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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0065-23
)	
v.)	Date of Issuance: August 20, 2024
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
)	
Employee, <i>Pro Se</i>		
Angel Cox, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 5, 2023, 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, effective August 4, 2023. Employee was terminated for having an ‘Ineffective’ rating under the D.C. Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2022-2023 school year. OEA issued a Request for Agency Answer to Petition for Appeal on September 6, 2023. Agency submitted its Answer to Employee’s Petition for Appeal on October 6, 2023. This matter was assigned to the undersigned on October 6, 2023.

On October 11, 2023, the undersigned issued an Order scheduling a Status/Prehearing Conference for November 8, 2023. In a letter dated November 7, 2023, Employee requested that the scheduled conference be continued to a later date due to a conflict in his schedule. The undersigned granted Employee’s request in an Order dated November 14, 2023, wherein, the Status/Prehearing Conference was continued to November 21, 2023. Both parties attended the scheduled conference, where it was determined that an Evidentiary Hearing was required. Accordingly, on November 22, 2023, the undersigned issued an Order scheduling a Prehearing Conference for January 30, 2024, with Prehearing Statements due by January 17, 2024. While both parties timely submitted their Prehearing Statements, Agency’s representative did not appear for the scheduled Prehearing Conference as required. Therefore, the undersigned issued an Order for Statement of Good Cause on

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

the same day to Agency's representative to submit a statement of good cause by February 14, 2023, for her failure to attend the January 30, 2023, conference. Agency complied with the Order for Statement of Good Cause citing a family emergency as reason for not attending the January 30, 2024, conference.

Subsequently, on February 21, 2024, the undersigned issued an Order rescheduling the Prehearing Conference for March 13, 2024. Both parties were present at the scheduled conference. Thereafter, on March 20, 2024, the undersigned issued an Order Convening an Evidentiary Hearing. The Evidentiary Hearing was held on May 2, 2024, with both parties in attendance. Following the receipt of the hearing transcript, on May 23, 2024, the undersigned issued an Order requiring the parties to submit written closing arguments by June 28, 2024. Both parties have filed their respective closing arguments. The record is now closed.

JURISDICTION

This 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 an 'Ineffective' IMPACT rating during the 2022-2023 school year was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.²

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, 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.

SUMMARY OF MATERIAL TESTIMONY

The following represents a summary of the relevant testimony given during the Evidentiary Hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding.

² OEA Rule § 699.1.

Agency's Case in Chief

Alain Cantave ("Mr. Cantave") Tr. pgs. 14- 91.

Mr. Cantave has been employed by DCPS since September of 2013. His current position is Interim Deputy Chief of IMPACT and his duties include (1) ensuring that all school-based staff members receive an evaluation under IMPACT; (2) ensuring that the evaluation is reliable; (3) leading the team that designs IMPACT in terms of future adjustments and future changes to be implemented in forthcoming years; and (4) leading the team that manages the Essential Practices Rubric - a rubric that teachers are observed on. Tr. pgs. 14 – 16.

Mr. Cantave identified Agency's Exhibit 1, as IMPACT Group 2 Guidebook for Teachers. He explained that the purpose of the guidebook is to provide Group 2 teachers³ with details on "what their evaluation will look like with respect to what the individual components will be, how those components will be weighted, the rubrics that they will be evaluated on and ultimately how their final score and final rating will be determined." Mr. Cantave asserted that the Guidebook is available on the teacher's dashboard, which is where they log in to receive all IMPACT related information and on the DCPS intranet where DCPC staff members receive resources and Agency's website. According to Mr. Cantave, IMPACT was created under the authority of Congress related to an omnibus act that allowed DCPS to develop an evaluation system without negotiating with the unions. He stated that the purpose of the evaluation system is to provide teachers and staff in school with the tools needed for the School District to be able to assess the quality and the effectiveness of their staff members. Tr. pgs. 17 -19.

Mr. Cantave testified that for scoring purposes, IMPACT groups individuals into different positions. He noted that there are currently 28 IMPACT groups, with about 13 or 14 teacher groups. He explained that Group 2 teachers with student surveys receive Essential Practices observation, the Teacher-Assessed Student Achievement ("TAS") Data component and the CSC component. Mr. Cantave explained that the Group 2 evaluation components included: (1) Essential Practice ("EP"); (2) TAS; (3) Commitment to the School 19 Community ("CSC") and (4) Student Surveys of Practice ("SSP"). He asserted that these components are scored on a one (1) to four (4) scale based on various standards and the average scores are multiplied by the ultimate weight to reach a final score. Mr. Cantave further explained that there was another component – Core Professionalism ("CP") which was not scored like the other IMPACT components. He stated that this component is scored as a deduction at the end of the school year. Mr. Cantave testified that there are four (4) CP standards and employees can lose points on this final evaluation if they do not meet the expected level of professional responsibility for those standards. Tr. pgs. 20-26.

Mr. Cantave stated that the school leaders – principal, assistant principal or director of specialized instruction observe the teachers and complete the EP, TAS and CSC components. He noted that every teacher had two (2) observation cycles per school year. Mr. Cantave explained that for CSC, the teacher is evaluated by the school leader based on their expectations on a rubric that pulled "together with regards to what their expectations are for the school community and how they are crafting their school community, how they are looking to evaluate their staff based on how they are related to their school community." Tr. pg. 26, 39-40. Mr. Cantave testified that for TAS, the

³ Group 2 teachers are those who teach in grades 3 and above, and who receive student surveys or are eligible to receive student survey components for.

employees set their goal, and these goals are ultimately approved and scored by the school leader. He stated that the school leaders are required to input the data/scores into the database by a prescribed deadline for it to be incorporated into the evaluation system. Mr. Cantave cited that school leaders can request TAS data from the teachers. Mr. Cantave also averred that the school leaders have nothing to do with the student survey component, as it is administered by the central office. Tr. pgs. 26 – 27, 40 – 41, 43-47.

According to Mr. Cantave, the EP observations last a minimum of 30 minutes, and the results and related comments of the evaluation of the EP and those of the other IMPACT components of the evaluation are published by the school leaders on the individual's dashboard so they can see the results when they log into their dashboard. Tr. pgs. 27 -28. Cantave testified that after the observations are completed, school leaders are required to either conference with the teacher or make two attempts to conference with the teacher within 15 days. Tr. ps. 29.

Mr. Cantave testified that the lowest IMPACT score is any score below 200 and the IMPACT rating associated with that is 'Ineffective'. He explained that because Employee received an IMPACT score of 191, his final rating was 'Ineffective'. Tr. pgs. 32 – 33. Mr. Cantave asserted that Employee received a score of one (1) for TAS, which was multiplied by the weight of fifteen (15) percent for a total of fifteen (15) points. He also noted that for Student Survey, Employee received a score of 3.2, which was multiplied by the ten (10) percent weight, for a total weighted score of 32. Mr. Cantave stated that for CSC, Employee received a score of 2.12 after his Cycle 1 and Cycle 2 scores were averaged together, which resulted in a weighted score of 21.5. He also noted that Employee had two (2) deductions of twenty (20) points each for Cycle 1 and Cycle 3, respectively, thereby reducing his final IMPACT score by forty (40) points. Tr. pgs. 34 - 35.

Mr. Cantave stated that either the school leaders or the teachers set the TAS goals. He also noted that the school leader might not have the right facts as to the data to verify the score for a goal or determine how well the students did for a particular metric. He explained that Employee had two (2) TAS goals – (1) an assessment around health concepts and skills; and (2) the students being assessed on dribbling a basketball with the dominant hand. Tr. pgs. 35 – 36.

Mr. Cantave testified that when a school leader does not receive the data or cannot verify the data related to a particular metric or have no evidence that the students performed better, the school leader can indicate that there was no data provided to support a higher score and scored the staff member a one (1). He stated that the staff member is expected to provide the school leader with any underlying data or information necessary to score the TAS goal in a timely fashion. Mr. Cantave explained that school leaders are required to enter in the final scores and rating for their teachers by a certain time. He stated that the school leader might then ask the staff to provide them with the data within a certain timeframe for the school leader to score the staff. Mr. Cantave also cited that based on his review of Employee's IMPACT assessment conducted by the two (2) school leaders for the 2022/2023 school year, there were no procedural errors. Tr. pgs. 36-37, 48 - 51.

Mr. Cantave testified that post-observation conferences only apply to the EP component because it is considered a primary rubric. He explained that there is a requirement for a conference with the EP component, but not for the other IMPACT components. Tr. pg. 47.

Mr. Cantave explained the TAS procedure as follows: at the beginning of the school year, staff members and school leaders receive an email informing them that the database is live, and they

are also provided with 140 pages, TAS items document produced by the IMPACT team and the Office of Teaching and Learning. This document includes standardized/recommended goals for the teachers to think about. Once the database opens for teachers to set their goals, the procedure to enter goals would depend on the teacher and the school year in question. Teachers have about a two-week window to set their goals, thereafter, school leaders have a two-week window to review those goals and approve the goals. Mr. Cantave explained that for teachers hired late or those that changed course or those who did not set their goals within the two-week window, the IMPACT team does not lock them out, but instead reminders are sent out to these teachers periodically throughout the school year. He further explained that teachers or school leaders can go into the database at any point and set their goals. He asserted that if a goal needed to be changed, the teacher can reach out to the IMPACT team to make the changes, if the changes are approved by the school leader. Mr. Cantave testified that on April 1, anyone who has not set a goal will automatically receive an exception. The database is then switched to goal scoring and school leaders are informed of the goal scoring window and they can enter the data in the database up until the deadline. After that, the scoring window closes, and the IMPACT team compiles final scores and ratings for staff members. Tr. pgs. 52 – 57.

Mr. Cantave also testified that it is not uncommon to have two (2) TAS goals. He stated that TAS goals between 1 and 20 are allowed. Tr. pg. 58. He asserted that setting and approving a TAS goal are at two (2) different stages. He explained that if a school leader sets the TAS goal, then it is presumed to be approved at the time they were set because the school leader would just have to click to set them twice to approve it. However, if the TAS goal is set by the teacher, the school leader may adjust the goal teacher's goals before approving. The teacher would know if their TAS goals were changed by the school leader prior to its approval through their access to the dashboard, which has their TAS goals. Tr. pgs. 57-60.

According to Mr. Cantave, if Employee received a score of two (2) on his TAS, he would have gained 15 additional points. Adding these 15 points to his overall IMPACT score of 191, his total IMPACT score would be 206, which is considered 'Minimally effective'. He explained that because Employee had two (2) TAS goals, he needed to get an average TAS score of two (2) for the two TAS goals to get an overall TAS score of two (2). He explained that individuals who receive two minimally effective ratings in a row are separated from IMPACT, as are individuals whose rating declined from 'developing' to 'minimally effective'. Tr. pgs. 66-70.

Mr. Cantave testified that it is common for the staff to be exempted from TAS for varied reasons, for example, if the staff member was not with their students for enough time or if the staff did not set a TAS goal. If any TAS component is exempted, the weight for that component moves to the primary rubric. Tr. pgs. 75 – 82.

Shaunte Daniel ("Ms. Daniel") Tr. pgs. 94- 206.

Ms. Daniel is the principal of Excel Academy and has been in this position for three (3) consecutive school years as of the date of the Evidentiary Hearing. Her duties include ensuring that "all things are running efficiently and effectively as it relates to academic programming, social-emotional needs of students and families, and staff." Tr. pgs. 94 – 95. Ms. Daniel affirmed that she was familiar with the IMPACT assessment system. She explained the IMPACT assessment system is an evaluation tool used to determine the effectiveness of outcomes of students based on the delivery of instruction by teachers, teachers' input based on their commitment to the school community, and their ability to assess at the end of the school year. Tr. pg. 96.

Ms. Daniel testified that she was familiar with Employee. She asserted that Employee taught Health and Physical Education. She stated that Employee received informal observations, feedback and formal observation by an administrator, as per the IMPACT guideline. Tr. pgs. 96 – 97. Ms. Daniel identified Agency’s Exhibit 2 as a score report, dated May 17, 2023, after a formal observation she completed for Employee. She stated that she held a post-observation conference with Employee on May 25, 2023. Tr. pgs. 98 – 99.

Ms. Daniel explained that Teacher-Assessed Student Achievement (“TAS”) is a tool used to evaluate student progress based on the teaching and learning curve throughout the school year. She asserted that at the start of the school year, a lengthy email is sent to all staff with the TAS guidance and all the goals that align with their Comprehensive School Plan (“CSP”). This email provides teachers on what and how to input, the deadline to input their goals and how to track it. Ms. Daniel affirmed that there’s a two (2) week window within which she must approve the TAS goals, and the dates of the window change yearly, depending on the IMPACT window. She noted that staff can find out which goals are approved by checking their IMPACT Dashboard, which is part of their professional obligation. Tr. pg. 133-137.

Ms. Daniel cited that Physical Education (“PE”) teachers such as Employee have the autonomy to create and enter their own TAS goals into the Dashboard. If there are any discrepancies in the selected goals, the employee would be notified and asked to modify the goal. Ms. Daniel stated that Assistant Principal Brawley, alongside Ms. Samball⁴, worked to create the goals which she approved. Tr. pgs. 138-140, 196.

Ms. Daniel testified that to evaluate the TAS, teachers turned their data to her by having one Inner-Core’s teacher scan all the spreadsheets and the student outcomes to her. She stated that another PE teacher slid a folder under her door of all the assessments from the health side of the goal, with the spreadsheet at the top. Ms. Daniel emphasized that it was the teacher’s responsibility to turn in their data to her by the deadlines set forth in emails. Tr. pgs. 140, 142-143, 175.

Ms. Daniel averred that after Employee chose his TAS goals, she discussed these goals with Employee and she approved it. She testified that she did not change Employee’s TAS goals because it was easier to identify. She explained that Employee’s goals were simple to identify because most of Employee’s classes (80 percent) were with one (1) grade level (sixth grade) versus the other special teachers who served multiple grade levels consistently every day. She further cited that because Employee’s goals aligned with what they did, she did not have a reason to meet with Employee. Tr. pg. 101, 134, 183-184.

Ms. Daniel testified that no data was turned in for Employee’s end of year TAS goals by the prescribed deadline. She explained that for teacher-created goals, the teachers are responsible for developing the structure of their assessment at the beginning of the school year. She then meets with the teachers to talk about their TAS goals, and she sends out the IMPACT guidebook about TAS via email. Ms. Daniel stated that she met with some of the teachers at the end of the school year to review. She stated that some teachers did not have to meet with her for their TAS goals review because they can submit their data. Ms. Daniel asserted that teachers that need an exemption would request to meet with her. Tr. pgs. 102 – 103. She also noted that because of the tracker created by Central Office, it was easy to capture data since most of their teachers had the tracker, thus there was

⁴ Ms. Samball is a Health and Physical Education Elementary teacher at Excel Academy.

no need to have a meeting with each of the teachers. She explained that Inner-Core did not have the same type of tracker because they were the only team that had the autonomy to create their own assessment. As a result, they were responsible for tracking their own data to her. Tr. pg. 145-147.

When asked if Employee requested a conference about his TAS assessment or indicated that he needed an exemption, Ms. Daniel said “no”. She noted that she did not have independent access to the TAS assessment and that all special teachers had to develop and share the assessments with her, and they routinely did so. Tr. pg. 103. When asked if she received any TAS data from Employee, Ms. Daniel said “no”. Tr. pgs. 104, 184. Ms. Daniel stated that she did not have a reason to meet with Employee at the end of the school year because there was no data to discuss. Tr. pg. 184. She averred that the entire school had the same TAS submission deadline. She affirmed that she would send out a calendar scheduler if she wanted to meet with a staff member. Ms. Daniel asserted that a calendar invite was sent out to the entire school on June 15, 2023, and that TAS scores were due for teachers only. Tr. pgs. 143 – 144.

Ms. Daniel testified that she had never seen Employee’s Exhibit 1 before.⁵ Upon review of the document, Ms. Daniel stated that the document tracked student names, and an assessment score was next to each student’s name. When asked if the document had the components needed to be a successful TAS documents, Ms. Daniel asserted that the document was missing the Beginning of year (“BOY”) and End of year (“EOY”) scores. She stated that it would be impossible to track a growth goal without comparative data. Tr. pgs. 148-150.

Ms. Daniel testified that there were three (3) PE teachers during the 2022/2023 SY. She asserted that there’s no obligation to have a TAS conference, but there’s an obligation to submit TAS data. She reiterated that TAS conferences are not required. She explained that she checked with every administrator to ensure that data wasn’t shared with them and there was no data from Employee. Ms. Daniel noted that Ms. Samball was the leader for the Inner-Core team for the Specialist teachers and she led their professional development throughout the school year, so, Ms. Daniel would meet with Ms. Samball to disseminate information to her team. Tr. pgs. 162, 169-170, 172, 182. She reiterated that just because she met with Ms. Samball, does not indicate that it was specific to TAS. She stated that Ms. Samball submitted goals and data to support those goals. Tr. pgs. 180 -181.

Ms. Daniel testified that the Assistant Principal Ms. Bryant, evaluated Employee’s Commitment to School Community (“CSC”) and the Core Professional (“CP”) scores for Cycle 1 of the 2022/2023 school year. She explained that all CSC scores are calculated by her and two (2) assistant principals to ensure that they are not missing any documentation. She cited that Employee received a CSC of 2.0 for Cycle 1 of the 2022/2023 school year. Tr. pgs. 104 – 106, 132.

Ms. Daniel identified Agency’s Exhibit 5 as a January 9, 2023; staff update sent out to all Excel Academy staff via email. Tr. pgs. 106 – 107. Ms. Daniel testified that the Excel Academy CSC created at the beginning of the school year and submitted to the IMPACT team by a certain deadline was also included in the January 9, 2023, email. She also noted that page 10 of Agency’s Exhibit 5 was a Self-Reflection document which employees could use to showcase their work. Ms. Daniel cited that the Self-Reflection document allowed employees the opportunity to align the rubric with their accomplishments. She stated that employees had to turn in their Self-Reflection document by a

⁵ Employee’s Exhibit 1 consists of multiple documents to include, but not limited to a copy of Employee’s CSC Self-Assessment, Employee’s TAS data summary, a screenshot of a conversation by the inner-core members dated June 14, 2023, regarding TAS conferences, etc.

prescribed deadline. Tr. pgs. 109 – 111. Ms. Daniel noted that she did not receive any CSC Reflections for Cycle 1 from Employee. Tr. pgs. 112. For Cycle 1 CP, Ms. Daniel asserted that Employee received a 20 points deduction for the ‘on-time arrival’ category. Tr. pg. 113.

Ms. Daniel identified Agency’s Exhibit 6 as the email communication between her and Employee where Employee submitted his CSC Self-Reflection for Cycle 2⁶, after the prescribed Excel Academy deadline. She explained that page 23 of this Exhibit was Employee’s Self-Reflection of his contribution to CSC. Tr. pgs. 117-119. Referencing an email between Employee and Ms. Daniel on January 14, 2023, at 2:13 p.m., found in Agency’s Exhibit 6, Ms. Daniel stated that Employee sent his CSC replacement and stated that Employee said “I thought I sent this already, but he didn’t. Sorry.” Ms. Daniel cited that Employee further stated that he had sent the document before, which was confusing to her. Thus, she requested that Employee forward the original email he sent to her prior to June 7, but Employee failed to do so. Ms. Daniel also noted that Employee did not inform her he was having issues with his computer. Tr. pg. 125-126, 128-129, 131.

Ms. Daniel testified that the Self-Reflection was due on June 7, 2023. When asked if she would have been able to incorporate Employee’s reflection into his CSC when he submitted them, Ms. Daniel said “no”. She explained that it was submitted after the deadline. She asserted that the deadline for staff to submit their reflections was June 7th, and the DCPS deadline was June 8th. So, they only had that day to complete the CSC data. She maintained that even if Employee’s email with the reflection was sent on June 9th, it still wouldn’t have been considered because it was after her deadline and DCPS’s deadline to enter data. Ms. Daniel reiterated that she did not receive any reflection from Employee before June 14, 2023. Tr. pg. 126-128. She stated that Employee received a CSC score of 2.5 for IMPACT Cycle 3. Tr. pg. 131-132.

Ms. Daniel stated that CSC reflections are not required. She averred that they extract CSC data by going through all committee meeting notes, they check staff meeting rosters/sign-in sheets to ensure employees attend meeting and they use trackers and data to support what teachers do when they don’t turn in CSC reflections. Tr. pgs. 172-174.

Ms. Daniel identified Agency’s Exhibit 8 as a calendar invitation she sent out on April 6, 2023, setting the TAS deadline for teachers for June 15, 2023. She stated that the calendar invitation was not sent to Employee but to the entire school calendar on Microsoft TEAMS and all employees had access to the calendar. Ms. Daniel noted that the TEAMS group was called Excel Academy, and all the staff were added to the group. Tr. pgs. 185 – 189.

When questioned by the undersigned on how data was collected for CSC if the submission of Self-Reflection document by employees was not mandatory, Ms. Daniel testified that it is observed on a day-to-day basis. She provided that field trips, for instance, are approved by her and they live on the master calendar. For committees, she testified that every committee chair must submit all their members to her at the end of the cycle on a shared document which she reviews. This document has information on their meeting agenda and activities. Ms. Daniel explained that for Bulletin Boards, her front office has a tracker that updates the Bulletin Boards on the 15th of every month. She also stated that the rubric has newsletters, and these monthly newsletters are approved by her. So, she could search to see if Employee submitted newsletters. Ms. Daniel averred that there’s a tracker tool

⁶ Pursuant to Agency’s Exhibit 2, IMPACT Cycle 2 is referred to as Cycle 3 on the final IMPACT document.

created by an administrator, the main office staff or instructional coach associated with almost every element within each component of the CSC rubric. Tr. pgs. 191- 194.

Ms. Daniel testified that Employee did not submit any reflections for Cycle 1, and his Cycle 2 reflection was submitted after the District's and her internal deadline. She averred that Employee received a score of three (3) for staff meetings because of her own data collection and not because of the reflection. Tr. pgs. 194 – 196. Regarding Employee's assertion that he inputted just one (1) TAS goal and not two (2), Ms. Daniel testified that she was no sure if any administrator edited his goals prior to the goals being approved. Tr. pgs. 196- 199.

Ms. Daniel testified that committee chairs submit names of members on their committees. She also noted that these committees have sign-up sheets at the beginning of the school year and many staff members sign up, but do not actually serve or fulfil the responsibilities by the end of the committee. Ms. Daniel asserted that there are guidelines on what the requirements are to be fully considered as a member of any committee. She stated that attending an event is not considered being on a committee. She maintained that an email communication to employees stated that attending meetings would not get the employees credit for a four (4) on the CSC if they did not fulfil all the requirements of a three (3) in the CSC. As an example, she noted that if Employee went to the dance to escort a student, which is what he signed up for, he would get credit (a four (4)) for that on his CSC. However, he had to fulfill all the requirements of a three (3) on his CSC before getting a four (4) and it does not mean he was on the committee. Tr. pgs. 201-205.

Jade Bryant ("Ms. Bryant") Tr. pgs. 209 - 228.

Ms. Bryant has been employed by Agency for six (6) years. She currently serves as an Assistant Principal at Excel Academy. In this role, she oversees Climate and Culture, serves on the Instructional Leadership team, Operations, informal Instructional Observations and anything to ensure students are learning. Ms. Bryant noted that she was familiar with IMPACT. She explained that IMPACT is an evaluation system that DCPS uses for different positions within the District and uses different standards and criteria. She explained that IMPACT for teachers encompasses an observation to ensure that teachers and students are learning. It also has a CSC, CP component and TAS goals. Tr. pgs. 209 – 211.

Ms. Bryant testified that she was familiar with Employee. She stated that she met him in August of 2022, which was her first year at Excel Academy. She averred that Employee was the primary Physical Education and Health teacher for middle school and some elementary school students. Tr. pgs. 211 – 212. Ms. Bryant asserted that two (2) formal and informal observations are required under the Essential Practice component of the IMPACT evaluation system. She stated that she conducted one (1) EP evaluation for Employee for the 2022/2023 school year. Bryant identified page 67 of Agency's Exhibit 2 as Employee's Cycle 1 EP observation which she conducted on January 23, 2023. She stated that she had a post-observation conference with Employee on January 27, 2023, and went over his EP evaluation. Ms. Bryant cited that she gave Employee his EP score during the post-observation conference. Tr. pgs. 212 - 214.

Regarding Employee's CSC 5 component, Ms. Bryant testified that sometimes, student attendance was not recorded by the end of each period as was the policy. She noted that Employee did not consistently comply with this policy and she or the attendance counselor sent out daily reminders when attendance was not timely entered. Ms. Bryant asserted that part of Employee's duty

was to co-teach. She explained that collaboration as it relates to this component involved attending community meetings, efforts to meet with parents beyond parent-teacher conferences, or meeting with Employee's other sixth grade colleagues to discuss student performance, behavior, attendance, and to ensure that students were successful. Ms. Bryant asserted that evidence of a co-teaching planning tool highlighting that Employee and his co-teacher did lessons together, and what they were teaching, was not presented to her as evidence of CSC 5. Tr. pgs. 221-226. Ms. Bryant averred that she was only aware of what was on the master schedule. She explained that teachers and staff members also had the opportunity to submit self-reflections for their CSC and CP which were considered for their CSC scoring. Tr. pg. 227.

Employee's Case in Chief

Elizabeth Samball ("Ms. Samball") Tr. pgs. 232 - 239.

Ms. Samball is a PE and Health Elementary teacher at DCPS. She has been in this position for fifteen (15) years. She explained that she teaches physical education and health to Pre-K, and fourth and fifth grade; she handles recess and lunch duties, she coaches, and she is part of the middle school advisory. Ms. Samball affirmed working at Excel Academy during the 2022/2023 school year as a Health and PE Elementary teacher. Tr. pgs. 232-233.

Ms. Samball testified that TAS assessments provide data on student learning throughout the school year, with the goal of showing that students have learned throughout the school year. She asserted that TAS is provided to the administration because PE and Health are not subjects that are traditionally tested through standardized tests. Ms. Samball testified that she was aware that Employee made TAS goals because Employee consulted with her about some ideas, and they brainstormed together. Tr. pgs. 233 – 234.

Ms. Samball testified that while TAS data collection procedure varies by administration, from her experience at Excel Academy, she would receive a calendar invite from Ms. Daniel with a scheduled time. She then met with Ms. Daniel in her office with her data, and she explained the data to Ms. Daniel. Ms. Daniel would look over the data and provide Ms. Samball with an overall IMPACT score. Ms. Samball stated that she received a text message from Ms. Daniel in 2023, asking if she was available on that day to meet about TAS and after she provided Ms. Daniel with her availability, Ms. Daniel came to her classroom, and they discussed her TAS. Tr. pgs. 234 – 235. Ms. Samball asserted that she has never had to submit TAS data before going to a TAS conference with the principal. She maintained that as long as there has been TAS, she has always had a conference with the principal, and it was initiated by the administration. Ms. Samball also mentioned that they received a weekly bulletin and there was an email that "said that CSC and TAS conference were coming up. But that it didn't say other than to submit CSC data, it didn't say to submit TAS data. I've never had to submit TAS data before going to a conference." Tr. pgs. 235-236.

Ms. Samball cited that she had no knowledge of whether the administration meets with every teacher about their TAS goals. She affirmed that her testimony was based on her own experience. Ms. Samball further explained that for Specials team, they tend to talk about their TAS and TAS conferences, and in the past, after a TAS meeting, the Specials team would discuss how their TAS went, and prepare for upcoming TAS, to ensure data is prepared. Ms. Samball noted that she taught multiple grade levels and her TAS goals were connected to multiple grade levels. Tr. pgs. 237 – 238.

DeAngelo Moody (“Mr. Moody”) Tr. pgs. 246 - 254.

Mr. Moody is employed by Agency and he is currently a Health and PE teacher for seventh and eighth grade at Excel Academy. He has held that position since October of 2023 and his duties include leading a Health and PE program for seventh and eighth grade while under the National Health Standards of the District of Columbia. He also implements the curriculum of the Health and PE standards. Tr. pgs. 246- 247.

Mr. Moody acknowledged that he was familiar with TAS. He explained that every teacher must do TAS around the beginning of the year by setting TAS goals for the entire year and tracking those goals throughout the year. Mr. Moody stated that all three PE teachers (Ms. Samball, Employee and Mr. Moody) collaborated and talked through TAS goals with each other to ensure they knew exactly what was required of them for those TAS goals. Mr. Moody stated that he was exempted from TAS during his first year because he started late. He however stated that notes and information were shared that they would have to have a TAS conference at some point during the process. Mr. Moody explained that when the administration originally shared the TAS template and outline, they informed them that they would schedule their TAS conferences. He stated that because he was exempt from TAS goals submission in 2023, he did not receive an invite for a TAS conference, but he knew of several teachers that received TAS goal conferences. Mr. Moody affirmed that Employee taught multiple grades, including the sixth grade as well as elementary. Tr. pgs. 247 – 249, 252-253.

Mr. Moody testified that he, Employee and Ms. Samball collaborated with their instructional coach, Mr. Hamilton, at times. Mr. Moody noted that they met weekly and sometimes bi-weekly to collaborate and go through lessons and lesson planning. Tr. pgs. 249 -251. Mr. Moody testified that he has been employed at Agency since 2014, in different capacities and throughout his tenure and during the time when IMPACT was implemented teachers were required to submit TAS goals. Tr. pgs. 250-251.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW⁷

As part of the appeal process within this Office, I held an Evidentiary Hearing on the issue of whether Agency’s action of terminating Employee for an ‘Ineffective’ IMPACT rating for the 2022-2023 school year was in accordance with applicable law, rules, or regulations. During the Evidentiary Hearing, I was able to determine the credibility of the witnesses. The following findings of fact, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during Employee’s appeal process with this Office.

Employee’s Position

Employee contends that Agency did not comply with the IMPACT process, specifically as it related to the TAS component. He explains that he did not get a TAS conference as required, and Agency did not provide a clear procedure for the submission of TAS data. Employee asserts that he was terminated for receiving a final IMPACT score of 191 out of 200. He maintains that his low final IMPACT score was a result of Agency’s IMPACT procedure violation. Employee avers that the TAS

⁷ 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”).

procedure was ambiguous, and its execution was inconsistent. Employee states that unlike his colleagues, he did not receive an invitation from the principal to schedule a TAS conference. Employee contends that without a TAS conference, the administration “would lack the necessary data to accurately evaluate his performance.”

Additionally, Employee avers that he never received Agency’s Exhibit 8, which is a calendar reminder of the TAS due date. Employee notes that this calendar reminder was only shared between Ms. Daniel and the Assistant Principal, and it does not provide how the TAS data was to be submitted. Employee also notes that because he was having computer problems in June of 2023, his email to Ms. Daniel during that timeframe would not appear on Agency’s Exhibit 9. He asserts that he prepared and submitted his TAS data to Ms. Daniel on June 15, 2023. Employee further states that they were informed at the beginning of the school year that their TAS data would be reviewed at the TAS conference. Employee argues that based on Agency’s Exhibit 10, his TAS Goal 1, was never seen or approved by Ms. Daniel, and it was only viewed by Ms. Bryant at the end of the school year. He also stated that according to Agency’s Exhibit 11, Employee’s TAS Goal 2 which he imputed on October 27, 2022, was edited by a school leader on October 27, 2022, and November 8, 2022. Employee argues that even if Ms. Daniel approved two goals, his data for “dribbling a basketball” displayed an 86 percent of the target TAS Goal and he should have received a TAS score of three (3), which would have been sufficient for him to retain his employment.

Agency’s Position

Agency avers 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 2022-2023 school year.

Additionally, Agency asserts that 5-E DCMR §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency’s employees. It avers that 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. Agency notes that prior to instituting IMPACT, all principals and assistant principals at DCPS were provided with training materials and 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.

Agency avers that during school year 2022-2023, there were twenty-eight (28) IMPACT groupings of DCPS employees for evaluation purposes, each representing a different category of school-based personnel. Agency asserts that Employee was a Physical Education Teacher assigned to Group 2. For Group 2 employees, IMPACT consisted of two (2) assessment cycles. Agency asserts that Employee’s work performance was evaluated within the time frame mandated by IMPACT during the 2022-2023 school year, and that Employee received a final IMPACT rating of ‘Ineffective’ at the close of the 2022-2023 school year. Accordingly, he was terminated effective August 4, 2023. Agency asserts that with respect to the TAS, Employee offered a screenshot of his saved data with a date of July 2023, which was beyond the June 15, 2023, deadline for submission of

TAS data. Agency argues that Employee's assertion that he emailed his TAS data to Ms. Daniel in June 2023 was shown to be inaccurate as was his assertion that he only chose one of his TAS goals.

Agency contends that Employee did not assert during the Evidentiary Hearing that Agency failed to follow IMPACT guidelines in assessing him or that DCPS failed to follow the Collective Bargaining Agreement ("CBA") on performance evaluations. Instead, Employee argues that the administrators failed to meet with him about his TAS data. Agency states that this argument is without merit because there is no requirement under IMPACT or the Collective Bargaining Agreement that such a meeting occur. Agency notes that Ms. Daniel testified that there was no requirement under IMPACT for school leaders to meet with teachers to discuss TAS data.

Agency also argues that Ms. Bryant and Ms. Daniel evaluated Employee's work performance and that evaluation resulted in an Ineffective final IMPACT rating. Agency avers that it provided training and support to Employee, and he was aware of Agency's expectations. Thus, Agency's termination of Employee was reasonable and not arbitrary. Moreover, Employee has not proffered any credible evidence that controverts any of the Principal's, Assistant Principal's or IMPACT Team's comments.

Governing Authority

District of Columbia Municipal Regulations ("DCMR") 5-E DCMR §§ 1306.1, and 1306.4-5 gives the Superintendent the authority to set procedures for evaluating Agency's employees.⁸ 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, D.C. Official Code § 1-616.52(d) states, in pertinent part:

⁸ 5-E 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.

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.

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 his 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 the 2022-2023 school year. According to the record, Agency conducted annual performance evaluations for all its employees during school year 2022-2023.

With the IMPACT system, all staff received written feedback regarding their evaluation, as well as a post-observation conference with their evaluators. 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 school year 2022-2023, Employee was evaluated under IMPACT Group 2.

The IMPACT process for Group 2 employees during school year 2022-2023 consisted of two (2) assessment cycles: the first assessment cycle ("Cycle 1"), which ended on December 15th; and another assessment cycle ("Cycle 3") which ended on June 8th. The employees were observed two (2) times during the school year by their principal/supervisor. Here, Employee was observed two (2) times by Ms. Daniel and Ms. Bryant during the 2022-2023 school year. Employee received an IMPACT rating of 'Ineffective' during that school year.

For the 2022-2023 school year, Group 2 employees were assessed on a total of five (5) IMPACT components, namely:

- 1) Essential Practices ("EP") – comprised of 65% of a Group 2 employee's IMPACT score;

- 2) Teacher-Assessed Student Achievement Data (“TAS”)– comprised of 15% of a Group 2 employee’s IMPACT score;
- 3) Student Survey of Practice (SSP) - 10% of a Group 2 employee’s IMPACT score;
- 4) Commitment to the School Community (“CSC”) – 10% of a Group 2 employee’s score;
- 5) 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:⁹
 - 1) Attendance;
 - 2) On-time arrival;
 - 3) Compliance with policies and procedures; and
 - 4) Respect.

As part of the IMPACT process, upon the conclusion of each cycle assessment, and within fifteen (15) days of the observation, employees meet with their evaluator for a post observation conference. Additionally, school-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:¹⁰

- 1) Ineffective = 100-199 points.
- 2) Minimally Effective = 200-249 points.
- 3) Developing = 250-300.
- 4) Effective = 301 -349 points; and
- 5) Highly Effective = 350-400 points.

Analysis

Pursuant to 5-E DCMR §§1306.4, 1306.5 which gives the Superintendent the authority to set procedures for evaluating Agency’s employees in the instant matter, the IMPACT process detailed above is the evaluation procedure put in place by Agency for the 2022-2023 school year (“SY”). Employee was evaluated by the school principal – Ms. Daniel and the Assistant Principal, Ms. Bryant during SY 2022-2023. Employee was evaluated on the above specified components and at the end of the 2022-2023 school year, he received an ‘Ineffective’ IMPACT rating.

Employee does not deny that he received two (2) observations during the 2022-2023 school year. He also does not contest that Agency afforded him two (2) post observation conferences during the 2022-2023 school year. Employee’s contention is that he did not get a TAS conference, and that Agency did not provide a clear procedure for submitting TAS data. Agency asserted that Employee did not submit his TAS data before the submission deadline and that TAS conferences are not

⁹ If an employee’s rating for this component was ‘meets standard’ then there was no change in the employee’s final IMPACT score. If an employee received a rating of ‘slightly below standard’ on any part of the CP during a cycle, and no rating of ‘significantly below standard,’ the employee received an overall rating of ‘slightly below standard’ for that cycle and 10 points were subtracted from the employee’s final IMPACT score. An additional 10 points were deducted if an employee earned an overall rating of ‘slightly below standard’ again the next cycle. If an employee received a rating of ‘significantly below standard’ on any part of the CP rubric during a cycle, the employee received an overall rating of ‘significantly below standard’ for that cycle and 20 points were deducted from the employee’s final IMPACT score. An additional 20 points were deducted if the employee earned an overall rating of ‘significantly below standard’ again the next cycle.

¹⁰ See. Agency’s Answer (October 6, 2023).

required under IMPACT or the Collective Bargaining Agreement. Hence, the reason Employee received a TAS score of one (1) and the comment “no data was provided to support a higher score” was included in Employee’s final IMPACT rating for TAS.¹¹

Employee also argued that his Cycle 1, CSC 5 comment highlights that the evaluator misinterpreted the rubric.¹² He explained that the resulting score does not accurately represent his efforts, and the comments are misaligned with the rubric. Additionally, Employee noted that his Cycle 2, CSC 1 comment and score does not accurately represent his efforts.¹³

Pursuant to the 2022-2023 Group 2 IMPACT Guidebook, the TAS component consists of 15% of an employee’s overall IMPACT score. The guidebook further provides that the highest TAS rating is a ‘Level 4’, with a ‘Level 1’ rating being the lowest.¹⁴ Mr. Cantave testified that the employees set their TAS goals, and these goals are ultimately approved and scored by the school leader. He affirmed that the school leaders are responsible for the TAS procedure. Mr. Cantave stated that the school leaders are required to input the data/scores into the database by a prescribed deadline for it to be incorporated into the evaluation system. Mr. Cantave cited that school leaders can request TAS data from the teachers. Tr. pgs. 26 – 27, 40 – 41, 43-47. According to Mr. Cantave, because the school leaders are required to enter the final scores and rating for their teachers by a certain deadline, the staff member is expected to provide the school leader with any underlying data or information necessary to score the TAS goal in a timely fashion. Tr. pgs. 36-37, 48 - 51.

Ms. Daniel stated that she did not have a reason to meet with Employee at the end of the school year because there was no data to discuss. Tr. pg. 184. However, Ms. Samball testified that throughout her tenure at Excel Academy, she had never submitted TAS data before going to a TAS conference with the principal. Ms. Samball further stated that they received weekly bulletins and an email that “said that CSC and TAS conference were coming up. But that it didn’t say other than to submit CSC data, it didn’t say to submit TAS data.” Tr. pgs. 235-236. Also, I find that Ms. Samball’s testimony contradicts Ms. Daniel’s testimony that her meeting with Ms. Samball was not specific to TAS. Ms. Samball, testified that she received a text message from Ms. Daniel in 2023, asking if she was available on that day to meet about TAS. After she provided Ms. Daniel with her availability, Ms. Daniel came to her classroom, and they discussed her TAS.¹⁵ Tr. pgs. 234 – 235.

Likewise, Mr. Moody stated that information was shared during the 2022-2023 school year that they would have a TAS conference at some point during the process. Mr. Moody further

¹¹ *Id.*

¹² Cycle 1, CSC 5 – Instructional Collaboration (for Teachers only). Employee received a score of two (2) for this component. Ms. Bryant provided the following comment in support of this score: “Entering attendance notes into Aspen journal” and “Entering attendance into Aspen daily”. Pursuant to the CSC 5 IMPACT rubric, CSC 5 speaks to employees’ ability to collaborate with their colleagues to improve student achievement in an effective manner. Therefore, I agree with Employee that Ms. Bryant misinterpreted this component, when she scored Employee for his data entry skills instead of his collaboration with his colleague. Moreover, Mr. Moody testified that he, Employee and Ms. Samball collaborated with their instructional coach, Mr. Hamilton. Mr. Moody noted that they met weekly and sometimes bi-weekly to collaborate and go through lessons and lesson planning. Tr. pgs. 249 -251.

¹³ Employee’s Prehearing Statement (January 17, 2024).

¹⁴ Agency’s Answer, *supra*.

¹⁵ Ms. Samball testified that while TAS data collection procedures vary by administration, from her experience at Excel Academy, she would receive a calendar invitation from Ms. Daniels with a scheduled time. She then met with Ms. Daniels in her office with her data, and she explained the data to Ms. Daniels. Ms. Daniels would look over the data and provide Ms. Samball with an overall IMPACT score.

explained that when the administration originally shared the TAS template and outline, they informed them that they would schedule their TAS conferences.

In addition, Employee's Exhibit 1, includes a conversation dated June 14, 2023, between the Inner-Core members as follows:

“Hey y'all heads up Daniel is doing TAS goal conferences.”

“Today?”

“And she never sent calendar invites.”

This conversation is consistent with Ms. Samball's testimony that she received a *text message, not a calendar invite* from Ms. Daniel in 2023, asking if she was available on that day to meet about TAS and after she provided Ms. Daniel with her availability, Ms. Daniel came to Ms. Samball's classroom to discuss her TAS (emphasis added).

Also, Ms. Daniel averred that the entire school had the same TAS submission deadline. She affirmed that she would send out a calendar scheduler if she wanted to meet with a staff member. Agency's Exhibit 8 is a calendar scheduler/invitation sent out by Ms. Daniel on April 6, 2023, and it only provided that TAS scores were due on June 15, 2023, but did not provide a method of submission. Moreover, this April 6, 2023, calendar scheduler was sent to two (2) recipients – Ms. Bryant and Ms. Brawley, for an all-day TAS *meeting* on June 15, 2023, with Ms. Daniel as the organizer and Ms. Bryant and Ms. Brawley as attendees¹⁶ (emphasis added). Ms. Daniel also noted that a calendar invite was sent out to the entire school on June 15, 2023, that TAS scores were due for teachers only. However, Agency did not provide any convincing evidence of this communication.

Mr. Cantave testified that Employee had two (2) TAS goals – (1) an assessment around health concepts and skills; and (2) the students being assessed on dribbling a basketball with the dominant hand. Tr. pgs. 35 – 36. He explained that Employee received a score of one (1) for TAS, which was multiplied by the weight of fifteen (15) percent for a total of fifteen (15) points. He averred that if Employee received a score of two (2) on his TAS, he would have gained 15 additional points. Adding these 15 points to his overall IMPACT score of 191, his total IMPACT score would be 206, which is considered ‘Minimally effective’. Based on the foregoing, I find that the difference in points from a ‘Level 1’ to a ‘Level 2’ TAS rating would significantly change Employee's overall IMPACT rating.

Although the IMPACT guidebook does not provide for a mandatory TAS conference, based on the testimony of Ms. Samball and Mr. Moody, the procedure for the submission of TAS data at Excel Academy was via a TAS conference. The record and Ms. Samball's testimony contradicts Ms. Daniel's testimony regarding the TAS data submission procedure at Excel Academy. Moreover, Mr. Cantave affirmed that the *school leaders are responsible for the TAS procedure* (emphasis added). He testified that school leaders *request TAS data from the teachers* (emphasis added). The record is void of any prescribed TAS procedure at the school level, or any attempt by Ms. Daniel to request/collect TAS data from Employee, like she did with Ms. Samball. Therefore, I find that Agency violated the IMPACT process when it failed to establish a TAS data collection procedure at

¹⁶ Ms. Bryant responded “Yes” to the invitation and Ms. Brawley “didn't respond”.

the school level. I further find that in the instant matter, the Excel Academy school leaders did not comply with their practice of scheduling TAS conferences as a means to collect TAS data.

In the alternative, the Excel Academy school leaders would have clearly communicated an alternate TAS submission method to those employees who did not require TAS conferences prior to the TAS submission deadline. Accordingly, I conclude that Agency did not follow the TAS data submission procedure it developed at Excel Academy. Consequently, I further find that Agency does not have ‘just cause’ to terminate Employee pursuant to his IMPACT rating because Employee’s low TAS score was not due to his inability or failure to meet his TAS goals satisfactorily, but rather because “no data was provided to support a higher score.” Based on Employee’s TAS data submitted as part of Employee’s Exhibit 1, Employee’s percent class average for one of his TAS goals was 86 percent, which equates to a TAS score of three (3) as described in the IMPACT guidebook and TAS rubric. As Mr. Cantave testified, if Employee’s TAS data was considered and he received even a score of two (2) on his TAS, he would have gained 15 additional points. Adding these 15 points to his overall IMPACT score of 191, his total IMPACT score would be 206, which is a ‘Minimally Effective’ and not an ‘Ineffective’ IMPACT rating.

Additionally, as previously noted, I find that Ms. Bryant misinterpreted the Cycle 1 CSC 5 component - Instructional Collaboration (for Teachers only) when she scored Employee for his data entry skills instead of his collaboration with his colleague skills as provided in the IMPACT rubric for CSC 5. Moreover, Mr. Moody testified that he, Employee and Ms. Samball collaborated with their instructional coach, Mr. Hamilton and that they met weekly and sometimes bi-weekly to collaborate and go through lessons and lesson planning. Consequently, I find that Agency’s failure to follow the CSC rubric constitutes a violation of the IMPACT procedure it developed.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency’s action of separating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge