THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 2401-0220-10
DANIEL BUSTIOS,	)	
Employee	)	
	)	Date of Issuance: June 7, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

Daniel Bustios, Employee *Pro-Se*
W. Iris Barber, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 2, 2009, Daniel Bustios ("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") action of terminating his employment through a Reduction-in-Force ("RIF"). The effective date of the RIF was November 2, 2009. Employee's position of record at the time his position was abolished was an Elementary Teacher at Barnard Elementary School ("Barnard"). Employee was serving in Educational Service status at the time he was terminated.

I was assigned this matter on February 7, 2012. On February 14, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations ("February 14th Order"). Agency complied, but Employee did not respond to the February 14th Order. Accordingly, on March 29, 2012, I issued an Order for Statement of Good Cause ("March 29th Order") wherein Employee was required to submit a statement explaining his failure to adhere to the deadline as was previously prescribed. On April 9, 2012, Employee submitted his Statement of Good Cause explaining that he moved at the end of January 2012 and despite having his mail forwarded, the first correspondence that he received from OEA was the March 29th Order for Statement of Good Cause. He also requested an extension of time to file his brief. On April 11, 2012, the undersigned granted Employee's request for an extension of time and ordered Employee to submit his brief on or before April 26, 2012. Employee submitted an unsigned courtesy copy of his brief to the undersigned via email on April 25, 2012. Subsequently, on April 27, 2012, the undersigned received Employee's signed brief by mail. The undersigned is in receipt of briefs by both parties. After reviewing the record, I have determined that there are no material facts in dispute and therefore, a hearing is not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.[1]

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,[2] which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

---

[1] *See* Agency's Answer, Tab 1 (January 7, 2010).

[2] D.C. Code § 1-624.02 states in relevant part that:

> (a) Reduction-in-force procedures shall apply to the Career and Educational Services… and shall include:
> (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
> (2) One round of lateral competition limited to positions within the employee's competitive level;
> (3) Priority reemployment consideration for employees separated;
> (4) Consideration of job sharing and reduced hours; and
> (5) Employee appeal rights.

Specifically, section § 1-624.08 states in pertinent part that:

> (a) ***Notwithstanding*** *any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect* for the fiscal year ending September 30, 2000, and *each subsequent fiscal year*, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).
>
> (b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.
>
> (c) ***Notwithstanding*** *any rights or procedures established by any other provision of this subchapter*, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).
>
> (d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.
>
> (e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*,[3] the D.C. Superior Court found that "the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency." The Court also found that both laws were current and that the government triggers the use of the applicable statute by using "specific language and procedures."[4]

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*, [5] DCPS conducted a 2004 RIF "to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005." The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act ("the Act") instead of "the regular RIF procedures found in D.C. Code § 1-624.02."[6] The Court stated that the "ordinary and

---

[3] No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[4] *Id.* at p. 5.
[5] 960 A.2d 1123, 1125 (D.C. 2008).
[6] *Id.*

plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF."[7]

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.[8] The Act provides that, "notwithstanding any rights or procedures established by any other provision of this subchapter," which indicates that it supersedes any other RIF regulations. The use of the term 'notwithstanding' carries special significance in statutes and is used to "override conflicting provisions of any other section."[9] Further, "it is well established that the use of such a 'notwithstanding clause' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other sections."[10]

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.[11] Moreover, the persuasive language of § 1-624.08, including the term 'notwithstanding,' suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That he did not receive written notice thirty (30) days prior to the effective date of his separation from service; and/or

2. That he was not afforded one round of lateral competition within his competitive level.

Employee's Position

In his Petition for Appeal, Employee asserts that he was terminated for insufficient cause. Employee notes that the principal never held a conference or observed him. He further states that at the end of the 2008/2009 school year, he was excessed from Barnard, but Agency sent him back to Barnard for the 2009/2010 school year. Employee claims that he was not placed in the classroom, but instead was given a position supporting third grade math teachers. Employee has also provided supporting documentation, including lesson plans, performance evaluations, observation forms, and his use of DCPS teaching standards.[12]

In his brief, Employee states that Agency put him in a vulnerable position by not assigning him to a classroom and not allowing him to work in his specialty area, Bilingual Spanish Education. Employee claims that all of his evaluations at Barnard were positive and states that he was performing at or above expectations. Employee also claims that he was never given a negative formal observation requesting that he alter his teaching practices. He states that he has documentation of lesson plans using DCPS standards for the duration of his tenure at Barnard. Employee asserts that he never had a conference with the principal regarding his teaching style and was never observed during

[7] *Id.*
[8] *Id*.
[9] *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).
[10] *Id.*
[11] *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).
[12] Petition for Appeal (December 2, 2009).

the 2009-2010 school year. He also submits that he was given an award from the Cluster Principal at the start of the school year, but failed to receive a monetary bonus award that was given to all the staff and administrators during the 2008/2009 school year.

Additionally, Employee provides a detailed rebuttal to comments made by the principal in his CLDF. Employee's rebuttal stated, in pertinent part, the following:

> "First, I am not a 'dual language teacher of math'…when I was hired, I was told that I was going to be working in a [b]ilingual class (Kindergarten)…The principal, Dr. Reid, and the principal of the Cluster, Dr. Hopkinson, [asked] me to work supporting the third grade teachers…[in] the 5 years that I have taught at Barnard Elementary School I [have] used the DCPS Standards in Math, Language Arts, Science, and Social Studies..I consider unfair [sic] the comment made by Dr. Reid about my suppose [sic] inflexibility…as a teacher [I] had to buy with my own money [books] and math games…I have never had any conference with the Principal…as a Teacher I have to accommodate the Standards of DCPS…I was not working as a regular teacher, I did not have a class of my own, and my only role was to support the 3rd grade teachers…there is no need to alter the facts just to justify your selection of the people laid off."[13]

Agency's Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of his termination.[14] Agency further maintains that it utilized the proper competitive factors in implementing the RIF and, Employee, who was one of the lowest ranked Elementary Teachers, was terminated as a result of the round of lateral competition.[15]

RIF Procedures

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS is authorized to establish the competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area.[16] In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;

---

[13] Employee Brief (April 27, 2012).
[14] Agency Brief at pp. 3-7 (March 6, 2012).
[15] *Id*. at pp. 4-5. School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.
[16] Agency Answer, Tab 1, RIF Authorization (January 7, 2010).

2. The job title for each employee; and

3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.[17]

Here, Barnard was identified as a competitive area, and Elementary Teacher was determined to be the competitive level in which Employee competed. Employee has not provided any credible evidence or supporting documentation showing that he was placed in the wrong competitive level. According to the Retention Register provided by Agency, there were twelve (12) elementary teacher positions subject to the RIF.[18] Of the twelve positions, two (2) positions were identified to be abolished. Because Employee was not the only Elementary Teacher within his competitive level, he was required to compete with other employees in one round of lateral competition.

According to Title 5, DCMR § 1503.2 *et al.*:

> If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:
>
> (a) Significant relevant contributions, accomplishments, or performance;
>
> (b) Relevant supplemental professional experiences as demonstrated on the job;
>
> (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
>
> (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

> (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
>
> (b) Significant relevant contributions, accomplishments, or performance – (10%)
>
> (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)

[17] *Id.*
[18] Agency Brief, Exhibit A, Retention Register (March 6, 2012).

(d) Length of service – (5%)[19]

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.[20] Agency cites *to American Federation of Government Employees, AFL-CIO v. OPM*,[21] wherein the Office of Personnel Management was given "broad authority to issue regulations governing the release of employees under a RIF…including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority."[22] I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a Competitive Level Documentation Form ("CLDF") in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Barnard was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the "length of service" category was completed by the Department of Human Resources ("DHR").

Employee received a total weighted score of thirty-two (32) points on his CLDF and was therefore, ranked among the lowest two employees in his respective competitive level. Employee's CLDF stated in pertinent part, the following:

> "Mr. Bustios is at Barnard as a dual language teacher of math in various grade levels. Very often, he has demonstrated an inflexible attitude towards implementing the standards [sic] math curriculum in the way that DCPS requires. Several conferences with him have revealed that he would rather implement the core subject in the manner that he thinks 'makes sense.' Unfortunately, his way has not demonstrated a higher level of achievement by his assigned cadre of students. As such, he has insisted on teaching, based on his personal habits and not by the rubrics of the core subject area.
>
> Mr. Bustios' training and experience in other than DCPS' professional experience requirements often get into the way of his maximizing support for his students' all round competence in the language of the Teaching and Learning Framework. He has not followed the instructional model of the school. His

[19] It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in § 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).
[20] Agency Brief at pp. 4-5 (March 6, 2012).
[21] 821 F.2d 761 (D.C. Cir. 1987).
[22] *Id*.

> rigid inflexibility in dealing with changes in the requirements of DCPS has been an impediment.
>
> Mr. Bustios has made a great contribution to the nurturing of cultural sensitivity towards the diversity of the school's population. Mr. Bustios volunteered to engage with extremely challenging ELL [sic] students who have had negative responses to their assigned homeroom teachers. He has supported culture-specific efforts to the development of cultural projects designed by his grade-level peers. He has invested his personal funds to ensure authenticity of the resources needed to acknowledge and endorse the ethnic diversity of our school."[23]

Needs of the School

Employee received four (4) points out of a possible ten (10) points in the category of Needs of the School; resulting in a weighted score of thirty (30) points.[24] This category is weighted at 75% on the CLDF and accounts for any factor that may have an impact on the success of the school or the achievement of the students at school. Some of the factors used in consideration for this category include: student learning skills, training, experience, school culture contributions, teaching and learning framework, leadership roles, licensure or certifications, and advanced degrees that pertain specifically to the needs of the school.

While Employee has provided some supporting documentation, including lesson plans, performance evaluations, observation forms, and his use of DCPS teaching standards, in his rebuttal to the comments in this section of his CLDF, he has not provided any evidence to highlight how this translates into his classroom expertise. The CLDF notes Employee's positive contributions including his volunteer work with challenged students and his support of cultural projects. Moreover, because Employee received four (4) points in this category, it can reasonably be assumed that his positive contributions were accounted for in his score. Further, the instructions for completing the CLDF do not specify a determinate amount of points to be given for any specific factor.

Relevant significant contributions, accomplishments, or performance

Employee received zero (0) points in this category, which is weighted at 10% on the CLDF. This category evaluates any clear, significant contributions made by employees, above what would normally be expected of an employee in his or her competitive level. Employee has not provided any supplemental evidence suggesting that he should have earned a higher score in this category.

Relevant supplemental professional experiences as demonstrated on the job

Employee also received zero (0) points in this category, which is weighted at 10% on the CLDF, and awards points to employees for any additional training or professional experiences outside standard training required by Agency or required to maintain licensure; and application of

[23] Agency Brief, Exhibit B (March 6, 2012).
[24] *Id*., Exhibit A, Retention Register.

said training or experience at the school in a way that positively impacted student or school performance. Employee has not provided any documentation to supplement additional points being awarded in this area.

While Employee has provided some supporting documentation in his rebuttal to his CLDF, he has not proffered any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*,[25] the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."[26]

Further, there is no indication that any supplemental evidence would supplant the scores received by the remaining employees in Employee's competitive level who were not separated from service. [27] Further, this Office cannot substitute its judgment for that of the principal at Barnard, who was given discretion to complete Employee's CLDF and had wide latitude to invoke her managerial discretion.[28] Thus, with respect to the aforementioned CLDF categories, I find that I will not substitute my judgment for that of the principal of Barnard as it relates to the scores she accorded Employee and his colleagues in the instant matter.

Length of service

This category, which was completed by DHR, includes credit for years of service, District residency, veterans' preference, and prior outstanding or exceeds expectation performance rating within the past year. Employees were granted an additional five (5) years of service for D.C. residency, four (4) years of service for veterans' preference, and four (4) years of service for performance evaluations of 'outstanding' or 'exceeds expectations' for the last school year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee.

Here, the record shows that Employee was employed with Agency for a total of five (5) years.[29] He received zero (0) points for D.C. residency and veterans preference. The record shows that Employee resided in Virginia during the instant RIF.[30] Employee has submitted his performance evaluation for the 2008/2009 school year, which shows that he received a 'meets expectation' rating.[31] Because Employee did not receive an 'exceeds expectations' for the 2008/2009 school year, he was not entitled to the extra four (4) years of service. Employee received a total weighted score of four (4) points in this category. Further, Agency has provided an affidavit from Peter Weber, who

---

[25] 109 F.3d 774 (D.C. Cir. 1997).
[26] *See also American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).
[27] See *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).
[28] *See Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997).
[29] *See* Agency Brief, Employee Personnel File (March 6, 2012).
[30] *Id*.; *see also* Agency Answer, Tab 4 (January 7, 2010).
[31] *See* Petition for Appeal, Attachment (December 2, 2009).

served as the Interim Director of Human Resources during the time of the instant RIF.[32] Mr. Weber states that he was responsible for computing employees' length of service for the instant RIF and used the DHR official Peoplesoft system to obtain data for the calculations, which appear in Employee's CLDF. Moreover, a review of Employee's personnel file, which was submitted by Agency, does not reveal any evidence that would necessitate a recalculation of the points awarded in this category.[33] Therefore, based on the evidence of record, I find that Agency properly calculated this number.

According to the CLDF, Employee received a total weighted score of thirty-two (32) points after all of the CLDF factors outlined above were tallied and scored. The lowest scoring elementary teacher in Employee's competitive level, who was retained in service, received a total score of thirty-three and a half (33.5) points.[34] While this teacher received the same scores in the categories completed by the principal, their score in the length of service category was higher at seven (7) points, in part because they received credit for twelve (12) years of service.[35] Employee has not shown that a re-calculation of his CLDF score is required nor proffered any credible evidence showing that a re-evaluation of his CLDF scores would result in a different outcome in this case.[36]

Employee also contends that the principal never held a conference with him and that he was not observed during the 2009-2010 school year. The undersigned notes that the criteria Agency instructed the principals to use in ranking employees did not require a formal observation of employees.[37] Specifically, in the Office or School Needs category, principals were instructed to assign scores "reflect[ing] [the] best judgment of the extent to which the person meets the particular needs of [the] school."[38] Moreover, the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.[39] This Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."[40] Accordingly, I find that the principal of Barnard had discretion in completing Employee's CLDF, as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. Therefore, I find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) Days Written Notice

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The

---

[32] Agency Brief, Exhibit B (March 6, 2012).
[33] *Id*., Employee Personnel File.
[34] *Id*., Retention Register.
[35] *See* Agency Brief Exhibit B; Retention Register (March 6, 2012).
[36] See *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).
[37] Agency Answer, Tab 2, Attachment B (January 7, 2010).
[38] *Id.*
[39] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).
[40] *See Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

Here, the record shows that Employee received his RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.[41] The RIF notice states that Employee's position was eliminated as part of a RIF. The RIF notice also provided Employee with information about his appeal rights. Further, Employee has not alleged that he did not receive thirty (30) days notice prior to the effective date of the RIF. Accordingly, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

Grievances

Employee also argues that he was not assigned to a classroom and was instead given a position supporting third grade math teachers. He also alleges that he failed to receive a monetary bonus award that was given to all the staff and administrators during the 2008/2009 school year. Complaints of this nature, regarding Employee's work duties, classroom assignments, and receipt of bonus payments are considered grievances and do not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after he properly received one round of lateral competition and was given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

ORDER

It is hereby **ORDERED** that Agency's action of abolishing Employee's position through a Reduction-In-Force is **UPHELD**

FOR THE OFFICE:

_____
STEPHANIE N. HARRIS, Esq.
Administrative Judge

[41] Agency Answer, Tab 4 (January 7, 2010).