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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0057-18
KRISTIAN DANIELS,)	
Employee)	
)	Date of Issuance: March 29, 2019
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
Agency)	
_____)	Arien P. Cannon, Esq.
)	Administrative Judge

Kristian Daniels, Employee, *Pro se*
Nicole C. Dillard, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Kristian Daniels (“Employee”) filed a Petition for Appeal on July 10, 2018, challenging the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to remove her from her position as an Educational Aide, pursuant to an IMPACT rating, effective July 27, 2018. Agency filed an Answer to Employee’s Petition for Appeal on August 29, 2019. I was assigned this matter on September 4, 2018.

A Prehearing Conference was convened in this matter on November 5, 2018. Thereafter, a Post Prehearing Conference Order was issued which set forth a briefing schedule for the parties to submit briefs on the issue. Employee submitted her response on December 6, 2018, while Agency submitted its response on December 20, 2018. Based on the submissions, I determined that an evidentiary hearing was not warranted. The record is now closed.

JURISDICTION

Jurisdiction of this Office is established in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency's action of removing Employee from her position as an Educational Aide pursuant to a "Minimally Effective" IMPACT rating during the 2016-2017 school year followed by a "Developing" IMPACT rating during the 2017-2018 school year under the IMPACT system was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ "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.

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.²

The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees. Agency conducts annual performance evaluations for all its employees. During the 2016-2017 and 2017-2018 school years, Agency utilized IMPACT as its evaluation system for all school-based employees. As part of each assessment cycle, employees have a conference with their respective administrator where they receive feedback based upon the educational aide standards rubric and discuss next steps for professional growth.

For the 2017-2018 school year, Employee's position was classified with Group 17 (Educational Aides) which was evaluated during two cycles: Cycle 1 and Cycle 3. Employee's conference for Cycle 1 was held on January 31, 2018.³ Employee's conference for Cycle 3 was held on June 4, 2018.⁴

The IMPACT evaluation system used for Employee and Group 17 consisted of three components, namely:

(1) Educational Aide Standards (EA)—comprised of 90% of the Group 17 employees' scores;

(2) Commitment to the School Community—comprised of 10% of Group 17 employees' scores;

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ See Agency Answer, Tab 3 (August 29, 2019).

⁴ *Id.*

(3) Core Professionalism— 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:

- (a) Attendance;
- (b) On-time arrival;
- (c) Compliance with policies and procedures; and
- (d) Respect.

Employees did not receive a weighted score for Core Professionalism; rather this was an area where employees could receive a deduction for lack of professionalism in one of these areas.

School-based personnel assessed through IMPACT ultimately receive a final IMPACT score at the end of the school year of either:

- 1) Highly Effective = 350-400 points.
- 2) Effective = 300-349 points; and
- 3) Developing = 250-299 points
- 4) Minimally Effective = 200-249 points
- 5) Ineffective = 100-199 points (immediate separation from school);

In the instant matter, Employee received a “Developing” rating for the 2016-2017 school year. During the 2017-2018 school year, Employee received an IMPACT score of 215, giving her an overall “Minimally Effective” rating. When an employee receives a “Developing” rating one year, followed by a “Minimally Effective” rating the next year, they are subject to separation due to a decline in performance from developing to significantly below expectations. IMPACT policy states that an employee whose final IMPACT rating declines between two (2) consecutive years from Developing to Minimally Effective is subject to separation. Because of Employee’s decline in her IMPACT rating, she was separated from service with DCPS.

Governing Authority

5-E DCMR §§1306.4 and 1306.5 gives the Superintendent authority to set procedures for evaluating Agency’s employees.⁵ 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 as follows:

⁵ 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.

1306.5 – 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.

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, the D.C. Code § 1-616.52(d) states, in pertinent part:

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 employees and whether or not 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 satisfactorily perform the duties of their position of employment.

Analysis

The D.C. Superior Court in *Shaibu v. District of Columbia Public Schools*⁶ explained that, substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The Court in *Shaibu* noted that, “it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal’s] evaluation

⁶ *Shaibu v. District of Columbia Public Schools*, Case No. 2012 CA 003606 P (January 29, 2013).

but that would support a better overall evaluation.”⁷ Additionally, it highlighted that “principals enjoy near total discretion in ranking their [employees]”⁸ when implementing performance evaluations.

Here, Employee does not challenge the procedures and protocol of the IMPACT evaluation system, rather she challenges the evaluation score given by her evaluator.⁹ Employee asserts that her IMPACT rating during her first year with DCPS, for the 2016-2017 school year, was undeserving.¹⁰ However, because her IMPACT rating for the 2016-2017 school year did not alone subject her to separation, this Office is not the appropriate forum for Employee’s grievance. In a letter issued by DCPS on June 23, 2017, regarding Employee’s 2016-2017 IMPACT rating, Employee was informed that she could file a Chancellor’s Appeal challenging her IMPACT score.¹¹

Regarding her 2017-2018 IMPACT rating that resulted in her separation, Employee states that there were issues in the classroom where she was assigned. She explained that the administration favored the teacher in the classroom over her since the teacher worked at the school longer.¹² Employee also stated that the teacher complained to administration without addressing the issues in the classroom with her first.¹³ Employee acknowledges that she does not “have hard evidence of [her] wrongful scoring.” Employee submits what appear to be screenshot text messages from a student’s mother to support her position that she maintained a professional relationship with students’ families. However, this submission alone is not enough to increase a rating of “Minimally Effective.”

As the Court noted in *Shaibu*, principals enjoy near total discretion in ranking their employees when implementing performance evaluations.¹⁴ I find that Agency properly followed its IMPACT procedures by holding a conference with Employee during Cycle 1 and Cycle 3, on January 31, 2018, and June 4, 2018, respectively. I further find that Agency’s decision to separate Employee from service after receiving a “Developing” rating followed by a “Minimally Effective” rating was supported by just cause. Accordingly, I must uphold Agency’s decision to remove Employee from her position.

⁷ *Id.* at 6.

⁸ *Shaibu*, (citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997)).

⁹ Employee’s Submission, p. 3 (December 6, 2018).

¹⁰ See Employee’s Prehearing Submission (November 5, 2018).

¹¹ Agency Answer, Tab 5 (August 29, 2018).

¹² Employee’s Prehearing Submission (November 5, 2018); See also Employee’s Post Prehearing Submission (December 6, 2018).

¹³ *Id.*

¹⁴ *Shaibu*, (citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997)).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's decision to separate Employee from her position is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge