

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
Marjorie Bailey	)	OEA Matter No. 2401-0237-10
Employee	)	
	)	Date of Issuance: April 17, 2012
v.	)	
	)	Senior Administrative Judge
D.C. Public Schools	)	Joseph E. Lim, Esq.
Agency	)	
_____		
Sarah White, Esq., Agency Representative		
John Mercer, Esq., Employee Representative		

**INITIAL DECISION**

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On December 2, 2009, Employee filed a petition for appeal with this Office from Agency's final decision terminating her position as a Counselor at the J.C. Nalle Elementary School due to a Reduction-in-Force ("RIF"). The matter was assigned to the undersigned judge on February 6, 2012. I ordered the parties to submit a legal brief by March 7, 2012. Agency complied by February 22, 2012, but Employee failed to do so.

After Employee's deadline had passed, Employee submitted a request that this Office: 1) hold a prehearing conference on the above matter; 2) extend the discovery period significantly past the deadline specified in the Office's rules; and 3) immediately freeze the proceedings to give Employee sufficient time to prepare.

I denied Employee's requests as it infringed on a judge's right to conduct his case docket in the most expeditious and legally sound manner that he deems fit. I also pointed out that OEA Rule 617.6 states that the parties may commence discovery after the agency is notified of the employee's appeal. The rule also states that discovery should be completed by the date of the prehearing conference. Thus, Employee had more than two years to conduct discovery. Finally, I denied his request to freeze proceedings as another infringement on the judge's right to conduct his docket in the manner consistent with judicial efficiency. I also noted that this Office is under a mandate by the D.C. Court of Appeals and the D.C. Council to adjudicate its docket as expeditiously as possible. Nevertheless, I extended Employee's deadline to March 16, 2012.

Despite the extension, Employee again failed to meet the new deadline. So on March 29, 2012, I issued a Show Cause Order to Employee to respond by April 4, 2012. To date, Employee has not responded despite prior warnings that failure to comply could result in sanctions, including dismissal. The record is closed.

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.

ANALYSIS AND CONCLUSION

OEA Rule § 621.3, 59 D.C. Reg. 2129 (March 16, 2012) provides as follows:

If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant.” 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.

The employee was warned in each order that failure to comply could result in sanctions including dismissal. The employee never complied. Employee’s behavior constitutes a failure to prosecute his appeal and that is sound cause for dismissal.

ORDER

It is hereby ORDERED that the petition in this matter is dismissed for failure to prosecute.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.  
Senior Administrative Judge