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

_____	)	
In the Matter of:	)	
	)	OEA Matter No. 1601-0099-16
MARVIN JOHNSON,	)	
Employee	)	
	)	Date of Issuance: April 10, 2017
v.	)	
	)	Michelle R. Harris, Esq.
OFFICE OF THE STATE	)	Administrative Judge
SUPERINTENDENT OF EDUCATION,	)	
Agency	)	
_____	)	

Marvin Johnson, Employee, *Pro Se*  
Hillary Hoffman-Peak, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 22, 2016, Marvin Johnson (“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” or “OSSE”) decision to terminate him. On October 19, 2016, Agency filed its Answer to Employee’s Petition for Appeal. Following an unsuccessful attempt to resolve this matter through mediation, this matter was assigned to the undersigned Administrative Judge (“AJ”) on February 2, 2017. On February 7, 2017, I issued an Order scheduling a Status/Prehearing Conference for March 15, 2017. Following a request by Agency to reschedule, I issued an Order on February 21, 2017, rescheduling the Status/Prehearing Conference for March 21, 2017.

On March 21, 2017, Employee failed to appear for the Status/Prehearing Conference. As a result, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on his failure to appear at the March 21, 2017, Status/Prehearing Conference. Employee had until April 3, 2017, to respond. To date, Employee has not responded to the Order. 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 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 621.3 states in relevant part that the “Administrative Judge, 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. 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 (Emphasis added);*
- (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.”<sup>1</sup>

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and submit required documents after being provided with a deadline to comply with such orders.<sup>2</sup> In the instant matter, Employee was provided notice in all of the Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order, or appear for the scheduled Status/Prehearing Conference. Employee’s appearance for scheduled proceedings, and responses to each of these Orders was required to ensure an appropriate review and resolution of the matter. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee’s failure to prosecute his appeal is a violation of OEA Rule 621.

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<sup>1</sup> OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

<sup>2</sup> *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge