

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
WENDY LUGO	)	OEA Matter No. J-0088-08
Employee	)	
	)	Date of Issuance: September 5, 2008
v.	)	
	)	Sheryl Sears, Esq.
	)	Administrative Judge
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS	)	
Agency	)	

Wendy Lugo, Employee *Pro Se*  
Harriet E. Segar, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND FINDINGS OF FACT

Wendy Lugo (“Employee”) is a Teacher at the Oyster School. On June 5, 2008, Employee filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) challenging the decision of the District of Columbia Public Schools (“DCPS” or “Agency”) to suspend her for three days effective from June 10 through June 12, 2008. Agency cited D.C. Municipal Regulation 5, §1401.2 (b) in charging Employee with “[g]rave misconduct in the office” and (n) “[d]iscourteous treatment of the public, supervisor or other employees.” Agency alleged that, during the week of December 10 through December 15, 2007, Employee “demonstrated a fit of anger and conveyed insults to the students.”

JURISDICTION

The jurisdiction of this Office is established by D.C. Official Code § 1-606.03 (2001). However, as will be explained in detail below, the Office does not have jurisdiction over the instant appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS

OEA Rule 629.1, 46 D.C. Reg. at 9317, provides that the burden of proof with regard to material issues of fact presented by appeals before this Office is a “preponderance of the evidence.” Preponderance of the evidence is defined as “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.” In accordance with OEA Rule 629.2, *id.*, “the employee shall have the burden of proof as to issues of jurisdiction. . .” Therefore, it is the burden of the appellant to show that this Office has jurisdiction over her appeal.

D.C. Official Code § 1-606.03 (2001), establishes the jurisdiction of this Office as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . an adverse action for cause that results in removal, reduction in grade, or *suspension for 10 days or more* . . . or a reduction in force [RIF] . . . (Emphasis added.)

According to the letter issued by Agency entitled “notice of suspension,” Employee was suspended for three days. However, this Office, in accordance with the above statutory provision, only has the authority to review a suspension of ten days or more. It is outside of the authority of this Office to review the instant matter. For that reason, this appeal must be dismissed for lack of jurisdiction.

### ORDER

It is hereby ORDERED that Employee’s petition for appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:                      SHERYL SEARS, ESQ., ADMINISTRATIVE JUDGE