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

In the Matter of:	)	
	)	
ROBERT RICHARDS,	)	
Employee	)	OEA Matter No. 1601-0145-11
	)	
v.	)	Date of Issuance: June 21, 2013
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	
	)	

Robert Richards, Employee *Pro Se*  
Carl Turpin, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 25, 2011, Robert Richards (“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 him from his position as a Social Studies Teacher at Cardozo High School effective August 12, 2011. Employee was terminated for receiving a ‘Minimally Effective’ rating under the IMPACT Performance Assessment System for the 2009-2010, and 2010-2011 school years. On September 12, 2011, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter in April, 2013. Thereafter, I issued an Order dated April 8, 2013, requiring the parties to attend a Status Conference for May 8, 2013. Both parties attended the Status Conference. During the Status Conference, Employee noted that he retired prior to the effective date of his termination. On May 9, 2013, I issued a Post Status Conference Order wherein, Employee was required to submit a brief addressing the jurisdiction issue raised during the Status Conference. Employee’s brief was due on June 5, 2013. Following Employee’s failure to submit his brief by the required deadline, on June 10, 2013, 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 submit a response to the May 9, 2013 Order on or before June 19, 2013. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

## JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

## 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 621.1 grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “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.<sup>1</sup> 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.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.<sup>2</sup> Here, Employee was warned in the May 9, 2013, and June 10, 2013, Orders that failure to comply

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<sup>1</sup> *Id.* at 621.3.

<sup>2</sup> *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

could result in sanctions, including dismissal. Employee did not provide a written response to either Order. Both were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office; therefore, the matter should be dismissed for his failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is dismissed for Employee's failure to prosecute his appeal.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge