

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

TRACY ANDREWS-MELLOUISE  
PETITIONER

v.

EAST PROVIDENCE SCHOOL COMMITTEE  
RESPONDENT

DECISION

Held: Proof of the Appellant’s excellent performance as Assistant Director of Pupil Personnel Services and her perfect evaluation by her supervisor do not meet the burden of proof required in appeals challenging nonrenewal decisions by local school committees. Testimony of the Superintendent established her “good faith belief” that a more qualified individual could be found for the Appellant’s position. According to case precedent, this reason is “presumptively valid” and can be rebutted only by evidence that a more qualified person cannot be found. The cited provisions of the Basic Education Program describing the role evaluations of staff are to play in their retention, do not render the “belief that a better-qualified educator can be recruited for the position” an invalid reason for nonrenewal of public school educators or preclude superintendents from exercising the prerogative of judgment that is accorded to them under Title 16.

Date: April 16, 2020

### **Travel of the Case:**

On June 11, 2019 the undersigned was designated to hear and decide this appeal. Counsel for Tracy Andrews-Mellouise had filed a Complaint Under the Rhode Island Administrator's Bill of Rights to appeal a decision of the East Providence School Committee unanimously upholding its prior decision to non-renew Ms. Andrews-Mellouise's contract as Assistant Director of Pupil Personnel Services, effective at the end of the 2018-2019 school year. The appeal was placed in abeyance by agreement of the parties until the fall of 2019.

On September 16, 2019 the appeal was heard by the undersigned, testimony was taken and documentary evidence was received. Closing briefs were then filed, a process completed on December 13, 2019.

**Issue:** Was the non-renewal of Tracy Andrews-Mellouise's contract as Assistant Director of Pupil Personnel Services for the East Providence School Department valid under state education law?

### **Findings of Relevant Facts:**

- Tracy Andrews-Mellouise (the "Appellant") has been employed in the position of Assistant Director of Pupil Personnel Services for the East Providence School Department since December of 2013. Tr. p.86.
- Her last employment contract with the East Providence School Committee, dated January 12, 2016, provided for her employment from November 1, 2015 through October 31, 2018. Paragraph 15 of this employment contract states:

In the event that the Committee does not affirmatively vote to extend or renew this contract on or before the 90<sup>th</sup> day of the final year of this contract, the contract is automatically terminated and the Administrator shall be deemed non-renewed as of June 30<sup>th</sup> of the final year of the contract. In the event of automatic termination and non-renewal, the Administrator may request a hearing before the Committee and be afforded any rights available under applicable law. See Joint Ex. 1 B.

- The Appellant's performance in her position was most recently evaluated for the period October 2018-November 2019. She was evaluated using a broad range of criteria, including "Leadership," "Relationship with the School Committee," "Communication," "Relationship with the Community," and "Personal Attributes". With respect to all of the criteria on which she was evaluated, she received a score of 10 out of a possible 10, signifying that her performance was "excellent". As required by the evaluation instrument, her evaluator, Julian "Bud" MacDonnell, the Director of Pupil Personnel Services, supported his numerical

ratings by comments, giving a rationale and objective evidence for his numerical ratings. See Joint Ex. 1 B.

- Over the period of her employment in East Providence, the Appellant has not been the subject of a complaint by a parent (Tr. pp. 111-112) nor is there evidence that any of her colleagues lodged any complaint against her or were critical of her performance.
- On September 10, 2018 the Appellant met with Superintendent Kathryn Crowley with respect to a proposed three-year contract, renewing her employment for the term July 1, 2018 through June 30, 2021. Joint Ex. 1 B; After reviewing the proposed contract with the Appellant and noting that she had received an “outstanding evaluation from Bud MacDonnell” the Superintendent indicated that she would be moving forward to the School Committee for approval of the three-year contract. Tr. pp. 50-55; Joint Ex. 1 A (pp. 14, 47).
- At some point prior to the September 25, 2018 meeting of the East Providence School Committee (the “School Committee”) at which contract renewals were to be considered for all administrators, Superintendent Crowley learned from one of the School Committee members that there would be a “problem” with getting the Appellant’s contract approved and that “at least two votes” would not be cast in favor of her renewal. Tr. pp. 23, 178-179; Joint Ex. 1 A (pp. 28-29).
- When she learned this information, the Superintendent changed her recommendation of a proposed contract for the Appellant from a three-year term to a one-year term prior to submitting it to the School Committee for approval on September 25, 2018. Tr. pp. 23-25, 62; Joint Ex. 1 A p. 17.
- At its September 25, 2018 meeting the School Committee voted by unanimous consent to “take no action on contract #26” (the Appellant’s proposed one-year contract).<sup>1</sup> Tr. p. 26; Joint Ex. 1 B; Superintendent Crowley advised the Appellant the next day that the School Committee had “tabled” her contract and that this meant that the School Committee was not going to renew her contract. Tr. p. 114. The Superintendent did not tell her that, based on input from one of the School Committee members, she had changed her recommendation from a three-year to a one-year contract prior to making her recommendation at the meeting. Tr. pp. 62-63.
- After talking to Assistant Superintendent, Sandra Forand, and three (3) principals in the district<sup>2</sup> and making a telephone call to a parent who she knew was active on the EPLAC<sup>3</sup> Superintendent Crowley “changed her mind” with respect to renewal of the Appellant’s contract because she “decided she could do better”. Tr. p. 27; Joint Ex. 1 A p. 22.

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<sup>1</sup> The School Committee voted to approve all of the other thirty-six (36) administrative contracts, three (3) of which had been reduced to two-year contracts. Joint Ex. 1 B. pp. 15-17.

<sup>2</sup> The three principals were arbitrarily chosen, according to the Superintendent’s statement to the School Committee at the May 21, 2019 hearing before the School Committee (See Joint Ex. 1 A pp. 33-34). In her testimony on the record in this case, the Superintendent stated that “those three names came to my attention that they had some problems with Tracy”.

<sup>3</sup> EPLAC is the Special Education Advisory Committee in East Providence.

- Superintendent Crowley decided that she would recommend that the School Committee not renew the Appellant’s contract with the School Committee.<sup>4</sup> Tr. p. 12; Joint Ex. 1 B letter from Kathryn M. Crowley to Tracy Andrews-Mellouise dated January 22, 2019. The non-renewal letter notified the Appellant that the reason for this action was because “there are more qualified individuals available to better meet the needs of the District.” Letter of January 22, 2019 from Superintendent Crowley.
- The Superintendent testified that her recommendation was based on research that she did on the Appellant’s leadership ability, her communication skills and her interpersonal relationships with other leaders in the district. Superintendent Crowley testified that she had attempted to create a “collaborative culture” among both central office staff and administrators in the district and that she could “do better in this area as far as [the Appellant] was concerned”. Tr. p. 12.
- On February 11, 2019 Superintendent Crowley sent another letter notifying the Appellant that the School Committee would take up her recommendation to non-renew her contract at its meeting on February 12, 2019, adding the reason that “... 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”. Letter of February 11, 2019 from Kathryn M. Crowley to Tracy Andrews-Mellouise.
- The Appellant’s position was in fact reduced to a .5 FTE (part-time) position and the former Director of Pupil Personnel Services was expected to fill this position<sup>5</sup> for the 2019-2020 school year. Tr. pp. 39-40.
- The School Committee voted on February 26, 2019 not to renew the Appellant’s contract with the district. The reason for its action was:

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<sup>4</sup> Per the terms of the Appellant’s contract, in the absence of an affirmative vote by the School Committee to extend or renew her contract “by the 90<sup>th</sup> day of the final year” of the contract, it was “deemed non-renewed as of June 30<sup>th</sup>, i.e. June 30, 2019. The inference taken here is that when presented with what was tantamount to a decision to non-renew the Appellant’s contract (the School Committee’s September 25, 2018 vote to “table” a recommendation to renew the contract for one (1) year), the Superintendent sought to implement that decision **if she could** by determining if there were reasons that would support such action and, if there were, to provide the Appellant with notice of such reason(s) in accordance with the Administrator’s Bill of Rights, §16-12.1-1 et seq. In *Alba v. Cranston School Committee*, 021-10, decision of the Commissioner dated August 3, 2010, the Commissioner affirmed that under Title 16, a school committee had explicit authority to withhold consent to a superintendent’s proposal to renew a school administrator and implicit authority to take the necessary steps to effectuate such decision. See *Alba* at page 5. The Commissioner found that the Cranston School Committee had followed all legally-required procedures in effectuating its decision to reject Superintendent Richard Scherza’s recommendation. Thus, if Superintendent Crowley had not changed her mind with respect to her initial recommendation, compliance with the Administrator’s Bill of Rights would have remained the responsibility of the School Committee. The Appellant argues that Superintendent’s testimony that she changed her mind is not truthful, and that once the School Committee “tabled” the renewal of the Appellant’s contract, Superintendent Crowley’s purpose in doing further “research” was merely to implement the School Committee’s decision.

<sup>5</sup> At the time of hearing, September 16, 2019, the testimony was that “Bud” MacDonnell was “going to” step down into a part-time special education position as assistant director of pupil personnel services. Tr. p. 39

that the Superintendent of Schools believes that she can find a more qualified individual available to better meet the needs of the District and further that she is currently considering a reorganization of the Special Education Department and the current plan would eliminate your position and replace it with a .5 FTE position (See Joint Ex. 1 B, letter of Charles Tsonos, Chair, East Providence School Committee to Tracy Andrews-Mellouise dated February 28, 2019)

- On May 21, 2019 the School Committee held a hearing under R.I. Gen. Laws §16-12.1-3 and 4. Superintendent Crowley and the Appellant both appeared before the School Committee<sup>6</sup> at that time. Thereafter, the School Committee voted unanimously to affirm its prior decision to non-renew the Appellant's employment, effective at the end of the 2018-2019 school year. A written decision was provided to her pursuant to R.I. Gen. Laws §16-12.1-5 on or about May 28, 2019. It was from this decision that the Appellant appealed to the Commissioner for a *de novo* hearing.

### **Positions of the Parties:**

#### **The Appellant:**

At the outset, counsel for the Appellant submits that underlying all personnel decisions in Rhode Island public schools must be compliant with applicable provisions of the Basic Education Program Regulations,<sup>7</sup> promulgated by the Council on Elementary and Secondary Education in 2009. Section 1.4.1 (B) (3)(d), together with other provisions set forth in Section 1.4.2 (B), relate to the role a required evaluation process must play in the personnel function of a district. These provisions, taken as a whole, require that a Superintendent oversee the hiring and retention of highly effective staff. The appraisal of staff performance and quality is to be determined by a "formal evaluation process that is completed on a regular basis and is compliant with applicable legal requirements". Section 1.4.2 (B)(2)(d)(3). The East Providence School Department has a formal evaluation process for all of its administrators in place and evaluations are conducted on a regular basis. Nonetheless, in the Appellant's case the decision on retention was not consistent with the formal and objective measurements showing that her performance as the Assistant Director of Pupil Personnel Services was highly effective. Instead, counsel for the Appellant asserts, her retention was subject to an "off the grid campaign" initiated at the School Committee level. With the Superintendent's complicity, counsel argues, this campaign was successful in removing a highly effective member of the East Providence School Department's staff.

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<sup>6</sup> There is no evidence that sworn testimony was presented to the School Committee on the evening of May 21, 2019.

<sup>7</sup> 200-RICR-20-10-1.

Important (and binding) provisions of the BEP should not be displaced by an arbitrary decision, reviewable only by the application of a very low bar for the non-renewal of administrators. This low bar has resulted from a series of cases issued by the Commissioner's office (and affirmed by the Council and Superior Court) under a misguided interpretation of the School Administrator's Bill of Rights, R.I. Gen. Laws §16-12.1-1 et seq.

Historically, the Commissioner has viewed administrators' rights, in situations of non-renewal, to be limited to the same standard as that of non-tenured teachers whose annual contracts may be non-renewed for reasons other than "good and just cause".<sup>8</sup> The reasons for validating an administrator's non-renewal have therefore included the "good faith belief of the Superintendent in her ability to find a more qualified person" even absent any formal evaluation or identifiable reasons. See pages 2-3 of the Appellant's Brief, citing *Chrabaszcz v. Johnston School Committee*, decision of the Commissioner dated January 28, 2005.<sup>9</sup> Counsel for the Appellant argues that decisions on retention of administrators should be held to a higher standard. Unlike teachers, whose retention after a probationary period results in tenure, administrators do not enjoy tenure rights- only the procedural protections conferred by the School Administrators' Rights Act (§16-12.1-1 et seq.) and whatever rights are negotiated under group or individual employment contracts. The interpretation and application of the School Administrators' Rights Act, with its vague, low standard for non-renewal, should be abandoned in favor of the more stringent standards required by the BEP.

There was no mention of the BEP in the more recent case of *Gibbs v. East Providence School Committee*<sup>10</sup> a case that also involved the non-renewal of an East Providence administrator. The Commissioner upheld Cheryl Gibbs' non-renewal on its merits<sup>11</sup> and, citing *Chrabaszcz, supra*, affirmed that:

... the simple statement that a better qualified educator can be recruited has been

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<sup>8</sup> The Board of Regents, in a decision dated December 2, 1996: *Jawor v. Bristol/Warren Regional School District* determined that the "just cause standard" in §16-12.1-2.1 did not apply to the non-renewal of a school administrator. The Board determined that §16-12.1-3 required that notice and hearing be provided to a non-renewed administrator and that "the non-renewal action would be held to a standard akin to that of the non-renewal of a non-tenured teacher. See Board decision at page 2. The Bristol/Warren School Committee had cited the Board of Regents' decision in *Helen Kagan and Thomas McGhee v. Bristol/Warren Regional School Committee* (October 12, 1995) for the proposition that the desire to find better qualified teachers to implement the goal of achieving excellence was a valid reason for non-renewal. See *Jawor v. Bristol/Warren Regional School Committee*, decision of the Commissioner dated March 21, 1996 at page 5.

<sup>9</sup> The Board of Regents affirmed the Commissioner's decision in *Chrabaszcz* on January 12, 2006. The Board concurred in the Commissioner's statement of the legal standard for a non-renewal based on a "presumptively valid judgment that a more qualified person can be recruited for the particular position". Id at page 2.

<sup>10</sup> Decision 016-22, issued on October 24, 2016.

<sup>11</sup> There was extensive evaluation record of poor performance in the *Gibbs* case, counsel notes.

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 the 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<sup>12</sup>

Counsel for the Appellant submits that, although the decision in *Gibbs* was correct, the restatement of this principle is not correct, as it does not take into account restrictions imposed by the BEP with respect to the weight that must be given to formal evaluations in making decisions on retaining educators.

Even if this case is to be governed by the “good faith belief” standard, the Commissioner cannot uphold the Appellant’s non-renewal. Perfect evaluations, with their supporting commentary, speak for themselves. Her credentials and competency in the field of special education remain unchallenged. Superintendent Crowley’s initial recommendation of a three-year contract for this veteran staff member indicates her belief and judgment that no better individual for the position could be recruited. Her initial support of the Appellant’s renewal belies a contrary assessment. It was not until she received a vague complaint from one School Committee member that the Superintendent “abandoned her professional judgment”. Brief at page 4. The Superintendent’s subsequent recommendation to non-renew the Appellant’s contract clearly resulted from a directive implicit in the September 25, 2018 vote of the Committee to “table” action on her recommendation of a one-year contract. Furthermore, a recommendation to non-renew could not reasonably - or in good faith- have been based on allegations confirmed with only four individuals and never presented to the Appellant to get her side of the story.

A result-oriented inquiry into vague allegations against the Appellant was conducted by Superintendent Crowley with a focus on two disgruntled administrators who had previously clashed with the Appellant and one dissatisfied parent. The Appellant was not told of this review and was given no opportunity to rebut accusations that were later “sprung upon her” on the evening of her hearing before the School Committee. Counsel submits that “good faith” was clearly not an element of the process followed by the Superintendent and it was likewise absent from her recommendation that the Appellant be non-renewed.

Perhaps in recognition of the weakness of her position, the Superintendent decided to reduce the Appellant’s position from full-time to half-time and to add this as an additional

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<sup>12</sup> Both *Chrabaszcz* and *Gibbs*, *supra*, surely meant to cite to 16-12.1-1 et seq.

reason for her non-renewal. According to the Appellant's argument, this decision was made unilaterally by the Superintendent and without any consultation with Director Bud MacDonnell. Such decision, it is submitted, is inconsistent with the needs of the district and compromises the requirement in special education regulations Section 6.5.8(b)(2) that districts employ a "sufficient number of special education administrators necessary to carry out the requirements" of the IDEA. The Appellant testified that she is unaware of the logic behind decreasing her position to a .5 FTE, full-time equivalent. In addition, the Appellant submits, once it was determined that Mr. MacDonnell would step into the part-time position, the Superintendent should have offered the full-time position to the Appellant. The fact that she did not do so underscores that this "reorganization" was intended as a backstop against a possibility that the Commissioner would reject the "good faith belief" argument.

In summary, the Appellant recognizes the weight of the burden of proof that she is required to meet under the precedent of decisions on this issue. However, if there were ever a case in which this burden of proof has been met, it is this case. If the Commissioner sees fit to deny this appeal, she should just plainly declare that a public school administrator can never overcome a non-renewal decision through an appeal under the School Administrators' Rights Act. A decision standing for the proposition that "the belief that a more qualified person can be recruited" insulates such judgment from review will result in unsound educational policy because ensuring the success of special education students requires dedicated professionals such as the Appellant to remain employed to protect the vulnerable population they serve.

### **East Providence School Committee**

Counsel for the School Committee disputes the allegation that some sort of nefarious scheme brought about the Appellant's non-renewal. As counsel for the School Committee views the facts here, Ms. Andrews-Mellouise's renewal was short-circuited when legitimate concerns about her performance were brought forward just prior to the September 25, 2018 meeting. At that point in time the Appellant's renewal was, by law, still subject to the approval of the School Committee. One member of the Committee related a complaint about the Appellant to Superintendent Crowley and told her that there could be insufficient votes to approve her recommendation for a three-year contract. Superintendent Crowley quickly responded with a modified recommendation for a one-year contract so that she could "look into the matter". The School Committee did not support even a one-year renewal and tabled action on any extension of the Appellant's contract. Such action was completely within their authority.

In the days and weeks that followed, Superintendent Crowley looked into complaints that had originated with the School Committee. What the Superintendent found when she looked into the matter was enough to convince her that she could recruit an Assistant Director of Pupil Personnel Services that would function better in the "collaborative

culture” she was attempting to create in East Providence. There was no intended criticism of the Appellant’s competency in the field of special education and no lack of consideration of the excellent formal evaluation she had received from her supervisor, Bud MacDonnell. There was no need for a comprehensive investigation or notice and opportunity for input from the Appellant because the Superintendent didn’t feel such a process was necessary in the context of non-renewal. She felt she had sufficient information and that she had discretion to recruit someone that was a “better fit” for her district. The School Committee’s counsel cites *Chrabaszcz, supra*, in this regard:

“[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”<sup>13</sup>

According to the testimony in this case, it was the Superintendent’s desire to build a management team sharing in a “collaborative culture” that formed the basis for her decision. Thus, under case precedent issued pursuant to the Rhode Island School Administrators’ Rights Act, Superintendent Crowley’s decision must be sustained. Superintendent Crowley testified as to her good faith determination that, despite the Appellant’s excellent record of performance and her receipt of a perfect evaluation from her supervisor, Bud MacDonnell, she could find an Assistant Director of Pupil Personnel Services better able to support the collaborative culture she sought to create in East Providence. This determination is “presumed valid” pursuant to decisions in *Kagan v. Bristol Warren Regional School Committee*, 1997 WL 1526517 (R.I. Super.) and *Chrabaszcz, supra*.<sup>14</sup> This case law establishes that the burden is on an educator challenging his or her non-renewal to demonstrate that the professional judgment of the Superintendent is without a basis in fact. The Appellant has not met this burden of proof.

During this process, Superintendent Crowley also determined that she could re-allocate and better use some Title 1 funds for direct student services if she reduced the position of Assistant Director of Pupil Personnel Services to a .5 position. Her analysis of special education staffing was that this was feasible in that the district currently had a part-time coordinator of out-of-district placements for special education students. She thus made a decision to reduce the Appellant’s position as Assistant Director to a part-time, .5 FTE, position.

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<sup>13</sup> The reference here is a typographical error. The cite is R.I.G.L. 16-12.1-1 et seq.

<sup>14</sup> See also: *Alba v. Cranston School Committee*, 021-10, decision of the Commissioner dated August 3, 2010 at page 6; aff’d by the Board of Regents on February 2, 2012; aff’d in a decision of the R.I. Supreme Court, 90 A.3d 174\*; 2014 R.I. LEXIS 68\*\*; 2014 WL 1998750.

After making both of these determinations, Superintendent Crowley notified the Appellant of her recommendation that her contract not be renewed and that her employment in East Providence would end on June 30, 2019. A formal letter notifying her of the proposed recommendation and the reasons for it was sent to the Appellant on February 11, 2019. When she invoked her right to a hearing prior to the School Committee's final action, the Appellant received a full hearing before four out of the five members<sup>15</sup> of the School Committee on May 21, 2019. After hearing from witnesses, the Superintendent and counsel for the Appellant, the Committee voted to affirm their initial decision. The Appellant was notified in writing of this decision, and the reasons therefor, on May 28, 2019.

Therefore, the School Committee submits, from both a substantive and a procedural standpoint the Appellant has received all of the protections to which she is entitled by the School Administrators' Rights Act, R.I. Gen. Law §16-12.1-1 et seq.

Her reliance on the BEP and her perfect evaluation by her supervisor are misguided. The Basis Education Program Regulations cannot be interpreted to overrule precedent based on the School Administrators' Rights Act. §16-12.1-1 et seq. and case law interpreting this statute are controlling. Noteworthy is the Commissioner's post-BEP decision in *Gibbs v. East Providence School Committee*, 016-22, decision of the Commissioner dated October 24, 2016. This decision makes no mention of the BEP and in fact affirms case precedent "that the substantive threshold for an administrator's non-renewal is low". See *Gibbs* at page 17. Counsel for the School Committee emphasizes that as a matter of law, a nonrenewal is not a substantive judgment with respect to the lack of qualifications of the nonrenewed educator. (citing *Chrabaszcz* at page 9) Thus, proof of her technical qualifications and excellent performance are not sufficient to carry her burden of proof. Superintendent Crowley's belief that she could find someone with similar or better credentials while also finding someone with superior communication and interpersonal skills is presumptively valid and stands un rebutted.

## DECISION

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.<sup>16</sup> Prior decisions have further elucidated that "...the law is plain that the burden was (and is) on the appellant to show that other, more qualified teachers were not available..." see *Tracy v. Scituate*, *supra*, at p. 5. In the evolution of

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<sup>15</sup> The School Committee member who had spoken to the Superintendent about her concern with respect to the Appellant's renewal prior to the September 25, 2018 meeting did not attend the May 21, 2019 meeting.

<sup>16</sup> See footnote 14 of *Karagozian v. North Providence School Committee*, decision of the Commissioner dated May 17, 1979; *Tracy v. Scituate School Committee*, decision of the Commissioner dated March 12, 1984 at page 2, "Such a conclusion, when not arbitrary, states a sufficient reason for not renewing a nontenured teacher's contract."

cases on this issue, 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". *Kagan v. R.I. Board of Regents*, 1997 WL 1526517 (R.I. Super. Court); See also *Chrabaszcz*, *supra* at page 9.<sup>17</sup> The individual non-renewed must convince the Commissioner that there is not a more qualified individual available somewhere for the position.

There is no burden on a School Committee to prove, or even identify, any underlying performance deficiencies by means of an unsatisfactory evaluation or otherwise. Furthermore, it is permitted for a Superintendent to ground his or her decision in the belief 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. *Chrabaszcz* at page 13. Thus, although decisions of this type should be reasonable, supported factually or grounded in some justification that would insulate the action from being arbitrary and capricious, the decision is presumed valid unless rebutted by the specific evidence required of the nonrenewed educator. *Kagan v. R.I. Board of Regents*, *supra* and *Chrabaszcz*, *supra*.

The facts in this case indicate that the Appellant performed in an excellent (10 out of 10) manner in all of the areas measured by the formal evaluation system in place for administrators in East Providence. Her supervisor, Bud MacDonnell, the Director of Pupil Personnel Services for the district, supported his perfect numerical ratings of Ms. Andrews-Mellouise's performance by specific, fact-based comments with respect to how well she had performed over the course of the 2017-2018 school year. Superintendent Crowley testified that she was aware of the Appellant's excellent evaluation (she presumably relied on it) when she initially recommended her for a three-year contract renewal. The Superintendent also testified that Mr. MacDonnell was an experienced and revered member of her administrative staff, further supporting the notion that his assessment of the Appellant's qualifications, professional attributes and performance was reliable.

However, Superintendent Kathryn Crowley also testified, under oath, that she "changed her mind" on the issue of whether Tracy Andrews-Mellouise should be renewed as an Assistant Director of Pupil Personnel Services. While counsel for the Appellant submits that this testimony was false and that her purported reasons for changing her mind were fabricated to support a directive from the School Committee, we do not share in this assessment of Superintendent Crowley's testimony. The record does not contain sufficient reliable evidence of any issues with respect to the Appellant's leadership ability, her communication skills and her interpersonal relationships with other leaders in the district. No findings of fact with respect to these issues can be made. The School Committee, however, had no burden of proof to

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<sup>17</sup> In *Chrabaszcz*, the Commissioner clearly stated, at page 12 of the decision and the Board of Regents affirmed that "The existing legal precedent in Rhode Island is that this view [that a more qualified administrator could be identified for this job] is presumed valid in the absence of specific evidence from Mr. Chrabaszcz that in fact no more qualified administrator could be found for his job."

establish deficiencies or shortcomings. The testimony of Superintendent Crowley was that she drew a conclusion with respect to these issues based upon her own admittedly-limited inquiry of an inner circle of administrators in East Providence and without any opportunity for input from the Appellant. The strength or weakness of support for the Superintendent's conclusions in this regard are not relevant, only her good faith in drawing them. Her testimony does provide an explanation for what would otherwise be an arbitrary and capricious "change of mind" and shift from recommending a three-year contract to a recommendation of nonrenewal. Per binding case precedent, it is the good faith of her belief that the Appellant was not supportive of a "cooperative culture" in East Providence that provides a valid basis for the Appellant's non-renewal.

The BEP, and the important role of ongoing performance evaluations of educators and other certified staff in Rhode Island public schools in making employment decisions, 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.

The additional reason of the anticipated reorganization of the Special Education Department in East Providence of which there is un rebutted evidence in the record, also supports the Appellant's non-renewal.

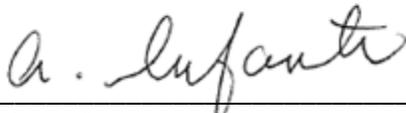
For the foregoing reasons, the appeal of the Appellant is denied and dismissed.

For the Commissioner,

/s/ Kathleen S. Murray

Kathleen S. Murray

Date: April 16, 2020



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Angélica Infante-Green Commissioner  
Commissioner