THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0073-24
Employee	)	
	)	Date of Issuance: June 2, 2025
v.	)	
	)	JOSEPH E. LIM, ESQ.
DC PUBLIC SCHOOLS,	)	SENIOR ADMINISTRATIVE JUDGE
Agency	)	

Employee *Pro se*
Gehrrie Bellamy, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 5, 2024, 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 him from his position as a Teacher at Ketcham Elementary School. Employee was removed because he received a rating of "Developing" for three (3) consecutive school years under Agency's IMPACT program.[1] Employee's termination was effective on August 2, 2024.

Pursuant to a letter issued by OEA on August 8, 2024, Agency filed its Answer on September 5, 2024. This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on September 9, 2024. On September 23, 2024, I issued an Order scheduling a Prehearing Conference to be held on October 3, 2024. During the Conference, I determined that an Evidentiary Hearing was not warranted based on the arguments and documents presented by the parties. Therefore, I ordered legal briefs to be submitted no later than December 9, 2024. Both parties have complied. The record is now closed.

JURISDICTION

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

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to a 'Developing' performance rating under the IMPACT system for three (3) consecutive school years was done in accordance with all applicable laws, rules, or regulations.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Governing Authority

District of Columbia Municipal Regulation ("DCMR") 5-E DCMR §§1306.1, and 1306.4-5 gives the Superintendent authority to set procedures for evaluating Agency's employees.[2] 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 in pertinent part as follows:

> 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:

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[2] 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.
1306.4 - Employees in grades ET 6-15 shall be evaluated each semester by the appropriate supervisor and rated annually, prior to the end of the school year, under procedures established by the Superintendent.
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.

> 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.

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 employees had any issues or concerns about their IMPACT evaluations and ratings, they were encouraged to contact DCPS' IMPACT team by telephone or electronic mail. Additionally, the Collective Bargaining Agreement ("CBA") between the Washington Teachers' Union, Local #6 of the American Federation of Teachers, AFL-CIO and the District of Columbia Public Schools provides as follows with respect to the evaluation process:

> 15.3 DCPS's 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.

D.C. Code§ 1-616.52(d) provides: 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.

Thus, employees may only grieve, or alternatively appeal, IMPACT procedures, not the substance contained therein. Employee's position, Teacher, was within Group 2.[3] Accordingly, in reviewing this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether 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 perform satisfactorily the duties of their position of employment.

The IMPACT Process

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2021-2022, 2022-2023, and 2023-2024 school years. According to the record, Agency conducts annual performance evaluations for all its employees. Agency utilized IMPACT as its evaluation system for all school-based employees.[4] The IMPACT system was

[3] *Id.* Tab 4. Employee's 2022-2023 IMPACT Report.
[4] Agency's Answer to Employee's Petition for Appeal (September 5, 2024).

designed to provide specific feedback to employees to identify areas of strength, as well as areas in which improvement was needed.[5]

In this case, Employee was assessed on the following IMPACT components:[6]

1) Essential Practices ("EP")—a measure of a teacher's instructional expertise. This component accounted for 65% of the IMPACT score.

2) Teacher-Assessed Student Achievement Data ("TAS")—a measure of a teacher's impact on student learning throughout the school year, as evidenced by rigorous assessments. This component accounted for 15% of the IMPACT score.

3) Student Surveys of Practice ("SSP")-a measure of the student's evaluation of their teacher. Students in grade 3 and up take a survey once a year and rank the extent to which they agree with certain statements of their teacher's performance. This component accounted for 10% of the IMPACT score.

4) Commitment to the School Community ("CSC")—a measure of the extent to which school-based personnel support and collaborate with their colleagues and their school's community. This component accounted for 10% 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." If all areas of Core Professionalism are met by the employee, then no points are deducted from the final score; however, if there is a concern in one of the areas of Core Professionalism, points are deducted from the final score.

The IMPACT process also provides that employees are entitled to a conference with the administrator as part of each assessment cycle. It further notes that if the administrator makes at least two (2) attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or unresponsive, the assessment will be valid without the conference. Valid attempt methods include, but are not limited to, phone calls. text messages, emails, notes in your school inbox, and/or in-person conversations. At the end of the school year, after all assessments are completed, the evaluations are averaged and scored.

The IMPACT database is where all IMPACT records are stored, including evaluations, observations, other components, as well as IMPACT final reports. Agency's website is open and available to the general public. However, the educator portal is open to employees only. All employees with an email account and password have access to the educator portal. Currently, when employees are hired, they are provided a username and password.

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[5] Agency's Answer *supra* and Agency Brief (November 4, 2024).
[6] Agency Brief, Exhibits 2, 4 and 6.

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

1) Ineffective = 100-199 points (immediate separation from school);
2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of 'Minimally Effective' for two (2) consecutive years are subject to separation from the school system);
3) Developing = 250-299 points (Individuals who receive a rating of 'Developing' for three (3) consecutive years are subject to separation from the school system);
4) Effective = 300-349 points; and
5) Highly Effective = 350-400 points.

Employee's position as Teacher at Ketcham Elementary School and a union member, was within Group 2. According to the IMPACT process, Group 2 employees had three (3) assessment cycles – an informal first assessment cycle, a second assessment cycle, Cycle 1, and a third assessment cycle, Cycle 2. Here, Employee was assessed during the three (3) cycles for the 2021-2022, 2022-2023, and 2023-2024 school years. The assessments included being observed three times during the school year by the teacher's principal or supervisor. Upon the conclusion of each assessment, the employee will meet with the evaluator for a post observation conference within 15 days of the observation. IMPACT does not require Administrators to hold post conference meetings after an informal observation.

During the 2021-2022 school year, Employee's Informal Observation occurred on November 17, 2021.[7] His Cycle 1 observation occurred on February 10, 2022, and the Post Observation Conference was held on February 14, 2022. His Cycle 2 observation occurred on April 29, 2022, and the Post Observation Conference was held on May 12, 2022.[8] Employee's observations for his school were documented in the database. It is uncontroverted that Employee subsequently received a "Developing" rating upon the conclusion of the 2021-2022 school year.[9] Employee was notified in a July 1, 2022, letter of his rating and was warned that should he receive a rating of Minimally Effective or Ineffective at the conclusion of the next school year, he would be subject to separation from Agency.[10]

During the 2022-2023 school year, Employee's Informal Observation occurred on November 1, 2022.[11] His Cycle 1 observation occurred on January 26, 2023, and the Post Observation Conference was held on February 1, 2023.[12] His Cycle 2 observation occurred on May 19, 2023, and the Post Observation Conference was held on June 2, 2023.[13] He received a "Developing" rating at the end of the 2022-2023 school year.[14] Employee was informed that

[7] Agency Brief, Exhibit 6.
[8] *Id*.
[9] *Id*.
[10] Agency Brief, Exhibit 5.
[11] Agency Brief, Exhibit 4.
[12] *Id*.
[13] *Id*.
[14] *Id*.

individuals whose final IMPACT rating stays at Developing for three (3) years or declines to either Minimally Effective or Ineffective, will be subject to separation from Agency.[15]

During the 2023-2024 school year, Employee's Informal Observation occurred on October 31, 2023.[16] His Cycle 1 observation occurred on January 10, 2024, and the Post Observation Conference was held on January 23, 2024.[17] His Cycle 2 observation occurred on April 10, 2024, and the Post Observation Conference was held on April 12, 2024.[18] He received a "Developing" rating at the end of the 2023-2024 school year.[19] Employee was informed that individuals whose final IMPACT rating are Developing for three (3) consecutive years will be subject to separation from Agency. As a result of his ratings, Employee was separated effective August 2, 2024.[20]

Although Employee does not deny that he received "Developing" IMPACT scores for three (3) consecutive years, he contends that although both he and fellow employee Mr. A. Harris were accused of not facilitating morning meetings, they received different point deductions on their Core Professionalism component for the 2023-2024 school year. He denied the accusation and accused Agency's Principal Beckwith of lacking integrity or ethics in computing his final IMPACT score, causing it to drop by ten points. Employee asserted that without that ten-point deduction, he would have met the requirements to retain his standard DC teacher license.[21]

Employee accused the school principal of disparate treatment. He maintains that both he and Mr. Harris were Group 2 Teachers at Ketcham Elementary School under the same supervisor, Mr. Forschner. Employee also decried the absence of his union representative during his meeting with Principal Beckwith and that he was not given clinics on how to conduct morning meetings.

OEA has consistently held that if an employee is singled out for punishment or is punished in a disproportionate manner as compared with other similarly-situated employees, the punishment may be reviewed for consistency and may be reduced or reversed altogether.[22] Over the years, OEA has reasoned that an employee who raises an issue of disparate treatment has the burden of making a *prima facie* showing that they were treated differently from other similarly-situated employees.[23]

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[15] Agency Brief, Exhibit 3.
[16] Agency Brief, Exhibit 2.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] Agency Brief, Exhibit 1.
[21] Employee Brief (undated).
[22] *Employee v. Agency,* OEA Matter No. 1601-0180-81, 31 D.C. Reg. 2186 (1984); *Harris v. Department of Human Services*, OEA Matter No. 1601-0188-91 (May 19, 1993); and *Alvin Frost v. Office of the D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995).
[23] *Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-01190-90, *Opinion and Order on Petition for Review* (July 22, 1994).

In *Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 22, 1994), the OEA Board provided the following as it relates to disparate treatment:

> A number of factors are important in determining whether a penalty is reasonable. Among these factors is whether or not the agency has meted out similar penalties for similar offenses. However, the principle of similar penalties for similar offenses does not require that agencies insist upon rigid formalism, mathematical rigidity, or perfect consistency regardless of variations, but that they apply practical realism to each situation to assure that employees receive fair and equitable treatment where genuinely similar cases are presented. . . Employee bears the burden of showing that the circumstances surrounding the misconduct are substantially similar to the circumstances in the cases being compared. . . Normally, in order to establish disparate treatment, the employee must show that they worked in the same organizational unit as the comparison employees, and they were subject to discipline by the same supervisor within the same general period.[24]

Further, in *Lewis v. Department of Veterans Affairs,* 113 M.S.P.R 657 (2010)*,* the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, provided a wider approach for determining disparate treatment. In *Lewis*, the MSPB stated that "factors such as whether an agency treated similarly-situated employees differently, whether the difference in treatment was knowing and intentional, whether an agency began levying a more severe penalty for a certain offense without giving notice of a change in policy, and whether an imposed penalty is appropriate for the sustained charge(s) are all relevant considerations but not outcome determinative nor threshold requirements in disparate penalty analysis…."

Although Employee alleges disparate treatment, he failed to provide any evidence to prove his allegations. He did not submit any documents to show Mr. Harris' position as a Group 2 teacher or that they had the same supervisor in the same school at the same time period. In addition, while he alleged that Principal Beckwith discriminated against him, he did not present any evidence and did not allege that Principal Beckwith was the supervisor of both him and Mr. Harris.[25] Apart from bare allegations, I therefore find that Employee failed to meet his burden of proof on his allegation of disparate treatment.

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[24] Citing *Douglas v. Veterans Administration,* 5 M.S.P.R 280 (306-307)(1981); *Bess v. Department of the Navy,* 46 M.S.P.R. 583 (1991); *Carroll v. Department of Health and Human Services,* 703 F.2d 1388 (Fed. Cir. 1983); *Kuhlmann v. Department of Health and Human Services,* 10 M.S.P.R 356 (1982); *Mille v. Department of Air Force,* 28 M.S.P.R 248 (1985). *Also see Huntley v. Metropolitan Police Department,* OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Adewetan v. D.C. General Hospital,* OEA Matter No. 1601-0021-93 (July 11, 1995); *Link v. Department of Corrections,* OEA Matter No. 1601-0079-92, *Opinion and Order on Petition for Review* (September 29, 1995); *Jordan v. Metropolitan Police Department,* OEA Matter No. 1601-0285-94, *Opinion and Order on Petition for Review* (September 29, 1995); *Shade v. Department of Administrative Services,* OEA Matter No. 1601-0360-94 (August 3, 1999); *Reynold Morris v. Office of State Superintendent of Education,* OEA Matter No. 1601-0261-10 (September 4, 2013); and *Shalonda Smith v. D.C. Fire and Emergency Medical Services,* OEA Matter No. 1601-0195-11 (November 27, 2013).

[25] Employee Brief to Petition for Appeal (undated). Mr. Harris' November 11, 2024, affidavit does not mention that he was a Group 2 Teacher, the time period when he and Employee taught at the same school, or who his supervisor was.

As noted above, the Collective Bargaining Agreement (CBA) between Employee's union, the Washington Teachers' Union, Local #6 of the American Federation of Teachers, AFL-CIO and the District of Columbia Public Schools provides that an employee may only appeal whether Agency followed the procedures it developed in evaluating its employees, not the substance contained in his IMPACT evaluation. In this matter, while Employee disagrees with the content of his IMPACT evaluation, he does not allege that DCPS failed to follow the IMPACT procedure. I therefore find no grounds to overturn Agency's choice of penalty.

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.[26] As performance evaluations are "subjective and individualized in nature,"[27] 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."[28] Despite Employee's protestations to the contrary, I find no credible evidence that his former principals abused their discretion when he was evaluated per the aforementioned IMPACT guidelines. I further find that DCPS had sufficient 'just cause' to terminate Employee, following his "Developing" IMPACT scores for three (3) consecutive years.[29]

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD**.

FOR THE OFFICE: s/s *Joseph Lim*
JOSEPH E. LIM, ESQ.
Senior Administrative Judge

[26] *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).

[27] *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).

[28] *See Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

[29] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").