

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 Office Manager 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-0050-25            |
| EMPLOYEE, <sup>1</sup>                       | ) |                                      |
| Employee                                     | ) |                                      |
|                                              | ) | Date of Issuance: September 17, 2025 |
| v.                                           | ) |                                      |
|                                              | ) |                                      |
| D.C. PUBLIC SCHOOLS,                         | ) | NATIYA CURTIS, Esq.                  |
| Agency                                       | ) | Administrative Judge                 |
|                                              | ) |                                      |
| Employee, <i>Pro Se</i>                      |   |                                      |
| Lynette Collins, Esq., Agency Representative |   |                                      |

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On June 20, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public School’s (“Agency” or “DCPS”) decision to terminate him from his position as a Director of Investigations, effective May 23, 2025. OEA issued a letter dated June 20, 2025, requesting that Agency file an Answer to Employee’s Petition for Appeal on or before July 20, 2025. Agency filed its Answer and Motion to Dismiss Employee’s Petition for Appeal for Lack of Jurisdiction on June 27, 2025. Agency asserted in its Answer and Motion to Dismiss that this Office lacks jurisdiction over this matter because Employee was an at-will employee.<sup>2</sup>

This matter was assigned to the undersigned Administrative Judge (“AJ”) on July 18, 2025. On July 23, 2025, the undersigned issued an Order for Briefs on Jurisdiction requiring Employee to address the jurisdiction issue raised by Agency in its Answer and Motion to Dismiss. Employee’s brief was due by August 14, 2025. Agency’s reply brief was due by September 4, 2025. The parties submitted their briefs, as required. After considering the parties’ arguments as presented in their submissions to this Office, the undersigned has determined that an Evidentiary Hearing is not required. The record is now closed.

**JURISDICTION**

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

---

<sup>1</sup>Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

<sup>2</sup> Agency’s Answer and Motion to Dismiss Employee’s Petition for Appeal (June 27, 2025).

### 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

#### **Employee’s Position**

Employee asserts that he was a Career Service employee and was terminated for cause without due process. Employee maintains that a footnote in the Notice of Termination indicated that he was terminated for violating DCMR Section 2-1402.61 “coercion or retaliation.” Employee avers that he never received notice of an investigation and was never provided an opportunity to respond to the charge.<sup>3</sup> Employee argues that Agency’s contention that he was an at-will employee is “fatally flawed.” Employee asserts that his offer letter did not classify him as an at-will employee and he “has been designated as a Career Service Employee.”<sup>4</sup> Employee further contends that while Agency stated he is an Employee “without tenure” that does not amount to him being an “at-will” Employee. Employee asserts that “[a]ccording to DCHR, “Tenure-is a factor used to determine an employee’s retention rights in the event of a reduction in force (RIF).”<sup>5</sup> Employee also avers that “neither the District Personnel Manual nor the OEA enabling restrictions recognizes ‘at-will’ as a formal employment classification subject to jurisdictional exclusion.”<sup>6</sup>

#### **Agency’s Position**

Agency maintains that OEA lacks jurisdiction over this appeal. Agency avers that Employee accepted a non-tenured position as a Director, Compliance Investigations on October 14, 2021. Agency asserts that it issued Employee a Notice of Termination on May 5, 2025, and met with Employee to explain its decision to terminate him. Agency notes that DCPS was the subject of a lawsuit, which

---

<sup>3</sup> Employee’s Petition for Appeal, p. 2 (June 20, 2025).

<sup>4</sup> Employee’s Brief on Jurisdiction, p.1, (August 12, 2025).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* p. 2

alleged violation of the Whistleblower Protection Act (WPA), DC Official Code § 1-615.51. Agency avers that Employee was found to have engaged in conduct that violated the WPA by a jury verdict.<sup>7</sup> Agency maintains that Employee was informed that pursuant to DC Official Code § 1-615.55, violations of the WPA are subject to disciplinary action, including dismissal.<sup>8</sup> Agency asserts that based on the jury verdict against Employee, he was terminated.<sup>9</sup>

Agency avers that the Director of Investigations role falls under the Educational Services, and that all Educational Services employees are non-union and non-tenured, which means they are at-will.<sup>10</sup> Agency further notes that Employee's SF-50-Notification of Personnel Action form ("SF-50") confirms that he was an Educational Services employee and notes that his employment was without tenure. Agency maintains that the footnote at the bottom of Employee's Notice of Termination was included in error.<sup>11</sup>

### ***Analysis***

The threshold issue in this matter is one of jurisdiction. This Office has no authority to review issues beyond its jurisdiction.<sup>12</sup> 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. According to the rules of this Office, established at 6-B of the District of Columbia Municipal Regulation ("DCMR") Chapter 600, Rule 604.1 states this Office has 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.

In the instant matter, the undersigned agrees with Agency's assertion that OEA lacks jurisdiction over this matter. D.C. Official Code § 1-608.01 governs creation of the Career Service. Section 1-608.01(a) explicitly states "The Mayor shall issue rules and regulations governing employment, advancement, and retention in the 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). Further, The Public Education Personnel Reform Amendment Act of 2008, which is codified at D.C. Official Code § 1-608.01a states:

---

<sup>7</sup> Agency's Answer and Motion to Dismiss, p. 1, (June 27, 2025).

<sup>8</sup> This section states, "As part of the relief ordered in an administrative, arbitration or judicial proceeding, any person who is found to have violated § 1-615.53... shall be subject to appropriate disciplinary action including dismissal."

<sup>9</sup> Agency's Answer and Motion to Dismiss, p. 1, (June 27, 2025).

<sup>10</sup> Agency's Sur Reply, p. 1. (August 21, 2025).

<sup>11</sup> *Id.* at p. 5

<sup>12</sup> See, *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

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).<sup>13</sup>

The law is clear that Educational Service employees who are not Excluded Employees are excluded from Career Service status. Further, an employee who serves without tenure is an at-will employee. This Office has consistently held that OEA lacks jurisdiction over at-will employees regarding their terminations.<sup>14</sup>

Based on the record, the undersigned finds that Employee held a position in the Educational Service, did not meet the definition of an “Excluded Employee, and thus was an at-will employee. Accordingly, this Office lacks jurisdiction over his appeal. An offer letter of employment dated October 14, 2021, from Agency to Employee outlines the terms of Employee’s position. The offer letter states that Employee was offered a promotion for “Director, Compliance Investigation, full time.” This letter explicitly states: “Pursuant to the Public Education Personnel Reform Amendment Act of 2008, this appointment is without tenure to the DC Public Schools.” The letter further states this is a non-union position.<sup>15</sup> Employee’s SF-50 dated May 23, 2025, classified him as an Educational Service Employee.<sup>16</sup> Further, on May 5, 2025, Agency issued a Notice of Termination letter to Employee, which noted an effective date of termination as May 23, 2025, and indicated that he was being provided with notice of termination, “[i]n accordance with the Public Education Personnel Reform Amendment Act of 2008....”, lending support to the conclusion that Employee was an Educational Service employee and thus at-will.<sup>17</sup> Further, Employee has not suggested and the record does not support a finding that he meets the requirements to be an Excluded Employee.

While Employee makes several arguments in support of jurisdiction, the undersigned finds that the arguments do not overcome Employee’s burden to establish jurisdiction. Employee asserts that he was wrongfully terminated “for cause without due process.”<sup>18</sup> In his Petition for Appeal, Employee cites to a footnote in the Notice of Termination which “indicates that I was terminated for violating DCMR Section 2-1402.61 ‘coercion or retaliation’ but I have never received notice of an investigation for violation of this sort, never been provided an opportunity to respond to allegations of this sort, nor do I know what conduct I’m being discipline for.”<sup>19</sup> The undersigned finds that Employee’s status as an at-will employee negates this argument. While Agency avers that it exercised its authority to terminate Employee for conduct that a jury found to have violated the Whistleblower Protection Act, it is well established in the District of Columbia that an employer may discharge an at-will employee “at any time and for any reason, or for no reason at all.”<sup>20</sup> Thus, it is Employee’s *status as an at-will Employee*, not the reason for termination that determines his appeal rights before this Office. Thus, the

---

<sup>13</sup> D.C. Official Code § 1-608.01a(2)(A)(i) (2008).

<sup>14</sup> See. *Employee v. District of Columbia Public Schools*, OEA Matter No. 1601-0161-12R17(December 21, 2017); *Employee v District of Columbia Public Schools*, OEA Matter No. 1601-0049-23 (July 18, 2025).

<sup>15</sup> Agency’s Sur Reply, Exhibit One (August 21, 2025).

<sup>16</sup> *Id.* at Exhibit Three.

<sup>17</sup> Employee’s Petition for Appeal, p. 7 (June 20, 2025).

<sup>18</sup> *Id.* at p. 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Employee v. District of Columbia Public Schools*, OEA Matter No. 1601-0049-23 (July 18, 2025) (citing *Bowie v Gonzalez*, 433 F.Supp.2d 24 (D.D.C. 2006)).

reason for termination does not grant Employee any greater standing before this Office. Further, as Agency noted, the undersigned finds that the footnote included in Employee's termination letter was made in error. As Agency noted, the footnote does not have corresponding text in the body of the letter.<sup>21</sup>

Employee asserts additional arguments that the undersigned considered but finds to be without merit or application to the instant matter.<sup>22</sup> Employee asserts that "[t]enure is a factor used to determine an employee's retention rights in the event of a reduction in force" according to DCHR. Employee further avers that "neither the District Personnel Manual ("DPM") nor the OEA enabling restrictions recognizes 'at-will' as a formal employment classification subject to jurisdiction exclusion."<sup>23</sup> The undersigned finds that these arguments are misguided. Employee was not terminated due to a reduction-in-force and served in a position that was without tenure. Further, Chapter 16 of the DPM affords adverse action protection to some classes of employees; however, these protections do not apply to at-will employees who can be terminated without cause. Accordingly, I find that jurisdiction has not been established. As a result, I further find that Employee's Petition for Appeal 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/ Natiya Curtis  
NATIYA CURTIS, Esq.  
Administrative Judge

---

<sup>21</sup> Agency's Sur Reply, p. 5 (August 21, 2025).

<sup>22</sup> 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").

<sup>23</sup> Employee's Brief in Opposition to Agency's Motion to Dismiss and in Support of Jurisdiction, p. 2 (August 12, 2025)