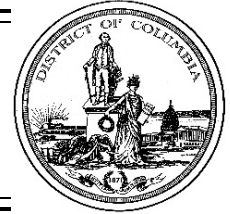

OFFICE OF AT-LARGE COUNCILMEMBER ANITA BONDS
CHAIR, COMMITTEE ON EXECUTIVE
ADMINISTRATION & LABOR



January 23, 2023

Director Sheila Barfield and
General Counsel Lasheka Brown, Esq.
955 L'Enfant Plaza, SW, Suite 2500
Washington, DC 20024

Dear Director Barfield and Ms. Brown:

The annual performance hearing for the Office of Employee Appeals is scheduled for **Wednesday, February 15, 2023, beginning at 9:30 AM in the Zoom virtual platform**. The government witness(es) for the agency will testify following public testimony. Please plan to arrive in time to listen to the entirety of the public testimony presented with respect to the agency. Pursuant to Council rule 522(a), we ask all executive witness(es) to submit their hearing testimony 48 hours in advance of their performance oversight hearing.

Written pre-hearing questions for your agency are attached. So that I may make effective use of your responses, please provide your electronic responses in Microsoft Word and PDF format **by 5:00PM on Wednesday, February 8, 2023**.

If you feel that I could use additional information outside the scope of the attached questions, please feel free to include an additional written statement. If your office requires clarification of any of the attached questions, please contact Kevin Chavous, Committee Director, at (202) 741-0918 or kchavous@dccouncil.gov. Thank you in advance for your timely and comprehensive response.

Sincerely,

A handwritten signature in black ink, appearing to read "ANB".

Anita Bonds
At-Large Councilmember
Chairperson, Committee on Executive Administration and Labor

OFFICE OF EMPLOYEE APPEALS
FY2022-2023 Performance Oversight Questions
Committee on Executive Administration and Labor
At-Large Councilmember Anita Bonds, Chair

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I. Agency Priorities, Performance, and Policy

1. Please discuss OEA's **top five priorities**.
 - a. How did the agency address its top five priorities in FY2022, including the impact of and any adjustments or modifications due to COVID-19?
 - b. What are the agency's top five priorities in FY2023? Please explain how the agency expects to address each priority in FY2023.

ANSWER:

OEA's top five priorities in FY 2022 were to ensure that the Administrative Judges were able to make decisions on appeals within 120 business days; ensure that all decisions were 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 were scanned, uploaded to, and organized within the agency's database; and continue replacing the agency's outdated laptop and desktop computers. During the fiscal year, every judge prepared a monthly docket (and continues to prepare a monthly docket) which kept the intake coordinator apprised on the status of each appeal and the approximate length of time it would take to adjudicate the appeal. As for the other priorities, the agency's Operations Manager worked with the administrative support division to implement these priorities.

For FY 2023, the agency's top priorities are to fill its vacant positions; develop a multi-year training schedule for its Administrative Judges, General Counsel division, and Operations support division; complete the last phase of the agency's technology upgrade/modernization program; and provide additional research assistance to the public by highlighting on its website court rulings concerning OEA. The agency has begun addressing its first priority by developing a hiring plan which includes the various tasks to be completed during the recruitment process and timelines for completing each task. As for its second priority, the agency intends to have its Administrative Judges and General Counsel divisions attend the MSPB Law Week in March and will continue developing its training plan as funding is available. With respect to the technology upgrade/modernization program, the agency is in the process of completing the last phase of this project and is awaiting the delivery of new monitors. Lastly, the agency's Operations Manager will work with the appropriate OCTO personnel so that the court decisions will appear on OEA's website.

2. Please list each **program** or significant project administered by the OEA during FY2022 and FY2023, as of Jan. 1, 2023.
 - a. Highlight any new programs in FY2022 or FY2023, such as the agency's review of safety sensitive cases.
 - b. For each program or activity, please provide a description of the program, the division and personnel that administer the program, activities in FY2022 and FY2023, and any documented results of the program.

ANSWER:

The programs administered by OEA, and through which OEA operated, during FY 2022 and FY 2023, as of January 1, 2023, 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.

Despite having jurisdiction over newly designated safety sensitive positions, OEA has not received any of these appeals. The agency, however, has prepared itself to adjudicate these appeals by creating a new appeal form to capture the necessary information that will aid in the processing of this type of appeal and by adding an entirely new section to its amended Rules of Procedure to guide the adjudication of safety-sensitive designation appeals.

3. Please describe any **initiatives** that the OEA implemented or ceased to implement in FY2022 or FY2023, as of Jan. 1, 2023, 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 FY 2022, OEA improved its internal operations by developing a system which enables its Operations support division to notify agencies within two business days of when an employee has filed a Petition for Appeal. Moreover, the agency worked, and continues to work, with the Office of Public Records to ensure that the agency is in compliance with the District's records management and retention policies. Additionally, the agency's Operations Manager updated OEA's COOP plan to reflect those things the agency learned from the nearly two years that it was in a full telework posture during the COVID-19 Public Health Emergency.

4. Please provide a copy of the OEA's FY2022 **performance accountability report**.
 - a. Please explain which performance plan strategic objectives and key performance indicators (KPIs) were met or completed in FY2022 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.

OEA has three strategic objectives: to render impartial, legally sound decisions in a timely manner; to streamline the adjudication process; and to maintain a system to allow the public to have access to all decisions rendered by the agency. The following KPI's were met under the

first strategic objective: time required to resolve petitions for review; percent of OEA decisions upheld by D.C. Superior Court and the D.C. Court of Appeals; and percent of decisions published within the D.C. Register. The following KPI's under this objective were not met: the number of Opinions and Orders issued; the time required to complete adjudications; and the number of Initial Decisions issued. The KPI regarding the number of Opinions and Orders issued was not met because there were thirteen petitions filed in FY 2022. The Board issued all of the decisions that were pending on its docket. The only reason that the Board did not reach its target is because there were not at least eighteen cases pending on the Board's docket in FY 2022. The KPI regarding the number of Initial Decisions issued was not met because during the second half of FY 2022 one of OEA's Administrative Judges resigned full-time employment with the agency and became a part-time judge for the remainder of FY 2022. Consequently, no more appeals could be assigned to that judge. Moreover, one of OEA's Senior Administrative Judges did not issue as many decisions as the other Senior Administrative Judges.

5. Regarding the OEA's FY2023 **performance plan**:

- a. Please provide a copy of the OEA's FY2023 performance plan as submitted to the Office of the City Administrator.
- b. List the agency's challenges that prevent achieving the listed target measurements in the KPI.
- c. Discuss any changes to the measurements in FY2022 or FY2023 and explain why the measure was changed.

ANSWER:

Please see Attachment #2.

There are external factors which prevent the agency from issuing Initial Decisions within 120 business days of when the appeal is assigned to an Administrative Judge. The external factor which figures prominently into delaying a timelier issuance of decisions is requests for extensions of time. Throughout the appeal process, parties request multiple extensions of time to file pleadings, to convene evidentiary hearings, to appear for status and prehearing conferences, to seek representation, and to generally prepare their case. Because the judges grant these requests, a more timely adjudication of the appeal is delayed.

New workload measures were added in FY 2022. Those were 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. These measures were added to capture more of the work that the agency performs and to further explain the strategic objective to streamline the adjudication process.

6. 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, as applicable, 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 would be accomplished.

II. Budget and Expenditures

Budget

7. **Budget.** Please *complete the table* in Excel, as completed last year (Attachment #3, pg 10), showing your agency's budget, including Council-approved original budget, revised budget (after reprogramming, etc.), and actual expenditures, by program and activity, for fiscal year 2022, and the first quarter of 2023. 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 2022 for each program and activity code.

ANSWER:

Please see Attachment #3.

8. Please provide an update on the agency's progress in repaying old back pay and delayed pay increases to employees earned during FY2022 and FY2023. Describe the steps taken by OEA and OCFO to ensure that adequate personnel services funds have been requested for the FY 2024 budget.

ANSWER:

All back pay has been issued and all employees are scheduled to receive their step increases when they become due. The agency submitted an enhancement request as part of its FY 2024 budget submission asking that the agency's personnel services costs be fully funded.

9. Please provide the following information for all **intra-District memoranda of understanding (MOUs)** for FY2022 and FY2023 as of Jan. 1, 2023, *including anticipated MOUs* for the remainder of FY2023.
 - a. *Attach copies* of all intra-district MOUs.
 - b. For each MOU, including anticipated MOUs, *update last year's table* in Excel to reflect this year, refer to page 29 Attachment #4.

ANSWER:

Please see Attachment #4.

10. Please provide the following information for all **intra-District memoranda of agreement (MOAs)**, as applicable, for FY2022 and FY2023 as of Jan. 1, 2023, including anticipated MOAs for the remainder of FY2023.
- 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 FY 2022 or FY 2023 as of January 1, 2023.

Memoranda of Agreement, FY2022 and FY2023, 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 FY2022 and FY2023, as of Jan. 1, 2023, including anticipated inter-agency reprogrammings for the remainder of FY2023.
- 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 reprogramming, 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 FY2022 and FY2023, as of Jan. 1, 2023, as well as any anticipated intra-agency reprogramming for the remainder of FY2023.
- a. Please *attach copies* of any reprogramming documents.
 - b. For each reprogramming, including anticipated reprogramming, *update Attachment #6* in Excel, referenced on page 33.

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 FY2024.

ANSWER:

Please see Attachment #7.

Expenditures

14. Please *update last year's table* in Excel to reflect this year (Attachment #8, pg. 42) with the following information on each **contract, procurement, and lease** leveraged in FY2022 and FY2023 as of Jan. 1, 2023, 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 FY2022 and FY2023, as of Jan. 1, 2023; 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, FY2022 and FY2023

<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 FYs 2022 or 2023 as of Jan. 1, 2023, 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 FY 2022 or FY 2023 as of January 1, 2023.

Contract Appeals Board cases filed FY2022 or FY2023, as of Jan. 1, 2023

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

ANSWER:

OEA is not experiencing any staffing or financial challenges which would impact its capacity to publish opinions in the Register. OEA does, however, have one vacant full-time Administrative Judge position and one part-time Administrative Judge position. This will impact OEA’s capacity to timely adjudicate cases as the workload of the agency’s four full-time and one part-time Administrative Judges will be increased until those positions are filled, and the new hires are able to issue decisions.

18. Please provide an **organizational chart** for the agency, arranged by division and subdivision, as of Jan. 1, 2023.

- 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, 2023.

ANSWER:

Please see Attachment #10.

19. Please *update last year’s table* in Excel to reflect this year (reference Attachment #11 pg. 49) with a **chart of all positions (i.e., Schedule A)** at the agency, as of January 15, 2023.

ANSWER:

Please see Attachment #11.

20. 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, 2023.

ANSWER:

The vacant positions position numbers are 00010846 which became vacant on January 1, 2023; 00018547 which became vacant on October 22, 2021; and 00077069 which became vacant on October 1, 2022. The agency has developed a hiring plan which includes the various tasks to be completed during the recruitment process and timelines for completing each task.

21. What was the **caseload** for each hearing examiner in FY2021, FY2022 and FY2023 as of Jan. 1, 2023?

ANSWER:

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

Administrative Judge	Caseload
Administrative Judge Cannon	9
Sr. Administrative Judge Dohnji	12
Administrative Judge Harris	9
Administrative Judge Hochhauser (PT)	6
Sr. Administrative Judge Lim	9
Sr. Administrative Judge Robinson	13

Fiscal Year 2023-to-date

Administrative Judge	Caseload
Sr. Administrative Judge Dohnji	16
Sr. Administrative Judge Harris	15
Administrative Judge Hochhauser (PT)	7
Sr. Administrative Judge Lim	15
Sr. Administrative Judge Robinson	18

22. Regarding **term and temp employees, as applicable:**
- 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 FY2022 or FY2023, please provide a brief narrative to specify why the hire was done on a term or temp basis and not on a continuing basis.

ANSWER:

OEA does not currently have any term or temporary employees.

23. How many and what percentage of employees at the agency as of Jan. 1, 2023, were **District residents?**

- If the percentage of District residents is lower than 50%, please explain.

ANSWER:

Of the twelve full-time and one part-time employees, four are District residents. This represents approximately 30% of OEA’s FTE positions. The agency is unable to explain why this is lower than 50%.

24. Please complete the following charts about the **residency of new hires, including term and temp employees, in FY2022 and FY2023, as of Jan. 1, 2023:**

ANSWER:

No new employees were hired in FY 2022 or have been hired in FY 2023 as of January 1, 2023.

DC Residency of Employees Hired in FY 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			

DC Residency of Employees Hired in FY 2023, as of January 1, 2023

<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			

25. Please complete, *as applicable*, the following table regarding employees placed on **administrative leave** in FY2022 or FY2023. 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 FY 2022, and none have been placed on administrative leave thus far in FY 2023.

Employees on Administrative Leave During FY2022 and FY2023

<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, 2023).</i>

26. For FY2022 and FY2023, as of Jan. 1, 2023, please complete, *as applicable*, the following table on each **employee separated** from the agency.

ANSWER:

No employees were separated from the agency in FY 2022 nor have any been separated in FY 2023 as of January 1, 2023.

Employees Separated from Agency, FY2022 and FY2023

<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>	<i>Number of days employed at OEA</i>

IV. Office of Employee Appeals

27. Please complete the following chart with information about **OEA cases by case type** in FY2021, FY2022, and FY2023 as of Jan. 1, 2023.

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		
	FY2021	FY2022	FY2023	FY2021	FY2022	FY2023	FY2021	FY2022	FY2023
Jurisdiction	7	11	8	16	13	7	9	6	1
Performance Rating	0	0	0	0	0	0	0	0	0
Adverse Action	39	60	15	53	73	20	38	59	11
Enforced Leave	0	0	0	0	0	0	0	0	0
Reduction-in force	1	12	0	1	4	0	0	2	0
Safety Sensitive	N/A	0	0	N/A	0	0	N/A	0	0

28. Please complete the following chart with information about the **average time** to reach an initial decision by case type in FYs 2020-2022 and FY2023 as of Jan. 1, 2023.

ANSWER:

Case Type	Average Days from Filing to Initial Decision ¹			
	FY2020	FY2021	FY2022	FY2023
Jurisdiction	102	139	169	66
Performance Rating	0	0	0	0
Adverse Action	205	265	253	238
Enforced Leave	0	0	0	0
Reduction-in-Force	163	89	165	0
Safety Sensitive	N/A	N/A	0	0

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

¹ The totals reflect the average number of business days.

ANSWER:

Jurisdiction Final Decisions, FY2021-FY2023

Number of final decisions			Number of decisions issued 45 days or more after being filed with the OEA office		
FY2021	FY2022	FY2023	FY2021	FY2022	FY2023
16	13	7	16 ²	13	7

30. Please complete the following chart with **data on OEA cases** for FY2021, FY2022 and FY2023:

ANSWER:

OEA Case Information, FY2021-FY2023

Item	FY2021	FY2022	FY2023, as of Jan. 1, 2023
ADMINISTRATIVE JUDGES			
Number of petitions for appeals filed	47	83	23
Number of cases entering mediation	41	46	5
Number of cases settled by mediation	2	5	0
Number of initial decisions issued	70	90	27
Average time to issue initial decisions (days) ³	233	237	194
Number of pending petitions for appeal	11 ⁴	47	19
OEA BOARD			
Number of petitions for review filed	16	14	4
Number of opinions and orders issued	18	13	5
Average time to issue opinions and orders (days) ⁵	74	71	66
Number of pending petitions for review	0	0	4
SUPERIOR COURT			
Number of decisions appealed to Superior Court	12	8	4
Number of pending appeals in Superior Court	1	5	4
Number of decisions issued in Superior Court	19	16	4
Number of appeals upheld in Superior Court	17	13	3
Number of appeals reversed or remanded in Superior Court	2	3	1
DC COURT OF APPEALS			

² Four of the sixteen jurisdictional decisions were matters on remand or compliance. Therefore, the statutory 45-day deadline is not applicable to those four cases.

³ The totals reflect the average number of business days.

⁴ There are four FY2020 appeals included in this total.

⁵ The totals reflect the average number of business days.

Number of decisions appealed to Court of Appeals	5	3	5
Number of pending appeals in Court of Appeals	1	3	5
Number of decisions issued in Court of Appeals	16	7	3
Number of appeals upheld in Court of Appeals	13	6	3
Number of appeals reversed or remanded in Court of Appeals	3	1	0

31. Please provide a narrative **description explaining each decision that was reversed or remanded** by Superior Court of the Court of Appeals in FY2022 or FY2023. Please attach a copy of any opinion issued with the remand or reversal (please provide each as a separate attachment).

ANSWER:

Summaries of the cases are provided below. Copies of the FY2022 and FY2023 remand and reversal decisions are provided in Attachments #12-16.

2022 Superior Court Remands

1. *George Resper v. District of Columbia et al., Case No. 2019 CA 008286 P(MPA) (Attachment #12)* – This case addressed OEA’s jurisdiction over appeals involving reasonable accommodations, as it relates to Agency’s cause for removal. The Court held that OEA correctly ruled that Employee’s claims of human rights violations by Agency, due to his disability status and request for workplace accommodations/restrictions, are outside the scope of OEA’s jurisdiction. However, the Court held that OEA did have jurisdiction to decide whether Agency lawfully removed Employee under 6B DCMR § 1607.2(n). It found that because OEA determined that circumstances prevented Employee from carrying out his assigned duties, it had the function to determine “whether any reasonable accommodation could enable him to perform those functions.” The Court reasoned that although tension may exist between (1) OEA’s duty to decide whether a reasonable accommodation by Agency would have enabled Employee to perform the essential functions of his position and (2) OEA’s lack of jurisdiction to decide whether Agency violated the D.C. Human Rights Act (DCHRA) or the Americans with Disabilities Act (ADA), one way to reconcile these two principles is through the holding in *Falls v. D.C. Department of General Services, OEA Matter No. 1601- 0044-12, Opinion and Order on Interlocutory Appeal* (Oct. 29, 2013).

In *Falls*, OEA concluded that it did have jurisdiction to determine whether the agency had cause to remove the employee, even though it did not have jurisdiction to determine whether the removal violated the DCHRA. As a result, the Court opined that OEA could resolve the issue concerning cause for termination without also deciding whether any failure by Agency to provide reasonable accommodations violated the DCHRA or the ADA. It held that the issue that OEA had the jurisdiction and the obligation to decide was intertwined with issues involving the DCHRA and the ADA, but this intertwinement did not eliminate OEA’s

jurisdiction or relieve it of the obligation to decide whether Agency had cause for removal under 6B DCMR § 1607.2(n).

The Court further found that although the Administrative Judge (AJ) discussed the reasonableness of some accommodations for Employee's disability, he did not adequately explain his conclusions. It asserted that the AJ's finding seemed tantamount to a finding that the Agency is justified in removing any employee whose disability required any accommodations at all, which is inconstant with the explicit recognition in 6B DCMR § 1607.2(n) that reasonable accommodations are required. Moreover, the Court ruled that Agency did not engage in the interactive process to identify an accommodation, as required by the DCHRA. Therefore, the Court granted Employee's Petition for Review and remanded the matter to OEA.

On December 6, 2022, the AJ issued an Initial Decision on Remand upholding Agency's termination action against Employee.

2. ***Gina Vaughn v. Metropolitan Police Department, Case No. 2020 CA 002891 P(MPA) (Attachment #13)*** – Employee raised three arguments in Superior Court: (a) the Reduction-in-Force (“RIF”) was a sham intended to remove her and not her position; (b) flawed documents made her separation illegal; and (c) MPD denied her an opportunity to compete for a remaining position at the same competitive level. The Court decided not to determine if the RIF was a sham because Employee failed to raise this argument before OEA. As for the flawed documents, the Court upheld OEA's ruling that the error was not harmful.

As it related to Employee's opportunity to compete argument, the Court held that Agency agreed that Employee had the right to compete for another position in the same competitive level, which meant jobs in the same classification series and grade. However, Agency contended that Employee's position was in classification “334”, and the only available positions with the same grade were in classification “2210.” Accordingly, Employee had no right to compete for those positions. OEA agreed with this contention, but the Court determined that this decision was in error.

The Court found that the 334 series was cancelled and replaced with the 2210 series. However, Agency made no effort to update Employee's position to show that she was in the 2210 series. The Court ruled that Agency's failure to reclassify the position after cancelling the 334 series does not change the fact that the reclassification occurred. Consequently, Employee had the right to compete for any position within the 2210 series. Accordingly, the Court remanded the matter to OEA for further proceedings.

On April 25, 2022, the Administrative Judge (AJ) issued a Second Initial Decision on Remand. Consistent with the Superior Court ruling, he held that when Agency abolished the Computer Specialist 334 series, it replaced it with the new competitive level 2210 series. The AJ went on to note that Agency then failed to reclassify its 334 series position to the existing 2210 series. Accordingly, both parties agreed that a reversal of Agency's removal pursuant to the RIF was required. Therefore, Agency's termination action was reversed, and it was ordered to reinstate Employee with back pay and benefits.

3. *Roxanne Cromwell v. Office of Employee Appeals, Case No. 2021 CA 002345 P(MPA) (Attachment #14)* – The Court provided that although it is true that there is no regulation authorizing the OEA Board to consider decisions on compliance, because the Administrative Judge’s (AJ) Addendum Decision on Compliance (1) included appeal rights; (2) included a certificate of service that referred to the “attached Initial Decision;” (3) the AJ requested briefs from the parties addressing unresolved factual and legal questions; (4) and because the AJ clarified or modified conclusions from the Initial Decision on Remand in the Addendum Decision on Compliance, the Addendum Decision on Compliance should have been captioned as a “supplemental” Initial Decision because it modified, clarified, or amended the Initial Decision on Remand. Accordingly, the Court ruled that the Board had jurisdiction to consider the appeal because it resulted from an Initial Decision. Therefore, the matter was remanded to the OEA Board to consider the AJ’s Addendum Decision on Compliance.

On November 17, 2022, the Board issued its Third Opinion and Order on Petition for Review. It ruled that because Employee’s position was obtained non-competitively, she could not have acquired permanent status based on the term appointment. Furthermore, it reasoned that Employee’s position could not have been converted to a regular Career Service appointment because the initial term appointment was not obtained through open competition. Accordingly, the Board found that the AJ correctly held that Agency was only required to reimburse Employee back pay and benefits through the expiration of her term appointment date. As a result, the Petition for Review was denied.

2022 D.C. Court of Appeals Remands

1. *Abraham Evans v. District of Columbia Office of Employee Appeals et al., Case No. 19-CV-1223 (Attachment #15)* – This case involved the 90-day deadline for adverse actions. The D.C. Court of Appeals held that it was not clear when “the conclusion of the investigation” of Employee occurred under D.C. Code § 5-1031(b). It found that there was a gap in time between when the MPD “knew or should have known of the act . . . allegedly constituting cause” for Employee — taking payment for providing private security — and when the matter became the “subject of a criminal investigation,” seemingly with the MPD Internal Affairs’ referral of the matter to the United States Attorney’s Office (USAO) on January 13, 2009. The Court determined that this gap may have been as long as twenty-two business days, but even if it is only two business days, the MPD’s notice of proposed adverse action against Employee (issued eighty-nine days after the USAO’s declination of prosecution letter) would be untimely under the MPD’s interpretation of what constitutes “the conclusion of the investigation” under D.C. Code § 5-1031(b). As a result, it remanded the matter to the OEA Administrative Judge (AJ).

Employee subsequently filed a request for rehearing with the Court. The Court issued an order denying the request on September 8, 2022. The matter is currently pending before the AJ. Agency filed its brief on December 15, 2022. Employee’s brief was due on January 20, 2023, and Agency’s sur-reply is due on March 1, 2023.

2023 Superior Court Reversal

1. *District of Columbia Youth Rehabilitation Services v. D.C. Office of Employee Appeals (Samuel Murray)*, Case No. 2022 CA 001505 P(MPA) (Attachment #16) – The Court found that under D.C. Code § 1-606.03(c), an Administrative Judge (AJ) retains jurisdiction over a case “only to the extent necessary to correct the record, rule on a motion for attorney fees, or process any petition for enforcement filed under the authority of the Office.” It held that the AJ’s Second Initial Decision on Remand became a final order. While Employee properly sought enforcement of this order when the Agency had not yet given him his back pay after thirty days, that issue became moot with the payment of the March 31, 2021, check.

It further held that while the AJ may have found it appropriate here, given the lengthy litigation, to award Employee interest on the back pay, the AJ did not have the jurisdiction to do so. It reasoned that Employee’s request for an award of interest on the back pay award did not fall within OEA’s jurisdiction – to correct ministerial errors in the record, to rule on attorney fees, or to process a petition for enforcement. It found that the AJ did process Employee’s Motion to Reopen, treating it as a motion to enforce compliance with the order to award back pay; however, the jurisdiction ended there, particularly when the issue of compliance became moot.

According to the Court, the AJ’s order became final in October of 2020, and Employee did not file his motion requesting that the final judgment be amended to add interest on the back pay award, until February 10, 2021. Therefore, because the AJ’s decision had become final and the request for interest on back pay fell outside the scope of OEA’s jurisdiction, the Court reversed the award of interest.

32. Please fill in the chart below with **cases by agency** in each year FY2021, FY2022, and FY2023. 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, FY2021-FY2023, as of Jan. 1, 2023

Agency name	Case Type	Number of cases filed against agency		
		FY2021	FY2022	FY2023
Child and Family Services Agency	Adverse Action	0	0	1
Child and Family Services Agency	Jurisdiction	0	0	1
D.C. Fire and Emergency Medical Services	Adverse Action	3	5	3
D.C. Fire and Emergency Medical Services	Jurisdiction	1	1	0
D.C. Public Library	Adverse Action	0	3	0
D.C. Public Schools	Adverse Action	5	15	2
D.C. Public Schools	Jurisdiction	0	1	0
D.C. Public Schools	Reduction-in-Force	1	1	0
D.C. Retirement Board	Adverse Action	0	1	0
Department of Aging and Community Living	Adverse Action	1	0	0
Department of Behavioral Health	Adverse Action	1	1	1
Department of Behavioral Health	Jurisdiction	0	2	0
Department of Consumer and Regulatory Affairs	Adverse Action	1	0	0
Department of Consumer and Regulatory Affairs	Jurisdiction	0	1	0
Department of Corrections	Adverse Action	5	1	2
Department of Corrections	Jurisdiction	0	0	2
Department of Employment Services	Adverse Action	0	1	0
Department of For-Hire Vehicles	Adverse Action	1	0	0
Department of For-Hire Vehicles	Jurisdiction	0	0	1
Department of Forensic Sciences	Adverse Action	2	6	0
Department of Forensic Sciences	Reduction-in-Force	0	11	0
Department of General Services	Adverse Action	1	2	0
Department of Health	Adverse Action	0	1	0
Department of Human Resources	Adverse Action	1	0	0
Department of Human Services	Adverse Action	1	0	0

Department of Human Services	Jurisdiction	0	1	0
Department of Motor Vehicles	Adverse Action	1	0	0
Department of Motor Vehicles	Jurisdiction	1	1	0
Department of Parks and Recreation	Adverse Action	0	2	0
Department of Public Works	Adverse Action	2	4	1
Department of Public Works	Jurisdiction	0	0	2
Department of Transportation	Adverse Action	2	3	0
Department of Transportation	Jurisdiction	0	1	0
Department of Youth Rehabilitation Services	Adverse Action	2	4	2
Department of Youth Rehabilitation Services	Jurisdiction	2	0	0
Metropolitan Police Department	Adverse Action	3	6	1
Metropolitan Police Department	Jurisdiction	2	0	1
Office of the Attorney General	Adverse Action	1	1	1
Office of the Attorney General	Jurisdiction	0	1	0
Office of the Chief Technology Officer	Adverse Action	1	2	0
Office of the Chief Technology Officer	Jurisdiction	0	1	0
Office of the State Superintendent of Education	Adverse Action	2	1	0
Office of the State Superintendent of Education	Jurisdiction	1	1	1
Office of Unified Communications	Adverse Action	1	0	1
University of the District of Columbia	Adverse Action	2	1	0

33. As a result of the Comprehensive Policing and Justice Reform Acts, arbitrator review of adverse actions will no longer be available to union members of the Metropolitan Police Department. As the sole avenue for these appeals, please describe the expected increase in the volume of OEA filings as well as the impact on ALJ caseloads. Does OEA anticipate the need for additional resources to continue to meet the statutory deadline for initial decisions within 120 days?

ANSWER:

According to officials of the DC Police Union, OEA can expect to receive approximately 150 new appeals annually from MPD officers. DC Police Union officials believe that each appeal will require an evidentiary hearing with each hearing lasting at least two days. An increase of this magnitude will require additional resources. OEA will need to hire at least one new Administrative Judge (possibly two) to adjudicate these appeals. Moreover, additional support staff will be required. The agency will also need additional funding to spend on court reporting costs and office supplies.

34. In each year of FY2022 and FY2023, as of Jan. 1, 2023, 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:

1. ***Samuel Murray v. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0032-14C21*** – Employee was separated from his position as a Motor Vehicle Operator. After numerous appeals and remands among the OEA Administrative Judge (AJ), the OEA Board, and the Superior Court of the District of Columbia (Superior Court), the AJ issued an Addendum Decision on Compliance on March 22, 2022. He determined that there were no outstanding compliance issues by the Agency because it issued a check to Employee. However, he also ordered the Agency to pay four percent (4%) per annum simple interest on the back pay amount from December 1, 2013, through March 31, 2021. On April 5, 2022, Agency filed an appeal of the ruling on interest in Superior Court. On January 5, 2023, Superior Court reversed the AJ’s award of interest. It found that the AJ’s order became final in October of 2020, and Employee did not file a motion requesting that the AJ amend the final judgment to add interest on the back pay award until February 10, 2021. Consequently, because the AJ’s decision had become final, the request for interest on back pay fell outside the scope of OEA’s jurisdiction.
2. ***Valerie Richards v. D.C. Department of Corrections, OEA Matter No. 1601-0013-21C22*** – Employee was suspended for fifteen days from her position as an Operations Research Analyst. On January 7, 2022, the Administrative Judge (AJ) issued an Initial Decision reversing Agency’s decision to suspend Employee. Agency did not appeal the decision. On March 19, 2022, Employee filed a Request for Compliance. The AJ convened a Status Conference on April 20, 2022. On May 2, 2022, the AJ issued an Addendum Decision on Compliance. She provided that on April 28, 2022, Employee submitted an email confirming that Agency fully complied with the Initial Decision. Accordingly, the AJ dismissed Employee’s Motion to Enforce.
3. ***Keith Bickford v. District of Columbia Department of General Services, OEA Matter No. 1601-0053-17C21*** – Employee was removed from his position as a Supervisory Special Police Officer. An Initial Decision was issued on June 6, 2019, reversing Agency’s removal action. Agency filed a Petition for Review with the OEA Board on July 5, 2019. The Board issued an Opinion and Order on January 14, 2020. It opined that in accordance

with DPM § 1602.3(a), Agency had ninety days to issue its notice of proposed action against Employee. Agency exceeded the deadline by two days. Consequently, the Board denied Agency's petition.

Agency then filed an appeal with the Superior Court of the District of Columbia (Superior Court). On February 3, 2021, the Superior Court affirmed OEA's decision and denied Agency's appeal. Employee subsequently filed a Petition for Enforcement of Decision and Order on September 7, 2021, alleging that the Agency had not reinstated him or restore his back pay and benefits. The AJ issued an order on November 19, 2021, notifying Agency to comply and to identify any item to which it was not in compliance and the person responsible for achieving compliance of that item by December 3, 2021. Agency filed a response to the order on December 13, 2021. It submitted that, with the exception of one item, it had achieved full compliance and that compliance on the remaining item would be met in the immediate future. Employee did not file a response or seek an extension of time. On May 9, 2022, the AJ issued an Addendum Decision on Compliance. She provided that Employee failed to file a response to her order, and thus, dismissed the Petition for Enforcement because he no longer disputed Agency's compliance. Accordingly, the petition was dismissed.

4. ***Saundra McNair v. D.C. Department of Employment Services, OEA Matter No. 1601-0012-14C22*** – Employee was separated from service as an Administrative Law Judge. The OEA Administrative Judge (AJ) issued an Initial Decision on April 22, 2016, reversing Agency's termination action against Employee. This decision was not appealed by Agency to the OEA Board or the Superior Court of the District of Columbia (Superior Court). From May 2016 through August 2017, the AJ held numerous status conferences and exhausted all avenues for compliance. On August 11, 2017, the AJ certified the matter to the OEA General Counsel's Office.

On August 21, 2017, the OEA General Counsel certified the matter to the Executive Office of the Mayor's Office of the General Counsel (EOM OGC). On July 31, 2018, the EOM OGC issued a Memorandum Decision on its findings. Employee appealed to Superior Court; however, the appeal was dismissed for lack of jurisdiction. Subsequently, a separate but related, OEA matter (OEA Matter No. 1601-0059-20) involving Employee came before the AJ when she was terminated from her position again.

During the November 16, 2021, Prehearing Conference, for the separate matter, the AJ was informed that Agency still had not restored all benefits owed to Employee related to the original matter. As a result, the AJ treated Employee's Motion to Reopen for Enforcement as a Second Motion for Enforcement.

On March 25, 2022, Agency filed a Motion to Close the Issues of Compliance and Response to Employee's Motion for Attorney's Fees, Cost, or Related Expenses. The AJ issued a Second Addendum Decision on Compliance on September 30, 2022. He found that because he had previously made extensive attempts to remedy the outstanding compliance issues, to leave the enforcement matter to another entity, like Superior Court,

to address the outstanding compliance issues. As a result, the AJ denied Employee’s Second Motion for Enforcement.

5. ***Margaret Fowler v. D.C. Alcoholic Beverage Regulation Administration, OEA Matter No. 1601-0006-20C22*** – Employee was removed from her position as a Licensing Specialist. On March 11, 2021, the Administrative Judge (AJ) issued an Initial Decision reversing Agency’s decision to terminate Employee. Agency filed a Petition for Review with the OEA Board on April 15, 2021. On August 26, 2021, the Board issued an Opinion and Order denying Agency’s Petition for Review.

Employee filed a request for compliance on May 17, 2022. On June 16, 2022, the AJ held a Status Conference and directed the parties to periodically update her on the status of the matter. On September 29, 2022, Agency notified the AJ that Employee’s backpay and benefits check was processed and mailed to Employee. Subsequently, on September 29, 2022, Employee notified the AJ and Agency that she received the check. On September 30, 2022, the AJ issued an Addendum Decision on Compliance ruling that Agency fully complied with the March 11, 2021, Initial Decision and dismissing Employee’s request for compliance.

35. For the OEA board members, please complete the chart below with **member information** as of Jan. 1, 2023. Please note any vacancies.

OEA Board members

<i>Member’s name</i>	<i>Confirmation date</i>	<i>Term expiration date</i>	<i>District resident? (y/n)</i>
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

36. Please explain what risks or challenges would be faced by OEA, petitioners or responding agencies if OEA allowed for the electronic submission of appeals. What resources would be necessary to accept electronic submission of appeals?

ANSWER:

OEA is in the process of consulting with OCTO to determine how to configure the database to allow for the electronic submission of appeals and the costs associated with this. In the interim, OEA is planning to use a dedicated email inbox to receive petitions.

V. Agency Operations and Disputes

37. 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 FY2022 or FY2023. 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:
- 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 FY2022 or FY2023, as of Jan. 1, 2023, 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 FY2022 or FY2023-to-date.

38. 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 FY2022 or FY2023, as of Jan. 1, 2023. Do not include cases covered in Questions 28-29 or lawsuits naming OEA solely for the purpose of filing the full record in court.
- Provide the case name, court, where claim was filed, case docket number, current status of case, and a description of all causes of action, counts, and/or allegations in the filed complaint.
 - Attach a copy of each complaint and any response filed by the agency or its legal representative.

ANSWER:

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.

39. Please list all **settlements** entered into by the agency or by the District on behalf of the agency in FY2022 or FY2023, as of Jan. 1, 2023, 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 FY2022 or FY2023-to-date.

40. 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 FY2022 and FY2023, as of Jan. 1, 2023.
- 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 contracted any contractors or consultants to prepare any studies, research papers, reports, evaluations, or analyses during FY2022 or FY2023-to-date.

41. Please list and describe any **investigations, audits, or reports by outside entities** that involve the OEA or any employee that were conducted during FY2022 and FY2023, as of Jan. 1, 2023, or that are ongoing. *Attach copies* of any such document. Include any routine or ad hoc monitoring, site reviews, desk audits, or other reviews or audits by federal agencies, the District Inspector General, the DC Auditor, or *any other* local or federal governmental entity.

ANSWER:

There are no ongoing investigations, audits, or reports by outside entities involving OEA or any employees conducted during FY2022 or FY2023-to-date.

42. Please list all **recommendations identified by the Office of the Inspector General, D.C. Auditor, or other federal or local oversight entities** during FY2021, FY2022, or FY2023 as of Jan. 1, 2023 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:

In its October 6, 2022, report, the Office of the District of Columbia Auditor (ODCA) addressed the settlements paid by the District government to Metropolitan Police Department (MPD) officers who were terminated and reinstated. The Auditor explained that MPD terminations could be overturned through arbitration or the Office of Employee Appeals (OEA) and that there are multiple entities involved in the MPD disciplinary process.

It provided that incidents could be investigated by the Office of Police Complaints, the U.S. Attorney's Office (USAO), MPD's Use of Force Review Board, MPD's Chain of Command, and/or MPD's Internal Affairs Division (IAD). If the misconduct is sustained, discipline is recommended by MPD's Disciplinary Review Division (DRD). In cases where termination is proposed, a hearing tribunal is held, also known as trial board or an Adverse Action Panel. The Panel is made up of MPD commanders, inspectors, and captains to hear witnesses and review evidence against the officer. From this point forward, MPD is represented by an attorney from the D.C. Office of the Attorney General (OAG). The tribunal is empowered to recommend discipline and then an assistant chief will assign discipline to the officer. Officers recommended for termination can then appeal to the Chief of Police. If the appeal is denied by the Chief of Police, the officer's employment is terminated.

At this point, the MPD officer has options to appeal the termination. The collective bargaining agreements between MPD and the Fraternal Order of Police (FOP), effective at the time the report was provided, empowered the FOP to challenge MPD terminations through arbitration. If the FOP decided not to appeal on behalf of an officer, the individual officer could appeal their termination, independent of the union, by filing with OEA.

The report noted that the D.C. Council's permanent version of the police reform legislation, would remove police discipline from the collective bargaining agreement (CBA) process. As a result, appeals through arbitration would no longer be an option. MPD employees would then appeal their terminations through OEA.

OEA is unaware of when the Auditor's recommendation is intended to take effect. Additional staff and court reporting costs will be required to handle the increased caseload. OEA is in the process of gathering the information necessary to request additional funding.

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

ANSWER:

Please see Attachment #17.

44. Please attach a **log of all FOIA requests** received in FY2022 and FY2023, as of Jan. 1, 2023, with the request number, the name of the requestor, the request date, and a brief description of the information requested.

ANSWER:

Please see Attachment #18.

No FOIA requests were received in FY 2022, and none have been received in FY 2023 as of January 1, 2023.