

ISSUE

Whether Agency's action of terminating Employee from service following 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

Agency's Position

Agency avers that Employee's termination under IMPACT was done in accordance with all applicable District of Columbia laws, rules and regulations. Further, Agency argues that as a result of IMPACT, OEA's jurisdiction is limited with respect to the instant appeal and may only consider whether the evaluation process and tools under IMPACT were properly administered.¹ Agency asserts that Employee was appropriately evaluated in Cycles 1, 2, and 3 under IMPACT for Group 17, and received a score that resulted in an "Ineffective" rating for the 2016-2017 school year, which subjected her to separation.² Agency also argues that Employee's claim with regard to workers' compensation has no bearing on her "Ineffective" rating and subsequent separation in accordance with the IMPACT standards.

Employee's Position

Employee argues that she was wrongfully terminated. Further, Employee argues that she injured herself while in the classroom and needed modified duty, but that it was never completed by the administration.³ Employee also asserts that she was given responsibilities that she should

¹ Agency's Prehearing Statement (November 22, 2017).

² Agency's Prehearing Statement at Page 2 (November 22, 2017).

³ Employee's Petition for Appeal (August 28, 2017).

not have been, and as a result that affected her ability to do her job, and resulted in her IMPACT score.

IMPACT

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees. Based on the record in the instant matter, DCPS conducted annual performance evaluations for all of its employees through IMPACT, and used this system to evaluate employees during the 2016-2017 school year.

During the 2016-2017 school year, Employee's position was classified with Group 17, and she was evaluated during Cycles 1 and 3 in that year.⁴ The conference for Cycle 1 occurred on January 30, 2017, and the conference for Cycle 3 was held on June 1, 2017.⁵ The IMPACT evaluation for Group 17 was composed of three components, specifically:

- (1) Educational Aide Standards (EA) – This component comprised 90% of the Group 17 employee's IMPACT ratings;
- (2) Commitment to School Community (CSC) – This component comprised 10% of Group 17 employee's scores; and
- (3) Core Professionalism (CP) – This component was scored and weighted differently from the previous two components. This component measured four (4) professional requirement for all school-based personnel. The requirements included (a) Attendance, (b) On-Time Arrival; (c) Policies and Procedures (d) Respect.⁶

Employees in Group 17 did not receive a weighted score for the Core Professionalism component. Rather, employees could receive three levels: "meets standard", "slightly below standard", or "significantly below standard". If an employee received a "meets standard" score, then there would be no change to their final impact score. However, if an employee received a slightly below standard or a significantly below standard, then their final impact score would be subject to a deduction.⁷

DCPS personnel assessed through IMPACT in the 2016-2017 school year, received a final IMPACT score and rating at the end of the school year based on the following:

- (1) Ineffective = 100-199 points (subject to immediate separation);
- (2) Minimally Effective = 200-249 points
- (3) Developing = 250-299 points
- (4) Effective = 300-350 points
- (5) Highly Effective = 350-400 points

⁴ The undersigned noted that Agency asserts that Employee was evaluated in Cycle 1, 2 and 3. However, the accompanying materials, as submitted by Agency in both its Prehearing and Post Hearing Statements, including Employees' scores and conference dates, reflect evaluations and scores from Cycle 1 and Cycle 3.

⁵ Agency's Prehearing Statement at Exhibit 3 (November 22, 2017).

⁶ Agency's Post Hearing Statement at Exhibit 3 (January 18, 2018).

⁷ *Id.* at Exhibit 4 Group 17 Guidebook.

In the instant matter, Employee received a final IMPACT rating of “Ineffective” and a score of 184⁸, for the 2016-2017 school year. An “Ineffective” rating subjects an employee to immediate separation from their positions with DCPS.⁹

Governing Authority

D.C. Official Code §1-617.18 grants DCPS the authority to create and implement its own tools for evaluating employees. IMPACT was the evaluation system used by Agency to evaluate its employees during the 2016-2017 school year.¹⁰ Further, DCMR §§ 1306.4 and 1306.5, provides that the Superintendent of DCPS has the authority to set procedures for evaluating its employees.¹¹ The aforementioned sections of the DCMR 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 as previously described was the evaluation procedure for Agency in the 2016-2017 school year. Additionally, 5 DCMR §1401.1 and 1401.2 provides that:

1401:1 Adverse action shall be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious; and

1401.2: For purposes of this section, “just cause for adverse action” may include, but is not necessarily limited to, one (1) or more of the following grounds:
(c) Incompetence, including either inability or *failure to perform satisfactorily the duties of the position of employment*. (Emphasis added.)

Employee is a member of the American Federation of State Employees Local 2921.¹² Accordingly, in reviewing this matter the undersigned will address whether Agency followed the procedures it developed to evaluate its employees; and whether Agency’s termination of Employee in following her IMPACT rating was supported by “just cause” pursuant to 5 DCMR §1401.2.

ANALYSIS

D.C. Superior Court held in *Shaibu v. D.C. Public Schools*, that substantial evidence for a positive evaluation, does not establish a lack of substantial evidence for a negative evaluation.¹³ 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 evaluator’s evaluation, but that would support a better overall

⁸ The undersigned has noted that based on the Final Impact report, Employee’s weighted scores (191 for EA component and 22 for CSC components) total 213. However, the total core professionalism deductions were 30 points, thus resulting in a score of 183 (213-30), however the Final Impact Report reflects a score of 184. Neither party addressed this as an issue in this matter.

⁹ *Id.*

¹⁰ Agency’s Answer (October 2, 2017).

¹¹ DCMR §§ 1306 provides in pertinent part:

1306.1 - Official performance evaluation ratings for all employees of the Board of Education shall be inclusive of work performed through June 30th, unless otherwise specified in this section.

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 EB schedule, EG schedule, and ET 2 through 5, except as provided in § 1306.3.

¹² Employee’s Petition for Appeal at Page 4 (August 28, 2017).

¹³ Case No. 2012 CA 003606 P (January 29, 2013).

evaluation.”¹⁴ Further, the Court went on to say that “principals enjoy near total discretion in ranking their employees”¹⁵ in the implementation of performance evaluations.

In the instant matter, Employee was a Paraprofessional with Agency during the 2016-2017 school year, and worked at Garrison Elementary. For that school year, Employee’s performance was evaluated through the metrics of Agency’s IMPACT system. Employee was evaluated by the principal of Garrison Elementary School, Mr. Hill, and was evaluated in Cycle 1 and Cycle 3. Employee was provided conference dates on January 30, 2017, and on June 1, 2017. At the end of this evaluation period, Employee received a score of 184 and an “Ineffective” rating. Additionally, based on documents submitted with the record, for the previous school year of 2015-2016, Employee received a “Developing” rating.¹⁶ Employee does not dispute that she was evaluated by Principal Hill, however, Employee maintains that she worked with another employee, Ms. Alexander, in the classroom during that year.

Further, Employee does not dispute that she attended the two conferences with regard to her IMPACT scores for the 2016-2017 school year. Employee asserts that she was unable to perform some duties due to an injury that she received while in the classroom. Employee argues that Ms. Alexander would ask her to perform duties that she could not do as a result of her injury, but that she did try to perform them so she wouldn’t have a low IMPACT score.¹⁷ Agency argues that Employee’s injuries and her placement on modified work duty did not prevent them from evaluating Employee.¹⁸ Agency notes that the Notice of Determination dated March 13, 2017, from the Public Sector’s Workers Compensation, states that Employee returned to work on September 16, 2016. Further, there was no time lost beyond the continuation of payment period as a result of the injury that she sustained, and that no Temporary Total Disability benefits were owed.¹⁹ Further, Agency argues that it followed the IMPACT process appropriately, because the “standards that Administrators assessed Employee’s work performance were within Employee’s modified duty assignment.”²⁰ Accordingly, I find that Agency followed its IMPACT procedures as outlined with regard to Employee’s job assignments and subsequent evaluation.

Additionally, during the Cycle 1 evaluation for the 2016-2017, school year, Employee received deduction in Core Professionalism of ten (10) points. Employee received a rating of “meet standards” with regard to attendance, on-time arrival and policies and procedures, but was slightly below standard with regard to respect. In the Cycle 3 evaluation, Employee received a deduction in Core Professional of twenty (20) points. Employee had a rating of “meets standards” with regard to attendance and on-time arrival; but received a “slightly below standard” for policies and procedures, and rating of “significantly below standard” for respect. Employee has not offered any controverting information or evidence that disputes the evaluation for the 2016-2017 school year. Further, the undersigned finds that Employee’s modified work status did not prevent Agency from evaluating her in that school year with the components that were considered.

¹⁴ *Id.*

¹⁵ *Id.* Citing *Washington Teachers’ Union, Local #6 v. Board of Education*, 109 F.3rd 774, 780 (D.C. Cir. 1997).

¹⁶ Employee’s Petition for Appeal at Attachment- Final 2016-2017 IMPACT Report Page 2 (August 28, 2017).

¹⁷ Employee’s Brief (February 22, 2018).

¹⁸ Agency’s Reply at Page 2 (March 12, 2018).

¹⁹ *Id.* at Exhibit 6.

²⁰ Agency’s Reply (March 12, 2018).

Employee received a copy of her IMPACT scores, and was afforded notice in the Group 17 Guidebook that an “Ineffective” rating would result in separation from service. Because Employee’s score was “Ineffective” for the 2016-2017, school year, she was terminated effective July 29, 2017. Based on the aforementioned, I find that Agency followed the procedures it developed for the evaluation of its employees, and Employee’s “Ineffective” rating was supported by just cause. As a result, I find that Agency’s decision to separate Employee from service for the failure to satisfactorily perform the duties of her position must be upheld.

ORDER

Based on the foregoing, it is **ORDERED** that the Agency’s action of terminating Employee from service is here by UPHELD.

FOR THE OFFICE:

MICHELLE R. HARRIS, Esq.
Administrative Judge