THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0192-10
MICHELLE CAMACHO,	)	
Employee	)	
	)	Date of Issuance: June 15, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

Michelle Camacho, Employee *Pro-Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 1, 2009, Michelle Camacho ("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") action of terminating her employment through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was an Elementary Teacher at Davis Elementary School ("Davis"). Employee was serving in Educational Service status at the time she was terminated. Agency submitted its Answer on December 31, 2009.

I was assigned this matter on February 7, 2012. On February 14, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations ("February 14th Order"). Both parties have complied. After reviewing the record, I have determined that there are no material facts in dispute and therefore, an evidentiary hearing is not warranted. 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 Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.[1]

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,[2] which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

Specifically, section § 1-624.08 states in pertinent part that:

> (a) ***Notwithstanding*** *any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the

[1] *See* Agency's Answer, Tab 1 (December 31, 2009).

[2] D.C. Code § 1-624.02 states in relevant part that:

> (a) Reduction-in-force procedures shall apply to the Career and Educational Services… and shall include:
> (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
> (2) One round of lateral competition limited to positions within the employee's competitive level;
> (3) Priority reemployment consideration for employees separated;
> (4) Consideration of job sharing and reduced hours; and
> (5) Employee appeal rights.

> agency head's discretion, to identify positions for abolishment (emphasis added).
>
> (b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.
>
> (c) ***Notwithstanding*** *any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).
>
> (d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.
>
> (e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*,[3] the D.C. Superior Court found that "the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency." The Court also found that both laws were current and that the government triggers the use of the applicable statute by using "specific language and procedures."[4]

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*, [5] DCPS conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005." The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act ("the Act") instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[6] The Court stated that the "ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF."[7]

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.[8] The Act provides that, "notwithstanding

[3] No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[4] *Id.* at p. 5.
[5] 960 A.2d 1123, 1125 (D.C. 2008).
[6] *Id.*
[7] *Id.*
[8] *Id.*

any rights or procedures established by any other provision of this subchapter," which indicates that it supersedes any other RIF regulations. The use of the term 'notwithstanding' carries special significance in statutes and is used to "override conflicting provisions of any other section."[9] Further, "it is well established that the use of such a 'notwithstanding clause' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other sections."[10]

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[11] Moreover, the persuasive language of § 1-624.08, including the term 'notwithstanding,' suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or

2. That she was not afforded one round of lateral competition within her competitive level.

Probationary Employment Status

In her Petition for Appeal, Employee asserts that she was in probationary employee status at the time of the instant RIF. OEA'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 not relevant to this case, of permanent employees in the Career and Education Service, who are not serving in a probationary period, or who have successfully completed their probationary period. However, D.C. Code §1-628.01(c) gives this Office limited jurisdiction over Career and Educational Service employees, in RIF cases, regardless of the employee's date of hire. Based on the above referenced section, Employee's assertion that she was in a probationary employment status at the time of the RIF, still entitles her to the RIF procedures found in D.C. Code §1-624.08, which includes one round of lateral competition and thirty (30) days written notice prior to the effective date of the RIF. As such, I find that OEA has jurisdiction over Employee's appeal.

Employee's Position

In her Petition for Appeal, Employee states that the principal erroneously "derived her judgment" for the Competitive Level Documentation Form ("CLDF") based on a classroom evaluation conducted during the second or third week of classes.[12] In her brief Employee provides a detailed rebuttal to the comments contained in her CLDF, including the following:

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[9] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[10] *Id.*
[11] *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[12] *See* Petition for Appeal (December 1, 2009).

1) Employee alleges that her CLDF evaluation was "questionable, unfair, biased, and undocument[ed]."
2) She states that her record reflects her highly qualified status and high performance rating, which contradicts statements made by the principal in the CLDF.
3) Employee asserts that Agency "failed to execute a fair, unbiased, just, and properly documented one round of lateral competition."
4) She claims that the classroom observation done during the third week of September 2009 was "untimely and invalid" and notes that it is natural for a classroom to not run smoothly as the teacher is starting to establish her rules, procedures, and routines.
5) She refutes statements that she has poor classroom management, noting again that this was only based on a third week observation in September 2009.
6) Employee provides details of her use of instructional time and procedures for following lesson plans.
7) She claims that consideration was not given for her Bachelor's degree in Chemistry, teacher certification, or passage of the Praxis Series examination.[13]
8) Employee also alleges that she was not awarded points in the area of professional development, despite another teacher in her competitive level receiving credit for her professional development outside of school.
9) She states that the principal did not give any weight to her "credentials, accomplishments, structured/unstructured PPEP observations and comments for the past two years."
10) She further states that a copy of her CLDF was not given to her when she signed her RIF separation letter.
11) Employee specifically addressed several of the factors listed by Agency as examples for use by principals in their CLDF assessments.[14]

Employee also provided supporting documentation in support of her position, including copies of structured and unstructured observation reports from previous years, classroom visit evaluations, log books, narrative and incident reports, and student assessments.[15] She also provided photographs in support of her claims that her classroom was conducive to learning and followed the standards set by the principal, along with copies of various training programs, teaching workshops, and Professional Learning Units (PLU) coursework.[16]

Agency's Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her termination.[17]

[13] The Praxis Series tests are taken by individuals entering the teaching profession as part of the certification process required by DCPS.
[14] Employee Brief (March 29, 2012).
[15] *Id*., Exhibits F, G, I.
[16] *Id*., Exhibits M, N.
[17] Agency Brief at pp. 3-8 (March 6, 2012).

Agency further maintains that it utilized the proper competitive factors in implementing the RIF and Employee, who was one of the lowest ranked Elementary Teachers, was terminated as a result of the round of lateral competition.[18]

RIF Procedures

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS is authorized to establish the competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area.[19] In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;

2. The job title for each employee; and

3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.[20]

Here, Davis was identified as a competitive area, and Elementary Teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were eight (8) elementary teacher positions subject to the RIF.[21] Of the eight positions, four (4) positions were identified to be abolished. Because Employee was not the only Elementary Teacher within her competitive level, she was required to compete with other employees in one round of lateral competition.

According to Title 5, DCMR § 1503.2 *et al.*:

> If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
>
> (a) Significant relevant contributions, accomplishments, or performance;

[18] *Id.* at pp. 3-6. School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.
[19] Agency Answer, Tab 1, RIF Authorization (December 31, 2009).
[20] *Id.*
[21] Agency Brief, Exhibit A, Retention Register (March 6, 2012).

(b) Relevant supplemental professional experiences as demonstrated on the job;

(c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and

(d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

(a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)

(b) Significant relevant contributions, accomplishments, or performance – (10%)

(c) Relevant supplemental professional experiences as demonstrated on the job – (10%)

(d) Length of service – (5%)[22]

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.[23] Agency cites *to American Federation of Government Employees, AFL-CIO v. OPM*,[24] wherein the Office of Personnel Management was given "broad authority to issue regulations governing the release of employees under a RIF…including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority."[25] I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a CLDF in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Davis was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the "length of service" category was completed by the Department of Human Resources ("DHR").

[22] It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in § 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).
[23] Agency Brief at pp. 5-6 (March 6, 2012).
[24] 821 F.2d 761 (D.C. Cir. 1987).
[25] *Id*.

Employee received a total of twenty-three and a half (23.5) points on her CLDF and was therefore, the third lowest ranked employee in her respective competitive level. Employee's CLDF stated in pertinent part, the following:

> "[Ms.] Camacho consistently underperforms. Her students have consistently shown very little progress on assessments especially on the DIBLES assessments. Based on her DIBLES assessments, all of her students are at risk. Her poor classroom management contributes significantly to her students' lack of academic progress. Ms. Camacho consistently introduces objectives for all of the subjects at one time, resulting in students not being able to determine what the expectations are. She gives students worksheets as a means of learning and provides little by way of instruction prior to distributing the worksheets. The lesson plan format is not followed as there is little or no recall to prior knowledge. As students work through the worksheets, they are questioned as to whether or not they have completed the work."[26]

Needs of the School

Employee received a total of three (3) points out of a possible ten (10) points in this category, resulting in a weighted score of twenty-two and a half (22.5) points; a score much lower than the other employees within her competitive level who were retained in service.[27] This category is weighted at 75% on the CLDF and accounts for any factor that may have an impact on the success of the school or the achievement of the students at school. Some of the factors used in consideration for this category include: student learning skills, training, experience, school culture contributions, teaching and learning framework, leadership roles, licensure or certifications, and advanced degrees that pertain specifically to the needs of the school.

Employee alleges that her CLDF was not properly completed because it failed to give credit for her Bachelor's degree in Chemistry, teacher certification, or passage of the Praxis Series examination. However, Employee has failed to provide any evidence to highlight how her degree or certification translates into how she meets the needs of the school as an elementary teacher. As noted above, while advanced degrees and certifications are one of the factors considered in this category, there is no specific point designation for any of the multitude of factors that could be considered. Further, Agency did not develop an exhaustive list of factors to be considered, but rather listed examples that could be considered by principals.[28] Moreover, because Employee did in fact receive points in this category, it can reasonably be assumed that her degree and certifications were taken into consideration for awarding points. With respect to Needs of the School category, I find that in this matter, I will not substitute my judgment for that of the principal of Davis as it relates to the score he accorded to Employee and her colleague in the instant matter.

Employee also claims that her CLDF was erroneously based on an "untimely and invalid" observation conducted by the principal during the second or third week of September 2009. She also

[26] *Id.*
[27] Agency Brief, Exhibit A, Retention Register (March 6, 2012).
[28] *Id.*

contends that the principal did not give any weight to her observations over the prior two school years. However, the undersigned notes that the criteria Agency instructed principals to use in ranking employees did not require a formal observation of employees.[29] Specifically, in the Needs of the School category, principals were instructed to assign scores "reflect[ing] [the] best judgment of the extent to which the person meets the particular needs of [the] school."[30]

Relevant significant contributions, accomplishments, or performance

Employee received zero (0) points in this category, which is weighted at 10% on the CLDF. This category evaluates any clear, significant contributions made by employees, above what would normally be expected of an employee in his or her competitive level. Employee has not provided any supplemental evidence suggesting that she should have earned a higher score in this category.

Relevant supplemental professional experiences as demonstrated on the job

Employee also received zero (0) points in this category, which is weighted at 10% on the CLDF, and awards points to employees for any additional training or professional experiences outside standard training required by Agency or required to maintain licensure; and application of said training or experience at the school in a way that positively impacted student or school performance. Employee has provided documentation of various training programs, teaching workshops, and Professional Learning Units (PLU) coursework; however, she has not explained how this positively impacted student or school performance. Employee also takes issue with another employee in her competitive level being awarded points for professional development. However, the principal was given managerial discretion to assess Employee in this area and I will not substitute my judgment for that of the principal of Davis as it relates to her assessment of the on-the-job performance and capabilities of her subordinates. Moreover, there is no indication that a recalculation of employee's score in this area would supplant the score of the employees who were retained in service.

While Employee has provided some supporting documentation in her rebuttal to the comments in her CLDF, she has not proffered any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*,[31] the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."[32] Further, there is no indication that any supplemental evidence would supplant the higher scores received by the remaining employees in Employee's competitive level who were not separated from service. This Office cannot substitute its judgment for that of the principal at Davis, who was given discretion to complete Employee's CLDF and had wide latitude to invoke her managerial discretion. Thus, with respect to the aforementioned CLDF categories, I find

[29] Agency Answer, Tab 2, Attachment B (December 31, 2009).
[30] *Id.*
[31] 109 F.3d 774 (D.C. Cir. 1997).
[32] *See also American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

that I will not substitute my judgment for that of the principal of Davis as it relates to the scores she accorded Employee and her colleagues in the instant matter.

Length of service

This category, which was completed by DHR, includes credit for years of service, District residency, veterans' preference, and prior outstanding or exceeds expectation performance rating within the past year. Employees were granted an additional five (5) years of service for D.C. residency, four (4) years of service for veterans' preference, and four (4) years of service for performance evaluations of 'outstanding' or 'exceeds expectations' for the last school year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Here, the record shows that Employee began her tenure with Agency in 2007 and received credit for two (2) years of service.[33] She received zero (0) points for D.C. residency and veterans preference. The record shows that Employee resided in Maryland at the time of the instant RIF.[34] Employee has submitted her performance evaluation for the 2008/2009 school year, which shows that she received a 'meets expectation' rating.[35] Because Employee did not receive an 'exceeds expectations' for the 2008/2009 school year, she was not entitled to the extra four (4) years of service. Employee received a total weighted score of one (1) point in this category. Further, Agency has provided an affidavit from Peter Weber, who served as the Interim Director of Human Resources during the time of the instant RIF.[36] Mr. Weber states that he was responsible for computing employees' length of service for the instant RIF and used the DHR official Peoplesoft system to obtain data for the calculations, which appear in Employee's CLDF. Moreover, a review of Employee's personnel file, which was submitted by Agency, does not reveal any evidence that would necessitate a recalculation of the points awarded in this category.[37] Therefore, based on the evidence of record, I find that Agency properly calculated this number.

Employee contends that her CLDF evaluation was questionable, unfair, and undocumented. However, in reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF.[38] According to the CLDF, Employee received a total score of twenty-three and a half (23.5) points after all of the factors outlined above were tallied and scored. The lowest scoring elementary teacher in Employee's competitive level who was retained in service, received a total score of sixty-eight (68) points.[39] Employee has not proffered any evidence to suggest that a re-evaluation of her CLDF scores would result in a different outcome in this case.[40]

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[33] *See* Agency Brief, Employee Personnel File (March 6, 2012).
[34] *Id*.; *see also* Agency Answer, Tab 4 (December 31, 2009).
[35] *See* Employee Brief (March 29, 2012); Agency Brief, Employee Personnel File (March 6, 2012).
[36] Agency Brief, Exhibit B (March 6, 2012).
[37] *Id*., Employee Personnel File.
[38] *See Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997).
[39] Agency Brief, Exhibit A, Retention Register (March 6, 2012).
[40] See *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

Further, the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[41] This Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."[42] Accordingly, I find that the principal of Davis had discretion in completing Employee's CLDF, as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. Therefore, I find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) Days Written Notice

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

Employee contends that a copy of her CLDF was not given to her when she signed her RIF separation letter. I find that Agency was not required to provide Employee with a copy of her CLDF at the time that she received her RIF notice. Further, a copy of Employee's CLDF was included with Agency's Answer at Tab 3.

Here, the record shows that Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.[43] The RIF notice states that Employee's position was eliminated as part of a RIF. The RIF notice also provided Employee with information about her appeal rights. Further, Employee has not alleged that she did not receive thirty (30) days notice prior to the effective date of the RIF. Accordingly, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

Grievances

Employee also refutes comments in her CLDF that she has poor classroom management and poor use of instructional time. Complaints of this nature, regarding an Employee's work duties are considered grievances and do not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

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[41] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[42] *See Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).
[43] Agency Answer, Tab 4 (December 31, 2009).

CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after she properly received one round of lateral competition and was given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

ORDER

It is hereby **ORDERED** that Agency's action of abolishing Employee's position through a Reduction-In-Force is **UPHELD**

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.
Administrative Judge