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 OEA Chief Operating Officer 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:	
	OEA Matter No. J-0062-26
EMPLOYEE,[1]	
Employee	
	Date of Issuance: November 2, 2026
v.	
D.C. PUBLIC SCHOOLS,	ChôNayse Sellers, Esq.
Agency	Administrative Judge

Marc Wilhite, Esq., Employee Representative
Gehrrie Bellamy, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 24, 2026, Employee filed a Petition for Appeal ("Petition") with the Office of Employee Appeals ("OEA" or this "Office") contesting the District of Columbia Public Schools' ("DCPS" or "Agency") decision to terminate him from his position as Teacher. Employee's termination was effective on March 26, 2026. OEA issued a Request for Agency's Answer to Employee's Petition on April 27, 2026. On May 27, 2026, Agency filed its Answer to Petition and Motion to Dismiss ("Agency's Answer") asserting that OEA lacks jurisdiction over this appeal as Employee was within his probationary period at the time of his separation.

This matter was initially assigned to Senior Administrative Judge Harris ("SAJ"). On June 3, 2026, SAJ issued an Order for Briefs on Jurisdiction requiring the parties to submit briefs addressing whether OEA has jurisdiction in this matter. Employee's brief was due on July 2, 2026, and Agency's brief was due on July 23, 2026. On July 1, 2026, Employee obtained counsel and requested an extension to file his brief on jurisdiction. Agency consented to Employee's request. On July 2, 2026, the SAJ granted Employee's request and extended the briefing schedule to August 17, 2026, for Employee and September 8, 2026, for the Agency. Both Employee and Agency submitted their briefs as required.

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

This matter was assigned to the undersigned on September 9, 2026. On September 14, 2026, I issued an Order for Supplemental Briefs requesting the Employee's SF-50 and any documents related to Employee's request for Paid Medical Leave. The Employee submitted all documents related to his request for leave and the Agency submitted Employee's SF-50. After reviewing the record, I have determined that an evidentiary hearing is not warranted in this matter. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (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:
>
> > 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 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

On June 26, 2025, Agency extended an offer of employment to Employee for the position of full-time Teacher at Dunbar High School. Employee's effective start date was August 11, 2025.[2] The offer letter states that Employee's "…employment status is probationary for a period of one (1) school year.".[3] The offer letter also informed Employee that his position was a "…union position covered under the Collective Bargaining Agreement between DCPS and the Washington Teachers' Union (WTU)".[4] On March 4, 2026, the Agency notified Employee that he was being charged as absent without leave for the period of February 18, 2026 to March 4, 2026.[5] Agency

[2] Agency's Answer at Exhibit 3.
[3] *Id.*
[4] *Id.*
[5] *Id.* at Exhibit 1.

instructed Employee to either request leave or return to work by March 9, 2026.[6] Agency warned that Employee's failure to return to work or request leave would result in separation.[7] On March 26, 2026, Agency notified Employee that, pursuant to D.C. Municipal Regulations ("DCMR"), Title 5-E, Chapter 10, Section 1020.6, he was deemed to have voluntarily resigned from his position since he did not report to work or apply for leave under the Family Medical Leave Act ("FMLA").[8] Employee filed his appeal with OEA on April 24, 2026.

Employee's Position

Employee asserts that OEA has jurisdiction over this matter. Employee disputes that he voluntarily resigned from the Agency. Employee contends that his separation constitutes a constructive removal because he never relinquished his position.[9] Employee avers that when voluntary resignations are improperly invoked, the "resulting separation is a constructive removal over which this Office has jurisdiction".[10] Employee argues that his separation from the Agency was a constructive removal and, therefore, OEA has jurisdiction. Additionally, Employee asserts that this Office has jurisdiction over this matter because he is not a probationary employee and, assuming *arguendo* that Employee was within his probationary term at the time of separation, this Office is not barred from adjudicating appeals of probationary employees.[11]

Employee does not dispute relevant facts concerning his employment with Agency. Employee admits that he was hired as a teacher effective August 11, 2025, and that his offer letter stated that his employment status was subject to a one-year probationary period.[12] Employee admits that this was his first teaching job and his first position within the D.C. government.[13] Employee acknowledges that he was separated from his teaching position on March 26, 2026, after not reporting to work from February 18, 2026, through March 26, 2026.[14]

Employee challenges the Agency's characterization of his absence as a voluntary resignation. Employee argues that voluntariness requires a person to exercise free choice and one's mental state is a critical element in the ability to make choices.[15] Employee admits that he was psychiatrically hospitalized from February 13, 2026, through March 4, 2026.[16] Even after his release from the hospital, Employee remained under the care of a physician and continued to receive treatment.[17] On March 20, 2026, Employee's physician recommended that he remain on leave due to his mental health.[18] Employee provided Agency with notice of his hospitalization, treatment, and need for additional leave prior to the March 26, 2026 Notice of Voluntary

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[6] *Id.*
[7] *Id.*
[8] *Id.* at Exhibit 2.
[9] Employee's Brief on Jurisdiction and Opposition to Agency's Answer and Motion to Dismiss ("Employee's Brief"), p.10 (August 17, 2026).
[10] *Id.* at 9-10 (citing *Johnson v. DCPS,* OEA Matter No. 1601-0037-13 (January 19, 2017)).
[11] *Id.* at 18-22.
[12] *Id.* at 3.
[13] *Id.*
[14] *Id.* at 7.
[15] *Id.* at 15.
[16] *Id*. at 4.
[17] *Id.* at 5-6.
[18] *Id.* at 6.

Resignation ("March 26 Notice").[19] Employee asserts that his mental state restricts his ability to voluntarily resign. Additionally, Employee argues that because Agency had notice of his mental condition, Agency is precluded from characterizing his absence as a voluntary resignation.[20]

Employee argues that the Agency's constructive removal of Employee was a matter of regulation as opposed to any affirmative action he made to voluntarily resign. Employee contends that voluntary resignations require both an intention and "visible act of relinquishment"[21]. Employee asserts that, during his hospitalization, he did not sign, submit, or express anything that would relinquish his position.[22] Instead, Employee states that he provided the Agency with medical certification and e-mail updates regarding his status.[23] Employee avers that the documentation and emails demonstrate his intention to return to work at the Agency.

Employee also challenges the assertion that he voluntarily resigned due to his failure to respond to the March 4, 2026 Return to Duty letter ("March 4 Letter"). Employee argues that the Agency's March 4 Letter was not provided to him.[24] Employee cites that Agency sent their March 4 Letter to Employee via e-mail and did not mail it to his home address.[25] Employee further cites that the Agency did not call Employee or communicate with his union representative.[26] When representatives for Employee contacted Agency to discuss his hospitalization and request for leave, the Agency refused to engage with them.[27] Employee argues that his failure to respond as requested in the March 4 Letter cannot be characterized as a voluntary act when such notice deficiencies exist and were never cured.

Employee avers that other deficiencies in the Agency's various notices demonstrate that he did not voluntarily resign. In both the March 4 Letter and March 26 Notice, Agency faults Employee for not "requesting DC FMLA Leave" and, ultimately, characterizes his failure to do so as a basis for concluding that he had resigned.[28] Employee admits that he did not apply for FMLA; however, Employee contends that he was not eligible[29] for that benefit.[30] Instead, Employee applied for Paid Medical Leave on March 25, 2026.[31] Employee argues that Agency cannot

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[19] *Id.* at 5-7.
[20] Id. at 16.
[21] *Id.* at 10.
[22] *Id.* at 4-7.
[23] *Id.*
[24] *Id.* at 14-15.
[25] *Id.* at 14.
[26] *Id.*
[27] *Id.*
[28] *Id.* at 13-14.
[29] Employee mistakenly cites D.C. Code 32-502(a) in discussing an employee's eligibility for FMLA. The correct statute is D.C. Code 32-501(1)(A). Notwithstanding this error, Employee correctly identifies the eligibility requirement as either being employed for twelve (12) consecutive months or having worked at least 1000 hours in the twelve (12) months preceding the date when the leave is to start.
[30] Employee's Brief at 13-14.
[31] Employee's Brief at 7. Employee's application was denied on March 26, 2026, because he was not eligible. *See* Employee's Supplemental Submission in Response to Order for Supplemental Briefs, at Exhibit 3 (September 29, 2026).

condition his employment on an act which he could not complete and then classify his failure to act as a resignation.

Employee further contends that he is not a probationary employee and, therefore, this Office can adjudicate his appeal. Employee argues that he is an excluded employee and not subject to a probationary period.[32] Employee cites his union membership and assignment to a local school as the basis for being classified as an excluded employee under D.C. Code §1-608.01a(b)(2(A)(ii).[33] Employee argues that, despite the probationary language in his offer letter, it cannot solely be used to enlarge this Office's jurisdiction beyond what the statute allows.[34]

Employee asserts that, if he is found to be a probationary employee, he cannot be terminated arbitrarily. Employee is a member of the Washington Teachers' Union, Local 6, Federation of Teachers, AFL-CIO ("WTU").[35] The Collective Bargaining Agreement (the "Agreement") between DCPS and WTU makes a distinction between probationary and at-will employees in how they are disciplined.[36] Employee argues that, in making said distinction, the Agreement rejects at-will status for probationary employees and supports probationary employees only being separated after rational consideration of the facts.[37] Employee asserts that Agency's reliance on his probationary status as its defense in this matter is not supported by the Agreement because a rational consideration of the facts did not occur.

Employee argues that, if he is found to be a probationary employee, his probationary status is not a categorical bar to OEA's jurisdiction over this matter. Employee cites to this Office adjudicating the appeal of a probationary employee who was subject to a reduction in force by the Agency.[38] In *Platt v. D.C. Public Schools*[39], Employee asserts that this Office rejected the Agency's argument that OEA lacked jurisdiction over a probationary employee who was subject to a reduction in force.[40] In doing so, Employee contends that OEA established a governing principle that "probationary status limits the substantive protections an employee enjoys; it does not operate as a jurisdictional trump card relieving the Agency of compliance with the law it chooses to invoke". [41] Relying on *Platt*, Employee asserts that his probationary status does not bar OEA from determining whether the Agency misapplied the voluntary resignations regulation as the basis for his separation.

Lastly, Employee claims that the Agency did not cite his probationary status as a basis for termination and cannot now use it as a defense in this matter. In its March 26 Notice, Agency only cites to 5-E DCMR §1020.6 as the basis for Employee's separation.[42] Employee asserts that the Agency fails to reference any statute, regulation, or language mentioning Employee's probationary

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[32] *Id.*
[33] *Id.*
[34] *Id.* at 21.
[35] *Id.* at 19.
[36] *Id.* at 19-20.
[37] *Id.* at 20.
[38] *Id.* at 19.
[39] OEA Matter No. 2401-0252-10 (May 15, 2012).
[40] *Id.*
[41] *Id.*
[42] *Id.* at 18.

status in the March 26 Notice.[43] Employee argues that Agency's justification for his termination is therefore limited to defending their characterization of Employee's separation as a voluntary resignation as described in the March 26 Notice.

Agency's Position

Agency asserts that Employee's Petition must be dismissed for lack of jurisdiction as this Office can only "hear appeals of permanent employees in the career and education services who have successfully completed their probationary periods".[44] Agency contends that Employee was hired on August 11, 2025, and was subject to a one-year probationary period.[45] Agency cites that, prior to the completion of his probationary period, Employee voluntarily resigned on March 26, 2026.[46] Agency argues that OEA is precluded from adjudicating his Petition as Employee never achieved permanent status.[47]

Agency also contends that Employee's arguments concerning the voluntariness of his resignation, recharacterization of his resignation as a constructive removal, and deficiencies within its March 26 Notice do not create appealable rights for probationary employees.[48] Agency avers that even if Employee did not voluntarily resign and was terminated without cause, he still cannot appeal to OEA.[49] Agency argues that there is no basis in law, statute, or the collective bargaining agreement that allows Employee to circumvent OEA's obligation to dismiss this appeal due to Employee's probationary status.[50]

Analysis[51]

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.[52] 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 the OPRAA conferred jurisdiction on this Office to hear appeals, with some exceptions of permanency employees in the Career and Education Service who are not serving in a probationary period, or who have successfully completed their probationary period. According to the rules of this Office, established at 6-B DCMR § 604.1, OEA has

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[43] *Id.*
[44] Agency's Answer and Motion to Dismiss ("Agency's Answer"), p. 2 (May 27, 2026).
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Agency's Sur Reply, pp. 2-4 (September 8, 2026).
[49] *Id.* at 1-2.
[50] *Id.* at 4.
[51] 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").
[52] *See Employee v. D.C. Fire & Medical Emergency Services,* OEA Matter No. 1601-0080-24 (September 24, 2024); *Employee v. Department of Public Works,* OEA Matter No. J-0076-25, *Opinion and Order on Petition for Review* (June 4, 2026).

jurisdiction in matters involving District Government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

Probationary Employee

D.C. Public Schools Educational Service employees are subject to the provisions in Chapter 5 of the DCMR. Specifically, 5-E DCMR §1307.1 provides that "an employee initially entering … into the Educational Service shall … serve a probationary period." Additionally, §1307.2 states that "an initial appointee to the EG salary class, except those appointed to classroom teaching positions, shall serve a one (1) year probationary period. Appointees to EG teaching positions shall serve a probationary period of two (2) years." Further, §1307.6 goes on to outline that "failure to satisfactorily complete the requirements of the probationary period shall result in termination from the position." As noted previously, Employee has the burden of proof regarding the jurisdiction of this Office.

Here, the undersigned agrees with the Agency's assertion that OEA does not have jurisdiction over this matter because Employee was in his probationary status at the time of his removal from the Agency. It is undisputed that Employee was hired as a Teacher on August 11, 2025. Employee's SF-50 identifies the legal authority for his position as "D.C. Code 1-608.01a Educ. Service Employees".[53] Pursuant to D.C. Official Code §1-611.11, I find that as an employee at DCPS, Employee's employment classification is Educational Service.

The record supports that Employee was subject to a probationary period. Although his SF-50 does not include 'probationary' in the remarks, Employee's offer letter states that Employee would be subject to a one-year probationary period.[54] Further, Employee admits to this position being his first within D. C. Government and his first as a teacher—both of which mandate a probationary period under D.C. Code.[55] Therefore, pursuant to the requirements of the DCMR[56], I find that Employee was subject to a one-year probationary period as an Educational Service employee.

The record is clear that Employee's effective date of termination was March 26, 2026. Employee acknowledges that he had only been working for the Agency for seven (7) months at the time of his separation. [57] The OEA Board has previously held that an employee's admission is

[53] Agency's Supplemental Brief, at Exhibit 1 (September 30, 2026).
[54] Agency's Answer at Exhibit 3.
[55] *See* 5-E DCMR §1307.1; *see also* DPM §223.
[56] *See Employee v. D.C. Public Schools*, OEA Matter No. 1601-0032-25, *Opinion and Order on Petition for Review*, (January 29, 2026) (explaining that terms of employment are established by the relevant law and that if said law provides for a probationary period then the employee must serve one).
[57] Employee's Petition for Appeal, p 1 (April 24, 2026).

sufficient to meet the Agency's burden of proof.[58] Additionally, Employee was provided notice of his separation consistent with the requirements for termination of a probationary employee.[59] Therefore, I find that the record supports that Employee was within his probationary period at the time of separation from the Agency.

Employee argues that he is an excluded employee and not subject to a probationary period. D.C. Official Code §1-608.01a(b)(2)(A)(i) states:

> Excluding those employees in a recognized collective bargaining unit, those employees appointed before January 1, 1980, those employees who are based at a local school or who provide direct services to individual students, **and** those employees required to be excluded pursuant to a court order (collectively, "Excluded Employees"), a person appointed to a position within the Educational Service shall serve without job tenure. (Emphasis added).

Based on the record, I find that Employee does not meet the requirements as set forth in §1-608.01a(b)(2)(A)(i). Employee does not contend that he is subject to a court order mandating his classification as an excluded employee and was hired prior to January 1, 1980. Employee's offer letter outlines the terms of Employee's position. The offer letter states that Employee was offered a union position of teacher at Dunbar High School.[60] The offer letter also states that Employee's employment status "…is probationary for a period of one (1) school year".[61] Neither the offer letter nor Employee's SF-50 identify him as an excluded employee. [62] Thus, I conclude that Employee does not meet the definition of an excluded employee and is, therefore, subject to a probationary period.

Employee asserts that Agency's reliance on his probationary status as its defense in this matter is not supported by the Agreement and should either be barred or confer jurisdiction on this Office. The record does not support Employee's argument that union represented probationary employees can seek review of their separations from the Agency.[63] While the Agreement does state that disciplining probationary employees shall not be "arbitrary or capricious", this contradicts the DPM, DCMR, and CMPA.[64] The Agreement clearly states that any provision that contradicts the law shall not be enforced. [65]It is well settled that an agency's signature on a labor agreement cannot

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[58] *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. J-0036-20 (February 3, 2022).
[59] *See* DPM §227 (stating that when an employee is separated pursuant to § 227.1, the personnel authority shall notify the employee in writing of the effective date of the separation). Here, Employee received written notice of his separation (albeit for a voluntary resignation) on March 26, 2026.
[60] Agency's Answer at Exhibit 3.
[61] *Id.*
[62] *See id.*; Agency's Supplemental Brief at Exhibit 1.
[63] Employee's Brief at 19.
[64] *Id.* at 20.
[65] *Id.* at Exhibit 7.

enlarge OEA's statutory authority.[66] Therefore, the undersigned finds that the Agreement cannot be used to confer jurisdiction on this Office.

Employee argues that the Agency cannot assert his probationary status as a basis for separation when it was not listed in the March 26 Notice. The record is clear that Employee's separation from the Agency was characterized as a voluntary resignation under 5-E DCMR §1020.6. No other basis for separation is identified in the March 26 Notice. Without addressing the merits of whether Employee voluntarily resigned, I find that this argument is moot. Issues regarding jurisdiction may be raised at any time during the course of these proceeding.[67] OEA has consistently found that an employee's probationary status can be asserted as grounds for dismissal of a petition despite probationary status not being the listed basis for separation in a termination notice.[68] Therefore, I find that Agency can assert Employee's probationary status as a basis for termination despite it not being listed in the March 26 Notice.

The District Personnel Manual ("DPM") § 227.4, provides in relevant part that "separation from government service during a probationary period is neither appealable nor grievable". Thus, according to the preceding sections of the DPM, DCMR, and the CMPA, Education Service employees who are serving in their probationary period are precluded from appealing a removal action to this Office until their probationary period is finished. This Office has consistently held that an appeal by an employee serving in a probationary status must be dismissed for lack of jurisdiction.[69] Based on the foregoing, I find that Employee did not meet his burden of proof in establishing jurisdiction in this matter. Therefore, I conclude that OEA lacks jurisdiction over this matter as Employee was removed from service during his probationary period.

Employee asserts additional arguments regarding the merits of his appeal, including challenging the voluntary nature of his perceived resignation and deficiencies with the Agency's March 4 Letter and March 26 Notice; however, I find that these arguments do not overcome Employee's burden to establish jurisdiction by a preponderance of the evidence. [70] Employee's argument that this Office can adjudicate appeals of probationary employees is not only in

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[66] *See Carlo Brent v. Office of the Chief Financial Office*, OEA Matter No. 1601-0031-15 (April 14, 2015).
[67] *Employee v. D.C. Department of Transportation*, OEA Matter No. J-0042-26 (August 5, 2026) (citing *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995)).
[68] *See e.g.*, *Vera Barker-Hawkins v. D.C. Public Schools*, OEA Matter No. 1601-0071-18 (December 21, 2018); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0071-22 (October25, 2022); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0075-24 (November 1, 2024); *Employee v. D. C. Public Schools*, OEA Matter No. 1601-0032-25 (August 19, 2025); *Employee v. D. C. Public Schools*, OEA Matter No. 1601-0024-26 (April 14, 2026).
[69] *See e.g.*, *Alexis Parker v. Department of Health*, OEA Matter No. J-0007-11 (April 28, 2011); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0024-26 (April 14, 2026).
[70] Because I find that Employee was separated from service during his probationary period, I will not address the issue of job abandonment and/or resignation.

contradiction to §227.4 of the DPM, but also the purpose of a probationary period[71] and the practice of this Office[72]. Thus, Employee's Petition must be dismissed for lack of jurisdiction.

ORDER

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

FOR THE OFFICE:

/s/ ChôNayse Sellers
ChôNayse Sellers, Esq.
Administrative Judge

[71] DCHR Issuance on Probationary Periods 1-2021-33 (September 7, 2021) (stating "Probationary periods aid in deciding whether an employee's knowledge, skills, abilities, and conduct meet the requirements for permanent employment status in the Career Service."); *see also* 5-E DCMR §1307.5 (stating "the probationary period shall be used to evaluate the performance of the employee").

[72] I find that Employee's reliance on *Platt* is misguided. D.C. Code §1-624.08(c) provides that this Office has limited jurisdiction to hear appeals of probationary employees who are subject to a reduction in force. No such exception exists for probationary employees who voluntarily resign or are subject to constructive removals.