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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
BRANDON DICKENS,)	
Employee)	OEA Matter No. J-0017-12
)	
v.)	Date of Issuance: January 19, 2012
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF)	
EDUCATION,)	
Agency)	
_____)	ERIC T. ROBINSON, Esq.
Brandon Dickens, Employee <i>Pro-Se</i>)	Senior Administrative Judge
Virginia Crisman, General Counsel)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 7, 2011, Brandon Dickens (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Office of the State Superintendent of Education’s (“Agency”) action of “violating [his] seniority right to bid on [his] 2011 Fall Run Bid dated August 11, 2011. Unlawfully reassigning [him] to work as an Acting Bus Attendant for 3 years and two months without notifying [him].” *See* Employee’s Petition for Appeal at § C No. 14. I was assigned this matter on or about December 19, 2011. After reviewing the case file and the documents of record, I issued an Order dated December 20, 2011, wherein I questioned whether the OEA may exercise jurisdiction over the instant matter. Employee was required to respond on or before January 4, 2011. Employee submitted a request asking for additional time in which to file a response. I then issued an Order dated January 6, 2012, where I granted Employee’s request and extended his response deadline to January 13, 2012. To date, I have not received Employee’s response. After reviewing all of the relevant facts and circumstances as contained within the documents of record, I have determined that no further proceedings in this matter are warranted. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Should this matter be dismissed for lack of jurisdiction?

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states that:

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 629.2, *id.*, states that "the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing."

ANALYSIS AND CONCLUSION

Even though Employee did not characterize it as such, I find that Employee's petition for appeal is an appeal of a grievance. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

This Office has no authority to review issues beyond its jurisdiction. *See Banks v. District of Columbia Pub. Sch.*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (Sept. 30, 1992), __ D.C. Reg. __ (). Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding. *See Brown v. District of Columbia Pub. Sch.*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993), __ D.C. Reg. __ (); *Jordan v. Department of Human Services*, OEA Matter No. 1601-

0110-90, *Opinion and Order on Petition for Review* (Jan. 22, 1993), __ D.C. Reg. __ ();
Maradi v. District of Columbia Gen. Hosp., OEA Matter No. J-0371-94, *Opinion and Order on
Petition for Review* (July 7, 1995), __ D.C. Reg. __ ().

The jurisdiction of this Office is expressly limited to performance ratings that result in removals; final agency decisions that result in removals, reductions in grade; suspensions or enforced leave of ten days or more; or reductions in force. *See* OEA Rule 604.1, Based on the preceding statute, OEA rule, and related case law, I find that the OEA does not have jurisdiction to adjudicate appeals of a grievance. Consequently, I conclude that I must dismiss this matter for lack of jurisdiction.

ORDER

It is hereby ORDERED that this matter be DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge