

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:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No. 1601-0032-25
v.	)	
D.C. PUBLIC SCHOOLS,	)	Date of Issuance: January 29, 2026
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Teacher with the D.C. Public Schools (“Agency”). On February 6, 2025, Agency issued a Notice of Termination, charging her with violating 5-E D.C. Municipal Regulations (“DCMR”) §§ 1401.2(j) – willful disobedience, 1401.2(e) – insubordination, and 1401.2(v) – other conduct during outside of duty hours that would affect adversely the employee’s or the agency’s ability to perform effectively. The facts which formed the basis of this appeal stemmed from an incident wherein Employee allegedly disregarded a direct order to refrain from sending emails regarding a verbal altercation with a co-worker. According to Agency, Employee emailed the Chancellor’s office, other Agency employees, and a pastor offering a \$5,000 reward for any witness to come forward regarding the incident. Employee’s termination became effective

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

on February 24, 2025.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on March 25, 2025. She alleged that she was wrongfully terminated in retaliation for her role as a whistleblower. Employee claimed that she did not engage in insubordination because she complied with Agency’s instructions. As a result, she requested that she receive compensation for damages.³

On April 25, 2025, Agency filed a Motion to Dismiss and Answer to the Petition for Appeal. Agency asserted that Employee’s actions were in direct violation of the directive of the principal to refrain from sending emails. Additionally, it contended that because Employee was still within her probationary period, she was precluded from filing an appeal with OEA.⁴ Agency provided that OEA lacked jurisdiction over probationary employees; therefore, it requested that Employee’s petition be dismissed.⁵

The OEA Administrative Judge (“AJ”) issued an order requesting that the parties submit briefs on OEA’s jurisdiction.⁶ On July 3, 2025, Employee filed her brief asserting that she was not a probationary employee at the time of termination. She argued that she had been a substitute teacher with Agency since March of 2012, and she was promoted to a Special Education Teacher on August 11, 2024. Employee also noted that her offer letter did not indicate that she was a probationary employee but, rather, was a permanent employee.⁷

Agency filed its Response to Employee’s Brief on Jurisdiction on July 17, 2025. It asserted that Employee was a probationary employee at the time she was terminated. Agency reiterated that

² *Petition for Appeal*, p.7 (March 25, 2025).

³ *Id.*, 2-6.

⁴ Agency provided that Employee was hired on August 12, 2024, and she was terminated effective February 24, 2025. Therefore, she was still within her probationary period.

⁵ *District of Columbia Public Schools’ Motion to Dismiss and Answer*, p. 1-5 (April 25, 2025).

⁶ *Post Pre-hearing Conference Order/Order for Briefs on Jurisdiction* (June 4, 2025).

⁷ *[Employee’s] Motion to Deny District of Columbia Public Schools’ Motion to Dismiss and Answer*, p. 1-3 (July 3, 2025).

Employee began her employment with Agency on August 12, 2024, and her employment was terminated effective February 24, 2025. Thus, it opined that the matter should be dismissed for lack of jurisdiction.⁸ Employee filed a supplemental statement to Agency's Response highlighting that she never received a copy of the District Personnel Manual nor was she informed that she was required to serve a probationary period.⁹

On August 19, 2025, the AJ issued an Initial Decision. She held that pursuant to District Personnel Manual ("DPM") § 814.3, an employee's termination during a probationary period is not appealable to OEA. Additionally, the AJ opined that in accordance with 5-E DCMR § 1307.1, "an employee initially entering or transferring into the Educational service shall meet certification requirements of the Board of the Education and serve a probationary period." Moreover, she noted that § 1307.2 provides that "[a]n initial appointee to the EG salary class, except those appointed to classroom teaching positions, shall serve a one (1) year probationary period. Appointees to EG teaching positions shall serve a probationary period of two (2) years." Thus, she held that Employee was subject to a probationary period. The AJ ruled that because a termination during a probation period is not appealable or grievable to OEA, the matter was dismissed for lack of jurisdiction.¹⁰

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on September 16, 2025. In her petition, she asserts that the Initial Decision was based on an erroneous interpretation of the law and failed to consider material evidence. Specifically, Employee contends that she was unaware that she was in a probationary status and claims that she was a permanent employee. Accordingly, she requests that the Board grant her petition for

⁸ *District of Columbia Public Schools' Response to Employee's Brief on Jurisdiction* (July 17, 2025).

⁹ *[Employee's] Motion to Add a Supplemental Brief/Statement to D.C. Public Schools' Agency Response Dated on July 17, 2025* (July 28, 2025).

¹⁰ *Initial Decision*, p. 5-7 (August 19, 2025).

review.¹¹

D.C. Code § 1-606.03 (a) and DPM § 604.1 provide the parameters of OEA’s jurisdiction. The statute and regulation outline that a District of Columbia government employee may appeal a final agency decision affecting:

- a. A performance rating which results in removal of the employee;
- b. An adverse action for cause which results in removal;
- c. A reduction in grade;
- d. A suspension for ten (10) days or more;
- e. A reduction-in-force; or
- f. A placement on enforced leave for ten (10) days or more.

Moreover, DPM § 631.2 provides that “. . . for appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction ”

As it specifically relates to D.C. Public Schools Educational Service employees, 5-E DCMR § 1307.1 provides that “an employee . . . shall . . . serve a probationary period.” 5-E DCMR § 1307.6 goes on to outline that “failure to satisfactorily complete the requirements of the probationary period shall result in termination from the position.” OEA has consistently held that it does not have jurisdiction over probationary employees.¹² Employee argues that she received communication indicating that she was a permanent employee and that she had no knowledge that she was classified as a probationary employee. According to Employee, she relied on Agency’s communication to show that she was in a permanent status and that she cannot be retroactively

¹¹ *Petition for Review of Initial Decision*, p. 1-3 (September 16, 2025).

¹² *Destinee Robinson v. Metropolitan Police Department*, OEA Matter No. 1601-0044-16 (September 18, 2017); *Stevenson Wachira v. University of the District of Columbia*, OEA Matter No. J-0055-16 (January 5, 2017); *Stephanie Huey v. D.C. Public Schools*, OEA Matter No. 1601-0113-15 (November 2, 2015); *Nina Wilson v. D.C. Public Schools*, OEA Matter No. 1601-0364-10 (October 19, 2012); *Elliott Duvall v. Department of Youth Rehabilitation Services*, OEA Matter No. J-0008-06 (January 24, 2006); *Delilah Edwards v. D.C. Public Schools*, OEA Matter No. 2401-0106-04 (March 14, 2005); *Sarah E. Simmons v. D.C. Public Schools*, OEA Matter No. 2401-0169-04 (May 18, 2005); *Kemmeth R. Thau v. D.C. Child and Family Services*, OEA Matter No. 1601-0050-99, Opinion and Order on Petition for Review (October 15, 2003); and *Iris Stanton v. Department of Human Services*, OEA Matter No. J-0008-04 (November 21, 2003).

reclassified as probationary.¹³

However, OEA has relied on guidance on this issue from our federal counterpart, the Merit Systems Protection Board (“MSPB”). The United States Court of Appeals considered several cases where employees asserted that they were misled into accepting their positions and did not receive notice of their probationary periods. In each case, the Court held that a government employee's status is statutory and not contractual.¹⁴ Accordingly, MSPB has only the jurisdiction conferred on it by statute. The Court reasoned that this jurisdiction creates the power of the MSPB to hear and decide a case and that without jurisdiction, the Board's decision on the merits of a petition is a nullity.¹⁵ Additionally, the Court ruled that MSPB’s jurisdiction could not be derived from government misconduct in an initial employment decision, and to do so would improperly broaden the scope of MSPB’s authority.¹⁶ It emphasized that a misstatement by the government cannot confer jurisdiction on the MSPB where, by law, there is none.¹⁷

In accordance with the above-mentioned United States Court of Appeals rulings, OEA held in *Iris Stanton v. Department of Human Services*, OEA Matter No. J-0008-04 (November 21, 2003), that the terms of employment are established by the relevant law and that the failure of an Agency to inform an employee that the position they occupy is probationary, does not change the nature of the position. The AJ went on to find that if the law provides for a probationary period, then the employee must serve one.

¹³ *Petition for Review of Initial Decision*, p. 2-3 (September 16, 2025).

¹⁴ *Weidel v. Department of Justice*, 230 F.3d 1380 (9th Cir. 2000); *Bofill v. Merit Systems Protection Board*, 26 Fed.Appx. 916 (Fed.Cir.2001); and *Anderson v. Merit System Protection Agency*, 12 F.3d 1069 (9th Cir.1993).

¹⁵ *Dooley v. Department of Veterans Affairs*, 306 Fed.Appx. 594 (Fed.Cir.2009) and *Schmittling v. Department of Army*, 219 F.3d 1332 (Fed. Cir. 2000).

¹⁶ *Weidel v. Department of Justice*, 230 F.3d 1380 (Fed.Cir.2000) and *Anderson v. Merit Systems Protection Board*, 12 F.3d 1069 (Fed.Cir.1993).

¹⁷ *Bemus v. Merit Systems Protection Board*, 55 Fed.Appx. 936 (Fed.Cir.2003).

In the current case, Employee began employment with Agency on August 11, 2024.¹⁸ She was removed from her position on February 6, 2025.¹⁹ Given the six-month timeframe of her employment, Employee was still within her probationary period at the time she was terminated. As for Employee's argument that she was not informed of her probationary period, because OEA's jurisdiction is conferred on it by D.C. Code § 1-606.03(a) and not by Agency's assertions, or lack thereof, made in employment documents, we are unable to consider the merits of this appeal because we lack jurisdiction. Accordingly, we must deny Employee's Petition for Review.

¹⁸ *Petition for Appeal*, p. 17-18 (March 25, 2025).

¹⁹ *Id.* at 10.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.