

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:)	
)	OEA Matter No. 1601-0068-18
VERNIQUE ROBINSON,)	
Employee)	
)	Date of Issuance: November 5, 2018
v.)	
)	Michelle R. Harris, Esq.
DISTRICT OF COLUMBIA)	Administrative Judge
PUBLIC SCHOOLS,)	
Agency)	
)	

Vernique Robinson, Employee, *Pro Se*
Nicole C. Dillard, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 26, 2018, Vernique Robinson (“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 her from service due to IMPACT evaluation scores. The effective date of termination was July 27, 2018. On August 30, 2018, Agency filed its Answer to 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 10, 2018. On October 4, 2018, Agency filed a Motion to Reschedule the Prehearing Conference. On October 5, 2018, I issued an Order granting Agency’s Motion and rescheduling the Prehearing Conference to October 15, 2018. Agency filed its Prehearing Statement on October 5, 2018. Employee did not submit a Prehearing Statement in accordance with the September 11, 2018 Order. On October 15, 2018, Employee failed to appear for the 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 her 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.

¹ Agency was present for the Prehearing Conference.

JURISDICTION

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

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, October 5, 2018 and October 15, 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 her 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

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).

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 her 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.

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