

Minutes

D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING

Tuesday, February 16, 2016

Location: 1100 4th Street, SW, Suite 380E
Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), Sommer Murphy (OEA Acting Deputy General Counsel), Sheree Price (OEA Board Vice Chair), A. Gilbert Douglass (OEA Board Member), Patricia Hobson Wilson (OEA Board Member), Vera Abbott (OEA Board Member), Carolyn Williams (Member of the Public), Sam Cowin (Member of the Public), Alexandria Enda (Member of the Public), Derek Gadsden (Member of the Public), and Brandi Nave (Member of the Public).

- I. Call to Order** – Sheree Price called the meeting to order at 11:07 a.m.
- II. Ascertainment of Quorum** – There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Vera Abbott moved to adopt the Agenda. Patricia Hobson Wilson seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The January 5, 2016 meeting minutes were reviewed. There were no corrections. The minutes were accepted.

V. New Business

A. Board Member Terms

1. Lasheka Brown informed Board Members Patricia Hobson Wilson and A. Gilbert Douglass that their terms will expire on April 6, 2016. She also provided that after speaking with the Director of the Office of Talent and Appointments, it appears that Mayor Bowser will nominate a new Board Chair and two new Board members.

B. Public Comments on Petitions for Review

1. Sam Cowin stated that he represents Carolyn Williams. He provided that he would be happy to answer any questions that the Board had regarding her case.
2. Derek Gadsden provided that he left a note at his job when he was arrested at work. Therefore, he was never AWOL because Agency knew where he was. He also stated that the arrest had nothing to do with him.

C. Summary of the Cases

1. **Carolyn Williams v. D.C. Public Schools, OEA Matter No. 2401-0124-10R13** – This matter has been before the OEA Board previously. On September 18, 2013, the Board held in its Opinion and Order on Petition for Review that Employee involuntarily retired from her position with Agency. Therefore, it remanded the matter to the Administrative Judge (“AJ”) to determine Employee’s position of record and to consider the merits of Agency’s Reduction-in-Force (“RIF”) action.

The AJ issued an Order Requesting Briefs on November 26, 2013. Agency made several of the same arguments previously presented to the AJ and OEA Board regarding OEA's lack of jurisdiction. Agency contended that because Employee voluntarily retired, OEA could not consider the merits of the RIF action. As for Employee's position of record, it explained that Employee was teaching hospitality at the time; therefore, this was her position of record. Moreover, it asserted that Employee's qualifications, requirements, duties, responsibilities, pay schedule, and working conditions were that of a Hospitality Teacher. Therefore, she was within the proper competitive level. However, because Employee was in a single-person competitive level, Agency opined that it was not required to provide her with one round of lateral competition.

Employee filed her Response Brief on March 21, 2014. She argued that she helped to develop the Academy of Hospitality and Tourism at Agency and was offered the position of Coordinator of Travel and Tourism. However, she declined the promotion due to personal and family issues. Employee contended that although she taught hospitality classes, her position of record was a Social Studies teacher and she was required to maintain her certification in social studies. Moreover, Employee provided that Agency listed her as a Social Studies teacher during its 2003 and 2004 RIFs. Employee posited that none of the Social Studies teacher positions were eliminated during the 2009 RIF. Hence, because she should have competed within that competitive level, Employee argued that her position may not have been eliminated at all or that she would have survived the round of lateral competition. Thus, Employee requested that she be reinstated to her position with back pay and benefits.

The AJ issued her Initial Decision on Remand on April 22, 2014. She held that Employee's retirement was involuntary. Additionally, she provided that an employee's position of record is generally shown by the issuance of a Standard Form 50 ("SF-50"). The AJ found that based on the submissions of several Personnel Action forms, Employee's position of record was a Social Studies teacher. She ruled that Agency's submissions of performance evaluations which listed Employee as a Hospitality teacher were not compelling because they were not official documents like the Personnel Action forms which listed Employee as a Social Studies teacher. The AJ provided that because Employee should have been in the competitive level with other Social Studies teachers, Agency failed to meet its burden of proof that it properly conducted the RIF. Therefore, she ordered that Employee be reinstated with back pay and benefits.

On May 27, 2014, Agency filed a Petition for Review of the AJ's Decision on Remand. It presents the same arguments as those previously raised regarding Employee's retirement being voluntary. Agency also submitted documentation of the definition of involuntary retirement as provided in its Summary Plan Description. Moreover, it presents a new argument that the AJ should not have relied on Employee's SF-50 when making a determination

about the voluntariness of her retirement because it was generated after she elected to retire. Further, Agency provided that the AJ improperly relied on D.C. Official Code § 1-624.08, when she should have relied on D.C. Official Code § 1-624.02.

Employee disagreed with Agency's petition and filed a response on July 1, 2014. She explains that her retirement was involuntary and that her position of record was a Social Studies teacher. Employee highlights that the performance evaluations relied upon by Agency simply lists Hospitality as the subject matter she taught, not her position of record. Moreover, she suggests that even if she were a Hospitality teacher, she should have remained in the competitive level with the other Social Studies teachers because the positions were so similar. Therefore, Employee requests that she be reinstated because Agency's misclassification that she was a Hospitality teacher cannot be deemed harmless error.

2. **Derek Gadsden v. Department of General Services, OEA Matter No. J-0065-14** – Employee was a Maintenance Worker with Agency. On January 23, 2014, Agency issued a Notice of Final Decision to Employee. The notice provided that he was being removed from his position for “any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include: unauthorized absence and absence without leave.”

Employee filed a Petition for Appeal with OEA on March 18, 2014. He argued that the notice was sent to the wrong location and should have been sent to the Department of Corrections. He provided that he informed his supervisor that he was being arrested. However, he was terminated even though other previously arrested employees were allowed to keep their jobs.

Agency filed its answer to Employee's Petition for Appeal on April 21, 2014. It argued that Employee was terminated from his position because he failed to call or show up to work for twenty-six consecutive days from November 21, 2013 through December 30, 2013. Agency asserted that it sent notices to Employee's last known address, but it never received a response until Employee filed his Petition for Appeal with OEA. It explained that, in accordance with the District Personnel Manual (“DPM”), removal was within the range of penalties for AWOL. Agency opined that incarceration is not a basis for an excused absence. Therefore, it requested that its decision be affirmed.

The AJ asked both parties to file briefs on jurisdiction for this matter because it appeared that Employee's Petition for Appeal was untimely. Employee asserted that Agency sent notices to his home even though it knew he was incarcerated. He claimed that he was unable to file his appeal within a timely manner because he was unaware of the removal action. Employee provided that Agency should have mailed his notices to the Department of Corrections.

Agency provided that Employee's appeal was filed past the thirty-day deadline, and as a result, his case should be dismissed. Moreover, it contended that Employee's incarceration did not toll the filing deadline for his Petition for

Appeal. Agency submitted that there is no case law or laws which grant OEA the authority to toll a deadline due to an employee's incarceration. Finally, it argued that Employee cannot claim that there was a lack of notice when he failed to inform it of his "new[,] temporary address." Thus, Agency claimed that OEA lacked jurisdiction to consider Employee's case.

On April 28, 2014, the AJ issued her Initial Decision. She held that the thirty-day deadline to file appeals is mandatory in nature. Additionally, she found that Agency was only required to send Employee's notice to his last address of record and not the Department of Corrections. Finally, she concluded that there was no proof offered that incarceration tolls a filing deadline. Therefore, Employee's appeal was dismissed for lack of jurisdiction.

Employee filed a Petition for Review with the OEA Board on May 9, 2014. He argues that his wife acted as his agent when she told Agency that he would not be reporting to work because he had a toothache. He also claims that he was "under the Family Medical Act." Moreover, it is Employee's position that the regulations which Agency relied upon are abstract and not feasible. Therefore, he requested that he be reinstated.

- 3. Ennice Davis v. D.C. Public Schools, OEA Matter No. 2401-0215-12** – Employee worked as an Administrative Aide with Agency. On June 18, 2012, Employee received a RIF notice from Agency which provided that she would be terminated from her position effective August 10, 2012. Employee filed a Petition for Appeal with OEA on August 21, 2012. In her petition, she argued that she should not have been terminated because her position was changed without her knowledge; she had seniority; her union was not made aware of the RIF action; and she had an "Effective" rating on her performance evaluation.

Agency submitted its response to Employee's petition on September 28, 2012. It contended that it complied with the D.C. Municipal Regulations ("DCMR") when conducting its RIF. Agency claimed that Employee was provided with thirty days' notice; it considered Employee's length of service; and it notified Employee's union of the RIF action. In a subsequent brief filed by Agency, it explained that it was not required to conduct one round of lateral competition because Employee was in a single-person competitive level.

On February 27, 2014, Employee filed a brief which reiterated her length of service with Agency and her performance rating as "Effective" or "Highly Effective." She also provided that she was the only Administrative Aide within her school and that Agency requested funding for her position for the 2013 fiscal year. Employee claimed that after she was RIFed, Agency hired an Administrative Assistant with the funding for her position. She contends that because her position was funded, she should have not been RIFed for budgetary reasons. Moreover, Employee objected to the categories Agency used to weigh each section of the competitive process. She also opined that Agency should have used D.C. Official Code § 1-624.08 instead of D.C. Official Code § 1-624.02 when conducting the RIF.

The AJ issued her Initial Decision on April 29, 2014. She found that Agency should have used D.C. Official Code §1-624.08 instead of D.C. Official Code § 1-624.02 when conducting the RIF action. Therefore, she used D.C. Official Code § 1-624.08 in her analysis of this case. The AJ held that because Employee was the sole Administrative Aide within her competitive level, Agency was not required to conduct one round of lateral competition. Additionally, she found that Agency provided Employee with thirty days' notice. The AJ reasoned that, in accordance with *Anjuwan v. D.C. Department of Public Works*, OEA lacked jurisdiction to consider if Agency's RIF was bona fide or to consider how Agency elected to use its budgetary resources. Accordingly, the AJ upheld Agency's RIF action.

Employee disagreed with the AJ's decision and filed a Petition for Review with the OEA Board. She argues that the AJ overlooked that fact that Agency used the wrong Code section when conducting the RIF. Therefore, her decision was not based on substantial evidence. Additionally, Employee contends that the AJ misinterpreted *Anjuwan* and failed to consider that there was no change in the number of full-time positions after the RIF. Therefore, she requested that she be reinstated with back pay, benefits, and attorney's fees.

- 4. Dametrius McKenny v. D.C. Public Schools, OEA Matter No. 1601-0207-12** – Employee worked as an Instructional Aide at Agency. On July 27, 2012, he received a notice from Agency that he would be terminated from his position because he received a “Minimally Effective” rating for two consecutive school years on his IMPACT evaluation. IMPACT is Agency's performance assessment system.

Employee filed a Petition for Appeal with OEA on August 16, 2012. In his petition, he argued that he was surprised to be terminated because he felt his performance was within the IMPACT standards. He also explained that he had a great work ethic; had a great relationship with the students and staff; and was not provided an opportunity to meet with any supervisors regarding his performance. Therefore, he requested that he be reinstated to his position.

Agency responded to Employee's petition and contended that he received a rating of “Minimally Effective” for the 2010-2011 and 2011-2012 school years. It asserted that Employee was observed twice during each school year. Additionally, Agency provided that Employee had at least two opportunities to meet with his supervisor to discuss the strengths and weaknesses provided in his evaluation.

On February 25, 2014, the AJ issued an Order Convening a Status Conference. The conference was scheduled for March 25, 2014. However, Employee's representative had a conflict and requested that the conference be rescheduled. Employee's representative provided that she tried to reach Agency's counsel several times for an alternate date. However, Agency was non-responsive. Accordingly, on March 24, 2014, the AJ issued an Order Rescheduling the Status Conference for April 15, 2014.

Agency failed to appear at the April 15th Status Conference. Therefore, the AJ issued an Order Requesting a Good Cause Statement. Agency was given a deadline of April 25, 2014, to provide its statement. According to the AJ, Agency failed to meet the deadline. Agency's counsel subsequently sent the AJ an email on April 29, 2014, stating that it would provide a statement the next day. However, counsel failed to meet this deadline as well. On May 1, 2014, Agency sent the AJ an emailed Statement of Good Cause.

The AJ issued her Initial Decision on May 7, 2014. She provided that email submissions are not a valid means of filing documents with the office; thus, Agency failed to provide a Good Cause Statement by the deadline. The AJ also held that Agency was warned that its failure to comply with her orders could lead to sanctions. Therefore, she ruled that Agency failed to defend its action against Employee. Accordingly, Agency's decision was reversed, and it was ordered to reinstate Employee with back pay and benefits.

Agency filed a Petition for Review with the OEA Board on June 12, 2014. It provides that Agency's counsel could not have appeared for the April 15, 2014 conference because it was Passover, a religious holiday. Furthermore, its representative explains that due to a clerical error, it failed to calendar the April 15th conference. Additionally, counsel claims that she was ill and unable to provide her Good Cause Statement by the April 25, 2014 deadline set by the AJ. Moreover, Agency's counsel states that because she was out of the office, she missed the April 30, 2014 extension that she requested. Agency opines that it did not fail to defend its action against Employee and requests that the OEA Board remand this matter to the AJ to consider the case on its merits.

Employee filed his response to Agency's Petition for Review and outlines in detail the efforts made to reach out to Agency to provide the AJ with a Status Conference date that worked for both parties. However, Agency's representative failed to return any phone calls or emails. Employee reasons that Agency failed to exercise reasonable diligence. Therefore, he requests that Agency's petition be denied.

- 5. Andrew Johnson v. D.C. Public Schools, OEA Matter No. 1601-0215-11** - Employee worked as a School Psychologist with Agency. On July 15, 2011, Employee was notified that he would be terminated because he received a final rating of "Minimally Effective" under IMPACT, Agency's performance assessment system, for the 2009-2010 and 2010-2011 school years. The effective date of his termination was August 12, 2011. On May 1, 2012, Employee met with Agency's Office of Human Resources ("OHR") to inquire about his retirement options. Employee subsequently submitted a retirement application and began receiving his pension funds.

Employee filed a Petition for Appeal with OEA on September 9, 2011. He disagreed with the termination and requested that OEA reinstate him to his previous position. Employee also requested that this Office award him back pay and benefits lost as a result of his termination. Agency filed its Answer to the Petition for Appeal on October 12, 2011, explaining that Employee was properly evaluated under IMPACT pursuant to the standards for Group 12 Related

Services Providers. According to Agency, Employee received a final rating of “Minimally Effective” for two consecutive years, and was, therefore, subject to termination.

The matter was assigned to an AJ for adjudication on June 26, 2013. On June 27, 2013, the AJ issued an Order scheduling a Prehearing Conference for the purpose of assessing the parties’ arguments. On July 22, 2013, a Post Conference Order was issued, directing Employee to submit a written brief addressing whether his Petition for Appeal should be dismissed for lack of jurisdiction because he elected to retire in lieu of being terminated. The Order noted that employees have the burden of proof on issues of jurisdiction; however, Agency was also directed to submit a response to Employee’s brief.

In his brief, Employee argued that his termination notice failed to state that he would waive his appeal right to OEA if he filed for retirement. Employee further stated that he was under the impression that his retirement was involuntary because he “was litigating the matter and intended to return to DCPS but needed the funds to survive.” Agency submitted a response to Employee’s brief on August 28, 2013, asserting that Employee voluntarily retired from DCPS and that OEA lacks jurisdiction over this matter. Agency argued that DCPS made no misrepresentations regarding Employee’s retirement options and that the existence of a financial hardship is not sufficient to establish jurisdiction before this Office. In addition, Agency noted that neither DCPS nor the District of Columbia Retirement Board were under an obligation to inform Employee that retirement may preclude his right to pursue an appeal before OEA.

The Initial Decision (“ID”) was issued on May 20, 2014. The AJ found that Employee voluntarily elected to retire in lieu of being terminated and that there was no evidence in the record to prove that his retirement was procured through Agency’s misrepresentation, fraud, or coercion. Moreover, the AJ held that designating a retirement as “Involuntary” pursuant to the District of Columbia Teachers’ Retirement Plan did not render Employee’s retirement a constructive removal. As a result, the AJ determined that OEA lacked jurisdiction over Employee’s appeal and the matter was therefore dismissed.

Employee subsequently filed a Petition for Review with OEA’s Board on June 26, 2014. In his petition, Employee argues that he did not choose to retire when he visited the retirement office in May of 2012 because he intended to return to work with DCPS. According to Employee, Agency obtained his application for retirement by providing him with incorrect information and failing to disclose material information regarding the ramifications that retiring would have on his right to file an appeal with this Office. In response, Agency reiterates that Employee’s retirement was not procured through misinformation or fraud. Agency, therefore, requests that the Board deny the Petition for Review and uphold the AJ’s Initial Decision.

- 6. Jerelyn Jones v. D.C. Public Schools, OEA Matter No. 2401-0053-10R13** - Employee worked as a Special Education Teacher with Agency. On October 2, 2009, Agency notified Employee that she was being separated from her position pursuant to a RIF. The effective date of the termination was November 2, 2009.

Employee filed a Petition for Appeal with OEA on October 21, 2009. In her appeal, Employee argued that she was not given proper notice of her separation and that Agency failed to follow the proper RIF procedures. Employee therefore requested to be reinstated to her previous position. Alternatively, Employee requested that Agency compensate her for its improper actions.

Agency filed an Answer to Employee's Petition for Appeal on December 17, 2009, arguing that it conducted the RIF in accordance with D.C. Official Code § 1-624.02 and Title 5, Chapter 15 of the DCMR. According to Agency, Employee was provided with one round of lateral competition within the proper competitive area and competitive level. Agency further stated that it provided Employee with thirty days' written notice that her position was being abolished pursuant to the RIF.

On December 28, 2011, the AJ ordered the parties to submit written briefs addressing whether Employee's separation from service should be upheld. Agency submitted its legal brief on January 26, 2012. Employee did not submit a response to the AJ's order. On January 27, 2012, the AJ issued an ID, dismissing Employee's Petition for Appeal for failure to prosecute.

Employee filed a Petition for Review and Request for Reinstatement with OEA's Board on March 2, 2012. Counsel for Employee stated that his failure to respond to the AJ's order was an oversight. Counsel further requested that the Board reinstate Employee's case to allow time to conduct discovery and to substantiate any claims raised in previous filings. Agency submitted a response to Employee's Petition for Review on April 9, 2012. Agency reiterated that its RIF action was proper and requested that Employee's Petition for Review be denied.

The Board issued an Opinion and Order on Petition for Review on April 30, 2013. It held that the AJ's decision to dismiss the Petition for Appeal was not warranted because the AJ did not allow Employee to present a statement of good cause before issuing his Initial Decision. The Board subsequently remanded this matter to the AJ to consider the case on its merits.

The AJ issued an Initial Decision on June 16, 2014. He held that Agency should have utilized D.C. Official Code §1-624.08 instead of D.C. Official Code §1-624.02 when conducting the 2009 RIF. In analyzing Agency's actions under §1-624.08, the AJ determined that Employee was afforded one round of lateral competition within the appropriate competitive area and level. The AJ further held that Employee received thirty days' written notice prior to the effective date of her termination.

Employee presented several other arguments in her brief, all of which were addressed by the AJ in his Initial Decision. First, the AJ denied Employee's request for an evidentiary hearing because she did not specifically dispute any of the statements provided by the school principal in her Competitive Level Documentation Form ("CLDF"). Next, the AJ concluded that Employee's pre-RIF arguments were outside the scope of OEA's jurisdiction. Employee's claims of Agency's alleged violations of the American with Disabilities Act were also determined to be outside of this Office's purview. The AJ noted that Employee

failed to substantiate her claim that two additional Special Education Teachers should have been included in her competitive level when Agency conducted the RIF. Lastly, the AJ cited to OEA Rule 617.6 in determining that Employee should not have been granted an additional opportunity to conduct discovery; she had several years to engage in discovery, since filing a Petition for Appeal in 2009. Accordingly, the AJ upheld Agency's RIF action.

Employee disagreed with the AJ's decision and filed a Petition for Review with OEA's Board on July 21, 2014. Employee argues that new and material evidence is available that was not available when the record was closed. According to Employee, Agency has engaged in wrongful employment practices to remove former high-level employees in the last four (4) years. She also asserts that the AJ erroneously analyzed the instant RIF under D.C. Official Code §1-624.08 instead of §1-624.02. Employee believes that Agency abused its discretion in placing her in the incorrect competitive area and level at Woodson High School and that the Initial Decision was not based on substantial evidence.

7. **Oscar Harp, III v. D.C. Public Schools, OEA Matter No. 1601-0356-10** - Employee worked as a School Psychologist with Agency. On July 2, 2010, Agency issued written notice to Employee informing him that he would be terminated because he received a final rating of "Ineffective" under IMPACT. The effective date of the termination was July 16, 2010.

Employee filed a Petition for Appeal with OEA on August 3, 2010. In his petition, Employee argued that Agency unfairly terminated him based on improper evaluation procedures. Employee requested that this Office reinstate him with back pay. Agency filed its Answer to the Petition for Appeal on September 7, 2010, asserting that Employee received assessments during Cycles 1 and 3 of the 2009-2010 school year as required under IMPACT procedures. According to Agency, Employee received a final IMPACT score of "Ineffective" and was therefore subject to termination.

After conducting an Evidentiary Hearing, the AJ issued an ID on May 12, 2014. The AJ noted that Employee properly received evaluations during Cycle 1 and 3 during the 2009-2010 school year. However, the AJ determined that Agency failed to comply with the IMPACT process because: 1) Group 12 employees relied on the IMPACT process that was communicated to them at the beginning of the school year as a guide for developing their duties; 2) changes were made to the IMPACT scoring process in March and June of 2010; 3) Group 12 members, including Employee, were prejudiced by the changes in scoring because they were denied adequate notice of the new scoring standards and had no opportunity to adjust their duty plans; and 4) but for the adjustments to the scoring rubric, Employee would likely not have received an IMPACT rating of "Ineffective" for the 2009-2010 school year. In addition, the AJ held that Agency violated DCMR § 1306.2, which requires performance ratings to reflect the level of competence of employees who have worked for the same supervisor for at least ninety days. The AJ stated that the acting supervisor, Dr. Ramona Rich, only supervised Employee's work performance for six weeks during the 2009-2010 school year. As a result, Agency's action of terminating Employee was reversed because Agency failed to establish that he was terminated for "just cause" as required

under the terms of the Collective Bargaining Agreement (“CBA”) between Employee’s union and Agency. Accordingly, Agency was ordered to reinstate Employee to his last position of record with back-pay and benefits lost as a result of his termination.

On June 16, 2014, Agency filed a Petition for Review with the OEA Board. Agency argues that the AJ’s findings were not based on substantial evidence and that the decision to reverse Employee’s termination was based on an erroneous interpretation of the law. Specifically, Agency contends that the AJ’s reference to changes to the IMPACT scoring rubric in March and June of 2010 were spontaneous and that Employee has not argued that DCPS committed harmful error in instituting changes to the scoring process. Agency further states that the AJ should have reopened the record so that it could have been given an opportunity to explain the changes in scoring criteria during the 2009-2010 school year. According to Agency, even if it did err, Employee was not substantially harmed by the application of its procedures and would have still received a final IMPACT score of “Ineffective.” Employee did not submit a response to Agency’s Petition for Review.

- 8. Dwight Robbins v. D.C. Public Schools, OEA Matter No. 1601-0213-10** - Employee worked as a teacher with Agency. At the close of the 2009-2010 school year, Employee was classified as an excessed employee with an “Effective” rating under IMPACT. As a result, he was informed that he had to secure placement for the 2010-2011 school year. Employee did not secure employment and was, therefore, given the choice to accept a buyout; take an early retirement; or take an additional year to secure a new placement. Employee selected to take an additional year to secure placement for the 2011-2012 school year. In accordance with the Washington Teacher’s Union (“WTU”) agreement with DCPS, Agency had the right to separate any excessed teachers who were unable to secure a new placement. Thus, on July 15, 2011, Agency issued a notice to Employee informing him that he would be terminated effective August 12, 2011, based on his failure to secure a new position. Employee challenged the termination by filing a Petition for Appeal with OEA on September 9, 2011. He argued that Agency violated Chapter 8 of the D.C. Personnel Regulations when the principal at Jefferson Middle School refused to interview him for the Health and Physical Education position. Employee also stated that the principal retaliated against him for challenging “. . . the equalization process of homeroom.” Lastly, he contended that Agency violated his civil rights because the Health and Physical Education position was given to a younger, white female. Therefore, Employee requested to be placed in a full-time position at Jefferson Middle School.

In its Answer to the Petition for Appeal, Agency denied that it violated any D.C. Personnel Regulations. It asserted that Employee was terminated because he failed to secure another position within the required timeframe pursuant to the WTU agreement. It explained that Employee “. . . had a duty to obtain a position by mutual consent by June 22, 2011, in accordance with Article 4.5.5.3.3.5 of the Collective Bargaining Agreement.” In addition, Agency argued that the principal of Jefferson Middle School was not obligated to interview him. Agency further

stated that it did not retaliate against Employee or violate his civil rights. Thus, Agency believed that the termination was proper.

The AJ issued his ID on June 16, 2014. He held that Employee received notice on December 21, 2010, advising him that he needed to secure a new teaching position by mutual consent on or before June 22, 2010. Employee signed an Additional Year Selection Form (“AYSF”) on December 27, 2010; however, he was unable to secure a new position before the proscribed deadline. Accordingly, the AJ found that Employee’s failure to secure a new teaching position on or before June 22, 2011 constituted cause for his termination and that Agency acted within the confinements of the CBA.

Employee filed a Petition for Review on July 21, 2014. He argues that the Initial Decision was based on an erroneous interpretation of statute and that the AJ failed to consider his substantive arguments. Employee submits that he was not provided a full year to secure a position, in violation of the CBA. He further believes that Agency misled him with regard to retirement, and as a result, he had only six months to obtain a position.

Employee later filed a Supplemental Brief in Support of his Petition for Review. He argues that Agency violated the terms of the CBA, and the AJ did not evaluate the termination under the correct CBA. He reiterates his claim that the 2004-2007 CBA, and not the 2007-2012 CBA should have been used to evaluate Agency’s actions. According to Employee, the 2007-2012 CBA did not become effective until June 29, 2010, and his notification of excess was dated June 11, 2010. Lastly, Employee submits that he “. . . was deprived of the opportunity to seek a new position until December 2011, when he was informed that [he] was not eligible for early retirement.” Employee requests that the Board reinstate him to his position with back pay and benefits.

D. Deliberations - After the summaries were provided, Vera Abbott moved that the meeting be closed for deliberations. Patricia Hobson Wilson seconded the motion. All Board members voted in favor of closing the meeting. Sheree Price stated that, in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.

E. Open Portion of Meeting Resumed

F. Final Votes –Sheree Price provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Carolyn Williams v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Agency’s Petition for Review and reversing its action. Therefore, the petition was denied, and Agency’s termination action was reversed. Accordingly, Agency was ordered to reinstate Employee to her last position of record or a comparable position. Additionally, it must reimburse Employee all back pay and benefits lost as a result of the termination action.

2. Derek Gadsden v. Department of General Services

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee’s Petition for Review. Therefore, the petition was denied.

3. Ennice Davis v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee’s Petition for Review. Therefore, the petition was denied.

4. Dametrius McKenny v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price				X
Vera Abbott				X
A. Gilbert Douglass, Jr.				X
Patricia Hobson Wilson				X

Four Members voted in favor of dismissing Agency’s Petition for Review and reversing its action. Therefore, the petition was dismissed, and Agency’s action was reversed. Accordingly, Agency was ordered to reinstate Employee to his last position of record or a comparable position. Additionally, it must reimburse Employee all back pay and benefits lost as a result of the termination action.

5. Andrew Johnson v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		

Patricia Hobson Wilson		X		
------------------------	--	---	--	--

Four Board Members voted in favor of denying Employee’s Petition for Review. Therefore, the petition was denied.

6. Jerelyn Jones v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee’s Petition for Review. Accordingly, the Petition for Review was denied.

7. Oscar Harp, III v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass, Jr.		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Agency’s Petition for Review and reversing its action. Therefore, the petition was denied, and Agency’s termination action was reversed. Accordingly, Agency was ordered to reinstate Employee to his last position of record or a comparable position. Additionally, it must reimburse Employee all back pay and benefits lost as a result of the termination action.

8. Dwight Robbins v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DISMISSED
Sheree Price	X		X	
Vera Abbott	X		X	
A. Gilbert Douglass, Jr.	X		X	
Patricia Hobson Wilson	X		X	

Four Board Members voted in favor of granting Employee’s Petition for Review and remanding the matter to the Administrative Judge. Therefore, the petition was granted and remanded.

VI. Adjournment – A. Gilbert Douglass moved that the meeting be adjourned; Vera Abbott seconded the motion. All members voted affirmatively to adjourn the meeting. Sheree Price adjourned the meeting at 12:35 p.m.

Respectfully Submitted,
Lasheka Brown
OEA General Counsel