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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 2401-0146-10
RONNIE JONES,	)	
Employee	)	
	)	Date of Issuance: May 23, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
_____	)	Administrative Judge
Gregory L. Lattimer, Employee Representative	)	
W. Iris Barber, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On November 12, 2009, Ronnie Jones (“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”) action of terminating his employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time his position was abolished was an Elementary Teacher at C.W. Harris Elementary School (“Harris”). Employee was serving in Educational Service status at the time he was terminated.

I was assigned this matter on or around February 6, 2012. On February 15, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations (“February 15<sup>th</sup> Order”). Agency complied, but Employee did not. On March 30, 2012, the undersigned issued an Order (“March 30<sup>th</sup> Order”) for Statement of Good Cause for Employee’s failure to respond to the February 15<sup>th</sup> Order. On April 10, 2012, Employee, through Counsel, submitted a Statement of Good Cause, which included an Unopposed Motion for Extension of Time that had been previously submitted to OEA on March 29, 2012. Both the Statement of Good Cause and Unopposed Motion for Extension of Time requested an extension to file a response to Agency’s brief until April 11, 2012, noting that since there was no notice that the motion was denied, the brief would be submitted by April 11, 2012. However, Employee failed to submit his brief and on April 27, 2012, the undersigned issued a second Order for Statement of Good Cause (“April 27<sup>th</sup> Order”), noting that Employee’s extension of time request had not been denied. The undersigned ordered Employee to submit his statement of good cause along with his legal brief

on or by May 8, 2012, thereby giving Employee an additional two weeks to submit the required documents. As of the date of this decision, Employee has not responded to the aforementioned Orders. After reviewing the record, I have determined that there are no material facts in dispute and therefore, a hearing is not warranted. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

### 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.

### FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.<sup>1</sup>

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,<sup>2</sup> which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

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<sup>1</sup> See Agency's Answer, Tab 1 (December 16, 2009).

<sup>2</sup> D.C. Code § 1-624.02 states in relevant part that:

Specifically, section § 1-624.08 states in pertinent part that:

(a) *Notwithstanding any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) *Notwithstanding any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*,<sup>3</sup> the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency.” The Court also found that both

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(a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;

(2) One round of lateral competition limited to positions within the employee's competitive level;

(3) Priority reemployment consideration for employees separated;

(4) Consideration of job sharing and reduced hours; and

(5) Employee appeal rights.

<sup>3</sup> No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”<sup>4</sup>

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*,<sup>5</sup> DCPS conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.” The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the Act”) instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”<sup>6</sup> The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”<sup>7</sup>

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.<sup>8</sup> The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”<sup>9</sup> Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”<sup>10</sup>

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.<sup>11</sup> Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding,’ suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level.

### ***Employee’s Position***

In his Petition for Appeal, Employee asserts that he should not have been RIFed “because after being assigned to C.W. Harris, two new classrooms were created and the teaching position went to outside personnel.”<sup>12</sup> Additionally, Employee states that he is a certified teacher and was

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<sup>4</sup> *Id.* at p. 5.

<sup>5</sup> 960 A.2d 1123, 1125 (D.C. 2008).

<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.*

<sup>9</sup> *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

<sup>10</sup> *Id.*

<sup>11</sup> *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

<sup>12</sup> Petition for Appeal (November 12, 2009).

never assigned a permanent position at Harris.<sup>13</sup> Employee also alleges that the principal “tried to terminate him at the end of the last school year, but HR overturned the termination due to unfairness by the principal.”<sup>14</sup>

### ***Agency’s Position***

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of his termination.<sup>15</sup> Agency further maintains that it utilized the proper competitive factors in implementing the RIF and that the lowest ranked elementary teacher, Employee, was terminated as a result of the round of lateral competition.<sup>16</sup>

### ***RIF Procedures***

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS is authorized to establish the competitive areas when conducting a RIF so long as those areas are based “upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office.” For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and
3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.

Here, Harris was identified as a competitive area, and elementary teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were nine (9) elementary teacher positions subject to the RIF.<sup>17</sup> Of the nine positions, one (1) position was identified to be abolished. Because Employee was not the only elementary teacher within his competitive level, he was required to compete with other employees in one round of lateral competition.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Agency Brief at pp. 2, 7 (March 7, 2012).

<sup>16</sup> *Id.* at pp. 3-6 (March 7, 2012). School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

<sup>17</sup> *Id.*, Exhibit A, Retention Register.

According to Title 5, DCMR § 1503.2 *et al.*:

If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
- (b) Significant relevant contributions, accomplishments, or performance – (10%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
- (d) Length of service – (5%)<sup>18</sup>

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.<sup>19</sup> Agency cites to *American Federation of Government Employees, AFL-CIO v. OPM*,<sup>20</sup> wherein the Office of Personnel Management was given “broad authority to issue regulations governing

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<sup>18</sup> It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in § 1503.2. Thus, Agency is not required to assign equal values to each of the factors. See *White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

<sup>19</sup> Agency Brief at pp. 4-5 (March 7, 2012).

<sup>20</sup> 821 F.2d 761 (D.C. Cir. 1987).

the release of employees under a RIF...including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority.”<sup>21</sup> I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

### ***Competitive Level Documentation Form***

Agency employs the use of a Competitive Level Documentation Form (“CLDF”) in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Harris was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the “length of service” category was completed by the Department of Human Resources (“DHR”).

Employee received a total of eight and a half (8.5) points on his CLDF, and was, therefore, ranked the lowest in his respective competitive level. Employee’s CLDF stated, in pertinent part, the following:

“Mr. Jones has co-taught in a 3<sup>rd</sup> and 5<sup>th</sup> grade class. Based on my observations, Mr. Jones’ behavior towards student discipline and redirection have been unacceptable. On more than one occasion, he has used an abrasive, challenging and loud tone. Students have complained that he has used an abrasive, challenging and loud tone. Students have complained that he ‘shouts’ at them. I have observed similar behavior by him in the cafeteria. Based on this concern in his ability to manage and monitor students, I have had three conversations with Mr. Jones. Mr. Jones has not yet to [sic] establish significant contributions to meet school needs as reflected in his co-teaching ability. He has assisted with small group instruction, however, it has been ill-tempered by his unprofessional outbursts when students need to be managed. I have not seen qualitative evidence in Mr. Jones’ being able to implement the expectations of the Teaching and Learning Framework that will bring about positive student outcomes. Mr. Jones has shown professional collegiality with teachers and staff. He has expressed his willingness to assist in any way possible...Being new to C.W. Harris, Mr. Jones has yet to establish any significant contribution, accomplishments or by performance...Based on Mr. Jones’ tenure as a newly assigned teacher at Harris, he has yet to fulfill supplemental professional experience to make a significant impact as a classroom teacher.”<sup>22</sup>

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<sup>21</sup> Agency Brief at pp. 4-5 (March 7, 2012).

<sup>22</sup> Agency Answer, Tab 3 (December 16, 2009).

Employee received a total of one (1) point out of a possible ten (10) points in the category of Office or School Needs; a score much lower than the other employees within his competitive level, with the next lowest score being five (5) points.<sup>23</sup> This category is weighted at 75% on the CLDF and includes: curriculum, specialized education, degrees, licenses or areas of expertise. Employee received zero (0) points in the category of Relevant Significant Contributions, Accomplishments, or Performance, which is weighted at 10% on the CLDF. Additionally, Employee received zero (0) points in the category of Relevant Supplemental Professional Experiences as Demonstrated on the Job, which is weighted at 10% on the CLDF.

Employee has not specifically contested that the documentation in his CLDF is incorrect and has not provided any credible evidence that would bolster a score in any of the aforementioned categories completed by the principal of Harris. Further, there is no indication that any supplemental evidence would supplant the higher scores received by the remaining employees in Employee's competitive level who were not separated from service. Moreover, this Office cannot substitute its judgment for that of the principal at Harris, who was given discretion to complete Employee's CLDF and had wide latitude to invoke her managerial discretion. With respect to the aforementioned CLDF categories, I will not substitute my judgment for that of the principal of Harris as it relates to the scores she accorded Employee and his colleagues in the instant matter.

The Length of Service category, which was completed by DHR, includes credit for years of service, District residency, veterans' preference, and prior outstanding or exceeds expectation performance rating within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee. Employee received one (1) point in this category. Agency has provided an affidavit from Peter Weber, who served as the Interim Director of Human Resources during the time of the instant RIF.<sup>24</sup> Mr. Weber states that he was responsible for computing employees' length of service for the instant RIF and used the DHR official Peoplesoft system to obtain data for the calculations, which appear in Employee's CLDF. Therefore, based on the evidence of record, I find that Agency properly calculated this number.

Moreover, in reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*,<sup>25</sup> the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."<sup>26</sup> According to the CLDF, Employee received a total score of eight and a half (8.5) points after all of the factors

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<sup>23</sup> Agency Brief, Exhibit A, Retention Register (March 7, 2012).

<sup>24</sup> Agency Brief, Exhibit B (March 7, 2012).

<sup>25</sup> 109 F.3d 774 (D.C. Cir. 1997).

<sup>26</sup> See also *American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

outlined above were tallied and scored.<sup>27</sup> The next lowest scored elementary teacher in Employee's competitive level received a total score of thirty-seven and a half (37.5) points.<sup>28</sup> Employee has not proffered any evidence to suggest that a re-evaluation of his CLDF scores would result in a different outcome in this case.<sup>29</sup>

Additionally, the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.<sup>30</sup> This Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."<sup>31</sup> Accordingly, I find that the principal of Harris had discretion in completing Employee's CLDF, as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. I, therefore, find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

### ***Thirty (30) Days Written Notice***

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

Here, the record shows that Employee received his RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.<sup>32</sup> The RIF notice states that Employee's position was eliminated as part of a RIF. The RIF notice also provided Employee with information about his appeal rights. Further, Employee has not alleged that he did not receive thirty (30) days notice prior to the effective date of the RIF. Accordingly, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

### ***Lack of Budget Crisis***

Employee alleges that he should not have been subject to the RIF because Agency hired outside personnel for teaching positions, after creating two new classrooms. Regarding the alleged hiring of outside personnel, this Office has previously held that it lacks jurisdiction to

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<sup>27</sup> Agency Brief, Exhibit A, Retention Register (March 7, 2012).

<sup>28</sup> *Id.*

<sup>29</sup> See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

<sup>30</sup> See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

<sup>31</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

<sup>32</sup> See Agency Brief at p. 7 (March 7, 2012).

entertain any post-RIF activity, which may have occurred at an agency.<sup>33</sup> Further, in *Anjuwan v. D.C. Department of Public Works*<sup>34</sup>, the D.C. Court of Appeals ruled that OEA lacked authority to determine whether an Agency's RIF was bona fide. The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement wthe RIF..."<sup>35</sup> The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds...[or] management decisions about which position should be abolished in implementing the RIF."<sup>36</sup>

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services. In this case, how Agency elected to spend its funds on personnel services or how Agency elected to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge ("AJ") has any control.<sup>37</sup>

Employee also asserts that he should not have been subject to the RIF because the principal tried to terminate him at the end of the last school year, "but HR overturned the termination due to unfairness by the principal." However, Employee has provided no evidence or documentation to corroborate this claim or show how it impacted him being subject to the instant RIF. Further, there is nothing within the record that would lead the undersigned to believe that Agency conducted the RIF unfairly.

### ***Grievances***

Employee also alleges that after being assigned to Harris, he was never assigned a position. However, a complaint of this nature is a grievance and does not fall within the purview of OEA's scope of review. Additionally, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals.

### ***Failure to Prosecute***

Employee's failure to respond to the February 15<sup>th</sup> and April 27<sup>th</sup> Orders provides an alternative basis to dismiss this petition. OEA Rule 621.3 grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice.<sup>38</sup> The AJ may, in the exercise of sound discretion, dismiss the action if a party fails to take reasonable steps to prosecute or defend his appeal.<sup>39</sup> Moreover, this Office has held that failure to prosecute an appeal includes a

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<sup>33</sup> *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).

<sup>34</sup> 729 A.2d 883 (December 11, 1998).

<sup>35</sup> *Id.* at 885.

<sup>36</sup> *Id.*

<sup>37</sup> *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

<sup>38</sup> 59 DCR 2129 (March 16, 2012).

<sup>39</sup> OEA Rule 621.2, 59 DCR 2129 (March 16, 2012).

failure to submit required documents after being provided with a deadline for such submission.<sup>40</sup> Both the February 15<sup>th</sup> and April 27<sup>th</sup> Orders advised Employee of the consequences of not responding, including sanctions resulting in the dismissal of the matter. Employee's responses to these Orders were required for a proper resolution of this matter on the merits. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and this serves as an alternate ground for the dismissal of this matter.

### CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after he properly received one round of lateral competition and was given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

### ORDER

It is hereby **ORDERED** that Agency's action of abolishing Employee's position through a Reduction-In-Force is **UPHELD**

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
ADMINISTRATIVE JUDGE

<sup>40</sup> See OEA Rule 621.3(b)-(c); *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).