Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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:	)	
	)	
GWENDOLYN GILMORE,	)	OEA Matter No. 1601-0377-10
Employee	)	
	)	Date of Issuance: September 16, 2014
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Gwendolyn Gilmore ("Employee") worked as a Teacher with the D.C. Public Schools ("Agency"). On July 23, 2010, Agency issued a notice to Employee informing her that due to her "Ineffective" performance rating under IMPACT, its performance assessment system, her position was terminated. The effective date of the termination was August 13, 2010.[1]

Employee challenged the termination by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on August 20, 2010. In it, she argued that she was wrongfully terminated as a result of IMPACT. She explained that she received her IMPACT evaluation five days after her arrival to a new school and her placement teaching a new grade level. Therefore, she requested reinstatement to her position with benefits restored.[2]

Agency explained in its Answer to the Petition for Appeal that Employee's IMPACT

[1] *Petition for Appeal,* p. 7 (August 20, 2010).
[2] *Id.* at 3.

evaluation was performed during the 2009-2010 school year, and it was based on her time as a General Education Teacher at the Brightwood Education Campus ("Brightwood"). It provided that Employee was in Group 2 of the IMPACT evaluation process and was assessed during Cycles 1, 2, and 3. Agency explained that Employee's final rating was "Ineffective." Therefore, it believed that the termination action was proper.[3]

After the matter was assigned to an OEA Administrative Judge ("AJ"), he scheduled a Pre-hearing Conference and ordered the parties to submit Pre-hearing Statements.[4] Agency's Pre-hearing Statement provided that although Employee's Cycle 1 evaluation was not included in her IMPACT assessment, Cycles 2 and 3 were included, and those evaluations resulted in her termination. Agency further asserted that pursuant to the Collective Bargaining Agreement between it and the Washington Teacher's Union, Employee's appeal to OEA was limited to whether it adhered to the IMPACT process. Lastly, Agency argued that it had discretion to implement its own evaluation system.[5]

Employee's Pre-hearing Statement reiterated that Agency retaliated against her. She argued that although the IMPACT evaluation was unfair, her students excelled during her time at Brightwood. Thereafter, Employee submitted an addendum to her Pre-hearing Statement which provided a number of rebuttals to the claims made in Agency's Pre-hearing Statement.[6]

The Initial Decision was issued on May 6, 2013. The AJ found that during the 2009-

---

[3] Agency noted that during the 2008-2009 school year, Employee was terminated, but she was subsequently reinstated to her position in accordance with a settlement agreement. *District of Columbia Public Schools' Answer to Employee's Petition for Appeal,* p. 2-5 (September 24, 2010). Thereafter, Employee filed an Addendum to the Petition for Appeal which alleged that after she was reinstated and began working at Brightwood, she was subjected to stressful conditions and retaliation. She explained that she was placed at a low-performing school and tasked with teaching 20 first graders, all of whom were English Language Learners. She also submitted that after she was reinstated, she did not get paid until December 18, 2009. *Addendum to the Petition for Appeal* (February 25, 2011). Employee later submitted that upon reinstatement, her benefits were terminated. *Addendum to Petition for Appeal* (April 4, 2011).

[4] *Order Convening a Pre-hearing Conference* (August 23, 2012).

[5] *District of Columbia Public Schools' Pre-hearing Statement,* p. 2-3 (September 21, 2012).

[6] *Employee's Pre-hearing Statement* (September 24, 2012) and *Employee's Addendum to Pre-hearing Statement* (October 1, 2012).

2010 school year, Employee was a General Education Teacher at Brightwood.[7] He provided that Employee had conferences following the evaluations, and she received the IMPACT training materials. Thus, the AJ found that Agency acted in accordance with the IMPACT procedures and had cause to terminate Employee following her "Ineffective" rating. Accordingly, Employee's termination was upheld.[8]

On May 29, 2013, Employee filed a letter addressed to the AJ that is considered her Petition for Review. Just as she did in her previous submissions, she provides a host of grievances arguing that her termination was unfair. Employee claims that the assessment for Group 1- Value Added Data was not a factor in the AJ's decision. She also questions the viability of the Dibel assessments. Employee submits that she was effective in the 'Commitment to the School Community' component. Moreover, she believes that the Master Educator did not count her classroom expertise. Finally, she contends that the Engage All Students in Learning component was unfair. Therefore, Employee requests that she be reinstated to her position.[9]

In accordance with OEA Rule 633.3, a Petition for Review should present one of the following arguments for it to be granted:

> 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

[7] With regard to Employee's concerns regarding her working conditions and medical benefits, the AJ found that these arguments were grievances that OEA lacked jurisdiction to consider. *Initial Decision,* p. 2-3 (May 6, 2013).
[8] *Id.,* 4-6.
[9] *Employee's Letter to the AJ,* p. 3-4 (May 29, 2013).

(d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Employee's Petition for Review fails to raise any of the four objections listed. There was no evidence accompanying Employee's Petition for Review; therefore, OEA Rule 633.3(a) is not applicable. Employee does not present any statutes, regulations, or policies in her Petition for Review to trigger OEA Rule 633.3(b). Similarly, Employee makes no substantial evidence arguments, nor does she take a position that the AJ failed to address any material issues of law and fact. Instead, she outlined how the IMPACT evaluation could be made better. She also posed very specific questions about the evaluation and the process. However, OEA is not the proper venue for such claims. As the AJ provided in his Initial Decision, these are grievances over which OEA does not have jurisdiction to consider. Accordingly, we must deny Employee's Petition for Review.

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is denied.

FOR THE BOARD:

____
William Persina, Chair

____
Sheree L. Price, Vice Chair

____
Vera M. Abbott

____
A. Gilbert Douglass

____
Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.