

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TRINA ADAMS,)	
Employee)	OEA Matter No. 1601-0048-19
)	
v.)	Date of Issuance: July 30, 2019
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	MONICA DOHNJI, ESQ.
Agency)	Senior Administrative Judge
_____)	
Trina Adams, Employee, <i>Pro Se</i>)	
Kevin Stokes, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 3, 2019, Trina Adams (“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”) decision to terminate her from her position as a Bus Driver, effective January 25, 2019. Agency filed its Motion to Dismiss on May 7, 2019, stating that Employee’s Petition for Appeal was untimely filed with OEA. As such, the appeal should be dismissed for lack of jurisdiction.

I was assigned this matter in June of 2019. Thereafter, I issued an Order on June 12, 2019, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss. Employee’s brief on jurisdiction was due on or before July 2, 2019. Employee did not comply with the June 12, 2019, Order. Subsequently, on July 15, 2019, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the June 12, 2019 Order.¹ Employee’s response was due on or before July 25, 2019. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

¹ On July 15, 2019, Agency filed a Renewed Motion to Dismiss for lack of jurisdiction.

JURISDICTION

The jurisdiction of this Office, pursuant to D.C. Official Code § 1-606.03 (2001), 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 621.3, 59 DCR 2129 (March 16, 2012) 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.² 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* (emphasis added); 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.³ Here, Employee was warned in the June 12, 2019, and July 15, 2019, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to

² OEA Rule 621.3.

³ *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).

these Orders. These were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute her 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, this matter should be dismissed for her failure to prosecute.

ORDER

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute her Appeal.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge