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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0227-12
KIMBERLEY HUGHES,)	
Employee)	
)	Date of Issuance: February 20, 2015
v.)	
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Kimberley Hughes, Employee, <i>Pro Se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 30, 2012, Kimberley Hughes (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) final decision to remove her from her position as a Language Arts Teacher at Hardy Middle School (“Hardy”). Employee was terminated because she received a rating of “Minimally Effective” under Agency’s IMPACT program for two consecutive school years.¹ Employee’s termination was effective on August 10, 2012.

This matter was assigned to me in November of 2013. On November 25, 2013, I issued an Order scheduling a Prehearing Conference to be held on January 9, 2014, for the purpose of assessing the parties’ arguments. Employee appeared for the conference; however, Agency did not. Accordingly, I issued a Statement of Good Cause on January 13, 2014, requiring Agency to submit a statement of cause for its failure to appear.² Agency submitted a response on January 16, 2014. On February 14, 2014, I issued an Amended Order Rescheduling a Prehearing Conference, finding that Agency established cause for its failure to appear at the January 9, 2014 conference. On March 20, 2014, a telephonic Prehearing Conference was held. During the conference, I determined that an

¹ IMPACT is the effectiveness assessment system used by the D.C. Public School System to rate the performance of school-based personnel.

² On January 9, 2014, Employee submitted a written request to have this case decided in her favor because Agency failed to submit its Answer to the Petition for Appeal within thirty (30) days. Employee’s request was denied in the Undersigned’s February 14, 2014 Order.

Evidentiary Hearing was warranted based on the arguments presented by the parties. An Evidentiary Hearing was held on June 19, 2014. On July 10, 2014, I ordered the parties to submit written closing arguments on or before August 29, 2014. Both parties responded to the Order. The record is now closed.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

ISSUES

Whether Agency's removal of Employee should be upheld.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *Id.* states:

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.

Position of the Parties

Employee argues that she was not properly evaluated under the IMPACT process because she did not receive a post-evaluation conference after Cycle 3 of the 2011-2012 school year. Agency argues that Employee's termination under the IMPACT program was done in accordance with all District of Columbia statutes, regulations, and laws. Agency also argues that OEA's jurisdiction is limited with respect to the instant appeal and that Employee may only challenge whether the evaluation process and tools were properly administered. According to Agency, Employee was properly evaluated under the IMPACT program, which resulted in her receiving a final IMPACT score of "Minimally Effective" during the 2010-2011 and 201-2012 school years.

SUMMARY OF RELEVANT TESTIMONY

The following represents what I have determined to be the most relevant facts adduced from the transcript generated as a result of the Evidentiary Hearing in the instant matter. Both

Agency and Employee had the opportunity to present documentary and testimonial evidence during the course of the hearing to support their positions.

Agency's Case in Chief

Loren Daniel Brody (Tr. pgs. 14-65)

Loren Daniel Brody (“Brody”) works as an Assistant Principal at Hardy Middle School for four (4) years. As an Assistant Principal, Brody was responsible for designing courses and class schedule, student discipline, and for observing and evaluating staff. There are approximately thirty (30) to forty (40) teachers at Hardy, and approximately ten (10) to twenty (20) staff members at the school. Brody stated that he was trained in utilizing the IMPACT system and used it to evaluate the teachers and staff at Hardy. Prior to the 2010-2011, and the 2011-2012 school years, both teachers and staff received training on the IMPACT system. Agency also provided training booklets on IMPACT, which described the system and how it pertained to their job duties.

Brody identified Agency’s Exhibits 15 and 16 as the IMPACT guidebook for Group 1 teachers. He noted that, each year, the IMPACT guidelines would be revised, republished and distributed to the staff. Brody stated that he was familiar with Employee because she was a teacher at Hardy. He observed Employee during the 2010-2011 school year.

2010-2011 IMPACT ASSESSMENT, Cycle 1 (Administrator)

Brody completed the IMPACT report for Cycle 1 after observing and evaluating Employee on October 20, 2010. Employee had a post-observation conference with Employee on November 3, 2010. Brody stated that the purpose of the conference is to review the lesson that was observed and to provide ratings to the teachers on their performance according to the IMPACT guidelines. The conference also provides an opportunity to review the IMPACT scores that were awarded to the teacher or staff member, and to discuss the next steps pertinent to professional development.

There are three (3) elements for the Cycle 1 assessment. Teaching and Learning Framework (“TLF”) scores relate to the teaching and learning that occurs in the classroom during lesson observation. Commitment to School Community (“CSC”) assesses a teacher’s contributions to the school and community.³ Both school staff and teachers are evaluated on Core Professionalism (“CP”), which measures other standards related to professionalism. In this case, Employee received an average TLF score of 1.89. Brody awarded Employee the following scores in the TLF category.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons**. Employee received a score of 1.
2. TLF2: **Explain Content Clearly**. Employee received a score of 2.

³ TLF and CSC scores are rated on a scale of 1-4, with a score of 4 being the highest possible score.

3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 1. Brody noted that a score of 1 meant that the teacher was ineffective at providing students multiple ways to engage with content. Brody opined that Employee's lesson that he observed did not give students meaningful ways to interact with the text and did not master objectives related to the relationship between character chase and character actions, which was the topic of Employee's lesson during Brody's observation.
5. TLF5: **Check for Student Understanding.** Employee received a score of 2.
6. TLF6: **Respond to Student Misunderstandings.** Employee received a score of 2.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 2.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 3.

Brody explained that he prepared the scores and comments for each element after conducting Employee's observation during one class period. Employee received an average CSC score of 2.20 based on the following;

1. CSC1: **Support of the Local School Initiative.** Employee received a score of 2.
2. CSC2: **Support of the Special Education and English Language Learner Programs.** Employee received a score of 3.
3. CSC3: **High Expectations.** Employee received a score of 2.
4. CSC4: **Partnership with Families.** Employee received a score of 2.
5. CSC5: **Instructional Collaboration.** Employee received a score of 2.

Core Professionalism is rated on a "Meets Standards" "Slightly Below Standard," or "Significantly Below Standard." If an employee received a "Slightly Below Standard," then ten (10) points are deducted from the teacher's final evaluation score. A "Significantly Below Standard" score in any CP category results in twenty (20) points being deducted from the final score. Employee received the following scores for CP:

1. CP1: **Attendance.** Employee received a "Meets Standard."
2. CP2: **On-Time Arrival.** Employee received a "Meets Standard."
3. CP3: **Policies and Procedures.** Employee received a "Slightly Below Standard." Brody noted that Employee received this score because she arrived late for English department meetings on more than one occasion. Brody also stated that Employee submitted a leave request form that coincided with an important meeting that was scheduled well

in advance. The meeting was scheduled to analyze student performance results.

4. CP4: **Respect**. Employee received a “Meets Standard.”

Brody and Employee discussed Employee’s scores during the November 3, 2010 post-assessment conference for Cycle 1. According to Brody, Employee disagreed with the scores she received and stated that she did not want to continue discussing the observation results. Brody testified that he had a meeting with Employee and the school principal, Ms. Nerenberg, on or around November 5, 2010. During the meeting, Brody and Nerenberg reiterated to Employee the importance of communicating how Employee could improve her performance during the course of the school year. In addition, Employee stated that she had not received an email informing her that she was going to be observed on October 20, 2010. Brody stated that Employee refused to review or discuss her Cycle 1 observation report. Brody did not make any changes to the observation or the IMPACT assessment as a result of the meeting with Employee and Nerenberg.

2010-2011 IMPACT ASSESSMENT, Cycle 3 (Administrator)

Brody completed the IMPACT report for Cycle 3 after observing and evaluating Employee on June 6, 2011. Brody had a post-observation conference with Employee on June 13, 2011. Employee received an average TLF score of 2.56. Brody awarded Employee the following scores in the TLF category.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons**. Employee received a score of 3.
2. TLF2: **Explain Content Clearly**. Employee received a score of 2.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work**. Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content**. Employee received a score of 3.
5. TLF5: **Check for Student Understanding**. Employee received a score of 3.
6. TLF6: **Respond to Student Misunderstandings**. Employee received a score of 3.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning**. Employee received a score of 2.
8. TLF8: **Maximize Instructional Time**. Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community**. Employee received a score of 3.

Employee received an average CSC score of 3.00 based on the following:

1. CSC1: **Support of the Local School Initiative**. Employee received a score of 3.

2. **CSC2: Support of the Special Education and English Language Learner Programs.** Employee received a score of 3.
3. **CSC3: High Expectations.** Employee received a score of 4. Brody stated that Employee received a score of 4 in this category because she had promoted high expectations in her relationships with students. Employee led the Embassy Adoption program, and also assisted with a poetry writing competition for the students.
4. **CSC4: Partnership with Families.** Employee received a score of 2.
5. **CSC5: Instructional Collaboration.** Employee received a score of 3.

Employee received the following scores for CP:

1. **CP1: Attendance.** Employee received a score of “Meets Standard.”
2. **CP2: On-Time Arrival.** Employee received a “Significantly Below Standard.” Brody stated that Employee had two or more unexcused late arrivals to work. According to Brody, Employee’s late arrivals were documented, which included a meeting with Employee and a letter regarding her late arrivals.
3. **CP3: Policies and Procedures.** Employee received a “Meets Standards.”
4. **CP4: Respect.** Employee received a “Meets Standard.”

Brody and Employee discussed Employee’s scores during the June 13, 2011 post-assessment conference for Cycle 3. Brody stated that Employee did not relay any comments regarding her scores in Core Professionalism. After Brody completed Employee’s assessment, he entered the information into the IMPACT database, wherein, it becomes part of the official evaluation record. The IMPACT scores are accessible to both the evaluator and the employee who was evaluated. Brody stated that he did not evaluate Employee during the 2011-2012 school year because the new school principal, Mr. Stefanus decided to evaluate Employee personally based on her “Minimally Effective” rating the previous school year.

Brody reiterated that the IMPACT conference was the only evaluation conference held with the teachers at Hardy. He recalled that there was a check-out procedure (“close-out”) wherein teachers were required to turn in their keys, and submit lists of recommended courses for students for the following school year. However, the ‘close-out’ meeting was not considered part of the IMPACT program.

On cross examination, Brody stated that he did not remember Employee requesting an early ‘close-out’ meeting to turn in her keys because of a scheduled trip to Paris with some of the students after the end of the 2011-2012 school year. Brody admitted that he assisted Employee at some point during the 2011-2012 school year because she was having problems accessing her school email. He further reiterated that principal Stefanus expressed to the teachers about the local school initiative priorities during staff meetings, smaller team meetings, and individual meetings. Brody stated that teachers were informed of the policy on tardiness during faculty meetings in 2011 and 2012.

Dana Nerenberg Tr. pgs. 65-95

Dana Nerenberg (“Nerenberg”) currently works as the Principal at Hyde-Addison Elementary School. During the 2010-2011 school year, Nerenberg was the Principal at both Hyde-Allison and Hardy Middle School. As a school principal, she is responsible for being an instructional leader, working with teachers, students, and families, and other related duties. Nerenberg stated that the IMPACT system “involves the observation from a building-based administrator, as well as the observation from master educators, averaging into a final score for a teacher...”⁴ School administrators were initially trained on IMPACT during the Summer Leadership Academy. Nerenberg also served on the task force that was responsible for improvement-related revisions to IMPACT.

2010-2011 IMPACT ASSESSMENT, Cycle 2 (Administrator)

Employee was an English Language Arts teacher for the sixth grade at the time Nerenberg conducted an observation of her teaching. Nerenberg completed Employee’s IMPACT assessment for Cycle 2 on February 7, 2011. She had a post-observation conference with Employee on February 16, 2011. Employee received an average TLF score of 1.75. Nerenberg noted that the Core Professionalism standard was not rated during Cycle 2.

1. TLF1: **Lead Well-Organized, Objective-Driven Lessons.** Employee received a score of 1.
2. TLF2: **Explain Content Clearly.** Employee received a score of 2.
3. TLF3: **Engage Students at All Learning Levels in Rigorous Work.** Employee received a score of 2.
4. TLF4: **Provide Students Multiple Ways to Engage with Content.** Employee received a score of 1. Nerenberg stated that Employee received this score because she did not offer her students multiple ways to engage with content, and students were not given the opportunity to interact with each other.
5. TLF5: **Check for Student Understanding.** Employee received a score of 2.
6. TLF6: **Respond to Student Misunderstandings.** Employee was not rated in this component because there was an option to not rate an employee if there were no misunderstandings.
7. TLF7: **Develop Higher-Level Understanding through Effective Questioning.** Employee received a score of 2.
8. TLF8: **Maximize Instructional Time.** Employee received a score of 2.
9. TLF9: **Build a Supportive, Learning-Focused Classroom Community.** Employee received a score of 2.

⁴ Tr. pg. 69.

Nerenberg did not recall specifically what was discussed during her post-evaluation conference with Employee, but stated that her general policy is to give teachers a ‘write-up’ or draft of what the observation will include, prior to the post-observation conference. Nerenberg also gives teachers a copy of her personal notes that she took during the observation so that they can prepare for the conference.

On cross examination, Nerenberg stated that she currently performs a final Teacher-Assessed Student Achievement (“TAS”) conference at the end of each school year. However, TAS conferences were not part of the IMPACT model at the time Employee was evaluated. Nerenberg further noted that she sometimes has an end-of-year Commitment to School Community (“CSC”) conference, depending on the timing of her observations. Nerenberg stated she may adjust a teacher’s CSC score based on the input she solicited from them, if that teacher provided evidence of things she was not aware of. She testified in pertinent part that:

“Different principals do it in different ways. The way that I’ve chosen to do it at my school is I give my teachers a document. I’m very clear about what the criteria are for meeting expectations around collaboration with others or support for special education students. And I give my teachers that rubric at the beginning of the year that’s school specific. And then I give teachers a Google survey, where they can provide evidence of what self-reflection...they think they’ve done and some evidence. I take that into consideration. But I don’t have teachers bring in artifacts, no.”⁵

“...I mean, there’s not really a final evaluation. It’s lots of different pieces that come together for an average. And in the past several years, and I can’t recall if this is precisely what was in place in 2010-2011, DCPS actually, the IMPACT team, puts together a PDF that shows a teacher what they anticipate their final IMPACT rating will be, including all of the components that have been previously known, such as the observation, the CSC, the core professionalism, plus information about, especially for a Group 1 teacher, about the range of, depending on how the students do on the DC CAS and how...the value-added piece, will impact the final rating...So that does not come from the school administrator at all. It goes straight to the teacher.”⁶

Bregeneve Ocansey Tr. pgs. 97-103⁷

Bregeneve Ocansey (“Ocansey”) has worked as a Senior Master Educator (“SME”) for DCPS since 2011. SMEs are responsible for managing a team of Master Educators, in addition to evaluating teachers. During Cycle 1 of the 2011-2012 school year, Ocansey observed Employee

⁵ Tr. pgs. 84-85.

⁶ Tr. pgs. 93-94.

⁷ Ocansey provided testimony via videoconference.

on October 7, 2011, and had a post-observation conference with her on October 21, 2011. Employee received an average TLF score of 3.33. During Cycle 2 of the 2011-2012 school year, Ocansey observed Employee on May 8, 2012, and had a post-observation conference with her on May 22, 2012. Employee received an average TLF score of 2.55.

Ocansey stated that during the post-evaluation conferences with Employee, they discussed the lesson that was observed, the level of student engagement, and Employee's objective for the lesson. Ocansey also explained her justification for Employee's final scores, as well as strategies for improving performance.

Leslie Edwards Tr. pgs. 104-108⁸

Leslie Edwards ("Edwards") works as a Master Educator for DCPS, and evaluated Employee's performance during the 2010-2011 school year. Edwards observed Employee on December 8, 2010, and had a post-evaluation conference with her on December 16, 2010. Employee received an average TLF score of 2.67. During the conference, Edwards and Employee reviewed the scores, and the rationale behind the ratings. Edwards also provided Employee with suggestions to address areas of growth, in addition to pushing Employee in her areas of strength.

Elizabeth McCarthy Tr. pgs. 109-112⁹

Elizabeth McCarthy ("McCarthy") works as a Master Educator for DCPS, and evaluated Employee's performance during the 2010-2011 school year. McCarthy observed Employee on March 10, 2011, and had a post-evaluation conference with her on March 21, 2011. Employee received an average TLF score of 3.50.

Michelle Hudacsko Tr. pgs. 113-167¹⁰

Michelle Hudacsko ("Hudacsko") works as the Deputy Chief of IMPACT. She is responsible for overseeing the assessment system for the District, including the Master Educator Team, the Align Team, and the IMPACT Team. DCPS was given the authority to administer an assessment system through the Omnibus Authorization Act, as well as the D.C. Code, and the Washington Teacher's Union. Between 2007 and 2009, Hudacsko's team spent time researching and designing the system. During the 2010-2011 school year, Group 1 IMPACT members consisted of teachers. Each IMPACT group has their own guidebook, which consists of the standards, rubric and components of the evaluation system for that particular group of employees. At the beginning of each school year, employees received a hard copy of the IMPACT guidebook, but they were also available online. In addition, an IMPACT helpline was established, via phone and email, to answer any questions that employees have.

According to Hudacsko, teachers were evaluated five (5) times during the school year, three times by an administrator, and two times by an external Master Educator. After each

⁸ Edwards provided testimony via videoconference.

⁹ McCarthy provided testimony via videoconference.

¹⁰ Hudacsko provided testimony via videoconference.

observation, the assessor was required to write up evidence and suggestions based on what was observed. The evaluation is given to the teacher at the conference, and is available on the IMPACT database. After the report has been uploaded into the database, the date of the conference is noted, and the teacher is observed in the next requisite cycle. At the end of the school year, the IMPACT team calculates a final score and a final grade based on the multiple measures that compose the overall assessment.

Hudacsko stated that the final IMPACT score is composed of four components for Group 1. Individual Value Added (“IVA”) is a measure of student achievement based on the DC CAS (the District-wide standardized test), and accounts for 50% of the final score. Teaching and Learning Framework (“TLF”) is a measure of pedagogical practice, and is 35% of the final score. Commitment to School Community (“CSC”), which is 10% of the final score, is a measure of the way a teacher has collaborated with other teachers, and supported local school initiatives. School Value-Added (“SVA”) is an average of the value-added score of all the teachers in the building, and is 5% of the teacher’s final IMPACT score. The IMPACT team works with an external partner, Mathematica Research Group to calculate the IVA. The IVA is multiplied by the weight of 50% for Group 1 teachers’ evaluations to produce a final weighted score.

According to Hudacsko, Core Professionalism consists of four (4) standards that are part of basic professional responsibility, and are not things that employees should receive extra credit for. The standards include attendance, being on time to work, and following the policies and procedures set out within a building, and showing respect. If a school administrator notes that any of the four standards are an area of concern for an employee, they can give a ten (10) or twenty (20) point deduction, which indicates that the individual is slightly or significantly not meeting that standard.

Employee received a thirty (30) point reduction on her CP score for the 2010-2011 school year, and had a final IMPACT score of 180. Under IMPACT, a score of 180 deemed her “minimally effective.” Employee also received a thirty (30) point deduction on her CP score for the 2011-2012 school year, and had a final IMPACT score of 243, which also deemed her “minimally effective.” According to Hudacsko, any employee who receives a minimally effective rating two years in a row is subject to termination. Employees who are identified for separation are given the opportunity to file an appeal with the Chancellor of DCPS. In this case, Employee filed an appeal with the Chancellor, but the appeal was denied because the issues raised in Employee’s submissions were not violations of the IMPACT process.

Hudacsko testified that all IMPACT timelines were followed, based on her review of Employee’s documentation. She stated that each one of the IMPACT cycle observations and conferences were held within cycle deadlines, and the data for the holistic assessments for CSC and CP were inputted by the required due date.

On cross examination, Hudacsko stated the following with respect to how IMPACT conferences are notated on the forms:

“...the field and the database says ‘date of conference,’ the conference is a time for the teacher and the administrator to meet. And so, because this is our system of record, the date that our principal has inputted for the conference is then the date that the IMPACT team uses as the date that that conversation occurred... Additionally, as part of the investigation, your Chancellor’s appeal, we followed up and had a conversation with Ms. Stefanus in which she confirmed that she conducted the cycle 3 observation and conference. She said again that the post-observation conference occurred on May 29th, as documented in the database...And I’m looking here at the notes. She said that she also conducted a second meeting per your request, and that you had made this request because you were concerned about your scores.”¹¹

Regarding the policy for unexcused absences, Hudasko testified that the District-wide policy for IMPACT is that, if an administrator, based on the policies set within the building, has deemed an employee’s absence as unexcused, then it is marked under the Core Professionalism component. She also stated that IMPACT only mandates that a post-observation conference be held within fifteen (15) days of the observation. The conferences are not meant to be a place for employees to debate their scores. If an employee did not receive the requisite conference within fifteen days, they would contact the IMPACT team because that would be a violation of the IMPACT process. There may be some instances in which there is an agreement between a school administrator and a teacher that a conference could occur outside the fifteen days; however, it is the employee’s right that the conference occur within the proscribed time period.

Hudasko stated that she saw notes wherein Stefanus and Employee were scheduled to meet for a second time in July of 2012, but did not know if the purpose of that meeting was related to a post-observation conference, or a close-out meeting. She reiterated that close-out meetings are outside the scope of IMPACT.

Employee’s Case in Chief

Barbara Annand Tr. pgs. 169-179¹²

Barbara Annand (“Annand”) is vaguely familiar with the Core Professionalism standard under IMPACT. Annand stated that teachers were given a follow-up meeting after their administrator assessment during Cycle 3. Teachers are also given an exit or close-out meeting when they leave for the summer. She did not have a close-out meeting at the end of the 2011-2012 school year.

¹¹ Tr. pgs. 149-150.

¹² Annand provided testimony via telephone.

Kimberley Hughes Tr. pgs. 180-197

Kimberley Hughes (“Employee”) testified that she is not disputing any of her classroom evaluations scores from the 2010-2011 and 2011-2012 school years, and that she is in full agreement with each of her scores. However, Employee stated that she received “Effective” and “Highly Effective” performance ratings during her sixteen (16) year tenure with DCPS. Employee noted that she had personal issues from 2010 through 2011, which resulted in a decline in her performance. Employee discussed her personal issues with Stefanus, who agreed that Employee could call into school before the start of the school day to inform Stefanus that she would be late. According to Employee, Stefanus verbally agreed that Employee’s late arrival would not be counted as an unexcused tardy if she arrived before the students.

Employee also testified that she was not afforded an end-of-the year ‘close-out’ meeting before leaving for Paris, even though she requested to have one. When Employee returned from Paris, she requested a meeting to have her last evaluation with Mr. Brown because Stefanus was out of town. Employee stated that the meeting never occurred because the school was closed on the day of the scheduled meeting, and that Mr. Brown refused to reschedule for a new date. According to Employee, Stefanus did not conduct an end-of-year post-evaluation conference for the 2011-2012 school year, despite the conference date that Stefanus submitted on the IMPACT form.

In addition, Employee stated that she had numerous problems with accessing her work email because her name was spelled incorrectly. According to Employee, the issues with email caused her to not receive her IMPACT scores. Employee also stated that she did not receive hard copies of the IMPACT scores.

On cross examination, Employee testified that she did not know that there was a difference between a ‘close-out’ meeting and a post-evaluation conference until the date of the Evidentiary Hearing before OEA. She also stated that the only IMPACT scores that she was able to view online from 2010 through 2012 were the evaluations conducted by Master Educators. Employee did receive her final IMPACT scores in the mail for both the 2010-2011 and 2011-2012 school years. Employee further reiterated that Hardy did not have a written policy for unexcused tardiness. However, Employee stated that she had a verbal agreement in place with Stefanus, because she was experiencing personal and financial issues beginning in 2010.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, P.L. 109-356, which provides:

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. D.C. Code § 1-617.18

Pursuant to this broad authority, DCPS implemented the IMPACT evaluation system beginning with the 2009-2010 school year. The District of Columbia Public Schools (DCPS or Agency) conducts annual performance evaluations for all of its employees. IMPACT is DCPS' Effectiveness Assessment System for all School-Based Employees, including teachers, principals, and other staff members. IMPACT was used for the 2009-2010, 2010-2011 and 2011-2012 school years to rate the performance of school-based personnel.

The IMPACT Process

The IMPACT process required that all school-based staff receive written feedback regarding their evaluations, in addition to a having a post-evaluation conference with their evaluators. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01 a.m. the day after the end of each cycle. If an employee had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. Employees also received an email indicating that their final scores were available online.

During the 2010-2011 and 2011-2012 school years, there were twenty (20) IMPACT grouping of DCPS employees. Employee's position, General Education Teacher, was within Group 1. The first assessment cycle ("Cycle 1") occurred on or before December 1st; the second cycle ("Cycle 2") occurred on or before March 1st, and the third assessment cycle ("Cycle 3") occurred on or before June 15th. During an assessment cycle, employees in Group 1 were observed five (5) times during the course of the year: three observations were conducted by the teacher's principal or a supervisor, and two observations were conducted by an expert Master Educator. In this case, Employee was assessed on the following IMPACT components:

- 1) Individual Value-Added Student Achievement—a measure of the impact the teacher has on his or her students' learning over the course of the school year, as evidenced by the DC CAS (A District-wide assessment given in the spring of each year). This component accounts for 50% of the IMPACT score.
- 2) Teaching and Learning Framework ("TLF")—a measure of a teacher's instructional expertise. This component accounted for 35% of the IMPACT score.
- 3) Commitment to the School Community ("CSC")—a measure of the extent to which school-based personnel support and collaborate with their school community. This component accounted for 10% of the IMPACT score.
- 4) School-Value Added ("SVA")—a measure of a school's impact on student learning over the course of the school year, as measured by the DC CAS. This component accounted for 5% of the IMPACT score.
- 5) Core Professionalism ("CP")—a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows: attendance; on-time arrival; compliance with policies and procedures; and respect. This component was scored differently from the others, as an employee could have additional points

subtracted from their score if the rating was “slightly below standard” or “significantly below standard.”

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year. If an employee received a “Minimally Effective” rating two (2) consecutive years in a row, then that employee was subject to termination under the IMPACT program. The scoring range is as follows:

- 1) Ineffective = 100-174 points (immediate separation from school);
- 2) Minimally Effective = 175-249 points (given access to additional professional development);
- 3) Effective = 250-349 points; and
- 4) Highly Effective = 350-400 points.

Governing Authority (IMPACT – WTU Union Members)

Based on the documents submitted by the parties, I note that Employee was a member of Washington Teachers’ Union (“WTU”) when she was terminated. Thus, the Collective Bargaining Agreement (“CBA”) between Agency and WTU applies to this matter and as such, OEA has limited jurisdiction over this matter. In *Brown v. Watts*, 933 A.2d 529 (April 15, 2010), the Court of Appeals held that OEA is not jurisdictionally barred from considering claims that a termination violated the express terms of an applicable collective bargaining agreement. The court explained that the Comprehensive Merit Personnel Act (“CMPA”) gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including “matters covered under subchapter [D.C. Code §1-616] that also fall within the coverage of a negotiated grievance procedure.”³ In this case, Employee was a member of the WTU when she was terminated and governed by Agency’s CBA with WTU. Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA between WTU and DCPS, as it relates to the adverse action in question in this matter. Section 15 of the CBA between WTU and Agency provides in pertinent part as follows:

15.3 DCPS’ compliance with the evaluation process, and not the evaluation judgment, shall be subject to the grievance and arbitration procedure.

15.4: The standard for separation under the evaluation process shall be “just cause”, which shall be defined as *adherence to the evaluation process only*. (Emphasis added).

Accordingly, I am primarily guided by §15.4 of the CBA between WTU and DCPS in reviewing this matter, and as such, I will only address whether or not Agency’s termination of Employee pursuant to her performance evaluation was supported by just cause. As referenced above, ‘just cause’ is defined as adherence to the *evaluation process only* (emphasis added). Thus, OEA’s jurisdiction over this matter is limited only to Agency’s adherence to the IMPACT process it instituted at the beginning of the school year.

In this case, Employee stated during the Evidentiary Hearing that she does not dispute the scores she received on any of her IMPACT Evaluations.¹³ However, Employee argues that she was not afforded a ‘close-out’ meeting or a post-evaluation conference after Cycle 3 for the 2011-2012 school year. I disagree. The documents submitted throughout the course of this appeal, in addition to Hudascko’s testimony during the Evidentiary Hearing, support a finding that Employee was afforded a post-evaluation conference on May 29, 2012. This conference date was noted by Stefanus in the IMPACT database. Hudascko also stated that Employee’s claim was researched after filing an appeal with the DCPS Chancellor. The Chancellor’s Appeal Decision, dated December 21, 2012, states the following in pertinent part:

“Per DCPS follow up phone call, Principal Stefanus confirmed that she conducted Ms. Hughes’ Cycle 3 observation and post-observation conference (POC). The post-observation conference occurred on 5/19/2012, as documented in the IMPACT database. Also, Principal Stefanus conducted a second POC per the request of Ms. Hughes. Ms. Hughes made this request because she was concerned about her scores.”¹⁴

It should further be noted that any references to ‘close-out’ meetings, wherein teachers are required to turn in their keys, and submit lists of recommended courses for students, are outside the scope of the IMPACT process. Accordingly, I find that Employee’s claim that she did not receive a post-evaluation conference after Cycle 3 during the 2011-2012 school year is without merit.

After reviewing the documents of record, in addition to the testimony given during the Evidentiary Hearing, I find that Employee was evaluated a total of five (5) times during the 2010-2011 school year and the 2011-2012 school year, in accordance with the IMPACT guidelines. I further find that Employee was afforded post-evaluation conferences after each assessment with the school administrator or the Master Educator. Employee’s final IMPACT score for the 2010-2011 school year was 180, which deemed her “Minimally Effective.” Likewise, her final IMPACT score for the 2011-2012 school year was 243, which deemed her “Minimally Effective.” Because Employee was rated “Minimally Effective” for two consecutive years, she was identified for termination.

Based on the foregoing, I find that Employee was member of the WTU at the time she was terminated, and was therefore subject to the terms of the CBA between WTU and Agency. I also find that OEA’s jurisdiction in this matter is limited by the terms of this CBA. Because Agency properly adhered to the IMPACT process, I conclude that Agency had sufficient ‘just cause’ to terminate Employee.

¹³ Tr. pg. 83.

¹⁴ Agency Exhibit 19.

ORDER

It is hereby **ORDERED** that Agency's action of terminating Employee is **UPHELD**.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE