

OFFICE OF EMPLOYEE APPEALS
FY2021-2022 Performance Oversight Questions
Committee on Labor and Workforce Development
Councilmember Elissa Silverman (At-Large), Chair

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I. Agency Priorities, Performance, and Evaluation

1. Please discuss OEA’s **top five priorities**.
 - a. How did the agency address its top five priorities in FY2021, including the impact of and any adjustments or modifications due to COVID-19?
 - b. What are the agency’s top five priorities in FY2022? Please explain how the agency expects to address each priority in FY2022.

ANSWER:

OEA’s top five priorities in FY2021 were to issue Initial Decisions within the statutory timeframe; develop procedures for processing safety sensitive position appeals; ensure that the parties redact any personal identifying information from documents before filing the documents with OEA; track the number of court records prepared and filed by the agency; and ensure that all decisions were uploaded to the agency’s website in a timely manner. Another priority of the agency in FY2021 was to amend the Office’s Rules of Procedure and have them published in the D.C. Register.

On March 13, 2020, OEA was declared a full telework agency due to COVID-19 and remained a full telework agency until just after the beginning of the fourth quarter in Fiscal Year 2021. During this time, the agency focused its efforts on carrying out its statutory mandates and maintaining its same level of service as much as possible while also ensuring the safety of its staff and any visitors to the agency. While the agency was in a full telework posture, it had a secure drop box located at the entrance to its suite so that litigants could file appeals and other pleadings; its Administrative Judges and General Counsel’s sections conducted conferences, evidentiary hearings, and Board meetings virtually via WebEx; and the administrative support staff went into the office on a rotating basis to, *inter alia*, process petitions and issue decisions.

When the Office fully reopened just after the beginning of the fourth quarter in Fiscal Year 2021, it was able to finish amending its Rules of Procedure and forward them on for review by the Office of Documents and Administrative Issuances. The agency's amended Rules of Procedure took effect on an emergency basis on November 26, 2021 and were published at 68 D.C.Reg. 48. The final rulemaking took effect January 14, 2022 and is published at 69 D.C.Reg. 2. To process safety-sensitive designation appeals, the agency added a new appeal form to capture the necessary information that will aid in the processing of this type of appeal and added an entirely new section to its amended Rules of Procedure to guide the adjudication of safety-sensitive position appeals. Moreover, the agency began requiring that all litigants redact all personal identifying information from documents before filing the documents with OEA. Additionally, the agency uploaded all decisions to its website in a timely manner and successfully tracked the number of court records filed. However, the Administrative Judges were not able to issue Initial Decisions within 120 business days.

For FY2022, the agency's top priorities are to ensure that the Administrative Judges are able to make decisions on appeals within 120 business days; ensure that all decisions are uploaded to the agency's website; resume submitting all of the agency's decisions to the Office of Documents and Administrative Issuances for publication in the D.C. Register; perform an internal audit of the agency's database to ensure that all documents received by the agency while it was in a full telework posture have been properly scanned, uploaded to, and organized within the agency's database; and continue the process of replacing the agency's laptop and desktop computers. The agency expects to address the first priority by having the judges to prepare a monthly docket and then meet with the intake coordinator to discuss the status of each appeal and identify solutions to any barriers for making a decision on the appeal within 120 business days. With respect to the other priorities, the agency's operations/administrative support division will work with the appropriate personnel to implement these priorities.

2. Please list each **program** or significant project administered by the OEA during FY2021 and FY2022, as of Jan. 1, 2021. Highlight any programs new in FY2021 or FY2022, such as the agency's review of safety sensitive cases. For each program or activity, please provide a description of the program, the division and personnel that administer the program, activities in FY2021 and FY2022, and any documented results of the program.

ANSWER:

The programs administered by OEA, and through which OEA operated, during FY2021 and FY2022, as of January 1, 2022, are its Adjudication and Agency Management programs. The Adjudication program offers mediation to the parties; conducts evidentiary hearings and Board meetings; and adjudicates appeals filed by District government employees. The Agency Management program provides for administrative support and the required tools to achieve operational and programmatic results.

A new program over which OEA acquired jurisdiction as of October 1, 2021, is the appeal of newly designated safety sensitive positions. To prepare for these appeals the agency created a new appeal form to capture the necessary information that will aid in the

processing of this type of appeal and added an entirely new section to its amended Rules of Procedure to guide the adjudication of safety-sensitive designation appeals. To date, OEA has not received any of these appeals.

3. Please describe any **initiatives** that the OEA implemented or ceased to implement in FY2021 or FY2022, as of Jan. 1, 2022, 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 FY2021, OEA began requiring that litigants redact all personal identifying information from documents before filing them with the agency. The purpose of this initiative is to protect the privacy of litigants, witnesses, and minor children who may be involved in the adjudication of an employee's appeal. Also, in FY2021, the Office of Disability Rights requested that OEA no longer list the name of employees in decisions placed on OEA's website. The Office of Disability Rights wanted to ensure that an employee's right to privacy was protected. OEA consented to this request and began removing the employee's name from decisions placed on OEA's website in June of 2021. The word "Employee" is written in place of the employee's name.

4. Please provide a copy of the OEA's FY2021 **performance accountability report**.
 - a. Please explain which performance plan strategic objectives and key performance indicators (KPIs) were met or completed in FY2021 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:

Please see Attachment #1.

In FY2021, OEA was able to issue the number of Opinions and Orders that it had projected to issue; resolve Petitions for Review in a timely manner; and issue decisions, which when appealed to court, were all upheld. OEA was not able to issue the number of Initial Decisions which it had projected to issue. Due to the pandemic emergency, the agency remained a full telework agency until just after the beginning of the fourth quarter in FY2021. The agency's operations, including its ability to timely process and assign appeals, were adversely impacted while in a full telework posture.

5. Regarding the OEA's FY2021 **performance plan**:
 - a. Please provide a copy of the OEA's FY2022 performance plan as submitted to the Office of the City Administrator.

- b. Discuss any changes to any outcome measurements in FY2021 or FY2022, 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.

Additional workload measures that will be tracked in FY2022 include the number of evidentiary hearings conducted; the number of Board meetings conducted; the number of safety-sensitive designation appeals filed; the number of mediations declined by the agency; and the number of mediations declined by the employee. Additional KPIs that will be tracked in FY2022 include the percent of agency answers timely filed, and the percent of decisions published within the D.C. Register. These workload measures were added this fiscal year so that the agency will be able to further quantify the volume of work it performs.

6. Please describe any staffing or financial challenges which impact to OEA's capacity to timely adjudicate cases or publish opinions in the Register.

ANSWER:

Currently, OEA is not experiencing any staffing or financial challenges which impact the agency's ability to timely adjudicate cases or publish opinions in the D.C. Register. The timely adjudication of appeals is most often related to external factors such as requests for extensions of time which must be granted and the nature of the facts in dispute which then require that an evidentiary hearing be conducted. OEA plans to resume publishing its decisions within the D.C. Register.

7. Please discuss the current policy of OEA as it relates to remote and in-person work in regard to COVID-19 accommodations. Please include:
 - a. The dates and reasoning for each change to in-person programming by the agency since the emergency began.
 - b. A description of the impact to constituents and any actions the agency took to minimize negative impacts of each change.

ANSWER:

OEA fully reopened on July 7, 2021 and continues to be fully open. The duties of those employees within the operations/administrative support division cannot be performed remotely. Therefore, employees within this division work in-person, at the office every day. All other employees report in person to the office for duty three days per week and work remotely the other two days of the week. This schedule was implemented to ensure that the mission of the office could be accomplished while at the same time ensuring the safety of all employees and visitors to the office.

II. Budget and Expenditures
Budget

8. **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 year 2021, and the first quarter of 2022. 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 2021 for each program and activity code.

ANSWER:

Please see Attachment #3.

9. Please provide the following information for all **intra-District memoranda of understanding (MOUs)** for FY2021 and FY2022 as of Jan. 1, 2022, *including anticipated MOUs* for the remainder of FY2022.
- a. *Attach copies* of all intra-district MOUs.
 - b. For each MOU, including anticipated MOUs, *complete the attached table* in Excel.

ANSWER:

Please see Attachment #4.

10. Please provide the following information for all **intra-District memoranda of agreement (MOAs)** for FY2021 and FY2022 as of Jan. 1, 2022, including anticipated MOAs for the remainder of FY2021.
- a. *Attach copies* of all intra-district MOAs.
 - b. For each MOA, including anticipated MOAs, complete the table below; add rows as necessary.

ANSWER:

OEA had no intra-District memoranda of agreement (MOAs) for FY2021 or FY2022 as of January 1, 2022.

Memoranda of Agreement, FY2021 and FY2022, 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>

11. Please provide the following information for each **interagency reprogramming** of funds into and out of the agency for FY2021 and FY2022, as of Jan. 1, 2022, including anticipated inter-agency reprogrammings for the remainder of FY2022.
 - 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 #5.

12. Please provide the following for each **intra-agency reprogramming** *within* your agency during FY2021 and FY2022, as of Jan. 1, 2022, as well as any anticipated intra-agency reprogrammings for the remainder of FY2022.
 - 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 #6.

13. Please attach all **budget enhancement requests** submitted by your agency to the Mayor or Chief Financial Officer as part of the budget process for FY2023.

ANSWER:

Please see Attachment #7.

Expenditures

14. Please *complete the attached table* in Excel with the following information on each **contract, procurement, and lease** leveraged in FY2021 and FY2022 as of Jan. 1, 2022, 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 #8.

15. Please complete the following table with information on all **credit card, p-card, or purchase card purchases and expenditures** for FY2021 and 2022, as of Jan. 1, 2022; 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.

ANSWER:

Please see Attachment #9.

Credit and purchase card expenditures, FY2021 and FY2022

<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>

16. Were any protests or complaints filed with the **Contract Appeals Board** in FY2021 or 2022 as of Jan. 1, 2021, 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.

ANSWER:

No protests or complaints were filed with the Contract Appeals Board in FY2021 or FY2022 as of January 1, 2022.

Contract Appeals Board cases filed FY2021 or FY2022, as of Jan. 1, 2022

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

III. Agency Organization and Personnel

17. Please provide an **organizational chart** for the agency, arranged by division and subdivision, as of Jan. 1, 2022.
- a. Show for each division and subdivision:
 1. The names and titles of all personnel;
 2. Include on the chart, and denote as vacant or frozen, any such positions;
 - b. Note on the chart the date of the information if not Jan. 1, 2022.

ANSWER:

Please see Attachment #10.

18. Please *complete the attached table* in Excel with a **chart of all positions (i.e., Schedule A)** at the agency, as of January 15, 2022.

ANSWER:

Please see Attachment #11.

19. 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. 1, 2022.

ANSWER:

The vacant position position's number is 00088930. The position became vacant on October 22, 2021. The position will be upgraded to a Paralegal position; this Paralegal will work exclusively with the Administrative Judges. We anticipate that the hiring process will begin during the fourth quarter of FY2022.

20. What was the **caseload** for each hearing examiner in FY2020, FY2021 and FY2022 as of Jan. 1, 2022?

ANSWER:

Fiscal Year 2020

Administrative Judge	Caseload
Administrative Judge Cannon	12
Sr. Administrative Judge Dohnji	12
Administrative Judge Harris	13
Administrative Judge Hochhauser (PT)	8
Sr. Administrative Judge Lim	13
Sr. Administrative Judge Robinson	12

Fiscal Year 2021

Administrative Judge	Caseload
Administrative Judge Cannon	9
Sr. Administrative Judge Dohnji	8
Administrative Judge Harris	7
Administrative Judge Hochhauser (PT)	7
Sr. Administrative Judge Lim	7
Sr. Administrative Judge Robinson	11

Fiscal Year 2022-to-date

Administrative Judge	Caseload
Administrative Judge Cannon	10
Sr. Administrative Judge Dohnji	11
Administrative Judge Harris	6
Administrative Judge Hochhauser (PT)	5
Sr. Administrative Judge Lim	10
Sr. Administrative Judge Robinson	11

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

- a. 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
- b. For each term or temp employee (by position number) included in the schedule A who started in the position in FY2021 or FY2022, please provide a brief narrative to specify why the hire was done on a term or temp basis and not on a continuing basis.
- c. For each term employee (by position number) employed during FY2021 or FY2022 whose hire date is before FY2017, please explain why the employee is term and has not been converted to a permanent employee.

ANSWER:

OEA does not currently have any term or temporary employees.

22. How many and what percentage of employees at the agency as of Jan. 1, 2022, were **District residents**?

ANSWER:

As of January 1, 2022, three employees were District residents. This represents 20% of OEA's FTE positions.

23. Please complete the following charts about the **residency of new hires, including term and temp employees**, in FY2021 and FY2022, as of Jan. 1, 2022:

ANSWER:

DC Residency of Employees Hired in FY 2021

<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	1	0	0
Term	0	0	0
Temporary	0	0	0
WAE	0	0	0

DC Residency of Employees Hired in FY 2022, as of January 1, 2022

<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			

24. Please complete the following table regarding employees placed on **administrative leave** in FY2021 or FY2022. 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.

ANSWER:

No employees were placed on administrative leave in FY2021, nor have any been placed on administrative leave in FY2022 to date.

Employees on Administrative Leave During FY2021 and FY2022

<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. 1, 2021).</i>

25. For FY2021 and FY2022, as of Jan. 1, 2022, please complete the following table on each **employee separated** from the agency.

ANSWER:

No employees were separated in FY2021, nor have any been separated in FY2022 as of January 1, 2022.

Employees Separated from Agency, FY2021 and FY2022

<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>

IV. Office of Employee Appeals

26. Please complete the following chart with information about **OEA cases by case type** in FY2020, FY2021, and FY2022 as of Jan. 1, 2022

ANSWER:

OEA Cases by Type

Case Type	Number of cases filed			Number of initial decisions issued			Number of cases for which initial decisions were issued 120 days or more after being filed with the OEA office		
	FY2020	FY2021	FY2022	FY2020	FY2021	FY2022	FY2020	FY2021	FY2022
Jurisdiction	17	7	4	18	16	3	7	9	1
Performance Rating	0	0	0	0	0	0	0	0	0
Adverse Action	45	39	22	71	53	14	50	38	13
Enforced Leave	0	0	0	0	0	0	0	0	0
Reduction-in-Force	0	1	11	9	1	1	5	0	1
Safety Sensitive	N/A	N/A	0	N/A	N/A	0	N/A	N/A	0

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

ANSWER:

Jurisdiction Final Decisions, FY2020-FY2022

Number of final decisions			Number of decisions issued 45 days or more after being filed with the OEA office		
FY2020	FY2021	FY2022	FY2020	FY2021	FY2022
18	16	3	15	16 ¹	3

¹ Four of the sixteen jurisdictional decisions were matters on remand or compliance. Therefore, the statutory 45-day deadline is not applicable under the circumstance.

28. Please complete the following chart with **data on OEA cases** for FY2020, FY2021 and FY2022:

ANSWER:

OEA Case Information, FY2020-FY2022

Item	FY2020	FY2021	FY2022, as of Jan. 1, 2022
ADMINISTRATIVE JUDGES			
Number of petitions for appeals filed	62	47	37
Number of cases entering mediation	47	32	8
Number of cases settled by mediation	4	3	2
Number of initial decisions issued	98	70	18
Average time to issue initial decisions (days)	182	233	231
Number of pending petitions for appeal	22 ²	34	36
OEA BOARD			
Number of petitions for review filed	7	16	5
Number of opinions and orders issued	18	18	4
Average time to issue opinions and orders (days)	175	74	45
Number of pending petitions for review	0	0	4
SUPERIOR COURT			
Number of decisions appealed to Superior Court	16	12	2
Number of pending appeals in Superior Court	3	6	2
Number of decisions issued in Superior Court	30	18	4
Number of appeals upheld in Superior Court	27	16	4
Number of appeals reversed or remanded in Superior Court	3	2	0
DC COURT OF APPEALS			
Number of decisions appealed to Court of Appeals	12	5	1
Number of pending appeals in Court of Appeals	5	3	1
Number of decisions issued in Court of Appeals	14	15	2
Number of appeals upheld in Court of Appeals	11	12	2
Number of appeals reversed or remanded in Court of Appeals	3	3	0

29. Please provide a narrative **description explaining each decision that was reversed or remanded** by Superior Court of the Court of Appeals in FY 2021 or FY2022. Please attach a copy of any opinion issued with the remand or reversal (please provide each as a separate attachment).

² Included in this number are four cases from Fiscal Year 2019.

ANSWER:

Summaries of the cases are provided below. Please note that there have been no remands or reversals in FY2022. Copies of the FY2021 remand and reversal decisions are provided in Attachment #12.

2021 Superior Court Remands

1. ***District of Columbia Office of Police Complaints v. District of Columbia Office of Employee Appeals, et al., Case No. 2020 CA 004294 P(MPA)*** – Agency imposed four charges against Employee. For the first charge, the Court determined that there was not substantial evidence in the record to support OEA’s findings. The Court held that because there was a discrepancy between the record and OEA’s conclusion that there was no evidence or testimony in the record to demonstrate that access was at issue in Charge No. 1, this charge was remanded to OEA for further review.

As for charge two, the Court found that because the violations set forth in the charge expressly reference the DPM, then it was the DPM, and not the policy, that should have been considered in the analysis. It held that the Initial Decision only addressed whether the policy prohibited unauthorized disclosure of the documents, and not whether the Employee reasonably should have known that his conduct violated the law, pursuant to 6B DCMR § 1607.2(a)(4), or whether the disclosure constituted an unauthorized disclosure of protected information pursuant to 6B DCMR § 1607.2 (a)(10). Accordingly, the Court remanded Charge No. 2 to OEA for further review.

As it relates to charge 3, the Court found that OEA’s determination that Agency failed to prove that the charge was supported by substantial evidence and must be affirmed. It found that Agency did not provide any evidence to dispute Employee’s testimony or demonstrate that Employee did not use his break to generate documents or order transcripts.

For the final charge, the Court determined that, similar to its conclusion regarding Charge No. 2, the violations of the DPM and not the policy, should have been considered in the analysis. Accordingly, Charge No. 4 was also remanded to OEA for further proceedings.

In response to the Court’s remand order, the OEA Administrative Judge issued an Initial Decision on Remand on January 14, 2022, upholding Agency’s termination action.

2. ***Zack Gamble v. District of Columbia Office of Employee Appeals, et al., Case No. 2020 CA 003074 P(MPA)*** – In this case, OEA previously found that Agency failed to properly consider job sharing and reduced hours as an alternative to the reduction-in-force, as required by D.C. Code § 1-624.02(a)(4). Therefore, the Court held that the Administrative Judge’s decision not to overturn the Agency’s dismissal was erroneous when measured against statutory requirements. Accordingly, it determined that the application of the harmful error standard was an erroneous application of law and must

be reversed and vacated. Consequently, the Court remanded the case for further proceedings. The OEA Administrative Judge issued an Initial Decision on Remand on January 11, 2022, reversing Agency’s RIF action.

2021 D.C. Court of Appeals Remands

1. ***Devlin Hillman v. Office of Employee Appeals, Case No. 19-CV-1099 (D.C. 2020)*** – Before the Court of Appeals, the Department of Parks and Recreation came to the realization that their position before OEA was flawed. The OAG’s office no longer believed that the *Wubishet* case was applicable case law in this matter, as they initially argued. The employee in *Wubishet* was removed during their probationary period. However, the employee in *Hillman* was past his probationary period and a Career Service employee. As a result, the OAG argued that because Employee was not a probationary employee at the time of termination, he should not have lost his Career Service rights solely for failing to obtain a new lifeguard license. Thus, it believed that if the matter moved forward in the Court of Appeals, it would have resulted in bad case law. Consequently, the OAG asked that the Court remand the matter to OEA for it to render a decision on the merits, instead of a potential dismissal at the Court of Appeals based on its incorrect allegation that Employee was in an at-will status at the time of termination. The OEA Administrative Judge held an evidentiary hearing on November 30, 2021. After the hearing transcripts are received from the court reporter, the parties will be ordered to submit closing briefs, and a decision will be rendered.
2. ***Widmon Butler v. Metropolitan Police Department, No. 18-CV-1238 (D.C. 2020)*** – In its decision, the Court of Appeals held that it could not sustain the Administrative Judge’s ruling regarding the ninety-day deadline because the AJ treated the ninety-day period as tolled until the Internal Affairs Division (“IAD”) issued its investigative report in September of 2014. Under D.C. Code § 5-1031(b), however, tolling continues only as long as the matter is the subject of a criminal investigation, and it is undisputed that any potential criminal investigation ended when the U.S. Attorney’s Office declined prosecution on June 2, 2014.

Additionally, the Court could not sustain the OEA Board’s holding on the ninety-day issue because it assumed the matter was under criminal investigation from September 12, 2013 through June 2, 2014, but the matter was not referred for prosecution until October 1, 2013. The Court ruled that it was undisputed that eighty-eight (88) business days passed between June 2, 2014 and October 6, 2014, when the notice of termination was issued. However, it held that unless much of the time between September 12, 2013 through October 1, 2013 was tolled, then Agency’s notice of termination was untimely. Although Agency argued that the time during this period was tolled (because Employee’s conduct was under criminal investigation with IAD), the Court held that neither the Administrative Judge nor the Board relied on this rationale. Therefore, the matter was remanded to OEA for further consideration. On March 18, 2021, the AJ issued an Initial Decision on Remand upholding Agency’s termination action.

3. ***Anitha Davis v. D.C. Office of Employee Appeals, Case No. 17-CV-0704 (D.C. 2020)***
 - The Court of Appeals held that OEA did not address whether Agency’s failure to offer Employee priority reemployment at another school was a “decision affecting a . . . reduction in force” within the meaning of D.C. Code § 1-606.03(a), or whether it was a “final agency decision” within the meaning of this statute. The Court opined that there was not enough evidence in the record for it to make a ruling. Therefore, it ordered that the matter be remanded to OEA.

The OEA Administrative Judge has been informed by the parties that they have finalized a settlement agreement. Unfortunately, Employee has passed away. As a result, her family is in the process of establishing her estate to proceed with the settlement. On January 13, 2022, the AJ issued an Order Convening Status Conference on January 26, 2022, for the parties to provide an update on the estate and its representative.

30. Please fill in the chart below with **cases by agency** in each year FY2020, FY2021, and FY2022. Add rows as necessary. Please alphabetize agencies; if there are multiple cases per agency, group them by case type.

ANSWER:

OEA cases or complaints by agency, FY2020-FY2022, as of Jan. 1, 2022

Agency name	Case Type	Number of cases filed against agency		
		FY2020	FY2021	FY2022
Alcoholic Beverage Regulation Administration	Adverse Action	1	0	0
Criminal Justice Coordinating Council	Adverse Action	1	0	0
D.C. Board of Ethics and Government Accountability	Jurisdiction	0	0	0
D.C. Fire and Emergency Medical Services	Adverse Action	1	3	2
D.C. Fire and Emergency Medical Services	Jurisdiction	1	1	1
D.C. Housing Authority	Adverse Action	0	0	0
D.C. Office of Police Complaints	Adverse Action	0	0	0
D.C. Public Library	Adverse Action	1	0	1
D.C. Public Schools	Adverse Action	1	5	4
D.C. Public Schools	Reduction-in-Force	0	1	0
D.C. Public Schools	Jurisdiction	3	0	0
D.C. Rental Commission	Adverse Action	2	0	0
D.C. Retirement Board	Adverse Action	0	0	0
Department of Aging and Community Living	Adverse Action	0	1	0
Department of Behavioral Health	Adverse Action	2	1	1
Department of Behavioral Health	Jurisdiction	0	0	1
Department of Child and Family Services	Adverse Action	1	0	0
Department of Consumer and Regulatory Affairs	Adverse Action	1	1	0
Department of Corrections	Jurisdiction	0	0	0
Department of Corrections	Adverse Action	3	5	1
Department of Employment Services	Adverse Action	2	0	0
Department of Employment Services	Jurisdiction	1	0	0
Department of For-Hire Vehicles	Adverse Action	1	1	0
Department of Forensic Sciences	Adverse Action	0	2	4
Department of Forensic Sciences	Reduction-in-Force	0	0	11

Department of General Services	Adverse Action	1	1	0
Department of General Services	Jurisdiction	1	0	0
Department of Human Resources	Adverse Action	0	1	0
Department of Human Services	Adverse Action	0	1	0
Department of Human Services	Jurisdiction	0	0	1
Department of Insurance and Securities Banking	Adverse Action	1	0	0
Department of Motor Vehicles	Adverse Action	4	1	0
Department of Motor Vehicles	Jurisdiction	0	1	0
Department of Parks and Recreation	Adverse Action	1	0	1
Department of Public Works	Adverse Action	7	2	2
Department of Public Works	Jurisdiction	5	0	0
Department of Transportation	Adverse Action	2	2	1
Department of Transportation	Jurisdiction	0	0	0
Department of Youth Rehabilitation Services	Adverse Action	1	2	0
Department of Youth Rehabilitation Services	Jurisdiction	2	2	0
Events D.C.	Jurisdiction	1	0	0
Metropolitan Police Department	Adverse Action	8	3	3
Metropolitan Police Department	Jurisdiction	0	2	0
Office of Campaign Finance	Adverse Action	0	0	0
Office of the Attorney General	Adverse Action	0	1	1
Office of the Chief Financial Officer	Jurisdiction	1	0	0
Office of the Chief Technology Officer	Adverse Action	0	1	0
Office of the State Superintendent of Education	Adverse Action	2	2	1
Office of the State Superintendent of Education	Jurisdiction	1	1	1
Office of Unified Communications	Adverse Action	1	1	0

Office of Unified Communications	Jurisdiction	1	0	0
University of the District of Columbia	Adverse Action	0	2	0
University of the District of Columbia	Jurisdiction	0	0	0

31. In each year of FY2021 and FY2022, as of Jan. 1, 2022, 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.

ANSWER:

FY2021 Motions for Enforcement

1. ***Clifton Taylor v. D.C. Public Schools, OEA Matter No. J-0075-19C20*** — Employee was separated from his position as a Behavioral Health Technician pursuant to a reduction-in-force. An Initial Decision was issued in the matter on February 19, 2020, reversing Agency’s termination action. Agency did not appeal the Initial Decision. On May 4, 2020, Employee informed the Administrative Judge (“AJ”) that he had not received his back pay, and his leave had not been restored. Following several email communications among the AJ and the parties, Employee notified the AJ in an email dated September 15, 2020, that he had received his back pay. However, Employee noted that restoration of his sick and annual leave was still outstanding. On September 29, 2020, Agency notified Employee and the AJ that the restored leave would be reflected on Employee’s October 9, 2020, paystub. On November 22, 2020, Employee notified the AJ that as of October 9, 2020, his sick and annual leave were restored. On October 29, 2020, the AJ issued an Addendum Decision on Compliance. She held that Agency fully complied with the February 19, 2020 Initial Decision. Accordingly, the AJ dismissed Employee’s May 4, 2020 request for compliance.
2. ***Ahmad Harvey v. Department of General Services, OEA Matter No. 1601-0029-19C20*** – Employee was removed from his position as a Special Police Officer. On January 31, 2020, the AJ issued an Initial Decision ordering Agency to reinstate Employee; place Employee on unpaid administrative leave from the effective date of his termination, January 19, 2019, through the time he was able to have his Special Police Officer commission reinstated; and reimburse him all back-pay and benefits lost because of his removal. On September 10, 2020, Employee filed a Motion for Compliance/Enforcement of the January 31, 2020 Initial Decision. A Status Conference was convened on September 17, 2020, to address the outstanding compliance issues raised by Employee. On January 14, 2021, the AJ issued an Addendum Decision on Compliance. He provided that on January 8, 2021, Employee submitted an email confirming that Agency fully complied with the Initial Decision. Accordingly, Employee’s Motion to Enforce was dismissed.
3. ***Roxanne Cromwell v. Department of Small and Local Business Development, OEA Matter No. J-0009-18R20C20*** — Employee was removed from her position as an

Administrative Officer. On May 28, 2020, the AJ issued an Initial Decision on Remand (“IDR”) reversing Agency’s termination action. She ordered that Employee be reinstated with back pay and benefits. On September 21, 2020, Employee filed a Petition for Enforcement of the May 28, 2020 IDR. After holding a status conference, the AJ issued an Addendum Decision on February 17, 2021. She provided that because Employee’s term appointment expired, and Agency opted not to extend her term appointment, Agency did not have to reinstate Employee. However, she determined that Agency failed to reimburse Employee’s backpay and benefits in compliance with the IDR. Consequently, she ordered that Agency reimburse back pay and benefits covering the period from when Employee was terminated until the expiration of Employee’s term appointment date. On March 22, 2021, Agency submitted a statement acknowledging that it had not reimbursed Employee’s back pay and benefits. Agency argued that Employee failed to provide the requisite tax returns to deduct any salary earned by Employee from other employment during the covered period. Accordingly, it requested that it be excused from the thirty-day compliance deadline imposed in the Addendum Decision on Compliance.

Employee filed a Petition for Review on March 23, 2021. Agency filed its opposition to the petition on April 27, 2021. The OEA Board issued a Second Opinion and Order on Petition for Review on June 17, 2021. The Board denied Employee’s appeal because it lacked jurisdiction to consider Petitions for Review of Addendum Decisions on Compliance. On July 9, 2021, Employee filed an appeal with the Superior Court of the District of Columbia. The matter is currently pending in Superior Court.

4. ***Andrew Johnson v. D.C. Public Schools, OEA Matter No. 1601-0215-11C21***— Employee was separated from service as a School Psychologist after receiving two consecutive years of a “Minimally Effective” IMPACT rating. After numerous appeals and remands among the OEA Administrative Judge, OEA Board, the Superior Court, and the D.C. Court of Appeals, the AJ issued an Addendum Decision on Compliance on September 29, 2021. He determined that Agency met its burden of proof by establishing that Employee failed to adequately mitigate his damages. Moreover, the AJ determined that Employee’s back pay should be reduced by any amounts already paid by Agency; by Employee’s actual interim earnings; and by the amount Employee could have earned from August 2011 through the date he was reinstated. On January 12, 2022, Agency filed a status report of its compliance with the September 29, 2021 order. It provided that it reduced the backpay based on the annuity retirement benefits paid to the Employee from 2011 to 2020. As a result, Agency submitted that Employee was not owed any backpay by the Agency.

32. For the OEA board members, please complete the chart below with **member information** as of Jan. 1, 2022. Please note any vacancies.

ANSWER:

OEA Board members

<i>Member's name</i>	<i>Confirmation date</i>	<i>Term expiration date</i>	<i>District resident? (y/n)</i>
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 Marie Lewis	02/11/2019	04/06/2025	Yes

33. Please explain why OEA does not allow Petitions for Appeals to be submitted via email (rather, only through in-person delivery or regular mail). What, if any, resources would be necessary to accept appeal petitions by email?

ANSWER:

The Office's Rules of Procedure provide that Petitions for Appeal must be filed by mail or in-person delivery. Other than a dedicated email address, OEA is not certain of what other resources would be necessary to accept petitions by email.

V. Agency Operations and Disputes

34. 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 **against the agency or OEA employee** that are pending in FY2021 or FY2022. Only include cases in which OEA or an OEA employee is a named party in the complaint. 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:

- a. Provide the agency name and office of the complainant at the time the matter occurred.
- b. Provide the name of the forum or agency to which the complaint was filed.
- c. Specify if the complaint concerns a colleague or supervisor.
- d. Provide a brief description of the matter and the current status.
- e. Describe the response to the complaint or grievance, including any disciplinary action taken and any changes to agency policies or procedures
- f. For any complaint or grievance that was resolved in FY2021 or FY2022, as of Jan. 1, 2022, describe the resolution or outcome.

ANSWER:

There were no grievances or complaints filed against or regarding OEA or any of its personnel by any District government employee or former employee in FY2021 or FY2022-to-date.

35. 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 FY2021 or FY2022, as of Jan. 1, 2022. Do not include cases covered in Questions 28-29 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 technical party of interest to file the record in court, there are no lawsuits that name or concern OEA or any employees of the agency.

36. Please list all **settlements** entered into by the agency or by the District on behalf of the agency in FY2021 or FY2022, as of Jan. 1, 2022, 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 FY2021 or FY2022-to-date.

37. 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 FY2021 and FY2022, as of Jan. 1, 2022.
- a. For each study, paper, report, or analysis, please include:
 1. Report name;
 2. Author name, whether the agency or an outside party;
 3. Status, including actual or expected completion date;
 4. Purpose and description of contents; and

5. Contract number or grant name if the report was produced by a contractor or grantee.
- b. Please attach a copy if the study, research paper, report, or analysis is complete.

ANSWER:

OEA has not prepared or been contracted to prepare any studies, research papers, reports, evaluations, or analyses during FY2021 or FY2022-to-date.

38. Please list and describe any **investigations, audits, or reports by outside entities** that involve the OEA or any employee that were conducted during FY2021 and FY2022, as of Jan. 1, 2022, 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 have been no investigations, audits, or reports by outside entities involving OEA or any employees conducted during FY2021 or FY2022-to-date.

39. Please list all **recommendations identified by the Office of the Inspector General, D.C. Auditor, or other federal or local oversight entities** during FY2020, FY2021, or FY2022, as of Jan. 1, 2022 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 by the Office of the Inspector General, D.C. Auditor, or other federal or local oversight entities during FY2020, FY2021, or FY2022-to-date involving OEA, its board members, or employees.

40. Please attach a copy of the agency's **FOIA disclosure report** for FY2021.

ANSWER:

Please see Attachment #13.

41. Please attach a **log of all FOIA requests** received in FY2021 and FY2022, as of Jan. 1, 2022, with the request number, the name of the requestor, the request date, and a brief description of the information requested.

ANSWER:

No FOIA requests were received in FY2021, nor have any been received in FY2022 as of January 1, 2022.