THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0049-23
	)	
v.	)	Date of Issuance: July 18, 2025
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Senior Administrative Judge
	)	

Thomas Eiler, Esq., Employee Representative
Lynette Collins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 7, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") contesting the D.C. Public Schools' ("DCPS" or "Agency") decision to terminate his position as an Instructional Superintendent, Office of Secondary Schools, effective June 16, 2023. OEA issued a Request for Agency's Answer to Employee's Petition for Appeal on July 10, 2023. Thereafter, on July 14, 2023, Agency filed its Motion to Dismiss and Answer wherein, it stated that OEA lacked jurisdiction over Employee's Petition for Appeal because Employee's appointment was without tenure, thus, he was classified as an 'at-will' employee.[2]

This matter was initially assigned to Administrative Judge ("AJ") Lois Hochhauser. On July 19, 2023, AJ Hochhauser issued an Order directing Employee to address the jurisdiction issue raised by Employee in its Motion to Dismiss. On July 24, 2023, Employee filed Employee's Opposition to Agency's Motion to Dismiss citing that although his position was without tenure, OEA has jurisdiction over his appeal because he was removed from Agency as a result of an adverse action for cause.[3] Agency filed a Sur-reply on August 4, 2023, wherein, it restated that because Employee's appointment was without tenure, Employee was 'at-will'

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency's Motion to Dismiss and Answer (July 14, 2023).
[3] Employee's Opposition to Agency's Motion to Dismiss (July 24, 2023).

during his time of employment and separation from Agency. Agency also included Employee's Standard Form 50 – Notification of Personnel Action ("SF-50") in support of its assertion.[4]

On February 13, 2024, AJ Hochhauser issued an Order wherein, she stated that "the AJ has carefully reviewed the submissions and undertaken some research. She found support for Agency's position that Employee held an at-will position and could be terminated for good cause, bad cause or no cause. However, she has also found support for Employee's position that if Agency fails to meet the notice and evaluation requirement of D.C. Code, § 1-608.01a(b)(2)(C)(ii) before terminating an employee, this Office may determine it has jurisdiction to hear the appeal." Accordingly, AJ Hochhauser directed the parties to submit additional briefs on jurisdiction. Agency filed a Response to the Administrative Law Judge's Inquiry on March 20, 2024, citing that the decision to terminate Employee was properly invoked pursuant to D.C. Code, § 1-608.01a(2)(b)(2)(D)(v). Agency argued that OEA must determine if Employee was an 'at-will' employee and that OEA has long and consistently held that it did not have jurisdiction over 'at-will' employees.[5] Employee filed his Supplemental Brief on March 22, 2024, arguing that OEA has jurisdiction over the current matter because he suffered an adverse action from his wrongful terminated for cause.[6] Employee asserted that he was not an 'at-will' Employee, but, if this Office concludes that he was an 'at-will' employee, this Office should retain jurisdiction because he was removed for cause and such action falls within the statutory and regulatory strictures of OEA.[7]

AJ Hochhauser issued another Order on May 28, 2024, scheduling 'Oral Argument' for June 26, 2024. This Order also required the parties to submit "a list of precedent, statute, etc. that it considers as significant support for its position, by … June 19, 2024." Employee submitted the requested list on June 20, 2024. On June 25, 2024, AJ Hochhauser issued an Order continuing the scheduled Oral Argument to June 27, 2024. Both parties were present for the Oral Argument. On June 28, 2024, AJ Hochhauser issued a Summary of Proceedings and Order wherein, she provided a summary of the parties' oral argument. This Order also noted that Employee filed a similar case against Agency at the U.S. District Court for the District of Columbia ("U.D. District Court") after he filed the instant appeal with OEA. AJ Hochhauser required the parties in this current Order to submit briefs in support of why the appeal before OEA should not be Stayed pending the outcome of the U.S. District Court case. On July 18, 2024, Agency filed its brief objecting to the OEA matter being stayed pending the outcome of the U.S. District Court decision, noting that it would be prejudicial to Agency. Agency further argued that the appeal before OEA should be dismissed based on the premise that Employee filed a complaint in the U.S. District Court. Employee also filed his brief on July 19, 2024, requesting that the matter before OEA be stayed throughout the pendency of the judicial proceeding.

On September 3, 2024, AJ Hochhauser issued another Order staying the OEA matter, pending the outcome of the judicial proceeding. This Order also required the parties to file monthly status reports, beginning October 1, 2024, and include any filings or issuance from the U.S. District Court that could impact the decision to stay the matter before OEA. On December

[4] Agency's Sur-Reply (August 4, 2023).
[5] Agency's Response to Administrative Law Judge's Inquiry (March 20, 2024).
[6] Employee's Supplemental Brief (March 22, 2024).
[7] *Id*.

3, 2024, AJ Hochhauser issued another Order noting that the parties failed to submit the status reports as required in the September 3, 2024, Order. She advised the parties that their failure to submit the required status report was considered a failure to comply with OEA Rule 624, and this could result in the imposition of sanctions. Thereafter, Employee filed Status Reports on December 6, 2024, January 2, 2025, February 7, 2025, and March 10, 2025. On March 14, 2025, Employee filed a Motion to Lift Stay and to Compel.

AJ Hochhauser issued an Order on March 28, 2025, granting Employee's Motion to Lift Stay and ordered Agency to fully comply with Employee's discovery requests by May 1, 2025. This Order also required Agency to respond to Employee's Motion to Lift Stay by April 18, 2025. Agency filed a Response to the ALJ's March 28, 2025 Order on April 9, 2025, citing that it had no objections to the stay being lifted. On April 15, 2025, Agency filed a Sur Reply to Employee's Opposition to Agency's Motion to Dismiss, reiterating that Employee was an 'at-will' employee, therefore, OEA lacks jurisdiction over the current matter. On April 21, 2025, AJ Hochhauser issued an Order lifting the stay. This Order also noted that Employee via email to AJ Hochhauser, objected to the admission of Agency's April 15, 2025, Sur reply to Employee's Opposition to Agency's Motion to Dismiss. AJ Hochhauser admitted this filing and provided Employee with an opportunity to respond to the Sur-reply by May 16, 2025. Employee filed a Response to Agency Sur-Reply to Employee's Opposition to Agency's Motion to Dismiss on May 16, 2025, citing that he was not an 'at-will' employee, as based on to D.C. Code, § 1-608.01a, he could not simply be terminated at will without meeting the precondition set forth in D.C. Code, § 1-608.01a. On May 19, 2025, Agency filed a Motion for Leave to file its Supplemental Argument to Its Motion to Dismiss, citing that as outlined in D.C. Code, § 1-608.01(E), terminations pursuant to D.C. Code, § 1-608.01 are not subject to administrative review. Agency reiterated that Employee was an 'at-will' employee, therefore; OEA does not have jurisdiction over this appeal and this matter should be dismissed.

The matter was reassigned to the undersigned on June 11, 2025, following AJ Hochhauser's departure from OEA. Upon review of the record, I have decided that no other submissions are required. Additionally, because I determined that this matter can be decided on the basis of the documents of record, no proceedings were conducted. The record is now closed.

JURISDICTION

The jurisdiction of this Office pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (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:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[8]

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[9]

In a letter dated July 3, 2019, Agency extended an offer of employment to Employee for the position of Instructional Superintendent, Grade EX5 Step 5. The letter highlights in pertinent that, "[p]ursuant to the Public Education Personnel Reform Act of 2008, *this appointment is without tenure* to the DC Public Schools." (Emphasis added).[10] This letter listed Employee's effective date of employment as July 15, 2019, and it informed Employee that his position was "a non-union position."[11] Employee's appointment was in the Educational Service. On May 31, 2023, Employee received a notice of termination of his appointment, with the termination effective on June 16, 2023. Employee filed a Petition for Appeal with this Office alleging wrongful termination and violation of D.C. Code, § 1-608.01a. He explained that his termination was improper, untrue, pretextual, and unlawful. He also stated that Agency violated his due process rights under the fifth amendment. In Agency's Motion to Dismiss and Answer, Agency stated that Employee's appointment was without tenure, therefore, he was an 'at-will' employee at the time of his termination. Agency maintained that OEA does not have jurisdiction over 'at-will' employees, as such, this matter should be dismissed for lack of jurisdiction.

The threshold issue in this matter is one of 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[12], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

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[8] OEA Rule § 699.1.
[9] 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").
[10] *See* Agency's Motion to Dismiss and Answer, supra, at Exhibit 1.
[11] *Id*.
[12] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

(a) A performance rating which results in removal of the employee;
(b) An adverse action for cause which results in removal;
(c) A reduction in grade;
(d) A suspension for ten (10) days or more (Emphasis added);
(e) A reduction-in-force; or
(f) A placement on enforced leave for ten (10) days or more.

This Office has no authority to review issues beyond its jurisdiction.[13] Therefore, issues regarding jurisdiction may be raised at any time during the proceeding.[14] In the instant matter, Employee was terminated effective June 16, 2023.

D.C. Official Code § 1-608.01a(2)(A)(i) states that, "[e]xcluding those employees in a recognized collective bargain unit, those employees appointed before January 1, 1989, those employees who are based at a local school, or who provide direct services to individual students, and those employees required to be excluded pursuant to a court order (collectively, "Excluded Employees"), a person appointed to a position within the Educational Service shall serve without tenure." Section 1-608.01a(2)(A)(ii) goes on to note that, except for Excluded Employees, the provisions of this paragraph shall apply to *all nonschool-based personnel*, as defined in § 1-603.01(13C), including all Educational Service employees within DCPS (emphasis added).

Here, there is no dispute that Employee's position was classified as 'Educational Service.' Employee wrote "I assume educational" on his Petition for Appeal, in response to the question regarding his type of service. Further, Employee's SF-50 at Section 5-D lists the Legal Authority for Employee's position as "D.C. Code 1-608.01a Educ. Service Employee."[15] Pursuant to D.C. Official Code § 1-611.11, I find that as an employee of the DCPS, Employee's employment classification is Educational Service. I further find that Employee is not an Excluded Educational Service employee because he does not meet any of the requirements as set forth for Excluded Educational Service employees in D.C. Official Code § 1-608.01a(2)(A)(i). *supra*.

It is well established in the District of Columbia that, an employer may discharge an 'at-will' employee "at any time and for any reason, or for no reason at all."[16] 'At-will' employees do "not have any job tenure or protection."[17] Furthermore, D.C. Official Code § 1-608.01a (2)(A)(i) highlights that, "…a person appointed to a position within the Educational Service shall serve without job tenure." Specifically, pursuant to the Public Education Personnel Reform

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[13] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[14] *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).
[15] *See* Agency's Sur-Reply, *supra*.
[16] *Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C 2006); citing *Adams v. George W. Cochran & Co.* 597 A.2d 28, 30 (D.C. 1991).
[17] *See* D.C. Official Code § 1-609.05 (2001).

Amendment Act of 2008,[18] all non-excepted employees appointed to the Educational Services shall serve without tenure.

Based on the foregoing, I find that at the time of the termination in the instant matter, Employee's status was 'at-will', and he could be discharged at any time and for no reason. Further, AJ Hochhauser noted in her February 13, 2024, Order that "She found support for Agency's position that Employee held an at-will position and could be terminated for good cause, bad cause or no cause." I agree with this determination.

This Office has consistently held that 'at-will' employees have no appeal rights with this Office.[19] Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 631.2. Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 631.1, *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." Based on the foregoing, I conclude that Employee has not meet the required burden of proof, and that this matter must be dismissed for lack of jurisdiction. Consequently, I am unable to address the factual merits, if any, of this matter.[20]

ORDER

It is hereby **ORDERED** that Agency's Motion to Dismiss is **GRANTED** and the Petition for Appeal is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge

[18] 55 District of Columbia Register 004275, pub. April 18, 2008.
[19] *Brown et al. v. Department of Consumer and Regulatory Affairs*, OEA Matter Nos. 1601-0012-2009 *et al.* (June 26, 2009) citing *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991).
[20] Employee argued that although D.C. Code, § 1-608.01a provides that he was to serve "without tenure, however, by the operation of law there are only two (2) ways to terminate an Education Service employee who was similarly situated to [Employee], either (1) pursuant to D.C. Code, § 1-608.01a(b)(2)(C)(ii) (2) at the discretion of the Mayor, if…[Employee] had been provided a fifteen (15) day separation notice and had at least one (1) evaluation within the preceding six (6) months and a minimum of thirty (30) days prior to the issuance of the separation notice; or (2) for cause as outlined in D.C. Code, § 1-608.01a(2)(b)(2)(D)(i)-(v)." Additionally, AJ Hochhauser also noted in her February 13, 2024, Order that "she has also found support for Employee's position that if Agency fails to meet the notice and evaluation requirement of D.C. Code, § 1-608.01a(b)(2)(C)(ii) before terminating an employee, this Office may determine it has jurisdiction to hear the appeal." However, there is no precedence in support of this assertion. Moreover, the classification of Employee as an 'at-will' employee precludes this Office from exercising jurisdiction over this matter. Consequently, I find that Agency's alleged noncompliance with D.C. Code, § 1-608.01a(b)(2)(C)(ii) (2) or D.C. Code, § 1-608.01a(2)(b)(2)(D)(i)-(v) does NOT grant OEA jurisdiction over 'at-will' employees, such as Employee.