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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0138-10
MARKIA JACKSON,)	
Employee)	
)	Date of Issuance: June 5, 2012
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	STEPHANIE N. HARRIS, Esq.
_____)	Administrative Judge

Markia Jackson, Employee *Pro-Se*
Sara White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 5, 2009, Markia Jackson (“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”) action of terminating her employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time her position was abolished was an Elementary Teacher at Davis Elementary School (“Davis”). Employee was serving in Educational Service status at the time she was terminated. Agency submitted its Answer on December 14, 2009.

I was assigned this matter on February 7, 2012. On February 14, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations (“February 14th Order”). Agency complied, but Employee did not respond to the February 14th Order. Accordingly, on March 29, 2012, I issued an Order for Statement of Good Cause (“March 29th Order”) wherein Employee was required to submit a statement explaining her failure to respond to the February 14th Order. Employee was also directed to submit her legal brief. Employee’s response was due on or before March 27, 2012. As of the date of this decision, the undersigned has not received a response from Employee regarding the aforementioned Orders. After reviewing the record, I have determined that there are no material facts in dispute and therefore, a hearing is not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

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.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.¹

Although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,² which encompasses more extensive procedures, for the reasons explained below, I find that D.C. Official Code § 1-624.08 ("Abolishment Act") is the more applicable statute to govern this RIF.

Specifically, section § 1-624.08 states in pertinent part that:

¹ See Agency's Answer, Tab 1 (December 14, 2009).

² D.C. Code § 1-624.02 states in relevant part that:

(a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;

(2) One round of lateral competition limited to positions within the employee's competitive level;

(3) Priority reemployment consideration for employees separated;

(4) Consideration of job sharing and reduced hours; and

(5) Employee appeal rights.

(a) ***Notwithstanding*** any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 2000, and each subsequent fiscal year, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment (emphasis added).

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) ***Notwithstanding*** any rights or procedures established by any other provision of this subchapter, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section (emphasis added).

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

In *Mezile v. D.C. Department on Disability Services*,³ the D.C. Superior Court found that “the language of § 1-624.08 is unclear as to whether it replaced § 1-624.02 entirely, or if the government can only use it during times of fiscal emergency.” The Court also found that both laws were current and that the government triggers the use of the applicable statute by using “specific language and procedures.”⁴

However, the Court of Appeals took a different position. In *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*,⁵ DCPS conducted a 2004 RIF “to ensure balanced budgets, rather than deficits in Fiscal Years 2004 and 2005.” The Court of Appeals found that the 2004 RIF conducted for budgetary reasons, triggered the Abolishment Act (“the Act”) instead of “the regular RIF procedures found in D.C. Code § 1-624.02.”⁶ The Court stated that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF.”⁷

³ No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

⁴ *Id.* at p. 5.

⁵ 960 A.2d 1123, 1125 (D.C. 2008).

⁶ *Id.*

⁷ *Id.*

The Abolishment Act applies to *positions abolished for fiscal year 2000 and subsequent fiscal years* (emphasis added). The legislation pertaining to the Act was enacted specifically for the purpose of addressing budgetary issues resulting in a RIF.⁸ The Act provides that, “notwithstanding any rights or procedures established by any other provision of this subchapter,” which indicates that it supersedes any other RIF regulations. The use of the term ‘notwithstanding’ carries special significance in statutes and is used to “override conflicting provisions of any other section.”⁹ Further, “it is well established that the use of such a ‘notwithstanding clause’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other sections.”¹⁰

The Abolishment Act was enacted after § 1-624.02, and thus, is a more streamlined statute for use during times of fiscal emergency.¹¹ Moreover, the persuasive language of § 1-624.08, including the term ‘notwithstanding,’ suggests that this is the more applicable statutory provision to conduct RIFs resulting from budgetary constraints. Accordingly, I am primarily guided by § 1-624.08 for RIFs authorized due to budgetary restrictions. Under this section, an employee whose position was terminated may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level.

Employee’s Position

In her Petition for Appeal, Employee states that she graduated in 2009 with a “BS in Elementary Education (magna cum laude),” noting that she has passed both the Praxis I and Praxis II¹² and meets all the requirements of the ‘No Child Left Behind’ program. Employee explains that Agency failed to provide a reason for the RIF, but claimed that the Mayor and former Chancellor both stated publicly that the selection was based on low performance. She cites an October 6, 2009 Washington Post article as support for this proposition. Employee also states that she was a new teacher who had only worked for five weeks, and that she was not evaluated and did not receive any observation reports. Employee further asserts that she was not provided with any information or documentation regarding the evaluation process that resulted in her termination, re-employment priority rights, or the Displaced Employee Program.¹³

Agency’s Position

Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her termination.¹⁴

⁸ *Id.*

⁹ *Burton v. Office of Employee Appeals*, 30 A.3d 789 (D.C. 2011).

¹⁰ *Id.*

¹¹ *Mezile v. D.C. Department on Disability Services*, No. 2010 CA 004111 (D.C. Super. Ct. February 2, 2012).

¹² The Praxis Series tests are taken by individuals entering the teaching profession as part of the certification process required by DCPS.

¹³ See Petition for Appeal (November 5, 2009).

¹⁴ Agency Brief at pp. 3-8 (March 6, 2012).

Agency further maintains that it utilized the proper competitive factors in implementing the RIF and Employee, who was one of the lowest ranked Elementary Teachers, was terminated as a result of the round of lateral competition.¹⁵ Agency also contends that OEA does not have jurisdiction in this matter because Employee voluntarily retired.¹⁶

Regarding the issue of jurisdiction, Agency has failed to provide any supporting documentation to support its contention that Employee retired. Further, Employee's personnel file and the retention register used by Agency for the instant RIF shows that Employee began her employment with DCPS in 2009.¹⁷ Thus, based on the preceding, the undersigned will address the merits of this matter.

RIF Procedures

Under Title 5 DCMR § 1501.1, the Superintendent of DCPS is authorized to establish the competitive areas when conducting a RIF so long as those areas are based "upon all or a clearly identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office." For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area.¹⁸ In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and
3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.¹⁹

Here, Davis was identified as a competitive area, and Elementary Teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were eight (8) elementary teacher positions subject to the RIF.²⁰ Of the eight positions, four (4) positions were identified to be abolished. Because Employee was not the only Elementary Teacher within her competitive level, she was required to compete with other employees in one round of lateral competition.

According to Title 5, DCMR § 1503.2 *et al.*:

If a decision must be made between employees in the same competitive area and competitive level, the following factors,

¹⁵ *Id.* at pp. 3-6. School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

¹⁶ *Id.* at p. 2.

¹⁷ *Id.*, Exhibit A, Retention Register; Employee Personnel File.

¹⁸ Agency Answer, Tab 1, RIF Authorization (December 14, 2009).

¹⁹ *Id.*

²⁰ Agency Brief, Exhibit A, Retention Register (March 6, 2012).

in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;
- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
- (b) Significant relevant contributions, accomplishments, or performance – (10%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
- (d) Length of service – (5%)²¹

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.²² Agency cites to *American Federation of Government Employees, AFL-CIO v. OPM*,²³ wherein the Office of Personnel Management was given “broad authority to issue regulations governing the release of employees under a RIF...including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority.”²⁴ I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

²¹ It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in § 1503.2. Thus, Agency is not required to assign equal values to each of the factors. *See White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

²² Agency Brief at pp. 5-6 (March 6, 2012).

²³ 821 F.2d 761 (D.C. Cir. 1987).

²⁴ *Id.*

Competitive Level Documentation Form

Agency employs the use of a Competitive Level Documentation Form (“CLDF”) in cases where employees subject to a RIF must compete against each other in lateral competition. In conducting the instant RIF, the principal of Davis was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the “length of service” category was completed by the Department of Human Resources (“DHR”). Employee claims that she was not provided with any information or documentation regarding the evaluation process that resulted in her termination. However, the undersigned notes that Agency included a copy of Employee’s CLDF in its Answer at Tab 3.²⁵

Employee received a total of seventeen (17) points on her CLDF and was therefore, ranked one of the lowest employees in her respective competitive level. Employee’s CLDF stated in pertinent part, the following:

“Ms. Jackson does not show great progress towards[s] the mastery of the Teaching and Learning Framework. During instruction, she does not regularly refer to the objective. She also fails to articulate a focus question or engage students in higher-ordered questioning. She does not create lessons that reach all types of learners at different levels, as many students appear not to be challenged by the material presented. She has not made a positive impact on the academic progress of her students. Her classroom management skills are ineffective, resulting in too much off-task behavior and many interruptions to instruction.”²⁶

Office or school needs

Employee received a total of two (2) points out of a possible ten (10) points in this category; a score much lower than the other employees within her competitive level who were retained in service.²⁷ This category is weighted at 75% on the CLDF and accounts for any factor that may have an impact on the success of the school or the achievement of the students at school. Some of the factors used in consideration for this category include: student learning skills, training, experience, school culture contributions, teaching and learning framework, leadership roles, licensure or certifications, and advanced degrees that pertain specifically to the needs of the school.

Employee submits that she has a bachelor’s degree, has passed the Praxis I and Praxis II exams, and meets the requirements of the ‘No Child Left Behind Act,’ along with supporting documentation. However, Employee has failed to provide any evidence to highlight how her degree or licensure translates into her classroom expertise. Moreover, because Employee received two points in this category, it can reasonably be assumed that her degree and certifications were taken into consideration for awarding points.

²⁵ See Agency Answer, Tab 3 (December 14, 2009).

²⁶ *Id.*

²⁷ Agency Brief, Exhibit A, Retention Register (March 6, 2012).

Employee also claims that she was not evaluated and did not receive any observation reports. The undersigned notes that the criteria Agency instructed principals to use in ranking employees did not require a formal observation of employees.²⁸ Specifically, in the Office or School Needs category, principals were instructed to assign scores “reflect[ing] [the] best judgment of the extent to which the person meets the particular needs of [the] school.”²⁹

Relevant significant contributions, accomplishments, or performance

Employee received zero (0) points in this category, which is weighted at 10% on the CLDF. This category evaluates any clear, significant contributions made by employees, above what would normally be expected of an employee in his or her competitive level. Employee has not provided any supplemental evidence suggesting that she should have earned a higher score in this category.

Relevant supplemental professional experiences as demonstrated on the job

Employee also received zero (0) points in this category, which is weighted at 10% on the CLDF, and awards points to employees for any additional training or professional experiences outside standard training required by Agency or required to maintain licensure; and application of said training or experience at the school in a way that positively impacted student or school performance. Employee has not provided any documentation to supplement additional points being awarded in this area.

Employee has not provided any credible evidence that would bolster a score in any of the aforementioned categories completed by the principal of Davis. Further, there is no indication that any supplemental evidence would supplant the higher scores received by the remaining employees in Employee’s competitive level who were not separated from service. This Office cannot substitute its judgment for that of the principal at Davis, who was given discretion to complete Employee’s CLDF and had wide latitude to invoke her managerial discretion.³⁰ Thus, with respect to the aforementioned CLDF categories, I find that I will not substitute my judgment for that of the principal of Davis as it relates to the scores she accorded Employee and her colleagues in the instant matter.

Length of service

The Length of Service category, which was completed by DHR, includes credit for years of service, District residency, veterans’ preference, and prior outstanding or exceeds expectation performance rating within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee. Employee received a total of two (2) points in this category and has not contested that additional points should have been awarded. Additionally, Agency has provided an affidavit from Peter Weber, who served as the Interim Director of Human Resources during the time of the instant RIF.³¹ Mr. Weber states that he was responsible for computing employees’ length of service for the instant RIF and used the DHR official Peoplesoft system to obtain data for the calculations, which appear in Employee’s CLDF. Further, a review of Employee’s personnel file, which was submitted by Agency,

²⁸ Agency Answer, Tab 2, Attachment B (December 14, 2009).

²⁹ *Id.*

³⁰ See *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997).

³¹ Agency Brief, Exhibit B (March 6, 2012).

does not reveal any evidence that would necessitate a recalculation of the points awarded in this category.³² Therefore, based on the evidence of record, I find that Agency properly calculated this number.

Moreover, in reviewing the documents of record, Employee does not offer any statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*,³³ the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."³⁴ According to the CLDF, Employee received a total score of seventeen (17) points after all of the factors outlined above were tallied and scored. The lowest scoring elementary teacher in Employee's competitive level who was retained in service, received a total score of sixty-eight (68) points.³⁵ Employee has not proffered any evidence to suggest that a re-evaluation of her CLDF scores would result in a different outcome in this case.³⁶

Further, the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.³⁷ This Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."³⁸ Accordingly, I find that the principal of Davis had discretion in completing Employee's CLDF, as she was in the best position to observe and evaluate the criteria enumerated in DCMR §1503.2, *supra*, when implementing the instant RIF. Therefore, I find that Agency did not abuse its discretion in completing the CLDF, and Employee was properly afforded one round of lateral competition as required by D.C. Official Code § 1-624.08.

Thirty (30) Days Written Notice

Title 5, §1506 of the DCMR provides the notice requirements that must be given to an employee affected by a RIF. Section 1506.1 states that "an employee selected for separation shall be given specific written notice at least thirty (30) days prior to the effective date of the separation. The notice shall state specifically what action is taken, the effective date of the action, and other necessary information regarding the employee's status and appeal rights." Additionally, D.C. Official Code § 1-624.08(e), which governs RIFs, provides that an Agency *shall* give an employee thirty (30) days notice *after* such employee has been *selected* for separation pursuant to a RIF (emphasis added).

³² *Id.*, Employee Personnel File.

³³ 109 F.3d 774 (D.C. Cir. 1997).

³⁴ See also *American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

³⁵ Agency Brief, Exhibit A, Retention Register (March 6, 2012).

³⁶ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

³⁷ See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

³⁸ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

Here, the record shows that Employee received her RIF notice on October 2, 2009, and the RIF effective date was November 2, 2009.³⁹ The RIF notice states that Employee's position was eliminated as part of a RIF. The RIF notice also provided Employee with information about her appeal rights. Further, Employee has not alleged that she did not receive thirty (30) days notice prior to the effective date of the RIF. Accordingly, I find that Employee was given the required thirty (30) days written notice prior to the effective date of the RIF.

RIF Authorization

Employee contends that Agency failed to specifically state a reason for the RIF, noting that they made public statements that the selections for the RIF were based on low performance. As noted above, in the September 10, 2009 RIF Authorization memorandum, Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.⁴⁰

Further, in *Anjuwan v. D.C. Department of Public Works*,⁴¹ the D.C. Court of Appeals ruled that OEA lacked authority to determine whether an Agency's RIF was bona fide. The Court of Appeals explained that as long as a RIF is "justified by a shortage of funds at the agency level, the agency has discretion to implement the RIF..."⁴² The Court also noted that OEA does not have the "authority to second guess the mayor's decision about the shortage of funds...[or] management decisions about which position should be abolished in implementing the RIF."⁴³

OEA has interpreted the ruling in *Anjuwan* to include that this Office has no jurisdiction over the issue of an agency's claim of budgetary shortfall, nor can OEA entertain an employees' claim regarding how an agency elects to use its monetary resources for personnel services. In this case, how Agency elected to spend its funds on personnel services or how Agency elected to reorganize internally was a management decision, over which neither OEA nor this Administrative Judge ("AJ") has any control.⁴⁴

Priority Re-employment

Employee also argues that she did not receive any information or documentation regarding priority re-employment rights. As discussed above, § 1-624.08, the Abolishment Act, and not § 1-624.02 applies to the instant RIF. The Abolishment Act does not require Agency to engage in priority re-employment procedures. However, in conducting the instant RIF, Agency maintains that it complied with 5 DCMR Chapter 15, which addresses the issue of priority re-employment.⁴⁵ Agency's RIF Notice stated that "[e]mployees separated pursuant to a reduction in force receive priority re-employment consideration, but are not guaranteed re-employment."⁴⁶ The notice also explained that employees may apply for future job vacancies at DCPS or within the District

³⁹ Agency Answer, Tab 4 (December 14, 2009).

⁴⁰ *Id.*, Tab 1.

⁴¹ 729 A.2d 883 (December 11, 1998).

⁴² *Id.* at 885.

⁴³ *Id.*

⁴⁴ *Gatson v. DCPS*, OEA Matter No. 2401-0166-09 (June 23, 2010).

⁴⁵ Agency's Brief at p. 3 (March 6, 2012).

⁴⁶ See Agency's Answer, Tab 4 (December 14, 2009).

government that arise in the future.⁴⁷ Further, 5 DCMR § 1505.3⁴⁸ states that while Agency is authorized to establish and implement priority reemployment procedures, separated employees are not granted a right to be reemployed. Employee has not provided any credible evidence to show that she applied for available positions and was not given priority consideration.

Grievances

Employee also argues that she did not receive any information or documentation about the Displaced Employee Program. A complaint of this nature is considered a grievance and does not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction hear Employee's other claims.

Failure to Prosecute

Employee's failure to respond to the February 14th and March 29th Orders provides a basis to dismiss this petition. OEA Rule 621.3 grants an AJ the authority to impose sanctions upon the parties as necessary to serve the ends of justice.⁴⁹ The AJ may, in the exercise of sound discretion, dismiss the action if a party fails to take reasonable steps to prosecute or defend her appeal.⁵⁰ Moreover, this Office has held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline for such submission.⁵¹ Both the February 14th and March 29th Orders advised Employee of the consequences of not responding, including sanctions resulting in the dismissal of the matter. Employee's responses to these Orders were required for a proper resolution of this matter on the merits. Accordingly, the undersigned finds that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office and this serves as an alternate ground for the dismissal of this matter.

CONCLUSION

Based on the foregoing, I find that Employee's position was abolished after she properly received one round of lateral competition and was given thirty (30) days written notice prior to the effective date of the RIF. I therefore conclude that Agency's action of abolishing Employee's position was done in accordance with D.C. Official Code § 1-624.08.

⁴⁷ *Id.*

⁴⁸ 49 DCR 5975 (2002).

⁴⁹ 59 DCR 2129 (March 16, 2012).

⁵⁰ OEA Rule 621.2, 59 DCR 2129 (March 16, 2012).

⁵¹ See OEA Rule 621.3(b)-(c); *Employee v. Agency*, OEA Matter No. 1602-0078-83, 32 D.C. Reg. 1244 (1985); *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

ORDER

It is hereby **ORDERED** that Agency's action of abolishing Employee's position through a Reduction-In-Force is **UPHELD**

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge