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

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 2401-0095-14
PHYLLIS FRANK,	)	
Employee	)	
	)	Date of Issuance: December 19, 2014
v.	)	
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	Monica Dohnji, Esq.
_____	)	Administrative Judge
Phyllis Frank, Employee <i>Pro Se</i>		
Carl Turpin, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 8, 2014, Phyllis Frank (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to abolish her position through a Reduction-in-Force (“RIF”). The effective date of the RIF was August 8, 2014. Employee’s position of record at the time her position was abolished was an Administrative Aide at Harris Elementary School (“Harris”). On September 11, 2014, Agency submitted its Answer to the Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on September 22, 2014. On September 30, 2014, I issued an Order requiring the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations. While Agency submitted a timely response to the September 30, 2014, Order, on November 14, 2014, Employee filed a request for an extension of time to submit her brief. Employee’s request was granted in an Order dated November 17, 2014. Employee’s brief due date was extended to December 2, 2014; however, Employee did not submit her brief as requested.

Subsequently, on December 5, 2014, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the November 17, 2014 Order, on or before December 15, 2014. As of the date of this decision, Employee has not responded to either Order. 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 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 621.1 grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “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.<sup>1</sup> 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; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.<sup>2</sup> Here,

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<sup>1</sup> OEA Rule 621.3.

<sup>2</sup> *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

Employee was warned in the September 30, 2014; November 17, 2014; and December 5, 2014, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to these Orders. These were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, this matter should be dismissed for her failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge