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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: J-0261-12
THERESA AVILES-RODRIGUEZ,	)	
Employee	)	
	)	Date of Issuance: December 19, 2012
v.	)	
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Agency	)	Sommer J. Murphy, Esq.
_____	)	Administrative Judge
Theresa Aviles-Rodriguez, Employee, <i>Pro Se</i>		
Carl Turpin, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On September 17, 2012, Theresa Aviles-Rodriguez (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public School’s (“Agency” or “DCPS”) action of terminating her employment based on an “Ineffective” rating under Agency’s Effectiveness Assessment System for School-Based Personnel program (“IMPACT”). The effective date of Employee’s termination was August 10, 2012.

I was assigned this matter in October of 2012. On October 15, 2012, I ordered Employee to submit a brief addressing whether this Office may exercise jurisdiction over her appeal. Employee submitted a response to the Order on October 23, 2012. Agency was also given an opportunity to submit an optional reply brief, but did not. After reviewing the record, I determined that an Evidentiary Hearing was not warranted. The record is now closed.

**JURISDICTION**

As will be explained below, the jurisdiction of this Office has not been established.

**ISSUE**

Whether OEA may exercise jurisdiction over Employee’s appeal.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over Employee's appeal. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a 'preponderance of the evidence' standard. Preponderance of the evidence means "[t]hat 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."

This Office has no authority to review issues beyond its jurisdiction. Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>1</sup> According to DCMR § 604.2, [a]n appeal filed pursuant to § 604.1 must be filed within thirty (30) calendar days of the effective date of the appealed agency action.

In this case, Employee received Agency's Notice of Minimally Effective IMPACT Rating and Termination notice on July 27, 2012. The Notice stated that Employee's termination was to be effective on August 10, 2012. The Notice further provided that "[y]ou may file an appeal with the D.C. Office of Employee Appeals (OEA). Your appeal must be filed within thirty (30) calendar days of the effective date of your termination."<sup>2</sup> Employee; however, did not file a Petition for Appeal with this Office until September 17, 2012, more than thirty (30) days after the effective date of her termination.<sup>3</sup> Based on the foregoing, I find that Employee has failed to meet her burden of proof on the issue of jurisdiction under OEA Rule 628.2 because the Petition for Appeal was filed in an untimely manner. Therefore, I am unable to address the merits, if any, of Employee's appeal. Accordingly, this matter must be dismissed for lack of jurisdiction.

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<sup>1</sup> See *Banks v. District of Columbia Public School*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>2</sup> Agency Brief, Tab 2, Notice of Minimally Effective IMPACT Rating and Termination (July 27, 2012).

<sup>3</sup> Petition for Appeal (September 17, 2012).

ORDER

It is hereby ORDERED that Employee's appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

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SOMMER J. MURPHY, ESQ.  
ADMINISTRATIVE JUDGE