

I. Introduction

On April 4, 2016, Petitioner, Cheryl Gibbs (“Ms. Gibbs”), formerly a principal at Orlo Avenue Elementary School in East Providence (the “School”), filed an appeal with the Commissioner pursuant to Chapters 12.1 and 39 of title 16 of the Rhode Island General Laws with respect to the March 29, 2016 decision of Respondent, East Providence School Committee (the “School Committee”), not to renew her group employment contract.

The following facts were deduced from testimony during the evidentiary hearing before the undersigned on August 12, 2016, as well as the exhibits that were entered into evidence in the course of the proceeding.¹

II. Facts and Applicable Law

1. Ms. Gibbs, who has served as Principal of the School for the past decade, *see* Tr. at 70, served in that capacity during the 2013-14 school year pursuant to a group employment contract signed on her behalf by the President of the East Providence Association of School Principals (the “2012 Agreement”). *See* Petitioner’s Ex. 1.

2. Under Rhode Island law, elementary school principals have no right to bargain collectively, *see* RIGL § 16-12.1-1, but may enter into group contracts such as the 2012 Agreement, which had a three-year term, from November 1, 2012 through October 31, 2015. *See* Petitioner’s Ex. 1 at 1.

3. The 2012 Agreement, which referred to Ms. Gibbs as an “Administrator,” provided, *inter alia*, that:

RENEWAL

Negotiation for a new agreement between the Association and the School Committee shall commence no later than one hundred twenty (120) days prior to the expiration of this Agreement ending on November 30, 2015

¹ References to the transcript of the hearings before the undersigned will be cited simply as “Tr.” In addition, unless expressly noted to the contrary, all cited exhibits were entered into evidence during the August 12 hearing.

(‘End Date’). *Should negotiations fail to commence and/or commence and extend beyond the End Date, the current Agreement shall continue in full force and effect until a new agreement is reached.*

Id. at 1 (emphasis added).

4. The 2012 Agreement also provided that:

[e]very Administrator shall be granted, at the sole discretion of the Superintendent, a term (“Individual Term”) of no less than two (2) years. *Once the Administrator has been employed as an Administrator in the District for five (5) years, the Individual Term shall be no less than three (3) years.*

* * *

[i]n the event the District elects *not to renew* the Administrator upon the conclusion of his/her individual term, the *District shall provide notice of its decision to the Administrator on or before March 1 of the year in which his/her term concludes.*

Id., §§ 4 and 5.6.2, respectively (emphasis added).

5. Under the School Administrator’s Rights Act (the “ARA” or the “Act”), RIGL § 16-12.1-1, *et seq.*, “[a]n administrator shall only be terminated for just cause including but not limited to declining enrollment or consolidation.” *Id.* at § 16-12.1-2.1. However, the Act also provides that:

[p]rior to taking final action dismissing *or not renewing* the employment of an administrator, and subsequent to suspending the employment of an administrator, a regional or local school committee shall provide the affected administrator with: *(1) a concise, clear, written statement, privately communicated, of the bases or reasons for the suspension, dismissal, or nonrenewal*, and (2) notification of the right of the administrator to a prompt hearing, which shall be at the election of the administrator, and the right to be represented by counsel at the hearing. Upon the request of a hearing by the administrator, prompt notification stating the time and place of the hearing shall be given. *The time and place set for the hearing shall allow sufficient opportunity to the administrator for preparation without undue delay.*

RIGL § 16-12.1-3 (emphasis added).

6. On August 12, 2014, the former Superintendent of Schools for East Providence, Kimberly Mercer (the “Former Superintendent”), advised Ms. Gibbs in writing that she intended

to recommend to the School Committee that Ms. Gibbs's employment "be terminated for cause because of [u]nsatisfactory [p]erformance" at the School Committee's meeting scheduled for August 26, 2014. *See* Tr. at 87-88 and 96; Respondent's Ex. 7 at 1.

7. The Former Superintendent advised Ms. Gibbs as follows:

I am recommending that you be terminated and dismissed as a principal in the East Providence School Department for cause because of Unsatisfactory Performance. Unsatisfactory Performance is indicated by the following:

- Removal as principal recommended by the entire staff when selecting interventions for school reform with the Rhode Island Department of Education following Orlo Ave receiving the classification as a Priority School.
- Teachers report an adversarial work environment and/or feel that they are not treated as professionals.
- An environment of open communication and dialogue does not exist at Orlo.
- Teachers do not receive timely and/or meaningful feedback on their performance and at the conclusion of this school year, teacher's ratings were not finalized in the EPSS system.
- Students are not adequately prepared for the state assessment and/or other end-of-year assessments. School is designated as priority. Student scores are on the decline.
- Employees report feeling bullied.
- You have told employees that you have a race card and will use it.
- You reprimand teachers publically.
- Newer/weaker teachers feel preyed upon.
- You have been verbally abusive to staff.
- Staff feels that you are unapproachable.
- You have exhibited inappropriate behavior towards staff, including sexually inappropriate comments, and inappropriate touching.

- Grievances filed against you by staff have gone unanswered.
- Teachers indicate that you are too busy and cannot take the time to talk to them, emails are ignored or are not responded to within a reasonable time, and information is not conveyed in a timely fashion, not at all, or is incorrect.

Respondent's Exhibit 7 at 2.²

8. The Former Superintendent also gave Ms. Gibbs the option of resigning, noting that “[i]f you resign then this letter and its enclosure will be expunged from your file, and you will maintain your current health care coverage for six months, provided that you continue to make your monthly co-share payments.” *Id.* at 1.

9. Ms. Gibbs did not resign. Yet the School Committee, while voting to approve the Former Superintendent's recommendation to “start the process” necessary to terminate Ms. Gibbs's employment, *see* Tr. at 92, did not in fact start any process, and neither it nor the Former Superintendent took any follow-up action with respect to the proposed termination. *See id.* at 94-95.

10. Instead, sometime in August of 2014, Ms. Gibbs was placed on paid leave while the parties discussed the possibility of reassigning her to a school as an assistant principal, which Ms. Gibbs stated would have been “fine.” *See* Tr. at 76.

11. However, no re-assignment was ever made and in the absence of any notice of non-renewal or “negotiation for a new agreement” as contemplated under the 2012 Agreement (and required under the ARA), the Agreement remained in “full force and effect” while Ms. Gibbs remained on paid leave. *See* Petitioner's Ex. 1 at 1; Tr. at 15-16, and 72.

12. On November 30, 2015, the current Superintendent, Kathryn M. Crowley (the

² Ms. Gibbs denied having received page two of the August 12, 2014 letter from the Former Superintendent (containing the list of reasons for the decision), although the evidence establishes that the letter was sent by certified mail. *See* Tr. at 96-97.

“Superintendent”), replaced the Former Superintendent. *See* Tr. at 16.

13. The Superintendent testified that she “chronologically placed all of the paperwork” in Ms. Gibbs’s personnel file and created a document entitled “Cheryl Gibbs Event Log,” *see* Tr. at 57- 58 and Respondent’s Ex. 4, which, along with references to the August 12, 2014 letter (*see* ¶¶ 6-7, *supra*, and Respondent’s Exhibit 7), contained Ms. Gibbs’ professional evaluations,³ as well as references to dates and documents suggesting that:

- (a) on January 14, 2008, Rhode Island College informed the Superintendent that it “would no longer entertain practicum students or student teacher placements at Orlo Ave. Elementary School” since “Mrs. Gibbs interaction with student teachers over the course of the semester were unacceptable;”
- (b) on October 7, 2011, the staff held a meeting with the Assistant Superintendent to express concern about “Mrs. Gibbs leadership and professionalism;”
- (c) during 2012-1013 the school’s Reading and Math NECAP and Writing scores were such that “school was placed on warning;”
- (d) on June 19, 2012, a parent filed a Complaint against Ms. Gibbs for “grabbing a child and making inappropriate statements to students;”
- (e) in October of 2012, a teacher complained that Ms. Gibbs’ behavior was “inappropriate, unprofessional, harassing and threatening,” and included “several dates and examples;”
- (f) on October 19, 2012, a staff member complained of “inappropriate sexual comments made by C. Gibbs to him;”
- (g) on February 1, 2013, a social worker accused Ms. Gibbs of “lying about a student;”
- (h) on March 21, 22 and 26, 2013, the Union representative filed a complaint relating to “Ms. Gibbs slamming door in face;”

³ In the Final Effectiveness Rating Report for Ms. Gibbs for the period August 9, 2013 through August 1, 2014, *see* Respondent’s Ex. 6, Ms. Gibbs received an “Unsatisfactory” (the lowest) rating with respect to “Professional Practice,” a “Does not Meet Expectations” rating (also the lowest) with respect to “Professional Foundations” and a “Final Effectiveness” rating of “D.” *Id.* For the period July 10, 2012 through June 30, 2013, *see* Respondent’s Ex. 5), she was rated “Proficient” with respect to “Professional Practice,” a rating of “Does not Meet Expectations” (again the lowest) with respect to “Professional Foundations,” and a “Final Effectiveness” rating of “Effective.” *Id.*

- (i) on March 26, 2013, a teacher’s assistant complained of Ms. Gibbs’s “yelling and swearing;”
- (j) on April 22, 2013, a report found that Ms. Gibbs engaged in “bullying, sexually-related jokes, hostile work environment and made racial comments such as ‘she was untouchable because she could play the race card’” and “preys on newer and inexperienced teachers.”

See Tr. at 57-58; Respondent’s Ex. 4.

14. On January 13, 2016, the Superintendent – who admitted that she had never previously communicated with Ms. Gibbs, *see Tr. at 25-27* – advised her by letter that the School Committee had voted “to dissolve the 2012 Agreement” at its meeting the prior night, and “to issue” an individual employment contract (the “2016 Contract”). *See Petitioner’s Ex. 2.*

15. By its terms, the 2016 Contract referenced “employment as Principal on paid leave,” and had effective dates which were both retroactive – back to November 1, 2015 – and prospective, i.e., to February 28, 2016. *See Petitioner’s Ex. 2 at 1.*⁴

16. According to the Superintendent, soon after sending Ms. Gibbs the 2016 Contract:

- (a) the District’s Director of Human Resources (the “HR Director”) telephoned Ms. Gibbs and asked her whether she would “mind coming in and speaking with the Superintendent in regards to your contract.” *See id.* at 23, 30-31;
- (b) Ms. Gibbs responded by referring the HR Director to her lawyer. *See id.* at 23, 28-29, 31-32;⁵
- (c) when contacted, Ms. Gibb’s lawyer reported that he had not yet been retained by Ms. Gibbs, and then called back to confirm that he was

⁴ Thus, the 2016 Contract provided, in pertinent part, as follows:

TERMS OF CONTRACT:

The Committee hereby employs, and the Administrator hereby accepts employment as Principal on paid leave commencing on the 1st day of November, 2015 and ending on the 28th day of February, 2016.

Id. The School Committee also approved individual contracts for the other administrators covered under the 2012 Agreement at its meeting on January 12, 2016. *See Respondent’s Ex. 1.*

⁵ According to Ms. Gibbs, a meeting with the Superintendent “did not even come up” during her conversation with the HR Director. *See id.* at 73.

representing her, *see id.*, after which

- (d) there was no further contact between the parties concerning the 2016 Contract. *See id.*

17. Neither Ms. Gibbs nor her lawyer made any additional response after having received the 2016 Contract and after having been informed that the School Committee had voted to dissolve the 2012 Agreement and “to issue” the 2016 Contract. Ms. Gibbs neither appealed the action taken by the School Committee at its January 12 meeting⁶ nor signed the 2016 Contract, although she continued to receive her pay check and benefits while on paid leave at home.

18. On January 26, 2016, the Superintendent advised Ms. Gibbs by letter that she would be advising the Committee “that they non-renew your employment as Principal,” *see* Petitioner’s Ex. 3, noting that she was “making the recommendation because I believe, in my opinion, I can find a more qualified Principal.” *Id.*

19. On February 9, 2016, the School Committee voted to approve the Superintendent’s recommendation not to renew the 2016 Contract.

20. Ms. Gibbs then exercised her right under the ARA to a hearing before the School Committee to challenge its decision not to renew the 2016 Contract, and following an evidentiary hearing on March 28, 2016 – at which Ms. Gibbs was represented by counsel – the School Committee affirmed its decision.⁷ Formal notice of the decision not to renew was

⁶ RIGL § 16-12.1-6 provides that:

[a]n administrator aggrieved by a final decision of a school committee may obtain review under the provisions of chapter 39 of this title by petitioning the commissioner of elementary and secondary education within ten (10) days of receipt of the decision. When an appeal is taken, the school board shall forward a copy of the complete record of the case to the commissioner of elementary and secondary education.

Id.

⁷ Respondent moved the transcript of the March 28, 2016 hearing before the School Committee into evidence, and although the undersigned has the discretion to admit such hearsay into evidence – *see, e.g., Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1018 (R.I. 2004) (former testimony in arbitration

provided to Ms. Gibbs by letter dated March 29, 2016.

21. On April 4, 2016, Ms. Gibbs appealed “her purported nonrenewal as principal” to the Commissioner, citing five separate grounds:

[1] the untimeliness of the decision, [2] the district's failure to comply with the RIDE regulation requiring written contracts for administrators, [3] the failure to identify and/or establish the contract purportedly being non-renewed, [4] the arbitrary and/or discriminatory foundation of the decision, and [5] a lack of factual support.

Id.

22. The Superintendent’s testimony before the undersigned included the following colloquy:

Q: Just to conclude, Superintendent Crowley, based upon your review of the file and the notes that you made regarding Cheryl Gibbs’ file which are contained in Respondent's Exhibit 4,⁸ what is your opinion regarding whether or not in Cheryl Gibbs’ case you can find a more qualified principal?

A: I feel that I definitely can find a more qualified principal for a position in the East Providence School Department based on the information that I have before me.

Tr. at 62.

23. Ms. Gibbs did not address or attempt to rebut the basis of the Superintendent’s opinion that she could find “a more qualified Principal.”

III. Positions of the Parties

1. Ms. Gibbs

In her October 11, 2016 *Memorandum in Support of her De Novo Appeal* (“Ms. Gibbs’s Brief”), Ms. Gibbs argued that:

deciding wrongful termination of tenured teacher entitled to some weight and decision of arbitrator “entitled to probative force” in subsequent hearing before the Department of Labor and Training) – the movant here failed to establish that the transcript was relevant. *See* Tr. at 80.

⁸ Respondent’s Ex. 4 is the “Cheryl Gibbs Event Log” described in ¶ 12, *supra*.

- (a) the fact that the 2012 Agreement was a group contract does not render the ARA or Board of Regents' Regulations Concerning the Employment and Duties of Principals (the "Principal Regs." or the "Regulations") inapplicable. *See id.* at 4;
- (b) the School Committee violated both the ARA and the Regs. by failing to involve Ms. Gibbs in the decision not to renew the 2012 Agreement and by unilaterally issuing a retroactive 2016 Contract which did not provide the minimum three-year term guaranteed by the 2012 Agreement. *See id.* at 2-5;
- (c) the School Committee should be equitably estopped from attempting to unilaterally nullify the 2012 Agreement "almost *three months* after its identified end date." *Id.* at 3 (emphasis in original), citing *John Craig v. East Providence School District*, RIDE No. 012-12 (July 25, 2012); and thus
- (d) the 2012 Agreement remained in effect and the 2016 Contract was null and void. *See id.* at 3-4; and
- (e) Ms. Gibbs should be granted a contract with a three-year term, retroactive to November 1, 2015. *See id.* at 6-7.

2. The School Committee

In the School Committee's October 11, 2016 *Post-Hearing Brief* (the "School Committee Brief"), the Committee argued that:

- (a) the 2012 Agreement "was a collective bargaining agreement with the District's Principals, and as such the Committee was not obligated to continue honoring it when it was dissolved by the Committee because 'the right to organize and bargain collectively does not include superintendents, assistant superintendents, principals, assistant principals and other supervisors above the rank of assistant principal.'" *Id.* at 4, quoting *Sheehan v. Town of North Smithfield*, 2010 WL 11273298 at note 13 (R.I. Superior Court, February 2, 2010) (Gibney, J.). *See* School Committee Brief at 4;
- (b) if Ms. Gibbs had any questions about the 2016 Contract, she should have contacted the District. *See id.* at 4-5; and
- (c) "Regulations of the Board of Regents, now the Board of Education, should be construed to promote better education . . . [and] . . . Petitioner's argument that she was illegally non-renewed flies in the face of promoting education" since "[i]t is illogical, and does not follow, that the

Committee should have to continue paying [Ms. Gibbs] after already paying her for over one and a half years (August 2014 - March 2016) while she was on administrative leave for her poor performance as a principal.” *See id.* at 6.

In its October 19 *Reply Brief*, the School Committee reiterated the above arguments, *see id.* at 2, and also claimed that the Commissioner’s decision in *Craig v. East Providence*, *supra*, was factually distinguishable since it involved a layoff which the Commissioner found to have been “arbitrary and capricious,” whereas in this case the non-renewal was justified on the merits. *See id.* at 3-4.

IV. Discussion

1. Jurisdiction, Burden of Proof and Standard of Review

The Commissioner’s jurisdiction here is provided under RIGL § 16-12.1-6, which makes clear that:

an administrator aggrieved by a final decision of a school committee may obtain review under the provisions of chapter 39 of this title by petitioning the commissioner of elementary and secondary education within ten (10) days of receipt of the decision.

Id.

As to the burden of proof, for present purposes it will be assumed that Ms. Gibbs had acquired “a protected property interest in her employment” within the meaning of *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985),⁹ and although the issue was not addressed in *Loudermill* or its progeny, it also will be assumed that the School Committee bears the burden of proving that it complied with the ARA’s procedural dictates. For reasons that will become

⁹ *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972) (to have such a property interest in a benefit, a person must have more than an “abstract need or desire” or “unilateral expectation,” but rather must have an interest “created and [its] dimension[] . . . defined by existing rules or understandings that stem from an independent source such as state law . . . that secure certain benefits and that support claims of entitlement.”); *see also Wilkinson v. State Crime Laboratory Com’n.*, 788 A.2d 1129, 1138-39 (R.I. 2002) (“classified full-status employee had a vested property right in his employment that enjoyed due process and just compensation protection”).

apparent, there is no need to reach the burden of proof issue as to Ms. Gibbs's claim that the School Committee violated her rights under the 2012 Agreement.

Finally, as the Court held in *Slattery v. School Committee of City of Cranston*, 354 A.2d 741, 746-47 (R.I. 1976), the hearing before the Commissioner is *de novo, id.*, and as the Court noted in *Greenhalgh v. McCanna*, 90 R.I. 417, 421, 158 A.2d 878, 880 (1960), hearing a case *de novo* means hearing it "as if no [proceeding] whatever had been had . . . below." *Id.*

2. The School Committee's Dissolution of the 2012 Agreement

As noted, Ms. Gibbs argues that the School Committee's failure to even attempt to negotiate with her prior to voting on January 12, 2016 to dissolve the 2012 Agreement was a violation of her rights under the ARA, the Principal Regs. and the 2012 Agreement, and thus the non-renewal was not effective and the 2012 Agreement remained in effect. *See* Ms. Gibbs's Brief at 2-5.

In fact, the evidence does support Ms. Gibbs's claims that the School Committee violated:

- (a) the ARA, and specifically, § 16-12.1-2.1's requirement that she be afforded advance notice of any decision not to renew as well as a statement of the reasons (quoted at ¶ 5, *supra*); and
- (b) the Principal Regs. since the School Committee made no attempt to contact Ms. Gibbs or to negotiate a successor to the 2012 Agreement before unilaterally issuing the 2016 Contract after it had been approved by the School Committee on January 12, 2016 and had ostensibly been in effect for several months. *See* ¶ 15, *supra*; as well as
- (c) the terms of the 2012 Agreement, by failing to: (i) negotiate with Ms. Gibbs; (ii) recognize that the 2012 Agreement was to remain "in full force and effect until a new agreement [was] reached;" or (iii) provide the minimum three-year term called for under the 2012 Agreement. *See* 2012 Agreement at 1 and § 4 (quoted at ¶¶ 3-4, *supra*).

Moreover, the School Committee's suggestion that Ms. Gibbs is somehow stripped of her

statutory and contractual rights as a result of the fact that: (a) she had no statutory right to bargain collectively; and/or (b) the 2012 Agreement was a group, rather than individual, contract, *see* School Committee’s Brief at 4, is not supported by any pertinent legal authority and makes little sense.¹⁰ Ms. Gibbs also is correct that there could have been no meeting of the minds as to the 2016 Contract – indeed it is undisputed that there had been no meaningful communication between the parties, *see* ¶¶ 16-18, *supra* – and thus an essential element to contract formation was missing. *See* Ms. Gibbs’s Brief at 1-2, *citing* *Smith v. Boyd*, 553 A.2d 131, 133 (R.I. 2016).

Yet, the fact remains that after having been provided with written notice of the Committee’s January 12, 2016 decision to “dissolve” the 2012 Agreement and “to issue” the 2016 Contract, *see* Petitioner’s Ex. 2, Ms. Gibbs failed to file an appeal under RIGL § 16-12.1-6. *See* ¶ 17 and note 5, *supra*. By failing to do so, she effectively waived the arguments contained in her notice of appeal, *see* ¶ 21, *supra*, and cannot now argue that the School Committee had violated her rights under the ARA, the Principal Regs. or the 2012 Agreement. *See* *Ryan v. Zoning Bd. of Review of Town of New Shoreham*, 656 A.2d 612, 616 (R.I. 1995) (by failing to file a timely appeal party waived objection to Zoning Board’s failure to properly notice meeting).¹¹

2. The Enforceability of the 2016 Contract

The fact that Ms. Gibbs waived certain statutory and contractual rights with respect to the

¹⁰ *Sheehan v. Town of North Smithfield*, *supra*, merely repeats the undisputed fact that school principals have no right to bargain collectively, *see id.* at note 13, it does not stand for the nonsensical proposition that individuals covered by group contracts have no individual contractual rights.

¹¹ Although the Rhode Island Supreme Court has recognized an exception to waiver in situations in which basic constitutional rights are concerned, the Court also has emphasized that:

[i]n order for the exception to apply . . . the error asserted must go beyond the level of harmless error, the record must be ‘sufficient to permit a determination of the issue,’ and counsel’s failure to raise the issue must be premised upon ‘a novel rule of law that counsel could not reasonably have known during the trial.’ *State v. Donato*, 592 A.2d 140, 141-42 (R.I. 1991); *see also In re SHY C. et al.*, 126 A.3d 433, 435 (2015) (citing waiver rule and elements of limited exception). The elements of this limited exception to the waiver rule are not present here.

2012 Agreement does not, however, necessarily mean that she effectively assented to the terms of the 2016 Contract. Without any prior notice or negotiation, the Superintendent's transmittal of the 2016 Contract to Ms. Gibbs on January 13, 2016 constituted a mere offer to enter into a contract, a conclusion which was reinforced by the School District's apparent attempt to "discuss" the 2016 Contract with Ms. Gibbs after it had been "issued." See ¶ 16, *supra*.

According to the *Restatement (Second) of Contracts*, if an offeree (like Ms. Gibbs here) fails to reply to an offer, silence and inaction can operate as an acceptance only in the following cases:

- (a) if an offeree takes the benefit of offered services with reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation;
- (b) if the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer; or
- (c) if, because of previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he or she does not intend to accept.

Id. at § 69(1).¹²

Here, Ms. Gibbs not only failed to appeal the School Committee's January 12, 2016 decision after having been provided with timely notice, she remained on paid leave status following the School Committee action and accepted the checks which were sent to her pursuant to the 2016 Contract. See Tr.at 62. Thus, under example (a), above, from the *Restatement (Second) of Contracts*, Ms. Gibbs is estopped from now arguing that her failure to assent to the 2016 Contract renders it unenforceable. Put another way, after reaping the benefit of the 2016 Contract, Ms. Gibbs cannot now raise the issue of its validity. As the court noted in *Alix v. Alix*,

¹² The section of the *Restatement* has been cited with approval by the Rhode Island Supreme Court. See, e.g., *Kenney Mfg. Co. v. Starkweather & Shepley, Inc.*, 643 A.2d 203, 208 (1994); see also *Wagenmaker v. Amica Mut. Ins. Co.*, 601 F.Supp.2d 411, 417-18 (D.R.I. 2009).

497 A.2d 18, 21 (R.I. 1985):

when a necessary element of a contract is lacking as a result of one contracting party's failure to act, and that party has reaped those benefits to which he or she was entitled under the contract, he or she cannot thereafter raise the issue of the validity of the contract in order to avoid fulfilling his or her own obligations under the contract. *See City of Warwick v. Boeng Corp.*, 472 A.2d 1214, 1218 (1984). As stated succinctly by the United States Supreme Court in *Union Pacific Railway Co. v. McAlpine*, 129 U.S. 305, 314 (1889):

‘[A] principle of common justice forbids that one shall be permitted to lead another to act upon a contract of purchase with him, and incur expenses by reason of it, and then, upon some pretext of a defect in a matter of form, refuse compliance with its provisions, and thus deprive the purchaser of the benefit of his labor and expenditures.’

Id.

Thus, the 2016 Contract effectively replaced the 2012 Agreement. It now must be determined whether the School Committee met its contractual and statutory obligations when it declined to renew the 2016 Contract.

3. Ms. Gibbs received the required notice and statement of cause prior to the non-renewal of the 2016 Contract.

Under the ARA, a principal facing non-renewal is statutorily entitled to:

- [a] a concise, clear, written statement, privately communicated, of the bases or reasons for the suspension, dismissal, or nonrenewal, and
- [b] notification of the right of the administrator to a prompt hearing . . .

RIGL § 16-12.1-3 (quoted at ¶ 4, *supra*). Both were provided to Ms. Gibbs with respect to the decision not to renew the 2016 Contract. As noted, she:

- (a) was advised by letter on January 26, 2016 that the Superintendent would recommend that the School Committee not renew the 2016 Contract at its February 9, 2016 meeting “because I believe, in my opinion, I can find a more qualified Principal.” *See* Petitioner’s Ex. 3; and
- (b) was advised of her right to appeal the School Committee’s February 9, 2016 decision, and in fact perfected an appeal of the decision, and then was represented by counsel in the evidentiary hearing on March 28, 2016 when the School Committee affirmed the decision.

In addition, nothing in the 2016 Contract suggests that the notice of non-renewal was not timely. Thus, three of the five grounds of Ms. Gibbs's present appeal – i.e., (1) that the decision not to renew was untimely, (2) that there was no written contract, and (3) that the relevant contract was not identified, *see* ¶ 21, *supra* – are contradicted by the evidence.

Finally, aside from notice, the School Committee's decision not to renew the 2016 Contract was legal on its merits, and thus the remaining two grounds of Ms. Gibbs's appeal, i.e., that the decision not to renew [4] was "arbitrary and/or discriminatory" and/or [5] lacked "factual support," *see id.*, are similarly unpersuasive. Both the ARA and the 2016 Contract make a clear distinction between dismissal and non-renewal. Thus, in *Alba v. Cranston Sch. Cmmttee.*, 90 A.3d 174 (R.I. 2014), the Court emphasized that:

[n]othing in the Administrators' Rights Act prohibits automatic nonrenewal. The absence of such a prohibition in the provisions governing administrators' employment may be contrasted with the provisions governing teachers' employment, which specifically command that '[t]eaching service shall be on the basis of an annual contract' which "shall be deemed to be continuous unless the governing body of the schools shall notify the teacher in writing on or before March 1 that the contract for the ensuing year will not be renewed * * *." General Laws 1956 § 16-13-2. The Legislature therefore knows how to call for automatic renewal. If it desired the same measure for administrators, it could have directed as such in the provisions of the Administrators' Rights Act. *See In re Proposed Town of New Shoreham Project*, 25 A.3d 482, 525 (R.I.2011) (reasoning that "the General Assembly knew how to require a net-benefit test when it wanted the [Public Utilities] [C]ommission to use that type of analysis"); *Rubano v. DiCenzo*, 759 A.2d 959, 969 (R.I.2000).

Id. at 182. The Commissioner made the point in *Chrabaszcz v. Johnston Sch. Cmmttee.*, RIDE No. 0010-05 (January 28, 2005), *aff'd.* by the Board of Regents for Elementary and Secondary Education on January 12, 2006, emphasizing that:

Administrators are entitled to a statement of reasons for a non-renewal – however the simple statement that a better qualified educator can be recruited has been ruled sufficient. A Superintendent may determine that an administrator, although well qualified, is not the right fit for the management team that the

Superintendent is striving to build within a school district. *If, in the un rebutted judgment of the Superintendent, an administrator, no matter how qualified, could be replaced by a more qualified administrator, it is the unrestricted right of the Superintendent to non-renew that administrator, pursuant to R.I.G.L. 16-12-1.1.*

Id. at 13 (emphasis added).

Indeed, Ms. Gibbs recognizes that the “substantive threshold for an administrator’s non-renewal” is “low.” *See* Ms. Gibbs’s Brief at 1. Yet, she presented absolutely no evidence to rebut the “presumptively valid judgment” of the Superintendent that she “definitely [could] find a more qualified principal for a position in the East Providence School Department.” Tr. at 62.

V. Conclusion

For all the above reasons:

1. Ms. Gibbs’s appeal is denied and dismissed, with prejudice.

For the Commissioner,

Anthony F. Cottone, Esq.,
Hearing Officer

Ken Wagner, Ph.D.,
Commissioner

Dated: October 24, 2016