

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. 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:)	
)	
KAHLIQUAH DAWKINS,)	
Employee)	OEA Matter No. 1601-0070-17
)	
v.)	Date of Issuance: May 25, 2018
)	
D.C. PUBLIC SCHOOLS,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
)	
Kahliquah Dawkins, Employee, <i>Pro Se</i>		
Nicole Dillard, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 13, 2017, Kahliquah Dawkins (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate her from her position as a Teacher at Tyler Elementary School, effective July 29, 2017. Employee was terminated for having an ‘Ineffective’ rating under IMPACT, the D.C. Public Schools’ Effective Assessment System for School-Based Personnel during the 2016-2017 school year. On September 11, 2017, Agency submitted its Answer to the Petition for Appeal.

This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on October 3, 2017. A Prehearing/Status Conference was convened in this matter on February 6, 2018. Thereafter, I issued a Post Status Conference Order requiring the parties to address the issues raised during the Status/Prehearing Conference. Both parties have complied. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

OEA 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 ratings under the IMPACT system for school year 2016-2017 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.

Employee's Position

In her submissions to this Office, Employee submits that she was a first grade co-teacher at Tyler Elementary School. Her co-teacher was Ms. Thomas. Employee states that she was discriminated against by her principal, Mr. Brunson. She explains that Mr. Brunson used discrimination and retaliation to debase her as a teacher and lower her observation scores. Employee also states that Mr. Brunson prevented the other two (2) school administrators from observing her, as they did with her co-teacher, Ms. Thomas. Employee maintains that she was only observed by Mr. Brunson and the observations occurred in the afternoon, although she taught from 8:45 a.m. to 2:55 p.m.

Employee notes that she wants her name cleared. Employee maintains that (1) she was placed in an undesirable teaching position; (2) she received IMPACT scores that were lower than should be; (3) verbal communication with the principal was deceitful; (4) she was placed in a co-teaching position with Ms. Thomas, who was repeatedly absent from the classroom; (5) she felt intimidated when meeting with Mr. Brunson for post observation conferences; (6) she experienced nonchalant demeanor from Mr. Brunson when she tried to verbalize her concern; (7) she supported Ms. Thomas during her observations, but Ms. Thomas was asked by Mr. Brunson to be out of the classroom during Employee's observations; (8) Ms. Thomas was given preferential treatment while various bias actions and fabrication was rendered against Employee by the principal; (9) Ms. Thomas took vacation during the school year but she, (Employee) was observed two (2) days after she returned from medical leave; (10) she filed a grievance against

Mr. Brunson with the union during the 2015-2016 school year; and (11) she was nervous when being observed by Mr. Brunson which led her to seek work related help from COPE.¹

Employee asserts that for her Cycle 1, Commitment to the School Community (“CSC”), she received a score of two (2) in all categories. However, after voicing her concern in Mr. Brunson’s office three (3) months later, Mr. Brunson called the IMPACT office and had her score changed to a 2.8. She avers that she was shocked that the principal could increase or decrease her score at his discretion. Mr. Brunson did not provide her with any verbal feedback or reason for changing the score. The comments for her CSC score of two (2) were the same for her score of three (3).

Employee also argues that she and Ms. Thomas had different Teacher-Assessed Student Achievement Data (“TAS”) goals. Their TAS had different weight measure and percentage. Further, Employee notes that the principal failed to evaluate her with the same standard as Ms. Thomas. The regulation required that the evaluation not be arbitrary and capricious. Citing to *Johnson v. DCPS*², Employee highlights that an evaluation is arbitrary and capricious if it is based on the evaluation of a teacher outside of the normal classroom condition. Employee maintains that during school year 2016-2017, all three (3) administrators were aware that the class was being co-taught with Ms. Thomas. While she was present at all three of Ms. Thomas’ observation, and provided her support, at Mr. Brunson’s request, Ms. Thomas was not present for or supported her during her observation. Therefore, she was evaluated outside of her normal co-teaching classroom condition.

Employee additionally argues that Agency’s statement that she was the lead English Language Arts (“ELA”) teacher and only supported math instruction was untrue. She explains that during the 2016-2017 school year, she taught the entire math curriculum because Ms. Thomas was not present during math block and the Principal was aware of this. She notes that all three (3) of her observations occurred during the math block. Employee provided emails to support her assertion that.³

Furthermore, Employee asserts that the comments on her Cycle 3 observations were incorrect. She explains that the names on the documents submitted by the principal do not belong to any of the students in her class. She believed that the principal clearly, the principal cut and pasted them from another chart.

Employee argues that the principal did not follow the IMPACT process and procedure that would support her growth as stated on page 4 of the IMPACT Guidebook. She maintains that she sought information about her working responsibility and was informed by the principal that “we will meet”, but this meeting never occurred. She avers that none of the other administrators provided her support for growth as stated in the IMPACT guidebook, nor did they provide support needed to facilitate collaborative teamwork between she and Ms. Thomas.

¹ Petition for Appeal (July 13, 2017); *See also* Employee’s Brief (April 3, 2018)

² OEA Matter No. 1601-0175-11 (June 4, 2014) (Citing D.C. Regs section 1306).

³ *See* Employee’s Brief (April 3, 2018). *See also* Employee’s Petition for Appeal (July 13, 2017).

Employee contends that the IMPACT guidebook was placed in her mailbox and delivered several weeks into the school year. She explains that having the IMPACT guidebook presented to her in this manner did not provide her with clear notice of work guidelines for the 2016-2017 school year.

Employee additionally argues that she should not have been deducted twenty (20) points for Core Professionalism (“CP”). She notes that she was penalized for an incident with a student.⁴

Agency’s Position

Agency asserts 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.⁵

Agency maintains that, it was granted authority to develop its own evaluation process and tools for evaluating DCPS employees, and it exercised this managerial prerogative when it created IMPACT. Agency notes that, IMPACT is a performance evaluation system used to evaluate school-based personnel for school year 2016-2017. Agency contends that it followed the laws of the District. Agency provides that it properly conducted Employee’s performance evaluation using the IMPACT process. Since Employee received an ‘Ineffective’ IMPACT rating during school year 2016-2017, her employment was terminated effective July 29, 2017. Employee received a ‘Developing’ rating for the 2015-2016 school year.⁶

Agency notes there were twenty (20) IMPACT groups. Agency also states that Employee was a teacher within IMPACT Group 2b. She was assessed during all three (3) IMPACT Cycles by the principal/supervisor and was conferenced after the observations wherein, she received substantive reasons for each score. Cycle 1 - ended on December 15; Cycle 2 - ended on March 16; and Cycle 3 - ended on June 8.

Agency highlights that the components for the 2016-2017 school year were as follows: Essential Practices (“EP”); Student Surveys of Practice (“SSP”); Teacher-Assessed Student Achievement Data (“TAS”); Commitment to School Community (“CSC”); and Core Professionalism (“CP”).

Additionally, Agency highlights that according to its agreement with the Washington Teachers’ Union, to which Employee is a member; OEA’s decision on Employee’s termination based on performance is limited to whether the evaluation process and tools were properly administered.

Agency asserts that it fairly and accurately evaluated Employee. Citing to *Shaibu v. District of Columbia Public Schools*⁷ Agency highlights that substantial evidence for a positive

⁴ *Id.*

⁵ Agency’s Answer (September 11, 2017). *See also* Agency’s Brief (Mar 12, 2018).

⁶ *Id.*

⁷ Case No. 2012 CA 003606 P (January 29, 2013).

evaluation does not establish a lack of substantive evidence for a negative evaluation. Agency notes that it would not be enough for employee to proffer to OEA evidence that did not conflict with factual basis of the principal's evaluation but that would support a better overall evaluation. It further stated that principals enjoy near total discretion in ranking their employees. Agency contends that it followed IMPACT procedures on evaluating Employee's work performance. Agency avers that Employee has not submitted any evidence that controverts any statement in IMPACT evaluation. It also explains that Employee has not raised that DCPS failed to follow IMPACT timelines and procedure. She only alleges that she felt that her principal discriminated against her by unfairly scoring her on her IMPACT evaluation and generally disagreed with Agency's assessment of her work. Agency argues that the IMPACT process as applicable was specific to Employee's job performance of a teacher. The criteria of evaluation were provided to Employee prior to the start of 2016-2017 school year.⁸

With regards to TAS, which had a weight of 15%, Agency asserts that Employee and Ms. Thomas had the exact same TAS goal and scored the same for TAS. Employee and Ms. Thomas however had different scores in Essential Practices ("EP").⁹

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

The following findings of facts, 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.

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."¹⁰ In this case, Employee was a member of the Washington Teachers Union ("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:

⁸ *Id.*

⁹ *Id.*

¹⁰ 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 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.

The IMPACT Process

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2016-2017 school year. According to the record, Agency conducts annual performance evaluation for all its employees.

With the IMPACT system, all staff received written feedback regarding their evaluation, as well as a post-observation conference (“POC”) 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 2016-2017, Employee was evaluated under IMPACT Group 2b.

The IMPACT process for Group 2b employees during school year 2016-2017 consisted of three (3) assessment cycles: the first assessment cycle (“Cycle 1”), which ended on December 15; second assessment cycle (“Cycle 2”) which ended on March 16; and the third assessment cycle (“Cycle 3”) which ended on June 8. Employee was observed three (3) times by her principal/supervisor during the 2016-2017 school year. Employee received an IMPACT rating of ‘Ineffective’ during that school year.

For 2016-2017 school years 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 – 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:¹¹

¹¹ 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 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

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

School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:¹²

- 1) Ineffective = 100-199 points (immediate separation from school);
- 2) Minimally Effective = 200-249 points (given access to additional professional development);¹³
- 3) Developing = 250-300;¹⁴
- 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.¹⁵ 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 2016-2017 school year. Employee was evaluated by the school principal. Employee received a final evaluation on the above specified components at the end of the 2016-2017 school year, wherein, she received an ‘Ineffective’ IMPACT rating.

Employee does not deny that she received three (3) observations on all the IMPACT components during the 2016-2017 school year. She also does not contest that Agency afforded her two (2) POCs during the 2016-2017 school year. Employee’s contention is that Agency did not allow the other two administrators to observe her, as they did with her co-teacher Ms. Thomas.

‘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.

¹² See Agency’s Answer.

¹³ IMPACT procedures provide that employees who receive a rating of ‘Minimally Effective’ for two consecutive years are subject to separation. See Agency’s Answer.

¹⁴ Individuals who receive this rating are held at their current salary step until they earn a rating of Effective or higher. Individuals who are unable to move beyond the Developing level for three consecutive years will be subject to separation from the school system.

¹⁵ 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.

Pursuant to the IMPACT policy, the IMPACT observations are to be conducted by administrators.¹⁶ The principal, Mr. Brunson, was an administrator at Employee's school, so he was qualified to observe Employee. Further, it was within the principal's discretion to assign another administrator (s) to observe Employee's co-teacher, Ms. Thomas. Therefore, I conclude that Agency properly followed the IMPACT guideline by having the principal (administrator) observe Employee during the relevant school year.

Employee further argues that she only receive the IMPACT guidebook weeks after the start of the school year, thus, she did not have clear notice of work guidelines for the 2016-2017. Agency maintains that the IMPACT guidebook was placed in Employee's mailbox prior to the start of the school year. Based on Employee's statement, she received her guidebook a few weeks after school started. She does not specify when exactly she received the guidebook. The 2016-2017 school year started on or around August 22, 2016. Employee had her Cycle 1 observation on December 1, 2016. Based on Employee's statement, and her Cycle 1 IMPACT observation date, it is undisputable that she was in possession of the IMPACT guidebook for most of the first cycle.

Employee argues that the principal did not follow the IMPACT process and procedure that would support her growth as stated on page 4 of the IMPACT Guidebook. She maintains that she sought information about her working responsibility and was informed by the principal that "we will meet," but this meeting never occurred. She avers that none of the other administrators provided her support for growth as stated in the IMPACT guidebook, nor did they provide support needed to facilitate collaborative teamwork between she and Ms. Thomas. Page 4 of the IMPACT Guidebook is not specific to a particular school or principal. It simply provides the various ways through which the IMPACT system can support growth. Further, Agency explains that employees were informed that if they had any issues with their IMPACT evaluation and rating, they should contact the DCPS IMPACT team by phone or email.

Employee does not assert that she was not observed a total of three (3) times during the 2016-2017 school year, nor does she argue that she was not provided a POC as required by IMPACT procedure. Accordingly, I find that Agency complied with the IMPACT process as required by the CBA between Agency and the WTU.

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 challenged or contradicted any of the comments listed in her 2016-2017 IMPACT evaluation. Employee contends that her TAS goal, weight and score were different from that of her co-teacher. A review of Ms. Thomas' and Employee's final IMPACT rating highlight that both of them had the same TAS score – 3.6, and this constituted 15% of their overall IMPACT rating.¹⁷ Consequently, I find that Employee's argument with regards to the TAS component is without merit.

Citing to *Johnson v. DCPS*¹⁸, Employee highlights that her evaluation was arbitrary and capricious because her co-teacher was not present during her observations to provide her with

¹⁶ See Agency's Answer, *supra*, at Tab 4, page 9.

¹⁷ See Agency's Brief, *supra*, at Tabs 2 and 4.

¹⁸ OEA Matter No. 1601-0175-11 (June 4, 2014) (Citing D.C. Regs § 1306).

support. I find that Employee's argument contradicts her own statement that her co-teacher was never in the classroom and she was often left alone in the classroom. Therefore, I conclude that her observation was not outside of her normal classroom condition as she had been accustomed to teach her class in the absence of her co-teacher.

Employee also asserts that the principal changed her scores from 2s to 3s several months after the evaluation, after she voiced her concerns with the score. She also explains that the comments on her Cycle 3 observations were incorrect. Employee maintains that the names on the documents submitted by the principal do not belong to any of the students in her class. Clearly, the principal cut and pasted them from another chart. Employee maintains that Agency's statement that she was the lead English Language Arts ("ELA") teacher and only supported math instruction was untrue.¹⁹ She explains that during the 2016-2017 school year she taught the entire math curriculum because Ms. Thomas was not present during math block and the principal was aware of this. Employee additionally argues that she should not have been deducted twenty (20) points for Core Professionalism ("CP"). She notes that she was penalized for an incident with a student.

The D.C. Superior court in *Shaibu v. District of Columbia Public Schools*²⁰ 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."²¹ 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"²² 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 states that the comments for her CSC score of two (2) were the same for her score of three (3). She also provides an explanation for what occurred with the student that resulted in her being deducted 20 points for CP. 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.²³ As performance evaluations are "subjective and

¹⁹ It should be noted that according to the IMPACT guidebook, Group 2b is specific to General Education Teachers. Both Math and English are considered general education subjects and as such, I find that Employee was properly evaluated under IMPACT group 2b.

²⁰ Case No. 2012 CA 003606 P (January 29, 2013).

²¹ *Id.* at 6.

²² *Id. Citing Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

²³ *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).

individualized in nature,”²⁴ 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.”²⁵ Thus, I find that it was within the principal’s discretion to rank and rate Employee’s performance.

Discrimination and Retaliation

Employee further argues that while Ms. Thomas received preferential treatment, she, (Employee) was discriminated and retaliated upon by the school principal Mr. Brunson. With regards to her discrimination claim, D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights (“OHR”). Per this statute, the purpose of the OHR is to “secure an end to unlawful discrimination in employment...for any reason other than that of individual merit.” Complaints classified as unlawful discrimination are described in the District of Columbia Human Rights Act.²⁶ Additionally, District Personnel Manual (“DPM”) § 1631.1(q) reserves allegations of unlawful discrimination to Office of Human Rights. However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works*²⁷ stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is “contending that he was targeted for whistle blowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation...”²⁸ In the instant case, Employee simply alleges that she was discriminated upon, but fails to provide any evidence in support of this assertion. Moreover, Employee’s claim as described in her submissions to this Office do not allege any whistle blowing activities as defined under the Whistleblower Protection Act nor does it appear to be retaliatory in nature. Accordingly, I find that Employee’s discrimination claim falls outside the scope of OEA’s jurisdiction.

To establish a retaliation claim, the party alleging retaliation must demonstrate the following: (1) she engaged in a protected activity by opposing or complaining about employment practices that are unlawful under the District of Columbia Human Rights Act (“DCHRA”); (2) her employer took an adverse action against her; and (3) there existed a causal connection between the protected activity and the adverse personnel action.²⁹ A prima facie showing of retaliation under DCHRA gives rise to a presumption that the employer’s conduct was unlawful, which the employer may rebut by articulating a legitimate reason for the employment action at issue.³⁰ But for her statement that the principal used retaliation to debase her as a teacher, Employee has not provided any credible evidence in support of her retaliation claim. Further, Employee noted that she filed a grievance with WTU against Principal Brunson upon receiving a “Developing” IMPACT rating for school year 2015-2016. The grievance is at the Step 2 grievance process with WTU. Employee does not assert that her grievance with the WTU is a

²⁴ 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).

²⁵ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

²⁶ D.C. Code §§ 1-2501 *et seq.*

²⁷ 730 A.2d 164 (May 27, 1999).

²⁸ *El-Amin*; citing *Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

²⁹ *Vogel v. District of Columbia Office of Planning*, 944 A.2d 456 (D.C. 2008).

³⁰ *Id.*

protected activity under the DCHRA, nor has she provided a causal connection between the alleged protected activity and her termination. Reiterating the Court's reasoning in *Shaibu, supra*, if the factual basis of the "Principal's evaluation were true, the evaluation was supported by substantial evidence." Employee simply provided explanation to the comments made by Principal Brunson in her 2016-2017 IMPACT rating. Therefore, I conclude that Agency had a legitimate reason for the employment action at issue.

Grievance

Employee additionally contends that (1) she was placed in an undesirable teaching position; (2) verbal communication with the principal was deceitful; (3) she was placed in a co-teaching position with Ms. Thomas, who was repeatedly absent from the classroom; (4) she felt intimidated when meeting with Mr. Brunson for post observation conferences; (5) she experienced nonchalant demeanor from Mr. Brunson when she tried to verbalize and concern; (6) she supported Ms. Thomas during her observations, but Ms. Thomas was asked by Mr. Brunson to be out of the classroom during Employee's observations; (7) Ms. Thomas was given preferential treatment while various bias actions and fabrication was rendered against Employee by the principal; (8) Ms. Thomas took vacation during the school year but she, Employee was observed two (2) days after she returned from medical leave; (9) she filed a grievance against Mr. Brunson with the union during the 2015-2016 school year; and (10) she was nervous when being observed by Mr. Brunson which led her to seek work related help from COPE. 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 2016-2017 school year.

ORDER

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

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge