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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of:	)	
	)	OEA Matter No.: 2401-0255-10AF16AF18
WEBSTER ROGERS,	)	
Employee	)	
	)	Date of Issuance: April 5, 2018
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
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Omar Melehy, Esq., Employee Representative		
Carl Turpin, Esq., Agency Representative		

**THIRD ADDENDUM DECISION ON ATTORNEY FEES AND COSTS**

On December 2, 2009, Webster Rogers (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“the OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) action of terminating his 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 his position was abolished was an ET-15 Music Teacher at Moten Elementary School (“Moten”). Employee was in Educational Service status at the time he was terminated.

This matter was initially assigned to Administrative Judge Sommer Murphy. On June 13, 2012, the AJ Murphy issued an Initial Decision (“ID”), finding that Agency’s action of abolishing Employee’s position was done in accordance with D.C. Official Code § 1-624.08, and that the RIF, which resulted in his removal, should be upheld. Employee subsequently filed an appeal with D.C. Superior Court on August 6, 2012. On December 9, 2013, the Honorable Judge John Mott reversed and remanded the her ID and held that the RIF was conducted under the incorrect regulation. Specifically, Judge Mott held that a mistake of law arose by applying the criteria in 5 D.C.M.R § 1500 *et seq.*, instead of Chapter 24 of the D.C. Personnel Manual (“DPM”), after determining that the Abolishment Act (D.C. Code § 1-624.08) governed the RIF.<sup>1</sup>

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<sup>1</sup> See 2012 CA 006364 P(MPA) (December 9, 2013).

The parties were subsequently ordered to submit additional briefs on the issues as enumerated in Judge Mott's December 9, 2013 Order. On February 27, 2015, AJ Murphy issued an Initial Decision on Remand, finding that Agency failed to prove by a preponderance of the evidence that it conducted the 2009 RIF in accordance with the procedures set forth in D.C. Code §1-624.08 and Chapter 24 of the DPM.<sup>2</sup> Agency's action of terminating Employee was therefore reversed. Agency was further ordered to reinstate Employee to his previous position of record, and reimburse him for all back-pay and benefits lost from the effective date of his termination.<sup>3</sup>

In April of 2015, Agency filed a Petition for Review with OEA's Board; however, the appeal was denied and Agency was ordered to reinstate Employee in accordance with the February 27, 2015 ID.<sup>4</sup> Agency filed an appeal of the Board's Opinion and Order on Petition for Review in D.C. Superior Court on August 25, 2015. Employee then filed a Motion for Award of Attorney's Fees and Costs Along with Supporting Memorandum with OEA on August 14, 2015. Employee's Supplemental Memorandum in Support of An Award of Attorney's Fees and Costs was submitted to OEA on August 31, 2015.<sup>5</sup> On August 31, 2015, Agency submitted a Motion to Strike Employee's Petitions for Attorney's fees, arguing that Employee's submission should be dismissed as being premature. On November 3, 2015, AJ Sommer Murphy issued an Addendum Decision on Attorney Fees wherein she dismissed without prejudice Employee Motion for Attorney Fees due to said request being premature. Subsequently, AJ Murphy took on a new role within the OEA as its Deputy General Counsel.

On August 1, 2016, in the Second Superior Court Case, Judge Rankin denied Employee's Motion for Attorney's Fees and Costs, finding that the Superior Court had no jurisdiction to adjudicate Employee's claim for fees in Superior Court. Judge Rankin remanded the case to the OEA for the Administrative Judge to decide two issues: (1) "whether an increased fee award is proper in light of the fact that Employee prevailed at D.C. Superior Court"; and (2) "whether or not any award of fees or costs to Employee at the administrative level was undercut by the time and effort spent litigating this matter in Superior Court."

In or around August 2016, this matter was reassigned to the Undersigned in order to address the issues outlined by Judge Rankin in his August 1, 2016 Order. On January 17, 2017, the Undersigned issued a Second Addendum Decision on Attorney Fees and Costs which granted the bulk of Employee fees and costs request. On December 5, 2017, Employee filed his Second Motion for Award of Attorney's Fees and Costs. In it, Employee notes that further litigation efforts were expended before the OEA Administrative Judges unit and the OEA Board. Thereafter, on or about December 20, 2017, the parties informed the Undersigned that they had settled in principle but needed additional time codifying, executing then performing the terms of the settlement. On April 3, 2018, Employee, through counsel, submitted his Unopposed Motion to Dismiss the Appeal with Prejudice. In it, Employee stated, in pertinent part, the following:

Employee ... moves to dismiss the appeal in this matter, with prejudice, because the last remaining issue – Employee's supplemental petition for attorney's fees and cost – has been settled fully and finally and [DCPS] has

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<sup>2</sup> 2401-0255-10-R14 at 9 (February 27, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Rogers v. DCPS*, Opinion and Order on Petition for Review, OEA Matter No. 2401-0255-10-R14 (April 3, 2015).

<sup>5</sup> Employee submitted a corrected version of Exhibit B to be included with its previous filing on August 17, 2015.

delivered the consideration set forth in the settlement agreement ... There are no other outstanding issues to be adjudicated by the [OEA]...

After reviewing the documents of record, I find that no further proceedings are warranted. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.08 (2001).

### 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.

### ISSUE

Whether Employee’s motion for attorney’s fees should be dismissed.

### ANALYSIS AND CONCLUSIONS OF LAW

I am guided by the OEA rules in this matter. OEA 606.2<sup>6</sup> provides that “the Office shall exert every possible effort to resolve matters by mediation, to the extent possible, rather than through litigation.” Furthermore, OEA Rule 606.11 states that “if the parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code § 1-606.06(b) (2006 Repl.).” Employee, through counsel, has submitted an Unopposed Motion to Dismiss the Appeal with Prejudice indicating that the parties have settled their differences. Accordingly, I find that Employee’s Second Motion for Attorney’s Fees and Costs should be dismissed in accordance with OEA Rule 606.11.

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<sup>6</sup> 59 DCR 2129 (March 16, 2012).

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED.

**FOR THE OFFICE:**

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Eric T. Robinson, Esq.  
Senior Administrative Judge