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

_____	)	
In the Matter of:	)	
	)	
PAMELA ADAMS,	)	
Employee	)	OEA Matter No. 2401-0123-14
	)	
v.	)	Date of Issuance: May 8, 2015
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
_____	)	
Diana Bardes, Esq., Employee Representative	)	
Sara White, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 5, 2014, Pamela Adams, (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“Agency” or “DCPS”) action of abolishing her position through a Reduction-in-Force (“RIF”). The effective date of the RIF was August 8, 2014. Employee was Custodian (RW-5) at Shepherd Elementary School (“Shepherd”). On October 8, 2014, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on October 10, 2014. Thereafter, the parties were ordered to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations. Pursuant to Agency’s failure to submit a timely brief, on November 7, 2014, the undersigned AJ issued an Order for Statement of Good Cause. Agency submitted a timely response to the November 7, 2014 Order, along with a request for an extension to file its brief. Agency’s request for extension was granted in an Order dated November 21, 2014. Agency filed its brief on November 25, 2014. Subsequently, on December 15, 2014, Employee filed a request for an extension to file her brief, pending the production of documents from Agency. In an Order dated December 19, 2014, the undersigned AJ granted Employee’s extension request. Additionally, the Order further required Agency to respond to Employee’s Request for Production of Documents on or before January 5, 2015.

Following Agency's failure to respond to Employee's Request for Production of Documents by the January 5, 2015 deadline, Employee filed a Motion for Sanctions for Failure to Produce Documents on January 14, 2015. In addition, on January 22, 2015, Employee filed a Motion for Extension of Time to file her brief pending the decision on the Motion for Sanctions. In an Order dated January 23, 2015, the undersigned issued an Order for Statement of Good Cause wherein, Agency was again required to explain its failure to comply with the December 19, 2014 Order. The January 23, 2015 also extended the due date of Employee's brief. Agency filed a response to the January 23, 2015 Order, along with the response to Employee's request for production of document. Both parties submitted their respective briefs as requested. On April 20, 2015, I issued an Order to Agency requesting additional documentation. Agency has complied. After considering the arguments herein, I have determined that an Evidentiary Hearing is unwarranted. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

### FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On or around April 4, 2014, D.C. School Chancellor Kaya Henderson authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, and Title 5 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 15. Chancellor Henderson stated that the RIF was necessitated for budgetary reasons.<sup>1</sup>

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,<sup>2</sup> which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act or the Act") is the more applicable statute to govern this RIF.

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<sup>1</sup> See *Agency's Answer* at Tab 1, (October 8, 2014).

<sup>2</sup> D.C. Code § 1-624.02 states in relevant part that:

- (a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:
  - (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
  - (2) One round of lateral competition limited to positions within the employee's competitive level;
  - (3) Priority reemployment consideration for employees separated;
  - (4) Consideration of job sharing and reduced hours; and
  - (5) Employee appeal rights.

Section § 1-624.08 states in pertinent part that:

(a) ***Notwithstanding*** any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 2000, and each subsequent fiscal year, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) ***Notwithstanding*** any rights or procedures established by any other provision of this subchapter, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*, the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency.”<sup>3</sup> The Court also found that both laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”<sup>4</sup>

However, the Court of Appeals took a different position. In *Washington Teachers' Union*, DCPS conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.”<sup>5</sup> The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the Act”) instead of “the regular RIF procedures found

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<sup>3</sup> *Mezile v. District of Columbia Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

<sup>4</sup> *Id.* at p. 5.

<sup>5</sup> *Washington Teachers' Union, Local # 6 v. District of Columbia Public Schools*, 960 A.2d 1123, 1125 (D.C. 2008).

in D.C. Code § 1-624.02.”<sup>6</sup> The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”<sup>7</sup>

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.<sup>8</sup> The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”<sup>9</sup> Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”<sup>10</sup>

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.<sup>11</sup> Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding’, suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions.<sup>12</sup> Under this section, an employee whose position was terminated due to a RIF may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level.

### ***Employee’s Position***

In her submissions to this Office, Employee notes that she should not have been placed in a custodial position with any other employee that had less seniority than her. She explains that she had seventeen (17) years of custodian experience and she has been employed with Agency for a total of twenty (20) years at the time of her termination. Employee further highlights that she had an effective Competitive Level Documentation form (“CLDF”) IMPACT rating for school years 2012-2013; and 2013-2014. Employee argues that the retained Custodian’s IMPACT rating for 2012-2013 has not been provided by Agency despite Employee’s request that it be produced. Employee highlights that the retained Custodian received an Effective rating.

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

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1125. See also *Johnson v. District of Columbia Department of Health*, 2012 CA 000278 P (MPA).

<sup>9</sup> *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

<sup>10</sup> *Id.*

<sup>11</sup> See *Mezile v. D.C. Department on Disability Services*, *Supra*.

<sup>12</sup> In *Webster Rogers v. DCPS*, No. 2012 CA006364 (D.C. Super. Ct. December 9, 2013), the D.C. Superior Court stated that D.C. Code §1-624.08 is the correct statute for RIFs conducted due to budgetary constraints and Chapter 24 of the District Personnel Manual (“DPM”) is the applicable criteria to be used as opposed to Title 5 DCMR Chapter 15.

Employee states that, there were two Custodians at Shepard at the time of her termination, and she was the only one separated from the position pursuant to the RIF. She explains that DCPS completed CLDFs for the two (2) Custodians to determine who to RIF. Employee contends that Agency failed to use the most recent IMPACT rating to determine which Employee should be impacted by the RIF. Employee maintains that by the time she was separated pursuant to the RIF, her 2013-2014 IMPACT Evaluation was already completed and Agency should have used the 2013-2014, and not the 2012-2013 IMPACT evaluation because it is a more accurate depiction of Employee's work at the time of the RIF. Employee states that because her 2013-2014 IMPACT evaluation was not used, she was not properly afforded one round of lateral competition. Employee however concedes that her 2012-2013 and 2013-2014 IMPACT ratings were the same – Effective.

Citing *Sligh v. District of Columbia Public Schools*, 2012 CA 0697P (MPA)(March 14, 2013); and *Dupree v. District of Columbia Office of Employee Appeals*, 36 A. 3d 826 (D.C. 2011), Employee asserts that an Evidentiary Hearing is needed. Employee also notes that an Evidentiary Hearing is needed to develop factual issues with regards to why the Custodian that was retained pursuant to the instant RIF received comments on his CLDF, and Employee received no comments. Employee argues that the CLDF was not supported by substantial evidence and she was therefore not provided with the round of lateral competition that she was guaranteed before being separated. Employee further contends that she was given a lower score than the retained Employee for improper reasons. Employee maintains that the Principal was aware that Employee wanted to transfer schools, so the Principal gave the retained Custodian a higher score so Employee could interview with other schools. Employee additionally notes that the Principal told Employee that she would help Employee obtain an assignment at a different school, but ultimately failed to provide Employee with any assistance.<sup>13</sup>

### ***Agency's Position***

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code. Agency notes that the Chancellor of DCPS authorized the RIF, and defined the competitive areas and competitive level for the RIF. Agency explains that each school was identified as a separate competitive area, and each position title constituted a separate competitive level. Shepard was determined to be a competitive area and the Custodian position was deemed a competitive level.

Agency further notes that because Employee and one other employee served as RW5 Custodians at Shepard at the time of the RIF. Because the budget for Fiscal Year 2015 only allowed for one (1) RW5 Custodian position, Employee had to compete with the other Custodian for the position. The Principal at Shepard was required to use the CLDF to rate each RW5 Custodian based on the following criteria specified by 5-E DCMR 1503.2:

- A. Relevant significant contributions, accomplishments or performance: (50% of total score):
- B. Office or School needs (20% of total score); and

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<sup>13</sup> Petition for Appeal (September 5, 2014); Employee's Brief (February 18, 2015).

- C. Relevant supplemental professional experience as demonstrated on the job (20% of total score).

Additionally, Agency's Office of Human Resources ("OHR") computed "length of service, including credit for District residency, veteran's preference, and prior "Highly Effective" IMPACT rating for each employee (10% of the total score). The lowest ranked employee within the competitive level was selected for separation pursuant to the RIF. Employee received the lowest score of the two (2) RW5 Custodians at Shepard and she was terminated. Employee received the notice of termination on or around May 16, 2014, and the effective date of her termination was August 8, 2014.<sup>14</sup>

### *Analysis*

In the instant matter, Shepard Elementary school was identified as a competitive area, and RW5 Custodian was determined to be the competitive level in which Employee competed. There were two (2) Custodians subject to the RIF. Of the two (2) Custodian positions, one (1) position was identified to be abolished.

Employee was not the only (Custodian) within her competitive level and was, therefore, required to compete with other employees in one round of lateral competition. According to Title 5, DCMR § 1503.2 *et al.*:

If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

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<sup>14</sup> Agency's Answer (October 8, 2014): Agency's Brief (November 25, 2014).

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (50%)
- (b) Significant relevant contributions, accomplishments, or performance – (20%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (20%)
- (d) Length of service – (10%).<sup>15</sup>

### ***Competitive Level Documentation Form***

Agency employs the use of a CLDF in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Shepard Elementary school was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the “length of service” category was completed by the Office of Human Resources (“OHR”).

Employee received a total of fifty (50) points on her CLDF, and was, therefore, ranked the lowest in her competitive level.<sup>16</sup>

### **Office or school needs**

This category is weighted at 50% on the CLDF. Under this category, an employee was given a score based on their most recent IMPACT performance evaluation. If an employee received a “Highly Effective” rating, the employee received the full fifty (50) points available in this category. If an employee received an “Effective” rating, the employee would receive forty (40) points. An Impact rating of “Minimally Effective” would earn an employee thirty (30) points and an employee would receive zero (0) points if they had an “Ineffective” IMPACT rating in this category. Employee received an “Effective” rating on her 2012-2013 IMPACT evaluation and this was the second highest IMPACT rating. Consequently, Employee received a total score of forty (40) points out of the possible fifty (50) points in this category; the same score was received by the retained custodian in this competitive level. Employee’s initial argument that the retained employee’s IMPACT rating could not be substantiated is now moot as Agency has submitted the retained employee’s IMPACT evaluation for school year 2011-2012; 2012-2013; and 2013-2014. A review of the submitted IMPACT evaluation forms highlight that the retained employee received an IMPACT rating of “Effective” for all the above referenced school years. Employee also argues that while the retained custodian had comments on his IMPACT evaluation, there were no comments on Employee’s 2012-2013, IMPACT evaluation.

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<sup>15</sup> It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

<sup>16</sup> Agency’s Answer, Tab 2 (October 8, 2014).

However, I find that it is within the Principal of Shepard's managerial expertise to rate and assign values as she deems necessary.

**Significant relevant contributions, accomplishments, or performance**

This category is weighted at 20% on the CLDF. Employee received zero (0) points, out of the possible fifty (50) points in this category while the retained custodian received ten (10) points. Employee has not provided any evidence to supplement additional points being awarded in this area. Moreover, the principal has discretion to award points in this area giving her independent knowledge of the employees.

**Relevant supplemental professional experiences as demonstrated on the job**

This category accounts for 20% of the CLDF. Employee received zero (0) points, out of the possible fifty (50) points in this category while the retained custodian received ten (10) points. Employee did not provide any documentation to supplement additional points being awarded in this area.

**Length of service**

This category accounts for 10%. It was completed by OHR and was calculated by adding the following: 1) years of experience; 2) veteran's preference; 3) D.C. residency points; and 4) prior "Highly Effective" IMPACT rating within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Here, Employee was employed with Agency for approximately twenty (20) years. She received a total of ten (10) points for length of service and D.C. residency, the maximum amount of points available in this category. The retained custodian received five (5) points out of a possible ten (10) points in this category. Employee did not receive any points for veteran's preference, or a "Highly Effective" rating. In the school years 2012/2013 and the 2013/2014, Employee did not receive a "Highly Effective" IMPACT performance rating; she received an "Effective" IMPACT rating. Employee received a total weighted score of ten (10) points in this category. She does not contest the calculation of the points awarded. Therefore, I find that Agency properly calculated this number.

Also, Employee asserts that, an Evidentiary Hearing is needed to develop factual issues with regards to why the retained Custodian received comments on his CLDF, and Employee received no comments on her CLDF. In reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997), the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are

“subjective and individualized in nature.”<sup>17</sup> Moreover, according to the CLDF, Employee received a total score of fifty (50) after all of the factors outlined above were tallied and scored. The retained Custodian received a total score of fifty-five (55) points. Employee has not proffered any evidence to suggest that a re-evaluation of her CLDF scores would result in a different outcome in this case.<sup>18</sup>

Furthermore, Employee cites to *Dupree v. D.C. Office of Employee Appeals*, and *Slight v. District of Columbia Public Schools*, in support of her position that she should be afforded an Evidentiary Hearing to determine whether she was actually given one round of lateral competition. The Court in *Dupree* held that the “ALJ abused his discretion in failing to conduct an Evidentiary Hearing on whether [the] termination of a District of Columbia employee by [the] Department of Corrections (DOC), due to a mandated reduction in force (RIF), complied with [the] applicable regulations...and factual determinations were required for at least two of the four issues raised by employee.” The Employee in *Dupree* appealed his termination to the OEA, alleging that he should have received an enhancement for an “outstanding” performance rating and that the Retention Register for the Criminal Investigator position failed to include two employees classified as “Criminal Investigators (Internal Affairs).” The employee claimed that the ALJ should have conducted an Evidentiary Hearing “to adduce testimony to support the argument that the agency's termination action was flawed and contrary to law.”

The facts in this case are distinguishable from those in *Dupree*. Unlike in *Dupree*, here, Employee is challenging the RIF on the grounds that she did not receive comments in her CLDF and that her 2013-2014 IMPACT rating should have been used and not her 2012-2013 IMPACT rating. Employee explained that at the time she received her RIF notice, her 2013-2014 IMPACT evaluation had already been completed. She further explained that the most recent IMPACT evaluation provided a more accurate depiction of her work at the time she was competing with the retained custodian, and because Agency’s failed to use the 2013-2014 IMPACT evaluation, she was not afforded one round of lateral competition. However, Employee conceded that her RIF score would have been the same for both her 2012-2013 IMPACT evaluation and the 2013-2014 IMPACT evaluation. It is also worth noting that the retained custodian also received an Effective IMPACT rating for the 2012-2013 school year, as well as the 2013-2014 school year. Consequently, I conclude that the scores for the performance section for both Employee and the retained custodian would have remained the same even if the IMPACT rating for school year 2013-2014 was utilized in the CLDF.<sup>19</sup>

Moreover, Chapter 24 of DPM §2416.2 provide in pertinent part as follows: “[t]he current performance rating shall be the performance rating for the year which ended on the March 31st, August 31st, or September 30th, as applicable, that precedes the date of the reduction-in-force notice.” The instant RIF was approved on April 4, 2014; and it became effective on August 8, 2014. Employee received an IMPACT rating of Effective for 2012-2013;

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<sup>17</sup> See also *American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

<sup>18</sup> See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law.)

<sup>19</sup> Employee’s argument that Agency failed to submit the retained custodian’s IMPACT rating for 2012-2013; and 2013-2014 school years is now moot because Agency has since submitted the requested documents.

and 2013-2014 school years. Unlike in *Dupree*, here, Employee is not challenging this performance evaluation nor has she provided any argument that she should have received an enhancement for an “outstanding” performance rating...”<sup>20</sup> Based on the foregoing, and contrary to Employee’s assertion that the 2013-2014 IMPACT rating should have been used, I conclude that Agency was justified in using the 2012-2013 IMPACT rating in providing Employee and her colleague one round of lateral competition.

Accordingly, I find that the Principal of Shepard had discretion in completing Employee’s CLDF as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. Moreover, it appears as though Employee’s basis for requesting an Evidentiary Hearing is to be afforded an opportunity to explore and undoubtedly dispute “...interpretations of their worth against [the] principals’ evaluations.”<sup>21</sup> While it is unfortunate that Agency had to release any employee as a result of budgetary constraints, there is nothing within the record that would lead the undersigned to believe that the RIF was conducted unfairly. Additionally, an AJ has the discretion to decide a matter on the record or conduct an evidentiary hearing.<sup>22</sup> Therefore, I further find that, Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08, and an Evidentiary Hearing is unwarranted in this matter.

### ***Notice Requirements***

The D.C. Official Code § 1-624.08(e) which governs RIFs provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added). Additionally, Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that “an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee’s status and appeal rights.” Here, the record shows that Employee was notified on May 16, 2014 that her position was being eliminated effective August 8, 2014. The notice stated that Employee’s position was being abolished as a result of a RIF. The Notice also provides Employee with information about her appeal rights. Moreover, Employee does not contest that she did not receive the required thirty (30) days notice. It is therefore undisputed that Employee was given the required thirty (30) days written notice prior to the RIF effective date.

### ***Grievances***

Employee notes that the principal promised to help her transfer to another school but failed to do so. This Office has previously held that complaints of this nature are grievances, and do not fall within the purview of OEA’s scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance

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<sup>20</sup> *Dupree, Supra.*

<sup>21</sup> *Washington Teachers' Union* at 780.

<sup>22</sup> OEA rule §624.2.

appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

**ORDER**

It is hereby **ORDERED** that Agency's action separating Employee pursuant to a RIF is **UPHELD**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge