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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
JANELL JOHNSON,)	
Employee)	OEA Matter No. 1601-0175-11
)	
v.)	Date of Issuance: June 4, 2014
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	MONICA DOHNJI, Esq.
)	Administrative Judge

Janell Johnson, Employee *Pro Se*
Carl Turpin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 15, 2011, Janell Johnson (“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 Special Education Coordinator at Johnson Middle School, effective July 29, 2011. Employee was terminated for having an “Ineffective” rating under IMPACT, the DC Public Schools’ Effective Assessment System for School-Based Personnel during school year 2010-2011. On September 19, 2011, Agency submitted its Answer to Employee’s Petition for Appeal. On October 27, 2011, Employee filed a reply to Agency’s Answer.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on June 18, 2013. Thereafter, on June 24, 2013, I issued an Order scheduling a Status Conference in this matter for July 24, 2013. Both parties were present for the Status Conference. On July 25, 2013, I issued a Post-Status Conference Order requiring the parties to submit written briefs addressing the issues raised at the Status Conference. Agency’s brief was due on August 14, 2013, while Employee’s brief was due on August 28, 2013. Following Agency’s failure to comply with the July 25, 2013, Order, I issued an Order for Statement of Good Cause on August 19, 2013, wherein, Agency was ordered to submit a statement of good cause based on its failure to submit its brief by the required deadline. Both parties have now submitted their respective briefs.

Subsequently, on October 7, 2013, the undersigned issued an Order convening a Prehearing Conference for November 6, 2013. Both parties were present. Thereafter, on November 15, 2013, I

issued an Order scheduling an Evidentiary Hearing for January 8, 2014.¹ Both parties were present for the Evidentiary Hearing. On February 19, 2014, 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. Following several email communications and adjustments to the closing arguments schedule, both parties have now 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 an "Ineffective" performance rating under the IMPACT system 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.

¹ Because the November 15, 2014 Order had some clerical errors, the undersigned issued two Amended Orders on November 18 and November 22, 2013.

SUMMARY OF RELEVANT TESTIMONY

Agency's Case in Chief

1. Pamela Ransome-Clark (Transcript pages 14-57)

Pamela Nicol Ransome Clark ("Clark") currently works for Agency as the Director of Academics at the Washington Public Charter School. She has been in this position since August of 2013. (Tr. pg. 16-17). Clark was the Principal, and Employee's supervisor at Johnson Middle School ("Johnson"). They initially met in August of 2010 when Clark did individual interviews with the teachers as she transitioned into her position. (Tr. pg. 20). Clark noted that when she arrived at Johnson Middle School, the school was in transformation. She testified that the school had a new principal every year for three years straight, and she was the fourth principal. (Tr. pg. 17). Eighteen teachers were on the teaching staff at Johnson.

Clark noted that Employee was the Special Education Coordinator. (Tr. pg. 19). Clark explained that the special education coordinator's duties included directing and making sure that all of the special education teachers were fulfilling their Individual Education Plan's ("IEP") requirements; making sure IEP meetings were held in a timely fashion; making sure that students were receiving services that are slated within their IEPs; and making sure that everything was done according to DCPS code. (Tr. pg. 19).

Clark is aware of DCPS' IMPACT evaluation system. She noted that she was also trained to evaluate teachers, special education coordinators, special education teachers, and staff utilizing IMPACT. (Tr. pg. 23). Clark received a six-hour training session on IMPACT, its categories, and how to write the evaluations. (Tr. pg. 20). She also received training from new leaders at new schools regarding how to write comments for IMPACT utilizing the Claims Evidence IMPACT and Justification method (CEIJ). (Tr. pg. 21). Clark testified that teachers received booklets regarding their IMPACT group; the category in which they are evaluated; and the possible scores they could have received. (Tr. pg.21).

With regard to the IMPACT evaluation process, Clark testified that special education coordinators did not have to be observed for a particular amount of time. (Tr. pg. 24). Instead, they were evaluated based on the general nature of the work that they did for the entire cycle, or the beginning of the school year until mid-December, and then January until May. (Tr. pg. 24).

Clark testified that Employee was in Group 13, which included special education deans and special education coordinators. Clark stated that she evaluated Employee for Cycle 1 of the 2010-11 school year. (Tr. pg. 26). The first portion of the IMPACT evaluation was Program Coordinator and Dean Standards (PCD) portion, and there were categories within this portion. Clark noted that the scoring system for IMPACT involves a score of 1 through 4 for each category except the Professionalism category. (Tr. pg. 27).

For the Core Job Functions category of the PCD portion, Clark gave Employee a score of 3 because she was consistent in the work that she did and she attempted to turn in her work in a timely fashion. Clark noted that Employee also shared documentation at the IEP meetings that

was available to both teachers and families. (Tr. pg. 28). For the Programmatic Goals category, Employee received a score of a 3 because she met the standard in that category and she worked toward measurable goals. (Tr. pg. 28). For the Positive Rapport with Students and Families category, Clark gave Employee a score of 4 because she exceeded expectations in having a really good relationship with the parents and most of the kids knew her name. Further, parents would often call her to ask questions. (Tr. pg. 29). For the Collaboration category within the PCD portion, Employee received a score of 2 because at the time, Employee did a lot of work individually. Clark testified that she and Employee had a conversation about working more closely with the teachers in order to collaborate and to work more closely with others in the building. (Tr. pg. 29). Clark gave Employee a score of 3 for the Adaptability category because she met expectations for her ability to change and do things differently. (Tr. pg. 29). For the Use of Data category within the PCD portion, Employee received a 2 because she was slightly below expectation due to not being able to reference most of the data when questions were asked, and she would have to come back to the table with the information. Clark noted that she suggested growth in that category. (Tr. pg. 29). For the Management and Leadership category within the PCD portion, Employee received a 3 because she fulfilled her management responsibilities consistently and she became more familiar with the teachers and their strengths. (Tr. pg. 30).

The second portion of the IMPACT evaluation was Commitment to School Community (CSC). Clark testified that Employees are scored in this area based on their commitment to follow through with all of the school level initiatives that are happening in the building. (Tr. pg. 30). Employee received a 2 for the Support the Local School Initiatives category because she was slightly below in that area. Clark stated that Employee supported the initiative sometimes, but was not very active in the building and you could not see her visibly supporting the things that were happening. (Tr. pg. 30). For the Support of the Special Education and English Language Learning Programs category, Employee received a score of 4. (Tr. pg. 31).

The third portion of the IMPACT evaluation for Employee was Core Professionalism (CP). Clark stated that this portion was based on attendance, on-time arrival, following the DCPS code, and respectful interactions with others in the building. (Tr. pg. 32). This portion is rated based on a “meets expectations” standard; the score is either “meets expectations,” “slightly below meets expectations,” or “does not meet expectations.” (Tr. pg. 33). If an employee is slightly below meets expectations, then they receive a reduction of ten points. If an employee does not meet expectations, then there is a reduction of twenty points. (Tr. pg. 30).

For the Attendance category of the CP portion, Employee met the standard. She did not have any unexcused absences. Employee also met the standard for the On Time Arrival category and the Policy and Procedures category. However, for the Respect category, Clark scored Employee as slight below the standard because there were often contentious conversations with her. (Tr. pg. 33). Clark noted that Employee was often not very kind in her words or how she dealt with other people. (Tr. pg. 34). In the comment section of this portion, Clark further noted that at the start of the school year, Employee’s verbal and written communication was harsh. However, the comment went on to say that over time, Employee revised her stance and is more cordial and receptive. (Tr. pg. 34). Clark is certain that she had a conversation with Employee about her communication with others and how she needed to communicate in a different way. (Tr. pg. 34).

Clark held a conference with Employee on December 1, 2010. She sat down with Employee and discussed the evaluation. (Tr. pg. 35). Clark explained that during this conference, she went over all of the comments she had for Employee. She noted that this procedure was a part of the protocol under IMPACT. After the conversation with Employee, the evaluation is finalized on the IMPACT database and is available to be seen by anybody who is above Clark's pay grade, such as the Instructional Superintendent and the Chancellor. The evaluation then becomes a part of Employee's evaluation record. (Tr. pg. 36). Employee was also able to view the evaluation.

Clarke stated that her relationship with Employee was cordial. She worked with her when it was necessary. Clark noted that Employee was a part of the school leadership team and whenever there was a meeting, Employee was asked to be present. Clark testified that they did not have a friendly relationship or socialize outside of the school. (Tr. pg. 36).

Clark testified that she has seen a copy of the job description for the special education coordinator position. (Tr. pg. 37). However, she has not co-taught alongside any special education teachers, nor has she ever been a special education coordinator. (Tr. pg. 38). Clark testified that the D.C. core standards are aligned with the goals of student IEPs. (Tr. pg. 39).

As far as the database that was used during the 2010-11 school year, Clark testified that evaluators used the SPIDER information that was available through DCPS and the Easy IEP database. (Tr. pg. 39). With regard to the OctoQuickBase system, Clark stated that there are a number of different platforms in this database, including access to Easy IEP, access to employment documentation, and other Outlook platforms. Further, all of the employee information can be found on Outlook and on Octo. (Tr. pg. 40-41). Another platform was the Blackman Jones platform. Clark testified that Employee logged on to the Blackman Jones platform. (Tr. pg. 45).

Clark testified that as a school leader, she was required to conduct department meetings, morning meetings, and presentations. (Tr. pg. 34). Clark recalled that during one presentation, she reviewed IEP goals, writing objectives for students, and ways to work more effectively with co-teachers. (Tr. pg. 40). However, Clark did not attend the IEP meetings because they were assigned to the assistant principal. (Tr. pg. 57). The special education coordinator held triannual meetings with those who were connected with the IEP process for student evaluating, and whether that student's goals needed to be changed for the upcoming three years. The special education coordinator also held meetings to determine whether there was a manifestation of a student's disability. (Tr. pg. 41-42). Clark testified that Employee did not have a specific secretary assigned to her, but there was access to two secretaries in the main office. Also, many of the teachers in the special education department assisted with clerical work. (Tr. pg. 42-43).

Clark noted that one of the components of school data is Title X in special education. She noted that evaluators look at the timeliness of the IEPs being evaluated, and the timeliness of when she has requested that documents or tests be administered for students. Another component that is reviewed is how many of the IEP meetings were held, which includes how many were postponed; how many eligible parents were present at the meeting; what kind of wrap around services were used by the students; how much time that the student spent in wrap around service

provider offices; how much time the student spent in regular offices; and how much time the student spent in pull out classrooms receiving additional services outside of the regular classroom. (Tr. pg. 50).

Clark testified that during the 2010-11 school year, there were two self-contained classrooms for special education at Johnson; there was an ID classroom, which had a classroom teacher and a teacher's aide, and an ED classroom. The ED classroom had a teacher and an aide, but eventually did not have a teacher for the majority of the year because the teacher was sick. (Tr. pg. 57).

2. Phillip M. Morgan (Transcript pages 58-97)

Phillip M. Morgan ("Morgan") is currently the Assistant Principal assigned to Johnson. He has been in this position for six years. As an Assistant Principal, Morgan's duties include overseeing discipline; observing instruction in the classroom; observing day-to-day operations, including custodial work, matters dealing with the school building, and the things pertaining to athletics. (Tr. pg. 59-60).

During the 2010-11 school year, there was one other assistant principal working with Morgan at Johnson. (Tr. pg. 60-61). Morgan was provided training on IMPACT, but stated that it was minimal because the assessment tool had just started two to three years prior to him arriving at Johnson. (Tr. pg. 61). He also had the opportunity to be a part of the development process of IMPACT. Morgan evaluated Employee for Cycle 3 during the 2010-11 school year. He held a conference with Employee on June 9, 2011. He noted that if an administrator did not perform an evaluation during the cycle, their lack of conducting the evaluation in a timely manner would be reflected in their evaluation. (Tr. pg. 66).

Morgan testified that for the PCD portion, he gave Employee a score of 3 for Core Functions because he felt that Employee understood her job functions. (Tr. pg. 69). Morgan gave Employee a score of 3 for Programmatic Goals because Employee helped students achieve their potential of where they needed to be. Morgan stated that Employee understood the dynamics of children. (Tr. pg. 69). Morgan gave Employee a score of 4 for the Positive Rapport with Students and Families category, and noted that she was professional and was able to get the families to come in for any concern. (Tr. pg. 70-71). However, for the Collaborative category, Morgan gave Employee a score of 2 because he only saw instances where Employee participated in mandatory collaboration. (Tr. pg. 71). For Adaptability, Morgan gave Employee a score of 3 because there had been some situations where students had an emergency, and Employee adapted to those emergencies. He noted that in some instances, if Employee was not present for the emergency, a situation could have gotten out of hand. (Tr. pg. 72). For the Use of Data Category, Morgan gave Employee a score of 3 because he believed that Employee used the data that was given to her wisely. (Tr. pg. 77). For the Management and Leadership category, Morgan gave Employee a score of 3. (Tr. pg. 71-72). Morgan testified that he collaborated with Employee to make sure that she understood her job functions.

For the CSC portion of IMPACT, Morgan testified that he gave Employee a score of 2 for the Support of Local School Initiatives category because he did not think that Employee

supported the local school initiatives. He believed that Employee did not support the transition time of the year, and he noted that this was a busy time of the school year. (Tr. pg. 73). For the Support of the Special Education and English Language Learner Programs category, Morgan gave Employee a score of 4. He noted that Employee worked very hard in this category. (Tr. pg. 73). For the High Expectations category, Morgan gave Employee a score of 3 because she promoted high expectations and talked with the kids about what she expected from them. (Tr. pg. 74). Employee's overall score for the CSC portion was a 3.

Morgan testified that Employee met the standards for the CP portion of the IMPACT evaluation. (Tr. pg. 67). Therefore, Employee did not have any points deducted from her score. Morgan believed that Employee was a good employee. (Tr. pg. 75). Morgan testified that he wrote all of his own comments for Employee's IMPACT evaluation for Cycle 3. He provided that in June, Clark was not present in the building because she was suspended. (Tr. pg. 78). Morgan did not discuss his IMPACT evaluation of Employee with Clark. (Tr. pg. 94). Furthermore, he did not see Clark's evaluation of Employee. (Tr. pg. 94). Finally, Clark did not proofread Morgan's comments. (Tr. pg. 95).

Morgan provided that some of the Common Core Standards are aligned with the student goals, and some are not. He explained that for common core, the instruction is still modified for the student in order for them to be able to do the work. In Morgan's opinion, the job description for the special education coordinator position is not aligned with IMPACT. (Tr. pg. 81). According to Morgan, the special education department of Agency should have had at least one morning meeting per week. Morgan did not attend any of those meetings. (Tr. pg. 82). With regard to OctoQuickbase, Morgan stated that the IMPACT platform could be found in this database, as well as information regarding professional development. Morgan noted that aside from the IEP meetings, the special education coordinator conducted manifestation meetings.

Morgan testified that during the 2010-11 school year, Johnson did not have all of the full-time related service providers. (Tr. pg. 84). Further, he testified that an administrative assistant was not assigned to the special education department. In addition, for the 2010-11 school year, Johnson had two special education coordinators. (Tr. pg. 86). Morgan stated that he knows about the Crisis Intervention Team and confirmed that there were at least two self-contained classrooms at Johnson during the 2010-11 school year. (Tr. pg. 86). Morgan stated that at Johnson, there were ED programs staffed with one teacher. Morgan attended one of the IEP meetings. (Tr. pg. 86). Morgan knows that Johnson is considered a low performance school.

3. Cassandra Watson (Transcript pages 100-126)

Cassandra Watson ("Watson") began working with Agency in 2000 and started out as a Special Education Teacher. She left Agency in 2003, and then came back in 2006. At that point, she was a Special Education Coordinator. Then, in 2007, Watson became the Secondary Transitional Specialist and thereafter, she became the Special Education Specialist. Watson is currently the Director of the Monitoring and School Support Team ("Team") and has held this position since June, 2013. (Tr. pg. 100-101).

Watson testified that in August of the 2010-11 school year, a meeting was held and teachers and special education coordinators were encouraged to attend. The meeting included a discussion about how to conduct IEP meetings and case management responsibilities for IEP meetings. The IMPACT evaluation system was discussed, including a section discussing IMPACT for special education teachers and coordinators. The transition process and issues with related service providers were also discussed. (Tr. pg. 104). Watson testified that out of 123 Special Education Coordinators, 115 attended the meeting. Watson stated that Employee was present for the meeting. Watson stated that she knows Employee because they were coworkers when they worked as Special Education Coordinators at another school. (Tr. pg. 105).

Watson explains that the “Blackman Jones” case is a court case that came out which determined that Agency was non-compliant in several areas of special education. As a result of Agency’s non-compliance, it was required to increase compliance training for staff. Accordingly, Agency decided to hold monthly meetings to ensure that staff members were getting the needed training. (Tr. pg. 106-107).

During the time that Employee was a Special Education Coordinator at Johnson, Watson did not visit the school. Watson believed that IMPACT was introduced to DCPS during the 2009-10 school year. (Tr. pg. 109). Watson testified that the current Common Core Standards that Agency uses are aligned with the goals and objectives in the IEPs. (Tr. pg. 111). Further, Watson stated that all of the related service providers are not full-time, and some are assigned to more than one school. (Tr. pgs. 112 & 123).

With regard to database systems, Watson testified that Special Education Coordinators are responsible for the Special Education Database System (“SEDS”), the Quickbase system, and the Blackman Jones database system. (Tr. pg. 112). Watson further noted that most evaluative tools for the students are standardized. (Tr. pg. 113). Watson testified that there are about 15 to 20 IMPACT books. He stated that the job descriptions for each of the positions are aligned with the IMPACT guidebooks.

4. **Kathryn McMahon-Klosterman** (Transcript pages 127 - 169)

Kathryn McMahon-Klosterman (“McMahon”) is currently the Director of IMPACT operations at Agency. She has held this position since November 2011. Her team oversees the implementation of the IMPACT system; maintains the database where records are stores; monitor administrator compliance with the observation deadlines; and inputs data into the database on student achievement metrics and special education timeliness metrics. (Tr. pg. 129). Before this position, McMahon was a Coordinator on the IMPACT Evaluations Team for a year.

McMahon explained that IMPACT is the performance evaluation system for DCPS based employees. Agency was given the authority to establish IMPACT from the D.C. Omnibus Act and Congress. The D.C. Municipal Regulations (“DCMR”) also indicates that the Superintendent may evaluate employees. (Tr. pg. 133). Further, the collective bargaining agreement between the Board of Education and the Council of the School Officers indicates that the Superintendent is able to establish evaluations of employees and all appeals will go directly back to 5 DCMR §§ 1306.8-1306.13 of the rules of the Board of Education. (Tr. pg. 136).

McMahon testified that the evaluation component of IMPACT varies based on an employee's role. Employees are placed in different groups; there were 21 IMPACT groups during the 2010-11 school term. (Tr. pg. 131). Each group has a unique set of evaluation components and each component has standards. The core standards described the functions of the group. (Tr. pg. 139). Multiple evaluations occur within the school year. (Tr. pg. 138). At the end of the school year, the component scores are added together to create the final score. There are up to 12 standards and they are rated on a scale of 1 through 4; the IMPACT guidebook indicates what it means to perform at a level of 1, 2, 3, or 4. (Tr. pg. 139).

The IMPACT guidebook for Special Education Coordinators in Group 13 was designed specifically for the position and the type of work that they performed. The Special Education Coordinators are provided a hard copy of the guidebook and they can also view it online. Changes are made to the guidebook every year. (Tr. pg. 132). The evaluation components for the Special Education Coordinator position include Program Coordinator standards and Dean standards. The Dean standards have a specific set of smaller standards within it: school IEP timeliness, school ordering assessment timeliness, school required action timeliness, commitment to school community, and school value-added. Further, there is an additional component called Core Professionalism. (Tr. pg. 140). Once an employee is provided the guidebook, the employee is aware of all of the components that go into the evaluation. (Tr. pg. 141).

McMahon is aware of the Blackman Jones case and the lawsuit brought against DCPS because of their non-compliance with timeliness involving special education students. (Tr. pg. 141). She noted that as a result of the case, programmatic changes were made with the special education section of DCPS. Specifically, the Office of Special Education began to focus on timeliness in order to get students back to DCPS, and Agency emphasized in the IMPACT evaluation system the importance of getting things done on time. Further, the timeliness metric was an important part of the evaluation system for Special Education Coordinators, Special Education Teachers, and Related Service Providers. (Tr. pg. 142). McMahon explained the IMPACT components as they apply to Special Education Coordinators, as well as how these components are scored. She testified that once each component is scored and multiplied by the weight provided in the IMPACT pie chart, the scores are added together to produce a final score on a scale of 100 to 400. Each employee receives a score and a final rating. (Tr. pg. 147-148).

McMahon testified that Employee's final rating for the 2010-2011 school year was "Ineffective." (Tr. pg. 149). According to McMahon, Employee's scores were entered into the IMPACT database by the Principal or the Assistant Principal. (Tr. pg. 151). She summarized the scores Employee received on her IMPACT evaluation for that school year.

According to McMahon, Employee received subtotal of 183 for her final IMPACT score, but 10 points were deducted because of her scores in Core Professionalism. Employee's final IMPACT score was 173 resulting in an "Ineffective" rating. (Tr. pg. 155). Employees who were rated 'Ineffective' were separated at the close of the school year. The final document showing Employee's final rating was prepared and sent out in the Summer of 2011. (Tr. pg. 150). McMahon testified that all of the procedures outlined in the IMPACT guidebook were followed. Further, Employee received a conference after each of her sessions. (Tr. pg. 156).

McMahon testified that currently, there are position descriptions that correlate with the IMPACT guidebooks. (Tr. pg. 161). McMahon was not aware of the particular scores of Johnson Middle School. Additionally, McMahon stated that although Johnson was considered a low performing school, the school would not need a different rubric under IMPACT because the majority of Agency's schools are high poverty schools and low performing schools. (Tr. pg. 164). However, McMahon noted that funding is different for schools that have a high percentage of poverty; they receive particular federal government funding. Further, the staffing of these buildings is left to the principal, and they can budget as they see fit for the needs of the particular school. McMahon stated that evaluation tools such as IMPACT lay out clear standards and expectations. (Tr. pg. 164-165). The expectations are in the guidebook and the guidebook is made public. Further, the guidebook includes information on what Special Education Coordinators are responsible for. (Tr. pg. 166).

Employee's Case in Chief

1. Laquita Hull (Transcript pages 171-201)

Laquita Hull ("Hull") is a Special Education Teacher with DCPS. She currently is assigned to Washington Metropolitan High School. Hull and Employee worked together while they were at Johnson. While at Johnson, Hull was a Special Education Teacher in the inclusion English and Math classroom. Hull has previously worked as a Special Education Coordinator with DCPS. (Tr. pg. 171-172).

In her previous position as a Special Education Coordinator, Hull was not provided a position description, and she testified that she has never seen a position description. (Tr. pg. 172). She recalled that from 2009 to 2011, the Special Education Department had weekly meetings. Everyone who attended these meetings was required to sign a sign-in sheet. Hull testified that she did not recall that there were any administrators present at these meetings. (Tr. pg. 176). Hull testified that Employee drafted a document which gave the Special Education Teachers, General Education Teachers, and Administrative Staffs a brief synopsis of what the services were and who the case worker was so that if a teacher wanted in depth information, they could speak with a case worker. (Tr. pg. 174). Special Education Coordinators used several databases, including DIMS and Compliance-E.

Hull testified that there were several parts of the IMPACT rubric. The IEP Timeliness tool helps Special Education Coordinators know when IEPs are due and helps them make sure that the IEPs are in the system on time. The Required Action lets the staff know when an IEP or reevaluation is coming up. Assessment timeliness is a tool that lets the staff know if someone is being recommended for special education, and when their assessment needs to be completed. (Tr. pg. 178). The Blackman Jones database identifies anyone who has a lawsuit or is included in the Blackman Jones records so that the staff knows what is going on with them. The SEC attendance showed which Special Education Coordinators attended the SEC meetings. Further, Special Education Coordinators were judged on IEP and reevaluation timeliness by using a star system ranging from 1 to 5 stars. The percentage of time spent showed how much time a student spent in special education and in general education. The Blackman Jones Volume 1 Dashboard showed which cases the staff may have. (Tr. pg. 179-180).

Hull testified that there were two things that impacted the timeliness of the IEP meetings: students coming from different schools with IEPs already overdue, and the special education student population versus the amount of service providers. She explained that all of Johnson's service providers were part time and the staff would have to share them. For example, a caseworker would have a caseload of 40 students that she needed to see on a weekly basis, but would only be working two days a week. (Tr. pg. 181). Hull explained that Special Education teachers did their part in making sure the IEP data had the goals and objectives, but the service Provider part of data was based on whether the service providers were available to be at the meetings. (Tr. pg. 182). Furthermore, if the service provider was not available for a meeting, the meeting would not go forward. Hull testified that the administrators of Johnson knew that the service providers were part time. (Tr. pg. 183).

According to Hull, the Critical Response Team was dealt with anything that happened in the community that directly affected the school. Dr. Coher, the social worker, was a part of the team. However, on average, Dr. Coher did not work two to three days per week. (Tr. pg. 184). Hull stated that Employee was one of the most resourceful Special Education Coordinators. She noted that Employee stayed on top of the legal part of things and documentation was very important to her. (Tr. pg. 185). Hull stated that Employee was really good with people in the community. She noted that Employee knew the kids and families in the community. (Tr. pg. 186).

Hull testified that during the twelve years she has worked at Johnson, the school has had six principals, and from 2009 to 2010, the school has had two Special Education Coordinators. She noted that Johnson was always a low performing school. (Tr. pg. 187). Hull believed that school leaders used data from the schools to make academic changes. (Tr. pg. 188). As far as Hull is aware, the administrators at Johnson did not make themselves available to learn the duties of the Special Education Coordinators at Johnson. (Tr. pg. 189).

Between 2009 and 2012, Hull worked at Johnson and was evaluated under IMPACT. During each school term, she was evaluated by either the principal or the assistant principal. During the 2009-10 school term, Hull was rated 'Effective' and during the 2010-11 school term, she was rated 'Minimally Effective.' (Tr. pg. 191). Because of her 'Minimally Effective' rating, Hull was not given a merit increase. During the 2011-12 school year, Hull was rated 'Effective.' She noted that if DCPS would have rated her 'Minimally Effective' during this school year, she would have been terminated. (Tr. pg. 192).

Hull believes that the IMPACT evaluation is not fair and that she should have been rated higher, but she did not file a grievance regarding her ratings. (Tr. pg. 194). Hull testified that because of the Blackman Jones case, the timeliness of the IEPs were important. In her role as a Special Education Teacher, Hull did not evaluate Employee and the administrators did not come and ask her for an opinion of Employee. (Tr. pg. 196). Hull stated that the timeliness issue is a school-wide issue and based on school-wide compliance. (Tr. pg. 198). With regard to an individual teacher, the IEP timeliness is based on teachers getting the IEPs prepared; however, it is the Special Education Coordinator's responsibility to make sure that the Special Education Teachers and service providers are getting the information in on a timely basis. (Tr. pg. 199).

Hull reiterated that if a related service provider or teacher was unavailable, that impacted the timeliness of the IEPs. (Tr. pg. 200-201).

2. **Janell Johnson (“Employee”)** (Transcript pages 204-216)

Employee testified that she agreed with some parts of the IMPACT evaluation, but she asserted that the school value added portion of IMPACT was unfair. Further, she stated that there were limitations to the school administrators having knowledge of the work she performed. She noted that she did not have help despite there being a lot of students. (Tr. pg. 205).

Employee believed that administrators wanted to use their power to run the Special Education Department, but asserted that the department needed to follow the law. (Tr. pg. 205). She explained that if a child is repeatedly suspended, there will be issues with the meetings. She also noted that there were attorneys who would come into the school and attack the staff, and administrators were questioned for not providing the students their paperwork; for putting the students out of the buildings; and for not providing the students the resources they needed in order to decrease the number of suspensions. She explained that for suspended students, if placement is an issue, a meeting must be held. (Tr. pg. 206).

Employee stated that she treated every student and family as if they were in special education because she did not want to miss anything. She noted that timeliness, the school required actions, the assessments, and having enough service providers were systematic issues. (Tr. pg. 207). Employee noted that she would ask her administrators questions, but they would get offended. Employee believed that the administrators did not know enough about special education. (Tr. pg. 208). She noted that the special education cases at Johnson were some of the worst kind in the world, and she did everything she could to try to keep up with them. (Tr. pg. 209). Further, if a parent could not come to a meeting, Employee would utilize her lunch hour to get to wherever the parent was and have the meeting. (Tr. pg. 209-210).

Employee believed the IMPACT evaluation was personal; she explained that the Principal did not see everything she saw. She noted that because the Principal was later terminated, she did not get a chance to discuss the IMPACT evaluation with her. (Tr. pg. 210). Employee noted that there was an aide who was placed in a full time class, and she told them that they could not do that. However, Employee was told that she was not the Principal. (Tr. pg. 211).

Employee testified that prior to IMPACT, she did her best to make sure everyone was responsible and accountable. She noted that when the Principal punched a student in the face, she did not lie for her. (Tr. pg. 211). She also noted that she pushed to get the timeliness data up. She stated that when she told the Administrator that she was having some problems with teachers getting reports and assessments in on time, she was told to deal with it. (Tr. pg. 214).

According to Employee, due to Johnson being a low performing school, she felt that if she did not make certain numbers, it was inevitable that she was going to get a low IMPACT score. (Tr. pg. 214). Further, she noted that she had issues with the comment sections of her IMPACT evaluation because they were verbatim, and the database did not reflect the correct

employee name. She believed that the evaluators were cutting and pasting information. (Tr. pg. 215).

Employee's Position

In her submissions to this Office, Employee provides in relevant part that:

1. The IMPACT tool was not explained to the DCPS employees. The ideologies used to develop the School Added Value section of IMPACT were incorporated into individual scores without the employees knowing what they were being evaluated for, or what was actually involved in the procedure;
2. Her roles and responsibilities were not clearly described, and none of her supervisors had knowledge of her position description. Employee explains that Agency provided vague matrices in 2010-2011 school year for Special Education Teachers and Coordinators. The matrices lacked explanation and there was no job description that correlated with it;
3. She has not met with the Principal or Assistant Principal on anything that she did not do as a Special Education Coordinator;
4. Her evaluation by the Principal, Ms. Ransome (Clark) was very subjective and not based on her performance. She also noted that the Principal never observed her for any evaluation and what the Principal gave as Employee's evaluation was personal and not professional. Employee explains that the Principal formed preconceived notions of her. The Principal did not like her and was not very supportive of Employee. The Principal verbally threatened to write her up for mistakes made by the Assistant Principal and other teachers;
5. On July 23, 2011, Employee learned that she had been replaced since April, thus regardless of how hard she worked, or how well she performed her jobs, the Principal had no intention to retain her;
6. Her evaluation was personal and a form of retaliation from the Principal. Employee explains that she and all the employees who testified to witnessing the Principal hitting a student on May 4, 2011, received poor evaluations in retaliation, and were eventually dismissed. She was evaluated by a Principal who was placed on leave and terminated before the end of the school year;
7. She was evaluated by the Assistant Principal, Mr. Morgan in the absence of the Principal. She had minimal contact with the Assistant Principal. The Assistant Principal did not know the detail of Employee's job. She explains that her evaluation by Mr. Morgan is invalid because she believes Ms. Ransome (Clark) consulted with Mr. Morgan as a means of retaliation and malice intent towards all the teachers that testified to witnessing Ms. Ransome's (Clark) fight with a student;
8. In her June 2011 IMPACT evaluation, Mr. Morgan used the exact same comments under PCD 1-3, and 5-7, and CSC, as in Ms. Ransome's (Clark) evaluation, thus, proving unfair employer practice, in violation of D.C. Regs 1306 Performance Evaluation;
9. Her termination was a result of malice, evil motive and retaliation. Her removal was arbitrary, capricious and wrongful. The Douglas factors were misapplied, the Agency blatantly failed to consider mitigating factors, or show that her conduct adversely affected the ability to perform effectively. Agency's specifications in support of her termination are fabricated and unsubstantiated;

10. Agency failed to adhere to the IMPACT evaluation process as her supervisors used flawed, subjective and contradictory rating criteria to evaluate her; and
11. Agency has not met its burden of proof to show that her performance was ‘Minimally Effective’ or ‘Ineffective’ and her termination was not based on sufficient cause.²

Agency’s Position

Agency asserts that in 2005, pursuant to the DC Omnibus Authorization Act, PL 109-356 (D.C. Code §1-617.18), DCPS was granted authority to develop its own evaluation process and tool for evaluating its employees.³ Agency argues that it followed proper D.C. statutes, regulations and laws in conducting Employee’s performance evaluation. Agency maintains that, it was granted authority to develop its own evaluation process and tools for evaluating DCPS employees, and it exercised this managerial prerogative when it created IMPACT. Agency notes that, IMPACT is a performance evaluation system utilized by DCPS to evaluate school-based personnel for school year 2010-2011. Agency contends that it followed the laws of the District. Agency provides a description of the 2010-2011 school year IMPACT process and it states that it properly conducted Employee’s performance evaluation using the IMPACT process. And because Employee received an “Ineffective” IMPACT rating, her employment was terminated.⁴

Governing Authority

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). According to the record, Employee is a member of the Council of School Officers (“CSO”) and the Collective Bargaining Agreement (“CBA”) between Agency and CSO highlights in pertinent parts the following: 1) each officer shall be evaluated annually by the officer’s designated immediate supervisor in accordance with procedures adopted by the Superintendent; 2) copies of the evaluation procedures shall be made available to each officer, and the procedures shall be followed at all conferences concerning the officer’s evaluation; 3) the officer shall be given a copy of the officer’s evaluation at the conclusion of the mid-year and final evaluation conferences, along with a signed copy of the final evaluation within thirty (30) days after the end of the rating year; 4) a conference to discuss the evaluation will be held if requested by the Superintendent, their designee, the immediate supervisor or the officer; and 5) officers shall be made aware of and have the right to review and shall receive a copy of any material used in their evaluation.⁵ The IMPACT process is the performance evaluation program Agency established to evaluate its employees in compliance with the CBA. Moreover, DCMR §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency’s employees.⁶ Accordingly, I am primarily guided by the performance

² Petition for Appeal (August 15, 2011); Employee’s Reply to Agency’s Answer (October 27, 2011); Employee’s Post-Status Conference Brief (September 5, 2013); Employee’s Brief (April 7, 2014).

³ Agency’s Answer (September 19, 2010); See also Agency’s Post Status Conference Brief (August 28, 2013).

⁴ *Id.*

⁵ *Id.* at Exhibit No. 3.

⁶ 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.

evaluation process set forth in the CBA between the CSO and DCPS, as well as the DCMR in reviewing this matter.

The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during 2010-2011 school year.⁷ Agency conducts annual performance evaluation for all its employees. During the 2010-2011 school year, Agency utilized IMPACT as its evaluation system for all school-based 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. Employee was a Special Education Coordinator at Johnson Middle School for the 2010-2011 school year, and she was evaluated under IMPACT Group 13. According to the record, Group 13 employees were evaluated two times over the course of the school year.

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. For the 2010-2011 school year, 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.

Prior to instituting IMPACT, each staff member was provided with a full IMPACT guidebook, unique to their evaluation group. Employee was evaluated by two separate supervisors for the 2010-2011 school year IMPACT evaluation using the following seven (7) components: 1) Program Coordinator and Dean Standards (PCD – 20%); 2) School IEP Timeliness (SIEPT-20%); 3) School Ordering Assessment Timeliness (SOAT – 20%); 4) School Required Action Timeliness (SRAT – 20); 5) Commitment to the School Community (CSC-10%); 6) School Value-Added Student Achievement Data (SVA – 10%); and 7) Core Professionalism (CP).⁸ According to the IMPACT guidebook, School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:

- 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.

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

⁷ Agency's Brief, *supra*, at Tab 1.

⁸ This component was 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: Attendance; On-time arrival; Compliance with policies and procedures; and Respect.

Analysis

Employee contends that Agency did not adhere to the evaluation process. The CBA sets forth a number of processes that Agency has to follow in conducting a performance evaluation involving its officers as mentioned above. Employee was evaluated annually by her designated supervisors - the Principal (Clark) during IMPACT Cycle 1, and by the Assistant Principal (Morgan) during IMPACT Cycle 3 in accordance with the IMPACT evaluation process established by the Superintendent or their designee. Employee does not contest that she did not receive copies of the IMPACT guide book and training material highlighting the IMPACT procedures nor does she contest that the procedure was not followed at all conferences regarding her evaluation. Employee was evaluated twice during the 2010-2011 school year, and she was provided with two copies of her evaluation – one around the middle of the school year and the other at the end of the school year following her Cycle 1 and Cycle 3 IMPACT evaluations. Employee does not argue that she did not receive a signed copy of her final evaluation within thirty (30) days after the end of the 2010-2011 school year. In addition, Employee had a conference with the Principal and Assistant Principal at the end of each cycle evaluation, in compliance with the CSO and the IMPACT process. Moreover, Employee stated that she did receive IMPACT material at the beginning of the school year. Employee received an overall IMPACT score of 173, resulting in an “Ineffective” rating for the 2010-2011 school year and as a result, she was terminated. Accordingly, I find that Agency had the authority under DCMR to create its own performance evaluation procedure – IMPACT. I further find that Agency complied with the performance evaluation processes set forth in the CBA between Agency and CSO.

Additionally, Employee argues that Assistant Principal Morgan used the exact same comments under PCD 1-3, and 5-7, and CSC of Employee’s IMPACT evaluation, as in Principal Clark’s IMPACT evaluation of Employee, thus, proving unfair employer practice, in violation of D.C. Regs 1306 Performance Evaluation. She stated that her termination was arbitrary, capricious and wrongful. Employee explained that the comment sections of her IMPACT evaluation were verbatim, and also, the database did not reflect the correct employee name. She believes that the evaluators were cutting and pasting information. (Tr. pg. 215). Employee maintained that her second IMPACT evaluation which was conducted by Assistant Principal Morgan was not based on an independent evaluation of Employee’s work performance. Employee further testified that Morgan had the ability to view and copy Clark’s evaluation of Employee. Morgan testified that he wrote all of his own comments for Employee’s IMPACT evaluation for Cycle 3. He relayed that in June, Clark was not present in the building because she was suspended. (Tr. pg. 78). Morgan noted that he did not discuss his IMPACT evaluation of Employee with Clark; he did not see Clark’s evaluation of Employee and Clark did not proofread Morgan’s comments. (Tr. pgs. 94-95).

A review of Employee’s 2010-2011 IMPACT evaluation submitted to this Office by Agency supports Employee assertion. Employee’s IMPACT evaluation for Cycles 1 and 3 had the same evaluation language.⁹ Although Employee was evaluated during separate time frames by two separate individuals, about 90% of the language and score received by Employee in both evaluations were exactly the same. Given Morgan’s testimony that he never discussed

⁹ See Agency’s Post Status Conference Brief (August 28, 2014).

Employee's evaluation with Clark and he did not see Clark's evaluation of Employee, it can be reasonably assumed that, both Morgan and Clark used boilerplate language in evaluating Employee. While Employee asserts that Morgan had access to the IMPACT database and that the database did not reflect the correct employee name because evaluators were cutting and pasting information, Agency has not provided any credible evidence to refute this assertion.

In addition, the Superior court in *Evelyn Sligh et al. v. District of Columbia Public Schools*, 2012, CA 000697 P (MPA) (D.C. Super. Ct. March 14, 2013) reasoned that if OEA did not adequately evaluate an employee's performance evaluation document, then employees could be arbitrarily removed from their positions. Agency did not even attempt to camouflage the boilerplate language used in the IMPACT evaluation conducted by Assistant Principal Morgan and Principal Clark. Morgan did not have a credible explanation as to why his comments and scores on Employee's Cycle 3 IMPACT evaluation for school year 2010-2011 are almost the same as the comments and scores made by Clark on Employee's Cycle 1 IMPACT evaluation for the same school year. Consequently, I find that Agency has not met its burden of proof by a preponderance of evidence in this matter.

Pursuant to the court's reasoning in *Sligh et al.*, this Office has the responsibility to review Employee's performance evaluation document to ensure that Employee was not arbitrarily removed from her position.¹⁰ The record highlights that Agency's action in this matter is arbitrary and capricious. The D.C. Court of Appeals in *Bruno Mpooy v. District of Columbia Public Schools et al.*,¹¹ noted that, an agency's action is arbitrary and capricious "if the agency has...entirely failed to consider an important aspect of the problem." There is substantial evidence to support Employee's assertion that Agency's action of terminating Employee was arbitrary and capricious as Agency failed to properly evaluate Employee during IMPACT Cycle 3. Additionally, because of the about 90% similarity in the comments and the scores Employee received in IMPACT Cycles 1 and 3, I agree with Employee's assertion that she did not have an individualized evaluation of her performance. For these reasons, I find that Employee's 2010-2011 IMPACT evaluation ratings do not reflect a fair and accurate evaluation of her performance. As such, Employee's termination was not based on an appropriate and informed assessment of her performance as a Special Education Coordinator.

Grievances

Employee submits that IMPACT tool was not explained to the DCPS employees; her roles and responsibilities were not clearly described; none of her supervisors had knowledge of her position description; and Agency provided vague matrices for Special Education Teachers and Coordinators, the matrices lacked explanation, and there was no job description that correlated with them. She also submits that the Principal formed preconceived notions of her, did not like her, was not very supportive and verbally threatened to write Employee up for mistakes made by others; Employee's evaluation was personal and a form of retaliation from the Principal; the Principal had no intention to retain her; she had minimal contact with the Assistant

¹⁰ See also *Robert Willis v. District of Columbia Public Schools*, OEA Matter No. 2401-0210-10 Opinion and Order on Petition for Review (October 29, 2013).

¹¹ No. 13-CV-723 (May 27, 2014); *Citing Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Principal who evaluated her during Cycle 3; and her termination was a result of malice and evil motives.

Generally, complaints of this nature are grievances, and do not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Moreover, Employee has not submitted any credible evidence in support of her retaliation claim. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to her last position of record and reimburse her all back-pay, and benefits lost as a result of her removal; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge