

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
JANET JONES,	)	
Employee	)	OEA Matter No. 1601-0092-16
	)	
v.	)	Date of Issuance: May 11, 2018
	)	
D.C. PUBLIC SCHOOLS,	)	Monica Dohnji, Esq.
	)	Senior Administrative Judge
Agency	)	
	)	

---

Janet Jones, Employee, *Pro Se*  
Nicole Dillard, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On September 6, 2016, Janet Jones (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“DCPS” or “Agency”) decision to terminate her from her position as a Dance Teacher at Orr Elementary School effective August 5, 2016.

Employee was terminated for having a ‘Developing’ rating under IMPACT, the DC Public Schools’ Effective Assessment System for School-Based Personnel during the 2014-2015 school year followed by a ‘Minimally Ineffective’ rating during the 2015-2016 school year. On October 14, 2016, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on October 18, 2016. Following several conferences and continuances, an evidentiary hearing was held on February 9, 2018. Thereafter, on March 7, 2018, I issued an Order wherein, the parties were notified that the transcript from the Evidentiary Hearing was available for pickup. The Order also provided the parties with a schedule for submitting their written closing arguments. Both parties have submitted their written closing arguments. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

## ISSUE

Whether Agency's action of separating Employee from service pursuant to a 'Developing' and 'Minimally Effective' performance ratings under the IMPACT system for school years 2014-2015; and 2015-2016 respectively; was done in accordance with all applicable laws, rules, or regulations.

## BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

## FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

As part of the appeal process within this Office, I held an Evidentiary Hearing on the issue of whether Agency's action of terminating Employee was in accordance with applicable law, rules, or regulations. During the Evidentiary Hearing, I had the opportunity to observe the poise, demeanor and credibility of the witnesses, as well as Employee. The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of Employee's appeal process with this Office.

## SUMMARY OF RELEVANT TESTIMONY

### *Agency's Case in Chief*

#### **1. Jamie Trahan (Transcript pages 21-79)**

Jamie Trahan ("Trahan") is the Assistant Principal of English Language Arts at Orr Elementary School. Her duties as an Assistant Principal include, but are not limited to academic and assessment programing, and test administrator for the school. She supervises and ensures that all formal and informal assessments are completed. She supervises second through fifth grade English Language Arts teachers and special subject teachers.

Trahan testified that as a dance teacher, Employee was one of the special subject teachers she was supervising during the 2015-2016 school year. She completed Employee's IMPACT evaluation, on Core Professionalism ("CP") and Commitment to School Community ("CSC") ratings. Trahan explained that IMPACT looks at the teacher responsibilities, which includes the instruction for a teacher's core content; evaluates teachers on student academic achievement over the course of the year and the teacher's support of local school initiatives and what they do above and beyond their regular classroom capacity.

Trahan stated that CP evaluates the teacher's adherence to core duties, tardiness, attendance and any core duty functions that are allotted for a given staff member or educator. Trahan explained that teachers are evaluated twice a year – at the middle of the school year and the end of the year. The core duties are documented mainly by observation and some legal documentation. Trahan testified that respect is a big core duty – how you interact with staff, peers, and children is evaluated by observation.

While reviewing Employee's final IMPACT score, Trahan testified that Employee had three administrator evaluations and two master educator evaluations.

Trahan stated that the Teaching and Learning Framework (TLF) is evaluated twice. But Employee only had two administrator evaluations because Employee was out on Family Medical Leave. Trahan testified that TLF covered nine standards of teacher instruction during the relevant school year and all these standards are evaluated every time Trahan does an observation.

With regards to CSC, Trahan testified that it is evaluated twice. She explained that it's a holistic evaluation over a period of time. Performance or adherence to what the commitment to school community is asking from the beginning of the school year until the period of the evaluation. (Tr. pgs. 29-30). She testified that the requirements for the CSC are provided to the teachers at the beginning of the school year so they can track their progress. Special subject teachers can participate in CSC through intervention. For instance, they may have a group of students that they are tasked with providing additional instruction to cover the period of time. Trahan testified that this is different from the one-off 30-minute observation regularly done for IMPACT. CSC looks at what you do on a regular basis. (Tr. pg. 30).

Trahan testified that CP is assessed over time and it's usually regulated through levels of progressive discipline such as verbal and written (formal or informal) warning. Trahan stated that CP deducts from the final IMPACT score. She explained that if you meet standards, your score remains the same. However, there is a 10-point or a 20-point deduction if you fail to meet the core duties of CP. (Tr. Pg. 32).

Reviewing Employee's 2015/2016 IMPACT report, Trahan testified that Employee was observed on November 2, and she had a conference on November 17. Her final TLF score was 2.33. Trahan stated that she went into Employee's class at that time and observed her.

Employee scored a 1.25 for CSC. For CSC 1: Trahan maintained that special subject teachers were allotted a certain number of students in a particular subject that they were supposed to meet with outside of their regular duty across the week for intervention. Employee

failed to meet with those students in cycle one. Trahan stated that, during that school year, special subject teachers had an opening in the morning of their instructions during which they were supposed to receive students for about 20-30 minutes for instruction. Trahan stated that she knew Employee did not meet the standard for CSC 1 because she was not receiving students based on her observation. Trahan explained that based on her observation, Employee did not have students at the time when students were supposed to be with her. (Tr. pgs. 36-37). Employee was not reported as either receiving students or going to get students for her interventions. (Tr. pg. 37).

Trahan testified that for CSC 3, special subject teachers, especially those that do performing arts, were expected to have children perform. The first cycle for the 2015/2016 school year ended just before Christmas. Every year, the school has a very large Christmas program. There were multiple instances where practice was initiated after school. There was a lack of clarity when things were supposed to happen. Trahan noted that even up until the day of the performance, Employee was actively trying to teach the children with 300 people in the audience. She further explained that in terms of timely preparation and delivery information, teachers were very often unaware of who was supposed to be where, what their performance was, and how the school would support. Trahan stated that Employee got support and guidance from other staff members on costumes and things for performance, but it was very disorganized and resulted in children not actually being able to complete the performance because it was not properly prepared. (Tr. pgs. 38-39). Trahan also testified that when she observed Employee on November 2, Employee did not know the names of the students, including the names of students she was supervising for practice or after care, which is a core duty or expectation of teachers. Trahan averred that they do multiple observations; however, not all observations are formal observations. (Tr. pgs. 39-40).

For CSC 4, Trahan asserted that she scored Employee as a level 1 because Employee provided no evidence of engagement with students' families. Trahan explained that, Employee never followed-up when asked about the children participating in the extracurricular activities. For instance, she was asked if she had contacted their parents, or aftercare coordinators or officer registrar to get names or contact information, but she never followed-up. Thus, there was always a concern around clarity and whether information was being communicated to the appropriate parties, be it teachers or parents. (Tr. pg. 40). Trahan asserted that she actively engaged with Employee to let her know what the expectation was and what she should be doing through conversations, and she emailed documentation after conversations occurred. Employee did not follow the next steps she recommended. (Tr. pg. 41).

For CSC 5, Trahan testified that Employee adhered to DCPS structured professional development. However, with regards to collaboration outside of that, there was no supporting documentation. For instance, she failed to communicate her expectations to teachers regarding the students dancing in the Christmas performance and there was no clarity as to what they were supposed to be doing. Trahan explained that Employee created schedules after Trahan had conversations (warnings) with Employee informing her that teachers needed a schedule of when Employee pulled students from their academic courses. (Tr. pg. 43).

Under CP3 – Policies or Procedures, Employee received a slightly below standard score. Trahan testified that Employee would allow children who were in aftercare to come to her space and stay after school without notifying the leaders. She noted that Employee was given multiple reminders that the aftercare leader had to be aware that the children were with Employee. (Pg. 44). This was a safety concern and Employee was asked to notify the school if children were going to be staying with her after school. Additionally, if the children were not in aftercare, there had to be formal parent permission for them to be able to stay. (Tr. pg. 45). Trahan recounted an incident where a child who was supposed to be in aftercare was with Employee and when the child's parents or sibling came to retrieve them for aftercare, they could not find the child. The child was helping Employee take things to her car, and Employee reported that she was driving around the block with the child in her care because she was afraid that someone was following her. Trahan also mentioned that Employee had a habit of asking children to help her bring her things to her car and she has been informed that was an unacceptable practice. (Tr. pg. 45-47).

Referring to page 88 of the Staff Handbook – extracurricular activities, Trahan testified that according to the handbook, if a child is participating in an activity outside of the school day, the student must remain on and be left on school grounds. Further, the sponsor of the event must remain until all children are picked up. Trahan stated that Employee violated this policy when she removed the child from school grounds without the school or family's permission when she was driving around with the child. (Tr. pg. 50). Trahan noted that the Staff Handbook is given to teachers during preservice week – the first week teachers report to work before school officially resumes for the students at the beginning of the year. Trahan stated that Employee received a copy of the handbook, along with other materials. (Tr. pg. 51).

With reference to Employee's cycle three observation that happened in May, Trahan testified that she attempted to schedule a conference with Employee multiple times but Employee did not show up for her conference times. (Tr. pg. 53).

Additionally, Trahan testified that with regards to TAS, all ET-15 teachers are required to have student achievement performance requirement. She explained that, at the beginning of the school year, teachers get guidance on what is allowed or recommended by the school for their assessments in their core content area. Teachers are asked to submit beginning of year data, especially if they choose a growth measurement. The teachers complete their assessment and provided beginning of the year data to Trahan at the beginning of October. At the end of the year, the teachers submit documentation for end of year results for the same data they submitted in October. A pre and post assessment is done for the school year and TAS compares all the assessments submitted. The assessments have to be approved by an administrator. The teacher provides Trahan with an example of what their assessment will look like before providing it to the students. The teachers provide Trahan with the results of the assessment in late May/June. (Tr. pgs. 55-56). Trahan stated that Employee scored a one (1) in this area because the data she submitted was for fifth graders, which was not the grade level that she outlined for herself in the assessment, and she submitted assessment data for about eight (8) or nine (9) fifth graders students, out of about forty (40) fifth graders. Thus, her submission was incomplete. Trahan testified that she reminded Employee that TAS was due. Trahan explained that, unfortunately for Employee, fifth graders' schedules were not consistent at the end of year. But because TAS has been a required IMPACT requirement from the start of IMPACT, all teachers were aware of

what they had to do beginning and end of year assessments. Trahan mentioned that she gave Employee until the last day of school to attempt to assess students and provide data, yet Employee did not provide Trahan with a complete set of data for the beginning and end of year. (Tr. pgs. 57-58). Trahan asserted that Employee had returned from her Family Medical Leave (“FMLA”) at the time TAS was due.

On Cross-examination, Trahan reiterated that Employee provided her with both written and performance data for eight (8) or nine (9) students and that was not what Employee had stated at the beginning that her assessment would be based on. Trahan stated that Employee had stated at the beginning that her assessment would be based on third grade. She stated that, when you choose a grade, its representative of all the students in the grade. But the data Employee submitted represented eight (8) or nine (9) students. Further, it did not align with what Employee had initiated at the beginning of the school year. Additionally, the data Employee provided was not complete for the grade level that she was attempting to submit data for. (Tr. pg. 60). Trahan acknowledged that she had a meeting with Employee regarding a discrepancy with the grade level Employee had to assess – fifth or third grade. Trahan noted that if it was indeed agreed at a later date that Employee submit fifth grade data, it was still not submitted. (Tr. pg. 61). Trahan explained that TAS required that data be submitted for all students outlined in the assessment and if Employee chose fifth graders, she had to submit data for all fifth graders which she failed to do. Trahan maintained that Employee provided a sample that was not the complete grade level. (Tr. pgs. 62-63).

Trahan testified that although there were challenges because of the fifth graders promotion, all the students could have been available to Employee. She explained that fifth grade was a popular grade for special subject teachers to choose and there were other teachers facing the same challenges with fifth graders and these teachers went to the children’s houses, they called the parents and had them come in to ensure that the children were assessed. Trahan stated that end of year assessment can happen anywhere towards the end of the school year. Employee had the opportunity to complete assessments from when she returned from FMLA until the day the fifth graders were promoted. (Tr. pg. 64).

Trahan explained that, if a teacher teaches a percentage of the school year, then TAS can count for the teacher. Trahan testified that she did not remember Employee tallying up the results of the assessment; however, she reiterated that Employee submitted an incomplete set of data for the group of students. (Tr. pg. 67).

Trahan stated that she does not recall the reason why Employee did not attend the post observation conference. She asserted that she had two rescheduled dates and she communicated with Employee that they had a meeting. Trahan explained that she was obligated to make two attempts to have a post observation conference, and if the conference did not happen, she could complete the assessment. (Tr. pg. 68).

Trahan noted that if she specifically quoted Employee in her notes as saying that “whole classes cannot learn a dance” then she is positive that Employee made the statement. (Tr. pg. 70).

With regards to performance, Trahan testified that Employee was the dance teacher and in conjunction with music, the expectation was that all classes perform. For instance, for the Christmas concerts, every class will get on stage singing, and the same with the dance class. Trahan mentioned that Employee was provided with the expectation around performance teachers and what was expected at the school during her interview, before and after she was hired. (Tr. pgs. 72-73).

On redirect, Trahan testified that other performing arts teachers had all the kids perform by grade level during the performance. Employee selected a group of children to practice and perform. Employee was not articulate or clear in her communication when that group of students were practicing. The group of children were still practicing on the day of the music performance and this showed a lack of practice and expectation. Because all the grade levels were not performing, Employee was asked to select a group of children who she thought could conduct a performance and that was not able to be fully completed during the day of the program. (Tr. pg. 76).

For TAS, Trahan stated that Employee submitted documents for the wrong class and the submission was incomplete. She testified that if Employee had submitted data for the entire fifth grade based on the conversation Employee had after the TAS goals were set, she would have satisfied the completion section, credited and a part of her TAS considered. (Tr. pgs. 77-78).

## **2. Alan Contav (Transcript pages 80-149)**

Alan Contav (“Contav”) is the manager of IMPACT operations. In this role his team ensures that the evaluation system is completed uniformly across the district. They set policies and manage the database. Contav’s specific role is around communications, working with legal partners in labor management, employee relations and the office of general counsel. He’s been employed with DCPS since 2013. He explained that the goals of IMPACT is to develop language to set expectation for school-based staff at DCPS, and allows for individuals to be evaluated on the work they do at the school against the expectations. IMPACT covers all school-based staff member. (Tr. pg. 80). IMPACT is divided into various groups associated with the work the individuals in the group perform. The evaluation for each group is different.

Agency produces the IMPACT guidebook at the beginning of every school year and disseminates through individuals’ online dashboards, DCPS website for individuals to download and physical copies sent to schools. (Tr. pg. 82).

Contav stated that Employee was in Group 2 – Generalized age teacher. He identified the Group 2 IMPACT Guidebook for the 2015/2016 school year. Contav testified that for school years 2014/2015 and 2015/2016, all teachers got about five (5) observations throughout the course of the school year by school leaders – administrator and master educators. The master educators are external individuals who conducted observations throughout the course of the school year. All Group 2 teachers were evaluated with the following components: (1) TAS component which are goals set for students that are holistic for the entire school year and are scored on a 1 to 4 rubric; (2) CSC which captures the work that teachers do outside of the classroom; and (3) CP is a positive contribution. Unlike the other components which are scored

on a scale of 1 to 4, it is scored as a deduction. (Tr. pg. 85). There are four components under CP – (a) on-time arrival; (b) attendance; (c) policy and procedures; and (d) respect. If the school leader finds that an employee did not meet standards in any of these four (4) components, the individual could get a deduction in their rating from 10 to 20 points per cycle and ultimately up to 40 points for the totality of the school year. (Tr. pg. 86).

Contav testified that there were three administrator evaluation and two master educator evaluation. The first administrative cycle ended Dec 17; the second ended March 3; and the third ended June 9. The first master educator cycle ended February 11, and the second ended June 9. (Tr. pg. 87). He explained that at the conclusion of each cycle, either the administrator or the master educator would observe the teacher for 30 minutes and have a conference with the teacher over the effectiveness of their practice by the close of the cycle deadline. The conferences traditionally occur within 15 days and the report uploaded into the IMPACT database by the close of the cycle deadline. (Tr. pg. 87). Once uploaded into the database, it could be downloaded.

Contav stated that if an individual is out on leave for the cycle such that she cannot be observed, they receive an N/A or “Not Applicable”. He further explained that according to the IMPACT policy, if an individual receives more than half of the primary rubric – TLF for teachers, they are able to produce a valid final rating. Since Employee was missing only one (1) out of five (5) evaluations, they had sufficient information for a final rating. (Tr. pg. 88).

Contav explained that TAS are student learning goals. The goals are set at the beginning of the school year between the school leaders and the teachers. The school leaders have to approve the goals. At the end of the school year, the goals are scored against the student achievement for that school year. They are scored from 1 to 4. (Tr. pg. 89). TAS goals are set by the teachers in collaboration with the school leaders; however, the school leaders have the ultimate determination of the TAS goal. (Tr. pg. 97). Contav testified that if a TAS goal is to measure growth, you need a starting and ending point to understand and appreciate how a person has grown. (Tr. pg. 98). If an individual is out of school due to approved leave for a period of the year and returns prior to the close of the school year, they are still expected to submit a TAS. (Tr. pg. 105).

Contav explained that the CSC is the component that identifies the things that teachers do outside of the classroom. – What they do for their school community. This section is scored holistically. CSC had two cycles – the first one ended on December 17 and the second cycle ended June 16. (Tr. pg. 90).

Contav stated that CP isn't scored on the rubric, but rather scored as a deduction. It's scored during cycle 1 and cycle 3. An individual can receive up to a 20-point deduction in either cycle, depending on the circumstance of why they got a deduction. There is ‘meets expectation’ – no deduction; ‘slightly below expectation’ – 10 point deduction; and ‘significantly below expectation’ – a 20 point deduction. (Tr. pg. 91). An individual can receive a maximum of 20 points deduction in any one cycle, and a maximum of 40 points deduction across both cycles. (Tr. pg. 91).



Contav testified that TLF, TAS and CSC are averaged together to get a score for the school year. The average score for each component is then multiplied by the weight identified in the pie chart to get a subtotal. Thereafter, any CP deductions are taken from the subtotal to arrive at the final IMPACT score. (Tr. pgs. 91-92). Administrators go into the IMPACT database to document the scores and comments associated with the scores by the end of each cycle. Thereafter, it is available for staff members to review and grow their practice. (Tr. pg. 92). The scores are updated on the dashboard; they receive email notification that the scores are available online; the scores are emailed out to employees and a copy mailed to their address in PeopleSoft. (Tr. pg. 93).

School leaders don't directly inform individuals if they are effective or not. They simply input the observation notes into the database and the database calculates the individual's final rating. The school leaders are only informed at the end of the year before the database goes live. (Tr. pg. 94). The IMPACT score is a combination of the administrators' and master educator's observation.

Contav testified that there was no evidence that the IMPACT process was violated with regards to Employee. He stated that Employee was informed in a letter that because her previous (2014/2015) IMPACT rating was "Developing" and her current rating was "Minimally Effective", she would be separated. Employee was also provided with her appeal rights in that letter as well as other HR-related matter. He also noted that Employee was notified at the end of the 2014/2015 school year that in the event her final IMPACT grade declined from "Developing" to "Minimally Effective" or "Ineffective" in the subsequent years, she would be separated. (Tr. pgs. 100-101). IMPACT has multiple cycles and points of feedback so that individuals are put on notice about where they lie with regards to their final rating. Teachers receive multiple points of feedback in different forms from the school leaders and are given the ability to adjust their practice. Teachers also have conferences within 15 days of the observation wherein they get feedback. (Tr. pgs. 102-104). Since TAS is scored at the end of the school year, a teacher who works closely with their students would be aware of whether or not their students are moving in accordance with the goals they set at the beginning of the school year. (Tr. pgs. 102-103).

On cross-examination, Contav stated that the TAS component does not state that if an employee is out on leave they are no longer held responsible for TAS. He stated that since Employee was able to teach, was observed and assessed upon her return, the expectation was that she would receive a score for the TAS component. (Tr. pg. 106). Contav testified that if at the end of the school year both the teacher and the students are not there, then TAS cannot be scored. (Tr. pg. 110). And if the TAS component cannot be scored because there were no students, the staff member will receive a 'Not Applicable' in the TAS component. The weight of the TAS would be moved into TLF, which is the primary rubric and the score calculated based on the reallocated components. (Tr. Pg. 111).

Contav explained that TAS is not a question of how many students the person had, but rather TAS goals are set across the student body. For example, if a teacher has two students and both students scored an average point of growth, that teacher would get a four (4) for that assessment, which is the highest score possible. (Tr. pgs. 113-114). Contav further explained by example that, if a teacher had 40 students and they provided data for only ten (10) students while

they were still teaching all 40 students, then that is not considered providing data that a school leader can validate. In such a scenario, school leaders are advised to give a score of 1. However, in a scenario where the teacher started off with 40 students and 30 students left and transferred schools, then yes, it is appropriate for a goal to be scored based only on those ten (10) students left. (Tr. pgs. 115-116). Contav defined students' availability for purposes of scoring the TAS component to mean students not being at school. (Tr. pg. 118). Contav testified that teachers who don't grade students are still assessed under TAS. (Tr. Pg. 127). He stated that student growth happens outside of grading. (Tr. pg. 128).

Contav testified that CSC is not considered a primary rubric evaluation, but rather holistic, and for that reason, individuals can get an N/A if they were out of school for a significant amount of time during that cycle. (Tr. pg. 119). Reviewing Employee's IMPACT documents, Contav explained that CSC 3 stretched from December 18 through June 16 and Employee was not available from January through May. That would be more than a significant portion of that holistic evaluation, thus, school leaders are not asked to assess someone holistically if they haven't been there for at least half of that cycle. (Tr. pg. 120). Because CSC is not considered the primary evaluation, the determination of the final rating to be produced and competency assessed is aligned whether or not they had more than half of the primary evaluation. As long as a teacher receives an observation for a sufficient amount of time, they are able to get a final rating. (Tr. pg. 120).

Furthermore, Contav clarified that TLF was the primary rubric evaluation and it will expand to replace the other IMPACT components that cannot be scored. If a teacher's TLF is evaluated but gets an N/A for TAS and CSC, the teacher will still get a valid final rating since the largest part of their observation is scored. (Tr. pg. 122). He stated that there is nothing in the guidebook which states that even if one whole cycle is missing it's still valid. (Tr. pg. 123). Contav also clarified that more than half of the TLS component needs to be involved in scoring. (Tr. pg. 124). There are no consequences if a teacher is missing a CSC assessment because the final CSC score is an average of the two. The weight for CSC is set at 10 %. (Tr. pgs. 125-126).

Contav testified that the IMPACT expectations are clearly stated in the IMPACT guidebook and IMPACT supports growth. All the specific responsibilities for teachers under IMPACT are not the same. That's the reason why there are over 20 different IMPACT groups. There are over 11 different groups just for teachers, which are then broken down into what components and pieces would be a part of the evaluation. (Tr. pgs. 131-132). IMPACT components look at what is considered effective teaching pedagogy and it has one rubric - TLF. What a principal looks for in a kindergarten classroom isn't the same as what they look for in a 12<sup>th</sup> grade classroom. Conferences are held no later than 15 days after the observation and this provides the teacher with the opportunity to get feedback from the evaluators. (Tr. pgs. 133-138).

### **Employee's Case in Chief**

#### **1. Janet Jones (Transcript pages 149-252)**

Janet Jones ("Employee") testified that her termination was not justified or fair because she worked harder and put in more hours at Orr, than she did since 2010. She stated that she

typically left work at the same time as the janitor. She stated that she had a lot of extenuating circumstances which she explained to the principal. These extenuating factors were the reasons for her absences and tardiness. (Tr. pgs. 150-151).

Employee testified that prior to getting a 'Developing' rating for the 2014/2015 school year, she was deemed effective which demonstrated that she understood and knew how to integrate other content areas into an arts lesson, however, this goal had been articulated at the beginning. She maintained that the expectations of her position as she was told during the interview were for her to focus on performance and the integration of students and teacher - a performance that showed the staff and students working together. She invited teachers to come to the auditorium to practice for the Christmas performance but they never showed up. (Tr. pg. 152).

Employee stated that she saw progress with the students who worked hard. The students made progress with regards to their characters which she found significant. She saw significant growth in the students as far as their performance and achievement in dance. Most of the students had never danced a day in their lives, she worked with them and she saw the progress they made, although they never got to perform. (Tr. pgs. 154-156, 160).

Employee testified that she talked to the parents personally on the phone. She gave them her cell phone number so they could call her. The kids got permission to stay for practice. (Tr. pg. 161).

Employee provided an explanation to Trahan's testimony that they were still practicing on the day of the performance. She stated that as a performer, you always have to practice, as practice makes it better. (Tr. pg. 161). She also provided an explanation to Trahan's testimony that she was still bringing in students. She maintained that she knew who the students were that were performing and so did Trahan because she gave Trahan a list. (Tr. pg. 161-162).

With regard to the issue of collaboration, Employee asserted that she approached the music teacher about collaborating on a performance for the Christmas program - they had meetings maybe once or twice a week. Employee stated that she approached the music teacher on her own at the start of the school year about collaboration. (Tr. pg. 163). While referring to a student who played violin, Employee testified that she and the music teacher reached out to his parent. She stated that two parents came on a trip she had with the kids and she had conversations with them. (Tr. pg. 164). Employee testified that the plan for the Christmas show did not go as planned because the teachers did not participate. (Tr. pg. 165).

Employee further testified that she was not aware that she was responsible to get parental permission in writing for children that came to her class after school. She stated that she thought that was the responsibility of the administration or administrator to get parental permission. She explained that she was not aware if the kids that came to her class had parental permission or not. All she was aware of was the fact that she was supposed to be there teaching after school class, which is what she did. (Tr. pgs. 169-170). Employee noted that after she was informed that she needed to get parental permission, on the days when she had rehearsals, she got permission. She explained that if the kids did not have permission, she would not let them practice and they

would use her phone to call their parents and got permission before she let them stay for rehearsal. (Tr. pgs. 170-171).

Employee acknowledged that the kids came up on the stage in the morning before their classes. She explained that because her classroom was in the auditorium which is where the kids waited before going to class, they would come to her and offer to help carry her things. Employee stated that she never asked a kid to carry anything for her. They took that upon themselves when she came. They will take her stuff from her and come up the stage with her. They would clean up, as well as do other little tasks and were happy doing so. They also offered to help her after school. (Tr. pgs. 171-172).

With regards to the incident involving Employee removing a kid from school grounds without permission, Employee testified that the kid offered to help carry her things to her car. When they came out the door, the door shut and they couldn't get back in. (Tr. pg. 173). Employee explained that because of certain incidents that happened in her past, she was a target and had to move because she was threatened. Employee stated that while she was with the kid, she saw a questionable car and thinking of the kid's safety, she asked the kid to get into the car. She stated that she called the school and talked to a Mr. Ray to let them know what was going on and that she was driving around the block until the person in the questionable car was gone. Employee maintained that she drove around the block and came back straight to school. She did not wonder off with the student. (Tr. pgs. 174-175).

Employee noted that she was committed to the school. She worked late and had to ask Mr. Ray or the janitor to walk her to her car as the parking lot was in a challenged neighborhood. (Tr. pg. 175). Employee stated that she did not make the statement to Trahan that "whole classes cannot learn dance". (Tr. pgs. 176-177). She however noted that Trahan might have misquoted their conversation. She explained that they talked about the whole class being able to participate. (Tr. pg. 177).

Employee testified that when she returned to school from her leave, she went to the principal and asked what she wanted Employee to focus on and the principal asked her not to worry about grades because it was too late to get them started. She told Employee to just let the students dance since they like to dance. So she assumed that if she wasn't grading the kids, then she would not be evaluated. Employee noted that, she expected the principal to tell her to focus on her TAS or her evaluation if that's what she was going to judge her on. (Tr. pgs. 191-192). She testified that she returned to school a few weeks before school ended and most kids had already gone. (Tr. pgs. 191-192).

Employee maintained that if the principal wanted her to evaluate the students, he should have told her and she would have done so. (Tr. pg. 193). Employee claimed that the principal told her to help with graduation and "not to do TAS evaluation" when she first returned to school. (Tr. pg. 195, line 15). She asserted that it was unfair for the principal to tell her to do TAS at the last minute, instead of at the beginning. Employee testified that the students were not there, so it wasn't her choice not to do TAS. (Tr. pg. 196). She would have done it if the students were there. Pg. 196. Thus, she should not have been deducted points for TAS and CP. (Tr. pg. 196). Employee reiterated that based on Contav's testimony, because the students were not in

place to be evaluated, and of no fault of hers, she should not have been required to submit a TAS assessment and she should not have been deducted any points for TAS. (Tr. pg. 197).

Employee also stated that she should not have been deducted any points for CP because she called the school and spoke with a Mr. Ray to inform him of the extenuating circumstances that let her to drive off school grounds with a student. (Tr. pg. 198).

For CSC, Employee testified that she does not know of any school initiative that the school administrator could be referencing that she did not adhere to. (Tr. pg. 199). She stated that she participated in every initiative that she was aware of, except for the ones she was not invited to. (Tr. pg. 200). She testified that her expectations of her student were high, so she should not have been deducted any points for that.

On cross-examination, Employee testified that she identified the measures and submitted initial data about where her students were with regards to TAS. (Tr. pgs. 203-204). Employee agreed that her TAS goals included measuring growth, performance, and proficiency for third grades and an analysis of that measure through a written assessment. (Tr. pg. 204). She also agreed that to show growth, there has to be a start and ending point. Employee testified that she does not remember whether she actually submitted her initial start point, but stated that if it was required, then she is sure she submitted it. (Tr. pg. 205). She also stated that she does not recall whether she made a baseline assumption or whether she actually submitted documents work. (Tr. pg. 206). She stated that she knew where the kids were level-wise, but as far as documentation she does not recall whether or not she submitted any. (Tr. pg. 207). Employee explained that at the end of the school year, she submitted the assessment she did on the few students that were present. Reviewing her end of year assessment, Employee agreed that based on the assessment report, you can't measure where the students were at the beginning and at the end without information on the initial starting point. (Tr. pg. 213). She again stated that an objective person cannot measure the growth of the students at the end without knowing where they were at the beginning, but insisted that she does not remember whether or not she submitted something at the beginning of the school year. (Tr. pg. 214).

Employee testified that she didn't know if TAS data was required when she returned, that is why she went to the principal to ask what was required, her expectations and what she should focus on. (Tr. pg. 217). She stated that she did not specifically ask the principal if she was still under IMPACT. She asked what her focus should be and that was the principal's opportunity to say what she expected of her. (Tr. pg. 218). Employee asserted that she discussed with Trahan about changing from third grade to fifth grade at the beginning when she made the assessment. The change did not happen and she only found out when Trahan required TAS data about a month before the end of the school year. (Tr. pg. 219). She also got an email on June 7, reminding her that she had to complete her TAS data by June 9 because fifth grader were going on fifth grade promotion. She stated that she did not have access to a computer, but she was aware that there was a fifth grade promotion coming up. (Tr. pg. 222). She stated that she decided to complete her TAS assignment when she knew that she was required to do so. (Tr. pg. 223). She found out she had less than a month – last minute that she had to complete her TAS assignment.

Employee testified that her TAS data was not complete as she did not submit the data for all of the fifth graders because they weren't there. (Tr. pg. 226). Employee stated that she was certain that she returned to school in May and when she was privy to her responsibility of submitting TAS data, she tried to meet them. (Tr. pg. 227). Employee argued that not submitting TAS for the entire fifth grade does not mean that her TAS data was incomplete, because that will depend on the definition of incomplete. (Tr. pg. 228).

Employee stated that she was aware that she was being evaluated under IMPACT and IMPACT looked at standards. (Tr. pg. 230). She stated that she was not confused about how to integrate the IMPACT standards with the school objectives. She knew that the standards had to be implemented and she always implemented the standards in the lessons prior to performance. (Tr. pg. 231). Employee maintained that she was specifically told to focus on performance and the performance was the ultimate measure of growth of the students. (Tr. pg. 233).

Employee testified that she did not know if there was a difference between an aftercare teacher and an afterschool teacher. (Tr. pg. 233). She stated that she did not have authority over all the children who stayed after school. (Tr. pg. 234). She oversaw a small group of students who were supposed to come to her class after school for some sort of direct instruction, making her an afterschool teacher. (Tr. pg. 234).

Employee also stated that some children from Preschool to fifth grade decided on their own to help carry her stuff, without her asking. (Tr. pg. 235). Employee testified that students have helped her carry her bag and walked with her to her car, which is not off school property, and to her knowledge, it was allowed and the door doesn't usually shut behind the students. (Tr. pg. 236).

With reference to the incident with the student in her car, Employee testified that she had afterschool and she was responsible for the kid since she was part of her afterschool program. Employee stated that the kid was very persistent with regards to helping her carry her bag to the car and that it was not dark. (Tr. pg. 238). Employee emphasized that the parking lot is in a high crime neighborhood, and on school grounds. So it would have been as if the kid was accompanying her to the playground which is also on school grounds and the kids are there by themselves and are allowed. (Tr. pg. 240). She stated that she does not know if the kids would not go to the playground while in aftercare. Employee maintained that she did what she thought was necessary and in the best interest of the kid when she believed she was being followed. She also testified that she did not know that someone was sitting out there or that someone would come up and be a threat. When that happened, she adjusted to the situation and did what she thought was the best thing to do. (Tr. pg. 243).

### **Governing Authority**

Agency notes that because Employee was a member of Washington Teachers' Union ("WTU") when she was terminated, the Collective Bargaining Agreement ("CBA") between Agency and WTU applies to this matter and as such, OEA has limited jurisdiction over this matter. Employee does not deny that she was a member of the WTU at the time of her termination. In *Brown v. Watts*, 933 A.2d 529 (April 15, 2010), the Court of Appeals held that

OEA is not jurisdictionally barred from considering claims that a termination violated the express terms of an applicable collective bargaining agreement. The court explained that the Comprehensive Merit Personnel Act (“CMPA”) gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including “matters covered under subchapter [D.C. Code §1-616] that also fall within the coverage of a negotiated grievance procedure.”<sup>1</sup> In this case, Employee was a member of the Washington Teachers Union (“WTU”) when she was terminated and governed by Agency’s CBA with WTU. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between WTU and DCPS, as it relates to the adverse action in question in this matter. Section 15.4 of the CBA between WTU and Agency provides in pertinent part as follows:

15.4: The standard for separation under the evaluation process shall be “just cause”, which shall be defined as *adherence to the evaluation process only*. (Emphasis added).

Accordingly, I am primarily guided by §15.4 of the CBA between WTU and DCPS in reviewing this matter, and as such, I will only address whether or not Agency’s termination of Employee pursuant to her performance evaluation was supported by just cause. As referenced above, ‘just cause’ is defined as adherence to the *evaluation process only* (emphasis added). Thus, OEA’s jurisdiction over this matter is limited only to Agency’s adherence to the IMPACT process it instituted at the beginning of the school year.

### **The IMPACT Process**

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during 2014-2015, and 2015- 2016 school years. According to the record, Agency conducts annual performance evaluation for all its employees. The IMPACT system was designed to provide specific feedback to employees to identify areas of strength, as well as areas in which improvement was needed.

With the IMPACT system, all staff received written feedback regarding their evaluation, as well as a post-evaluation conference with their evaluators. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01am, the day after the end of each cycle. If employees had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS’ IMPACT team by telephone or email. At the close of the school year, all employees received an email indicating that their final scores were available online. Additionally, a hard copy of the report was mailed to the employees’ home address on file.

There were several different types of IMPACT grouping of school-based DCPS employees, each representing a different category of school-based personnel. Individualized groups were developed to reflect the varying responsibilities of employees. For school year

---

<sup>1</sup> Pursuant to D.C. Code § 1-616.52(d), “[a]ny system of grievance resolution or review of adverse actions negotiated between the District and a labor organization *shall take precedence* over the procedures of this subchapter for employees in a bargaining unit represented by the labor organization” (emphasis added).

2014-2015 and school year 2015-2016, Employee was a teacher in Group 2 (General Education Teacher).

For the 2014-2015 school year, the IMPACT process for Group 2 employees consisted of three (3) assessment cycles: the first assessment cycle (“Cycle 1”), which ended on December 18, 2014; second assessment cycle (“Cycle 2”) which ended in March of 2016; and the third assessment cycle (“Cycle 3”) which ended on June 11, 2015.

For the 2015-2016 school year, the IMPACT process for Group 2 employees consisted of three (3) assessment cycles: the first assessment cycle (“Cycle 1”), which ended on December 17, 2017; second assessment cycle (“Cycle 2”) which ended on March 3, 2016; and the third assessment cycle (“Cycle 3”) which ended on June 9, 2016. Employee also received an IMPACT rating of “Minimally Effective” during this school.

Employee was observed by both a Master Educator and by her principal during these school years.

For 2014-2015 and 2015-2016 school year, Group 2 employees were assessed on a total of four (4) IMPACT components, namely:

- 1) Teaching and Learning Framework (TLF) – comprised of 75% of Group 2 teacher’s IMPACT score;
- 2) Teacher-Assessed Student Achievement Data (TAS) – comprised of 15 % of Group 2 teacher’s IMPACT score;
- 3) Commitment to the School Community (CSC) – 10% of Group 2 teacher’s score;
- 4) Core Professionalism – This component is scored differently from the others. This is a measure of four (4) basic professional requirements for all school-based personnel.

These requirements are as follows:

- 1) Attendance;
- 2) On-time arrival;
- 3) Compliance with policies and procedures; and

School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:<sup>2</sup>

- 1) Ineffective = 100-199 points (immediate separation from school);
- 2) Minimally Effective = 200-249 points (given access to additional professional development);<sup>3</sup>
- 3) Developing = 250-299 points;<sup>4</sup>

<sup>2</sup> See Agency’s Answer (October 14, 2016)..

<sup>3</sup> IMPACT procedures provide that employees who receive a rating of “Minimally Effective” for two consecutive years are subject to separation. See Agency’s Answer.

<sup>4</sup> This rating signifies performance that is below expectations. Individuals who receive this rating are encouraged to take advantage of the professional development opportunities provided by DCPS. IMPACT procedures provide that employees who receive a rating of “Developing” for three consecutive years are subject to separation.



- 4) Effective = 200-349 points; and
- 5) Highly Effective = 350-400 points.

### **Analysis**

Chapter 5-E of District of Columbia Municipal Regulation (“DCMR”) §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency’s employees.<sup>5</sup> The above-referenced DCMR sections provide that each employee shall be evaluated each semester by an appropriate supervisor and rated annually prior to the end of the year, based on procedures established by the Superintendent. In the instant matter, the IMPACT process detailed above is the evaluation procedure put in place by Agency for the 2014-2015 and 2015-2016 school years. Employee was evaluated by the school principal and a Master Educator. Employee received a final evaluation on the above specified components at the end of the school year, wherein, she received a “Developing” IMPACT rating for the 2014-2015 school year, and a “Minimally Effective” rating for the 2015-2016 school year.

Employee argues that her termination was unfair. She asserted that the evaluation process was not properly adhered to because it had a great deal of contradiction, misinformation and untruth statements. The IMPACT process required that Employee be observed by a Master Educator and a school administrator, as well as receive post observation conferences during each assessment cycle. Employee concedes that she was evaluated by both a Master Educator and the principal during the 2014-2015, and 2015-2016 school years as prescribed by the IMPACT guidebook.<sup>6</sup> The record supports the fact that Employee was indeed observed a total of ten (10) times by both the Master Educator and the school administrator during the 2014-2015 and 2015-2016 school years. Upon reviewing Employee’s record, Trahan testified that for the 2014-2015 and 2015-2016 school year, Employee had three administrator evaluations and two master educator evaluations during each of the school years. Accordingly, I conclude that Agency complied with this IMPACT process.

Agency concedes that Employee did not receive the required post observation conference (“POC”) during the 2014-2015 and 2015-2016 school years. However, Agency explains that it attempted to schedule a POC but Employee neglected to respond to multiple conference requests following her April 22, 2015 Master Educator observation and her May 25, 2016 administrator observation. Trahan testified that she attempted to schedule a conference with Employee multiple times but Employee did not show up for her conference times. (Tr. pg. 53). Agency also notes that Trahan made two attempts to meet with Employee on June 3 and June 6, 2016. Employee does not deny this allegation. A review of pages 12-14 of the 2015-2016 IMPACT guidebook for Group 2 highlights that, employees are required to have a POC within 15 calendar days following the formal observation, the observer (administrator or master educator) *will* meet with you to share his/her ratings, provide feedback, and discuss next step for professional

---

<sup>5</sup> 5-E DCMR § 1306 provides in pertinent parts as follows:

1306.4 – Employees in grades ET 6-15 shall be evaluated each semester by the appropriate supervisor and rated annually, prior to the end of the school year, under procedures established by the Superintendent.

1306.5 – The Superintendent shall develop procedures for the evaluation of employees in the B schedule, EG schedule, and ET 2 through 5, except as provided in § 1306.3.

<sup>6</sup> Agency’s Answer at Tab 6, page 12-14.

growth. *It further highlights that if an observer makes at least two attempts to schedule a conference with the employee within 15 calendar days following the observation and the employee is unable to meet or is unresponsive, the observation will be valid without the conference occurring within the 15 days.* Valid attempts include, but are not limited to phone calls, text messages, emails, notes in your school inbox, and/or in-person conversations. (Emphasis added).

Based on above-referenced provision, I find that Agency attempted to meet with Employee at least twice for the post observation conference within the fifteen calendar days. Employee does not deny that Agency made several attempts to contact her to schedule a POC. Accordingly, I further find that Agency's failure to comply with this process was not its doing.

Employee also notes that according to IMPACT, a teacher could be terminated after two consecutive years of receiving a minimally effective rating, and not from one developing then minimally effective rating. Pursuant to the IMPACT policy, if an employee's IMPACT score drops from 'Developing' to 'Minimally Effective' rating, the employee will be subjected to separation.<sup>7</sup> Further, Employee was notified in the Notice of Developing IMPACT rating that individuals whose final IMPACT rating declines from 'Developing', to either 'Minimally Effective' or 'Ineffective', will be subject to separation from DCPS.<sup>8</sup> During school year 2013-2014, Employee received an IMPACT rating of 'Developing'. For school year 2014-2015, Employee's IMPACT rating dropped from 'Developing' to 'Minimally Effective'. Therefore, I conclude that Agency's decision to terminate Employee is consistent with the above-reference IMPACT policy.

In addition, Employee argues that she was not informed, supported or received feedback, which is a direct contradiction of the purpose of IMPACT as stated in the IMPACT manual. She stated that she did not receive professional development, nor did Agency offer support for improvement. Employee maintains that she did not receive professional development on the evaluation process as stated under Article 15.2.4 of the CBA.<sup>9</sup> According to page 14 of the 2015-2016 IMPACT guidebook, employees will receive written comment/feedback through a web-based portal after the formal observation. Agency highlights that it supported Employee in the manner prescribed by the 2015-2016 IMPACT manual prior to her separation. She received post observation conferences where she was provided with feedback. The IMPACT team also offered several opportunities by the Master Educator and other IMPACT team members for employees to gain more insight into ways of improving upon the different TLF standards evaluated via IMPACT. The IMPACT guidebook also provides employees with job-specific professional development resources available to help them succeed such as the Educator Portal, (Reality PD and Teach Standard Resource Sets).<sup>10</sup> Employee's 2015-2016 CSC 5 provides that Employee attended Professional Development during Professional Development days.

---

<sup>7</sup> See Agency's Answer, supra, at Tab 6, page 61.

<sup>8</sup> See Agency's Answer at Tab 3.

<sup>9</sup> Agency's Answer, supra, at Tab 7, page 50. Article 15.2.4 of the CBA provides that DCPS and the WTU recognize the importance of the evaluation process. To that end, DCPS shall develop and implement professional development for all Teachers on the evaluation process.

<sup>10</sup> Agency's Answer at Tab 6, pg. 52.

Additionally, Contav testified that IMPACT has multiple cycles and points of feedback so that individuals are put on notice about where they lie with regards to their final rating. Teachers receive multiple points of feedback in different forms from the school leaders and are given the ability to adjust their practice. Teachers also have conferences within 15 days of the observation wherein they get feedback. (Tr. pgs. 102-104). Contav testified that the IMPACT expectations are clearly stated in the IMPACT guidebook and are distributed to the teachers at the beginning of every school year through individuals' online dashboards, DCPS website for individuals to download and physical copies sent to schools. (Tr. pg. 82). The IMPACT evaluations are also available on the IMPACT Dashboard throughout the school year. Article 15.2.4 is not specific with regards to the type of professional development program Agency is required to provide. Based on the above, I conclude that Agency properly provided Employee with feedback and professional support through the IMPACT team, and as required in the IMPACT guidebook and in compliance with Article 15.2.4 of the CBA.

Citing to the CBA between Agency and the WTU, Employee argues that she was not provided with a copy of her formal observation at the end of her conference with Trahan or prior to the end of the school year, in violation of the CBA. She notes that she received her termination letter in late July of 2016, with a termination effective date of August 5, 2016. She notes that she could have been informed of this decision by the school administration prior to the end of the school year. She was not informed by Trahan during her last conference that she was in jeopardy of losing her job. She stated that Trahan informed her that she did not have anything to worry about with regards to losing her evaluation. Agency stated that the CBA Article 15.2.2 requires that a teacher be given a copy of his/her final evaluation promptly after the evaluation year but no later than September 30. Employee's end of year evaluation was available on her IMPACT Dashboard on or about June 27, 2015, along with results of her previous evaluation. She had access to the IMPACT Dashboard well ahead of her August 5, 2016, termination effective date. A hard copy of the evaluation was mailed to Employee and received prior to September 30, 2015, per the CBA. She had access to her ratings throughout the school year through her IMPACT Dashboard. Also, Contav testified that IMPACT has multiple cycles and points of feedback so that individuals are put on notice about where they lie with regards to their final rating. Teachers receive multiple points of feedback in different forms from the school leaders and are given the ability to adjust their practice. Teachers also have conferences within 15 days of the observation wherein they get feedback. (Tr. pgs. 102-104). Contav explained that School leaders don't directly inform individuals if they are effective or not. They simply input the observation notes into the database and the database calculates the individual's final rating. The school leaders are only informed at the end of the year before the database goes live. (Tr. pg. 94). The IMPACT score is a combination of the administrators' and master educator's observation. Based on the above, I find that Employee's argument is irrelevant.

Employee does not assert that she was not observed a total of five (5) times during the 2014-2015 school year, nor does she argue that she was not provided a POC as required by IMPACT procedure. Furthermore, Employee does not dispute that she was observed a total of five (5) times during the 2015-2016 school year, nor does she asserts that she was not provided a POC. Accordingly, I find that Agency complied with the IMPACT process.

Employee raised several arguments in her testimony and submissions to this Office, some of which are outside of the purview of this Office. Moreover, I also find that Employee's other arguments fall outside of the IMPACT process/procedures as stated above and this Office's jurisdiction does not extend to the content/judgement of the evaluation. However, assuming *arguendo* that this Office's jurisdiction in this matter extends to the content or judgment of the evaluation, I find that none of the evidence offered by Employee challenged or contradicted any of the comments listed in her 2014-2015 and 2015-2016 IMPACT evaluation.

Moreover, the D.C. Superior court in *Shaibu v. District of Columbia Public Schools*<sup>11</sup> explained that, substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. This court noted that, "it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal's] evaluation but that would support a better overall evaluation."<sup>12</sup> The court further opined that if the factual basis of the "Principal's evaluation were true, the evaluation was supported by substantial evidence." Additionally, it highlighted that "principals enjoy near total discretion in ranking their teachers"<sup>13</sup> when implementing performance evaluations. The court concluded that since the "factual statements were far more specific than [the employee's] characterization suggests, and none of the evidence proffered to OEA by [the employee] directly controverted [the principal's] specific factual bases for his evaluation of [the employee]..." the employee's petition was denied.

In the instant matter, Employee asserts that she did more in terms of hours spent at work, and adhering to school policies, procedures and leadership direction. For CSC 4, she stated that she spoke with parents personally and gave some of them her cell phone numbers. She explained that there were parents engaged in the process as well. She invited parents to go on field trips with them. She attended every school initiative, collaborated with other teachers, specifically the Music Teacher, informed the administration of performance and gave names of students involved before the performance time. Employee received a rating of "1" for CSC 4 for the 2015-2016 school year. The comment stated that "students' families are *rarely* or never engaged in an effective manner and are not valued partners. Ms. Jones provided no evidence of engaging with families (emphasis added). I find that Employee simply provided an explanation to the comments made by the administrator, along with one instance wherein, parents attended a field trip. This can be categorized as the rare instance stated by the administrator in their evaluation.

Moreover, Trahan testified that she scored Employee as a level "1" because Employee provided no evidence of engagement with students' families. Trahan explained that, Employee never followed-up when asked about the children participating in the extracurricular activities. Trahan maintained that Employee was asked if she had contacted the parents, or aftercare coordinators or officer registrar to get names or contact information of the kid, but she never followed-up. Thus, there was always a concern around clarity and whether or not information was being communicated to the appropriate parties, be it teachers or parents. (Tr. pg. 40). Trahan notes under CSCS 5 that collegial collaboration to improve student achievement is sometimes promoted in an effective manner. Following the Court's reasoning in *Shaibu*, I conclude that

---

<sup>11</sup> Case No. 2012 CA 003606 P (January 29, 2013).

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

Employee's evidence of collaboration with the music teacher and parents participating in a field trip does not conflict with the factual basis of Trahan's evaluation as stated in the 2015-2016 IMPACT evaluation comment sections. Additionally, I find that the factual basis of Trahan's evaluation was supported by substantial evidence, and Trahan (assistant principal) enjoys near total discretion in ranking Employee.

With regards to not participating in intervention blocks, she maintained that she had a conversation with the principal and it was agreed that during intervention block, she would rehearse with students for the performance. Trahan explained that special subject teachers were allotted a certain number of students in a particular subject that they were supposed to meet with across the week for intervention and Employee failed to meet with those students in cycle one. Employee was not reported as either receiving students or going to get students for her interventions. (Tr. pg. 37). Therefore, I conclude that Employee is simply providing an explanation as to why she did not support intervention blocks as identified in the master schedule. Employee's explanation does not contradict the factual basis of Trahan's evaluation.

Employee stated that she was given minimal scores based on things that were not true, she explained that she submitted her assessment data, although Trahan stated that it was not submitted, completed or approved. Employee maintained that when she returned to work after her surgery, she asked the principal what she should focus on, and she replied that "just let them dance, they like to dance." The principal told her not to worry about grading the students. She explained that she took this to mean that she did not have to do evaluations. She was only told about evaluations after most of the students had left for summer. Although it was impossible to do, she was able to evaluate the students that were still available. Employee received a TAS score of 1 – Assessment not approved or Completed. Trahan testified that the TAS data Employee submitted was incomplete as she submitted assessment data for about eight (8) or nine (9) fifth graders students, out of about forty fifth graders. Employee conceded that her TAS data was not complete as she did not submit the data for all of the fifth graders because they weren't there. (Tr. pg. 226). Employee explained that at the end of the school year, she submitted the assessment she did on the few students that were present. Again, based on the reasoning in *Shaibu*, I conclude that Employee's statement explain, rather than contradict Trahan's comments and as such, I find that the evaluation is based on substantial evidence.

Employee avers that she should not have been deducted 10 points for CP. She maintained that she did not release students early. She explained that Trahan took the word of a fifth grader who was caught someplace where they should not have been over hers. She also stated that she was not informed by anyone at Orr that students were required to bring a note from their parents to stay after school. When she was informed of the policy, she never allowed any student without a note from their parent. This does not contradict Trahan's statement in the IMPACT evaluation that "Ms. Jones sometimes followed DCPS/Orr policies and procedures. Ms. Jones allowed students to stay after school without parent permission." Moreover, Employee does not deny taking a student out of school in her car without permission; she only provides an explanation as to why she did so. Thus, I conclude that the evaluation was based on substantial evidence.

Employee argues that for the previous four (4) years, she was an effective teacher. So it is concerning that regardless of her hard work, one occurrence of 'Developing' and 'Minimally

Effective' IMPACT rating can result in termination. The District of Columbia Superior Court in *Samuel Jackson Jr., v. District of Columbia Public School*, Civil Case No. 2016 CA 7146P(MPA) (April 25, 2018) recently held that, prior effective ratings does not mean that a current ineffective rating is unsupported by substantial evidence. Trahan provided specific statements/comments along with every score that Employee received during her 2015-2016 school year IMPACT evaluation, wherein, she received a 'Minimally Effective' rating. Therefore, I conclude that Employee's argument is unpersuasive and the current evaluation is supported by substantial evidence.

Based on the above, I find that Employee has not proffered to this Office any credible evidence that controverts any of the principal's comments. Employee mainly provided explanations to the comments in her IMPACT evaluation or evidence for a positive evaluation/rating. This Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.<sup>14</sup> As performance evaluations are "subjective and individualized in nature,"<sup>15</sup> this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised."<sup>16</sup> Moreover, the courts have found that principals enjoy near total discretion in ranking their teacher. Thus, I find that as her direct supervisor, it was within the Trahan's discretion to rank and rate Employee's performance.

### ORDER

It is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD**.

FOR THE OFFICE:

---

MONICA DOHNJI, Esq.  
Senior Administrative Judge

---

<sup>14</sup> See *Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); see also *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

<sup>15</sup> See also *American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

<sup>16</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).