Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. 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:	)
EMPLOYEE, <sup>1</sup>	OEA Matter No.: 1601-0056-24
Employee	) Date of Issuance: November 25, 2024
v.	
D.C. PUBLIC SCHOOLS,	) NATIYA CURTIS, Esq.
Agency	) Administrative Judge
Employee, Pro Se	,
Angel Cox, Esq., Agency Representative	

### **INITIAL DECISION**

## **INTRODUCTION AND PROCEDURAL HISTORY**

On June 11, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to terminate him from his position as a Behavior Technician, effective May 23, 2024. The removal action was for Corporal Punishment, pursuant to 5-E DCMR Section 2403.1.<sup>2</sup> OEA issued a letter dated June 11, 2024, requesting Agency file an Answer on or before July 11, 2024. Agency filed its Answer to Employee's Petition for Appeal as required. This matter was assigned to the undersigned Administrative Judge on July 11, 2024. On July 15, 2024, I issued an Order Convening a Prehearing Conference for August 13, 2024. The parties appeared for the Prehearing Conference as required. During that conference, the undersigned determined that briefs were required. As a result, on August 14, 2024, I issued a Post Prehearing Conference Order, requiring the parties to submit briefs addressing the issues in the matter. Agency's brief was due by September 10, 2024. Employee's brief was due by October 8, 2024. Agency submitted it's brief as required. Employee failed to submit his brief as required.

As a result, on October 18, 2024, I issued an Order for Statement of Good Cause, requiring Employee to submit his brief along with a statement of good cause for his failure to submit a response by the deadline required in the August 14, 2024, Order. Employee's brief and statement of good cause was due by November 4, 2024. Employee did not submit

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<sup>&</sup>lt;sup>1</sup> Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

<sup>&</sup>lt;sup>2</sup> Agency's Answer to Employee's Petition for Appeal (July 11, 2024).

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his statement and brief as required. On November 15, 2024, I emailed the parties a courtesy copy of the Order for Statement of Good Cause and noted that I was confirming whether the parties received the Order. Employee did not respond to this email. On November 18, 2024, Agency confirmed that it was in receipt of the Order for Statement of Good Cause, but had not received Employee's statement or brief. As of the date of this decision, Employee has not responded to Order issued on October 18, 2024. 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 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for 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 631.2 id. states:

For Appeals filed under § 604.1, 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 624.3, DCMR Ch. 600, et seq (December 27, 2021) grants an Administrative Judge the authority to "...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.

This Office has consistently held that a matter may be dismissed for failure to prosecute when a party fails to appear for scheduled proceedings or fails to submit required documents.<sup>3</sup> Here, Employee was warned in the Order for Statement of Good Cause issued on October 18, 2024, that failure to comply with the Order could result in sanctions, including dismissal. As of the date of this decision, Employee has not responded or provided a written response to the October 18, 2024, Order. Employee's response was required to make an informed decision regarding the resolution of this matter. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office, and Employee's inaction presents a valid basis for dismissing this matter. Consequently, I further find that this matter should be dismissed for failure to prosecute.

#### **ORDER**

It is hereby **ORDERED** that this matter be **DISMISSED** for Employee's failure to prosecute his Appeal.

FOR THE OFFICE:

/s/ Natiya Curtis
Natiya Curtis Esq.
Administrative Judge

<sup>&</sup>lt;sup>3</sup> See David Bailey Jr. v. Metropolitan Police Department, OEA Matter No. 1601-0007-16 (April 14, 2016).