

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

|                     |   |                                    |
|---------------------|---|------------------------------------|
| _____               | ) |                                    |
| In the Matter of:   | ) |                                    |
|                     | ) |                                    |
| LUE B. BARNES       | ) | OEA Matter No. 1601-0127-08        |
| Employee            | ) |                                    |
|                     | ) |                                    |
| Vs.                 | ) | Date of Issuance: January 27, 2009 |
|                     | ) |                                    |
|                     | ) |                                    |
| D.C. PUBLIC SCHOOLS | ) | Rohulamin Quander, Esq.            |
| Agency              | ) | Senior Administrative Judge        |
| _____               | ) |                                    |

Lue B. Barnes, *pro se*, Employee  
Sara White, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Employee, *pro se*, was a Special Education Teacher, Grade ET-15, with the D.C. Public Schools (the "Agency"). She was terminated from employment, pursuant to a letter of termination, dated on or about July 11, 2008, effective August 1, 2008. Employee did not provide a copy of Agency's termination letter for the record. On July 29, 2008, Employee filed a petition for appeal with the Office of Employee Appeals (the "Office" or "OEA"), challenging Agency's decision.

Employee provided a letter issued by Thelma Monk, Interim Director of Agency's Office of Human Resources, dated December 3, 2007, which advised the Employee that her provisional license to teach in the D.C. Public Schools would expire in December 2007. The letter further advised that in order to continue employment with the Agency, she must make an immediate application for a regular license, which completed application must be accompanied by the presentation of documents and information which established that she met the requirements for issuance of a standard license. The letter also stated:

You were informed at the time of your appointment that your employment was contingent upon satisfactory completion and maintenance of the teacher/service provider licensure requirements. Please note that as long as you remain unlicensed, you may be separated from service at any time.

Agency was notified of Employee's appeal, and filed an Answer on September 4, 2008, asserting that Employee was neither licensed nor certified to continue as an educational employee in the Agency's academic system, as she had not satisfactorily completed the mandated requirements for licensure. This matter was assigned to me on December 1, 2008. I convened a status conference on January 26, 2009, at which time Agency requested that the appeal be dismissed for lack of subject matter jurisdiction. Agency's counsel underscored that this Office has previously ruled that it has no jurisdiction over Agency's employees whose unlicensed status has been determined to render them into an "at will," rather than career status category. Based upon a review of the documents submitted, and guided by the applicable law that addresses the subject matter, I have determined that an evidentiary hearing was not needed in order to render my decision. The record closed on January 26, 2009.

### JURISDICTION

This Office's jurisdiction was not established.

### ISSUE

Should this matter be dismissed?

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee began teaching special education at one of Agency's elementary public schools in August 2005, and was awarded a provisional license that expired in December 2007. Agency's December 3, 2007, issued letter to Employee reminded her that continued employment was contingent upon completing and maintaining teacher certification requirements, which also included becoming licensed. The letter enumerated in general format what Employee must do in order to come into immediate compliance, including directing that an application be completed and supporting documents filed, to verify credentials and entitlement to license.

Employee filed an Action Plan, using Agency's preprinted form, which reflected completed courses taken between February 2007, and February 2008. She also provided an uncertified photocopy of her "Kaplan University Official Grade Report," indicative of her pursuit of a Masters of Special Education Degree. Although she submitted documents indicative of her substantial progress and good faith efforts towards obtaining licensure eligibility status, and to becoming duly certified, none of the submitted documents indicates that she has actually become certified or secured the mandatory teaching license.

Agency countered Employee's assertions, by underscoring that despite Employee's good faith efforts to come into compliance, the fact still remains that her work contract expired, with Employee not obtaining the full license by the compliance date. Agency noted further that it is well established that substantial compliance with the requirements for obtaining or renewing teacher certification does not satisfy the certification requirements and does not protect termination of employment. See *Mount Adams School District v. Cook, et al*, 54 P.3d 1213 (Was. 2002), Further, this Office previously noted that the Supreme Court has held that, "a mere

subjective ‘expectancy’ is not liberty or property protected by the Due Process Clause.”, *Id.*, citing *Perry v. Sinderman*, 408 U.S. 593 (1972). Viewed in this light, Employee still could not prove that she had a claim that entitled her to the relief sought.

As the deciding AJ, I have determined that the threshold issue in this case is one of jurisdiction. This Office’s jurisdiction is conferred upon it by law, and was initially created by the District of Columbia Comprehensive Merit Personnel Act of 1978 (the “Act”), *D.C. Official Code* (the “Code”) § 1-601-01, *et seq.* (2001) and then amended by the Omnibus Personnel Reform Amendment Act of 1998 (“OPRAA”), D.C. Law 12-124, which became effective on October 21, 1998. Both the Act and OPRAA confer jurisdiction on the Office to hear appeals, with some exceptions not relevant to this case, of permanent employees in the Career or Education Service who are not serving in a probationary period. The Code § 1-608.01(a)2)(E) confers permanent Educational Service status upon employees who have been appointed to a position, upon completion of a probationary period of at least one year. It is undisputed that Employee was not in a probationary status. However, there is no evidence in the record that Employee became a permanent employee of Agency at the expiration of the probationary period. She was unable to achieve permanent status because she lacked the requisite license. *See* 5 DCMR § 1601.1.

One thing is certain. Employee did not fully complete the certification requirements and obtain the license by July 31, 2008, and once her work contract expired, she served solely in an “at will” capacity, subject to Agency’s determinations with regard to whether she qualified for continued employment. It is well established that in the District of Columbia, an employer may discharge an at-will employee “at any time and for any reason, or for no reason at all”. *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991). *See also* *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (DCDC 2006). As an “at will” employee, Employee did “not have any job tenure or protection.” *See* Code § 1-609.05 (2001). Further, as an “at will” employee, Employee had no appeal rights with this Office. *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991).

Employees have the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a “preponderance of the evidence” which is defined in OEA Rule 629.1, *id.*, as 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”. I conclude that Employee did not meet the burden of proof, and that this matter must be dismissed for lack of jurisdiction.

However, assuming *arguendo* that Employee had met the burden of proof on the issue of jurisdiction, the claim would still fail because she lacked the credentials required to challenge the standards set by Agency. In *Nunez v. Simms*, 341 F.3d 385 (5<sup>th</sup> Cir, 2003), Nunez was hired by the El Paso, Texas Independent School District in 1996 and issued a three-year probationary license because, like Employee herein, she did not qualify for a standard teaching certificate at the time of hire. She was terminated in November 2000 for failing to meet the requirements and sued the school district.<sup>1</sup> The Court concluded that Nunez was not qualified to serve as a teacher following

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<sup>1</sup> Unlike the instant case, in *Nunez*, the teacher initiated her lawsuit while she was teaching under

the expiration of her provisional license because she lacked the credentials and had no reasonable expectation of or property interest in continued employment.

Employee argued that Agency's action in terminating her was "unjust". However, as the Court stated in *Nunez*, Employee "knew at the time [Nunez] entered into the contract, or should have known from the language in the contract and the provisions of . . . law, that the contract gave her no right to continued employment while she remained uncertified when her certificate expired by its own terms. Accordingly, she could have no reasonable expectation of continued employment".<sup>2</sup> *Nunez* at 391.

Agency, seeking compliance with the federally mandated *No Child Left Behind Act of 2001*, codified at 20 U.S.C. § 6319 (2008), elected to not grant this Employee and others similarly situated a further extension of time to finalize their earning their credentials and licenses. Agency operated within its discretion. As well, Agency's decision regarding its "at will" employees who were nearing licensure, but still had not completed all of the certification requirements, is beyond my jurisdiction to either address or set aside. Hopefully, Employee will soon obtain all of the necessary credentials and a license, so that she can resume the important mission of educating the youth of the District of Columbia.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.

/ S /

FOR THE OFFICE:

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ROHULAMIN QUANDER, Esq.  
Senior Administrative Judge

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a "continuing contract" authorized by Section 21.153 of the Texas Education Code. The District of Columbia has no similar provision. Employee's last contractual relationship with Agency ended with the expiration of her provisional license.

<sup>2</sup> As noted in her 2005 letter, offering employment, Employee was advised that her continued employment was contingent upon satisfactory completion and maintenance of the teacher/service provider licensure requirements, and that a failure to become and remain licensed, would be the basis for separation from employment service.