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

_____	)	
In the Matter of:	)	
	)	
OSCAR HARP, III,	)	
Employee	)	OEA Matter No. 1601-0356-10
	)	
v.	)	Date of Issuance: May 12, 2014
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Olekanna Ekekwe-Kauffman, Esq., Employee Representative	)	
Carl K. Turpin, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

Dr. Oscar Harp (“Employee” or “Harp”) was a District of Columbia Public Schools (“DCPS” or “the Agency”) School Psychologist assigned to various schools during the 2009-2010 school year. All school based DCPS employees are subject to ongoing performance evaluation through IMPACT (DCPS’ tailor-made performance evaluation tool). At the close of the 2009-2010 school year, Employee received an IMPACT rating of Ineffective. As will be explained below, IMPACT procedure provides that employees who receive a rating of Ineffective are subject to separation. Accordingly, Employee’s employment with DCPS was terminated effective July 16, 2010. At the time of his removal, Employee was a member of the Council of School Officers Union. On August 3, 2010, Employee filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”). Shortly thereafter, DCPS filed its Answer. On or about July 17, 2012, the undersigned was assigned this matter.

After a prehearing conference, a hearing was held on March 26, 2013 and June 25, 2013. Thereafter, Employee’s original counsel, Lee Boothby, Esq., was incapacitated due to illness and is no longer able to actively practice law. Moreover, the parties undertook protracted (and unsuccessful) settlement negotiations. Eventually, Employee found new legal counsel and both parties recently submitted their written closing arguments. The record is

now closed.

### JURISDICTION

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

### ISSUE

Whether Agency's action of separating Employee from service pursuant to an "Ineffective" performance rating under the IMPACT system 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.

### FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of Employee's appeal process with this Office.

#### The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during 2009-2010 school year.<sup>1</sup> According to the record, Agency conducts annual performance evaluation for all its employees.<sup>2</sup> During the 2009-2010 school year, Agency utilized IMPACT as its evaluation system for all school-based employees. The IMPACT system was designed to provide specific feedback to employees to identify areas of strength, as well as

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<sup>1</sup> Agency's Answer (September 7, 2010).

<sup>2</sup> *Id.*

areas in which improvement was needed.<sup>3</sup>

With the IMPACT system, all staff received written feedback regarding their evaluation, as well as a post-evaluation conference with their evaluators. IMPACT evaluations and ratings for each assessment cycle were available online for employees to review by 12:01 am, the day after the end of each cycle. For the 2009-2010 school year, if employees had any issues or concerns about their IMPACT evaluation and rating, they were encouraged to contact DCPS' IMPACT team by telephone or email. At the close of the school year, all employees received an email indicating that their final scores were available online. Additionally, a hard copy of the report was mailed to the employees' home address on file.

Prior to instituting IMPACT, all principals and assistant principals at DCPS were provided with training materials, which they then used to conduct a full-day training with all staff members in September 2009. The training detailed the IMPACT process, consequences, and positive and negatives associated with each full final IMPACT rating. Each staff member was provided with a full IMPACT guidebook unique to their evaluation group. The guidebooks were delivered to the employees' schools and were also available online via the DCPS website. Throughout the year, the IMPACT team visited schools to answer questions as well as to ensure that the IMPACT hotline was available to all staff members via email and/or telephone to answer questions and provide clarification.

For the 2009-2010 school year, there were twenty (20) IMPACT grouping of DCPS employees. For the 2009-2010 IMPACT evaluation, School Psychologists were classified as "Related Service Providers". Employee's position – School Psychologist, was within Group 12. The IMPACT process for Group 12 employees consisted of two (2) assessment cycles: the first assessment cycle ("Cycle 1"), had to occur by February 1st; and the second assessment cycle ("Cycle 2") had to occur by June 15th. As part of each assessment cycle, Group 12 employees were also entitled to have a conference with their Program Manager/Special Education Coordinator from the DCPS Office of Special Education, wherein, the employees receive written feedback based on the Related Service Provider Standards rubric, along with a discussion of the next steps for professional growth.<sup>4</sup> According to the Group 12 IMPACT Assessment Handbook distributed to Group 12 employees at the beginning of the 2009 – 2010 school year, these employees were assessed on the following four (4) IMPACT components, namely:

- 1) Related Service Provider Standards
  - 1) Domain 1: Assessment
    - Standard 1: Standard Assessment Battery
    - Standard 2: Assessment Report Format
    - Standard 3: Assessment Report Content
  - 2) Domain 2: Service Delivery
    - Standard 1: Skill Building
    - Standard 2: Due Diligence

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<sup>3</sup> *Id.*

<sup>4</sup> Group 12 IMPACT Assessment Handbook - *See* Agency's Exhibit 9.

- Standard 3: Productivity
- 3) Domain 3: Documentation
    - Standard 1: Documentation Format
    - Standard 2: Intervention Activity
    - Standard 3: Missed Sessions
    - Standard 4: IEP Report Cards
- 2) IEP Quality (IEPQ)
    - 1) Present Levels of Performance
    - 2) Goals
    - 3) Service and Supplemental Aides
    - 4) Least Restrictive Environment
    - 5) Extended School Year Services
  - 3) Assessment Timeliness (AT) – (Scored once a year, and tracked in the Special Education Data System – SEDS)
  - 4) Core Professionalism – This component is scored differently from the others. This is a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows:
    - 1) Attendance;
    - 2) On-time arrival;
    - 3) Compliance with policies and procedures; and
    - 4) Respect.

Group 12 employees were also provided with an explanation of how they would be scored. School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:

- 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.<sup>5</sup>

On March 4, 2010, Agency's Director of Teacher Human Capital Jason Kamras sent out a letter to all DCPS Related Service Providers in an attempt to clarify the IMPACT process for Group 12 employees. Specifically, Agency sent this letter as an attempt to explain the Group 12 IMPACT process in the event that one of the components listed above does not apply to a particular Group 12 employee. To address this problem, Agency noted that it had established four subgroups within Group 12 to include:

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<sup>5</sup> *Id.*

1. Group 12a: RSPs who write IEPs and conduct student assessments – These individuals were assessed using the following IMPACT Assessment Components; 1) RSP Standards (70%); 2) IEP Quality (15%); and 3) Assessment Timeliness (15%).
2. Group 12b: RSPs who do not write IEPs but do conduct student assessments - These individuals were assessed using the following IMPACT Assessment Components; 1) RSP Standards (85%); and 2) Assessment Timeliness (15%).
3. Group 12c: RSPs who write IEPs but do not conduct student assessments - These individuals were assessed using the following IMPACT Assessment Components; 1) RSP Standards (85%); and 2) IEP Quality (15%).
4. Group 12d: RSPs who do not write IEPs and do not conduct student assessments - These individuals were assessed using the IMPACT Assessment Component RSP Standards (100%).

The March 4, 2010 letter also informed the Related Service Providers that the IEP Quality component will be eliminated and will not be counted for Cycle 1 final IMPACT scores.

According to Employee's Final 2009 – 2010 IMPACT report, DCPS informed its Related Service Providers of another adjustment to the Group 12, 2009 – 2010 IMPACT Assessment.<sup>6</sup> The report highlighted the following changes to the Group 12, 2009 – 2010 IMPACT Assessment components:

1. Adjustment 1: IEPQ weight decreased from 15% to 0%
2. Adjustment 2: AT weight decreased from 15% to 0%
3. Adjustment 3: RSP weight increased from 70% to 100%.

In addition, this report noted that the Productivity Standard under the RSP component would not be included in the RSP Standard score calculation.<sup>7</sup>

### SUMMARY OF THE TESTIMONY

#### Maria Turner-Wingate (Transcript pages 16 to 141)

Maria Turner-Wingate (“Dr. Turner-Wingate”) is currently the Program Manager for the District of Columbia Public School System (“DCPS”). She works in the Office of Special Education. She began this position in September of 2009. Prior to this position, she was the School Psychologist for DCPS. Prior to her time working for DCPS, she was a School Psychologist for the Baltimore City Public Schools. Dr. Turner-Wingate earned her undergraduate degree in psychology from Dartmouth College and earned her doctorate in clinical psychology from the Illinois School of Professional Psychology.

As a Program Manager, Dr. Turner-Wingate's duties are to supervise the school

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<sup>6</sup> See Agency's Exhibit No. 3.

<sup>7</sup> *Id.*

psychologists in the District; oversee the school psychology program for the District; help to write guidelines for the policies that have been established for the school psychology program; hold trainings for psychologists; assist when there is any issues or concerns at the schools psychologists are working; and evaluate the school psychologists twice a year under the IMPACT evaluation. The Director of Related Services supervised the program managers and the school psychologists. Dr. Erica Fener (“Dr. Fener”) was the Director of Related Services and was Dr. Turner-Wingate’s immediate supervisor. Dr. Turner-Wingate met with Dr. Fener on a weekly basis to discuss matters regarding the IMPACT program. Whenever there were issues that would rise to the level of the principal or higher, Dr. Turner-Wingate would let Dr. Fener know so that she could be aware of the situation and so that she could receive feedback on how to proceed.

In 2009, there were a total of nine program managers. When IMPACT was instituted, the program managers received a training session on the program. Each of the program managers had various subsets of employees that worked under them. Dr. Turner-Wingate supervised school psychologists in Cycles 1 and 3.

Prior to the start of the school year, a four-day open session for professional development was held. During the open sessions, employees prepared for the beginning of the school year, received assignments, and discussed new business. Since the IMPACT system was new, it was introduced during the open session. They received copies of the booklets for the IMPACT system. Specifically, school psychologists received the IMPACT booklet for the 2009-2010 school year. The IMPACT booklet provided a brief overview of what the IMPACT evaluation system is, including the percentages of the areas for the components that make up the IMPACT evaluation system and related service providers. The booklet also included a breakdown of each competent and standard and how all of the information is put together to come up with the final evaluations. Guidebooks titled “DCPS Psychology Assessment and Eligibility Guidebook” were also disseminated to school psychologists. This guidebook provided what different reports the school psychologists had to write and how the assessments were to be completed. The guidebook also included templates for reports and eligibility criteria for the different classifications. Psychologists also received guidebooks titled “Related Services Provider’s Handbook.” This handbook contained information about the psychologists’ and social workers’ duties, responsibilities, certification requirements, tour of duty, and expectations.

It was determined that those who supervised were going to write their own operationalized rubric of the IMPACT rubric. Dr. Turner-Wingate, Dr. Rich and Dr. Mitchell got together and went through the rubric and discussed what they believed it should look like. Dr. Turner-Wingate typed everything up. The program managers operationalized the ‘Group 12 Rubric’ specifically for school psychologists. This means that they took the rubric and boiled it down into very specific metrics. They gave specific examples for every area that the provider needed to have in order to receive their scores. The rubric was given to Dr. Fener for review and approval prior to disseminating it to the psychologists. At that time, Dr. Turner-Wingate was not a licensed psychologist. It was not required to be a licensed psychologist for the school psychology discipline. The rubric was discussed at the first case conference in October. It was subsequently discussed when people presented reports. A rating of 4 is the highest score one can achieve and a rating of 1 is the lowest. The rubric showed how to get a score of 4. Dr. Turner-

Wingate brought up IMPACT at every case conference. At the case conference, two psychologists would present cases.

In the 2007-08 school year, litigation took place that involved the Special Education Department. Dr. Turner-Wingate is familiar with this litigation and refers to it as the “Blackman-Jones” case. Dr. Turner-Wingate provided that after the litigation of the Blackman-Jones case, changes were made in the department; things became much more stringent and they were cited for not assessing the students in a timely manner. Additionally they were cited for not appropriately documenting service and not completing IEPs timely. As a result, there was a huge change in the terms of the guidelines, practices and systems. Specifically, the IMPACT psychology guidebook was written to help psychologists do a better job of their assessment reports and being able to appropriately support the ‘IEP’ team in identification of disability classifications. Assessment reports are based on referral concerns. Whatever concern a parent or teacher has about a child, they would bring the concern to the team to discuss and the team would look for data as to how the child is conforming. If the team decided that the child needed to be formally assessed, then the assessment would be based on the concerns.

The IEP team includes the parents of the student, the school psychologist, the child’s teacher, another administrator from the school, and other related service providers. The school psychologist is a core person on the IEP team. This is typically the person who does the majority of the assessments based on the referral concern. The school psychologist is responsible for the report that is generated.

A template for the psychological reports was developed. After the Blackman-Jones litigation, the report was a little longer and a lot more thorough. Further, the Special Education Database System would track when assessments were ordered and completed so that the number of untimely assessments would be reduced. As a result, there were no paper files for the special education students in the school. Everything was uploaded in the database system. This change was to make sure that everyone was being efficient, records were not lost, and inappropriate persons would not have access to the records. To access the system, one needed a code. The system helped with better monitoring the timeliness of assessments.

As a Program Manager, Dr. Turner-Wingate was the direct report over Employee. She would hold conferences wherein a subset of school psychologists would come together and discuss cases and assessment reports. She also held monthly staff meetings that would address new issues that would come up. Further, she would have professional development sessions throughout the school year so that she could offer training on the topics related to school psychologists. She instituted office hours so that providers could come in and have individual support on any issues or concerns they had.

The school year began in mid to late August. Dr. Turner-Wingate was promoted to Program Manager and her official start date was September 28, 2009. Employee was a School Psychologist that she supervised. Employee participated in the monthly meetings, case conferences, staff meetings, and professional development sessions. During the 2009-10 school year, Dr. Turner-Wingate conducted an IMPACT assessment on Employee for Cycle 1. Cycle 1 needed to be completed by February 1 and Cycle 3 needed to be completed by sometime in June.

School psychologists and people in Group 12 were assessed twice a year.

School psychologists had to write three reports on their students: the Psychological Evaluation Report; the Independent Educational Evaluation (IEE) Review Report, which is an outside report that's been done that the family brings in and the psychologist reviews it; and the Data Evaluation Report, which reviews all of the data on the child to make a determination on eligibility.

Employee did not have any reports entered into the database system. The operations team, which is a support team for the program managers, goes into the database system to pull the reports for the reviews. Dr. Turner-Wingate stated that the operations team did not find reports for about a quarter of the psychologists. Dr. Turner-Wingate sent an email to Employee stating that she needed the reports and that he needed to update them into the database system. She subsequently reviewed 5 of Employee's reports. Two of those reports were Psychological Evaluations. The final three were headed "Psychological Summary Report." However, these reports were not a part of the IMPACT rubric.

However, Dr. Turner-Wingate testified that Employee was not scored in the IEPQ rating section. This score was not reflected in the final IMPACT. She stated that the entire IEPQ section was thrown out completely and not included in the first or second assessment rating.

The section titled RSP (related service provider) of the IMPACT rating addresses the core responsibilities of the related service provider. For school psychologists, the core component is the assessment reports that they completed. The initial Standard Assessment Battery (RSP:A1, Standard Assessment Battery) would include a cognitive measure, a measure of educational achievement, and any additional measure they would need to address a referral concern. The overall score that Employee received in this category was a 2 because his psychological evaluation reports did not meet all of the IMPACT requirements.

For the RSP: A2 Assessment Report Format, he received a score of 1 because his other reports did not meet the appropriate format and did not have the correct heading. For the RSP A3 Assessment Report Content, he received a score of 1. This assessment was reviewed based on the template that was in the guidebook. He received a 1 because his assessment did not have all of the information it needed to have in it. For the A3 Assessment Report Content, Employee received a score of 1 because he did not include the required information. The first section of this assessment was about whether or not the content was there. The second section addressed the summary and educational implications. For this section, the psychologist needed to explain how the areas of concern affected the student's ability to function at grade level in a general education classroom. The last section of this assessment is recommendations. This section should have included an evaluation report that contained recommendations as to how the child can be assisted and whether or not they are going to be made eligible. Employee did not have sufficient recommendations to help the teachers or any of the team members help the students improve. It is important that psychologists follow the template for IMPACT because they need all of the data information available on the child to make the decision about his/her strengths, weaknesses, and educational needs. Further, they must be meeting the objectives of Blackman-Jones, including making sure that they document appropriately and not over-identifying children in certain



disability classifications.

The section called CP of the IMPACT rating addresses the core professionalism. In this area of the evaluation, the providers do not earn scores of 4-1. They either meet the standard, fall slightly below the standard, or fall significantly below the standard. In this category Employee received a minus 20 (“-20”). The first standard is Attendance. Employee met the requirements of this category because he came to work, attended the case conferences, monthly meetings, and professional development training. He also met the standard for On Time Arrival. For the Policies and Procedures category, Employee scored significantly below the standard because he did not follow the procedure as indicated on the manual. He did not submit documentation on a weekly basis and Dr. Turner-Wingate had to email him to ask to submit the information. A rating of significantly below the standard indicates that there was a pattern of failure to do something in terms of following policy.

The next category is Respect. Employee received a score of slightly below standard for this because Dr. Turner-Wingate received emails telling her that there were some issues concerning him at Eastern Senior High School. She had received emails from the Cluster Supervisor regarding conflicts with Employee in terms of being able to make certain meetings and doing what was asked of him at the meetings. She informed Dr. Fener, her supervisor, of the issues. She also spoke with Employee through email exchange and through a meeting.

In total, Employee received an average RSP score of 1.33. Because of the issue regarding the three reports that were not really reports, Dr. Turner-Wingate determined that she would reread the reports and evaluate him again. She told Employee that she would talk about it with him after she looked at them again. After she reviewed the three reports again, she determined that they did not have all of the content needed in order to bump up his score anything beyond a 1. Dr. Turner-Wingate did not have a chance to meet with Employee to tell him this.

Case conferences involved peer review for going over the reports, presenting reports, and presenting cases. Staff meetings dealt with things affecting everyone, such as a change in policy. Case conferences usually consisted of seven or eight people, while the staff meetings consisted of all the psychologists. Case conferences were held at the beginning of each month and staff meetings were held the third or fourth Friday of every month. In addition, psychologists received a “Growth Plan” pursuant to IMPACT procedure. The Growth Plan information was posted online. Dr. Turner-Wingate did not discuss the Growth Plan with Employee.

Dr. Turner-Wingate supervised Employee from the end of September until he was transferred to her colleague, Dr. Ramonia Rich, on May 1. She subsequently provided Dr. Rich a copy of Employee’s IMPACT rating from Cycle 1. Dr. Turner-Wingate gave about five other employees’ ineffective ratings. Dr. Turner-Wingate did not have any concerns with the quality of Employee’s work until she conducted the IMPACT review. After the IMPACT ratings were discussed with her supervisor, they made sure that they had Growth Plans in place for people. Dr. Turner-Wingate referred Employee to the Assessment Eligibility Guidebook because it she believed he wasn’t following the policies and guidelines for IMPACT.

There were other psychologists outside of Dr. Turner-Wingate’s group who were not

uploading reports. Dr. Fener became aware that the reports were not being uploaded into the database system. The following year a new system was developed so that program managers could better monitor this issue.

Ramonia Rich (Transcript pages 146 to 231, 247 to 301 & 483 to 489)

Ramonia Rich (“Dr. Rich”) is currently the Psychologist Program Manager for DCPS. She began this position in the 2008-09 school year. Prior to this position, she was a School Psychologist for DCPS. She held this position from 2001 to 2008. Dr. Rich has a bachelor’s degree in education and a master’s degree in school psychology. She also has a Ph.D. in educational psychology. Dr. Rich is not a licensed psychologist. She is a certified school psychologist for the District and her background is in school psychology.

As a Program Manager, Dr. Rich currently supervises approximately 34 psychologists. She had previously supervised 25 psychologists in the 2008-09 school year and about 25 in the 2009-10 school year. Supervision consists of providing some support at the local schools; developing some professional development for the staff; doing some case conference; hold monthly meetings to review and offer information; and possibly mini-training sessions.

Dr. Rich is also responsible for reviewing psychologists using the IMPACT system. This system began in the 2009-10 school year. During the evaluation time period, there is an operations team that will pull a random sample of psychological reports. If the reports are in the database system, they are provided to program managers. The program managers read through the reports and use the IMPACT rubric to score them. Then, the program managers access the IMPACT system to write up the ‘qualitative piece’ and be provided with a score. The program managers subsequently hold a conference with the employee where they discuss the assessments/reports that were reviewed and/or any issues with regard to any of the Core Professionalism sections. Core Professionalism consists of four areas that the IMPACT office created. The program managers operationalized the core areas and generated a score for the employees.

The Central Office Staff held professional development sessions where they informed the psychologists of any change and brought them up to speed on expectations. During this session the IMPACT system was introduced by Dr. Fener. Dr. Fener was Dr. Rich’s supervisor. Every provider received a copy of the booklet on IMPACT at the professional development session. However, they were not able to review it at this time. Psychologists received the Related Service Provider’s Handbook. The handbook was a guidebook for them and discussed duties, policy, regulations, and expectations for the program. They also received the DCPS Psychology Assessment and Eligibility Guidebook dated September 2009. This guidebook was more specific to the actual assessments that psychologists conducted. With regard to the Components of the Psychological Evaluation Report, the report needed to be ordered a certain way and needed to have certain elements to deem it a comprehensive report. The guidebook provided templates for the expectations for the evaluations. Dr. Rich noted that there may have been minor changes to the IMPACT system during the 2009-10 school year, but she does not recall them. She was involved in these changes and sent out new materials from time to time.

There are different categories of employees that are a part of the related services providers. Related service providers in Group 12 include speech pathologists, language speech pathologists, social workers, psychologists, psychological support such as occupational therapy and physical therapy, and assisted technology. The IMPACT booklet provided all the different components that make up the assessment for Group 12.

Dr. Rich holds a session on IMPACT at the beginning of each school year. However, since IMPACT was first introduced in the 2009-10 school year, she held the session at the case conference in September. At the first case conference, employees were able to review the IMPACT booklet, ask questions, and get an understanding of what was expected of them. There was also a discussion on how to prepare reports, expectations, timesheets, sick leave and other routine information. The operationalized IMPACT rubric was emailed out to the psychologists in October.

Assessment reports are prepared by school psychologists in preparation for the eligibility meeting and the triennial meeting. Prior to the meeting, the psychologists upload the reports into the database system. It is not Dr. Rich's responsibility to check and make sure the reports are uploaded into the system, or to look at them prior to them being uploaded.

A case conference is a meeting designed to discuss different cases that the providers are working on. At case conferences, employees use their peers as a sounding board to discuss complicated cases, get direction, and to help develop their skills. Employees are not rated or graded at the case conferences. The case conferences are used for the growth of the service providers. The case conferences are during the first full week of each month. The conferences last three days. Employee attended two of Dr. Rich's case conferences. However, he did not present at the case conferences. Because he did not present, he did not receive feedback.

The monthly meetings are a time used to review documents, information, and training. One of the program managers would chair the meetings. The staff meetings were held the third Thursday of the month.

Dr. Rich worked with Employee for many years. Employee was transferred to Dr. Rich's supervision in later part of the 2009-10 school year. She met with Employee on May 1. She supervised Employee for approximately six weeks during that school year. Dr. Rich also supervised Employee during the fall of the 2010-11 school year. She held monthly meetings and monthly case conferences. She is familiar with the Blackman-Jones v. DC case. She states that because DCPS was not in compliance, they had to meet expectations pursuant to this case. Psychological Reports were missing information and documentation was poor. Because DCPS had to be more uniform in their practices, templates were developed.

Dr. Rich evaluated Employee's assessments and the quality of the assessments during the 2009-10 school year. Employee worked at Woodson Senior High School, Eastern Senior High School and the DC Jail. She evaluated him during Cycle 3, which needed to be completed by June 15. She did not provide a rating for the IEP section because that section did not apply to school psychologists. In order to conduct the rating, the operations team pulled four or five random reports from the database that were completed by Employee and provided them to Dr.

Rich. The team pulled the reports at five or six weeks prior to May 1. Dr. Rich stated that it is possible that the reports could have been completed prior to her becoming Employee's supervisor.

Dr. Rich based her rating on the IMPACT booklet and the operationalized rubrics that were provided to the service providers. Standard Assessment Battery is a battery of assessment measures or tests that are chosen in order to conduct the psychological evaluation. The battery of assessment measures is based on a number of factors. The main factor is the referral question. Psychologists' proficiency in the related service provider standards were assessed based on psychological evaluations and core professionalism.

For the first rating called RSP (Related Service Provider): A1, Standard Assessment Battery, Employee received a 2. He received this score because only two out of five of his reports made use of the appropriate measures and data sources. In addition, multiple informants were not utilized in the formulation of data gathering in three of the reports. For the second rating, Assessment Report Format, A2, Employee received a rating of 1 because information was inserted and/or deleted for three out of five of the assessments. As a result, the assessments were not in compliance with the data elements outlined in the assessment formats found in the templates in the handbooks. For the third rating, A3, Assessment Report Content, Employee received a 2 because his assessments missed very important data sets. For the rating for 3b, Employee received a 1. Employee also received a rating of a 1 for 3c because there were no recommendations in his assessments. Overall, Employee's average score for the RSP section was a 1.44.

The next section is Core Professionalism. This section is not rated the same as the RSP section. Employee received a "meets expectations" rating for On Time Arrival; "meets expectations" for Attendance; "meets expectations" for Policies and Procedures; and "meets expectations" for Respect. Employee met the expectations of Policy and Procedures because he met the local school policies and procedures for submitting student discipline referrals, appropriate staff attire, and protocol for thirty minute morning block.

On June 10, Dr. Rich held a conference with Employee on his rating. Her Growth Plan indicated that she expected Employee to follow the IMPACT format, to include the designated elements, to integrate data, and to develop his recommendations. She provided the areas that he needed to work on, and stated that she would be available if he needed support. Dr. Rich did not review Dr. Turner-Wingate's Growth Plan, nor did she see it in the database. Dr. Rich understands that the Growth Plan is supposed to highlight the areas of concern. In addition, feedback is supposed to be written in the IMPACT database. Employee expressed to Dr. Rich that he felt that there were some discrepancies between her and Dr. Turner-Wingate's evaluations. He felt that the expectations differed between the two program managers. Dr. Rich believed that Employee was disrespectful in expressing his concerns. He was offensive and made remarks regarding her level of training. Dr. Rich explained to Employee that although he is a trained clinical psychologist, this was a school psychologist job, and there are expectations with regard to recommendations he is to provide regarding the student. Dr. Rich encouraged Employee to take his concerns up with Dr. Fener. The Evaluation needed to be completed by June 15. Psychologists can review their evaluations the next day after the IMPACT period

closes.

After the evaluation meeting, Dr. Fener called Dr. Rich for a conversation regarding Employee's evaluation. Dr. Rich explained to Dr. Fener that Employee had some questions about the way she evaluated him and the way Dr. Turner-Wingate evaluated him. She explained that Employee felt that there were some discrepancies in terms of how each program manager evaluated him. Dr. Rich explained that she did not look at Dr. Turner-Wingate's evaluation. She informed Dr. Fener that Employee was rude to her. Dr. Rich confirmed that she did not review Dr. Turner-Wingate's evaluation.

In comparison to the review Employee received during Cycle 1, Dr. Rich found that she did not have attendance issues with Employee. Therefore, she saw growth with regard to attendance. Further, she specifically detailed areas of deficit. However, there were similar areas of concerns with regard to the assessment reports.

Kathryn McMahan-Klosterman (Transcript pages 301 to 352)

Kathryn McMahan-Klosterman ("McMahon") is currently employed at DCPS. She is the Director of IMPACT. As the Director of IMPACT, she manages the team that oversees the implementation of IMPACT. Her duties include overseeing the helpline, which is responsible for answering phone calls and emails from current and past employees; ensuring that evaluators meet deadlines; overseeing the Chancellor's appeals process; and overseeing caseload confirmation for the special education teachers. She started working with the IMPACT team in October of 2010. She has been the Director since November of 2011.

IMPACT started in the 2009-10 school year with formal evaluations. The authority to establish IMPACT was provided through the D.C. Omnibus Act and the DCMR. Specifically, the regulations provide that the supervisor that supervises for at least 90 days shall conduct the IMPACT evaluation. The IMPACT procedures and processes were adopted by the Superintendent. Although McMahon did not work with IMPACT during the 2009-10 school year, she later became responsible for the keeping of all the records of what occurred in the 2009-10 school year. On occasion, McMahon has had to go back and review the 2009-10 IMPACT documents when employees, past administrators, or attorneys call. McMahon has also interacted with various unions that represent school based employees.

In designing IMPACT, the IMPACT team wanted to make sure to evaluate people on the roles and responsibilities particular to their jobs. Therefore, for the 2009-10 school year, employees' roles were broken into 20 different groups. Group 12 was Related Service Providers and Employee was in this group. For Group 12, program managers evaluated the service providers. Program managers were assigned a subset of providers. Sometimes the evaluators changed. The IMPACT program for the related services providers was designed to have multiple program managers so that they can change evaluators if necessary. Another reason for multiple evaluators was that the scale for related service providers was large and therefore, multiple persons for each discipline were needed.

The Growth Plan an employee received for Cycle 1 was not necessarily the same

Growth Plan an employee received for Cycle 2. There aren't specific requirements surrounding the Growth Plans. Growth Plans could be discrete to one cycle and not necessarily be provided in another cycle. Or, there could be a Growth Plan that moves from Cycle 1 to Cycle two. Furthermore, an evaluator for one cycle may not be the same evaluator for another cycle. McMahon noted that "multiple feedback" would not be helpful if the supervisor/program manager did not provide the feedback until June of the 2009-10 school year. However, there are chances for the employee to receive feedback; the employee may receive feedback through ongoing professional development, by talking to their program managers, or through informal settings.

An IMPACT report is a document that outlines all of an employee's scores from all assessment cycles. It includes the discrete scores as well as the final IMPACT score and rating. The record is kept in the IMPACT database. How psychologists' IMPACT reports are scored and what should be provided in the reports are contained in the assessment rubric. All evaluations and adverse actions taken against employees pursuant to IMPACT are kept in the database.

There are consequences associated with the final score for the IMPACT rating. Further, the database indicates the consequences from the 2009-10 school until the present. In the 2009-10 school year, a rating of "highly effective" meant that one is eligible for a bonus. Individuals with an "effective" rating would receive their normal salary progression. Individuals who were rated "minimally effective" (a score of 175 to 249) and were members of the Washington Teacher's Union received a hold on their step increase and a Notice of Minimally Effective. For employees who were not a part of the union, they only receive the notice. If one was rated "minimally effective" two years in a row, then they were subject to separation.

The record kept for Employee shows that his rating during that year was a raw score of 119, which means that his final rating was ultimately "ineffective." Therefore, he received a Notice of Ineffective rating. The Growth Plan given to Employee for Cycle 1 included following the guidelines related to evaluation and eligibility for special education and related services. Further, going forward, Employee needed to closely review the assessment and eligibility guidebook and follow up with his program manager regarding any outstanding questions or concerns. The Growth Plan given to Employee for Cycle 3 included working to develop psychological evaluation reports as it relates to format, content, and recommendations.

McMahon noted that the purpose of the Growth Plan is to provide concrete information around how someone is performing, provide them ideas for how to improve and to give them direction on what to do should they continue to struggle. McMahon testified that a Growth Plan for Cycle 3 would not be helpful for employment with DCPS if an employee was separated as a result of his or her ratings. However she noted that the evaluations are meant to be holistic and evaluators should wait until the end of the cycle so that they can include evidence from an entire cycle.

Employees who are separated as a result of an ineffective rating may appeal through OEA, the Chancellor, or their union. Employee's union was the Counsel of School Officers (CSO). This union had a collective bargaining agreement with the Board of Education for the

District of Columbia. Although the agreement ended in 2007, the agreement was still being enforced and has not been renegotiated. The agreement discussed the evaluations; however, the agreement did not provide that the supervisor needed to supervise an employee for 90 days prior to the completion of the evaluation. When there is a grievance filed with the union, McMahon may receive requests for documentation, knowledge of the situation, or her thoughts on the concerns.

Oscar Harp III (Transcript pages 354 to 481)

Oscar Harp III (“Employee” or “Dr. Harp”) holds a Bachelor of Arts from Clark College, where he majored in psychology. He received a masters and a Ph.D. from Howard University. As a part of his Ph.D. requirement, he did an internship at Children’s Hospital National Medical Center. He also went to the New York Institute of Technology for a couple of years. Dr. Harp did post-doctoral masters in clinical psychopharmacology at Farleigh Dickinson in New Jersey. Dr. Harp is a Maryland licensed psychologist and has been certified in the District as a school psychologist. Dr. Harp also possesses other certifications and is a part of various psychological associations. During the 2009-10 school year, Dr. Harp was the president of the Association of Black Psychologists Local Chapter D.C. and the editor-in-chief of the news journal for the Association of Black Psychologists.

Dr. Harp worked for DCPS from 1980 until July 16, 2010, the date of his termination. His first position with DCPS was a clinical psychologist. However, he was informed by DCPS that he could no longer use this title within the school system and that he would be considered a school psychologist. Thereafter he received his certification for school psychology and was a school psychologist from 2008 to 2010. Prior to the 2009-10 school year, Dr. Harp was never rated ineffective, nor was he rated below average. He was always rated average and above average. With the exception of his evaluation during the 2009-10 school year, he always met or exceeded expectations.

During a meeting in September of 2009, Dr. Harp was informed of the IMPACT evaluation system. Dr. Fener spoke briefly regarding IMPACT. At the time, he was told that the system was not ready, so he did not receive all of the documents. Dr. Harp stated that the meeting was more of a cursory review of the IMPACT system. DCPS explained that that they were coming up with guidelines regarding IMPACT. After several months, Dr. Harp and other employees received a manual by email. Employees were complaining that they did not have a document to refer to. He explained that DCPS made changes to the requirements of IMPACT throughout the year and it would send him emails regarding the changes.

Dr. Turner-Wingate became Dr. Harp’s supervisor in September of 2009. A staff meeting was held in October, where Employee was provided with the Related Services Provider’s Handbook. He also received the Psychology Assessment and Eligibility Handbook. This was Dr. Turner-Wingate’s first time as a supervisor. Dr. Turner-Wingate discussed training during monthly conferences. During one conference, she provided a report that she conducted and explained that the report did not meet the guidelines.

From Dr. Harp’s understanding, under IMPACT, he would receive observations of what

he was doing in his psychological, which would be reviewed based on moving guidelines implemented under IMPACT. The review would be based on how the psychological was written, if the psychological was working, and whether there was a working document.

During the monthly meetings, the school psychologists would talk about what they were doing in the schools. They would also discuss IMPACT and some school psychologists made presentations on their psychologicals. During one of the meetings, Dr. Harp gave a presentation. While he was doing this presentation, Dr. Turner-Wingate stated that she had to do something and stepped out of the room. He gave his presentation to the remaining school psychologists in the room. His supervisor was never able to hear his presentation. As a result, she was not able to provide comments on the presentation. There were about five or six monthly meetings with Dr. Turner-Wingate.

On January 9, 2010, Employee had a meeting with Dr. Harp and received his initial evaluation for IMPACT. At this time, Dr. Turner-Wingate informed him that she had made some errors and that she had evaluated all of his reports as if they were psychological evaluations. She went over all of the RSP ratings with him. She did not realize that some of his reports were titled "Summary of Reports." The reports should have been labeled "Review of Independent Evaluations." As a result, she graded the reports based on the wrong criteria. Therefore, another meeting needed to be held where she would review the reports as if they were "independent evaluations." Dr. Turner-Wingate notified Dr. Harp via email that this meeting would be held on January 29, 2010.

On the day of the meeting, Dr. Turner-Wingate was late. Then she realized that they needed to be at another meeting with Dr. Fener, so the evaluation was cut short. Dr. Harp was told that they would continue the evaluation at the meeting with Dr. Fener. Dr. Turner-Wingate explained to Employee that she had all of his psychological reports on her laptop, and she would be reviewing them during the meeting. She further explained that at the conclusion of the meeting, they could discuss what his evaluation ratings would be and any concerns she had with the psychologicals. However, at the meeting, Dr. Turner-Wingate volunteered her laptop to use for a presentation, and the presenter utilized her laptop for the duration of the meeting. As a result, she told Dr. Harp that she would continue his evaluation that evening and would send him his results via email. She explained to him that she could not meet with him at that time because she had another evaluation to do and she had not started with it.

Dr. Harp later realized that if his evaluation was not completed by February 1, 2010, Dr. Turner-Wingate would be rated poorly. She explained to Employee that she was going to be going to a restaurant with another psychologist, and that his evaluation would be emailed to him. Dr. Harp never received his evaluation. In addition, he did not realize that his evaluation would be inputted into the IMPACT database system because no one informed him of this or the website. On February 10, 2010, Employee received a document titled "Related Service Providers" Standards, Rubric Assessment." Dr. Turner-Wingate told Employee that she had evaluated him based on this rubric. This rubric was different than the one previously provided to him.

During his time under Dr. Turner-Wingate, Dr. Harp requested that Dr. Turner-Wingate



come to Eastern High School because he wanted her to see what he was dealing with at the school. He explained that the school wanted him to do presentations. Dr. Turner-Wingate told him not to do them because he was not supposed to do them. He also explained to her that he felt that it was unfair of him to have three schools, while the other psychologists had two. Thereafter, Dr. Turner-Wingate attended one of Employee's evaluations. She later met with Dr. Fener and told her that Employee did a fine job in terms of his evaluation and reporting to parents. Dr. Turner-Wingate told Employee that Dr. Fener did not like him.

Later during a town meeting on or around April 29, 2010, Dr. Harp mentioned to Dr. Turner-Wingate that she never sent him his results and that he needed to know his results. She told Dr. Harp that she thought she had emailed the results to him. Dr. Harp considered this a failed evaluation because his supervisor never sent him his results or discussed the various areas of IMPACT with him.

On May 6, 2010, Dr. Harp received an email from Dr. Rich, explaining that she was his new supervisor and that she would be evaluating him for the third cycle. He explained to her that his evaluation had not been completed with his previous supervisor and asked her if she knew his results. Dr. Rich stated that she knew what his evaluation was for the first cycle, but she did not provide this information to him. Dr. Rich further provided part of his Cycle 3 evaluations would be based on what she received from Dr. Turner-Wingate. She stated that she received some information from Dr. Turner-Wingate via email. Dr. Harp did not attend any of Dr. Rich's meetings because she had already held her monthly meeting for May and there were no meetings in June.

The evaluation meeting was on June 9. On that day, Dr. Rich was two hours late for the meeting. She explained that she was having trouble finding the building and apologized for her tardiness. When Employee asked Dr. Rich why he was switched to her supervision, Dr. Rich explained to him that the change was made for administrative reasons dealing with the balancing of caseloads between herself and Dr. Turner-Wingate. During the evaluation, Dr. Rich told Employee that some of his language was too high for the population he was serving. Dr. Harp stated that he felt that there were no problems with his language and that there was nothing in DCPS' guidelines on this issue. He also felt Dr. Rich was using different criteria from that of his previous supervisor, as Dr. Turner-Wingate did not mention this issue to him. He felt the evaluation process was unfair because Cycle 1 was supposed to cohere with his second cycle in order to make a determination whether the person was doing well. Dr. Rich showed Employee his results and told him not to worry because his rating would change as a result of the information he provided her. Further, Dr. Rich stated that they would have a meeting with Dr. Fener.

Dr. Harp disputed Dr. Rich's remarks in her testimony regarding him being rude. He testified that he did not reiterate to her that he was a clinical psychologist. During his time at Agency and interacting with Dr. Rich, Employee had never been rude or disrespectful to her. Dr. Rich was never rude to Employee in their interactions. Employee has known Dr. Rich for several years. However, at one point in time, Dr. Rich felt that Employee should not have been doing counseling at the D.C. Jail. She told him that as a school psychologist, he should only be doing psychological testing.

Later around July 2, Dr. Harp received an email from Jason Kameron of Human Capital. The email informed him that his results were on the IMPACT website and provided him with a link for it. It was the first time Dr. Harp had ever received a link for this website. He went to the website to view his results. He was alarmed at his evaluation ratings, as he was told by Dr. Rich that his ratings would change and move upward. Employee also believed that Dr. Turner-Wingate contradicted herself in evaluating his IEE reports. In addition, he believed that she did not have the correct dates of when he evaluated the students. Employee explained that Dr. Turner-Wingate criticized him for not following guidelines, but he explained that guidelines weren't implemented until November 10, 2009, and his reports were completed before this date. Dr. Turner-Wingate stated that his November 5, 2009, reports did not include observations, but Dr. Harp stated that they did. Employee believed that her observations and notes were not consistent with her review. Further, he contested many of her statements in her evaluation. He stated that these guidelines kept changing, making them hard to follow because they were learning as they went along.

Dr. Harp emailed Dr. Rich and Dr. Fener regarding the meeting promised to him. He did not receive a response, so he emailed Dr. Nyankori, the superintendent. The superintendent and Employee talked at length for two to three emails, and Dr. Nyankori informed Employee that Dr. Fener would meet with him. The meeting was scheduled for July 22. However, Employee received a letter on July 12 informing him that he would be terminated as of July 16. The letter was dated July 2. Thereafter, Dr. Rich sent Employee an email thanking him for his services.

Dr. Harp proceeded to go to the meeting on July 22. He waited for an hour for Dr. Fener. When Dr. Fener finally came out, she apologized and explained that she was coming out of a meeting. Then she said "Okay, Start" to Dr. Harp. He explained to her everything that had happened. Then when he was finished, Dr. Fener said "I thank you very much" and typed up his responses on her laptop. Dr. Fener escorted Dr. Harp out of the door and did not ask him any other questions. She explained to Dr. Harp that she had to meet with David Kameron and that she would get back to him regarding the results. Dr. Fener stated that she would get back with Employee in about two or three days. She later informed Dr. Harp that he needed to pursue the appeal process with OEA.

After Employee's termination, he proceeded to look for other employment. He filled out applications and applied to various positions. He alerted all of his friends that he really needed a job because he was going broke. He was using his own money for many months. After all of his own funds were exhausted, Employee applied for unemployment and received it. Employee received a little over \$19,000.00. However, he was later told that unemployment funds were no longer available to him.

Eventually Employee was contacted about an adjunct professor position at the University of the District of Columbia. The position involved teaching one course to graduate level counselors who were obtaining their master's degree. The position dealt with treatment methods for substance abuse and addictions. The compensation for this position was \$3,000.00 He worked during the second semester of 2012.

By October of 2012 Employee obtained three part-time positions. One position was with Alliance Staffing, a temp staffing agency for professionals. The agency got him a position at Roots Public Charter School as a clinical psychologist working with adolescents. Employee was paid \$50 per hour. He has earned about \$5,000.00 with this position. He works approximately six or seven hours a week. He also joined a firm of psychologists where he was an independent contractor. Employee has an independent practice with them and he has two offices where he delivers clinical psychological services to populations. Employee's third position is with Psychogeriatrics, which is a staff of psychiatrists, psychologists, and physicians who serve nursing and rehabilitation homes. He is stationed at Clinton Nursing Home, where he has about 30 patients. He is paid \$40.00 per hour and works about 18-20 hours per week. All three positions began at the same time. He is currently working all three positions and has earned around \$62,861.00. If Dr. Harp prevails in this case, he would like to return to DCPS so that he can finish his term and retire. He has had a difficult time trying to obtain full time employment.

### Analysis

Chapter 5-E of D. C. Municipal Regulation ("DCMR") §§1306.4, 1306.5 gives the Superintendent the authority to set procedures for evaluating Agency's employees.<sup>8</sup> The above-referenced DCMR sections provide that each employee shall be evaluated each semester by an appropriate supervisor and rated annually prior to the end of the year, based on procedures established by the Superintendent. In the instant matter, Agency developed the IMPACT process detailed above as its evaluation procedure for Group 12 – Related Service Providers for the School year 2009- 2010. Employees were trained and received documentation describing the IMPACT process at the beginning of the school year. However, Agency, during the course of the school year, made changes to the initial evaluation process. While Employee does not deny that he was evaluated a total of two (2) times, nor does he deny that he had conferences after the evaluation or that he received the IMPACT training materials, I find that Agency committed harmful error when it adjusted the IMPACT process at the middle and end of the 2009 - 2010 school year.

6-B DCMR § 631.3 provide that "... [OEA] shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." Additionally, 8-A DCMR § 1803 highlights that "harmful error shall mean an error of such magnitude that in its absence the employee would not have been released..." In the instant matter, at the beginning of the school year, Agency provided Group 12 employees with the IMPACT process it would use to evaluate them. Moreover, Dr. Turner-Wingate testified that at the beginning of the school year, she went over the IMPACT rubric specifying to the Psychologists specifically what they needed to do to earn a point of 4, 3, 2, or 1 according to the impact rubric. Further, Dr. Turner-Wingate stated

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<sup>8</sup> 5-E DCMR § 1306 provides in pertinent parts as follows:

1306.4 – Employees in grades ET 6-15 shall be evaluated each semester by the appropriate supervisor and rated annually, prior to the end of the school year, under procedures established by the Superintendent.

1306.5 – The Superintendent shall develop procedures for the evaluation of employees in the B schedule, EG schedule, and ET 2 through 5, except as provided in § 1306.3

that Employee may have been scored in the IEPQ rating section, but this score was not reflected in the final IMPACT calculation. She also testified that the entire IEPQ section was thrown out completely and not included in the first or second assessment rating.

Thus, it is highly probative that these Group 12 employees, including Employee in this matter, relied on the IMPACT process they received at the beginning of the school year as a guide in developing their duty plan for the school year. Furthermore, it can be reasonably assumed that upon receiving the IMPACT material at the beginning of the school year, these employees allocated time and resources accordingly, to meet the requirements of the IMPACT process. Consequently, I find that, by not scoring certain components, and adjusting the IMPACT process in March and June of 2010, Group 12 employees were prejudiced because the time and resources they devoted to the other components that were thrown out may have negatively affected the scores they received on the components Agency eventually decided to retain. And because the adjustments were made in the middle and end of the school year, these employees did not have sufficient notice nor were they granted the opportunity to adjust their duty plan. Absent these adjustments, there is a high probability that Employee would not have received an “Ineffective” IMPACT rating. Accordingly, I find that Agency did not adhere to the IMPACT process specifically because it changed the IMPACT assessment rubric in the middle, and at the end of the 2009 – 2010 school year. I find that this constitutes harmful error.

Dr. Harp also contends that his IMPACT review was flawed in that his second supervisor, Dr. Rich, had not been his supervisor for 90 days or more as mandated by CDCR 5-E1306, which provides in pertinent part as follows:

#### 1306 Performance Evaluations

1306.1 Official performance evaluations for all employees of the Board of Education shall be inclusive of work performed through June 30<sup>th</sup>, unless otherwise specified in this section.

1306.2 Ratings shall reflect the level of competence of employees who have worked for the same supervisor for at least ninety (90) days without change in position prior to the end of rating the period.<sup>9</sup>

Dr. Rich admitted that during the 2009 – 2010 school year, she was Dr. Harp’s supervisor for approximately six weeks. I find that this is well below the ninety (90) day supervision requirement noted in CDCR 5-E1306.2. I further find that this presents another instance whereby DCPS failed to adhere to the IMPACT process and this also constitutes harmful error.

For the above reasons, I further conclude that Agency did not meet the “just cause” standard for separating an employee under the evaluation process as per the CBA. Accordingly I conclude that I must reverse Agency’s action of removing Dr. Harp from service.

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<sup>9</sup> See Employee’s Exhibit No. 21.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee for receiving an "Ineffective" IMPACT rating during the 2009 – 2010 school year is **REVERSED**; and
2. Agency shall reinstate Employee to his last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay, benefits lost as a result of the separation; costs and attorney's fee; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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ERIC T. ROBINSON, ESQ.  
SENIOR ADMINISTRATIVE JUDGE