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 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:	)	
	)	
EMPLOYEE[1]	)	
	)	OEA Matter No. 1601-0412-10R23R25
v.	)	
	)	Date of Issuance: November 5, 2026
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	
	)	

SECOND OPINION AND ORDER
ON
PETITION FOR REVIEW

This matter was previously before the Office of Employee Appeals' ("OEA") Board. Employee was a Teacher with the District of Columbia Public Schools ("Agency"). On August 23, 2010, Agency issued a final notice of separation informing Employee that she would be removed from her position because she was not a permanent status employee; she failed to secure a position within sixty days of being excessed; and she did not receive a final rating of at least "Effective" under IMPACT, Agency's performance assessment system. Consequently, she was terminated from employment effective August 23, 2010.[2]

The Administrative Judge ("AJ") issued an Initial Decision on January 29, 2013. The AJ

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] *Petition for Appeal* (September 20, 2010).

found that Employee was an Education Service employee, and "…educational service employees who are serving in a probationary period are precluded from appealing a removal action to [OEA] until their probationary period is finished."[3] He found that Employee started working for Agency on January 3, 2010, and the effective date of her removal was August 23, 2010. As a result, the AJ held that pursuant to § 814.3 of the District Personnel Manual ("DPM"), OEA lacked jurisdiction over the matter. Accordingly, Employee's appeal was dismissed.[4]

On February 27, 2013, Employee filed a Petition for Review with the OEA Board. She argued that the AJ did not address all issues of the facts and law raised in her appeal. Employee opined that the relevant section of the DPM, used by the AJ, which addressed appeals by probationary employees, did not apply to Educational Service positions.[5] It was Employee's position that any employee can appeal a final agency decision to OEA which resulted in removal. Therefore, she requested that the Board reverse the Initial Decision and hold that OEA has jurisdiction over her appeal.[6]

In response to the Petition for Review, Agency provided that Employee was not terminated based on any of the provisions provided in D.C. Code § 1-606.03, which outlined OEA's jurisdiction. It argued that she was excessed in accordance with the procedures of the Collective Bargaining Agreement ("CBA") that existed between it and the Washington Teachers' Union ("WTU"). Lastly, Agency reasoned that because Employee was in a probationary status, she had no statutory right to appeal to OEA.[7]

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[3] The AJ explained that pursuant to 5 D.C. Municipal Regulation ("DCMR") § 1307.3, Employee needed to serve a two-year probationary period and in accordance with 5 DCMR § 1307.6, her failure to do so would result in termination. *Initial Decision*, p. (January 29, 2013).
[4] *Id.* at 4.
[5] Employee also provided that OEA's rules do not mention the word probation, nor do they exclude probationary employees from OEA's jurisdiction. *Petition for Review of Initial Decision*, p. 8 (February 27, 2013).
[6] *Id.* at 9.
[7] *District of Columbia Public Schools' Response to Employee's Petition for Review* (March 21, 2013).

This Board issued its Opinion and Order on Petition for Review on June 10, 2014. It found that the AJ incorrectly applied DPM § 814.3 to uphold Employee's removal. The Board explained that DPM § 814.3 applies to Career Service employees and not Educational employees. Thus, it determined that the AJ improperly cited to this section of the regulation in the Initial Decision. However, the Board opined that the reference was *de minimis* because the AJ properly relied on 5 DCMR § 1307 in reaching his decision that Employee was properly removed. The Board explained that in accordance with 5 DCMR § 1307.3, Employee was required to serve a two-year probationary period. Because Employee was hired by Agency on January 3, 2010, the Board determined that the probationary period would not have ended until January 3, 2012. Specifically, it held that District of Columbia government employees serving a probationary period did not have a statutory right to be removed for cause and could not utilize the procedures under the Comprehensive Merit Personnel Act, which includes appealing those actions to this Office. Consequently, the Board denied Employee's Petition for Review for lack of jurisdiction.[8]

Employee appealed the matter to the Superior Court of the District of Columbia. The Court found that there was substantial evidence in the record to support that the AJ properly relied on 5 DCMR § 1307.3 to conclude that Employee was required to serve a two-year probationary period. It held that Employee's probationary period ended on January 3, 2012, and Employee was terminated on June 21, 2011, before her probationary period ended. Accordingly, the Court upheld the AJ's decision.[9]

The matter was then appealed to the District of Columbia Court of Appeals. On appeal before the D.C. Court of Appeals, Agency conceded that Employee had rights under the CBA,

[8] *Opinion and Order on Petition for Review*, p. 4-6 (June 10, 2014).
[9] *[Employee] v. District of Columbia Office of Employee Appeals*, *et al.*, 2014 CA 006579 P(MPA) (D.C. Super Ct. December 6, 2018).

which according to Agency, made Employee neither an at-will employee nor a permanent employee but rather "something in between." Accordingly, it requested that this matter be remanded to OEA. The Court of Appeals remanded the matter for OEA to determine whether it had jurisdiction over Employee's appeal because Agency argued that Employee was indeed serving within her probationary period. Finally, the Court declined to consider Agency's belated argument that Employee's prior use of the grievance process stripped OEA of jurisdiction to consider Employee's appeal. As a result, it remanded the matter to OEA for further consideration.[10]

After conducting a status conference, the AJ issued a Post-Conference Order on May 15, 2023. He requested that the parties submit briefs addressing whether the grievance, and subsequent settlement, filed by the WTU precluded Employee from prosecuting her petition for appeal before OEA. Additionally, he asked the parties to brief whether Employee's attempt (intentional or unintentional) at "splitting" her cause of action prevented OEA from exercising jurisdiction over the matter.[11]

Agency filed its brief and argued that the grievance filed by the WTU was a class action litigation that included Employee. It explained that Employee filed her appeal with OEA after the WTU grievance was filed. According to Agency, D.C. Code § 1-616.52(f) provides that an employee shall be deemed to have exercised their option pursuant to subsection (e) to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure, whichever event occurs first. Thus, it posited that since Employee's WTU grievance was filed before the OEA appeal was filed, the resolution from the grievance would take precedence. Additionally, Agency noted that Employee's attempt to remove herself from the grievance matter

[10] *[Employee] v. District of Columbia Office of Employee Appeals*, *et al.*, No. 18-CV-1350 (D.C. 2023).
[11] *Post-Status Conference Order* (May 15, 2023).

was in 2018, eight years after the initial filing of the grievance in 2010.[12] While Agency noted that Employee's assertion was that she was not made aware of the WTU grievance filed on her behalf, it argued that the grievance process was a legal proceeding in which the resolution should be acknowledged and upheld. Thus, it opined that Employee should be barred from seeking additional redress before OEA.[13]

In her brief, Employee asserted that she did not consent to joining the WTU's grievance process. Consequently, she argued that she was not bound by the terms of the WTU settlement agreement. Moreover, Employee claimed that she did not accept a settlement, nor did she receive funds from the settlement between her union and Agency. Additionally, she contended that OEA did not lack jurisdiction to adjudicate the instant matter and that pursuant to D.C. Code § 1-612.52(e)(f), she was not prohibited from filing an appeal before OEA.[14]

Agency filed a sur-reply to Employee's Post-Status Conference brief. It made many of the same assertions in its previous brief and maintained that since Employee was a member of the union, she gave tacit consent for WTU to act on her behalf in litigious matters. Agency contended that after the grievance was filed, Employee's appeal was impermissible because her union filed a grievance on her behalf first.[15]

On May 9, 2024, the AJ issued an Initial Decision on Remand. He held that OEA lacked jurisdiction and thus, did not have authority to address the merits of Agency's removal action. The AJ explained that D.C. Code § 1-616.52 (f) provides that whichever avenue of redress is first chosen, is the sole venue through which an employee may pursue redress. He determined that

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[12] Agency provided that the executed WTU settlement agreement was submitted in February 2019, and Employee was awarded the settlement.
[13] *Respondent's Post-Status Conference Brief*, p. 3-11 (June 7, 2023).
[14] *Petitioner [ ] Opposition to Respondent District of Columbia Public Schools' Post-Status Conference Brief*, p. 13-26 (June 21, 2023).
[15] *District of Columbia Public Schools' Sur Reply to Employee's Opposition Post-Status Conference Brief*, p. 2-5 (July 18, 2023).

Employee's decision, through her union, to first grieve this cause of action through the CBA prevented her from filing with OEA. Additionally, he noted that Employee's grievance withdrawal came seven years after it was first filed. The AJ opined that Employee could not have a second attempt to appeal. Consequently, he ordered that the matter be dismissed for lack of jurisdiction.[16]

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on June 7, 2024. She reiterated several arguments made throughout the appeal. Employee asserted that OEA had jurisdiction and provided that her only course of action was the appeal before OEA. She emphasized that she did not consent to join the WTU's grievance and had not accepted any settlement or received funds from Agency related to any settlement. Therefore, Employee requested that the Initial Decision on Remand be vacated and that the matter be remanded to the AJ for further consideration.[17]

On January 16, 2025, this Board issued its Opinion and Order on Remand. The Board determined that the AJ erred in concluding that filing a grievance under the CBA precluded Employee from appealing to OEA. It relied on the *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 277 A.3d 1272 (D.C. 2022) and explained that D.C. Code § 1-616.52(e), prohibited employees from pursuing both avenues of relief, but did not prohibit them from filing appeals in both forums. Accordingly, the Board remanded the matter to the AJ to determine whether Employee knowingly exercised her discretion to pursue a grievance through the WTU. The Board also directed the AJ to determine whether Employee's recovery through the grievance process prevented OEA from rendering a decision, given Agency's claim that Employee received a lump sum payment and

[16] *Initial Decision on Remand*, p. 4-5 (May 9, 2024).
[17] *Petitioner [ ] Petition for Review After Remand*, p. 16-26 (June 7, 2024).

Employee's assertion that she had not received any compensation.[18]

On March 3, 2025, the AJ issued an Order requesting the parties to submit briefs to determine whether Employee exercised her discretion to have the WTU file a grievance on her behalf, in light of the holding in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*.[19]Agency maintained in its brief that OEA lacked jurisdiction. It argued that the grievance settlement was reached by all parties; thus, Employee should not have been permitted to seek further relief before OEA because she already pursued legal recourse through the WTU and prevailed. Moreover, Agency noted that Employee acknowledged the appeal and grievance addressed the same issues. Agency argued that Employee could not rely on *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department* because while the ruling permitted filing in both forums, it did not allow recovery in both. Lastly, Agency provided that it was prepared to issue Employee a new check to ensure that she received the full settlement amount without any loss of entitlement due to the passage of time.[20]

Employee filed her brief on April 30, 2025, reiterating many of the same arguments made throughout the appeal. Specifically, she maintained that she neither accepted a settlement nor received any funds from the settlement between the WTU and Agency. Additionally, Employee asserted that she never established an attorney-client relationship with the WTU and had consistently pursued her appeal since 2010.[21]

Agency filed a sur-reply on June 2, 2025. It argued that union representation did not require an attorney-client relationship. Agency explained that an employee who is a member of the WTU

[18] *Opinion and Order on Petition for Review*, p. 6-9 (January 16, 2025).
[19] *Order* (March 3, 2025).
[20] *Respondent's Brief on OEA Remand*, p. 3-7 (March 28, 2025).
[21] *Petitioner [ ] Brief After Board Remand*, p. 31 and 37 (April 30, 2025).

authorized the union to act on the employee's behalf in matters concerning the CBA, including grievances, disciplinary actions, and collective bargaining. Furthermore, Agency maintained that Employee was included in the grievance and had been awarded monetary compensation pursuant to the settlement agreement. It asserted that Employee's failure to physically collect the funds did not mean that she had not received the award. Agency further contended that Employee was intentionally declining to collect the funds to determine what additional recovery she could obtain through her OEA appeal.[22]

On June 22, 2026, the AJ issued his Second Initial Decision on Remand. He determined that the WTU grievance filed on behalf of Employee was settled on January 30, 2016. The AJ opined that Employee could have informed the WTU that she did not wish to be included in the class action grievance but failed to do so. He reasoned that Employee should have known that she acquiescence to further litigation by signing the release of her personnel file to WTU, and Employee's failure to dissociate herself from the grievance did not entitle her to pursue further litigation before OEA to have a better outcome. The AJ further noted that regardless of whether Employee physically collected her settlement award, the funds remained available to her, and she could not recover through the grievance process and OEA. Consequently, he held that Employee was precluded from proceeding with her OEA appeal and dismissed her Petition for Appeal.[23]

Employee filed a Second Petition for Review on July 28, 2026. She maintains that she neither authorized the WTU to settle her claim nor received any funds from the settlement. Employee argues that Agency waived its preclusion defense by failing to raise it in 2010. Furthermore, she contends that the ruling in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department* permitted

[22] *Respondent's Sur-Reply Brief on OEA Remand*, p. 4-6 (June 2, 2025).
[23] *Initial Decision*, p. 3-5 (June 22, 2026).

her to both file a grievance and an OEA appeal. Accordingly, Employee requests that the Second Initial Decision on Remand be reversed.[24]

On October 13, 2026, Agency filed its response. It contends that the ruling in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department* provides that the election of remedies is not jurisdictional and does not permit recovery in both forums. Agency further argues that the final resolution of the grievance precludes Employee's appeal, regardless of whether she collects the settlement funds. Moreover, Agency agrees with the AJ's determination that Employee cannot pursue both avenues of relief and wait until recovery is obtained in one forum to determine which avenue to pursue. Consequently, Agency requests that Employee's Second Petition for Review be denied.[25]

Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. 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. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[26]

The AJ's Second Initial Decision on Remand is based on substantial evidence. This Board believes that the AJ has adequately addressed whether Employee exercised her discretion to have the WTU file a grievance on her behalf. The AJ held that Employee did not actively assert her

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[24] *Petitioner [ ] Second Petition for Review Post-Remand*, p. 26-32 and 44 (July 28, 2026).
[25] *Agency's Response in Opposition to Employee's Second Petition for Review Post-Remand*, p. 5-12 and 15 (October 13, 2026).
[26] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

desire to proceed without WTU assistance before the settlement was reached and awarded and that she could have actively informed the WTU that she did not want to be included in the class action while it proceeded in a separate litigation track. However, she did not. This Board also agrees with the AJ's ruling that Employee should have known that the express purpose of the request that she provide a signed release of her personnel file to the WTU and the subsequent acquiescence on her part was for further litigation purposes tacitly on her behalf.

Additionally, the AJ ruled, and this Board agrees, that the same facts and circumstances that gave rise to the Petition for Appeal are identical to the facts and circumstances that were settled in the grievance. Moreover, a reasonable mind would accept the AJ's reasoning that while the *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department* case allows Employee to file both a grievance and an appeal, the ruling does not allow is recovery in both forums. The Court held that while some procedural flexibility at times may be warranted, it does not override the prohibition against duplicative recovery for the same issues. This Board also supports the AJ's holding that once a claim has been finally adjudicated, the doctrine of claim preclusion, or *res judicata*, prevents the same parties from relitigating the same claim.

Finally, although the Settlement Agreement, Section 3(d) provides that ". . . if a teacher . . . does not respond to DCPS within the 365-day period, their right to payment under this Agreement shall be permanently and irrevocably forfeited,"[27] Agency has provided assurances that the settlement funds remain available to Employee and no entitlement has been lost through the passage of time. Moreover, Agency provides that it will reissue payment upon receipt of the

[27] *District of Columbia Public Schools' Sur Reply to Employee's Opposition Post Status Conference Brief*, Tab 2 (June 13, 2023).

required documentation required by Employee.[28]

All issues have been adequately addressed from the Board's January 16, 2025, Opinion and Order on Petition for Review. The AJ's decision is based on substantial evidence. Accordingly, Employee's Second Petition for Review Post-Remand is denied.

[28] *Agency's Response in Opposition to Employee's Second Petition for Review Post-Remand,* p. 11 (October 13, 2026).

ORDER

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

FOR THE BOARD:

Pia Winston, Chair

LaShon Adams

Jeanne Moorehead

Lafayette Barnes

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.