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

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 1601-0020-15
BRANDON DICKENS,	)	
Employee	)	
	)	Date of Issuance: April 14, 2015
v.	)	
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION,	)	
Agency	)	Monica Dohnji, Esq.
_____	)	Administrative Judge

Brandon Dickens, Employee *Pro Se*  
Hillary Hoffman-Peak, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On November 25, 2014, Brandon Dickens (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency”) decision to demote him from a School Bus Driver to a School Bus Attendant, effective November 30, 2014. On December 11, 2014, Agency submitted its Answer to the Petition for Appeal.

A Mediation Conference was held in this matter on January 29, 2015, wherein, a settlement agreement was reached between the parties. This matter was assigned to the undersigned Administrative Judge (“AJ”) on February 23, 2015. Thereafter, on March 3, 2015, the undersigned AJ issued an Order to Employee requiring him to submit a Notice of Withdrawal since the matter had been settled during the Mediation Conference. Employee’s statement was due on or before March 17, 2015. On March 19, 2015, Employee requested an extension to file the Notice of Withdrawal. Following several telephone conversations between Employee and the undersigned, Employee notified the undersigned that he will submit his Notice of Withdrawal no later than March 31, 2015. As of the date of this Initial Decision, Employee has not submitted the requested document. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether this appeal should be dismissed for failure to prosecute.

### 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 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>1</sup> Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

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

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 or fails to submit required documents.<sup>2</sup> In

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<sup>1</sup> *Id.* at 621.3.

<sup>2</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).

this case, Employee did not provide a written response to my Order. The requested document was required for a proper resolution of this matter. I conclude that Employee's failure to prosecute his appeal is consistent with the language of OEA Rule 621. Employee was notified of the specific repercussions of failing to submit the requested written documentation. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and therefore, the matter should be dismissed for failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge