

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of: )  
 )  
LYDIA ROSENBORO ) OEA Matter No. 1601-0175-08  
 )  
Employee ) Date of Issuance: March 27, 2009  
 )  
v. ) Sheryl Sears, Esq.  
 ) Administrative Judge  
 )  
D.C. PUBLIC SCHOOLS )  
 )  
Agency )  
 )

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Lydia Rosenboro, Employee, *Pro Se*  
Harriet E. Segar, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND FINDINGS OF FACT

Lydia Rosenboro (“Employee”) was a Paraprofessional Teacher for the D.C. Public Schools (“Agency”). Agency removed her effective on August 12, 2008, for lack of proper credentials for her position. Agency acted in accordance with provisions of the *No Child Left Behind Act* of 2001. The Act is a federal law under which state and local governments are granted funding for education from kindergarten through high school. To qualify, a school district must comply with guidelines including strict licensure requirements for teachers.

Agency cited the District of Columbia Municipal Regulations (DCMR), which provides, in relevant portion, as follows:

**Section 1309.2**

An instructional paraprofessional who provides direct academic support to students or teachers shall:

- (a) Complete at least two (2) years of study at an institution of higher education; or
- (b) Obtain an associate’s (or higher) degree; or

(c) Meet a rigorous standard of quality and be able to demonstrate through a formal academic assessment;

(1) Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(2) Knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

#### **Section 1309.4**

The mandatory deadline for all instructional paraprofessionals employed by the D.C. Public Schools to meet the requirements stated in § 1309.2 shall be June 30, 2008.

According to the letter of notice issued to Employee by Michelle Rhee, Chancellor, D.C. Public Schools on July 25, 2008, Employee did not present Agency with documents indicating compliance with the requirements.

On September 17, 2008, Employee filed an appeal with the D.C. Office of Employee Appeals (“the Office”). Attached to her appeals form is a statement in which Employee acknowledges that she did not achieve test scores sufficient to demonstrate the instruction readiness that was required by Agency’s deadline. However, she urges that Agency should have considered her years of service and demonstrated ability to work with children rather than her test scores in determining whether to continue her employment.

This appeal presented no factual disputes that required resolution by a hearing. Therefore, none was convened. However, on March 4, 2009, this Judge issued an “Order For Employee to Show Cause Why This Appeal Should Not Be Dismissed for Lack of Jurisdiction.” The deadline for Employee’s submission was March 16, 2009.” The order advised, in bold lettering, as follows, “If Employee does not respond or cannot meet the deadline of proving that this Office has jurisdiction, the appeal must be dismissed.” To date, Employee has made no submission. This decision is based upon the record of documentary evidence and written legal arguments by the parties. The record is now closed.

#### **BURDEN OF PROOF**

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction . . .” Pursuant to OEA Rule 629.1, *id.*, the applicable standard of proof is by a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence as “[t]hat 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.” Employee must prove, by a preponderance of the evidence, that this Office has jurisdiction over his/her appeal.

#### **JURISDICTION**

For the reasons set forth in the “Analysis and Conclusion” section below, this Office does not have jurisdiction over Employee’s appeal.

### ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS

Chapter 16 of the District Personnel Manual (DPM) contains the rules and regulations that implement the law of employee discipline. Section 1600.1 of the DPM limits the application of those provisions to employees “of the District government *in the Career Service*.” (Emphasis added.) In accordance with §1601.1, no career service employee may be “officially reprimanded, suspended, reduced in grade, removed, or placed on enforced leave, except as provided in this chapter or in Chapter 24 [the provisions for conducting a reduction in force] of these regulations.”

Section 1601.1 of the District Personnel Manual (DPM) distinguishes career service employees from at will employees. It states that “[e]xcept as otherwise required by law, an employee not covered by §1600.1 is an *at will employee* and may be subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority.” (Emphasis added). An at will employee may be terminated at any time and “for any reason at all.” *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), \_\_\_ D.C. Reg. \_\_\_ ( ).

The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, “a final agency decision” effecting “an adverse action for cause that results in removal.” However, that review is only afforded to employees who have a right to challenge their removals. Employee was required to have certain credentials for her position. It is undisputed that, at the time of the separation, she did not have them. For that reason, instead of holding “career” status, she was an “at will” employee. As an at-will employee, she was subject to removal by the agency with no recourse. According to the applicable laws, rules and regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, this appeal must be dismissed.

### ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

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SHERYL SEARS, ESQ.