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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup> ,	)	OEA Matter No. 1601-0064-23
	)	
v.	)	Date of Issuance: February 6, 2024
	)	
D.C. PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*  
Gehrie Bellamy, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On September 1, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate her from her position as a Teacher, effective August 4, 2023. Employee was terminated for having an ‘Ineffective’ rating under the D.C. Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2022-2023 school year. OEA issued a Request for Agency Answer to Petition for Appeal on September 6, 2023. Agency submitted its Answer to Employee’s Petition for Appeal on October 4, 2023. This matter was assigned to the undersigned on October 4, 2023.

A Status/Prehearing Conference was held on November 8, 2023, with both parties present. That same day, I issued a Post Status/Prehearing Conference Order requiring the parties to address the issues raised during the November 8, 2023, Conference. Agency’s brief was due on or before November 29, 2023, while Employee’s brief was due on or before December 20, 2023. Agency had the option to submit a sur-reply by January 4, 2024. While both parties submitted their respective briefs, Agency did not file a sur-reply. Upon review of the record and considering the parties’ arguments as presented in their submissions to this Office, I have

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<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

decided that there are no material facts in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

### JURISDICTION

This 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' IMPACT rating during the 2022-2023 school year was done in accordance with all applicable laws, rules, or regulations.

### BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

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

the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.<sup>2</sup>

OEA Rule § 631.2 *id.* states:

For appeals filed under § 604.1, 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 FACT, ANALYSIS AND CONCLUSIONS OF LAW<sup>3</sup>

The following findings of fact, analysis, and conclusions of law are based on the documentary evidence presented by the parties during the course of Employee's appeal process with OEA. D.C. Official Code § 1-606.03 (2001) gives this Office the authority to review, *inter alia*, appeals from separations pursuant to a performance rating.

Here, Employee was employed as a Teacher with Agency effective October 24, 2019. Employee was placed at the Smothers Elementary School during the 2021-2022, and 2022 -2023 school years. Her performance was assessed using the D.C. Public Schools' Effective Assessment System for School-Based Personnel ("IMPACT"). For the 2021-2022 school year,

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<sup>2</sup> OEA Rule § 699.1.

<sup>3</sup> 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").

Employee received an IMPACT rating of “Developing”. She subsequently received an IMPACT rating of ‘Ineffective’ for the 2022-2023 school year and was terminated by Agency for receiving an ‘Ineffective’ IMPACT rating during the 2022-2023 school year. Employee was a member of the Washington Teachers’ Union (“WTU”) when she was terminated, and the Collective Bargaining Agreement (“CBA”) between Agency and WTU applies to this matter.

### ***Employee’s Position***

Employee notes in her Petition for Appeal that because she was a novice teacher, her IMPACT rating should have been a ‘Developing or Effective.’ Employee avers that her IMPACT observations were more descriptive of her weak classroom management skills and less on her actual work she performed with the students. She stated that her principal’s final evaluation note did not reflect an ‘Ineffective’ teacher but rather a novice teacher who needed more training.<sup>4</sup>

Employee avers that she maintained a strong relationship with her students’ parents and guardians. She notes that the students’ reading level improved significantly from where they were at the beginning of the school year. She explains that the 2022-2023 school year was the first year she had a large classroom size of twenty-one (21) students, and no assistant. Employee asserts that she was able to move fifteen (15) out of the twenty-one (21) students in her classroom a color band in reading, and thirteen (13) out of twenty-one (21) a color band in math.<sup>5</sup> Employee acknowledged that DCPS conducted the required number of observations and follow-up meetings pursuant to the IMPACT process. However, she explained that much of what was cited as evidence that warranted a ‘Level 1’ score on her IMPACT rating was out of her control. Employee states that she should not have received a ‘Developing’ IMPACT rating for the 2021-2022 school year or an ‘Ineffective’ IMPACT rating for the 2022-2023 school year.<sup>6</sup>

Employee argues that three (3) of the four (4) IMPACT evaluations were misleading and not supported by her student outcomes. She explains that there should be a correlation between her observations and her student performance.<sup>7</sup> Employee avers that her first Cycle observation for the 2022-2023 school year was done on January 18, 2023, and she had just returned to school after being absent due to COVID-19. She explains that while she was out sick, her students had been out of routine for over a week and her students needed a ‘behavior reboot.’<sup>8</sup> Employee states that during the observation, Principal Williams assumed that the students were doing what they had been doing all along, without asking Employee about the students’ reading levels. She highlights that she had been focusing on the students’ reading prior to the observation. Employee asserts that she suffered from a COVID symptom of ‘brain fog’ to explain why she was looking for materials during her observation, the same week she returned to work after being sick with COVID.<sup>9</sup>

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<sup>4</sup> Employee’s Petition for Appeal (September 1, 2023).

<sup>5</sup> This is a student assessment conducted at the beginning and at the end of the year to determine the percentage of student growth in a teacher’s classroom.

<sup>6</sup> Employee’s Brief to Agency’s Request to Uphold Decision of Removal (December 20, 2023).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Employee avers that Principal Williams trivialized the experiences that happened in the small groups. Regarding Principal Williams' comment that Employee "listened in while students read chorally", and that the practice was "not entirely effective because the teacher was unable to support individual students with their reading", Employee states that she could not be in two (2) places at a time.<sup>10</sup> Employee explains that she was constantly helping students with logging in since her classroom had a connectivity problem.

Employee cites that during the follow-up conference for the second Cycle of the 2022-2023 school year, she and Principal Williams disagreed on her strategy and her score of '1' for Essential Practices ("EP") component five (5).<sup>11</sup> Employee further notes that the resident principal at her school made several unprofessional and inappropriate remarks to her, belittled her, which all impacted her morale. She notes that her efforts to support the school team and work with some of the toughest students in the school were devalued.<sup>12</sup> Employee avers that she did not receive any help or feedback from the resident principal or Principal Williams despite sending them emails. She states that she had to figure things out by herself.<sup>13</sup>

Employee argues that her students' Teacher-Assessed Student Achievement Data ("TAS") score does not reflect that she was 'Ineffective'. She explains that when they returned to in-person teaching for the 2021-2022 school year, the goal was to move 85% of the students at least one (1) color band. Employee cites that for the 2021-2022 school year, she moved 65% of her students in reading; and for the 2022-2023 school year, she moved 75% of her students in reading. For math, she achieved a 72%. She maintains that the students she did not move a color band moved by 100 points or more. Employee reiterates that the observation score does not match the student result and that there were also extenuating circumstances at play, to include (1) a larger class size; and (2) lack of an aide despite having an Individualized Education Program ("IEP") student in her classroom that required the support of a dedicated aide. She also cites that Principal Williams changing her scores from '1s' to '2s' shows that she had the discretion and authority to reassess Employee's practices from a different lens or change her scores, but she chose not to.<sup>14</sup>

### ***Agency's Position***

Agency asserts in its October 4, 2023, Answer that Employee was evaluated during the 2022-2023 school year and she received a final IMPACT rating of 'Ineffective' after she received an IMPACT rating of 'Developing' for the 2021-2022 school year. Therefore, she was terminated effective August 4, 2023, for having received a declining IMPACT rating for a second consecutive year.<sup>15</sup>

Agency avers that in 2005, pursuant to the DC Omnibus Authorization Act, PL 109-356 (D.C. Code §1-617.18), DCPS was granted authority to develop its own evaluation process and tool for evaluating its employees and it exercised this managerial prerogative when it created

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Agency's Answer (October 4, 2023). *See also*. Agency's Brief to Employee's Petition for Appeal (November 29, 2023).

IMPACT. Agency argues that it followed proper D.C. statutes, regulations, and laws in conducting Employee's performance evaluation. Agency notes that, IMPACT is a performance evaluation system utilized by DCPS to evaluate school-based personnel for the 2021-2022, and 2022-2023, school years.<sup>16</sup>

Agency provides that there were twenty (20) IMPACT groupings of DCPS employees during the 2022-2023 school year. Agency explains that Employee's position was within IMPACT Group 2b. Agency notes that Group 2b employees are evaluated during Cycle 1 and Cycle 2. Employee was observed on two (2) separate occasions, and she received conferences with her evaluator after each observation. Agency avers that Employee received an 'Ineffective' IMPACT rating during the 2022-2023 school year, after having received a 'Developing' IMPACT rating for the 2021-2022 school year.<sup>17</sup>

Agency submits that it followed all the IMPACT procedures in evaluating Employee's work performance. It notes that Employee does not argue that Agency failed to follow the IMPACT timeline and procedures. Agency avers that Employee was given adequate notice of her performance deficiencies during the post-evaluation conferences. In addition, Agency avers that it had the authority to evaluate and terminate employees that do not meet the performance standards. It explains that Employee failed to meet Agency's performance standards, thus, she was terminated. Agency further notes that Employee has not provided any evidence that contradicts Agency's evaluation of her, but rather she simply disagrees with the rating she received and her termination.<sup>18</sup>

### **Governing Authority**

Agency notes that because Employee was a member of Washington Teachers' Union ("WTU") when she was terminated, the Collective Bargaining Agreement ("CBA") between Agency and WTU applies to this matter and as such, OEA has limited jurisdiction over this matter. Employee does not deny that she was a member of the WTU at the time of her termination. 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."<sup>19</sup> In this case, Employee was a member of 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 15.4 of the CBA between WTU and Agency provides in pertinent part as follows:

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Agency's Brief, *supra*.

<sup>19</sup> Pursuant to D.C. Code § 1-616.52(d), "[a]ny 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 the labor organization" (emphasis added).

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 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). Therefore, 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.

### **The IMPACT Process**

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during the 2022-2023 school year. According to the record, Agency conducts annual performance evaluation for all its employees during school year 2021-2022, and 2022-2023.<sup>20</sup>

With the IMPACT system, all staff received written feedback regarding their evaluation, as well as a post-observation conference with their evaluators. There were several different types of IMPACT grouping of school-based DCPS employees, each representing a different category of school-based personnel. Individualized groups were developed to reflect the varying responsibilities of employees. For school year 2022-2023, Employee was evaluated under IMPACT Group 2b.

The IMPACT process for Group 2b employees during school year 2022-2023 consisted of two (2) assessment cycles: the first assessment cycle (“Cycle 1”), which ended on December 15; and another assessment cycle (“Cycle 3”) which ended on June 8. The employees were observed two (2) times during the school year by their principal/supervisor. Here, Employee was observed two (2) times by Principal Williams during the 2022-2023 school year. Employee received an IMPACT rating of ‘Ineffective’ during that school year.

For the 2022-2023 school year, Group 2b employees were assessed on a total of four (4) IMPACT components, namely:

- 1) Essential Practices (“EP”) – comprised of 75% of Group 2b teacher’s IMPACT score;
- 2) Teacher-Assessed Student Achievement Data (“TAS”)– comprised of 15% of Group 2b teacher’s IMPACT score;
- 3) Commitment to the School Community (“CSC”) – 10% of Group 2b teacher’s score;
- 4) Core Professionalism (“CP”) – 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:<sup>21</sup>

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<sup>20</sup> Because the Final Agency Action issued to Employee noted that Employee was being terminated for receiving an ‘Ineffective’ IMPACTT rating for the 2022-2023 school, year, I will not consider Agency’s assertion that Employee was terminated for receiving a declining IMPACT rating in two (2) consecutive years.

<sup>21</sup> If an employee’s rating for this component was ‘meets standard’ then there was no change in the employee’s final IMPACT score. If an employee received a rating of ‘slightly below standard’ on any part of the CP during a cycle, and no rating of ‘significantly below standard,’ the employee received an overall rating of ‘slightly below standard’ for that cycle and 10 points

- 1) Attendance;
- 2) On-time arrival;
- 3) Compliance with policies and procedures; and
- 4) Respect.

As part of the IMPACT process, upon the conclusion of each cycle assessment, and within fifteen (15) days of the observation, employees meet with their evaluator for a post observation conference. Additionally, school-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:<sup>22</sup>

- 1) Ineffective = 100-199 points.
- 2) Minimally Effective = 200-249 points.
- 3) Developing = 250-300.
- 4) Effective = 301 -349 points; and
- 5) Highly Effective = 350-400 points.

### **Analysis**

Chapter 5-E of District of Columbia Municipal Regulation (“DCMR”) §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency’s employees.<sup>23</sup> 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. In the instant matter, the IMPACT process detailed above is the evaluation procedure put in place by Agency for the 2022-2023 school year. Employee was evaluated by the school principal – Principal Williams. Employee received a final evaluation on the above specified components at the end of the 2022-2023 school year, wherein, she received an ‘Ineffective’ IMPACT rating.

Employee does not deny that she received two (2) observations on all the IMPACT components during the 2022-2023 school year. She also does not contest that Agency afforded her two (2) post observation conferences during the 2022-2023 school year. Employee’s contention is that her students’ TAS score does not reflect that she was ‘Ineffective’. She explains that when they returned to in-person teaching for the 2021-2022 school year, the goal was to move 85% of the students at least one (1) color band. Employee cites that for the 2022-

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were subtracted from the employee’s final IMPACT score. An additional 10 points were deducted if an employee earned an overall rating of ‘slightly below standard’ again the next cycle. If an employee received a rating of ‘significantly below standard’ on any part of the CP rubric during a cycle, the employee received an overall rating of ‘significantly below standard’ for that cycle and 20 points were deducted from the employee’s final IMPACT score. An additional 20 points were deducted if the employee earned an overall rating of ‘significantly below standard’ again the next cycle.

<sup>22</sup> See Agency’s Answer, *supra*.

<sup>23</sup> 5-E DCMR § 1306 provides in pertinent parts as follows:

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.

2023 school year, she moved 75% of her students in reading and 72% of them in math. She maintains that the students she did not move a color band moved by 100 points or more.

Pursuant to the 2022-2023 Group 2b IMPACT Guidebook, the TAS component consists of 15% of an employee's overall IMPACT score. The guidebook further provides that the highest TAS rating is a 'Level 4', with a 'Level 1' rating being the lowest.<sup>24</sup> TAS measures the students' learning over the course of the year. TAS is an opportunity to identify students' learning not reflected in the state standardized tests. It is incorporated in the teacher's instructional goal and IMPACT evaluation.<sup>25</sup> Teachers are assessed on the students' growth from the beginning of the year to the end of the year. Employee received an overall TAS rating of 'Level 2' for all subjects during the 2022-2023 school year. The evaluator provided that 62% of Employee's students met the TAS goal - i-Ready Diagnostic Assessment. The evaluator further provided that 75% of Employee's students met the TAS goal - Dynamic Indicators of Early Literacy Skills (DIBELS).<sup>26</sup> A teacher receives a 'Level 1' TAS rating if their student performance is below a 'Level 2' goal or the assessment was not approved, completed or the score was not validated. To obtain a 'Level 2' TAS rating, 70% of a teacher's students must meet the TAS goal. To obtain a 'Level 3' TAS rating, 80% of a teacher's students must meet the TAS goal. To obtain a 'Level 4' TAS rating, 90% of a teacher's students must meet the TAS goal. Here, according to Employee's 2022-2023 IMPACT evaluation submitted by Agency, 75% of Employee's students met the TAS DIBELS assessment goal and 62% of the students met the i-Ready Diagnostic Assessment. This 75% falls between a 'Level 3' and a 'Level 2' TAS rating and 62% falls in the 'Level 1' TAS rating because it is below the 'Level 2' TAS goal of 70%.<sup>27</sup>

Employee however asserts that she moved 75% of her students in reading and 72% of them in math for the 2022-2023 school year, thereby, improving her TAS rating to a 'Level 3'. I find that the difference in points from a 'Level 2' to a 'Level 3' TAS rating does not significantly change Employee's overall IMPACT rating. The TAS component comprises 15% of Employee's overall IMPACT rating. If Employee's TAS score were to be adjusted to account for the differences in points between a 'Level 2' (30 points) and a 'Level 3' (45 points), Employee would receive a TAS score increase of fifteen (15) points. Employee's current overall 2022-2023 school year IMPACT score is 169, with 30 points assigned to the TAS component.<sup>28</sup> Adding the fifteen (15) points to Employee's overall IMPACT score will increase Employee's overall adjusted 2022-2023 IMPACT score to **184** (169 (current IMPACT score) + 15 (adjusted TAS score) = 184 (adjusted IMPACT score)). This adjusted final IMPACT score still translates to an 'Ineffective' IMPACT rating for the 2022-2023 school year. Consequently, I find that Employee's argument with regards to the TAS component is inconsequential. (Emphasis added).

Employee further argues that during the follow-up conference for the second Cycle of the 2022-2023 school year, she and Principal Williams disagreed on her strategy and her score of '1' for Essential Practices component five (5). She stated that her principal's final evaluation note did not reflect an 'ineffective' teacher but rather a novice teacher who needed more training.

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<sup>24</sup> Agency's Answer, *supra*, at Tab 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at Tab 4.

<sup>27</sup> *Id.*

<sup>28</sup> Based on the record, the 30 TAS points was derived by multiplying 2 (which is equivalent to 'Level 2') by 15%, which is the overall TAS percentage for Group 2b employees.



Pursuant to the CBA between Employee's union and Agency, 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.

Assuming *arguendo* that this Office's jurisdiction extends to the content or judgment of the evaluation, I find that none of the evidence offered by Employee contradicts the comments listed in Employee's 2022-2023 IMPACT evaluation. Employee avers that her IMPACT observations were more descriptive of her weak classroom management skills and less on her actual work she performed with the students. As justification for Principal Williams' comments in Employee's IMPACT evaluation, Employee further explains that her first Cycle observation for the 2022-2023 school year was done the same week she just returned to school after being absent due to COVID-19. She maintains that while she was out sick, her students had been out of routine for over a week and needed a 'behavior reboot.' Employee additionally explains that she suffered from a COVID symptom of 'brain fog' reason why she was looking for material during her observation that occurred when she returned to work after being sick.

The District of Columbia Superior Court in *Shaibu v. District of Columbia Public Schools*<sup>29</sup> explained that substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. This court 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 but that would support a better overall evaluation."<sup>30</sup> The Court further opined that if the factual basis of the "Principal's evaluation were true, the evaluation was supported by substantial evidence." Additionally, it highlighted that "principals enjoy near total discretion in ranking their teachers"<sup>31</sup> when implementing performance evaluations. The court concluded that since 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] ..." the employee's petition was denied. Here, Employee simply provided explanations to the comments made by her principal in her 2022-2023 IMPACT evaluation, none of which contradicts the principal's comments. Relying on the Court's reasoning in *Shaibu*, I conclude that Employee has not proffered to this Office any credible evidence that controverts any of the principal's comments. 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.<sup>32</sup> As performance evaluations are "subjective and individualized in nature,"<sup>33</sup> this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if

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<sup>29</sup> Case No. 2012 CA 003606 P (January 29, 2013).

<sup>30</sup> *Id.* at 6.

<sup>31</sup> *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

<sup>32</sup> 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).

<sup>33</sup> 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).

“managerial discretion has been legitimately invoked and properly exercised.”<sup>34</sup> Thus, I find that it was within the principal’s discretion to rank and rate Employee’s performance.

### Grievance

Employee also asserts that the resident principal at her school made several unprofessional and inappropriate remarks to her and belittled her. She avers that her efforts to support the school team and work with some of the toughest students in the school were devalued. Employee cites that she did not receive any help or feedback from the resident principal or Principal Williams despite sending them emails, and she had to figure things out by herself.

Complaints of this nature are grievances, and do not fall within the purview of OEA’s scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee’s other ancillary arguments are best characterized as grievances and outside of OEA’s jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee’s other claims.

Based on the foregoing, I find that because Employee is a member of the WTU, she is 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 adhered to the IMPACT process, I conclude that Agency had sufficient ‘just cause’ to terminate Employee, following her ‘Ineffective’ IMPACT rating for the 2022-2023 school year.

### ORDER

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

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.  
Senior Administrative Judge

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<sup>34</sup> See. *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).