THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
	OEA Matter No.: 1601-0032-25
EMPLOYEE[1],	
Employee	
	Date of Issuance: August 19, 2025
v.	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	MICHELLE R. HARRIS, ESQ.
Agency	Senior Administrative Judge

Employee, *Pro Se*
Angel Cox, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 25, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to terminate her from her position as a Teacher, effective February 24, 2025. Following a letter from OEA dated March 26, 2025, requesting an Answer in this matter, Agency filed its Answer and Motion to Dismiss on April 25, 2025. Agency cited therein that Employee was in probationary status at the time of separation, and that OEA lacked jurisdiction to adjudicate this matter. This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on April 28, 2025. On April 30, 2025, I issued an Order scheduling a Prehearing Conference for June 3, 2025. Prehearing statements were due by or before May 27, 2025.

Both parties appeared for the Prehearing Conference as required. Following the Conference, I issued an Order on June 4, 2025, requiring the parties to submit briefs to address the jurisdiction issue raised by Agency. Employee's brief was due by July 1, 2025. Agency's response was due by July 17, 2025. On June 6, 2025, Employee emailed the undersigned and Agency's representative raising substantive issues related to her matter. Because I had advised that email was not an appropriate forum for such inquiries, I issued an Order on June 6, 2025, scheduling a Status Conference. A Status Conference was held on June 13, 2025, and both parties appeared. During that Conference, I addressed issues and questions raised by the parties. I also advised the parties that the existing deadlines for briefs would remain the same. Both parties filed their briefs as required. On July 23, 2025, Employee again emailed the undersigned citing that she did not understand why Agency was able to submit its brief after hers and attempted to address statements made by the Agency. Again, the undersigned

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

reminded Employee that email was not the appropriate forum and that should she wish to respond, a motion would need to be filed for the record. Because of Employee's email, I issued an Order allowing Employee to submit a response by July 31, 2025. Employee submitted her responsive statement on July 28, 2025. Upon review of the parties' submissions and the record, I have determined that an Evidentiary Hearing is not warranted in this matter. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for 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 631.2 *id.* states:

> For appeals filed under §604.1, 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee was hired at Agency as a Teacher at Smothers Elementary. Employee's effective start date was August 12, 2024.[2] In a notice dated February 6, 2025, Employee was advised that she was to be placed on paid administrative leave effective immediately due to "Improper Conduct on or about November 26, 2024." This letter also cited to an enclosed Notice of Termination. The Notice of Termination cited that Employee would remain on administrative leave until February 24, 2025. Further, that notice cited that Employee was being terminated for: *violation of 5-E DCMR Section 1401.2(j) – Willful disobedience, 5-E DCMR Section 1401.2(e) – Insubordination and violation of 5-E DCMR 1401.2(v) – Other conduct during and outside of duty hours that would affect adversely the employee's or the agency's ability to perform effectively.* Employee filed her appeal with OEA on March 25, 2025.

[2] Employee's Petition for Appeal at Offer Letter (March 25, 2025). Employee's Petition for Appeal cites that she was a "Special Education Teacher."

SUMMARY OF PARTIES' POSITIONS

Employee's Position

Employee asserts that she was not a probationary employee at the time of termination. Employee cites that she had been a substitute teacher with Agency "since March of 2012 and [she] was promoted to Special Education Teacher on August 11, 2024, after 12 years of excellent service as a substitute teacher." Employee argues that her offer letter never indicated that she was a probationary employee, which is evidence that she was not in probationary status.[3] Employee also asserts that the information she was provided by Human Resources ("DCPS HR") shows that she was a permanent employee. To support this contention, Employee asserts that DCPS HR documents show that her effective date of August 11, 2024, where she was promoted to a full-time teacher, along with a document dated October 6, 2024, wherein she received a salary increase show her status. Further, Employee cites that a letter dated March 12, 2012, clearly exhibits when she joined DCPS as a substitute teacher.[4] Employee asserts that the personnel documents reflecting her position as a substitute showed that she was "conditional which correlated with what was put under remarks "Not to Exceed (NTE)" on 12/01/2013 as [she] was renewed each year with a new NTE for that current year."[5] However, Employee argues that when she was "promoted as a full-time teacher block#24 under tenure has "1" indicating a permanent status and it was [sic] consistence with not having NTE date or anything under remarks."

Employee avers that her permanent status was determined as of her hire date. Employee further argues that the documentation that Agency relies upon which indicates '1' for Permanent but has probationary in remarks is contradictory. Employee contends that this "sends a mixed message while block#24 next to tenure shows permanent status and on the same document where probationary is added under remarks." Employee avers that "the document had to show one or the other (permanent or probationary) as it cannot be both permanent and probationary."[6] Employee asserts that her initial documents (SF-50) did not indicate that she was probationary and that it was only the document submitted by Agency's representative in its filings before OEA that reflected probationary in the remarks. Employee also avers that she specifically inquired and was told by Human Resources that she was a permanent teacher. Employee avers that her Exhibit 5 reflects an email confirming her permanent status on February 11, 2025.[7] Employee also contends that email between her and the WTU (Exhibit 4) also proves she was a permanent teacher.[8]

Employee also notes that while Agency cites that she was not promoted, that she did not make up the word on her own. Instead, Employee asserts that the Notification of Personnel Action showed "promotion" in "6-B Nature of action."[9] Employee further argues that she was never given the District Personnel Manual nor was she told to refer to this regarding probationary status. She maintains that DCHR indicated that she was a permanent employee. Employee also notes that her offer letter and initial start had her at a salary of $82,250, but it increased on October 6, 2024, to $82,875 "due to WTU negotiated salary increase."[10] Further Employee reiterates that the Notice of Personnel Action

[3] Employee's Brief at Page 1 (July 3, 2025).
[4] *Id*. at Page 2.
[5] *Id*.
[6] *Id*.
[7] Email from Adrienne Hill.
[8] *Id*. at Pages 3-4.
[9] Employee's Supplemental Brief at Page 1-2.
[10] *Id*. at Pages 2-3.

"submitted by [Agency representative] with an effective date of 02/24/2025 and processed on 03/28/2025 (that has "probationary") under remarks without Not to Exceed Date", was not provided to her by DCPS Human Resources, but was only submitted by Agency counsel. As such, Employee avers that this Office should retain jurisdiction over her appeal.

Agency's Position

Agency asserts that Employee was in probationary status at the time of her removal from Agency. Agency provides that Employee was hired by DCPS on or about August 12, 2024. Agency cites that Employee was provided with a Notice of Termination dated February 6, 2025, and termination was effective February 24, 2025. Because of this, Agency avers that Employee was still in probationary status at the time of termination.[11] Further, Agency asserts that pursuant to District Personnel Manual ("DPM") Chapter 814.3, a termination during a probationary period is neither appealable or grievable.[12] Additionally, Agency asserts that DPM §813.2 "provides that employees are required to serve a probationary period of one year…[t]he fact that Employee's offer letter did not state that she was a probationary employee does not nullify this statutory requirement."[13] Agency further contends that "Employee's claim that she was promoted from substitute teacher to special education teacher on August 11, 2024, represents a misunderstanding at best, and a misrepresentation at worst, of the facts here."[14]

Agency argues that Employee was not promoted but was newly hired for the first time in a full-time position with Agency. Agency asserts that "Employee's own evidence supports this…[a]s outlined in her March 13, 2012 offer letter, Employee's position as a substitute teacher was a "Wages as Earned position."[15] Likewise, Agency proffers that "Employee's status as a permanent employee is not mutually exclusive of her status as a probationary employee."[16] Agency cites that pursuant to the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA") , "the Office of Employee Appeals can hear appeals of permanent employees who have completed their probationary status…[p]ermanent employees who serve in either career or educational service are entitled to removal for cause…[a] term employee or an employee removed during their probationary period is not so entitled and therefore cannot appeal their removals to OEA."[17] For these reasons, Agency maintains that because Employee was hired on or about August 12, 2024, and was terminated effective February 24, 2025, she was still in probationary status at the time of termination, thus precluding her ability to appeal before OEA. Agency further avers that "OEA does not have jurisdiction to hear appeals by probationary employee as its appeals are limited to permanent employees who have successfully completed their probationary period."[18] As such, Agency contends that Employee's appeal must be dismissed.

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[11] Agency's Answer and Motion to Dismiss at Page 3 (April 25, 2025).
[12] *Id*. – As will be addressed in the Analysis portion of this Initial Decision, Agency has cited to an outdated version of the DPM in its references to DPM Chapter 8. Provisions related to Probationary Employees are now found within DPM Chapter 2.
[13] Agency's Brief on Jurisdiction at Pages 1-2 (July 17, 2025).
[14] *Id*. at Page 2.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*. at Page 3. Citing to *Roxanne Smith v. DC Department of Parks and Recreation*, OEA Matter J-0103-08 (October 5, 2009).

ANALYSIS[19]

Jurisdiction

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[20], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

OEA Rule 631.2, 6-B DCMR Ch. 600 (December 27, 2021), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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." This Office has no authority to review issues beyond its jurisdiction.[21] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[22]

The principal issue here rests in the question of this Office's jurisdiction. In the instant matter, the undersigned agrees with Agency's assertion that OEA does not have jurisdiction over this matter because Employee was in probationary status at the time of her removal from Agency. It is clear from the documents in the record that Employee began her service with agency as a full time teacher on August 12, 2024.[23] Further, in an affidavit submitted by Nancy Wright, the Senior Deputy Chief of the Office of Employee Services, it was affirmed that Employee was hired on August 12, 2024, and that as "an initial appointee to the Educational Service [she] was required to serve a one-year probationary period" and that "Employee was terminated from DCPS on February 24, 2025, and was still in probationary status at the time of her separation from DCPS."[24]

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[19] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[20] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

[21] *See. Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

[22] *See. Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

[23] The undersigned would note that the offer letter stated Employee's effective date with Agency was August 11, 2024, and her official report date was August 12, 2024.

[24] Agency's Brief at Exhibit 4 (July 17, 2025).

Employee avers that her documentation – personnel actions (hereinafter referred to as SF-50s) or offer letter, did not indicate that she was subject to a probationary period. Further, Employee asserts that she was not provided with a copy of the "DPM Manual Chapter 8" which reflected the requirements of completing a probationary period. The undersigned would note that in its Answer/Motion to Dismiss and Brief on Jurisdiction, Agency cites to an outdated version of the DPM, as the specifications in the DPM regarding probationary period are now found in Chapter 2, not Chapter 8.[25] This noted, DPM § 223.2, cites that: "[g]enerally, a person appointed to a Career Service position shall be required to serve a probationary period of one (1) year." Further, as a teacher, Employee's service would be subject to the provisions found int Chapter 5 of the District of Columbia Municipal Regulations (DCMR). Specifically, 5-E DCMR § 1307.1, cites that "An employee initially entering or transferring into the Educational Service shall meet certification requirements of the Board of Education and serve a probationary period." Additionally, §1307.2, "[a]n initial appointee to the EG salary class, except those appointed to classroom teaching positions, shall serve a one (1) year probationary period. Appointees to EG teaching positions shall serve a probationary period of two (2) years." The undersigned finds that upon her hire as a teacher, Employee was subject to a probationary period pursuant to Chapter 5 of the DCMR, as this applies to all District government employees in Educational Service. This section also notes that failure to "satisfactorily complete a probationary period shall result in termination."[26]

The undersigned would agree that the SF-50s Employee provided as part of her submissions to this Office did not cite to a probationary in the remarks section. Specifically, the undersigned would note that the SF-50 that reflects a date processed of February 20, 2025, (which reflected an effective date of October 6, 2025) did not include probationary in remarks.[27] However, Employee's effective date of termination was not until February 24, 2025. This stated, the SF-50 with a date processed of March 28, 2025, and an effective date of February 24, 2025, reflects the final SF-50 (with the termination effective date) and cites to "probationary" in remarks. As such, I find that this along with Employee's start date of August 12, 2024, and termination date of February 24, 2025 (approximately 6 months later), evince that Employee was in probationary status at the time of termination. The undersigned also finds that Employee's claims regarding her "permanent" status do not negate the requirement of a probationary period as required by the aforementioned regulations related to those serving in Educational Service.

Here, I find that Employee's permanent status reflects that her position was neither temporary, term, wages as earned (WGE), nor any other status by which an employee might be otherwise classified. Here, I find that based upon the offer letter, Employee's status as "permanent" employee meant she was full-time. This is of note particularly given that the email Employee provided as Exhibit 5 with her brief, cites that she was "permanent, not NTE" etc.[28] Further, I find that as a permanent employee, Employee was subject to complete a one-year probationary period pursuant to the requirements of the DPM. While it is of note that Employee avers that Agency failed to otherwise notify her that she would be subject to a probationary period; I find that the record supports that she was a probationary employee at the time of separation from Agency.

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[25] Chapter 8 of the DPM is now related to Metropolitan Police Department and DC Fire and Medical Emergency Services.
[26] *See.* 5-E DCMR 1307.6.
[27] Employee asserted that she requested this SF-50 after her termination.
[28] Employee Brief at Exhibit 5 – Email from Adrienne Hill.

Based on the aforementioned, the undersigned finds that Employee was in probationary status at the time of removal from Agency. Additionally, pursuant to DPM §227.4, "[s]eparation from government service during a probationary period is neither appealable nor grievable." Here, Employee was provided notice of her termination (albeit the notice was cited for cause) with the required notice requirements for termination of a probationary employee.[29] Accordingly, I find that Employee's Petition for Appeal must be dismissed for lack of jurisdiction.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge

[29] *See*. DPM §227.2 -When an employee is separated pursuant to § 227.1, the personnel authority shall notify the employee in writing of the effective date of the separation. Additionally, DPM§ 227.3 cites that "the personnel authority may provide a probationary employee advanced written notice of his or her separation and may place the employee on administrative leave for up to ten (10) days prior to the effective date of the separation." Here, Employee received notice on February 6, 2025, that she would be terminated effective February 24, 2025. In the time between February 6, 2025, and February 24, 2025, Employee was placed on administrative leave.