

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)
In the Matter of:)
) OEA Matter No. 1601-0121-08
VICTORIA TORRES)
Employee) Date of Issuance: December 5, 2008
)
v.) Sheryl Sears, Esq.
) Administrative Judge
DISTRICT OF COLUMBIA)
PUBLIC SCHOOLS)
)
Agency)
_____)

Victoria Torres, Employee, *Pro Se*
Harriet E. Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

The D.C Public Schools (“Agency”) was required, by Public Law 107-110, the *No Child Left Behind Act* of 2001, a federal law, to ensure that all school teachers were properly certified. Agency set standards for qualification and then evaluated the teaching staff. Victoria Torres (“Employee”) was an Instructional Paraprofessional with the D.C. Public Schools. By letter dated June 13, 2008, Employee was notified that she would be separated effective June 30, 2008, for failure to satisfactorily meet qualification requirements for her position.

On July 12, 2008, Employee filed an appeal with the Office of Employee Appeals (“the Office”). She acknowledges that she does not have the credentials for the position. However, she contends that “wisdom and experience are worth more than knowledge.” Employee presented, along with her appeals form, numerous letters of endorsement and recommendation.

JURISDICTION

For the reasons set forth in the “Analysis and Conclusion” section below, this Office does not have jurisdiction over Employee’s appeal.

ISSUES

- I. Whether this Office has jurisdiction over Employee's appeal.
- II. If so, whether Employee was lawfully removed.
- III. If not, whether this appeal should be dismissed.

BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999) provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.” Pursuant to OEA Rule 629.1, *id.*, Employee has the burden of proving, by a preponderance of the evidence, that this Office has jurisdiction over her appeal.

ANALYSIS AND CONCLUSION

The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, “a final agency decision” effecting “an adverse action for cause that results in removal.” Chapter 16 of the District Personnel Manual (DPM) contains the rules and regulations that implement the law of employee discipline. Section 1600.1 of the DPM limits the application of those provisions to employees “of the District government *in the Career Service*.” (Emphasis added.) In accordance with §1601.1, no career service employee may be “officially reprimanded, suspended, reduced in grade, removed, or placed on enforced leave, except as provided in this chapter or in Chapter 24 [the provisions for conducting a reduction in force (RIF) of these regulations.” Thus, career service employees, only, are afforded certain protections by the laws, rules and regulations that provide for adverse personnel actions.

Section 1601.1 of the DPM distinguishes career service employees from others by stating that “[e]xcept as otherwise required by law, an employee not covered by §1600.1 is an *at will employee* and may be subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority.” (Emphasis added). This Office has held that Employees who serve without credentials for their position are not career service employees. In the matter of *Williamson v. D.C. Public Schools* (April 25, 2008), ___ D.C. Reg. ___ (), this Judge held that a teacher without full licensure did not meet all of the requirements of her contractual agreement with the agency. Therefore, she never achieved career status. Instead, she was an “at will” employee subject to removal at any time. Her removal was upheld.

The appellant in the instant appeal, did not, at the time of Agency's decision to remove her, have full credentials for her position. Therefore, she was an at-will employee who was properly subject to removal. According to the applicable laws, rules and

regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, this Office does not have jurisdiction to review the instant appeal and it must be dismissed.

ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE