

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
THERESA AVILES-RODRIGUEZ,	)	OEA Matter No. J-0261-12
Employee	)	
	)	Date of Issuance: April 15, 2014
v.	)	
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Theresa Aviles-Rodriguez (“Employee”) worked as a teacher with D.C. Public Schools (“Agency”). According to Agency, during the 2010 - 2011 and 2011- 2012 IMPACT evaluation periods, Employee was observed on five separate occasions and ultimately rated “Minimally Effective” for both periods. Consequently, she was removed from her position effective August 10, 2012.<sup>1</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 17, 2012. She asserted that her scores were low because although she was a Spanish teacher, her evaluation was performed by a Master Educator who spoke a different Spanish dialect; she was assigned to teach pre-k, for which she was not certified; she did not receive adequate training for the new curriculum; she had medical issues which hindered her from taking

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<sup>1</sup> *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, p. 2 (October 22, 2012).

the stairs to her third floor classroom; and she believed she was targeted because of her age.<sup>2</sup>

Agency filed its response to Employee's petition on October 22, 2012. It contended that under IMPACT, each employee was evaluated on their teaching and learning framework; teacher-assessed student achievement data; commitment to the school community; and school value-added student achievement data. In accordance with the IMPACT procedures, because Employee received scores of "Minimally Effective" for two consecutive years, she was terminated.<sup>3</sup>

The OEA Administrative Judge ("AJ") issued her Initial Decision in this matter on December 19, 2012. She held that D.C. Municipal Regulations ("DCMR") § 604.2 established that Employee should have filed her appeal within thirty calendar days of the effective date of Agency's action. The AJ found that Employee received notice of her termination on July 27, 2012. The effective date of the action was August 10, 2012. She alleged that Employee did not file her Petition for Appeal with OEA until September 17, 2012, which was beyond the thirty-day period. Because Employee's petition was untimely filed, the AJ dismissed the case for lack of jurisdiction.<sup>4</sup>

On January 18, 2013, Employee filed a Petition for Review with the OEA Board. She asserts that, contrary to the AJ's holding, her Petition for Appeal was timely filed.<sup>5</sup> On February 4, 2013, Employee submitted a copy of a certified receipt as evidence that her appeal was sent to OEA. The receipt is addressed to the "Office of Employee Appeals, 1100 4<sup>th</sup> Street, SW (East Bldg) Suite 620E, Washington, DC 20024."<sup>6</sup>

OEA was given statutory authority to address this appeal in D.C. Official Code §1-

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<sup>2</sup> *Petition for Appeal*, p. 5 (September 17, 2012).

<sup>3</sup> *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, p. 2-4 (October 22, 2012).

<sup>4</sup> *Initial Decision*, p. 2 (December 19, 2012).

<sup>5</sup> *Petition for Review* (January 18, 2013).

<sup>6</sup> *Supplement to Petition for Review* (February 4, 2013).

606.03(a). This statute provides that:

An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

Moreover, OEA Rule 604.2 provides that “an appeal . . . must be filed within thirty (30) calendar days of the effective date of the appealed agency action.” As the AJ provided, Employee received notice of her termination on July 27, 2012. The effective date of the action was August 10, 2012.<sup>7</sup> Therefore, in accordance with the D.C. Official Code and OEA Rule, Employee had until September 9, 2012, to file her appeal with OEA. September 9, 2012, was a Sunday. Thus, in accordance with OEA Rule 603.1, Employee had until September 10, 2012 to file her appeal.<sup>8</sup>

The proof offered by Employee only establishes that her Petition for Appeal was mailed on September 10, 2012, with an expected delivery date of September 12, 2012.<sup>9</sup> On its face, even Employee’s proof does not show that she actually filed the appeal within the required 30-day deadline. Moreover, OEA has relied on the Superior Court for the District of Columbia holding in *Nursat Aygen v. D.C. Office of Employee Appeals*, 2009 CA 006528 P(MPA) and 2009 CA 008063 P(MPA) (D.C. Super. Ct. April 5, 2012), which held that a document mailed by

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<sup>7</sup> Although there is no record of Agency’s final decision for Employee in the record, Employee concedes in her Petition for Appeal that the effective date of Agency’s action was August 10, 2012. *Petition for Appeal*, p. 2 (September 17, 2012). The final Agency decision that was provided in Agency’s Answer to Employee’s Petition for Appeal actually belongs to another Employee. *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, Tab #2 (October 22, 2012). In accordance with OEA Rules 604.1 and 608.2(e), Employee is responsible for providing a copy of the final Agency decision with her Petition for Appeal. Because Employee failed to comply with the requirement, her appeal could be dismissed on this basis alone.

<sup>8</sup> OEA Rule 603.1 provides that “. . . for calendar days, if the last day of the time period is a Saturday, Sunday, or legal holiday, the period shall be extended by the end of the next business day.”

<sup>9</sup> *Supplement to Petition for Review*, p. 2 (February 4, 2013).

certified or registered mail, *return receipt requested*, is adequate evidence to prove that the document was indeed mailed and received (emphasis added).<sup>10</sup>

In response to the AJ's October 15, 2012 Order on Jurisdiction, Employee submitted a copy of the returned receipt to her September 10, 2012 mailing. The receipt is signed by an OEA employee and lists the delivery date as September 17, 2012.<sup>11</sup> The receipt was stamped by the United States Post Office on September 18, 2012. In accordance with OEA Rule 607.3, "the date of filing *shall* be the date the Office time stamps on the document (emphasis added)." Per *Aygen*, the returned receipt is evidence to prove that the document was mailed and received. Therefore, the AJ's holding that Employee's appeal was filed on September 17, 2012, was proper. This is seven days beyond the statutory thirty-day deadline. Therefore, we must uphold the Initial Decision in this matter. Accordingly, Employee's Petition for Review is DENIED.

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<sup>10</sup> *Belinda Bryant v. D.C. Public Schools*, OEA Matter No. 2401-0256-10, *Opinion and Order on Petition for Review* (October 29, 2013) and *Charlotte Clipper v. D.C. National Guard*, OEA Matter No. 1601-0125-11, *Opinion and Order on Petition for Review* (February 5, 2013).

<sup>11</sup> This is consistent with the OEA date stamp on Employee's Petition for Appeal.

**ORDER**

Accordingly, it is **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.