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

_____	)	
In the Matter of:	)	
	)	
LARRY JACKSON,	)	
Employee	)	OEA Matter No. 1601-0071-17
	)	
v.	)	Date of Issuance: November 14, 2017
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Larry Jackson, Employee, <i>Pro Se</i>	)	
Lynette Collins, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On July 17, 2017, Larry Jackson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate him from his position as a Gardner, effective July 29, 2017. On September 11, 2017, Agency filed a Motion to Dismiss Employee’s Petition for Appeal, stating that Employee returned to work on August 17, 2017 and as such, OEA does not have jurisdiction over this matter.

I was assigned this matter on October 3, 2017. Thereafter, I issued an Order on October 6, 2017, requiring Employee to address the jurisdictional issue raised by Agency in its Motion to Dismiss. Employee’s brief on jurisdiction was due on or before October 20, 2017. To date, Employee has not filed a response to the jurisdiction order. Subsequently, on October 24, 2017, I issued a Statement of Good Cause, wherein, Employee was ordered to explain his failure to submit a response to the October 6, 2017, Order. Employee’s response to the Show Cause Order was due on or before November 7, 2017. As of the date of this decision, Employee has not responded to either Order. The record is now closed.

## JURISDICTION

The jurisdiction of this Office, pursuant to *D.C. Official Code, § 1-606.03 (2001)*, has not been established.

## 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, 59 DCR 2129 (March 16, 2012) grants an Administrative Judge (“AJ”) the authority to impose sanctions upon the parties as necessary to serve the ends of justice. The AJ “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.<sup>1</sup> 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; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has consistently held that, failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.<sup>2</sup> Here, Employee was warned in the October 6, 2017, and October 24, 2017, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written

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<sup>1</sup> OEA Rule 621.3.

<sup>2</sup> *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

response to these Orders. These were required for a proper resolution of this matter on its merits. I find that Employee's failure to prosecute his appeal is a violation of OEA Rule 621. Accordingly, I further find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. Therefore, this matter should be dismissed for his failure to prosecute.

ORDER

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

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Senior Administrative Judge