

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
SAUNDRA MCCRAY)	OEA Matter No. 1601-0010-03
Employee)	
)	Date of Issuance: October 26, 2005
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC)	
SCHOOLS)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sandra McCray (“Employee”) worked as a teacher with the D.C. Public Schools (“Agency”) from 1981-1999. On October 16, 1999, Employee was temporarily appointed to the position of Assistant Principal for the 21st Century Community Learning Center (CLC) at the Patricia Roberts Harris School for a one-year term; CLC is a grant-funded program. In August of 2002, Employee was advised by Agency that the CLC grant would not be renewed and would expire as of September 30, 2002.

Although Employee was appointed to the Assistant Principal position, she continued to occupy her position as a permanent status teacher, ET, 15. Even though Employee continued to be paid by Agency until November 16, 2002, Agency never placed Employee back into a teaching position when the CLC grant expired.¹ On November 8, 2002, Employee filed a Petition for Appeal with this office stating that she did not receive notice of adverse action allegedly used to remove her from her position. She also provided in the petition that she received no notice of any changes in duty or pay. Employee's license to teach expired on June 30, 2003, which according to Agency was in direct violation of the "No Child Left Behind Act ("NCLBA")."²

An Initial Decision was issued on January 22, 2004, which provided that as of November 17, 2002, Employee should have been reinstated to an ET-15 teacher's position. The Administrative Judge held that as a result of her expired teaching license, Employee's reinstatement period was from November 17, 2002 until June 30, 2003. The Administrative Judge also found that Employee was entitled to back pay and benefits at the ET-15 level from November 17, 2002 through June 30, 2003.

On January 28, 2004, Employee filed a Petition for Review alleging that she was wrongfully terminated by the Agency. Employee contends that the Administrative Judge erroneously interpreted the NCLBA with respect to the reinstatement period and the amount of back pay she was entitled to. In her Petition for Review, Employee agrees that she should have been reinstated to her ET-15 teaching position. However, she contends

¹ See Employee's Motion for Back Pay and Reinstatement and Information in Support Thereof, p. 1.

² The "No Child Left Behind Act" provides that public school teachers must be highly qualified by means of being fully certified by Agency's Office of Academic Credentialing and Accreditation and hold a valid teaching license. See Agency Response to Motion for Summary Judgment.

that until this occurs she will not have proper and effective notice of the applicable NCLBA requirements.

According to 5 DCMR § 520.3, a person not retained as an Assistant Principal who holds permanent status in another position shall revert to the highest prior position upon their removal from the Assistant Principal position. Therefore, when Employee was removed as an Assistant Principal on September 30, 2002, according to the statute she should have reverted to an ET-15 teaching position. That being the case, Agency did not provide the Office of Employee Appeals (“OEA”) with a basis to remove Employee as an ET-15 teacher.

At no time was Employee notified that she would be removed from her position because of a suspension for 10 days or more, an adverse action, or a reduction in grade. These are the statutory jurisdictional requirements for the OEA to hear cases on appeal.³ Because the Agency did not remove Employee under any of the three statutory basis outlined, Employee may not have been properly removed from her position. There is no evidence of a Final Agency Decision nor is there notice of it having been sent to Employee. Moreover, the Administrative Judge provides in his Initial Decision that Employee alleged that the Agency failed to provide notice of her termination.⁴ This issue, however, was never addressed by the Administrative Judge.

³ See D.C. Code Ann. § 1-606.3(a).

⁴ See Initial Decision (January 22, 2004), p. 1.

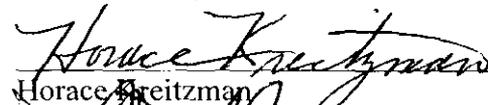
Therefore, this matter is remanded to the Administrative Judge to determine if the Agency properly removed Employee from her position as an ET-15 teacher as outlined in D.C. Code Ann. §1-606.3(a) and D.C. Personnel Regulations, Chapter 16, Part I . Although it is very clear that the NCLBA was applicable during the period that Employee was removed from her position as an Assistant Principal, the issue of Employee's expired license is secondary to the issue of her proper removal since both parties concede that she should have reverted back to her highest prior teaching position as outlined in the DCMR. It is not evident, based on the information provided to OEA, which procedure the Agency used to remove Employee from her position. Therefore, Employee's Petition for Review is remanded to the Administrative Judge for further review.

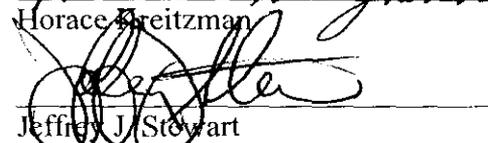
ORDER

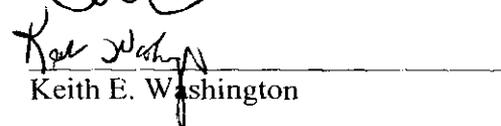
Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and this appeal is **REMANED** for further consideration.

FOR THE BOARD:


Brian Lederer, Chair


Horace Kreitzman


Jeffrey J. Stewart


Keith E. Washington

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.