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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

| | | |
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| <u>In the Matter of:</u> |) | |
| |) | |
| EMPLOYEE, |) | OEA Matter No. 1601-0072-24 |
| Employee |) | |
| |) | Date of Issuance: May 12, 2025 |
| v. |) | |
| |) | JOSEPH E. LIM, ESQ. |
| DC PUBLIC SCHOOLS, |) | SENIOR ADMINISTRATIVE JUDGE |
| <u>Agency</u> |) | |
| Employee <i>pro se</i> | | |
| Gehrrie Bellamy, Esq. Agency Representative | | |

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 5, 2024, 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 him from his position as a Math Teacher at Jackson Reed High School. Employee was removed because he received a rating of “Minimally Effective” for both the 2022-2023 school year and the 2023-2024 school year under Agency’s IMPACT program.¹ Employee’s termination was effective on August 2, 2024.

In response to OEA’s August 8, 2024, letter, Agency filed its Answer on September 5, 2024, disputing Employee's claims and asserting that its action was proper. The matter was assigned to the undersigned senior administrative judge (“AJ”) on September 9, 2024. On September 23, 2024, I issued an Order and scheduled a Telephonic Prehearing Conference for October 3, 2024. During the conference, I determined that an evidentiary hearing was not warranted based on the arguments presented by the parties. Therefore, I ordered the parties to submit legal briefs by December 12, 2024. On December 10, 2024, at Agency’s request for a new due date for its Sur reply, the new deadline for the sur reply for both parties was extended to December 27, 2024. 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).

ISSUE

Whether Agency's removal of Employee pursuant to IMPACT should be upheld.

Position of the Parties

Agency argues that Employee's termination under the IMPACT program was done in accordance with all District of Columbia statutes, regulations, and laws.² According to Agency, Employee was properly evaluated under the IMPACT program, which resulted in him receiving a final IMPACT score of "Minimally Effective" for two consecutive school years. Agency asserts that it fairly and accurately evaluated Employee and gave him adequate notice of his performance deficiencies. Employee argues that he has the proper teaching license and his IMPACT scores are inaccurate.³ He asks this Office to reinstate him.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The IMPACT Process

D.C. Official Code § 1-617.18 grants DCPS the authority to create and implement its own tools for evaluating employees. IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during the 2022-2023 and 2023-2024 school years. According to the documents of record, Agency conducts annual performance evaluations for all its employees. The IMPACT system was designed to provide specific feedback to employees to identify areas of strength, as well as areas in which improvement was needed.⁴

The IMPACT process required that all staff receive written feedback regarding their evaluation, in addition to a post-evaluation conference with their evaluators. 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. 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.

For the 2022-2023 school year, there were twenty (20) IMPACT groupings of DCPS employees. Employee's position – Teacher, was within Group 1. The IMPACT process for Group 1 employees consisted of two (2) assessment cycles: the first assessment cycle ("Cycle 1"), which

² Agency Brief (November 8, 2024).

³ Employee Legal Brief (December 19, 2024).

⁴ Agency's Answer and Agency's Brief, *supra*.

was between September 21st and December 1st; and the third assessment cycle (“Cycle 3”) which was between March 1st and June 15th.

Based on his IMPACT sheets, Employee was assessed on the following:

- 1) Essential Practice Observation. This component accounted for 65% of the total IMPACT Score.

Essential Practice 1: Cultivate a Responsive Learning Community
Essential Practice 2: Challenge Students with Rigorous Content
Essential Practice 3: Lead a Well-Planned, Purposeful Learning Experience
Essential Practice 4: Maximize Student Ownership of Learning
Essential Practice 5: Respond to Evidence of Student Learning

- 2) Teacher-Assessed Student Achievement Goals (“TAS”). This component accounted for 15% of the total IMPACT Score.
- 3) Student Survey of Practice (“SSP”): Care, Confer, Captivate, Clarify, Consolidate, Challenge, Classroom Management. This is a measure of the students' evaluation of their teacher. Students in grades 3 and up take a survey once a year and rank the extent to which they agree with certain statements about their teacher's performance. This component makes up 10% of the total IMPACT score;
- 4) Commitment to the School Community (“CSC”)— This is a measure of the extent to which school-based personnel support and collaborate with their colleagues and their school's community and made up 10% of a Group 2 teacher's IMPACT score.
- 5) 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 was scored differently from the others, as an employee could have additional points subtracted from their overall score if the rating was “slightly below standard” or “significantly below standard.” If an employee's rating for this component was "meets standard," then there was no change in the employee's final IMPACT score. If an employee received a rating of "slightly below standard" on any part of the Core professionalism rubric during a cycle, and no ratings of "significantly below standard," the employee received an overall rating of "slightly below standard" for that cycle and 10 points were subtracted from the employee's final IMPACT score. An additional 10 points were deducted if an employee earned an overall rating of "slightly below standard" again the next cycle. If an employee received a rating of "significantly below standard" on any part of the Core Professionalism rubric during a cycle, the employee received an overall rating of "significantly below standard" for that cycle, and 20 points were deducted from the employee's final IMPACT score. An additional 20 points were deducted if the employee earned an overall rating of "significantly below standard" again the next cycle.

Upon the conclusion of each assessment, within 15 days of the observation, the employee will meet with the evaluator for a post observation conference. School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year of either:

Highly Effective = 350-400 points
Effective = 301-349 points
Developing = 250-300 points
Minimally Effective = 200-249 points
Ineffective = 100-199 points

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 employees had any issues or concerns about their IMPACT evaluations and ratings, they were encouraged to contact DCPS' IMPACT team by telephone or electronic mail. Additionally, the Collective Bargaining Agreement (CBA) between the Washington Teachers' Union, Local #6 of the American Federation of Teachers, AFL-CIO and the District of Columbia Public Schools provides as follows with respect to the evaluation process:

15.3 DCPS's compliance with the evaluation process, and not the evaluation judgment, shall be subject to the grievance and arbitration procedure.

15.4 The standard for separation under the evaluation process shall be "just cause," which shall be defined as adherence to the evaluation *process* only.

D.C. Code§ 1-616.52(d) provides: Any 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 a labor organization.

Thus, employees may only grieve, or alternatively appeal, IMPACT procedures, not the substance contained therein. Employee's position, Teacher, was within Group 1.⁵ Employee was observed on three separate occasions, one informal observation and two formal observations. At the conclusion of each formal observation, Employee conferenced with his evaluator and the date of the conference was noted on each of his IMPACT assessments. As a result, Employee received notice that his score of 209 was rated "Minimally Effective" at the conclusion of the 2022-2023 school year under IMPACT, and that should his rating not improve for the following school year, he would be subject to termination.⁶

For the 2023-2024 school year, Employee was again evaluated following the same procedures. In this case, Employee was evaluated by the school administrator. Employee was observed on three (3) separate occasions, one informal observation which occurred on November 13, 2023, and two (2) informal observations which occurred on November 20, 2023, and April 26,

⁵ *Id.* Tab 4. Employee's 2022-2023 IMPACT Report.

⁶ *Id.* Tab 3. Notice of Minimally Effective IMPACT Rating dated July 1, 2023.

2024.⁷ He received an IMPACT score of 237 and was ultimately rated as "Minimally Effective."⁸ IMPACT procedures provide that employees who receive two consecutive Minimally Effective ratings are subject to separation.⁹ Therefore, Employee's employment was terminated effective August 2, 2024.¹⁰

Employee's primary arguments are that the IMPACT scores are inaccurate and that his Maryland teaching license should be accepted in Washington, D.C. With regard to his IMPACT score, he characterizes his disagreements with the scorer as procedural, when in fact, those disagreements are with the substance written in the report. For instance, Employee cited as inaccurate his evaluator's observation that he wrote the answer for his students on the wrong location or that he did not provide directions to a student.

It should be noted that the D.C. Superior Court in *Shaibu v. D.C. Public Schools*¹¹ explained that substantial evidence for a positive evaluation does not establish a lack of substantial 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."¹² 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"¹³ when implementing performance evaluations. The court concluded that since the "factual statements were far more specific than [the employee's] characterization suggests, and none of the evidence proffered to OEA by [the employee] directly controverted [the principal's] specific factual bases for his evaluation of [the employee]..." the employee's petition was denied.

In the instant matter, I find that Employee has not proffered to this Office any credible evidence that controverts any of the school administrator's comments. This Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not to OEA.¹⁴ As performance evaluations are "subjective and individualized in nature,"¹⁵ this Office will not substitute its judgment for that of an agency; rather,

⁷ Agency Answer to Employee's Appeal for Petition (September 6, 2024) Tab 2. Employee's 2023-2024 IMPACT Report.

⁸ *Id.*

⁹ *Id.* Tab 5. IMPACT Guidebook.

¹⁰ *Id.* Tab 1. Specific Notice of Termination effective August 2, 2024.

¹¹ Case No. 2012 CA 003606 P (January 29, 2013).

¹² *Id.* at 6.

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

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

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

this Office limits its review to determining if “managerial discretion has been legitimately invoked and properly exercised.”¹⁶ Thus, I find that it was within the school administrator’s discretion to rank and rate Employee’s performance. Moreover, the undersigned Administrative Judge is not in the position to recommend that Employee receives a higher rating since the undersigned is unfamiliar with the nature and details of Employee’s job.

Procedurally, Employee does not deny that he was evaluated a total of three (3) times by the school administrator. Employee also does not deny that he had conferences after the evaluation or that he received the IMPACT training materials. Accordingly, I find that Agency properly conducted the IMPACT process and had just cause to terminate Employee.

Based on the foregoing, I find that Employee was a member of the WTU at the time he was terminated and was he was subject to the terms of the CBA between WTU and Agency. I also find that OEA’s jurisdiction in this matter is limited by the terms of this CBA. Based on the foregoing, I find that Agency properly adhered to the IMPACT process and had cause to terminate Employee. Because Agency adhered to the IMPACT process, I conclude that Agency had sufficient cause to terminate Employee based on his ‘Minimally Effective’ IMPACT ratings for two (2) consecutive school years. Accordingly, Agency’s action must be upheld.

Lastly, Employee argues that his Maryland teaching license should suffice for the Washington, D.C. public school system. However, he has not cited any statute or regulation that would support his contention. Nor does he deny Agency’s contention that the D.C. Office of the State Superintendent of Education (“OSSE”) did not renew his D.C. teaching license, thereby rendering him ineligible to be a teacher at the DCPS.

In *Linda Ellis, et. al. v. D.C. Department of Consumer and Regulatory Affairs*,¹⁷ the D.C. Superior Court held that when an employee fails to acquire a required certification or license, such an employee is automatically converted to “at-will” status.¹⁸ The Superior Court noted that the OEA Administrative Judge (AJ) in *Ellis* had found that: (a) the ICC certification was a significant requirement of the Employees’ respective positions; (b) that the DCRA went to considerable expense to provide Employees with opportunities to become certified; (c) that Employees’ continued failure to obtain certification converted them to “at-will” employees; and (d) their status as at-will employees subjected them to termination at any time, for any reason. The Superior Court agreed with the AJ’s ultimate conclusion that if an employee neglects to obtain proper licensure or certification by the effective date of their removal, then they are deemed at-will employees, and thus OEA must dismiss the appeals as it lacks jurisdiction over “at-will” employees.

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

¹⁷ 2011 CA 001529 P(MPA), 2011 CA 001533 P(MPA), 2011 CA 001534 P(MPA), 2011 CA 001557 P(MPA), 2011 CA 001560 P(MPA), 2011 CA 001561 P(MPA), 2011 CA 001562 P(MPA), and 2011 CA 001567 P(MPA) D.C. Super. Ct. (November 28, 2011).

¹⁸ See also *Michael Brown, et. al. vs. DC Dept. of Consumer and Regulatory Affairs*, OEA Matter Nos. 1601-0012-09 to 1601-0027-09, 1601-0052-09 to 1601-0054-09, *Opinion and Order on Petition for Review* (January 26, 2011); and *Gizachew Wubishet v. District of Columbia Public Schools*, OEA Matter No. 1601-0106-06, (March 26, 2007).

Here, it is undisputed that Employee does not have the required D.C. teaching license. Based on this fact, I find that his status was converted to an “at-will” employee. Accordingly, I conclude that Agency’s action to terminate Employee’s employment must be upheld.

ORDER

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

FOR THE OFFICE:

/s/ Joseph Lim
JOSEPH E. LIM, ESQ.
Senior Administrative Judge