STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 1, 2023)

TRACY ANDREWS-MELLOUISE	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2021-02524**
	:	
RHODE ISLAND COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION; and EAST PROVIDENCE SCHOOL COMMITTEE,	:	
	:	
Defendants.	:	

DECISION

STERN, J. Before the Court is Plaintiff-Appellant Tracy Andrews-Mellouise's (Andrews-Mellouise) appeal from the Rhode Island Council on Elementary and Secondary Education's (Council) decision that affirmed the decision of the East Providence School Committee (EPSC) not to renew her administrator contract. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the foregoing reasons, the Court affirms the decision of the Council.

I

Facts and Travel

By way of background, Ms. Andrews-Mellouise was employed by the East Providence School Department as an Assistant Director of Pupil Services from 2013 to 2019. (Rhode Island Department of Education (RIDE) Transcript of Hearing held on September 16, 2019 (RIDE Hr'g

Tr.) 86:1-4; RIDE Hr'g Tr. Joint Ex. 1B (Employment Contract) 1.)[1] Ms. Andrews-Mellouise has an extensive background in education: she worked in the Woonsocket school department for eight years before coming to East Providence and as a program coordinator at Northern Rhode Island Collaborative from 2002 to 2005. (RIDE Hr'g Tr. 86:5-12.)

In or around January of 2016, Ms. Andrews-Mellouise entered into an employment agreement (Employment Contract), retroactive from November 1, 2015 through October 31, 2018, for the position of Assistant Director of Pupil Personnel with EPSC.[2] (Employment Contract 1.) In her most recent performance review, Ms. Andrews-Mellouise received perfect scores of ten from her supervisor, Julian (Bud) MacDonnell, the Director of Special Education at the East Providence Public Schools. (RIDE Hr'g Tr. 39:14, 43:22-23, 50:21-51:2; RIDE Hr'g Tr., Joint Ex. 1B (Andrews-Mellouise Evaluation).) Superintendent Kathryn Crowley (Superintendent Crowley) signed off on the evaluation.

On or around September 10, 2018, Superintendent Crowley met with Ms. Andrews-Mellouise to discuss the possibility of a new three-year contract, retroactively dated from July 1, 2018 to June 30, 2021. (RIDE Hr'g Tr. 22:18-23:2; RIDE Hearing Tr., Joint Ex. 1A; (EPSC Hr'g Tr., May 21, 2019) (EPSC Hr'g Tr.), at 13:16-14:3.) At that meeting, Ms. Andrews-Mellouise and Superintendent Crowley went over the contract, and Ms. Andrews-Mellouise signed the three-year

[1] Documents in the Record are not marked as enumerated exhibits and will be identified in this Decision by the document titles listed on the Record page titled "Transmission of Original Record" followed by a page number where appropriate. Many of the documents in the Record are not internally paginated; however, for clarity purposes, any citation to a page number in this Decision refers to the number of pages listed next to the document's title on the Certification of record or to the internal pagination when applicable. Additionally, Joint Exhibits 1A and 1B to the RIDE Hearing contain multiple documents and thus will be referred to by their specific document titles.

[2] In her hearing testimony, Superintendent Crowley also refers to this position as the "Assistant Director of Special Education." (RIDE Hr'g Tr. 11:17-21.)

renewal contract, pending approval from the EPSC. (EPSC Hr'g Tr. 13:16-14:3.) The EPSC was scheduled to meet on September 25, 2018 to discuss administrator contract renewals. *Id*. at 15:13-20; RIDE Hr'g Tr. 23:3-6. Prior to that meeting, roughly a day or two before, Superintendent Crowley received information from EPSC Member Jessica Beauchaine indicating that Ms. Andrews-Mellouise would not receive at least two votes for contract renewal. (RIDE Hr'g Tr. 23:7-17.) Based on that information, Superintendent Crowley changed her recommendation for renewal from three years to one year, to "sort of feel out the School Committee as to what the issue might have been thinking . . ." *Id*. at 23:21-24:2. At the September 25, 2018 public meeting, the EPSC tabled Ms. Andrews-Mellouise's contract renewal. *Id*. at 26:3-5. Following the hearing, Superintendent Crowley conducted her own investigation into Ms. Andrews-Mellouise and her work as Assistant Director. *Id*. at 26:22-27:5. Superintendent Crowley interviewed one parent and several administrators in her investigation, including Principal Yaniza Gallant, Principal Karen Rebello, Principal Lindsay Reilly, and Assistant Superintendent Sandra Forand. *Id*. at 27:6-10. From her interviews, Superintendent Crowley learned that Ms. Andrews-Mellouise sometimes communicated in a demeaning manner with others, specifically to other administrators. *Id*. at 27:22-28:5. Additionally, Superintendent Crowley learned that others had difficulty dealing with Ms. Andrews-Mellouise. *Id*. at 28:9-13.

After conducting her investigation, Superintendent Crowley sent a letter to Ms. Andrews-Mellouise on January 22, 2019 indicating that on February 12, 2019 at the EPSC meeting, Superintendent Crowley would be recommending nonrenewal of Ms. Andrews-Mellouise's employment with East Providence Public Schools. *Id*. at 36:6-16; RIDE Hr'g Joint Ex. 1B (Jan. 22, 2019 Ltr. 1)). In the letter, Superintendent Crowley articulated her reason for nonrenewal, indicating that "there are more qualified individuals available to better meet the needs of the [East

Providence School] District (District)." Jan. 22, 2019 Ltr. 1. Additionally, Superintendent Crowley informed Ms. Andrews-Mellouise of her right to request a hearing should the EPSC vote not to renew the employment agreement. *Id.* Thereafter, on February 11, 2019, Superintendent Crowley sent a second letter to Ms. Andrews-Mellouise, wherein Superintendent Crowley added a second reason for nonrenewal: "the Special Education Department is being re-organized and the current plan would be to eliminate your position and replace it with a .5 FTE position." (RIDE Hr'g Joint Ex. 1B (Feb. 11, 2019 Ltr.), 1; RIDE Hr'g Tr. 36:24-37:4.) At the EPSC meeting on February 26, 2019, the EPSC voted not to renew Ms. Andrews-Mellouise's employment agreement. (RIDE Hr'g Tr., Joint Ex. 1B (Feb. 28, 2019 Ltr.) 1.) Further, Charles Tsonos, Chair of the EPSC, indicated that Ms. Andrews-Mellouise had the right to a hearing before the EPSC with the opportunity to present evidence, including witness testimony. *Id.*

On May 21, 2019, the EPSC held a hearing regarding Ms. Andrews-Mellouise's appeal of the nonrenewal of her contract. *See* EPSC Hr'g Tr. 4:3-7. EPSC presented Superintendent Crowley as a witness, and Andrews-Mellouise testified on her own behalf. *See generally id.* After direct and cross-examination testimony, EPSC voted unanimously to uphold its decision not to renew Ms. Andrews-Mellouise's contract. *Id.* at 65:22-66:4. Ms. Andrews-Mellouise appealed EPSC's decision not to renew her contract, requesting a hearing. (Compl. under Rhode Island Administrator's Bill of Rights.) The appeal was heard on September 16, 2019 by Hearing Officer/Commissioner Kathleen S. Murray (Commissioner) for the Rhode Island Department of Education. *See generally* RIDE Hr'g Tr.

A

Presentation of Witnesses at RIDE Hearing

On September 16, 2019, RIDE, with its designated Commissioner to hear the appeal, convened an on-the-record hearing. *See id*. at 5:2-8. Commissioner Murray heard witness testimony from both Superintendent Crowley and Ms. Andrews-Mellouise on her own behalf. *See generally id*.

1

Superintendent Kathryn Crowley

Superintendent Crowley testified first at the RIDE hearing. *See id*. at 7:20-8:1. She testified that she decided to recommend nonrenewal of Ms. Andrews-Mellouise's employment agreement because of concerns about Ms. Andrews-Mellouise's communication skills and interpersonal relationships with other leaders. *Id*. at 12:8-12. Discussing the creation of a collaborative work environment within the District, Crowley "felt that [she] could do better in this area as far as the assistant pupil personnel director was concerned . . ." *Id*. at 12:19-22. Superintendent Crowley stated that it was not an issue of competence because, in her words, Ms. Andrews-Mellouise was "[a]bsolutely" competent in special education law. *Id*. at 13:1-4.

In discussing Ms. Andrews-Mellouise's communication skills, Superintendent Crowley believed that "[t]here was a negative relationship with the parents, perceived by some parents." *Id*. at 18:2-3. She opined that Ms. Andrews-Mellouise's leadership style did not mesh well with her own. *Id*. at 18:13-15. This incompatibility did not fit into the culture Superintendent Crowley was trying to create and maintain in East Providence. *Id*. at 18:21-23. Because she received information directly from the EPSC before the meeting, Superintendent Crowley also testified that she changed her recommendation for Ms. Andrews-Mellouise from a three-year renewal to a one-

year renewal in order to "feel out the School Committee as to what the issue might have been . . ." *Id*. at 23:21-24:4. Instead, the EPSC tabled Ms. Andrews-Mellouise's contract renewal. *Id*. at 26:3-5.

As mentioned above, after the interviews with one parent and a handful of administrators, she concluded that the District could do better at the position. *Id*. at 27:17-19. In further detail, Superintendent Crowley found that the principals had a hard time dealing with Ms. Andrews-Mellouise, and that "there was a deterioration of the relationship between the principals and [Ms. Andrews-Mellouise]." *Id*. at 28:9-13. Additionally, she testified that Ms. Andrews-Mellouise had commented about Ms. Gallant, to the effect of, "who did she sleep with to get this position . . ." *Id*. at 31:5-8. Superintendent Crowley found that other principals sensed that Ms. Andrews-Mellouise talked down to them and did not foster a cooperative relationship. *Id*. at 32:10-13.

Moreover, Superintendent Crowley stated on direct examination that she removed Ms. Andrews-Mellouise from meetings with a parent organization known as the East Providence Special Education Advisory Committee (EPLAC). *Id*. at 32:20-23. Specifically, parents were not happy with Ms. Andrews-Mellouise's comments at meetings, forcing Superintendent Crowley to ask Ms. Andrew-Mellouise's supervisor, Mr. MacDonnell, to take over the EPLAC meetings. *Id*. at 34:1-5.

As to the February 11, 2019 letter in which Superintendent Crowley notified Ms. Andrews-Mellouise that her position was being eliminated and replaced with a .5 FTE position, Superintendent Crowley then testified that this move would give the District additional money for student engagement. *Id*. at 37:5-15. According to Superintendent Crowley, she believed she could find someone who would have "positive communication skills, . . . a good relationship with the administrators and a good relationship with teachers." *Id*. at 38:22-39:3. When asked whether she

considered Ms. Andrews-Mellouise's perfectly scored performance evaluation in her determination of whether or not to renew, Superintendent Crowley explained that she did not because, "I am nonrenewing because I think I can do better, but I'm not questioning her capabilities to do a better job in another District." *Id*. at 74:12-21. Ultimately, Superintendent Crowley hired Mr. MacDonnell for the part-time special education position as Assistant of Pupil Personnel Services. *Id*. at 39:9-17. She stated that he was well respected in the District and wanted a position on a part-time basis. *Id*. at 39:19-23. In her professional opinion, Superintendent Crowley believed that Mr. MacDonnell was a better fit for the position than Ms. Andrews-Mellouise. *Id*. at 40:20-23.

On cross-examination, counsel for Ms. Andrews-Mellouise questioned Superintendent Crowley about the events leading to EPSC's decision not to renew her contract. *See generally id*. Specifically, Superintendent Crowley was questioned about Mr. MacDonnell's positive evaluation of Ms. Andrews-Mellouise and her September 10, 2018 meeting with Ms. Andrews-Mellouise. *Id*. at 50:16-55:23. Additionally, Superintendent Crowley stated that, prior to the September 10, 2018 meeting, she heard "little bits and pieces" of complaints from others regarding Ms. Andrews-Mellouise's mannerisms and demeanor in meetings but nothing substantial. *Id*. at 57:15-20. She also admitted that she did not tell Ms. Andrews-Mellouise about changing the renewal recommendation from three years to one year prior to the September 25, 2018 EPSC open meeting. *Id*. at 62:17-23. In addition, she did not inform Ms. Andrews-Mellouise that she was investigating her job performance. *Id*. at 63:17-64:3. Superintendent Crowley did not request Ms. Andrews-Mellouise's side of the story because Ms. Andrews-Mellouise informed her that she had hired an attorney. *Id*. at 64:4-6; 68:3-19; 69:1-7.

2

Tracy Andrews-Mellouise

Next, Commissioner Murray heard testimony from Ms. Andrews-Mellouise. Ms. Andrews-Mellouise discussed the four people Superintendent Crowley interviewed in her investigation. *Id*. at 90:3-15. First, she spoke in depth about Assistant Superintendent Dr. Sandy Forand, who directly oversaw two principals: Yaniza Gallant and Lindsay Reilly. *Id*. at 90:16-19. Ms. Andrews-Mellouise described a circumstance about moving a student to a particular school in East Providence, in accordance with that student's Individual Education Plan (IEP), Least Restrictive Environment (LRE), as well as state regulations. *Id*. at 92:23-94:1. However, Dr. Forand directed the student be placed to another school in the District "because she directed that no other students, especially a student with an IEP, should be placed in that school." *Id*. Ms. Andrews-Mellouise stated that Dr. Forand had a lack of trust in her and had accused Ms. Andrews-Mellouise of making a rude comment about another teacher. *Id*. at 94:12-15; 95:13.

Ms. Andrews-Mellouise testified that she had a great relationship with Ms. Reilly in support of her assertion to contributing to a collaborative work environment. *Id*. at 96:3-10. In the past, during Ms. Gallant's first year as principal, Ms. Rebello was the only educator that Ms. Andrews-Mellouise had "to write up for not performing her duties." *Id*. at 100:7-23.

Continuing to defend her character and ability, Ms. Andrews-Mellouise also testified that she could have asked many people to speak on her behalf and in her defense, including Mr. MacDonnell and Assistant Superintendent Dr. Celeste Bowler. *Id*. at 107:8-14. In addition, Ms. Andrews-Mellouise stated that the parent Superintendent Crowley talked to was heavily involved in EPLAC, but that she and the parent never had any direct meetings. *Id*. at 109:11-110:2.

Ms. Andrews-Mellouise testified that she was unaware of negative feedback or any internal investigation regarding her renewal. *Id*. at 112:15-22. The day after the September 25, 2018 EPSC meeting, Ms. Andrews-Mellouise learned from Superintendent Crowley that her contract was "tabled," and her contract would not be renewed. *Id*. at 114:12-16. After informing her about the renewal being tabled, Ms. Andrews-Mellouise and Superintendent Crowley did not discuss the matter further, but maintained a professional working relationship. *Id*. at 123:17-124:14. Ms. Andrews-Mellouise testified that Superintendent Crowley had set a different standard for her than she had with Mr. MacDonnell, whom she claims also had conflicts with parents. *Id*. at 137:3-11.

In addition, Ms. Andrews-Mellouise also argued in her brief that the Basic Education Program (BEP), 200 RICR 20-10-1,[3] imposed stricter regulations that carry the force of law. (Commissioner's Decision #19-060K, dated April 16, 2020 (RIDE Decision), 6.) With the BEP, the low standard for nonrenewal ought to be abandoned for the more stringent standards required by the BEP. *Id*. Specifically, Ms. Andrews-Mellouise argued that formal evaluations in making decisions for retaining educators should be given weight. *Id*. at 7. As such, her perfect evaluation spoke for itself and contradicts Superintendent Crowley's ultimate decision not to renew. *Id*.

On the other hand, EPSC argued that Ms. Andrews-Mellouise's reliance on the BEP and evaluation were "misguided." *Id*. at 10. Specifically, EPSC averred that the BEP did not overrule

[3] The BEP is a "set of regulations promulgated by the Council on Elementary and Secondary Education pursuant to its delegated statutory authority to determine standards for the Rhode Island public education system and the maintenance of local appropriation to support its implementation under R.I. Gen. Laws § 16-60-4." (200 RICR 20-10-1.1, Basic Education Program (BEP).) Specifically, the BEP sets forth that a Local Education Agency (LEA) will create and sustain high quality learning environments. *Id*. at § 1.1.4.A.1. Moreover, the BEP also outlines that the LEA will have a "formal evaluation process that is completed on a regular basis and is compliant with applicable legal requirements. The evaluation system promotes the growth and effectiveness of staff, provides feedback for continuous improvement, and includes processes for disciplinary action and exiting of ineffective staff." *Id*. at § 1.4.2.B.d.3.

precedent and the existing case law indicates that the threshold for an administrator's nonrenewal is low. *Id*. As such, Superintendent Crowley's decision not to renew on grounds of finding someone with better credentials and communication skills is valid and sufficient. *Id*.

B

RIDE's Written Decision

After reviewing the hearing transcript and the post-hearing memoranda papers *de novo,* Commissioner Murray denied Ms. Andrews-Mellouise's appeal. *See* RIDE Decision, 1. Commissioner Murray noted that, "When a Rhode Island educator is without tenure and the renewal of his or her contract is at issue, it is well-settled law that a Superintendent's belief that a more qualified educator can be found is a permissible reason for non-renewal." *Id*. at 10. She stated that the Superintendent's determination is presumed valid unless rebutted by specific evidence. *Id*. at 11 (citing *Kagan v. Rhode Island Board of Regents,* No. C.A. 95-5847, 1997 WL 1526517 (R.I. Super. Aug. 21, 1997)). Commissioner Murray noted that Ms. Andrews-Mellouise received an excellent evaluation; however, she concluded that Superintendent Crowley had not ignored the score but instead decided against renewal after speaking with an EPSC member and conducting her own investigation. *Id*. Commissioner Murray determined that there was no reliable evidence in the record that there were issues with Ms. Andrews-Mellouise's leadership or relationships with other leaders in the district. *Id*. However, she continued, the EPSC only had to prove the Superintendent's good faith belief that someone more suitable could take the position. *Id*. at 11-12.

Finally, Commissioner Murray stated that the BEP "does not take away the prerogative of judgment that Title 16 accords to superintendents and school committees in making such decisions. Stated another way, a superintendent is not bound by a formal evaluation in making decisions on the renewal of employment contracts for district employees." *Id*. at 12.

C

Council's Decision

On May 20, 2020, Ms. Andrews-Mellouise filed an appeal of the Commissioner's Decision with the Council. *See* Notice of Appeal of Commissioner's Decision 19-060K (Notice of Appeal of Commissioner's Decision), 1. After reviewing the submitted memoranda, the Council affirmed the Commissioner's decision on March 9, 2021. *See* Decision of the Council on Elementary and Secondary Education, dated March 9, 2021 (Council's Decision), 5. The Council's review was limited to whether Commissioner's decision was '"patently arbitrary, discriminatory, or unfair."' *Id*. at 3 (quoting *Altman v. School Committee of the Town of Scituate,* 115 R.I. 399, 405, 347 A.2d 37, 40 (1975)).

Ms. Andrews-Mellouise argued before the Council that the Commissioner ignored evidence that the Superintendent purportedly lacked a good faith belief that she could find a better candidate for the position. *Id.* at 4. Ms. Andrews-Mellouise excepted to the Commissioner's conclusion that superintendents are not bound by formal evaluations when making decisions about renewing employment contracts. *Id.* at 5. As such, the Council interpreted this argument as saying that the BEP requirements "changed the standard of review under the ARA."[4] *Id*. at 4. However, the Council determined that the BEP only requires a review system be in place and does not control the outcomes of the review process itself. *Id*. (citing 200 RICR 20-10-1.4.2(B)(1)). Therefore, the Council concluded that the BEP does not restrict decisions of local education agencies. *Id*.

Further, the Council determined that the Commissioner, acting as a factfinder, found that Superintendent Crowley's decision not to renew Ms. Andrews-Mellouise was in good faith, and

[4] The ARA refers to the Administrator's Rights Act, G.L. 1956 Chapter 12.1 of title 16. Hereinafter, the Administrator's Rights Act will be referred to as "ARA."

that such decision was supported by evidence in the record that was enough to satisfy the standard of review under the ARA. *Id*. at 4-5. As such, the Council concluded that the Commissioner's decision was not arbitrary, discriminatory, or unfair. *Id*. at 5. Lastly, the Council stated that Ms. Andrews-Mellouise's second argument—that there was no valid secondary reason for nonrenewal with respect to decreasing the position to a .5 FTE—is inconsistent with the Commissioner's decision. *Id*.

D

Procedural History

Pursuant to Rule 80 of the Superior Court Rules of Civil Procedure and § 42-35-15, Ms. Andrews-Mellouise filed her timely appeal in Superior Court on April 12, 2021. *See* Docket (PC-2021-02524). After hearing oral arguments by the parties on July 21, 2021 and reserving from the bench, this Decision follows.

II

Standard of Review

This Court has appellate jurisdiction to review the final decisions of administrative agencies. *See McAninch v. State of Rhode Island Department of Labor & Training*, 64 A.3d 84, 87 (R.I. 2013). Section 42-35-15(a) of the Rhode Island Administrative Procedures Act provides that "[a]ny person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled to judicial review under this chapter." Section 42-35-15(a). "This Court's review of an agency decision is, in essence, 'an extension of the administrative process.'" *Leyden v. Employees' Retirement System*, No. PC-121867, 2013 WL 2735827, *7 (R.I. Super. June 5, 2013) (quoting

R.I. Public Telecommunications Authority v. R.I. State Labor Relations Board, 650 A.2d 479, 484 (R.I. 1994)).

The Administrative Procedures Act outlines this Court's scope of appellate review:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
>
> "(2) In excess of the statutory authority of the agency;
>
> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error of law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 42-35-15(g).

The Court will defer to an agency's findings of fact if the agency's determinations are supported by legally competent evidence. *Town of Burrillville v. Rhode Island State Labor Relations Board*, 921 A.2d 113, 118 (R.I. 2007) (citing *State Department of Environmental Management v. State Labor Relations Board*, 799 A.2d 274, 277 (R.I. 2002); *Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 804-05 (R.I. 2000)). Thus, "[t]his Court will 'reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record.'" *Pinto v. Roy*, No. PC-02-2398, 2003 WL 21297132, at *6 (R.I. Super. May 27, 2003) (quoting *Milardo v. Coastal Resources Management Council*, 434 A.2d 266, 272 (R.I. 1981)). "Legally competent [or substantial] evidence is 'such relevant evidence that a reasonable

mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.'" *Leyden*, 2013 WL 2735827, at *7 (quoting *R.I. Temps, Inc. v. Department of Labor and Training, Board of Review*, 749 A.2d 1121, 1125 (R.I. 2000)) (internal citations omitted). As such, if competent evidence exists in the record, the court is required to uphold the agency's conclusions. *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992).

By contrast, "an agency's determinations of law, including issues of statutory interpretation, 'are not binding on the reviewing court.'" *Marsocci v. National Grid-Electric*, No. PC-2019-10140, 2022 WL 3025365, at *5 (R.I. Super. June 27, 2022) (quoting *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008)). "Instead, this Court reviews the record *de novo* in order 'to determine what the law is and its applicability to the facts.'" *Id.* (quoting *Pawtucket Transfer Operations, LLC*, 944 A.2d at 859).

III

Analysis

A

The Standard of Review Is Not a Violation of Statutory Provisions or Law

1

The BEP Did Not Change the Standard for Non-Renewal of Administrators

As stated above, issues of statutory interpretation are reviewed by this Court *de novo*. *Palazzolo v. State ex rel. Tavares*, 746 A.2d 707, 711 (R.I. 2000). As an initial matter, the Court first determines that the just cause standard articulated under G.L. 1956 § 16-12.1-2.1 applies *only* to the termination of administrators and does not govern the nonrenewal of administrators. Specifically, the statute reads, "An administrator shall only be terminated for just cause including

but not limited to declining enrollment or consolidation." Section 16-12.1-2.1. No language in the statute discusses or mentions nonrenewal of administrators. Furthermore, this Court considers the statute in its entirety and reads the individual provisions in the context of the entire statutory scheme. *Freepoint Solar LLC v. Richmond Zoning Board of Review*, 274 A.3d 1, 8 (R.I. 2022). The Legislature defined the legislative purpose of the School Administrators' Rights. Under § 16-12.1-1, for nonrenewals, administrators are afforded "an opportunity to be heard before the school committee. Full disclosure of the bases or reasons for suspension, dismissal, or nonrenewal and the hearing which may follow . . ." Section 16-12.1-1. There are no other provisions in the chapter that relate specifically to nonrenewal. *See generally* §§ 16-12.1-1-1 to 16-12.1-6. However, there is a specific standard articulated for termination: just cause. *See* § 16-12.1-2.1. Therefore, the Court determines that the "just cause" standard was meant to apply only to termination of an administrator, and not for the nonrenewal of administrators.

Our Supreme Court in *Champlin's Realty Associates v. Coastal Resources Management Council*, 283 A.3d 451 (R.I. 2022), has said that "[w]hen interpreting a regulation, we employ the same rules of construction that we apply when interpreting a statute." *Champlin's*, 283 A.3d at 475 (citing *Murphy v. Zoning Board of Review of Town of North Kingstown*, 959 A.2d 535, 541 (R.I. 2008)). Thus, if the regulation in question is clear and unambiguous, then the court must enforce it as written and give the words of the regulation their plain and ordinary meaning. *Id.*

Ms. Andrews-Mellouise avers that the "good faith belief standard has no basis in law or the Board's own regulations." Br. of Appellant Tracy Andrews-Mellouise (Br. of Appellant) 9.) She argues that the BEP imposed an obligation on superintendents to follow certain evaluation procedures, and the failure to follow such procedures was "legally impermissible." *Id.* at 12. Arguing that the BEP carries the weight of law, Ms. Andrews-Mellouise asserts that if the

regulation requires a formal evaluation process, it cannot be ignored. *Id*. at 14. Therefore, Ms. Andrews-Mellouise concludes, it was "inexcusable for the Commissioner and the Council to insist that evaluations have no basis in the nonrenewal of an administrator." *Id*. at 15.

On the other hand, EPSC states that the BEP here does not apply. Br. of Def./Appellee East Providence School Committee (Br. of EPSC) 7. EPSC states that the BEP here does not apply. *Id*. at 11. EPSC submits that statutes supersede regulations, and the BEP contemplates that school committees have autonomy to control the hiring and managing of their personnel. *Id*. The Council also submits that the BEP does not restrict any statutory powers granted to a school committee in Rhode Island. (Def. [Council's] Mem. of Law in Supp. of Opp'n to Pl.'s Administrative Appeal (Council's Opp'n) 12.) The Council cites to *Alba v. Cranston School Committee,* 90 A.3d 174 (R.I. 2014), stating that there the Rhode Island Supreme Court found that a school committee can nonrenew an administrator contract under its direct statutory power and is not limited by the BEP. *Id*.

Reviewing the record *de novo*, *Marsocci*, 2022 WL 3025365 at *5 (quoting *Pawtucket Transfer Operations, LLC*, 944 A.2d at 859), the Court must determine whether, under the BEP, there is a legal obligation to follow a proper evaluation procedure and whether that evaluation must be considered in the process of administrator renewal. The Court cannot agree with Ms. Andrews-Mellouise that the BEP enacted in 2009 requires superintendents to conduct and consider an evaluation as a condition precedent in consideration of renewal of administrators. Nowhere in the plain language of the BEP does it mention that a superintendent is required to consider a formal evaluation in reassessing an employee's contract. *See* Br. of Appellant Ex. 1 (2009 BEP Regulation) On the contrary, the BEP requires:

> "In order to ensure that all staff show consistent positive impact on student learning, the LEA shall have a formal evaluation process

> that is completed *on a regular basis* and is compliant with applicable legal requirements. The evaluation system promotes the growth and effectiveness of staff, provides feedback for continuous improvement, and includes processes for disciplinary action and exiting of ineffective staff." *Id*. at 40 (emphasis added).

There is no language in the BEP that requires a review of an evaluation to control or impact a superintendent's judgment when determining whether to renew an employment agreement. If it were required, a superintendent would have little independence in personnel decisions. The BEP's regulation is not ambiguous, and this Court must give it its plain and ordinary meaning: LEAs must establish a formal evaluation process, full stop. It need not go further. As written, superintendents are still granted the power to make personnel decisions and are not required to uncritically adopt the evaluations required under the BEP in recommending renewals. While Ms. Andrews-Mellouise points out that this seems counterintuitive, it should be noted that there are plenty of other factors superintendents consider in a determination of employment that could fall outside the parameters of an evaluation, including relationships with other administrators. Therefore, the Court concludes that Superintendent Crowley was not required to follow the formal evaluation under the BEP in conducting reviews for the purpose of renewing the District's employment contracts.

2

Applying the "Good-Faith" Standard Was Not a Violation of Statutory Law or Provision

Ms. Andrews-Mellouise next argues that the Council followed a standard that violates the ARA as well as the BEP. (Br. of Appellant 9.) However, as explained above, the standard for nonrenewal of administrators was not for "just cause," nor did the BEP change the standard to follow a formal evaluation of an administrator in considering a renewal of a contract. *See supra*

Part III.A.1. Based on the previous findings, the Court determines that applying the "good-faith" standard in this matter was not a violation of statutory law or provisions.

As mentioned, there is no articulate standard under the ARA for nonrenewal of administrator contracts. *See* §§ 16-12.1-1 to 16-12.1-6. Administrative agencies are granted broad enforcement discretion, and considerable deference is given to those agencies in enforcing their own regulations. *Arnold v. Lebel*, 941 A.2d 813, 820-21 (R.I. 2007). It is well settled that this deference extends to the agency's interpretation of a statute. *Narragansett Wire Co. v. Norberg*, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977).

Ms. Andrews-Mellouise draws dissimilarities between the standard applied in previous nonrenewal cases. Br. of Appellant at 10-12.[5] In *Chrabaszcz v. Johnston School Committee*, the Commissioner determined that the Johnston School Committee met the minimum standard for nonrenewal of an administrator's contract. *See* Br. of Appellant, Ex. 3 (*Chrabaszcz* Decision) 1. The Commissioner concluded that there is no "just cause" requirement for the decision *not* to renew an education administrator. *Id*. at 9 (citing § 16-12.1-1). Further, *Chrabaszcz* stated that, "The ruling in this case . . . permits school committees to nonrenew an educator not protected by tenure at the conclusion of his/her contract without regard to specific evaluations or presentation of identified deficits of the nonrenewed employee, if in the good faith professional judgment of the employee's supervisors a better qualified educator can be obtained for the position." *Id*. Ms. Andrews-Mellouise questions the decision in *Chrabaszcz*, asking, "why apply this standard for non-tenured teachers to administrators? After all, the real holding of *Kagan* . . . was to maintain the distinction between non-tenured and tenured teachers." Br. of Appellant at 11.

[5] Ms. Andrews-Mellouise discusses the cases of *Chrabaszcz v. Johnston School Committee* and *Kagan v. Rhode Island Board of Regents for Elementary and Secondary Education*, No. C.A. 95-5847, 1997 WL 1526517 (R.I. Super. Aug. 21, 1997). *See* Br. of Appellant Exs. 3 and 4.

In asserting that the Commissioner and Council committed a violation of law, Ms. Andrews-Mellouise lastly avers that *Alba* is not applicable here. *Id*. at 15 (citing *Alba*, 90 A.3d 174). She distinguishes *Alba* from the current matter, maintaining that *Alba* began in 2008, prior to the 2009 BEP enactment. *Id*. In addition, Superintendent Crowley initially indicated that she would recommend renewal and then changed her recommendation, which had not occurred in *Alba*. *Id*.

On the other hand, EPSC argues that the good faith standard applied by the Council was appropriate because the "just cause" standard applies to termination of administrators only. Br. of EPSC at 7. As such, EPSC urges this Court to conclude that the only rights afforded to an administrator under § 16-12.1-1 are a written statement of the reasons for the nonrenewal and notification of the right to a prompt hearing. *Id*. at 8. Alternatively, if the Court finds an ambiguity in the statute, EPSC avers that this Court is required to defer to the Council's interpretation of the statute, if not clearly erroneous. *Id*. at 9 (citing *Labor Ready Northeast, Inc. v. McConaghy*, 849 A.2d 340, 344 (R.I. 2004)).

In concluding that the proper standard in such situations is one of good faith, the Commissioner stated that, "[w]hen a Rhode Island educator is without tenure and the renewal of his or her contract is at issue, it is well-settled law that a Superintendent's belief that a more qualified educator can be found is a permissible reason for non-renewal." (RIDE Decision 10.) Furthermore, the Commissioner noted that "the Commissioner, the Board of Regents, and the Superior Court have all affirmed that a Superintendent's determination that a more qualified educator is available is 'presumed valid unless rebutted by specific evidence presented by the nonrenewed educator.'" *Id*. at 11 (citing *Kagan v. Rhode Island Board of Regents for Elementary and Secondary Education*, No. CA 95-5847, 1997 WL 1526517 at *5 (R.I. Super. Aug. 21, 1997)).

Having found that Superintendent Crowley's consideration and use of Ms. Andrews-Mellouise's evaluation was not a violation of the BEP or ARA, Ms. Andrews-Mellouise has failed to rebut the presumption that Superintendent Crowley's determination was valid. Moreover, the Court determines that, because the BEP has not changed the standard for nonrenewal of administrators, *Alba* is instructive here. *Alba*, 90 A.3d at 182. In *Alba*, the Rhode Island Supreme Court stated that "[t]he Legislature has clearly vested the committee with authority to choose the administrators who will run its schools." *Id*. Further, the Court stated that it would "not read such a limit into either the contract or the relevant statutory provisions" when discussing whether a recommendation for nonrenewal from the superintendent was required before nonrenewal could be accomplished. *Id*. The Court stated that, "'A board bound to conform to the superintendent's recommendations is merely a rubber stamp.'" *Id*. (quoting *Taylor v. Crisp*, 212 S.E.2d 381, 385 (N.C. 1975)). Therefore, the Court will read nothing more into the statute as provided, consistent with its discussion in part 1.A.1 of this Decision.

Furthermore, Commissioner Murray's decision discussed the formal evaluation conducted by Mr. MacDonnell of Ms. Andrews-Mellouise but found that Superintendent Crowley's decision was based in good faith, as well as based on other factors, including her own internal investigation. (RIDE Decision 11-12.) Having found that Ms. Andrews-Mellouise has failed to show a violation of statutory law, coupled with our Supreme Court precedent that administrative agencies are afforded great deference in interpretation and enforcement of the statutes that govern their affairs, the Court finds that applying the good faith standard here was not a violation of statutory provision or law.

B

Superintendent Crowley's Nonrenewal Decision Was Not Arbitrary or Capricious

The Court next moves to Ms. Andrews-Mellouise's contention that the Council's decision was arbitrary and capricious.

First, Ms. Andrews-Mellouise contends that the Council's decision is arbitrary and capricious because Superintendent Crowley did not dispute that Ms. Andrews-Mellouise received a perfect evaluation. Br. of Appellant at 16. Further, there is no dispute that, until she received a complaint from an EPSC member, Crowley was fully prepared to recommend a three-year contract renewal. *Id*. Ultimately, Ms. Andrews-Mellouise asserts that Superintendent Crowley "ignored anything positive" about Ms. Andrews-Mellouise's performance and did not give her the opportunity to rebut the allegations raised in the internal investigation. *Id*. Moreover, Ms. Andrews-Mellouise asserts that Superintendent Crowley cherrypicked three people out of many people who would have spoken positively about Ms. Andrews-Mellouise. *Id*. at 17-18. As such, she argues there was no basis for the Commissioner to conclude that Superintendent Crowley provided an explanation for her decision that was anything but arbitrary or capricious. *Id*. at 18 ("since [Crowley] failed to give Ms. Andrews[-Mellouise] even the decency of telling her the truth about what the Committee had done, and what she as Superintendent was secretly investigating her about").

Ms. Andrews-Mellouise next argues that the credibility and probative value of the principals' remarks to Superintendent Crowley are "nil" and without corroboration. *Id*. at 19. Bringing back *Chrabaszcz*, Ms. Andrews-Mellouise asserts her case differs, because there other administrators testified and there were multiple evaluations of the principal in *Chrabaszcz*. *Id*. at

20. Here, the evaluation conducted by Crowley was not exhaustive and therefore cannot be compared or analogized to *Chrabaszcz*. *Id*.

EPSC argues that the Commissioner's decision was not arbitrary or capricious, because the findings of fact are supported by Superintendent Crowley's testimony that she could find a candidate with stronger communication skills and interpersonal relationships. Br. of EPSC at 12-14. Ultimately, EPSC maintains that the reasons for nonrenewal were "not trivial, and . . . are supported by the facts found by the Commissioner." *Id*. at 14. The Council argues that EPSC followed protocol in nonrenewing Ms. Andrews-Mellouise's contract. (Council's Opp'n 7.) Additionally, the Council maintains that EPSC provided Ms. Andrews-Mellouise with a concise and clear statement for the bases of non-renewal as required under § 16-12.1-1. *Id*. at 9.

The Court determines that the decision of the Council was not arbitrary or capricious. Here, there is legally competent evidence in support of the Commissioner and the Council's decisions that they were not arbitrary or capricious. Notably, Superintendent Crowley testified that she believed she could find a better candidate for Ms. Andrews-Mellouise's position because she was concerned about Ms. Andrews-Mellouise's "leadership ability, her communication skills and her interaction . . . with other leaders in the District." (RIDE Hr'g Tr. 12:9-12.) In addition, Superintendent Crowley stated that Ms. Andrews-Mellouise's communication with other principals was "antagonistic, and principals felt that she talked down to them, demeaning." *Id*. at 13:14-15. Moreover, through her investigation, Superintendent Crowley found that Ms. Andrews-Mellouise had a negative relationship with parents and a leadership style that "[d]oesn't compliment my leadership style." *Id*. at 18:2-8; 11-16. Regardless of the accuracy of these conclusions, there was legally competent evidence in the record to support Superintendent

Crowley's good-faith basis for ultimately recommending nonrenewal following her investigation, despite having initially recommended to renew Ms. Andrews-Mellouise's employment agreement.

C

There Was a Valid Secondary Reason for Nonrenewal

Lastly, Ms. Andrews-Mellouise argues that the Commissioner was wrong in determining that reorganization constituted a valid secondary reason for nonrenewal. Br. of Appellant at 21. First, Superintendent Crowley did not consult with anyone in the special education office about moving Ms. Andrews-Mellouise's position from full-time to part-time, making the decision unilaterally. *Id*. ("If this were a serious proposal by the Superintendent, she would have presented it to her two special education administrators, Ms. Andrews and Mr. MacDonnell.")

Additionally, Ms. Andrews-Mellouise asserts that, under the *Craig v. East Providence School Committee* Decision, once Mr. MacDonnell took the part-time position, the superintendent should have offered the full-time position to Ms. Andrews-Mellouise. *Id*. at 22; *see also* Ex. 7 (*Craig*). In *Craig*, the commissioner held that the terminated administrator "could have been retained in the position that had become available when [a senior administrator] submitted her resignation on June 30, 2011[.]" *Craig* at 9. Ms. Andrews-Mellouise argues that, "[t]he fact that [Crowley] did not underscores that this reorganization was intended as a backstop against a possibility that the Commissioner would reject the 'good faith belief' argument." Br. of Appellant at 22.

EPSC asserts that Crowley's decision not to renew based on restructuring of the department was proper. (Br. of EPSC at 16.) EPSC argues that Crowley sought the advice of other administrative staff, while also deciding to reduce the position based on the amount of Title 1 money dedicated to students. *Id*. Furthermore, EPSC submits that the present scenario is

distinguishable from *Craig*, where the layoff/nonrenewal was based solely on the restructuring of a department. *Id*. at 17. Whereas here, EPSC maintains that the present case is unlike *Craig* because "Superintendent Crowley based her decision upon the fact that she was 'looking for someone who would have positive communication skills, a relationship with parents, a good relationship with the administrators and a good relationship with teachers.'" *Id*. (quoting RIDE Hr'g Tr. 38:22-39:3). EPSC concludes that Crowley did not believe Ms. Andrews-Mellouise met this criterion and thus did not need to offer her the position for full-time Director of Special Education. *Id*.

Having determined that Superintendent Crowley had a good-faith basis for nonrenewal and that the decisions of the lower administrative agencies were supported by legally competent evidence, the Court is not required to dive further. However, for the sake of completeness, the Court also determines that Superintendent Crowley's decision to nonrenew based on reorganization of the department was also supported by legally competent evidence. The record shows that Superintendent Crowley testified that she believed that reducing the position to a part-time role would "give . . . additional monies in Title 1 to use for student engagement." (RIDE Hr'g Tr. 37:1-7.) Superintendent Crowley testified that the Title 1 money would be better used for students rather than personnel due to student need. *Id*. at 37:9-21. Additionally, the Court agrees with Appellees here that this matter is distinguishable from *Craig*. The Court already has determined that Superintendent Crowley had a good-faith basis for nonrenewal, based on her investigation and concerns that she could find a better alternative. Therefore, because the reasons for nonrenewal were not solely based on the restructuring of the department, Superintendent Crowley was under no obligation to offer Ms. Andrews-Mellouise the new opening for the Director

of Special Education, and it is also not evidence that the restructuring of the department was not a serious reason.

IV

Conclusion

Based on the foregoing, the Court AFFIRMS the ruling of the Council and DENIES Ms. Andrews-Mellouise's appeal. Counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Andrews-Mellouise v. Rhode Island Council on Elementary and Secondary Education; and East Providence School Committee**
CASE NO:	**PC-2021-02524**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**September 1, 2023**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Gregory Piccirilli, Esq.**
For Defendant:	**Benjamin M. Scungio, Esq.** **Sean J. Clough, Esq.**