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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0237-12
DALE LUBKEMAN,)	
Employee)	
)	Date of Issuance: November 30, 2015
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Dale Lubkeman, Employee <i>Pro Se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 5, 2012, Dale Lubkeman (“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 Social Studies teacher. Employee was terminated because he received a final rating of “Minimally Effective” under Agency’s IMPACT program during the 2010-2011 and 2011-2012 school years.¹ Employee’s termination was effective on August 10, 2012.

This matter was assigned to me in December of 2013. On December 11, 2013, I issued an Order convening a Prehearing Conference for the purpose of assessing the parties’ arguments. Employee’s initial representative, Taylor Lewis, Esq., filed a Designation of Employee Representative Form with OEA on January 27, 2014. On July 17, 2014, Attorney Lewis informed this Office that she would no longer be representing Employee, as she was no longer an employee of the Washington Teacher’s Union (“WTU”). Orders rescheduling the Prehearing Conference and Status Conference orders were subsequently issued on August 4, 2014,

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

September 25, 2014, October 27, 2014, January 5, 2014, and January 7, 2015.² A Status Conference was held on January 28, 2015, during which it was determined that an Evidentiary Hearing was warranted.

Orders rescheduling the Evidentiary Hearing were issued on February 6, 2014, May 21, 2014, January 28, 2015, and March 19, 2015. On July 1, 2015, the Undersigned issued a final Order convening an Evidentiary Hearing to be held on October 22, 2015. On October 16, 2015, Attorney Jackson informed this Office via email that he would no longer be representing Employee in his appeal before OEA. I informed Employee, Agency's representative, and Attorney Jackson that the Evidentiary Hearing would still proceed as planned. Employee did not contact the Undersigned after October 16, 2015 regarding his case. On October 22, 2015, Agency appeared for the Evidentiary Hearing; however, Employee did not. I subsequently ordered the parties to submit written briefs in lieu of an Evidentiary Hearing. Agency submitted a response the Order; however, Employee did not. The record is now closed.

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.

² On September 24, 2014, Lee Jackson, Esq., filed a Consent Motion to Postpone Status Conference and entered his appearance as Employee's new representative.

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. Agency also argues that OEA's jurisdiction is limited with respect to the instant appeal and that Employee may only challenge whether the evaluation process and tools were properly administered. According to Agency, Employee was evaluated a total of five times during both the 2010-2011 and 2011-2012 school years. After receiving a final IMPACT score of "Minimally Effective" for two consecutive years, Agency submits that Employee was correctly identified for termination.

Employee argues that he attempted to improve his performance in the classroom; however, he never received adequate professional development support from the school.³ He also asserts that Agency did not properly inform him of his work expectations and failed to provide opportunities to improve his performance through training and development. Employee also believes that his IMPACT scores did not sufficiently recognize his professional accomplishments.

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 2010-2011 and the 2011-2012 school years to rate the performance of school-based personnel.

Governing Authority

Agency notes that because Employee was a member of Washington Teachers' Union, Local #6 ("WTU") when he was terminated, the Collective Bargaining Agreement ("CBA") between Agency and the WTU applies to this matter and as such, OEA has limited jurisdiction over this appeal. In *Brown v. Watts*, the D.C. Court of Appeals held that OEA is not jurisdictionally barred from considering claims that a termination violated the express terms of an applicable collective bargaining agreement.⁴ The Court explained that the Comprehensive

³ Employee's Prehearing Statement (January 27, 2014).

⁴ 933 A.2d 529 (April 15, 2010).

Merit Personnel Act (“CMPA”) gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including “matters covered under subchapter [D.C. Code §1-616] that also fall within the coverage of a negotiated grievance procedure.”⁵ In this case, Employee was a member of the Washington Teachers Union (“WTU”) when he was terminated and is therefore governed by the CBA between Agency and the WTU. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between the WTU and DCPS, as it relates to the adverse action in question in this matter. Section 15 of the CBA between WTU and Agency provides in pertinent part the following:

15.3 DCPS’ 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*. (Emphasis added).

Accordingly, I am primarily guided by §15.4 of the CBA between the WTU and DCPS and as such, I will only address whether or not Agency’s termination of Employee pursuant to his performance evaluation was supported by just cause. As referenced above, ‘just cause’ is defined as adherence to the *evaluation process only* (emphasis added).

The IMPACT Process

During the 2010-2011 and 2011-2012 school years, 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 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.

DCPS school-based staff was divided into twenty (20) IMPACT groups. General Education Teachers were included in Group 12. Under IMPACT, teachers were required to be evaluated a total of five (5) times during the school year. Three evaluations were performed by the school principal and two evaluations were done by a Master Educator. 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. In this case, Employee was assessed on the following IMPACT components:

⁵ 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).

1. Teaching and Learning Framework (TLF)—A measure of the teacher’s instructional expertise. TLF scores accounts for 75% the score;
2. Teacher-Assessed Student Achievement Data (TAS)—A measure of the student’s learning over the course of the year, as evidenced by rigorous assessments other than the DC CAS. TAS accounts for 10% of the IMPACT score.
3. Commitment to the School Community (CSC)—A measure of the extent to which the teacher supports and collaborates with his or her school community. CSC accounted for 10% of Group 2 scores;
4. School Value-Added Student Achievement Data (SVA)—A measure of the impact the teacher’s school has on student learning over the course of the school year, as evidenced by the DC CAS. SVA comprised 5% of Group 2 employees’ scores;
5. Core Professionalism (CP)—This component is scored differently from the others. CP is a measure of four (4) basic professional requirements for all school-based personnel. Employees are assessed twice during the school year; once by December 1st, and a second time by June 15th. The CP requirements are as follows:
 - Attendance;
 - On-time arrival;
 - Compliance with policies and procedures; and
 - Respect⁶

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.

⁶ Core Professionalism scores are rated as either “Meets Standards,” “Slightly Below Standard,” or “Significantly Below Standard.” If an employee received a “Meets Standard,” then there was no change in his or her final score. If an employee received a “Slightly Below Standard,” on any part of the CP rubric during a cycle, and no ratings of “Significantly Below Standard” for that cycle, then ten (10) points are deducted from the teacher’s final evaluation score. A “Significantly Below Standard” score in any CP category resulted in twenty (20) points being deducted from the final score. An additional twenty (20) points were deducted if the employee earned an overall rating of “Significantly Below Standard” again for the next cycle. See Agency Prehearing Statement (January 24, 2014).

2010-2011 IMPACT ASSESSMENT, Cycle 1 (Administrator)⁷

School Administrator, Gendre Guillaume, evaluated Employee during Cycle 1 of the 2010-2011 school year. There are three (3) elements for the Cycle 1 assessment. Teaching and Learning Framework (“TLF”) scores relate to the teaching and learning that occurs in the classroom during lesson observation. Commitment to School Community (“CSC”) assesses a teacher’s contributions to the school and community.⁸ Both school staff and teachers are evaluated on Core Professionalism (“CP”), which measures other standards related to professionalism. In this case, Employee was observed on November 18, 2010, and had a post-evaluation conference with Guillaume on November 29, 2010. He received an average TLF score of 2.22. Guillaume awarded Employee the following scores in the TLF category.

1. **TLF1: Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 3.
2. **TLF2: Explain Content Clearly.** Employee received a score of 2.
3. **TLF3: Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. **TLF4: Provide Students Multiple Ways to Engage with Content.** Employee received a score of 3.
5. **TLF5: Check for Student Understanding.** Employee received a score of 2.
6. **TLF6: Respond to Student Misunderstandings.** Employee received a score of 2.
7. **TLF7: Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 1. Guillaume stated that Employee failed to ask his students questions that required a higher level of thinking.
8. **TLF8: Maximize Instructional Time.** Employee received a score of 2.
9. **TLF9: Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 3.

Employee received an average CSC score of 3.40 based on the following;

1. **CSC1: Support of the Local School Initiative.** Employee received a score of 4.
2. **CSC2: Support of the Special Education and English Language Learner Programs.** Employee received a score of 3.
3. **CSC3: High Expectations.** Employee received a score of 4.
4. **CSC4: Partnership with Families.** Employee received a score of 4.
5. **CSC5: Instructional Collaboration.** Employee received a score of 2.

⁷ Agency Answer to Petition for Appeal, Exhibit 10 (January 24, 2014).

⁸ TLF and CSC scores are rated on a scale of 1-4, with a score of 4 being the highest possible score.

Core Professionalism is rated on a “Meets Standards” “Slightly Below Standard,” or “Significantly Below Standard.” If an employee received a “Slightly Below Standard,” then ten (10) points are deducted from the teacher’s final evaluation score. A “Significantly Below Standard” score in any CP category results in twenty (20) points being deducted from the final score. Employee received the following scores for CP:

1. CP1: **Attendance**. Employee received a “Meets Standard.”
2. CP2: **On-Time Arrival**. Employee received a “Meets Standard.”
3. CP3: **Policies and Procedures**. Employee received a “Meets Standard.”
4. CP4: **Respect**. Employee received a “Meets Standard.”

In his notes, Guillaume stated that Employee should be commended for his tireless involvement with the D.C. Youth Government, National Honor Society, and the Debate Team. Employee was further acknowledged for providing students with wonderful opportunities outside of the classroom.

2010-2011 IMPACT ASSESSMENT, Cycle 2 (Administrator)⁹

Genre Guillaume also evaluated Employee during Cycle 2 of the 2010-2011 school year. Employee was observed on February 14, 2011, and had a post-evaluation conference with Guillaume on February 18, 2011. He received an average TLF score of 2.33. Guillaume awarded Employee the following scores in the TLF category.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons**. Employee received a score of 3.
2. TLF2: **Explain Content Clearly**. Employee received a score of 3.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work**. Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content**. Employee received a score of 3.
5. TLF5: **Check for Student Understanding**. Employee received a score of 2.
6. TLF6: **Respond to Student Misunderstandings**. Employee received a score of 2.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning**. Employee received a score of 2.
8. TLF8: **Maximize Instructional Time**. Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community**. Employee received a score of 2.

⁹ Agency Answer to Petition for Appeal, Exhibit 11.

2010-2011 IMPACT ASSESSMENT, Cycle 3 (Administrator)¹⁰

Gendre Guillaume evaluated Employee during Cycle 3 of the 2010-2011 school year. Employee was observed on May 2, 2011 and had a post-evaluation conference with Guillaume on May 13, 2011. He received an average TLF score of 2.00. Guillaume awarded Employee the following scores in the TLF category.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 2.
2. TLF2: **Explain Content Clearly.** Employee received a score of 3.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 3.
5. TLF5: **Check for Student Understanding.** Employee received a score of 2.
6. TLF6: **Respond to Student Misunderstandings.** Employee received a score of 2.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 1.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 1.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 2.

Employee received an average CSC score of 2.60 based on the following:

1. CSC1: **Support of the Local School Initiative.** Employee received a score of 1.
2. CSC2: **Support of the Special Education and English Language Learner Programs.** Employee received a score of 3.
3. CSC3: **High Expectations.** Employee received a score of 3.
4. CSC4: **Partnership with Families.** Employee received a score of 3.
5. CSC5: **Instructional Collaboration.** Employee received a score of 3.

Employee received “Meets Standard” for each CP component except for CP3, “Policies and Procedures.” Guillaume gave Employee a “Significantly Below Standard” for CP3 because he did not respect protocol for student field trips on several occasions.

¹⁰ *Id.* at Exhibit 5.

2010-2011 IMPACT ASSESSMENT, Cycle 1 (Master Educator)¹¹

Master Educator, Ijeoma Kush, observed Employee on November 3, 2010 and had a post-evaluation conference with Employee on November 18, 2010. Employee received an average TLF score of 2.75 for Cycle 1. Ijeoma did not evaluate Employee on any other components during this cycle.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 2.
2. TLF2: **Explain Content Clearly.** Employee received a score of 3.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 2.
5. TLF5: **Check for Student Understanding.** Employee received a score of 2.
6. TLF6: **Respond to Student Misunderstandings.** Employee was not scored on this component during Cycle 1.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 4.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 4.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 3.

2010-2011 IMPACT ASSESSMENT, Cycle 3 (Master Educator)¹²

During Cycle 3, Kush observed Employee on March 31, 2011, and had a post-evaluation conference with him on April 12, 2011. Employee received an average TLF score of 2.78. Kush did not evaluate Employee on any other components during this cycle.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 3.
2. TLF2: **Explain Content Clearly.** Employee received a score of 3.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 3.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 2.
5. TLF5: **Check for Student Understanding.** Employee received a score of 3.
6. TLF6: **Respond to Student Misunderstandings.** Employee received a score of 3.

¹¹ *Id.* at Exhibit 13.

¹² *Id.* at Exhibit 14.

7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 3.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 3.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 2.

In his notes, Kush stated that “[i]n order to ensure continuous academic growth and high levels of student achievement, all teachers must engage students in rigorous and relevant classroom instruction that improves their academic and social-emotional skills and abilities.

2011-2012 IMPACT ASSESSMENT, Cycle 1 (Administrator)¹³

School Administrator, Gendre Guillaume, evaluated Employee during Cycle 1 of the 2011-2012 school year. Employee was observed on September 26, 2011 and had a post-evaluation conference with Guillaume on October 7, 2011. He received an average TLF score of 1.77. Guillaume awarded Employee the following scores in the TLF category.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 2.
2. TLF2: **Explain Content Clearly.** Employee received a score of 2.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 2.
5. TLF5: **Check for Student Understanding.** Employee received a score of 1. Guillaume noted that Employee was ineffective at checking for student understanding and does not get an accurate “pulse” of the class for understanding.
6. TLF6: **Respond to Student Misunderstandings.** Employee received a score of 1. Guillaume stated that Employee was unable to comprehend that some of his students did not understand the basic concepts necessary to grasp the content.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 1.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 3 based on his ability to effectively build a supportive and learning-focused classroom community.

¹³ Agency Answer to Petition for Appeal, Exhibit 3 (January 24, 2014).

Employee received an average CSC score of 3.00 based on the following;

6. **CSC1: Support of the Local School Initiative.** Employee received a score of 3.
7. **CSC2: Support of the Special Education and English Language Learner Programs.** Employee received a score of 3.
8. **CSC3: High Expectations.** Employee received a score of 3.
9. **CSC4: Partnership with Families.** Employee received a score of 3.
10. **CSC5: Instructional Collaboration.** Employee received a score of 3.

Employee received the following scores for CP:

1. **CP1: Attendance.** Employee received a “Meets Standard.”
2. **CP2: On-Time Arrival.** Employee received a “Slightly Below Standard.” Guillaume provided two dates for Employee’s unexcused absences: August 16, 2011, and October 28, 2011.
3. **CP3: Policies and Procedures.** Employee received a “Slightly Below Standard.”
4. **CP4: Respect.** Employee received a “Meets Standard.”

2011-2012 IMPACT ASSESSMENT, Cycle 2 (Administrator)¹⁴

School Administrator, Gendre Guillaume, evaluated Employee during Cycle 2 of the 2011-2012 school year. Employee was observed on February 17, 2012, and had a post-evaluation conference with Guillaume on February 28, 2012. He received an average TLF score of 2.44 and was not evaluated on CSC or CP during this cycle. Guillaume awarded Employee the following scores in the TLF category.

1. **TLF1: Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 3.
2. **TLF2: Explain Content Clearly.** Employee received a score of 3.
3. **TLF3: Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. **TLF4: Provide Students Multiple Ways to Engage with Content.** Employee received a score of 2.
5. **TLF5: Check for Student Understanding.** Employee received a score of 2.
6. **TLF6: Respond to Student Misunderstandings.** Employee received a score of 3.
7. **TLF7: Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 3.
8. **TLF8: Maximize Instructional Time.** Employee received a score of 2.

¹⁴ Agency Answer to Petition for Appeal, Exhibit 4.

9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 2.

In the comments section, Guillaume noted that Employee put a lot of effort into the D.C. Youth and Government club as well as the Future Business Leaders of America. Employee also supported the Debate Team and orchestrated the Student Voter Registration.

2011-2012 IMPACT ASSESSMENT, Cycle 3 (Administrator)¹⁵

School Administrator, Gendre Guillaume, evaluated Employee during Cycle 3 of the 2011-2012 school year. Employee was observed on May 16, 2012 and had a post-evaluation conference with Guillaume on May 25, 2012. He received an average TLF score of 2.77. Guillaume awarded Employee the following scores in the TLF category.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 3.
2. TLF2: **Explain Content Clearly.** Employee received a score of 3.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 3.
5. TLF5: **Check for Student Understanding.** Employee received a score of 3.
6. TLF6: **Respond to Student Misunderstandings.** Employee received a score of 3.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 3.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 3.

Employee received an average CSC score of 3.40 based on the following:

1. CSC1: **Support of the Local School Initiative.** Employee received a score of 3.
2. CSC2: **Support of the Special Education and English Language Learner Programs.** Employee received a score of 4.
3. CSC3: **High Expectations.** Employee received a score of 3.
4. CSC4: **Partnership with Families.** Employee received a score of 3.
5. CSC5: **Instructional Collaboration.** Employee received a score of 4.

There was no change in Employee's CP score, as he received "Meets Standard" for each component.

¹⁵ *Id.* at Exhibit 5.

2011-2012 IMPACT ASSESSMENT, Cycle 1 (Master Educator)¹⁶

Master Educator, Tim Stroud, observed Employee on September 14, 2011 and had a post-evaluation conference with Employee on September 27, 2011. Employee received an average TLF score of 2.00. Stroud did not evaluate Employee on any other components during this cycle.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 2. Stroud noted that Employee was minimally effective at leading an objective-driven lesson and encouraged Employee to design his objectives to fit into one class period to flesh out the posted agenda.
2. TLF2: **Explain Content Clearly.** Employee received a score of 2.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 1. Stroud stated that Employee only made the content available to the students via Socratic dialogue and lecture, but there was no evidence that such content was differentiated by process, product or content.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 2.
5. TLF5: **Check for Student Understanding.** Employee received a score of 3.
6. TLF6: **Respond to Student Misunderstandings.** Employee did not receive a score for this component, as there were no expressed student misunderstandings that required Employee to use scaffolding to correct.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 1. Stroud stated that Employee failed to utilize identifiable evidence that students were required to engage in the use of analysis, synthesis or critical thinking skills.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 3.

2011-2012 IMPACT ASSESSMENT, Cycle 3 (Master Educator)¹⁷

Master Educator, Ijeoma Kush, observed Employee on March 6, 2012 and had a post-evaluation conference with him on March 21, 2012. Employee received an average TLF score of 1.55. Kush did not evaluate Employee on any other components during this cycle.

¹⁶ *Id.* at Exhibit 6.

¹⁷ *Id.* at Exhibit 7.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 1 based on his lack of providing students with objectives that were specific, measurable and aligned to standards.
2. TLF2: **Explain Content Clearly.** Employee received a score of 2.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 1. Kush stated that Employee was not effective in engaging students at all learning levels in rigorous work.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 2.
5. TLF5: **Check for Student Understanding.** Employee received a score of 2.
6. TLF6: **Respond to Student Misunderstandings.** Employee received a score of 2.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 1.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 1.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 2.

In the comments section, Kush stated that Employee was encouraged to engage students in rigorous and relevant classroom instruction for the purpose of improving their academic and social-emotional skills and abilities.

After reviewing the documents of record, I find that Employee was evaluated a total of five (5) times during the 2010-2011 school year and the 2011-2012 school year, in accordance with the IMPACT guidelines. I further find that Employee has failed to proffer any credible evidence to support a finding that Agency did not act in accordance with the IMPACT process. Each evaluation contained detailed notes from the school principal or the master educator, including suggestions on how Employee could improve his performance. Employee's evaluations also noted his numerous professional achievements and involvement in extracurricular activities with students.¹⁸

It should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*¹⁹ held 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."²⁰ 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* stated that "principals enjoy near total discretion in ranking their teachers"²¹ when implementing performance evaluations. The Court denied the employee's petition, finding that the "factual statements were far more specific than

¹⁸ See Agency Closing Arguments (November 23, 2015).

¹⁹ Case No. 2012 CA 003606 P (January 29, 2013).

²⁰ *Id.* at 6.

²¹ *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

[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]....²²

In this case, Employee has failed to offer any credible evidence that directly contradicts the statements that Kush or Guillaume made regarding his work performance. In addition, Employee has not submitted any evidence to support a finding that the evaluators lacked managerial discretion to rank and rate his classroom performance. Each assessment included a numerical score for each relevant standard included in the evaluated component followed by detailed comments. The Undersigned therefore finds no reason to disturb either assessor's findings.

I further find that Employee was afforded post-evaluation conferences after each assessment with a school administrator or a Master Educator. Employee's final IMPACT score for the 2010-2011 school year was 226, where he was deemed "Minimally Effective." Employee's final IMPACT score for the 2011-2012 school year was 230, which also deemed him "Minimally Effective." Because Employee was rated "Minimally Effective" for two consecutive years, he was properly identified for termination. Based on the foregoing, I find that Employee was a member of the WTU, and was therefore subject to the terms of the CBA between the WTU and Agency. OEA's jurisdiction in this matter is limited by the terms of Section 15 of CBA. Because Agency properly adhered to the IMPACT process, I conclude that Agency had sufficient 'just cause' to terminate Employee.

ORDER

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

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

²² *Id.*