

THE OFFICE OF EMPLOYEE APPEALS

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In the Matter of: )  
)  
Kaitlin Reilly ) OEA Matter No. 1601-0132-13  
Employee )  
) Date of Issuance: February 2, 2015  
v. )  
) Senior Administrative Judge  
D.C. Public Schools ) Joseph E. Lim, Esq.  
Agency )  
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Carl Turpin, Esq., Agency Representative  
Sean Gaynor, Employee Representative

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Kaitlin Reilly (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 6, 2013, appealing District of Columbia Public Schools’ (“Agency” or “DCPS”) final decision to terminate her employment due to an “Ineffective” rating for the 2012-2013 school year. This matter was assigned to me on or about May 14, 2014, and I held a prehearing conference on August 22, 2014. The parties submitted briefs on the issue identified. The record is now closed.

JURISDICTION

This Office has jurisdiction pursuant to D.C. Office Code Section 1-606.03 (2001).

ISSUE

Should Employee’s termination be upheld?

***Agency’s Position***

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>1</sup> Agency argues that it followed proper D.C. statutes, regulations and laws in conducting Employee’s performance evaluation. Agency maintains that, it was granted authority to develop its own evaluation process and tools for evaluating DCPC employees, and it exercised this managerial prerogative when it created IMPACT. Agency notes that IMPACT is a performance evaluation system utilized by DCPS to evaluate school-based personnel for school year 2012-2013. Agency contends that it followed the laws of the District. Agency provides a detailed description of the 2012-2013 school year IMPACT process and it states that it properly conducted Employee’s performance evaluation using the IMPACT process. Since Employee received an “Ineffective” rating for the 2012-2013 school year, her employment

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1 Agency’s Answer (August 18, 2014).

was terminated.<sup>2</sup> Agency argues that based on the Collective Bargaining Agreement (“CBA”) between Employee’s Washington Teachers’ Union (“WTU”) and Agency, only Agency’s compliance with the evaluation process, and not the evaluation judgment, can be considered by this Office. Agency denies Employee’s allegation that they settled this appeal. Agency also argues that Employee’s Teaching and Learning Framework (“TLF”) score is moot as the overall IMPACT rating would have remained the same. Lastly, Agency argues that there is no support for Employee’s allegation of the school principal’s bias.

### ***Employee’s Position***

In her legal brief, Employee submits that the school principal’s bias and hostility towards her rendered her IMPACT score improper. In addition, Employee asserts that she has settled this appeal with Agency.

### **FINDINGS OF FACT**

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.

The following facts are undisputed:

1. Employee was employed as a General Education Teacher with DCPS from August 2011 to August 2013.
2. IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during 2012-2013 school year.<sup>3</sup>
3. During those school years, Agency utilized IMPACT as its evaluation system for all school-based 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. With the IMPACT system, all personnel received written feedback regarding their evaluation, as well as a post-evaluation conference with their evaluators. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01am, 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. 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.
5. Prior to instituting IMPACT, all principals and assistant principals at DCPS were provided

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<sup>2</sup> Agency’s Prehearing Statement (August 18, 2014).

<sup>3</sup> Agency’s Answer.

with training materials, which they then used to conduct a full-day training with all staff members. The training detailed the IMPACT process, consequences, and positive and negatives associated with each full final IMPACT rating. Each staff member was provided with a full IMPACT guidebook unique to their evaluation group. The guidebooks were delivered to the employees' schools and were also available online via the DCPS website. Throughout the year, the IMPACT team visited schools to answer questions as well as to ensure that the IMPACT hotline was available to all staff members via email and/or telephone to answer questions and provide clarification.

6. For the 2012-2013 school year, there were twenty (20) IMPACT grouping of DCPS employees. Employee's position – General Education Teacher, was within Group 3. The IMPACT process for Group 3 employees consisted of three (3) assessment cycles: the first assessment cycle ("Cycle 1"), which was between September 21st and December 1st; the second assessment cycle ("Cycle 2") which ends on March 1<sup>st</sup>, and the third assessment cycle ("Cycle 3") which was between March 1st and June 15th.<sup>4</sup>
7. Group 3 employees were assessed on a total of three (3) IMPACT components, namely:
  - a. Teaching and Learning Framework ("TLF")—a measure of a teacher's instructional expertise. This component accounted for 75% of the IMPACT score.
  - b. Teacher-Assessed Student Achievement Data ("TAS")—a measure of a teacher's impact on student learning over the course of the year. This component accounted for 15% of the IMPACT score.
  - c. Commitment to the School Community ("CSC")—a measure of the extent to which the teacher supports and collaborates with the school community. This component accounted for 10% of the IMPACT score.
8. Core Professionalism ("CP")—measures 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 score if the rating was "slightly below standard" or "significantly below standard."
9. The CSC standards above have three (3) components: Support of the Local School Initiatives, Support of the Special Education and English Language Learner Programs, High Expectations, Partnership with Families (for Teachers Only), Instructional Collaboration (for Teachers Only).
10. The TAS standard above measures the impact Employee's school had on its students' learning during the past school year.

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4 Agency Answer p. 2.

11. School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either: a) Ineffective = 100-174 points (immediate separation from school); b) Minimally Effective = 175-249 points (given access to additional professional development); c) Effective = 250-349 points; and d) Highly Effective = 350-400 points.
12. DCMR §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency's employees.<sup>5</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. In the instant matter, the IMPACT process detailed above is the evaluation procedure put in place by Agency for the 2012-2013 school years. Employees were evaluated by the school Principal.
13. Agency gave Employee an IMPACT performance rating of "Ineffective" for the 2012-2013 school year. Employee was thus terminated effective August 10, 2013.
14. Employee was a member of the Washington Teachers Union ("WTU") when she was terminated and governed by Agency's Collective Bargaining Agreement ("CBA") with WTU.

### ANALYSIS AND CONCLUSIONS

#### *Alleged Settlement between Employee and Agency*

Employee asserts that there is an enforceable mutual agreement between the parties. DCPS denies this. Employee fails to proffer or present any evidence of this alleged settlement. Thus, I find that there is no valid settlement.

#### **Governing Authority (IMPACT – WTU Union Members)**

Based on the documents submitted by the parties, I note that Employee was a member of Washington Teachers' Union ("WTU") when she was terminated. Thus, the Collective Bargaining Agreement ("CBA") between Agency and WTU applies to this matter and as such, OEA has limited jurisdiction over this matter. In *Brown v. Watts*, 933 A.2d 529 (D.C. 2010), 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. The court explained that the Comprehensive 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

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<sup>5</sup> 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

negotiated grievance procedure.”<sup>6</sup> In this case, Employee was a member of the Washington Teachers Union (“WTU”) when she was terminated and governed by Agency’s CBA with WTU. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between WTU and DCPS, as it relates to the adverse action in question in this matter.

Section 15.4 of the CBA between WTU and Agency provides in pertinent part as follows:

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 WTU and DCPS in reviewing this matter, and as such, I will only address whether or not Agency’s termination of Employee pursuant to her performance evaluation was supported by just cause. As referenced above, ‘just cause’ is defined as adherence to the *evaluation process only* (emphasis added). Thus, OEA’s jurisdiction over this matter is limited only to Agency’s adherence to the IMPACT process it instituted at the beginning of the school year.

In this case, I find that Agency followed the relevant procedures in evaluating Employee under IMPACT. The documents of record support a finding that Employee was evaluated three times during the 2012-2013 school year.

Specifically, during the relevant school year, School Principal Holly Searl conducted observations of Employee on February 19, 2013, and May 6, 2013. Searl also held post-observation conferences with Employee on February 28, 2013, and May 17, 2013. In addition, Master Educator Katherine Nix observed Employee’s work performance on January 18, 2013, and held a post-observation conference with Employee on January 29, 2013.

Based on their submitted documents and arguments, I find that Employee was evaluated three times by her principal and master educator based on personal observations and feedback from other school personnel. I also find that Employee did have conferences after the evaluation and that she received the IMPACT training materials. Thus, I find that Agency did adhere to the IMPACT process. Accordingly, I find that Agency properly conducted the IMPACT process and had just cause to terminate Employee.

### *IMPACT Rating*

Employee’s other contention is that her IMPACT score was not based on her actual performance but the result of hostility, bias, and prejudice from the principal. I do not find such claims credible. First, apart from her bare allegations, Employee fails to present or proffer any evidence that the principal falsified Employee’s work performance evaluations solely due to hostility, bias, and prejudice. As noted above, the CBA between the parties limits this Office to

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<sup>6</sup> 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).

examining only Agency's adherence to the IMPACT process it instituted at the beginning of the school year. Secondly, Employee does not explain why Master Educator Nix similarly gave her low IMPACT when Employee does not allege Nix had any bias or hostility towards her.

Additionally, assuming *arguendo* that this Office's jurisdiction in this matter extends to the content or judgment of the evaluation, I find that, while Employee maintains that she should have received a much higher score in the IMPACT components, she did not specifically note that the Principal's comments were untrue; nor did she proffer any evidence that directly contradicted the Principal's factual finding. Employee simply made a blanket assertion that her score was motivated by the Principal's bias and hostility towards her. The principal's comments in this evaluation are quite specific, for example:

"Ms. Reilly was ineffective at explaining content clearly. The majority of her instruction was delivered verbally without use of explanatory devices such as the interactive Smartboard, graphic organizers, or modeling with guided practice. The lesson did not connect with students' experiences or interests, other content areas, or current events. A number of students appeared disengaged as evidenced by their lack of active participation and off task behaviors such as side bar conversations."<sup>7</sup>

"Ms. Reilly was ineffective at leading a well-organized, objective driven lesson. The lesson taught was not aligned to the current CCSS Math standards for Unit 4 nor was the math block well-organized. Standards for CCSS Unit 4 address adding and subtracting within 100 or 1000; adding multiple two digit numbers; and solving multi-step problems. The math lesson observed was not aligned to the standards and objectives for this unit of instruction."<sup>8</sup>

"The lesson was not accessible or challenging to all students due to a lack of differentiated content and a lack of access to the primary text which would have allowed students to provide evidence based answers to questions. The selected text was not complex enough to provide many opportunities for higher level questions."<sup>9</sup>

None of the evidence proffered by Employee contradicted any of the specific facts above. In the instant matter, Employee has not proffered to this Office any credible evidence that controverts any of the Principal's comments. Instead, Employee made accusations that she was a victim of the school principal's bias without offering any credible proof of such. Consequently, I conclude that this argument is without merit.

Employee argues that she should be allowed to present whatever evidence she has in a hearing. However, the Court has held that a hearing is warranted on the factual basis of the

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<sup>7</sup> Agency post prehearing brief, Tab 3.

<sup>8</sup> Agency post prehearing brief, Tab 4.

<sup>9</sup> Agency post prehearing brief, Tab 5.

principal's evaluation *only if* the employee can proffer evidence that directly contradicts the statements the rater made in the Impact report. Even if the employee can produce evidence that would warrant a higher performance score, it does not automatically mean that the principal's assessment was wrong or unsupported by substantial evidence, especially if the principal's statements was not an untrue objective fact but rather a subjective opinion in an area where principals enjoy "near-total discretion." See *Washington Teachers' Union Local No. 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997) (recognizing that "principals enjoyed near-total discretion in ranking their teachers" when implementing RIFs).

Moreover, the D.C. Superior court in *Shaibu v. D.C. Public Schools*<sup>10</sup> 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>11</sup> The court further opined that if the factual basis of the "Principal's evaluation were true, the evaluation was supported by substantial evidence." 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.

Based on the foregoing, I find that because Employee is a member of the WTU, she is 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. And because Agency adhered to the IMPACT process, I conclude that Agency had sufficient 'just cause' to terminate Employee, following her 'Ineffective' IMPACT rating for the school year. Accordingly, I find that Agency properly conducted the IMPACT process and had just cause to terminate Employee.

### ORDER

It is hereby ORDERED that Agency's termination of Employee is upheld.

FOR THE OFFICE:

Joseph E. Lim, Esq.  
Senior Administrative Judge

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<sup>10</sup> Case No. 2012 CA 003606 P (January 29, 2013).

<sup>11</sup> *Id.* at 6.