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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ROBERT WILLIS)	
Employee)	OEA Matter No. 2401-0210-10-R14
)	
v.)	Date of Issuance: June 10, 2015
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	

Mattie Johnson, Esq., Union Representative
Carl K. Turpin, Esq., & Sara White, Esq., Agency Representatives

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

On December 1, 2009, Robert Willis (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“the OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) action of terminating his employment through a Reduction-in-Force (“RIF”). The effective date of the RIF was November 2, 2009. Employee’s position of record at the time his position was abolished was an ET-15 Science Teacher at Ballou Senior High School (“Ballou”). I was initially assigned this matter on February 7, 2012. On February 16, 2012, I sent out an Order wherein I ordered the parties to submit written briefs on the issue of whether Agency conducted the instant RIF in accordance with all applicable District laws, statues, and regulations. Both parties complied with this order and after reviewing the documents of record, the undersigned issued an Initial Decision (“ID”) in this matter on June 3, 2012, wherein I upheld DCPS’ decision to abolish Employee’s last position of record through a RIF.

Employee timely filed a petition for review with the Board of the OEA (“Board”). On October 29, 2013, the Board issued its Opinion and Order on Petition for Review (“O&O”) in this matter. The Board elected to remand this matter to the undersigned in order to determine

whether the Competitive Level Documentation Form (“CLDF”) used by DCPS to justify Employee’s removal was supported by substantial evidence.¹

Thereafter, the undersigned rescheduled the status conference multiple times in this matter due to various scheduling conflicts including certain dates where the District government was closed due to inclement weather. Eventually, an evidentiary hearing was held on December 11, 2014. On January 22, 2015, the undersigned issued an order to the parties providing them with a deadline of March 9, 2015, to submit their closing arguments. After a brief delay, both parties have submitted their closing arguments. The record is now closed.

ISSUE

Whether Agency’s action of separating Employee from service pursuant to a RIF 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.

SUMMARY OF RELEVANT TESTIMONY

Rahman Branch (Transcript pages 18 - 179)

Rahman Branch (“Branch”) is currently a Principal and Coach for New Leaders. From 2005 to 2014, Branch worked as an Assistant Principal and Principal for D.C. Public Schools (“Agency”). Specifically, Branch was the Principal from 2008 to 2014 at Ballou High School (“Ballou”). He was the assistant principal at Ballou from 2005 to 2008.

Branch testified that every year while he was at Ballou, the budget decreased and a Reduction-in-Force (“RIF”) was conducted. He stated that the Director of Operations for Agency sent out a memorandum informing him of exactly what to do within the Competitive Level Documentation Forms (“CLDF”) and how to weigh each individual. After he completed

¹ See O&O at 5.

this form, he had to send it to the Central Office. Branch stated that during the 2009 RIF, he had to eliminate three science teacher positions. He recalled that Ballou had 12 science teachers. Branch recalled that Robert Willis (“Employee”) worked as a Science Teacher at Ballou.

With regard to the CLDFs, Branch testified that the forms provided specific categories based on the school’s needs, school based perspective, and the execution of each individual as it related to the categories. He stated that he needed to determine to what extent the employee was meeting the need, and score them appropriately. He stated that the scores were submitted to the Central Office.

For Employee’s CLDF, Branch wrote that he did not see growth in student learning. He explained that he had not seen where instruction was provided in order to get the students to a learning degree that was acceptable. Branch also wrote on Employee’s CLDF that there was resistance to the changes that the school was implementing. He stated that a poor lesson plan leads to a lack of solid instruction. Branch also stated that he wrote that Employee often arrived to work late and did not support the parent and community engagement. He explained that the administration was out in front of the school when the teachers and students arrived, and oftentimes, they would mark down the teacher’s arrival time. He stated that they also noted when the teachers were late. Branch stated that he consistently checked in with the business manager regarding which teachers were tardy.

Branch testified the teachers were on four block schedules; meaning, they had three classes and one off period. He stated that depending on the schedule, the off period could be the first block and the other blocks were class teaching time. He stated that certain times of the year would cause the schedule to change. He explained that Labor Day and the equalization process were factors that could change the schedules. Branch wrote that Employee was inflexible with variations of the schedule.

Branch stated that he scored the teachers based on student learning; training experience and school culture; and teaching and learning framework. He stated that his comments for each teacher looked similar because he referenced the memorandum that was provided from the Central Office because the needs of the school were uniform and expectations of the teachers were uniform.

Branch testified that the instructions provided for the RIF process discussed advanced degrees and particular areas of expertise; however, he stated that he did not receive direct instruction on these things. He stated that Employee was evaluated from the beginning of the school year through September 24, 2009.

With regard to Mr. Carither’s evaluation, Branch stated that this teacher had an organized classroom and he posted rules. He stated that there are certain practices and certain ways to engage students. With regard to Ms. Scoles, Branch stated that she was evaluated for her work from August 17, 2009 to September 24, 2009. Branch stated that Ms. Scoles was enthusiastic about Ballou and that she got along with other staff members. In addition, Branch’s evaluation indicated that Ms. Scoles was flexible with regard to changes in schedule. Branch stated in his evaluation of Ms. Leach that she had an organized workspace with objective-driven lesson plans. He also stated that she implemented the teaching and learning framework. Further, he stated that she interacted with the students in a positive and respectful manner. Branch based this evaluation

on his observation of Ms. Leach's classroom. Branch testified that he observed all of his teachers' classrooms.

Branch testified that one of the things that a teacher had to do was establish norms, routines and rituals in the classroom. He explained that gains and growth involves the hectic environment of the day and how the students gain and grow from understanding the routine. Branch stated that routines, rituals and procedure are aspects of gains and growth. He stated that at difference stages, he also checked for test assessments. Branch explained that Employee failed to employ rigorous instructions. He stated that one can check for rigor by going into the classroom and observing the instruction being delivered; the questions; who is doing the heavy lifting; who is leading the instruction; and who is leading the learning. Branch testified that Employee lacked active participation, motivation and reinforcement. He stated that Employee also lacked having a variety of teaching methods and instructional activities to accommodate various learning styles. Branch stated that the outline of the subject matter would not fall under rigorous instruction, nor would rules and regulations regarding attendance fall under rigorous instruction. Furthermore, Branch testified that a notification to the student of how many days they have been absent is not a part of rigorous instruction. In addition, student behavior was not a part of rigorous instruction.

Branch testified that "Biology: the Dynamics of Life" was one of the books that was used at Ballou during the 2008-09 school year. Branch testified that field trips could be considered 'varying instruction.' He explained that it depended upon whether it was a field trip that developed as an incentive based upon certain behaviors or based on whether the field trip was directly related to the instructional practices and lesson plans. Branch testified that a field trip could be a learning technique. Branch testified that he was not aware that Employee took the students on an educational field trip between August and September of 2009.

Branch testified that he used the same period of time for each employee in Employee's competitive level. He stated that if employees were inflexible in scheduling, he noted it in their CLDF. Branch did not have any help in determining how many positions he needed to eliminate. He did not deal with the length of service when conducting the RIF. He testified that someone in the Central Office determined the score for the length of service. He did not think about salaries when he ranked the individuals. He routinely observed classroom instruction between August and September 2009. He interacted with students and watched the teachers interact with students. He knew whether the teachers were participating in school activities. He testified that in conducting his evaluation, he used the examples provided with the RIF instructions. In relevant part, Branch testified as follows:

Q: ... Why do the [CLDFs] look similar? Why do your comments look similar?

A: Well, I think that there are a couple of reasons. One, I referenced the document that we were given - -the memorandum that we were given... the needs of the school were uniform, the expectations of our teachers were uniform. So, they're all being evaluated or rated based on upon the exact same criteria.

Q: ... If [Employee] hadn't received one of the lowest scores, would you have terminated another science teacher?

A: Yes.

Q: Did you have a choice as to whether or not you needed to eliminate three science teachers?

A: No. Three was our actual number.²

Branch testified that he accurately recorded the needs of the school on all 12 competitive level documentation forms for the science teachers under his supervision.

Robert Willis (Transcript pages 185-233)

Robert Willis ("Employee") was a Science Teacher for 25 years with the Agency. He left DCPS in October 2009 due to a RIF. He testified that the information on the CLDF dealt with his instruction, his contributions to the school, his longevity with teaching in Agency, and his contributions to the school. Employee received a total score of five. For the needs of school, he received a zero. This score was based on him making relevant contributions to the school. He testified that showing gains with regard to the students and growth included him giving them a pretest as part of orientation at the beginning of the school year. Employee explained that he used the pre-test as a post-test, and at the end of the course. He explained that it was a two part test whereby one deals with the knowledge and information; content; other details with processing skills; how to go about thinking; and how to go about doing science.

Employee asserted that during the period of August 2009 through September 2010, he made plans for the students. He explained that his summer was spent making contact with people through meetings and conferences. He met with them in reference to his instructional programs and providing field trip worthy activities for the students. He stated that some of these activities started back in July but they were planned for September. Employee emailed Dr. Chaney in July concerning field trips. Employee explained that Dr. Chaney along with another teacher³ worked together to provide relevant field trips for the students whereby they could get out and see the relevance of science in their everyday life and hopefully get the students excited about going into a career in science. Employee explained that Dr. Chaney worked with the National Institution of Health ("NIH"). He explained that he had done several programs at NIH. He did three summers of research in the laboratories at NIH. He also worked with NIH to develop a training program for teachers whereby they learned how to do lab experiments in biotechnology. Employee explained that this field trip to NIH was scheduled for September. He subsequently took the students on the field trip.

Employee also wanted to start a portfolio program with his students. He talked with Mr. Price because Mr. Price was recommended by his colleagues. Employee testified that Mr. Price did a lot with portfolios. However employee did not get a chance to do the portfolios with the students because of the RIF. Employee was also interested in doing an activity where the

² Transcript at 39 – 40.

³ The other teacher who collaborated with Employee to plan this field trip was also removed from service as part of the instant RIF.

students would be in competition with each other. However, the project needed funding. Employee did not get a chance to tell Mr. Branch about this project. Employee explained that Mr. Branch did not discuss this with him during his evaluation.

Employee considered field trips to be a part of his teaching methods. He stated that it was also a part of his motivation. During the RIF, he took the students on a field trip to the Congressional Black Caucus and to the Science Brain Trust. He testified that the students were able to hear the speakers in reference to career opportunities in science.

To develop his lesson plans Employee used the book called "Biology: Dynamics of Life." He explained that this book was used by all biology teachers. He explained that this curriculum was adopted by Agency as the curriculum for biology. He explained he was trained to use this curriculum and to develop lesson plans from the curriculum. The book contained CDs as well as virtual labs and it provided all materials that you would need in order to teach biology. Employee testified that since DCPS did not have an adopted curriculum for biology, they were instructed to use this book and all the resources that come with the book. One could use the lesson plans, or, they could change the lesson plans to fit the needs of the students.

Employee was certain that he participated in school wide activities. He served on two committees. The two main committees he participated in were the Local School Restructuring Team ("LSRT") and the School Chapter Advisory Committee. He explained that LSRT dealt with reform and all aspects of the school in terms of restructuring. Employee also testified that this team consisted of parents and students, as well as teachers and administration. He explained that this team made sure that the school was moving forward in meeting the needs of the students and the community. He explained that the School Chapter Advisory Committee was a committee that was union based, but it was set up to be collaborative between teachers and management. This committee made sure that the school operated in a fashion that was productive and progressive. Employee stated that the School Chapter Advisory Committee was also involved with the RIF. He explained that the RIF procedure was supposed to be shared with this committee.

Employee explained that between August and September 2009, the School Chapter Advisory Committee had a meeting. The meeting involved getting concerns from the teachers that needed to be dealt with. Employee also stated that he was a part of the professional development team. The professional development team dealt with the needs of the school in terms of teachers being trained to meet the needs of instruction and needs of the school. Employee was also the building representative for the school.

In 2009, Employee was the teacher for Advanced Placement Biology, Biology 1, and regular Biology. He stated that he had met with his Advanced Placement students and he was very excited about working with them. Employee stated that he received training to teach advanced placement biology in August of 2004 at Williams and Mary College Advanced Placement Institute. Prior to Employee receiving training for Advanced Placement Biology, there was no Advanced Placement Biology Teacher at Ballou. Employee received recognition for his advanced placement biology teaching as well as his teaching in environmental science biology. from the Chancellor of the school. Employee stated that Mr. Branch was aware that he was going to be teaching advanced placement biology for the 2009-10 school year.

Employee explained that on the first day that the teachers were to return to work, they were informed that they needed to move to another classroom. As a result, Employee had to move to a new classroom with all of his supplies. He stated that he had been in his classroom for almost 4 years. Employee testified that when he got into his new classroom, it was in disarray. He had to clean and organize materials that were left in the classroom.

Employee holds a degree in biological science. He also has a Master's in Education in curriculum and instruction; certification in coursework for all special education; and coursework for certification in mathematics and physics.

Employee stated that a master teacher is a teacher that is well experienced in their subject area. The master teacher is also knowledgeable of various techniques in terms of teaching. They are knowledgeable about how to assist other teachers with instruction. He explained that a master teacher can also serve as a mentor in the school as well as the school system. Employee is considered to be a master teacher. Employee testified that while teachers needed to be certified to teach, the teachers that came on board in 2009 were not certified. He knows that they were not certified because they came to the school through teaching programs whereby they were working on getting certification. The names of the programs were DC Teachers and Teach for America. Employee explained that they were in these programs while teaching at the school. As part of the programs, the teachers were moved into a teaching position towards the end of the program.

Employee testified that there were between 40 and 50 students and four teachers went on this field trip. Two of the teachers were from the Science department and the other two teachers were acting as chaperones.

Employee testified that his salary was based off of the number of years he taught. Employee admitted that he was not deemed an official master teacher for DCPS but that he considered himself to be a Master Teacher.⁴

Peter Weber (Transcript pages 237-272)

Peter Webber ("Weber") was the Interim Director of Human Resources during the period of 2009 to 2010. He testified that he started as Interim Human Resources Director in January 2008 and served that position through April 2010. He stated that he had oversight over the personnel management system.

With regard to the RIF, Weber stated that the Agency completed the competitive level ranking for each employee, taking into account four factors. The first three factors were factors that were based off of evaluations by the employee and the managers. The fourth factor was based on seniority. Weber stated that he met with some of the principals with regard to the RIF.

⁴ Employee offered into evidence Employee's Exhibit No.1. It is a compilation of documents used to buttress his assertion that he deserved a higher score on his CLDF. Of note, this item was heavily redacted by the undersigned due to the fact that Employee initially included numerous documents containing student information including *inter alia* names, birth dates, and addresses. Employee was unable to provide the undersigned with an executed release from these students' parents or guardians authorizing its use as part of his appeal process. Therefore, in the presence of both DCPS and Employee's counsel the items were removed and shredded.

He explained that he discussed with them the time frame that they had in order to complete the evaluation of the employees. He stated that the time frame was between September 18th and late October or early November. He asked the principals to consider as much information as they had. For example, if the principal had many years of interaction with the employee, and could evaluate them over a longer period, he encouraged the principal to consider that. Or, if the principal had a short exposure to the employee, they could only consider the time in which they knew the employee.

Weber testified that there was a budget shortfall after the start of the 2009/10 school year. They learned of the shortfall from the Chief Financial Officer. They sent out a revised budget allocation based on the student enrollment at the schools across the district. The schools received an initial budget allocation in February or March of 2009 when they built their initial budget. Then, Agency sent out a reduced budget allocation upon learning of the shortfall. Before contemplating any employees to be reduced, Weber asked the school leader along with the Local School Advisory Team to propose a number of positions to be reduced. Weber explained that after the principal was advised by the Local School Advisory Team, he finalized the determination of which position would be eliminated. With the input of the Local School Advisory Team, the principals determined which positions would be eliminated.

Weber testified that Chancellor Rhee determined that the RIF needed to take place. In accordance with applicable laws, the competitive areas and competitive levels were established for the RIF. Chancellor Rhee issued a memorandum that laid out the procedure. The memorandum explained that the RIF would take place at the school level as opposed to any other unit in the school district and that that the RIF should compare people. The memorandum established competitive levels and the memorandum articulated that those competitive levels should ensure that employees are competing with other employees who do the same jobs. The memorandum went on to articulate what factors were to be contemplated and prescribed the weighting for those factors.

Weber testified that the calculations for the RIF were completed by the Office of Human Resources. He further stated that the CLDFs went to the Office of Human Resources. He testified that the principals were responsible for writing the first three factors which included the needs of the school; the relevant significant contributions, accomplishments of the performance; and the relevant supplemental professional experience as demonstrated on the job.

Weber explained that at Ballou there were 12 science teachers who needed to compete with each other and that there were three teachers that needed to be eliminated. The principal filled out the CLDFs for all of the science teachers. Weber testified that he considered 2000 CLDFs for the RIF across the entire school system. When he reviewed the CLDFs, he checked to see if the narratives that the principal wrote matched the number on the form. He also looked to see if the characteristics match the things asked of the principal. The third thing he did was look to see if there were any specific examples provided.

Analysis

Under Title 5 DCMR § 1501.1, the Chancellor of DCPS is authorized to establish competitive areas when conducting a RIF so long as those areas are based “upon all or a clearly

identifiable segment of the mission, a division or a major subdivision of the Board of Education, including discrete organizational levels such as an individual school or office.” For the 2009/2010 academic school year, former DCPS Chancellor Rhee determined that each school would constitute a separate competitive area. In accordance with Title 5, DCMR § 1502.1, competitive levels in which employees subject to the RIF competed were based on the following criterion:

1. The pay plan and pay grade for each employee;
2. The job title for each employee; and
3. In the case of specialty elementary teachers, secondary teachers, middle school teachers and teachers who teach other specialty subjects, the subject taught by the employee.⁵

Here, Ballou was identified as a competitive area and ET-15 Science Teacher was determined to be the competitive level in which Employee competed. According to the Retention Register provided by Agency, there were eleven (11) other ET-15 Science Teachers stationed at Ballou. Three of those positions did not survive the instant RIF. According to the aforementioned retention register, Employee was the lowest ranked ET-15 Science Teacher stationed at Ballou. Accordingly, his position was abolished as part of the instant RIF.

Employee was not the only ET-15 Science Teacher within his competitive level and area; he was therefore required to compete with other similarly situated employees in one round of lateral competition. According to Title 5, DCMR § 1503.2 *et al.*:

If a decision must be made between employees in the same competitive area and competitive level, the following factors, in support of the purposes, programs, and needs of the organizational unit comprising the competitive area, with respect to each employee, shall be considered in determining which position shall be abolished:

- (a) Significant relevant contributions, accomplishments, or performance;
- (b) Relevant supplemental professional experiences as demonstrated on the job;

⁵ District of Columbia Public Schools’ Brief at 2-3 (March 7, 2012). School-based personnel constituted a separate competitive area from nonschool-based personnel and are precluded from competing with school-based personnel for retention purposes.

- (c) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise; and
- (d) Length of service.

Based on § 1503.1, Agency gave the following weights to each of the aforementioned factors when implementing the RIF:

- (a) Office or school needs, including: curriculum, specialized education, degrees, licenses or areas of expertise - (75%)
- (b) Significant relevant contributions, accomplishments, or performance – (10%)
- (c) Relevant supplemental professional experiences as demonstrated on the job – (10%)
- (d) Length of service – (5%)⁶

Agency argues that nothing within the DCMR, applicable case law, or D.C. Official Code prevents it from exercising its discretion to weigh the aforementioned factors as it sees fit.⁷ Agency cites to *American Federation of Government Employees, AFL-CIO v. OPM*, 821 F.2d 761 (D.C. Cir. 1987), wherein the Office of Personnel Management was given “broad authority to issue regulations governing the release of employees under a RIF...including the authority to reconsider and alter its prior balance of factors to diminish the relative importance of seniority.” I agree with this position and find that Agency had the discretion to weigh the factors enumerated in 5 DCMR 1503.2, in a consistent manner throughout the instant RIF.

Competitive Level Documentation Form

Agency employs the use of a Competitive Level Documentation Form (“CLDF”) in cases where employees subject to a RIF must compete against each other in a lateral competition. In conducting the instant RIF, the Principal of Ballou was given discretion to assign numerical values to the first three factors enumerated in Title 5, DCMR § 1503.2, *supra*, as deemed appropriate, while the “length of service” category was completed by the Department of Human Resources (“DHR”).

⁶ It should be noted that OEA has consistently held that DCPS is allowed discretion to accord different weights to the factors enumerated in 1503.2. Thus, Agency is not required to assign equal values to each of the factors. See *White v. DCPS*, OEA Matter No. 2401-0014-10 (December 30, 2001); *Britton v. DCPS*, OEA Matter No. 2401-0179-09 (May 24, 2010).

⁷ District of Columbia Public Schools’ Brief at 5 (March 8, 2012).

Employee received a total of five points on his CLDF. Employee was one of the lowest ranked persons in his competitive area and level. Employee's CLDF stated, in pertinent part, the following:

Mr. Willis fails to show gains in student growth. He does not have high expectations for Ballou students, which is apparent in his failure to employ rigorous instruction; to apply principles of learning such as active participation, motivation and enforcement; and to use a variety of teaching methods and instructional activities to accommodate various student-learning styles. Mr. Willis was not prepared to teach on the first day of school. He failed to establish a set of norms, routines, or procedures.

Mr. Willis is not tailoring instruction to address the specific needs of the students. Lesson plans are not standards-based. In fact, he lacks skills that match the instructional model of the school and does not participate in school-wide activities.

Office or school needs

This category is weighted at 75% on the CLDF and includes: curriculum, specialized education, degrees, licenses or areas of expertise. Employee received a total of zero (0) point out of a possible ten (10) points in this category; a score much lower than the other employees within his competitive level and area. In essence, Employee argues that the evidence does not support the score afforded to him. He asserts that the CLDF was erroneously used as a subjective tool in which to secure the abolishment of his last position of record. In *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774 (D.C. Cir. 1997), the D.C. Court of Appeals, in evaluating several union arguments concerning a RIF, stated that "school principals have total discretion to rank their teachers" and noted that performance evaluations are "subjective and individualized in nature."⁸

I find that Branch was given the discretion to complete Employee's CLDF. Employee has provided little credible evidence that may bolster his score in this area. Also, Employee has failed to provide any evidence to highlight how his degrees and erstwhile activities and accomplishments effectively translated into his classroom expertise. Further, Employee's argument neglects the fact that he was in a competition with other similarly situated employees for a limited number of positions that would survive the instant RIF. Employee did not compete in a vacuum. Based on the CLDF, Employee did not fare too well in this competition. It was the same person, the Principal of Ballou, who completed the scoring for the instant RIF. Employee has not proffered any credible indication that any supplemental evidence would supplant the higher scores received by the other employees in his competitive level and area who were not separated from service pursuant to the RIF.

⁸See also *American Fed'n of Gov't Employees, AFL-CIO v. Office of Pers. Mgmt.*, 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).

In reviewing the record, Employee did not proffer any credible statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. I find that Branch had wide latitude to invoke his managerial discretion with respect to assessing the on-the-job performance and capabilities of his subordinates.

Significant relevant contributions, accomplishments, or performance

This category is weighted at 10% on the CLDF. Employee received zero (0) points in this area. Employee proffered similar arguments as noted above in challenging the score that he was given in this category. I incorporate by reference my reasoning from above and I find that in this matter, I will not substitute my judgment for that of the Principal of Ballou as it relates to the score he accorded to Employee and his colleagues in the instant matter.

Relevant supplemental professional experiences as demonstrated on the job

This category accounts for 10% of the CLDF. This category is weighted at 10% on the CLDF. Employee received zero (0) points in this area. Employee proffered similar arguments as noted above in challenging the score that he was given in this category. I incorporate by reference my reasoning from above and I find that this falls within the rubric of managerial discretion.

Length of service

This category was completed by DHR and was calculated by adding the following: 1) years of experience; 2) military bonuses; 3) D.C. residency points; and 4) rating - four years of service was given for employees with an "outstanding" or "exceeds expectations" evaluation within the past year. The length of service calculation, in addition to the other factors, were weighted and added together, resulting in a ranking for each competing employee. An outstanding performance rating in the previous year gets employee an extra four (4) points in the length of service category. According to the CLDF, Employee was not awarded any of the aforementioned additional points in this category. Employee's tenure with DCPS began in 1986. Employee received a weighted score of five (5) points in this category. I find that Employee has not provided any credible supporting documentary evidence to buttress any additional points being awarded in this category.

Employee received a total of five (5) points on his CLDF. Employee was one of the lowest ranked persons in his competitive area and level. In reviewing record including testimonial evidence from Branch and Weber, I note that Employee did not proffer any credible statutes, case law, or other regulations to refute Agency's position regarding the principal's authority to utilize discretion in completing an employee's CLDF during the course of the instant RIF. According to the CLDF, Employee received a total score of five (5) points after all of the factors outlined herein were tallied and scored. The next lowest colleague, whose position survived the instant RIF, received a total score of fifty two and a half (52.5). Despite Employee's protestations to the contrary, there is no credible indication that any supplemental

evidence would supplant the higher scores received by the remaining employees in Employee's competitive level and area who were not separated from service.

I further note that Employee's argument regarding the similarity of Branch's responses for all of his former colleagues CLDFs as proof of the illegality of the CLDFs is unpersuasive. Branch explained that he utilized similar terminology and phrases for all of his employees so that he could fulfill the mandate of providing fair and consistent performance evaluations for all similarly situated employees. In weighing the credibility of the testimonial evidence between Branch and Employee it is clear to the undersigned that Branch used his good faith judgment when he ranked Employee against his peers as part of the instant RIF. As noted above in the summary of his testimony, Branch has presented more than sufficient evidence that Employee's effectiveness as a Science Teacher was lacking for a number of reasons most notably, his tardiness and the lack of rigor and fidelity with respect to presenting the coursework to his students. Ultimately, this was the cause of Employee's lackluster CLDF score. To buttress this point, Branch credibly contrasted the scores that Employee's colleagues received and was able to explain why their CLDF scores were considerably higher than Employee's. Moreover, in an effort to be fair with the scoring, Branch only utilized his impressions for that current school year. As has been noted previously, Principals are granted wide discretion to rate and rank employees under their supervision. Nothing in the record would lead the undersigned to believe that this RIF was conducted unfairly or with any animus towards Employee herein. Consequently, I find that Employee has failed to present credible evidence that his CLDF score was unjustified. I also find that Employee has not proffered any credible evidence to suggest that a re-evaluation of his CLDF scores would result in a different outcome in this matter.⁹

Grievances

Additionally, it is an established matter of public law that the OEA no longer has jurisdiction over grievance appeals.¹⁰ Based on the above discussion, Employee has failed to proffer any credible evidence that would indicate that the RIF was improperly conducted and implemented. Employee's numerous ancillary arguments, most notably, his attempt to draw a distinction between tenure and seniority and his belief that it should be construed in his favor as part of the instant RIF, are best characterized as grievances and outside of the OEA's jurisdiction to adjudicate.

Conclusion

Based on the foregoing, I find that Employee's position was abolished after he properly received one round of lateral competition and a timely thirty (30) day legal notification was properly served.¹¹ I further find that the CLDF that was used in this matter is overwhelmingly supported by substantial evidence. I further find that DCPS has met its burden of proof in this matter with respect to how it implemented and carried out the instant RIF and the resulting

⁹ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (stating that a material fact is one which might affect the outcome of the case under governing law).

¹⁰ Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124.

¹¹ As part of his appeal process, Employee did not contest the fact that he was timely served with a 30 day notice of the RIF before it was effectuated.

abolishment of Employee's last position of record. Therefore, I conclude that Agency's action of abolishing Employee's position was done so in accordance with D.C. Official Code § 1-624.08 and the Reduction-in-Force which resulted in his removal should be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of abolishing Employee's position through a Reduction-In-Force is **UPHELD**.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE