

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:)	
)	
EMPLOYEE ¹ ,)	
)	OEA Matter No.: 1601-0054-23
v.)	
)	Date of Issuance: July 11, 2024
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Teacher with D.C. Public Schools at Takoma Elementary School (“Agency”). On July 1, 2023, Agency issued a notice to Employee that she would be terminated from her position under IMPACT, its performance effectiveness system. The notice informed Employee that she was being separated after receiving a final IMPACT score of “Developing” for the 2021-2022 school year and final score of “Minimally Effective” for the 2022-2023 school year. Since employees whose final IMPACT scores decline between subsequent school years are subject to removal, Agency notified Employee that she would be terminated effective August 4, 2023.²

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

² *Agency Answer to Petition for Appeal*, Tab 1 (August 31, 2023).

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 4, 2023. She argued that she never received thorough feedback from the school principal regarding the sufficiency of her lesson plans, but when she did, the communications were contradictory. As a result, Employee requested mediation to clarify why her evaluation was used as a basis for her termination. She further requested that school administrators demonstrate a higher level of efficiency, good judgment, and accountability.³

In response, Agency asserted that it properly followed the IMPACT process. It explained that Employee received a rating of “Developing” for the 2021-2022 school year and a rating of “Minimally Effective” for the 2022-2023 school year. Thus, according to Agency, Employee was subject to removal since she received a declining IMPACT rating for two consecutive years. As a result, it requested that the termination action be upheld.⁴

An OEA Administrative Judge (“AJ”) was assigned to the matter in September of 2023. After conducting a prehearing conference, the parties were ordered to submit briefs addressing whether Employee’s removal under IMPACT should be upheld.⁵ In its brief, Agency provided that Chapter 5E, Sections 1306.4 and 1306.5 of the D.C. Municipal Regulations (“DCMR”) authorized the District of Columbia Superintendent the authority to evaluate school-based employees each semester by an appropriate supervisor. It explained that during the 2022-2023 school year, Employee’s position, teacher, was within IMPACT Group 2b. During the year, Group 2b employees were assessed three times: during an informal observation, and during Cycle 1 and Cycle 2. According to Agency, Employee was observed during the 2022-2023 school year by a school administrator, and received post-evaluation conferences on January 18, 2023, and April 13,

³ *Petition for Appeal* (August 4, 2023).

⁴ *Agency Answer to Petition for Appeal*

⁵ *Briefing Order* (September 11, 2023).

2023. It provided that Employee ultimately received a “Minimally Effective” rating upon the conclusion of Cycles 1 and 2. It further noted that while not at issue in this appeal, Employee received an IMPACT rating of “Developing” after being assessed properly during the 2021-2022 school year. Since the policy outlined that an employee whose final IMPACT score rating declines between two consecutive years, as in Employee’s case, Agency reasoned that its termination action was proper.⁶

Further, it maintained that Employee failed to raise an argument that it did not follow the correct procedures in evaluating her work performance. Agency submitted that its expectations for performance were clearly articulated to Employee and provided that failed to submit any evidence that contradicted any of the statements in the IMPACT evaluation. Lastly, it opined that Employee was not retaliated against, noting that the school principal attempted to provide Employee with support by having her observe another teacher to understand the importance of planning and class instruction. As a result, it submitted that all of the IMPACT procedures were properly followed in Employee’s case.⁷

In response, Employee argued that her IMPACT evaluations for the 2021-2022 and 2022-2023 school years were adjusted after the post-evaluation conferences were held and believed that the reports submitted by the reviewer differed from those that she received. She questioned why the principal, who normally evaluated third, fourth, and fifth grade students, was permitted to perform an evaluation of a first-grade class. Next, Employee averred that the principal violated Equal Employment Opportunity (“EEO”) regulations pertaining to her COVID-19 vaccination status. Employee further alleged that Agency failed to follow the appropriate protocols regarding complaints against filed against her as well as grievances filed by Employee, which violated the

⁶ *Brief in Support of Agency’s Answer* (October 13, 2023).

⁷ *Id.*

Human Rights Act of 1974. Employee opined that her parental rights were also infringed upon after she expressed concerns to her son's school, Whittier Elementary, regarding his exposure to sexual topics that she deemed inappropriate. She explained that the principal of Takoma was made aware of the discussions at Whittier, which were subsequently impermissibly incorporated into her IMPACT evaluation. Employee further opined that the feedback provided on her evaluations was contradictory. Consequently, she requested that her termination be reversed.⁸

The AJ issued an Initial Decision on January 16, 2024. He explained that according to the IMPACT process, as a teacher, Employee had three assessment cycles: an informal first assessment, a second assessment cycle ("Cycle 1"), and a third assessment cycle ("Cycle 2"). The AJ noted that each assessment was required to be followed by a post-observation conference⁹ with the evaluator within fifteen days of the assessment. As it related to the 2021-2022 school year, the AJ determined that: (1) Employee's informal observation occurred on February 2, 2022; (2) the Cycle 1 observation and post-evaluation conference occurred on February 2, 2022, and February 11, 2022, respectively; and (3) the Cycle 2 observation and post-evaluation conference occurred on March 29, 2022, and April 6, 2022, respectively. Based on the IMPACT scoring rubric, Employee received a final rating of "Developing."¹⁰

Regarding the 2022-2023 school year, the AJ concluded that Employee's informal observation occurred on November 2, 2022. Employee's Cycle 1 observation was conducted on January 6, 2022, and the post-evaluation conference occurred on January 18, 2022. Likewise, she noted that the Cycle 2 evaluation occurred on March 31, 2023, with the post-assessment meeting

⁸ *Employee's Brief* (November 4, 2023). In its reply brief, Agency denied Employee's claim that she was retaliated against. It maintained that Principal Clayton never admonished Employee for her vaccination status and never stated that he wanted Employee terminated. Agency also claimed that the incident involving Employee's son at Whittier Elementary was not held against her for the 2022-2023 IMPACT evaluation. *Agency's Sur-Reply Brief* (November 14, 2023).

⁹ IMPACT guidelines do not require the school administrator to hold a conference after the informal observation.

¹⁰ *Initial Decision* (January 16, 2024).

occurring on April 13, 2023. Since Employee's performance under IMPACT declined from "Developing" to "Minimally Effective," between consecutive school years, the AJ ruled that Employee was subject to termination.

The AJ also disagreed with Employee's argument that the IMPACT report that she reviewed in April of 2022 was significantly different from the assessment submitted by the school principal. He noted that the documents referenced by Employee were identical to those produced in Agency's Answer to the Petition for Appeal. Further, the AJ held that Employee failed to present a compelling argument that the school principal was not permitted to conduct her IMPACT assessments. Concerning Employee's contentions related to the incident at Whittier Elementary with her son, the AJ concluded that those interactions had no bearing on the outcome of her IMPACT score. Citing the holding in *Shaibu v. District of Columbia Public Schools*, Case No. 2012 CA 003606 P(MPA)(D.C. Super. Ct. June 29, 2013), the AJ held that despite her stark disagreements with her IMPACT scores and evaluation notes, Employee failed to refute the factual observations made by her evaluators. He also noted that principals retain broad discretion in ranking their teachers. Thus, the AJ ruled that Agency followed all regulations related to the IMPACT process for both the 2021-2022 and 2022-2023 school years. Consequently, Agency's termination action was upheld.¹¹

Employee filed a Petition for Review with the OEA Board on February 22, 2023. She argues that the Initial Decision is not based on substantial evidence and asserts that the AJ failed to address all issues of law and fact properly raised in her appeal. First, she asserts that a letter was written to administration at Takoma from a staff member at Whittier Elementary regarding a meeting involving her son which led to her IMPACT scores being negatively altered. Employee

¹¹ *Id.*

explains that she was unjustly harassed at work and was accused of defamation of character when she observed a class at the direction of her IMPACT assessor. She believes that the school principal unfairly used his power which created a conflict of interest. According to Employee, the use of different evaluators resulted in her IMPACT assessments containing inconsistencies. As a result, she requests that a thorough review of her appeal be conducted.¹²

In response, Agency asserts that the Initial Decision was based on substantial evidence. It highlights that the allegations outlined in Employee's Petition for Review were already presented to and decided by the AJ. Agency reiterates its position that all IMPACT guidelines were followed in Employee's case. It also submits that there is no basis for finding that Employee was retaliated against. Therefore, it asks the Board to deny the Petition for Review.¹³

Discussion

In accordance with OEA Rule 637.4, 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

Additionally, the D.C. Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987) found that if administrative findings are supported by

¹² *Petition for Review* (February 22, 2023).

¹³ *Agency's Answer to Petition for Review* (March 4, 2024).

substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.¹⁴

IMPACT Process

Regarding the IMPACT process, this Board is guided by D.C. Code § 1-617.18 and Section 15.4 of the Collective Bargaining Agreement (“CBA”) between Agency and the Washington Teachers Union (“WTU”). Employee was a member of the WTU; therefore, OEA is governed by the terms of the applicable CBA. In 2005, the 109th Congress of the United States enacted the District of Columbia Omnibus Authorization Act, P.L. 109-356, which provides the following in pertinent 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 evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes.

Moreover, 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. Accordingly, the Board must determine whether Employee’s termination under IMPACT was supported by just cause.

In *Jones v. District of Columbia Public Schools, et al.*, Case No. 2015 CA 005054 P(MPA)(D.C. Super. Ct. August 31, 2016), the Court explained that “the CBA established the extent to which the teacher evaluation process may be subject to grievance in §§ 15.3 and 15.4. Under the grievance process, OEA can only evaluate whether Agency followed the evaluation

¹⁴ Black’s Law Dictionary, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

process it established and had just cause to terminate Petitioner.” The Court in *Jones* provided that the responsibility of the OEA 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 the 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.¹⁵

The District of Columbia Superior Court in *Shaibu v. District of Columbia Public Schools*, *supra*, explained that substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The *Shaibu* Court noted that, “it would not be enough for [the 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.”¹⁶ The Court further reasoned that if the factual basis of the “Principal’s evaluation was true, the evaluation was supported by substantial evidence.”¹⁷ Additionally, it provided that “principals enjoy near total discretion in ranking their teachers” when implementing performance evaluations.

The rulings in *Jones* and *Shaibu* have been consistently utilized as guidance by this Office in determining whether Agency followed the IMPACT process when evaluating its employees.¹⁸ For example, in *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0070-22 (March 18, 2022), the AJ held that the employee’s disagreements with the comments contained within his

¹⁵ See *Washington Teachers Union Local #6 v. Rhee*, 2009 CA 007482 (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.”).

¹⁶ *Id.* at 6.

¹⁷ *Id.* See also *Washington Teachers' Union, Local #6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997)

¹⁸ See *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0062-22 (February 21, 2023); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0054-23 (January 16, 2024); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0073-22 (May 5, 2023); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0057-18 (March 29, 2019); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0087-16 (December 28, 2018); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0092-16 (May 11, 2018); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0089-17 (May 8, 2018); and *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0078-17 (March 9, 2018).

IMPACT evaluations did not serve as a basis for reversal of the termination action. She further ruled that that it was within the Administrator's discretion to reach a different conclusion about the employee's performance, as long as the Administrator's opinion was supported by substantial evidence.¹⁹ Similarly, in *Employee v. D.C. Public Schools*, OEA No. 1601-0064-23 (February 6, 2024), this Office held that there was no basis for reversing Agency's termination action when the employee only provided explanations to the comments made by her principal regarding her Group 2b, 2022-2023 IMPACT evaluation, none of which contradicted the principal's comments.

Here, during the 2021-2022 school year, Employee, a teacher, was a member of IMPACT Group 2. Group 2 employees were evaluated on five components: Essential Practices ("EP"); Teacher-Assessed Student Achievement Data ("TAS"); Student Surveys of Practice ("SSP"); Commitment to School Community ("CSC"); and Core Professionalism ("CP"). Members of Group 2 were required to undergo one informal evaluation and assessments for Cycles 1 and 2. Post-observation conferences were then held within fifteen days of each cycle. During the 2022-2023 school year, Employee was a member of Group 2(b). Under the updated IMPACT guidelines, Group 2(b) employees were evaluated on four components: EP; TAS; CSC; and CP. Members of the group were also required to undergo post-assessment conferences within fifteen days of their evaluations. School-based personnel who were evaluated through IMPACT ultimately receive a final score of Highly Effective, Effective, Developing, Minimally Effective, or Ineffective. An employee whose final rating declined between two consecutive years would then be subject to separation.²⁰

Employee does not contest that Agency conducted conferences and post-assessment conferences in accordance with the IMPACT guidelines. During the 2021-2022 school year,

¹⁹ *Id.* at p. 10.

²⁰ *Brief in Support of Agency Answer* at p. 7.

Employee was evaluated informally on October 28, 2021, and formally on February 2, 2022 (Cycle 1) and March 29, 2022 (Cycle 2). Post-evaluation conferences were subsequently held on February 11, 2022, for Cycle 1 and April 6, 2022, for Cycle 2. Likewise, during the 2022-2023 school year, Employee received an informal evaluation on November 2, 2022, a Cycle 1 assessment on January 6, 2022, and a Cycle 2 assessment on March 31, 2023. Post-observation conferences were held on January 18, 2023, and April 13, 2022, respectively.

While not specifically presented in her petition before this Board, Employee's submissions to the AJ offered vehement disagreements with the comments contained within her IMPACT assessments. However, instead of proffering direct, contradictory evidence to support an alternate conclusion, Employee simply provided narratives as to why her performance should be rated differently. She has failed to offer any documentary proof that contradicts any of the factual bases of her evaluator's conclusions. Consistent with the holding in *Shaibu*, Employee's argument falls short of the standard necessary to warrant a change in her IMPACT scores, as principals enjoy a wide range of discretion in assessing school-based staff. Additionally, she has failed to produce evidence that the incident at Whittier Elementary involving her son had a material impact on her final score for the 2021-2022 school year.²¹

²¹ The incident at Whittier was referenced in the Core Professionalism ("CP") component of Employee's 2021-2022 IMPACT evaluation. This component measures four basic professional requirements: attendance, on-time arrival, compliance with policies and procedures, and respect. If an employee received a rating of "significantly below standard" on any part of the CP rubric during a cycle, he or she received an overall rating of "significantly below standard" for that cycle, and twenty points were deducted from the employee's final IMPACT score. Employee's score was ultimately reduced by twenty points after receiving an assessment of "significantly below standard" for CP Component No. 4 (Respect) during the Cycle 2 evaluation. The CP4 rubric states the following:

"Individual demonstrates a pattern of failing to interact with students, colleagues, parents/guardians, or community members in a respectful manner OR individual has committed a single egregious act of disrespect as determined by the school leader."

In support thereof, the IMPACT assessor cited to an event wherein Employee allegedly raised her voice and interrupted a guardian during a May 24, 2022, meeting, and also highlighted an instance when Employee failed to respond to a guardian's email regarding an event that occurred on May 20, 2022, during class instruction. The

The AJ outlined the IMPACT procedures in great detail, and he accurately held that Agency did comply with the process. Therefore, the record supports a finding that Agency provided Employee with the requisite number of IMPACT evaluations and post-observation conferences. Additionally, this Board agrees with the AJ's conclusion that the IMPACT assessments submitted by Agency are the same ones submitted by Employee. While Employee contends that her evaluations contain inconsistencies throughout the various assessment cycles, we can find no credible basis for concluding that Agency abused its discretion in evaluating her performance. Since her final rating declined from "Developing" in the 2021-2022 school year to "Minimally Effective" for the 2022-2023 school year, Employee was subject to termination. Consequently, Agency properly terminated Employee in accordance with Section 15.4 of the CBA. As a result, we find no compelling basis for disturbing the AJ's ruling.

Discrimination and Unfair Treatment

Employee raises several arguments in her Petition for Review related to her claims of discrimination and unfair treatment by Agency. To wit, Employee laments that Agency engaged in discrimination and retaliated against her after an email was sent to the principal of Takoma Elementary from a staff member at Whittier Elementary following a meeting in which Employee was accused of making disparaging comments about a staff member's sexual orientation. She also references allegations of discrimination based on her COVID-19 vaccination status, as well as retaliation efforts against her son. As a result, she believes that Agency violated discrimination laws which caused her harassment and undue stress. Employee further supposes that her

evaluator also stated that during a June 14, 2022, meeting at Whittier Elementary regarding Employee's son, Employee made derogatory statements about the Vice Principal's sexual orientation. This Board notes that even if the assessor were to strike the incident at Whittier as an impermissible basis for reducing Employee's CP rating, there remains two additional incidents on which the assessor could rely as to justify a rating of "significantly below standard."

termination from Takoma Elementary was directly related to her interaction with staff members at Whittier Elementary.

D.C. Code § 2-1411.02, reserves complaints of unlawful discrimination to the Office of Human Rights (“OHR”). Under this statute, the purpose of the OHR is to “secure an end to unlawful discrimination in employment...for any reason other than that of individual merit.” Thus, complaints classified as unlawful discrimination are described in the District of Columbia Human Rights Act.²² Additionally, District Personnel Manual (“DPM”) § 1631.1(q) reserves allegations of unlawful discrimination to OHR. Accordingly, this Board finds that Employee’s claims related to discrimination are not within the purview of OEA’s jurisdiction.

Conclusion

Based on the foregoing, this Board finds that the Initial Decision is based on substantial evidence. Agency adhered to the IMPACT process for the 2021-2022 and 2022-2023 school years. Additionally, Employee has failed to produce any evidence which directly contradicts the statements contained within her IMPACT evaluations. Lastly, her claims of discrimination fall outside of this Office’s jurisdiction. Therefore, Employee’s petition must be denied.

²² D.C. Code §§ 1-2501 *et seq.*

ORDER

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

FOR THE BOARD:

Clarence Labor, Jr., Chair

Peter Rosenstein

Dionna Maria Lewis

Arrington L. Dixon

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