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

In the Matter of:	)	
JULIE BROWN	)	OEA Matter No.
2401-0126-04		
	Employee	)
Issuance: June 5, 2006		Date of
	v.	)
Sears, Esq.		Sheryl
	Administrative Judge	)
D.C. PUBLIC SCHOOLS	)	
	Agency	)

Julie Brown, *Pro Se*  
Harriet Segar, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION

Agency removed Julie Brown (“Employee”) from the position of Teacher at Turner Elementary School by reduction in force (RIF). Employee filed a petition for appeal with the Office of Employee Appeals (“the Office”). As a part of the RIF process, agency officials evaluated Employee according to the guidelines of a competitive level documentation form (CLDF). According to Employee, Agency committed errors which caused her to be incorrectly evaluated, ranked and separated.

On May 4, 2005, the parties convened for a pre-hearing conference. This Judge convened a hearing on June 13, 2005. This decision is based upon the record of documentary and testimonial evidence along with the parties’ oral and written 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 Employee was denied a lawful round of lateral competition.

### BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999) provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.” Accordingly, Agency has the burden of proving that officials acted properly in evaluating, ranking and separating Employee.

### FINDINGS OF FACT AND ANALYSIS AND CONCLUSIONS

#### Employee’s Claim for Relief

Employee was one of eighteen teachers evaluated by the school principal in accordance with a Competitive Level Documentation Form (CLDF) as part of the reduction in force (RIF) process. Employee was ranked lowest of the eighteen with 50 points. S.B., ranked 17<sup>th</sup>, had 55 points. They were both removed. J.W., ranked 16<sup>th</sup> with 60 points, was retained. Agency maintains that all of the employees were properly evaluated and ranked.

Employee claims that Agency did not award her enough points in the evaluation. In order for this Judge to find that Employee should have been retained instead, the record must show that Agency wrongly denied her 61 points (an additional 11). Upon such a finding, this Judge would conclude that it was Employee who was entitled to retention instead of J.W. and grant her relief. Employee seeks an order from this Office reversing the RIF and restoring her to an ET-15 teaching position. At the hearing, she expressed her preference for employment at a public school that is not chartered. It is undisputed that teaching positions at charter schools are administered differently than those at other public schools.

According to the D.C. Official Code § 1-624.08 (2001), which sets forth the standards for review of a RIF appeal, the grounds upon which an employee can challenge a RIF are limited to the following:

- (f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that. . .

(2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (f) were not properly applied.

d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to *1 round of lateral competition* pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given *written notice of at least 30 days* before the effective date of his or her separation. (Emphasis added).

Employee's challenge raises the question of whether she received a fair round of lateral competition.

#### Testimony at the Hearing

Agency presented, as its sole witness, Marcia Parker, the principal at Turner at the time of the RIF. Employee testified on her own behalf. They both testified that Employee completed the CLDF form and the principal reviewed it. The principal explained how she used Employee's entries along with her independent knowledge to rate Employee. Employee testified in support of her contention that, based upon her activities and performance level, her rating should have been higher.

#### Testimony of Marcia Parker, Principal at Turner Elementary School

Marcia Parker testified as follows: On or near May 13, 2004, she attended a meeting of administrators to receive information about the RIF process. She then met with her administrative staff to discuss how to rank employees. A week or two later, she convened a mandatory faculty meeting where she explained the evaluation process and distributed the CLDF form. She could not remember whether Employee was present on that day. Principal Parker said that she gave the teachers "a time line in which to submit the form." She then scheduled a meeting "with each individual teacher" and "discussed what they had put on the form." "They were required to bring documentation" for information they desired to add. "In cases where they did not bring the documents, [she] used [her] knowledge base of . . . what they had done." As part of the process, she noted "deficiencies that [she], as administrator of the building, saw in their performance on the job."

Ms. Parker explained that the student population serviced by Turner comes "from an area where the social problems are high." Working as a teacher or administrator at Turner, she said, requires managing the "special needs" of the students including the ability to "control the classroom" and "handle situations without having to call the parents on every little thing." Ms. Parker recalled that she discussed with Employee, over the course of her employment, her "lack of ability to monitor the children at Turner Elementary School." Parker said that, during the CLDF evaluation, she discussed with Employee "how she had

listed several professional development courses she had taken but those courses had not spilled over into the classroom.”

Regarding Employee’s CLDF, Ms. Parker testified as follows:

Relevant Significant Contributions, Accomplishments or Performance

The first section of the form accounts for Employee’s “Relevant Significant Contributions, Accomplishments or Performance: 25 points Maximum.” According to language on the CLDF, these are “[f]or example, student outcomes, ratings, awards, special contributions, etc.” They [m]ay also include negative factors such as disciplinary, attendance, and failure to meet occupational responsibilities, etc. with documentation.” Employee made this entry on the form: “No student below basic in reading 2002-3, many advance proficient, brought speaker and interschool pen pal program 2001-2002, science projects for children, improvement on test scores all years, water project- river cutters, met expectation, introduce children to speakers – visitors to learn about other states.” Ms. Parker gave Employee 15 points in this category.

Ms. Parker testified that Employee’s entry about her students’ reading progress was “not accurate” and she had “some students below basic” proficiency. Parker indicated that she did not give Employee credit for a “Pen Pal Program 2001-2002” because it was outside of the relevant time frame. For the purpose of the evaluation, she considered only the employees’ performance for the school year 2003 – 2004. The principal did not credit Employee with any points for doing science projects because “[a]ll teachers help their children with the projects. That’s part of the job responsibilities.” She said that the “water project- river cutters” did not occur during the relevant time period. She said that she did not give Employee credit for bringing in speakers to teach them about other states because “[a] teacher has to be creative and bring different programs [in] order [for] a classroom to be successful.” “That’s expected.” She acknowledged that Employee presented “adults from various backgrounds and careers” to the students and said it was a “good experience for the children.”

Ms. Parker said that she took heavily into account that Employee “always had difficulty with classroom management.” She recalled speaking with Employee “on numerous occasions about the parental complaints.” There were also “[c]omplaints of other teachers about her classroom management.” “We discussed that she needed to shore up her classroom environment which was untidy.” “The children running in and out of the room climbing on tables. We even had parent conferences with her and parents about her lack of control.” Parker reported that she had other employees sit in on Employee’s classroom to give her support and help bring the “class under control.” Those included Crystal Pleasants, Ms. Parker’s primary instructional facilitator; Claudette Martin, a retired teacher and school psychologist, Nichole Lewis. According to Parker, all made negative reports.

She said that she presented these concerns to Employee during the school year and at the CLDF interview. According to Parker, “instructionally [Employee] had the ability to deliver the instruction.” But she lacked the skills to monitor her children.” Parker said,

“[I]n the environment in which we worked, we needed someone who was strong and could manage their class in order to deliver the instruction.”

#### Relevant Supplemental Professional Experience as Demonstrated on the Job

The second section of the form accounts for “Relevant Supplemental Professional Experience as Demonstrated on the Job: 25 Points Maximum. . .[f]or example, experience or training, professional development, performance based education, science, math, literacy, technology advancement, etc. with documentation.” Employee noted the following: “Professional development – reading classes, technology classes, math workshops, science training – Carnegie Institute, Chesapeake Bay foundation - water studies, instruction for children in publishing on computer, creating slide shows (1997 – 2003), Technology and Testing Committee.”

Principal Parker said that this category referred to an employee taking “additional course work to provide the expertise to be demonstrated in their performance in the classroom.” Parker acknowledged that Employee took courses. She said that, although Employee “had the knowledge base. . .she did not have the skill base to implement it with the children.” She said that, although Employee volunteered for the Technology and Testing Committee, she did not recall her attending more than one meeting. She acknowledged that meetings were during school time and Employee “needed to be in her classroom.” She said that all children have the opportunity to do “desktop publishing.” She said the “slide show” that Employee noted was “not something extra. It is expected.” She said that spending time with the children after school or during the lunch hour, taking them on field trips or teaming with another teacher would have counted as extra.

In summary, she said about Employee, “The key point is that she took the professional development courses clearly. She has the knowledge clearly. She participated in many activities clearly. But they were not demonstrated on the job. And the children were suffering greatly because of what she was unable at that time to demonstrate to the parent and to the administration and to the students.” What she expected from Employee was for her to “come up with a plan to correct. . .[her] deficiencies.” She expected that employee would be creating a behavior modification plan for the children” rather than “calling parents on [her] cell phone during instructional time.” Employee received 10 points in this category.

#### Office or School Needs

The third section of the form accounts for “Office or School Needs: 25 points maximum. (For example, curriculum, specialized education, conflict resolution, degrees, licenses, areas of expertise, extra curricular sponsorship, etc. with documentation).” Employee entered the following: “Classes/workshops in conflict resolution, speech-language development, after school tutor children (1997 – 2003). All children show academic gain. Assist in science special classroom.”

Ms. Parker expressed concern that Employee’s work in conflict resolution did not translate into classroom expertise. She said, “Ms. Brown’s class was a class that was in complete disarray. The children were constantly running, jumping, not listening to her. She was constantly on her cell phone calling parents. I was having parents come in to remove

her from the classroom. She was completely frustrated. She had a very challenging class, but was unable to implement what she learned in the classes workshops.” Parker said that she was not familiar with the work designated as “speech language development.” She said that Employee, along with others, tutored children after school. Some worked for pay and some volunteered. Employee received 15 points in this category.

#### Additions to the Competitive Level Documentation Form

Employee submitted, as evidence at the hearing, a list of Additions to the Competitive Level Form.” Parker testified about her knowledge of the items. Employee stated that she “attends school unless [there is a] medical problem or family emergency.” Parker said that she did not consider that to be relevant. Nor did she credit Employee with anything extra for “always arriv[ing] early to better prepare for student instruction” because “a lot of teachers come early to prepare themselves.” Parker responded the same way to Employee’s statement that she helped children review skills where they need practice. She said that Employee was expected to do that. Employee, in reciting these items, appears to have quoted from the “relevant significant contributions” section of S.B.’s CLDF S.B. enumerated each of these things along with “My children do well on their achievement tests over the years.” S.B. was awarded 15 points in that section. However, Parker testified that S.B.’s students “always scored proficient and advanced.” In this way, Parker distinguished their classroom accomplishments.

Employee indicated that she was “[a]lways on duty station on time.” However, Parker said that is not unique to her. Employee said she “created monthly grade level newsletters.” Parker said “each teacher is required to do it” as a “parent communication.” Ms. Parker was not familiar with Employee’s work as “grade level chairperson.” Employee noted that she was “recognized for high implementation of ALEM [Academic Learning Environment Model], Reform Prep Model.” However, according to Parker, the school was no longer using that model during the school years beginning in 2003 and 2004. The new model was “America’s Choice.” Parker also took issue with Employee’s representation that she had “[n]o student below basic in reading comprehension.” She said that, “in 2004, [the school] did not reach our target school wide. So, there were children in all grade levels who were below basic.”

Employee indicated that she was “recognized for Earobics, Incorporated for total implementation of program.” Parker acknowledged that Employee “did a very good job with that” but said that all of the “grade one through three teachers” who participated were recognized. She said that she did not remember Employee receiving a “Stanford Nine award for making targets.” On cross examination, she said that the award must have been based upon the incorrect knowledge of the school counselor who presented the award to Employee. Parker said that “several teachers” were involved in a “Mother’s Day Family Brunch.” And, she noted, it “wasn’t discussed during the conference.” She conceded that they did not discuss, at the conference, students receiving awards for “outstanding contributions” such as the spelling bee and was not aware of “art competition award” referenced by Employee but she noted that “all teachers are required to participate in

activities.” She did not comment on “[c]lass team project award, second place in science for a competition.”

The principal acknowledged that Employee brought “inter-cultural experiences including Native American, Mary Sunshine, to teach dance and legends to grade level classes” was a “very good program” that was unique to Employee.” She said that she gave her credit for the “interschool pen-pal” program as well as for introducing the students to speakers from whom they could learn about other states (in saying this she contradicted her earlier statement that no credit was due for this activity). Parker was not aware of a “multi-cultural food tasting experience” and whether it was unique to Employee’s classroom. Parker was also aware of the “river project” and “water quality testing project.”

However, Parker said that many of the skills and activities enumerated by Employee were required of all teachers including “math skills,” training for work with children with attention deficit disorder, “reading comprehension for K through three”, “arts for every student,” “elementary reading in the content area” and preparation for the Stanford Nine test. Parker explained that extra studies were required of all teachers at this “transformation school.” Parker said that Employee’s studies of “behavior problems in the classroom” and “strategies for students with anger problems” did not translate into productivity in the classroom.

Parker testified about her comparison of Employee with the two teachers ranked immediately above her, J.W. and S.B. She said that J.W. received more points for “relevant significant contributions” (20 to Employee’s 15) and “relevant supplemental experience” (20 to Employee’s 10) because he “met his school-wide initiatives ” and “on the Stanford nine test, he moved the required number of children from basic to proficient. . .[a]nd below basic to basic.” Also, there were no “parental complaints” about him and he received good reports from the instructional facilitator. She said that “his training was carried over into the delivery of his classroom instruction. . .and his children made gains. . .[and he] had an orderly environment.” She said that in working on his guidance counseling degree, “many of the strategies that he learned there were carried over into the classroom.” She acknowledged that they had much of the same training but Employee’s was “not carried over into the classroom.” In detailing, Employee’s Stanford Nine test results, she said that “77 of her children were basic. And basic is moving toward the objective. That is not where we want our kids to be at the end of the year.” “We want all of our children to either be proficient or advanced.” “It really shouldn’t have been any more than two children in below basic, or basic.” Instead, “she had the majority of her children in basic.”

Parker gave S.B. 0 points for “relevant supplemental experience” because she did not bring all of her information with her. Parker also said that, although she found her to be a good teacher, S.B. “did not feel comfortable participating in committees or being a demonstration teacher.” When an observer came to her classroom, “she would get as nervous as, you know, a wreck.” However, with her tenure of 34 years, S.B. got 25 points to Employee’s 10 for “length of service.” As noted, the final rankings, determined after Parker entered scored on the CLDFs, placed Employee at the bottom of the list.

On cross-examination, Employee questioned Parker about whether some of the parental complaints against her were solicited. Parker explained that she asked parents who

made verbal complaints to put them in writing. When asked by Employee if she was the only teacher with problem students, Principal Parker replied that Employee's situation was the most severe. Parker denied having told Employee that "it really doesn't matter what's on this form because you are not coming back." She said that, if she felt that way, she would have marked Employee "unsatisfactory."

### Testimony of Employee

Employee testified that she was absent when the CLDF forms were distributed. She believes that Parker decided in advance to remove her. That is why she did not ask for more time to complete the CLDF process. She said that some of the classes she took were not required including "math techniques in the classroom. . .math manipulates." The rest, she acknowledged, were required to meet continuing education requirements. She said the "Anacostia River Project was unique" to her and that she was the only one in her school to attend "cooperative small groups." She did this to help with the children who "had a history of being difficult wherever they were or are." She recalled that she also took "elementary reading in the content area" and "reading to writing" on her own.

Employee explained that many of the behavior problems in her classroom were caused by "crack babies and very special population children." She said that many of her students "needed a special placement" and their behavior could not be controlled. She asked for "assistance from the counseling services." Her concern along with Ms. Parker's is the reason that the school psychologist came. She said that many of the children had problems. These are children no one can work with and they let them "play all year." She heard children in J.W.'s class called the "throw away kids."

Employee felt that she worked well with the situation. She recalled that one student came to her "as a total failure of a child, an emotional mess. . .[f]ighting with everybody. . .[t]hrowing temper tantrums." She said that "by the middle of the year, he was [her] star student." She said that she received compliments from the teachers who got her students after she taught them. She said that she was told by observer, Claudette Martin. . .that she had no advice for her because she was doing fine. She said that Ms. Pleasants "stood in the doorway angry because Ms. Parker had told her to come in. And she didn't even know why she was supposed to be there." In addition, according to Employee, Pleasants "did some things in the classroom to correct children that were probably not even appropriate." The school psychologist came in and took some children out a few at a time to "try to teach them to get along better." She said that she has been consulted by some teachers from the school since her departure.

Comparatively, she said that Mr. W. and Ms. B's classrooms were "anything but neat" and she did not believe that Mr. W.'s students gained any more experience working on computers than hers. She felt that she was due more credit for "Earobics" because she was one of only three teachers who were recognized in a newspaper article that she presented as evidence. She claimed responsibility for implementing the "entire program" and not just the "computer aspect of it." She said that her knowledge of computers was effectively transmitted to the students because they all "knew how to turn on computers" and "shut them down properly" and "access information from the Internet." She said that she took more than the required number of continuing education classes.



On rebuttal, Parker commented that Employee could not have known what was going on in the other classrooms if she was attending to her own. And she said that, if Employee had asked for more time to complete the CLDF, she would have given it to her.

### Conclusion

The testimony of Employee and the principal who supervised and evaluated her was much the same. Although Employee indicated that she was absent on the day the CLDFs were distributed, she did not ask for more time in the process or claim that she was handicapped in her efforts by the lack of it. Both acknowledged the special challenges and learning needs of the student population at Turner Elementary School. And they both expressed an awareness of Employee's training and credentials and school activities. However, they differed on the crucial question of the level of Employee's performance. Employee testified that she performed at a high level as a classroom teacher and that her students were high achievers. The principal, considering both the Stanford Nine test results of Employee's students and her observation of their activity in the classroom, concluded that Employee's base of knowledge did not translate into an effective skill set.

The principal had the opportunity to observe Employee as well as other faculty members. And it is within the range of her managerial expertise to compare them. Moreover, Employee did not present sufficient evidence to refute the statements of the principal. Given the concrete evidence of the test results of Employee's students and the principal's assessment of Employee's classroom behavior, this Judge concludes that Employee was properly evaluated and ranked. Therefore, Agency has met its burden of proving that the RIF was lawful.

### ORDER

It is hereby ORDERED that Agency's decision to separate Employee by reduction in force is UPHeld.

FOR THE OFFICE:

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SHERYL SEARS, ESQ.  
ADMINISTRATIVE JUDGE