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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DEVARNITA WILLIAMS,	)	
Employee	)	OEA Matter No.: 1601-0171-13AF16
	)	
v.	)	Date of Issuance: September 2, 2016
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Kelly Burchell, Esq., Employee Representative	)	
Carl Turpin, Esq., Agency Representative	)	

**ADDENDUM DECISION ON ATTORNEY FEES**

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 30, 2013, Devarnita Williams, (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C Public Schools’ (“DCPS” or “Agency”) decision to terminate her effective August 30, 2013.

Employee was charged with the following:

Ground(s): 5-E DCMR Section 1401.2(n) Discourteous treatment of the public, supervisor, or other employees.

Reason(s): Multiple witnesses state that you have referred to students in your elementary school class as “whore” and “bitches.” You admit to describing your students as “Thieving ass kids.”

On November 15, 2013, Agency filed its Answer to Employee’s Petition for Appeal. This matter was assigned to the undersigned AJ on June 4, 2014. On February 6, 2016, following a Motion for Summary Judgment from Employee, and Agency’s reply to said motion, I issued an Initial Decision in which I granted Employee’s Motion for Summary Judgment and reversed Agency’s decision to terminate Employee from her last position of record. As relief, I directed that Agency reinstate Employee, and I awarded her back pay and any benefits lost as a result of the removal. Agency filed a Petition for Review with OEA Board on March 13, 2015. The OEA Board, on June 21, 2016, issued an Order and Opinion in this matter denying Agency’s Petition for Review. Subsequently, on August 17, 2016, Employee filed a Motion for Attorney fees and costs. The

undersigned AJ issued an Order dated August 17, 2016, convening a Status Conference in this matter for September 28, 2016. On July 21, 2016, Agency appealed the OEA Board's decision to the D.C. Superior Court. This appeal is still pending with the D.C. Superior Court.

### JURISDICTION

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

### ISSUES

Whether Employee's motion for attorney fees should be dismissed.

### FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

D.C. Official Code §1-606.08 provides that an agency may be directed to pay reasonable attorney fees if the employee is the prevailing party and payment is "warranted in the interest of justice". *See also*, OEA Rule 634.1, 59 DCR 2129 (March 16, 2012). This award is an exception from the "American Rule" which requires each party to pay its own legal fees.<sup>1</sup> The goal, in awarding attorney fees, is to attract competent counsel to represent individuals in civil rights and other public interest cases, where it might be otherwise difficult to retain counsel.<sup>2</sup> An employee is considered the "prevailing" party, if he received "all or a significant part of the relief sought" as a result of the decision.<sup>3</sup>

Agency has filed a Petition for Review, and this Petition for Review is currently pending before D.C. Superior Court. Consequently, I find that Employee's Motion for Attorney Fees and Costs is premature because the D.C. Superior Court has not yet issued a ruling in this matter. Employee may however, re-file her Motion for Attorney Fees if she is ultimately found to be the prevailing party.

### ORDER

Based on the aforementioned, it is hereby **ORDERED** that Employee's Motion for Attorney Fees and Costs is **DISMISSED** *without prejudice*.

FURTHER, the Status Conference scheduled for September 28, 2016, is **CANCELLED**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Senior Administrative Judge

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<sup>1</sup> *See, e.g., Huecker v. Milburn*, 538 F.2d, 1241, 1245.

<sup>2</sup> *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968).

<sup>3</sup> *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1602-0138-88AF92 (May 13, 1993). *See also, Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980).