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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 2401-0145-10
IMA SIMMONS,	)	
Employee	)	
	)	Date of Issuance: June 5, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
_____	)	Administrative Judge
Ima Simmons, Employee <i>Pro-Se</i>		
W. Iris Barber, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On November 12, 2009, Ima Simmons (“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 her 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 her position was abolished was an Elementary Teacher at Leckie Elementary School (“Leckie”). Employee was serving in Educational Service status at the time she was terminated.

I was assigned this matter on 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, statutes, and regulations (“February 15<sup>th</sup> Order”). Agency complied, but Employee did not respond to the February 15<sup>th</sup> Order. On March 8, 2012, Employee’s copy of the February 15<sup>th</sup> Order was returned to this Office marked ‘Forward Time Expired; Return To Sender.’ Accordingly, on March 30, 2012, I issued an Order for Statement of Good Cause (“March 30<sup>th</sup> Order”) wherein Employee was required to submit a statement explaining her failure to respond to the February 15<sup>th</sup> Order. Employee was also directed to submit her legal brief. Employee’s response was due on or before April 10, 2012. On April 10, 2012, Employee’s copy of the Order for Statement of Good Cause was returned to this Office marked ‘Return to Sender; No Mail Receptacle; Unable to Forward.’ As of the date of this decision, OEA has not received a response from Employee regarding 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:

- (a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:
- (1) A prescribed order of separation based on (1) 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.

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 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

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

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

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

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

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 her Petition for Appeal, Employee provides a rebuttal to comments made by the principal in her CLDF detailing her teaching expertise, qualifications, and activities conducted at Leckie.<sup>12</sup> Employee also provided supporting documentations including undated lesson plans and unsigned collaborative team feedback sheets. Employee’s rebuttal stated, in pertinent part, the following:

“Having six years of experience in the classroom I have worked with lots of personalities and have been successful in planning and working with other individuals...I do not find it difficult to collaborate with teachers and towards the end of my tenure at Leckie Elementary, I worked well with the teachers...I don’t feel the need to assess my students so much as this is what I [was] requested to do by the District and this is the area that the grade levels I worked with thought necessary...Much of my assistance to students came informally. Plans were not

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<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).

tantamount because teachers did not articulate a specific area that they saw a weakness in prior to me walking in the classroom...In conclusion, Mr. Wright's although succinct [sic] description of my tenure at Leckie Elementary is inaccurate."<sup>13</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 her termination.<sup>14</sup> Agency further maintains that it utilized the proper competitive factors in implementing the RIF and, Employee, who was the lowest ranked Elementary Teacher, was terminated as a result of the round of lateral competition.<sup>15</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.<sup>16</sup> 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.<sup>17</sup>

Here, Leckie 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 thirteen (13) elementary teacher positions subject to the RIF.<sup>18</sup> Of the thirteen positions, one (1) position was identified to be abolished. Because Employee was not the only elementary teacher within her competitive level, she was required to compete with other employees in one round of lateral competition.

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

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

<sup>14</sup> Agency Brief at pp. 3-7 (March 7, 2012).

<sup>15</sup> *Id.* at pp. 4-5. 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>16</sup> Agency Answer, Tab 1, RIF Authorization (December 16, 2009).

<sup>17</sup> *Id.*

<sup>18</sup> Agency Brief, Exhibit A, Retention Register (March 7, 2012).

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>19</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>20</sup> Agency cites to *American Federation of Government Employees, AFL-CIO v. OPM*,<sup>21</sup> wherein the Office of Personnel Management was given “broad authority to issue regulations governing 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>22</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.

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<sup>19</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>20</sup> Agency Brief at pp. 4-5 (March 7, 2012).

<sup>21</sup> 821 F.2d 761 (D.C. Cir. 1987).

<sup>22</sup> *Id.*

### ***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 Leckie 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 zero (0) points on her CLDF, and was, therefore, ranked the lowest employee in her respective competitive level. Employee’s CLDF stated, in pertinent part, the following:

“Ms. Simmons fails to support school need[s] to create a strong learning environment. She came to school unprepared to teach on the first day of school and has continued to demonstrate a lack of preparedness and initiative in carrying out her duties. Ms. Simmons has had minimal impact on instruction and student achievement. She finds it difficult to collaborate with colleagues on how to best meet the needs of her students. She also has not demonstrated the ability to plan. As of this date, Ms. Simmons has failed to implement a specific plan of action for targeted assistance for identified students. Other resource teachers are fully into their routines providing whole group and small group instruction for identified students. Ms. Simmons is still in the planning stages. She frequently speaks of the need to assess her students to determine what their needs are. Nevertheless, none of the assessing has translated into anything specific in terms of instruction.”<sup>23</sup>

### ***Needs of the School***

Employee received zero (0) points out of a possible ten (10) points in the category of Needs of the School; a score much lower than the other employees within her competitive level who were retained in service.<sup>24</sup> This category is weighted at 75% on the CLDF and accounts for any factor that may have an impact on the success of the school or the achievement of the students at school. Some of the factors used in consideration for this category include: student learning skills, training, experience, school culture contributions, teaching and learning framework, leadership roles, licensure or certifications, and advanced degrees that pertain specifically to the needs of the school.

While Employee has provided some supporting documentation in her rebuttal to the comments in her CLDF regarding the Needs of the School category, she has not proffered 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.<sup>25</sup>

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<sup>23</sup> Agency Answer, Tab 3 (December 16, 2009).

<sup>24</sup> Agency Brief, Exhibit A, Retention Register (March 7, 2012).

<sup>25</sup> See *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997).

**Relevant significant contributions, accomplishments, or performance**

Employee received zero (0) points in this category, which is weighted at 10% on the CLDF. This category evaluates any clear, significant contributions made by employees, above what would normally be expected of an employee in his or her competitive level. Employee has not provided any supplemental evidence suggesting that she should have earned a higher score in this category.

**Relevant supplemental professional experiences as demonstrated on the job**

Employee also received zero (0) points in this category, which is weighted at 10% on the CLDF, and awards points to employees for any additional training or professional experiences outside standard training required by Agency or required to maintain licensure; and application of said training or experience at the school in a way that positively impacted student or school performance. Employee has not provided any documentation to supplement additional points being awarded in this area.

According to the CLDF, Employee received a total score of zero (0) points after all of the factors outlined above were tallied and scored. The lowest scoring elementary teacher in Employee's competitive level, who was retained in service, received a total score of thirty-one (31) points.<sup>26</sup> 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.<sup>27</sup> Further, this Office cannot substitute its judgment for that of the principal at Leckie, who was given discretion to complete Employee's CLDF and had wide latitude to invoke his managerial discretion.<sup>28</sup> Thus, with respect to the aforementioned CLDF categories, I find that I will not substitute my judgment for that of the principal of Leckie as it relates to the scores he accorded Employee and her colleagues in the instant matter.

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>29</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>30</sup>

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<sup>26</sup> Agency Brief, Exhibit A, Retention Register (March 7, 2012).

<sup>27</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>28</sup> See *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997).

<sup>29</sup> 109 F.3d 774 (D.C. Cir. 1997).

<sup>30</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).

### Length of service

This 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 has not provided any supporting documentary evidence to support any additional points being awarded in this category. Employee received a total of zero (0) points 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>31</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. Further, a review of Employee's personnel file, submitted by Agency, does not reveal any evidence that would necessitate a recalculation of the points awarded in this category.<sup>32</sup> Therefore, based on the evidence of record, I find that Agency properly calculated this number.

The primary responsibility for managing Agency's work force is a matter entrusted to the Agency, not to OEA.<sup>33</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>34</sup> Accordingly, I find that the Principal of Leckie had discretion in completing Employee's CLDF, as he 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.

### **Retention Register**

According to 6 DCMR § 2412.1,<sup>35</sup> an agency is required to establish a Retention Register for each competitive level, whenever a competing employee is to be released from his or her competitive level. The undersigned notes that there is an error in Agency's retention register, which displays Employee's first name incorrectly as "Iris." However, the employee identification number listed on the Retention Register matches the employee identification number listed on Employee's RIF Notice. I find that Agency's error with Employee's first name on the Retention Register was not harmful error. Harmful error is defined as an error with "such magnitude that in its absence, the employee would not have been released from his or her competitive level."<sup>36</sup> In this case, I find that Agency's misspelling of Employee's first name on the Retention Register was a procedural error. Such an error will not serve to negate or overturn Employee's separation and does not constitute harmful error.

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<sup>31</sup> Agency Brief, Exhibit B (March 7, 2012).

<sup>32</sup> *Id.*, Employee Personnel File.

<sup>33</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>34</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

<sup>35</sup> 55 DCR 12899, 12902 (December 26, 2008).

<sup>36</sup> 6 DCMR § 2405.7, 47 D.C. Reg. 2430 (2000).

### ***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 her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.<sup>37</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 her appeal rights. Further, Employee has not alleged that she 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.

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

Employee’s failure to respond to the February 15<sup>th</sup> and March 30<sup>th</sup> Orders provides another basis to dismiss this petition. OEA Rule 621.3 grants an Administrative Judge (“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 her appeal.<sup>39</sup> Specifically, OEA Rule 621.3(b)-(c) provides that the failure to prosecute an appeal includes failing to submit required documents after being provided with a deadline for such submission and not informing this Office of a change of address which results in correspondence being returned. Moreover, this Office has held that failure to prosecute an appeal includes a 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 March 30<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, the undersigned finds 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 she 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.

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<sup>37</sup> Agency Answer, Tab 4 (December 16, 2009).

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

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

<sup>40</sup> *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).

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