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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0059-25
	)	
v.	)	Date of Issuance: October 27, 2026
	)	
D.C. PUBLIC SCHOOLS,	)	Senior Administrative Judge
Agency	)	JOSEPH E. LIM, ESQ.
	)	

Employee *Pro Se*
Gehrrie Bellamy, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL HISTORY

On August 1, 2025, Employee filed a petition with the Office of Employee Appeals (“OEA”) appealing the decision of the D.C. Public Schools (“DCPS” or “Agency”) to terminate her from her position as a Dedicated Educational Aide due to receiving an IMPACT score of Ineffective.¹ In response to OEA’s August 1, 2025, request, Agency submitted its Answer to Employee’s Appeal on August 21, 2026. The matter was assigned to me on or about August 22, 2025.

On August 22, 2025, I ordered Employee to respond to Agency’s Motion to dismiss for lack of jurisdiction by September 5, 2025. Both parties have submitted their briefs on jurisdiction. On January 23, 2026, I issued an Order asking both parties to submit supporting documents along with their brief by February 6, 2026. Both parties have complied. Because this matter can be resolved by the documents submitted by the parties, no evidentiary hearing is required. The record is closed.

JURISDICTION

Jurisdiction in this matter was not established.

¹ IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees.

ISSUE

Should the petition for appeal be dismissed for lack of jurisdiction?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2, 68 DCR 012473 (December 21, 2021). Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 699.1, as that “the 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.” In this matter, Employee has not provided any evidence that OEA has jurisdiction over her appeal.

In a letter (“Notice of Ineffective IMPACT Rating and Separation” or “Letter”) dated July 1, 2025, from Christopher Lewis, Chief, Employee Services for the DCPS, Employee was informed that the effective date of her termination was August 1, 2025. The Letter further provided in relevant part that:

You may elect to appeal this separation in **one of the following ways, not both:**

1. You may file an appeal with the D.C. Office of Employee Appeals (OEA). Your appeal must be filed within thirty (30) calendar days of the effective date of your separation. You must submit your appeal directly to OEA, 955 L'Enfant Plaza, SW Suite 2500, Washington, DC 20024; telephone (202) 727-0004. Copies of the OEA Petition Appeal Form and the appeal forms are attached to this letter. In addition, this information is available at <http://oea.dc.gov/service/file-employee-appeal>.

Or,

2. You may be able to file a grievance pursuant to the Collective Bargaining Agreement between DCPS and the American Federation of State, County and Municipal Employees Local 2921. Your grievance must be submitted within ten (10) workdays of the date of this notice, in writing to your supervisor (i.e. your principal).

Emphasis added.

Employee was hired by DCPS as a Teacher on December 4, 2023, and was a member of the American Federation of State, County, and Municipal Employees (“AFSCME”). Employee was rated as “Ineffective” at the conclusion of the 2024-2025 school year under IMPACT. She was observed consistently with IMPACT and was provided with a post evaluation conference after at least one assessment. IMPACT procedures provide that employees who receive a rating of Ineffective are subject to separation. Therefore, the Employee’s employment was terminated effective August 1, 2025.

Because Employee is a member of AFSCME, her Collective Bargaining Agreement (“CBA”) takes precedence when determining appeal rights and procedures.² AFSCME and DCPS have negotiated a Grievance system, and it is contained in the CBA.³ The CBA provides that either an employee or AFSCME may raise a grievance; AFSCME can process a grievance on behalf of an employee with that employee’s consent; and when AFSCME files a grievance, the employee may not later raise the Grievance itself.

On July 16, 2025, in accordance with Title 5-E, Chapter 14 of the District of Columbia Municipal Regulations (“DCMR”), as well as relevant provisions of the CBA between the Board of Education of the District of Columbia Public Schools and the AFSCME District Council 20 Local 2921, and on Employee’s behalf, the Union filed a formal grievance of the final decision to remove Employee from service.⁴ The fact that her grievance was filed before she filed her OEA appeal was acknowledged by Employee on her appeal form.⁵ In her brief, Employee did not dispute Agency’s allegation that her union filed a grievance on her behalf with her consent. Instead, Employee focused on her termination as a basis for OEA jurisdiction and her disagreement with her IMPACT scores.

As was noted above, on August 1, 2025, Employee filed her petition for appeal with the Office of Employee Appeals. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 (“Appeal procedures”) reads in pertinent part as follows:

(a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

Of note, D.C. Official Code § 1-616.52, provides as follows:

(a) An official reprimand or a suspension of less than 10 days may be contested as a grievance pursuant to § 1-616.53 except that the grievance must be filed within 10 days of receipt of the final decision on the reprimand or suspension.

(b) An appeal from a removal, a reduction in grade, or suspension of 10 days or more may be made to the Office of Employee Appeals. When, upon appeal, the action or decision by an agency is found to be unwarranted by the Office of Employee Appeals, the corrective or remedial action directed by the Office of Employee Appeals shall be taken in accordance with the provisions of subchapter VI of this chapter within 30 days of the OEA decision.

² D.C. Code §1-616.52(d).

³ *Id.*

⁴ Agency Answer to Employee’s Petition for Appeal, Tab 2.

⁵ Petition for Appeal (August 1, 2025).

(c) A grievance pursuant to subsection (a) of this section or an appeal pursuant to subsection (b) of this section shall not serve to delay the effective date of a decision by the agency.

(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 for employees in a bargaining unit represented by a labor organization. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee.

(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 § 1-606.03, or the negotiated grievance procedure, **but not both.** (Emphasis Added.)

(f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, **whichever event occurs first.** (Emphasis Added.)

Based on the preceding, a District government employee, who is otherwise covered by the protections afforded to most District government employees under D.C. Official Code § 1-606.03, may elect to have an Agency's action reviewed under the auspices of the OEA. However, some District government employees, like Employee herein, have other protections afforded to them pursuant to various collective bargaining agreements entered into by and between an employees' union and a District government agency.

In the instant matter, as referenced in the Notice of Ineffective IMPACT Rating and Separation Letter, initially, Employee had concurrent avenues available for reviewing the Agency's adverse action – file a petition with the OEA or file a grievance through the CBA, but not both. As the Letter noted, the Employee had to choose which avenue in which to contest her removal. The Letter warned Employee, in layman's terms, of the election of review as generally provided for pursuant to D.C. Official Code § 1-616.52 *et seq.* According to D.C. Official Code § 1-616.52 (e), an aggrieved employee cannot simultaneously review a matter before the OEA and through a negotiated grievance procedure. Also, D.C. Official Code § 1-616.52 (f), further provides that once an avenue of review, either through the OEA or through a negotiated grievance procedure, is first selected, then the possibility of review via the other route is closed. OEA has consistently held that it lacks jurisdiction to adjudicate an appeal when an employee elects to

grieve a matter through their union prior filing an appeal with this Office.⁶ The D.C. Superior Court has also ruled likewise.⁷ I find that the Employee initially opted to contest her removal under the auspices of the Collective Bargaining Agreement as noted in the Termination letter. Consequently, I find that the OEA lacks jurisdiction over the instant matter.⁸

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

/s/ Joseph Lim

JOSEPH E. LIM, ESQ.

Senior Administrative Judge

⁶ *Charles Brown v. Department of Human Services*, OEA Matter No. 1601-0058-07, *Opinion and Order on Petition for Review* (November 23, 2009); and *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0044-23, *Opinion and Order on Petition for Review* (March 7, 2023).

⁷ *Rebecca Barnes v. Office of Employee Appeals, D.C. Public Schools, et. al.*, Case No. 2010 CA 9389 (D.C. Super. Ct. May 17, 2010).

⁸ Since this decision is predicated on the Office's lack of jurisdiction, I am unable to address the factual merits, if any, of the Employee's appeal.