

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
KARON V. FOSTER)	OEA Matter No. 1601-0133-08
Employee)	
)	
v.)	Date of Issuance: December 24, 2008
)	
DISTRICT OF COLUMBIA)	Rohulamin Quander, Esq.
PUBLIC SCHOOLS)	Senior Administrative Judge
Agency)	

Karon V. Foster, *pro se*
Harriet Segar, Esq., Agency Rep.

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On July 31, 2008, Employee, a Teacher’s Assistant in Agency’s Instructional Paraprofessional group, with the D.C. Public Schools (the “Agency”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (the “Office” or “OEA”), challenging Agency’s final decision, effective August 1, 2008, which advised Employee that Michelle A. Rhee, Chancellor, had elected to terminate the Employee from her position, due to a noncompliance with the position’s qualification requirements as outlined in the *No Child Left Behind Act of 2001* (“NCLB”). Agency was notified on August 5, 2008, of Employee’s having filed an appeal with the Office, and filed an answer to the appeal on September 5, 2008.

Agency requested that Employee’s appeal be dismissed, asserting that Employee, despite being fully aware of the deadline date to become “highly qualified” for her position, pursuant to D.C. Board of Education Rule 1309.2, still failed to meet the June 30, 2008, mandated deadline to complete the required standards to qualify as an instructional paraprofessional. Agency asserted that the Office lacked jurisdiction to consider Employee’s appeal, as the effect of Employee’s failure to meet the credentials standards, likewise caused her to remain in an “at will” job status. Further, because Employee had been employed for about 10 months, beginning in September 2007, she

was still serving in a probationary period, an additional employment status that further rendered her ineligible for consideration by the Office, which only has jurisdiction over permanent status employees. Employee left the Agency in good standing, and would be eligible for consideration as a new hire, when her credentials are in order.

Therefore, Employee never achieved permanent status with the Agency, and could not, so long as she was not in compliance with the credential standards required by NCLB. Agency underscored that this Office has previously held that it lacks jurisdiction to hear appeals of employees who fail to finalize their teaching credentials, as such employees likewise have failed to attain permanent status when they lack the requisite teaching license. See *Wright v. DCPS*, OEA Matter No. 1601-0127-06, January 22, 2007. “An unlicensed employee serves in an ‘at will’ capacity, subject to the discretion of the approving authority regarding whether the employee qualifies for continuous employment.” As an at will employee, OEA has previously determined that such an employee, “could be removed from her position for any reason or no reason at all.” *Id.*, citing *Cottman v. DCPS*, OEA Matter No. J-0021-92, *Opinion and Order on Petition for Review*, (July 10, 1995).

In response, Employee asserted that she has steadfastly and in good faith moved towards becoming fully credentialed, including taking the Parapro examination on one occasion, earning a score of 438, slightly lower than a passing score of 461. As well, she is also taking courses towards earning her associates degree. Employee argued that the accumulated results of her efforts should be benefited by this administrative judge finding a way to order that she be reinstated to her job.

JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code*, § 1-606.03 (2001), has not been established.

ISSUE

Whether OEA has jurisdiction to consider this matter.

ANALYSIS AND CONCLUSION

Agency has taken the position that, although Employee was a valued individual, and provided a needed service for the benefit of the children of the District of Columbia, due to the legal mandates of NCLB, Employee had to be terminated. Michelle Rhee, the Chancellor of the Agency, extended the deadline for one additional year, from June 30, 2007, to June 30, 2008, to allow a greater number of the paraprofessional educational assistants to become “highly qualified,” as required by NCLB. Employee, despite her attempt to pass the qualifying examination, did not manage to attain the passing grade on the Parapro test.

Further, although she has taken some courses, she still lacks an associate degree,

which is accepted as a suitable alternative to taking and passing the Parapro test. As such, her existing credentials remain insufficient, and she still does not yet qualify to serve as an Instructional Assistant. Further, in addition to be “at will” at the time of her termination, she was also still in her probationary status, having been employed for only 10 months. However, she was in good standing at the time of her termination, and would be eligible to reapply for her old position, if a position(s) was available, and her credentials matched the Agency’s needs at the time.

Agency renewed its motion that the matter be dismissed for lack of jurisdiction, owing to Employee’s remaining in an “at will” category, due to her lack of mandated educational credentials, and further due to the probationary employee status that was in effect at the time of her termination.

Having assessed this case against the mandates of NCLB and the Agency’s efforts to come into full compliance with the Act, I conclude that Employee was in an “at will” status. Prior to being terminated, she had not yet attained the mandated credentials to be certified by the Agency as “highly qualified.” I further conclude that, having served in her position for only 10 months, she was likewise in a probationary job status. It is long established that this Office has no jurisdiction over either at will or probationary status employees. For that reason, this petition for appeal must be dismissed.

ORDER

The matter having been considered, it is hereby,

ORDERED that Agency’s Motion to Dismiss the Petition is GRANTED: and it is

FURTHER ORDERED, that Employee Petition is hereby DISMISSED.

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FOR THE OFFICE:

ROHULAMIN QUANDER, ESQ.
Senior Administrative Judge