

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:	)	
	)	
EMPLOYEE <sup>1</sup>	)	
	)	OEA Matter No. J-0054-25
v.	)	
	)	
D.C. PUBLIC SCHOOLS,	)	Date of Issuance: March 12, 2026
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Employee worked as a Library Media Specialist with D.C. Public Schools (“Agency”). Agency issued a notice of termination to Employee on February 14, 2022. It provided that Employee was removed from her position pursuant to 5-E District of Columbia Municipal Regulations (“DCMR”) § 1401.2(b) for grave misconduct and § 1401.2(v) for other conduct during and outside of duty hours that would affect adversely the Employee’s or the Agency’s ability to perform effectively. Specifically, Agency alleged that Employee had her students conduct a reenactment of the Holocaust during class.<sup>2</sup> The notice of termination explained that Employee could elect to file a grievance in accordance with Article VI, Grievance and Arbitration, of the

---

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

<sup>2</sup> Agency explained that students played different roles in the reenactment including pretending to shoot other students who were portraying Jewish people; digging ditches; placing students in gas chambers; and building trains to transport Jewish people to the gas chambers. One student was made to portray Adolf Hitler. According to Agency, Employee instructed the students not to tell their parents about the reenactment.

Washington Teacher's Union ("WTU") collective bargaining agreement ("CBA"). The notice also informed Employee that she could elect to file an appeal with the Office of Employee Appeals ("OEA"). However, she could not do both. The notice specifically provided that if Employee appealed with OEA, she had thirty calendar days from the effective date in which to file her appeal.<sup>3</sup>

On July 2, 2025, Employee filed a Petition for Appeal with OEA. She argued *inter alia* that Agency's investigation was unfair; her due process rights were violated; and the Douglas factors<sup>4</sup> penalty was unreasonable. Consequently, she requested that the Douglas factors be reconsidered and that she be made whole.<sup>5</sup>

On July 14, 2025, Agency filed an Answer to Employee's Petition for Appeal and Motion to Dismiss. It asserted that on May 27, 2022, the WTU filed a grievance on behalf of Employee to address her termination. According to Agency, on March 18, 2024, the arbitrator denied

---

<sup>3</sup> *Petition for Appeal*, p. 9-14 (July 2, 2025).

<sup>4</sup> The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee's past disciplinary record;
- 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- 7) consistency of the penalty with any applicable agency table of penalties;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) potential for the employee's rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

<sup>5</sup> *Petition for Appeal*, p. 2 (July 2, 2025).

Employee's grievance. Agency noted that Employee filed an appeal with OEA on July 2, 2025. It reasoned that Employee's appeal with OEA was three years beyond the thirty-day deadline to file an appeal. Moreover, Agency contended that Employee chose to file a grievance via the CBA before filing with OEA. As a result, it requested that Employee's appeal be dismissed.<sup>6</sup>

The OEA Administrative Judge ("AJ") issued an order on jurisdiction. She requested that Employee address whether her Petition for Appeal should be dismissed because it was untimely filed. The AJ also requested that Employee address Agency's position that she filed her grievance before filing an appeal with OEA.<sup>7</sup>

According to Employee, Agency misled her and provided incorrect information which led to "missed opportunities to file with the better choice of agency like OEA." Employee alleged that this is what caused her delay of three years in filing an appeal with OEA. She cited to the D.C. Court of Appeals' decision in *Maya Gilliam, et al., v. Department of Forensic Sciences, et al.*, Nos. 24-CV-0460, 24-CV-0404, and 24-CV-0462 (D.C. September 25, 2025) by arguing that the filing deadline should be tolled because of excusable neglect. Employee asserted that Agency was unreasonable, unfair, and inconsistent. Moreover, she alleged that Agency failed to advise her about District and agency rules.<sup>8</sup>

The AJ issued her Initial Decision on September 9, 2025. She held that although OEA's filing deadline is contained in a statute – D.C. Code § 1-606.03(a) – and the language is mandatory of when the appeal shall be filed, pursuant to the D.C. Court of Appeals' holding in *Yolanda Sium v. Office of the State Superintendent of Education*, 218 A.3d 228 (D.C. 2019), more is required. The AJ provided that the D.C. Court of Appeals in *Brewer v. D.C. Office of Employee Appeals*,

---

<sup>6</sup> *District of Columbia Public Schools' Motion to Dismiss*, p. 2-3 (July 14, 2025).

<sup>7</sup> *Order* (July 18, 2025).

<sup>8</sup> *Brief of [ ] the Employee Pro Se Jurisdiction, Untimely Filing, and Union Choice* (August 1, 2025).

163 A.3d 799 (D.C. 2017) held that OEA's thirty-day filing deadline was subject to equitable tolling, which must determine if there was an unexplained or undue delay and if tolling would be an injustice to the other party. According to the AJ, Employee argued that the three-year delay was due to misleading information by Agency and the WTU. However, she noted that Employee never specified the misleading information. The AJ found that Employee's termination letter included OEA appeals forms, the OEA rules, and OEA's contact information. Consequently, she did not find Employee's argument for the delay convincing. Additionally, the AJ reasoned that tolling the deadline would be an injustice to Agency because during the delay, Employee filed claims in several forums. She found that if Employee was successful in any of the other forums, she would not have filed her current appeal at OEA. Accordingly, the AJ dismissed Employee's petition as untimely.<sup>9</sup>

As for Employee's selection of forum, the AJ determined that the WTU filed a Step 2 grievance on behalf of Employee on May 27, 2022, and more than three years later, Employee filed an appeal with OEA. She reasoned that because Employee elected to file a grievance under the CBA before filing an OEA appeal, she waived her rights to be heard at OEA. Consequently, she held that OEA lacked jurisdiction over Employee's appeal.<sup>10</sup>

Employee disagreed and filed a Petition for Review on October 9, 2025. She argues that the AJ failed to consider all evidence; failed to consider testimony; and ignored contradictory evidence. According to Employee, OEA could not dismiss a late-filed appeal and could only dismiss an appeal if Agency seasonably objected to the untimeliness of the filing as a defense. She asserts that a timing rule should be tolled if there was an unexplained or undue delay and if there would be an injustice to the other party. Employee contends that a late filing is allowed when a

---

<sup>9</sup> *Initial Decision*, p. 4-6 (September 9, 2025).

<sup>10</sup> *Id.* at 7.

plaintiff has diligently pursued their rights but was prevented from filing on time due to extraordinary circumstances beyond their control.<sup>11</sup>

On October 17, 2025, Agency filed its Response to Employee's Petition for Review. It argues that Employee was separated on March 8, 2022, and shortly thereafter, her union filed a grievance on her behalf. Agency contends that the grievance was denied at both Step 2 and at arbitration. Thus, it reasons that the AJ correctly denied Employee's OEA appeal because she could not file a grievance and an appeal.<sup>12</sup>

The D.C. Court of Appeals ruled in *Maya Gilliam, et al., v. Department of Forensic Sciences, et al.*, Nos. 24-CV-0460, 24-CV-0404, and 24-CV-0462 (D.C. September 25, 2025) that a filing deadline can be extended upon a showing of excusable neglect. It reasoned that the test for excusable neglect should consider the danger of prejudice to other parties; the length of the delay and its potential impact on judicial proceedings; the reason for the delay, including whether it was within the reasonable control of the movant; and whether the movant acted in good faith.

#### Length of Time

In *Gilliam, et al.* the D.C. Court of Appeals upheld the Superior Court of the District of Columbia's ruling that a delay of seventy-eight (78) days was significant. The delay in the current matter is over one thousand (1,000) days. This delay substantially exceeds that which was found to be in excess in the *Gilliam, et al.* case. Therefore, we agree with the AJ's finding that Employee's filing at OEA, nearly three years after the filing deadline, is untimely.

#### Reason for Delay

According to Employee, the reason for the delay in this case was because Agency misled her and provided incorrect information which led to missed opportunities to file with OEA.

---

<sup>11</sup> *Petition for Review: Full OEA Board* (October 9, 2025).

<sup>12</sup> *District of Columbia Public Schools' Response to Employee's Petition for Review* (October 17, 2025).

Contrary to Employee's position, Agency clearly outlined in its Notice of Termination, the relevant DCMR regulations, provisions of the CBA, and OEA rules and appeal rights.<sup>13</sup> Agency also provided the Douglas factors which outlined its reasoning for its decision to terminate Employee.<sup>14</sup> Thus, the record does not support Employee's contention that Agency misled her or that it provided her with incorrect information.

#### Good Faith and Prejudice to Party

Moreover, as the AJ provided in the Initial Decision, Employee waited until the disposition of her grievance to file an appeal with OEA. The D.C. Court of Appeals in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 277 A.3d 1272 (D.C. 2022) held that an employee's choice is binding only when the employee has an option that can be exercised in their discretion. Employee clearly chose the grievance option as she waited until there was a resolution. This does not, on its face, appear to be an act of good faith. In her Notice of Termination, Employee was informed that she could choose the grievance process or appeal at OEA, but she could not do both. With the filing of this appeal, Employee is attempting to do just that. This would be prejudicial to Agency. Consequently, this Board agrees with the AJ's holding that it would be an injustice to Agency to allow Employee to appeal to OEA after it successfully defended its action in several forums via the grievance process for three years.

Employee chose to file a grievance instead of an appeal with OEA. Her OEA filings were untimely, and she was unable to establish excusable neglect. Therefore, Employee's Petition for Review is denied.

---

<sup>13</sup> *Petition for Appeal*, p. 9-11 (July 2, 2025).

<sup>14</sup> *Id.*, 12-14.

**ORDER**

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

**FOR THE BOARD:**

---

Pia Winston, Chair

---

Arrington L. Dixon

---

LaShon Adams

---

Jeanne Moorehead

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.