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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LINDA CHAMBLEE,)	
Employee)	OEA Matter No. 1601-0346-10
)	
v.)	Date of Issuance: January 9, 2014
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Mark J. Murphy, Esq., Employee Representative)	
Carl Turpin, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Linda Chamblee (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or “Agency”) decision to terminate her effective July 16, 2010. Employee was a Speech Pathologist at Shadd Elementary School. Employee was terminated for receiving an “Ineffective” rating under the DC Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2009/2010 school year. At the time of her removal, Employee was a member of the Council of School Officers Local #4 (“Union”).

A prehearing conference was held on September 25, 2012. After considering the parties opposing viewpoints during this conference, I determined that it was necessary to hold an evidentiary hearing in this matter. Accordingly, after granting an extension of time, an evidentiary hearing was held on February 26, 2013. Thereafter, the parties were notified that the transcripts from the Evidentiary Hearing were available. The Order also provided the parties with a schedule for submitting their written closing arguments. Both parties have submitted their written closing arguments. The record is 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.

SUMMARY OF THE TESTIMONY

Regina Grimmert ("Grimmett") Tr. 16 - 105

Grimmett testified in relevant part that she is currently employed by DCPS as Director of Related Services Operations. During the school year in question, she was employed by DCPS and was Employee's direct supervisor. Grimmert then explained that Related Services providers and other positions within DPCS are subject to a court order rendered pursuant to the *Blackman/Jones* court case (*Blackman, et al v. District of Columbia, et al*, 2006 WL 2456413 (D.D.C)). Pursuant to that court order, DCPS was required to document all services provided to special education students including what services were missed by students that were absent from school. Moreover, also pursuant to *Blackman/Jones*, DCPS was subject to periodic monitoring. DCPS is required to accurately and immediately document all services provided to

special education students. Employee, as a speech pathologist, was required to document all contact with her students. Grimmatt testified that one of the essential functions of the speech pathologist's duties is to accurately document all services provided to special education students. The method developed by DCPS in order to document all services for special education students is EasyIEP. According to Grimmatt, Employee, as a speech pathologist, was required to place data into the EasyIEP through the following method:

- (a) The user clicks a button and a calendar pops up to record the date.
- (b) The user clicks a button and a drop down menu appears. From the menu the user selects the activity used by the speech pathologist.
- (c) In the narrative section of the program the speech pathologist records additional information about the student.
- (d) The data is saved on the provider's computer.
- (e) The speech pathologist opens the student record selection and selects "Generate Final Service Tracker Notes" to finalize the report. The document is printed and the speech pathologist signs the document.
- (f) The speech pathologist faxes the document using the number indicated on the document's barcode to the Special Education Data System (EasyIEP).
- (g) The hard copy is placed in the speech pathologist's personal work folder.

Grimatt testified that Employee attended extensive training which consisted of the following:

- Online special Education Data System training.
- Training on computer equipment and how to use the EasyIEP program that included information that the Washington Teachers' Union offered computer training for all DCPS employees.
- Computer classes through schoolnet.com.
- Access to computer labs in the speech pathologists' office.

According to Grimmatt, after the IMPACT evaluations, she held conferences with Employee to discuss the evaluations. According to Agency's Exhibits Nos. 5 and 6, Grimmatt issued Employee the following ratings: Cycle 1- 1.60 and Cycle 2-1.50. During the Cycle 1 evaluation, Ms. Grimmatt determined that Ms. Chamblee was awarded a high rating for her

positive interaction with her students but received extremely low ratings for documenting her activities with her assigned students. For the Cycle 2 evaluation, Grimmert explained that once again Employee's positive interaction with her students received a high rating; however, her documentation of her efforts into the EasyIEP program remained substandard. Grimmert testified that she was aware that Employee had issues with her back but she was never informed that Employee had vision problems.

Kathryn McMahon-Klosterman ("McMahon-Klosterman") Tr. 105 – 149

McMahon-Klosterman testified in relevant part that since 2010, she has been employed by DCPS as its Director of IMPACT. According to Agency's Exhibit No. 2, Employee's final IMPACT score for the 2009/10 school year was 135. This rating was based on a four point system with four being the highest rating and one being the lowest rating. The rating system has four rating categories:

100-174	Ineffective
175-249	Minimally Effective
250 – 349	Effective
350 – 400	Highly Effective

Pursuant to IMPACT, speech pathologists were evaluated two times during the 2009-2010 school year: Cycle I (before February 1, 2009) and Cycle 3 (before June 15, 2010). Prior to the 2009-2010 IMPACT evaluation process Employee was provided with the DCPS Guidebook for Service Providers, participated in IMPACT training sessions, attended a 2.5 hour speech pathologists' workshop, received a list of speech pathologist requirements, and received a copy of the Guidelines for Due Diligence. DCPS' Guidebooks describes IMPACT's consequences and that an employee may be subject to employment termination if the employee receives a final Ineffective rating or two consecutive school years of Minimum Effective ratings. Since Employee was rated Ineffective, DCPS opted to remove Employee from service as part of the IMPACT process.

Linda Chamblee ("Employee") Tr. 149 - 180

Employee testified in relevant part that prior to her removal she had worked for DCPS for nine years. Employee was stationed at Shadd Elementary School for the final two years of her tenure with DCPS. During her final school year, Employee was assigned approximately 30 students. Typically, she would meet with them once a week in order to have speech therapy sessions. Employee readily acknowledged that she knew that she was required to document the sessions that she had with her students and to take notes with respect to what she did. Employee explained that when she first started working with DCPS, all of her documentation was done on paper. However, Employee admitted that she had trouble timely documenting her sessions when EasyIEP was introduced in or about 2005. During the 2009/10 school year Employee admitted that she had multiple meetings with Grimmert in order to go over her IMPACT evaluations. She confirmed that during these meetings Grimmert informed her that the crux of her poor evaluations stemmed from Employee failing to properly document her sessions into EasyIEP.

Employee said that Grimmett told her about different computer workshops offered by DCPS that she could take so that she could improve her computer skills.

When Employee first started with DCPS, she informed them, in writing, that she had issues with her back and legs. Employee admitted that DCPS accommodated those conditions by placing her office on the first floor. Employee explained that she has vision problems caused by Keratoconus which adversely affected her cornea. As a treatment option, she started using specially made contact lenses. According to Employee, her vision problems make it extremely difficult for her to view a computer screen. Employee admitted that she was aware of the Blackman/Jones consent decree and the wholesale change that it mandated with respect to documenting all sessions with special needs children into EasyIEP.

Ayorkor Austin ("Austin") Tr. 180 – 191

Austin testified in relevant part that she was familiar with EasyIEP and the requirement imposed upon Related Service Providers to enter all session notes into this program in adherence to the Blackman/Jones consent decree. Austin and Employee had worked at a number of schools prior to working together at Shadd. Austin worked alongside Employee in the same office at Shadd. Austin was not in Employee's chain of command. Because they worked in the same office, Austin was aware of Employee's problems with her eyesight. Austin helped Employee by adjusting the fonts on her computer; however, those font adjustments were not recognized by the EasyIEP program.

The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees during 2009-2010 school year. According to the record, Agency conducts annual performance evaluation for all its employees. 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 areas in which improvement was needed.

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, Speech Pathologists were classified as "Related Service Providers". Employee's position – Speech pathologist, 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.¹

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.²

Analysis

During the evidentiary hearing, Employee admitted that she did not timely enter her session data into EasyIEP. Also, she readily admitted that she failed to do so over the course of the 2009/10 school year. Moreover, Employee admitted that this problem had been one that had been ongoing for several years. Of note, Employee was given high marks on her interaction with her students. After assessing the credibility of the testimony of both Grimmatt and Employee, I find that both of them provided trustworthy testimony in this matter. However, Employee readily admitted that she was aware that timely and accurately entering her session information into EasyIEP was an integral part of her job pursuant to the Blackman/Jones consent decree. Regrettably, Employee also admitted that she consistently failed to live up to this standard. Employee explains that she had vision problems, but as Agency notes, she never provided DCPS or the undersigned with any sort of verifiable evidence that she has this condition or that she formally informed DCPS that they would need to accommodate her vision problems. I find that Employee has admitted to the salient facts that are the subject of the instant adverse action. Further, the Board of the OEA has previously held that an employee's admission is sufficient to meet Agency's burden of proof. *See, Employee v. Agency*, OEA Matter No 1601-0047-84, 34 D.C. Reg. 804, 806 (1987). Considering as much, I find that Agency has met its burden of proof

¹ Group 12 IMPACT Assessment Handbook - *See* Agency's Exhibit 7.

² *Id.*

in this matter. I further find that the Agency's adverse action was taken for cause. The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. See, *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ (); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), __ D.C. Reg. __ (). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. See *Stokes, supra*; *Hutchinson, supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ (); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ ().

I find that DCPS has met its burden of proof in this matter. Moreover, Agency has proven that it did have cause to remove the employee and that the penalty of removal was proper, therefore, the removal is upheld.

ORDER

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

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE