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

_____	)	
In the Matter of:	)	
	)	
MICHAEL ANDERSON,	)	
Employee	)	OEA Matter No. 1601-0254-12
	)	
v.	)	Date of Issuance: June 6, 2014
	)	
DISTRICT OF COLUMBIA	)	STEPHANIE N. HARRIS, Esq.
PUBLIC SCHOOLS,	)	Administrative Judge
Agency	)	
_____	)	
Michael Anderson, Employee <i>Pro-Se</i>	)	
Carl Turpin, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 10, 2012, Michael Anderson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Public Schools’ (“Agency” or “DCPS”) decision to terminate him pursuant to receiving a ‘Minimally Effective’ rating for the 2009-2010 and 2010-2011 school years via Agency’s IMPACT performance evaluation tool. Employee’s termination was effective August 10, 2012. Agency submitted its Answer in response to Employee’s Petition for Appeal on October 12, 2012.

I was assigned this matter in October 2013. On January 22, 2014, the undersigned issued an Order scheduling a Prehearing Status Conference for March 17, 2014. However, due to inclement weather, the District of Columbia government was closed, and subsequently, the undersigned issued an Order on March 18, 2014 (“March 18<sup>th</sup> Order”), wherein the Prehearing Status Conference was rescheduled for May 20, 2014.

Agency was present for the Prehearing Status Conference, but Employee did not appear at the scheduled date and time. Subsequently, the undersigned issued an Order for Statement of Good Cause on May 20, 2014 (“May 20<sup>th</sup> Order”). Employee was ordered to submit a statement of good cause based on his failure to appear at the scheduled Prehearing Status Conference. Employee’s response to the May 20<sup>th</sup> Order was due on or before May 30, 2014. As of the date of this decision, OEA has not received a response from Employee regarding the aforementioned

Order for Statement of Good Cause. Based on the record to date, I have determined that no further proceedings are warranted. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether this appeal should be dismissed.

### 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.

### ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 621.1<sup>1</sup> grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “in the exercise of sound discretion may dismiss the action or rule for the appellant” if a party fails to take reasonable steps to prosecute or defend an appeal.<sup>2</sup> Additionally, OEA Rule 621.3(a)-(c), states that failure to prosecute an appeal includes, but is not limited to, a failure to:

- (a) Appear at a scheduled proceeding after receiving notice; or
- (b) Submit required documents after being provided with a deadline for such submission.
- (c) Inform this Office of a change of address which results in correspondence being returned.

Moreover, this Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear at a scheduled proceeding, submit required documents, or

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<sup>1</sup> 59 DCR 2129 (March 16, 2012).

<sup>2</sup> See OEA Rule 621.3.

update this Office with a change of address.<sup>3</sup> Employee did not appear at the scheduled Prehearing Status Conference and he failed to submit a response to the May 20<sup>th</sup> Order for Statement of Good Cause. Employee's appearance at the scheduled Prehearing Status Conference was necessary to address pertinent issues in this matter and was required for a proper resolution of this matter on its merits. Further, both the March 18<sup>th</sup> and May 20<sup>th</sup> Orders advised Employee that failure to comply could result in sanctions, including dismissal. The undersigned concludes that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Accordingly, this matter should be dismissed for Employee's failure to prosecute his appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for Employee's failure to prosecute his appeal.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge

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<sup>3</sup> See also *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).