

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 1601-0054-16
SONJA NIXON,)	
Employee)	
)	Date of Issuance: February 17, 2017
v.)	
)	Arien P. Cannon, Esq.
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	Administrative Judge
Agency)	
)	
)	
)	

Sonja Nixon, Employee, *Pro se*
Nicole Dillard, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 10, 2016, Sonja Nixon (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to remove her from her position as a Special Education Teacher. This matter was assigned to the undersigned on October 4, 2016.

On December 21, 2016, an order was issued scheduling this matter for a Prehearing Conference on February 1, 2017. At Agency’s request, this matter was subsequently rescheduled for February 7, 2017. Agency’s representative was present; however, Employee failed to appear. A Show Cause Order was issued on the same date. Employee had until February 14, 2017, to respond to the Show Cause Order. To date, Employee has failed to respond. The record is now closed.

JURISDICTION

Jurisdiction of this Office is established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this matter should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “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.

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.²

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 628.2 provides that Employee has the burden of proof for establishing jurisdiction.³ Additionally, OEA Rule 621.3 provides that the Administrative Judge, 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. 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 (emphasis added);*
- (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.⁴

This Office has consistently held that failure to prosecute an appeal includes a failure to appear at a scheduled proceeding after receiving notice.⁵ Here, an Order was issued on December 21, 2016, which scheduled a Prehearing Conference for February 1, 2017. In an e-mail sent on January 3, 2017, by Agency’s representative, it sought to reschedule the February 1, 2016 Prehearing Conference. Unable to get in contact with Employee, Agency submitted three proposed dates to reschedule the Prehearing Conference. An order was issued on January 23, 2017, rescheduling the Prehearing Conference for February 7, 2017. Agency’s representative was present; however, Employee failed to appear. As such, a Show Cause order was issued the same day which required Employee to submit a statement for good cause for her failure to appear at the February 7, 2017 Prehearing Conference. Employee’s response to the Show Cause Order was due on or before February 14, 2017. To date, Employee has not responded to the Show Cause Order.

Accordingly, I find that Employee has not exercised the diligence expected of an

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ *Id.*

⁴ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

⁵ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute her appeal is a violation of OEA Rule 621. Thus, Employee's appeal must be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge