

**OFFICE OF EMPLOYEE APPEALS**  
**FY2019-2020 Performance Oversight Questions**  
**Committee on Labor and Workforce Development**  
**Councilmember Elissa Silverman (At-Large), Chair**

I. Agency Priorities, Performance, and Evaluation.....	1
II. Budget and Expenditures .....	5
Budget.....	5
Expenditures .....	6
III. Agency Organization and Personnel.....	9
IV. Office of Employee Appeals .....	11
V. Agency Operations and Disputes.....	27

**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 FY2019? Please describe each in detail.
  - b. What are the agency's top five priorities in FY2020? Please explain how the agency expects to address each priority in FY2020.

**ANSWER:** The agency's top five priorities in FY2019 were to implement the Decision Uniformity Initiative; ensure that all decisions were 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 addressed the first priority by ensuring that all of its decisions were stylistically uniform prior to being issued. The second priority was met by the Network Assistant performing an end of the quarter check which ensured that all the agency's decisions issued during that quarter were on the agency's website. As for the third priority, the Network Assistant worked with the Intake Coordinator to determine what appeals were being mediated and whether the mediation was successful. For the last two priorities, the agency continued the process of amending its rules and issuing decisions within the 120 business days timeframe.

The agency's top five priorities in FY2020 are to issue the number of Initial Decisions that has been projected to be issued this fiscal year; publish the Office's amended rules of procedure; identify local training opportunities for the Office's Administrative Judges and General Counsel's Office; track how many motions to enforce a final decision issued by the Office are filed within this fiscal year; and continue to issue decisions within the statutory timeframe. The agency will address the first and last priorities by reviewing with the judges each month during the first Friday staff meetings the number of decisions that have been issued. This will ensure that each judge is issuing the number of decisions that has been individually assigned to that judge and that there are no barriers to issuing the decisions. With respect to the second priority, one of the Senior Administrative Judges and the Deputy General Counsel are leading this initiative. They provide periodic updates and drafts and will complete this initiative by September 30, 2020. As for the third priority, the Administrative Judges and General Counsel's Office will attend a two-day training presented by the Federal Employment Law Training Group. This priority is dependent, however, upon the availability of funding. Lastly, the Intake Coordinator will record how many motions to enforce a final decision are filed with the agency.

2. Please list each **program** or body of work operated or administered by the OEA during FY2019 and FY2020, as of Jan. 15, 2020. Highlight any programs new in FY2019 or FY2020. For each program, please provide a description of the program, the office that carries out the program, activities in FY2019 and FY2020, and any documented results of the program.

**ANSWER:** The programs administered by OEA in 2019, 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. The Information Technology program pertains to the agency's website and case tracking system.

3. Please describe any **initiatives** that the OEA implemented in FY2019 or FY2020, as of Jan. 15, 2020, 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:** In FY2019 OEA implemented the Decision Uniformity Initiative ensuring that all decisions were stylistically uniform prior to being issued. The Network Assistant performed an end of the quarter check to make sure that all of the agency's decisions had been successfully uploaded to the agency's website. One of the Senior Administrative Judges and the Deputy General Counsel were assigned to lead the process of amending the agency's rules of procedure. The Intake Coordinator monitored the agency's mediation program and provided the results of the agency's mediation program. The agency's FY2020 initiatives are in the process of being implemented.

4. Please provide a copy of the OEA's FY2019 **performance accountability report**.
  - a. Please explain which performance plan strategic objectives and key performance indicators (KPIs) were met or completed in FY2019 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 FY2019, the agency met its key performance indicators related to the time required to complete Adjudications and the time required to Resolve Petitions for Review. The agency nearly met the Percent of OEA decisions upheld by D.C. Superior Court and the D.C. Court of Appeals; however, the Agency cannot predict how the Court will rule on a decision. All of these were completed by September 30, 2019 and within the allotted budget. The key performance indicators which were not met are the number of Opinions and Orders to be issued. This was due to the Board not being able to meet at certain times because all members were not available. Also, the agency did not meet the number of Initial Decisions to be issued. This was due to one of the Senior Administrative Judges not issuing the individually required number of decisions.

OEA's FY2019 Performance Accountability Report is provided as **Attachment #1**.

5. Regarding the OEA's FY2020 **performance plan**:
- Please provide a copy of the OEA's FY2020 performance plan as submitted to the Office of the City Administrator.
  - Discuss any changes to any outcomes measurements in FY2019 or FY2020, 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:** Please see **Attachment #2**

The number of Initial Decisions and Opinions and Orders to be issued has changed for FY2020. The agency projects that it will issue 120 Initial Decisions and 20 Opinions and Orders in FY2020. These projections were changed to more closely align with the number of appeals being filed in FY2020.

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 FY2019 and FY2020, as of Jan. 15, 2020.
- For each study, paper, report, or analysis, please include:
    - Report name;
    - Author name, whether the agency or an outside party;
    - Status, including actual or expected completion date;
    - Purpose and description of contents; and
    - Contract number or grant name if the report was produced by a contractor or grantee.
  - 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 FY2019 or FY2020, 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 FY2019 and FY2020, as of Jan. 15, 2020, 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 were no investigations, audits or reports by outside entities that involve OEA or any employee conducted during FY2019 and FY2020, 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 FY2018, FY2019, or FY2020, as of Jan. 15, 2020 about the OEA or its board members or employees. 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 FY2018, FY2019, or FY2020, to date.

9. Please attach a copy of the agency's **FOIA disclosure report** for FY2019.

**ANSWER:** Please see **Attachment #3**

10. Please attach a **log of all FOIA requests** received in FY2019 and FY2020, as of Jan. 15, 2020, with the request number, the name of the requestor, the request date, and a brief description of the information requested.

**ANSWER:** No FOIA requests have been received in FY2020, to date.

## **II. Budget and Expenditures**

### **Budget**

11. **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 2020. 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 #4**

12. Please provide the following information for all **intra-District memoranda of understanding (MOUs)** for FY2019 and FY2020 as of Jan. 15, 2020, *including anticipated MOUs* for the remainder of FY2020.
- Attach copies* of all intra-district MOUs.
  - For each MOU, including anticipated MOUs, *complete the attached table* in Excel.

**ANSWER:** Please see **Attachment #5**

13. Please provide the following information for all **intra-District memoranda of agreement (MOAs)** for FY2019 and FY2020 as of Jan. 15, 2020, including anticipated MOAs for the remainder of FY2020.

- a. *Attach copies* of all intra-district MOAs.
- b. For each MOA, including anticipated MOAs, complete the table below; add rows as necessary.

**Memoranda of Agreement, FY2019 and FY2020, 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:** OEA had no intra-District memoranda of agreement (**MOAs**) for FY2019 and FY2020 as of Jan. 15, 2020.

14. Please provide the following information for each **interagency reprogramming** of funds into and out of the agency for FY2019 and FY2020, as of Jan. 15, 2020, including anticipated inter-agency reprogrammings for the remainder of FY2020.

- 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:** Please see **Attachment #6**

15. Please provide the following for each **intra-agency reprogramming** *within* your agency during FY2019 and FY2020, as of Jan. 15, 2020, as well as any anticipated intra-agency reprogrammings for the remainder of FY2020.

- 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 #7**

16. Please attach all **budget enhancement requests** submitted by your agency to the Mayor or Chief Financial Officer as part of the budget process for FY2021.

**ANSWER:** Please see **Attachment #8**

## **Expenditures**

17. Please *complete the attached table* in Excel with the following information on each **contract, procurement, and lease** leveraged in FY2019 and FY2020 as of Jan. 15, 2020, 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:** Please see **Attachment #9**

18. Please complete the following table with information on all **credit card, p-card, or purchase card purchases and expenditures** for FY2019 and 2020, as of Jan. 15, 2020; 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, FY2019 and FY2020**

<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**

19. Were any protests or complaints filed with the **Contract Appeals Board** in FY2019 or 2020 as of Jan. 15, 2020, 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 FY2019 or FY2020, as of Jan. 15, 2020**

<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 FY2019 or FY2020, as of Jan. 15, 2020.

### **III. Agency Organization and Personnel**

20. Please provide an **organizational chart** for the agency, arranged by division and subdivision, as of Jan. 15, 2020.
- Show for each division and subdivision:
    - The names and titles of all personnel;
    - Include on the chart, and denote as vacant or frozen, any such positions;
  - Note on the chart the date of the information if not Jan. 15, 2020.

**ANSWER:** Please see **Attachment #11**

21. Please *complete the attached table* in Excel with a **chart of all positions (i.e., Schedule A)** at the agency, as of January 15, 2020.

**ANSWER:** Please see **Attachment #12**

22. Please list each **vacant position's** position number and provide: (1) the date on which it became vacant and (2) the step or status of the hiring process for the position as of Jan. 15, 2020.

**ANSWER:** OEA had no vacant positions as of Jan. 15, 2020.

23. What was the **caseload** for each hearing examiner in FY2019 and FY2020 as of Jan. 15, 2020?

**ANSWER:**

Fiscal Year 2019

<b>Administrative Judge</b>	<b>Caseload</b>
Administrative Judge Cannon	10
Sr. Administrative Judge Dohnji	13
Administrative Judge Harris	13
Administrative Judge Hochhauser (PT)	6
Sr. Administrative Judge Lim	11
Sr. Administrative Judge Robinson	13

Fiscal Year 2020-to-date

<b>Administrative Judge</b>	<b>Caseload</b>
Administrative Judge Cannon	15
Sr. Administrative Judge Dohnji	17
Administrative Judge Harris	19
Administrative Judge Hochhauser (PT)	6
Sr. Administrative Judge Lim	16
Sr. Administrative Judge Robinson	13

24. Regarding **term and temp employees**:

- For each term or temp employee (by position number) included in the schedule A, indicate the start date of the position and the expected end date; and
- For each term or temp employee (by position number) included in the schedule A who started in the position in FY2019 or FY2020, please provide a brief narrative to specify why the hire was done on a term or temp basis and not on a continuing basis.
- For each term employee (by position number) employed during FY2019 or FY2020 whose hire date is before FY2016, please explain why the employee is term and has not been converted to a permanent employee.

**ANSWER:** The start date of the person occupying the temp position was June 23, 2019 with no anticipated end date. The hire was done on a temp basis due to the level of funding allocated to that position.

25. How many and what percentage of employees at the agency as of Jan. 15, 2020, were **District residents**?

**ANSWER:** OEA had 16 employees as of Jan. 15, 2020 and 18.75% of them were District residents.

26. Please complete the following charts about the **residency of new hires, including term and temp employees**, in FY2019 and FY2020, as of Jan. 15, 2020:

**DC Residency of Employees Hired in FY 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	0	0	0
Term	0	0	0
Temporary	1	0	
WAE	0	0	0

### DC Residency of Employees Hired in FY 2020, as of Feb. 2020

<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			

27. Please complete the following table regarding employees placed on **administrative leave** in FY2019 or FY2020. Specify (column 3) why the employee was placed on leave and note if the leave is a result of discipline or due to an investigation.

### Employees on Administrative Leave During FY2019 and FY2020

<i>Employee's job title</i>	<i>Position number</i>	<i>Reason placed on leave; specify if disciplinary or due to investigation</i>	<i>Length of leave</i>	<i>Whether employee was separated</i>	<i>Whether the leave was/is paid or unpaid</i>	<i>Their current status (as of Jan. 15, 2020).</i>

**ANSWER:** No employees were placed on administrative leave in FY2019 or FY2020 to date.

28. For FY2019 and FY2020, as of Jan. 15, 2020, please complete the following table on each **employee separated** from the agency.

### Employees Separated from Agency, FY2019 and FY2020

<i>Employee name</i>	<i>Job title</i>	<i>Amount of separation pay, if relevant</i>	<i>Number of weeks of separation pay, if relevant</i>	<i>The reason for the separation; specify if it was due to probation, performance, or discipline</i>

**ANSWER:** No employees were separated from the agency in FY2019 or FY2020, as of Jan. 15, 2020.

#### **IV. Office of Employee Appeals**

29. Please provide a list of OEA **case types** (as OEA delineates cases) and describe what each case type entails.

**ANSWER:** In accordance with District Personnel Manual (“DPM”) § 604.1, OEA has jurisdiction over the following types of appeals:

- a. A performance rating which results in removal of the employee;
- b. An adverse action for cause which results in removal;
- c. A reduction in grade;
- d. A suspension for ten (10) days or more;
- e. A reduction-in-force; or
- f. A placement on enforced leave for ten (10) days or more.

##### Jurisdiction Appeals

When there is a question raised pertaining to OEA’s jurisdiction over a matter, DPM § 628.2 provides that “the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.”

##### Performance Rating Appeals

A Performance Improvement Plan (PIP) is designed to facilitate constructive discussion between an employee and his or her immediate supervisor to clarify areas of work performance that must be improved. Once the areas for improvement have been identified, the PIP provides the employee the opportunity to demonstrate improvement in those areas and his or her ability to meet the specified performance expectations. In accordance with DPM § 1410.3, “[a] PIP issued to an employee shall last for a period of thirty (30) to ninety (90) days and must identify the specific performance areas in which the employee is deficient; and provide concrete, measurable action steps the employee can take to improve in those areas.”

If the employee fails to meet the requirements of the PIP, the written decision shall state the reason(s) the employee was unsuccessful in meeting those requirements. Pursuant to DPM § 1415.6, an employee may appeal a final agency decision regarding a performance rating that results in removal to OEA.

##### Adverse Action Appeals

An adverse action is a suspension of ten (10) workdays or more, a reduction in grade, or a removal. DPM § 1602.1 provides that “no employee may be reprimanded, suspended, demoted, placed on enforced leave or removed without cause. . . .” Therefore, OEA is tasked with determining if Agency had the requisite cause to impose the action taken against a District government employee.



### Enforced Leave Appeals

For matters involving enforced leave, DPM § 1617.1 provides that “[e]nforced leave occurs when an employee is involuntarily placed in a non-duty leave status, which is neither a corrective nor adverse action for purposes of this chapter.”

DPM § 1617.3 provides the following:

An agency may place an employee on enforced leave when there is reliable evidence that he or she:

- a. Utilized fraud in securing his or her appointment;
- b. Falsified official records;
- c. Has been indicted on, arrested for, charged with, or convicted of a felony charge (including conviction following a plea of nolo contendere); or
- d. Has been indicted on, arrested for, or convicted of any crime that bears a relationship to his or her position.

Moreover, DPM § 1617.8(a)-(b) provide that “[w]henver an employee is placed on enforced leave [t]he agency must initiate either corrective or adverse action based on the evidence supporting the enforced leave action; and [t]he employee shall remain on enforced leave no longer than is required to reach a final determination on corrective or adverse action, or one hundred eighty (180) days, whichever is shorter.” Accordingly, if the basis for placing an employee on enforced leave pursuant to this section does not result in corrective or adverse action, any annual leave or pay lost as a result of the enforced leave action shall be restored retroactively (*See* DPM §1617.9).

### Reduction-in-Force (RIF) Appeals

Reductions-in-Force occur when an agency releases a competing employee from their competitive level on the basis of a lack of work, shortage of funds, or a reorganization or realignment. An employee who has received a notice of Reduction-in-Force may file an appeal with OEA if they believe that their agency has incorrectly applied the RIF regulations.

30. Please complete the following chart with information about **OEA cases by case type** in FY2018, FY2019, and FY2020 as of Jan. 15, 2020.

**OEA Cases by Type**

<b>Case Type</b>	<b>Number of cases filed</b>			<b>Number of initial decisions issued</b>			<b>Number of cases for which initial decisions were issued 120 days or more after being filed with the OEA office</b>		
	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>
Jurisdiction	21	24	7	25	18	7	7	2	1
Performance Rating	0	0	0	0	0	0	0	0	0
Adverse Action	71	62	20	87	92	18	67	50	10
Enforced Leave	0	1	0	0	0	0	0	0	0
Reduction-in-Force	1	4	0	11	8	2	7	4	0

31. Please fill in the following chart regarding **jurisdiction final decisions**:

**Jurisdiction Final Decisions, FY2018-FY2020**

<b>Number of final decisions</b>			<b>Number of decisions issued 45 days or more after being filed with the OEA office</b>		
<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>
25	18	7	20	13	6

32. Please complete the following chart with **data on OEA cases** for FY2018, FY2019 and FY2020:

**OEA Case Information, FY2018-FY2020**

Item	FY2018	FY2019	FY2020, as of Jan. 15, 2020
<b>ADMINISTRATIVE JUDGES</b>			
Number of petitions for appeals filed	93	91	27
Number of cases entering mediation	57	46	17
Number of cases settled by mediation	12	10	2
Number of initial decisions issued	123	118	27
Average time to issue initial decisions (business days)	190	176	174
Number of pending petitions for appeal	5 <sup>1</sup>	51	35
<b>OEA BOARD</b>			
Number of petitions for review filed	20	24	2
Number of opinions and orders issued	33	19	9
Average time to issue opinions and orders (business days)	168	123	178
Number of pending petitions for review	0	5	2
<b>SUPERIOR COURT</b>			
Number of decisions appealed to Superior Court	24	23	4
Number of pending appeals in Superior Court	3	5	4
Number of decisions issued in Superior Court	16	20	16
Number of appeals upheld in Superior Court	13	18	14
Number of appeals reversed or remanded in Superior Court	3	2	2
<b>DC COURT OF APPEALS</b>			
Number of decisions appealed to Court of Appeals	6	7	7
Number of pending appeals in Court of Appeals	2	7	7
Number of decisions issued in Court of Appeals	5	5	5
Number of appeals upheld in Court of Appeals	4	3	2
Number of appeals reversed or remanded in Court of Appeals	1	2	3

<sup>1</sup> In addition to the cases indicated, there is one (1) case pending from FY13; two (2) cases pending from FY16; and two (2) cases pending from FY17.

33. Please provide a narrative **description explaining each decision that was reversed or remanded** by Superior Court or the Court of Appeals in FY 2019 or FY2020. Please attach a copy of any opinion issued with the remand or reversal (please provide each as a separate attachment).

**ANSWER:**

**2019 Superior Court Remand**

1. ***Gina Vaughn v. Metropolitan Police Department, OEA Matter No. 2401-0020-12R16R19*** – Employee was removed from her position as a Computer Specialist pursuant to a Reduction-in-Force (“RIF”). The OEA Administrative Judge reversed Agency’s RIF action, and the matter was appealed several times. Most recently, the Superior Court for the District of Columbia remanded the matter to the OEA Board for further consideration. The issue presented on appeal involved a late filing that Employee submitted after the AJ issued his Initial Decision on Remand. The Court held that although Employee’s submission to the OEA Board was past the thirty-five-day jurisdictional deadline for filing a Petition for Review, OEA has a responsibility to inform *pro se* litigants of procedural rules and the consequences of noncompliance, including minimal notice of pleading requirements. Consequently, the matter was remanded to the OEA Board for consideration of Employee’s Petition for Review.

**2019 Superior Court Reversal**

1. ***Sheila Thomas-Bullock v. Metropolitan Police Department, OEA Matter No. 1601-0039-17R19*** – Employee was removed from her position as a Police Officer based on charges of “conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense; conduct unbecoming of an officer; and falsification of official records or reports.” The issue presented on appeal was whether Agency violated D.C. Official Code § 5-1031, commonly referred to as the “90-day rule.” The AJ held that Agency violated the mandatory nature of D.C. Official Code § 5-1031 because Employee’s termination letter was issued more than ninety days after Agency knew or should have known of the act or occurrence constituting cause.

On appeal, the Superior Court for the District of Columbia held that the ninety days was not triggered under D.C. Official Code § 5-1031 until Employee’s criminal case was dismissed pursuant to an agreement between Employee and the United States Attorney’s Office (USAO). The Court reasoned that it was not until Employee completed the terms of the agreement that the USAO could decide whether to charge Employee with assault or to dismiss the charges. As a result, the Court concluded that Agency complied with the 90-day rule. Therefore, OEA’s decision was reversed.

**2019 D.C. Court of Appeals Remands**

1. ***Zack Gamble v. Metropolitan Police Department, OEA Matter No. 2401-0018-12R19***  
– Employee was separated from service as a Computer Specialist pursuant to a

Reduction-in-Force (“RIF”). The OEA Administrative Judge upheld the Agency’s action of abolishing Employee’s position through the RIF. The matter was appealed to the Superior Court for the District of Columbia, wherein Agency successfully argued that the consideration of job sharing and reduced hours in conducting a RIF was discretionary, not mandatory. However, while on appeal in the D.C. Court of Appeals, two Superior Court judges held in separate (but related) matters that agencies were required to consider job sharing and reduced because of the plain language of D.C. Official Code § 1-624.02. Consequently, Agency filed a motion with the D.C. Court of Appeals to remand the matter to Superior Court with instructions to vacate the Court’s affirmance of OEA’s decision. The Court of Appeals granted Agency’s motion and instructed Superior Court to remand the matter to OEA for additional findings.

2. ***Brenda Toyer v. Metropolitan Police Department, OEA Matter No. 2401-0022-12R19*** – Employee was removed from her position as a Computer Clerk pursuant to a Reduction-in-Force (“RIF”). The OEA Administrative Judge upheld Agency’s action of abolishing Employee’s position through the RIF. On appeal, the Superior Court for the District of Columbia held that the Realignment Approval Forms provided by the District’s City Administrator, Allen Lew, were both timely and authentic. The Court also upheld OEA’s reliance on D.C. Official Code § 1-624.02 in evaluating the RIF action. As a result, Employee’s separation from service was upheld.

While on appeal in the D.C. Court of Appeals, Agency filed a motion requesting that the matter be remanded to Superior Court with instructions to vacate the Court’s affirmance of OEA’s decision. The Court of Appeals granted Agency’s motion and instructed Superior Court to remand the matter to OEA for additional findings.

### **2020 Superior Court Remand**

1. ***Linda Sun v. Office of the Tenant Advocate, OEA Matter No. 1601-0037-17R20*** – Employee was removed from her position as a Program Support Specialist based on several counts of malfeasance, misfeasance, insubordination, and the unauthorized practice of law. The OEA Administrative Judge dismissed Employee’s appeal, finding that the same claims against the same parties were previously adjudicated in federal court. On appeal, the Superior Court for the District of Columbia held that the federal court had jurisdiction over Employee’s retaliation claim; therefore, she was barred from pursuing that claim before OEA. However, Employee’s claims alleging a violation of the Comprehensive Merit Personnel Act (“CMPA”) were not precluded, and OEA retained the jurisdiction to hear such claims. As a result, the matter was remanded, in part, for the limited purpose of determining whether Agency’s Summary Removal Notice complied with the requirements of D.C. Municipal Regulation (“DCMR”) § 1616.3(a).

### **2020 Superior Court Reversal**

1. ***Charis Toney v. Department on Disability Services, OEA Matter No. 1601-0053-16R20*** – Employee was suspended for thirty days from her position as a Vocational Rehabilitation Specialist based on charges of “false statements; including:

misrepresentation, falsification, or concealment of material facts or records in connection with an official matter” (“Charge No. 1”) and “knowingly and willfully reporting false or misleading information or purposely omitting material facts to any superior” (“Charge No. 2”). The charges were based on Employee’s act of submitting a D.C. Government Family and Medical Leave Application and a “return to work” form which were both altered by Employee prior to submitting them to Agency. The Administrative Judge (AJ) held that Agency met its burden of proof with respect to Charge No. 2, but it failed to meet its burden of proof with respect to Charge No. 1.

On appeal, the Superior Court for the District of Columbia found that the AJ only considered the return to work notice when analyzing Charge No. 1. It explained that Agency did not meet its burden of proof for that cause of action because Employee’s treating physician gave Employee permission to alter the form. However, the Court reasoned that Agency’s Advance Notice of Termination clearly indicated that Charge No. 1 was as a result of Employee’s alteration of both the medical certification and the return to work notice. The Court further noted that the record showed that Employee did not have permission to alter Section III of the medical certification. As a result, it found that OEA should have considered Employee’s alteration of both forms when ruling on Charge No. 1, and therefore, should have found that Agency met its burden of proof by a preponderance of the evidence on that cause of action. Consequently, the Court vacated and reversed the AJ’s ruling as it related to Charge No. 1.

### **2020 D.C. Court of Appeals Remands**

1. ***Harold Dargan v. D.C. Fire and Emergency Medical Services, OEA Matter No. 1601-0091-13R20*** – Employee was removed from his position as an Emergency Medical Technician with Agency because of his failure to maintain his mandatory Department of Health (“DOH”) certification. The OEA Administrative Judge held that Agency complied with all applicable rules, laws, and regulations which required that all Emergency Medical Technicians maintain their certification by the National Registry of EMTs (“NREMT”). He further concluded that Employee failed the skills examination of the certification exam on September 28, 2011, February 2, 2012, and February 14, 2012.

The D.C. Court of Appeals held that there was not substantial evidence in the record to support a finding that Employee was administered the practical skills exams of the NREMT on any of the aforementioned dates. Additionally, the Court determined that the Administrative Judge erroneously focused on whether Employee maintained his NREMT exam. Instead, it explained that the focal point of the AJ’s analysis should have been to determine whether Employee properly maintained his DOH certification, which presumably had different procedures and requirements. Therefore, the matter was remanded to OEA to determine if the procedures were followed before terminating Employee for failing to maintain a current certification.

2. ***Yordanos Sium v. Office of the State Superintendent of Education, OEA Matter No.***

**1601-0135-13R20** – Employee was removed from her position as a Bus Driver based on a charge of neglect of duty. The charges stemmed from Employee’s involvement in a January 5, 2011 accident wherein Employee’s school bus collided with a car. Employee left the scene of the accident without checking for damages to the vehicle. The Superior Court for the District of Columbia concluded that Employee’s failure to file an appeal with OEA within thirty days, as specified in D.C. Code § 1-606.03(a), did not deprive OEA of jurisdiction to hear her case. The Court held that the thirty-day deadline was not jurisdictional. Additionally, the Court found that the OEA abused its discretion by failing to conduct an evidentiary hearing on disputed material facts. As a result, the Court remanded the matter to OEA for further consideration.

3. ***Belynda Roebuck v. Office on Aging, OEA Matter No. 1601-0098-12R20*** –

Employee was removed from her position as a Special Products Coordinator with Agency based on charges of making a false statement or knowingly failing to disclose a material fact to obtain or increase unemployment insurance benefits. The OEA Administrative Judge held that Agency established the requisite cause to terminate Employee. However, Agency was ordered to reimburse Employee for fifteen days’ pay and benefits because of its failure to provide her with the proper notice of termination. The Superior Court of the District of Columbia denied Employee’s Petition for Review and upheld OEA’s findings.

On appeal, the D.C. Court of Appeals upheld OEA’s finding that an arrest record was not required for Employee to have been disciplined under D.C. Municipal Regulation § 1603.3(h). The Court also disagreed with Employee’s argument that OEA erred in failing to accord significance to the findings of the Office of Administrative Hearings in Employee’s unemployment benefits cases. However, the Court did conclude that the record was vacant of evidence that the *Douglas* factors were properly considered. Therefore, it remanded the case to OEA for further findings on that issue.

Please see **Attachment #13**

34. Please fill in the chart below with **cases by agency** in each year FY2018, FY2019, and FY2020. Add rows as necessary. Please alphabetize agencies; if there are multiple cases per agency, group them by case type.

**OEA cases or complaints by agency, FY2018-FY2020, as of Jan. 15, 2020**



Agency name	Case Type	Number of cases filed against agency		
		FY2018	FY2019	FY2020
Aramark <sup>2</sup>	Jurisdiction	1	0	0
Criminal Justice Coordination Council	Adverse Action	0	0	1
D.C. Alcoholic Beverage Regulation Administration	Adverse Action	0	0	1
D.C. Board of Ethic and Government Accountability	Jurisdiction	0	1	0
D.C. Child and Family Services	Adverse Action	0	0	1
D.C. Fire and Emergency Medical Services	Adverse Action	4	2	0
D.C. Housing Authority	Adverse Action	0	2	0
D.C. Office of Contract and Procurement	Adverse Action	1	0	0
D.C. Office of Police Complaints	Adverse Action	0	1	0
D.C. Public Charter School Board	Jurisdiction	1	0	0
D.C. Public Library	Adverse Action	1	0	1
D.C. Public Schools	Adverse Action	23	8	1
D.C. Public Schools	Reduction-in-Force	1	4	0
D.C. Public Schools	Jurisdiction	3	2	0
D.C. Housing Authority	Adverse Action	1	2	1
D.C. Retirement Board	Adverse Action	0	1	0
Department of Behavioral Health	Adverse Action	1	0	1
Department of Behavioral Health	Jurisdiction	1	0	0
Department of Corrections	Jurisdiction	0	5	0
Department of Corrections	Adverse Action	0	2	1
Department of Employment Services	Adverse Action	1	1	1
Department of Employment Services	Jurisdiction	0	1	1
Department of Energy and the Environment	Adverse Action	0	1	0
Department of For-Hire Vehicles	Adverse Action	0	1	0
Department of General Services	Adverse Action	2	3	0
Department of General Services	Jurisdiction	0	2	1
Department of Health	Adverse Action	2	0	0
Department of Human Resources	Adverse Action	0	1	0
Department of Human Services	Adverse Action	2	0	0

Department of Human Services	Jurisdiction	1	0	0
Department of Motor Vehicles	Adverse Action	0	0	3
Department of Parks and Recreation	Adverse Action	2	2	1
Department of Public Works	Adverse Action	3	5	2
Department of Public Works	Jurisdiction	1	2	2
Department of Small and Local Business Development	Jurisdiction	1	0	0
Department of Transportation	Adverse Action	4	1	0
Department of Transportation	Jurisdiction	1	1	0
Department of Youth Rehabilitation Services	Adverse Action	2	1	0
Department of Youth Rehabilitation Services	Jurisdiction	2	2	0
Events D.C.	Jurisdiction	0	0	1
Metropolitan Police Department	Adverse Action	11	14	4
Metropolitan Police Department	Jurisdiction	2	1	0
Office of Administrative Hearings	Adverse Action	1	0	0
Office of Campaign Finance	Adverse Action	0	1	0
Office of Contracting and Procurement	Adverse Action	1	0	0
Office of Risk Management	Jurisdiction	1	0	0
Office of the Chief Financial Officer	Jurisdiction	1	1	1
Office of the Inspector General	Adverse Action	0	2	0
Office of the Inspector General	Jurisdiction	0	1	0
Office of the State Superintendent of Education	Adverse Action	8	11	1
Office of the State Superintendent of Education	Jurisdiction	4	3	1
Office of Unified Communications	Adverse Action	1	1	0
University of the District of Columbia	Adverse Action	1	1	0
University of the District of Columbia	Jurisdiction	1	1	0

35. In each year of FY2019 and FY2020, as of Jan. 15, 2020, how many complainants returned to OEA to **request enforcement** of an OEA order? Please provide a list of the cases, and for each case, provide the case name, agency involved, and brief description of the matter.

<sup>2</sup> It was determined by the Administrative Judge that this was not a D.C. government agency.

**ANSWER:**

**FY2019 Motions for Enforcement**

1. ***Laura Jackson v. Department of Health, OEA Matter No. 2401-0020-10-R17C19*** – Employee was separated from service pursuant to a Reduction-in-Force (RIF). The matter was appealed to the Superior Court for the District of Columbia and subsequently to the D.C. Court of Appeals. The Court of Appeals remanded the matter to OEA for the purpose of addressing the errors in Employee’s Service Computation Date. On May 1, 2018, an OEA Administrative Judge (AJ) issued an Initial Decision on Remand reversing Agency’s RIF action and ordered Employee to be reinstated with back pay and benefits. Employee subsequently filed a Motion for Compliance with OEA on October 24, 2018. The AJ held a status conference on June 24, 2019, wherein the parties were ordered to address whether Agency fully complied with the Initial Decision on Remand. On September 23, 2019, the AJ issued an Addendum Decision on Compliance, concluding that Agency failed to fully comply with the order on remand. The AJ also provided that the matter would be certified to the OEA’s General Counsel for enforcement of the Addendum Decision on Compliance. However, Employee filed a Petition for Review with the OEA Board on October 24, 2019, challenging the AJ’s Addendum Decision on Compliance. Agency’s Petition for Review is currently pending before the OEA Board.
2. ***Gennifer Cunningham v. D.C. Public Schools, OEA Matter No. 241-0058-17C19*** – Employee was separated from service pursuant to a Reduction-in-Force (“RIF”). On June 5, 2018, the OEA Administrative Judge (“AJ”) reversed Agency’s RIF action and ordered Employee to be reinstated with back pay and benefits. On June 14, 2019, Employee filed a Petition for Enforcement, arguing that Agency failed to issue her a check for back pay and benefits. In response, Agency argued that Employee failed to submit the proper documentation to accurately calculate the amount due. On July 15, 2019, the AJ held a status conference to assess the compliance issues. On September 30, 2019, Employee filed a Praecipe of Compliance wherein she stated that Agency complied with the June 5, 2018 Initial Decision. On October 8, 2019, the AJ issued an Addendum Decision on Compliance dismissing Employee’s Petition for Enforcement because Agency fully complied with the Initial Decision.
3. ***Veronica Butler v. Department on Aging, OEA Matter No 1601-0132-14C19*** – Employee was removed from her position as a Special Assistant based on charges of Absence Without Official Leave and Unauthorized Absence. On October 27, 2015, the OEA Administrative Judge (“AJ”) reversed Agency’s termination action and ordered that Employee be reinstated to her previous position, or a comparable position, with back pay and benefits. The matter was subsequently appealed to the OEA Board and was remanded to the AJ for the purpose of conducting an evidentiary hearing. On July 3, 2018, the AJ issued an Initial Decision on Remand, again reversing Agency’s termination action. Employee filed a Motion for Enforcement with OEA on June 17, 2019. She argued that Agency offered her a position that was not comparable to her previous position of record. On August 9, 2019, the AJ ordered the parties to submit briefs addressing the outstanding compliance issues. On November 25, 2019, the AJ

issued an Addendum Decision on Compliance. She held that Agency offered Employee a position that was substantially similar to her former position. As a result, the AJ concluded that Agency fully complied with the July 3, 2018 Initial Decision on Remand.

4. ***Deborah Gudger v. D.C. Public Schools, OEA Matter No. 1601-0087-16C19*** – Employee was removed from her position as a Family Care Coordinator under the IMPACT performance evaluation system. On December 28, 2018, the OEA Administrative Judge (“AJ”) reversed Agency’s termination action and ordered that Employee to be reinstated with back pay and benefits lost as a result of her removal. On June 26, 2019, Employee filed a Motion to Enforce Judgment with OEA asserting that Agency’s back pay amount failed to include certain out-of-pocket, health-related expenses that she incurred as a result of being terminated. The AJ subsequently ordered the parties to submit briefs addressing the outstanding compliance issues. On December 17, 2019, the AJ issued an Addendum Decision on Compliance. She concluded that Employee was not entitled to the expenses that she requested. As a result, the AJ deemed Agency to be in full compliance with the December 28, 2018 Initial Decision.
5. ***Stephanie Linnen v. Office of the State Superintendent of Education, OEA Matter No. 1601-0039-18C19*** – Employee was suspended for ten days from her position as a Staff Assistant based on charges of neglect of duty, insubordination, and failure to carry out assigned tasks. On February 13, 2019, the OEA Administrative Judge (“AJ”) issued an Initial Decision reversing Agency’s termination action and ordered that Employee be reinstated with back pay and benefits. On May 28, 2019, Employee filed a Motion for Enforcement because she opined that Agency failed to comply with the AJ’s February 13, 2019 order. The AJ subsequently held a status conference on June 24, 2019, wherein Agency provided Employee with a check for back pay and a check for annual leave payout for the suspension period. On July 3, 2019, the AJ issued an Addendum Decision on Compliance. She held that Agency fully complied with the Initial Decision and dismissed Employee’s Motion for Enforcement.
6. ***Davette Butler v. D.C. Public Schools, OEA Matter No. 2401-0090-17C19*** – Employee was separated from service pursuant to a Reduction-in-Force (“RIF”). On August 27, 2018, the OEA Administrative Judge (“AJ”) issued an Initial Decision reversing Agency’s RIF action. Employee was ordered to be reinstated with back pay and benefits. On July 12, 2019, Employee filed a Petition for Enforcement and Compliance with the Initial Decision. Employee asserted that she was reinstated to a temporary, not a permanent position; thus, Agency did not fully comply with the August 27, 2018 Initial Decision. On November 26, 2019, the AJ ordered the parties to submit briefs addressing the outstanding compliance issues by December 23, 2019. The compliance matter remains pending the issuance of an Addendum Decision on Compliance.
7. ***James Wilson v. Department of Parks and Recreation, OEA Matter No. 1601-0062-17C19*** – Employee was terminated from his position as a Motor Vehicle Operator based on charges of fighting and arguing. On September 26, 2018, the OEA Administrative Judge (“AJ”) issued an Initial Decision reversing Agency’s termination action. Employee was ordered to be reinstated with back pay and benefits.

Agency subsequently filed a Petition for Review with the OEA Board. The Board dismissed Agency's petition in a May 28, 2019 Opinion and Order on Petition for Review and upheld the Initial Decision. On September 17, 2019, Employee submitted a letter to OEA requesting an update on the status of his reinstatement. Employee also alleged that Agency failed to comply with the AJ's orders. The AJ issued an Order for Agency Response on Compliance. The deadline is February 14, 2020. This matter is currently pending.

### **FY2020 Motion for Enforcement**

1. ***Eric Levenberry v. Metropolitan Police Department, OEA Matter No. 1601-0031-19C20*** – Employee filed a Petition for Appeal with OEA challenging Agency's decision to impose a \$5,000.00 fine pursuant to D.C. Municipal Regulation § 877.8. On September 30, 2019, the AJ Issued an Initial Decision and ordered Agency to reverse Employee's fine assessment. On December 11, 2019, Employee filed a Motion for Compliance and Enforcement of the Initial Decision. The AJ issued an Addendum Decision on Compliance on January 10, 2020. He provided that Agency elected to file a Petition for Review of OEA's decision with the Superior Court for the District of Columbia. Because Employee's appeal is still pending, the AJ dismissed Employee's motion as premature. The AJ noted that Employee was permitted to re-file the Motion for Enforcement depending on the disposition of the matter in Superior Court.
36. What methods did OEA use in FY2019 and FY2020 to **determine whether and when agencies implemented** OEA's orders? Please describe the methods and provide examples. In each year of FY2019 and FY2020, how many complainants did OEA reach out to on its own to determine if OEA's order had been enforced?
- ANSWER:** As it relates to enforcement of OEA orders, DPM § 635 addresses compliance and enforcement of OEA orders. The DPM sections provide the following:
- 635.1 Unless the Office's final decision is appealed to the Superior Court of the District of Columbia, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final.
- 635.2 If any agency fails to comply with the final decision of the Office within the time period specified in § 635.3, the employee may file a motion to enforce the final decision. The motion shall be directed to the Administrative Judge who decided the appeal.
- 635.3 An agency must file an answer within twenty (20) calendar days of receipt of the employee's motion.
- 635.4 The employee, with specificity, shall explain in the motion how the agency has failed to comply with the Office's decision. The agency shall include in its answer a statement which admits or denies each allegation in the employee's motion.
- 635.5 The parties shall serve the motion and answer on each other.

635.6 Failure by the agency to file an answer to the motion for enforcement shall be construed as an admission of the employee's allegations.

635.7 The Administrative Judge shall take all necessary action to determine whether the final decision is being complied with and shall issue a written opinion on the matter.

635.8 The Administrative Judge may, for good cause shown, allow the agency additional time to submit proof of compliance with the initial decision.

635.9 If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Official Code § 1-606.02 (2006 Repl.).

635.10 No additional filings are permitted once the General Counsel certifies the final decision.

635.11 If the agency fails to comply with the order, the General Counsel may take such actions as are necessary to secure compliance with the order.

Moreover, D.C. Official Code § 1-606.09 provides that “[i]f 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 accordance with the DPM, the burden is on employee to file a motion with the Administrative Judge to enforce the final decision. Therefore, OEA does not contact the parties to determine if compliance has occurred.

37. For the OEA board members, please complete the chart below with **member information** as of Jan. 15, 2020. Please note any vacancies.

**OEA Board members**

<b>Member's Name</b>	<b>Confirmation Date</b>	<b>Term Expiration Date</b>	<b>District Resident? (y/n)</b>
Patricia Hobson Wilson	02/11/2014	04/06/2022	Yes
Jelani Freeman	05/01/2017	04/06/2023	Yes
Clarence Labor, Jr.	04/02/2018	04/06/2024	Yes
Peter Rosenstein	08/07/2018	04/06/2024	Yes
Dionna Maria Lewis	02/11/2019	04/06/2025	Yes

## **V. Agency Operations and Disputes**

38. Please list in chronological order any ***grievances filed by labor unions*** against the agency or any employee of the agency in FY2019 or FY2020, as of Jan. 15, 2020. Do not include cases covered in Questions 33. 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 FY2019 or FY2020, as of Jan. 15, 2020, describe the resolution or outcome.

**ANSWER:** There were no grievances filed by labor unions against OEA or any of its personnel in FY19 or FY20-to-date.

39. 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 or former employee***, that were filed or pending in FY2019 or FY2020. Do not include cases covered in Questions 33. 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
  - For any complaint or grievance that was resolved in FY2019 or FY2020, as of Jan. 15, 2020, describe the resolution or outcome.

**ANSWER:** There were no grievances or complaints filed against or regarding OEA or any of its personnel filed by any District government employee or former employee in FY19 or FY20-to-date.

40. 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 FY2019 or FY2020, as of Jan. 15, 2020. Do not include cases covered in Questions 33 or lawsuits naming OEA solely for the purpose of filing the full record in court.

- a. 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.
- b. Attach a copy of each complaint and any response filed by the agency or its legal representative.

**ANSWER:** Other than matters where OEA is named as a party of interest to file the record in court, there are no lawsuits that name or concern OEA or any employees of the agency.

41. Please list all **settlements** entered into by the agency or by the District on behalf of the agency in FY2019 or FY2020, as of Jan. 15, 2020, 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

- a. The parties' names,
- b. The date the settlement was entered into;
- c. The amount of the settlement, and
- d. If related to litigation, the case name, court where claim was filed, case docket number, and a description of the case, or
- e. 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 FY19 or FY20 -to-date.



# **ATTACHMENT #1**

# Office of Employee Appeals FY2019

Agency Office of Employee Appeals

Agency Code CHO

Fiscal Year 2019

Mission The Office of Employee Appeals (OEA) is an independent agency with a mission is to adjudicate employee appeals and rendering impartial decisions with sound legal reasoning in a timely manner.

Summary of Services In accordance with DC Official Code §1-606.03, the Office of Employee Appeals adjudicates the several types of personnel actions. (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.

## 2019 Accomplishments

Accomplishment	Impact on Agency	Impact on Residents
During FY2019, OEA completed adjudications during the statutory timeframe of 120 business days. Moreover, OEA was successful in uploading all of its decisions to its website thereby meeting its statutory mandate to provide research assistance to the public by making its decisions readily available. Furthermore, most of OEA's decisions withstood judicial scrutiny as evidenced by the percentage of decisions that were upheld by the courts.	These accomplishments positively impacted the agency by meeting the goals set out at the beginning of the fiscal year.	These accomplishments positively impacted the residents of the District by providing greater assurance to the residents that OEA is carrying out its statutory mandates.

## 2019 Key Performance Indicators

Measure	Frequency	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY 2019 Q1	FY 2019 Q2	FY 2019 Q3	FY 2019 Q4	FY 2019 Actual	KPI Status	Explanation
<b>1 - Render impartial, legally sound decisions in a timely manner. (6 Measures)</b>											
Number of Opinions and Orders Issued	Quarterly	51	33	25	5	4	8	2	19	Unmet	The Board could not meet at certain times because not all members were available.
Time Required to Complete Adjudications	Annually	6	6	12	Annual Measure	Annual Measure	Annual Measure	Annual Measure	5	Met	
Time Required to Resolve Petitions for Review	Annually	8	5	9	Annual Measure	Annual Measure	Annual Measure	Annual Measure	4	Met	
Percent of OEA decisions upheld by D.C. Superior Court and the D.C. Court of Appeals	Annually	93.1%	100%	99%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	96%	Nearly Met	The Agency cannot predict how the Court will rule on a decision.
Number of Initial Decisions Issued	Quarterly	142	123	135	40	29	26	22	117	Unmet	One of the Administrative Judges did not issue the required number of decisions.
Percent of cases reversing agency decisions	Quarterly	6.8%	10.9%	Not Available	3.4	1.7	3.4	1.7	10.16%	Neutral Measure	
<b>2 - Streamline the adjudication process. (2 Measures)</b>											
Percent of appeals involved in mediation process	Quarterly	Not Available	61%	Not Available	7	14	14	11	46%	Neutral Measure	

Measure	Frequency	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY 2019 Q1	FY 2019 Q2	FY 2019 Q3	FY 2019 Q4	FY 2019 Actual	KPI Status	Explanation
Percent of appeals resolved through mediation	Quarterly	Not Available	13%	Waiting on Data	0	10.9	0	10.9	21.7%	Neutral Measure	
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (2 Measures)</b>											
Percent of Initial Decisions uploaded to website	Quarterly	Not Available	100%	100%	100%	100%	100%	100%	100%	Neutral Measure	
Percent of Opinions and Orders uploaded to website	Quarterly	Not Available	100%	100%	100%	100%	100%	100%	100%	Neutral Measure	

## 2019 Workload Measures

Measure	FY 2017 Actual	FY 2018 Actual	FY 2019 Q1	FY 2019 Q2	FY 2019 Q3	FY 2019 Q4	FY 2019 Actual
<b>2 - Mediation and Settlement (1 Measure)</b>							
Number of attorney fee appeals mediated	15	2	1	0	0	0	1

## 2019 Operations

Operations Header	Operations Title	Operations Description	Type of Operations
<b>1 - Render impartial, legally sound decisions in a timely manner. (3 Activities)</b>			
ADJUDICATION PROCESS	Petitions for Appeal	Intake Coordinator reviews Petition for Appeal, determines the type of appeal and assigns to Administrative Judge.	Daily Service
APPEALS	Petitions for Review	Office of the General Counsel reviews Petitions for Review, drafts the Opinion and Order and meets with the Board to present the appeal and issue the decision.	Daily Service
ADJUDICATION PROCESS	Initial Decisions	Administrative Judges process Petitions for Appeal which culminate in the issuance of an Initial Decision.	Daily Service
<b>2 - Streamline the adjudication process. (1 Activity)</b>			
MEDIATION	Mediation and Settlement	The goal of the mediation program is to help the parties, through the negotiation process, reach a settlement that is agreeable to both of them.	Key Project
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (1 Activity)</b>			
INFORMATION TECHNOLOGY	Website	Decisions are uploaded to the agency's website so that the public is able to view the decisions and research the decisions.	Daily Service

## 2019 Strategic Initiatives

Strategic Initiative Title	Strategic Initiative Description	Completion to Date	Status Update	Explanation for Incomplete Initiative
<b>Mediation and Settlement (1 Strategic Initiative)</b>				
Effectiveness of Mandatory Mediation	The Network Assistant will compile data pertaining to what kind of appeals are mediated so as to determine the effectiveness of mandatory mediation.	Complete	The Network Assistant has fully complied with this initiative.	
<b>Petitions for Appeal (1 Strategic Initiative)</b>				

Strategic Initiative Title	Strategic Initiative Description	Completion to Date	Status Update	Explanation for Incomplete Initiative
Decision Uniformity Initiative (DUI)	The Administrative Judges and General Counsel's Office will issue decisions which are stylistically uniform.	Complete	The decisions that were issued were more stylistically uniform.	
<b>Petitions for Review (1 Strategic Initiative)</b>				
Decision Uniformity Initiative (DUI)	The General Counsel's Office will ensure that the Opinions and Orders issued by them are stylistically uniform.	Complete	The decisions that were issued were more stylistically uniform.	
<b>Website (1 Strategic Initiative)</b>				
Quarterly Check-In	At the end of each quarter in the fiscal year, the Network Assistant will ensure that all of the decisions issued during that quarter have been successfully uploaded to the agency's website.	Complete	The Network Assistant has fully complied with this initiative.	

# **ATTACHMENT #1**

# Office of Employee Appeals FY2019

Agency Office of Employee Appeals

Agency Code CH0

Fiscal Year 2019

**Mission** The Office of Employee Appeals (OEA) is an independent agency with a mission is to adjudicate employee appeals and rendering impartial decisions with sound legal reasoning in a timely manner.

**Summary of Services** In accordance with DC Official Code §1-606.03, the Office of Employee Appeals adjudicates the several types of personnel actions. (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.

## 2019 Accomplishments

Accomplishment	Impact on Agency	Impact on Residents
During FY2019, OEA completed adjudications during the statutory timeframe of 120 business days. Moreover, OEA was successful in uploading all of its decisions to its website thereby meeting its statutory mandate to provide research assistance to the public by making its decisions readily available. Furthermore, most of OEA's decisions withstood judicial scrutiny as evidenced by the percentage of decisions that were upheld by the courts.	These accomplishments positively impacted the agency by meeting the goals set out at the beginning of the fiscal year.	These accomplishments positively impacted the residents of the District by providing greater assurance to the residents that OEA is carrying out its statutory mandates.

## 2019 Key Performance Indicators

Measure	Frequency	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY 2019 Q1	FY 2019 Q2	FY 2019 Q3	FY 2019 Q4	FY 2019 Actual	KPI Status	Explanation
<b>1 - Render impartial, legally sound decisions in a timely manner. (6 Measures)</b>											
Number of Opinions and Orders Issued	Quarterly	51	33	25	5	4	8	2	19	Unmet	The Board could not meet at certain times because not all members were available.
Time Required to Complete Adjudications	Annually	6	6	12	Annual Measure	Annual Measure	Annual Measure	Annual Measure	5	Met	
Time Required to Resolve Petitions for Review	Annually	8	5	9	Annual Measure	Annual Measure	Annual Measure	Annual Measure	4	Met	
Percent of OEA decisions upheld by D.C. Superior Court and the D.C. Court of Appeals	Annually	93.1%	100%	99%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	96%	Nearly Met	The Agency cannot predict how the Court will rule on a decision.
Number of Initial Decisions Issued	Quarterly	142	123	135	40	29	26	22	117	Unmet	One of the Administrative Judges did not issue the required number of decisions.
Percent of cases reversing agency decisions	Quarterly	6.8%	10.9%	Not Available	3.4	1.7	3.4	1.7	10.16%	Neutral Measure	
<b>2 - Streamline the adjudication process. (2 Measures)</b>											
Percent of appeals involved in mediation process	Quarterly	Not Available	61%	Not Available	7	14	14	11	46%	Neutral Measure	

Measure	Frequency	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY 2019 Q1	FY 2019 Q2	FY 2019 Q3	FY 2019 Q4	FY 2019 Actual	KPI Status	Explanation
Percent of appeals resolved through mediation	Quarterly	Not Available	13%	Waiting on Data	0	10.9	0	10.9	21.7%	Neutral Measure	
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (2 Measures)</b>											
Percent of Initial Decisions uploaded to website	Quarterly	Not Available	100%	100%	100%	100%	100%	100%	100%	Neutral Measure	
Percent of Opinions and Orders uploaded to website	Quarterly	Not Available	100%	100%	100%	100%	100%	100%	100%	Neutral Measure	

## 2019 Workload Measures

Measure	FY 2017 Actual	FY 2018 Actual	FY 2019 Q1	FY 2019 Q2	FY 2019 Q3	FY 2019 Q4	FY 2019 Actual
<b>2 - Mediation and Settlement (1 Measure)</b>							
Number of attorney fee appeals mediated	15	2	1	0	0	0	1

## 2019 Operations

Operations Header	Operations Title	Operations Description	Type of Operations
<b>1 - Render impartial, legally sound decisions in a timely manner. (3 Activities)</b>			
ADJUDICATION PROCESS	Petitions for Appeal	Intake Coordinator reviews Petition for Appeal, determines the type of appeal and assigns to Administrative Judge.	Daily Service
APPEALS	Petitions for Review	Office of the General Counsel reviews Petitions for Review, drafts the Opinion and Order and meets with the Board to present the appeal and issue the decision.	Daily Service
ADJUDICATION PROCESS	Initial Decisions	Administrative Judges process Petitions for Appeal which culminate in the issuance of an Initial Decision.	Daily Service
<b>2 - Streamline the adjudication process. (1 Activity)</b>			
MEDIATION	Mediation and Settlement	The goal of the mediation program is to help the parties, through the negotiation process, reach a settlement that is agreeable to both of them.	Key Project
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (1 Activity)</b>			
INFORMATION TECHNOLOGY	Website	Decisions are uploaded to the agency's website so that the public is able to view the decisions and research the decisions.	Daily Service

## 2019 Strategic Initiatives

Strategic Initiative Title	Strategic Initiative Description	Completion to Date	Status Update	Explanation for Incomplete Initiative
<b>Mediation and Settlement (1 Strategic Initiative)</b>				
Effectiveness of Mandatory Mediation	The Network Assistant will compile data pertaining to what kind of appeals are mediated so as to determine the effectiveness of mandatory mediation.	Complete	The Network Assistant has fully complied with this initiative.	
<b>Petitions for Appeal (1 Strategic Initiative)</b>				

Strategic Initiative Title	Strategic Initiative Description	Completion to Date	Status Update	Explanation for Incomplete Initiative
Decision Uniformity Initiative (DUI)	The Administrative Judges and General Counsel's Office will issue decisions which are stylistically uniform.	Complete	The decisions that were issued were more stylistically uniform.	
<b>Petitions for Review (1 Strategic Initiative)</b>				
Decision Uniformity Initiative (DUI)	The General Counsel's Office will ensure that the Opinions and Orders issued by them are stylistically uniform.	Complete	The decisions that were issued were more stylistically uniform.	
<b>Website (1 Strategic Initiative)</b>				
Quarterly Check-In	At the end of each quarter in the fiscal year, the Network Assistant will ensure that all of the decisions issued during that quarter have been successfully uploaded to the agency's website.	Complete	The Network Assistant has fully complied with this initiative.	



# **ATTACHMENT #2**

## District of Columbia Planning Documents

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DSLBD (...)

FY18: E...

DSLBD...

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Home

Agencies

Performance Plans

Objectives

Operations List

Operations-Strategic...

STRATEGIC INITIATIVES

Initiatives

Me

## Performance Plans

## Office of Empl...

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Prev |

Return | Next

Agency Office of Employee Appeals

Agency Acronym OEA

Agency Code CH0

To edit agency and POC information press your agency name (underlined and in blue above).

## Agency Performance POCs

Lasheka (OEA) Brown; Sheila (OEA) Barfield

## Agency Budget POCs

Shilonda (OFRM) Wiggins!

Fiscal Year 2020

## Agency's Operating Budget

[Lookup Your Agency's Operating Budget](#)

## 2020 Objectives

Full Report | Grid Edit | Email | More 3 Objectives

Objective Number	Strategic Objective	# of Measures	# of Operations
1	Render impartial, legally sound decisions in a timely manner.	6	3
2	Streamline the adjudication process.	2	1
3	Maintain a system to allow the public to have access to all decisions rendered by the OEA.	2	1
TOT		10	5

Add Strategic Objective

[Add Strategic Objective](#)

## 2020 Key Performance Indicators

Full Report | Grid Edit | Email | More 10 Measures

Measure	New Measure/ Benchmark Year	Directionality	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY2019 Actual	FY 2020 Target	FY 2020 Quarter 1
<b>1 - Render impartial, legally sound decisions in a timely manner. (6 Measures)</b>								
Number of Opinions and Orders Issued	<input type="checkbox"/>	Up is Better	51	33	25	19	25	6
Time Required to Complete Adjudications	<input type="checkbox"/>	Down is Better	6	6	12	5	12	Annual Measure
Time Required to Resolve Petitions for Review	<input type="checkbox"/>	Down is Better	8	5	9	4	9	Annual Measure
Percent of OEA decisions upheld by D.C. Superior Court and the D.C. Court of Appeals	<input type="checkbox"/>	Up is Better	93.1%	100%	99%	96%	99%	Annual Measure
Number of Initial Decisions Issued	<input type="checkbox"/>	Up is Better	142	123	135	118	135	18
Percent of cases reversing agency decisions	<input type="checkbox"/>	Neutral	6.8%	10.9%	Not Available	10.2%	No Target Set	Semi-Annual Measure
<b>2 - Streamline the adjudication process. (2 Measures)</b>								
Percent of appeals involved in mediation process	<input type="checkbox"/>	Neutral	New in 2018	61%	Not Available	46%	No Target Set	100%
Percent of appeals resolved through mediation	<input type="checkbox"/>	Neutral	New in 2018	13%	Not Available	21.7%	No Target Set	100%
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (2 Measures)</b>								
Percent of Initial Decisions uploaded to website	<input type="checkbox"/>	Neutral	New in 2018	100%	100%	100%	100%	100%
		Neutral		100%	100%	100%	100%	100%

POWERED BY

Measure	New Measure/ Benchmark Year	Directionality	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY2019 Actual	FY 2020 Target	FY 2020 Quarter 1
Percent of Opinions and Orders uploaded to website	<input type="checkbox"/>		New in 2018					

## 2020 Operations

Full Report | Grid Edit | Email | More 5 Activities

Operations Header	Operations Title	Operations Description	Type of Operations
<b>1 - Render impartial, legally sound decisions in a timely manner. (3 Activities)</b>			
ADJUDICATION PROCESS	Petitions for Appeal	Intake Coordinator reviews Petition for Appeal, determines the type of appeal and assigns to Administrative Judge.	Daily Service
APPEALS	Petitions for Review	Office of the General Counsel reviews Petitions for Review, drafts the Opinion and Order and meets with the Board to present the appeal and issue the decision.	Daily Service
ADJUDICATION PROCESS	Initial Decisions	Administrative Judges process Petitions for Appeal which culminate in the issuance of an Initial Decision.	Daily Service
<b>2 - Streamline the adjudication process. (1 Activity)</b>			
MEDIATION	Mediation and Settlement	The goal of the mediation program is to help the parties, through the negotiation process, reach a settlement that is agreeable to both of them.	Key Project
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (1 Activity)</b>			
INFORMATION TECHNOLOGY	Website	Decisions are uploaded to the agency's website so that the public is able to view the decisions and research the decisions.	Daily Service

## 2020 Workload Measures

Full Report | Grid Edit | Email | More 1 Measure

Measure	New Measure/ Benchmark Year	FY2016 Actual	FY2017 Actual	FY2018 Actual	FY2019 Actual	FY 2020 Quarter 1
<b>2 - Mediation and Settlement (1 Measure)</b>						
Number of attorney fee appeals mediated	<input type="checkbox"/>	Needs Update	15	2	1	0

## 2020 Initiatives

Strategic Initiatives	Strategic Initiative Title	Strategic Initiative Description	Proposed Completion Date	Is this Initiative focused on Wards 7 and/or 8?	Does this Initiative support the Resilient DC Strategy?	Activity - Objective - Agency - Cluster	Add Initiative Update
No strategic initiatives found							

## FY2020 Initiative Updates

Initiative Updates	Strategic Initiative Title	Initiative Status Update	% Complete to date	Confidence in completion by end of fiscal year (9/30)?	Status of Impact	FY20 Reporting Quarter
No initiative updates found						

## Internal: Unfinished 2019 Initiatives

Strategic Initiatives	Title	Description	Complete to Date	Status Update	Explanation	Anticipated Completion Date	Add Initiative Update - Rolled Over Initiatives
No strategic initiatives found							

## Updates for Unfinished FY19 Initiatives



Strategic Initiative Title	Anticipated completion date	New initiative created for FY19	No Longer an Initiative	Initiative Status Update	% Complete to date	Confidence in completion by anticipated completion date?	Status of Impact	Explanation of Impact	Supporting Data	FY20 Reporting Quarter
----------------------------	-----------------------------	---------------------------------	-------------------------	--------------------------	--------------------	--	------------------	-----------------------	-----------------	------------------------

No initiative updates found

## Administrative Information

Record ID# 704

Performance Plan ID 704      Blank Initiative Updates [Blank Initiative Updates](#)

Created on Oct. 30, 2018 at 11:14 AM (EDT). Last updated by [Katz, Lia \(EOM\)](#) on Jan. 28, 2019 at 11:48 AM (EST). Owned by [Katz, Lia \(EOM\)](#).

# **ATTACHMENT #2**

## District of Columbia Planning Documents

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Home

Agencies

Performance Plans

Objectives

Operations List

Operations-Strategic...

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Initiatives

Me

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Prev |

Return | Next

Agency Office of Employee Appeals

Agency Acronym OEA

Agency Code CH0

To edit agency and POC information press your agency name (underlined and in blue above).

Agency Performance POCs

Lasheka (OEA) Brown; Sheila (OEA) Barfield

Agency Budget POCs

Shilonda (OFRM) Wiggins

Fiscal Year 2020

## Agency's Operating Budget

[Lookup Your Agency's Operating Budget](#)

## 2020 Objectives

Full Report | Grid Edit | Email | More 3 Objectives

Objective Number	Strategic Objective	# of Measures	# of Operations
1	Render impartial, legally sound decisions in a timely manner.	6	3
2	Streamline the adjudication process.	2	1
3	Maintain a system to allow the public to have access to all decisions rendered by the OEA.	2	1
TOT		10	5

Add Strategic Objective

[Add Strategic Objective](#)

## 2020 Key Performance Indicators

Full Report | Grid Edit | Email | More 10 Measures

Measure	New Measure/ Benchmark Year	Directionality	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY2019 Actual	FY 2020 Target	FY 2020 Quarter 1
<b>1 - Render impartial, legally sound decisions in a timely manner. (6 Measures)</b>								
Number of Opinions and Orders Issued	<input type="checkbox"/>	Up is Better	51	33	25	19	25	6
Time Required to Complete Adjudications	<input type="checkbox"/>	Down is Better	6	6	12	5	12	Annual Measure
Time Required to Resolve Petitions for Review	<input type="checkbox"/>	Down is Better	8	5	9	4	9	Annual Measure
Percent of OEA decisions upheld by D.C. Superior Court and the D.C. Court of Appeals	<input type="checkbox"/>	Up is Better	93.1%	100%	99%	96%	99%	Annual Measure
Number of Initial Decisions Issued	<input type="checkbox"/>	Up is Better	142	123	135	118	135	18
Percent of cases reversing agency decisions	<input type="checkbox"/>	Neutral	6.8%	10.9%	Not Available	10.2%	No Target Set	Semi-Annual Measure
<b>2 - Streamline the adjudication process. (2 Measures)</b>								
Percent of appeals involved in mediation process	<input type="checkbox"/>	Neutral	New in 2018	61%	Not Available	46%	No Target Set	100%
Percent of appeals resolved through mediation	<input type="checkbox"/>	Neutral	New in 2018	13%	Not Available	21.7%	No Target Set	100%
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (2 Measures)</b>								
Percent of Initial Decisions uploaded to website	<input type="checkbox"/>	Neutral	New in 2018	100%	100%	100%	100%	100%
		Neutral		100%	100%	100%	100%	100%

powered by

Measure	New Measure/ Benchmark Year	Directionality	FY 2017 Actual	FY 2018 Actual	FY 2019 Target	FY2019 Actual	FY 2020 Target	FY 2020 Quarter 1
Percent of Opinions and Orders uploaded to website	<input type="checkbox"/>		New in 2018					

## 2020 Operations

Full Report | Grid Edit | Email | More 5 Activities

Operations Header	Operations Title	Operations Description	Type of Operations
<b>1 - Render impartial, legally sound decisions in a timely manner. (3 Activities)</b>			
ADJUDICATION PROCESS	Petitions for Appeal	Intake Coordinator reviews Petition for Appeal, determines the type of appeal and assigns to Administrative Judge.	Daily Service
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<b>2 - Streamline the adjudication process. (1 Activity)</b>			
MEDIATION	Mediation and Settlement	The goal of the mediation program is to help the parties, through the negotiation process, reach a settlement that is agreeable to both of them.	Key Project
<b>3 - Maintain a system to allow the public to have access to all decisions rendered by the OEA. (1 Activity)</b>			
INFORMATION TECHNOLOGY	Website	Decisions are uploaded to the agency's website so that the public is able to view the decisions and research the decisions.	Daily Service

## 2020 Workload Measures

Full Report | Grid Edit | Email | More 1 Measure

Measure	New Measure/ Benchmark Year	FY2016 Actual	FY2017 Actual	FY2018 Actual	FY2019 Actual	FY 2020 Quarter 1
<b>2 - Mediation and Settlement (1 Measure)</b>						
Number of attorney fee appeals mediated	<input type="checkbox"/>	Needs Update	15	2	1	0

## 2020 Initiatives

Strategic Initiatives	Strategic Initiative Title	Strategic Initiative Description	Proposed Completion Date	Is this Initiative focused on Wards 7 and/or 8?	Does this Initiative support the Resilient DC Strategy?	Activity - Objective - Agency - Cluster	Add Initiative Update
No strategic initiatives found							

## FY2020 Initiative Updates

Initiative Updates	Strategic Initiative Title	Initiative Status Update	% Complete to date	Confidence in completion by end of fiscal year (9/30)?	Status of Impact	FY20 Reporting Quarter
No initiative updates found						

## Internal: Unfinished 2019 Initiatives

Strategic Initiatives	Title	Description	Complete to Date	Status Update	Explanation	Anticipated Completion Date	Add Initiative Update - Rolled Over Initiatives
No strategic initiatives found							

## Updates for Unfinished FY19 Initiatives



Strategic Initiative Title	Anticipated completion date	New initiative created for FY19	No Longer an Initiative	Initiative Status Update	% Complete to date	Confidence in completion by anticipated completion date?	Status of Impact	Explanation of Impact	Supporting Data	FY20 Reporting Quarter
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No initiative updates found

## Administrative Information

Record ID# 704

Performance Plan ID 704    Blank Initiative Updates    [Blank Initiative Updates](#)

Created on Oct. 30, 2018 at 11:14 AM (EDT). Last updated by [Katz, Lia \(EOM\)](#) on Jan. 28, 2019 at 11:48 AM (EST). Owned by [Katz, Lia \(EOM\)](#).



# ATTACHMENT #3

Agency Name  
Office of Employee Appeals (OEA)

Annual Freedom of Information Act Report for Fiscal Year 2019  
October 1, 2018 through September 30, 2019

FOIA Officer Reporting Sheila G. Barfield

PROCESSING OF FOIA REQUESTS
-----------------------------

1. Number of FOIA requests received during reporting period.....0.....
2. Number of FOIA requests pending on October 1, 2018.....0.....
3. Number of FOIA requests pending on September 30, 2019.....0.....
4. The average number of days unfilled requests have been pending before each public body as of September 30, 2019  
.....N/A.....

DISPOSITION OF FOIA REQUESTS
------------------------------

5. Number of requests granted, in whole.....N/A.....
6. Number of requests granted, in part, denied, in part.....N/A.....
7. Number of requests denied, in whole.....N/A.....
8. Number of requests withdrawn.....N/A.....
9. Number of requests referred or forwarded to other public bodies.....N/A.....
10. Other disposition .....N/A.....

NUMBER OF REQUESTS THAT RELIED UPON EACH FOIA EXEMPTION
---

11. Exemption 1 - D.C. Official Code § 2-534(a)(1).....N/A.....
12. Exemption 2 - D.C. Official Code § 2-534(a)(2).....N/A.....
13. Exemption 3 - D.C. Official Code § 2-534(a)(3)
  - Subcategory (A)..... N/A
  - Subcategory (B) .....N/A
  - Subcategory (C) ..... N/A
  - Subcategory (D) .....N/A
  - Subcategory (E) .....N/A
  - Subcategory (F) .....N/A
14. Exemption 4 - D.C. Official Code § 2-534(a)(4) N/A
15. Exemption 5 - D.C. Official Code § 2-534(a)(5) N/A

16. Exemption 6 - D.C. Official Code § 2-534(a)(6)

Subcategory (A) N/A

Subcategory (B) N/A

17. Exemption 7 - D.C. Official Code § 2-534(a)(7) N/A

18. Exemption 8 - D.C. Official Code § 2-534(a)(8) N/A

19. Exemption 9 - D.C. Official Code § 2-534(a)(9) N/A

20. Exemption 10 - D.C. Official Code § 2-534(a)(10) N/A

21. Exemption 11 - D.C. Official Code § 2-534(a)(11) N/A

22. Exemption 12 - D.C. Official Code § 2-534(a)(12) N/A

**TIME-FRAMES FOR PROCESSING FOIA REQUESTS**

23. Number of FOIA requests processed within 15 days N/A

24. Number of FOIA requests processed between 16 and 25 days N/A

25. Number of FOIA requests processed in 26 days or more N/A

26. Median number of days to process FOIA Requests N/A

**RESOURCES ALLOCATED TO PROCESSING FOIA REQUESTS**

27. Number of staff hours devoted to processing FOIA requests 0

28. Total dollar amount expended by public body for processing FOIA requests 0

**FEES FOR PROCESSING FOIA REQUESTS**

29. Total amount of fees collected by public body 0

**PROSECUTIONS PURSUANT TO SECTION 207(d) OF THE D.C. FOIA**

30. Number of employees found guilty of a misdemeanor for arbitrarily or capriciously violating any provision of the District of Columbia Freedom of Information Act 0

**QUALITATIVE DESCRIPTION OR SUMMARY STATEMENT**

Pursuant to section 208(a)(9) of the D.C. FOIA, provide in the space below or as an attachment, "[a] qualitative description or summary statement, and conclusions drawn from the data regarding compliance [with the provisions of the Act]."

OEA did not receive any FOIA requests during FY 2019.

# ATTACHMENT #3

Agency Name  
Office of Employee Appeals (OEA)

Annual Freedom of Information Act Report for Fiscal Year 2019  
October 1, 2018 through September 30, 2019

FOIA Officer Reporting Sheila G. Barfield

PROCESSING OF FOIA REQUESTS
-----------------------------

1. Number of FOIA requests received during reporting period.....0.....
2. Number of FOIA requests pending on October 1, 2018.....0.....
3. Number of FOIA requests pending on September 30, 2019.....0.....
4. The average number of days unfilled requests have been pending before each public body as of September 30, 2019  
.....N/A.....

DISPOSITION OF FOIA REQUESTS
------------------------------

5. Number of requests granted, in whole.....N/A.....
6. Number of requests granted, in part, denied, in part.....N/A.....
7. Number of requests denied, in whole.....N/A.....
8. Number of requests withdrawn.....N/A.....
9. Number of requests referred or forwarded to other public bodies.....N/A.....
10. Other disposition .....N/A.....

NUMBER OF REQUESTS THAT RELIED UPON EACH FOIA EXEMPTION
---

11. Exemption 1 - D.C. Official Code § 2-534(a)(1).....N/A.....
12. Exemption 2 - D.C. Official Code § 2-534(a)(2).....N/A.....
13. Exemption 3 - D.C. Official Code § 2-534(a)(3)  
    Subcategory (A)..... N/A  
    Subcategory (B) .....N/A  
    Subcategory (C) ..... N/A  
    Subcategory (D) .....N/A  
    Subcategory (E) .....N/A  
    Subcategory (F) .....N/A
14. Exemption 4 - D.C. Official Code § 2-534(a)(4) N/A
15. Exemption 5 - D.C. Official Code § 2-534(a)(5) N/A

16. Exemption 6 - D.C. Official Code § 2-534(a)(6)

Subcategory (A) N/A

Subcategory (B) N/A

17. Exemption 7 - D.C. Official Code § 2-534(a)(7) N/A

18. Exemption 8 - D.C. Official Code § 2-534(a)(8) N/A

19. Exemption 9 - D.C. Official Code § 2-534(a)(9) N/A

20. Exemption 10 - D.C. Official Code § 2-534(a)(10) N/A

21. Exemption 11 - D.C. Official Code § 2-534(a)(11) N/A

22. Exemption 12 - D.C. Official Code § 2-534(a)(12) N/A

#### TIME-FRAMES FOR PROCESSING FOIA REQUESTS

23. Number of FOIA requests processed within 15 days N/A

24. Number of FOIA requests processed between 16 and 25 days N/A

25. Number of FOIA requests processed in 26 days or more N/A

26. Median number of days to process FOIA Requests N/A

#### RESOURCES ALLOCATED TO PROCESSING FOIA REQUESTS

27. Number of staff hours devoted to processing FOIA requests 0

28. Total dollar amount expended by public body for processing FOIA requests 0

#### FEES FOR PROCESSING FOIA REQUESTS

29. Total amount of fees collected by public body 0

#### PROSECUTIONS PURSUANT TO SECTION 207(d) OF THE D.C. FOIA

30. Number of employees found guilty of a misdemeanor for arbitrarily or capriciously violating any provision of the District of Columbia Freedom of Information Act 0

#### QUALITATIVE DESCRIPTION OR SUMMARY STATEMENT

Pursuant to section 208(a)(9) of the D.C. FOIA, provide in the space below or as an attachment, "[a] qualitative description or summary statement, and conclusions drawn from the data regarding compliance [with the provisions of the Act]."

OEA did not receive any FOIA requests during FY 2019.

# **ATTACHMENT #4**

## Q11 Budget

## OEA BUDGET, FY2019 AND FY2020, AS OF JAN. 1, 2020 (Q11)

			FY2019 Approved budget	FY2019 Revised budget	FY2019 Expenditures	FY2019 Difference between Revised and Expenditures	Reason for any variation between revised budget and actual expenditures in FY2019 (Narrative)	FY2020 approved budget	FY2020 Revised budget (as of Jan. 1, 2020)	FY2020 Q1 expenditures
Agency Management (1000)	Total \$		1,191,326	1,191,326	1,147,139	44,187		1,212,378	1,212,378	343,558
	Federal \$									
	Local \$									
	SPR \$									
	ID \$									
	Contracting and Procurement (1020)	Total \$	116,824	116,824	80,968	35,856		105,429	105,429	69,521
	Information Technology (1040)	Total \$	76,409	76,409	82,947	-6,539		78,049	78,049	21,547
	Customer Service (1085)	Total \$	57,486	57,486	66,002	-8,516		58,731	58,731	12,633
	Performance Management (1090)	Total \$	264,445	264,445	215,696	48,749		274,859	274,859	59,766
	Office of Employee Appeals (1100)	Total \$	676,163	676,163	701,526	-25,363		695,310	695,310	180,090
	Total \$		986,875	961,875	953,534	8,341		1,023,150	1,023,150	255,888
Adjudication (2000)	Federal \$									
	Local \$									
	SPR \$									
	ID \$									
	Ajudication Process (2001)	Total \$	908,391	883,391	887,391	-4,000		931,159	931,159	234,728
	Appeals (2002)	Total \$				0		11,395	11,395	
	Mediation (2003)	Total \$	78,484	78,484	66,144	12,341		80,596	80,596	21,160



# **ATTACHMENT #4**

## Q11 Budget

## OEA BUDGET, FY2019 AND FY2020, AS OF JAN. 1, 2020 (Q11)

			FY2019 Approved budget	FY2019 Revised budget	FY2019 Expenditures	FY2019 Difference between Revised and Expenditures	Reason for any variation between revised budget and actual expenditures in FY2019 (Narrative)	FY2020 approved budget	FY2020 Revised budget (as of Jan. 1, 2020)	FY2020 Q1 expenditures
Agency Management (1000)	Total \$		1,191,326	1,191,326	1,147,139	44,187		1,212,378	1,212,378	343,558
	Federal \$									
	Local \$									
	SPR \$									
	ID \$									
	Contracting and Procurement (1020)	Total \$	116,824	116,824	80,968	35,856		105,429	105,429	69,521
	Information Technology (1040)	Total \$	76,409	76,409	82,947	-6,539		78,049	78,049	21,547
	Customer Service (1085)	Total \$	57,486	57,486	66,002	-8,516		58,731	58,731	12,633
	Performance Management (1090)	Total \$	264,445	264,445	215,696	48,749		274,859	274,859	59,766
	Office of Employee Appeals (1100)	Total \$	676,163	676,163	701,526	-25,363		695,310	695,310	180,090
	Total \$		986,875	961,875	953,534	8,341		1,023,150	1,023,150	255,888
Adjudication (2000)	Federal \$									
	Local \$									
	SPR \$									
	ID \$									
	Ajudication Process (2001)	Total \$	908,391	883,391	887,391	-4,000		931,159	931,159	234,728
	Appeals (2002)	Total \$				0		11,395	11,395	
	Mediation (2003)	Total \$	78,484	78,484	66,144	12,341		80,596	80,596	21,160

# **ATTACHMENT #5**

[illegible]

<b>OFFICE OF THE CHIEF TECHNOLOGY OFFICER</b> <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b>  ★ ★ ★ [REDACTED] [REDACTED]	<b>MOU Executive Brief</b> <b>OCTO Division</b>
<b>OCTO Deputy/Executive:</b> Carol Harrison	<b>Program Manager:</b> Anthony Watkis
<b>Agency:</b> DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS (OEA)	<b>Dollar Amount:</b> \$3,349.35
<b>Date Submitted:</b> Oct 23 2018 2:21PM	<b>eMOU#:</b> TO0CH0-2019-01129
<b>Project Description:</b> This MOU assesses OEA for the costs of the Microsoft Office 365 Enterprise E3 step-up license for total of 15 E3 licenses. This amount will be paid to DELL by OCTO on behalf of OEA.	
<b>Risks:</b> none	
<b>Challenges:</b> collect fund ASAP	
<b>Urgency:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Rush <input checked="" type="checkbox"/> Expedite	



## MEMORANDUM OF UNDERSTANDING

BETWEEN

**DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS**

AND

**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY  
OFFICER**

**FOR FISCAL YEAR 2019**

---

**MOU Number: TO0CH0-2019-01129**

### **I. INTRODUCTION**

This Memorandum of Understanding ( "MOU") is entered into between the **DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS (OEA or "Buyer Agency")** and the **District of Columbia OFFICE OF CHIEF TECHNOLOGY OFFICER ("OCTO" or "Seller Agency")**, collectively referred to herein as the "Parties" and individually as "Party."

### **II. LEGAL AUTHORITY FOR MOU**

D.C. Official Code § 1-301.01(k);

### **III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES**

This MOU assesses OEA for the costs of the Microsoft Office 365 Enterprise E3 step-up license for total of 15 E3 licenses. This amount will be paid to DELL by OCTO on behalf of OEA.

### **IV. SCOPE OF SERVICES**

Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOU expeditiously and economically, the Parties hereby agree as follows:

#### **A. RESPONSIBILITIES OF SELLER AGENCY**

1. OCTO shall enter into (if it has not yet entered into) and maintain a contract with Microsoft or a certified Microsoft reseller under which Microsoft Office 365 Enterprise E3 cloud-based subscription plan services will be provided to each employee, contractor, or other Agency-designated person (hereinafter referred to as a "user") of OEA, up to the number of users listed in Attachment A.
  2. Under the contract with Microsoft, OCTO shall ensure that the following minimum services will be provided to each user:
    - Exchange online enterprise 50 GB mailbox.
    - Skype for Business Office mobile apps.
    - OneDrive for business with 1 TB storage.
-



E3 will include full downloadable version of latest Office ProPlus enterprise per user for up to fifteen (15) devices: (5 PCs or Macs, 5 tablets, and 5 smartphones).

#### **Attachment A**

E3 Quantity:15 Unit Price: \$223.29

Total MOU cost for subscription: \$3,349.35

#### **B. RESPONSIBILITIES OF BUYER AGENCY**

OEA shall make an intra-District transfer to OCTO as required by this MOU, in the amount set forth in Attachment A.

#### **V. DURATION OF MOU**

The duration of this MOU shall be for **Fiscal Year 2019**, and shall begin on the later of either **Oct 01, 2018**, or the last date of execution by the Parties, and shall expire on **Sep 30, 2019**, unless terminated in writing by the Parties prior to expiration pursuant to Section VII of this MOU.

#### **VI. FUNDING PROVISIONS**

##### **A. COST OF SERVICES**

The total cost for goods and/or services under this MOU shall not exceed **\$3,349.35** for Fiscal Year 2019. Funding for goods and/or services shall not exceed the actual cost of the goods and/or services provided, based on the rates provided in the budget, attached hereto as Appendix A.

#### **Appendix A**

E3 Quantity:15 Unit Price: \$223.29

Total MOU cost for subscription: \$3,349.35

#### **B. PAYMENT**

(1) Payment for the goods and/or services shall be made through an Intra-District advance by the Buyer Agency to the Seller Agency based on the total amount of this MOU **\$3,349.35**.

a. Advances to the Seller Agency for the services to be performed and/or goods to be provided shall not exceed the actual costs of the goods or services or the amount of this MOU.

b. The Seller Agency shall receive the advance and bill the Buyer Agency through the Intra-District process only for those goods and/or services actually provided pursuant to the terms of this MOU.

(2) The Seller Agency shall provide the Buyer Agency with online access to listing of itemized services, as well as upon request of the Buyer Agency, which shall be available online at <https://services.dcnet.dc.gov>.

(3) The Seller Agency shall:

a. Notify the Buyer Agency within forty-five (45) days prior to the close of the fiscal year if it has reason to believe that all of the advance will not be billed during the current fiscal year.

---

b. Return any excess advance to the Buyer Agency by September 30 of the current fiscal year.

(4) In the event of termination of this MOU, payment to the Seller Agency shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

### **C. ANTI-DEFICIENCY CONSIDERATIONS**

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation, and that all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

### **VII. TERMINATION**

Either Party may terminate this MOU in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

### **VIII. NOTICES**

The following individuals are the contact points for each Party:

#### **OEA**

Gabrielle Smith-Barrow  
gabrielle.smith-barrow@dc.gov  
955 L'enfant Plaza, SW, Suite 2500  
Washington, DC, 20024  
Phone: (202) 727-0009  
Email : gabrielle.smith-barrow@dc.gov

#### **OCTO**

Anthony Watkis  
Program Manager  
200 I ST SE, 5th Floor  
Washington, D.C. 20003  
Phone : 202-727-7498  
Email :Anthony.Watkis@dc.gov

### **IX. MODIFICATIONS**

This MOU may be modified only upon prior written agreement of the Parties. Modifications shall be dated and signed by the authorized representatives of the Parties.

### **X. CONSISTENT WITH LAW**

The Parties shall comply with all applicable federal and District laws, rules and regulations whether now in effect or hereafter enacted or promulgated.

### **XI. COMPLIANCE AND MONITORING**

---



The Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements.

## **XII. RECORDS AND REPORTS**

The Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the Buyer Agency's or the District of Columbia's request, make these documents available for inspection by duly authorized representatives of the Buyer Agency or other officials of the District of Columbia as may be specified by the District of Columbia in its sole discretion.

## **XIII. PROCUREMENT PRACTICES ACT**

If a District of Columbia agency or instrumentality plans to utilize the goods and/or services of an agent, contractor, consultant or other third party to provide any of the goods and/or services under this MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, et seq.) to procure the goods or services.

## **XIV. RESOLUTION OF DISPUTES**

The Parties' Directors or designees shall resolve all adjustments and disputes arising from services performed under this MOU. The decision of the Parties' Directors related to any disputes referred shall be final. In the event that the Parties are unable to resolve a financial issue, the matter shall be referred to the D.C. Office of the Chief Financial Officer, Office of Financial Operations and Systems.

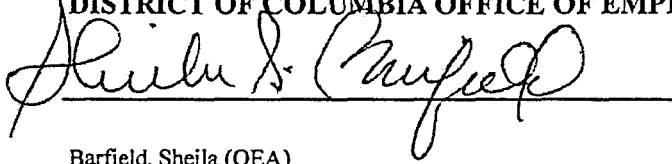
## **XV. CONFIDENTIAL INFORMATION**

The Parties to this MOU will use, restrict, safeguard and dispose of all information related to services provided by this MOU in accordance with all relevant federal and District statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with the performance of this MOU shall remain the property of the Buyer Agency.

---

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS

A handwritten signature in dark ink, appearing to read "Sheila Barfield", is written over a horizontal line.

Barfield, Sheila (OEA)

Date: Oct. 23, 2018

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER

Date:

Interim CTO

Barney Krucoff (OCTO)

# INTRA-DISTRICT STANDARD REQUEST FORM

Government of District of Columbia

**MOU  
Number:**

TO0CH0-2019-01129

**Date of  
MOU:**

10/23/2018

## Buyer Information

Agency Name: OEA

Name of  
Contact:

Telephone #: (202) 727-0009

Agency Code: CH0

Address: 955 L'enfant Plaza, SW, Suite 2500

Fax #:

Date:

Signature

## Seller Information

Agency Name: OCTO

Name of  
Contact:

Telephone #:

Agency Code: TO0

Address: 200 I ST, SE WASHINGTON, DC  
20003

Fax #:

Date:

Signature

## Service Information and Funding Codes

GOOD/  
SERVICE:

### Buyer

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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### Seller

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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# eMOU Approval History

10/29/2018 2:09:55  
PM

TO0CH0-2019-01129

Step Name	Name	Status Name	Status Date	Comments
MOU Author Review	Shimul Saha (OCTO)	Approved	10/23/2018 2:21:48 PM	

<p><b>OFFICE OF THE CHIEF TECHNOLOGY OFFICER</b>  <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b></p> <p>★ ★ ★</p> <p>██████████</p> <p>██████████</p>	<p><b>MOU Executive Brief</b>  <b>OCTO Division</b></p>
<p><b>OCTO Deputy/Executive:</b>          Barney Krucoff (OCTO)</p>	<p><b>Program Manager:</b>          Marshall, Christophe</p>
<p><b>Agency:</b>          DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE          APPEALS (OEA)</p>	<p><b>Dollar Amount:</b>          \$35,267.92</p>
<p><b>Date Submitted:</b>          Aug 20 2019 11:12AM</p>	<p><b>eMOU#:</b>          TO0CH0-2020-01255</p>
<p><b>Project Description:</b></p> <p>OEA would like to engage OCTO to provide consulting services for the OEA Case Management System [Casetrack] application maintenance.</p>	
<p><b>Risks:</b></p>	
<p><b>Challenges:</b></p>	
<p><b>Urgency:</b></p> <p> <input type="checkbox"/> Normal             <input type="checkbox"/> Rush             <input type="checkbox"/> Expedite         </p>	



**MEMORANDUM OF UNDERSTANDING**  
BETWEEN  
**DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS**  
AND  
**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY  
OFFICER**  
FOR FISCAL YEAR 2020

---

MOU Number: TO0CH0-2020-01255

**I. INTRODUCTION**

This Memorandum of Understanding ("MOU") is entered into between the **DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS (OEA or "Buyer Agency")** and the **District of Columbia OFFICE OF CHIEF TECHNOLOGY OFFICER ("OCTO" or "Seller Agency")**, collectively referred to herein as the "Parties" and individually as "Party."

**BACKGROUND STATEMENT ON BUYER AGENCY**

OCTO provides fully redundant, secure, high-speed transport of data, voice, video, and wireless telecommunications services for government and public safety purposes throughout the District of Columbia.

**II. LEGAL AUTHORITY FOR MOU**

D.C. Official Code § 1-301.01(k); IF APPLICABLE - D.C. Official Code § INSERT CODE FOR BUYER AGENCY AUTHORITY.

**III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES**

OEA would like to engage OCTO to provide consulting services for the OEA Case Management System [Casetrack] application maintenance; and OEA's agreement to pay for said services once approved. The program goals and objectives are as follow:

Representatives of OCTO and OEA will meet as reasonably necessary, but no less than monthly, to monitor and evaluate performance under this MOU. The monthly meetings, in addition to any other meetings scheduled to satisfy the requirements of this MOU, will:

1. Provide annual application support throughout FY2020, and
2. Make changes and additions to content wording within the OEA Case Management System [Casetrack] application pertaining

**IV. SCOPE OF SERVICES**



Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOU expeditiously and economically, the Parties hereby agree as follows:

#### **A. RESPONSIBILITIES OF SELLER AGENCY**

The Seller Agency shall:

- (1) Attend scheduled meetings between OEA and OCTO to provide consulting services.
- (2) Correct any software defects for the production OEA Casetrack application.
- (3) Modify OEA Casetrack application that are consistent n language due to legislative/policy changes.
- (4) Perform any other maintenance on the OEA Casetrack application that are consistent with the standards and guidelines as established by OCTO, and
- (5) Perform all services timely and satisfactory as determined in the sole discretion of OEA.

\* This agreement does not include the design, development, or modification of any new web-based software applications nor any application features to existing software

#### **B. RESPONSIBILITIES OF BUYER AGENCY**

The Buyer Agency shall:

- (1) The Buyer agrees to the terms, projected cost, and fund availability associated with this MOU.
- (2) The Buyer agrees to process an advance of the projected cost (as stated i Section VI.A below) to the Seller immediately after execution of this MOU.
- (3) The Buyer shall provide all OEA Casetrack content and assume responsibility for all decisions concerning the OEA Casetrack application maintenance pursuant to OCTO Web Standards Guidelines and DC legislation, and
- (4) The Buyer shall review all services performed under this MOU to determine if said services were timely and satisfactory before approving associated service costs to be withdrawn by Seller from the Intra-District advance.

#### **V. DURATION OF MOU**

The duration of this MOU shall be for **Fiscal Year 2020**, and shall begin on the later of either **Oct 01, 2019**, or the last date of execution by the Parties, and shall expire on **Sep 30, 2020**, unless terminated in writing by the Parties prior to expiration pursuant to Section VII of this MOU.

#### **VI. FUNDING PROVISIONS**

##### **A. COST OF SERVICES**

The total cost for goods and/or services under this MOU shall not exceed **\$35,267.92** for Fiscal Year 2020. Funding for goods and/or services shall not exceed the actual cost of the goods and/or services provided,

based on the rates provided below:

Maintenance Fee = ((20% of Total Development Cost) + License Cost)

Maintenance Fee = ((.2 \* \$162,839.60) + \$2700.00)

Maintenance Fee = (\$32,567.92 + \$2700.00)

Maintenance Fee = \$35,267.92

## **B. PAYMENT**

(1) Payment for the goods and/or services shall be made through an Intra-District advance by the Buyer Agency to the Seller Agency based on the total amount of this MOU **\$35,267.92**.

a. Advances to the Seller Agency for the services to be performed and/or goods to be provided shall not exceed the actual costs of the goods or services or the amount of this MOU.

b. The Seller Agency shall receive the advance and bill the Buyer Agency through the Intra-District process only for those goods and/or services actually provided pursuant to the terms of this MOU.

(2) The Seller Agency shall provide the Buyer Agency with online access to listing of itemized services, as well as upon request of the Buyer Agency, which shall be available online at <https://services.dcnnet.dc.gov>.

(3) The Seller Agency shall:

a. Notify the Buyer Agency within forty-five (45) days prior to the close of the fiscal year if it has reason to believe that all of the advance will not be billed during the current fiscal year.

b. Return any excess advance to the Buyer Agency by September 30 of the current fiscal year.

(4) In the event of termination of this MOU, payment to the Seller Agency shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

## **C. ANTI-DEFICIENCY CONSIDERATIONS**

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation, and that all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

## **VII. TERMINATION**

Either Party may terminate this MOU in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

## **VIII. NOTICES**

The following individuals are the contact points for each Party:

### **OEA**



Gabrielle Smith-Barrow  
gabrielle.smith-barrow@dc.gov  
955 L'enfant Plaza, SW, Suite 2500  
Washington, DC, 20024  
Phone: (202) 727-0009  
Email : gabrielle.smith-barrow@dc.gov

## **OCTO**

Marshall, Christopher (OCTO)  
Program Manager  
200 I ST SE, 5th Floor  
Washington, D.C. 20003  
Phone : (202) 478 5971  
Email :Christopher.Marshall@dc.gov

## **IX. MODIFICATIONS**

This MOU may be modified only upon prior written agreement of the Parties. Modifications shall be dated and signed by the authorized representatives of the Parties.

## **X. CONSISTENT WITH LAW**

The Parties shall comply with all applicable federal and District laws, rules and regulations whether now in effect or hereafter enacted or promulgated.

## **XI. COMPLIANCE AND MONITORING**

The Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements.

## **XII. RECORDS AND REPORTS**

The Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the Buyer Agency's or the District of Columbia's request, make these documents available for inspection by duly authorized representatives of the Buyer Agency or other officials of the District of Columbia as may be specified by the District of Columbia in its sole discretion.

## **XIII. PROCUREMENT PRACTICES ACT**

If a District of Columbia agency or instrumentality plans to utilize the goods and/or services of an agent, contractor, consultant or other third party to provide any of the goods and/or services under this MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, et seq.) to procure the goods or services.

## **XIV. RESOLUTION OF DISPUTES**

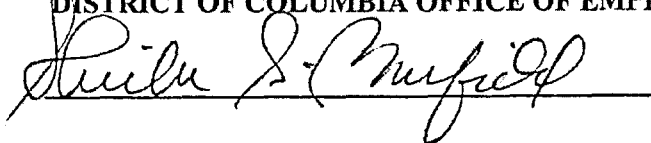
The Parties' Directors or designees shall resolve all adjustments and disputes arising from services performed under this MOU. The decision of the Parties' Directors related to any disputes referred shall be final. In the event that the Parties are unable to resolve a financial issue, the matter shall be referred to the D.C. Office of the Chief Financial Officer, Office of Financial Operations and Systems.

## **XV. CONFIDENTIAL INFORMATION**

The Parties to this MOU will use, restrict, safeguard and dispose of all information related to services provided by this MOU in accordance with all relevant federal and District statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with the performance of this MOU shall remain the property of the Buyer Agency.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS

A handwritten signature in cursive script, appearing to read "Sheila S. Barfield", written over a horizontal line.

Barfield, Sheila (OEA)

Date: Aug. 23, 2019

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER

Date:

\_\_\_\_\_  
CTO

Lindsey Parker (OCTO)

**INTRA-DISTRICT STANDARD REQUEST FORM**  
Government of District of Columbia

**MOU**                      TO0CH0-2020-01255  
**Number:**

**Date of**                      08/22/2019  
**MOU:**

---

**Buyer Information**

Agency            OEA  
Name:

Agency            CH0  
Code:

Name of  
Contact:

Address: 955 L'enfant Plaza, SW, Suite 2500

Telephone #:        (202) 727-0009

Fax #:

Date:

---

Signature

---

**Seller Information**

Agency            OCTO  
Name:

Agency            TO0  
Code:

Name of  
Contact:

Address: 200 I ST, SE WASHINGTON, DC  
20003

Telephone #:

Fax #:

Date:

---

Signature

---

**Service Information and Funding Codes**

GOOD/  
SERVICE:

**Buyer**

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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**Seller**

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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# eMOU Approval History

8/23/2019 1:00:28  
PM

TO0CH0-2020-01255

Step Name	Name	Status Name	Status Date	Comments
MOU Author Review	Easley, Juan (OCTO) (OCTO)	Approved	8/22/2019 10:23:43 AM	approved

# **ATTACHMENT #5**

questions 1 17 21.xlsx

<b>OFFICE OF THE CHIEF TECHNOLOGY OFFICER</b> <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b>  ★ ★ ★ [REDACTED] [REDACTED]	<b>MOU Executive Brief</b> <b>OCTO Division</b>
<b>OCTO Deputy/Executive:</b> Carol Harrison	<b>Program Manager:</b> Anthony Watkis
<b>Agency:</b> DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS (OEA)	<b>Dollar Amount:</b> \$3,349.35
<b>Date Submitted:</b> Oct 23 2018 2:21PM	<b>eMOU#:</b> TO0CH0-2019-01129
<b>Project Description:</b>  This MOU assesses OEA for the costs of the Microsoft Office 365 Enterprise E3 step-up license for total of 15 E3 licenses. This amount will be paid to DELL by OCTO on behalf of OEA.	
<b>Risks:</b> none	
<b>Challenges:</b> collect fund ASAP	
<b>Urgency:</b> <div style="display: flex; justify-content: space-around; align-items: center;"><div><input type="checkbox"/> Normal</div><div><input type="checkbox"/> Rush</div><div><input checked="" type="checkbox"/> Expedite</div></div>	





## MEMORANDUM OF UNDERSTANDING

BETWEEN

**DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS**

AND

**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY  
OFFICER**

**FOR FISCAL YEAR 2019**

---

**MOU Number: TO0CH0-2019-01129**

### **I. INTRODUCTION**

This Memorandum of Understanding ( "MOU") is entered into between the **DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS (OEA or "Buyer Agency")** and the **District of Columbia OFFICE OF CHIEF TECHNOLOGY OFFICER ("OCTO" or "Seller Agency")**, collectively referred to herein as the "Parties" and individually as "Party."

### **II. LEGAL AUTHORITY FOR MOU**

D.C. Official Code § 1-301.01(k);

### **III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES**

This MOU assesses OEA for the costs of the Microsoft Office 365 Enterprise E3 step-up license for total of 15 E3 licenses. This amount will be paid to DELL by OCTO on behalf of OEA.

### **IV. SCOPE OF SERVICES**

Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOU expeditiously and economically, the Parties hereby agree as follows:

#### **A. RESPONSIBILITIES OF SELLER AGENCY**

1. OCTO shall enter into (if it has not yet entered into) and maintain a contract with Microsoft or a certified Microsoft reseller under which Microsoft Office 365 Enterprise E3 cloud-based subscription plan services will be provided to each employee, contractor, or other Agency-designated person (hereinafter referred to as a "user") of OEA, up to the number of users listed in Attachment A.
  2. Under the contract with Microsoft, OCTO shall ensure that the following minimum services will be provided to each user:
    - Exchange online enterprise 50 GB mailbox.
    - Skype for Business Office mobile apps.
    - OneDrive for business with 1 TB storage.
-

E3 will include full downloadable version of latest Office ProPlus enterprise per user for up to fifteen (15) devices: (5 PCs or Macs, 5 tablets, and 5 smartphones).

#### **Attachment A**

E3 Quantity:15 Unit Price: \$223.29

Total MOU cost for subscription: \$3,349.35

#### **B. RESPONSIBILITIES OF BUYER AGENCY**

OEA shall make an intra-District transfer to OCTO as required by this MOU, in the amount set forth in Attachment A.

#### **V. DURATION OF MOU**

The duration of this MOU shall be for **Fiscal Year 2019**, and shall begin on the later of either **Oct 01, 2018**, or the last date of execution by the Parties, and shall expire on **Sep 30, 2019**, unless terminated in writing by the Parties prior to expiration pursuant to Section VII of this MOU.

#### **VI. FUNDING PROVISIONS**

##### **A. COST OF SERVICES**

The total cost for goods and/or services under this MOU shall not exceed **\$3,349.35** for Fiscal Year 2019. Funding for goods and/or services shall not exceed the actual cost of the goods and/or services provided, based on the rates provided in the budget, attached hereto as Appendix A.

#### **Appendix A**

E3 Quantity:15 Unit Price: \$223.29

Total MOU cost for subscription: \$3,349.35

##### **B. PAYMENT**

(1) Payment for the goods and/or services shall be made through an Intra-District advance by the Buyer Agency to the Seller Agency based on the total amount of this MOU **\$3,349.35**.

a. Advances to the Seller Agency for the services to be performed and/or goods to be provided shall not exceed the actual costs of the goods or services or the amount of this MOU.

b. The Seller Agency shall receive the advance and bill the Buyer Agency through the Intra-District process only for those goods and/or services actually provided pursuant to the terms of this MOU.

(2) The Seller Agency shall provide the Buyer Agency with online access to listing of itemized services, as well as upon request of the Buyer Agency, which shall be available online at <https://services.dcnet.dc.gov>.

(3) The Seller Agency shall:

a. Notify the Buyer Agency within forty-five (45) days prior to the close of the fiscal year if it has reason to believe that all of the advance will not be billed during the current fiscal year.

---

b. Return any excess advance to the Buyer Agency by September 30 of the current fiscal year.

(4) In the event of termination of this MOU, payment to the Seller Agency shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

### **C. ANTI-DEFICIENCY CONSIDERATIONS**

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation, and that all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

### **VII. TERMINATION**

Either Party may terminate this MOU in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

### **VIII. NOTICES**

The following individuals are the contact points for each Party:

#### **OEA**

Gabrielle Smith-Barrow  
gabrielle.smith-barrow@dc.gov  
955 L'enfant Plaza, SW, Suite 2500  
Washington, DC, 20024  
Phone: (202) 727-0009  
Email : gabrielle.smith-barrow@dc.gov

#### **OCTO**

Anthony Watkis  
Program Manager  
200 I ST SE, 5th Floor  
Washington, D.C. 20003  
Phone : 202-727-7498  
Email :Anthony.Watkis@dc.gov

### **IX. MODIFICATIONS**

This MOU may be modified only upon prior written agreement of the Parties. Modifications shall be dated and signed by the authorized representatives of the Parties.

### **X. CONSISTENT WITH LAW**

The Parties shall comply with all applicable federal and District laws, rules and regulations whether now in effect or hereafter enacted or promulgated.

### **XI. COMPLIANCE AND MONITORING**

---

The Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements.

## **XII. RECORDS AND REPORTS**

The Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the Buyer Agency's or the District of Columbia's request, make these documents available for inspection by duly authorized representatives of the Buyer Agency or other officials of the District of Columbia as may be specified by the District of Columbia in its sole discretion.

## **XIII. PROCUREMENT PRACTICES ACT**

If a District of Columbia agency or instrumentality plans to utilize the goods and/or services of an agent, contractor, consultant or other third party to provide any of the goods and/or services under this MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, et seq.) to procure the goods or services.

## **XIV. RESOLUTION OF DISPUTES**

The Parties' Directors or designees shall resolve all adjustments and disputes arising from services performed under this MOU. The decision of the Parties' Directors related to any disputes referred shall be final. In the event that the Parties are unable to resolve a financial issue, the matter shall be referred to the D.C. Office of the Chief Financial Officer, Office of Financial Operations and Systems.

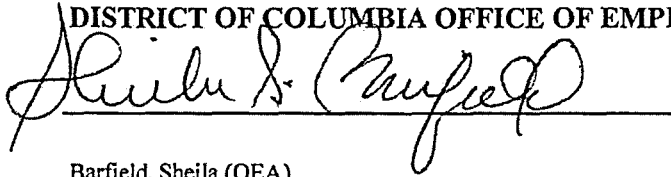
## **XV. CONFIDENTIAL INFORMATION**

The Parties to this MOU will use, restrict, safeguard and dispose of all information related to services provided by this MOU in accordance with all relevant federal and District statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with the performance of this MOU shall remain the property of the Buyer Agency.

---

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS



Barfield, Sheila (OEA)

Date: Oct. 23, 2018

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER

Date:

Interim CTO

Barney Krucoff (OCTO)

# INTRA-DISTRICT STANDARD REQUEST FORM

Government of District of Columbia

MOU  
Number:

TO0CH0-2019-01129

Date of  
MOU:

10/23/2018

## Buyer Information

Agency Name: OEA

Name of  
Contact:

Telephone #: (202) 727-0009

Agency Code: CH0

Address: 955 L'enfant Plaza, SW, Suite 2500

Fax #:

Date:

Signature

## Seller Information

Agency Name: OCTO

Name of  
Contact:

Telephone #:

Agency Code: TO0

Address: 200 I ST, SE WASHINGTON, DC  
20003

Fax #:

Date:

Signature

## Service Information and Funding Codes

GOOD/  
SERVICE:

### Buyer

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
-----	----	-----	------	-------	-----	-----	------	-------	------	-----	-----	-----	--------

### Seller

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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# eMOU Approval History

10/29/2018 2:09:55  
PM

TO0CH0-2019-01129

Step Name	Name	Status Name	Status Date	Comments
MOU Author Review	Shimul Saha (OCTO)	Approved	10/23/2018 2:21:48 PM	

<p><b>OFFICE OF THE CHIEF TECHNOLOGY OFFICER</b>  <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b></p> <p>★ ★ ★</p> <p>██████████</p> <p>██████████</p>	<p><b>MOU Executive Brief</b>  <b>OCTO Division</b></p>
<p><b>OCTO Deputy/Executive:</b>          Barney Krucoff (OCTO)</p>	<p><b>Program Manager:</b>          Marshall, Christophe</p>
<p><b>Agency:</b>          DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE          APPEALS (OEA)</p>	<p><b>Dollar Amount:</b>          \$35,267.92</p>
<p><b>Date Submitted:</b>          Aug 20 2019 11:12AM</p>	<p><b>eMOU#:</b>          TO0CH0-2020-01255</p>
<p><b>Project Description:</b>          OEA would like to engage OCTO to provide consulting services for the OEA Case Management System [Casetrack] application maintenance.</p>	
<p><b>Risks:</b></p>	
<p><b>Challenges:</b></p>	
<p><b>Urgency:</b>                      <input type="checkbox"/> Normal                      <input type="checkbox"/> Rush                      <input type="checkbox"/> Expedite</p>	



**MEMORANDUM OF UNDERSTANDING**  
 BETWEEN  
**DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS**  
 AND  
**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY**  
**OFFICER**  
 FOR FISCAL YEAR 2020

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MOU Number: TO0CH0-2020-01255

**I. INTRODUCTION**

This Memorandum of Understanding ( "MOU") is entered into between the **DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS** (OEA or "Buyer Agency") and the **District of Columbia OFFICE OF CHIEF TECHNOLOGY OFFICER** ("OCTO" or "Seller Agency"), collectively referred to herein as the "Parties" and individually as "Party."

**BACKGROUND STATEMENT ON BUYER AGENCY**

OCTO provides fully redundant, secure, high-speed transport of data, voice, video, and wireless telecommunications services for government and public safety purposes throughout the District of Columbia.

**II. LEGAL AUTHORITY FOR MOU**

D.C. Official Code § 1-301.01(k); IF APPLICABLE - D.C. Official Code § INSERT CODE FOR BUYER AGENCY AUTHORITY.

**III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES**

OEA would like to engage OCTO to provide consulting services for the OEA Case Management System [Casetrack] application maintenance; and OEA's agreement to pay for said services once approved. The program goals and objectives are as follow:

Representatives of OCTO and OEA will meet as reasonably necessary, but no less than monthly, to monitor and evaluate performance under this MOU. The monthly meetings, in addition to any other meetings scheduled to satisfy the requirements of this MOU, will:

1. Provide annual application support throughout FY2020, and
2. Make changes and additions to content wording within the OEA Case Management System [Casetrack] application pertaining

**IV. SCOPE OF SERVICES**

Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOU expeditiously and economically, the Parties hereby agree as follows:

#### **A. RESPONSIBILITIES OF SELLER AGENCY**

The Seller Agency shall:

- (1) Attend scheduled meetings between OEA and OCTO to provide consulting services.
- (2) Correct any software defects for the production OEA Casetrack application.
- (3) Modify OEA Casetrack application that are consistent n language due to legislative/policy changes.
- (4) Perform any other maintenance on the OEA Casetrack application that are consistent with the standards and guidelines as established by OCTO, and
- (5) Perform all services timely and satisfactory as determined in the sole discretion of OEA.

\* This agreement does not include the design, development, or modification of any new web-based software applications nor any application features to existing software

#### **B. RESPONSIBILITIES OF BUYER AGENCY**

The Buyer Agency shall:

- (1) The Buyer agrees to the terms, projected cost, and fund availability associated with this MOU.
- (2) The Buyer agrees to process an advance of the projected cost (as stated i Section VI.A below) to the Seller immediately after execution of this MOU.
- (3) The Buyer shall provide all OEA Casetrack content and assume responsibility for all decisions concerning the OEA Casetrack application maintenance pursuant to OCTO Web Standards Guidelines and DC legislation, and
- (4) The Buyer shall review all services performed under this MOU to determine if said services were timely and satisfactory before approving associated service costs to be withdrawn by Seller from the Intra-District advance.

#### **V. DURATION OF MOU**

The duration of this MOU shall be for **Fiscal Year 2020**, and shall begin on the later of either **Oct 01, 2019**, or the last date of execution by the Parties, and shall expire on **Sep 30, 2020**, unless terminated in writing by the Parties prior to expiration pursuant to Section VII of this MOU.

#### **VI. FUNDING PROVISIONS**

##### **A. COST OF SERVICES**

The total cost for goods and/or services under this MOU shall not exceed **\$35,267.92** for Fiscal Year 2020. Funding for goods and/or services shall not exceed the actual cost of the goods and/or services provided,

based on the rates provided below:

Maintenance Fee = ((20% of Total Development Cost) + License Cost)

Maintenance Fee = ((.2 \* \$162,839.60) + \$2700.00)

Maintenance Fee = (\$32,567.92 + \$2700.00)

Maintenance Fee = \$35,267.92

## **B. PAYMENT**

(1) Payment for the goods and/or services shall be made through an Intra-District advance by the Buyer Agency to the Seller Agency based on the total amount of this MOU **\$35,267.92**.

a. Advances to the Seller Agency for the services to be performed and/or goods to be provided shall not exceed the actual costs of the goods or services or the amount of this MOU.

b. The Seller Agency shall receive the advance and bill the Buyer Agency through the Intra-District process only for those goods and/or services actually provided pursuant to the terms of this MOU.

(2) The Seller Agency shall provide the Buyer Agency with online access to listing of itemized services, as well as upon request of the Buyer Agency, which shall be available online at <https://services.dcnnet.dc.gov>.

(3) The Seller Agency shall:

a. Notify the Buyer Agency within forty-five (45) days prior to the close of the fiscal year if it has reason to believe that all of the advance will not be billed during the current fiscal year.

b. Return any excess advance to the Buyer Agency by September 30 of the current fiscal year.

(4) In the event of termination of this MOU, payment to the Seller Agency shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

## **C. ANTI-DEFICIENCY CONSIDERATIONS**

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation, and that all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

## **VII. TERMINATION**

Either Party may terminate this MOU in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

## **VIII. NOTICES**

The following individuals are the contact points for each Party:

**OEA**

Gabrielle Smith-Barrow  
gabrielle.smith-barrow@dc.gov  
955 L'enfant Plaza, SW, Suite 2500  
Washington, DC, 20024  
Phone: (202) 727-0009  
Email : gabrielle.smith-barrow@dc.gov

## **OCTO**

Marshall, Christopher (OCTO)  
Program Manager  
200 I ST SE, 5th Floor  
Washington, D.C. 20003  
Phone : (202) 478 5971  
Email :Christopher.Marshall@dc.gov

## **IX. MODIFICATIONS**

This MOU may be modified only upon prior written agreement of the Parties. Modifications shall be dated and signed by the authorized representatives of the Parties.

## **X. CONSISTENT WITH LAW**

The Parties shall comply with all applicable federal and District laws, rules and regulations whether now in effect or hereafter enacted or promulgated.

## **XI. COMPLIANCE AND MONITORING**

The Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements.

## **XII. RECORDS AND REPORTS**

The Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the Buyer Agency's or the District of Columbia's request, make these documents available for inspection by duly authorized representatives of the Buyer Agency or other officials of the District of Columbia as may be specified by the District of Columbia in its sole discretion.

## **XIII. PROCUREMENT PRACTICES ACT**

If a District of Columbia agency or instrumentality plans to utilize the goods and/or services of an agent, contractor, consultant or other third party to provide any of the goods and/or services under this MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, et seq.) to procure the goods or services.

## **XIV. RESOLUTION OF DISPUTES**

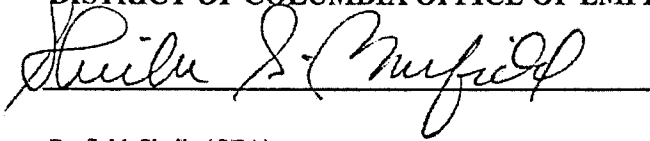
The Parties' Directors or designees shall resolve all adjustments and disputes arising from services performed under this MOU. The decision of the Parties' Directors related to any disputes referred shall be final. In the event that the Parties are unable to resolve a financial issue, the matter shall be referred to the D.C. Office of the Chief Financial Officer, Office of Financial Operations and Systems.

## **XV. CONFIDENTIAL INFORMATION**

The Parties to this MOU will use, restrict, safeguard and dispose of all information related to services provided by this MOU in accordance with all relevant federal and District statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with the performance of this MOU shall remain the property of the Buyer Agency.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

**DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS**

A handwritten signature in cursive script, appearing to read "Sheila S. Barfield", is written over a horizontal line.

Barfield, Sheila (OEA)

Date: *Aug. 23 2019*

**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER**

\_\_\_\_\_  
CTO

Lindsey Parker (OCTO)

Date:

**INTRA-DISTRICT STANDARD REQUEST FORM**  
Government of District of Columbia

**MOU**                      TO0CH0-2020-01255  
**Number:**

**Date of**                      08/22/2019  
**MOU:**

---

**Buyer Information**

Agency                      OEA  
Name:

Agency                      CH0  
Code:

Name of  
Contact:

Address: 955 L'enfant Plaza, SW, Suite 2500

Telephone #:              (202) 727-0009

Fax #:

Date:

---

Signature

---

**Seller Information**

Agency                      OCTO  
Name:

Agency                      TO0  
Code:

Name of  
Contact:

Address: 200 I ST, SE WASHINGTON, DC  
20003

Telephone #:

Fax #:

Date:

---

Signature

---

**Service Information and Funding Codes**

GOOD/  
SERVICE:

**Buyer**

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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**Seller**

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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# eMOU Approval History

8/23/2019 1:00:28 PM

TO0CH0-2020-01255

Step Name	Name	Status Name	Status Date	Comments
MOU Author Review	Easley, Juan (OCTO) (OCTO)	Approved	8/22/2019 10:23:43 AM	approved



# **ATTACHMENT #6**

## OEA INTERAGENCY REPROGRAMMINGS, FY2019 AND FY2020 (Q14)

**Including anticipated reprogrammings for remainder of FY2020**

[illegible]

# **ATTACHMENT #6**

**Including anticipated reprogrammings for remainder of FY2020**

[illegible]

# **ATTACHMENT #7**

## OEA INTRA-AGENCY REPROGRAMMINGS, FY2019 AND FY2020 (Q15)

**Including anticipated reprogrammings for remainder of FY2020**

[illegible]

GOVERNMENT OF THE DISTRICT OF COLUMBIA



OFFICE OF EMPLOYEE APPEALS

**MEMORANDUM**

**TO:** Office of Policy and Legislative Affairs

**FROM:** Sheila Barfield *Sheila S. Barfield*  
Executive Director  
Office of Employee Appeals

**THRU:** Angelique Rice  
Associate Chief Financial Officer  
Government Operations Cluster

**DATE:** July 15, 2019

**SUBJECT:** Request for Reprogramming – Local Fund within the Office of Employee Appeals (OEA) – \$21,000

---

The purpose of this request is to reprogram local funds within the non-personnel services budget lines to ensure that the Office of Employee Appeals (OEA) can purchase critical items needed for the agency's operations:

**Why are the funds needed?**

The funds are needed to purchase necessary IT equipment and supplies to support the agency's critical mission.

**Is this a reprogramming to restore a budget cut authorized by the Mayor and/or Council?**

No, this reprogramming does not restore a budget cut authorized by the Mayor nor the Council.

**How will the funds be reprogrammed?**

Funds will be reprogrammed from Comp Source group 0040 (object 0408 - Professional Services, and 0427 – Board Member Fees) to Comp Source Group 0020 (object 0201 – Office Supplies) and Comp Source Group 0070 (object 0702 – Equipment and Machinery)

**Why the funds are available?**

Funds are available due to the agency's decision to redirect projected spending in a more proficient manner.

**What hardship will the District face if the action is postponed until the subsequent years?**

The agency's ability to timely process District Government employees' appeals will be impaired due to lack of necessary working equipment and the necessary office supplies.

**What programs, services, or other purchases will be delayed because of the action and the impact on the program or agency?**

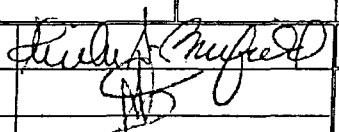
No ongoing programs or services will be delayed because of this reprogramming.

Should you have questions, please contact Alemayehu Awas at 202- 727- 6535.



## Attachment A

## Reprogramming Budget Request/SOAR Budget Entry Form

Government of the District of Columbia				Originating Agency Name and Code:				Office of Employee Appeals				Fund and Code:		0100	
APPROVAL REQUIRED FOR THE FOLLOWING:				APPROVAL LEVEL:				Agency Director: (signature)				Budget Fiscal Year:			
								Agency CFO: (signature)				2019			
Shift Between Agencies:				Agency:				Associate CFO: (signature)							
Shift Between Activities:		X		OBP:		X		Budget Reprogramming Amount Requested:		\$ 21,000.00		Prepared Date			
Shift Between Programs:		X		Council:				Prepared By:		Xavier Epps		7/15/2019			
Line	Agency Code	Program Code	Activity Code	Program Name	Index	PCA	Object	Object Class	Fund	Original Budget Amount	Current Budget Amount	Amount of Decrease (-)	Amount of Increase (+)	Revised Budget Amount	
1	CH0	1000	1020	Agency Management	10000	11020	0020	0201	0100	3,000.00	(1,368.08)		4,018.00	2,649.92	
2	CH0	1000	1020	Agency Management	10000	11020	0040	0440	0100	-	-		6,932.00	6,932.00	
3	CH0	1000	1020	Agency Management	10000	11020	0070	0702	0100	-	-		10,050.00	10,050.00	
4	CH0	1000	1020	Agency Management	10000	11020	0040	0408	0100	52,119.64	33,769.61	(16,982.00)		16,787.61	
5	CH0	1000	1020	Agency Management	10000	11020	0040	0427	0100	25,000.00	18,460.00	(4,018.00)		14,442.00	
SUB-TOTAL										\$ 80,119.64	\$ 50,861.53	\$ (21,000.00)	\$ 21,000.00	\$ 50,861.53	
TOTAL										\$ 80,119.64	\$ 50,861.53	\$ (21,000.00)	\$ 21,000.00	\$ 50,861.53	

Justification of the  
Reprogramming Proposal:

## For OBP Use Only:

## Approvals

TASK	NAME	DATE	TITLE	PHONE
Approved By:			Advisor, Operating Budget	
Keyed in SOAR By:			Operating Budget Analyst	
Released in SOAR By:			Advisor, Operating Budget	
Override Approved by: (if Applicable)			Operating Budget	

## Document Information (For OBP Use Only)

Doc Number:	
Batch Type:	
Batch Agency:	
Doc Date:	
Effective Date:	
MPCD Code:	

11:36:36 Monday, July 15, 2019

S061 V2.1 PRD DISTRICT OF COLUMBIA R\*STARS 2.1 07/15/19 11:36 AM  
LINK TO: \_\_\_\_\_ AGENCY BUDGET FINANCIAL INQUIRY DSNF

AGENCY: CH0 AY: 19 ORG CODE: 0100 PGM CODE: 1020 FUNC CODE: \_\_\_\_\_  
AP FUND: \_\_\_\_\_ FUND: 0100 GRANT/PH: \_\_\_\_\_ PROJECT/PH: \_\_\_\_\_  
COMP SRC/GRP: 0040 OBJ/COBJ/AGY OBJ: \_\_\_\_\_ AGY OBJ GROUP: \_\_\_\_\_  
ORG LEVEL: 03 OFFICE OF EMPLOYEE APPEALS (RC)  
PGM LEVEL: 02 CONTRACTING & PROCUREMENT  
FUNC LEVEL:

INQ TYPE: MC (MA, YA, MY, YY, MC, YC) DETAIL/SUMMARY: D  
INQ YEAR: 19 INQ MONTH: 10 ADJUSTED BUDG: 83,823.64  
BUDGET AVAIL: 58,219.61 BUDG % AVAIL: 69.45  
EXPEND/BUDG %: 12.93 ALLOT/BUDG %: 0.00  
ALLOTMENT BAL: 25,604.03- UNEXPND ALLOT: 20,678.51-  
BT TITLE AMOUNT BT TITLE AMOUNT  
09 ORIG EXP BU 83,823.64  
15 CASH EXPEND 10,838.51  
16 INTRA-DIST 9,840.00  
17 ACCRUED EXP .00  
18 ENCUMB OUTS 4,925.52

F1-HELP F2-DOC INQ F5-NEXT F9-INTERRUPT ENTER-INQUIRE CLEAR-EXIT

Fiscal Year 2019

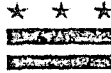
				Values								
Program Cod	Program Cod	Program Cod	PCA	Comp Source Group	Comp Object	Comp Object Title	Sum of Revised Budget	Sum of Total Expenditure	Sum of Intradistrict	Sum of Encumbrance	Sum of Pre Encumbrance	Sum of Available Balance
1000	AGENCY MAN	1020	10000	11020	0020	OFFICE SUPPLIES	3,000.00	2,096.51	271.57	-	-	621.92
					0040							
					0401	TRAVEL - LOCAL	500.00	400.00	100.00	-	-	-
					0405	MAINTENANCE AND REPAIRS	1,704.00	-	-	-	-	1,704.00
					0407	MAINTENANCE AND REPAIRS	3,000.00	-	-	-	-	3,000.00
					0408	PROF SERVICE FEES AND	52,119.64	3,554.51	9,870.00	4,925.52	-	33,769.61
					0416	POSTAGE	1,500.00	344.00	(130.00)	-	-	1,786.00
					0427	COMP BD MEMBERS AND	25,000.00	6,540.00	-	-	-	18,460.00
					0041							
					0409	CONTRACTUAL SERVICES	30,000.00	26,615.76	-	6,924.87	(0.00)	(3,540.63)
					0020							
					0201	OFFICE SUPPLIES	-	179.83	1,820.17	-	-	(2,000.00)
					0040							
					0408	PROF SERVICE FEES AND	-	-	3,000.00	-	-	(3,000.00)
					0410	OFFICE SUPPORT	-	2,858.14	(6,789.88)	-	-	3,431.74
					0070							
					0711	IT SOFTWARE ACQUISITION	1,000.00	-	-	-	-	1,000.00
					0011							
					0111	CONTINUING FULL TIME	62,579.71	46,428.81	-	-	-	16,150.90
					0011							
					0111	CONTINUING FULL TIME	47,706.51	35,390.87	-	-	-	12,315.64
					0011							
					0111	CONTINUING FULL TIME	219,456.32	132,115.27	-	-	-	87,341.05
					0011							
					0111	CONTINUING FULL TIME	561,131.34	417,325.55	-	-	-	143,805.79
					0011							
					0111	CONTINUING FULL TIME	1,008,697.52	673,849.25	8,641.86	11,850.39	(0.00)	314,356.02
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					0111	CONTINUING FULL TIME	688,673.28	507,2				

# **ATTACHMENT #7**

**Including anticipated reprogrammings for remainder of FY2020**

[illegible]

GOVERNMENT OF THE DISTRICT OF COLUMBIA



OFFICE OF EMPLOYEE APPEALS

**MEMORANDUM**

**TO:** Office of Policy and Legislative Affairs

**FROM:** Sheila Barfield *Sheila S. Barfield*  
Executive Director  
Office of Employee Appeals

**THRU:** Angelique Rice  
Associate Chief Financial Officer  
Government Operations Cluster

**DATE:** July 15, 2019

**SUBJECT:** Request for Reprogramming – Local Fund within the Office of Employee Appeals (OEA) – \$21,000

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The purpose of this request is to reprogram local funds within the non-personnel services budget lines to ensure that the Office of Employee Appeals (OEA) can purchase critical items needed for the agency's operations:

**Why are the funds needed?**

The funds are needed to purchase necessary IT equipment and supplies to support the agency's critical mission.

**Is this a reprogramming to restore a budget cut authorized by the Mayor and/or Council?**

No, this reprogramming does not restore a budget cut authorized by the Mayor nor the Council.

**How will the funds be reprogrammed?**

Funds will be reprogrammed from Comp Source group 0040 (object 0408 - Professional Services, and 0427 – Board Member Fees) to Comp Source Group 0020 (object 0201 – Office Supplies) and Comp Source Group 0070 (object 0702 – Equipment and Machinery)

**Why the funds are available?**

Funds are available due to the agency's decision to redirect projected spending in a more proficient manner.

**What hardship will the District face if the action is postponed until the subsequent years?**

The agency's ability to timely process District Government employees' appeals will be impaired due to lack of necessary working equipment and the necessary office supplies.

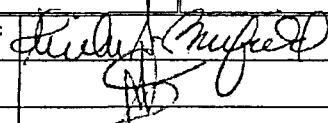
**What programs, services, or other purchases will be delayed because of the action and the impact on the program or agency?**

No ongoing programs or services will be delayed because of this reprogramming.

Should you have questions, please contact Alemayehu Awas at 202- 727- 6535.

## Attachment A

## Reprogramming Budget Request/SOAR Budget Entry Form

Government of the District of Columbia				Originating Agency Name and Code:				Office of Employee Appeals				Fund and Code:		0100	
APPROVAL REQUIRED FOR THE FOLLOWING:				APPROVAL LEVEL:				Agency Director: (signature)				Budget Fiscal Year			
								Agency CFO: (signature)				2019			
Shift Between Agencies:				Agency:				Associate CFO: (signature)							
Shift Between Activities:		X		OBP:		X		Budget Reprogramming Amount Requested:		\$ 21,000.00		Prepared Date			
Shift Between Programs:		X		Council:											
								Prepared By:		Xavier Epps		7/15/2019			
Line	Agency Code	Program Code	Activity Code	Program Name	Index	PCA	Object	Object Class	Fund	Original Budget Amount	Current Budget Amount	Amount of Decrease (-)	Amount of Increase (+)	Revised Budget Amount	
1	CH0	1000	1020	Agency Management	10000	11020	0020	0201	0100	3,000.00	(1,368.08)		4,018.00	2,649.92	
2	CH0	1000	1020	Agency Management	10000	11020	0040	0440	0100	-	-		6,932.00	6,932.00	
3	CH0	1000	1020	Agency Management	10000	11020	0070	0702	0100	-	-		10,050.00	10,050.00	
4	CH0	1000	1020	Agency Management	10000	11020	0040	0408	0100	52,119.64	33,769.61	(16,982.00)		16,787.61	
5	CH0	1000	1020	Agency Management	10000	11020	0040	0427	0100	25,000.00	18,460.00	(4,018.00)		14,442.00	
SUB-TOTAL										\$ 80,119.64	\$ 50,861.53	\$ (21,000.00)	\$ 21,000.00	\$ 50,861.53	
TOTAL										\$ 80,119.64	\$ 50,861.53	\$ (21,000.00)	\$ 21,000.00	\$ 50,861.53	

Justification of the Reprogramming Proposal:	
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For OBP Use Only:				
Approvals				
TASK	NAME	DATE	TITLE	PHONE
Approved By:			Advisor, Operating Budget	
Keyed in SOAR By:			Operating Budget Analyst	
Released in SOAR By:			Advisor, Operating Budget	
Override Approved by: (if Applicable)			Operating Budget	

Document Information (For OBP Use Only)	
Doc Number:	
Batch Type:	
Batch Agency:	
Doc Date:	
Effective Date:	
MPCD Code:	



11:36:36 Monday, July 15, 2019

S061 V2.1 PRD DISTRICT OF COLUMBIA R\*STARS 2.1 07/15/19 11:36 AM  
LINK TO: \_\_\_\_\_ AGENCY BUDGET FINANCIAL INQUIRY DSNF

AGENCY: CH0 AY: 19 ORG CODE: 0100 PGM CODE: 1020 FUNC CODE: \_\_\_\_\_  
AP FUND: \_\_\_\_\_ FUND: 0100 GRANT/PH: \_\_\_\_\_ PROJECT/PH: \_\_\_\_\_  
COMP SRC/GRP: 0040 OBJ/COBJ/AGY OBJ: \_\_\_\_\_ AGY OBJ GROUP: \_\_\_\_\_  
ORG LEVEL: 03 OFFICE OF EMPLOYEE APPEALS (RC)  
PGM LEVEL: 02 CONTRACTING & PROCUREMENT  
FUNC LEVEL:

INQ TYPE: <u>MC</u>	(MA, YA, MY, YY, MC, YC)	DETAIL/SUMMARY: <u>D</u>	
INQ YEAR: <u>19</u>	INQ MONTH: <u>10</u>	ADJUSTED BUDG:	83,823.64
BUDGET AVAIL:	58,219.61	BUDG % AVAIL:	69.45
EXPEND/BUDG %:	12.93	ALLOT/BUDG %:	0.00
ALLOTMENT BAL:	25,604.03-	UNEXPND ALLOT:	20,678.51-
BT TITLE	AMOUNT	BT TITLE	AMOUNT
09 ORIG EXP BU	83,823.64		
15 CASH EXPEND	10,838.51		
16 INTRA-DIST	9,840.00		
17 ACCRUED EXP	.00		
18 ENCUMB OUTS	4,925.52		

F1-HELP F2-DOC INQ F5-NEXT F9-INTERRUPT ENTER-INQUIRE CLEAR-EXIT

Approved Year: 2019

				Values									
Program Cod	Program Cod	Program Cod	Index Code	PCA	Comp Source Group	Comp Object	Comp Object Title	Sum of Revised Budget	Sum of Total Expenditure	Sum of Intradistrict	Sum of Encumbrance	Sum of Pre Encumbrance	Sum of Available Balance
1000	AGENCY MAN	1020	10000	11020	0020	0201	OFFICE SUPPLIES	3,000.00	2,096.51	271.57	-	-	621.92
					0040	0401	TRAVEL - LOCAL	500.00	400.00	100.00	-	-	-
						0405	MAINTENANCE AND REPAIRS	1,704.00	-	-	-	-	1,704.00
						0407	MAINTENANCE AND REPAIRS	3,000.00	-	-	-	-	3,000.00
						0408	PROF SERVICE FEES AND	52,119.64	3,554.51	9,870.00	4,925.52	-	33,769.61
						0416	POSTAGE	1,500.00	344.00	(130.00)	-	-	1,286.00
						0427	COMP BD MEMBERS AND	25,000.00	6,540.00	-	-	-	18,460.00
					0041	0409	CONTRACTUAL SERVICES	30,000.00	26,615.76	-	6,924.87	(0.00)	(3,540.63)
		11020		11020	0020	0201	OFFICE SUPPLIES	-	179.83	1,820.17	-	-	(2,000.00)
					0040	0408	PROF SERVICE FEES AND	-	-	3,000.00	-	-	(3,000.00)
						0410	OFFICE SUPPORT	-	2,858.14	(6,789.88)	-	-	3,431.74
	1040	10000		11040	0070	0711	IT SOFTWARE ACQUISITION	1,000.00	-	-	-	-	1,000.00
		11040		11040	0011	0111	CONTINUING FULL TIME	62,579.71	46,428.81	-	-	-	16,150.90
	1085	11085		11085	0011	0111	CONTINUING FULL TIME	47,706.51	35,390.87	-	-	-	12,315.64
	1090	11090		11090	0011	0111	CONTINUING FULL TIME	219,456.32	132,115.27	-	-	-	87,341.05
	1100	10011		10010	0011	0111	CONTINUING FULL TIME	561,131.34	417,325.55	-	-	-	143,805.79
	AGENCY MANAGEMENT				Total			1,008,697.52	673,849.25	8,641.86	11,850.39	(0.00)	314,356.02
1000 Total								1,008,697.52	673,849.25	8,641.86	11,850.39	(0.00)	314,356.02
2000	ADJUDICATION	2001	20001	12001	0011	0111	CONTINUING FULL TIME	688,673.28	507,289.88	-	-	-	181,383.40
	ADJUDICATION				Total			688,673.28	507,289.88	-	-	-	181,383.40
2000 Total								688,673.28	507,289.88	-	-	-	181,383.40
Grand Total								1,697,370.80	1,181,139.13	8,641.86	11,850.39	(0.00)	495,739.42

# **ATTACHMENT #8**

## Enhancement Request #1

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** WAE Employees Tour of Duty  
**This request is priority:** #1 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

**The amount of local funds requested is \$29,700.**

**This will be a recurring cost. The estimated cost in FY 2022 is \$30,220; in FY 2023 is \$30,749; and in FY 2024 is \$31,287.**

OEA has two WAE employees who perform mission critical services of assigning appeals, conducting mediations, and adjudicating appeals. This enhancement will allow these judges to work their full tour of duty of 40 hours per pay period.

Legislative support will not be required for this request.

## Enhancement Request #2

<b>Agency Name:</b>	<b>Office of Employee Appeals</b>
<b>Agency Code:</b>	<b>CH0</b>
<b>Enhancement Title:</b>	<b>Court Reporting</b>
<b>This request is priority:</b>	<b>#2 out of 5 for OEA.</b>
<b>Agency Point of Contact:</b>	<b>Sheila G. Barfield</b>
<b>Date:</b>	<b>October 21, 2019</b>

**The amount of local funds requested is \$30,000. The estimated cost in FY 2022 is \$30, 525; in FY 2023 is \$31,059; and in FY 2024 is \$31,603.**

**This will be a recurring cost.**

Additional funding is needed to ensure that the agency can carry out the mission critical function of court reporting. Without adequate funding, the number of Initial Decisions and Opinions and Orders issued will decrease. Moreover, the length of time required to resolve petitions for appeal and petitions for review will increase. If decisions are not issued in a timely manner, a backlog of cases will develop. If a backlog of cases is allowed to develop, then for those decisions in which an agency's action against an employee was reversed, the back pay and benefits awarded would be greatly increased.

Legislative support is not required for this request.

### Enhancement Request #3

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** Other Services and Charges  
**This request is priority:** #3 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

The amount of local funds requested is \$83,800. The estimated cost in FY 2022 is \$85,267; in FY 2023 is \$86,759; and in FY 2024 is \$88,277.

**This will be a recurring cost.**

Additional funding is needed to ensure that the agency can pay for the services that are needed to carry out its core mission. Without adequate funding, Board members will not be compensated; employee training will not occur; funding for postage will not be available; and funding for web maintenance and machinery maintenance and repair will not be available.

Legislative support is not required for this request.

#### Enhancement Request #4

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** Supplies  
**This request is priority:** #4 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

**The amount of local funds requested is \$717.00.**

**This will be a recurring cost. The estimated cost in FY 2022 is \$717.00; in FY 2023 is \$717.00; and in FY 2024 is \$717.00.**

Additional funding is needed to ensure that the agency can purchase the supplies that are needed to carry out its core mission. Without supplies, the agency will not be able to adjudicate appeals. No hearings will be conducted; no decisions will be issued; and no court filings will be prepared.

Legislative support is not required for this request.

Enhancement Request #5

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** IT Hardware and Software  
**This request is priority:** #5 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

**The amount of local funds requested is \$1,000.**

**This will be a recurring cost.**

Additional funding is needed to ensure that the agency can purchase any hardware and software that will be needed to carry out its core mission.

Legislative support is not required for this request.



# **ATTACHMENT #8**

Enhancement Request #1

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** WAE Employees Tour of Duty  
**This request is priority:** #1 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

**The amount of local funds requested is \$29,700.**

**This will be a recurring cost. The estimated cost in FY 2022 is \$30,220; in FY 2023 is \$30,749; and in FY 2024 is \$31,287.**

OEA has two WAE employees who perform mission critical services of assigning appeals, conducting mediations, and adjudicating appeals. This enhancement will allow these judges to work their full tour of duty of 40 hours per pay period.

Legislative support will not be required for this request.

## Enhancement Request #2

<b>Agency Name:</b>	<b>Office of Employee Appeals</b>
<b>Agency Code:</b>	<b>CH0</b>
<b>Enhancement Title:</b>	<b>Court Reporting</b>
<b>This request is priority:</b>	<b>#2 out of 5 for OEA.</b>
<b>Agency Point of Contact:</b>	<b>Sheila G. Barfield</b>
<b>Date:</b>	<b>October 21, 2019</b>

**The amount of local funds requested is \$30,000. The estimated cost in FY 2022 is \$30, 525; in FY 2023 is \$31,059; and in FY 2024 is \$31,603.**

**This will be a recurring cost.**

Additional funding is needed to ensure that the agency can carry out the mission critical function of court reporting. Without adequate funding, the number of Initial Decisions and Opinions and Orders issued will decrease. Moreover, the length of time required to resolve petitions for appeal and petitions for review will increase. If decisions are not issued in a timely manner, a backlog of cases will develop. If a backlog of cases is allowed to develop, then for those decisions in which an agency's action against an employee was reversed, the back pay and benefits awarded would be greatly increased.

Legislative support is not required for this request.

### Enhancement Request #3

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** Other Services and Charges  
**This request is priority:** #3 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

The amount of local funds requested is \$83,800. The estimated cost in FY 2022 is \$85,267; in FY 2023 is \$86,759; and in FY 2024 is \$88,277.

This will be a recurring cost.

Additional funding is needed to ensure that the agency can pay for the services that are needed to carry out its core mission. Without adequate funding, Board members will not be compensated; employee training will not occur; funding for postage will not be available; and funding for web maintenance and machinery maintenance and repair will not be available.

Legislative support is not required for this request.

Enhancement Request #4

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** Supplies  
**This request is priority:** #4 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

**The amount of local funds requested is \$717.00.**

**This will be a recurring cost. The estimated cost in FY 2022 is \$717.00; in FY 2023 is \$717.00; and in FY 2024 is \$717.00.**

Additional funding is needed to ensure that the agency can purchase the supplies that are needed to carry out its core mission. Without supplies, the agency will not be able to adjudicate appeals. No hearings will be conducted; no decisions will be issued; and no court filings will be prepared.

Legislative support is not required for this request.

Enhancement Request #5

**Agency Name:** Office of Employee Appeals  
**Agency Code:** CH0  
**Enhancement Title:** IT Hardware and Software  
**This request is priority:** #5 out of 5 for OEA.  
**Agency Point of Contact:** Sheila G. Barfield  
**Date:** October 21, 2019

**The amount of local funds requested is \$1,000.**

**This will be a recurring cost.**

Additional funding is needed to ensure that the agency can purchase any hardware and software that will be needed to carry out its core mission.

Legislative support is not required for this request.

# **ATTACHMENT #9**

### Q17 Contracts

questions 1== 17 21.xlsx

[illegible]



# **ATTACHMENT #9**

### Q17 Contracts

questions 11-17 21.xlsx

[illegible]

# **ATTACHMENT #10**

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CREDIT AND PURCHASE CARD EXPENDITURE  
FY2019 AND FY2020

	A	B	C	D	E	F
1						
2	CARD HOLDER	DATE OF PURCHASE	VENDOR	DOLLAR AMOUNT		PURPOSE OF EXPENDITURE
3						
4	Gabrielle Smith-Barrow	12/12/2018	Standard Office Supply	\$179.83		Office Supplies
5	Gabrielle Smith-Barrow	1/18/2019	Standard Office Supply	\$545.98		Office Supplies
6	Gabrielle Smith-Barrow	1/21/2019	Superior Couriers LLC	\$130.00		Messenger services
7	Gabrielle Smith-Barrow	2/1/2019	Standard Office Supply	\$738.49		Office Supplies
8	Gabrielle Smith-Barrow	2/13/2019	Standard Office Supply	\$159.98		Office Supplies
9	Gabrielle Smith-Barrow	2/26/2019	Standard Office Supply	\$411.13		Office Supplies
10	Gabrielle Smith-Barrow	3/20/2019	Neal R. Gross & Co	\$2,150.61		Court Reporting services
11	Gabrielle Smith-Barrow	3/20/2019	Neal R. Gross & Co	\$512.05		Court Reporting services
12	Gabrielle Smith-Barrow	3/28/2019	Neal R. Gross & Co	\$1,131.90		Court Reporting services
13	Gabrielle Smith-Barrow	4/2/2019	Neal R. Gross & Co	\$1,988.91		Court Reporting services
14	Gabrielle Smith-Barrow	4/2/2019	Superior Couriers LLC	\$214.00		Messenger services
15	Gabrielle Smith-Barrow	4/3/2019	staples direct	\$58.48		Office Supplies
16	Gabrielle Smith-Barrow	4/22/2019	Neal R. Gross & Co	\$2,156.00		Court Reporting services
17	Gabrielle Smith-Barrow	4/24/2019	Neal R. Gross & Co	\$2,986.06		Court Reporting services
18	Gabrielle Smith-Barrow	5/10/2019	Metro Fare	\$200.00		travel
19	Gabrielle Smith-Barrow	5/9/2019	Standard Office Supply	\$182.45		Office Supplies
20	Gabrielle Smith-Barrow	5/14/2019	Metro Fare	\$200.00		travel
21	Gabrielle Smith-Barrow	5/17/2019	Superior Couriers LLC	\$130.00		Messenger services
22	Gabrielle Smith-Barrow	6/4/2019	Metro Fare	\$200.00		travel
23	Gabrielle Smith-Barrow	6/6/2019	Standard Office Supply	\$2,288.05		Office Supplies
24	Gabrielle Smith-Barrow	6/14/2019	Standard Office Supply	\$130.00		Office Supplies
25	Gabrielle Smith-Barrow	6/17/2019	Washington Express	\$240.00		Messenger services
26	Gabrielle Smith-Barrow	7/9/2019	Neal R. Gross & Co	\$1,821.82		Court Reporting services
27	Gabrielle Smith-Barrow	7/9/2019	Superior Couriers LLC	\$78.00		Messenger services
28	Gabrielle Smith-Barrow	7/10/2019	Neal R. Gross & Co	\$328.79		Court Reporting services
29	Gabrielle Smith-Barrow	7/10/2019	Neal R. Gross & Co	\$1,913.45		Court Reporting services
30	Gabrielle Smith-Barrow	7/10/2019	Neal R. Gross & Co	\$1,361.52		Court Reporting services
31	Gabrielle Smith-Barrow	7/10/2019	Metro Fare	\$200.00		travel
32	Gabrielle Smith-Barrow	7/12/2019	adobe Acropro	\$2,161.13		software

CREDIT AND PURCHASE CARD EXPENDITURE  
FY2019 AND FY2020

	A	B	C	D	E	F
33	Gabrielle Smith-Barrow	8/1/2019	tpw	\$566.69		copier maintenance
34	Gabrielle Smith-Barrow	8/5/2019	Superior Couriers LLC	\$182.00		Messenger services
35	Gabrielle Smith-Barrow	8/6/2019	Neal R. Gross & Co	\$1,773.31		Court Reporting services
36	Gabrielle Smith-Barrow	8/6/2019	Neal R. Gross & Co	\$468.93		Court Reporting services
37	Gabrielle Smith-Barrow	8/7/2019	Neal R. Gross & Co	\$441.98		Court Reporting services
38	Gabrielle Smith-Barrow	8/21/2019	Standard Office Supply	\$827.47		Office Supplies
39	Gabrielle Smith-Barrow	8/28/2019	Standard Office Supply	\$3,199.97		Office Supplies
40	Gabrielle Smith-Barrow	9/30/2019	Neal R. Gross & Co	\$539.00		Court Reporting services
41	Gabrielle Smith-Barrow	11/12/2019	Superior Couriers LLC	\$140.00		Messenger services
42	Gabrielle Smith-Barrow	12/6/2019	Superior Couriers LLC	\$140.00		Messenger services
43						
44						
45						
46						
47			Standard Office Supply	310.83		
48			Standard Office Supply	36.02		
49			Pitney Bowes	183.58		
50						
51						
52			TOTAL	\$33,608.41		

# **ATTACHMENT #10**

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CREDIT AND PURCHASE CARD EXPENDITURE  
FY2019 AND FY2020

	A	B	C	D	E	F
1						
2	CARD HOLDER	DATE OF PURCHASE	VENDOR	DOLLAR AMOUNT		PURPOSE OF EXPENDITURE
3						
4	Gabrielle Smith-Barrow	12/12/2018	Standard Office Supply	\$179.83		Office Supplies
5	Gabrielle Smith-Barrow	1/18/2019	Standard Office Supply	\$545.98		Office Supplies
6	Gabrielle Smith-Barrow	1/21/2019	Superior Couriers LLC	\$130.00		Messenger services
7	Gabrielle Smith-Barrow	2/1/2019	Standard Office Supply	\$738.49		Office Supplies
8	Gabrielle Smith-Barrow	2/13/2019	Standard Office Supply	\$159.98		Office Supplies
9	Gabrielle Smith-Barrow	2/26/2019	Standard Office Supply	\$411.13		Office Supplies
10	Gabrielle Smith-Barrow	3/20/2019	Neal R. Gross & Co	\$2,150.61		Court Reporting services
11	Gabrielle Smith-Barrow	3/20/2019	Neal R. Gross & Co	\$512.05		Court Reporting services
12	Gabrielle Smith-Barrow	3/28/2019	Neal R. Gross & Co	\$1,131.90		Court Reporting services
13	Gabrielle Smith-Barrow	4/2/2019	Neal R. Gross & Co	\$1,988.91		Court Reporting services
14	Gabrielle Smith-Barrow	4/2/2019	Superior Couriers LLC	\$214.00		Messenger services
15	Gabrielle Smith-Barrow	4/3/2019	staples direct	\$58.48		Office Supplies
16	Gabrielle Smith-Barrow	4/22/2019	Neal R. Gross & Co	\$2,156.00		Court Reporting services
17	Gabrielle Smith-Barrow	4/24/2019	Neal R. Gross & Co	\$2,986.06		Court Reporting services
18	Gabrielle Smith-Barrow	5/10/2019	Metro Fare	\$200.00		travel
19	Gabrielle Smith-Barrow	5/9/2019	Standard Office Supply	\$182.45		Office Supplies
20	Gabrielle Smith-Barrow	5/14/2019	Metro Fare	\$200.00		travel
21	Gabrielle Smith-Barrow	5/17/2019	Superior Couriers LLC	\$130.00		Messenger services
22	Gabrielle Smith-Barrow	6/4/2019	Metro Fare	\$200.00		travel
23	Gabrielle Smith-Barrow	6/6/2019	Standard Office Supply	\$2,288.05		Office Supplies
24	Gabrielle Smith-Barrow	6/14/2019	Standard Office Supply	\$130.00		Office Supplies
25	Gabrielle Smith-Barrow	6/17/2019	Washington Express	\$240.00		Messenger services
26	Gabrielle Smith-Barrow	7/9/2019	Neal R. Gross & Co	\$1,821.82		Court Reporting services
27	Gabrielle Smith-Barrow	7/9/2019	Superior Couriers LLC	\$78.00		Messenger services
28	Gabrielle Smith-Barrow	7/10/2019	Neal R. Gross & Co	\$328.79		Court Reporting services
29	Gabrielle Smith-Barrow	7/10/2019	Neal R. Gross & Co	\$1,913.45		Court Reporting services
30	Gabrielle Smith-Barrow	7/10/2019	Neal R. Gross & Co	\$1,361.52		Court Reporting services
31	Gabrielle Smith-Barrow	7/10/2019	Metro Fare	\$200.00		travel
32	Gabrielle Smith-Barrow	7/12/2019	adobe Acropro	\$2,161.13		software

CREDIT AND PURCHASE CARD EXPENDITURE  
FY2019 AND FY2020

	A	B	C	D	E	F
33	Gabrielle Smith-Barrow	8/1/2019	tpw	\$566.69		copier maintenance
34	Gabrielle Smith-Barrow	8/5/2019	Superior Couriers LLC	\$182.00		Messenger services
35	Gabrielle Smith-Barrow	8/6/2019	Neal R. Gross & Co	\$1,773.31		Court Reporting services
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42	Gabrielle Smith-Barrow	12/6/2019	Superior Couriers LLC	\$140.00		Messenger services
43						
44						
45						
46						
47			Standard Office Supply	310.83		
48			Standard Office Supply	36.02		
49			Pitney Bowes	183.58		
50						
51						
52			TOTAL	\$33,608.41		



# **ATTACHMENT #11**

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**OEA BOARD**

Clarence Labor, Chairman

Patricia Hobson Wilson, Board Member

Jelani Freeman, Board Member

Peter Rosenstein, Board Member

Dionna Maria Lewis, Board Member

**EXECUTIVE DIRECTOR**

Sheila Barfield, Esq.

**GENERAL COUNSEL**

Lasheka Bassey, Esq.  
General Counsel

Sommer Murphy, Deputy  
General Counsel

Wynter Clarke, Paralegal

**ADMINISTRATIVE JUDGES**

Joseph Lim, Esq., Senior AJ  
Eric Robinson, Esq., Senior AJ  
Monica Dohnji, Esq., Senior AJ  
Michelle Harris, Esq., AJ  
Arien Cannon, Esq., AJ  
Lois Hochhauser, Esq., AJ  
Wanda Jackson, Esq., AJ

**ADMINISTRATIVE STAFF**

Katrina Hill, Receptionist  
Derrick Harris, Network Assistant  
Anthony James, Administrative Assistant  
Joyce Madison, Administrative Assistant  
Gabrielle Smith-Barrow, Operations Manager

# **ATTACHMENT #11**



**OEA BOARD**

Clarence Labor, Chairman

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**EXECUTIVE DIRECTOR**

Sheila Barfield, Esq.

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General Counsel

Sommer Murphy, Deputy  
General Counsel

Wynter Clarke, Paralegal

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Monica Dohnji, Esq., Senior AJ  
Michelle Harris, Esq., AJ  
Arien Cannon, Esq., AJ  
Lois Hochhauser, Esq., AJ  
Wanda Jackson, Esq., AJ

**ADMINISTRATIVE STAFF**

Katrina Hill, Receptionist  
Derrick Harris, Network Assistant  
Anthony James, Administrative Assistant  
Joyce Madison, Administrative Assistant  
Gabrielle Smith-Barrow, Operations Manager

# **ATTACHMENT #12**

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### Q21 Personnel

questions7 21.xlsx

# **ATTACHMENT #12**

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**Q21 Personnel**

[illegible]



# **ATTACHMENT #13**

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

GINA VAUGHN,	)	
	)	
	)	
Petitioner,	)	Case No. 2017 CA 005525 P (MPA)
	)	
v.	)	Judge William M. Jackson
	)	
METROPOLITAN POLICE DEP'T,	)	
Respondent.	)	

**ORDER GRANTING PETITION FOR REVIEW**

This matter is before the Court on Petitioner Gina Vaughn's Petition for Review filed on February 8, 2018. Respondent filed its Brief in Opposition on March 26, 2018, to which Petitioner filed a Reply on May 11, 2018. Upon consideration of the Petition, the Opposition thereto, and the entire record herein, the Court **grants** the Petition.

**Factual and Procedural Background**

**I. The Initial Decision on Remand**

The background of this case spans over more than six years to October 2011, when Petitioner was separated from her position with the Metropolitan Police Department ("MPD") pursuant to a Reduction in Force ("RIF"). R. at 00022-23. The Court will dispense with a full recitation of the facts as the facts relevant to the instant appeal are far more limited, relating specifically to (1) the events leading up to and immediately following Office of Employee Appeals Senior Administrative Judge ("AJ") Joseph Lim's September 9, 2016 Initial Decision on Remand ("IDOR") and (2) the required procedures for challenging that decision.

Prior to that decision, AJ Lim had issued an Initial decision reversing Petitioner's separation, but the Office of Employee Appeals ("OEA") Board remanded the matter to AJ Lim because (1) the Agency was denied an opportunity to respond to or explain apparent

discrepancies in documentation; and (2) the Board believed the AJ incorrectly found that a specific numerical indicator was a reference to a pay scale step rather than designation of the position description. R. at 00363-69. Copies of the OAE Board's May 10, 2016 Opinion and Order remanding the matter to AJ Lim were sent to counsel of record, including Petitioner's attorney Leslie Deak, and also to Petitioner individually. R. at 00369.

On remand, AJ Lim ordered the parties to submit briefs addressing the issues in the May 10, 2016 Opinion and Order on Petition for Review. R. at 00370. The parties submitted briefs, and AJ Lim issued the IDOR on September 9, 2016. R. at 00503. In the IDOR, AJ Lim upheld the Agency's RIF action and found that Petitioner was placed in the correct competitive level in the retention register and that the other inconsistencies in the RIF documents constituted a harmless error because they did not significantly affect the Agency's final decision to separate Petitioner from employment. *Id.*

Pursuant to D.C. Code § 1-606.03(c) and Title 6-B of the D.C. Municipal Regulations § 633.1, Petitioner had thirty-five days to file a Petition for Review of the September 9, 2016 IDOR. Thus, the deadline to file this Petition for Review was October 14, 2016. On October 13, 2016, Petitioner sent a letter by facsimile and first-class mail to the OEA informing the Board that her attorney throughout the entirety of these proceedings, Ms. Deak, had ceased communication with her. In that letter, Petitioner requested a one week extension of the deadline in that letter. The letter was not received by the OEA Board until October 18, 2016. Accordingly, the Board deemed the letter filed as of October 18, 2016. R. at 00520. Petitioner also sent an email to AJ Lim on October 14, 2016 at 10:48 a.m., in which she attached her October 13, 2016 Letter. She submitted a second letter on October 27, 2016, titled "Abandonment by Attorney: Request for Leave to Obtain Attorney & Further [Extend Time] to File Brief-Memorandum on

Pending Issue on Remand.” R. at 00522. Petitioner stated that she was unsuccessful in eliciting an update regarding the status of her pending appeal on remand from her attorney. *Id.* Thus, she requested leave to find new counsel to represent her before the OEA. *Id.*

Petitioner did in fact retain a new attorney, Stephen Leckar, and Mr. Leckar filed on Petitioner’s behalf a Motion for Leave to Submit Memorandum in Support of Petitioner for Review of the Initial Decision on Remand. R. at 00529-536. In the motion, Petitioner argued that she had timely filed a *pro se* letter to OEA after being abandoned by her previous attorney, in which she requested an “appeal” or a review of the IDOR, and requested leave to submit a brief in support of her petitioner for review. *Id.* Petitioner further argued that the letter should have either (1) been construed as a request to extend the 35-day time limit to file a PFR, or (2) in the alternative, the letter itself should have been considered a timely PFR. R. at 00530, 00591, 00618. Respondent filed an Opposition in January 2017, asserting that the IDOR became a final decision on October 14, 2016, thirty-five days after its issuance. R. at 00582.

## **II. THE OEA’s July 17, 2011 Opinion and Order on Remand**

On July 11, 2017, the OEA Board issued an Opinion and Order on Remand, ultimately rejecting Petitioner’s arguments and concluding that the October 13, 2016 Letter was not a PFR or a request for an extension of time to file a PFR; but rather, that the Letter was an attempt by Petitioner to determine whether her attorney had filed a brief on remand in a timely manner. R. 000625. The Board further stated that it lacked the authority to extend the 35-day time limit even if it were to “unreasonably construe Employee’s letter as a Petition for Review,” and confirmed that the filing date of the letter was October 18, 2016, as pleadings cannot be submitted by either email or facsimile. *Id.* at 00626-27. Petitioner filed the instant Petition for Review on August 9, 2017, contending that the OEA Board erred by failing to consider Petitioner’s PFR.

### **Legal Standard**

Super. Ct. Agency Review R. 1(g) provides that the Superior Court “shall not set aside the action of the agency if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law.” In addition, the Court must “base its decision exclusively on the administrative record.” *Id*; *see also*, *Dupree v. D.C. OEA*, 36 A.3d 826, 830 (quoting *Settemire v. District of Columbia Office of Emp. Appeals*, 898 A.2d 902, 905 n.4 (D.C. 2006) (further citation omitted) (the Court’s review is confined “strictly to the administrative record,” and the Court “must affirm the OEA’s decision so long as it is supported by substantial evidence in the record and otherwise in accordance with law”). In reviewing administrative appeals, the Court of Appeals has stated that, “[t]o pass muster, an administrative agency decision must state findings of fact on each material, contested factual issue; those findings must be supported by substantial evidence in the agency record; and the agency’s conclusions must follow rationally from its findings.” *Dupree*, 36 A. 3d at 830 (quoting *Johnson v. District of Columbia Office of Emp. Appeals*, 912 A.2d 1181, 1183 (D.C. 2006) (further citation omitted). The reviewing court “will only reverse where the OEA’s action was ‘arbitrary, capricious, or an abuse of discretion.’” *Dupree*, 36 A.3d at 831 (quoting *Jahr v. OEA*, 19 A.3d 334, 340 (D.C. 2011) (quoting *Bagenstose v. OEA*, 888 A.2d 1155, 1157 (D.C. 2005)).

### **Analysis**

On review, Petitioner argues that the July 11, 2017 Opinion and Order on Remand should be reversed because Petitioner timely filed a *pro se* Petition for Review. In the alternative, Petitioner contends that the OEA Board erred in failing to equitable toll the deadline. Respondent contends that even if Petitioner’s Letter was timely received, it failed to meet the

requirements set forth in the Notice of Appeal Rights and that equitable tolling is not warranted in the instant case.

Pursuant to D.C. Code § 1-606.03(c) and Title 6-B of the D.C. Municipal Regulations § 633.1, a PFR is due thirty-five days after the issuance of an order by the OEA. Accordingly, the PFR for the September 9, 2016 IDOR would have been due on October 14, 2016. The September 9, 2016 IDOR included a Notice of Appeal Rights explaining the required procedures to challenge the IDOR. The Notice states, in part:

All Petitioners for Review must set forth objections to the Initial Decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;
2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;
3. The finding[s] of the presiding official are not based on substantial evidence; or
4. The Initial Decision did not address all the issues of law and fact properly raised in the appeal.

R. 00504. The OEA Board found that Petitioner's letter requesting additional time to file her brief to "avoid dismissal of [her] appeal," was received and deemed filed by the OEA on October 18, 2016, four days after the expiration of the thirty-five day period. The OEA Board further found that even if the letter was timely received, it was not a PFR because Petitioner merely intended to determine whether her attorney filed a brief on remand in a timely manner and she did not reference the IDOR or provide the basis for granting a petitioner pursuant to OEA Rule 633.3.

It is well settled that, "a *pro se* litigant is entitled to no special treatment, nor substantial assistance from the judge assigned to her case." *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 756 (D.C. 2008). However, "[i]n matters involving pleadings, service of process, and timeliness of

filings, *pro se* litigants are not always held to the same standards as are applied to lawyers.” *Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 980 (D.C. 1999). In fact, courts have a “responsibility to inform *pro se* litigants of procedural rules and the consequences of noncompliance, include “at least minimal notice ... of pleading requirements.” *Padou*, 998 A.2d 286, 292 (D.C. 2010). Here, Petitioner was provided the minimal notice of pleading requirements and the consequences of noncompliance. There is substantial evidence in the record that the Petitioner was informed of the requirements to file a PFR and the consequences of failing to file a brief within the time limit. Petitioner’s letter was not received until October 18, 2016, four days after the deadline. Even if the letter had been timely, the OEA Board did not err in finding that the Letter did not constitute a PFR notwithstanding the liberal pleading standards for *pro se* litigants. However, while the Court finds that Petitioner’s letter did not constitute a timely PFR, the Court ultimately concludes that the OEA Board erred in failing to consider whether it retained equitable jurisdiction to hear Petitioner’s PFR.

The reviewing court may reverse a decision where the OEA’s action was “arbitrary, capricious, or an abuse of discretion.” *Jahr*, 19 A.3d at 340. The trial court abuses its discretion when it fails to apply the proper factors to the exercise of discretion. *Johnson v. United States*, 398 A.2d 254, 265 (D.C. 1979). Trial judges are required to exercise special care with a *pro se* litigant in special circumstances. *Padou v. District of Columbia*, 998 A.2d 286, 292 (D.C. 2010). “In matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards are applied to lawyers.” *Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 980 (D.C. 1999). In exercising its discretion, the OEA Board failed to consider the applicability of equitable tolling to Petitioner’s claims. Whether equitable tolling is appropriate “is a fact-specific questions that turns on [] balancing the fairness to both parties.

*Mathis v. D.C. Hous. Auth.*, 124 A.3d 1089, 1104 (D.C. 2015). Our Court of Appeals has indicated that “whether a timing rule should be tolled turns on whether there was unexplained or undue delay and whether tolling would work an injustice to the other party. *Id.* (citing *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 403-04 (D.C. 1991)).

Respondent contends that there is not sufficient evidence to support a finding that equitable tolling was appropriate in this case. The Court disagrees. Petitioner’s argument for equitable tolling in this case is compelling. Petitioner’s former attorney Leslie Deak, ceased communication with the Petitioner during the 35-day appeal period and was later disbarred in December 2017 for an unrelated reason. *See In re Phoebe Leslie Deak*, No. 17-BG-369, at \*3. Petitioner made reasonable efforts to preserve her rights to file a PFR, including sending a letter to the OEA by first-class mail on October 13, 2016, requesting an extension and sending an email to the AJ Lim on October 14, 2016. While the letter may not have been received and deemed filed, until October 18, 2018, it was also sent by facsimile on October 13, 2016, and by email on October 14, 2016. Petitioner subsequently sent another letter requesting an “Extension of Time to File Brief-Memorandum on Pending Issues on Remand” which the OEA Board received on October 27, 2016. In the October 27, 2016 letter, Petitioner states that she has still been unable to contact her attorney, and asks for leave to find new counsel. After failing to receive any response from the OEA Board regarding her submissions, Petitioner promptly retained a new attorney who submitted a “Motion for Leave to Submit Memorandum in Support of Petitioner for Review of the Initial Decision on Remand” in December 2016. When the OEA Board denied that Motion, Petitioner subsequently filed a timely Petition for Review in this Court. The record shows an unbroken effort by an unexpectedly *pro se* Petitioner to properly comply with the Court’s filing deadline and preserve her rights. Petitioner diligently pursued her



claim and made every reasonable effort to ascertain whether or not her former counsel had filed a brief on her behalf. Once Petitioner realized she had been abandoned by Ms. Deak, she took several steps to preserve her rights without any unexplained or undue delay. Moreover, the Court finds no prejudice whatsoever that would inure to the Respondent from allowing Petitioner to file her PFR. Rather, balancing the fairness to both parties reveals a far greater negative impact on Petitioner and the prosecution of her claim which she has litigated for the past seven years. The trial court had discretion to apply equitable tolling and it failed to consider its applicability. Accordingly, the Court concludes that the OEA Board erred in failing to equitably toll the deadline for Petitioner's review and remands the case to the OEA Board for further proceedings on the merits.<sup>1</sup>

Therefore, on this 27<sup>th</sup> day of November, 2018, it is:

**ORDERED** that Petitioner's Petition for Review is **GRANTED**. It is further

**ORDERED**, that this case shall be remanded to the Office of Employee Appeals for briefing on the Petitioner's Petition for Review.

**SO ORDERED.**



**William M. Jackson**  
**Associate Judge**  
**(Signed in Chambers)**

Copies to:

David Branch, Esq.  
Louise Ryder, Esq.  
*Counsel for Petitioner*

Ryan Donaldson, Esq.  
*Counsel for Respondent*

---

<sup>1</sup> Nothing in the Court's ruling should be construed as to the Court's view of the merits of petitioner's argument.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**DISTRICT OF COLUMBIA  
METROPPOLITAN POLICE DEPT.,  
Petitioner,**

**v.**

**DISTRICT OF COLUMBIA OFFICE OF  
EMPLOYEE APPEALS,  
Respondent,**

**SHEILA THOMAS-BULLOCK  
Intervenor.**

**Case No.  
2018 CA 003991 P(MPA)  
Judge Hiram Puig-Lugo**

**ORDER**

The District of Columbia Metropolitan Police Department (“Petitioner” or “MPD”) seeks review of a D.C. Office of Employee Appeals (“OEA” or “respondent”) determination to reverse the termination of Sheila Thomas-Bullock (“intervenor”). For the reasons explained below, the OEA decision is reversed.

**Factual and Procedural History**

Intervenor Ms. Thomas-Bullock was a police officer with the MPD in the Second District. R. at 124. On December 27, 2015, Intervenor was off-duty and became involved in a physical altercation with Ms. Tije Holland. R. at 100. Intervenor and her sister assaulted Ms. Holland in “what could be described as an unprovoked attack,” which occurred within Barcode club. *Id.* Ms. Holland was treated at Washington Hospital Center thereafter and the physical altercation was captured on video surveillance. *Id.*

On December 28, 2015, members of MPD’s Fourth District and the Internal Affairs Division (“IAD”) interviewed Mr. Bullock and Ms. Holland at the Washington Hospital Center. R. at 108-118. Both Mr. Bullock and Ms. Holland alleged that Intervenor assaulted Ms. Holland

by punching her face. *Id.* Accordingly, Incident Summary (“IS”) numbers were assigned to the incident for MPD to investigate further. R. at 143. Additionally, the incident was opened as a criminal investigation. R. at 128-137.

After IAD assigned incident summary numbers and a criminal investigation was opened on December 28, 2015, IAD revoked Intervenor’s police powers. R. at 146-151. On that same day, Intervenor filed a false police report with the Sixth District Police Station alleging that Mr. Bullock struck her in the mouth while at the Barcode club. R. at 153-161. The matter was assigned to IAD Agent Detective Tracye Malcolm (“Agent Malcolm”) for further investigation. R. at 108-126.

On January 8, 2016, following Agent Malcolm’s criminal investigation, Agent Malcolm referred the incident to the United States Attorney’s Office (“USAO”). R. at 276. On February 1, 2016, the USAO issued an arrest warrant for Simple Assault for Intervenor’s arrest. R. at 165-173. On February 4, 2016, Intervenor was arrested. R. at 211. On April 11 2016, Intervenor pled guilty to Simple Assault and entered into a Deferred Sentencing Agreement (“DSA”). R. at 213-215. On September 26, 2016, the USAO dismissed the matter in accordance with the DSA. R. at 507.

On August 12, 2016, MPD issued an Advanced Written Notice (“Notice”) to Intervenor and proposed to terminate her. R. at 101-107. On or around February 10, 2017, after a full evidentiary hearing was held, the Adverse Action Panel (“panel”) issued its findings and found Intervenor guilty of all three charges. R. at 72-100. The Director of Human Resources Management Division adopted the Panel’s findings and issued a Final Notice of Adverse Action, adopting termination effective April 14, 2017. R. at 65-71. On February 27, 2017, Intervenor appealed the Panel’s findings to the Chief of Police. R. at 783-895. On March 17, 2017, the

Chief of Police sustained the proposed removal and Intervenor was subsequently removed from the MPD. R. at 58-64.

On April 18, 2017, Intervenor filed her Petition for Appeal with the OEA. R. at 1-4. On April 30, 2018, the Administrative Judge (“AJ”), Michelle Harris, Esq., issued an Initial Decision which reversed MPD’s termination based on an alleged violation of the “90-day rule.” R. at 1231-1248. Petitioner filed the instant petition for review on November 16, 2018.

### **Legal Analysis**

Any employee or agency may appeal the decision of the OEA to the District of Columbia Superior Court within thirty days of the final agency decision. *Id.*; *see also* Super. Ct. Civ. Agency Rev. R. 1(a). The decision of the OEA “shall include findings of fact and a written decision, as well as the reasons or basis for the decision upon all material issues of fact and law presented on record, and order.” D.C. Code § 1-606.03(c).

Upon review of the appeal, the Court may “affirm, reverse, remove, or modify such decision, or take any other appropriate action the Court may deem necessary.” D.C. Code § 1-606.03(d). “This court must review the record as a whole to determine whether the agency could fairly and reasonably find the facts as it did, and to assure that the Board’s decision did not rely on unsupported findings.” *Walsh v D.C. Police & Firefighters Ret. & Relief Bd.*, 523 A.2d 562, 565 (D.C. 1987). The Court “must examine the administrative record to determine whether there has been procedural error, whether there is substantial evidence in the record to support the OEA’s findings, or whether the OEA’s action was in some manner otherwise arbitrary, capricious, or an abuse of discretion.” *D.C. Metro. Police Dep’t v Broadus*, 560 A.2d 501, 504 (D.C. 1989) (quoting *Stokes v District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985)). However, if an agency decision rests on a question of law, the reviewing court has greater

experience, and therefore the agency decision is accorded less deference. *Broadus*, 560 A.2d at 504 (quoting *Saah v D.C. Bd. Of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981)).

This Court shall base its decision exclusively upon the administrative record and shall not set aside the action of the agency if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law. Super. Ct. Civ. Agency Rev. R. 1(g); *accord Walsh*, 523 A.2d at 565 (quoting *Proulx v Police & Firemen's Relief Bd.*, 430 A.2d 34, 35 (D.C. 1981)) (“An agency’s findings of fact are ‘conclusive on this court unless unsupported by substantial evidence in the record.’”). “Substantial evidence “is evidence that “a reasonable mind might accept as adequate to support a conclusion” *Davis-Dodson v D.C. Dep’t of Emp’t Servs.*, 697 A.2d 1214, 1218 (D.C. 1997) (quoting *Ferreira v D.C. Dep’t of Emp’t Servs.*, 667 A.2d 310, 312 (D.C. 1995)). Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Allen v D.C. Police & Firefighters’ Ret. & Relief Bd.*, 528 A.2d 1225, 1229 (D.C. 1987) (quoting *Perkins v D.C. Dep’t of Emp’t Servs.*, 482 A.2d 401, 403 (quoting *Consol. Edison Co. v Nat. Labor Relations Bd.*, 305 U.S. 197, 229 (1938))). However, evidence is not substantial if it is so “‘highly questionable in the light of common knowledge and experience’ that it is not worthy of belief.” *D.C. Gen Hosp. v D.C. Office of Emp. Appeals*, 548 A.2d 70, 77 (D.C. 1988) (citations omitted).

## **I. The 90-Day Rule**

D.C. Code § 5-1031 states, in relevant part:

“If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department or any law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General, or is the subject of an investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints, the 90-day period for commencing

a corrective or adverse action under subsection (a) or (a-1) of this section shall be tolled until the conclusion of the investigation.”

In a time limit context, the "conclusion of a criminal investigation" must involve action taken by an entity with prosecutorial authority--that is, the authority to review evidence, and to either charge an individual with commission of a criminal offense, or decide that charges should not be filed. *See District of Columbia v. D.C. Office of Emple. Appeals*, 883 A.2d 124, 125 (D.C. 2005). “In many circumstances, even an arrest would not mark the conclusion of a criminal investigation.” *Id.* at 128; *see also McCain v. Office of Emple. Appeals*, Case No. 2015 CA 004589 P(MPA) (D.C. Super. Ct. 2017) (finding that the 90-day rule started on the day of Petitioner’s conviction, when the prosecutorial body’s exercise of its discretionary authority concluded). In imposing the specific 90-day deadline at issue here, the D.C. Council was motivated by the exorbitant amount of time that the adverse action process’ was then taking, such that employees had to wait months or even years to see the conclusion of an investigation against them. *See D.C. Fire & Med. Servs. Dep’t v. D.C. Office of Emple. Appeals*, 986 A.2d 419 (D.C. 2010), *citing* REPORT ON BILL 15-194 at 13, 14.

AJ Harris found that February 4, 2016, the date on which Intervenor was arrested, was the end of the investigation for purposes of D.C. Code § 5-1031(b) and therefore, MPD was in violation of the 90-day notice rule. AJ Harris concluded that the “mere notion that because the USAO elected to enter into a Deferred Sentencing Agreement with Intervenor exhibits an ongoing investigation, is not substantive to prove that a criminal investigation was ongoing” between the Intervenor’s arrest date and the date that Intervenor pled guilty and entered into an agreement with the USAO. AJ Harris found that on April 11, 2016, Intervenor entered into a DSA with the USAO, which reflected a decision between the USAO and Intervenor with regard

toward the final disposition of the criminal case and did not, without substantial evidence, indicate that a criminal investigation was ongoing.

Petitioner asserts that MPD conducts internal investigations pursuant to the procedures in its general orders and the collective bargaining agreement, which includes interviews of all appropriate MPD members. R. at 830-851. Further, Petitioner asserts that in almost every case, the interviews will include the employee suspected of committing the alleged misconduct. Pet. Brief at 14. The Petitioner argues that Intervenor's testimony that she declined to give a statement until the end of her criminal case and confirmed that she did not give a statement until after September 26, 2016, when the case was dismissed, supports the argument that the investigation had not concluded on February 4, 2016 but instead on April 11, 2016, when Intervenor pled guilty to simple assault. *See* Pet. Brief at 16.

After reviewing the relevant pleadings, law and the entire record herein, the Court finds that the 90-day rule began tolling on September 26, 2016, when the prosecutorial body's exercise of its discretionary authority concluded and the case was dismissed pursuant to the DSA between Intervenor and the USAO. It was not until Intervenor's successful completion of the DSA obligations that USAO's prosecutorial authority to decide whether to charge Intervenor with assault or decide that charges should not be filed concluded. Indeed, neither MPD nor Intervenor would have benefitted from MPD moving forward into disciplinary proceedings that would have run parallel to the Intervenor's criminal case and pending fulfillment of the DSA requirements. Further, the purpose for which the 90-day rule was intended is not at odds with this finding and MPD efficiently processed this disciplinary case. The Court finds that based on the record and relevant law, MPD's Notice was timely.<sup>1</sup>

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<sup>1</sup> The Court does not need to address the arguments surrounding the issue of whether the 90-day rule is mandatory or directory because the Court finds that MPD was not in violation of the 90-day rule.

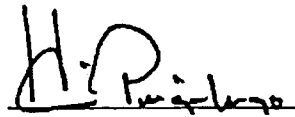
## CONCLUSION

In conclusion, the Court finds that AJ Harris' decision with respect to the 90-day rule was not supported by substantial evidence in the record or otherwise in accordance with the law. Specifically, the Court finds that AJ Harris was incorrect in its finding that MPD's Advance Notice of termination was untimely and that the removal was not in accordance with the applicable law.

Accordingly, it is this 19<sup>th</sup> day of March, 2019, hereby:

**ORDERED** that Petitioner Metropolitan Police Department's *Petition for Review* is **GRANTED**.

The judgment below is reversed and remanded for proceedings consistent with this Order.

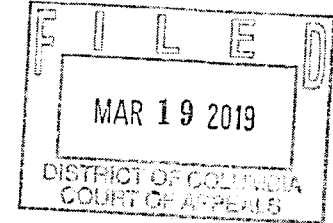


Judge Hiram E. Puig-Lugo  
*Signed in Chambers*

Copies via CasefileXpress to:  
All counsel of record.



**District of Columbia  
Court of Appeals**



No. 18-CV-604

ZACK W. GAMBLE,

Appellant,

v.

CAP2472-17

D.C. OFFICE OF EMPLOYEE  
APPEALS, *et al.*,

Appellees.

**ORDER**

On consideration of appellee D.C. Metropolitan Police Department's motion to remand this case to the Superior Court with instructions to vacate the court's affirmance of the decision of the Office of Employee Appeals (OEA) and to remand this matter to the OEA for additional findings to which appellant has consented and no opposition has been filed, and appellee's consent motion for an extension of time within which to file the brief, it is

ORDERED that appellee's motion to remand is granted and this case is remanded to the Superior Court with instructions to vacate the OEA's decision and remand this matter to the OEA for additional findings. It is

FURTHER ORDERED that appellee's motion for an extension of time is denied as moot. It is

FURTHER ORDERED that the Clerk shall issue the mandate forthwith.

BY THE COURT:

STEPHEN H. GLICKMAN  
Acting Chief Judge

No. 18-CV-604

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Branch Chief, Civil Actions

Director, Court Reporting & Recording Division

elp

DOCKETED in Chambers  
MAY 29 2019

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

TOYER BRENDA

Plaintiff(s),

v.

DISTRICT OF COLUMBIA OFFICE OF  
EMPLOYEE APPEALS

Defendant(s).

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2017 CA 002470 P(MPA)

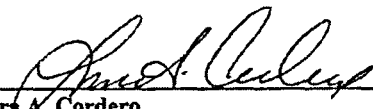
**ORDER REMANDING CASE**

This case has been remanded to this Court from the District of Columbia Court of Appeals. In accordance with the opinion from the Court of Appeals, this case will be remanded to the Office of Employee Appeals ("OEA") for further proceedings.

Wherefore, it is this 29<sup>th</sup> day of May, 2019, hereby:

**ORDERED** that this case is remanded to the OEA for further proceedings consistent with the opinion of the Court of Appeals; it is further

**ORDERED**, that this matter is closed.

  
Laura A. Cordero  
Presiding Judge, Civil Division

*Copies to:*

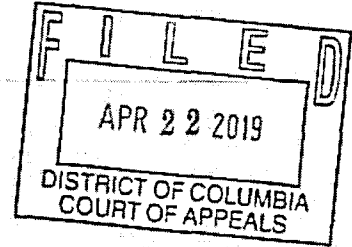
Judge Joseph E. Lim

Robert J. Shore, Esq. *Counsel for Plaintiff*

Andrea G. Comentale, Esq. *Counsel for Defendant*

Frank J. McDougald, Esq. *Counsel for Intervener District of Columbia Metropolitan Police Department*

**District of Columbia  
Court of Appeals**



No. 19-CV-13

BRENDA TOYER,

Appellant,

v.

CAP2470-17

D.C. OFFICE OF EMPLOYEE  
APPEALS, *et al.*,

Appellees.

**ORDER**

On consideration of appellee D.C. Metropolitan Police Department's motion to remand this case to the Superior Court with instructions to vacate the court's affirmance of the decision of the Office of Employee Appeals (OEA) and to remand this matter to OEA for additional findings to which appellant has consented and no opposition has been filed, it is

ORDERED that appellee's motion to remand is granted and this case is remanded to the Superior Court with instructions to vacate the OEA's decision and remand this matter to OEA for additional findings. It is

FURTHER ORDERED that the Clerk shall issue the mandate forthwith.

BY THE COURT:

A handwritten signature in black ink, appearing to read "A. Blackburne-Rigsby".

ANNA BLACKBURNE-RIGSBY  
Chief Judge

No. 19-CV-13

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Branch Chief, Civil Actions

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION—CIVIL ACTIONS BRANCH**

**LINDA SUN,**

**Petitioner,**

**v.**

**DISTRICT OF COLUMBIA OFFICE OF  
THE TENANT ADVOCATE,**

**Respondent.**

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Civil Case No. 2017 CA 007451 P(MPA)  
Civil II, Calendar I  
Judge Kelly A. Higashi

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**ORDER GRANTING IN PART PETITION FOR REVIEW AND REMANDING FOR  
FURTHER CONSIDERATION**

This matter comes before the court on Linda Sun’s Amended Petition for Review of the Office of Employee Appeals’ (“OEA’s”) October 13, 2017 Decision, the Respondents’ opposition, Sun’s reply thereto, and any supplemental briefing. The central issue raised by this petition is whether OEA erred in holding that the resolution of a 2012 lawsuit (“the District Court Action”) filed by Linda Sun in the United States District Court of the District of Columbia to challenge her termination precluded Sun from subsequently raising another challenge to her termination before the Office of Employee Appeals in 2017 (“the 2017 OEA Proceeding”). For the reasons stated herein, the Court affirms the OEA decision in part and reverses in part.

**Background**

In 2007, Sun began working as a Program Support Specialist with the Office of the Tenant Advocate (“OTA”). Sun is a law school graduate, but she is not admitted to practice law in the District of Columbia or any other jurisdiction. Sun’s supervisor at OTA grew concerned that Sun was engaging in the unauthorized practice of law, or that her activities may have created the appearance of such unauthorized practice, and directed Sun to take several corrective measures. Sun failed to comply with her supervisors’ instructions and OTA terminated Sun in

2012 by issuing a Summary Removal Notice. Sun maintains that she was fired for retaliatory reasons. Whether Sun's termination was indeed wrongful is not before the Court.

### ***2012 District Court Action***

In 2012, Sun filed a claim in the United States District Court for the District of Columbia, *Sun v. District of Columbia Gov't, et al.*, Case No. 2012-CV-01919 (the "District Court Action").<sup>1</sup> Sun's Second Amended Complaint alleged the following claims: Wrongful Termination in Violation of Public Policy (Count 1), Retaliation in Violation of the District of Columbia Whistleblower Protection Act (Count 2), Discrimination in Violation of the District of Columbia Human Rights Act (Count 3), Wrongful Termination in Violation of Title VII of the Civil Rights Act of 1964 (Count 4), Breach of Contract (Count 5), Intentional Infliction of Emotional Distress (Count 6), and Assault (Count 7). Record at 16-26<sup>2</sup> (Second Amended Complaint in Case No. 2012-CV-01919).

The District Court entered summary judgment in favor of the District of Columbia on every count except Sun's assault claim. *See* R. at 124-144 (Order Granting Summary Judgment); *see also Sun v. District of Columbia et al.*, 133 F. Supp. 3d 155 (D.D.C. 2015). The Court held that Sun's common law wrongful termination claim (Count 1) failed because "plaintiff has not identified any other public policy that defendants are supposed to have violated." R. at 141. The Court reached this conclusion on the basis that "as an at-will employee ... plaintiff could have been fired 'at any time and for any reason, or for no reason at all.'" *Id.* at 141. The Court determined Sun's Whistleblower Protection Act claim (Count 2), District of Columbia Human Rights Act claim (Count 3), and Title VII claim (Count 4) in favor of the District of Columbia

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<sup>1</sup> Sun first filed a charge with the Equal Employment Opportunity Commission ("EEOC") on March 21, 2012, to challenge the termination on the basis that OTA discriminated against her on the basis of race, sex, national origin, and retaliation. The EEOC issued Sun a letter confirming her right to institute a civil action, and she proceeded with the District Court Action.

<sup>2</sup> The Record is hereinafter cited as "R."

because plaintiff “failed to produce probative evidence to rebut defendants’ legitimate nondiscriminatory reasons for her termination.” R. at 140. The Court also rejected Sun’s Breach of Contract (Count 5) and Intentional Inflection of Emotional Distress (Count 6) claims, but allowed the assault claim (Count 7) to go to a jury. R. at 142-43. A jury returned a verdict against Sun on her assault claim. *See* R. at 122 (Judgment on the Verdict for Defendant).

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the summary judgment decision. *See* R. at 34-35 (February 14, 2017 Judgment); *see also Sun v. District of Columbia Gov’t*, 686 F. App’x 5 (D.C. Cir. 2017). The Court held that summary judgment was proper on the Title VII, District of Columbia Human Rights Act, and Whistleblower Protection Act claims because of Sun’s failure “to produce evidence sufficient for a reasonable jury to find that the asserted reasons were not the actual reasons” for Sun’s termination. R. at 34. With respect to the wrongful termination claim (Count 1), the Court of Appeals stated:

the parties now agree that [Sun] was not an at-will employee. Thus, the common law claim of wrongful termination in violation of public policy is unavailable, and the District of Columbia Comprehensive Merit Personnel Act provides her sole remedy. *See Lewis v. D.C. Dep’t of Motor Vehicles*, 987 A.2d 1134, 1137 (D.C. 2010).

The Court also affirmed the decision with respect to the IIED claim and rejected Sun’s “procedural challenges to the jury trial on her assault claim.” R. at 35.

### ***2017 OEA Proceeding***

On April 7, 2017, nearly a decade after her termination, Sun filed an appeal to the Office of Employee Appeals challenging the termination. *See* R. at 1-6. Sun alleged that her termination “was retaliatory and against the public policy of the DC Government.” R. at 4. Sun explained that she had reported to her supervisor, Dennis Taylor, that the director of the Office of



Tenant Advocate, Johanna Shreve, “was still running her own company” in a supposed violation of policy or law, and that “I believe my termination was in retaliation for reporting Shreve’s conflict of interest ....” Sun also alleged that her “Summary Removal Directive contained no facts to support the allegations.” OTA asked OEA to dismiss the appeal on the grounds of *res judicata*.

Administrative Law Judge (“ALJ”) Lim dismissed Sun’s Petition for Appeal on October 13, 2017, for two reasons. First, ALJ Lim held that the doctrine of *res judicata* applied to Sun’s claims because:

all of the same claims against all of the same parties that [Sun] raises in this appeal were already adjudicated on their merits in Federal Court .... Employee instituted a civil action pursuing the same allegations that she is attempting to raise in this matter against the District, and any District employee, supervisor, or official having personal involvement in the prohibited personnel action.

ALJ Lim noted that the District Court had “supplemental jurisdiction under 28 U.S.C. § 1367” to adjudicate Sun’s non-federal claims. ALJ Lim addressed Sun’s argument, repeated here, that “the Federal Court had wrongly held that she was an at-will employee” and noted that the “Federal Court had adjudicated all her claims on their merits and thus afforded her all the same procedural rights as any Career Service employee would have ....” ALJ Lim further held that D.C. Code § 1-615.56 (a), which states that “The institution of a civil action pursuant to [D.C. Code] § 1-615.54 shall preclude an employee from pursuing any administrative remedy for the same cause of action from the Office of Employee Appeals” also barred Sun from seeking redress for matters already adjudicated in a civil action.

On November 3, 2017, Sun filed the instant Petition for Review. Sun asserts that she is “seeking a *de novo* review of the OEA dismissal.” Petition at 2. Sun requests back-pay and reinstatement to her former position, or an equivalent position.

### Standard of Review

In reviewing an administrative agency decision, this court must “base its decision exclusively upon the administrative record and shall not set aside the action of the agency if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law.” Super. Ct. Civ. R., Agency Review R. 1 (g). “[T]he burden of demonstrating error is on the appellant or petitioner who challenges the decision.” *Hoage v. Board of Trustees of the Univ. of the District of Columbia*, 714 A.2d 776, 781 (D.C. 1998). The court must affirm an agency decision unless it is “arbitrary, capricious, or otherwise not in accordance with law”; the court “will not disturb an agency ruling as long as the decision flows rationally from the facts, and the facts are supported by substantial evidence in the record.” *Providence Hosp. v. District of Columbia Dep’t of Emp’t Servs.*, 855 A.2d 1108, 1111 (D.C. 2004).

The court reviews findings of fact and mixed questions of law and fact under the “substantial evidence” standard, but applies “*de novo* review to the ultimate legal conclusions based on those facts.” *Scolaro v. District of Columbia Board of Elections & Ethics*, 717 A.2d 891, 894 (D.C. 1998). The court will “defer to an agency’s interpretation of a statute it administers unless that interpretation is unreasonable in light of the prevailing law, inconsistent with the statute, or plainly erroneous.” *Office of the District of Columbia Comptroller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

### Analysis

The court begins with a brief discussion of collateral estoppel and *res judicata*. “Collateral estoppel bars relitigation of an issue of fact or law when ‘(1) the issue is actually litigated; (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; and (4) under circumstances where the

determination was essential to the judgment.” *Walker v. FedEx Office & Print Servs.*, 123 A.3d 160, 164 (D.C. 2015) (quoting *Hogue v. Hopper*, 728 A.2d 611, 614 (D.C. 1999)). Under the doctrine of *res judicata*, “a prior judgment on the merits raises an absolute bar to the relitigation of the same cause of action between the original parties or those in privity” and bars “*not only those matters actually litigated but also those which might have been litigated in the first proceeding.*” *Goldkind v. Snider Bros., Inc.*, 467 A.2d 468, 473 n.10, 474 (D.C. 1983). With this legal backdrop in mind, the Court summarizes Sun’s arguments.

Much of Petitioner’s briefing seemingly argues the merits of her underlying claims already adjudicated by the District Court; the merits of these claims are not at issue in this petition. Otherwise, Sun argues that the District Court lacked jurisdiction over her claims, such that the doctrine of *res judicata* does not apply to preclude her from bringing similar claims before the OEA. Sun contends that the “CMPA provides the sole remedy for the wrongful termination claim which includes the whistleblower claim” and that “[i]f this Court finds the U.S. [D]istrict [C]ourt lacked jurisdiction over the state law claims, then *res judicata* and collateral estoppel do not apply.” Mem. at 6. In her Reply, Sun further argues “without original jurisdiction the [F]ederal [C]ourt had no supplemental jurisdiction ...” and, therefore, *res judicata* would not apply.

OTA argues that “Petitioner’s OEA Appeal was a clear attempt to re-litigate her claims regarding her termination from OTA” and refutes Sun’s arguments that the District Court erred and lacked jurisdiction. OTA notes that the District Court “exercised supplemental jurisdiction over [Sun’s] non-federal claims at [Sun’s] behest.” Opp’n at 15 (citing Sun’s Second Am. Compl. in the 2012 Action, R. at 16). OTA argues that it is “undisputed that the Federal District Court had jurisdiction over [Sun’s] Title VII claim” and that this federal question jurisdiction

therefore gave the court authority to “exercise supplemental jurisdiction over related state and common law claims.” OTA argues that because the District Court had jurisdiction to hear Sun’s claims, that adjudication has *res judicata* effect and precludes Sun from pursuing the same claims before OEA.

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The gravamen of the petition is whether OEA erred in holding that the District Court case precluded Sun’s claims before OEA either (1) on *res judicata* or collateral estoppel grounds, or (2) pursuant to D.C. Code § 1-615.54 (b). The Court finds that OEA did not err in so holding with respect to Sun’s retaliation claim, but remands the case to OEA to evaluate in the first instance Sun’s claim based on alleged violations of personnel regulations.

Any claim Sun could have brought in the District Court cannot be brought before the OEA, pursuant to the doctrine of *res judicata*. The District Court’s decision constitutes a “prior judgment on the merits” of an action litigated by the same parties in this action. (Indeed, it appears that the District Court afforded Sun ample opportunity to litigate her claims on their merits, and even took the extraordinary step of appointing counsel for the limited purpose of assisting Sun in drafting her pleadings). The District Court clearly had jurisdiction over Sun’s federal claims, and exercised supplemental jurisdiction over the related state law claims at Sun’s request pursuant to 28 U.S.C. § 1367 (a). Therefore, the doctrine of *res judicata* applies to bar “not only those matters actually litigated but also those which might have been litigated in the first proceeding.” *Goldkind v. Snider Bros., Inc.*, 467 A.2d 468, 473 n.10, 474 (D.C. 1983).

Importantly, however, as the Circuit Court noted, with respect to Sun’s “claim of wrongful termination in violation of public policy”:

the parties now agree that appellant was not an at-will employee. Thus, the common law claim of wrongful termination in violation of public policy is

unavailable, and the District of Columbia Comprehensive Merit Personnel Act provides her sole remedy. *See Lewis v. D.C. Dep't of Motor Vehicles*, 987 A.2d 1134, 1137 (D.C. 2010).

R. at 35; *Sun v. District of Columbia Gov't*, 686 F. App'x 5 (D.C. Cir. 2017). In *Lewis*, which the Circuit Court cited, the Court of Appeals held that a common law claim of “wrongful discharge” brought in the Superior Court was preempted by the CMPA and that the former employee’s “sole recourse to challenge his termination was by appeal to the OEA, with judicial review by the Superior Court ....” *Lewis*, 987 A.2d at 113; *see also* D.C. Code § 1-606.03 (a) (“An employee may appeal ... an adverse action for cause that results in removal ... to the [OEA] ....”). The *Lewis* Court held that the “Superior Court had no jurisdiction” to address the former employee’s common law wrongful termination claim. *Id.*<sup>3</sup>

Applied to this case, the holding in *Lewis* implies that the District Court had no jurisdiction to address any claim preempted by the CMPA; if the District Court lacked jurisdiction to hear such a claim, then the pursuit of such a claim before the OEA is not barred by the doctrine of *res judicata*. OEA considered Sun to be challenging her termination as “retaliatory and in violation of the public policy of the DC government.” ID at 5 (apparently quoting the petition Sun submitted to the OEA, reported at R. 4). It is apparent that Sun’s challenge of the termination as “retaliatory” is a reiteration of a claim she pursued before the District Court, “Count II – Retaliation in Violation of the District of Columbia Whistleblower Protection Act.” Persuasive authority, which this Court finds compelling, provides that the CMPA does not preempt claims brought under the DC Whistleblower Protection Act and that the

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<sup>3</sup> The CMPA does not preclude District employees from pursuing judicial relief for federal claims, such as the title VII claims at issue in the District Court Action. *Kelley v. District of Columbia*, 893 F. Supp. 2d 115, 119 n.1 (D.D.C. 2012); *Dickerson v. District of Columbia*, 70 F. Supp. 3d 311, 320 (D.D.C. 2014). Thus, the fact that Sun is subject to the CMPA did not preclude her from filing her federal claims and does not mean that the District Court lacked jurisdiction over those claims. Similarly, the CMPA does not preempt challenges based on alleged unlawful discrimination. *King v. Kidd*, 640 A.2d 656, 664 (D.C. 1993).

District Court may validly exercise jurisdiction over such a claim brought by an employee covered by the CMPA. *See, e.g., Sharma v. District of Columbia*, 791 F. Supp. 2d 207, 216-17 (D.D.C. 2011); *Owens v. District of Columbia*, 923 F. Supp. 2d 241, 248-49 (D.D.C. 2013). Thus, the District Court had jurisdiction to hear Sun's retaliation claim and she is barred from pursuing such a claim before OEA.

The Court understands Sun's claim that she was terminated "against the public policy of the DC Government" to be a challenge to her termination under the CMPA. Indeed, regulations promulgated pursuant to the CMPA require that a summary removal notice state "[s]ufficient facts relied upon by the agency head to support the action[]," 16 DCMR 1616.3 (a), and the petition Sun filed before the OEA alleged that her "Summary Removal Directive contained no facts to support the allegations." R. at 5 (Sun's filing before the OEA); R. at 12 (February 21, 2012 Summary Removal Directive stating that a "written summary removal notice will be sent to you" stating the reasons for the removal within three days); R at 167-75 (February 24, 2012 Written Summary Removal Notice). Such a claim alleging violation of the CMPA could not have been pursued in the District Court Action, *Lewis*, 987 A.3d at 1137, and therefore Sun is not precluded by *res judicata* from pursuing this claim before OEA. Thus, OEA's finding that *this* claim was precluded was erroneous as a matter of law.

The OEA also held that "D.C. Code § 1-615.56(a) clearly and unequivocally precludes her appeal to this Office." Under that election of remedies provision, "institution of a civil action pursuant to [D.C. Code] § 1-615.54 shall preclude an employee from pursuing any administrative remedy for the same cause of action from the Office of Employee Appeals ...."<sup>4</sup> D.C. Code § 1-615.54 states that an "employee aggrieved by a violation of [D.C. Code] § 1-615.53 may bring a

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<sup>4</sup> The Council added this provision with the Whistleblower Protection Amendment Act of 2009, which the Council passed as Act 18-0265 in 2010.

civil action against the District ....” In turn, D.C. Code § 1-615.53 prohibits a supervisor from taking “a prohibited personnel action or otherwise *retaliat[ing]* against an employee because of the employee’s protected disclosure or because of an employee’s refusal to comply with an illegal order.” In other words, an employee may elect to file a civil action alleging retaliation, and the filing of such an action precludes the employee from pursuing an administrative claim for the same cause of action before OEA. Thus, Sun’s filing of a claim for retaliatory termination in the District Court precluded her from filing the same claim with OEA. The Court, therefore, affirms OEA’s holding that any claim *for retaliation* was barred by *res judicata* and pursuant to D.C. Code § 1-615.56 (a).

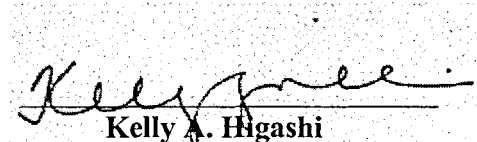
For the reasons stated above, the Court reverses OEA’s dismissal of the petition in part, and remands the petition to OEA to address Sun’s CMPA claim. The Court expresses no opinion on whether the nine page February 24, 2012 Written Summary Removal Notice complies with the requirements of 16 DCMR 1616.3 (a), or whether any alleged violation of that regulation actually harmed Sun, as it falls to OEA to make such determinations in the first instance. To be clear, on remand, OEA will only consider Sun’s allegation that her employer violated 16 DCMR 1616.3 (a), and Sun’s arguments should address this and only this topic.

Accordingly, it is this **9th** day of **October, 2019**, hereby

**ORDERED** that Linda Sun’s Amended Petition for Review of the Office of Employee Appeals’ October 13, 2017 Decision is **GRANTED IN PART**; and it is further

**ORDERED** that the October 13, 2017 Decision is **REVERSED IN PART** and **REMANDED** for further proceedings consistent with this **ORDER**; and it is further

**ORDERED** that this matter is **CLOSED**.



Kelly A. Higashi  
Associate Judge  
(Signed in Chambers)

**COPIES TO:**

Ryan Donaldson  
Andrea Comentale  
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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**D.C. DEPARTMENT ON DISABILITY  
SERVICES**

**Petitioner,**

**v.**

**DISTRICT OF COLUMBIA OFFICE  
OF EMPLOYEE APPEALS  
Respondent,**

**&**

**CHARIS TONEY**

**Intervenor.**

**Case No. 2018 CA 002192 P(MPA)**

**Judge John M. Campbell**

**ORDER**

This is before the Court on the District of Columbia Department on Disability Services' Petition for Review of Agency Decision, pursuant to Super. Ct. Agency Rev. R. 1. For the reasons stated below, the Court **VACATES** and **REVERSES IN PART** the decision of the District of Columbia Office of Employee Appeals.

**I. BACKGROUND**

Intervenor Charis Toney ("Ms. Toney") began working at the District of Columbia Department on Disability Services ("DDS" or "Petitioner") as a Vocational Rehabilitation Specialist on February 10, 2014. R. at 109. On September 24, 2015, Ms. Toney submitted a D.C. Government Family and Medical Leave Application Form requesting 160 hours of Paid Family Leave ("PFL"), from November 10, 2015 to December 10, 2015. R. at 77. Ms. Toney submitted the form to Rachel Phillips, the DDS Human Resources Specialist, who was responsible for

processing PFL and Family Medical Leave Act (“FMLA”) applications. R. at 571-593. As PFL is used when an employee is caring for a family member, Ms. Phillips instructed Ms. Toney to specify to whom care would be provided and an estimated time of leave needed. R. at 571-643. In Section II of the form, Ms. Toney indicated that she would be caring for her mother, Karen B. Toney, and stated that she would provide “as much care as needed for as long as needed.” R. at 78.

Section III of the application form was required to be completed by the patient’s healthcare provider. R. at 79. Dr. Abbaa Sarhan, MD, one of Ms. Toney’s physicians at Columbus Fertility Associates (“CFA”), completed Section III of the form. *Id.* The form indicated that the patient would undergo surgery on November 10, 2015, and stated that the patient would be recovering from surgery from November 10, 2015, to December 10, 2015. R. at 78-81. A section asking whether the patient would require care on an intermittent or reduced schedule basis, including recovery time, was marked “yes.” R. at 80. Section III of the form was signed by Dr. Sarhan and dated November 2, 2015, and a copy of the form was submitted to DDS on or around the same day. R. at 587.

On November 6, 2015, Ms. Toney contacted Ms. Phillips to ask about the status of her PFL application. R. at 84, 590-93. On November 9, 2015, when Ms. Phillips learned that Ms. Toney had surgery the next day, Ms. Phillips noted a discrepancy in Ms. Toney’s PFL request and asked Ms. Toney if the requested leave was for herself or for her mother. *Id.* Ms. Phillips conferred with her supervisor, Gria Hernandez, and contacted Ms. Toney’s doctor’s office. R. at 961. The doctor’s office informed DDS that Ms. Toney, rather than her mother, was receiving care. *Id.* Ms. Hernandez then informed Ms. Toney that PFL cannot be used for one’s self, and Ms. Phillips voided Ms. Toney’s PFL application form R. at 77, 578. Later that day (November

9), Ms. Toney submitted a D.C. FMLA form for a “personal health condition,” seeking to use sixty hours of annual leave and sixty hours of sick leave. R. at 87. This FMLA application included the Section III medical certification completed by Dr. Sarhan, and was signed by Ms. Phillips on November 12, 2015. R. at 88, 89-92. DDS sent Ms. Toney a letter approving her application for medical leave under the District of Columbia Family and Medical Leave Act of 1990 (“DCFMLA”) from November 10 until December 10, 2015. R. at 93-94. The letter also instructed Ms. Toney to submit a return to work letter from the same physician who certified her DCFMLA absence. *Id.*

Upon her return to work on December 8, 2015, Ms. Toney emailed Ms. Phillips the required return to work notice, signed by Dr. Safa Rifka, Ms. Toney’s primary care physician at CFA. R. at 103. After contacting CFA directly to obtain original copies of both the Section III medical certification and the return to work notice, Ms. Phillips and Ms. Hernandez noted discrepancies between the forms directly from CFA and the forms Ms. Toney submitted to DDS. R. at 604-612. On the Section III medical certification completed by Dr. Sarhan, the end date for the period of incapacity had been changed from November 17, 2015 in the original form to December 10, 2015 in the form submitted to DDS. R. at 80, 106. Further, medical facts in the Section III form submitted to DDS were whited-out, and the original form from CFA indicated that Ms. Toney would *not* need care on an intermittent or reduced schedule basis, contrary to the submitted form. R. at 79-80, 105-106 (emphasis added). On the return to work form completed by Dr. Rifka, the original form stated that Ms. Toney would be under her physician’s care from November 10 to December 1, 2015. R. at 108. However, the return to work form submitted by Ms. Toney to DDS indicated that she was under her physician’s care from November 10 to December 8, 2015. R. at 103.

Ms. Hernandez began an investigation against Ms. Toney on February 11, 2016, based on the allegation that “[Ms. Toney] appears to have forged the medical certification page of her FMLA application.” R. at 109, 662. After interviewing Ms. Toney and reviewing all forms associated with her FMLA application, Ms. Hernandez concluded in the “Record of Supervisory Investigation/Inquiry and Recommendation(s) for Action Re: Charis Toney” that Ms. Toney had fraudulently altered the Section III medical certification and the return to work notice, and recommended a thirty-day suspension. R. at 109-110. On March 7, 2016, Ms. Hernandez notified Ms. Toney of her upcoming suspension with a written Advance Written Notice of Proposed Suspension of 30 Days (“Advance Notice”). R. at 142-47. The Advance Notice identified three charges of adverse action under Section 1605.4(b) of Chapter 16 of the District Personnel Manual (“DPM”):

- (1) False Statements, including: Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter (“Charge One”). *See* § 1605.4(b)(2).
- (2) False statements, including: Knowingly and willfully reporting false or misleading information or purposefully omitting material facts to any supervisor (“Charge Two”). *See* § 1605.4(b)(4).
- (3) Unauthorized absences of five (5) workdays or more (“Charge Three”). *See* § 1605.4(f)(2).

The Advance Notice explains that Charge One was brought because “the dates on both the [Section III] medical certification and the return to work notice were changed,” and because Ms. Toney admitted to “whiting out and changing the forms on at least two occasions prior to submitting them.” R. at 142-43. Charge Two is based on Ms. Toney’s “false statements during the course of the [DDS] investigation;” Ms. Toney “denied forging the documents,” and when confronted with evidence of the altered forms, she “insisted that [she] did not know why the dates were different.” R. at 144. On May 5, 2016, Deborah Bonsack, DDS Deputy Director of Administration, issued a Final Decision on the Proposed Suspension of 30 days (“Final

Decision”). In the Final Decision, Ms. Bonsack sustained Charges One and Two and the proposed thirty-day suspension, and dismissed Charge Three on unauthorized absences.

On June 8, 2016, Ms. Toney appealed the Final Decision to OEA. R. at 186-234. The matter was assigned to an administrative judge (“ALJ”), who reviewed the parties’ supplemental briefs and held an Evidentiary Hearing on October 27, 2017. R. at 451, 458. On February 21, 2018, the ALJ issued an Initial Decision that reversed DDS’ fifteen-day suspension under Charge One and upheld the fifteen-day suspension under Charge Two. R. at 971-72. With respect to Charge One, the ALJ considered testimony from Dr. Rivka, in which he stated that he had verbally given Ms. Toney permission to extend her return to work until December 8, 2015, and redact any information that might violate her privacy protections. R. at 970. Therefore, because Ms. Toney had authorization to alter her return to work notice, the ALJ found that DDS had failed to meet its burden of proof by a preponderance of the evidence on Charge One. *Id.* Conversely, the ALJ found that Dr. Sarhan had not given Ms. Toney verbal consent to change medical incapacity dates on the Section III form, and found that DDS had not met its burden of proof on Charge Two. *Id.* The ALJ thus appears to have read Charge One as pertaining to the return to work notice, and Charge Two as pertaining to the Section III medical certification of the original PFL application. DDS subsequently appealed the Initial Decision to this Court.

## **II. STANDARD OF REVIEW**

The Superior Court has jurisdiction to review a final decision of a District of Columbia agency. *See* Super Ct. Agency Rev. R. 1. The Court is prohibited from substituting its judgment for that of the agency. *Kegley v. District of Columbia*, 440 A.2d 1013, 1018 (D.C. 1982) (citing *Jones v. Police and Firemen’s Retirement and Relief Board*, 375 A.2d 1 (D.C. 1977)). Rather, the Court generally gives deference to decisions rendered by administrative agencies. *Am. Broad.*

*Cos., Inc. v. District of Columbia Dep't of Employment Servs.*, 822 A.2d 1085, 1088 (D.C. 2003) (citing *Springer v. District of Columbia Dep't of Employment Servs.*, 743 A.2d 1213 (D.C. 1999)). This is done by examining the administrative record “to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the agency, or if the action is in some manner otherwise arbitrary, capricious, or an abuse of discretion.” *Kegley*, 440 A.2d at 1019. Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 183 (D.C. 2009) (citing *Rodriguez c. Filene's Basement Inc.*, 905 A.2d 177, 180-81 (D.C. 2006)).

Further, it is not the Court's function to retry the facts or rehear the evidence. *Hahn v. Univ. of the Dist. Of Columbia*, 789 A.2d 1252, 1256 (D.C. 2002) (quoting *Shephard v. District of Columbia Dep't of Employment Servs.*, 514 A.2d 1006, 1010 (D.C. 1986)). The Court will normally defer to the agency's decision, if the findings flow “rationally from the facts” and are “supported by substantial evidence.” *Am. Broad. Cos., Inc.*, 822 A.2d at 1089 (citing *Washington Post Co. v. District Unemployment Compensation Bd.*, 377 A.2d 436, 439 (D.C. 1977)).

### III. ANALYSIS

This Court finds that the OEA's Initial Decision is not supported by substantial evidence in the record. Therefore, the Initial Decision should be vacated and reversed as to Charge One, and the associated fifteen-day suspension should be reinstated.

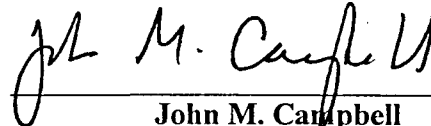
Petitioner argues that OEA erred in relying solely on Dr. Rifka's testimony in finding that DDS did not have cause with respect to Charge One against Ms. Toney. Pet'rs Br. 10. This Court agrees. Though Ms. Toney argues in the Intervenor's Brief that “[Charge One] is premised upon [Ms. Toney's] admitted alteration of dates on the return to work notice and [Charge Two] is

premised upon the medical incapacitation date change in Section III of [Ms. Toney's] medical form," this argument is not supported by the evidence in the record. Opp'n 10. In the Advance Notice informing Ms. Toney of the charges brought against her, Charge One, "making false statements of a material fact on an official matter," was explicitly based upon Ms. Toney's alteration of dates "on both the [Section III] medical certification and the return to work notice." R. at 142-43. Charge Two, "making false statements to any superior," was not based upon Ms. Toney's alteration of the two forms, but on her alleged "false statements during the course of the [DDS] investigation." R. at 144.

In the Initial Decision, the OEA only considered the return to work notice when analyzing Charge One, and found that DDS had not met its burden of proof for that cause of action because Dr. Rifka had given Ms. Toney permission to alter the form. R. at 964, 969-970. Further, the OEA only considered the Section III medical certification with regard to Charge Two, and affirmed DDS' decision on that cause of action because Dr. Sarhan did not give Ms. Toney permission to alter the certification. R. at 963, 970. The OEA's finding on Charge One does not flow "rationally from the facts" in the record. *Am. Broad. Cos., Inc.*, 822 A.2d at 1089 (citing *Washington Post Co.* 377 A.2d at 439). The Advance Notice clearly indicates that Charge One was brought pursuant to Ms. Toney's alteration of *both* forms, and the record evidence shows that Ms. Toney did not have permission to alter the Section III medical certification. R. at 142-43, 963. This Court finds that the OEA should have considered Ms. Toney's alteration of both forms when ruling on Charge One, and therefore should have found that DDS met its burden of proof by a preponderance of the evidence on that cause of action. Therefore, because the OEA's finding on Charge One is unsupported by substantial evidence, it is this 1<sup>st</sup> day of November, 2019, hereby

**ORDERED**, that the decision of the District of Columbia Office of Employee Appeals is  
**VACATED** and **REVERSED IN PART** as to Charge One; and it is further

**ORDERED**, that the Status Hearing scheduled for November 8, 2019 is **VACATED**.

  
\_\_\_\_\_  
**John M. Campbell**  
Associate Judge

Copies to:

Andrea Comentale, Esq.  
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Lakesha Brown Bassey, Esq.  
Raymond Fay, Esq.  
Janea Hawkins, Esq.  
*ViaCaseFileXpress*



**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 17-CV-253

HAROLD DARGAN, APPELLANT,

v.

D.C. OFFICE OF EMPLOYEE APPEALS, ET AL., APPELLEES.

Appeal from the Superior Court  
of the District of Columbia  
(CAP8873-15)

(Hon. Maurice A. Ross, Trial Judge)

(Argued November 13, 2019)

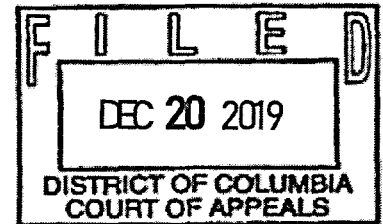
Decided December 20, 2019)

Before BECKWITH and EASTERLY, *Associate Judges*, and RUIZ, *Senior Judge*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Harold Dargan was removed from his position as a D.C. Fire and Emergency Medical Service Department (“FEMS”) Basic Paramedic, Series DS699, Grade 8, for failing to maintain his D.C. Department of Health (“DOH”) certification as required by FEMS Bulletin No. 83. On review of that decision, the Office of Employee Appeals (“OEA”) Administrative Law Judge (“ALJ”) concluded that FEMS (1) complied with the ninety-day time limit for commencing a corrective or adverse action against an employee under D.C. Code § 5-1031(a) (2019 Repl.); and (2) removed Mr. Dargan from service “in accordance with applicable law, rule, or regulation,” which the OEA identified as encompassing the certification testing requirements of Bulletin No. 83. Mr. Dargan sought review of that decision from the Superior Court and now appeals to this court. We reverse and remand.

We review an OEA ALJ’s decision as though the appeal was brought directly to us. *Jahr v. District of Columbia Office of Emp. Appeals*, 19 A.3d 334, 340 (D.C. 2011). “An OEA decision must state findings of fact on each material contested factual issue” and “those findings must be supported by substantial evidence.” *Id.* (internal quotation marks omitted). The “OEA’s conclusions of law



must follow rationally from its findings” and may be reversed only if they are “arbitrary, capricious, or an abuse of discretion.” *Id.* (internal quotation marks omitted).

Mr. Dargan challenges both the OEA ALJ’s procedural and substantive rulings. For reasons we will explain, we consider the OEA ALJ’s substantive ruling first. The OEA ALJ determined that FEMS terminated Mr. Dargan “in accordance with applicable law, rule, or regulation” because (1) Bulletin No. 83 requires that all FEMS Emergency Medical Technicians (“EMTs”) “maintain their certification by the National Registry of EMTs [(“NREMT”)]”; (2) the NREMT “certification exam requires passage of psychomotor (practical skills) examination”; (3) Bulletin No. 83 allows EMT-Intermediate/99 candidates “three full attempts to pass the psychomotor examination” of the NREMT exam; and (4) Mr. Dargan failed the psychomotor examination on September 28, 2011, February 2, 2012, and February 14, 2012.

To begin with, it is far from clear that substantial evidence supports the OEA’s determination that Mr. Dargan was administered the psychomotor exam of the NREMT on any of the three dates specified by the OEA.<sup>1</sup> But even if it had been, it is unclear why such testing would be relevant to this case, where Mr. Dargan was terminated, not for failing to maintain his NREMT certification (which, as the OEA ALJ found, was still current at the time of his termination), but rather for failing to maintain his DOH certification, which presumably has different procedures and requirements. Bulletin No. 83, entitled “National Registry of EMTs (“NREMT”) Certification Policy,” issued in 2010, set forth the procedures for the new obligation adopted in 2009 for all emergency services providers to maintain NREMT certification in addition to DOH certification: “All

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<sup>1</sup> The record includes no documentation from a September 28, 2011 “examination,” and in the parties’ Joint Statement of Agreed Upon Material Facts, they state only that on September 28, 2011, “the Medical Director [of FEMS] evaluated the Employee,” “checked the box ‘Return to Mentor,’” and “not[ed] ‘Close eval of ability to function in field. Need FISDAP for full release. Re-assessment. Will always []be ACA only under new paramedic partner.’” Likewise, the documentation of the “interviews” from February 2 and 14, 2012, gives no indication that they were in connection with the NREMT exam. Neither Mr. Dargan’s final decision of termination nor his advance notice indicated that NREMT testing was conducted on any of these dates.

DC Fire and EMS Department employees will be required to . . . maintain both National Registry certification and District of Columbia (D.C. Department of Health) certification.” But the testing procedures of Bulletin No. 83 by their plain language apply only to the former certification, not the latter: Bulletin No. 83 explains that FEMS “will make reasonable efforts to ensure that each employee will complete the National Registry certification process” within a certain timeframe and then details the “components” of the NREMT examination—the cognitive (written) examination and the psychomotor (practical skills) examination—and the “policies” for the administration of these components.<sup>2</sup>

Remand is required to determine (1) what procedures, if any, should have been followed to deny Mr. Dargan DOH recertification before terminating Mr. Dargan for not having a current DOH certification,<sup>3</sup> and (2) whether these

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<sup>2</sup> It is additionally unclear whether Bulletin No. 83’s testing procedures apply to NREMT recertification, but we need not resolve that question in this case since, as noted above, Mr. Dargan’s NREMT certification was current.

<sup>3</sup> By turning to and applying the process articulated in Bulletin No. 83, the OEA ALJ apparently thought Mr. Dargan could not be terminated unless some procedure had been followed to deny him DOH recertification. Perhaps Bulletin No. 83’s requirements regarding NREMT certification procedures also apply to DOH recertification. But if that is the case, the OEA needs to explain why this is so. Alternatively, it may be that there is another source of authority governing DOH recertification. Possible candidates are D.C. Code § 7-2341.15(b) (2018 Repl.) (authorizing the mayor, “subject to the right to a hearing as provided in § 7-2341.17” to deny, *inter alia*, “renewal of . . . a certification to perform duties of emergency services personnel” in enumerated circumstances), and the relevant regulations regarding EMS recertification, *see generally* 29 DCMR §§ 500–599 (2019), in particular 29 DCMR § 563.17(z) (“Sufficient grounds for denial, suspension, or revocation of certification granted to an emergency medical services provider . . . shall include: Withdrawal of sponsorship by the sponsoring medical director.”). The OEA ALJ did not reference these statutory and regulatory provisions, but Mr. Dargan did allude to them in his brief to the OEA ALJ. While focusing on Bulletin No. 83 above the line, in a footnote, he stated that:

The DOH has instituted a complex appeals process if it denies certification or recertification, but it is doubtful (1) it would be permitted in the case of the District of Columbia for the reasons

(continued...)

procedures were followed in Mr. Dargan's case.<sup>4</sup> Because the answer to these questions could impact whether Mr. Dargan was given proper notice of an adverse action under D.C. Code § 5-1031, i.e., whether FEMS denied him notice of a decision not to recertify him, if he was entitled to such separate notice, we remand that issue to the OEA as well.<sup>5</sup>

For the foregoing reasons, we vacate the judgment and remand the case to the Superior Court with directions to remand it to OEA for further proceedings consistent with this order.

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(...continued)

discussed above and (2) it would provide meaningful review in the circumstances existing here. 29 DCMR 564[.]

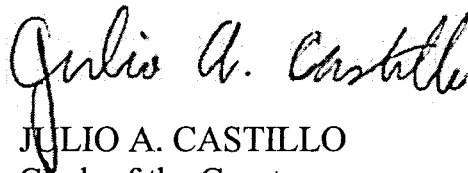
The meaning and import of this footnote is unclear to us and may be explored on remand.

<sup>4</sup> Mr. Dargan represented in his brief to the OEA ALJ that he had submitted his DOH certification application on May 30, 2012. Pursuant to 29 DCMR § 521.1, such applications must be submitted to the Medical Director. As noted above, see *supra* note 3, the decision by a medical director to withdraw sponsorship appears to be possible grounds for “denial, suspension, or revocation” of DOH certification. 29 DCMR § 563.17(z). But here, a July 3, 2012, letter from DOH to the Medical Director states that Mr. Dargan's DOH certification had lapsed on June 30, 2012, “with no application of renewal pending.” Assuming the FEMS Medical Director did not transmit Mr. Dargan's DOH recertification application to DOH, the question is whether he had acted within his authority to withhold Mr. Dargan's application or whether he should have nonetheless submitted Mr. Dargan's application to DOH. As a factual matter, there is no information in the record about if, when, or why a decision was made not to transmit Mr. Dargan's application to DOH, although there is ample evidence that the FEMS Medical Director was dissatisfied with Mr. Dargan's skills before his DOH certification lapsed. Adding to the mystery, the Medical Director requested that DOH *decertify* Mr. Dargan on June 25, 2012, giving the impression that he did not anticipate the expiration of Mr. Dargan's DOH certification five days later on June 30, 2012.

<sup>5</sup> We agree that if FEMS's notice obligation was not triggered until the date Mr. Dargan's DOH certification lapsed, then FEMS's notification was timely under the statute.

*It is so ordered.*

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

Copies to:

Honorable Maurice A. Ross

Director, Civil Division  
QMU

Copies e-served to:

Frederic W. Schwartz, Jr., Esquire

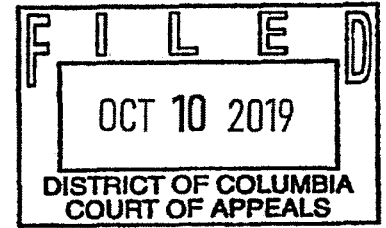
Sheila G. Barfield, Esquire  
DC Office of Employee Appeals

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Loren L. AliKhan, Esquire  
Solicitor General for DC

James C. McKay, Jr., Esquire  
Senior Assistant Attorney General- DC

**District of Columbia  
Court of Appeals**



No. 17-CV-872

YORDANOS SIUM,

Appellant,

v.

**CAP4119-16**

OFFICE OF THE STATE  
SUPERINTENDENT OF EDUCATION,

Appellee.

On Appeal from the Superior Court of the District of Columbia  
Civil Division

BEFORE: Glickman and Easterly, Associate Judges, and Steadman, Senior Judge.

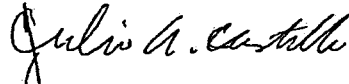
**J U D G M E N T**

This case came to be heard on the transcript of record and the briefs filed, and it was argued by counsel. On consideration whereof, and as set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED that the Office of Employee Appeals ("OEA") Boards' decision is vacated and this matter is remanded to the OEA for further

proceedings consistent with this opinion.

For the Court:

A handwritten signature in cursive script, reading "Julio A. Castillo".

JULIO A. CASTILLO  
Clerk of the Court

Dated: October 10, 2019.

Opinion by Associate Judge Catherine Easterly

*Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.*

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 17-CV-872

YORDANOS SIUM, APPELLANT,

v.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, APPELLEE.

Appeal from the Superior Court  
of the District of Columbia  
(CAP-4119-16)

(Hon. Jeanette J. Clark, Associate Judge)  
(Hon. Robert R. Rigsby, Associate Judge)<sup>1</sup>

(Argued November 16, 2018)

Decided October 10, 2019)

*David A. Branch* for appellant.

*Lucy E. Pittman*, Assistant Attorney General, with whom *Karl A. Racine*, Attorney General for the District of Columbia, *Loren L. Alikhan*, Solicitor General,

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<sup>1</sup> This court has jurisdiction to review agency orders and decisions that are final. *District of Columbia Dep't of Emp't Servs. v. Vilche*, 934 A.2d 356, 358–59 (D.C. 2007). Although pursuant to D.C. Code § 1-606.03(d) (2016 Repl.) orders and decisions from the Office of Employee Appeals (“OEA”) are first reviewable by the Superior Court before they are reviewed by this court, the exclusive focus of our analysis in this opinion is the OEA Board’s order denying Ms. Sium’s petition for review.

FILED 10/10/2019  
District of Columbia  
Court of Appeals

*Julio Castillo*  
Julio Castillo  
Clerk of Court



and *Stacy L. Anderson*, Acting Deputy Solicitor General, were on the brief, for appellee.

Before GLICKMAN and EASTERLY, *Associate Judges*, and STEADMAN, *Senior Judge*.

EASTERLY, *Associate Judge*: Appellant Yordanos Sium challenges her termination for cause by the Office of the State Superintendent of Education (“OSSE”). We first conclude that Ms. Sium’s failure to file an appeal to the Office of Employee Appeals (“OEA”) within thirty days, as specified in D.C. Code § 1-606.03(a) (2016 Repl.), did not deprive OEA of jurisdiction to hear her case. We further conclude that, because the OEA Administrative Law Judge (“ALJ”) decided not to conduct an evidentiary hearing even though the parties’ briefing disputed material facts, the OEA Board abused its discretion in denying Ms. Sium’s petition for review. We therefore vacate and remand.

## I.

Ms. Sium worked as a school bus driver for OSSE. In January 2011, her bus made contact with an illegally parked vehicle. She did not exit her bus and instead left the scene. The incident, which was recorded on videotape, was reported to OSSE, and an investigator interviewed Ms. Sium the following day. According to the investigator’s report, Ms. Sium initially told the investigator that she had not made contact with the illegally parked vehicle, but after the investigator informed

her that she had been seen making contact, she “changed her story” and apologized. OSSE cleared Ms. Sium to return to work about a week after the collision. Almost three months after the incident, OSSE sent Ms. Sium a notice of proposed termination.<sup>2</sup> It then informed Ms. Sium that she was terminated for cause in mid-April 2011.<sup>3</sup> By statute, Ms. Sium had thirty days to appeal her termination to OEA, *see* D.C. Code § 1-606.03(a), although OSSE did not specify this in its termination letter. Ms. Sium filed her pro se appeal in August 2013, using what appears to be an OEA form. No question on the form asked if Ms. Sium wanted an evidentiary hearing.

OSSE moved to dismiss Ms. Sium’s OEA appeal, asserting her failure to file within the requisite thirty-day timeframe deprived OEA of jurisdiction. The OEA ALJ did not explicitly rule on this motion and instead ordered briefing on the merits. In its brief, OSSE explained that the Division of Transportation had justifiably terminated Ms. Sium after “conclud[ing] that Ms. Sium’s behavior, including hitting a parked car, fleeing the scene, and lying to the investigator,

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<sup>2</sup> The notice stated that the proposed termination was for “Neglect of Duty—failure to follow instructions or observe precautions regarding safety; failure to carry out assigned tasks; careless or negligent work habits.” It provided no additional detail.

<sup>3</sup> The April notice repeated the language in the March notice regarding the reason for Ms. Sium’s termination.

presented a threat to the efficiency and discipline of the school system.” The agency also asserted that this was Ms. Sium’s second “preventable” collision within twelve months, although it provided no detail about the earlier incident and engaged in no analysis of why either collision was, in its view, “preventable.” In her pro se brief in response, Ms. Sium argued *inter alia* that OSSE had “cleared” her after the January 2011 collision and permitted her to return to work. She further asserted that “[c]ritical facts” alleged by OSSE had not been “determined conclusively” in its investigation; in particular, she challenged the assertions that she had been aware of the collision at the time, that she had fled the scene, and that she had lied to the investigator. Instead, she asserted that she had accepted responsibility only after she was informed by the investigator that she had made contact with the other vehicle.

The OEA ALJ issued a written decision in October 2014 upholding Ms. Sium’s termination. In one sentence of her decision, the OEA ALJ acknowledged her ability to hold an evidentiary hearing, but stated that, “[a]fter considering the parties’ arguments,” she had determined that an evidentiary hearing was unnecessary.

Ms. Sium then filed pro se a petition for review with the OEA Board. Among other arguments, Ms. Sium asserted that there were disputed issues of fact and argued that the OEA ALJ had thus erred in her decision “not to conduct an [e]videntiary [h]earing.”<sup>4</sup> In its May 2016 order denying her petition for review, the OEA Board rejected this argument. The OEA Board “relie[d] on OEA Rule 624.2 which provides that ‘if the Administrative Judge grants a request for an evidentiary hearing, or makes his or her own determination that one is necessary, the Administrative Judge will so advise the parties . . . ,’” and concluded that “[t]hus, it is the Administrative Judge’s prerogative to hold an evidentiary hearing when it is deemed necessary.” Ms. Sium unsuccessfully sought review of the OEA Board’s decision in Superior Court. This appeal followed.

## II.

“This court reviews agency decisions on appeal from the Superior Court the same way we review administrative appeals that come to us directly. Thus, in the final analysis, confining ourselves strictly to the administrative record, we review the OEA [Board]’s decision, not the decision of the Superior Court . . . .” *Stevens*

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<sup>4</sup> Nothing in the record indicates that OSSE filed an opposition to Ms. Sium’s petition for review by the OEA.

*v. District of Columbia Dep't of Health*, 150 A.3d 307, 311–12 (D.C. 2016) (citation and internal quotation marks omitted). Before we may consider the OEA Board's decision in this case, however, we must address OSSE's challenge to OEA's jurisdiction.

OSSE asks us to conclude that the thirty-day deadline to file an appeal with the OEA, contained in D.C. Code § 1-606.03(a), is jurisdictional. If OSSE is correct, OEA never should have heard this case, and we should remand to OEA to dismiss this appeal. *See Hamer v. Neighborhood Hous. Servs.*, 138 S. Ct. 13, 17 (2017) (“[A party’s f]ailure to comply with a jurisdictional time prescription . . . deprives a court of [its power to hear a] case, necessitating dismissal—a drastic result” (internal quotation marks omitted)). But as we explained in *Mathis v. District of Columbia Hous. Auth.*, 124 A.3d 1089, 1102 (D.C. 2015), not all filing deadlines are jurisdictional. Indeed, following Supreme Court precedent, we presume they are not and treat these deadlines as waivable claim-processing rules. *Id.* at 1101, 1102 (explaining our “bright line default is that procedural rules, even those codified in statutes, are nonjurisdictional in character” (internal quotation marks and citation omitted)).

The presumption that a filing deadline is a claim-processing rule may be rebutted if certain criteria are fulfilled. *See Mathis*, 124 A.3d at 1102. If a deadline is contained in a statute—not a court rule or a regulation—and its language is mandatory, it may be jurisdictional. *Id.* at 1101–02. Section 1-606.03(a), stating that “[a]ny appeal *shall* be filed within 30 days of the effective date of the appealed agency action,” meets both these requirements. D.C. Code § 1-606.03(a) (emphasis added). As our cases and Supreme Court precedent make clear, however, more is required.<sup>5</sup> For a filing deadline to be deemed a jurisdictional bar, the “traditional tools of statutory construction” must also make clear that the legislature intended it to serve this purpose. *Mathis*, 124 A.3d at 1102 (internal quotation marks omitted); *see, e.g., Hamer*, 138 S. Ct. at 20 n.9; *Kwai Fun Wong*, 135 S. Ct. at 1632–33. Here, we see no indication<sup>6</sup> that the D.C.

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<sup>5</sup> The Supreme Court has considered comparable statutory language and repeatedly concluded that it announces a claim-processing rule. *See, e.g., United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 1630–33 (2015) (holding that the filing deadlines in 28 U.S.C. § 2401(b), which provides that “a tort claim against the United States shall be forever barred unless it is presented to the agency [within the specified time period],” *id.* at 1632, are not jurisdictional); *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 438–41 (2011) (holding that the filing deadline in 38 U.S.C. § 7266(a), which states “a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days,” *id.* at 438, is not jurisdictional).

<sup>6</sup> OSSE agrees that a legislature “must do something special” to render a deadline a jurisdictional bar, *Mathis*, 124 A.3d at 1102 (quoting *Kwai Fun Wong*, 135 S. Ct. at 1632), and argues that the D.C. Council’s decision to locate the thirty-

(continued...)

Council affirmatively sought to curtail OEA's jurisdiction through D.C. Code § 1-606.03(a). Thus, we conclude that § 1-606.03(a)'s thirty-day deadline is not jurisdictional.

Although our holding means that OEA was not required to dismiss Ms. Sium's late-filed appeal outright, OEA was authorized to do so if OSSE "seasonably" objected to the untimeliness of Ms. Sium's filing as a defense. *Brewer v. District of Columbia Office of Emp. Appeals*, 163 A.3d 799, 802 & n.5 (D.C. 2017) (internal quotation marks omitted). OSSE did this. But it subsequently abandoned its objection;<sup>7</sup> and, having done so, it may not resurrect

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(...continued)

day deadline in § 1-606.03, a provision which OSSE claims contains other jurisdictional limitations, provides that indication. We are hesitant to adopt this characterization of these other provisions in § 1-606.03, which discuss the types of adverse actions that an employee can appeal, and we note that a separate subchapter, § 1-606.02, sets out the "authority" of the OEA. *See* D.C. Code § 1-606.02 (2016 Repl.) (providing that the OEA has the "authority" to adjudicate appeals, issue subpoenas, rules, and regulations, and require compliance with its orders, among others). In any event, we are unpersuaded by this proximity argument. "In characterizing certain requirements as nonjurisdictional, [the Supreme Court] ha[s] on occasion observed their separation from jurisdictional provisions. The converse, however, is not necessarily true: Mere proximity will not turn a rule that speaks in nonjurisdictional terms into a jurisdictional hurdle." *Gonzalez v. Thaler*, 565 U.S. 134, 146–47 (2012) (citations and internal quotation marks omitted).

<sup>7</sup> This conclusion can be reached by one of two routes. If, as OSSE seems to suggest, the OEA ALJ never ruled on OSSE's motion to dismiss, then OSSE's  
(continued...)

this defense in this court. *See, e.g., George Wash. Univ. v. Violand*, 940 A.2d 965, 977–78 (D.C. 2008). Thus, we need not decide if Ms. Sium’s appeal could or should have been dismissed on OSSE’s motion or whether the filing deadline should have been equitably tolled. Instead, we turn to the merits of Ms. Sium’s appeal.

### III.

Ms. Sium argues that the OEA Board’s decision was not supported by substantial evidence. Within this argument she makes a more fundamental claim: that the OEA ALJ was unable to base her factual findings on substantial evidence because she did not hold an evidentiary hearing to resolve disputed questions of material fact.

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(...continued)

“neglect [in] seek[ing] a ruling on [its] motion” resulted in its “fail[ure] to preserve the issue for appeal.” *Carter v. District of Columbia*, 980 A.2d 1217, 1226 (D.C. 2009) (internal quotation marks omitted). As we explained in *Carter*, this court “will excuse such a failure only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record.” *Id.* (internal quotation marks omitted). As in *Carter*, “[t]hose requirements are not met in this case.” *Id.* Alternatively, if the OEA ALJ denied OSSE’s motion when she acknowledged it in her order, nonetheless determined she had jurisdiction, and then ruled on the merits, OSSE abandoned this claim by failing to raise the issue—or even file a brief, *see supra* note 3—before the OEA Board.



We review an OEA decision to ensure it is not arbitrary, capricious, or an abuse of discretion. *District of Columbia Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 358 (D.C. 2005). For an OEA decision to pass muster, the agency “must state findings of fact on each material contested factual issue; those findings must be supported by substantial evidence in the agency record; and [its] conclusions of law must follow rationally from its findings.” *Rodriguez v. District of Columbia Office of Emp. Appeals*, 145 A.3d 1005, 1009 (D.C. 2016) (quotation marks omitted). “While it is the OEA [Board’s] final decision and not that of the [OEA] ALJ that may be reviewed by this court,” the OEA Board, and this court in turn, must accept the OEA ALJ’s findings of fact “unless they are not supported by substantial evidence.” *Colbert*, 874 A.2d at 358.

Ms. Sium, proceeding pro se, sought review from the OEA ALJ using a form that nowhere prompted her to indicate if she requested a hearing. Nevertheless, in her pro se filing, she disputed OSSE’s account of the school bus collision and of her response to questioning by the OSSE investigator. Among other things, Ms. Sium challenged OSSE’s assertion that security camera footage established that she was aware that her bus had hit the parked car and, by extension, knowingly left the scene, chose not to report the collision, and lied to the OSSE investigator. Moreover, after receiving the OEA ALJ’s decision, Ms.

Sium explicitly argued in her pro se petition to the OEA Board that the OEA ALJ should have held an evidentiary hearing because her disputes of fact were material to her appeal.<sup>8</sup>

The OEA Board rejected this argument on the ground that “it is the Administrative Judge’s prerogative to hold an evidentiary hearing when it is deemed necessary,” citing OEA Rule 624.2, 6-B DCMR § 624.2 (2012) (“If the Administrative Judge grants a request for an evidentiary hearing, or makes his or her own determination that one is necessary, the Administrative Judge will so advise the parties . . .”).<sup>9</sup> To the extent the OEA Board determined that the OEA ALJ has unfettered discretion to deny a petitioner a hearing, we cannot agree. To make findings regarding disputed facts in the absence of a hearing is the essence of arbitrary and capricious decision-making. *Compare Dupree v. District of*

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<sup>8</sup> Although Ms. Sium was less explicit in raising this issue in her pro se petition for review filed in Superior Court, asserting only that the OEA’s decision was not supported by substantial evidence, the OEA in its brief to this court has not argued that she abandoned this claim. It asserts instead that her argument that she was entitled to an evidentiary hearing before the OEA ALJ relates only to collateral matters, *see infra*.

<sup>9</sup> The OEA Board also cited to two prior decisions, but neither clearly support this broad proposition, and one of those decisions actually undermines the proposition by acknowledging that an ALJ should hold a hearing when material facts are in dispute. *See DuBuclet v. District of Columbia Pub. Sch.*, OEA Matter No. 2401-0245-10, at 6 (Dec. 17, 2013) (citing *Dupree v. District of Columbia Office of Emp. Appeals*, 36 A.3d 826 (D.C. 2011)).

*Columbia Office of Emp. Appeals*, 36 A.3d 826 (D.C. 2011) (remanding for an evidentiary hearing where OEA ALJ should have been aware there were material issues of disputed facts that needed to be resolved), *with Anjuwan v. District of Columbia Dep't of Pub. Works*, 729 A.2d 883, 885–86 (D.C. 1998) (affirming OEA ALJ's denial of an evidentiary hearing where, even after the ALJ ordered the parties to identify the issues, appellant made no mention of the issue he wished to be resolved at a hearing). Alternatively, to the extent the OEA Board implicitly determined that there were no material issues of disputed facts necessitating a hearing, the record does not support that determination.

OSSE now seeks to minimize as “collateral” the OEA ALJ's findings that Ms. Sium had both knowingly fled the scene of the collision and lied to an investigator. But these were the grounds for termination OSSE itself set forth in its brief to the OEA. And these were the grounds the OEA ALJ relied upon to support its determination that Ms. Sium had “neglected her duties” and could be terminated by OSSE. *See Jones v. District of Columbia Dep't of Emp't Servs.*, 519 A.2d 704, 709 (D.C. 1987) (observing that we limit our review of an agency's decision to the grounds the agency relied on at the time it made its decision). By contrast, the OEA ALJ made little mention of the ground that OSSE now asserts supported its termination decision—the fact that Ms. Sium had had two “preventable accidents.”

The OEA ALJ noted Ms. Sium's prior alleged collision only to explain that Ms. Sium, having previously been "in another accident," could be deemed to have been aware of the "Accident Policy as listed in the [Division of Transportation] policy and procedure manual" that required her to report the incident. The OEA ALJ did not independently analyze whether this incident or the earlier one was "preventable."<sup>10</sup>

For these reasons, we conclude the OEA Board abused its discretion in denying Ms. Sium's petition for review where the OEA ALJ decided this case without an evidentiary hearing.<sup>11</sup> We therefore vacate the OEA Board's decision

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<sup>10</sup> Whether an accident is "preventable" is determined by a special entity, the Accident Review Board. OSSE Div. of Transp. Policy & Proc. Manual § 207.1(E) (2010). The record before us does not include information about the Accident Review Board's assessment, if any, of either of Ms. Sium's two collisions.

<sup>11</sup> Ms. Sium's argument that she was denied due process when OSSE did not affirmatively arrange for a pre-termination hearing is without merit. The notice of proposed termination letter advised Ms. Sium that she had a right to request a pre-termination hearing, and Ms. Sium does not contend that she ever tried to avail herself of this process. *See Chase v. Pub. Def. Serv.*, 956 A.2d 67, 75 (D.C. 2008) ("Because [appellant] declined to take advantage of [an] opportunity [to appeal his termination to the Board of Trustees], he cannot demonstrate that he was deprived of due process.").

and remand this matter to the OEA for further proceedings consistent with this opinion.<sup>12</sup>

*So ordered.*

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<sup>12</sup> Because we conclude that vacatur and remand is in order we do not address Ms. Sium's claim that the OEA failed to consider lesser penalties.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 17-CV-246

BELYNDA ROEBUCK, APPELLANT,

v.

DISTRICT OF COLUMBIA OFFICE ON AGING, APPELLEE.

Appeal from the Superior Court  
of the District of Columbia  
(CAP-6472-15)

(Hon. Jennifer A. Di Toro, Trial Judge)

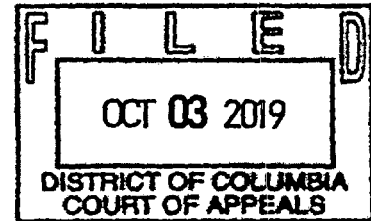
(Submitted May 10, 2018)

Decided October 3, 2019)

Before GLICKMAN and MCLEESE, *Associate Judges*, and NEBEKER, *Senior Judge*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Appellant, Belynda Roebuck, is an ex-employee of the Office on Aging. The Office terminated her upon finding she had broken the law while in its employ by falsely certifying she was out of work so she could collect unemployment compensation benefits. Her termination was upheld by the Office of Employee Appeals (OEA) and, on further review, by the Superior Court. But because the record fails to show that the Office on Aging properly considered relevant, mitigating factors in selecting the appropriate penalty to impose on Ms. Roebuck, as it was required to do under settled precedent, we must reverse the decision and remand for further proceedings.



## I.

Ms. Roebuck started working full-time at the Office on Aging on August 30, 2010. Due to an error in recording her start date in the payroll system, her initial paycheck was delayed, and she did not begin receiving her salary until October 5.<sup>1</sup>

Up until August 30, Ms. Roebuck was out of work and receiving unemployment compensation from the District's Department of Employment Services (DOES). For four weeks after she started working at the Office on Aging, on September 4, 11, 18, and 25, Ms. Roebuck continued to file for and collect unemployment compensation. In each filing, she falsely certified that she had not returned to work and had no earnings in each of those weeks.

In August 2011, after having audited Ms. Roebuck's wages, DOES ordered her to repay the \$1,536 she had received in unemployment compensation after August 30, 2010, and barred her from collecting unemployment benefits for three months.<sup>2</sup> Ms. Roebuck appealed this order to the Office of Administrative Hearings (OAH). On September 14, 2011, an Administrative Law Judge (ALJ) upheld the repayment order but reversed the three-month bar on receiving future benefits. The ALJ found that while Ms. Roebuck did make false statements to induce DOES to pay her unemployment compensation for which she was ineligible, DOES did not prove she made those false statements knowingly and willfully, i.e., with a fraudulent intent. The ALJ cited Ms. Roebuck's explanation that the on-line claim

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<sup>1</sup> Ms. Roebuck's start date at the Office on Aging was mistakenly recorded as being September 12. Ms. Roebuck brought this problem to the attention of her superiors on September 9, and the Office undertook to correct it. But as a result of the error, her paycheck for the days she worked from August 30 to September 11, which she should have received on September 21, was delayed until October 13. Meanwhile, she received her paycheck for the second two-week period of her employment on October 5, which appears to have been timely.

<sup>2</sup> DOES found in its audit that Ms. Roebuck had been paid \$5,470 in salary for September 2010. It asked Ms. Roebuck why she had not reported these earnings. Her explanation was that she was not paid the \$5,470 in September even though that was when she earned it.

forms had thwarted her effort to clarify that she was back at work full time but had not (yet) been paid.<sup>3</sup>

On February 8, 2012, the Office on Aging notified Ms. Roebuck that it proposed to terminate her for cause pursuant to (former) 6-B DCMR § 1603.3(h) (2008),<sup>4</sup> namely, her commission of a criminal offense in violation of D.C. Code § 51-119(a) (2014 Repl.). The Office alleged that Ms. Roebuck committed this offense by “knowingly and willfully fail[ing] to report [her] earnings” in her applications for unemployment compensation in September 2010.<sup>5</sup> A hearing officer was appointed to conduct an administrative review of the proposed removal action.

In her response to the notice of proposed removal, Ms. Roebuck cited the ALJ’s previous decision not finding that she had acted fraudulently. She argued that the Office on Aging had deprived her of “remunerative employment” and thereby “rendered [her] ‘unemployed’” when it delayed paying her for her first two weeks at work, and that once she started getting paid, she stopped applying for unemployment benefits. Moreover, Ms. Roebuck stated, she did not appeal the OAH decision requiring her to reimburse DOES and “took full responsibility for any overpayment as a result of [her] ‘pseudo’ employment status.” Charging also that the Office on Aging had “knowingly and willingly violated” the District’s Anti-

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<sup>3</sup> In an OAH proceeding the following year on Ms. Roebuck’s application for unemployment compensation after the Office on Aging terminated her, a second ALJ likewise found that Ms. Roebuck “did not ‘knowingly and willfully’ fail to report her earnings to DOES” when she applied for benefits in September 2010, and that her “conduct did not constitute dishonesty or otherwise rise to the level of misconduct” disqualifying her from collecting unemployment compensation.

<sup>4</sup> Chapter 16 of Title 6-B was revised in 2016, *see* 63 D.C. Reg. 1265 (Feb. 5, 2016). At all times relevant to this case, § 1603.3(h) provided that an agency could discipline an employee for “[a]ny act which constitutes a criminal offense whether or not the act results in a conviction[.]”

<sup>5</sup> D.C. Code § 51-119(a) makes it a crime to knowingly make a false statement or representation, or knowingly fail to disclose a material fact, to obtain unemployment benefits. The authorized punishment for each such offense is a fine of not more than \$100 and/or imprisonment of not more than 60 days. *Id.*



Deficiency Act by deferring her pay in order to record it in the new fiscal year, Ms. Roebuck claimed that she “was a victim of gross financial mismanagement and administrative neglect which resulted in a personal financial crisis that [she] still ha[d] not yet fully recovered from.”

The hearing officer acknowledged “how vexing” it was for Ms. Roebuck “to be ensnared in a bureaucratic morass while awaiting wages that were honestly earned.” Even so, he concluded, the delay in paying Ms. Roebuck “did not render her unemployed” or “absolve her of her duty to report her earnings to DOES,” and her failure to do so was a “conscious” and “intentional” violation of D.C. Code § 51-119(a). The hearing officer concluded that Ms. Roebuck’s “conscious failure to report her earnings to DOES in order to continue to unlawfully receive unemployment benefits places her squarely within violation of [6-B DCMR § 1603.3(h)].”

On the question of what penalty to impose for this violation, the hearing officer acknowledged that “[t]he legal standard for the appropriateness of a penalty” required consideration of the twelve so-called *Douglas* factors.<sup>6</sup> In a footnote, the hearing officer listed all of those factors. But apart from his discussion of the offense itself and the permissible penalty, the hearing officer did not discuss their applicability; nor did he find that the Office on Aging had considered the *Douglas* factors in proposing Ms. Roebuck’s removal. (The *Douglas* factors were not addressed in the Office’s notice of proposed removal.) Instead, the hearing officer simply stated that removal was “within the acceptable range of penalties” and “reasonable,” and that he “therefore recommended that [Ms. Roebuck] be removed from her position as proposed.” The Office on Aging formally accepted the hearing officer’s recommendation and issued a final decision of summary removal on April 11, 2012. This final decision reiterated that the penalty of removal was “within the acceptable range of penalties” and was “a reasonable penalty.” The decision did not mention the *Douglas* factors.

Ms. Roebuck appealed her removal to the OEA. She asserted that the Office on Aging did not have cause to fire her pursuant to 6-B DCMR § 1603.3(h) because she did not *knowingly* submit false information in order to receive unemployment compensation. In the alternative, she contended that the Office failed to consider the *Douglas* factors, a number of which she argued were mitigating, in determining the appropriate penalty. In opposition, the Office on Aging argued that it had cause

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<sup>6</sup> See *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280, 305-06 (1981).

to fire Ms. Roebuck because there was no dispute that she made false statements to obtain unemployment benefits, and because D.C. Code § 51-119(a) recognizes “no defense of financial hardship” and “does not consider the reasons why an individual submitted false statements.” The Office asserted it had “reviewed and applied the relevant *Douglas* factors” in selecting the penalty of removal, but it did not support that assertion with any record of such consideration or say which factors it considered relevant or how it had considered them.<sup>7</sup>

The appeal was assigned to an OEA Administrative Judge (AJ) in October 2013. Based on the parties’ briefs, the AJ concluded there were no material issues in dispute and that an evidentiary hearing was unnecessary. The AJ upheld the decision to terminate Ms. Roebuck for violating D.C. Code § 51-119(a). She found, among other things, that when Ms. Roebuck applied for unemployment compensation in September 2010 and denied being employed, she either had “actual knowledge of the falsity” of that statement or “made the statement recklessly, careless of whether it was true or false.” The AJ further found that the penalty allowed by the applicable Table of Appropriate Penalties for commission of a first offense of this nature ranged from a ten-day suspension to removal,<sup>8</sup> that the Office on Aging had “sufficient cause” to remove Ms. Roebuck, and that “its chosen penalty of removal is reasonable and is clearly not an error of judgment.” The AJ also said the Office had “presented evidence that it considered” the relevant *Douglas* factors, but even though this was disputed, she did not identify any “evidence” that supposedly showed such consideration. Nor did the AJ make any findings concerning how the Office applied the *Douglas* factors in deciding what sanction to impose or whether it had done so properly. There is a void in the record on all these points.

On appeal, the OEA Board upheld the AJ’s affirmance of Ms. Roebuck’s termination. It found record support for the conclusion that the Office on Aging had cause to terminate her, and it rejected Ms. Roebuck’s argument that the OAH decisions precluded a finding that she knowingly or willfully violated D.C. Code

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<sup>7</sup> In support of its assertion that it had reviewed and applied the relevant *Douglas* factors, the Office cited only its notice of proposed removal, the hearing officer’s recommendation, and its final decision of summary removal. As noted above, none of those documents discussed how the *Douglas* factors applied to Ms. Roebuck’s case.

<sup>8</sup> See (former) 6-B DCMR § 1619.1(8) (2008).



§ 51-119(a). The Board also found that the Office on Aging had fulfilled its duty to consider the *Douglas* factors by reviewing the hearing officer's report before reaching its final decision.

The Superior Court denied Ms. Roebuck's petition for review and affirmed the OEA Board. The court found there to be "ample evidence" in the record that Ms. Roebuck knowingly made false statements to obtain unemployment compensation, notwithstanding the contrary OAH decisions. It also rejected her argument that the Office on Aging could not penalize her for violating D.C. Code § 51-119(a) when she had not even been arrested for that offense. In response to Ms. Roebuck's argument that the Office had failed to consider the *Douglas* factors, the court agreed that "the record includes '*Douglas*' evidence" but was satisfied that the Office had "presented evidence that it considered factors outlined in *Douglas*." The court did not say what evidence the Office had presented on that score, nor did it describe or evaluate the Office's supposed consideration of the *Douglas* factors.

## II.

Although this case comes to us on appeal from the Superior Court, we review the OEA's decision "as though the appeal ha[d] been taken directly to this court."<sup>9</sup> Thus, as necessitated by the parties' claims,

we must examine the administrative record to determine whether there has been procedural error, whether there is substantial evidence in the record to support the OEA's findings, or whether the OEA's action was in some manner arbitrary, capricious, or an abuse of discretion.<sup>[10]</sup>

In a proceeding, such as this one, challenging the removal of an employee for misconduct, the employing agency has the "burden of persuasion" with respect to three elements:

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<sup>9</sup> *District of Columbia Metro. Police Dep't v. District of Columbia Office of Emp. Appeals*, 88 A.3d 724, 727 (D.C. 2014).

<sup>10</sup> *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985) (citing D.C. Code § 1-1510 (1981); other citations omitted).

(1) that the employee actually committed the alleged misconduct; (2) that there is a sufficient nexus between the misconduct and the efficiency of the service to sustain an adverse action; and (3) that the penalty imposed has been appropriately chosen for the specific misconduct involved.<sup>[11]</sup>

For its part, the OEA's task in this case was "not to substitute its judgment" for that of the Office on Aging, but "simply to ensure that 'managerial discretion has been legitimately invoked and properly exercised.'"<sup>12</sup>

Ms. Roebuck challenges her termination on three principal grounds. First, she argues that absent proof of an arrest record, she could not be disciplined pursuant to 6-B DCMR § 1603.3(h) for having committed a criminal act. Second, she argues that the OEA erred in failing to accord evidentiary significance to the findings by the ALJs in the DOES proceedings that she did not knowingly make a false statement to obtain unemployment benefits.<sup>13</sup> Third, she argues that the OEA erred in finding that the Office on Aging appropriately considered the mitigating *Douglas* factors in deciding to terminate her. For the reasons that follow, we reject the first two contentions but agree with the third.

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<sup>11</sup> *Raphael v. Okyiri*, 740 A.2d 935, 945 (D.C. 1999) (quoting *Parsons v. United States Dep't of Air Force*, 707 F.2d 1406, 1409 (D.C. Cir. 1983)).

<sup>12</sup> *Stokes*, 502 A.2d at 1010 (quoting *Douglas v. Veterans Admin.*, 5 M.S.P.R. 280, 301 (1981)).

<sup>13</sup> Relatedly, Ms. Roebuck complains that without taking testimony itself, the OEA lacked substantial evidence to find she knew her statements to obtain unemployment benefits were false. We find this complaint to be meritless; Ms. Roebuck admittedly knew she was working full time for pay when she declared the contrary on her applications for benefits. In her reply brief, Ms. Roebuck argues that the OEA's failure to hold an evidentiary hearing was reversible error in itself. The OEA Board rejected this contention on the ground that the OEA Rules provide that an evidentiary hearing is discretionary. We do not address the claim. "It is the longstanding policy of this court not to consider arguments raised for the first time in a reply brief." *Stockard v. Moss*, 706 A.2d 561, 566 (D.C. 1997).

### A. Absence of Arrest Record

The regulation pursuant to which Ms. Roebuck was terminated, former 6-B DCMR § 1603.3(h), defines “cause” for disciplinary action to include “[a]ny act which constitutes a criminal offense whether or not the act results in a conviction.” This definition does not state that proof of an arrest record is ever required. In support of her claim that it was required in this case, Ms. Roebuck cites the accompanying Table of Appropriate Penalties in (former) 6-B DCMR §1619.1(8) (2008). With reference to discipline for criminal acts, the Table states: “Conviction not needed; [the agency] may act on the arrest if the arrest is related to the job. Proof needed: Arrest record.” But while this brief notation indicates that proof of an arrest record may be necessary when an agency relies on an arrest to establish that an employee committed a criminal act, that does not mean proof of arrest is *always* necessary to prove that fact in the absence of a conviction. Another regulation, former 6-B DCMR § 1603.4, indicates otherwise; it states that “[t]he causes specified in section 1603.3 of this section shall include *but not necessarily be limited to* the infractions or offenses under each cause contained in the Table of Appropriate Penalties in section 1619 of this chapter.” (Emphasis added.) In other cases besides this one, the OEA Board has understood this to mean an agency is *not* precluded from disciplining employees for violating D.C. Code § 51-119(a) merely because they were not arrested (or charged).<sup>14</sup> To the extent there is any ambiguity to be resolved, “we routinely accord great deference to an agency’s interpretation of its own regulations.”<sup>15</sup> We see no reason to depart from that practice here.

### B. The OAH Decisions

Two ALJs in Ms. Roebuck’s unemployment benefits proceedings found she did not “knowingly” submit false information to obtain unemployment

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<sup>14</sup> See *Fulford-Cuthbertson et al. v. Department of Corrections*, consolidated OEA matters 1601-10-13R16, 1601-16-13R16, 1601-17-13R16, and 1601-18-13R16 at 11 (June 6, 2017) (“Agency was not required to produce an arrest record to support a cause of action under DCMR § 1603.3(h).”).

<sup>15</sup> *Dupree v. District of Columbia Dep’t of Corrections*, 132 A.3d 150, 154-55 (D.C. 2016); see also, e.g., *District of Columbia Dep’t of Pub. Works v. Colbert*, 874 A.2d 353, 359 (D.C. 2005) (deferring to Board’s “reasonable interpretation” of regulation in 6 DCMR).

compensation. Ms. Roebuck argues that, “[b]y overlooking this compelling evidence, the OEA failed to base its decision on substantial evidence.”<sup>16</sup> This argument is misconceived. There is a difference between “evidence” and the factual conclusions that a factfinder draws from evidence. “In the absence of issue preclusion or a statute providing for their admissibility, findings in one proceeding are not evidence in a different proceeding[.]”<sup>17</sup> Thus, it would have been error for the OEA to treat the ALJs’ findings in the unemployment benefit cases as admissible “evidence” of the facts found. And though Ms. Roebuck did argue below that the ALJs’ factual determinations were preclusive, on appeal she has abandoned this contention, and rightly so. We have held that, by law, the findings of fact in unemployment benefits hearings have “no binding effect on decision makers in subsequent adjudicatory proceedings between an employee and an employer,” including OEA proceedings, and that the OEA properly undertakes “an independent analysis of [an employee’s] termination.”<sup>18</sup>

### C. The *Douglas* Factors

“The primary discretion in selecting a penalty has been entrusted to agency management, not to the OEA.”<sup>19</sup> In this case, the Office on Aging had a broad spectrum of sanctions from which to choose; as previously mentioned, the allowable penalty in Ms. Roebuck’s case ranged from a ten-day suspension to removal.<sup>20</sup> The OEA’s review of an agency’s choice of penalty “is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness.”<sup>21</sup>

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<sup>16</sup> Brief for Appellant at 31.

<sup>17</sup> *In re Zita*, 915 N.E.2d 1067, 1076 (Mass. 2009) (holding it was error for a judge to consider prior findings in a protective case in granting the state’s emergency order for custody of a child).

<sup>18</sup> *Jahr v. District of Columbia Office of Emp. Appeals*, 19 A.3d 334, 338, 340 (D.C. 2011); *see also* D.C. Code § 51-111(j) (2014 Repl.).

<sup>19</sup> *Stokes*, 502 A.2d at 1011 (internal quotation marks omitted).

<sup>20</sup> 6-B DCMR 1619.1(8).

<sup>21</sup> *Stokes*, 502 A.2d at 1011 (quoting *Douglas*, 5 M.S.P.R. at 306).

For guidance as to the relevant factors, the OEA and this court have looked to the twelve factors identified by the OEA's federal counterpart, the Merit Systems Protection Board, in *Douglas*.<sup>22</sup> Several of these factors may weigh in favor of lessening the penalty in a particular case, including "mitigating circumstances surrounding the offense," the "potential for the employee's rehabilitation," "the employee's past disciplinary record," and "the employee's past work record."<sup>23</sup> Other *Douglas* factors may point in a different direction or be neutral or inapplicable in a given case. Thus, "[s]election of an appropriate penalty must . . . involve a responsible balancing of the relevant factors in the individual case."<sup>24</sup> If the agency fails to show that it "conscientiously" weighed the relevant factors, the OEA's duty is to "specify how the agency's decision should be corrected" and remand the matter to the agency for the necessary consideration.<sup>25</sup>

We agree with Ms. Roebuck that the OEA erred in finding that the Office on Aging considered the relevant, mitigating *Douglas* factors in deciding to terminate her. That finding is not supported by substantial evidence in the record; as discussed above, nothing in the record shows that the Office "conscientiously" considered the mitigating factors in Ms. Roebuck's case. In its initial notice of proposed removal, the Office did not mention the *Douglas* factors. The hearing officer acknowledged that those factors must be considered when assessing the appropriateness of a penalty, but he neither considered them himself nor found that the Office had done so. In its final decision imposing removal, the Office on Aging still did not even mention the *Douglas* factors.

In the ensuing proceedings before the OEA and in Superior Court, the Office and the OEA provided no support for their conclusory assertions that the relevant *Douglas* factors had been considered. Understandably enough, on the vacant record presented to them, the OEA and the Superior Court did not themselves consider the

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<sup>22</sup> See *id.* at 1010-11; *Douglas*, 5 M.S.P.R. at 305-06; see also, e.g., *Colbert*, 874 A.2d at 356 & n.4.

<sup>23</sup> *Douglas*, 5 M.S.P.R. at 305-06.

<sup>24</sup> *Stokes*, 502 A.2d at 1011 (quoting *Douglas*, 5 M.S.P.R. at 306).

<sup>25</sup> *Id.* (quoting *Douglas*, 5 M.S.P.R. at 306); see also *Colbert*, 874 A.2d at 361.



*Douglas* factors or purport to evaluate the consideration given them by the Office on Aging. The fact that the record did not permit them to do so is dispositive.

In this Court, the Office nonetheless continues to assert conclusorily that “[t]he record shows . . . that the Office addressed the relevant factors in exercising its discretion in the selection of termination as the appropriate penalty.”<sup>26</sup> But the record still does *not* show that, and the Office still cites nothing supporting its claim.

In the alternative, the Office argues – for the first time in this court – that Ms. Roebuck waived her right to its consideration of mitigating *Douglas* factors by failing to raise them with the hearing officer in her response to the initial proposal that she be terminated.<sup>27</sup> This argument is not persuasive. For one thing, it is less than accurate, as Ms. Roebuck did raise the factual predicate for at least some of the *Douglas* factors in her response to the notice of proposed removal.<sup>28</sup> Furthermore, Ms. Roebuck contended throughout the proceedings before the OEA and the Superior Court that the Office had failed to consider the mitigating *Douglas* factors, and the Office did not object to her doing so or claim that her failure to raise those factors with the hearing officer had impeded such consideration. Instead, the Office always responded that it *did* fully consider the *Douglas* factors. The hearing officer himself – an Assistant Attorney General in the Office of the General Counsel in the Department of Human Services – likewise never said any default on Ms. Roebuck’s part impeded consideration of the *Douglas* factors. And even now, the Office on Aging does not demonstrate that it was inhibited from addressing such potentially mitigating factors as Ms. Roebuck’s work record, lack of prior discipline, potential for rehabilitation, and financial distress due to the Office’s failure to pay her on time.

We conclude that the Office on Aging did not shoulder its burden of persuasion regarding the penalty it selected by showing that it “conscientiously”

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<sup>26</sup> Brief for Appellee at 25.

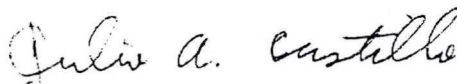
<sup>27</sup> *Id.* at 27-28.

<sup>28</sup> Specifically, she argued that she was effectively “unemployed” during the time that she filed her unemployment compensation forms because she was not receiving a paycheck, and as a result was suffering a “personal financial crisis that [she] ha[d] still not yet fully recovered from.” These facts implicated the *Douglas* factors that require the agency to consider any “mitigating circumstances surrounding the offense” and the “potential for the employee’s rehabilitation.”



considered all the relevant *Douglas* factors to “strike a responsible balance within tolerable limits of reasonableness” as to the appropriate discipline to impose on Ms. Roebuck.<sup>29</sup> We therefore must reverse the Superior Court’s affirmance and remand with directions to vacate the decision of the OEA and return the case to it for further proceedings consistent with this opinion.

ENTERED BY DIRECTION OF THE COURT:

  
JULIO A. CASTILLO  
Clerk of the Court

Copies to:

Honorable Jennifer Di Toro

Director, Civil Division

Copies e-served to:

Robert B. Fitzpatrick, Esquire

Lucy E. Pittman, Esquire  
Assistant Attorney General

Loren L. AliKhan, Esquire  
Solicitor General for DC

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<sup>29</sup> We express no view whatsoever as to exactly how the balance should be struck, and we expressly do not hold that removal from government service is necessarily precluded. Although Ms. Roebuck argues that her termination was “beyond the bounds of reasonableness” and an abuse of discretion given the nature of her “so-called crime” and what she calls “the overwhelming evidence of mitigating circumstances and the lack of any intent to defraud the City government,” Reply Brief for Appellant at 7-8, these are factual issues and discretionary judgments for agency determination on a yet-to-be made record and not for this court to resolve in this appeal.