THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DONALD FRAZIER	)	OEA Matter No. 1601-0161-12R17
Employee	)	
v.	)	Date of Issuance: December 21, 2017
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	Lois Hochhauser, Esq.
Agency	)	Administrative Judge
	)	

Lynette Collins, Esq., Agency Representative
Donald Frazier, Employee, *Pro Se*

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL BACKGROUND[1]

Donald Frazier, Employee, filed a petition with the Office of Employee Appeals (OEA) on July 23, 2012, appealing the decision of the District of Columbia Public Schools, Agency, to remove him from his teaching position with Agency, based on his failure to obtain his District of Columbia teaching license, which is required by Agency of its teachers. (R, 1-4). In the *Initial Decision* (ID), issued on March 31, 2014, Administrative Judge (AJ) Sommer J. Murphy upheld Agency's decision, concluding that Agency "properly separated Employee from service based on his noncompliance with the certification and licensure requirements." *Donald Frazier v. District of Columbia Public Schools*, OEA Matter No. 1601-0161-12 (March 31, 2014). (R, 161). Employee's petition for review was denied by the Board on September 5, 2016. *Donald Frazier v. District of Columbia Public Schools*, OEA Matter No. 1601-0161-12, *Opinion and Order on Petition for Review* (September 5, 2016) (R, 183-188).

On February 5, 2017, Employee filed a *Petition for Review of Agency Decision* with the D.C. Superior Court. Agency, although not a party to the proceeding before the Superior Court, moved to dismiss on February 10, 2017, arguing that this Office did not have jurisdiction to hear the petition for appeal since Employee had at-will status at the time he was terminated due to his failure to meet licensure requirements.

[1] In drafting this Decision, the undersigned relied in large part on the *Initial Decision* and *Opinion and Order on Petition for Review* issued in this matter, cited above, and submissions by the parties. References to the Record filed with the Superior Court are cited as "R" followed by the page number.

By *Order* dated April 4, 2017, Superior Court Judge Florence Y. Pan, determined that, based on the jurisdictional challenge, the Superior Court proceeding should be stayed. She remanded the matter to this Office, directing it to determine if it had jurisdiction to hear the petition for appeal. *Donald Frazier v. Office of Employee Appeals,* 2016 CA 874P (MPA) (April 4, 2017).[2]

The remand was assigned to this AJ on or about April 28, 2017.[3] By *Order* dated May 12, 2017, Employee was directed to respond to Agency's February 10, 2017 motion to dismiss. On October 10, 2017, the AJ issued an *Order* scheduling oral argument, and notifying the parties of the jurisdictional issues that would be addressed, and directing the submission of written summaries of the arguments. At the conclusion of oral argument on November 9, 2017,[4] it was agreed that no additional submissions were needed, and the record was closed.

JURISDICTION

The jurisdiction of this Office was at issue on remand.

ISSUE

Does this Office have jurisdiction to hear this appeal?

FINDINGS OF FACT, POSITIONS OF PARTIES, ANALYSIS AND CONCLUSIONS

Undisputed Findings of Fact

1. Employee applied for a position as a Health & Physical Education (H&PE) teacher with Agency in 2009. At the time, he was teaching in a private school in Maryland. He informed Morgan Geiseke, the Agency Recruitment and Selection team member who interviewed him, that he did not hold a teaching license in any jurisdiction, that he had a Master's degree in education and that he had14 years of teaching experience.

2. On July 24, 2009, Employee received two emails from Agency. The first, sent at 11:30 p.m., was entitled "TeachDC-Recommended!" and stated, in pertinent part:

> Congratulations! You have been recommended for hire by the Recruitment and Selection team. Principals will now have full access to your profile and will be contacting you…to conduct…interviews. Your position…is not secured until you have been hired by a principal.
> In addition, if you currently do not hold a DC teaching license, please begin the process of obtaining one immediately. Email…to obtain the application. Please note that your

[2] The format used by Administrative Judges of this Office to respond to directives in remand matters, is to address the directives in document captioned *Initial Decision on Remand*.
[3] The matter was reassigned because AJ Murphy was appointed OEA Assistant General Counsel prior to the remand, and therefore could no longer hear this matter.
[4] Initially scheduled for October 30, 2017, oral argument was continued at the request of Agency, and with the consent of Employee. *See Order,* October 31, 2017.

recommendation for hire is contingent on your license credentials. A principal will only be able to hire you if you have met all the requirements for licensure. (R, 26).

3. The second email, sent a few minutes later, was entitled "DCPS Licensure Requirements–Action Needed." It stated that although teachers were required to be licensed, Agency realized that Employee might not have his teaching license when he began to teach with Agency, since it could take Agency up to three months to complete its review of his documentation to ascertain if he met licensure requirements. Employee was notified that to meet licensure requirements, unless he sought reciprocity, he was required to:

1. Have a degree in education…or be enrolled in a master's of education program
2. Have passed the Praxis I exams (reading, writing and math). We do not accept any substitutes for these tests nor do we accept composite Praxis scores.
3. Have passed the Praxis II exams [if teaching certain subjects or areas]. All other subject areas do not require Praxis II exams. (R, 7).

4. By letter dated September 25, 2009, Agency offered Employee a full-time position as an H&PE teacher at the Youth Service Center (YSC). The letter stated in pertinent part:

> Your current status is probationary. Your continued employment with DCPS for the next 2 school years will be based upon a recommendation from your school principal and the satisfactory completion of all certification requirements…**If you do not currently possess a valid District of Columbia teaching/service provider license, you must complete all outstanding certification requirements per your approved action plan administered by the OSSE or DCPS**. (emphasis in original)
>
> Failure to maintain a valid District of Columbia teaching/service provider license or failure to complete your outstanding certification requirements for a District of Columbia teaching/service provider license may result in your separation from service with DCPS at any time. (emphasis in original).

Employee acknowledged receipt of the letter on September 25, 2009. (R, 182).

5. Employee began teaching H&PE at YSC in the 2009/10 school year (SY), and continued through the 11/12 SY. Letters from YSC Principal Arthur Linder dated May 11, 2012, and YSC Assistant Principal Eugene Wright dated May 12, 2012, Agency, both stated that Employee was a "valuable member" of the staff who provided "tremendous benefit" to the students. Both administrators recommended that Employee continue his current assignment. (R, 151, 153).

6. By letter dated April 13, 2010, Tony Graham, a Licensure Operations Analyst with the Office of the State Superintendent of Education (OSSE) Office of Educator Licensure and Accreditation (OELA), notified Employee that in order to be licensed as an H&PE teacher, he had to successfully complete all of the following requirements:

A. Bachelor's degree from a regionally accredited college or university

B. State-approved educator licensure program in teaching Health & Physical Education
C. Qualifying scores for all portions of the Praxis I Pre-Professional Skills test required by the District of Columbia; and
D. Current certificates with endorsements in CPR and First Aid from a recognized organization

Mr. Graham stated that OSSE had not approved Employee's application for licensure as an H&PE teacher, determining that Employee had not submitted sufficient documentation to establish that he met all requirements. A directory of approved programs was attached to the letter. (R, 8).

7. On October 31, 2011, Agency notified Employee, that his employment "has been and continues to be contingent upon satisfactory completion and maintenance of a license to teach …in [DC]." The letter cautioned:

> Our records indicate that you do not hold a valid teaching license. If by June 1, 2012, you do not hold a valid teaching license…DCPS cannot guarantee your employment for the school year 2012-13.

A Licensure/Highly Qualified Action Plan was attached to the letter, and Employee was encouraged to return the completed Plan in order to document his progress. (R, 62).

8. Employee submitted the application for Educator Licensure and Accreditation to OSSE on May 7, 2012. The application and supporting documents established that Employee had still not met all of the requirements to be licensed in the District of Columbia as an H&PE teacher. (R, 10-22, 147).

9. By letter dated June 14, 2012, Agency notified Employee that he would be terminated effective July 14, 2012, based on his failure to meet licensure requirements, stating that teachers employed by Agency were required to be licensed pursuant to District of Columbia Municipal Regulations (DCMR), Section 5-1601 of Title 5. The letter advised Employee of his right to file a grievance with his union or an appeal with this Office. (R, 59-60).

10. Employee filed a petition with this Office on July 23, 2012, appealing the termination. Following the prehearing conference, AJ Murphy determined that an evidentiary hearing was not needed, since no material facts were in dispute. As directed, the parties briefed the issue of whether Agency implemented Employee's removal consistent with applicable laws rules and regulations. (R, 74).

11. In her *Initial Decision*, AJ Murphy concluded that "Agency properly separated Employee from service based on his failure to meet the certification and licensure requirements." She reached this conclusion based on the following findings: teachers in the District of Columbia are required to satisfy licensing requirements; OSSE is the entity in the District of Columbia charged with establishing and ensuring compliance with these requirements; Employee was given sufficient time to meet the requirements but failed to do so; and Employee's Master's degree and 14 years of teaching experience did not exempt him from completing licensing requirements. (R, 156-161).

12. On May 5, 2014, Employee petitioned the OEA Board for review. In its September 5, 2016 *Opinion and Order on Petition for Review*, the Board dismissed the petition, agreeing with the

findings and conclusions in the *Initial Decision*. The Board disagreed with Employee's contention that he relied on Agency information regarding his need to complete licensure requirements which conflicted with the information from OSSE, In response to his contention that he could have met the requirements if given more time, it stated that Agency and OSSE gave Employee "ample notice. (R, 62, 185-186)

13. Employee filed a *Petition for Review of Agency Decision* in the Superior Court of the District of Columbia on February 5, 2017. Agency, although not a party to the proceeding, moved to intervene and on February 10, 2017 moved to dismiss the petition, arguing that OEA had lacked jurisdiction to hear Employee's petition for appeal because Employee was at-will when terminated due to his failure to complete the licensure requirements.

14. On April 4, 2017, Judge Florence Y. Pan, while noting that Agency's challenge was "clearly belated," having never been raised before AJ Murphy or the Board, concluded that the Court was "obligated to consider [the motion] because subject matter jurisdiction cannot be waived." The Superior Court proceeding was stayed, and the matter was remanded to this Office to determine if it had jurisdiction to hear Employee's July 23, 2012 petition for appeal, since, as Judge Pan stated, jurisdiction is "quintessentially a decision for the OEA to make in the first instance."[5] *Donald Frazier v. Office of Employee Appeals*, 2016 CA 874P (MPA) (April 4, 2017).

Positions of the Parties

Employee contends that his removal was "wrongful and unfair," maintaining that he was forthright with Agency at the interview with Ms. Geiseke that he did not have a teaching license, and did not want to leave the security of his teaching position in Maryland if his lack of licensure would be problematic; and that he accepted the position with Agency based on Ms. Geiseke's assurances that his qualifications of an advanced degree and 14 years of teaching experience were sufficient. He asserted that Agency representatives continued to give him these assurances throughout his tenure, and that he accepted their assurances, although they conflicted with information from OSSE.[6] (*See, e.g.*, R, 147). He asserts that he relied on statements from Agency representatives that he should not be concerned with the directives and conflicting information from OSSE to his detriment, and that he should have been given additional time to complete the requirements instead of being terminated, because the delay was caused by his reasonable reliance on Agency's advice that his credentials were sufficient, rather than his own inaction. He contends he could have completed the requirements on time, but for DCPS's misinformation, and that he should be given additional time because it was only his misplaced but reasonable reliance on DCPS resulted in his failure to meet the deadline. *See, e.g., Employee Brief Summar*y (10/24/16); and R, 139, 165-168.

Agency's position is that it did not mislead Employee or give him conflicting information about the licensure requirements, because it has no authority to determine if an applicant meets licensure requirements. It asserts that OSSE, and not Agency, is charged with establishing licensure standards and determining if requirements have been met for issuing teaching licenses. Agency argues that OSSE

[5] The Court cited *Taggart-Wilson v. District of Columbia*, 675 A.2d 28, 29 (D.C. 1996).
[6] The quoted portions of Employee's position in this section are from the *Brief Summary* filed by Employee in Civil Action No. 2016 CA 000874 (MPA) and his submissions to this Office.

maintained contact with Employee throughout his tenure about his need to meet licensing requirements, so that he was aware that OSSE, and not Agency, was responsible for decisions regarding licensure. Agency states that it was obligated to terminate Employee once notified by OSSE that Employee had not met licensure requirements, despite being given ample time to do so. (*See, e.g.*, R, 147).

Findings of Fact, Analysis, and Conclusions of Law

The jurisdiction of this Office is established by law. It was initially created by the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA) (2001) and then amended by the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (OPRAA). Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions not relevant in this matter, of permanent employees in the Career or Educational Service of 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. *See* D.C. Official Code §1-606.3 (2001).

Jurisdiction is a threshold issue, and must be established before an appeal can be heard. Jurisdiction cannot be created by waiver, agreement of the parties, or omission. Therefore, the fact that an agency notifies an employee in the final notice of removal that the employee can appeal the removal to this Office, or the failure of an agency to challenge jurisdiction throughout the proceedings before this Office, both of which occurred in this matter, do not create jurisdiction if jurisdiction does not exist. This Office has the responsibility of ensuring that it has the authority to hear an appeal.

The District of Columbia is one of many jurisdictions that recognizes that there are certain employees, known as "at-will" employees, who serve at the will of the employer, without guarantee of continued employment or protection from termination. The D.C. Official Code § 1-606.03 states that an at-will employee of the District of Columbia Government, serves "at the pleasure of the appointment authority and can be terminated by the employee at any time, with or without cause." Courts in this jurisdiction have used the same language in challenges to terminations brought by public and private sector employees. In *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991), the Court held that an at-will employee can be terminated "at any time and for any reason, or for no reason at all." *See also, Bowie v. Gonzalez*, 433 F.Supp.2d 24 (D.D.C. 2006). An at-will employee has no job tenure or protection, and therefore cannot appeal his or her termination to this Office, D.C. Official Code § 1-609.05, and *Davis v. Lambert*, MPA No. 17-89, 119 DWLR 204 (February 13, 1991).

At-will status can be established in several ways. First, it may be created by legislation. For example, employees in the Management Supervisory Service (MSS) are identified as at-will in the D.C. Office Code § 1-606.03 (2001). The District Personnel Manual, Chapter 38, § 2819.1, provides information on how at-will status impact employment... Although the provision refers to MSS employees, it is equally applicable to all at-will employees of the District of Columbia Government:

> A person appointed to [an at-will] position… shall not acquire Career Service status, shall serve at the pleasure of the appointing personnel authority, and may be terminated at any time.

This Office has long maintained in numerous decisions issued over the last decade, that in addition to lacking jurisdiction to hear appeals of employees designated at-will by statute, it lack jurisdiction to hear appeals of a terminated employee who failed to meet mandatory licensing or certification requirements, reasoning that the employee was at-will because he or she lacked mandatory qualifications. Although the position description does not designate the incumbent as holding "at will" status, since permanent status can only be achieved if requirements are met, an employee who lacks the requirements but is given a stated period of time to complete them, becomes at-will, if the employee fails to complete the requirements by the deadline. This Office has determined it lacks jurisdiction to hear challenges of teachers, inspectors, social workers and other District of Columbia employees who held positions that required licenses or certifications, and who lacked the licenses or certifications at the time of termination, concluding that these individuals, because they did not meet the requirements, had no vested right in the positions.

In most instances, agencies removed these employees "for cause," charging them, for example, with insubordination for failing to comply with agency directives to obtain the required license, inexcusable neglect of duty for failing to complete the licensing requirements, and/or being unable to perform their duties since they lack required certification, Agencies have generally included the right to appeal the removals to this Office in the notices of removal, and have not challenged this Office's jurisdiction. Administrative Judges of this Office have raised this jurisdictional issue and resolved it, as discussed below, recognizing that the jurisdiction must be established before a matter proceeds to resolution.

In *Gizachew Wubishet v. D.C. Public Schools,* OEA Matter No. 1601-0106-06 (March 23, 2007) , Wubishet, a teacher, was given a provisional teaching license when hired and told to complete requirements for a permanent license within a stated timeframe. When he failed to meet the requirements by the deadline, which had been extended, he was removed. He appealed the removal to this Office. In his March 23, 2007, *Initial Decision,* Senior Administrative Judge Eric Robinson determined that this Office's jurisdiction was at issue, although it was not challenged by Agency. Judge Robinson dismissed the appeal, concluding that employee was at-will at the time of removal, because of his failure to obtain the permanent teaching license, and OEA lacks jurisdiction to hear appeals of at-will employees. Wubishet petitioned the Board for review, arguing that he was in permanent status when terminated and that DCPS had not given him "proper notice" of the requirements. The Board disagreed, holding that the appeal was properly dismissed for lack of jurisdiction since Wubishet had at-will status when removed based on his failure to obtain his license after the expiration of his provisional license. *Gizachew Wubishet v. D.C. Public Schools,* OEA Matter No. 1601-0106-06, *Opinion and Order on Petition for Review* (June 23, 2009).

This issue was addressed again by Judge Robinson in *Robin Suber v. D.C. Public Schools*, OEA Matter No. 1601-0107-07R10 (January 22, 2010). Suber was removed for performance-related issues, but Judge Robinson dismissed the appeal, determining that Suber's failure to complete licensure requirements rendered her at-will at the time she was removed and therefore she was barred from appealing her removal to this Office. Similarly, in *Tricia Bowling-Bryant v. D.C. Public Schools*, OEA Matter No. 1601-0090-16 (May 30, 2017), the employee was terminated for performance-related issues. Senior Judge Joseph Lim upheld the removal on the merits, but also determined that the appeal should be dismissed for lack of jurisdiction since Bowling-Bryant had not acquired her teaching license as required and therefore was at-will when terminated...

In *Michael E. Brown et al v. D.C. Department of Consumer and Regulatory Affairs (*DCRA), OEA Matter Nos. 1601-0012-09, 1601-0027-09, 1601-0052-09 and 1601-0054-09 (June 26, 2009), appeals were filed by 19 employees, many of whom had been employed by DCRA for many years and were in permanent status. DCRA created new position descriptions (PD) at higher grades and salaries and moved these employees into the newly created positions. The only significant difference between the former and newly-created positions is that, the PD required incumbents to hold International Code Council (ICC) certification.[7] Agency gave the employees several years to obtain the certification, even extending the deadline when employees failed to complete the requirements. When the employees failed to obtain the ICC certification by the extended deadline, Agency removed them "for cause," charging them with insubordination and inexcusable neglect of duty. In the *Initial Decision*, Judge Robinson determined that DCRA met its burden of proof on the charges that resulted in the removals. However, he also determined that jurisdiction was at issue, since the employees became at-will when they failed to complete certification requirements. He rejected employees' argument that since they could perform their duties without being certified, they did not lose permanent status, thus certification was not essential to their positions. Judge Robinson used an analysis similar to the one in *Wubishet*, which had been approved by the Board. The employees in *Brown* then petitioned the Board for review, claiming again that they maintained their permanent status since certification was not an essential requirement. The Board rejected their claims, concluding that the appeals were properly dismissed for lack of jurisdiction based on their at will status at the time of removal due to their failure to meet certification requirements. *Michael E. Brown et al. v. D.C. Department of Consumer and Regulatory Affairs,* OEA Matter Nos. 1601-0012-09-1601-0027-09 & 1601-0052-09-1601-0054-09, *Opinion and Order on Petition for Review* (January 26, 2011), The Board noted that its decision was consistent with precedent:

> OEA has held that if an employee neglects to obtain proper licensure or certification by the effective date of their removal, then they are deemed at-will employees. Accordingly, they are subject to Agency's discretion regarding their qualifications to continue employment. *(Id,* 5).

Employees petitioned the D.C. Superior Court for review. On November 28, 2011, Judge Gregory Jackson, affirmed the *Initial Decision* and upheld the *Opinion and Order*, concluding that the "AJ decision and the OEA Board's opinion and order [were] persuasive and supported by substantial evidence." The Court, citing *Wubishet*, concluded that an employee's "failure to become certified made [him] "at-will." *Linda Ellis, et al. v. D.C. Department of Consumer and Regulatory Affairs,* 2011 CA 001529 P(MPA), 2011 CA 001533 P(MPA), 2011 CA 001534 P(MPA), 2011 CA 001557 P(MPA), 2011 CA 001560 P(MPA), 2011 CA 001561 P(MPA), 2011 CA 001562 P(MPA), and 2011 CA 001567 P(MPA) (November 28 2011). Thus, this Office's position has been upheld by the Superior Court.

More recently, in *Jennifer Broadwater v. D.C. Public Schools*, OEA Matter Nos. 1601-0099-15 (December 21, 2016), Agency removed Broadwater for failing to complete licensure requirements as a social worker. Judge Lim concluded that Broadwater had at-will status when removed because she had failed to meet the licensure requirements, and therefore OEA lacked jurisdiction to hear her appeal. He noted that in *Ellis*, the Superior Court had approved the conclusions reached by the AJ and confirmed by the Board based on this analysis:

[7] ICC is a nationally recognized certification program for residential and commercial code inspectors.

> The Superior Court agreed with the AJ's ultimate conclusion that if an employee neglects to obtain proper licensure or certification by the effective date of their removal, then they are deemed at-will employees, and thus OEA must dismiss the appeals as it lacks jurisdiction over "at-will" employees.

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), employees have the burden of proof on all issues of jurisdiction. Employee must meet the burden, according to OEA Rule 628.1, by a "preponderance of the evidence" which is defined as "the 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."

The AJ finds that that Employee was aware that OSSE had the ultimate responsibility in licensure matters. He may have been confused about the responsibilities of Agency and OSSE in the licensing process, because their roles were not clearly delineated in correspondence, and perhaps, even during discussions. However, the record supports the conclusion that Employee was aware that OSSE had a significant role in the licensure process because although he contacted Agency about his concerns and confusion and, according to his representations, was continuously told by Agency not to worry, he nevertheless also maintained contact with OSSE, which continued to communicate with him about the need to meet licensure requirements. He submitted his application and supporting documents to OSSE. Employee is a highly educated and very intelligent individual, and despite the inconsistencies and confusion, continued to communicate with OSSE, recognizing its role despite assurances he stated he received from Agency. *Williams v. Walker-Thomas Furniture Co*., 350 F.2d 445 (D.C. Cir. 1965).

Employee raised several arguments to support his position that this Office has jurisdiction of the appeal, maintaining that he was not, or should not have been, in at-will status when terminated. First, he argued that he told Agency at the initial interview that he did not have a teaching license, and that Agency assured him that his Master's degree and years of experience were sufficient qualifications. He maintained that several Agency representatives he contacted because of conflicting and inconsistent information from OSSE and Agency about whether he satisfied the requirements, told him not to worry. He maintained that he relied on Agency's assurances when accepting the position and in reliance, did not immediately begin efforts to meet licensure requirements. Agency did not concede that it assured Employee that he did not need to meet licensing requirements. However, accepting that Employee could have been confused by the information from OSSE and Agency, the documentation establishes that beginning when Employee was hired in 2009, and continuing each year thereafter, he was notified at least annually of the licensure requirements and of his failure to meet those requirements. The communications to Employee from DCPS and OSSE between 2009 and 2011, state clearly and often boldly, that licensure was mandatory; that Employee had not met the requirements; and that if he did not meet them by June 2012, his continued employment was not assured. [*See Undisputed Findings of Fact* (UFF), *infra* at 4, 6 and 7.]

Employee's argument that Agency should be equitably estopped from removing him because he took the position based on Agency's representations that his credentials were satisfactory fails for several reasons. Employee did not meet the required burden of proof that Agency made those representations. To the contrary, the written communications in the Record clearly inform Employee of the licensure requirements, that he has not met the requirements, and that he could not be assured of

continued employment unless they were met. In addition, Employee, although continuing to stay in contact with Agency about his confusion and hearing its continued assurances that he should not worry, nevertheless realized OSSE's role in this process since he exchanged communications with OSSE about the licensure process, and submitted his application and supporting documentation to OSSE. Assuming *arguendo,* that there was significant conflicting information given to Employee by OSSE and Agency, Employee's misplaced reliance on that information cannot alter the legal requirements of the position. *Office of Personnel Managements v. Richard*, 497 U.S. 414 (1990) rehearing denied, 497 U.S. 1046 (1991). Therefore, the licensure requirements could not be waived even if Ms. Geiseke and/or her colleagues had given Employee assurances that conflicted with the information he was receiving from OSSE. (UFF, 4, 6 and 7).

Employee argues that because of Agency's assurances that he relied upon and caused him to delay completing the requirements, he should be given additional time to complete licensure requirements. However, this argument must also fail. Employee was first notified of the requirements in September 2009. On September 25, 2009, Employee acknowledged receipt of a letter from Agency notifying him, in bold and italicized letters, that he would remain in probationary status for two years, and his "continued employment" would be based on the recommendation of the principal and "the satisfactory completion of all certification requirements…" The letter concluded that "failure to complete… outstanding certification requirements for a teaching license could "result in [his] separation from service with DCPS at any time."(UFF, 4). On April 13, 2010, OSSE notified him by letter, that his application for licensure was denied based on his failure to complete all requirements (UFF, 6). Finally, on October 31, 2011, Agency provided Employee with written notice that it could not ensure him of continued employment unless he had a valid teaching license by June 1, 2012. (UFF, 7). Employee knew in September 2009 that he had two years to complete requirements and obtain his license. In April 2010, he was notified that his application was denied. In October 2011, he was given until June 2012 to complete the requirements. Employee established that he was maintaining contact with OSSE during this time. He did not offer, through sufficient evidence or argument, that the time he was allotted was unreasonable and/or, under the circumstances, was unfair.

Pursuant to D.C. Municipal Regulations (DCMR), Chapter 5, Section 1601.1 requires that an individual must have a teaching license in order to be hired by Agency to teach most subjects, including H&PE. The provision also establishes that OSSE is the entity charged with establishing licensure requirements, managing the licensure process, and awarding teacher licenses:

> The State Superintendent of Education shall develop policies or directives setting forth objective and verifiable standards for the approval, renewal and revocation of approval by the OSSE of teacher preparation and practicing teacher programs in the District of Columbia that qualify candidates to earn a Regular Teaching Credential

OSSE is the entity charged with establishing licensure standards and determining if the requirements are met. There was no evidence or argument presented that Agency has the authority to waive or alter licensing requirements. Indeed, Agency argued that Agency lacked such authority and was obligated to terminate the employment of an individual determined by OSSE to have failed to meet licensure requirements. It maintains that it followed this procedure in the instant matter. This Office has no authority to waive the legal requirements of the position held by Employee, *i.e.*, the licensure

requirements. Employee's relief, if he contends the requirements are unreasonable or that he merits a waiver, must be in another forum.

Employee maintains that he proved that he was "an effective teacher who deserved to be tenured." Certainly, the YSC principal and assistant principal considered him qualified and effective, and recommended his continued employment. However, his effectiveness is not at issue. The District of Columbia requires teachers employed by Agency to have teaching licenses. OSSE is charged with establishing the standards and determining if requirements are met. Agency is required to terminate the employment of a teacher who has not completed licensure requirements by the stated deadline. There was documentation in the Record to support the conclusion that Employee knew or should have known that a teaching license was required to achieve permanent status. Although he may have been given assurances by DCPS that he did not need to meet those requirements, he was also consistently notified of his need to complete the requirements, and he maintained contact with OSSE regarding his application and the requirements. He did not establish that he was given insufficient time to complete the requirements. This Office has no authority to waive the licensing requirements or to waive the requirements. *Banks v. D.C. Public Schools*, OEA Matter No. 1601-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992). Employee was warned several times that he had "no right to continued employment while [he] remained uncertified when [his] certificate expired by its own terms. Accordingly, [he] could have no reasonable expectation of continued employment."

Teachers have a critical mission, responsible for ensuring that the youth of the District of Columbia have the knowledge, skills and values that will make them productive members of this community. They often work under difficult conditions, and rarely receive the appreciation and respect that they deserve. The principal and assistant principal of YSC gave Employee high accolades. The AJ was impressed by his demeanor, professionalism and intelligence throughout this proceeding, and believes that the District of Columbia and its youth would be well-served by his continued employment. She hopes that he completes the remaining requirements within a short period of time, and then after obtaining his teaching license, which she recommends OSSE process quickly, he returns to the District of Columbia to resume his important position.

In sum, based on the analysis, findings and conclusions, as discussed herein, the AJ concludes that Employee failed to meet his burden of proof that this Office has jurisdiction to hear this appeal. She further concludes that Employee was in at-will status at the time he was removed because of his failure to complete licensure requirements, and that this Office lacks jurisdiction to hear appeals of at-will employees regarding their removals.

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ORDER

It is hereby

ORDERED: This petition for appeal is dismissed.

FOR THE OFFICE: Lois Hochhauser, Esq.
Administrative Judge