THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0057-23
	)	
v.	)	Date of Issuance: July 15, 2024
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Anitra Griffin, Employee *Pro-Se*
Gehrrie Bellamy, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 8, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the District of Columbia Public Schools' ("DCPS" or the "Agency") action of removing her from service due to an "Ineffective" rating through its IMPACT performance evaluation tool. Employee's last position of record with DCPS was Educational Aide stationed at Browne Elementary School. The effective date of Employee's termination from service was August 4, 2023. On August 8, 2023, OEA issued a Request for Agency's Answer to Petition for Appeal. Agency timely submitted its Answer to Employee's Petition for Appeal on September 7, 2023. This matter was initially assigned to the Undersigned on September 11, 2023. On September 19, 2023, the Undersigned issued an Order Convening a Prehearing Conference set for October 19, 2023. The conference was held as scheduled and during this conference the Undersigned issued a verbal order whereby the parties were provided with the following briefing schedule: Agency's brief in support of its action was due by November 17, 2023; Employee's reply brief was due by December 18, 2023; and Agency's Sur reply brief was due by January 9, 2024. The parties timely submitted their written briefs. After careful review, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (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:
>
> 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 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.

ISSUES

Whether Agency's action of separating Employee from service pursuant to an IMPACT rating of 'Ineffective' during the 2022-2023 school year was done in accordance with all applicable laws, rules, or regulations.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The following findings of fact, analysis, and conclusions of law are based on the testimonial and documentary evidence presented by the parties during Employee's appeal process with the OEA.

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.[1] The above-referenced DCMR sections provide that each employee shall be evaluated each semester by

[1] 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.

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:

> 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.

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 her 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 2022-2023 school year. 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.[2]

Employee's position, Educational Aide at Browne Elementary School, was within Group 17. According to the IMPACT process, Group 17 employees had two (2) assessment cycles – typically in January and June of each year. Here, Employee was assessed during Cycle 1 and Cycle 3 for the 2022-2023 school year.

Employee was assessed on a total of three (3) IMPACT components, namely:

1) Educational Aide Standard (EA) – comprised of 90% of Group 17 employees' scores;
2) Commitment to the School Community (CSC) – 10% of Group 17 employees' scores; and
3) 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:
    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:

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.

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 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.

Analysis

In a nutshell, Agency has asserted that its removal action was justified in that it properly followed IMPACT protocols when it assessed Employee throughout the subject school year and

[2] Agency's Answer, *supra*.

when it made the decision to terminate her employment. Employee asserts that there were instances where she felt she was treated unfairly with requesting (and being granted) sick leave and that otherwise she was a good employee that should not have been removed from service. I find that Employee did not present a credible allegation that her IMPACT assessment was flawed in any tangible manner.

During the 2022-2023 school year, Employee's Cycle One IMPACT conference was held in January 2023, and her Cycle Two conference was held in June 2023. It is uncontroverted that Employee's final IMPACT score was 185 and she consequently received an "Ineffective" rating for the 2022-2023 school year. As evidenced by her submissions to this Office, Employee disagreed with her IMPACT scores on her IMPACT evaluations. The D.C. Superior Court in *Shaibu v. District of Columbia Public Schools*[3] explained that "[d]ifferent supervisors may disagree about an employee's performance and each of their opinions may be supported by substantial evidence." Similar to the facts in *Shaibu*, I find that it is within the Administrator's discretion to reach a different conclusion about Employee's performance, as long as the Administrator's opinion is supported by substantial evidence. Further, 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."[4] 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"[5] 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.

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 the OEA.[6] As performance evaluations are "subjective and individualized in nature,"[7] 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."[8] I find that Agency

---

[3] Case No. 2012 CA 003606 P (January 29, 2013).
[4] *Id.* at 6.
[5] *Id*. *Citing Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).
[6] *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).
[7] *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).

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

cogently noted that during the time period in question, Employee displayed multiple performance deficiencies including:

1. Employees' inability to follow attendance and tardiness protocols; and

2. Employee displayed instructional support deficiencies that she did not correct despite admonishment during both Cycles.[9]

Despite Employee's protestations to the contrary, I find no credible evidence that Employee's former principal abused her discretion when she evaluated Employee according to the aforementioned IMPACT guidelines. [10] I further find that DCPS had sufficient 'just cause' to terminate Employee following her Ineffective IMPACT score.

ORDER

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

FOR THE OFFICE:

/s/ Eric T. Robinson
ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

[9] *See* DCPS Brief to Employee's Petition for Appeal pp. 7 – 10 (November 16, 2023).
[10] 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").