Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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:	)	
	)	
MARKIA JACKSON,	)	OEA Matter No. 2401-0138-10
Employee	)	
	)	Date of Issuance: August 2, 2013
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Markia Jackson ("Employee") worked as an Elementary Teacher with the D.C. Public Schools ("Agency"). On October 2, 2009, Agency notified Employee that she was being separated from her position pursuant to a reduction-in-force ("RIF"). The effective date of the RIF was November 2, 2009.[1]

Employee challenged the RIF by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on November 5, 2009. She submitted that she was a new teacher who worked for Agency for five weeks.[2] Employee argued that the RIF notice did not cite a reason for the RIF; she was not provided with any information or documentation on the RIF evaluation process; and she was not given information regarding Agency's priority re-employment list or the

[1] *Petition for Appeal*, p. 7 (November 5, 2009).
[2] Employee provided that she had not been evaluated but received good observation reports.

Displaced Employee Program.[3]

In its answer to Employee's Petition for Appeal, Agency provided that it conducted the RIF pursuant to D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the District of Columbia Municipal Regulations ("DCMR"). It argued that pursuant to 5 DCMR § 1501, Davis Elementary School was determined to be the competitive area, and under 5 DCMR § 1502, the Elementary Teacher position was determined to be the competitive level subject to the RIF. Accordingly, Employee was provided one round of lateral competition where the principal rated each employee in the competitive level through the use of Competitive Level Documentation Forms ("CLDF"), as defined in 5 DCMR § 1503.2.[4] After discovering that Employee was ranked one of the lowest in her competitive level, Agency provided her a written, thirty-day notice that her position was being eliminated. Therefore, it believed the RIF action was proper.[5]

Prior to issuing the Initial Decision, the OEA Administrative Judge ("AJ") ordered the parties to submit legal briefs addressing whether Agency followed the District's statutes, regulations, and laws when it conducted the RIF.[6] Agency's brief reiterated its position and provided that OEA is limited to determining whether it followed D.C. Official Code § 1-624.02, 5 DCMR §§ 1503 and 1506.[7] It further argued that OEA did not have jurisdiction over Employee's appeal because she voluntarily retired.[8] Employee did not submit a brief in response the AJ's order.[9]

The Initial Decision was issued on June 5, 2012. With regard to Agency's contention

[3] *Petition for Appeal,* p. 6 (November 5, 2009).
[4] Agency explained that its Office of Human Resources computed Employee's length of service, including credit for District residency, veteran's preference, and any prior outstanding performance rating when it conducted the RIF.
[5] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal* (December 14, 2009).
[6] *Order Requesting Briefs* (February 14, 2012).
[7] *District of Columbia Public Schools' Brief,* p. 9 (March 6, 2012).
[8] *Id.*, 2-3.
[9] Employee's brief was due March 27, 2012. On March 29, 2012, the AJ issued an Order for Statement of Good Cause to Employee which required her to address her failure to submit the brief and to file a brief by April 9, 2012. She did not file the brief as ordered.

that Employee retired, the AJ ruled that Agency failed to provide supporting documentation for its claim. She found that although the RIF was authorized pursuant to D.C. Official Code § 1-624.02**,** D.C. Official Code § 1-624.08 was the applicable statute to govern the RIF.[10] As a result, the AJ ruled that § 1-624.08 limited her review of the appeal to determining whether Employee received a written, thirty-day notice prior to the effective date of her separation and if Agency provided one round of lateral competition within her competitive level.[11] The AJ held that Employee was properly afforded one round of lateral competition and explained that Agency considered all of the factors enumerated in DCMR § 1503.2 when it conducted the RIF.[12] She also found that Agency provided Employee the required thirty-day notice.[13] Accordingly, the RIF action was upheld.

On June 11, 2012, Employee filed a Petition for Review with the OEA Board. She requests that the Initial Decision be revised to exclude the statements from her CLDF.[14] Ultimately, she believes that the statements on her CLDF label her as an ineffective teacher and if the statements remain on the record, the negative information will follow her for the rest of her life. Therefore, she requests that the Initial Decision be revised to remove the language from her

[10] The AJ cited the District of Columbia Court of Appeals' position in *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools,* 960 A.2d 1123 (D.C. 2009) and reasoned that D.C. Official Code § 1-624.08 or the "Abolishment Act" was the applicable statute because the RIF was conducted for budgetary reasons, and the statute's 'notwithstanding' language is used to override conflicting provisions of any other section. *Initial Decision,* p. 2-4 (June 5, 2012).

[11] Although the AJ found that § 1-624.08 limited her review of the appeal, she considered Employee's argument regarding priority reemployment rights under § 1-624.02 and stated that Employee did not submit any credible evidence to prove that she applied for available positions and was not given consideration. *Id*., 10-11.

[12] The AJ noted that the principal had discretion to rank Employee by assigning numerical values to the first three factors enumerated in DCMR § 1503.2 when completing Employee's CLDF. In addressing Employee's assertion that she was not provided with any information or documentation regarding the evaluation process, the AJ noted that Agency included a copy of Employee's CLDF which was previously provided to her. *Id.* at 7.

[13] With regard to Employee's contention that the notice did not cite a reason for the RIF, the AJ determined that OEA lacked authority to decide whether an Agency's RIF action was bona fide. The AJ also ruled that Employee's argument regarding the Displaced Employee Program was a grievance over which OEA did not have jurisdiction to consider.

[14] Specifically, Employee asserts that the statements from her CLDF are untrue, negative, and unfair because she worked for Agency for only five weeks and was never evaluated or formally observed. She also provided that Agency incorrectly provided that she voluntarily retired from service.

CLDF.[15]

Arguments Not Raised Before AJ

Employee raised arguments in her Petition for Review that she failed to raise before the AJ on appeal. On appeal, she asserted that the RIF notice did not cite a reason and that she was not provided with documentation on the evaluation process.[16] However, in her Petition for Review, she contends that Agency incorrectly provided that she voluntarily retired and that Agency offered untrue and unfair statements in its CLDF.[17] OEA Rule 633.4 provides that "any . . . legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board." As a result of Employee's failure to address Agency's retirement argument, the AJ was not provided an opportunity to address the merits of her claims. Therefore, her argument is waived before this Board.

No Actionable Objections Raised on Review

Employee's Petition for Review also fails to provide any actionable objections to the Initial Decision.[18] Employee essentially requests that the Board delete sections of her CLDF and

[15] Employee also requests two other revisions to page four of the Initial Decision to include more information regarding her Praxis 1 and Praxis II scores and other qualifications. *Petition for Review*, p. 2 (June 11, 2012).
[16] *Petition for Appeal*, p. 6 (November 5, 2009).
[17] *Petition for Review* (June 26, 2012).
[18] In accordance with OEA Rule 633.3, this Board is tasked with reviewing and assessing the Initial Decision and Petition for Review on the four areas below:

> The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that:
>
> (a) new and material evidence is available that, despite due diligence, was not available when the record closed;
> (b) the decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation, or policy;
> (c) The findings of the Administrative Judge are not based on substantial evidence; or
> (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Employee's Petition for Review fails to raise any of the four objections listed. There was no evidence accompanying Employee's Petition for Review; thus, OEA Rule 633.3(a) is not applicable. Employee does not

rewrite the AJ's decision to remove language that she deems damaging to her future career. This Board is not in a position to justifiably do either. The Initial Decision complies with the following requirements of OEA Rule 631.2:

> Each initial decision shall contain:
>
> (a) findings of fact and conclusions of law, as well as the reasons or bases therefore, upon all the material issues of fact and law presented on the record;
> (b) an order as to the final disposition of the case, including appropriate relief if granted; and
> (c) a statement of the right to seek further administrative remedy, including the right to petition for review.

Moreover, in *Charles M. Becker v. District Of Columbia Department of Consumer & Regulatory Affairs*, 518 A.2d 93, 94-95 (D.C. 1986), the D.C. Court of Appeals stated that an "agency's decision, like the decision of a trial court, is presumed to be correct, so that the burden of demonstrating error is on the petitioner." The court reasoned that " . . . given the expertise of an administrative agency, we are generally bound by its decision if it is supported by and in accordance with reliable, probative and substantial evidence in the record, and the agency's conclusions flow rationally from its findings." Additionally, where there are no evident discrepancies between the evidence presented and an administrative agency's findings, and an employee presents no specific objections relating to the findings, deference is given to the administrative agency's expertise in evaluating testimony and supporting documents. This Board believes that Agency's CLDF and the AJ's decision were supported by substantial

---

present any statutes, regulations, or policies in her Petition for Review to trigger OEA Rule 633.3(b). Similarly, Employee makes no substantial evidence arguments, nor does she take a position that the AJ failed to address any material issues of law and fact. To the contrary, Employee concedes that the principal made the correct decision to remove her and retain the more experienced teacher with whom she competed during the RIF action. She provided in her Petition for Review that she inaccurately assumed that if she failed to respond to the AJ's orders that the case would be dismissed for failure to prosecute. However, at any point prior to the issuance of the Initial Decision, Employee had the option to withdraw her Petition for Appeal. Instead, she chose to intentionally ignore the AJ's orders in the hopes that her decision would be to dismiss the case. This Board is perplexed by this assumption. The appropriate action, given her desired outcome, should have been to withdraw her appeal.

evidence. Agency provided a retention register along with the CLDFs which show that Employee was one of the lowest ranked within her competitive level, and she was separated as a result.[19] Additionally, Agency provided Employee with the RIF notice on October 2, 2009, and her removal was effective on November 2, 2009.[20] This satisfied the thirty-day requirement for notice. The Initial Decision adequately addressed all issues of fact and conclusions of law; there was an order of final disposition; and it provided Employee with appeal rights. Thus, the decision complies with OEA Rule 631.2 and the *Becker* decision.

Request for Revisions of Initial Decision and CLDF

Finally, Employee provided that she is "not seeking a revision of the decision but humbly request that the language in the official decision be formally revised before its published in the District of Columbia Register and also revised on the website and any other [i]nternet sites." While we understand Employee's concern with internet searches that may include facts relevant to the case, OEA has a statutory obligation to publish our decisions. D.C. Official Code § 1-606.03 (c) provides that

> All decisions of the Office shall include findings of fact and a written decision, as well as the reasons or basis for the decision upon all material issues of fact and law presented on record, and order; provided, however, that the Office may affirm a decision without findings of fact and a written decision. Such decisions shall be published in accordance with the rules and regulations of the Office, and shall be published in the District of Columbia Register . . . .

The statutory language is mandatory in nature and requires strict compliance by OEA. Because Employee offered no basis upon which this Board could grant her Petition for Review, we must DENY the petition.

[19] *District of Columbia Public Schools' Brief,* p. 18 (March 6, 2012).
[20] *Petition for Appeal,* p. 7-8 (November 5, 2009).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

_____
William Persina, Chair

_____
Sheree L. Price, Vice Chair

_____
Vera M. Abbott

_____
A. Gilbert Douglass

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.