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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DELOISE RUCKER,	)	
Employee	)	OEA Matter No. 1601-0183-12
	)	
v.	)	Date of Issuance: September 25, 2014
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
_____	)	Administrative Judge
Deloise Rucker, <i>Pro-Se</i>		
Sara White, Esq., Agency's Representative		

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 7, 2012, Deloise Rucker (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate her from her position effective August 10, 2012. Employee was terminated for receiving a ‘Minimally Effective’ rating under the IMPACT Performance Assessment System for the 2010-2011 and 2011-2012 school years. On September 10, 2012, Agency submitted its Answer to Employee’s Petition for Appeal.

I was assigned this matter in October 2013. Thereafter, I issued an Order dated January 22, 2014, requiring the parties to attend a Prehearing Status Conference on March 18, 2014. Both parties were in attendance for the Prehearing Status Conference. On March 21, 2014, the undersigned issued a Post Prehearing Conference Order wherein the parties were required to submit briefs addressing the issues raised during the Prehearing Status Conference. Both parties timely submitted their briefs.

Upon further review of the record, the undersigned issued an Order on August 26, 2014, requiring the parties to submit briefs and additional documentation in this matter concerning Employee’s official position of record. Agency submitted its brief on September 9, 2014 and Employee submitted documentation on September 15, 2014.

All the required briefs have been submitted in this matter. After considering the parties arguments as presented in their submissions to this Office, the undersigned has determined that there are no material facts in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

### JURISDICTION

The Office 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 receiving two "Minimally Effective" performance ratings 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.

### ANALYSIS AND CONCLUSIONS OF LAW

The following findings of facts, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a performance rating.

#### ***Employee's Position***

In her Petition for Appeal, Employee claims that her IMPACT assessment was rated unfairly because she was working as a Dedicated Aide, although she was hired as an Instructional Aide. She also claims that she was still rated under IMPACT for her hired position, Instructional Aide, despite working as a Dedicated Aide. Employee also submitted letters of

recommendation from several colleagues in support of her position that she should not have been terminated.<sup>1</sup> Employee also provided the purported duties of an Educational Aide and Dedicated Aide.<sup>2</sup>

### ***Agency's Position***

In its Answer and Brief, 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.<sup>3</sup> Agency relays that IMPACT is the evaluation tool used for the 2010-2011 and 2011-2012 school years to rate the performance of school-based personnel.

Agency argues that Employee was terminated after she received two (2) final IMPACT ratings of “Minimally Effective” for the 2010-2011 and 2011-2012 school years.<sup>4</sup> Agency asserts that Employee’s termination was done in accordance with all applicable laws and regulations and her IMPACT scores reflect appropriate and informed assessments of her performance as an Educational Aide for the 2010-2011 and 2011-2012 school years. Agency asserts that Employee was assessed and received post assessment conferences during Cycles 1 and 3 for the 2010-2011 and 2011-2012 school years. Additionally, Agency denies that Employee was not rated fairly and asserts that it followed the same procedures for evaluating each Group 17 Educational Aide.<sup>5</sup>

### **Governing Authority**

DCMR §§1306.4, 1306.5 gives the Superintendent authority to set procedures for evaluating Agency’s employees.<sup>6</sup> The above-referenced DCMR sections 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. 5 DCMR 1401 provides as follows:

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.

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:

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<sup>1</sup> See Petition for Appeal (August 7, 2012).

<sup>2</sup> See Employee Brief (May 12, 2014).

<sup>3</sup> See Agency Answer (September 10, 2012). See also Agency Brief (April 18, 2014).

<sup>4</sup> Agency Answer, Tabs 2, 5 (September 10, 2012).

<sup>5</sup> *Id.*

<sup>6</sup> DCMR § 1306 provides in pertinent parts as follows:

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.

1306.5 – 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

(c) Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment.

Accordingly, in reviewing this matter, the undersigned will address whether Agency followed the procedures it developed in evaluating its employees; and whether or not Agency's termination of Employee pursuant to her IMPACT rating was supported by just cause. As referenced above, 'just cause' for adverse actions includes incompetence – an employee's inability or failure to perform satisfactorily the duties of their position of employment.

### **The IMPACT Process**

Agency relays that it conducts annual performance evaluations for all its employees and utilized IMPACT as its evaluation system for all school-based employees during the 2010-2011 and 2011-2012 school years. 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 evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. Agency asserts that IMPACT procedures provide that employees who receive a rating of "Minimally Effective" for two consecutive years are subject to separation. Agency denies that Employee was unfairly or inconsistently evaluated and contends that all IMPACT procedures and policies were properly followed. Additionally, Agency asserts that Employee's termination was based on appropriate and informed assessments of her performance.<sup>7</sup>

Employee contends that her IMPACT assessment was rated unfairly because she was working as a Dedicated Aide but she was scored under IMPACT for her hired position, Instructional Aide. In support of this contention, Employee submitted purported duty descriptions for the Educational Aide and Dedicated Aide positions.<sup>8</sup> In response, Agency submitted documentation including an unsigned SF-50 and a screen shot of Employee's Peoplesoft data page, which relays that Employee's position title is Special Education Aide and Educational Aide, respectively.<sup>9</sup> Additionally, Agency submitted the DCPS Educational Aide position description, which reflects that the General Educational Aide, Dedicated Aide, and Special Education Aide are titles encompassed within the overall Educational Aide title.<sup>10</sup>

In determining Employee's official position of record for the instant matter, the undersigned has given lesser weight to Employee's duty descriptions and Agency's unsigned SF-50 because these documents cannot be authenticated. Further, the undersigned gives greater weight to the Educational Aide position description submitted by Agency, with a January 6, 2014 certification date, which is also located on Agency's website. The undersigned finds that Employee's submitted duty descriptions do not corroborate whether Employee's official position of record was Educational Aide or Dedicated Aide. Further, the undersigned finds that Agency's Educational Aide position description aptly addresses the discrepancy by corroborating that the

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<sup>7</sup> Agency Answer (September 10, 2012).

<sup>8</sup> Employee Brief (May 12, 2014).

<sup>9</sup> Agency Brief, Exhibit A (September 9, 2014).

<sup>10</sup> *Id.*, Exhibit B.

General Educational Aide, Dedicated Aide, and Special Education Aide are titles encompassed within the overall Educational Aide title. Further, Employee was rated under IMPACT Group 17, which includes all Educational Aides.<sup>11</sup> Thus, based on the above analysis, the undersigned finds that Employee's official position of record was Educational Aide.

For the 2010-2011 and 2011-2012 school years, Employee was an Educational Aide, within Group 17 for the IMPACT evaluation. Each assessment group includes multiple components, each of which has a unique scoring rubric that outlines clear performance expectations. A designated Administrator assesses each employee formally two times during the year. As part of each assessment cycle, employees meet with the Administrator during a conference, where feedback about the IMPACT rubric are given and steps for professional growth are discussed.<sup>12</sup> Agency asserts that pursuant to the IMPACT procedure, Employee received the following assessments and conferences:

1. 2010-2011 Cycle 1 Assessment and Conference completed by Jorama Regis on October 12, 2010;<sup>13</sup>
2. 2010-2011 Cycle 3 Assessment and Conference completed by Keesha Blythe on June 1, 2011<sup>14</sup>
3. 2011-2012 Cycle 1 Assessment and Conference completed by Keesha Blythe on November 17, 2011;<sup>15</sup>
4. 2011-2012 Cycle 3 Assessment and Conference completed by Keesha Blythe on June 14, 2012.<sup>16</sup>

Group 17 employees were assessed on a total of four (4) IMPACT components, consisting of:

- 1) Educational Aide Standards (EA) – comprised of 85% of Group 17 employees' scores. This component defines the standards of excellence for educational aides including instructional support; school wide support; positive rapport with students and families; and adaptability.
- 2) Commitment to the School Community (CSC) – 10% of Group 17 employees' scores. This component measures several aspects of work as a member of a school community including support of local school initiatives; support of Special Education and English Language Learner programs; and efforts to promote high academic and behavioral expectations.
- 3) School Value-Added (SVA) – 5% of Group 17 employees' scores. This component is a measure of a school's overall impact on student learning. Every employee in the school receives the same score for SVA.
- 4) Core Professionalism – This component is scored differently from the others, and there is only a deduction if you receive a Slightly Below Standard or Significantly Below Standard rating. This is a measure of four (4) basic professional requirements

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<sup>11</sup> Agency Brief, Exhibit A, p. 8 (April 18, 2014).

<sup>12</sup> *Id.*, p. 10.

<sup>13</sup> Agency Answer, Tab 6 (September 10, 2012).

<sup>14</sup> *Id.*, Tab 7.

<sup>15</sup> *Id.*, Tab 3.

<sup>16</sup> *Id.*, Tab 4.

for all school-based personnel. These requirements include: attendance; on-time arrival; compliance with policies and procedures; and interacting with colleagues, students, families, and community members in a respect manner.

School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:<sup>17</sup>

- 1) Ineffective = 100-174 points (subject to immediate separation from school);
- 2) Minimally Effective = 175-249 points;
- 3) Effective = 250-349 points; and
- 4) Highly Effective = 350-400 points.

### **Analysis**

Chapter 5-E of District of Columbia Municipal Regulation (“DCMR”) §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency’s employees. Additionally, 5-E DCMR §§1306.6, 1306.8 requires that each performance rating plan provide ratings ranging from outstanding performance to unsatisfactory performance, with a right to appeal a below average or unsatisfactory rating.<sup>18</sup> The above-referenced DCMR sections provide that each employee shall be evaluated 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 detailed above is the evaluation procedure put in place by Agency for the 2010-2011 and 2011-2012 school years. Agency contends that Employee was evaluated by designated administrators, Joram Regis and Keesha Blythe, who also served as her supervisors.<sup>19</sup> Employee received a final evaluation on the above specified components at the end of the school year, wherein, she received a “Minimally Effective” IMPACT rating consecutively two years in a row. The record shows that Employee received two assessments and corresponding conferences during the 2010-2011 and 2011-2012 school years.<sup>20</sup> Employee does not provide any arguments that she was not observed or received the requisite conferences.

The guidelines provided for IMPACT require Agency to perform two assessments and corresponding conferences to discuss the IMPACT scores.<sup>21</sup> Each assessment cycle required an evaluation of the EA, CSC, and CP component, along with an overall SVA score. Based on the guidelines provided by the IMPACT guidebook, the undersigned finds that Agency properly followed the IMPACT evaluation process. The record shows that Joram Regis and Keesha

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<sup>17</sup> *Id.*, Tab 2.

<sup>18</sup> The undersigned finds that the IMPACT scale corresponds to the 5-E DCMR §1306.6 as follows: IMPACT Highly Effective = outstanding and above average performance; IMPACT Effective = average performance; IMPACT Minimally Effective = below average performance; and IMPACT Ineffective = unsatisfactory performance.

<sup>19</sup> Agency Answer, p. 3 (September 10, 2012)

<sup>20</sup> *Id.*, Tabs 2-7.

<sup>21</sup> Agency Brief, pp. 10, 13 (April 18, 2014).

Blythe held conferences with Employee on October 12, 2010 and June 1, 2011, respectively.<sup>22</sup> The record also reflects that Keesha Blythe held two conferences with Employee on November 17, 2011, and June 14, 2012.<sup>23</sup> Additionally, Employee's written assessments for Cycles 1 and 3, show that she was rated in the required EA, CSC, CP, and SVA rubric components.<sup>24</sup>

As noted above, Employee does not allege that she did not have the required conferences or assessments. Moreover, Employee has not alleged that Agency did not adhere to the IMPACT process. Accordingly, I find that Agency properly conducted the IMPACT process and had just cause to terminate Employee after she was rated "Minimally Effective" for the 2010-2011 and 2011-2012 school years.

Additionally, Employee has not provided any specific arguments or disputed that the comments in her IMPACT evaluation were untrue, nor did she provide any evidence that directly contradicted the findings in her evaluation. Further, Employee has provided no documentation to show that she should have received a higher score. Thus, the undersigned finds that there is nothing in the record that successfully contradicts any of the findings in Employee's IMPACT evaluation.

Moreover, the D.C. Superior court in *Shaibu v. District of Columbia Public Schools*<sup>25</sup> explained that, substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. This court noted 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."<sup>26</sup> The court further opined that if the factual basis of the "Principal's evaluation were true, the evaluation was supported by substantial evidence." Additionally, it highlighted that "principals enjoy near total discretion in ranking their teachers"<sup>27</sup> 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, Employee has not proffered to this Office any credible evidence that controverts any of the comments in her IMPACT evaluations. 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.<sup>28</sup> As performance evaluations are "subjective and

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<sup>22</sup> Agency Answer, Tabs 6, 7 (September 10, 2012).

<sup>23</sup> *Id.*, Tabs 3, 4.

<sup>24</sup> *Id.*, Tabs 3, 4, 6, 7.

<sup>25</sup> Case No. 2012 CA 003606 P (January 29, 2013).

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

<sup>28</sup> 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).

individualized in nature,”<sup>29</sup> this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if “managerial discretion has been legitimately invoked and properly exercised.”<sup>30</sup> Moreover, OEA is not in the position to recommend that Employee receives a higher rating as this is Agency’s role in performance evaluations.

Based on the foregoing, I find that Agency had sufficient ‘just cause’ to terminate Employee, after she received two consecutive ‘Minimally Effective’ performance evaluations under IMPACT for the 2010-2011 and 2011-2012 school years.

### ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD**.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge

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<sup>29</sup>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).

<sup>30</sup>See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).