

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup>	)	OEA Matter No. 1601-0015-20
	)	
v.	)	
	)	Date of Issuance: January 4, 2024
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Employee was hired to work as a Teacher with D.C. Public Schools (“Agency/DCPS”) in June of 2002. According to Agency, Employee was separated in August of 2009 for performance issues. However, on July 18, 2018, an Arbitrator reversed Agency’s termination action and ordered Agency to reinstate Employee.<sup>2</sup> On March 15, 2019, Agency issued a letter to Employee outlining the requirements for reinstatement.<sup>3</sup> The document provided that in accordance with the District of Columbia Municipal Regulations (“DCMR”), Employee was required to obtain a current teaching license from the Office of State Superintendent of Education (“OSSE”). Additionally, he was required to complete a criminal background check, pursuant to the Criminal Background

---

<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.  
<sup>2</sup> *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, p. 1 (January 8, 2020).  
<sup>3</sup> *District of Columbia Public Schools’ Opposition to Employee’s Witness List*, Joint Exhibit #3 (March 2, 2023).

Checks for the Protection of Children Act of 2004.<sup>4</sup> Employee was also required to submit a negative tuberculosis (“TB”) test dated within the past year, and he was required to complete a mandatory drug and alcohol test in accordance with Agency’s Mandatory Drug and Alcohol Testing (“MDAT”) policy.<sup>5</sup>

However, after several requests for extensions, according to Agency, Employee failed to comply with its reinstatement requirements. Therefore, on October 18, 2019, Agency issued a notice of termination action against Employee. It charged him with violating 5-E DCMR §§ 1401.2(j) – willful disobedience and 1401.2(t) – violation of the rules, or lawful orders of the Board of Education, or any directive of the Superintendent of Schools, issued pursuant to the rules of the Board of Education. As a result, Employee was terminated again, effective November 4, 2019.<sup>6</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on December 2, 2019. He argued that he provided Agency with an x-ray and a doctor’s note regarding his treatment for exposure to TB. Employee further asserted that he provided Agency with all of the required information, but he was still removed from his position. Therefore, he requested that he be reinstated to his position.<sup>7</sup>

On January 8, 2020, Agency filed its Answer to Employee’s Petition for Appeal. It explained that on May 25, 2019, Employee emailed Agency stating that he had contracted TB. In response, Agency emailed Employee’s union outlining the mandatory information needed, including a negative TB or chest x-ray, to ensure that it was safe for Employee to return to the classroom. Agency provided that on August 27, 2019, Employee reported to its Central Office to

---

<sup>4</sup> To complete the background check, Employee was required to submit a clearance application through the DCPS Employment Clearance link, and then report to DCPS’ Central Office for fingerprinting.

<sup>5</sup> The notice provided that Employee would receive an email from the MDAT team with directions to make an appointment for drug testing.

<sup>6</sup> *Petition for Appeal*, p.7 (December 2, 2019).

<sup>7</sup> *Id.* at 2.

be fingerprinted. However, when he informed Central Office staff members that he still had active TB and could not produce a negative test, Agency asked Employee to leave the building and, again, requested documentation outlining that it was safe for him to return. According to Agency, Employee presented a doctor's note dated August 27, 2019, which provided that Employee was "under . . . care for exposure to TB." Agency contended that Employee's doctor's note was not sufficient, and therefore, requested documentation, like a chest x-ray. However, it contended that Employee did not produce sufficient, requisite documentation, including a negative TB test. As a result, it terminated Employee.<sup>8</sup>

Prior to the evidentiary hearing being held in this matter, the OEA Administrative Judge ("AJ") ordered both parties to submit legal briefs addressing whether Agency's adverse action was taken for cause, and if so, whether the penalty was appropriate given the circumstances.<sup>9</sup> Agency provided that it received a copy of a diagnostic radiology report related to Employee's chest x-ray on September 20, 2019. However, it explained that the document did not indicate whether it was safe for Employee to return to work. It claimed that over one year later, on October 23, 2020, it finally received the requested information from Employee. Agency contended that OEA is tasked with reviewing whether the penalty it imposed was reasonable and if it considered the relevant factors. It opined that termination was reasonable and requested that its action should be upheld.<sup>10</sup>

Employee filed his brief on December 21, 2020. He argued that when he was wrongfully removed on August 15, 2009, he had a current teaching license; a background clearance; and negative test results for drugs, alcohol, and TB.<sup>11</sup> As for the adverse action taken against him,

---

<sup>8</sup> *District of Columbia Public Schools' Answer to Employee's Petition for Appeal* (January 8, 2020).

<sup>9</sup> *Post Status Conference Order* (November 6, 2020).

<sup>10</sup> *Agency's Legal Brief* (November 25, 2020).

<sup>11</sup> Employee provided that in accordance with the Arbitrator's ruling, Agency was to reinstate him to his position on March 31, 2019. However, Agency placed him on administrative leave around April 10, 2019. Employee explained that in May of 2019, he notified Agency that he had been exposed to TB. Subsequently, in August of 2019, he went to Agency's Central Office to perform the onboarding tasks Agency required, but he contended that Agency did not

Employee asserted that Agency failed to provide specific dates for the willful disobedience charge. Moreover, he contended that his attempt to follow Agency's directive by going to its Central Office negates its claim that he engaged in willful disobedience. He also opined that Agency failed to offer any specific rules, orders, or directives to prove that he violated 5-E DCMR § 1401.2(t). Employee argued that Agency abused its discretion and acted arbitrarily and capriciously when imposing its penalty. Additionally, he claimed that Agency failed to consider any relevant factors before terminating him. Therefore, Employee requested a summary disposition with an order for back pay and benefits.<sup>12</sup>

After conducting an evidentiary hearing,<sup>13</sup> the AJ issued an Initial Decision on September 13, 2023. On the issue of whether Employee was in Agency's employ, the AJ held that Agency's rebuttal witness, Yara Tanner, testified that Employee was on administrative leave with pay status when he was removed in November of 2019. The AJ noted that he could not find any precedent where administrative leave with pay was provided to anyone who was not employed by the District government. Accordingly, he ruled that Employee was reinstated in April of 2019, when he was placed on the administrative leave pay status and started to receive biweekly paychecks. Additionally, the AJ held that Employee complied with Agency's request to provide a chest x-ray, as it related to the TB testing requirement. As for Employee's background check, the AJ opined that Agency prevented Employee from completing the fingerprinting and should have

---

allow him to complete those tasks. Employee opined that he provided Agency with a diagnostic radiology report showing that he did not have TB on September 20, 2019. *Reply Brief*, p. 1-5 (December 21, 2020).

<sup>12</sup> *Id.*, 10-25.

<sup>13</sup> In Agency's written closing arguments brief, it argued that Employee was not a District government employee pursuant to D.C. Code § 1-603.01(7). It was Agency's position that although it placed Employee on administrative leave, the payments that were made to him were part of his back pay award and not salary payments. *District of Columbia Public Schools' Written Closing Arguments*, p. 9-10 (May 5, 2023).

In his closing arguments, Employee highlighted several witnesses who testified that he was reinstated to his position by Agency. Therefore, it was Employee's position that he was an employee with Agency. *Employee's Closing Argument with Proposed Findings of Fact and Conclusions of Law*, p. 1-2 (May 5, 2023).

communicated with Employee how he could have accomplished securing his background check, even with its concerns related to Employee's suspicion of TB.<sup>14</sup>

As it related to Employee's license to teach, the AJ held that Agency should have provided him with a provisional license. The AJ noted that Employee's license lapsed because of the length of the arbitration process, but he reasoned that Agency could have simply searched Employee's former personnel file to find his original licensing documents. Finally, he held that Agency failed to provide authorization for Employee to schedule a drug test, which prevented him from efficiently completing his drug testing requirement. Consequently, the AJ ordered that Agency's termination action be reversed; that Agency reinstate Employee; and that Agency reimburse Employee all pay and benefits lost as a result of his removal.<sup>15</sup>

On October 13, 2023, Agency filed a Petition for Review. It argues that the AJ's decision was not based on substantial evidence and did not address all findings of material facts raised in the appeal. Agency asserts that it was within its right to request additional information after receiving the x-ray to ensure that it was safe for Employee to return to work. It further contends that the AJ improperly placed the burden on Agency to ensure that Employee was licensed to teach. According to Agency, Employee was required to complete his own licensing application through OSSE but did not. Agency, again, asserts that Employee was not an employee in accordance with D.C. Code § 1-603.01(7) and notes that payments made to Employee were for back payment and not salary payments. It posits that Employee also failed to complete drug testing. Therefore, Agency requests that this Board dismiss Employee's petition or remand the matter to the AJ for further consideration.<sup>16</sup>

---

<sup>14</sup> *Initial Decision*, p. 9-13 (September 13, 2023).

<sup>15</sup> *Id.*, 11-13.

<sup>16</sup> *District of Columbia Public Schools' Petition for Review*, p. 3-6 (October 13, 2023).

Employee filed his response to Agency's Petition for Review on November 14, 2023. He maintains that he submitted a chest x-ray and agrees with the AJ's assessment that he provided Agency with what it requested. Employee asserts that the AJ correctly held that his lack of licensure should not have barred him from employment since he submitted his licensure paperwork when he was initially hired with Agency. Additionally, he contends that he was an employee because he was reinstated by the Arbitrator and was compensated while being on administrative leave with pay. Employee argues that he did not complete the drug testing because when he was initially sent the link to schedule the appointment, he had not yet signed Agency's reinstatement letter. He asserts that Agency did not send another link to schedule drug testing after the initial link expired. Therefore, he requests that the Initial Decision be upheld.<sup>17</sup>

#### Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then they must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.<sup>18</sup> After a review of the record, this Board believes that the AJ's ruling was based on substantial evidence.

#### Employment Status

In the Initial Decision, the AJ held that Employee was on administrative leave with pay status when he was removed for a second time in November of 2019. He noted that he could not

---

<sup>17</sup> *Employee's Answer to Agency's Petition for Review*, p. 2-7 (November 14, 2023).

<sup>18</sup> *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

find any precedent where administrative leave with pay was provided to anyone who was not employed by the District government. Accordingly, the AJ ruled that Employee was reinstated in April of 2019, when he was placed on the administrative leave pay status and started to receive biweekly paychecks.<sup>19</sup> This Board agrees with the AJ's holding on this issue.

In response to the initial termination action, the Arbitrator ordered that Employee's termination action be expunged from all Agency records and that he receive back pay and benefits.<sup>20</sup> Agency concedes that it reinstated Employee in April of 2019.<sup>21</sup> It was at this time that Employee was placed on administrative leave with pay and started to receive biweekly paychecks from Agency.<sup>22</sup> Agency's Deputy Chief testified that it placed Employee on administrative leave with pay status and "put him back on the payroll" to essentially stop the Arbitrator's back pay award from increasing.<sup>23</sup> Regardless of its motivation, the record shows that Agency reinstated Employee and issued biweekly regular earnings to him. This coupled with the fact that Agency's notice of termination noted appeal rights to OEA;<sup>24</sup> referenced an employee ID number; included an Agency email address for Employee; and highlighted the option for continued health insurance after termination, further bolster the position that he was an Agency employee.<sup>25</sup> Thus, Agency cannot now claim that he was not an employee.

---

<sup>19</sup> *Initial Decision*, p. 12-13 (September 13, 2023).

<sup>20</sup> *Reply Brief*, p. 55-59 (December 21, 2020).

<sup>21</sup> Agency's Deputy Chief provided in a May 2019 email exchange with Employee's attorney that "[Employee] has been reinstated at DCPS for over a month. . . ." *Employee's Exhibit List*, Employee Exhibit #14 (March 2, 2023). Additionally, in its answer to the Petition for Appeal, Agency provided that ". . . Employee was reinstated on or about April 10, 2019." *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, p. 1 (January 8, 2020).

<sup>22</sup> Agency's witness, Yara Tanner, testified that from April 2019 until November 2019, Employee received his regular earnings until his November 2019 termination. She further provided that Employee received a lump sum of his back pay in August of 2020. *OEA Hearing Transcript*, p. 321-323 (March 6, 2023).

<sup>23</sup> *Id.*, 115 and 189-191.

<sup>24</sup> Appeal rights are afforded to certain District government employees.

<sup>25</sup> *Petition for Appeal*, p. 7-8 (December 2, 2019).

Cause

Agency accused Employee of violating DCMR §§ 1401.2(j) – willful disobedience and 1401.2(t) – violation of the rules, or lawful orders of the Board of Education or any directive of the Superintendent of Schools, issued pursuant to the rules of the Board of Education. In its notice for termination, Agency provided that Employee was terminated because he failed to complete a background check; failed to submit to a mandatory drug test; and failed to provide proof of submission for licensure. The AJ found that Agency did not establish cause in this case. Specifically, he ruled that Agency prevented Employee from completing the fingerprinting; that it should have provided Employee with a provisional license to teach or use documentation from his original license; and that it failed to provide authorization for Employee to schedule a drug test, which prevented him from efficiently completing his drug testing.<sup>26</sup>

Although there was no mention of TB testing in Agency’s notice of termination, the requirement for a negative TB test was mentioned in its letter of reinstatement.<sup>27</sup> There are several documents in the record which prove that Agency offered the option for Employee to submit a chest x-ray to establish that he did not have the TB virus.<sup>28</sup> In compliance with the requirement, Employee submitted a chest x-ray on September 18, 2019, which was nearly two months before Agency terminated him a second time.<sup>29</sup> Therefore, Employee did provide the TB results, as

---

<sup>26</sup> *Initial Decision*, p. 9-13 (September 13, 2023).

<sup>27</sup> *District of Columbia Public Schools’ Opposition to Employee’s Witness List*, Joint Exhibit #3 (March 2, 2023).

<sup>28</sup> Agency provided an email from its Deputy Chief of Labor Management and Employee Relations to other District employees regarding Employee’s case which provides that Agency “must have documentation of [Employee’s] negative TB status (either a negative TB test or chest x-ray) in order to maintain him in a teaching position.” *Id.*, Agency Exhibit #2. In a document outlining frequently asked questions related to Agency’s onboarding, the section regarding TB testing provides that Agency “accepts negative skin or blood tests taken, or a clear x-ray analysis issued, within the last 12 months.” *Employee’s Exhibit List*, Employee Exhibit #11 (March 2, 2023). The same language is also provided in a second document in the record related to Agency’s clearance process. *Id.*, Exhibit #12. Moreover, Agency concedes in its answer to Employee’s Petition for Appeal that it “would need either a negative TB or a chest x-ray, to ensure that it was safe for the Employee to return to the class.” *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, p. 2 (June 8, 2020).

<sup>29</sup> *District of Columbia Public Schools’ Opposition to Employee’s Witness List*, Agency Exhibit #5 (March 2, 2023).



required by Agency.

As for the background check, in accordance with Agency's reinstatement letter, Employee was required to complete the clearance application and then report to its Central Office for fingerprinting. The record establishes that Employee went to Agency's Central Office to be fingerprinted on August 27, 2019. However, he was told to leave due to potential health concerns and that Agency required a negative TB test or chest x-ray.<sup>30</sup> It is this Board's position that when Employee submitted his chest x-ray to Agency on September 18, 2019, he satisfied Agency's requirement regarding TB. Consequently, Agency should have allowed him to return to its Central Office to complete the background check, instead of requesting additional proof other than the x-ray to show that he did not have TB. Accordingly, there is substantial evidence in the record to uphold the AJ's ruling that Agency prevented Employee from completing his background check and fingerprinting.

Employee was also required to complete mandatory drug and alcohol testing. Agency's reinstatement letter provided that its MDAT team would email Employee with directions for scheduling an appointment for testing. The record shows that on March 22, 2019, Agency sent Employee the link to schedule his drug and alcohol tests, which provided that he had fifteen calendar days to complete the test.<sup>31</sup> However, Agency extended the deadline for Employee to complete onboarding at least twice following its initial March 22, 2019 request.<sup>32</sup> During the evidentiary hearing, MDAT team member, Rosa Rodriguez, testified that if the drug test is not scheduled within fifteen days, then the link expires. She also provided that if the fifteen-day

---

<sup>30</sup> *Employee's Exhibits List*, Employee Exhibits #16 and #17 (March 2, 2023).

<sup>31</sup> *District of Columbia Public Schools' Opposition to Employee's Witness List*, Agency Exhibit #1 (March 2, 2023).

<sup>32</sup> On May 7, 2019, Agency's Deputy Chief provided via email that it was "agreeable to some flexibility on these processes but . . . insist[ed] on next steps by . . . May 17<sup>th</sup>." *Employee's Exhibit List*, Employee Exhibit #14 (March 2, 2023). On August 27, 2019, Agency's Deputy Chief, again, directed Employee to complete the onboarding requirements by September 6, 2019. *Id.*, Employee Exhibit #17.

deadline needed to be extended, Agency’s Deputy Chief, or someone in a position above them, would need to send her an email requesting that she send another link for an employee to schedule their test.<sup>33</sup> Because Agency extended the deadline for Employee to complete his onboarding, it should have also had the MDAT team send him new links to schedule his drug tests. Therefore, we agree with the AJ’s ruling that Agency prevented Employee from efficiently completing his drug testing.

As for the licensing requirements, the Board does not agree with the AJ’s holding that Agency exercised discretion over licensing requirements.<sup>34</sup> In accordance with, DCMR § 1601.1 “an individual must have a license known as a Teaching Credential to serve as a teacher in the District of Columbia Public Schools. . . .” Additionally, DCMR § 1601.2 provides that “the Office of the State Superintendent of Education (OSSE) shall issue a Teaching Credential in accordance with the provisions of this section.” In its letter of reinstatement, Agency clearly notes that Employee was required to complete his license application on OSSE’s website.<sup>35</sup> Because OSSE handled licensing directly through their website, Agency did not have discretion over licensing and did not prevent Employee from submitting his application for licensing. Moreover, the AJ’s reasoning that Agency could have used his previous documentation submitted for Employee’s license is flawed. The record shows that Employee’s license expired on July 25, 2016.<sup>36</sup> Therefore, it is unreasonable to believe that Agency could accept Employee’s original licensing documentation as adequate to support his licensing requirements for reinstatement.

Although Employee could have completed his licensing application, Agency failed to establish cause in the other areas outlined in its notice of termination. It did not accept the chest

---

<sup>33</sup> *OEA Hearing Transcript*, p. 66-80 (March 6, 2023).

<sup>34</sup> *Initial Decision*, p. 12 (September 13, 2023).

<sup>35</sup> *District of Columbia Public Schools’ Opposition to Employee’s Witness List*, Joint Exhibit #3 (March 2, 2023).

<sup>36</sup> *Id.*, Agency Exhibit #7.

x-ray, which it offered as an option to show that Employee did not have TB. Agency also prevented Employee from completing his background clearance and failed to provide additional links for him to complete drug testing, despite authorizing extensions for Employee to complete onboarding. Thus, Agency did not prove that it had cause to remove Employee.

### Penalty

In its brief on adverse action, Agency claimed that the penalty it imposed was reasonable and that it considered the relevant factors before terminating Employee.<sup>37</sup> However, there is no evidence in the record to establish either. In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).<sup>38</sup> According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency. Agency offered no evidence of what it used as guidance to determine reasonable penalties for the causes of adverse action it levied against Employee pursuant to DCMR §§ 1401.2(j) and 1401.2(t). Moreover, there was no range of penalties found within chapter 14 of the DCMR or within the collective bargaining agreement between Agency and the Washington Teachers Union Local #6.<sup>39</sup> Therefore, this Board cannot assess if the penalty of removal was within the range allowed by law,

---

<sup>37</sup> *Agency's Legal Brief* (November 25, 2020).

<sup>38</sup> *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No.1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

<sup>39</sup> DCMR chapter 14 and that collective bargaining agreement were both highlighted in Employee's notice of termination.

regulation, or table of penalties.

### Relevant Factors

OEA held the following in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011):

[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

Furthermore, in *Barry v. Department of Public Works*, OEA Matter No. 1601-0083-14, *Opinion and Order on Petition for Review* (July 11, 2017) (citing *Holland v. Department of Corrections*, OEA Matter No. 1601-0062-08, *Opinion and Order on Petition for Review* (September 17, 2012), the OEA Board held that an Agency's penalty decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion. The record is void of any evidence that Agency considered relevant factors in this case. In its notice of termination, Agency merely identified the regulation sections for the causes of action against Employee and a curt description of its reasoning for the causes of action.<sup>40</sup>

---

<sup>40</sup> The final notice includes the language below.

The grounds and reasons for your termination are as follows:

Grounds: Violation of 5-E DCMR Section 1401.2 (j) Willful disobedience;

Violation of 5-E DCMR Section 1401.2 (t) Violation of the rules, or lawful orders of the Board of Education or any directive of the Superintendent of Schools, issued pursuant to the rules of the Board of Education.

## Conclusion

Agency terminated Employee because he failed to complete four onboarding requirements. However, Agency prevented Employee from completing three of the four requirements. Although there was one requirement that Employee could have completed, Agency failed to offer a range of penalties to determine the reasonableness of its termination action. Furthermore, Agency did not provide any evidence that it considered relevant factors before terminating Employee. As a result, this Board must uphold the Initial Decision and deny Agency's Petition for Review. Accordingly, Employee is to be reinstated with back pay and benefits, as outlined in the Initial Decision.

---

Reasons: Despite repeated reminders since April 2019, you have failed to complete DCPS' mandatory onboarding process in order to be eligible to report to work as a teacher, specifically you have failed to complete a background check, submit to mandatory drug and alcohol testing, and provide proof of submission for licensure with the Office of the State Superintendent of Education (OSSE).

**ORDER**

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

**FOR THE BOARD:**

---

Clarence Labor, Jr., Chair

---

Peter Rosenstein

---

Dionna Maria Lewis

---

Arrington L. Dixon

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.