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

In the Matter of:	)	
	)	
FRAN-VICTORIA STEPHENS,	)	
Employee	)	
	)	OEA Matter No. 2401-0095-15
v.	)	
	)	Date of Issuance: October 5, 2015
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	
	)	MICHELLE R. HARRIS, Esq.
	)	Administrative Judge
Fran-Victoria Stephens, Employee <i>Pro Se</i>		
Nicole C. Dillard, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 2, 2015, Fran-Victoria Stephens (“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”) decision to terminate her. On July 31, 2015, Agency filed its Motion to Dismiss and Answer to Employee’s Petition for Appeal.

I was assigned this matter on August 5, 2015. Agency noted in its Motion to Dismiss and Answer to Employee’s Petition for Appeal that OEA does not have jurisdiction over this appeal. Consequently, on August 10, 2015, I issued an Order directing Employee to address whether OEA has jurisdiction over this matter. On August 20, 2015, Employee filed a Request for An Extension of Time to File Brief. I issued an Order granting this Motion on August 26, 2015. Employee filed her brief in accordance with the prescribed deadline. Agency had the option to submit a response on September 22, 2015. On September 18, 2015, Agency requested an extension to file its response by September 29, 2015. I issued an Order granting this Motion on September 23, 2015. Agency timely filed its Brief in Response to Employee’s Opposition to Agency’s Answer. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

**JURISDICTION**

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked for Agency as a Program Specialist, with the Office of Federal Programs since November 9, 2009. On May 21, 2015, Employee received a Notice of Termination indicating that pursuant to the Public Education Personnel Reform Amendment Act of 2008, her appointment with Agency would be terminated effective June 5, 2015.

***Employee's Position***

Employee asserts that she was wrongfully terminated by Agency following the receipt of contradictory notices regarding her termination. Employee indicates that she received two notices related to her termination, the first was dated April 21, 2015<sup>1</sup>, and the last was May 21, 2015. Employee states that the April 21, 2015 notice indicated her position would no longer be funded, and that she would be terminated as a result of a Reduction-in-Force ("RIF"), which would become effective on September 30, 2015. The Notice of Termination letter dated May 21, 2015 indicated the effective date of her termination would be June 5, 2015. The Standard Form Fifty ("SF-50") attached to the May 21, 2015 notice classified her termination as "Separation-RIF".<sup>2</sup> A subsequent SF-50 reflected her termination classification as a "Separation-Other".<sup>3</sup> Employee further contends that she was singled out and that only her position was eliminated. Employee indicates that she filed a grievance with the District of Columbia Office of Human Rights ("OHR") on March 30, 2015, and filed a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") on January 28, 2015.<sup>4</sup>

***Agency's position***

Agency asserts in its Motion to Dismiss and Answer to Employee's Petition for Appeal that this Office lacks the jurisdiction to adjudicate this matter. Agency argues that Employee's position as a Program Specialist is 'at-will' and not subject to OEA jurisdiction. Agency also contends in its September 29, 2015 Brief, that Employee's claim that OEA has jurisdiction over this matter fails because her employment status was non-tenured.<sup>5</sup> Agency maintains that Employee was properly separated, and the first SF-50 was incorrectly categorized as a "Separation-RIF"; but upon Agency's realization of the error, a subsequent document was sent to Employee that correctly indicated the category of termination as "Separation-Other".<sup>6</sup> Agency further asserts that Employee asked whether

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<sup>1</sup> It should be noted that Employee did not provide a formal notice or letter regarding the April 21, 2015 notice. In her Petition for Appeal, Employee provided an April 2015 DCPS "FY16 Reorganization FAQs", but there is no letter or other information that reflects that this document was specific to, or applicable to Employee's position. It reflects a general directive of Agency's FY15 reorganization.

<sup>2</sup> Employee Petition for Appeal (July 2, 2015).

<sup>3</sup> Agency's Motion to Dismiss and Answer to Employee's Petition for Appeal at Exhibit 1(July 31, 2015).

<sup>4</sup> Employee's Brief in Opposition to the Agency's Answer to Employee's Petition for Appeal (September 8, 2015). \*It should be noted that this information is contained in what appears to be an unsigned copy of Employee's grievance filed with the OHR.

<sup>5</sup> Agency's Brief in Response to Employee's Opposition to Agency's Answer at Page 1 (September 29, 2015).

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

she was being terminated through a RIF and was told her termination was pursuant to the Public Education Reform Amendment Act of 2008.<sup>7</sup>

### ***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<sup>8</sup>, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat 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." This Office has no authority to review issues beyond its jurisdiction.<sup>9</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>10</sup> Employees have the burden of proof for issues regarding jurisdiction and must prove jurisdiction by a preponderance of evidence.

In the instant matter, I agree with Agency's assertion that OEA does not have jurisdiction over this matter.<sup>11</sup> Agency asserts in its Motion to Dismiss and Answer to Employee's Petition for Appeal, that Employee was classified as an 'at-will' employee and was subject to termination with or without cause. It is well established in the District of Columbia that "an employer may discharge an 'at-will' employee for any reason or no reason at all."<sup>12</sup> Moreover, D.C. Official Code § 1-609.05 (2001), provides that "at-will employees do not have any job protection or tenure." Additionally, D.C. Official Code § 1-608.01a (2)(A)(i) provides that, "...a person appointed to a position within the Educational Service shall serve without job tenure."

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<sup>7</sup> *Id.* at Page 4.

<sup>8</sup> See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

<sup>9</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>10</sup> 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).

<sup>11</sup> It should be noted that the undersigned does not agree with Agency's assertion that OEA lacks jurisdiction because Employee filed a grievance with the Office of Human Rights. Pursuant to D.C. Official Code § 1616.52 (e) and (f) (2001), Employee's filing with the Office of Human Rights ("OHR"), would not preclude her from filing with OEA, as OHR does not fall into the category of the type of grievance that would preclude Employee her rights to filing an appeal with OEA.

<sup>12</sup> *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).

Employee does not dispute her status as an ‘at-will’ employee with Agency. In her Brief in Opposition to the Agency’s Answer to Employee’s Appeal, Employee affirms that Agency’s categorization of her status as an ‘at-will’ employee was accurate.<sup>13</sup> Employee argues that her status as an ‘at-will’ employee is not at issue as it relates to the cause for her termination, and as such, OEA has jurisdiction to address her appeal. However, I find that Employee’s status as a non-tenured, ‘at-will’ employee preemptively precludes this Office from any further review of the merits of this case as this Office lacks the jurisdictional authority to do so. Employees have the burden of proof for issues regarding jurisdiction and must meet this burden by a “preponderance of evidence. I have determined that Employee did not meet this burden. For these reasons, I find that OEA lacks jurisdiction to adjudicate this matter.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for lack of jurisdiction.

FOR THE OFFICE:

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MICHELLE R. HARRIS, Esq.  
Administrative Judge

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<sup>13</sup> Employee’s Brief in Opposition to the Agency’s Answer to Employees Appeal at Page 1 (September 8, 2015).