THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
JOANNE TAYLOR-COTTEN,	)	
Employee	)	OEA Matter No. 1601-0072-16
	)	
v.	)	
	)	Date of Issuance: January 30, 2018
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Joanne Taylor-Cotton ("Employee") worked as a School Counselor with D.C. Public Schools ("Agency"). On June 27, 2016, Agency issued a notice of termination to Employee. The notice provided that under IMPACT, Agency's assessment system for school-based personnel, an employee who received a final IMPACT rating that declines between two consecutive years from "Developing" to "Minimally Effective," was subject to separation. Employee was rated "Developing" for the 2014-2015 school year, and her final IMPACT rating for the 2015-2016 school year was "Minimally Effective." As a result, she was terminated effective August 5, 2016.[1]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on

[1] *Petition for Appeal,* p. 5 (August 1, 2016).

August 1, 2016. She argued that she was wrongfully terminated and discriminated against. Specifically, Employee alleged that she was not provided with a private office or telephone; she did not receive assignments; and she was not allowed to attend trainings. Moreover, she explained that she received excellent previous evaluation ratings and that ninety-five percent of her ninth grade students were promoted with above-average test scores. Accordingly, she requested that her termination be investigated and that she be reinstated to a permanent position.[2]

Agency filed its Answer to Employee's Petition for Appeal on September 1, 2016. It asserted that it properly followed the IMPACT process. Agency explained that Employee was terminated because of a "Developing" rating for the 2014-2015 school year and a "Minimally Effective" rating for the 2015-2016 school year. As for Employee's discrimination claims, Agency argued that OEA was not the proper forum to address these issues.[3] Therefore, it is Agency's position that Employee was properly terminated under IMPACT.[4]

On September 14, 2016, the OEA Administrative Judge ("AJ") conducted a Status Conference and ordered that the parties file Pre-hearing Statements. In Employee's Pre-hearing Statement, she provided that she did not meet with the Principal ("Evaluator") regarding her IMPACT score of "Developing." She also alleged that she did not receive a meeting or a performance plan to discuss her score. Further, Employee provided that the working conditions were unsatisfactory. She noted that there were cement holes in the parking lot; that a ceiling collapsed; and that there were rodents in the building. Therefore, she requested a hearing, back pay, reinstatement, attorney's fees, and the removal of her last two evaluations from her record.[5]

Agency filed its Pre-hearing Statement on September 27, 2016. It maintained that the

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[2] *Id.* 2 and 8-10.
[3] Moreover, it provided that Employee filed an Equal Employment Opportunity Commission ("EEOC") complaint to address these allegations.
[4] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal,* p. 1-5 (September 1, 2016).
[5] *Pre-Conference Hearing Submissions,* p. 3-5 (September 22, 2016).

IMPACT policies and procedures were properly followed. Agency explained that Employee was evaluated twice during her assessment cycles for the 2014-2015 and 2015-2016 school years. It contended that the assessments were pursuant to IMPACT based on the following components: Counselor standards, Teacher-Assessed Student Achievement Data, Commitment to the School Community, and Core Professionalism. Thus, Agency asserted that it properly terminated Employee as a result of her "Developing" and "Minimally Effective" ratings.[6]

On April 7, 2017, the AJ issued his Initial Decision. He ruled that pursuant to *Brown v. Watts*,[7] the 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 ("CBA"). He opined that OEA's jurisdiction over this matter is limited to Agency's adherence to the IMPACT *process* it instituted at the beginning of the school year (emphasis added). The AJ found that Chapter 5-E of D.C. Municipal Regulation ("DCMR") §§1306.4, 1306.5 gave the superintendent of Agency the authority to set procedures for evaluating its employees.[8] Further, he explained that while Employee maintained that her scores were unfair, she did not provide any evidence to support her claim that the IMPACT evaluation process had not been followed; nor did she specify that the Evaluator's comments were untrue. He asserted that Employee did not proffer any credible evidence that controverted any of the Evaluator's comments. Moreover, the AJ found that Employee's work performance was evaluated in accordance with the IMPACT rules. The AJ held that the Evaluator made two unsuccessful attempts to have a second conference with Employee. Accordingly, he provided that because

[6] *District of Columbia Public Schools' Pre-hearing Statement*, p. 1-5 (September 27, 2016).
[7] 933 A.2d 529 (April 15, 2010).
[8] 5-E 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.
> 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.

Employee's final IMPACT score resulted in a "Developing" rating one year and a "Minimally Effective" rating the subsequent year, Employee was appropriately terminated from her position. As it related to Employee's complaints regarding her work conditions, the AJ ruled that the complaints were not relevant to her IMPACT evaluations, nor were they legal grounds for overturning Agency's action. Accordingly, he upheld Agency's termination action.[9]

Employee disagreed with the Initial Decision and filed a Petition for Review with OEA's Board on April 20, 2017. She contends that Agency failed to adhere to the IMPACT process by not conducting a conference with the Evaluator. Employee again argues that she was not provided with a telephone or private office. Additionally, she outlines all of the resources and tutoring opportunities that she provided to Agency. Therefore, she requests that she be reinstated; receive back pay and damages; have her last two evaluations rescinded; and provided attorney's fees.[10]

Agency filed a Response to Employee's Petition for Review on May 19, 2017. It maintains that Employee was properly evaluated. Agency explains that during both school years, Employee was either provided post-evaluation conferences or attempts were made to schedule them, as required by the IMPACT guidelines. As it relates to Employee's alleged work conditions, Agency provides that Employee was evaluated on her role as a Counselor. Accordingly, it states that its actions to terminate Employee are proper and requests that the OEA Board deny Employee's request to remand the matter to the AJ because there is no new material facts or erroneous application of law or fact presented in the appeal.[11]

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[9] *Amended Initial Decision,* p. 4-6 (April 7, 2017). The Amended Initial Decision was issued to correct the date of issuance and the spelling of Employee's last name.
[10] *Employee's Petition for Review* (April 20, 2017). On May 5, 2017, a request to supplement Employee's brief was filed by Stephanie Rones, Esq. However, there is no indication in the record that the supplemental brief was filed. *Request for an Extension of Time to Supplement Respondent's Brief* (May 5, 2017).
[11] *District of Columbia Public Schools' Response to Employee's Petition for Review,* p. 1-7 (May 19, 2017).

The Superior Court for the District of Columbia recently issued a decision addressing the IMPACT evaluation process. In *Lauren Jones v. District of Columbia Public Schools, et al.,* Case No. 2015 CA 005054 P(MPA)(August 31, 2016), the Court explained that "the CBA established the extent to which the teacher evaluation process may be subject to grievance in §§ 15.3 and 15.4. Under the grievance process, OEA can only evaluate whether Agency followed the evaluation process it established and had just cause to terminate Petitioner."

Employee was a member of the Washington Teacher's Union ("WTU"). As a result, OEA is governed by the terms of the CBA between the WTU and Agency. Specifically, Section 15.4 of the CBA provides that "the standard for separation under the evaluation process shall be 'just cause', which shall be defined as adherence to the evaluation process only." Thus, as the AJ ruled, OEA could only determine if Agency adhered to the evaluation process.

The Superior Court provided in *Jones* that the responsibility of the AJ is to review the evaluation process in place and ensure that the Employee was not arbitrarily removed from her position. As the *Jones* Court noted, given the broad latitude that Agency had to create and implement the system of its choosing for evaluating employees, OEA has limited discretion to review the system it has established. *See Washington Teachers Union Local #6 v. Rhee,* 2009 CA 007482 B, 2012 D.C. Super. Ct., September 7, 2012) (acknowledging that "it is not for the Court to second-guess the judgments of the Mayor and the Chancellor regarding how to manage DCPS, when those judgments were made in the exercise of the Mayor and the Chancellor's lawful authority.").

The AJ outlined the IMPACT process in great detail, and he accurately held that Agency did comply with the process. In accordance with the IMPACT guidelines, Employee was properly removed from her position because she received a "Developing" then a "Minimally

Effective" rating.[12] Moreover, she was assessed by the Principal according to IMPACT guidelines. The guidelines provide the following:

> . . . As part of each assessment cycle, you will have a conference with your administrator. . . . If your administrator makes at least two attempts to schedule a conference with you prior to the Cycle deadline [,] and you are unable to meet or unresponsive, the assessment will be valid without the conference. Valid attempt methods include, but are not limited to, phone calls, text messages, emails, notes in your school inbox, and/or in-person conversations.[13]

Agency provided email and calendar notes to establish its attempts to assess Employee.[14] Given OEA's limited scope of review, we agree with the AJ's determination that the IMPACT process was properly followed. Accordingly, we must deny Employee's Petition for Review.

[12] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal,* Tab #5, p. 29 (September 1, 2016).
[13] *Id.*, Tab #6, p. 8.
[14] *District of Columbia Public Schools' Response to Employee's Petition for Review,* Tab #1 (May 19, 2017).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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Sheree L. Price, Chair

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Vera M. Abbott

_____
Patricia Hobson Wilson

_____
P. Victoria Williams

_____
Jelani Freeman

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.