THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0057-25
	)	
v.	)	Date of Issuance: February 2, 2026
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, ESQ.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*
Lynette Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 29, 2025, 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 Teacher, effective June 20, 2025. OEA issued a Request for Agency Answer to Petition for Appeal on July 29, 2025. Thereafter, on August 05, 2025, Agency filed its Motion to Dismiss stating that OEA lacked jurisdiction over this matter because Employee's Petition for Appeal with OEA was untimely; that Employee filed a grievance with her Union on or about July 11, 2025, before filing her Petition for Appeal with this Office on July 29, 2025; and that Employee was an at-will employee at the time of her termination.

I was assigned this matter on August 5, 2025. Thereafter, on August 6, 2025, Employee filed an Opposition to Agency's Motion to Dismiss. On August 12, 2025, Agency filed a Sur Reply to Employee's Opposition. On August 18, 2025, Employee filed a Rebuttal to Agency's Sur Reply. Subsequently on September 19, 2025, Employee filed a Motion for Extension of Time to Retain Counsel. On September 23, 2025, the undersigned issued an Order Granting Employee's Motion for Extension of Time to Retain Counsel and convened a Status Conference for October 30, 2025. Employee filed a Second Motion for Extension of Time to Retain Counsel on October 20, 2025. Agency submitted an Objection to Employee's Motion on October 27, 2025. Thereafter, on October 27, 2025, Employee filed a Reply to Agency's Objection Motion and requested that

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

this matter be held in abeyance pending a related arbitration outcome. On November 25, 2025, the undersigned issued an Order denying all pending motions and notifying the parties that no further proceedings and/or documentation were required in this matter. Because I determined this matter could be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
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> > that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee's Position

Employee asserts in her Petition for Appeal that her termination "constitutes unlawful retaliation for a severe work-related injury I sustained … and my subsequent workers' compensation claim."[3] Employee also asserts that her status as a permanent teacher "was impermissibly switched to temporary without my informed consent or knowledge under deceptive pretense involving fraudulent handling of licensure documents."[4] Employee maintains that Agency's action of terminating her was wrong as it involved unlawful discrimination because of a

[2] OEA Rule § 699.1.
[3] Petition for Appeal (July 29, 2025).
[4] *Id*.

work-related injury she sustained in 2023. Employee affirmed that her union, Washington Teachers' Union ("WTU") filed a grievance regarding her termination.[5]

Employee asserts in her Opposition to Agency's Motion to Dismiss that her Petition for Appeal is not untimely due to the application of equitable tolling.[6] She states that her termination was effective June 20, 2025, and she filed her Petition for Appeal on July 29, 2025. Employee explains that the doctrine of equitable tolling should be applied here due to extraordinary circumstances that were beyond her control. Employee avers that this doctrine empowers OEA to extend a filing deadline when a litigant, despite acting with reasonable diligence, was prevented from timely filing due to circumstances beyond their control. Employee states that following receipt of the April 2025, termination notice, she immediately initiated communication with DCPS representative, Ms. Nancy Wright ("Ms. Wright"), to seek clarification and reconsideration. She avers that Ms. Wright repeatedly delayed providing a response and this created a reasonable expectation of ongoing dialog and potential internal resolution which influenced her decision regarding filing a formal appeal with OEA. Employee cites that it was not until July 1, 2025, that she became aware that the delay would impact her grievance timeline. She contends that this supports the application of equitable tolling in this matter because Agency's conduct lured her into a false sense of security regarding the filing deadlines.[7]

Employee avers that her union, WTU, filed a grievance on July 11, 2025, on her behalf, which was rejected as untimely on July 14, 2025. She explains that the rejection of her grievance left her without a remedy through that avenue, making an appeal with OEA a necessary path to pursue a fair hearing on the merit of the case.[8]

Employee also contends that she was a permanent employee and not an "at-will" employee. She asserts that her termination for alleged licensure noncompliance was directly linked to the principal's obstruction of her licensure renewal. Employee notes that she was unable to renew her license because she was not assigned to a school following her reinstatement in 2024, therefore, a principal could not file the necessary forms required to renew her license.[9]

Employee asserts that DCPS is estopped from terminating her for lack of licensure. She explains that "DCPS's actions are in direct contradiction to the principles of estoppel and the "just cause" standard required for the termination of a permanent public sector employee."[10] Employee states that Agency, through its own repeated actions, forfeited any rights to terminate her based on licensure noncompliance. She cites that DCPS knowingly hired her without a license in October 2023; terminated her for not having a license; then reinstated her without a license in September 2024; and later terminated her again for not having a license. Employee argues that the "doctrine of equitable estoppel prevents a party from asserting a position that is inconsistent with a previous position or act upon which another party has reasonably relied." She states that Agency's conduct in this matter meets the criteria for estoppel and bars Agency from using the lack of a license as a

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[5] *Id*.
[6] Petitioner's Opposition to Agency's Motion to Dismiss (August 6, 2025).
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] *See.* Petitioner's Rebuttal to Agency's Sur Reply (August 18, 2025).

basis for her termination. Employee explains that she reasonably relied on Agency's repeated assurance of permanent employment and has been harmed by Agency's inconsistent actions. Employee also notes that her status as a permanent employee is protected by the Collective Bargaining Agreement ("CBA") between her union and Agency, as well as DC laws.[11]

Agency's Position

Agency states in its Motion to Dismiss that Employee was terminated for failing to obtain an active Office of the State Superintendent of Education ("OSSE") issued license by March 1, 2025. Agency asserts that Employee's Petition for Appeal is untimely and must be dismissed. Agency explains that Employee was terminated effective June 20, 2025, and she filed her appeal with OEA on July 29, 2025, beyond the thirty (30) days established for filing appeals with OEA.[12] Agency asserts that Employee's claim of equitable tolling is misplaced. It cites that the April 8, 2025, termination notice to Employee complied with OEA Rule 605, therefore, Employee's untimely Petition for Appeal does not fall within the exception to the thirty (30) days mandatory filing requirement.[13]

Agency also cites that in response to the termination notice, on July 11, 2025, WTU filed a Step 1, Stage 3 Grievance on Employee's behalf. Agency avers that D.C. Official Code § 1-616.52 limits employees to one method of appealing an adverse action. Agency avers that, pursuant to that D.C. Official Code § 1-616.52(f), the first appeal initiated by the employee will be the one to proceed. It explains that the July 11, 2025, grievance filed by WTU on Employee's behalf predates Employee's July 29, 2025, Petition for Appeal with OEA. Agency asserts that Employee chose to file a grievance to challenge this matter before filing a Petition for Appeal with OEA, therefore, OEA lacks jurisdiction over this matter as Employee has already grieved this matter.[14]

Additionally, Agency asserts that OEA does not have jurisdiction over Employee because Employee is an "at-will" employee and has no job tenure or protection. It highlights that this Office has consistently held that it lacks jurisdiction to hear appeals from employees terminated for failure to meet mandatory licensing or certification requirements. Agency explains that "although the position description does not designate the incumbent as holding "at-will" status, since permanent status can only be achieved if requirements are met, an employee who lacks the requirements but is given a stated period to complete them, becomes at-will, if the employee fails to complete the requirements by the deadline." Agency further explains that this Office "has determined it lacks jurisdiction to hear challenges of teachers … who held positions that required licenses or certifications, and who lacked the licenses or certifications at the time of termination, concluding that these individuals, because they did not meet the requirements, had no vested rights in the position." As such, Agency argues that Employee's appeal should be dismissed.[15] Agency

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[11] *Id*.
[12] Agency's Motion to Dismiss (August 5, 2025).
[13] Agency's Sur Reply (August 12, 2025).
[14] Agency's Motion to Dismiss, *supra*.
[15] *Id*.

also claims that there is no document to support Employee's contention that the Agency is responsible for her failure to obtain her OSSE issued licensure.[16]

Analysis[17]

The threshold issue in this matter is one of jurisdiction. This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[18], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating which results in removal of the employee;
(b) An adverse action for cause which results in removal;
(c) A reduction in grade;
(d) A suspension for ten (10) days or more (Emphasis added);
(e) A reduction-in-force; or
(f) A placement on enforced leave for ten (10) days or more.

This Office has no authority to review issues beyond its jurisdiction.[19] Therefore, issues regarding jurisdiction may be raised at any time during the proceeding.[20]

Untimeliness

Agency asserts that Employee's Petition for Appeal should be dismissed as untimely because she filed her appeal with OEA more than thirty (30) days from the effective date of her termination. A "[d]istrict government employee shall initiate an appeal by filing a petition for appeal with the OEA. The petition for appeal must be filed within *thirty (30) calendar days of the effective date of the action being appealed*."[21] (Emphasis added). Here, Employee was terminated effective June 20, 2025, and she filed her Petition for Appeal with OEA on July 29, 2025. I find that June 20, 2025, to July 29, 2025, is more than thirty (30) days. However, the D.C. Court of Appeals in *Yordanos Sium v. Office of State Superintendent of Education*, 218 A.3d 228 (D.C.

[16] Agency's Sur Reply, *supra*.
[17] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[18] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[19] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[20] *See Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).
[21] DC Official Code §1-606.03.

2019), held that the presumption regarding filing deadlines is that they are not jurisdictional but waivable claims-processing rules. In support of this position, the Court relied heavily on the ruling in *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015) that filing deadlines in particular are quintessential claim-processing rules, which seek only to promote the orderly progress of litigation, and generally do not have jurisdictional force. (citing *Wong,* 135 S.Ct. at 1632 (quoting *Henderson, 562 U.S.* at 435, 131 S.Ct. 1197). In *Sium*, the Court reasoned that even procedural rules codified in statutes are non-jurisdictional in character. It found that if a deadline is contained in a statute **and** its language is mandatory, it *may* be jurisdictional (emphasis added). The Court held that D.C. Code § 1-606.03(a), which provides that any appeal shall be filed within 30 days of the effective date of the appealed action, meets both requirements. However, it opined that more is required.

Relying on *Mathis*, the D.C. Court of Appeals held that for a filing deadline to be deemed a jurisdictional bar, the traditional tools of statutory construction must also make clear that the legislature intended it to serve this purpose. The D.C. Court of Appeals saw no indication that the D.C. City Council affirmatively sought to curtail OEA's jurisdiction; therefore, it ruled that the 30-day deadline to file appeals at OEA is not jurisdictional. As a result, OEA cannot dismiss a late-filed appeal outright. However, OEA can dismiss the appeal if the Agency seasonably objects to the untimeliness of Employee's filing as a defense, as held in *Brewer v. D.C. Office of Employee Appeals*, 163 A.3d 799 (D.C. 2017).

In *Brewer*, the D.C. Court of Appeals held that as a claims-processing rule, a 30-day deadline is subject to equitable tolling. However, in accordance with the *Mathis* holding, claims-processing rules may be tolled (or relaxed or waived) if equity compels such a result (*See Neill v. District of Columbia Public Employee Relations Bd.,* 93 A.3d 229, 238 (D.C.2014), (explaining that claim-processing rules "may be relaxed or waived"). The Court in *Brewer* reasoned that equitable tolling turns on balancing the fairness to both parties and that equity aids the vigilant. Therefore, where a timing rule should be tolled turns on (1) whether there was unexplained or undue delay and (2) whether tolling would work an injustice to the other party (*See Simpson v. District of Columbia Office of Human Rights,* 597 A.2d 392 (D.C.1991) and *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015)). Furthermore, the Court held that consideration of the importance of ultimate finality in legal proceedings can also be considered when making a determination on tolling a deadline.

In the instant matter, Employee filed the instant Petition for Appeal thirty-nine (39) days from the effective date of the adverse action, which is nine (9) days overdue. In consideration of the aforementioned D.C. Court of Appeals determinations regarding processing deadlines both in *Sium and Baldwin*, and recent OEA rulings in this regard, I find that this nine (9) day delay was not significant or egregious to amount to any prejudice or injustice upon the other party. As a result, I conclude that Agency's request to dismiss Employee's Petition for Appeal for being untimely is DENIED.

Selection of Forum

Agency also argues that OEA lacks jurisdiction over this appeal because Employee's Union filed a grievance after her termination, and prior to Employee filing the current adverse

action. Employee does not dispute this assertion. Employee asserts that her union, WTU, filed a grievance on July 11, 2025, on her behalf, which was rejected on July 14, 2025, for being untimely. Employee contends that the rejection of her grievance left her without a remedy through that avenue, making an appeal with OEA a necessary path to pursue a fair hearing on the merit of the case.

According to the record, the WTU filed a 'Step 1 Stage 3' grievance on Employee's behalf on July 11, 2025, pursuant to the Collective Bargaining Agreement ("CBA") between Employee's Union and DCPS, disputing her termination.[22]

D.C. Official Code (2001) §1-616.52 reads in pertinent part as follows:

> (d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter [providing appeal rights to OEA] for employees in a bargaining unit represented by a labor organization.
>
> (e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to Section 1-606.03, or the negotiated grievance procedure, **but not both**. (Emphasis added).
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> (f) An employee shall be deemed to have exercised their option *(sic)* pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever occurs first** (emphasis added).

Additionally, the April 8, 2025, Notice of Termination informed Employee that she could appeal her termination with either OEA or through her Union, but not both.[23] According to the record, Employee was a member of WTU. Employee's termination was effective on June 20, 2025. On July 11, 2025, Employee's Union filed a 'Step 1 Stage 3' grievance disputing her termination. Subsequently, on July 29, 2025, Employee filed a Petition for Appeal with OEA. Pursuant to the above-mentioned code, Employee had the option to appeal her termination with either OEA or through her Union, **but not both**. (Emphasis added). By electing to appeal her termination by filing a grievance under the CBA between Agency several days before she filed her Petition for Appeal with OEA, I find that Employee waived her rights to be heard by this Office. Therefore, I conclude that this Office does not have jurisdiction over Employee's appeal.

Lack of Licensure/At-Will Status

Agency asserts that OEA does not have jurisdiction over Employee because Employee is an "at-will" employee and has no job tenure or protection. Agency explains that Employee did not

[22] *See.* Agency's Motion to Dismiss, *supra*, at Agency's Exhibit Two.
[23] *See.* Agency's Motion to Dismiss, *supra*, at Agency's Exhibit One.

possess the required OSSE issued license by the March 1, 2025, deadline and at the time of her termination. Employee on the other hand argues that she was a permanent employee and not an "at-will" employee. She contends that her termination for alleged licensure noncompliance was directly linked to the principal's obstruction of her licensure renewal. Employee explains that she was unable to renew her license because she was not assigned to a school following her reinstatement in 2024, therefore, the principal could not file the necessary forms required to renew her license. Employee also argues that DCPS is estopped from terminating her for lack of licensure because its actions are in direct contradiction to the principles of estoppel and the "just cause" standard required for the termination of a permanent public sector employee.

Employee admits that she lacks the required OSSE issued license. However, she contends that Agency is responsible for her failure to obtain the required license and that because she was hired and reinstated without having the required license, Agency is estopped from using this issue as reason for termination. This Office and the District of Columbia Superior Court have consistently held that an employee who fails to meet the agency's licensing or certification requirement becomes an "at-will" employee and therefore has no right to an OEA appeal.[24]

In Gizachew Wubishet v. District of Columbia Public Schools, supra, the employee's provisional teachers license had expired, and he was unable to obtain a permanent teachers license prior to his removal from service. The OEA AJ in this matter found that because "the Employee did not fully complete the certification requirements [of his position] and [failed to] obtain his license by June 30, 2006 … once his provisional license expired, he served solely in an "at will" capacity, subject to Agency's determinations with regard to whether he qualified for continued employment" *Wubishet* was upheld by the Board of the OEA in an Opinion and Order on Petition for Review[25] wherein the OEA Board held that because of his lack of proper licensure, *Wubishet* was in an "at-will" employment status with no attendant appeal rights to the OEA. I find that the current matter is similar to *Wubishet* in that, here, Employee was terminated for her failure to obtain the required OSSE issued license for her position as a teacher by the March 1, 2025 deadline, and she has admitted that she did not possess such license by the effective date of her termination from service. Accordingly, I find that Employee served solely in an "at-will" capacity, subject to Agency's discretion with regard to whether she qualified for continued employment. The D.C. Official Code § 1-606.03 states that an "at-will" employee of the District of Columbia Government, serves "at the pleasure of the appointment authority and can be terminated by the employee at any time, with or without cause." It is well established that in the District of Columbia, an employer may discharge an "at-will" employee "at any time and for any reason, or

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[24] *See*. *Gizachew Wubishet v. District of Columbia Public Schools,* OEA Matter No. 1601-0106-06, (March 23, 2007; *Robin Suber v. D.C. Public Schools,* OEA Matter No. 1601-0107-07R10 (January 22, 2010); *Tricia Bowling-Bryant v. D.C. Public Schools*, OEA Matter No. 1601-0090-16 (May 30, 2017); *Michael E. Brown et al v. D.C. Department of Consumer and Regulatory Affairs*, OEA Matter Nos. 1601-0012-09, 1601-0027-09, 1601-0052-09, 1601-0054-09 (June 26, 2009); *Michael E. Brown et al. v. D.C. Department of Consumer and Regulatory Affairs,* OEA Matter Nos. 1601-0012-09-1601-0027-09 & 1601-0052-09-1601-0054-09, *Opinion and Order on Petition for Review* (January 26, 2011); *Jennifer Broadwater v. D.C. Public Schools*, OEA Matter Nos. 1601-0099-15 (December 21, 2016); *Linda Ellis, et al. v. D.C. Department of Consumer and Regulatory Affairs,* 2011 CA 001529 P(MPA), 2011 CA 001533 P(MPA), 2011 CA 001534 P(MPA), 2011 CA 001557 P(MPA), 2011 CA 001560 P(MPA), 2011 CA 001561 P(MPA), 2011 CA 001562 P(MPA), and 2011 CA 001567 P(MPA) (November 28 2011).

[25] *Gizachew Wubishet v. District of Columbia Public Schools*, OEA Matter No. 1601-0106-06, *Opinion and Order on Petition for Review* (June 23, 2009).

for no reason at all".[26] As an "at will" employee, Employee did not have any job tenure or protection.[27] Further, as an "at will" employee, Employee has no appeal rights with this Office.[28]

As previously noted, this Office has consistently held that it lacks jurisdiction to hear appeals of a terminated employee who failed to meet mandatory licensing or certification requirements, reasoning that the employee was "at-will" because he or she lacked mandatory qualifications. Although an employee's position description may not designate them as holding "at will" status, since permanent status can only be achieved if requirements are met, an employee who lacks the requirements but is given a stated period of time to complete them, becomes "at-will", if the employee fails to complete the requirements by the deadline. This Office has ruled that by failing to meet the licensure requirements, such employees have no vested right in the positions. Therefore, I find that because Employee failed to meet the licensure requirement by the March 1, 2025, deadline, she was an "at-will" employee at the time of her termination, as such, OEA does not have jurisdiction over this matter.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *id*, as 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." Employee filed a grievance with her union prior to filing an appeal with OEA. Additionally, Employee admitted that she did not have the required OSSE issued license at the time she was terminated, making her an "at-will" employee with no appeal rights to OEA. Based on the foregoing, I conclude that Employee did not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.

ORDER

It is hereby **ORDERED** that the Petition for Appeal is **DISMISSED** for lack of jurisdiction and Agency's Motion to Dismiss is **GRANTED**.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge

[26] *Adams v. George W. Cochran & Co.,* 597 A.2d 28, 30 (D.C. 1991). *See also Bowie v. Gonzalez*, 433 F.Supp.2d 24 (DCDC 2006).
[27] *See.* D.C. Official Code § 1-609.05 (2001).
[28] *Davis v. Lambert,* MPA No. 17-89, 119 DWLR 204 (February 13, 1991).