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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0225-10
LINDA BAILEY,)	
Employee)	
)	Date of Issuance: June 5, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	STEPHANIE N. HARRIS, Esq.
_____)	Administrative Judge

Linda Bailey, Employee *Pro-Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 2, 2009, Linda Bailey (“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 a Math Teacher at Webb-Wheatley Education Campus (“Webb-Wheatley”). Employee was serving in Educational Service status at the time she was terminated.

I was assigned this matter on February 6, 2012. On February 15, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations (“February 15th Order”). Agency complied, but Employee did not respond to the February 15th Order. Accordingly, on March 30, 2012, I issued an Order for Statement of Good Cause (“March 30th Order”) wherein Employee was required to submit a statement explaining her failure to respond to the February 15th Order. Employee was also directed to submit her legal brief. Employee’s response was due on or before April 10, 2012. As of the date of this decision, the undersigned has not received a response from Employee regarding the aforementioned Orders. After reviewing the record, I have determined that there are no material facts in dispute and therefore a 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:

¹ See Agency's Answer, Tab 1 (January 7, 2010).

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.

(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 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

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.*

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 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.

Employee’s Position

In her Petition for Appeal, Employee requests an evidentiary hearing and alleges that she was targeted for the RIF due to her age and seniority.¹² Employee claims that she was “purposely sent to Wheatley Educational Center for the 2009-2010 [school year,] even though there was not a mathematics teaching position available.”¹³ She contends that by sending her to Webb-Wheatley, Agency failed to follow the procedures of D.C. Code § 1-624.08.¹⁴ Employee also states that she was not fairly assessed in her evaluation and that a younger, less qualified teacher was given a teaching position instead of her.¹⁵ Additionally, Employee claims that when she was sent to Webb-Wheatley, there was no budget deficit at Agency.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

⁸ *Id.*

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 Petition for Appeal (December 2, 2009).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Agency Brief at pp. 3-7 (March 7, 2012).

Agency further maintains that it utilized the proper competitive factors in implementing the RIF and, Employee, who was the lowest ranked Math Teacher, 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, Webb-Wheatley was identified as a competitive area, and math teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were four (4) math teacher positions subject to the RIF.²¹ Of the four positions, two (2) positions were identified to be abolished. Because Employee was not the only math 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. 4-5. 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 (January 7, 2010).

²⁰ *Id.*

²¹ Agency Brief, Exhibit A, Retention Register (March 7, 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 Competitive Level Documentation Form (“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 Webb-Wheatley 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. 4-5 (March 7, 2012).

²⁴ 821 F.2d 761 (D.C. Cir. 1987).

²⁵ *Id.*

Employee received a total of thirty-five (35) points on her CLDF and was therefore, ranked the lowest employee in her respective competitive level. Employee's CLDF stated in pertinent part, the following:

“Ms. Bailey does not have a strong rapport with our students. She is somewhat rigid and does not seem particularly interested in making connections with the kids. She resists working with some students in our middle school. She has not made a significant impact on the school this year and is fairly passive in terms of adding to the middle school team. Overall, she's had very little impact on this school year. Ms. Bailey attended supplemental training in order to learn how to use the new promethean boards. Her instruction is adequate.”²⁶

Employee received a total of four (4) points out of a possible ten (10) points in the category of Office or School Needs, which is weighted at 75% on the CLDF and includes: curriculum, specialized education, degrees, licenses or areas of expertise.²⁷ Employee received zero (0) points in the category of Relevant Significant Contributions, Accomplishments, or Performance, which is weighted at 10% on the CLDF. Additionally, Employee received zero (0) points in the category of Relevant Supplemental Professional Experiences as Demonstrated on the Job, which is weighted at 10% on the CLDF.

Employee contends that she was not fairly assessed in her evaluation. However, Employee has not provided any credible evidence that would bolster a score in any of the aforementioned categories completed by the principal of Webb-Wheatley. 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. Moreover, this Office cannot substitute its judgment for that of the principal at Webb-Wheatley, who was given discretion to complete Employee's CLDF and had wide latitude to invoke his managerial discretion. With respect to the aforementioned CLDF categories, I find that I will not substitute my judgment for that of the principal of Webb-Wheatley as it relates to the scores he accorded Employee and her colleagues in the instant matter.

The Length of Service 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. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee. Employee received a total of five (5) points, which is the maximum number of points that can be awarded in this category. Additionally, Agency has provided an affidavit from Peter Weber, who served as the Interim Director of Human Resources during the time of the instant RIF.²⁸ 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. Further, 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

²⁶ Agency Answer, Tab 3 (January 7, 2010).

²⁷ Agency Brief, Exhibit A, Retention Register (March 7, 2012).

²⁸ *Id.*, Exhibit B (March 7, 2012).

category.²⁹ Therefore, based on the evidence of record, I find that Agency properly calculated this number.

Moreover, 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. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*,³⁰ 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."³¹ According to the CLDF, Employee received a total score of thirty-five (35) points after all of the factors outlined above were tallied and scored. The lowest scoring math teacher in Employee's competitive level, who was retained in service, received a total score of sixty-two (62) points.³² 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.³³

The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.³⁴ 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."³⁵ Accordingly, I find that the principal of Webb-Wheatley had discretion in completing Employee's CLDF, as he 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).

Here, the record shows that Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.³⁶ The RIF notice states that Employee's position was

²⁹ *Id.*, Employee Personnel File.

³⁰ 109 F.3d 774 (D.C. Cir. 1997).

³¹ 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).

³² Agency Brief, Exhibit A, Retention Register (March 7, 2012).

³³ 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).

³⁴ 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).

³⁵ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

³⁶ Agency Answer, Tab 4 (January 7, 2010).

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.

Evidentiary Hearing

Employee has requested an evidentiary hearing in this matter. OEA Rule 619.2³⁷ states in part that an Administrative Judge (“AJ”) can “require an evidentiary hearing, if appropriate.” Additionally, OEA Rule 624.2 indicates that it is within the discretion of the AJ to either grant or deny a request for an evidentiary hearing based on whether or not the AJ believes that a hearing is necessary.³⁸ After reviewing the record, the undersigned has determined that there are no material facts in dispute and therefore, Employee’s request for an evidentiary hearing is denied.

Further, it appears that Employee’s basis for requesting an evidentiary hearing is to be afforded an opportunity to explore and undoubtedly dispute “...interpretations of their worth against [the] principals’ evaluations.”³⁹ While it is unfortunate that Agency had to release any employee as a result of budgetary constraints, there is nothing within the record to corroborate that the RIF was conducted unfairly.

Discrimination Claims

Employee alleges that she was a target of the instant RIF due to her age and seniority. D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights (“OHR”). Per this statute, the purpose of OHR is to “secure an end to unlawful discrimination in employment...for any reason other than that of individual merit.” Complaints classified as unlawful discrimination are described in the District of Columbia Human Right Act.⁴⁰ Additionally, District Personnel Manual (“DPM”) § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. Moreover, the Court in *Anjuwan*⁴¹ held that OEA’s authority over RIF matters is narrowly prescribed. This Court explained that OEA lacks the authority to determine broadly whether the RIF violated any law except whether “the Agency has incorrectly applied...the rules and regulations issued pursuant thereto.” This court further explained that OEA’s jurisdiction cannot exceed statutory authority and thereby, OEA’s authority in RIF cases is to “determine whether the RIF complied with the applicable District Personnel Statutes and Regulations dealing with RIFs.”⁴²

However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*⁴³ stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is “contending that he was targeted for whistleblowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional

³⁷ 59 DCR 2129 (March 16, 2012); *See also* OEA Rule 619.2, 59 DCR 2129 (March 16, 2012).

³⁸ *See Gray-Avent v. D.C. Department of Human Resources*, OEA Matter No. 2401-0145-08, *Opinion and Order on Petition for Review* (July 30, 2010).

³⁹ *Washington Teachers' Union* at 780.

⁴⁰ D.C. Code §§ 1-2501 *et seq.*

⁴¹ 729 A.2d 883 (December 11, 1998).

⁴² *See Gilmore v. Board of Trustees of the University of the District of Columbia*, 695 A.2d 1164, 1167 (D.C. 1997).

⁴³ 730 A.2d 164 (May 27, 1999).

purposes from an independent complaint of unlawful discrimination or retaliation...⁴⁴ Here, Employee's claims as described in her submissions to this Office do not allege any whistleblowing activities as defined under the Whistleblower Protection Act. Thus, I find that Employee's claims of age discrimination fall outside the scope of OEA's jurisdiction.

Lack of Budget Crisis and Grievances

Employee alleges that Agency was not facing a budget deficit. Employee further alleges that a less qualified teacher was given a teaching position. This Office has previously held that it lacks jurisdiction to entertain any post-RIF activity that may have occurred at an agency.⁴⁵ Further, in *Anjuwan*, the D.C. Court of Appeals ruled that OEA lacked authority to determine whether an Agency's RIF was bona fide.⁴⁶ The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement the RIF..."⁴⁷ The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds...[or] management decisions about which position should be abolished in implementing the RIF."⁴⁸

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services. In this case, how Agency elected to spend its funds on personnel services or how Agency elected to reorganize internally was a management decision, over which neither OEA nor this AJ has any control.⁴⁹

Employee also contends that she was purposely sent to Webb-Wheatley, despite there being no available math teaching positions. However, Employee has provided no credible evidence to support this contention, which renders it a generalized unsupported allegation. Further, the record shows that Employee position title was classified as Math Teacher during the instant RIF.⁵⁰ Employee has not contested this classification, which was also listed in her Petition for Appeal.⁵¹

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 hear Employee's other claims.

⁴⁴ *El-Amin*; citing *Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

⁴⁵ *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).

⁴⁶ 729 A.2d 883 (December 11, 1998).

⁴⁷ *Id.* at 885.

⁴⁸ *Id.*

⁴⁹ *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

⁵⁰ See Agency Brief, Exhibit A, Retention Register (March 7, 2012).

⁵¹ See Petition for Appeal at p. 2 (December 2, 2009).

Failure to Prosecute

Employee's failure to respond to the February 15th and March 30th Orders provides a basis to dismiss this petition. OEA Rule 621.3 grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice.⁵² The AJ may, in the exercise of sound discretion, dismiss the action if a party fails to take reasonable steps to prosecute or defend her appeal.⁵³ Moreover, this Office has held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.⁵⁴ Both the February 15th and March 30th Orders advised Employee of the consequences of not responding, including sanctions resulting in the dismissal of the matter. Employee's responses to these Orders were required for a proper resolution of this matter on the merits. Accordingly, the undersigned finds that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and this serves as an alternate ground for the dismissal of this matter.

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:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

⁵² 59 DCR 2129 (March 16, 2012).

⁵³ OEA Rule 621.2, 59 DCR 2129 (March 16, 2012).

⁵⁴ See OEA Rule 621.3(b)-(c); *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).