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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LAKIA ROBERTS,)	
Employee)	OEA Matter No. 1601-0200-11
)	
v.)	Date of Issuance: January 6, 2015
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Lakia Roberts, Employee <i>Pro-Se</i>)	
Sara White, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Lakia Roberts (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to terminate her employment effective July 29, 2011. Employee last position of record with DCPS was Business Manager at Kramer Elementary School. Employee was terminated for receiving an “Ineffective” rating under the DC Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2010/2011 school year.

A prehearing conference was originally scheduled to be held on August 6, 2013. However, Employee asked that the date be continued so that she may attempt to find legal counsel. The request was granted and the prehearing conference was eventually held on September 17, 2014. After considering the parties opposing viewpoints during this conference, I determined that it was necessary to hold an evidentiary hearing in this matter. Accordingly, after granting multiple extensions of time due to Ms. White being ill, an evidentiary hearing was eventually held on March 6, 2014. Thereafter, on May 23, 2014, the parties were notified that the transcripts from the Evidentiary Hearing were available. The Order also provided the parties

with a schedule for submitting their written closing arguments. Both parties have submitted their written closing arguments. The record is closed.

JURISDICTION

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to an "Ineffective" performance rating under the IMPACT system was done in accordance with all applicable laws, rules, or regulations.

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.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of Employee's appeal process with this Office.

SUMMARY OF THE TESTIMONY

Principal Kwamme Simmons ("Simmons") Transcript ("Tr.") pages 13-38

Simmons testified in relevant part that he is employed by DCPS as the principal at Kramer Middle School. He has worked there for four years as the principal. He knew the Employee (Roberts) as the former business manager for Kramer. During his tenure, he supervised the employee. Part of his responsibility as the principal was to evaluate his employees, including Employee based on the IMPACT system. Simmons testified that IMPACT is a formal evaluation system where each employee is evaluated twice a year: cycle one and

cycle three¹. Simmons testified that he evaluated her twice and had two post-assessment conferences during the 2010-2011 year. Based on the evaluation he rated her at both cycles as “Ineffective”.

Overall, Simmons gave Employee a two out of four rating for Core Job Functions because she did not demonstrate a level of effectiveness during cycle one. Each employee is evaluated on the following categories of the employee’s Core Job Functions: Customer Service, Communication, Adaptability, Data, Supply Management, Budget and Procurement, Support of Local Initiatives, Support of the Special Education English Language Learner Programs, and High Expectations. For Customer Service, he gave Employee a two rating because she did not respond often enough to central office or administrative requests. In Communications, Simmons gave Employee a two because she rarely communicated with the entire staff. For Adaptability, Simmons gave Employee a one because Employee did not demonstrate an ability to move quickly inside the school setting, which Simmons considered to be a prerequisite to be effective. In Data, Simmons gave Employee a two because she rarely communicated any discrepancies that took place, and she did not catch the errors that she should have. For Supply Management, Simmons gave Employee a one because she was not demonstrating any evidence of tracking the school property. For Budget and Procurement, Simmons gave Employee a two because she did not show enough understanding of the budget guidelines, which made it more difficult for Simmons to do his job. For Support of the Local School Initiatives Simmons gave Employee a four because of her strong connections in the community. For instance, she reached out to the Redskins and took the students to see them that day. For Support of the Special Education English Language Learner Programs Simmons gave Employee a two because she did not demonstrate any evidence that she was working with that population in any manner. Ordinarily, this is a difficult area for anyone who is not a teacher; however, she could have done more to support this program by conversing with the Office of Special Education to talk about what kinds of equipment they may need. For High Expectations, Simmons gave Employee a one because she did not meet the expectations that he set forth for her.

The other part of the evaluation process is Core Professionalism. The following categories fit into Core Professionalism that the evaluator looks at: Attendance, On-Time Arrival, Policies and Procedures, and Respect. For Attendance, she met the standards. For On-Time Arrival, she was significantly below the standards because she struggled with taking care of her child and going to work on time consistently. The policy for attendance was for people to sign in and tally the time that each employee arrived in order for Simmons to track the number of late arrivals. Once the employee reached three late arrivals, Simmons was notified. Once Simmons was notified, he talked to each employee about their attendance. For Policies and Procedures, she met the standards because she always followed procedure in terms of dressing professionally, communicating clearly and cordially with staff and was respectful to staff members. For Respect, she met the standards because she was an easy going person and easy to talk to.

The cycle three² evaluation was completed on June 15, 2011. For the Core Professionalism standard Attendance, Employee as rated as meet standards. For On-Time Arrival

¹ See Agency Exhibit No. 1

Simmons marked Employee significantly below the standards because she could not arrive on time. The protocol for employees arriving late required that they notify him directly. At that juncture, the late arrival would be deemed an emergency and left up to Simmons discretion to excuse the tardiness. Even though all of the late arrivals were marked excused, she was late too many times. For Policies and Procedures, Simmons marked her as slightly below the standards because of a situation where she brought in people in through the auditorium without receiving Simmons' approval which created a disruption in the school. During the post-conferences, Simmons and the employees go through the self-assessments employees made of themselves based on the same rubric Simmons uses to rate the employees.

Kathryn McMahon-Klosterman ("McMahon") Tr. Pages 39- 62

McMahon testified in relevant part that she is employed by DCPS as the Director of IMPACT operations. Prior to that, she worked as a coordinator in the IMPACT team from 2010-11. McMahon testified that IMPACT is a tool to evaluate school based employees of DCPS. Furthermore, it allows employees, including Employee herein, to assess their progress to determine where they need to improve upon. Each employee, including Employee, is handed a hard copy of the guidebook and they were directed online to view the standards required to accomplish any given level on a scale from one to four. One is the lowest and four is the highest. For the categories of core professionalism, the ratings are given based on the following: meeting expectation, slightly below standard, or significantly below standard. A final score is calculated by taking the standards for each component, adding them together, and multiplying it by the weight in the pie chart. The weight varies for different components by each group. Thereupon the scores are averaged together and then taken away by any core professionalism deductions. The employee is then notified by receiving a hard copy of the final report and given an email regarding the scores being available through the database. After retrieving the final rating, the employees can appeal through the following avenues: chancellor's appeal process, OEA, and talking to their union. On both reports, cycle one and three³, Ms. Roberts received an Ineffective rating. In order for an employee to be minimally effective, it would have had to obtain a 175. She received a 173 on her first rating and a 153 on her second rating. Pursuant to procedures of IMPACT, the employees, including Employee, are separated from the system at the close of the year as consequence of the final IMPACT Ineffective rating.

Jonathan T. Battle ("Battle") Tr. 63- 70

Battle testified in part that he is employed by DCPS as security for the school. He was Employee's coworker and former romantic interest at one point. Now he is friends with Employee. He worked there from April to the middle of May 2011 when he left. He did not work there during summer 2011. The occasions where Battle saw her were in the supply room and collecting tickets dealing with prom related things. Battle suggested that Employee worked in unsanitary conditions five days a week from 9:00-4:00 pm where the rooms were dirty and dusty. Furthermore, the rooms were replete with rodents and insects. Occasionally, Battle went into the storage room and continuously coughed and felt like there was something stuck in his throat.

² See Agency Exhibit No. 2

³ See Agency Exhibit No. 4

Lakia Roberts ("Employee") Tr. 71-77

Employee testified in relevant part that she was puzzled by the Ineffective rating even though Simmons admitted that he had no proof that Employee performed the Core Job functions. She believed that Simmons unfairly rated her. To begin with, in Communications he rated her a two, yet she believed she communicated well with the staff, parents, and central office. Moreover, she never received any complaints about communications. In Adaptability, Simmons gave her a one. However, she felt that she adapted very well to her environment, especially during high-stress times such as prom and graduation. For Data, Simmons gave her a two because she did not track attendance. However, there was no need to track the attendance because the administrative assistant did that for him. Additionally, Employee promptly put all the attendance into PeopleSoft. For Supply Management, Simmons rated her as a one because of the lack of tracking of all school property. For Budget and Procurement, Simmons rated her as a two because of her lack of comprehension of the budget guidelines. However, the administrator did not have her do anything with the budget except help out in the office. She attended budget trainings, but did not work with it that much because the budget was already set before she got there. Furthermore, she was still learning how to do tasks regarding the budget during her second year at Kramer. For Support of the Special Education English Language Learners Program, Simmons gave her a two because there was no evidence that she supported his department. However, that is not true because she was the one who ordered all the supplies that the special education team asked her to order. Additionally, she faxed and copied papers for the special education team members. For High Expectations, Simmons gave her a one because she did not promote high expectation for the students. However, he did not point out that she rewarded several students who got a good report. Furthermore, she treated them to lunch on Fridays to promote good behavior and class attendance. For On-Time Arrival, Simmons rated her significantly below the standard because she could not make it on time. However, she told him at the inception of the school year about her son and the school not opening until 8:45. Thus, she only had a fifteen minute window to travel from her son's school to her job site at Kramer. Most of the time, she arrived to work on time. However, Kramer did not have adequate parking in its parking lot. Therefore, she spent a lot of time looking for a parking space so she would not get a ticket. For Policies and Procedures, he marked her below the standard because she did not follow procedure. However, she believes she followed all policies and procedures pertinent to DCPS.

The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during 2010-2011 school year. During the 2009-2010 school year, Agency utilized IMPACT as its evaluation system for all school-based employees. The IMPACT system was designed to provide specific feedback to employees to identify areas of strength, as well as areas in which improvement was needed.

With the IMPACT system, all staff received written feedback regarding their evaluation, as well as 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 am, the day after the end of each cycle. For the 2009-2010 school year, if employees had any issues or

concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. At the close of the school year, all employees received an email indicating that their final scores were available online. Additionally, a hard copy of the report was mailed to the employees' home address on file.

Prior to instituting IMPACT, all principals and assistant principals at DCPS were provided with training materials, which they then used to conduct a full-day training with all staff members in September 2010. The training detailed the IMPACT process, consequences, and positive and negatives associated with each full final IMPACT rating. Each staff member was provided with a full IMPACT guidebook, unique to their evaluation group. The guidebooks were delivered to the employees' schools and were also available online via the DCPS website. Throughout the year, the IMPACT team visited schools to answer questions as well as to ensure that the IMPACT hotline was available to all staff members via email and/or telephone to answer questions and provide clarification.

For the 2010-2011 school year, there were twenty (20) IMPACT grouping of DCPS employees. For the 2010-2011 IMPACT evaluation, Business Manager was within Group 18. The IMPACT process for Group 18 employees consisted of two (2) assessment cycles: the first assessment cycle ("Cycle 1"), had to occur by February 1st; and the second assessment cycle ("Cycle 2") had to occur by June 15th.

Group 18 employees were also provided with an explanation of how they would be scored. School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:

- 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.

Employee's final IMPACT score for the 2010/2011 school year was 153 making her Ineffective and subject to immediate termination from DCPS.⁴

Analysis

In a nutshell, DCPS contends that it properly evaluated Employee and as a result of her IMPACT evaluation, Agency was justified in removing Employee due to her sub-par performance evaluation. Employee contends that her rating was subjective and her Ineffective rating does not causally align with her actual work performance.

I find that DCPS has provided overwhelming testimonial and documentary evidence to support its action of removing Employee from service. As stated above, Simmons credibly

⁴ See Agency Exhibit No. 4.

testified that Employee's work was lackluster and that she was habitually tardy. This prompted Simmons to rate Employee as Ineffective for both Cycle 1 and 3 for school year 2010/2011. McMahon credibly testified that when Employee's scores were computed that Employee properly received an Ineffective IMPACT rating during the school year in question. I find that Simmons' and McMahon's testimony were consistent and readily buttressed through several exhibits.

During the pendency of this matter, Employee failed to present any credible evidence that would buttress her contention that she should not have been rated Ineffective. Employee mere contention that her IMPACT evaluation was flawed is not enough to sway the undersigned. I find that both Battle's and Employee's explanations were self-serving and lacking in credibility. Of note, during the evidentiary hearing, Employee declined the opportunity to cross examine Simmons.

Considering as much, I find that Agency has met its burden of proof in this matter. The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. See, *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ (); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), __ D.C. Reg. __ (). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. See *Stokes, supra*; *Hutchinson, supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ (); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ ().

I find that DCPS has met its burden of proof in this matter. Moreover, Agency has proven that the penalty of removal was proper; therefore, the removal is upheld.

ORDER

Based on the foregoing, it is hereby ORDERED that Agency's action of removing the Employee from service is UPHeld.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE