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

In the Matter of:)	
)	OEA Matter No. 1601-0013-17
PATRICIA MOYE,)	
Employee)	
)	Date of Issuance: February 28, 2017
v.)	
)	Michelle R. Harris, Esq.
OFFICE OF THE STATE)	Administrative Judge
SUPERINTENDENT OF EDUCATION,)	
Agency)	
Patricia Moye, Employee, <i>Pro Se</i>)	
Hillary Hoffman-Peak, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On November 21, 2016, Patricia Moye (“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 her. On December 15, 2016, Agency filed its Answer to Employee’s Petition for Appeal. This matter was assigned to the undersigned administrative judge (“AJ”) on December 16, 2016.

On December 28, 2016, I issued an Order Convening a Status/Prehearing Conference in this matter. The Prehearing Conference was scheduled for February 6, 2017. On February 6, 2017, Agency representatives appeared for the hearing. However, Employee failed to appear. Consequently, on February 6, 2016, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause based on her failure to appear at the February 6, 2017 Status/Prehearing Conference. Additionally, this Order noted that any change in address for Employee had to be submitted in writing to the Office.¹ Employee had until February 21, 2017, to respond. To date, Employee has not responded to either Order. The record is now closed.

¹ Employee’s copy of the December 28, 2016 Order was returned as undeliverable to this Office on January 4, 2017.

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 621.3 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;
- (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 (Emphasis Added).*”²

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings after being provided with a deadline to comply with such orders.³ Further, OEA Rule 621.3 (c) requires Employees to inform this Office of any change in address. In the instant matter, all Orders were sent via postal mail service to the address provided by Employee in her Petition for Appeal.⁴ Employee’s appearance for scheduled proceedings, and providing this

² OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

³ *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).

⁴ The Order for Statement of Good Cause also was sent via email to Employee from an address found by Agency counsel during the Status/Prehearing conference where Employee failed to appear.

Office with a current address for correspondence was necessary to ensure an appropriate review and resolution of the matter. 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 her appeal is a violation of OEA Rule 621. 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:

MICHELLE R. HARRIS, Esq.
Administrative Judge