THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROBERT BLANDFORD,	)	
Employee	)	OEA Matter No. 1601-0150-11
	)	
v.	)	Date of Issuance: May 29, 2014
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

Taylor Lewis, Esq., Employee Representative
Carl Turpin, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 28, 2011, Robert Blandford ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Public Schools' ("Agency" or "DCPS") decision to terminate him from his position as a Teacher at Roosevelt Senior High School ("Roosevelt") effective August 12, 2011. Employee was terminated for receiving an 'Ineffective' rating under the IMPACT Performance Assessment System for the 2010-2011 school year. On September 12, 2011, Agency submitted its Answer to Employee's Petition for Appeal.

I was assigned this matter in March 2013. Thereafter, I issued an Order dated May 17, 2013, requiring the parties to attend a Prehearing Conference on June 4, 2013. On May 20, 2014, the undersigned granted Agency's motion to reschedule the Prehearing Conference. Accordingly, the Prehearing Conference was rescheduled for June 11, 2013. Both parties were in attendance for the Prehearing Conference, and a Post Prehearing Conference Order was issued on June 17, 2013, requiring the parties to submit briefs in this matter. Agency's brief was due on or before July 1, 2013, and Employee's brief was due on or before July 15, 2013. Agency timely submitted its Post Prehearing Conference Brief, but Employee's brief was not received by the prescribed deadline.

Subsequently on August 20, 2013, the undersigned issued an Order for Statement of Good Cause, wherein Employee was ordered to explain his failure to submit his brief by the required deadline. On August 27, 2013, Employee submitted his Statement of Good Cause, which was accepted by the undersigned. Employee timely submitted his brief on September 20, 2013.

Upon further review of the pending issues, the undersigned issued an Order on January 30, 2014, requesting the parties to submit additional briefs in this matter. On March 6, 2014, the undersigned granted Agency's Unopposed Motion for an Extension of Time to Submit its Brief. With the new brief deadlines, Agency was required to submit its brief on or before March 14, 2014, and Employee was required to submit his brief on or before April 11, 2014. Both parties have timely submitted their briefs 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 in 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 an 'Ineffective' performance rating 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 his Petition for Appeal, Employee claims that on May 6, 2011, he received an excess letter which was based on the lowest IMPACT score rating among five (5) Social Studies Teachers, but notes that there was another Social Studies Teacher with lower IMPACT scores. Employee states that he disputed his first IMPACT evaluation score of '1.89.' He alleges that the administration made no effort to comply with Collective Bargaining Agreement §23.14.6, which states that the schools should assign a minimum number of daily class lesson preparations. Employee argues that he had three different prep subjects, while other Social Studies Teachers only had one or two lesson preps. Employee believes that Agency's actions constituted an unfair action and prevented his chances to reach a minimally effective or effective rating.[1]

In his Prehearing Statement, Employee claims that he was not given time to meet the minimum performance scores under the IMPACT program. Employee submits a letter from the D.C. Department of Employment Services ("DOES"), which relays that Agency indicated that teachers were given two years to meet minimum performance scores. He notes that this statement is not factual because he received an 'Effective' rating for the 2009-2010 school year.[2]

In his Brief, Employee contends that Agency did not follow proper procedures and did not have just cause to terminate him. Employee argues that although he received an 'Ineffective' rating, his removal should have been accompanied by a reconsideration process that afforded him an opportunity to demonstrate improvement. He also asserts that Agency procedurally violated Washington Teachers' Union ("WTU") Collective Bargaining Agreement ("CBA") §15.3 because he was not objectively evaluated or given an opportunity to improve as part of his evaluation process.[3] Employee argues that Agency is bound to comply with D.C. Code §§ 1-613.51(4), 1-613.52(6).[4] Additionally, he contends that Agency does not have sole authority to design its evaluation process; noting that Agency "simply does not have to negotiate about the evaluation process during collective bargaining."[5]

Agency's Position

In its Answer, Agency asserts that in 2005, pursuant to the D.C. 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.[6] Additionally, Agency asserts that OEA

[1] Petition for Appeal (July 28, 2011).
[2] Employee Prehearing Statement, Exhibit 2 (May 28, 2013).
[3] *See* Employee Brief (September 20, 2013).
[4] Employee Brief (April 11, 2014).
[5] *Id.*, p. .
[6] *See* Agency Answer (September 12, 2011). *See also* Agency Brief (March 7, 2014).

has limited jurisdiction to review a termination based on performance. Agency explains that, according to its agreement with the WTU, to which Employee is a member, OEA's decision on Employee's termination based on performance is limited to whether the evaluation process and tools were properly administered.[7]

Agency argues that Employee's termination was done in accordance with all applicable laws. Agency states that Employee's IMPACT scores reflect appropriate and informed assessments of his performance as a General Education Teacher during the 2010-2011 school year. According to Agency, Employee received a final IMPACT rating of 'Ineffective' for the 2010-2011 school year, under the IMPACT rating system thus warranting his termination.[8]

Agency also submits that according to the WTU CBA, an excess is an elimination of a teacher's position at a particular school due to a decline in student enrollment, a reduction in the local school budget, a closing or consolidation, a restructuring, or a change in the local school program, when such an elimination is not a Reduction-in-Force ("RIF") or abolishment. Agency notes that although a Teacher may be excessed, the IMPACT evaluation process is still implemented. Agency also denies that it 1) failed to comply with §23.14.6 of the CBA and 2) that Employee had three preparations for three subjects, because he only taught Social Studies. Further, Agency asserts that Employee's termination was based on appropriate and informed assessments of his performance as a Teacher.[9]

In its Post Prehearing Conference Brief, Agency relays that during the 2010-2011 school year, DCPS offered numerous opportunities for Employee to obtain support through the Office of Professional Development, which were "accessible through the Educator Portal and the PD Planner." Additionally, Agency claims that all DCPS employees, including Mr. Blandford, were sent copies of the DCPS guide "Reaching High Expectations: Professional Development at DCPS" in January 2011. Agency also notes that IMPACT evaluations were available online at the end of each assessment cycle and Employee was able to voice any concerns or issues that he had with his IMPACT ratings by contacting the DCPS IMPACT Team by telephone or electronic mail. Agency further submits that under IMPACT, and as described in the Group 2 Guide Book, an employee receiving an 'Ineffective' rating may be subject to termination. Agency also notes that preparing lesson plans were an essential function of a teacher's duties and Employee was not treated differently from any other employee and Agency offered numerous support opportunities.[10]

Agency also argues that Employee's claim that Agency violated §23.14.6 of the CBA lacks merit. Specifically, §23.14.6 states in part, "in the secondary schools, efforts shall be made to keep the number of lesson preparations to a minimum, consistent with an effective teacher program." Agency argues that there is nothing in this section that states that preparing three lesson plans is in violation of the CBA, further noting that Employee never filed a timely grievance pursuant to Article 6 of the CBA. Moreover, Agency claims that there is no merit to the allegation that the preparation of three lesson plans is a violation of IMPACT. Agency notes

[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *See* Agency Post Prehearing Conference Brief (July 2, 2013)

that the Group 2 Guide Book outlines key strategies to lead to increased student achievement and teachers are required to create objective-driven lesson plans.[11]

Governing Authority

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. Agency notes that because Employee was a member of WTU when he was terminated, the CBA between Agency and WTU applies to this matter and as such, OEA has limited jurisdiction over this matter. Employee also noted in his Petition for Appeal that he was a member of the WTU when he was terminated.[12]

In *Brown v. Watts*,[13] 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 negotiated grievance procedure."[14] In this case, Employee was a member of WTU when he 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. Sections 15.3 and 15.4 of the CBA between WTU and Agency provides in pertinent part as follows:

> 15.3: DCPS' compliance with the evaluation process, and *not the evaluation judgment*, shall be subject to the grievance and arbitration procedure. (Emphasis added).
>
> 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 §§ 15.3,15.4 of the CBA between WTU and DCPS in reviewing this matter, and as such, the undersigned will 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). Thus, 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.

The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during the 2010-2011 school years.[15] According to the record, Agency conducts

[11] *Id.*
[12] Petition for Appeal, p. 4 (July 28, 2011).
[13] 933 A.2d 529 (April 15, 2010).
[14] 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).
[15] Agency's Answer (September 12, 2011). *See also* Agency's Brief (July 2, 2013).

annual performance evaluation for all its employees.[16] During the 2010-2011 school year, Agency utilized IMPACT as its evaluation system for all school-based employees.

With the IMPACT system, Agency relays that all staff 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 12:01 am, the day after the end of each cycle. For the 2010-2011 school year, 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.[17]

There were several different types of IMPACT grouping of school-based DCPS employees, each representing a different category of school-based personnel. Individualized groups were developed to reflect the varying responsibilities of employees. For the 2010-2011 school year, Agency denotes that Employee was a General Education Teacher in Group 2.[18]

The IMPACT process for Group 2 employees consisted of three (3) assessment cycles: the first assessment cycle ("Cycle 1"), which ended on or around December 1st; second assessment cycle ("Cycle 2") which ended on or around March 1st; and the third assessment cycle ("Cycle 3") which ended on or around June 15th. Teachers were assessed during all three cycles and the assessments included being observed five times during the course of the year. Three observations were generally conducted by the teacher's principal or supervisor and two observations by an expert practitioner called a Master Educator. Group 2 employees were assessed on a total of five (5) IMPACT components, namely:

1) Teaching and Learning Framework (TLF) – comprised of 75% of Group 2 employees' scores;
2) Teacher Assessed Student Achievement (TASA) – comprised of 10% of Group 2 employees' scores;
3) Commitment to the School Community (CSC) – 10% of Group 2 employees' scores;
4) School Value-Added (SVA) – 5% of Group 2 employees' scores;
5) Core Professionalism – This component is scored differently from the others. This is a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows: (1) Attendance; (2) On-time arrival; (3) Compliance with policies and procedures; and (4) Respect.

School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:[19]

1) Ineffective = 100-174 points (immediate separation from school);[20]

[16] *Id.*
[17] *See* Agency Answer (September 12, 2011).
[18] Agency Answer, p. 2 (September 12, 2011).
[19] *Id.*, Tab 3.
[20] IMPACT procedures provide that employees who receive a rating of "Ineffective" are subject to separation. *Id.*

2) Minimally Effective = 175-249 points (given access to additional professional development);

3) Effective = 250-349 points; and

4) Highly Effective = 350-400 points.

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.[21] 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 2010-2011 school year.

Employee was evaluated by the school Principal and a Master Educator. Employee received a final evaluation on the above specified components at the end of the school year, wherein, he received an "Ineffective" IMPACT rating. Specifically, Agency submits that Employee received the following assessments:

1. 2010-2011 Cycle 1 IMPACT Principal Assessment completed by Principal Ivor Mitchell on November 12, 2011 (deadline December 1st);[22]
2. 2010-2011 Cycle 2 IMPACT Principal Assessment completed by Principal Ivor Mitchell on February 28, 2011 (deadline March 5th);[23]
3. 2010-2011 Cycle 3 IMPACT Principal Assessment completed by Principal Ivor Mitchell on June 15, 2011 (deadline June 15th);[24]
4. 2010-2011 Cycle 1 IMPACT Master Educator Assessment completed on November 22, 2010 (deadline December 1st);[25]
5. 2010-2011 Cycle 3 IMPACT Master Educator Assessment completed on April 8, 2011 (deadline June 15th).[26]

Just Cause Analysis

Employee argues that Agency did not follow the performance evaluation process denoted in the Group 2 Guidebook, including the opportunity to demonstrate an improvement in performance as part of the evaluation process. Additionally, he argues that he did not receive adequate training on IMPACT and that the professional development workshops were not geared to his particular position. The record shows that Agency conducted the five required observations and provided Employee with the detailed assessments from the Principal and Master Educator

[21] 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

[22] Agency Answer, Tab 4.
[23] *Id*., Tab 5.
[24] *Id*., Tab 6.
[25] *Id*., Tab 7.
[26] *Id*., Tab 8.

observations through the computerized IMPACT system notification. Employee also does not dispute that he was properly placed in IMPACT Group 2 for General education Teachers.

Further, Employee does not contest that he received five (5) observations during the 2010-2011 school year, and that the observations were properly conducted, although he argues that they were nor objective. Employee also does not allege that he did not have conferences after the evaluation nor does he deny that he received the IMPACT training materials. Further, Employee does not argue that the evaluating Principal's or Master Educator's comments were untrue; nor does he proffer any evidence that directly contradicts their factual findings. Accordingly, I find that Agency properly conducted the IMPACT process through its assessments and observations and therefore, had just cause to terminate Employee after he was rated "Ineffective" for the 2010-2011 school year.

It should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*[27] 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."[28] 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"[29] when implementing performance evaluations. The Court denied the employee's petition, finding that 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].…"

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.[30] Further, because performance evaluations are "subjective and individualized in nature," 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."[31] Thus, I find that it was within both the Principal's and the Master Educators' discretion to rank and rate Employee's performance. Moreover, the undersigned Administrative Judge is not in the position to recommend that Employee receive a higher IMPACT rating since the undersigned is unfamiliar with the nature and details of Employee's position. Accordingly, I find that Employee

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[27] Case No. 2012 CA 003606 P (January 29, 2013).
[28] *Id.* at p. 6.
[29] *Id. Citing Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).
[30] *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).
[31] *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). *See Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

was assessed under IMPACT in a fair and unbiased manner. I also find that the evaluators did not abuse their discretion in evaluating Employee's work performance. Accordingly, there is no credible reason to disturb Employee's IMPACT scores.

Moreover, assuming *arguendo* that this Office's jurisdiction in this matter extends to the content or judgment of the evaluation, I find that Employee has not challenged the scores he received in any of the 2010-2011 IMPACT evaluation categories. Moreover, none of the evidence offered by Employee challenged or contradicted any of the comments listed in his 2010-2011 IMPACT evaluation.

In regards to Employee's argument that he should have been given two years to meet the minimum performance scores under the IMPACT program, as denoted in a DOES communication, the undersigned finds Employee's argument flawed.[32] While employees who do not meet the minimum requirements and receive an IMPACT rating of 'Minimally Effective' are given two (2) years prior to termination, an employee who receives an 'Ineffective' rating is subject to termination during that school year pursuant to the guidelines listed in IMPACT.[33]

Excess

Employee argues that the Principal informed him that he was being excessed because he had the lowest performance evaluation.

Article 4 of the CBA between WTU and Agency provides in pertinent part as follows:

> 4.5.1.1: An excess is an elimination of a Teacher's position at a particular school due to a decline in student enrollment, a reduction in the local school budget, a closing or consolidation, a restructuring, or a change in the local school program, when such an elimination is not a 'reduction in force' RIF or 'abolishment.'

In this case, the undersigned finds that issues regarding the excessing of an Employee are outside of OEA's jurisdiction. This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal,

[32] Employee Prehearing Statement (May 28, 2013).
[33] *Id*., Exhibit II.

> reduction in grade, or suspension for 10 days or more . . ., or a reduction in force [RIF]. . . .

Employee's excess letter was dated May 6, 2011, notifying him that his position had been removed from Roosevelt as a result of equalization, thus resulting in his position being excessed.[34] Although Employee claims that the Principal informed him that the excess was due to his performance, apart from this bare allegation, Employee has not provided any *credible* evidence to support this allegation (emphasis added). Further, although the excessing of Employee's position became effective on June 17, 2011, he was still a DCPS employee and subject to IMPACT and based on his "Ineffective' evaluation, he was terminated on August 12, 2011.[35] As noted above, the WTU CBA denotes that an excess is not a RIF or abolishment. Further, excessing is not defined as an adverse action. Accordingly, arguments surrounding the excessing of Employee's position are outside of OEA's jurisdiction to adjudicate.

CBA Violations

Generally, D.C. Code §1-605.02, specifically reserves resolution of unfair labor practice allegations and collective bargaining agreement violations to the Public Employee Relations Board ("PERB"). According to the preceding statute, PERB is tasked with deciding whether unfair labor practices and CBA violations have been committed. However, in *Brown v. Watts*,[36] the Court of Appeals held that OEA is not jurisdictionally barred from considering claims that an adverse action violated the express terms of an applicable CBA. The Court explained that the Comprehensive Merit Personnel Act ("CMPA") gives this Office broad authority to decide and hear cases involving adverse actions, including "matters covered under [D.C. Code §1-616.52(d)] that also falls within the coverage of a negotiated grievance procedure."[37]

Additionally, Employee argues that Agency does not have sole authority to design its evaluation process; he contends that it simply does not have to negotiate about the evaluation process during collective bargaining. Specifically, Employee notes that §15.1 of the CBA states in relevant part that the "process and instruments for evaluating District of Columbia Public Schools employees shall be a non-negotiable item for collective bargaining purposes."

However, the undersigned notes that Employee's argument does not relate to the issue of whether Employee's termination was for cause, and therefore the issue of whether Agency has sole authority to implement a performance evaluation system is purely an alleged CBA violation issue and is outside of the scope of this Office's jurisdiction. For the purposes of this discussion, the undersigned finds that because Employee is a member of WTU he is subject to the terms of the negotiated CBA between Agency and WTU, and the performance evaluation procedures are applicable in this matter.

Employee also argues that Agency was not in compliance with D.C. Code §§1-613-51(4) and 1.613.52(6). Employee alleges that Agency's failure to comply with §§1-613-51(4) (performance management system designed to improve employee performance through training)

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[34] Agency Answer, Tab 1 (September 12, 2011).
[35] *Id*. Tabs 1, 2.
[36] 933 A.2d 529, 533-34 (D.C. 2010).
[37] *Id*.

and 1.613.52(6) (performance management system shall provide for an opportunity to demonstrate improvement in performance during the reconsideration process) denied him of an opportunity to demonstrate improvement in performance. He argues that a meeting held at Roosevelt was not IMPACT training and did not cover all aspects of the IMPACT guidebook. Employee also asserts that although he did have access to an Educator Portal for professional development offerings, they were not aligned to the standards that he was being evaluated for as an Advanced Placement History Teacher.

The undersigned disagrees with Employee's assertions. Pursuant to the applicable CBA, WTU had an opportunity to consult with Agency on the evaluation process *prior* to implementation (emphasis added). In this case, the IMPACT process was implemented over the 2010-2011 school year. The undersigned finds that the IMPACT process has provisions for employees to demonstrate improvement via the three to five assessments that are conducted over the course of the school year, along with an opportunity to contact the IMPACT team with any issues or concerns about their evaluation and rating. Although Employee's reference to D.C. Code §1-613.52(6) mentions a reconsideration period, Employee has failed to show where this term is defined in any statute or regulations. Thus, based on the plain language of the term, the undersigned finds that the 'reconsideration period' constitutes the time periods after Employee received his assessments and final rating, where he had an opportunity to contact the IMPACT team and contest his final rating with the Chancellor. The record shows that Employee requested reconsideration from Principal Mitchell's assessment on July 20, 2011 and reconsideration of his final rating on July 28, 2011.[38]

Additionally, the IMPACT Group 2 Guidebook relays that an instructional coach program for teachers was implemented. Employee has also acknowledged that he did have access to professional development offerings through the Educator Portal, and despite his claims that these offerings were not aligned with his teacher duties, the undersigned points out that the IMPACT evaluation covered more areas than just the specific subject that he taught. Thus, the undersigned finds that Agency was in compliance with D.C. Code §§1-613-51(4) and 1.613.52(6).[39]

Employee also argues that he was required to prepare three daily lesson plans in violation of CBA §23.14.6 and inconsistent with the provisions of an effective teaching program.[40] Agency argues that CBA §23.14.6 states in relevant part, "[i]n the secondary schools, efforts shall be made to keep the number of lesson preparations to a minimum, consistent with an effective teaching program."[41] Agency contends that there is nothing in the preceding section that states that preparing three lesson plans is in violation of the CBA and Employee failed to file a timely grievance pursuant to CBA, Article 6.

[38] Petition for Appeal, p. pp. 7-8 (June 28, 2011); Agency Prehearing Statement (June 3, 2013).
[39] *See* Agency Prehearing Statement, Exhibit 9 (June 3, 2013).
[40] Employee did not provide a copy of the CBA §23.14.6.
[41] Agency Post Prehearing Brief, p. 4 (July 2, 2013).

As noted above, this Office has consistently held that the primary responsibility for managing Agency's work force is a matter entrusted to the Agency, not to OEA. [42] Thus, the undersigned finds that Agency had discretion to assign lesson plans and notes that there are no provisions in the IMPACT guidebook, which reflect a minimum number of daily lesson plans to be assigned to teachers.

CONCLUSION

Based on the foregoing, I find that because Employee is a member of the WTU, he 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. The undersigned finds that Agency adhered to the IMPACT process and concludes that Agency had sufficient 'just cause' to terminate Employee, following his 'Ineffective' IMPACT rating for the 2010-2011 school year.

ORDER

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

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

[42] *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).