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**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:)	
)	OEA Matter No. 1601-0045-16
BYRON JONES,)	
Employee)	
)	Date of Issuance: December 6, 2016
v.)	
)	Michelle R. Harris, Esq.
OFFICE OF THE STATE)	Administrative Judge
SUPERINTENDENT OF EDUCATION,)	
Agency)	
Byron Jones, Employee, <i>Pro Se</i>)	
Hillary Hoffman-Peak, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On May 4 2016, Byron Jones (“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” or “OSSE”) decision to terminate him. On June 2, 2016, Agency filed its Answer to Employee’s Petition for Appeal. Following an unsuccessful attempt to resolve this matter through mediation, this matter was assigned to the undersigned Administrative Judge (“AJ”) on September 7, 2016.

On September 16, 2016, I issued an Order Convening a Prehearing Conference in this matter. The Prehearing Conference was scheduled for November 7, 2016. Additionally, the Order directed both parties to submit Prehearing Statements on or before October 31, 2016. Agency submitted its Prehearing Statement on October 31, 2016. Employee did not submit a Prehearing Statement. On November 7, 2016, Employee failed to appear for the Prehearing Conference. Consequently, on November 7, 2016, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit his Prehearing Statement, and a statement of good cause based on his failure to appear at the November 7, 2016 Prehearing Conference. Employee had until November 28, 2016, to respond. To date, Employee has not responded to either Order. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

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 states in relevant part 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;*
- (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.”*¹

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings and submit required documents after being provided with a deadline to comply with such orders.² In the instant matter, Employee was provided notice in both the September 16, 2016, and November 7, 2016 Orders that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal.³ Employee’s appearance for scheduled proceedings, and responses to each of these Orders were required to ensure an appropriate review and resolution of the matter. Accordingly, I find that

¹ OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

² *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).

³ The Order for Statement of Good Cause was also sent to an address that was located in the record from a previous OEA sign-in sheet, despite Employee never sending any official notice of an address change.

Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should 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:

MICHELLE R. HARRIS, Esq.
Administrative Judge