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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 2401-0219-10R14
CHARLES ALEXANDER,)	
Employee)	
)	Date of Issuance: November 24, 2014
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	Sommer J. Murphy, Esq.
)	Administrative Judge
<hr/>		
Daniel Katz, Esq., Employee Representative		
Sara White, Esq., Agency Representative		

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

On December 2, 2009, Charles Alexander (“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 social studies teacher at Woodson Senior High School (“Woodson”). Employee was in Educational Service status at the time he was terminated.

I was assigned this matter in February of 2012. On February 21, 2012, I issued an Amended Order requiring the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statutes, and regulations.¹ Agency submitted a response to the Undersigned on March 13, 2012. On March 30, 2012, Employee requested an extension of time in which to file his brief. The motion was granted and Employee submitted his brief on April 20, 2012.

¹ The Office inadvertently sent the Order dated February 13, 2012 to Agency Representative’s previous mailing address. As a result, deadlines for Employee and Agency brief submissions were modified.

On June 18, 2012, I issued an Initial Decision (“ID”), finding that Agency’s action of abolishing Employee’s position was done so in accordance with D.C. Official Code § 1-624.08 and that the Reduction-in-Force which resulted in his removal should be upheld. Employee subsequently filed a Petition for Review with OEA’s Board. On December 17, 2013, the Board issued an Opinion and Order on Petition for Review, and remanded the matter back to the Undersigned. According to the Board, the June 18, 2012 ID failed to address Employee’s claim that Woodson’s principal instructed him to identify fifteen (15) employees who should be RIF’d which could not include those on the principal’s administrative team; teachers hired in the summer of 2009; and teachers associated with Teach for America.² The Board also remanded the matter for the purpose of determining whether Employee’s Competitive Level Form (“CLDF”) was supported by substantial evidence.³

On February 10, 2014, I held a prehearing conference for the purpose of assessing the stature of this matter. An evidentiary hearing was subsequently held on April 30, 2014. On May 21, 2014, I issued an Order requesting written closing statements from the parties. Both Employee and Agency submitted responses. The record is now closed.

JURISDICTION

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

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.

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.

² Opinion and Order on Petition for Review (December 17, 2013).

³ *Id.*

Employee's Position

Employee argues that Agency's action of terminating him under the RIF should be overturned because his CLDF was not based on substantial evidence. In addition, Employee also argues that the school principal considered impermissible factors in protecting certain teachers when conducting the RIF.

Agency's Position

Agency argues that it conducted the instant RIF in accordance with all applicable District laws, rules, and regulations. Agency also states Employee properly received one round of lateral competition within his competitive area and received thirty (30) days written notice prior to the effective date of his separation.⁴ According to Agency, the statements contained in Employee's CLDF are supported by substantial evidence, thus the RIF that resulted in his separation should be upheld.

SUMMARY OF RELEVANT TESTIMONY

The following represents what I have determined to be the most relevant facts adduced from the transcript generated from the evidentiary hearing. Both Agency and Employee had the opportunity to present documentary and testimonial evidence during the course of the hearing to support their positions.

Philip Vincent Robey ("Robey") Tr. pgs. 13-99

Robey currently works as a Supervisory Education Program Specialist for the Office of the State Superintendent of Education ("OSSE"). Robey was the principal at H.D. Woodson from 2008 until 2010. His duties as a principal included supervising the academic programs, evaluating faculty, and hiring new faculty. In approximately August of 2009, the DCPS central office stated that budget cuts were necessary and that Woodson was required to eliminate approximately 1.5 million dollars from its budget. According to Robey, that amount translated to around fifteen (15) full-time employees ("FTEs"). In making the decision about which positions to eliminate, Robey stated that he consulted with his administrative team, which included assistant principals. There were four (4) social studies teachers at Woodson in 2009, and one (1) position was required to be eliminated under the RIF. Robey acknowledge that he signed the Competitive Level Documentation Forms ("CLDFs") for each social studies teacher, but did not recall if he actually filled out the content of the forms.

Robey had a discussion with Employee regarding his upcoming formal evaluation. During the conference Robey communicated to Employee what he would be looking for during the classroom observation. Robey stated that Employee did not appear to have heeded his advice in certain areas of performance. Robey opined that Employee's teaching methodology was "stuck in one kind of talking at the students method, occasionally putting something on the

⁴ Both parties concede that Employee received thirty (30) days written notice prior to the effective date of his termination. Accordingly, the Undersigned will not address the notice issue in this ID.

board.”⁵ According to Robey, Employee was on a 90-day performance improvement plan at the time he was evaluated. In addition, Robey stated that Employee needed to work on class management by lowering his voice when speaking to students and varying his method of student instruction.

Robey stated that he would regularly walk through classrooms during instruction time or sitting in the classrooms to observe teachers. He recalled that social studies teacher, Garth McIntosh-Peters, had “some wonderful discussions going on in his class” and that “[t]he students were always engaged.”⁶ Robey stated that social studies teacher, Ronnie Nelson, was laid back and had a high level of engagement with his students. Nelson was also a representative for the teacher’s union and a founding member of Woodson’s School Improvement Team. In addition, Robey stated that he was pleasantly surprised by social studies teacher, Nicolas Ojeda. According to Robey, Ojeda’s classes were very engaging, and that he was always volunteering to help with things. Robey did not believe that Employee had a strong bond with his students and believes that the level of noise that came from Employee’s classroom disturbed other classes.

Robey did not remember what form he used to evaluate the social studies teachers during the 2009 RIF, but did recall that Employee was identified for separation because he was the weakest teacher in his competitive level.

On cross examination, Robey stated that in determining which positions would be eliminated under the RIF, he did not consider whether a teacher had been with the school for three years or for twenty-five years. He did not remember if he had any employee’s personnel file with him when he completed the CLDFs at the DCPS central office. Robey further opined that teachers who contributed to the school in areas such as coaching, volunteering, teaching Saturday school, or moderating school clubs would be considered a positive effort. According to Robey, if any employee who was ranked by him or another school administrator received credit for participating in extra school activities, then every employee who participated in the activity should have received the same credit on their CLDF. Two other assistant principals at Woodson assisted Robey in evaluating the school faculty members. Robey visited and observed approximately thirty (30) teacher’s classrooms during his tenure at Woodson.

Peter Weber (“Weber”) Tr. pgs. 101-129

In 2009, Pete Weber worked as Chief of Staff to the DCPS Deputy Chancellor and served as the acting Director of Human Resources. His responsibilities included overseeing the HR department and employee retirements, in addition to maintaining the employee data system and overseeing employee relations and employee terminations. In addition, Weber was tasked with overseeing the personnel aspects of the 2009 RIF to identify positions that would be eliminated to meet the schools’ budget targets. Once the school principals identified the positions to be eliminated, Weber identified which employees in a given position would be subject to the RIF. If there was more than one employee in a position identified under the RIF, a CLDF was used to evaluate each employee based on the same factors to provide a fair comparison.

⁵ Tr. pg. 33.

⁶ Tr. pgs. 40-41.

H.D. Woodson consisted of an academy and a high school, which were considered different competitive areas for purposes of the 2009 RIF. The principals for each school were responsible for completing the CLDFs, which had the following sections: 1) needs of the school; 2) relevant significant contributions and accomplishments or performance; and 3) relevant supplemental experience as demonstrated on the job. In addition, the CLDF contained a calculation of the employee's years of service, which was entered by the HR department. After receiving the forms from the principals, Weber's office summed up the scores (including the weighted years of service) for a total score. The employee who received the lowest score in their competitive level was selected for separation under the RIF. According to Weber, all of the numerical data pertaining to the RIF was housed on a spreadsheet. At the time of the 2009 RIF, Woodson High School had four (4) social studies teachers. After the calculations were done, Employee had the lowest total score and was therefore identified for termination.⁷ After all of the numerical data on the CLDFs were captured in the database, the physical forms were stored in the Office of Labor-Management and Employee Relations.

On cross examination, Weber stated that he had no personal knowledge of any conversations that occurred between Employee and Robey. Weber had no personal knowledge of Employee's actual teaching skills; however, he and other administrators reviewed personnel files to identify which employees had performance evaluations that were rated 'exceeds expectations' because additional points were awarded to those persons on their CLDF. In addition, Weber worked with the school principals to ensure that they provided sufficient and complete information when completing their employee's CLDFs.

George Kenneth Tilghman ("Tilghman") Tr. pgs. 131-147

George Kenneth Tilghman is a retired school teacher and a retired correctional officer. Tilghman met Employee when they were both students at Coppin State University. Tilghman and Employee also taught together at Oak Hill Academy, which was an education institution for incarcerated D.C. students. According to Tilghman, Employee had a strong background in U.S. History and social studies. Tilghman had the opportunity to observe Employee teaching during their time at Oak Hill Academy, and opined that Employee's was an effective teacher because of his knowledge of the subject matter and student engagement. In addition, Tilghman believed that Employee was very organized and that his students were successful.

On cross examination, Tilghman stated that he was never Employee's supervisor at Oak Hill or Woodson. He did not evaluate Employee and was never a teacher at Woodson.

⁷ Weber explained that data displayed on Agency's Exhibit 1 and 1A is different because Exhibit 1 did not have the numerical data extracted from it properly. Weber went into the database and inserted Employee's start year (2007), which prompted the remainder of his CLDF information to populate correctly. Weber further noted that Employee was identified for separation on both Agency's Exhibit 1 and 1A.

Ronnie Nelson (“Nelson”) Tr. pgs. 148-167

Ronnie Nelson is a social studies teacher at H.D. Woodson High School. According to Nelson, the Local School Restructuring Team (“LSRT”) was a body that gave recommendations and advised principals regarding personnel cuts and other school-related issues. In 2009-2010, Nelson was part of the LSRT, and Employee was the chair of the team. In the fall of 2009, Nelson had a conversation with Robey about the impending RIF. Robey informed Nelson that cuts needed to be made and asked him to submit a list of names after discussing the RIF with Woodson’s LSRT. Nelson further stated the following regarding his conversation with Robey:

“[LSRT] did discuss this matter. I went in and talked to him...and then Mr. Alexander went in to speak to him as chair...[Robey] wanted Mr. Alexander to come in alone, but Mr. Alexander insisted that I go in with him. And the committee asked Mr. Alexander to speak on their behalf; that they would not recommend individuals; they would leave that more or less up to the principal to cut.”⁸

During additional discussions with Nelson, Robey stated that he would RIF both veteran teachers and teachers who were part of the Teach for America program. Nelson believes that Employee was a good teacher and that his students loved him in spite of having a large number of students in his classroom. According to Nelson, Employee assisted with the school prom and would often modify his lessons to ensure that his students were successful.

On cross examination, Nelson explained that the contract between DCPS and the Washington Teacher’s Union (“WTU”) required that the LSRT consult with Robey regarding making recommendations for positions that should be eliminated under the RIF. Nelson stated that the LSRT suggested that certain positions should be RIF’d, and not individuals. However, Nelson did not recall which specific positions the LSRT recommended to be abolished. Nelson also stated that Mr. McIntosh-Peters and Mr. Ojeda were good teachers based on his personal observation of their teaching methods.

Charles Alexander (“Employee”) Tr. pgs. 168-223

Employee began working for Agency in 2005 at Oak Hill Academy as a correctional teacher and social studies teacher. He also participated in treatment plan meetings, prepared lesson plans, and designed course studies. In 2007, Employee was transferred to Woodson, but had to be re-interviewed in the fall of 2008 for a teaching position. According to Employee, the average high class in D.C. schools is approximately twenty-five (25) students. During his evaluation period in October and November of 2008, Employee had thirty-seven (37) students; seventeen (17) of which had special needs. Employee stated that Robey was aware that he needed a co-teacher based on the size and needs of his students. However, Employee testified that Robey would come to his classroom and refuse to review folders, student work, and made no attempt to have additional resources allocated to Employee’s classrooms.

⁸ Tr. pgs. 151-152.

In November of 2008, Woodson's secretary, Ms. Durham, gave Employee a copy of an instructional improvement form that had been completed by Robey. The form was a ninety (90) day Performance Improvement Plan ("PIP"). According to Employee, under the PIP, Robey was required to design and implement an instructional improvement plan. However, Employee stated that Robey did not formally observe his class during this time, except on one occasion wherein DCPS Chancellor Michelle Rhee and the director of social studies for DCPS came to visit Employee's class in January of 2009. Employee's PIP probation period ended on April 8, 2009.

Robey also visited Employee's classroom twice in May of 2009. During Robey's visit, most of Employee's students were absent from the classroom because of field trips or sports activities. Employee stated that "...it was not a usual class. Mr. Robey knew what the situation was, and he knew it wasn't a regular classroom setting, and he chose that for an "I gotcha" moment, so to speak."⁹ Robey also observed Employee in June of 2009, when there were no students present in his classroom because it was the end of the school year. According to Employee, Robey came into the classroom and stated "...I realize you don't have any students. Just teach me."¹⁰ According to Employee, Robey instructed him to perform his morning drill, classroom activities and introduction to the lesson. Employee stated that Robey told him a week prior to the observation that Employee would be terminated.

During the start of the 2009-2010 school year, Employee taught social studies to approximately 27 students. In addition, he worked on the prom committee, chaperoned students to basketball and baseball games, and assisted with the school picnic. Employee stated that he was a member of the standards committee at Woodson, was a reader for the Library of Congress, and also created a partnership with Anacostia Museum so that students could go on field trips. Regarding the 2009 RIF, Employee stated the following:

"...I was in a staff meeting and Mr. Robey requested that after the staff meeting he needed to talk to me for a couple of minutes in my capacity as chairman of the LSRT committee. When I went to his office, he explained to me the D.C. was about ready to go through a cut in employment due to budgetary cuts. And he stated that Woodson would lose up to 15 employees from each category, from the principal all the way down to a maintenance worker...and he asked me as chairman of the LSRT committee to provide him with 15 names of people could be released by 2:45 that day...Basically I asked Mr. Robey initially...I needed the budgets. I needed class sizes. I needed a certification list. I needed a teachers' roste[r]. I asked for those things. And he said, "Oh, no, Mr. Alexander, you don't need any of that. All you need to do is give me 15 names...and then he went on to say with the exceptions of his administrative team, the Teach for America, and the new teachers hired in 2009, they would be exempted from the list...I told him I

⁹ Tr. pg. 181.

¹⁰ Tr. pg. 183.

couldn't participate in it because it was an illegal act. After the meeting I went up and I called the meeting with the other members of the LSRT committee, and we discussed it. And we all agreed that if the exemptions [were] put into the equation, then it was an illegal activity for us to participate...as a union we declined to provide any names unless the situations would change. And that would be no exemptions.”¹¹

On cross examination, Employee explained that Robey listed his class size as twenty-five (25) students and inclusion, meaning that there were two teachers in the classroom. However, he stated that he actually had thirty-four (34) students assigned to his social studies class and no co-teacher. According to Employee, Robey often told him how well-behaved his students were, but would subsequently give him unsatisfactory marks on subsequent evaluations. Employee further testified that he did not have the resources needed to adequately support his students; some of whom had mental illnesses. Employee attempted to file a grievance with his union in October of 2008 concerning the lack of resources in his classroom; however, no hearing was held based on his allegations. In addition, Employee sent a letter to Kate Wheeler, who was in charge of professional development for DCPS, after having a post-conference discussion with Robey on May 26, 2009. Employee believes that his letter prompted Robey to conduct a final, unstructured observation of him without the presence of students on June 15, 2009.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

This matter was remanded to the Undersigned for the purpose of holding an evidentiary hearing to determine whether: 1) Principal Robey utilized impermissible methods to protect certain teachers from termination under the RIF; and 2) Employee's CLDF was supported by substantial evidence. In the June 18, 2012 Initial Decision, I held that although the instant RIF was authorized pursuant to D.C. Code § 1-624.02,¹² D.C. Official Code § 1-624.08 (“Abolishment Act or the Act”) is the more applicable statute to govern this RIF.¹³ In *Anjuwan v. D.C. Department of Public Works*, the D.C. Court of Appeals held that OEA's authority over

¹¹ Tr pgs. 187-191.

¹² D.C. Code § 1-624.02 states in relevant part that:

- (a) Reduction-in-force procedures shall apply to the Career and Educational Services... and shall include:
 - (1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;
 - (2) One round of lateral competition limited to positions within the employee's competitive level;
 - (3) Priority reemployment consideration for employees separated;
 - (4) Consideration of job sharing and reduced hours; and
 - (5) Employee appeal rights.

¹³*Robinson v. D.C. Public Schools*, OEA Matter No. 2401-0013-10 (May 31, 2012). See *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. Bd. of Educ. of the Dist. Of Columbia*, 960 A.2d 1123, 1125 (D.C. 2008) (holding that the “ordinary and plain meaning of the words used in § 1-624.08(c) appears to leave no doubt about the inapplicability of § 1-624.02 to the 2004 RIF”); See also *Haughton v. D.C. Public Schools*, Case No. 2012 CA 005282 P(MPA) (August 2013) (upholding OEA's finding that D.C. Code § 1-624.08 was the correct statute to apply in this instant RIF).

RIF matters is narrowly prescribed.¹⁴ OEA may only determine “whether the RIF complied with applicable...statutes and regulations dealing with RIFs.” Accordingly, an agency’s decision to abolish a specific position through a RIF is subject only to OEA review “where an employee affected by the abolishment was (1) not afforded one round of lateral competition to which he is entitled for positions within the employee’s competitive level; or (2) not given proper written notice of at least thirty days before the effective date of the employee’s separation. Employee’s primary argument is that he was not afforded one round of lateral competition because his CLDF was not supported by substantial evidence.

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 lateral competition. In conducting the instant RIF, the principal of Woodson was given discretion to assign numerical values to the following categories: (1) needs of the school; (2) relevant significant contributions, accomplishments, or performance; and (3) relevant supplemental professional experiences as demonstrated on the job. The “length of service” category was calculated by the Department of Human Resources (“DHR”).

Needs of the School

This category is weighted at 75% on the CLDF. Employee received a total of two (2) points out of a possible ten (10) points in this category. In the comments section, Robey stated the following about Employee:

“Mr. Alexander is still on a 90 [d]ay probationary plan from last year. Mr. Alexander was disorganized and failed to follow a logical, linear lesson plan. His room was disorganized and the studies were noisy. He set low expectations for his students and does not plan strong lesson or unit plans. One student sat at his computer and told the principal she was making up a crossword puzzle for the next day’s class. When Mr. Alexander began to teach, he was yelling instead of speaking in a clear and concise voice. His yelling has been mentioned to him in the past in that it stirs students up while he tried to talk above them. He has not formed a strong bond with his students or his fellow teachers.”¹⁵

Relevant significant contributions, accomplishments, or performance

This category is weighted at 10% on the CLDF and includes factors such as student outcomes, ratings, awards, and attendance. Employee received zero (0) points in this area.

¹⁴ 729 A.2d 883 (December 11, 1998).

¹⁵ Agency Exhibit 2.

Relevant supplemental professional experiences as demonstrated on the job

This category accounts for 10% of the CLDF. Employee received a total of zero (0) points for this category.

Length of service

This category accounts for 5% of the CLDF and was calculated by the Department of Human Resources by adding the following: 1) years of experience; 2) military bonuses; 3) D.C. residency points; and 4) four years of service 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.

Employee had a Service Computation Date (“SCD”) of 2005, which equates to four (4) years of experience on his CLDF. Employee did not receive additional points for D.C. residency, Veterans Preference, or for an “Exceeds Expectation” evaluation during the prior academic school year. Employee therefore received a score for Years of Service of three (3) points, which results in a weighted score of one and a half (1.5) points in this category. Employee has not contested the calculation of his length of service, and I therefore find that Agency properly afforded him the correct amount of points in this category.

Employee argues that the school principal considered impermissible factors in protecting certain teachers when conducting the RIF. Specifically, Employee asserts that Robey instructed him to suggest fifteen (15) names of employees to terminate under the RIF. According to Employee, Robey stated that the list should exclude his administrative team, Teach for America members, and the new teachers hired in 2009. In this case, I find that there is insufficient evidence in the record to support a finding that Robey impermissibly protected certain employees from being terminated under the RIF. On cross examination, Robey stated that “...in terms of rating which teaching positions would be cut, it was no concern to me whether or not someone had been there for 25 years or 2 years.” Robey also testified that he recalled having a conversation with Employee and another member of the LSRT regarding the positions to be eliminated through the RIF.

I believe that Robey provided credible testimony that he followed the proper protocol in terms of asking the LSRT to make recommendations about which positions should be eliminated. More notably, the recommendations from the LSRT were not mandates, thus Robey was not required to adopt the team’s suggestions. Nelson’s testimony strengthens Agency’s position that Robey did not exempt certain employees from the RIF. According to Nelson, Robey stated “that he would not be RIF’ing just veteran teachers, he would be RIF’ing people who came in under Teach for America...he would choose individuals.”¹⁶ While Robey did not remember the entire conversation that he had with Employee, I find his testimony to be more credible than

¹⁶ Tr. pgs. 152-153.

Employee's. Employee's verbal testimony, which I find to be self-serving, is the only evidence that has been offered to suggest that Robey actively protected certain employees from being terminated under the RIF. Absent from the record is any documentary evidence or additional testimonial evidence to support Employee's argument, thus I accord very little weight to Employee's position that Robey illegally protected members of his administration, veterans, or employees participating in Teach for America.

Substantial Evidence

After reviewing the documents of record, including the testimony adduced during the evidentiary hearing, I find that Employee's CLDF was supported by substantial evidence, and that principal Robey's conclusions regarding Employee's work performance flowed rationally from his personal observations. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁷ Substantial evidence is more than a mere scintilla. This Office will uphold an agency's decision so long as it is supported by substantial evidence notwithstanding the existence of contrary evidence in the record.¹⁸ Employee argues that his CLDF contains material factual errors and omissions, proving that the CLDF was not based on substantial evidence.

Employee contends that he was not on a 90-day plan for performance improvement at the time of the evaluation period before the RIF. While it was true that Robey did not recall precisely when the 90 day period began or ended, he stated that Employee's performance plan early in his arrival at Woodson in September of 20008. Moreover, at the time he completed Employee's CLDF, Robey was in the best position to evaluate Employee's daily work performance. Robey observed the faculty at Woodson on a regular basis, and had the opportunity to assess Employee's work performance first-hand. Robey reiterated during the evidentiary hearing that he had discussions with Employee regarding the manner in which he conducted classroom instruction. Robey testified that there were several areas in which Employee needed improve to promote a more efficient learning environment. Robey believed that Employee was the least effective social studies teacher at Woodson when the 2009 RIF was conducted. At the time he completed Employee's CLDF, Robey determined that Employee's performance warranted a score of two (2) points in the 'needs of the school' category. Employee's CLDF was signed, and dated shortly after it was completed. Based on the documentary and testimonial evidence, I find that Robey's comments and conclusions flowed rationally from his personal observations, thus there is no reason to disturb the score awarded in the "needs of the school" category.¹⁹

Regarding Employee's contributions to the student body at Woodson, I also find no reason to disturb Robey's findings. While the Undersigned does not deny that Employee participated in school activities such as assisting with field trips, the school prom, and chaperoning students to basketball and baseball games, he does not offer any *compelling*

¹⁷ *Davis-Dodson v. D.C. Dep't of Employment Services*, 667 A.2d 310, 312 (D.C. 1995). Substantiality of evidence is reviewed on the entire record, taking into consideration both the evidence that supports the fact finder's decision and the evidence that "fairly detracts from its weight." *Universal Camera Corp v. NLRB*, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456 (1951).

¹⁸ *Ferreira v. District of Columbia Dep't of Empl. Servs.*, 667 A.2d 310, 312 (D.C. 1995).

¹⁹ See *D.C. Applesseed Center for Law & Justice, Inc.*, 54 A.3d at 1216.

evidence to support a finding that these activities translated into relevant or significant contributions, accomplishments or performance. The other social studies teachers in Employee's competitive level received additional credit for re-establishing Woodson's Student Government Association, for receiving an 'exceeds expectations' on the previous year's performance evaluation, and for founding Woodson's School Improvement Team. There is no credible evidence in the record that Employee was responsible for participating in similar, significant contributions. I also find this to be the case for the 'relevant supplemental professional experience as demonstrated on the job' category. Moreover, when making RIF decisions, principals enjoy broad discretion to rank their teachers.²⁰ In sum, I can find no evidence in the record to support a finding that principal Robey improperly utilized his managerial discretion in completing Employee's CLDF.

Agency has provided this tribunal with sufficient evidence to support a finding that Employee was placed in the proper competitive area (Woodson), and level (General Education—ET-15 social studies teacher). Agency has also submitted the Mayoral Order which authorized the 2009 RIF, a copy of the retention register, Employee's RIF notice, a copy Employee's official personnel file, and the CLDF for each social studies teacher in Employee's competitive level. The Undersigned has also considered both the testimonial and documentary evidence of Robey and Weber. I found their testimony to be truthful and there is no *credible* reason to disturb their findings. This is not to say that Employee, Tilghman, or Nelson has provided inaccurate or dishonest testimony. However, after calculating the numerical weighted values, Employee received a total of sixteen and a half (16.5) points on his CLDF and was therefore ranked the lowest social studies teacher in his competitive level. While Employee believes that he should not have been terminated under the RIF, the other teachers in his competitive level had substantially higher total scores.²¹ Employee has failed to provide any persuasive evidence that would justify bolstering his score. Accordingly, I find that Employee's CLDF is supported by substantial evidence and that he properly received one round of lateral competition as required by D.C. Code § 1-624.08.

CONCLUSION

Based on the foregoing, I find that Employee's CLDF was supported by substantial evidence. I further conclude that Employee was properly afforded one round of lateral competition and that he received thirty (30) days written notice prior to the effective date of his termination.

²⁰ See *Washington Teachers' Union Local No. 6, Am. Fed'n of Teachers, ALF-CIO v. Bd. of Educ. of the Dist. of Columbia*, 109 F.3d 774, 780-81 (D.C. Cir.1997) (finding teachers' due process rights were not violated by that fact that "principals have total discretion to rank their teachers").

²¹ It should be noted that during the evidentiary hearing, Agency provided a different copy of the Retention Register ("RR2") in which Employee was placed (See Agency Exhibit 1). The original Retention Register ("RR1") that was submitted by Agency prior to the issuance of the Undersigned's May 31, 2012 Initial Decision (See Tab E) contains different numerical scores for each Custodian in Employee's competitive level. When comparing the two registers, I take judicial note that the numerical data contained in the CLDFs for Employee, Wheeler, Hazell, and Marshall matches the numerical data reflected on RR1. However, on both RR1 and RR2, Employee is rated the lowest Custodian in his competitive level and was therefore identified for separation.

ORDER

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

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE