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

In the Matter of:	)	
	)	
QUIANA GREENE,	)	
Employee	)	OEA Matter No. 1601-0045-13
	)	
v.	)	Date of Issuance: May 7, 2014
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF EDUCATION,	)	
Agency	)	MONICA DOHNJI, Esq.
	)	Administrative Judge

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Quiana Greene, Employee *Pro Se*  
Hillary Hoffman-Peak, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 15, 2013, Quiana Greene (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“OSSE” or “Agency”) decision to terminate her from her position as a Bus Attendant effective December 12, 2012. Following an Agency investigation, Employee was charged with Neglect of Duty: failure to carry out assigned tasks as well as careless or negligent work habits, in accordance with Section 1603.3(f)(3) of the District Personnel Manual (“DPM”)¹. On February 15, 2013, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on February 24, 2014. Thereafter, I issued an Order requiring the parties to submit written briefs addressing whether Employee was terminated for cause, and in accordance with District of Columbia statutes, regulations and laws. The parties were also required to address whether the penalty of termination was appropriate. Both parties complied. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing was not required. The record is now closed.

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¹ Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include: Neglect of duty.

## JURISDICTION

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

## ISSUES

- 1) Whether Agency's action of terminating Employee was done for cause; and
- 2) Whether the penalty of removal is within the range allowed by law, rules, or regulations.

## FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

According to the record, Employee was a Bus Attendant with Agency. On November 27, 2012, Employee left a three (3) year old student on the bus from 7:35 am to 2:05 pm. Thereafter, an internal investigation was conducted wherein, Employee admitted to leaving the student on the bus.<sup>2</sup> On November 27, 2012, Employee was served with a fifteen (15) day advance written notice of proposed removal for violating DPM §1603.3(f)(3) and §703.3(13) of the DOT policies and procedures manual. On December 12, 2012, Agency issued its final agency decision terminating Employee from her position as a Bus Attendant.

### **Employee's Position**

Employee does not dispute the charge or the specification levied against her. Instead, Employee apologizes for the incident and explains that she "...had a terrible day at work, when my driver and I overlooked a child still on the bus."<sup>3</sup> Employee further notes that "I accept the fact that the day of the accident was terrible, but for six years I was a good employee and nothing like this will ever happen again."<sup>4</sup>

### **Agency's Position**

Agency submits that in accordance with § 703.3(13) of the DOT policies and procedures manual, leaving a student unattended on a bus constitutes dereliction of duty and is grounds for disciplinary action. Agency explains that, Employee's action was substantiated through Employee's signed statement, as well as an internal investigation which revealed that Employee failed to adhere to OSSE policies pertaining to delivering the student to the appropriate custodian at school. Agency submits that, the duties of a Bus Attendant include, but are not limited to delivering children to the designated party, both at school and at home; and visually checking the entire bus to ensure that all students have exited the bus. Additionally, Agency notes that Bus Attendants are required to conduct a post-trip vehicle inspection. Consequently, Agency concludes that failing to leave a student in the care of a designated recipient and leaving a

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<sup>2</sup> Agency's Answer at Exhibit F (February 15, 2013).

<sup>3</sup> Employee's Brief (April 3, 2014).

<sup>4</sup> Petition for Appeal (January 15, 2013).

student on a bus unattended as Employee did on November 27, 2012, constitutes neglect of duty.<sup>5</sup>

**1) *Whether Employee's actions constituted cause for discipline***

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, DPM § 1603.2 provides that disciplinary action against an employee may only be taken for cause. Under DPM §1603.3(f)(3), the definition of “cause” includes [a]ny on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include, neglect of duty. Employee’s removal from her position at Agency was based upon a determination by Agency that Employee neglected her duties when she failed to leave the student in the care of a designated recipient and instead left the student on a bus unattended on November 27, 2012.

Neglect of duty includes, but is not limited to failure to carry out assigned tasks; careless or negligent work habits.<sup>6</sup> Employee does not dispute Agency’s statement that as a Bus Attendant, her duties included delivering children to the designated party, both at school and at home, visually checking the entire bus to ensure that all students have exited the bus, and conducting a post-trip vehicle inspection. Employee admitted in a statement dated November 27, 2012, in her Petition for Appeal, as well as her Brief that she and the driver overlooked a child still on the bus. Consequently, I find that Employee’s action constitutes neglect of duty. And based on Employee’s own admission, I conclude that Agency had cause to institute this cause of action against Employee.

**2) *Whether the penalty of removal is within the range allowed by law, rules, or regulations.***

In determining the appropriateness of an agency’s penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).<sup>7</sup> According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. In the instant case, I find that Agency has met its burden of proof for the charge of “[a]ny on-duty act or employment-related

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<sup>5</sup> Agency’s Brief (February 15, 2013).

<sup>6</sup> DPM §1619.1(6)(c).

<sup>7</sup> See also *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

act or omission that interfered with the efficiency and integrity of government operations: Neglect of Duty”, and as such, Agency can rely on this charge in disciplining Employee.

In reviewing Agency’s decision to terminate Employee, OEA may look to the Table of Appropriate Penalties. Chapter 16 of the DPM outlines the Table of Penalties for various causes of adverse actions taken against District government employees. The penalty for “[a]ny on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Neglect of Duty” is found in § 1619.1(6)(c) of the DPM. The penalty for a first offense for Neglect of duty is reprimand to removal. The record shows that this was the first time Employee violated §1619.1(6)(c). Employee admits to leaving a student in the bus. Employee’s conduct constitutes an on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations and it is consistent with the language of § 1619.1(6)(c) of the DPM. Therefore I find that, by terminating Employee, Agency did not abuse its discretion.

As provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.<sup>8</sup> When an Agency's charge is upheld, this Office has held that it will leave the agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. I find that the penalty of removal was within the range allowed by law. Accordingly, Agency was within its authority to remove Employee given the Table of Penalties.

### ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge

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<sup>8</sup> *Love* also provided that “[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.” citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981).