

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:)	
)	OEA Matter No.: 1601-0241-12
LAUREN JONES,)	
Employee)	
)	Date of Issuance: May 4, 2015
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
)	Administrative Judge
<hr/>		
Olekanma Ekewe-Kauffman, Esq., Employee Representative		
Carl Turpin, Esq., Agency Representative		

AMENDED ERRATA AND ADDENDUM TO THE INITIAL DECISION¹

INTRODUCTION AND PROCEDURAL HISTORY

On September 7, 2012, Lauren Jones (“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 school psychologist. Employee was terminated because she received a rating of “Ineffective” under Agency’s IMPACT program during the 2011-2012 school year.² Employee’s termination was effective on August 10, 2012.

This matter was assigned to me in December of 2013. On January 27, 2014, I issued an held a Prehearing Conference for the purpose of assessing the parties’ arguments. During the conference, it was determined that an Evidentiary Hearing was warranted based on the arguments presented by the parties. An Evidentiary Hearing was held on April 21, 2014 and August 4, 2014. I subsequently ordered the parties to submit written closing arguments. Both parties responded to the Order. The record is now closed.

¹ On April 27, 2015, Employee requested, via email, that the following corrections be made to this Initial Decision: 1) “Wheaton Education Center” should be corrected to read “Wheatley Education Center” on page 10. 2) Employee’s statement corrected to read “Of course, try to get the report done as well.” on page 12.

² IMPACT is the effectiveness assessment system used by the D.C. Public School System to rate the performance of school-based personnel. May 4, 2015 is the official date of publication for the purpose of filing a Petition for Review with appeal with OEA’s Board or D.C. Superior Court.

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.

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

Dr. Jamila Mitchell Murray Tr. pgs. 16-192

Dr. Jamila Mitchell Murray ("Murray") has worked as a Psychology Program Manager for DCPS since August of 2008. Her duties include supervising school psychologists, and developing and monitoring programs to address any needs that are related to psychology within DCPS. Murray was Employee's supervisor from 2008 until the time she was terminated. At the beginning of the 2011-2012 school year, school psychologists were provided with professional development training over a four day period. One of the training sessions was dedicated to IMPACT training, which is the performance evaluation process for DCPS. Employee's IMPACT Group (12) was the Related-Services Group. During the training, employees in Group 12 reviewed each IMPACT category as it related to school psychologists, and were given the

standards by which they would be evaluated during the course of the school year. In addition, all documents related to the IMPACT system were given to Group 12 employees on a flash drive.

Group 12 psychologists (“providers”) were evaluated on student assessments, interpretation of data, and how their data supported a student’s eligibility criteria. Each psychologist was required to upload their assessments into the Special Education Data System (SEDS), which is a computer process that collects data for all students who are referred to special education. The assessments are required to be uploaded to SEDS within forty-five (45) days from the date of consent. Murray stated that school psychologists are required to meet with a supervisor once a month for a case conference. Case conferences occur when a small group of school psychologists and their peers meet to discuss student cases and any new processes or relevant concepts in psychology.

The Operations Team for related services employees reviews assessments that were uploaded into SEDS, and prints the documents for review by the program managers. The managers then evaluate the provider’s assessments, and requests feedback from school principals. The feedback and assessment reviews were addressed in some areas of the employee’s IMPACT evaluation.

IMPACT Assessment, 2011-2012 (Cycle 1)

Murray evaluated Employee during Cycle 1 of the 2011-2012 school year, and had a post-evaluation conference with her on February 2, 2012. Employee’s overall Related Service Provider Standards (“RSP”) score was 2.12 and her Core Professionalism score was -10. Each category was rated from a score of 1 to 4, with 4 being the highest possible score an employee could receive.

1. **RSP A1—Use of Assessment Battery.** This component looks at the provider’s selection of assessments, their explanation of why the student was referred, discussion related to the assessments they the provider chose, and what they determined to be the student’s suspected disability. Employee received a score of 2 for RSPA1. Murray stated that Employee did not provide a clear explanation of why she was assessing a particular student, and that she did not include the educational assessment in the ‘test administered’ area.
2. **RSP A2—Interpretation of Assessment Data.** A measure of all the data that is provided in the report regarding the assessment. Employee received a score of 1 for this component. Murray stated that Employee did not provide all of the information that was requested, such as background data, school history, and medical information. In addition, many of the assessment reports that Employee provided were missing complete sections.
3. **RSP A3—Report Conclusions and Format.** This component looks at the overall conclusion of the assessment, as well as the recommendations given to the parents and teachers. Employee received a score of 1 for RSPA3. According to Murray, three out

- of the four reports that were reviewed had no conclusion sections at all, and the report that was mostly completed had a page missing from the section.
4. **RSP SD1—Focus on Session Goals.** A measure of service delivery areas in which school psychologists do not provide services. Employee was not required to be evaluated in this area.
 5. **RSP SD2—Student Engagement.** Employee was not required to be evaluated in this area.
 6. **RSP SD3—Clinical Standards.** Measures the extent to which a provider follows the overall principles and practices of their profession. Employee received a score of 2 for RSPSD3 because she was not following the ethical standards and practices that were identified, including increasing sources of reference, and reaching out to other staff members.
 7. **RSP C1—Collaboration with School Staff.** Employee received a score of 3.
 8. **RSP C2—Collaboration with Families.** Employee received a score of 3.
 9. **RSP C3—Problem Solving.** Employee received a score of 4. Murray noted that Employee submitted a total of eighty-one (81) entries in the Provider Management Application (“PMA”), which is a computerized system that captures data from the providers regarding school collaboration, and other daily functions of the school psychologists.
 10. **RSP D1—Documentation of Service Delivery and/or Assessment Completion.** This component measures the psychologists’ assessment completion and timeliness. Employee received a score of 1. According to Murray, at the time Employee’s reports were pulled for review, a minimum of five reports had two or less pages uploaded. This meant that Employee’s reports were considered incomplete. If there is an error in the SEDS program, every provider is expected to review their reports for completeness, and ensure that the whole report has been uploaded and faxed into the system. If a provider is unable to upload a report into SEDS, they are required to email the report to a program manager and a school official (usually the Special Education Coordinator).

Core Professionalism (“CP”) is a measure of on-time arrival, policies and procedures, and respect to all stakeholders within DCPS. CP is rated as: 1) Meets Standard; 2) Slightly Below Standard; or 3) Significantly Below Standard. An employee can receive a deduction of ten (10) or twenty (20) points for CP if they are rated as Slightly Below Standard or Significantly Below Standard.

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. Murray stated that she requested all providers to submit their needs assessment for a response to intervention within the school system by a specified date. Employee did not submit this information at the time her IMPACT evaluation was completed during Cycle 1 of the 2011-2012 school year.
4. **CP4—Respect.** Employee received a Meets Standard.

After completing the evaluation for Cycle 1, Murray held a post-evaluation conference wherein she recommended that Employee proofread her reports for errors and completeness. Murray also suggested that Employee should review the documents that were uploaded into SEDS to make sure that all necessary information was captured in the system. Employee was accompanied by her union representative during the conference. The director of the IMPACT Operations Team was also in attendance. Murray stated that this was unusual, because post-evaluation conferences are normally held with just the program manager and the provider in attendance. After the post-evaluation conference is complete, the provider's assessment is uploaded online for access and review. If a provider received a lower score than usual, a program manager will review the report and address any areas of concern.

IMPACT Assessment, 2011-2012 (Cycle 3)

Murray completed Employee's IMPACT assessment for Cycle 3 of the 2011-2012 school year, and held a post-evaluation conference with her on June 14, 2012. Employee received an overall RSP score of 1.3, and received a deduction of twenty (20) points for CP.

1. **RSP A1—Use of Assessment Battery.** Employee received a score of 1. Murray stated that all of the assessments that Employee uploaded into SEDS only contained one page, and were therefore considered incomplete. A normal assessment contains approximately 15-22 pages. According to Murray, this issue was discussed with Employee on several occasions.
2. **RSP A2—Interpretation of Assessment Data.** Employee received a score of 1.
3. **RSP A3—Report Conclusions and Format.** Employee received a score of 1.
4. **RSP SD1—Focus on Session Goals.** Employee was not evaluated on this component.
5. **RSP SD2—Student Engagement.** Employee was not required to be evaluated in this area.
6. **RSP SD3—Clinical Standards.** Employee received a score of 2.
7. **RSP C1—Collaboration with School Staff.** Employee received a score of 1. Murray noted that she received feedback from two

schools, indicating that Employee had difficulty getting along with other staff members, and that there was no training documentation uploaded in the PMA.

8. **RSP C2—Collaboration with Families.** Employee received a score of 2. Employee reported thirty-three (33) family collaborations; however, there was no family outreach documentation uploaded into SEDS. Murray stated that Employee did receive positive feedback from families, but there were several times when student reports were not available during the family meetings.
9. **RSP C3—Problem Solving.** Employee received a score of 2.
10. **RSP D1—Documentation of Service Delivery and/or Assessment Completion.** Employee received a score of 1.

Employee received a deduction of twenty points for Core Professionalism during Cycle 3 of the 2011-2012 school year.

1. **CP1—Attendance.** Employee received a Significantly Below Standard. Murray indicated that Employee was absent from work without prior notification on April 27, 2012 and May 23, 2012.
2. **CP2—On-Time arrival.** Employee received a Meets Standard.
3. **CP3—Policies and Procedures.** Employee received a Significantly Below Standard. Employee failed to upload the needs assessments in SEDS, therefore violating the guidelines and policies for providers.
4. **CP4—Respect.** Employee received a Meets Standard.

Employee and her union representative met with Murray during the June 15, 2012 post-evaluation conference. Murray reviewed Employee's IMPACT evaluation, and provided Employee with her comments. Murray stated that Employee expressed concern that some of the training she completed was not uploaded into SEDS. Murray told Employee that she would consider the information if it was submitted by 3:00 p.m. on June 15, 2012; however, Employee did not submit any documents to Murray by the specified time.

On cross examination, Murray stated that all school psychologists were given the psychological evaluation guide in August of each school year. All psychologists were also informed that, if they were not in attendance when the guidebook was issued, they were still responsible for obtaining all materials from their program manager. All psychologists received IMPACT training over the course of a half day at the beginning of the school year.

Murray testified that she frequently communicated with Employee during the course of the 2011-2012 school year via email and phone. She also met with Employee regularly for case conferences. According to Murray, Employee received SEDS training at the start of the school year. Psychologists do not need an internet connection to upload documents into SEDS.

Documents can be submitted with the use of a fax machine, which each school has. If the fax machine is not working, providers are responsible for submitting their complete reports to both the program manager and the special education coordinator to ensure that all documentation has been properly noted and submitted in a timely manner. Murray stated that Employee did not submit complete reports because if she had, a copy of the full report would have been saved on Murray's computer.

The SEDS system is not capable of closing out a provider's report because each assessment has to be manually closed. The system will accept any document that is faxed in, including a one page report. SEDS does not have the capability of determining how many pages a particular assessment should have, as it is not that advanced. Murray stated that all providers should be given prior notice for meetings with the parents of students who receive special education services. Meeting days are identified in SEDS and the providers are expected to be available on those days. Employee, who was a required party a meetings, failed to give advance notice that she would not be in attendance on several occasions.

According to Murray, there were a number of assessments submitted by Employee that only contained one page. Murray sent Employee a list of the student's names and asked for status updates and an explanation as to why the assessments were incomplete. Murray assumed that Employee was intentionally uploading only one page of her assessments into SEDS so that it would appear to be submitted in a timely manner. When a report is closed out, the provider is representing that the entire report is closed. However, providers can go back and fax in additional documents with a separate coversheet, therefore creating multiple uploads. Employee was made aware that uploading incomplete assessments, to make it appear as though they were timely, would adversely affect her IMPACT scores.

Murray stated that there was not a significant change in Employee's work performance from the 2010-2011 school year to the 2011-2012 school year. However, Employee's performance declined in comparison to previous school years, as there were several issues that were identified by the school representatives throughout the year. Murray makes recommendations for all areas of the assessments and what should be addressed in each report.

On re-direct, Murray stated that there was an investigation made concerning Employee completing reports. Once the Operations Team identified that Employee only submitted one page several reports, Murray and her then supervisor, Dr. Erica Fener, contacted the IMPACT office to investigate the matter. The issue was raised again with Dr. Fields, and Employee was required to submit full reports within a certain time period.

Michelle Hudacsko Tr. pgs. 192-258

Michelle Hudacsko ("Hudacsko") is the Deputy Chief of IMPACT for DCPS. She is responsible for overseeing the implementation of IMPACT, which includes calculating final scores, special education metrics, value-added metrics, and ensuring a normed interpretation for the teaching and learning framework. Hudacsko's team consists of approximately sixty (60) members. IMPACT was authorized pursuant to the D.C. Omnibus Authorization Act, as well as the D.C. Code. Under IMPACT, each employee is placed into a specific group based on the

unique characteristics of their role. There are a total of twenty (20) IMPACT groups. Each group also has a separate IMPACT Guidebook, which details the measures by which the particular group will be assessed. The Guidebook is printed in hard copy, and is made available on a website for all employees to access at any time.

Group 12 employees are assessed on two different components. The Related Service Provider Standard (“RSP”) is broken into four domains, which have sub-standards associated with them. Assessment Timeliness (“AT”) is the second component, and is a special education metric. All employees are evaluated on Core Professionalism (“CP”), which is a measure of basic professional requirements that are expected of all employees. RSP accounts for 90% of a provider’s final IMPACT score, and AT accounts for 10% of the score. CP deductions, if any, are taken at the end of two cycles for employees in Group 12.

Final IMPACT scores are made against a scale that ranges from 100 points to 400 points. A score of 100-174 is considered ineffective performance. Employees who receive this rating are subject to separation from the school system. A score of 175-249 signifies performance that is minimally effective. Individuals who receive this rating have a salary step hold. If an employee is deemed minimally effective for two years, then they are subject to termination. A score of 250-349 is considered effective, and is deemed acceptable performance. A score of 350-400 is highly effective. Individuals who receive this score receive pay-for-performance bonuses if they are part of the Washington Teachers Union. Hudacsko testified that, based on a review of the documents she reviewed, all IMPACT processes were followed in Employee’s case.

On cross examination, Hudacsko stated that the IMPACT database would record any possible instances of a process violation. Process violations occur when an assessment occurred outside of an evaluation deadline, or if an employee’s scores were not inputted for a particular assessment. Letters of termination are sent out by certified mail, and are also available on the IMPACT database. Employee’s letter of termination was dated on July 27, 2012, with an effective date of August 10, 2012. According to Hudacsko, a copy of Employee’s letter would have been available on the IMPACT database on July 27, 2012. Hudacsko recalled that Employee received a final IMPACT score of effective during the 2009-2010 and the 2010-2011 school years. Hudacsko did not question the effectiveness of Employee’s 2011-2012 school year because she believed that the evidence supported the score.

Hudacsko stated that all of the assessors are trained to use the IMPACT rubric with fidelity after gathering evidence on a provider over the course of a cycle. The assessor is tasked with determining the provider’s level of effectiveness that best describes the totality of that evidence.

Kacy Lawrence Tr. pgs. 261-272³

Kacy Lawrence (“Lawrence”) is the manager of data and systems for the Office of Specialized Instruction and began working for Agency in January of 2012. She is responsible for overseeing the special education data system. Lawrence was also tasked with creating the

³ Lawrence was called as a rebuttal witness on the second day of the hearing.

IMPACT Assessment Spreadsheet. The spreadsheet tracks reports that were uploaded into each student's records. The categories include the student's universal identification number, the student's name, and the request date. The request date is a system-generated date on the day the case manager for the student orders the assessment. The due date for the assessment is calculated forty-five (45) days from the request date. When a Related Service Provider goes into SEDS to complete the assessment and input the results, they have the ability to type in the date on which they claim to have completed the report. The spreadsheet also included a coversheet date, which is used to fax in the assessment results and also contains a unique barcode. The date received category is the day that the system received the cover sheet and any documents included with it. It is the case manager's duty to select the assessment and assign the provider. The number of pages category reflects the number of pages received after the cover sheet. SEDS is the system of record for all student information.

On cross examination, Lawrence stated that if pages were faxed into SEDS without a coversheet, the document would not be linked to a student's account. Because SEDS is the system of record, it contains each student's historical data, whether they're enrolled or not. Lawrence was not aware of any technical issues with SEDS during 2010 or 2011. If a provider had problems faxing in documents, they could call the help desk for assistance.

Employee's Case in Chief

Deborah Lahre-Joyner Tr. pgs. 259-296

Deborah Lahre-Joyner ("Lahre-Joyner") is a school psychologist for DCPS and worked with Employee prior to her termination. During the 2011-2012 school year, Lahre-Joyner worked at Stuart-Hobson, Janney, and Spingarn. She recalled observing Employee collaborate with other psychologists at Webb Wheatley and stated that Employee was one of the leaders for the Anti-Bullying Task Force. Lahre-Joyner was not aware of any issues that Employee had with other members of the school staff. According to Lahre-Joyner, Employee had a very heavy case load. If a psychologist needed help with a case, other providers could volunteer to assist with the work.

On cross examination, Lahre-Joyner stated that if a provider missed a case conference, they would be required to make it up, if possible. She did not formally evaluate Employee and was never assigned to review provider reports, as that was the program manager's duty.

On redirect, Lahre-Joyner testified that she had problems uploading assessments by fax. In those instances, she was able to cut and paste the entire report into SEDS in order to close the report, and then try to fax it in at a later time.

Dr. Natalie Boyd Tr. pgs. 9-31⁴

Dr. Natalie Boyd ("Boyd") worked for DCPS as school psychologist until 2012, when she retired. Boyd met Employee when they were applying for a summer school job. Employee assumed Boyd's caseload after Boyd moved to another school in 1999. She did not have an

⁴ A second day of testimony was held on August 4, 2014.

opportunity to observe Employee's work, but would speak on the phone with Employee about difficult cases. According to Boyd, conducting an assessment includes gathering background information, referral questions, conducting interviews and observing students. Assessors must also talk to the teachers and parents when selecting the appropriate instruments to treat a child. Assessors have the discretion to choose the instrument(s) they deem appropriate for treatment.

Boyd was at the meeting when IMPACT was first introduced. She opined IMPACT to be a flawed program that generated flawed data. Boyd believed that Employee was an excellent psychologist because she is compassionate, knowledgeable and was a hard worker.

On cross examination, Boyd stated that she never worked directly with Employee and never evaluated her work performance or assessments. Under IMPACT, school psychologists were required to prepare and submit assessments within forty-five days. According to Boyd, there were unique situations where a provider would have a very difficult case that wasn't able to be completed within the prescribed time period.

On redirect, Boyd testified that assessments may not be completed in a timely manner if the provider could not get in touch with the parents or obtain the necessary signatures. Sometimes a provider may need an instrument that was not available. Providers are sometimes faced with the difficult choice of sticking to a timeline or putting the needs of a child first.

Dr. Lauren Jones Tr. pgs. 31-249

Dr. Lauren Jones ("Employee") worked as school psychologist at Wheatley Education Center ("Wheatley") and Watkins Elementary School ("Watkins") during the 2011-2012 school year. Her duties included conducting student assessments to determine whether or not a student was eligible for special education services. Employee also conducted re-evaluations, which occur every three years after a student is deemed eligible for services. She conducted over twenty (20) assessments during the 2011-2012 school year. During the 2009-2010 school year, Employee received an IMPACT rating of highly effective. Employee was not very concerned about her IMPACT ratings because she was consistently deemed as a high achiever. Employee stated that she was not rated correctly during the 2011-2012 school year because of a suspected computer glitch and because the record reflects that she was rated as either highly effective or effective during the previous two school years.

During Cycle 1 of the 2011-2012 school year, Employee requested that her union representative be present at her post-evaluation conference because of the sharp decline in her scores. Employee stated that each of the evaluations she submitted during the 2011-2012 school year was faxed into SEDs; however, many of the school psychologists had problems with the system. As an alternative, providers were able to cut and paste their assessments into the system for submission. Employee discussed the issue with Dr. Mitchell, who told Employee to email the assessments to her. Instead, Employee tried to hand-deliver the assessments to Dr. Mitchell, who stated that she wouldn't accept the documents unless they were faxed or emailed.

A typical work day for Employee included checking emails, preparing for meetings, and reviewing her student's testing schedules. Employee then collected and recorded the data, and would write reports at the end of the day. Employee also disagreed with Dr. Mitchell's evaluation of her assessments. For example, Dr. Mitchell stated that one of Employee's evaluations contained incorrect assessment tools, an incorrect analysis, and also failed to include a summary and conclusion section in Employee's report.

Employee disagreed with the IMPACT scores she received during Cycle 1 of the 2011-2012 school year because she stated that she consistently used the correct assessment measures to evaluate students and interacted with parents before submitting her reports. In addition, Employee stated that one of the assessments that Dr. Mitchell reviewed during Cycle 1 was faxed in its entirety; however, only one page was received in SEDS. Employee admitted that on a few occasions, she failed to include a conclusion in the assessments because of her heavy workload.

On cross examination, Employee testified that assignments for assessments are received from either a special education teacher or a program manager. Employee stated the following regarding the time period within which providers are required to submit reports:

"...within 45 days a child has to be tested and as close as possible to that date you have to have a report in...there were a lot of different discussions in terms of faxing things in, how to proceed...the 45 days is a federal law and it varies. D.C. Public schools has a different set of criteria. Forty-five days could be 45 school days. It could be 45 calendar days....my understanding at the...beginning of school year 2011-2012 was that psychologists had to have the testing done, the assessment done by that 45 day deadline and I always made sure I did that and I always strived to have a whole full report done by that 45 days."⁵

Dr. Mitchell told Employee that she should complete her reports within forty-five days. However, Employee stated that Dr. Mitchell did not delegate Employee's workload to other providers when she was out on sick leave. Employee further stated that cut-and-paste could be used to submit reports into SEDS; however, that method caused problems because of the way in which the documents were formatted in the system.

Employee testified that she received the IMPACT Guidebook for Group 12 members in electronic form, but did not receive a physical copy. Dr. Mitchell evaluated Employee a total of two times during the 2011-2012 school year, and held a post evaluation conference with Employee after each observation. Employee also received a copy of each evaluation in the mail and could access the documents online.

⁵ Tr. pgs. 161-162.

Employee did not focus a lot on how assessment timeliness was handled because it was a complicated issue. Sometimes, Employee would only submit one page of a report to the special education coordinator because the school was concerned about being in compliance with the forty-five day time limit. Employee conceded that the assessment for H.J.⁶ was not completed and submitted within the required time limit. According to Employee, the assessment for R.J. was completed on time, but a few pages were missing from the report, even though Employee faxed in all of the pages, but did so at different times. The assessment for J.P. was complicated; therefore, Employee only faxed in two pages of the report on the required deadline. Employee stated that she faxed in the remaining pages a few days after the deadline. Regarding the time limit for submitting reports, Employee stated that:

“We’ve got to keep within that timeline. D.C. Public Schools is going to be in trouble if we don’t get all of the children assessed within 45 days. Of course, try to get the report done as well. If you can’t, given the heavy caseload, please give me assistance so I can do that if you really want it to be done within 45 days. I need assistance. And Dr. Mitchell said there was no staff available to help me...So that was the position I was put in to try and just make sure I got the assessments done in 45 days and as much of the reports that I could get written by that time.”⁷

Employee stated that she received a deduction of ten (10) points for CP1 (Attendance) during Cycle 3 because she did not turn in a survey on time. She did not agree with Dr. Mitchell’s finding that she had unexcused absences and that she was very punctual and attended all meetings and case conferences. She did not ever recall being scheduled to attend a meeting and not showing up. However, Employee acknowledged that Dr. Mitchell emailed her about the issue of not uploading documents into SEDS.

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,

⁶ The names for students have been abbreviated for the purpose of protecting the identities of the minors.

⁷ Tr. pg. 187.

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 2011-2012 school year, there were twenty-six (26) IMPACT grouping of DCPS employees. Employee's position, Related Service Provider, was within Group 12. 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 14th. During an assessment cycle, employees in Group 12 were observed two (2) times during the course of the year. Each observation was conducted by program manager. In this case, Employee was assessed on the following IMPACT components:

1. **Related Service Provider Standards ("RSP")**—a measure of the Related Service Provider's expertise. This component accounted for 90% of the employee's final IMPACT score.
2. **Assessment Timeliness**—a measure of the extent to which the RSP completed the related service assessments for the students on his or her caseload within the timeframe, and in accordance with the rules established by the DCPS Office of Specialized Education. This component accounted for 10% of the employee's final IMPACT score.
3. **Core Professionalism**—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.

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 two (2) times during 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 Dr. Mitchell. Employee's final IMPACT score for the 2011-2012 school year was 138, which deemed her "Ineffective." Because Employee was rated "Ineffective," she was identified for termination. Employee was also given proper written notice of her termination.

Employee argues that Agency failed to prove by a preponderance of the evidence that she was terminated for cause. Employee also disputes Dr. Mitchell's evaluations of her assessments, and believes that the scores she received during Cycle 1 and Cycle 3 were unjustified. In addition, Employee notes that she received superior IMPACT scores in previous years.

It should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*⁸ held that substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The court held 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 but that would support a better overall evaluation.”⁹ The court further stated that if the factual basis of the “principal’s evaluation were true, the evaluation was supported by substantial evidence.” In addition, the Court in *Shaibu* held that “principals enjoy near total discretion in ranking their teachers”¹⁰ when implementing performance evaluations. The Court denied the employee’s petition, finding that the “factual statements were far more specific than [the employee’s] characterization suggests, and none of the evidence proffered to OEA by [the employee] directly controverted [the principal’s] specific factual bases for his evaluation of [the employee]....”

In this case, I find that Dr. Mitchell offered credible and consistent testimony with respect to the scores that she awarded Employee during Cycle 1 and Cycle 3 of the 2011-2012 school year. I further find that Employee failed to submit completed assessments in a timely manner, as required by IMPACT. Each provider was responsible for submitting complete reports to both the program manager and the special education coordinator if there was an issue uploading documents into SEDS. I find that Dr. Mitchell provided truthful testimony regarding the incompleteness and/or lateness of the assessments that she reviewed. This conclusion is corroborated by the testimony of Murray, who stated that there was an investigation made concerning Employee completing reports. Once the Operations Team identified that Employee only submitted one page several reports, Murray and her then supervisor, Dr. Erica Fener, contacted the IMPACT office to investigate the matter.

This Office has consistently held that the primary responsibility for managing and disciplining Agency’s work force is a matter entrusted to the Agency, not to OEA.¹¹ Because performance evaluations are “subjective and individualized in nature,” this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if “managerial discretion has been legitimately invoked and properly exercised.”¹² Thus, I find that it was within Dr. Mitchell’s discretion to rate Employee’s performance.

⁸ Case No. 2012 CA 003606 P (January 29, 2013).

⁹ *Id.* at 6.

¹⁰ *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

¹¹ See *Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); see also *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

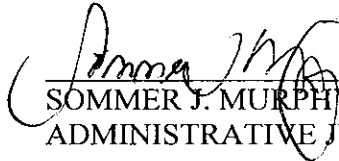
¹² See also *American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions). See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

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.

ORDER

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

FOR THE OFFICE:


SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

NOTICE OF APPEALS RIGHTS

This is an Initial Decision that will become a final decision of the Office of Employee Appeals unless either party to this proceeding files a Petition for Review with the office. A Petition for Review must be filed within thirty-five (35) calendar days, including holidays and weekends, of the issuance date of the Initial Decision in the case.

All Petitions for Review must set forth objections to the Initial Decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;
2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;
3. The finding of the presiding official are not based on substantial evidence; or
4. The Initial Decision did not address all the issues of law and fact properly raised in the appeal.

All Petitions for Review should be supported by references to applicable laws or regulations and make specific reference to the record. The Petition for Review, containing a certificate of service, must be filed with Administrative Assistant, D.C. Office of Employee Appeals, 1100 4th St., SW., Suite 620E, Washington, D.C. 20024. Four (4) copies of the Petition for Review must be filed. Parties wishing to respond to a Petition for Review may file their response within thirty-five (35) calendar days, including holidays and weekends, after the filing of the Petition for Review.

Instead of filing a Petition for Review with the Office, either party may file a Petition for Review in 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.

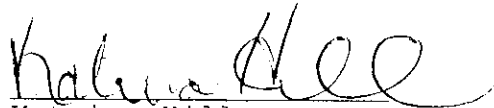
CERTIFICATE OF SERVICE

I certify that the attached **INITIAL DECISION** was sent by regular mail this day to:

Lauren Jones
4635 49th Street, NW
Washington, DC 20016

Carl Turpin, Esq.
Assistant Attorney General
Office of General Counsel
1200 First St., NE, 10th Floor
Washington, DC 20002

Olekanma Ekekwe-Kauffman, Esq.
2426 L'Enfant Square, SE Suite 100
Washington, DC 20020



Katrina Hill
Clerk

May 4, 2015
Date