

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
TANYA WRIGHT-NELSON,	)	
Employee	)	OEA Matter No. 1601-0210-12
	)	
v.	)	
	)	Date of Issuance: March 7, 2017
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Tanya Wright-Nelson (Employee”) worked as a Teacher with the District of Columbia Public Schools (“Agency”). On July 27, 2012, Agency issued a notice of termination to Employee. The notice provided that under IMPACT, Agency’s Effectiveness Assessment System for School-Based Personnel, employees who receive a Minimally Effective rating for two consecutive years were subject to separation. Employee was rated Minimally Effective for the 2010-2011 and 2011-2012 school years. As a result, Employee was terminated effective August 10, 2012.<sup>1</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 17, 2012. She asserted that her termination was unwarranted and that she was forced to

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<sup>1</sup> *Petition for Appeal*, p.7-14 (August 17, 2012).

work in a hostile environment. She also provided that she endured harassment and age discrimination. Therefore, she requested that she be reinstated or receive an early retirement.<sup>2</sup>

Agency filed its response to Employee's Petition for Appeal on September 20, 2012. It provided that it properly removed Employee. Agency stated that it was granted the authority to develop its own evaluation process of its employees, and it exercised this privilege when it created IMPACT. Agency explained that Employee was evaluated ten times during the 2010-2011 and 2011-2012 school years, pursuant to IMPACT based on the following five of the components: Teaching and Learning Framework, Teacher-Assessed Student Achievement Data, Commitment to the School Community, School Value-Added Student Achievement Data, and Core Professionalism. Thus, Agency asserted that it properly terminated Employee as a result of her Minimally Effective ratings.<sup>3</sup>

On March 11, 2014, the OEA Administrative Judge ("AJ") conducted a status conference and ordered that the parties file Pre-hearing Statements. In its Pre-hearing Statement, Agency maintained that the IMPACT policies and procedures were properly followed.<sup>4</sup> Employee's statement provided that Agency's actions were improper because it failed to comply with the IMPACT requirements to conduct a meeting fifteen days following an observation. Furthermore, she contended that Agency did not utilize impartial Master Educators to observe her during the evaluation process.<sup>5</sup>

On August 21, 2015, the AJ issued her Initial Decision. As it relates to the post-observation conference, the AJ found that Agency attempted to meet with Employee to conduct a post-observation conference within the fifteen-day deadline. However, Employee called in sick

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<sup>2</sup> *Id.* at 1-9.

<sup>3</sup> *Agency's Answer to Employee's Petition for Appeal*, p. 1-7 (September 20, 2012).

<sup>4</sup> *District of Columbia Public Schools' Pre-hearing Statement*, p. 1-5 (May 13, 2014).

<sup>5</sup> *Employee's Pre-hearing Statement*, p. 1-10 (September 24, 2014).

on the day they were scheduled to meet. The AJ explained that Agency attempted to reschedule the conference on November 21, 2011, which was after the fifteen-day deadline; however, Employee was unavailable. Therefore, she concluded that Agency's failure to comply with the process was not its own doing, but it was the result of Employee's absence. Accordingly, she determined that Agency's non-compliance was justified.<sup>6</sup>

Additionally, the AJ ruled that Employee did not challenge the scores she received in any of the 2010-2011 and 2011-2012 IMPACT evaluation categories. She found that it was within the Principal's discretion to rate Employee's performance. Moreover, the AJ explained that Employee failed to provide specific evidence in support of the assertion that she worked in a hostile environment. She reasoned that such a complaint was considered a grievance, and OEA no longer had jurisdiction over grievance appeals. The AJ concluded that Agency adhered to the IMPACT process and had cause to terminate Employee due to her Minimally Effective ratings for the 2010-2011 and 2011-2012 school years. Accordingly, Agency's removal action was upheld.<sup>7</sup>

On September 25, 2015, Employee filed her Petition for Review. She states that the AJ erred in ruling that Agency complied with the timing of the post-observation conference. Employee argued that there was no definitive appointment set for the meeting. She explains that on November 18, 2011, she notified the school that she was ill and would not be able to make it to work. She claims that the Principal provided her with less than five hours of notice for the post-observation conference. Employee also contends that the Principal did not take any action to have a meeting scheduled on November 21, 2011. Additionally, she notes that the Master Educator was not impartial. Accordingly, Employee requests that the AJ reconsider its decision

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<sup>6</sup> *Initial Decision*, p. 6-8 (August 21, 2015).

<sup>7</sup> *Id.*, 9-10.

and conduct a hearing.<sup>8</sup>

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Employee's Petition for Review seems to suggest that the Initial Decision did not address all material issues of law and fact. She provides a detailed argument of Agency's violation of the fifteen-day deadline. However, the AJ adequately addressed that issue in the Initial Decision. The record supports the AJ's conclusion that Employee was informed of the date of the conference, but she called in sick the morning of the conference date.<sup>9</sup> Thus, this Board agrees with the AJ's assessment that although Agency did not provide the post-observation conference within fifteen days, it was as the result of Employee's absence.

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 §§

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<sup>8</sup> *Petition for Review*, p. 1-6 (September 25, 2015).

<sup>9</sup> *District of Columbia Public Schools' Motion for Leave to File Amended Affidavit*, p. 5 and Exhibit #19.

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 Collective Bargaining Agreement (“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 had to 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. She accurately held that Agency did comply with the process. Employee was assessed by the Principal or Master Educator during each cycle outlined in IMPACT. Additionally, there is no evidence in the record to support that the Master Educator was not impartial. This Board agrees with the AJ’s determination that, but for Employee’s absence for the post-observation conference, the process was properly followed.<sup>10</sup> Therefore, Agency adequately complied with the IMPACT process.

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<sup>10</sup> As for Employee’s arguments regarding the credibility of the Master Educator and Principal, the Court in *Jones* held that, in accordance with the CBA, any challenge to the final ratings under IMPACT may only be appealed to

Accordingly, we must deny Employee's Petition for Review.

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the Chancellor who may refer the matter to an Impartial Review Board and then to the OEA.

**ORDER**

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

FOR THE BOARD:

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Sheree L. Price, Interim Chair

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Vera M. Abbott

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Patricia Hobson Wilson

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P. Victoria Williams

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. 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.