

OFFICE OF EMPLOYEE APPEALS
FY18-19 Performance Oversight Questions
Committee on Labor and Workforce Development
Councilmember Elissa Silverman (At-Large), Chair

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I. Agency Priorities, Performance, and Evaluation

1. Please discuss OEA’s **top five priorities**.
 - a. How did the agency address its top five priorities in FY2018?
 - b. What are the agency’s top five priorities in FY2019? Please explain how the agency expects to address these priorities in FY2019.

ANSWER: The agency’s top five priorities in FY2018 were to conduct a thorough review of the Office’s Rules of Procedure; develop a system to track how many motions for extensions of time are filed to include at what stage in the process the motion is most often filed, which party most often makes the request, how much additional time is requested, and what is the ruling of the judge; continue issuing Initial Decisions within the statutory timeframe; ensure the security of the agency; and rebuild the agency’s database and website. The agency began the process of amending its rules by comparing its rules to the rules of its federal counterpart. A system to track motions for extensions of time was developed. Initial Decisions were issued within the statutory timeframe. The agency’s database was successfully rebuilt, and its website was upgraded to add a new search feature thereby providing research assistance to the public as statutorily mandated. The security of the agency continues to be a concern.

The agency’s top five priorities in FY2019 are to implement the Decision Uniformity Initiative; ensure that all decisions are successfully uploaded to the agency’s website; examine the effectiveness of the agency’s mediation program; continue the process of amending the agency’s rules of procedure; and continue issuing decisions within the statutory timeframe. The agency will address the first priority by ensuring that all of its decisions are stylistically uniform prior to being issued. With respect to the second priority, the Network Assistant will perform an end-of-the-quarter check to ensure that all the agency’s decisions issued during that quarter are on its website. As for the third priority, the Network Assistant, working with the Intake Coordinator, will determine what kind of appeals are being mediated and whether the

mediation was successful. For the last two priorities, the agency will continue the process of amending its rules and issuing decisions within the 120 business days timeframe.

2. Please list each **program** or body of work operated or administered by the OEA during FY2018 and FY2019, to date. Highlight any programs new in FY2018 or FY2019. For each program, please provide a description of the program, the office that carries out the program, activities in FY18 and FY19, and any documented results of the program.

ANSWER: The programs administered by OEA in FY2018 and FY2019, to date are its Adjudication program, Appeals program, Mediation program, and Information Technology program. The Adjudication program pertains to Petitions for Appeal which are filed by District government employees. The appeals are adjudicated by an Administrative Judge and the process culminates with the issuance of an Initial Decision. The Appeals program pertains to Petitions for Review which are filed with the Board after the Initial Decision has been issued. The General Counsel's office drafts an Opinion and Order for issuance by the Board. The Mediation program encourages the parties, through the negotiation process, to reach a settlement that is agreeable to both of them. The Information Technology program pertains to the agency's website and case tracking system.

3. Please describe any **initiatives** that the OEA implemented in FY2018 or FY2019, to date, to improve the internal operations of the agency or the interaction of the agency with external parties. Please describe the results, or expected results, of each initiative.

ANSWER: The initiatives implemented by OEA in FY2018 were that the agency began a thorough review of its Rules of Procedure and developed a system to track motions for extensions of time. The agency is still in the process of reviewing its rules. It was anticipated that this initiative would span multiple years so that once the amendment process was complete, the Office's Rules of Procedure would be as comprehensive as possible. With respect to the second initiative, a system was developed for the judges to report information regarding the requests for extensions of time. The agency's FY2019 initiatives are in the process of being implemented.

4. Please provide a copy of the OEA's FY2018 **performance accountability report**.
 - a. Please explain which performance plan strategic objectives and key performance indicators (KPIs) were met or completed in FY18 and which were not.
 - b. For any met or completed objective, also note whether they were completed by the project completion date of the objective and/or KPI and within budget. If they were not on time or within budget, please provide an explanation.
 - c. For any objective not met or completed, please provide an explanation.

ANSWER: In FY2018, the agency met its key performance indicators related to the number of Opinions and Orders issued, the time required to complete adjudications, the time required to resolve Petitions for Review, and the percent of decisions upheld by the D.C. Superior Court and the Court of Appeals. All of these were completed by September 30, 2018 and within the

allotted budget. The key performance indicator which was not met was the number of Initial Decisions issued. The agency employs five full-time Administrative Judges. Two of those judges were on extended sick leave during FY2018 and were not able to adjudicate appeals during that time. As a result, the agency was not able to issue the number of Initial Decisions it had anticipated issuing.

OEA's FY2018 Performance Accountability Report is provided as Attachment #1.

5. Regarding the OEA's FY2019 **performance plan**:

- a. Please provide a copy of the OEA's FY2019 performance plan as submitted to the Office of the City Administrator.
- b. Discuss any changes to any outcomes measurements in FY2018 or FY2019, including the outcomes to be measured or changes to the targets or goals of outcomes; list each specifically and explain why it was dropped, added, or changed.

ANSWER: In FY2018, OEA began measuring the percent of appeals involved in the mediation process and the percent of appeals resolved through mediation. OEA will continue to measure these outcomes in FY2019 as a way to determine the effectiveness of mandatory mediation. Furthermore in FY2018, OEA began measuring the percent of Initial Decisions uploaded to its website and the percent of Opinions and Orders uploaded to its website. OEA will continue to measure these outcomes in FY2019 to ensure that the agency is in compliance with its statutory mandate to provide research assistance to the public.

OEA's target for the number of Initial Decisions to be issued in FY2019 has been set at 135. This target will allow the agency to remain in compliance with its statutory mandate of issuing decisions within 120 business days.

OEA's FY2019 Performance Plan is provided as Attachment #2.

6. Please provide a list of all **studies, research papers, reports, evaluations, and analyses**, including those provided by contractors or consultants, that the OEA prepared or contracted for during FY2018 and FY2019, to date.

- a. For each study, paper, report, or analysis, please include:
 1. Report name;
 2. Author name, whether the agency or an outside party;
 3. Status, including actual or expected completion date;
 4. Purpose and description of contents; and
 5. Contract number or grant name if the report was produced by a contractor or grantee.
- b. Please attach a copy if the study, research paper, report, or analysis is complete.

ANSWER: OEA did not prepare, nor contract for, any studies, research papers, reports, evaluations, or analyses during FY2018 or FY2019, to date.

7. Please list and describe any **investigations, audits, or reports by outside entities** that involve the OEA or any employee that were conducted during FY2018 and FY2019, to date, or that are ongoing. *Attach copies* of any such document. Include any routine or ad hoc monitoring, site reviews, desk audits, or other reviews or audits by federal agencies, the District Inspector General, the DC Auditor, or *any other* local or federal governmental entity.

ANSWER: There are no investigations, audits, or reports by outside entities that involve OEA or any employee that were conducted during FY2018 and FY2019, to date.

8. Please list all **recommendations identified by the Office of the Inspector General, D.C. Auditor, or other federal or local oversight entities** during FY2017, FY2018, or FY2019, to date about the OEA. Please provide an update on what actions have been taken to address each recommendation. If the recommendation has not been implemented, please explain why.

ANSWER: There have been no recommendations identified by the Office of the Inspector General, D.C. Auditor, or other federal or local oversight entity involving OEA during FY2017, FY2018, or FY2019, to date.

9. Please list all **reports or reporting** currently required of the agency in federal law, the District of Columbia Code, or Municipal Regulations. For each, include
- a. The statutory code or regulatory citation;
 - b. Brief description of the requirement;
 - c. Any report deadlines;
 - d. Most recent submission date; and
 - e. A description of whether the agency is in compliance with these requirements, and if not, why not.

ANSWER: D.C. Official Code §1-606.01(g)(3) provides the following:

The Office shall:

- (A) Establish and maintain systems for the timely processing, recording, and control of cases;
- (B) Maintain a data base system to record and provide information on the status and disposition of cases;
- (C) Prepare and certify official records;
- (D) Publish final decisions of the Office;
- (E) Provide initial responses to Freedom of Information Act requests;

(F) Manage a formal system for the organization, maintenance, and disposition of Office records;

(G) Formulate and implement programs and policies that provide research assistance to the Office and the public; and

(H) Maintain an updated index of cases, to include among other things subject matter and outcome, to provide research assistance to the Office and the public.

OEA is in compliance with each statutory requirement listed above. Matters are timely assigned and processed as they are filed with OEA. The office maintains a database that captures the status and disposition of each case. Official records are prepared and certified to the Superior Court of the District of Columbia within the requisite sixty-day period. Freedom of Information Act requests are similarly addressed by our office within the statutory timeframe. With the completion of OEA's new database and website revamp, has a better system for the organization, maintenance, and disposition of records; we are better able to provide research assistance to the public through keyword and subject matter searches; and we are able to maintain an updated index of cases by subject matter and outcome for the office and the public.

Additionally, D.C. Official Code §1-606.02(a)(3) provides the following:

(a) The Office shall have, in addition to the authority necessary and proper for carrying out its duties as specified elsewhere in this subchapter, the authority to:

(3) Issue an annual report on the activities of the Office to the Mayor and Council which should include, at a minimum, the following:

(A) The number and nature of cases heard by the Office, and the type of order issued in each case;

(B) The number of appeals heard by Office panels and the disposition of such appeal or type of order issued in each case;

(C) The number of appeals taken to Superior Court of the District of Columbia (both directly and from Office panels) and the disposition of or status of each case; and

(D) A statement of the amount of time taken to reach a final disposition of each case brought before the Office and a statement of the number of backlogged cases, if any.

Through Quickbase, the District government's reporting database, OEA provides an annual report of all of the requirements listed above.

10. Please attach a copy the agency's FOIA disclosure report for FY2017 and FY2018.

11. Regarding **FOIA requests** for FY2018 and FY2019, as of Feb. 1, 2019, that were submitted to your agency, please complete the following table.

FOIA Requests, FY18 and FY19

	<i>FY18</i>	<i>FY19, as of Feb. 1, 2019</i>
<i>Total FOIA requests received</i>		
<i>Number of requests granted in full (no exemptions claimed)</i>		
<i>Number of requests granted but which redacted or omitted some material according to FOIA exemptions</i>		
<i>Number of requests denied in full (i.e., all requested material exempt from disclosure)</i>		
<i>Number of requests for which the agency identified no responsive documents or records</i>		

ANSWER: Please see Attachment #4 for FOIA requests made in FY2018. No FOIA requests have been received in FY2019, to date.

12. Please confirm whether OEA posts all FOIA requests and responses on the DC Government FOIA Reading Room, at <https://foia-dc.gov/App/ReadingRoom.aspx>. If OEA does not post all FOIA requests on the DC Government FOIA Reading Room, explain why OEA does not post.

ANSWER: Due to the minimal number of FOIA requests received each year, OEA does not post any FOIA requests or responses on the DC Government FOIA Reading Room.

II. Budget and Expenditures

Budget

13. **Budget.** Please *complete the attached table* in Excel showing your agency's budget, including Council-approved original budget, revised budget (after reprogrammings, etc.), and actual expenditures, by program and activity, for fiscal years 2018, and the first quarter of 2019. For each activity, please include total amount budgeted and break down the budget by funding source (federal, local, special purpose revenue, or intra-district funds). Include any over- or under-spending. Explain any variances between the revised budget and actual expenditures for fiscal year 2018 for each program and activity code.

ANSWER: Please see Attachment #5.

14. Please provide the following information for all **intra-District memoranda of understanding (MOUs)** for FY2018 and FY2019 to date, *including anticipated MOUs* for the remainder of FY2019.
- Attach copies* of all intra-district MOUs.

- b. For each MOU, including anticipated MOUs, *complete the attached table* in Excel.

ANSWER: Please see Attachment #6.

15. Please provide the following information for all **intra-District memoranda of agreement (MOAs)** for FY2018 and FY2019 to date, including anticipated MOAs for the remainder of FY2019.
- a. *Attach copies* of all intra-district MOAs, other than those for overhead or logistical services, such as routine IT services or security.
- b. For each MOU, including anticipated MOUs, complete the table below; add rows as necessary.

Memoranda of Agreement, FY18 and FY19, including anticipated MOAs

<i>Description of MOA services or purpose, including name of project or initiative</i>	<i>Names of all agencies party to the agreement</i>	<i>Service period (dates)</i>

ANSWER: Please see Attachment #7.

16. Please provide the following information for each **interagency reprogramming** of funds into and out of the agency for FY2018 and FY2019, to date, including anticipated inter-agency reprogrammings for the remainder of FY2019.
- a. Please *attach copies* of the reprogramming documents, including the Agency Fiscal Officer's request memo and the attached reprogramming chart.
- b. For each reprogramming, including anticipated reprogrammings, complete the attached chart in Excel

ANSWER: OEA did not undertake an interagency reprogramming of funds in FY2018 or FY2019, to date.

17. Please provide the following for each **intra-agency reprogramming** *within* your agency during FY2018 and FY2019, to date, as well as any anticipated intra-agency reprogrammings for the remainder of FY2019.
- a. Please *attach copies* of any reprogramming documents.
- b. For each reprogramming, including anticipated reprogrammings, *complete the attached chart* in Excel

ANSWER: Please see Attachment #8.

18. For FY18 and FY19, to date, please identify any **special purpose revenue funds** maintained by, used by, or available for use by the agency. For each fund identified, provide:
- a. The revenue source name and fund code;

- b. A description of the program that generates the funds;
- c. The revenue funds generated annually by each source or program;
- d. An itemized list of each expenditure showing the recipient (if an outside vendor) and specific purpose; and
- e. The fund balance at the end of FY18, the current fund balance as of Feb. 1, 2019, and the expected balance at the end of FY19.

ANSWER: OEA did not maintain, use, or have available for use any special purpose revenue funds in FY2018 or FY2019, to date.

19. Please attach all **budget enhancement requests** submitted by your agency to the Mayor or Chief Financial Officer as part of the budget process for FY2020.

ANSWER: Please see Attachment #9.

Expenditures

20. Please *complete the attached table* in Excel with the following information on each **contract, procurement, and lease** leveraged in FY2018 and FY2019 as of Feb. 1, 2019, with a value amount of \$10,000 or more. “Leveraged” includes any contract, procurement, or lease used by the agency as a new procurement, contract extension, or contract option year execution. This also includes direct payments, if applicable. Treat Human Care Agreements as a contract—aggregating information by vendor for all task orders under the HCA, where relevant.

ANSWER: OEA did not leverage any contract, procurement or lease in FY2018 or FY2019, to date.

21. Please complete the following table with information on all **credit card, p-card, or purchase card purchases and expenditures** for FY2018 and 2019, to date; add rows as necessary. Alternatively, you may attach monthly statements with this same information; however, please name the ultimate vendor and specific purpose of the purchase for any Pay Pal or other transaction with an indirect payment service like Pay Pal.

Credit and purchase card expenditures, FY2018 and FY2019

<i>Employee name</i>	<i>Date of purchase</i>	<i>Vendor name (do not list “Pay Pal;” name the ultimate vendor)</i>	<i>Dollar amount</i>	<i>Purpose of expenditure</i>

ANSWER: Please see Attachment #10.

22. Were any protests or complaints filed with the **Contract Appeals Board** in FY2018 or 2019 to date, against or involving your agency or any employee of the agency? If so, please complete the following table with information on each complaint; add rows as necessary.

Contract Appeals Board cases filed FY2018 or FY2019, as of Feb. 1, 2019

<i>Case number</i>	<i>Name of complainant</i>	<i>Date of complaint</i>	<i>Description of complaint</i>	<i>Status of complaint</i>

ANSWER: No protests or complaints were filed with the Contract Appeals Board in FY2018 or FY2019, to date.

III. Agency Organization and Personnel

23. Please provide a current **organizational chart** for the agency, arranged by division and subdivision, as of Feb. 1, 2019.
- Show for each division and subdivision:
 - The names and titles of all personnel;
 - The number of vacant, frozen, and filled positions;
 - Note on the chart the date of the information.

ANSWER: Please see Attachment #11.

24. Please *complete the attached table* in Excel with a **chart of all positions (i.e. Schedule A)** at the agency, as of February 1, 2019.

ANSWER: Please see Attachment #12.

25. Regarding **term and temp employees**:
- For each term employee included in the schedule A who started in the position in FY2018 or FY2019, please provide a brief narrative to specify why the hire was done on a term or basis and not on a continuing basis.
 - For each term or temp employee included in the schedule A, indicate the start date of the position and the expected end date; and
 - For each term employee employed during FY2018 or FY2019 whose hire date is before FY2015, please explain why the employee is term and has not been converted to a permanent employee.

ANSWER: The starting date of the term employees was October 1, 2018. The expected end date is September 30, 2019. The requirements of the agency are best met with one FTE being occupied by two part-time employees.

26. Please complete the following table on **contract workers** who worked from the agency

(e.g. embedded contract workers) during FY2018 or FY2019; add rows as necessary.

Contract Workers who worked from an agency location, FY18 and FY19

<i>Contract worker's name (e.g., John Smith)</i>	<i>Contracting company (vendor) name</i>	<i>Contract number</i>	<i>Job title or position name</i>	<i>Hourly rate</i>	<i>Name of project assigned to and type of work duties</i>

ANSWER: OEA had no contract workers during FY2018 or FY2019, to date.

27. How many and what percentage of employees at the agency as of Feb. 1, 2019, were **District residents**?

ANSWER: Of the 15 FTEs, two full-time employees and one part-time employee were District residents as of February 1, 2019.

28. Please complete the following charts about the **residency of new hires** in FY18 and FY19, to date:

DC Residency of Employees Hired in FY 2018

<i>Position Type</i>	<i>Total Number</i>	<i>Number who are District Residents</i>	<i>Percent of total who are District residents</i>
Continuing			
Term			
Temporary			
WAE			

DC Residency of Employees Hired in FY 2019, as of Feb. 2019

<i>Position Type</i>	<i>Total Number</i>	<i>Number who are District Residents</i>	<i>Percent of total who are District residents</i>
Continuing			
Term			
Temporary			
WAE			

ANSWER: OEA had no new hires in FY2018 or FY2019, to date.

IV. Office of Employee Appeals

29. Please provide an analysis of how the **new searchable database of cases and the new case management system**, which were funded in the FY18 budget, are working. Is the project

complete? Are there any outstanding items? Did the project meet OEA's expectations and all its needs? Are any further changes or upgrades needed or planned?

ANSWER: OEA's website was upgraded to provide additional search functionalities for the public and the office as well. All case files that were previously listed on the agency's website have been migrated to the new case search application. This project is complete and meets the agency's expectations. No further changes or upgrades are needed or planned.

A new case tracking and management system was built for OEA to replace the outdated system that the agency had been using. This part of the project is being done in two phases. Phase one is complete and allows the user to perform the following functions: create a case; create case workflow; view case history; view case related documents; search a case by different parameters; view case workflow; assign cases to various steps including mediation, adjudication, case intake; reopen cases for review and appeals; add case decisions for mediations and adjudications; send email notifications on case assignments, document uploads, and approvals; show case timeline; extend a case from an existing case; and manage public decision files listed on the public search database. Phase two of the project involves creating a reporting functionality to allow the user to generate reports and metrics from the case management application. This item remains outstanding. Aside from the completion of phase two, the project is complete and meets the agency's expectations. No further changes or upgrades are needed or planned.

30. Please provide the following **data** for FY17, FY18 and the first quarter of FY19 (identify the court hearing the appeal when relevant):

- a. The number of decisions issued;
- b. The average time to issue an initial decision;
- c. The average time to issue an opinion;
- d. The average time to issue a final order;
- e. The number of decisions appealed;
- f. The number of pending appeals;
- g. The number of successful appeals of OEA decisions (including decisions to remand);
- h. The number of OEA decisions upheld on appeal; and
- i. A narrative description explaining each decision that was reversed or remanded along with a copy of any opinion issued with the remand or reversal.

ANSWER:

Fiscal Year 2017

ADMINISTRATIVE JUDGES	
Number of Petitions for Appeals Filed	97
Number of Initial Decisions Issued	143
Average Time to Issue Initial Decisions	6 mo.
Number of Pending Petitions for Appeal before Judges	13
OEA BOARD	
Number of Petitions for Review Filed	30
Number of Opinions and Orders Issued	51
Average Time to Issue Opinions and Orders	8 mo.
Number of Pending Petitions for Review before Board	0
SUPERIOR COURT	
Number of Decisions Appealed to Superior Court	27
Number of Pending Appeals in Superior Court	1/27
Number of Decisions Issued in Superior Court	22
Number of Appeals Upheld in Superior Court (Including Remands)	20/22
Number of Appeals Reversed in Superior Court	2/22
D.C. COURT OF APPEALS	
Number of Decisions Appealed to Court of Appeals	2
Number of Pending Appeals in Court of Appeals	0
Number of Decisions Issued in Court of Appeals	7
Number of Appeals Upheld in Court of Appeals (Including Remands)	7/7
Number of Appeals Reversed in Court of Appeals	0/7

Fiscal Year 2017 (Remanded)

Lelonie Curry-Mills v. Department of Youth Rehabilitation Services, et al. – The Superior Court for the District of Columbia agreed with OEA that our appeal deadline is jurisdictional in nature and that the notice sent to Employee and returned as undeliverable was not constitutionally effective to trigger an appeal deadline. However, the Superior Court held that the Court of Appeals has ruled that giving “notice” in these circumstances requires not only the communication of information about the effect of the decision but also the communication of unambiguous information about appeal rights. It did not believe that Employee’s appeal rights were clearly communicated to her. As a result, it remanded the matter to OEA to consider the case on its merits.

After extensive settlement negotiations, the parties settled the matter on January 18, 2019. An Initial Decision on Remand was issued on the same day dismissing the matter with prejudice. **See**

attachment #13.

Donald Frazier v. D.C. Public Schools – After OEA issued its decisions, Agency argued on appeal in Superior Court that OEA lacked jurisdiction to consider licensing issues. The Court held that the jurisdictional issue was raised for the first time on appeal, and therefore, was not considered by OEA. Thus, the Court remanded the matter to OEA to determine whether it has jurisdiction over Employee’s appeal.

An Initial Decision on Remand was issued on December 21, 2017, dismissing Employee’s appeal. The Administrative Judge determined that he was an at-will employee because he failed to maintain his mandatory licensing and certification requirements. **See attachment #14.**

Ella Cuff v. Department of General Services – The Superior Court for the District of Columbia found that Employee made an allegation of involuntariness that would entitle her to a hearing, given OEA’s jurisdiction over involuntary retirement. As a result, the matter was remanded to OEA to determine if Employee’s retirement was voluntary.

On April 17, 2018, the Administrative Judge issued his Initial Decision on Remand. He found that Employee failed to prove that Agency lacked cause for removal; that Agency provided misleading or mistaken information; or that Agency coerced her to retire. The judge held that Employee could not qualify with her service weapon, which was a valid and critical safety requirement for her position as an armed police officer. Therefore, Agency was justified in its removal decision. He also reasoned that Agency never pressured Employee to retire, as she took four months to reach her retirement decision. Consequently, the AJ ruled that OEA lacked jurisdiction over the appeal because Employee voluntarily retired. Accordingly, the case was dismissed. **See attachment #15.**

Willie Porter v. Department of Mental Health –The Superior Court for the District of Columbia found that “no authority is conferred upon the Superior Court to award fees related to review of decisions made by the OEA because the Court sits in the position of an appellate court when reviewing Merit Personnel cases.” However, in determining that it lacked jurisdiction, the Court did not evaluate OEA’s authority to award attorney’s fees for services rendered in the Superior Court. Therefore, the Court remanded the matter to OEA to determine whether OEA is empowered to award attorney’s fees for services rendered in Superior Court.

In addition to the Court’s order on attorney’s fees, the Administrative Judge is also addressing an outstanding compliance issue in this case. An Initial Decision on Remand will be issued by February 28, 2019. **See attachment #16.**

Edward Morgan, Sr. v. D.C. Fire and Emergency Medical Services – The Superior Court for the District of Columbia held that the OEA Board could have considered an argument by Agency, even though it was not raised before the Administrative Judge. Therefore, the matter was remanded for further consideration.

On January 9, 2019, the Administrative Judge ordered that both parties submit written briefs by January 31, 2019. This matter is still pending. **See attachment #17.**

Laura Jackson v. Department of Health – The D.C. Court of Appeals held that OEA must address errors in the calculation of service computation dates. Because agencies have the burden of proof, we must hold them accountable for proving that the service dates are accurate. This means requiring evidence of the calculation of service computation dates from other employees to ensure that the retention register is accurate. Therefore, the matter was remanded to OEA.

On remand, Agency conceded that it improperly terminated Employee after it recalculated her service date for the RIF action. Accordingly, the Administrative Judge issued her Initial Decision on Remand reversing Agency’s action and ordering that Employee be reinstated to her position with back pay and benefits. **See attachment #18.**

Fiscal Year 2017 (Reversed)

Heather Straker v. Metropolitan Police Department – The Superior Court for the District of Columbia ruled that the OEA Administrative Judge’s Initial Decision on Remand went beyond the scope of what she was ordered to determine in accordance with the OEA Board’s Opinion and Order. The Court held that the Administrative Judge awarded more than Employee may have been entitled to receive in back pay. Ultimately, it left the amount to be paid in back pay up to the Agency to determine. Accordingly, the Initial Decision on Remand was reversed. **See attachment #19.**

Cecile Thorne v. D.C. Public Schools – The Superior Court for the District of Columbia found that OEA erroneously relied on Employee’s SF-50 to determine his group placement. The Court ruled that OEA improperly referenced the IMPACT procedures and exceeded its scope of review by interpreting the IMPACT process instead of determining if the IMPACT procedure was followed. Consequently, Agency’s removal action was upheld, and OEA’s decision was reversed. **See attachment #20.**

Fiscal Year 2018

ADMINISTRATIVE JUDGES	
Number of Petitions for Appeals Filed	93
Number of Initial Decisions Issued	123
Average Time to Issue Initial Decisions	6 mo.
Number of Pending Petitions for Appeal before Judges	35
OEA BOARD	
Number of Petitions for Review Filed	15
Number of Opinions and Orders Issued	33
Average Time to Issue Opinions and Orders	5 mo.
Number of Pending Petitions for Review before Board	4
SUPERIOR COURT	
Number of Decisions Appealed to Superior Court	24
Number of Pending Appeals in Superior Court	13/24
Number of Decisions Issued in Superior Court	16
Number of Appeals Upheld in Superior Court (Including Remands)	16/16
Number of Appeals Reversed in Superior Court	0/16
D.C. COURT OF APPEALS	
Number of Decisions Appealed to Court of Appeals	6
Number of Pending Appeals in Court of Appeals	5/6
Number of Decisions Issued in Court of Appeals	5
Number of Appeals Upheld in Court of Appeals (Including Remands)	5/5
Number of Appeals Reversed in Court of Appeals	0/5

Fiscal Year 2018 (Remanded)

Abraham Evans v. Metropolitan Police Department – Both Agency and Employee requested that the Superior Court judge remand the matter to OEA.

In his June 29, 2018, Second Initial Decision on Remand, the Administrative Judge found that based on his review of the record, there was no basis to disturb the Agency's credibility determinations. He held based on substantial evidence, and Employee's own admission, Employee failed to follow Agency's General Order. Accordingly, the judge upheld Agency's action to remove Employee.

This matter is currently pending in Superior Court, where a scheduling conference will be held on April 11, 2019. **See attachment #21.**

Samson Adeboye v. Metropolitan Police Department – The Superior Court judge in this case held that there was substantial evidence to support the Administrative Judge’s ruling regarding the timeliness and authenticity of the City Administrator’s signature in this case. The Court also affirmed OEA’s determination that the RIF was properly approved. However, the matter was remanded to OEA for the limited purpose of determining if Agency met its burden of demonstrating that it considered job sharing and reduced hours before removing Employee.

On August 21, 2018, the Administrative Judge issued an Initial Decision on Remand. He held that in addition to Employee’s technical skills and certifications failing to meet the requirements of the new position, even if Agency had considered job sharing and reduced hours, the reduction-in-force still would have occurred. Accordingly, he upheld Agency’s RIF action against Employee.

The matter is pending in Superior Court. We are awaiting an order scheduling briefs and setting a scheduling conference. **See attachment #22.**

Daryl Boone v. Metropolitan Police Department – The Superior Court judge in this case held that there was substantial evidence to support the Administrative Judge’s ruling regarding the timeliness and authenticity of the City Administrator’s signature in this case. The Court also affirmed OEA’s determination that the RIF was properly approved. However, the matter was remanded to OEA for the limited purpose of determining if Agency met its burden of demonstrating that it considered job sharing and reduced hours before removing Employee.

On August 21, 2018, the Administrative Judge issued an Initial Decision on Remand. He held that in addition to Employee’s technical skills and certifications failing to meet the requirements of the new position, even if Agency had considered job sharing and reduced hours, the reduction-in-force still would have occurred. Accordingly, he upheld Agency’s RIF action against Employee.

The matter is pending in Superior Court. The parties have been asked to submit briefs by May 3, 2019. A scheduling conference is scheduled for August 16, 2019. **See attachment # 23.**

Andrew Johnson v. D.C. Public Schools – The D.C. Court of Appeals held that Employee was involuntarily separated. The Court noted that the issue of recovering retirement benefits awarded before reinstatement would arise however they resolved the current appeal, given the undisputed principle that employees who involuntarily retire due to coercion or misrepresentation by the employer are not barred from challenging their termination. Accordingly, they ruled that OEA does have jurisdiction in this matter and remanded the case for further consideration.

The case is currently pending before an OEA Administrative Judge. However, the parties believe that they can settle the matter and asked that it be transferred to an OEA mediator. A mediation conference was held on December 6, 2018. The parties are still in negotiations. **See attachment #24.**

Fiscal Year 2019-to-date

ADMINISTRATIVE JUDGES	
Number of Petitions for Appeals Filed	27
Number of Initial Decisions Issued	44
Average Time to Issue Initial Decisions	5 mo.
Number of Pending Petitions for Appeal before Judges	28
OEA BOARD	
Number of Petitions for Review Filed	11
Number of Opinions and Orders Issued	5
Average Time to Issue Opinions and Orders	4 mo.
Number of Pending Petitions for Review before Board	11
SUPERIOR COURT	
Number of Decisions Appealed to Superior Court	13
Number of Pending Appeals in Superior Court	11/13
Number of Decisions Issued in Superior Court	12
Number of Appeals Upheld in Superior Court (Including Remands)	12/12
Number of Appeals Reversed in Superior Court	0/12
D.C. COURT OF APPEALS	
Number of Decisions Appealed to Court of Appeals	0
Number of Pending Appeals in Court of Appeals	0
Number of Decisions Issued in Court of Appeals	1
Number of Appeals Upheld in Court of Appeals (Including Remands)	1/1
Number of Appeals Reversed in Court of Appeals	0/1

Thus far in FY19, there have been no OEA cases pending in Superior Court or D.C. Court of Appeals' matters that have been remanded or reversed.

31. What was the **caseload** for each hearing examiner in FY18 and FY19 to date?

ANSWER:

Fiscal Year 2018

Administrative Judge	Caseload
Administrative Judge Cannon	20
Sr. Administrative Judge Dohnji	24
Administrative Judge Harris	20
Administrative Judge Hochhauser (PT)	13
Sr. Administrative Judge Lim	28
Sr. Administrative Judge Robinson	18

Fiscal Year 2019-to-date

Administrative Judge	Caseload
Administrative Judge Cannon	12
Sr. Administrative Judge Dohnji	15
Administrative Judge Harris	11
Administrative Judge Hochhauser (PT)	8
Sr. Administrative Judge Lim	15
Sr. Administrative Judge Robinson	15

32. Please list the **statutory deadlines** OEA must meet for each step of its process, the average time it took to complete that step, the number of cases that reached that step within the deadline, and the number that did not. Please explain any steps that were not completed within statutory deadlines.

ANSWER:

Jurisdiction

D.C. Official Code § 1-606.03(c) provides that “. . . within 45 days, excluding Saturdays, Sundays, and legal holidays, after the appeal is filed with the Office, the Office shall determine whether, in accordance with this section and the Office’s own rules, the Office has jurisdiction.” In FY17, FY18, and FY19-to-date, a preliminary decision on jurisdiction was rendered within five (5) business days in each jurisdictional matter appealed to OEA.

In FY17, seven (7) of the twenty-seven (27) jurisdictional matters had final decisions issued within 45 business days. In FY18, six (6) of the twenty-five (25) jurisdictional matters had final decisions issued within 45 business days. In FY19 (first quarter), three (3) of the five (5) jurisdictional matters have had final decisions issued within 45 business days.

Initial Decisions

In accordance with D.C. Official Code § 1-606.03(c), “. . . any decision by a Hearing Examiner shall be made within 120 days, excluding Saturdays, Sundays, and legal holidays, from the date of the appellant’s filing of the appeal with the Office. As it relates to issuing decisions within 120 business days, on average – OEA has met this goal in FY17 and FY18, and we have exceeded the goal thus far in FY19-to-date.

In FY17, out of the one hundred and forty-three (143) decisions issued, ninety-three (93) were issued within the statutory requirement. There were fifty (50) issued beyond the 120-business day deadline.

In FY18, of the one hundred and twenty-three (123) Initial Decisions issued, seventy-six (76) were issued within the statutory deadline. Therefore, forty-seven (47) out of the one hundred and twenty-three (123) Initial Decisions were issued beyond the statutory deadline.

In FY19 (First Quarter), Initial Decision have been issued within one hundred (100) business days on average. Out of the forty-four (44) Initial Decisions that have been issued to date, thirty-two (32) were issued within 120 business days and twelve (12) were issued beyond that statutory deadline.

Compliance Matters Certified to the General Counsel’s Office

Additionally, D.C. Official Code § 1-606.09, provides that “if the Office determines that the respondent has not complied with an order within 30 calendar days of service of the order, the Office shall certify the matter to the General Counsel and any agency that may be appropriate for enforcement.”

In FY17, there were two matters certified to the General Counsel’s office for enforcement. In *Ilbay Ozbay v. Department of Transportation*, OEA Matter No. 1601-0073-09R11C15, on October 5, 2016, the Administrative Judge determined that the agency failed to comply with a previous order to restore the employee’s benefits, including leave. The matter was immediately certified to the General Counsel’s office on the same day. In *Saundra McNair v. Department of Employment Services*, OEA Matter No. 1601-0012-14C16, the Administrative Judge issued an order certifying the case to the General Counsel’s Office on August 11, 2017, two days after he determined that Agency failed to comply with a previous order.

There were no compliance matters certified to the General Counsel’s Office in FY18 or FY19-to-date.

33. For the OEA board, how many members and how many vacancies are there as of Feb. 1, 2019? Please complete the chart below with member information.

ANSWER:

OEA Board members

<i>Member's name</i>	<i>Confirmation date</i>	<i>Term expiration date</i>	<i>District resident? (y/n)</i>
Clarence Labor (Chair)	December 4, 2018	April 6, 2024	Yes
Vera Abbott	November 5, 2011	April 6, 2019	Yes
Patricia Wilson	December 20, 2016	April 6, 2022	Yes
Jelani Freeman	July 11, 2017	April 6, 2022	Yes
Peter Rosenstein	December 4, 2018	April 6, 2024	Yes

V. Agency Operations and Disputes

34. Please list in chronological order any **grievances filed by labor unions** against the agency or any employee of the agency in FY17, FY18, or FY19, to date. Include on the list any earlier grievance that is still pending in any forum. Also include any grievances filed by unions about a current employee of the agency that is related to a matter that arose at previous District government employment of the employee at another agency. For each grievance:

- Provide the union name and local number, a brief description of the matter, and the current status.
- Describe the response to each complaint or grievance and any change to agency policies or procedures as a result.
- For any complaint or grievance that was resolved in FY18 or FY19, to date, describe the resolution or outcome.

ANSWER: There are no grievances filed by labor unions against OEA or any of its employees for FY17, FY18, or FY19-to-date.

35. Please list in chronological order any other (non-union) **grievances or complaints against or regarding the agency or any of its personnel, filed by any District government employee**, that were filed or pending in FY18 or FY19. Include complaints filed in any forum, including with other District agencies; complaints on any matter, including human resources, personnel, sexual harassment, financial, or other matters; and complaints filed against a current agency employee related to their employment at the agency, or related to any previous employment at another District agency. Include on the list any earlier grievance that is still pending in any forum, including review by another District agency. For each grievance or complaint:

- Provide the agency name and office of the complainant at the time the matter occurred.
- Provide the name of the forum or agency to which the complaint was filed.
- Specify if the complaint concerns a colleague or supervisor.
- Provide a brief description of the matter and the current status.
- Describe the response to the complaint or grievance, including any disciplinary action taken and any changes to agency policies or procedures

- f. For any complaint or grievance that was resolved in FY18 or FY19, to date, describe the resolution or outcome.

ANSWER: There were no non-union grievances or complaints involving OEA or any of its personnel filed in FY18 or FY19-to-date.

36. Please list in chronological order all **administrative grievances or complaints filed by parties outside District government** against the agency regarding services provided by or actions of the agency or any employee of the agency in FY2018 or FY2019, to date. Include on the chronological list any earlier grievance that is still pending in any forum.

- Describe the complainant (e.g. [Program name] customer)
- For each grievance or complaint, give a brief description of the matter as well as the current status.
- Please describe the process utilized to respond to the complaint or grievance and any changes to agency policies or procedures as a result.
- For any complaints or grievances that were resolved in FY2018 or FY2019, to date, describe the resolution.

ANSWER: There were no administrative grievances or complaints involving OEA or any of its personnel filed in FY18 or FY19-to-date.

37. Please list all **lawsuits** that name or are concerned with the agency, division, or employee of the agency (related to the employee's work) as a party, which are pending or which concluded in FY2018 or FY2019, to date.

- Provide the case name, court, where claim was filed, case docket number, current status of case, and a description of all causes of action, counts, and/or allegations in the filed complaint.
- Attach a copy of each complaint and any response filed by the agency or its legal representative.

ANSWER: The following matters are lawsuits where the Office of Employee of Appeals is named as a party. The Office of Employee Appeals is named in these law suits for the limited purpose of filing the complete record for each matter in Superior Court for the District of Columbia and the D.C. Court of Appeals. All of the lawsuits listed below potentially expose the city to significant monetary liability. However, none of the liability can be attributed to the Office of Employee Appeals. Any judgments imposed as a result of these law suits are the sole responsibility of the agency that initiated the employment action against each employee. **See attachment #25** for copies of complaints and responses.

Fiscal Year 2018 Superior Court Matters

No.	Case Name	Case Number	Case Status
1	Aprille Washington v. D.C. Office of Employee Appeals	2017 CA 003829 P(MPA)	Closed – Dismissed on 03/16/2018

2	Francine Thomas v. Metropolitan Police Department and D.C. Office of Employee Appeals	2017 CA 004678 P(MPA)	Closed - Dismissed on 12/14/2017
3	Widmon Butler v. Metropolitan Police Department and D.C. Office of Employee Appeals	2017 CA 007843 P(MPA)	Closed - Denied on 10/15/2018
4	Beverly Day v. Department of Public Works	2016 CA 005498 P(MPA)	Closed - Affirmed OEA Decision on 02/23/2018
5	Metropolitan Police Department v. D.C. Office of Employee Appeals and Paula Edmiston	2017 CA 008130 P(MPA)	Closed – Affirmed OEA Decision on 01/28/2019
6	Kevin Baldwin v. D.C. Office of Employee Appeals	2017 CA 007980 P (MPA)	Closed - Affirmed OEA Decision on 09/24/2018
7	Robert Johnson v. D.C. Office of Employee Appeals	2017 CA 008080 P(MPA)	Closed - Affirmed OEA Decision on 04/02/2018
8	Wanderline Benjamin-Banks v. D.C. Office of Employee Appeals	2017 CA 008306 P(MPA)	Closed - Order Remanding Matter to OEA on 07/11/18
9	D.C. Fire and Emergency Medical Services v. Office of Employee Appeals	2018 CA 000821 P(MPA)	Open - Status Hearing to be held on 03/15/2019
10	Widmon Butler v. Metropolitan Police Department and D.C. Office of Employee Appeals	2018 CA 00430 P(MPA)	Closed - Dismissed on 08/27/2018
11	Tyeast Williams v. Department of Corrections	2017 CA 001997 P(MPA)	Closed - Affirmed OEA Decision on 01/11/2019
12	Guy Valentine v. D.C. Fire and Emergency Medical Services and D.C. Office of Employee Appeals	2018 CA 001652 P(MPA)	Open - Status Hearing to be held on 06/28/2019
13	Linda Sun v. D.C. Office of Tenant Advocate	2017 CA 007451 P(MPA)	Open - Status Hearing to be held on 02/15/2019

14	D.C. Department on Disability Services v. D.C. Office of Employee Appeals and Charis Toney	2018 CA 002192 P(MPA)	Open - Status Hearing to be held on 03/22/2019
15	Phillippa Mezile v. Department on Disability Services and D.C. Office of Employee Appeals	2018 CA 002820 P(MPA)	Closed - Affirmed OEA Decision on 01/18/2019
16	Brendan Cassidy v. D.C. Office of Employee Appeals	2018 CA 002756 P(MPA)	Open - Status Hearing to be held on 05/17/2019
17	Eric Moseley v. Department of Public Works and D.C. Office of Employee Appeals	2017 CA 007446 P(MPA)	Open - Status Hearing to be held on 02/01/2019
18	Michael Skelly v. D.C. Office of Employee Appeals	2018 CA 002463 P(MPA)	Open - Status Hearing to be held on 03/22/2019
19	Ella Cuff v. D.C. Office of Employee Appeals, et al.	2018 CA 003219 P(MPA)	Open - Status Hearing to be held on 02/22/2019
20	Metropolitan Police Department v. D.C. Office of Employee Appeals	2018 CA 003991 P(MPA)	Open - Status Hearing to be held on 03/29/2019
21	Georgia Stewart v. D.C. Office of Employee Appeals	2018 CA 002749 P(MPA)	Open - Status Hearing to be held on 05/17/2019
22	Roxy Guandique v. Department of Parks and Recreation	2018 CA 000626 P(MPA)	Open - Status Hearing to be held on 05/10/2019
23	William Redden v. D.C. Office of the Inspector General	2018 CA 002968 P(MPA)	Open - Status Hearing to be held on 04/05/2019
24	Abraham Evans v. D.C. Office of Employee Appeals, et al.	2018 CA 004909 P(MPA)	Open - Scheduling Conference to be held on 04/11/2019

Fiscal Year 2018 D.C. Court of Appeals Matters

No.	Case Name	Case Number	Case Status
1	LaTisha Porter v. D.C. Office of Employee Appeals, et al.	17-CV-1273	Open – Briefing
2	Lyttice Boone v. D.C. Office of Employee Appeals	13-CV-45	Open – Briefing

3	Harold Dargan v. D.C. Office of Employee Appeals	17-CV-253	Open – Briefing
4	Robert Johnson v. D.C. Office of Employee Appeals	18-CV-468	Closed - Dismissed on 01/22/2019
5	Judy Cofield, et al v. D.C. Office of Employee Appeals	17-CV-1123	Open - All Briefs Submitted
6	Joseph O'Rourke v. D.C. Office of Employee Appeals	18-CV-553	Open - All Briefs Submitted

Fiscal Year 2019-to-date Superior Court Matters

No.	Case Name	Case Number	Case Status
1	Carmen Faulkner v. D.C. Public Schools	2017 CA 005593 P(MPA)	Open - Status Hearing to be held on 05/03/2019
2	Michael Skelly v. D.C. Office of Employee Appeals	2018 CA 002463 P(MPA)	Open -Status Hearing to be held on 03/22/2019
3	Darryl Boone v. D.C. Office of Employee Appeals	2018 CA 006783 P(MPA)	Open - Status Hearing to be held on 08/16/2019
4	Metropolitan Police Department v. D.C. Office of Employee Appeals (Sheila Thomas Bullock)	2018 CA 003991 P(MPA)	Open - Status Hearing to be held on 03/29/2019
5	Metropolitan Police Department v. D.C. Office of Employee Appeals (Paula Edmiston)	2017 CA 008130 P(MPA)	Open - Status Hearing to be held on 01/29/2019
6	Gina Vaughn v. Metropolitan Police Department and D.C. Office of Employee Appeals	2017 CA 005525 P(MPA)	Closed - Order Remanding to OEA on 11/27/2018
7	Phillippa Mezile vs. D.C. Department on Disability Services and D.C. Office of Employee Appeals	2018 CA 002820 P(MPA)	Closed - Affirming OEA Decision on 01/18/2019
8	Samson Adeboye v. D.C. Office of Employee Appeals	2018 CA 006767 P(MPA)	Open - Awaiting Order Scheduling Briefs

9	Department on Disability Services v. D.C. Office of Employee Appeals (Charis Toney)	2018 CA 002192 P(MPA)	Open - Status Hearing to be held on 03/22/2019
10	Rickey Robinson v. D.C. Office of Employee Appeals	2018 CA 007598 P(MPA)	Open - Status Hearing to be held on 02/01/2019
11	Joanne Taylor-Cotten v. D.C. Public Schools, et al.	2018 CA 001462 P(MPA)	Open - Briefing
12	Robert Willis v. D.C. Public Schools and D.C. Office of Employee Appeals	2018 CA 002456 P(MPA)	Open - Status Hearing to be held on 09/13/2019
13	D.C. Office on Aging v. D.C. Office of Employee Appeals	2018 CA 006345 P(MPA)	Open - Status Hearing to be held on 05/17/2019

Fiscal Year 2019-to-date D.C. Court of Appeals Matters

No.	Case Name	Case Number	Case Status
1	Robert Johnson v. D.C. Fire and Emergency Medical Services	18-CV-468	Closed – Denied on 01/22/2019

38. Please list all **settlements** entered into by the agency or by the District on behalf of the agency in FY2018 or FY2019, to date, including any covered by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than \$10,000 or results from an incident within the last two years. For each, provide

- The parties' names,
- The date the settlement was entered into;
- The amount of the settlement, and
- If related to litigation, the case name, court where claim was filed, case docket number, and a description of the case, or
- If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. Administrative complaint related to sexual harassment, etc.).

ANSWER: There were no settlements entered into by OEA or by the District on OEA's behalf in FY18 or FY19-to-date.

39. Does your agency prepare a **legislative agenda**? If so, please attach a copy. Please discuss any legislation your agency plans to submit to the Council in FY2019 or FY2020.

ANSWER: OEA does not prepare a legislative agenda.

40. Please identify any **recommendations for ways the Council could facilitate or improve your agency's operations.**

ANSWER: At this time, we do not have any recommendations for ways the Council could facilitate or improve our agency's operations.