COLUMBIA	)	Administrative Judge
PUBLIC SCHOOLS,	)	
Agency	)	
Katerina Andrews, Employee Representative	)	
Lynette A. Collins, Esq., Agency Representative	)	

**INITIAL DECISION ON REMAND**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On June 1, 2016, Jennifer Cohen (“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 terminate her from her position as a Foreign Language Teacher. This matter was assigned to the undersigned Administrative Judge (“AJ”) on June 13, 2016. On September 8, 2016, I issued an Initial Decision dismissing Employee’s Petition for Appeal for failure to prosecute.

Thereafter, on September 19, 2016, Employee submitted a request for an extension of time to respond to previously issued orders. Because that request was submitted after the issuance of the Initial Decision, the OEA Board considered Employee’s request as a Petition for Review. Employee asserted that she was homeless from July 23, 2016, through August 2, 2016, and was hospitalized from August 7, 2016, through August 19, 2016.<sup>1</sup> As a result, the OEA Board held that despite Employee’s failure to “adhere to the two orders issued by the AJ, that she provided a reasonable justification for missing the deadlines.”<sup>2</sup> On January 31, 2017, the Board issued its Opinion and Order and remanded the matter to the undersigned for further proceedings.

Consequently, on February 7, 2017, I issued an Order scheduling a Status/Prehearing Conference for March 15, 2017. The Order was sent to Employee and her designated representative.

<sup>1</sup> *Jennifer Cohen v DCPS*, OEA Matter No. J-0051-16, *Opinion and Order on Review* (January 31, 2017).

<sup>2</sup> *Id.*

On February 23, 2017, Agency submitted a Motion to Dismiss. On March 15, 2017, neither, Employee or her representative appeared for the conference. As a result, I issued an Order for Statement of Good Cause to Employee and her representative. Employee was ordered to submit a statement of good cause based on her failure to appear at the March 15, 2017, Status/Prehearing Conference. Employee had until March 28, 2017, to respond. As of the date of this decision Employee has not responded to either Order.

### JURISDICTION

The jurisdiction of this Office has not been established.

### ISSUE

Whether this appeal should be dismissed for failure to prosecute.

### 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.

### ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.3 states in relevant part 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>3</sup>

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<sup>3</sup> OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings after being provided with a deadline to comply with such orders.<sup>4</sup> In the instant matter, Employee was provided notice in both the February 7, 2017, and March 15, 2017, Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. Additionally, all orders were sent via postal mail service to the address provided by Employee. Employee's appearance for the scheduled proceeding, and a response to the March 15, 2017 Order 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 621. 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:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge

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<sup>4</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).