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

_____	)	
In the Matter of:	)	
	)	
JANELL JOHNSON,	)	OEA Matter No. 1601-0175-11
Employee	)	
v.	)	Date of Issuance: April 14, 2015
D.C. PUBLIC SCHOOLS,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Janell Johnson (“Employee”) worked as a Special Education Coordinator with the D.C. Public Schools (“Agency”). On July 15, 2011, Agency issued a notice to Employee informing her that her position was terminated due to her “Ineffective” performance rating under IMPACT, Agency’s performance assessment system. The effective date of the termination was July 29, 2011.<sup>1</sup>

Employee challenged the termination by filing a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 15, 2011. She argued that her IMPACT evaluation was unfair and not justified; that the evaluators lacked credibility; that her evaluation was retaliatory in nature; and that the evaluation was subjective and not based on her performance.<sup>2</sup> Therefore,

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<sup>1</sup> *Petition for Appeal*, p. 4 (August 15, 2011).

<sup>2</sup> Employee explained that the scores provided by the Principal and Assistant Principal were invalid because they were not based on her actual work. Furthermore, she stated that the roles and responsibilities of the Special Education Coordinator’s position were not clear. Finally, she argued that she never received a position description.

Employee requested reinstatement; severance pay; benefits; renewal of her administrative license; her education promotion; compensation for her accrued leave that was lost as a result of her termination; favorable revisions to her IMPACT score; and positive recommendations for future employment.<sup>3</sup>

In its Answer to Employee's Petition for Appeal, Agency provided that Employee's IMPACT evaluation was performed during the 2010-2011 school year, and it was based on her time as a Special Education Teacher at Johnson Middle School. It explained that Employee was fairly assessed.<sup>4</sup> Agency submitted that Employee was in Group 13 of the IMPACT evaluation process and was assessed during Cycles 1 and 3. Agency noted that Employee's final rating was "Ineffective." Therefore, it believed that its termination action was proper.<sup>5</sup>

The OEA Administrative Judge ("AJ") scheduled a Status Conference and later issued a Post Status Conference Order which required both parties to submit briefs. The parties were ordered to address whether Agency adequately followed District of Columbia laws; to summarize the IMPACT process as it relates to Employee; to argue whether or not Employee was a member of a union; and to include any applicable statutes, case law, or other information in support of their positions.<sup>6</sup>

In Agency's brief, it asserted that it followed all statutes, regulations, and laws. Agency explained that it had discretion to implement its own evaluation system, and pursuant to its collective bargaining agreement ("CBA") with the Council of School Officers ("CSO"),<sup>7</sup> it was

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<sup>3</sup> *Id.*, 4-21.

<sup>4</sup> Agency denied that her rating was retaliatory. It further provided that the Principal and Assistant Principal were fully aware of Employee's duties and responsibilities.

<sup>5</sup> *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, p. 2-6 (September 19, 2011). Thereafter, Employee filed a reply to Agency's answer and reiterated her argument that her evaluation was unfair. She also believed that the comments provided in her IMPACT evaluation were discriminatory. *Employee's Reply to Agency's Answer to Employee's Petition for Appeal* (October 27, 2011).

<sup>6</sup> *Post Status Conference Order* (July 25, 2013).

<sup>7</sup> Agency provided that Employee was a member of this union.

granted the right to terminate employees who received ineffective ratings. Agency submitted that based on all of the elements of the IMPACT scoring, Employee received a final score of 173, which was deemed ineffective.<sup>8</sup>

Employee's brief reiterated that her IMPACT evaluations were unfair. She provided that her removal was arbitrary and capricious; that Agency misapplied the *Douglas* Factors;<sup>9</sup> and that Agency failed to consider any mitigating circumstances for her removal. Employee also believed that Agency's specifications for the IMPACT assessments were fabricated. Ultimately, she believed that her poor evaluation and termination were in retaliation to her witnessing the Principal act violently toward a student.<sup>10</sup>

Following an OEA Evidentiary Hearing, the parties were ordered to submit closing briefs. In Employee's brief, she provided that Agency committed harmful error when it failed to provide her a position description and relied on a plagiarized IMPACT evaluation.<sup>11</sup> Agency's

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<sup>8</sup> *District of Columbia Public Schools' Post Status Conference Brief* (August 28, 2013).

<sup>9</sup> The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee's past disciplinary record;
- 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- 7) consistency of the penalty with any applicable agency table of penalties;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) potential for the employee's rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

<sup>10</sup> *Employee's Post Status Conference Brief*, p. 9-15 (September 5, 2013).

<sup>11</sup> Employee explained that the information provided in her Cycle 2 evaluation was copied and pasted from the

closing brief explained that Employee's poor evaluation was based on objective standards. It denied that it relied on a plagiarized IMPACT evaluation. Thus, Agency believed that it had cause to remove Employee.<sup>12</sup>

The AJ issued her Initial Decision on June 4, 2014. First, she reasoned that she was guided by the provisions set forth in the CBA. She also found that under the D.C. Municipal Regulations ("DCMR"), Agency had the authority to implement IMPACT. After reviewing the IMPACT processes conducted by Agency, the AJ determined that Agency complied with the CBA.<sup>13</sup>

With regard to Employee's claim of plagiarism, the AJ found that her 2010-2011 IMPACT evaluation supported this assertion. She explained that "[a]lthough Employee was evaluated during separate time frames by two separate individuals, about 90% of the language and score received by Employee in both evaluations were exactly the same."<sup>14</sup> The AJ determined that the Principal and Assistant Principal used boilerplate language in evaluating Employee. As a result, she held that Employee's ratings did not reflect a fair and accurate performance evaluation; that Agency did not meet its burden of proof; and that Agency's removal action was arbitrary and capricious.<sup>15</sup> Accordingly, Agency's action was reversed, and it was ordered to reinstate Employee with back pay and benefits.<sup>16</sup>

On July 8, 2014, Agency filed a Petition for Review with the OEA Board. It argues that the AJ's findings were not based on substantial evidence and that the Initial Decision was based

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information provided in her Cycle 1 evaluation. Employee also provided that when Agency conducted the evaluation, it failed to consider the history and performance of the students. *Employee's Brief*, p. 3-8 (April 7, 2014).

<sup>12</sup> *Amended District of Columbia Public Schools' Closing Brief*, p. 17-20 (April 14, 2014).

<sup>13</sup> *Initial Decision*, p. 14-15 (June 4, 2014).

<sup>14</sup> *Id.* at 16.

<sup>15</sup> As for Employee's claims that she was not provided a job description and that the IMPACT tool was not explained to her, the AJ held that OEA did not have jurisdiction over these grievances. Furthermore, the AJ provided that Employee did not submit credible evidence to support her retaliation claim.

<sup>16</sup> *Initial Decision*, p. 17-18 (June 4, 2014).

on an erroneous interpretation of regulation. Agency reiterates that it provided Employee with a fair and accurate evaluation. It states that the Principal and Assistant Principal used the language provided in the rubric standard description.<sup>17</sup> Furthermore, Agency states that Employee's termination was caused by her inability to adhere to the performance metrics and not the assessments provided by the Assistant Principal and Principal.<sup>18</sup> It argues that the AJ failed to give any weight to Employee's entire IMPACT evaluation. Therefore, Agency requests that the Board overrule the Initial Decision; dismiss Employee's appeal; and rule that it did not err in its IMPACT rating of Employee.<sup>19</sup>

In opposition to Agency's Petition for Review, Employee argues that the AJ's findings are based on substantial evidence and accurate interpretations of law. She states that Agency's arguments are merely disagreements with the AJ's findings and that the Petition for Review questions the AJ's credibility determinations. Employee submits that the AJ's conclusions were supported by a thorough and substantive review of the record. She reiterates that Agency committed harmful error in terminating her. Therefore, Employee requests that the Board affirm the Initial Decision and dismiss the Petition for Review.<sup>20</sup>

### Substantial Evidence

Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.<sup>21</sup> According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987),

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<sup>17</sup> Agency argues that there was no evidence produced to prove that the administrators collaborated to produce their assessments.

<sup>18</sup> Agency reasons that only 30% of Employee's evaluation consisted of the comments provided by the Principal and Assistant Principal.

<sup>19</sup> *District of Columbia Public Schools' Petition for Review*, p. 3-11 (July 8, 2014).

<sup>20</sup> *Employee's Opposition to Agency's Petition for Review*, p. 2-6 (August 11, 2014).

<sup>21</sup> *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.

Agency's evaluation of Employee

As the AJ provided, IMPACT is the performance evaluation system that Agency used to assess its employees during the 2010-2011 school year. In *Onuche David Shaibu v. D.C. Public Schools*, 2012 CA 003606 P(MPA) (D.C. Super. Ct. January 29, 2013), the Superior Court for the District of Columbia held that an agency's action shall not be set aside if it is supported by substantial evidence in the record as a whole.<sup>22</sup> The AJ found that because Employee's evaluation was not supported by substantial evidence, then it must be set aside. She relied on *Evelyn Sligh, et al. v. District of Columbia Public Schools*, 2012 CA 000697 P(MPA)(D.C. Super. Ct. March 14, 2013) to support her conclusion.<sup>23</sup>

The *Sligh* Court specifically provided that a principal using boilerplate language in place of an individualized evaluation would remove the meaning of the evaluation. As the AJ provided in the current case, it is clear that boilerplate language was used to assess Employee. Of the comments provided by Principal Ransome and Assistant Principal Morgan, there are only two sentences that differ of the ten comments provided. However, even those two sentences are eerily similar to each other. One example is in the Program Coordinator and Dean Standards section. When assessing Employee's rapport with students and families, Principal Ransome wrote the following:

Ms. Johnson builds positive relationships with parents. Most parents feel comfortable working with and through Ms. Johnson. Ms. Johnson has been prompted to be more proactive in building relationships with parents (especially with home visits) and has done so in short order. Ms. Johnson

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<sup>22</sup> Conversely, the Court reasoned that any findings that are not supported by substantial evidence in the record must be set aside.

<sup>23</sup> In *Sligh*, the Court held that if the determination is not supported by substantial evidence, then an employee would have been separated from their position arbitrarily.

has been granted access to households that previously thwarted school interaction. Ms. Johnson's ability to engage parents has improved since the start of the year.

Assistant Principal Morgan wrote:

Ms. Johnson has an excellent rapport with parents. Most parents feel comfortable working with and through Ms. Johnson. Ms. Johnson has been prompted to be more proactive in building relationships with parents (especially with home visits) and has done so in short order. Ms. Johnson has been granted access to households that previously thwarted school interaction. Ms. Johnson's ability to engage parents has improved since the start of the year.

Agency wants this Board to believe that two people, at different times would decide to use the exact same wording to evaluate an employee. It argues on Petition for Review that the similarities exist because the Principals used the first and second sentences of the rubric standard description in their comments.<sup>24</sup> However, a reasonable mind would not accept this conclusion. Despite Mr. Morgan's contention that he did not review or copy the language used in Ms. Ransome's evaluation, the Board agrees with the AJ's assessment that boilerplate language was used.<sup>25</sup>

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<sup>24</sup> The rubric description for the above-mentioned category provides that the "Program coordinator or dean meets Level 3 expectations AND extends impact by dedicating a truly exceptional amount of time and energy towards building positive and productive relationships with students and families who face the greatest challenges." The Level 3 rubric description is that the "Program coordinator or dean consistently builds positive and productive relationships with students and their families." However, none of these sentences are reflected in the above-mentioned comments from either principal. Therefore, Agency's contention that the first and second sentences were used is inaccurate.

<sup>25</sup> Moreover, it must be noted that Agency claims that the principals did observe Employee. However, Principal Ransome testified that because Special Education Coordinators are not teachers, they are not observed in a classroom setting. Therefore, the general nature of their work is evaluated. *OEA Hearing Transcript*, p. 24 (January 8, 2014). When asked about their relationship, Principal Ransome testified that she worked with Employee when necessary and that they reviewed documents when necessary. *Id.* at 36. Similarly, Assistant Principal Morgan stated that he observed Employee's everyday functions, but he did not observe her while she interacted with students or parents. Additionally, he provided that he never attended any weekly meetings held by Employee for the Special Education department, and he only attended one Individual Education Plan meeting. *Id.*, 68 and 82-88. Although the AJ did not address this issue, based on the record, it appears that the principals' observations of Employee were minimal, at best. There was no evidence presented to establish how either of them came to the conclusions they did about Employee's performance.

### Agency's Overall Score

Agency's next argument is that the AJ failed to review all aspects of Employee's work performance. It is Agency's position that Employee was removed due to the performance metrics and not the evaluations of the Principal and Assistant Principal. However, a review of the IMPACT results as a whole contradicts Agency's assertion. The IMPACT evaluation used a combination of performance metrics, which accounted for seventy percent of Employee's overall score. Evaluations by the Principal and Assistant Principal were the remaining thirty percent of Employee's score.

Agency properly contends in its Petition for Review that the performance metrics were compiled by outside entities for the School's IEP Timeline, the School's Ordering Assessment Timeliness, the School's Required Access Timeliness, and the School's Value Added. Although this equaled seventy percent of her score, the AJ found that the principals' evaluations, representing thirty percent of the score, presented the real issue in this case. She explained that because both Principals used boilerplate language in Employee's evaluation, Employee did not receive an individualized assessment and was arbitrarily removed from her position. It appears to this Board that Agency seems to suggest that because the performance metrics accounted for seventy percent of the overall evaluation, then the principals' evaluations did not determine Employee's termination.

We believe that this argument misses the mark. If Employee received a proper individualized evaluation, she had the potential to receive a weighted score of one hundred and sixty (160) instead of the fifty-six (56) points received under Program Coordinator and Dean Standards. Likewise, she could have received a weighted score of eighty (80) instead of the thirty (30) points that she received under Commitment to the School Community. Both of these



sections were scored by the principals. Although the other standards were calculated by outside entities, the scores provided by the principals could have significantly impacted Employee's score.

#### Direct Contradiction of Evaluation Comments

While we agree with the AJ's holdings to this point, unfortunately, she failed to consider an important ruling in *Shaibu* when making her final decision in this case. The *Shaibu* court held that even if the evidence presented by an employee would have constituted substantial evidence, justifying a higher score, but they did not directly contradict any factual basis of the principal's evaluation, then OEA could not set aside the employee's termination. Regrettably, there is very little evidence in the record of Employee directly contradicting the comments provided in the evaluation.

Employee spent a great deal of time providing proof which contradicted her 2009-2010 evaluation.<sup>26</sup> However, she was removed due to the ineffective rating of her 2010-2011 performance evaluation. Of the fourteen standards on which she was evaluated, Employee only offered two instances that may have minimally risen to the level of contradicting Agency's comments.

In Employee's Brief filed on April 7, 2014, she addressed the Program Coordinator and Dean Standards and Commitment to the School Community standards where she was rated below standard. She provided that under the Program Coordinator and Dean Standards for Collaboration, her evaluations provided that "Ms. Johnson sometimes works collaboratively with other members of the staff. It is necessary for Ms. Johnson to be most collaborative when working with novice members of the Special Education department, being sure to both lead and grow the organization." To contradict this assessment, Employee provided that Principal

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<sup>26</sup> *Janell Johnson's Opening Hearing Statement and Summaries*, Tab 18 (September 5, 2013).

Ransome testified that she “was consistent in the work that she did . . . and that she shared documentation that was available to both teachers and families in IEP meetings.”<sup>27</sup> Moreover, she submitted that Principal Ransome provided that she “consistently fulfills management responsibilities.”<sup>28</sup> Furthermore, Employee highlighted testimony from Principal Ransome where she stated that “. . . [Employee] became more familiar with teachers and their strengths and how to use them throughout the first few months.”<sup>29</sup>

Additionally, under the Core Professionalism section, Principal Ransome deducted ten points from Employee’s overall evaluation because she fell slightly below standard for respect. The Principal’s comments provided that “at the start of the year, Ms. Johnson’s verbal and written communication was harsh. Over time she has revised her stance and is more cordial and receptive.” To combat this allegation, Employee notes that Ms. Ransome later described her as cordial.<sup>30</sup>

However, Employee failed to address any of the other standards on which she was evaluated. Therefore, no further contradictory evidence was provided. Although Employee may have received a higher score due to the boilerplate language, she did not directly contradict any factual basis of the principals’ evaluations.<sup>31</sup> Because of the clear ruling in *Shaibu*, the AJ lacked the authority to set aside Employee’s termination action. Therefore, we must reverse the Initial Decision.

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<sup>27</sup> *OEA Hearing Transcript*, p. 28 (January 8, 2014).

<sup>28</sup> *Employee’s Brief*, p. 8 (April 7, 2014).

<sup>29</sup> *OEA Hearing Transcript*, p. 30 (January 8, 2014).

<sup>30</sup> *Employee’s Brief*, p. 8 (April 7, 2014).

<sup>31</sup> This case is distinguished from the decision rendered by this Board in *Brendan Cassidy v. D.C. Public Schools*, OEA Matter No. 2401-0253-10, *Opinion and Order on Petition for Review* (July 31, 2013). In the *Cassidy* case, the Board ruled to remand the matter to the AJ because Employee provided an exhaustive list of arguments and exhibits that contradicted the assessments raised in his evaluation.

**ORDER**

It is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**, and the Initial Decision is **REVERSED**.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.