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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0116-14
SYLVIA REYNOLDS,)	
Employee)	
)	Date of Issuance: July 9, 2015
v.)	
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge

Sylvia Reynolds, Employee, *Pro Se*
Carl Turpin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 25, 2014 Sylvia Reynolds (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) final decision to remove her from her position as an Educational Aide at Turner Elementary School. Employee was terminated because she received a final rating of “Ineffective” under Agency’s IMPACT program during the 2013-2014 school year.¹ Employee’s termination was effective on August 8, 2014.

This matter was assigned to me in October of 2014. On October 22, 2014, I issued an order scheduling a Prehearing Conference to be held on November 20, 2014, for the purpose of assessing the parties’ arguments. During the conference, it was determined that an Evidentiary Hearing was warranted based on the issues presented by Agency and Employee. An Evidentiary Hearing was subsequently held on January 22, 2015. At the conclusion of the hearing, the parties were ordered to submit written briefs, including proposed findings of facts and proposed conclusions of law. Both parties responded to the order. The record is now closed.

¹ IMPACT is the effectiveness assessment system used by the D.C. Public School System to rate the performance of school-based personnel.

JURISDICTION

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

ISSUES

Whether Agency's removal of Employee should be upheld.

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.

Agency's Position

Agency argues that Employee's termination under the IMPACT program was done in accordance with all District of Columbia statutes, regulations, and laws. Agency submits that Employee's IMPACT assessments were fair and accurate, as her evaluating administrator provided a detailed analysis of Employee's work performance. Agency further states that Employee was evaluated in a timely manner during Cycle 1 and Cycle 3 of the 2013-2014 school year, and that she was afforded post-evaluation conferences after each observation. A final IMPACT score of Ineffective deemed Employee subject to termination, thus Agency argues that it had cause to terminate her.

Employee's Position

Employee submits that she was falsely accused of neglecting her responsibilities as an Educational Aide at Turner Elementary School. In addition, Employee states that her previous work performance was effective, and therefore inconsistent with the scores she received during the 2013-2014 school year. In sum, Employee disagrees with the scores that were afforded to her during Cycle 1 and Cycle 3 of the school year, and that Agency's act of terminating her should be overturned.

SUMMARY OF RELEVANT TESTIMONY

The following represents what I have determined to be the most relevant facts adduced from the transcript generated as a result of the Evidentiary Hearing in the instant matter. Both Agency and Employee had the opportunity to present documentary and testimonial evidence during the course of the hearing to support their positions.

Agency's Case in Chief

Karma Suttles (Tr. pgs. 14-50)²

Karma Suttles (“Suttles”) works as the Assistant Principal for Literacy at Turner Elementary School. Her responsibilities include overseeing the reading and writing curriculum, training teachers, and assessing teachers and teacher’s aids during the course of the school year. Suttles utilized IMPACT to assess employees. She assessed Employee during Cycle 1 and Cycle 3 of the 2013-2014 school year.

Cycle 1 (2013-2014)

Regarding the Instructional Support category (Educational Aide Standard 1 or “EA 1”), Suttles stated that Employee was responsible for supporting the teacher in terms of organizing materials for the children, and assisting the teacher with managing students in both the classroom, and as they moved throughout the school. Suttles gave Employee a score of Minimally Effective for EA 1 because Employee was not supporting the classroom teacher, as required by her job description. According to Suttles, the instructional teacher complained to the principal about Employee’s lack of organization, and failure to adequately manage the children in her classroom. Suttles further stated she relayed the specific job requirements to Employee verbally, and that Employee met with one of Turner’s assistant principals to discuss her job performance.

Employee received a score of Ineffective for EA 2 (School-wide Support). During the first two months of each school year, Turner hosts a Literacy Night, Math Night, parent workshops, and a Black History program. Suttles opined that Employee could have been a part of any of these programs to aid in supporting the school, but did not.

Employee received a score of Minimally Effective for EA 3 (Positive Rapport with Students and Families). According to Suttles, Employee had a lot of difficulty with the classroom teacher at the beginning of the 2013-2014 school year, and was not consistent in assisting with classroom duties.

On one occasion, an employee, who was a mandated reporter, approached Suttles because she witnessed Employee allegedly pulling a child down the stairs while yelling and screaming at the student. In response, Suttles told Employee that she needed to involve a security guard or an administrator if a student got out of control. She further stated that there were three

² The witness provided sworn testimony via Skype.

other occasions on which Employee spoke to students in an undesirable manner. Based on the foregoing, Employee received a score of Ineffective for EA 4 (Adaptability).

Commitment to School Community (CSC) is a measure of how an employee attempts to get the community involved in a way that is conducive to collaboration between Turner students and staff. CSC 1 (Support of the Local School Initiatives) included Literacy Night, Math Night and Black History Night, all of which required a lot of preparation and hand-on team work and organization. Suttles reiterated that Employee did not assist with these school efforts. Regarding CSC 2 (Support of the Special Education and English Language Learner Program), Suttles stated that Employee did not work with the SPED team to further any of their initiatives. She also testified that Employee was not interacting with students with a high level of expectation.

Core Professionalism (“CP”) is a measure of four (4) professional requirements for all school-based personnel. These requirements are as follows: attendance; on-time arrival; policies and procedures; and respect. This component was scored differently from the others, as an employee could have additional points subtracted from their score if their rating was “Slightly Below Standard” or “Significantly Below Standard” for a given component. Employee received a score of Significantly Below Standard for CP 1 (Attendance). Suttles cited to two dates on which Employee did not appear to the school for work, but noted that there were additional days that she had unexcused absences.³ Employee received a Meets Standard for CP 2 and CP 3 (On Time Arrival and Policies and Procedures). In terms of CP 4 (Respect), Suttles opined that Employee was having some difficulty with the classroom teacher, but not with the school administrator. Accordingly, Employee received a score of Slightly Below Standard for CP 4. Suttles suggested that if Employee was more dependable in assisting the classroom teacher, she could have potentially boosted her score for Core Professionalism.

Suttles attempted to have a post-assessment conference with Employee for Cycle 1 of the 2013-2014 school year, but had difficulty scheduling a meeting. Suttles eventually met with Employee and reviewed her assessment and suggestions for improving Employee’s scores. Suttles did not meet with Employee until after the end of Cycle 1.

Cycle 3 (2013-2014)

Suttles also completed the Cycle 3 IMPACT evaluation for Employee. According to Suttles, Employee made some improvement in her work performance during this period, but still had difficulty with the classroom teacher. Employee was also inconsistent with preparing materials, and was not as effective in completing tasks as Suttles would have desired. In terms of EA 2 (School-wide Support), Suttles stated that Employee assisted with supporting the school nurse in administering medications to students if needed. Employee somewhat improved in her adaptability (EA 4), but still received a score of Minimally Effective.

³ To verify Employee’s unexcused absences, Suttles would check with one of the school’s administrative assistants for documentation purposes.

Employee also made improvements in the CSC category by assisting students who were struggling with learning, and assisting the classroom teacher with planning. Employee also improved her performance during Cycle 3 by supporting the school and local initiatives and participating more in school activities. However, Suttles did not believe that Employee's performance was effective.

Employee received a score of Significantly Below Standard for CP 1 (Attendance) because she had more than two unexcused absences during Cycle 3. Employee also received a score of Slightly Below Standard for CP 3 (Policies and Procedures) because she was not coming to work on time or following procedures relevant to requesting time off from work. In addition, Suttles stated that Employee did not get along with the classroom teacher, and would get very irate when meeting with Suttles and the school principal. Suttles held a post-assessment conference with Employee on June 3, 2014. During the conference, Suttles communicated to Employee her strengths, as well as areas of improvement that would assist Employee in performing the functions of her job. Suttles, Employee, and a school administrator, Ms. Petrella, met again after the Cycle 3 post-assessment conference because Employee had questions about her IMPACT scores.

On cross examination, Suttles testified that Turner's principal reviewed the video of Employee allegedly pulling a student down the stairs. The incident was subsequently reported by a mandated reporter to someone in the District for investigation. Protocol also required that Employee was required to be apprised of the allegations against her regarding the incident.

Michelle Hudackso (Tr. pgs. 51-71)

Michelle Hudackso ("Hudackso") is the Deputy Chief of IMPACT. The IMPACT team in comprised of four different teams: 1) External Evaluators; 2) Master Educators; 3) Operations; and 4) the Align Team. The primary goals of IMPACT are to outline expectations for school-based employees, offer opportunities for employees to receive feedback, and to connect those employees with suggestions and resources in order to improve performance when needed. All school-based employees are broken down into groups of school leaders, teachers, and non-instructional staff.

Group 17 Educational Aide employees are assessed in two parts. Ninety (90) percent of Group 17's IMPACT score is comprised of Educational Aide Standards, which are four standards that are specific to the functions of their particular roles. Ten (10) percent of Group 17's IMPACT score is comprised of Commitment to School Community, which aligns with Agency's vision that all staff members should contribute to the school community. Core Professionalism standards are only assessed as deductions if there are issues with the components; additions are not added if the CP standards are met.

Group 17 employees are assessed twice throughout the school year, with the first assessment occurring in February, and the second assessment occurs in June. During the assessment period, a school administrator is responsible for gathering evidence as related to the standards for a particular group. The administrator is also required to draft notes and trends regarding the assessed standards and compiles the information into a written report. The

administrator's findings are shared with the assessed employee at the end of each cycle. For each standard in Group 17's rubric, an employee's performance can be rated according to the following: 1) Level 1 (Ineffective Practice); 2) Level 2 (Minimally Effective Practice); 3) Level 3 (Effective Practice); and 4) Level 4 (Highly Effective Practice).

In the Core Professionalism category, if an employee is rated as Slightly Below Standard, ten (10) points are deducted from their score during the cycle. If an employee received a Significantly Below Standard, a twenty (20) point deduction would be taken from their IMPACT score for that cycle. Although there are four (4) standards under CP, a maximum of twenty (20) points can be deducted during a given cycle, even if that employee received slightly or significantly below standard ratings for multiple CP standards.

According to Hudacsko, all employees have continual access to their IMPACT reports through the IMPACT database. Each employee is emailed information about the database, which contains a unique password for each employee. Scores from each cycle are housed in the IMPACT database, and the school administrator is responsible for inputting data and finalizing scores. If there is a change that needs to be made to a score, the IMPACT team is required to vet the information before altering the score. All DCPS employees have access to the IMPACT guidebook specific to their group. Each school is also sent a hard copy of the guidebook. Employees are encouraged to confirm that they are in the correct assessment group by logging into the IMPACT database.

Hudacsko stated that if an employee is rated as Ineffective under IMPACT, then they are subject to termination at the end of that school year. A rating of Minimally Effective for two consecutive years in a row also subjects an employee to termination. In addition, a rating of Developing for three years in a row can also result in an employee being terminated.

After reviewing Employee's 2013-2014 IMPACT report, Hudacsko stated that Employee had a final score of 134. Employee received a CP deduction of twenty (20) points during Cycle 1 and Cycle 2, which indicated that her performance related to one of the four components was significantly below standard. Agency mailed Employee's final IMPACT score via certified mail. The scores were also available for download on the IMPACT database.

On cross examination, Hudacsko stated that school administrators have discretion to determine different ways to gather evidence as related to the IMPACT rubric. If a student's parent had input related to any component of the rubric, the administrator would have the option of considering such information.

Employee's Case in Chief

Sylvia Reynolds (Tr. pgs. 73-87)

Sylvia Reynolds ("Employee") testified that she did not get along with Suttles because Suttles spoke to people in a disrespectful manner. She believes that Suttles used IMPACT as a tool to fire employees because the scores were based on her input alone. Employee stated that she dealt with special needs children on a daily basis and often referred them to the Special

Needs Service. According to Employee, her classroom teacher made it difficult to collaborate with her on projects. To support her position that she assisted with school efforts, Employee contended that she worked with the aftercare program, and volunteered to work with the outreach coordinator. She also noted that the IMPACT score she received for Cycle 1 in the 2012-2013 was Effective. Employee stated that she did not pull a child down the stairs and was never shown a video that reflected the incident. Moreover, Employee believes that she was terminated in retaliation for complaining about Suttles to the Labor Management team.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, P.L. 109-356, which provides:

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18

Pursuant to this broad authority, DCPS implemented the IMPACT evaluation system beginning with the 2009-2010 school year. The District of Columbia Public Schools (DCPS or Agency) conducts annual performance evaluations for all of its employees. IMPACT is DCPS' Effectiveness Assessment System for all School-Based Employees, including teachers, principals, and other staff members. IMPACT was used for the 2013-2014 school year to rate performance of school-based personnel.

The IMPACT Process

The IMPACT process required that all school-based staff receive written feedback regarding their evaluations. In addition, employees were required to have a post-evaluation conference with their assessors. Each employee had access to the 2013-2014 IMPACT Guidebook for their specific group. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01 a.m. the day after the end of each cycle. If an employee had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. Employees also received an email indicating that their final scores were available online.

During the 2013-2014 school year, there were twenty-six (26) IMPACT groups of DCPS employees. Educational Aids fell within Group 17. Under IMPACT, Educational Aides were required to be evaluated twice during each school year. The first assessment cycle ("Cycle 1") occurred on or before February 20th; and the third assessment cycle ("Cycle 3") occurred on or before June 10th. Each observation was conducted by a program manager. In this case, Employee was assessed on the following IMPACT components:

1. **Educational Aide Standards (EA)**—These standards define excellence for educational aides in DCPS. This component accounted for 90% of the employee’s final IMPACT score.
2. **Commitment to the School Community (CSC)**—A measure of the extent to which an employee supports and collaborates with the school community. This component makes up 10% of the employee’s final IMPACT score.
3. **Core Professionalism**—a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows: attendance; on-time arrival; compliance with policies and procedures; and respect. This component is scored differently from the others, as an employee could have additional points subtracted from their score if the rating was “slightly below standard” or “significantly below standard.”

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year. If an employee received a final rating of “Ineffective,” then that employee was subject to termination under the IMPACT program. The scoring range is as follows:

- 1) Ineffective = 100-174 points (immediate separation from school);
- 2) Minimally Effective = 175-249 points (given access to additional professional development);
- 3) Effective = 250-349 points; and
- 4) Highly Effective = 350-400 points.

After reviewing the documents of record, I find that Employee was evaluated a total of two (2) times during the 2013-2014 school year, in accordance with the IMPACT guidelines. During Cycle 1, Suttles attempted to hold a post-assessment conference with Employee on February 5, 2014, and again on February 6, 2014. However, Suttles was unable to hold a conference with Employee prior to the deadline for inputting IMPACT scores into the database. Suttles did eventually meet with Employee to discuss her Cycle 1 scores. Employee has not provided an explanation as to why she was unavailable to conference on the aforementioned dates. I further find that Employee was afforded a Cycle 3 post-observation conference on June 3, 2014. Employee’s final IMPACT score for the 2013-2014 school year was 134, which deemed her “Ineffective.” Because Employee was rated as “Ineffective,” she was identified for termination.

Employee argues that Suttle’s assessment of her work during the 2013-2014 school year was arbitrary and inconsistent with her previous work performance ratings. Employee cites to several IMPACT components that she believes should have been awarded higher scores. However, it should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*⁴ held that substantial evidence for a positive evaluation does not establish a lack of substantial

⁴ Case No. 2012 CA 003606 P (January 29, 2013).

evidence for a negative evaluation. The court held 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.”⁵ The court further stated that if the factual basis of the “principal’s evaluation were true, the evaluation was supported by substantial evidence.” In addition, the Court in *Shaibu* held that “principals enjoy near total discretion in ranking their teachers”⁶ when implementing performance evaluations. The Court denied the employee’s petition, finding that 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]....”⁷

In this case, Employee has failed to offer any credible evidence that directly contradicts the statements made by Suttles regarding her work performance. Each of Suttle’s assessments included a numerical score for each relevant standard, followed by detailed comments. I found the testimony of both Suttles and Hudasko to be truthful and consistent with the documents presented throughout the course of the instant appeal. Moreover, I find no reason to question the veracity of Suttle’s testimony regarding Employee’s act of dragging a student down the stairs, as the incident was reported by more than one person. Moreover, Employee has not argued that Dr. Mitchell did not have discretion to rank and rate employees under her supervision.⁸

Based on the foregoing, Employee received an average EA score of 1.50 for Cycle 1 of the 2013-2014 school year, and an EA score of 2.00 for Cycle 3. The EA average, 1.74, when weighted at the allotted ninety (90) percent, produced a weighted score of 157. Employee received a CSC score of 1.33 for Cycle 1 of the the 2013-2014 school year, and a CSC score of 2.00 for Cycle 3. The CSC average, 1.66, weighted at ten (10) percent, netted a weighted score of 16.⁹ Because Employee received deductions of twenty (20) points for both Cycle 1 and Cycle, an additional forty (40) points were deducted from her IMPACT score. Thus, Employee’s final IMPACT score was 134. This rating deemed Employee as “Ineffective,” and she was therefore identified for termination. Employee further received written notice that she was being terminated on June 27, 2017, with an effective date of August 8, 2014. As such, I find that Agency has proven by a preponderance of the evidence that it adhered to the IMPACT process. For this reason, I conclude that Agency had cause to terminate Employee and its action should be upheld.

⁵ *Id.* at 6.

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

⁷ *Id.*

⁸ Employee has also failed to provide any evidence in support of her position that she was terminated in retaliation for reporting Suttles to her union.

⁹ Prior to deductions for CP during Cycle 1 and Cycle 3, Employee had an IMPACT score of 174.

ORDER

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

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE