THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOLYEE [1]	
v.	OEA Matter No.: J-0050-25
D.C. PUBLIC SCHOOLS, Agency	Date: March 12, 2026

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as the Director of Compliance Investigations for the D.C. Public Schools ("Agency"). On May 5, 2025, Agency issued Employee a Fifteen-Day Notice of Termination. The notice provided that Employee's removal was based on violations of D.C. Municipal Regulations ("DCMR") § 2-1402.61 (Coercion or Retaliation) and 5-E DCMR § 1401 (Employee Rights and Responsibilities). Employee was subsequently placed on administrative leave until the effective date of his termination, May 23, 2025.[2]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on June 20, 2025. He argued that his termination lacked cause; Agency never provided him with notice of an

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] *Agency's Motion to Dismiss* (June 27, 2025). The DCMR provisions relied upon by Agency were identified in a footnote of the notice. Agency subsequently acknowledged that Employee was terminated pursuant to the Public Education Reform Amendment Act of 2008, not the DCMR.

investigation regarding his violation of DCMR § 2-1402.61; and he was prevented from submitting a response to the allegations of misconduct. As a result, Employee requested that his termination be reclassified as a resignation and that he receive six months' severance pay.[3]

On June 27, 2025, Agency filed a Motion to Dismiss. In its filing, Agency explained that Employee's termination stemmed from his act of engaging in prohibited personnel actions which violated D.C. Code § 1-615.51, otherwise referred to as the Whistleblower Protection Act ("WPA").[4] It contended that OEA lacked jurisdiction over the instant appeal because Employee was at-will at the time of the termination action. Thus, Agency reasoned that Employee's substantive claims fell outside of the purview of matters that could be adjudicated before this Office. Lastly, Agency conceded that the municipal regulations cited in its removal notice were erroneously included because Employee was terminated pursuant to the Public Education Reform Amendment Act of 2008 (D.C. Code § 1-608.01). Notwithstanding, Agency maintained that Employee's position was without tenure and at-will. Accordingly, it requested that his appeal be dismissed.[5]

On July 23, 2025, the OEA Administrative Judge ("AJ") directed the parties to submit written briefs addressing whether Employee's appeal should be dismissed for lack of jurisdiction.[6] In his brief, Employee asserted that both Agency's offer letter and his official personnel documents reflected that his position was designated as Career Service. Therefore, he opined that Agency failed to provide him with the appeal avenues typically afforded to Career Service employees. Employee denied any conduct forming the basis of the termination action and suggested that Agency improperly relied on

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[3] *Petition for Appeal* (June 20, 2025).
[4] Agency provided that it met with Employee to explain its decision to terminate him after a former employee filed a lawsuit against the District of Columbia government for unlawful retaliation under the WPA. The former employee alleged that Employee, who was his supervisor, took a prohibited personnel action against him when he reported that Employee threatened him with bodily harm. After a trial was held, a jury found that Employee engaged in conduct that violated the WPA. According to Agency, Employee was informed that under D.C. Code § 1-615.55, anyone who is found to have violated the WPA shall be subject to appropriate disciplinary action, including dismissal.
[5] *Agency's Motion to Dismiss*.
[6] *Order for Briefs on Jurisdiction* (July 23, 2025).

an alleged violation of the WPA to justify his removal. Finally, he averred that while Agency claimed that his position was without tenure, the terminology was not tantamount to him being at-will because tenure was a factor utilized solely to determine retention standing during a Reduction-in-Force ("RIF"). As such, he posited that OEA retained jurisdiction over his appeal pursuant to D.C. Code § 1-606.03(a) and 6-B DCMR § 604.18(b).[7]

In its reply, Agency provided that on October 14, 2021, Employee accepted a job as the Director of Compliance Investigations in the Educational Services. It clarified that his offer letter stated that the position was "non-union" and "non-tenured," meaning that the position was at-will. Agency disagreed with Employee's claim that his Standard Form 50 ("SF-50") supported his Career Service status because he was hired and terminated pursuant to D.C. Code § 1-608.01(a) as a non-excluded, Educational Service employee. In support thereof, Agency highlighted OEA case law to bolster its position that at-will employees can be discharged at any time, for any reason, or for no reason at all. Consequently, it maintained that Employee's appeal was improperly before this Office.[8]

The AJ issued an Initial Decision on September 17, 2025. She found that the record supported that Employee held a position in the Educational Service; he did not meet the definition of an "excluded employee," as defined under D.C. Code § 1-608.01; and Agency's offer letter explicitly stated that Employee's appointment to the position of Director of Compliance Investigations was without tenure to the D.C. Public Schools. Additionally, the AJ disagreed with Employee's argument that Agency's citation to DCMR § 2-1402.61 in its termination notice was sufficient to establish jurisdiction before this Office. Because Employee was at-will at the time of Agency's removal action,

[7] *Employee's Brief in Opposition to Agency's Motion to Dismiss and in Support of Jurisdiction* (August 12, 2025).
[8] *Agency's Sur-Reply* (August 21, 2025).

the AJ ruled that OEA lacked jurisdiction over his petition. As a result, Employee's appeal was dismissed.[9]

Employee filed a Petition for Review with the OEA Board on October 21, 2025. He maintains that Agency's offer letter never indicated that his position was at-will. Employee also asserts that the AJ failed to consider his argument that the D.C. Department of Human Resources ("DCHR") classified his position as Career Service in a public document. Additionally, he believes that Agency's citation to DCMR § 2-1402.61 in its termination notice places this matter squarely within OEA's jurisdiction pursuant to 6-B DCMR § 604.1(b). Employee argues that additional fact finding is necessary to determine whether he was classified as Career Service; whether his SF-50 was manipulated to support Agency's removal action; and whether his termination was taken for cause. Finally, he contends that Agency's failure to provide an avenue to appeal his termination violates the DCMR. Therefore, he requests that the Board to grant his Petition for Review.[10]

In response, Agency reiterates its argument that OEA lacks jurisdiction over Employee's appeal because his offer letter and accompanying SF-50 both classified his position as non-tenured. Moreover, it reasons that the Board should be precluded from considering Employee's suggestion that his personnel documents were doctored because it was not an argument presented to the AJ for consideration. Agency is unclear as to why DCHR would have identified Employee's position as Career Service, but it clarifies that D.C. Public Schools and DCHR are independent agencies from each another, and Agency's documents thoroughly outline that Employee held a non-excluded position within the Educational Service. It also echoes its previous argument that his termination was taken in accordance with the Public Education Reform Amendment Act of 2008. Because Employee was classified as at-will at the time of the removal action, Agency again submits that the AJ correctly

[9] *Initial Decision* (September 17, 2025).
[10] *Petition for Review* (October 21, 2025).

dismissed this appeal for lack of jurisdiction. Thus, it requests that the Board deny Employee's petition to the Board.[11]

Jurisdiction

The threshold matter here 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. 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. Under 6-B DCMR § 604.112, 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;
> (e) A reduction-in-force; or
> (f) A placement on enforced leave for ten (10) days or more.

Further, under OEA Rule 631.2, 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. This Office has no authority to review issues beyond its jurisdiction.[12] After careful review of the record, this Board finds that the AJ correctly ruled that OEA lacks jurisdiction over Employee's appeal.

Relevant to the disposition of this appeal is whether Employee was considered an excluded employee for the purposes of D.C. Code § 1-608.01. In accordance with Section 1-608.01(a), "[t]he Mayor shall issue rules and regulations governing employment, advancement, and retention in the

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[11] *Agency's Response to Employee's Petition for Review* (October 27, 2025).
[12] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

Career Service which shall include all persons appointed to positions in the District government, *except persons appointed to positions in the Excepted, Executive, Educational, Management Supervisory, or Legal Service.*" (emphasis added). Specifically, D.C. Code §§ 1-608.01a(2)(A)(i), (ii), (I) go on to provide the following concerning employees within the Educational Service:

> 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.
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> (ii) Except for Excluded Employees, the provisions of this paragraph shall apply to all non-school-based personnel, as defined in § 1-603.01(13C), including:
>
> (I) All Educational Service employees within the District of Columbia Public Schools ("DCPS")

In this case, the record supports a finding that Employee did not meet the definition of an excluded employee under D.C. Code § 1-608.01a(2)(A)(i). According to Agency, as Director of Compliance Investigations, Employee's responsibilities included planning, conducting, and supervising investigations; ensuring compliance with relevant regulations; and developing and implementing investigation policies and procedures.[13] There is no documentation to evince that he was covered by a recognized collective bargaining unit; was appointed before January 1, 1980; provided direct services to individual students; or was otherwise required to be excluded pursuant to a court order. Therefore, Employee's position was classified as non-excluded within the Educational Services.

[13] *Agency's Motion to Dismiss* at p. 1.

Next, Agency's offer letter to Employee provided that "Pursuant to the Public Education Personnel Reform Act of 2008, this appointment is without tenure to the D.C. Public Schools." The letter further indicated that the position was non-union.[14] Employee's initial SF-50, processed on October 18, 2021, reflects that he was converted to "Educational Appt" pursuant to the authority granted by the Board of Education Employees. Section 24 of the Form denotes a tenure status of "0," which corresponds to "none" on the document.[15] Additionally, the SF-50 memorializing the termination action provides that the legal authority was taken in accordance with D.C. Code § 1-608.01(a).[16]

Employees within the Educational Service who are not excluded under Section 1-608.01a(2)(A)(i) of the Code are not provided with the procedural appeal avenues typically afforded to permanent, Career Service employees. In a recent ruling, the OEA AJ in *Jellig v. D.C. Public Schools*, OEA Matter No. 1601-0049-23 (July 18, 2025), held that the employee, who held a non-excluded position in the Educational Service with D.C. Public Schools and removed pursuant to D.C. Code § 1-608.01, was deemed at-will and could be discharged at any time, for any reason, or no reason at all. Similar to *Jellig*, Employee in this case accepted a non-excluded, non-tenured position in the Educational Services, which made his employment status at-will. This Office has previously held it lacks jurisdiction over at-will employees.[17] Additionally, in accordance with the Public

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[14] *Agency's Sur-Reply* at Exhibit 2.
[15] *Id*. at Exhibit 3.
[16] *Id.*
[17] *Brown et al. v. Department of Consumer and Regulatory Affairs*, OEA Matter Nos. 1601-0012-2009 *et al*. (June 26, 2009)(citing *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991)); *Hodge v. Department of Human Services*, OEA Matter No. J-0114-03 (January 30, 2004); *Guimaraes v. D.C. Public Schools*, OEA Matter No. 1601-0101-14 (December 22, 2014); *Luchner v. D.C. Public Schools*, OEA Matter No. 1601-0216-12 (January 10, 2013); *Stewart v. Department of Corrections*, OEA Matter No. J-0078-15 (July 9, 2015); and *Clark v. Department of Corrections*, OEA Matter No. J-0033-02, *Opinion and Order on Petition for Review* (February 10, 2004). *See also Ellis et. al. v. D.C. Department of Consumer and Regulatory Affairs*, No. 2011 CA 001529 P(MPA) at 6 (D.C. Super. Ct. Nov. 28, 2011) (affirming OEA Board decision that it lacks jurisdiction over appeals from terminated at-will employees) and *Ellis, et. al. v. D.C. Department of Consumer and Regulatory Affairs*, Nos. 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) (D.C. Super. Ct. November 28, 2011).

Education Personnel Reform Amendment Act of 2008, Employee was provided with a fifteen-day notice of the termination action. Accordingly, the AJ's conclusion that OEA lacks jurisdiction over Employee's appeal is supported by the record.

As for Employee's other arguments, this Board finds them to be insufficient to surpass the weight of evidence in support of dismissal. Not only does Employee fail to substantiate his claim that Agency purportedly altered the personnel documents to support the removal action, but this argument was not presented to the AJ prior to the closing of the record. Under OEA Rule 637.5, any objections or legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board. Consequently, we will not address this issue on petition for review. We further agree with the AJ's assessment that Employee's at-will status negated OEA's ability to adjudicate his claims of errors in Agency's charging documents, or whether he was removed for cause. The AJ conducted a reasoned analysis for dismissing each claim as unpersuasive, and this Board finds no compelling basis for disturbing her rulings. In light of the foregoing, we find that the Initial Decision is based on substantial evidence;[18] Employee was at-will at the time of his removal; and the AJ's dismissal of this appeal for lack of jurisdiction was proper. Consequently, we must deny his Petition for Review.

[18] According to OEA Rule 637.4(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.

ORDER

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

FOR THE BOARD:

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Pia Winston, Chair

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Arrington L. Dixon

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LaShon Adams

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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.