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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DAVID TRAVERS,	)	
Employee	)	OEA Matter No. 1601-0265-10
	)	
v.	)	Date of Issuance: August 24, 2012
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
David Travers, Employee <i>Pro Se</i>	)	
Hillary Hoffman-Peak, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On January 4, 2010, David Travers (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency”) decision to terminate him from his position as a Bus Attendant. On January 19, 2010, OEA notified Agency of Employee’s Petition for Appeal in this matter.

I was assigned this matter on or around June 10, 2012. Upon review of the case file, the undersigned noticed that Agency had not filed its Answer to Employee’s Petition for Appeal as required by the January 19, 2010 letter. On June 11, 2012, I issued an Order for Statement of Good Cause to Agency. Agency was ordered to submit a statement of good cause based on its failure to submit an Answer to Employee’s petition for appeal. Agency had until June 25, 2012, to respond.<sup>1</sup> On June 25, 2012, Agency submitted a Motion for Extension of Time to File. This Motion was granted on June 27, 2012. Agency now had until July 10, 2012, to submit its Answer. On July 16, 2012, Agency submitted a Motion to Dismiss Employee’s Petition for Appeal. Subsequently, on July 18, 2012, the undersigned issued an Order scheduling a Status

<sup>1</sup> On June 19, 2012, Employee’s copy of this letter was returned to this Office marked “RETURN TO SENDER; NOT DELIVERABLE AS ADDRESSED; UNABLE TO FORWARD.”

Conference for August 7, 2012.<sup>2</sup> Agency was present for the Status Conference, but Employee was a no-show. Thereafter, on August 8, 2012, I issued an Order for Statement of Good Cause. Employee was ordered to submit a statement of good cause based on his failure to update his address with this Office. The Order specifically noted that if either party failed to update its address with this Office, sanctions may be imposed pursuant to OEA Rule 621, 59 DCR 2129 (March 16, 2012). Employee had until August 15, 2012, to respond. On August 14, 2012, this Order too, was returned to this Office. As of the date of this decision, Employee has not updated his address with this Office. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether this appeal should be dismissed for failure to prosecute.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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.

### ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1 grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “in the exercise of sound discretion may dismiss the action or rule for the appellant” if a party fails to take reasonable steps to prosecute or defend an appeal.<sup>3</sup> Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

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<sup>2</sup> On July 30, 2012, Employee’s copy of this Order was returned to this Office marked “RETURN TO SENDER; ATTEMPTED – NOT KNOWN; UNABLE TO FORWARD.”

<sup>3</sup> *Id.* at 621.3.

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding or fails to submit required documents.<sup>4</sup> Employee did not appear at the Status Conference, and did not provide a written response to my Order for Statement of Good Cause. Additionally, Employee failed to inform this Office of a change in his address, and as such, all correspondences from this Office to Employee were returned. Providing this Office with an updated address and appearing at a Status Conference were required for a proper resolution of this matter on its merits. Therefore, I conclude that, Employee's failure to prosecute his appeal is consistent with the language of OEA Rule 621. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and that therefore, the matter should be dismissed for his failure to prosecute.

#### ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge

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<sup>4</sup> *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).