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

_____	)	
In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0073-22
	)	
v.	)	Date of Issuance: May 5, 2023
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Employee <i>Pro-Se</i>	)	
Lynette Collins, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On July 28, 2022, 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 as an Educational Aide, effective July 30, 2022. Employee was terminated for having a “Minimally Effective” rating under the D.C. Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2021-2022 school year; after having received a rating of “Developing” during the 2020-2021 school year. Employee’s last duty station was at Nalle Elementary School (“Nalle ES”). OEA issued a Request for Agency Answer to Petition for Appeal on August 4, 2022. Agency submitted its Answer to Employee’s Petition for Appeal on August 22, 2022. This matter was initially assigned to the undersigned on September 9, 2022.

A Prehearing/Status Conference was held on October 19, 2022, with both parties present. Thereafter, on November 8, 2022, I issued a Post Status/Prehearing Conference Order requiring the parties to address the issues raised during the October 19, 2022, Conference. In essence, the parties were required to submit briefs regarding Employee’s removal. Both parties timely submitted their respective briefs. Upon review of the record and considering the parties’ arguments

as presented in their submissions to this Office, I have determined that no further proceedings are warranted. The record is now closed.

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

Employee contends that she was subjected to an unworkable environment when she was assigned to work with Mrs. Wright (a teacher at Nalle ES). She alleged several instances when she and Mrs. Wright had conflicting exchanges that she attributes to her low score. Otherwise, Employee did not provide any other credible reason to dispute her low IMPACT scores. It should be noted that Employee's evaluations were conducted by Assistant Principal Laena Lee ("Lee") and Principal Jacob Lappi ("Lappi"). In her submission, Employee alleges/admits that "... in order to maintain a peaceful classroom environment, to just remain quiet and cordial throughout the ordeal. Therefore, I suffered in silence." I find that she never voiced these concerns prior to her removal.

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

Agency asserts in its August 26, 2022, Answer 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 and it exercised this managerial prerogative when it created IMPACT. Agency argues that it followed proper D.C. statutes, regulations, and laws in conducting Employee's performance evaluation. Agency notes that, IMPACT is a performance evaluation system utilized by DCPS to evaluate school-based personnel for the 2018-2019, 2019-2020, 2020-2021, school years.<sup>1</sup>

Agency provides that Employee's position was within IMPACT Group 17, and she received a 'Minimally Effective IMPACT rating during the 2021-2022 school year, after having received a 'Developing' IMPACT ratings for the 2020-2021 school year. Agency further provides that during the 2017-2018 school year, Employee was an Educational Aide under IMPACT Group 17, and she was assessed during Cycles 1 and 3. Agency states that it properly conducted Employee's performance evaluation using the IMPACT process. Because Employee's IMPACT rating declined between two consecutive school years from 'Developing' to 'Minimally Effective' her employment was terminated pursuant to the IMPACT procedure.<sup>2</sup> Moreover, it was credibly asserted that Employee never voiced her concerns of the alleged non-collegial working environment with either Lee or Jacob prior to her removal.<sup>3</sup>

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<sup>1</sup> Agency's Answer (August 26, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> See DCPS Brief to Employee's Petition for Appeal at Exhibit 12 (November 21, 2022). See also DCPS Addendum to Agency's Brief (November 30, 2022).

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

**Governing Authority**

District of Columbia Municipal Regulation (“DCMR”) 5-E DCMR §§1306.1, and 1306.4-5 gives the Superintendent authority to set procedures for evaluating Agency’s employees.<sup>4</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-E DCMR 1401 provides in pertinent part 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:

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

Furthermore, the D.C. Code § 1-616.52(d) states, in pertinent part:

Any 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 a labor organization.

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, which states in part:

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluation of District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18.

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<sup>4</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.

1306.4 - 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.

Thus, Agency was granted the authority to develop its own evaluation process and tool for evaluating Agency employees and exercised this management prerogative when it created the IMPACT evaluation system.

Accordingly, in reviewing this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether 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**

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2021-2022 school year. According to the record, Agency conducts annual performance evaluations for all its employees. Agency utilized IMPACT as its evaluation system for all school-based employees.<sup>5</sup>

Employee's position, Educational Aide at J.C. Nalle Elementary School, was within Group 17. According to the IMPACT process, Group 17 employees had two (2) assessment cycles – typically in January and June of each year. Here, Employee was assessed during Cycle 1 and Cycle 3 for the 2020-2021 and 2021-2022 school years.

Employee was assessed on a total of three (3) IMPACT components, namely:

- 1) Educational Aide Standard (EA) – comprised of 90% of Group 17 employees' scores;
- 2) Commitment to the School Community (CSC) – 10% of Group 17 employees' scores; and
- 3) Core Professionalism (CP) – 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:

- 1) Ineffective = 100-199 points (immediate separation from school);
- 2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of 'Minimally Effective' for two (2) consecutive years are subject to separation from the school system);
- 3) Developing = 250-299 points (Individuals who receive a rating of 'Developing' for three (3) consecutive years are subject to separation from the school system);

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<sup>5</sup> Agency's Answer, *supra*.

- 4) Effective = 300-349 points; and
- 5) Highly Effective = 350-400 points.

IMPACT process also provides that employees are entitled to a conference with the administrator as part of each assessment cycle. It further notes that if the administrator makes at least two attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or is 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.

### *Analysis*

During the 2021-2022 school year, Employee's Cycle One IMPACT conference was held on January 27, 2022, and her Cycle Two conference was held on June 6, 2022. It is uncontroverted that Employee subsequently received a "Minimally Effective" rating upon the conclusion of the 2021-2022 school year. During the 2020-2021 school year, Employee's IMPACT evaluation conferences were held on February 18, 2021, and June 10, 2021. She received a "Developing" rating at the end of the 2020-2021 school year.

As evidenced by her submissions to this Office, Employee starkly disagreed with her IMPACT scores on her IMPACT evaluations. The D.C. Superior Court in *Shaibu v. District of Columbia Public Schools*<sup>6</sup> explained that "[d]ifferent supervisors may disagree about an employee's performance and each of their opinions may be supported by substantial evidence." Similar to the facts in *Shaibu*, I find that it is within the Administrator's discretion to reach a different conclusion about Employee's performance, as long as the Administrator's opinion is supported by substantial evidence. Further, 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>7</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>8</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. This Office has consistently held that the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency,

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<sup>6</sup> Case No. 2012 CA 003606 P (January 29, 2013).

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

not to the OEA.<sup>9</sup> As performance evaluations are “subjective and individualized in nature,”<sup>10</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>11</sup> Despite Employee’s protestations to the contrary, I find no credible evidence that her former principal abused his discretion when she was evaluated per the aforementioned IMPACT guidelines. I further find that DCPS had sufficient ‘just cause’ to terminate Employee, following the decline of her IMPACT rating from ‘Developing’ during the 2020-2021 school year, to ‘Minimally Effective’ during the 2021-2022 school year.<sup>12</sup>

### ORDER

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

FOR THE OFFICE:

/s/ Eric T. Robinson

ERIC T. ROBINSON, ESQ.

SENIOR ADMINISTRATIVE JUDGE

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<sup>9</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).

<sup>10</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>11</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

<sup>12</sup> Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).