



not have jurisdiction over his appeal. He also expressed frustration at having made several efforts and spent a lot of money to gain educational credentials, only to find that he “does not have enough education and. . . must attend more school.” Employee ended his recitation with the query, “Do I have adequate education to teach at your local schools?” Employee did not address the questions posed by this Judge.

Employee also attached a letter from Donna Lira, Licensure Specialist, Division of Teacher Education and Licensure, Commonwealth of Virginia, Department of Education. The letter, dated May 19, 2007, advised Employee of his eligibility to receive a three-year nonrenewable Provisional License. Employee was advised that he must satisfy other requirements in order to become eligible for a five-year renewable license.

This appeal presented no factual disputes that required resolution by a hearing. Therefore, none was convened. This decision is based upon the record of documentary evidence and written legal arguments by the parties. The record is now closed.

### BURDEN OF PROOF

OEA Rule 629.2, 46 D.C. Reg. 9297 (1999) states that “[t]he employee shall have the burden of proof as to issues of jurisdiction . . .” Pursuant to OEA Rule 629.1, *id.*, the applicable standard of proof is by a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence as “[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.” Employee must prove, by a preponderance of the evidence, that this Office has jurisdiction over his appeal.

### JURISDICTION

For the reasons set forth in the “Analysis and Conclusion” section below, this Office does not have jurisdiction over Employee’s appeal.

### ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

### ANALYSIS AND CONCLUSIONS

Employee was required to have a license to teach. It is undisputed that, at the time of the separation, he did not have one. The letter he presented demonstrates only that, as of May, 2007, he had provisional licensure. But the letter was clear in stating that other requirements must be met to gain full credentials. Employee has not presented any evidence that he had met them at the time of the removal. Agency correctly determined that Employee was not fully qualified for his position.

Although Agency was correct to notify Employee of his right to file an appeal, that notice does not establish the jurisdiction of this Office. Chapter 16 of the District

Personnel Manual (DPM) contains the rules and regulations that implement the law of employee discipline. Section 1600.1 of the DPM limits the application of those provisions to employees “of the District government *in the Career Service*.” (Emphasis added.) In accordance with §1601.1, no career service employee may be “officially reprimanded, suspended, reduced in grade, removed, or placed on enforced leave, except as provided in this chapter or in Chapter 24 [the provisions for conducting a reduction in force] of these regulations.” The D.C. Official Code (2001), Section 1-606.03, establishes that an employee may appeal, to this Office, “a final agency decision” effecting “an adverse action for cause that results in removal.”

However, these protections are only afforded to career service employees. Section 1601.1 of the District Personnel Manual (DPM) distinguishes career service employees from at will employees. It states that “[e]xcept as otherwise required by law, an employee not covered by §1600.1 is an *at will employee* and may be subjected to any or all of the foregoing measures at the sole discretion of the appointing personnel authority.” (Emphasis added). An at will employee may be terminated at any time and “for any reason at all.” *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995), \_\_\_ D.C. Reg. \_\_\_ ( ). In the matter of *Williamson v. D.C. Public Schools* (April 25, 2008), \_\_\_ D.C. Reg. \_\_\_ ( ), this Judge held that a teacher without full licensure did not meet all of the requirements of her contractual agreement with the agency. Therefore, she never achieved career status. Instead, she was an “at will” employee subject to removal at any time. Her removal was upheld.

As an at-will employee, the appellant was subject to removal by the agency with no recourse. According to the applicable laws, rules and regulations, this Office does not have jurisdiction over the appeal of a removal of an at-will employee. Therefore, this appeal must be dismissed.

#### ORDER

It is hereby ORDERED that the petition for appeal in this matter is dismissed for lack of jurisdiction.

FOR THE OFFICE:

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SHERYL SEARS, ESQ.