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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0104-14
WESLEY CAMPBELL,)	
Employee)	
)	Date of Issuance: April 27, 2015
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Olekanma Ekekwe-Kauffman, Esq., Employee Representative		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 30, 2014, Dr. Wesley Campbell (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) final decision to remove him from his position as a school psychologist. Employee was terminated because he received a final rating of “Ineffective” under Agency’s IMPACT program during the 2013-2014 school year.¹ Employee’s termination was effective on August 8, 2014.

This matter was assigned to me in September of 2014. On September 30, 2014, I issued an order scheduling a Prehearing Conference to be held on November 13, 2014, for the purpose of assessing the parties’ arguments. During the conference, it was determined that an Evidentiary Hearing was not warranted based on the issues presented by Agency and Employee. I subsequently ordered the parties to submit written briefs addressing whether Agency, in terminating Employee under its IMPACT assessment program, adequately followed proper District of Columbia statutes, regulations and laws. Both parties responded to the Order. The record is now closed.

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

JURISDICTION

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

ISSUES

Whether Agency's removal of Employee should be upheld.

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.

Agency's Position

Agency argues that Employee's termination under the IMPACT program was done in accordance with all District of Columbia statutes, regulations, and laws. Agency submits that Employee's IMPACT assessments were fair, as his supervising program manager provided a detailed and accurate analysis of Employee's work performance. Agency further states that Employee was evaluated in a timely manner during Cycle 1 and Cycle 3 of the 2013-2014 school year, and that his program manager, Dr. Mitchell, had post-evaluation conferences with Employee after each observation.

Employee's Position

Employee submits that his termination should be reversed because he was required to perform duties "above and beyond what was required of him" and that the comments contained within his IMPACT assessments were subjective and contradictory.² In addition, Employee states that his caseload was not reassigned to another school psychologist while he was on medical leave in April of 2013. Employee believes that his assessor, Dr. Mitchell, failed to weigh

² Employee Brief at 3 (February 13, 2015).

the relevant factors on his IMPACT evaluations, and that he should not have been rated as “Ineffective.”

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, P.L. 109-356, which provides:

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18

Pursuant to this broad authority, DCPS implemented the IMPACT evaluation system beginning with the 2009-2010 school year. The District of Columbia Public Schools (DCPS or Agency) conducts annual performance evaluations for all of its employees. IMPACT is DCPS’ Effectiveness Assessment System for all School-Based Employees, including teachers, principals, and other staff members. IMPACT was used for the 2013-2014 school year to rate performance of school-based personnel.

The IMPACT Process

During the 2013, 2014 school year, the IMPACT process required that all school-based staff receive written feedback regarding their evaluations. In addition, employees were required to have a post-evaluation conference with their assessors. Each employee had access to the 2013-2014 IMPACT Guidebook for their specific group. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01 a.m. the day after the end of each cycle. If an employee had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS’ IMPACT team by telephone or email. Employees also received an email indicating that their final scores were available online.

During the 2013-2014 school year, there were twenty (20) IMPACT grouping of DCPS employees. School psychologists fell within the Related Service Provider (“RSP” or “Provider”) category, which was identified as Group 12. Under IMPACT, RSPs were required to be evaluated twice during the school year. The first assessment cycle (“Cycle 1”) occurred on or before February 20th; and the third assessment cycle (“Cycle 3”) occurred on or before June 10th. Each observation was conducted by a program manager. In this case, Employee was assessed on the following IMPACT components:

- 1. Related Service Provider Standards (“RSP”)**—a measure of the Related Service Provider’s expertise. This component accounted for 90% of the employee’s final IMPACT score.
- 2. Assessment Timeliness**—a measure of the extent to which the RSP completed the related service assessments for the students on his or her caseload within the timeframe, and in accordance with

the rules established by the DCPS Office of Specialized Education. This component accounted for 10% of the employee's final IMPACT score.

3. **Core Professionalism**—a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows: attendance; on-time arrival; compliance with policies and procedures; and respect. This component was scored differently from the others, as an employee could have additional points subtracted from their score if the rating was “slightly below standard” or “significantly below standard.”

School-based personnel assessed through IMPACT ultimately received a final IMPACT score at the end of the school year. If an employee received a final rating of “Ineffective,” then that employee was subject to termination under the IMPACT program. The scoring range is as follows:

- 1) Ineffective = 100-174 points (immediate separation from school);
- 2) Minimally Effective = 175-249 points (given access to additional professional development);
- 3) Effective = 250-349 points; and
- 4) Highly Effective = 350-400 points.

IMPACT Assessment, 2013-2014 (Cycle 1)

Dr. Jamila Mitchell (“Mitchell”) evaluated Employee during Cycle 1 of the 2013-2014 school year, and had a post-evaluation conference with him on February 10, 2014.³ Employee's overall RSP score was 2.00 and his Core Professionalism score was -10. Each category was rated from a score of 1 to 4, with 4 being the highest possible score an employee could receive. Dr. Mitchell provided detailed feedback for each subcategory of the following components:

1. **RSP A1—Use of Assessment Battery.** This component is based on the Special Education Referral to determine whether the provider utilized all of the appropriate tests to effectively analyze the areas of concern identified in the special education referral and/or re-evaluation. Employee received a score of 2 for RSP A1.
2. **RSP A2—Interpretation of Assessment Data.** Measures the provider's assessments to determine whether sufficient data points and results are described in an accurate and educationally-focused manner. Employee received a score of 1 for RSP A2.
3. **RSP A3—Report Conclusions and Format.** Determines whether assessment reports are written in the proper format and convey the impact of the area of concern on the student's ability to access grade-level material. Employee received a score of 2 for RSPA3.

³ Affidavit of Dr. Jamila Mitchell, Agency Brief (March 2, 2014).

4. **RSP SD1—Focus on Session Goals.** Employee was not required to be evaluated in this area.
5. **RSP SD2—Student Engagement.** Employee was not required to be evaluated in this area.
6. **RSP SD3—Clinical Standards.** Measures the extent to which a provider collects data from multiple sources as a foundation for assessment and intervention. Employee received a score of 3 for RSP SD3.
7. **RSP C1—Collaboration with School Staff.** Employee received a score of 3 for RSP C1.
8. **RSP C2—Collaboration with Families.** Measures the provider's ability to partner with families to facilitate support of their children's healthy growth, development, and educational success. Employee received a score of 1 for RSP C2.
9. **RSP C3—Problem Solving.** A measure of the provider's ability to work with the Multidisciplinary Team ("MDT") to ensure the timely delivery of services. Employee received a score of 1 for RSP C3.
10. **RSP D1—Documentation of Service Delivery and/or Assessment Completion.** This component measures the provider's assessment completion, timeliness, and the evaluation of summary data. Each provider's assessment reports must be faxed into the Special Education Data System ("SEDS") within a forty-five (45) day period once the "Informed Written Consent" for testing has been obtained from the student's parent or guardian. Employee received a score of 1 for RSP D1.

Core Professionalism ("CP") is a measure of on-time arrival, policies and procedures, and respect to all stakeholders within DCPS. CP is rated as: 1) Meets Standard; 2) Slightly Below Standard; or 3) Significantly Below Standard. An employee can receive a deduction of ten (10) or twenty (20) points for CP if they are rated as Slightly Below Standard or Significantly Below Standard.

1. **CP1—Attendance.** Employee received a Meets Standard.
2. **CP2—On-Time Arrival.** Employee received a Slightly Below Standard based on his late arrival to a Professional Development meeting on January 6, 2014 without prior notification.
3. **CP3—Policies and Procedures.** Employee received a Slightly Below Standard. Mitchell stated that Employee closed out cases in SEDS on several occasions when they were in fact still open.
4. **CP4—Respect.** Employee received a Meets Standard.

IMPACT Assessment, 2013-2014 (Cycle 3)

Dr. Mitchell also evaluated Employee during Cycle 3 of the 2013-2014 school year, and had a post-evaluation conference with him on May 27, 2014. Employee's overall RSP score was 1.87 and his Core Professionalism score was -10. Each category was rated from a score of 1 to 4, with 4 being the highest possible score an employee could receive. Dr. Mitchell provided detailed feedback for each subcategory of the following components:

1. **RSP A1—Use of Assessment Battery.** Employee received a score of 1 for RSP A1.
2. **RSP A2—Interpretation of Assessment Data.** Employee received a score of 2 for RSP A2.
3. **RSP A3—Report Conclusions and Format.** Employee received a score of 2 for RSP A3.
4. **RSP SD1—Focus on Session Goals.** Employee was not required to be evaluated in this area.
5. **RSP SD2—Student Engagement.** Employee was not required to be evaluated in this area.
6. **RSP SD3—Clinical Standards.** Employee received a score of 3 for RSP SD3.
7. **RSP C1—Collaboration with School Staff.** Employee received a score of 3 for RSP C1.
8. **RSP C2—Collaboration with Families.** Employee received a score of 3 for RSP C2.
9. **RSP C3—Problem Solving.** Employee received a score of 1 for RSP C3.
10. **RSP D1—Documentation of Service Delivery and/or Assessment Completion.** Employee received a score of 1 for RSP D1.

Employee received a deduction of ten (10) points for Core Professionalism during Cycle 3 of the 2013-2014 school year.

1. **CP1—Attendance.** Employee received a Meets Standard.
2. **CP2—On-Time Arrival.** Employee received a Meets Standard.
3. **CP3—Policies and Procedures.** Employee received a Slightly Below Standard for closing out multiple assessments in SEDS when they were not completed.
4. **CP4—Respect.** Employee received a Meets Standard.

After reviewing the documents of record, I find that Employee was evaluated a total of two (2) times during the 2013-2014 school year, in accordance with the IMPACT guidelines. I further find that Employee was afforded post-evaluation conferences after each assessment with Dr. Mitchell. Employee's final IMPACT score for the 2013-2014 school year was 164, which deemed him "Ineffective." Because Employee was rated as "Ineffective," he was identified for termination.

Employee argues that Dr. Mitchell's assessment of his work throughout the 2013-2014 school year was arbitrary and did not reflect an accurate account of his performance. Specifically, Employee believes that his scores for RSP C2 (Collaboration with Families), RP C3 (Problem Solving), and RSP D1 (Documentation of Service Delivery) should be altered to reflect higher scores.

It should be noted that the D.C. Superior court in *Shaibu v. D.C. Public Schools*⁴ held that substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The court held 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."⁵ The court further stated that if the factual basis of the "principal's evaluation were true, the evaluation was supported by substantial evidence." In addition, the Court in *Shaibu* held that "principals enjoy near total discretion in ranking their teachers"⁶ when implementing performance evaluations. The Court denied the employee's petition, finding that 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]...."⁷

In this case, Employee has failed to offer any credible evidence that directly contradicts the statements that Dr. Mitchell made regarding his work performance. Dr. Mitchell's affidavit, produced by Agency, states that she "provided timely feedback to Dr. Wesley Campbell on his work performance and offered several suggestions for improvement...Each assessment included a numerical score for each relevant standard included in the evaluated component followed by detailed comments."⁸ The statements contained within Dr. Mitchell's affidavit are consistent with both of Employee's IMPACT evaluations during Cycle 1 and Cycle 3 of the 2013-2014 school year. The Undersigned finds no reason to disturb her findings, and Employee has not argued that Dr. Mitchell did not have discretion to rank and rate employees under her supervision.

⁴ Case No. 2012 CA 003606 P (January 29, 2013).

⁵ *Id.* at 6.

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

⁷ *Id.*

⁸ Agency Brief at 2.

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.⁹ Because performance evaluations are “subjective and individualized in nature,” 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.”¹⁰ Thus, I find that it was within Dr. Mitchell’s discretion to rate Employee’s performance.

Based on the foregoing, I find that Agency properly evaluated Employee twice during the 2013-2014 school year. Employee also received a post-evaluation conference after each observation, as required under IMPACT. Agency has proved by a preponderance of the evidence that it adhered to the IMPACT process. For this reason, I conclude that Agency had cause to terminate Employee.

ORDER

It is hereby **ORDERED** that Agency’s action of terminating Employee is **UPHELD**.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

⁹ 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).

¹⁰ 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). See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).