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

_____	)	
In the Matter of:	)	
	)	
TAMMARIA HENRY,	)	
Employee	)	OEA Matter No. 1601-0065-17
	)	
v.	)	Date of Issuance: September 29, 2017
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Tammaria Henry, Employee, <i>Pro Se</i>	)	
Nicole Dillard, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On June 29, 2017, Tammaria Henry (“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 her from her position as an Art Teacher, effective July 29, 2017. On July 31, 2017, Agency filed its Answer to Employee’s Petition for Appeal, stating that Employee was still in her probationary period at the time of her termination and as such, OEA lacked jurisdiction over this matter.

I was assigned this matter on August 21, 2017. Thereafter, I issued an Order on August 28, 2017, requiring Employee to address the jurisdictional issue raised by Agency in its Answer. Employee’s brief on jurisdiction was due on or before September 11, 2017. To date, Employee has not filed a response to the jurisdiction order. Subsequently, on September 15, 2017, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the August 28, 2017, Order, on or before September 25, 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 August 28, 2017, and September 15, 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 her 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 her failure to prosecute.

ORDER

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

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Senior Administrative Judge