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

_____)	
In the Matter of:)	
)	OEA Matter No. 1601-0008-18
JEREMIAH BYRD,)	
Employee)	
)	Date of Issuance: May 22, 2018
v.)	
)	Michelle R. Harris, Esq.
OFFICE OF THE STATE)	Administrative Judge
SUPERINTENDENT OF EDUCATION,)	
Agency)	
_____)	

Jeremiah Byrd, Employee, *Pro Se*
Hillary Hoffman-Peak, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 26, 2017, Jeremiah Byrd (“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” or “OSSE”) decision to terminate him. On November 6, 2017, Agency filed its Motion to Dismiss Employee’s Appeal. Following an unsuccessful attempt to resolve this matter through mediation, this matter was assigned to the undersigned Administrative Judge (“AJ”) on February 5, 2018. On February 5, 2018, I issued an Order scheduling a Status/Prehearing Conference for February 26, 2018.

On February 26, 2018, both parties appeared for the Status/Prehearing Conference. Following the conference, I issued a Post Status/Prehearing Conference Order on February 26, 2018, requiring parties to submit briefs in this matter. Agency’s brief was due on or before March 22, 2018, and Employee’s brief was due on or before April 23, 2018. Agency submitted its brief on March 20, 2018. Employee did not submit his brief by the prescribed deadline. As a result, on April 27, 2018, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on his failure to submit his brief by the April 23, 2018 deadline. Employee had until May 11, 2018, to respond. To date, Employee has not responded to the Order. The record is now closed.

JURISDICTION

This 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 621.3 states in relevant part that the “Administrative Judge, 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. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) *Submit required documents after being provided with a deadline for such submission* (Emphasis added); or
- (c) Inform this Office of a change of address which results in correspondence being returned.”¹

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and submit required documents after being provided with a deadline to comply with such orders.² In the instant matter, Employee was provided notice in all of the Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to the February 26, 2018, or April 27, 2018 Orders. Employee’s response to each of these Orders was required to ensure an appropriate review and resolution of the matter. Additionally, all

¹ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

² *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge