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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
CECILE THORNE,	)	
Employee	)	
	)	OEA Matter No.: 1601-0123-13
v.	)	
	)	Date of Issuance: September 13, 2016
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Cecile Thorne (“Employee”) worked as a teacher with the D.C. Public Schools (“Agency”). On July 27, 2013, Agency issued a written notice to Employee informing her that she was being terminated after receiving a final rating of “Ineffective” under IMPACT, Agency’s performance assessment system during the 2012-2013 school year. The effective date of the termination was August 10, 2013.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on July 26, 2013. In her petition, Employee argued that the principal of Reed Marie Learning Center retaliated against her based on her membership in the Washington’s Teacher Union (“WTU”).<sup>1</sup> She also asserted that Agency committed several procedural errors in implementing the IMPACT

<sup>1</sup> *Petition for Appeal* (July 26, 2013).

program. In addition, Employee implied that her final IMPACT score may have been a result of age and sex discrimination.<sup>2</sup> She requested that OEA reinstate her with back pay and benefits.

Agency filed its Answer to the Petition for Appeal on September 9, 2013. It denied Employee's allegations. Agency argued that Employee was terminated based on multiple appropriate and informed assessments of her performance under the IMPACT guidelines.<sup>3</sup>

The matter was assigned to an OEA Administrative Judge ("AJ") on May 14, 2014. On May 20, 2014, the AJ issued an Order Convening a Prehearing Conference to assess the parties' arguments and to determine whether an evidentiary hearing was warranted.<sup>4</sup> The parties were subsequently ordered to submit written briefs addressing whether Employee was terminated in accordance with the IMPACT procedures, and whether she was placed and evaluated in the correct IMPACT group.<sup>5</sup>

In her brief, Employee asserted that she was observed outside of her area of certification because her official position of record was an Early Childhood Education Teacher. She contended that she should have been observed pursuant to the guidelines for IMPACT Group 2a, not Group 2.<sup>6</sup> Employee further reiterated that personal issues with the school's principal improperly formed part of the basis for her "Ineffective" IMPACT score.<sup>7</sup>

Agency filed its brief on September 15, 2014, arguing that Employee was a member of Group 2 during the 2012-2013 school year.<sup>8</sup> It further stated that she was observed and evaluated a total of five times during the year and received a post-assessment conference after each

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

<sup>3</sup> *Answer to Petition for Appeal*, p. 4 (September 9, 2013).

<sup>4</sup> *Order Convening a Prehearing Conference* (May 20, 2014).

<sup>5</sup> *Post-Prehearing Conference Order* (August 19, 2014).

<sup>6</sup> *Employee Brief* (October 204, 2014).

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

<sup>8</sup> *Agency Brief* (September 15, 2014).

evaluation. According to Agency, Employee received a final IMPACT rating of “Ineffective” and was, therefore, subject to termination.<sup>9</sup>

An Initial Decision was issued on March 30, 2015. The AJ stated that the Collective Bargaining Agreement (“CBA”) between Agency and the WTU applied to this matter; however, OEA’s jurisdiction was limited to determining whether Employee was terminated for cause.<sup>10</sup> Under Section 15.4 of the CBA, “the standard for separation under the [IMPACT] evaluation process shall be ‘just cause,’ which shall be defined as adherence to the evaluation process only.” In her analysis, the AJ concluded that Agency improperly placed Employee in IMPACT Group 2, instead of Group 2a. The AJ provided that during the 2012-2013 school year, Group 2a was reserved for Early Childhood Education Teachers; whereas, Group 2 consisted of General Education Teachers in grades one through twelve.<sup>11</sup> She further determined that Employee’s position of record at the time of termination was an Early Childhood Education Teacher, as reflected by her Official Notification of Personnel Action Form (“SF-50”). Because Employee was evaluated under the improper IMPACT guidelines, the AJ held that Agency failed to meet its burden of proof in showing that it adhered to the IMPACT process. Therefore, it was ordered to reinstate Employee with back pay and benefits.<sup>12</sup>

Agency disagreed with the Initial Decision and filed a Petition for Review with OEA’s Board on May 4, 2015. It argues that the AJ’s findings were not based on substantial evidence and that the Initial Decision was based on an erroneous interpretation of law. According to Agency, the AJ erred in holding that Employee should have been placed in IMPACT Group 2a.<sup>13</sup> It states that the classification of IMPACT groups is based on the primary subject that the

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<sup>9</sup> *Id.*

<sup>10</sup> *Initial Decision* (March 30, 2015).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Petition for Review*, p. 3 (May 4, 2015).

teacher, in fact, teaches. In support thereof, Agency cites to Employee's teaching schedule, which reflects that she taught pre-school, kindergarten, first grade, second grade, and third grade during the relevant school year.<sup>14</sup> In addition, it asserts that the AJ accorded little weight to the IMPACT Team's determination that a teacher's subject area may result in more than one possible IMPACT Group. Agency believes that it was within its discretion to assign Employee to Group 2, instead of Group 2a.<sup>15</sup> Accordingly, it asks this Board to dismiss Employee's Petition for Appeal and declare that Agency did not err in rating her as "Ineffective" under IMPACT. In the alternative, Agency requests that the matter be remanded to the AJ for a full evidentiary hearing.<sup>16</sup>

#### Position of Record

Agency's primary argument is that the IMPACT group that Employee was assigned to at the beginning of the 2012-2013 school year was based on the courses that she actually taught. Nevertheless, the AJ correctly concluded that an employee's official position of record is displayed through the issuance of an SF-50.<sup>17</sup> Agency relies on Employee's teaching schedule to prove that she should have been placed in IMPACT Group 2, and not Group 2a. However, a teaching schedule is not an official personnel document. Only personnel action forms can alter the position of record for an employee.<sup>18</sup> Therefore, its argument that Employee was a general education teacher, with a license that authorized her to also teach classes in early childhood, is

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<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *Ross v. D.C. Office of Contracting and Procurement*, OEA Matter No. 2401-0133-09R11 (April 8, 2013) (holding that the employee could not be separated pursuant to a Reduction-in-Force from a position that they did not officially occupy, as evidenced by their SF-50).

<sup>18</sup> See *Williams v. D.C. Public Schools*, OEA Matter No. 2401-0124-10R13, *Opinion and Order on Petition for Review* (February 16, 2016).

without merit. If Employee's primary duties were those of a general education teacher, then Agency should have reclassified her position by generating an updated SF-50.

In its Petition for Review, Agency cites to a guide entitled "How Do I Place My Staff in IMPACT Groups?"<sup>19</sup> The document states that "[a]ny teacher who teaches pre-school, pre-kindergarten, or kindergarten, except those who are special education teachers...should be placed in Group 2a." Moreover, Employee was placed and evaluated in IMPACT Group 2a during the 2011-2012 school year.<sup>20</sup> While it is unclear why she was placed in IMPACT Group 2 for the 2012-2013 school year, it is evident from the record that Employee's official position of record at the time she was terminated was an Early Childhood Teacher. Since she was placed and evaluated in the incorrect IMPACT group, this Board finds that Agency failed to follow the evaluation process as required by Section 15.4 of the CBA between DCPS and the WTU.

### Conclusion

Because Agency placed Employee in the improper IMPACT Group, Employee was improperly evaluated under the incorrect evaluation criteria. Accordingly, we must uphold the AJ's decision to reinstate her to her position of record with back pay and benefits. Therefore, Agency's Petition for Review is denied.

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<sup>19</sup> *Petition for Review*, Exhibit 11 (May 4, 2015).

<sup>20</sup> *Petition for Appeal*, Tab 3 (October 24, 2014).

**ORDER**

Agency's Petition for Review is **DENIED**. Therefore, Agency's termination action is **REVERSED**. Accordingly, Agency shall reinstate Employee to her last position of record or a comparable position. Additionally, it must reimburse Employee all back-pay and benefits lost as a result of the termination action. Agency shall file with this Board within thirty (30) days from the date upon which this decision is final, documents evidencing compliance with the terms of this Order.

**FOR THE BOARD:**

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Sheree L. Price, Interim Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.