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

In the Matter of:	)	
	)	OEA Matter No.: J-0038-21
	)	
Employee	)	
	)	Date of Issuance: January 25, 2022
v.	)	
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION	)	
Agency	)	MICHELLE R. HARRIS, ESQ.
	)	Administrative Judge
	)	
	)	
_____ Employee, <i>Pro Se</i> Vincent Enriquez, Esq., Agency Representative <sup>1</sup>		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On July 27, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) citing that the Office of the State Superintendent of Education (“Agency” or “OSSE”) violated his seniority service. Pursuant to a letter issued by OEA on September 28, 2021, Agency’s Answer was due on or before October 28, 2021. This matter was assigned to the undersigned Administrative Judge (“AJ”) on November 1, 2021. Following an Order for Answer and Statement of Good Cause issued on November 16, 2021, Agency filed its Answer on November 30, 2021. Agency cited in its Answer that OEA lacked jurisdiction over this matter because Employee’s Petition seeks to challenge the denial of a grievance.

Accordingly, on December 7, 2021, I issued an Order requiring briefs regarding this Office’s jurisdiction in this matter. Employee’s brief was due on or before December 30, 2021, and Agency’s Brief was due on or before January 10, 2022. Employee did not submit a brief as required. As a result, on January 5, 2022, I issued an Order for Statement of Good Cause to Employee. Employee was required to submit his brief along with a statement of his failure to submit a response in accordance with the December 7, 2021 Order. Employee’s brief and statement were due on or before

<sup>1</sup> Entry of representation received January 7, 2022.

January 18, 2022. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

### JURISDICTION

The jurisdiction of this Office has not been established.

### 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; or
- (c) Inform this Office of a change of address which results in correspondence being returned.”<sup>2</sup> (Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.<sup>3</sup> In the instant matter, Employee was provided notice in the December 7, 2021, and January 5, 2022 Orders, that a failure to comply could result in sanctions, including dismissal. Employee did not respond to

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<sup>2</sup> OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

<sup>3</sup> *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).

either Order. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. A response to each of these Orders was required to ensure an appropriate review and resolution of the matter. 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