

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:)	
)	
MICHELLE HOLDEN,)	
Employee)	OEA Matter No. 1601-0031-18
)	
v.)	Date of Issuance: April 11, 2018
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Michelle Holden, Employee, <i>Pro Se</i>)	
Lynette Collins, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 17, 2018, Michelle Holden (“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 a Teacher, effective January 22, 2018. On March 5, 2018, Agency filed a Motion to Dismiss Employee’s Petition for Appeal, stating that Employee resigned in lieu of termination. Agency further noted that Employee was terminated during her probationary period and as such, OEA does not have jurisdiction over this matter.

I was assigned this matter on March 5, 2015. Thereafter, I issued an Order on March 7, 2018, 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 March 20, 2018. To date, Employee has not filed a response to the jurisdiction order. Subsequently, on March 28, 2018, I issued a Statement of Good Cause, wherein, Employee was ordered to explain her failure to submit a response to the March 7, 2018, Order. Employee’s response to the Show Cause Order was due on or before April 9, 2018. 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.¹ 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.² Here, Employee was warned in the March 7, 2018, and March 28, 2018, Orders that failure to comply could result in sanctions, including dismissal. Employee did not provide a written response to

¹ OEA Rule 621.3.

² *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).

either Order. 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:

MONICA DOHNJI, Esq.
Senior Administrative Judge