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

In the Matter of:)	
)	OEA Matter No. 1601-0069-18
KAMYAR ARSANI,)	
Employee)	
)	Date of Issuance: November 5, 2018
v.)	
)	Michelle R. Harris, Esq.
DISTRICT OF COLUMBIA)	Administrative Judge
PUBLIC SCHOOLS,)	
Agency)	
Kamyar Arsani, Employee, <i>Pro Se</i>)	
Nicole C. Dillard, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 27, 2018, Kamyar Arsani (“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 service due to IMPACT evaluation scores. The effective date of termination was July 27, 2018. On August 29, 2018, Agency filed its Motion to Dismiss Employee’s Petition for Appeal. This matter was assigned to the undersigned Administrative Judge (“AJ”) on September 4, 2018.

On September 11, 2018, I issued an Order Convening a Prehearing Conference in this matter for October 16, 2018. Employee failed to appear for the October 16, 2018 Prehearing Conference.¹ Consequently, I issued an Order for Statement of Good Cause to Employee. Employee was ordered to submit a statement of good cause for his failure to appear for the Prehearing Conference. Employee had until October 26, 2018, to respond to the Order. To date, Employee has not responded to either Order. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

¹ Agency was present for the Prehearing Conference.

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 states in relevant part that the “Administrative Judge, 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. 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.”² (Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to appear for scheduled proceedings after being provided with a deadline to comply with such orders.³ In the instant matter, Employee was provided notice in the September 11, 2018, and October 16, 2018 Orders, that a failure to comply could result in sanctions, including dismissal. Employee did not respond to either Order. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. A response to each of these Orders was required to ensure an appropriate review and resolution of the matter. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee’s failure to prosecute his appeal is a violation of OEA Rule 621. For these reasons, I have determined that this matter should be dismissed for Employee’s failure to prosecute.

² OEA Rule 621.3, 59 DCR 2129 (March 16, 2012).

³ *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

ORDER

It is hereby **ORDERED** that the petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge