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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	OEA Matter No. 1601-0054-23
)	
v.)	Date of Issuance: January 16, 2024
)	
D.C. PUBLIC SCHOOLS,)	JOSEPH E. LIM, ESQ.
<u>Agency</u>)	SENIOR ADMINISTRATIVE JUDGE
Employee <i>pro se</i>		
Lynette Collins, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 4, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) final decision to remove her from her position as a Teacher at Takoma Elementary School. Employee was removed because she received a rating of “Developing” for the 2021-2022 school year and “Minimally Effective” for the 2022-2023 school year under Agency’s IMPACT program.¹ Employee’s termination was effective on August 4, 2023.

Pursuant to a letter issued by OEA on August 4, 2023, Agency filed its Answer on August 31, 2023. This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on August 31, 2023. On September 6, 2023, I issued an Order scheduling a Prehearing Conference to be held on September 11, 2023. During the conference, I determined that an Evidentiary Hearing was not warranted based on the arguments and documents presented by the parties. Therefore, I ordered legal briefs submitted no later than November 13, 2023. Both parties have complied. The record is now closed.

JURISDICTION

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

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

ISSUE

Whether Agency's action of separating Employee from service pursuant to performance ratings of 'Developing' and 'Minimally Effective' under the IMPACT system for school years 2021-2022; and 2022-2023 respectively; was done in accordance with all applicable laws, rules, or regulations.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Governing Authority

District of Columbia Municipal Regulation ("DCMR") 5-E DCMR §§1306.1, and 1306.4-5 gives the Superintendent authority to set procedures for evaluating Agency's employees.² 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. 5-E DCMR 1401 provides in pertinent part as follows:

1401.1: Adverse action shall be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious.

1401.2: For purposes of this section, "just cause for adverse action" may include, but is not necessarily limited to, one (1) or more of the following grounds:

(c) Incompetence, including either inability or failure to perform satisfactorily the duties of the position of employment.

Furthermore, D.C. Official Code § 1-616.52(d) states, in pertinent part:

Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter for employees in a bargaining unit represented by a labor organization.

² DCMR § 1306 provides in pertinent parts as follows:

1306.1 - Official performance evaluation ratings for all employees of the Board of Education shall be inclusive of work performed through June 30th, unless otherwise specified in this section.

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.

The 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, which states in part:

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

Thus, Agency was granted the authority to develop its own evaluation process and tool for evaluating Agency employees and exercised this management prerogative when it created the IMPACT evaluation system.

Accordingly, in reviewing this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether Agency's termination of Employee pursuant to her IMPACT rating was supported by just cause. As referenced above, 'just cause' for adverse actions includes incompetence – an employee's inability or failure to perform satisfactorily the duties of their position of employment.

The IMPACT Process

IMPACT was the performance evaluation system utilized by DCPS to evaluate its employees during 2021-2022 and 2022-2023 school years. According to the record, Agency conducts annual performance evaluations for all its employees. Agency utilized IMPACT as its evaluation system for all school-based employees.³ 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.⁴

In this case, Employee was assessed on the following IMPACT components:⁵

- 1) Essential Practices (“EP”)—a measure of a teacher’s instructional expertise. This component accounted for 75% of the IMPACT score.
- 2) Teacher-Assessed Student Achievement Data (“TAS”)—a measure of a teacher’s impact on student learning throughout the school year, as evidenced by rigorous assessments. This component accounted for 15% of the IMPACT score.
- 3) Commitment to the School Community (“CSC”)—a measure of the extent to which school-based personnel support and collaborate with their colleagues and their school’s community. This component accounted for 10% of the IMPACT score.
- 4) Core Professionalism (“CP”)—a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows: attendance; on-time

³ Agency’s Answer, *supra*.

⁴ Agency’s Answer and Agency’s Brief, *supra*.

⁵ Agency Brief, Tab 18, Tab 19.

arrival; compliance with policies and procedures; and respect. This component was scored differently from the others, as an employee could have additional points subtracted from their score if the rating was “slightly below standard” or “significantly below standard.” If all areas of Core Professionalism are met by the employee, then no points are deducted from the final score; however, if there is a concern in one of the areas of Core Professionalism, points are deducted from the final score. Master educators only review teachers’ performances with respect to the TLF component; only the administrators have the ability to rate Core Professionalism.

The IMPACT process also provides that employees are entitled to a conference with the administrator as part of each assessment cycle. It further notes that if the administrator makes at least two (2) attempts to schedule a conference with the employee prior to the Cycle deadline and the employee is unable to meet or unresponsive, the assessment will be valid without the conference. Valid attempt methods include, but are not limited to, phone calls, text messages, emails, notes in your school inbox, and/or in-person conversations. At the end of the school year, after all assessments are completed, the evaluations are averaged and scored.

The IMPACT database is where all IMPACT records are stored, including evaluations, observations, other components, as well as IMPACT final reports. Agency’s website is open and available to the general public. However, the educator portal is open to employees only. All employees with an email account and password have access to the educator portal. Currently, when employees are hired, they are provided a username and password.

School-based personnel assessed through IMPACT ultimately receive a final IMPACT score at the end of the school year of either:

- 1) Ineffective = 100-199 points (immediate separation from school);
- 2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of ‘Minimally Effective’ for two (2) consecutive years are subject to separation from the school system);
- 3) Developing = 250-299 points (Individuals who receive a rating of ‘Developing’ for three (3) consecutive years are subject to separation from the school system);
- 4) Effective = 300-349 points; and
- 5) Highly Effective = 350-400 points.

Employee’s position, Teacher at Tacoma Elementary School and a union member, was within Group 2b. According to the IMPACT process, Group 2b employees had three (3) assessment cycles – an informal first assessment cycle, a second assessment cycle, Cycle 1, and a third assessment cycle, Cycle 2. Here, Employee was assessed during the three cycles for the 2021-2022 and 2022-2023 school years. The assessments included being observed three times during the school year by the teacher’s principal or supervisor. Upon the conclusion of each assessment, the employee will meet with the evaluator for a post observation conference within 15 days of the observation. IMPACT does not require Administrators to hold post conference meetings after an informal observation.

During the 2021-2022 school year, Employee's Informal Observation occurred on October 21, 2021.⁶ Her Cycle 1 observation occurred on February 2, 2022, and the Post Observation Conference was held on February 11, 2022. Her Cycle 2 observation occurred on March 29, 2022, and the Post Observation Conference was held on April 6, 2022.⁷ Employee's observations for her school were documented in the database. It is uncontroverted that Employee subsequently received a "Developing" rating upon the conclusion of the 2021-2022 school year.⁸ Employee was notified in a July 1, 2022, letter of her rating and was warned that should she receive a rating of Minimally Effective or Ineffective at the conclusion of the next school year, she would be subject to separation from Agency.

During the 2022-2023 school year, Employee's Informal Observation occurred on November 2, 2022.⁹ Her Cycle 1 observation occurred on January 6, 2022, and the Post Observation Conference was held on January 18, 2023.¹⁰ Her Cycle 3 observation occurred on March 31, 2023, and the Post Observation Conference was held on April 13, 2023.¹¹ She received a "Minimally Effective" rating at the end of the 2022-2023 school year.¹² Employee was informed that individuals whose final IMPACT rating declines from Developing to either Minimally Effective or Ineffective, will be subject to separation from Agency. As a result of her ratings, Employee was separated effective August 4, 2023.¹³

Employee contends that the IMPACT reports she reviewed in April 2022 were significantly different from that submitted by Agency's Principal Clayton and that the incidents described therein were mischaracterized, causing her final IMPACT scores to drop by twenty points. However, the IMPACT documents she submitted belied her contention.¹⁴ They are identical to her IMPACT reports contained in Agency's August 31, 2023, Answer.¹⁵ I therefore find her allegation to be incredible. Employee also questioned the principal's methodology and authority to evaluate her work performance. However, she does not deny that the principal who evaluated her was the principal of her school and thus had the authority to evaluate her work performance. Employee states that the principal personally disliked her for failing to get vaccinated and that her vaccination status was improperly disclosed.

Agency asserts in its August 31, 2023, Answer that in 2005, pursuant to the DC Omnibus Authorization Act, PL 109-356 (D.C. Code §1-617.18), DCPS was granted authority to develop its own evaluation process and tool for evaluating its employees and it exercised this managerial prerogative when it created IMPACT. Agency argues that it followed proper D.C. statutes, regulations, and laws in conducting Employee's performance evaluation. Agency notes that,

⁶ Agency Brief, Tab 10, Tab 11.

⁷ Agency Brief, Tab 12, Tab 13.

⁸ Agency Brief, Tab 9.

⁹ Agency Brief, Tab 3.

¹⁰ Agency Brief, Tab 4.

¹¹ Agency Brief, Tab 5.

¹² Agency Brief, Tab 1.

¹³ Agency Brief, Tab 17.

¹⁴ Employee's Response, OEA Pre-Hearing pt.1, Attachment 1. Employee's OEA Pre-Hearing pt.2, Attachment 10. Employee failed to clearly mark her attachments, thereby necessitating a reading of all her attachments to find the one she was referring to.

¹⁵ Agency's Answer, Tab 12.

IMPACT is a performance evaluation system utilized by DCPS to evaluate school-based personnel for the 2021-2022 and 2022-2023 school years.¹⁶ Employee alleges that her human rights were violated after Agency retaliated against her for filing a grievance against the principal and for fellow teacher K.H.'s allegations that she defamed K.H.¹⁷ Employee also asserts that she should not have to disclose her witness(es) due to fears of management retaliation.

Employee further alleges that Principal Johnson and Vice Principal¹⁸ Wiley violated her parental rights with regard to her son, a student at Whittier Elementary School, when she and her husband voiced their concerns about her son being exposed to Pride Week.¹⁹ She alleges that other Agency officials gathered and contrived information to negatively impact her performance scores. She alleged several instances when she and Agency officials had conflicting exchanges that she believes contributed to her low score. She also provided emails and letters dealing with her son. In her brief, Employee disagreed with the IMPACT scores she received, attributing them to the confrontational interaction she had with her son's school officials.

However, due to the undisputed fact that the Whittier Elementary School was never her work area and thus its administrators did not rate Employee's performance, I find that Employee failed to proffer any credible evidence that they had anything to do with her IMPACT scores. I find that Employee did not provide any other credible reason to dispute her low IMPACT scores. It should be noted that Employee's evaluations were conducted by Assistant Principal Larin Rottman for school year 2021-2022 and Principal Brandon Clayton for school year 2022-2023.

Agency provides that Employee received a 'Developing' IMPACT rating during the 2021-2022 school year and received a 'Minimally Effective' IMPACT rating for the 2022-2023 school year. Agency further provides that Employee was a Teacher under IMPACT Group 2B, and she was assessed during Cycles 1 and 3. Agency states that it properly conducted Employee's performance evaluation using the IMPACT process. Because Employee's IMPACT rating declined between two (2) consecutive school years from 'Developing' to 'Minimally Effective' her employment was terminated pursuant to the IMPACT procedure.²⁰ Agency submitted Principal Clayton's affidavit denying Employee's allegations of bias. Agency also pointed out that Principal Clayton did not complete Employee's 2021-2022 IMPACT assessment.

As evidenced by her submissions to this Office, Employee starkly disagreed with her IMPACT scores on her IMPACT evaluations. However, Employee did not refute the factual observations made by her evaluators. The D.C. Superior Court in *Shaibu v. District of Columbia Public Schools* explained that "[d]ifferent supervisors may disagree about an employee's performance and each of their opinions may be supported by substantial evidence."²¹ Similar to the facts in *Shaibu*, I find that it is within the Administrator's discretion to reach a different conclusion about Employee's performance, as long as the Administrator's opinion is supported by substantial evidence. Further, substantial evidence for a positive evaluation does not establish a

¹⁶ Agency's Answer (August 31, 2023).

¹⁷ Initials used to protect her identity.

¹⁸ Employee used VP throughout her brief without spelling it out.

¹⁹ Pride Week is an Agency sponsored event regarding LBGTQ ("Lesbian, Gay, Bisexual, and Transgender") employees and students.

²⁰ *Supra*, Agency Brief, Tab 1.

²¹ Case No. 2012 CA 003606 P (January 29, 2013).

lack of substantial evidence for a negative evaluation. This court noted that, “it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal’s] evaluation but that would support a better overall evaluation.”²² The court further opined that if the factual basis of the “Principal’s evaluation was true, the evaluation was supported by substantial evidence.” Additionally, it highlighted that “principals enjoy near total discretion in ranking their teachers”²³ when implementing performance evaluations. The court concluded that since the “factual statements were far more specific than [the employee’s] characterization suggests, and none of the evidence proffered to OEA by [the employee] directly controverted [the principal’s] specific factual bases for his evaluation of [the employee] ...” the employee’s petition was denied.

This Office has consistently held that the primary responsibility for managing and disciplining Agency’s work force is a matter entrusted to the Agency, not to OEA.²⁴ As performance evaluations are “subjective and individualized in nature,”²⁵ this Office will not substitute its judgment for that of an agency; rather, this Office limits its review to determining if “managerial discretion has been legitimately invoked and properly exercised.”²⁶ Despite Employee’s protestations to the contrary, I find no credible evidence that her former principals abused their discretion when she was evaluated per the aforementioned IMPACT guidelines. I further find that DCPS had sufficient ‘just cause’ to terminate Employee, following the decline of her IMPACT rating from ‘Developing’ during the 2021-2022 school year, to ‘Minimally Effective’ during the 2022-2023 school year.²⁷

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency’s action of removing Employee is **UPHELD**.

FOR THE OFFICE:

s/s Joseph Lim

JOSEPH E. LIM, ESQ.

Senior Administrative Judge

²² *Id.* at 6.

²³ *Id.* Citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997).

²⁴ See *Mavins v. District Department of Transportation*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013); *Mills v. District Department of Public Works*, OEA Matter No. 1601-0009-09, *Opinion and Order on Petition for Review* (December 12, 2011); *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Education of the District of Columbia*, 109 F.3d 774 (D.C. Cir. 1997); see also *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); and *Hutchinson v. District of Columbia Fire Department*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

²⁵ See also *American Federation of Government Employees, AFL-CIO v. Office of Personnel Management*, 821 F.2d 761, 765 (D.C. Cir. 1987) (noting that the federal government has long employed the use of subjective performance evaluations to help make RIF decisions).

²⁶ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

²⁷ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).