

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of	*	
	*	
LEXINGTON SCHOOL COMMITTEE	*	Case No. MUP-14-3961
	*	
and	*	Date Issued:
	*	
LEXINGTON EDUCATION ASSOCIATION	*	October 19, 2015
	*	

Hearing Officer:

Kerry Bonner, Esq.

Appearances:

Colby C. Brunt, Esq. - Representing Lexington School Committee

Ryan Dunn, Esq. - Representing Lexington Education Association

HEARING OFFICER'S DECISION

Summary

1 The issue in this case is whether the Lexington School Committee (School
2 Committee) violated Sections 10(a)(3) and, derivatively, Section 10(a)(1) of
3 Massachusetts General Laws Chapter 150E (the Law) by retaliating against Julia Finley
4 (Finley) for her protected, concerted activity. Based on the record and for the reasons
5 explained below, I conclude that the School Committee did not violate the Law as
6 alleged.

Statement of the Case

7 On August 28, 2014, the Lexington Education Association (Association) filed a
8 Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR)

1 alleging that the School Committee had engaged in prohibited practices within the
2 meaning of Sections 10(a)(1) and 10(a)(3) of the Law. On October 29, 2014, a DLR
3 investigator issued a Complaint of Prohibited Practice and Partial Dismissal, dismissing
4 the Association's independent Section 10(a)(1) allegation. The School Committee filed
5 its Answer to the Complaint on November 5, 2014.

6 I conducted a hearing on March 20, May 22 and June 17, 2015. The parties
7 were afforded a full opportunity to be heard, to examine and cross-examine witnesses,
8 and to introduce evidence. On May 22, 2015, prior to the School Committee beginning
9 its case in chief, it orally moved to dismiss the Complaint.¹ The Association orally
10 opposed the motion. I issued a ruling denying the motion on June 22, 2015. Following
11 the close of hearing, the Association and School Committee each timely filed post-
12 hearing briefs. On the entire record, including my observation of the demeanor of
13 witnesses, I make the following findings:

14 Stipulations of Fact

- 15 1. The Town of Lexington (Town) is a public employer within the meaning of
16 Section 1 of the Law.
17
18 2. The School Committee is the Town's collective bargaining representative for the
19 purpose of dealing with school employees.
20

¹ Prior to the in-person investigation, the School Committee filed a Motion to Dismiss arguing, in part, that the Association is precluded under the parties' settlement agreement, discussed below, from filing any claim that is based on the October 13, 2013 grievance. The School Committee did not renew this argument on May 22, 2015, therefore, I will not address it.

- 1 3. The [Association] is an employee organization within the meaning of Section 1 of
2 the Law.
- 3
- 4 4. The [Association] is the exclusive bargaining representative for certain school
5 employees working for the Town.
- 6
- 7 5. Metropolitan Council for Educational Opportunity ("METCO") is a program
8 through which students from Boston who would normally attend public schools
9 may elect to be enrolled in suburban school districts, including Lexington.
- 10
- 11 6. Julia Finley was hired by Lexington Public Schools in January 2013 of the 2012-
12 2013 school year as a METCO social worker.
- 13
- 14 7. In or about October 2013, Ms. Finley filed a grievance concerning a letter of
15 expectations that had been issued to her by Margaret Colella, one of her
16 supervising Principals.
- 17
- 18 8. The School Committee had knowledge of Ms. Finley's concerted, protected
19 activity as manifested by filing and processing of the aforementioned October
20 2013 grievance.
- 21
- 22 9. In or about February 2014, the parties executed a settlement agreement to
23 resolve the grievance mentioned in paragraphs [7 and 8] above.
- 24
- 25 10. In or about May 2014, Ms. Finley received notice of her non-renewal in
26 accordance with M.G.L. c. 71, s. 41.
- 27
- 28 11. In or about May 2014, Ms. Finley received a copy of her year-end summative
29 evaluation.
- 30
- 31 12. Ms. Finley was assigned to the Bowman, Bridge and Harrington Elementary
32 Schools for the 2012 – 2013 school year and for the 2013 – 2014 school year.
- 33
- 34 13. In addition, per the settlement agreement [referred to in paragraph 9], Ms. Finley
35 was transferred from the Bridge Elementary School to the Estabrook Elementary
36 School effective February 24, 2014.
- 37
- 38 14. The date of the meeting to discuss Ms. Finley's non-renewal was on or about
39 April 29, 2014.
- 40

1 15. Ms. Finley's ratings on her summative evaluation are as follows:²

- 2
- 3 Progress Toward Student Learning Goal(s): Some Progress
- 4
- 5 Progress Toward Professional Practice Goal(s): Significant Progress
- 6
- 7 Standard I: Needs Improvement
- 8
- 9 Standard II: Needs Improvement
- 10
- 11 Standard III: Proficient
- 12
- 13 Standard IV: Needs Improvement
- 14
- 15 Overall: Needs Improvement.

Findings of Fact

16 **Background**

17 Julia Finley began her employment with Lexington Public Schools in March 2000
18 as a Behavior Specialist. From approximately late 2001 – January 2013, she worked as
19 a Special Class Teaching Assistant for a language learning program, which is a special
20 education program. In January 2013, she was appointed as a METCO Social Worker.
21 Finley is a Licensed Social Worker (LCSW) who received a master's degree from
22 Simmons College School of Social Work in 1992.

23 During Finley's time as a Special Class Teaching Assistant, she worked at the
24 Bowman Elementary School (Bowman) where Mary Anton-Oldenburg (Anton) was the
25 Principal. When the METCO Social Worker position became available, Anton
26 encouraged Finley to apply as she believed it would be a good next step for Finley.

² The parties agreed to this stipulation after the close of hearing at my request as the ratings on the summative evaluation exhibit were illegible.

1 Anton also recommended Finley for the position to Superintendent Paul Ash (Ash).
2 Finley applied for the position in the Fall of 2012, but she initially did not have the
3 necessary license from the Department of Elementary and Secondary Education
4 (DESE). Ash therefore held the position open until Finley was able to obtain the license
5 in January 2013.³

6 As a METCO Social Worker, Finley was responsible for helping the children in
7 the METCO program acclimate to school in Lexington. She worked at three elementary
8 schools, with approximately 1.5 days at each school, and served approximately 70 – 80
9 total students.⁴ Cheryl Crowder (Crowder) was the other METCO Social Worker in the
10 elementary schools, and she divided her time between Lexington's remaining three
11 schools.⁵ Each school principal and Barbara Nobles (Nobles), the METCO Director,
12 were Finley's supervisors.⁶

13 **October 2013 Grievance**

14 Prior to September 30, 2013, Finley left an article for Margaret Colella (Colella),
15 the Principal at Bridge Elementary School (Bridge) on institutional racism from the

³ Both Finley and Ash testified about the process for Finley obtaining a temporary license, or waiver, from DESE, and the fact that she was initially denied the waiver. These details are not relevant to my decision.

⁴ Finley originally worked at the Bridge, Bowman, and Harrington elementary schools. As explained further below, in early 2014 she transferred from the Bridge to the Estabrook school.

⁵ Crowder also acted as Finley's mentor.

⁶ Nobles took a leave of absence from September 2013 through early January 2014.

1 National Association of Social Workers, with a note that said “can we have a
2 conversation after you read this,” or words to that effect. Finley also gave copies of the
3 article to Anton, Beth Glick (Glick), the Bowman Assistant Principal, and Elaine Mead
4 (Mead), the Principal of Harrington Elementary School (Harrington). Finley provided the
5 article because she felt that it set the groundwork for discussing race and how it impacts
6 social systems, and she wanted everyone “on the same page.”

7 On or about September 30, 2013, Ash called Phyllis Neufeld (Neufeld),
8 Association President, and told her that Finley had given an article to Colella that raised
9 issues of racism. He also advised Neufeld that Colella had a concern with Finley not
10 signing in and out of the building, which Colella was planning to discuss with Finley.
11 Ash told Neufeld that he was giving her a “heads-up” in case she wanted an Association
12 representative to attend the meeting between Colella and Finley. Neufeld was unable
13 to attend the meeting herself so she had the Bridge Association representative attend
14 instead.⁷

15 On or about October 1, 2013, Finley and Colella had originally scheduled a
16 meeting to discuss Finley’s concern that she did not have enough space to meet with
17 the METCO students at Bridge. Instead, at this meeting, Colella informed Finley that
18 she was upset about the article. Colella also discussed her concerns with Finley’s
19 performance, which Colella followed up with a letter of expectations to Finley on

⁷ It is unclear if the Association representative attended the October 1 or October 4 meeting described below.

1 October 4.⁸ In response, Finley wrote a rebuttal letter to the letter of expectations, in
2 which she referred to Colella as a racist.⁹

3 On October 21, 2013, the Association filed a grievance on Finley's behalf, stating
4 that the letter of expectations "is not based on fact and evidence." Neufeld met with Ash
5 for the level 2 grievance meeting in December 2013. At this meeting, Ash referenced
6 the fact that Finley referred to Colella as racist in her rebuttal letter, that it "elevated" the
7 issue, and that he had a duty to investigate. He also asked how Finley expected to be
8 hired the following year and be effective in her role if she persisted.¹⁰ In addition, Ash
9 asked why Finley cared whether the letter of expectations was right or wrong because it

⁸ The letter of expectations was not entered into evidence, however, Finley confirmed on cross-examination that the letter addressed her alleged failure to sign in and out of the building, a missed meeting with METCO parents in Spring 2013, coming in late on two occasions and leaving early on one occasion, failure to respond to emails, and her conduct at the October 1, 2013 meeting.

⁹ The rebuttal letter was not entered into evidence, however, Neufeld testified about Ash's reaction to Finley's reference to Colella as a racist, and Neufeld's notes from the meeting corroborate her testimony. In addition, Finley did not deny that she made this accusation in the rebuttal letter. The Association does not contend that the fact that Finley gave the article to Colella, or referred to Colella as racist, is protected activity.

¹⁰ Neufeld credibly testified about this conversation, and again her notes from the meeting corroborate her testimony. Although Ash testified that when he asked how Finley expected to be hired next year and be effective in her role if she persisted, he was referring to Finley persisting in refusing to take feedback, I do not find this credible. Given his statements and the fact that the meeting was about a grievance concerning Finley's letter of expectations and rebuttal letter, I find that Ash was questioning how Finley expected to be hired next year and be effective if she continued with her grievance and her accusation of Colella being a racist. In addition, Neufeld's detailed notes from this meeting do not make any reference to Ash discussing Finley's difficulty in taking feedback.

1 "just sits in her file," and noted that she was "burning bridges" with her allies, specifically
2 Nobles and Anton, and making it hard to support her.¹¹

3 Sometime in February 2014, Ash discussed the grievance with Finley.¹² He told
4 her he was no longer her ally and that he needed to defend the district. He also asked
5 her why she was making such a big deal about the letter, and told her that if he were
6 her father he would tell her to stop this,¹³ that she was burning bridges, and that people
7 were no longer her allies.¹⁴

¹¹ Ash testified that he felt that Finley was burning bridges because he was hearing from the principals and Nobles that Finley was extraordinarily defensive and caustic when anyone gave her a suggestion. Again, I do not credit Ash's testimony about this conversation, as it is not corroborated by Neufeld's testimony or notes from the meeting. Instead, I find that Ash was referring to Finley's grievance and racism accusation against Colella in her rebuttal letter. However, I do not take Ash's statement as evidence that Anton or Nobles felt that Finley was burning bridges with them, as there is no other evidence to indicate that Ash was aware of the effect that the grievance had on Anton or Nobles, or that they felt that Finley was, in fact, burning bridges.

¹² Although Finley did not recall the exact date of this meeting, she did recall that it occurred prior to the settlement described below.

¹³ Ash testified that he advised Finley what he would do if he were her father because he was making the point that he deeply cared about her success. In addition, he claimed that when he said that she had to stop doing "this," he was referring to her being dismissive of everyone's comments. Similar to his conversation with Neufeld, I do not credit Ash's testimony that he was referring to Finley's dismissiveness. Instead, I am convinced that Ash was referring to the whole situation involving Finley's rebuttal to Colella's letter of expectations in which she accused Colella of being a racist, and the subsequent grievance.

¹⁴ Finley testified that she believed that Ash was referring to Nobles, Anton, and Glick as not being her allies. However, I do not credit Finley's speculation as to whom Ash was referring.

1 shadowed Crowder to familiarize herself with the school, but did not directly work with
2 students.

3 **Observations of Finley's Performance**

4 NPST educators are given a minimum of two announced and three unannounced
5 observations of their performance each school year. Below are summaries and relevant
6 excerpts from Finley's observations for the 2013 – 2014 school year.¹⁸

7 Observation # 1

8 Anton conducted Finley's first observation on October 7, 2013 for 15 minutes
9 during a "lunch bunch" group of 12-13 4th grade students.¹⁹ Anton noted in her
10 observation form that Finley had established a warm rapport with the students, but that
11 a group of 12-13 was too large for an effective lunch bunch. Anton suggested that
12 Finley consider various configurations for the group to allow more students the
13 opportunity to participate, such as splitting the group or pair-shares. She also

¹⁸ Mead considered Finley's first half year, which began in January 2013, an introductory period and she did not formally supervise Finley until the 2013-2014 school year. No other witness addressed whether Finley was evaluated as a METCO Social Worker during the latter half of the 2012 – 2013 school year.

¹⁹ It is not clear whether this observation was announced or unannounced.

1 suggested that Finley break down the core purposes and goals of the group into
2 student-friendly language.²⁰

3 Observation # 2

4 Mead conducted Finley's second observation, which was announced, on
5 November 20, 2013 for 30 minutes at Harrington, during a meeting with a group of 2nd
6 grade readers. In her observation form, she stated, in part, that Finley has established
7 an effective routine for checking in with students during lunch meetings, that she
8 conveyed a high value on learning and homework completion, and that she also
9 conveyed her expectation that the students would take responsibility for being
10 "competent and confident" learners. Mead suggested that instead of Finley informally
11 checking in with the students' teachers, she could create a form to collect data from the
12 teachers so that she could link it to her check-in data from the students to monitor
13 students and create feedback loops for teachers and students.²¹

²⁰ Although the Association asserts in its brief that "Ms. Finley confirmed that she successfully implemented changes relative to those suggestions," Finley testified that she explained to Anton that she could not break down the group in a way that the children would get the most benefit since Finley was only at the school 1.5 days a week, but she did begin incorporating new ways for the children to share interactively.

²¹ Mead testified that in her observations, she "always appreciated as a strength [Finley's] relationship[s] with the children," but that she also saw that Finley needed to work on delivery of content and "an expansion of repertoire around working with groups in an instructional way." I agree with the Association that this criticism is not reflected in Mead's observation report and do not credit it.

1 In response to Mead's suggestion, Finley created a form that allowed her to look
2 at information that the students were providing based on questions she posed to them
3 during efficacy groups.²²

4 Observation # 3

5 Glick conducted Finley's third observation, which was announced, on November
6 25, 2013 for 30 minutes during a first grade efficacy group.²³ In her observation form,
7 Glick noted that Finley provided clear expectations for the students from the moment
8 they came in the room, and that she quickly activated prior knowledge by asking the
9 students to think about what they had been learning in the group. Glick also stated, "[i]n
10 addition to having clear language and expectations, you used non-verbal signals to
11 reinforce the behavioral expectations during the group." Glick recommended that Finley
12 ask the students one or two open-ended questions as she reads a story, name the
13 positive behaviors she sees during the group and ask the students to do the same, and
14 ask the children to take their positive behaviors with them for hallway behavior,
15 classroom behavior, and throughout the school.

²² During efficacy groups, Finley spoke with the children about the fact that they are as smart and as capable of learning as any of their peers. With regard to the check-in form, Finley did not address whether she created a form to collect data from teachers, as Mead had recommended. However, other evidence establishes that she did not.

²³ Anton wanted Glick to observe Finley because Glick was also a LICSW, and Anton felt that guidance from another social worker would be helpful to Finley. Anton advised Glick that her recommendations for Finley involved increasing student engagement, and she also wanted Glick to help Finley tighten her lessons and make better use of her time to accomplish her goals.

1 In response to these suggestions, Finley asked questions during reading, asked
2 children to name behaviors exhibited during reading, and asked students to take
3 positive behaviors into the hallway.

4 Observation # 4

5 Colella conducted an observation of Finley on January 14, 2014 for 11 minutes
6 during a 5th grade lunch group.²⁴ Colella's observation form states that Finley has
7 established an effective routine for checking in with the students at lunch group, and
8 that asking them how they are feeling using a rating scale and checking in about
9 homework and schoolwork allows the students to share their thoughts and feelings.
10 Colella also questioned the purpose of the group and whether Finley could elicit more
11 specific information from the children. She suggested that setting objectives for the
12 period would allow the students to understand what they will focus on and what is
13 expected of them. In a footnote to the evaluation, Colella stated, "Our follow-up
14 conversation provided me with more insight into your lunch groups."

15 In the Educator Response section of the observation form, Finley wrote, in
16 relevant part, "I would have enjoyed the opportunity to meet with you prior to the
17 observation to talk about the group, its purpose and goals. That meeting may have le[d]
18 to conversations about how the group meets the needs of these students."

²⁴ The observation form does not indicate whether the visit was announced or unannounced.

1 Observation # 5²⁵

2 Mead conducted Finley's 5th observation, which was unannounced, on January
3 15, 2014 for one hour during a meeting about the 5th grade social studies unit on the
4 enslavement period and the impact it would have on METCO students and African-
5 American Lexington students. Finley was asked to participate in this meeting with 5th
6 grade teachers and other staff because the teachers wanted guidance on how to be
7 sensitive to METCO students when discussing the enslavement period. Mead noted in
8 her observation that Finley was passionate about the importance of cultural proficiency
9 and the need to raise awareness regarding issues of race, and that she brought
10 knowledge and experience to the conversation. She also stated, "...these

²⁵ Mead also conducted a sixth observation of Finley on May 7, 2014 . As noted above, the School Committee is required to provide NPST educators with five evaluations, however, Mead was unable to recall why Anton requested that she conduct an additional observation. The Association argues that, despite the fact that Mead conducted the observation after the decision not to renew Finley was made, the observation should be considered because "it is highly probative on the question of pretext because the observation report praises Ms. Finley highly." I disagree. Rather, if Finley's supervisors were creating pretextual reasons to not renew her employment, it is highly unlikely that one of these supervisors would turn around and give her a positive evaluation *after* deciding not to renew her. In any event, because this observation occurred after the decision was made to not renew Finley, I do not consider it relevant to my analysis and will not address it further.

1 conversations can be challenging as we work through the range of perspectives and
2 thoughts.”²⁶

3 **Bus Monitor Issue**²⁷

4 On or about April 11, 2014, Finley requested that the METCO bus monitor cover
5 her efficacy groups at Harrington because she was not available and she believed it
6 was important for the children to still have time to get together. She left instructions for
7 the bus monitor to read a story and have the children share stories and draw a picture.
8 Mead learned about this before the groups occurred and contacted Nobles about it, who
9 told Finley that she could not have the bus monitor cover the groups. Mead did not
10 want the children missing class to have the bus monitor read a story, as the bus monitor

²⁶ Mead testified that the meeting was not as collaborative as she would have liked because Finley did not move the conversation forward. She further testified that there was a period of tension and misunderstanding when Finley provided materials to the curriculum chair, as there was a sense that Finley was providing the materials because of things that she felt were missing in the curriculum. Finley described the discussion as “tenuous,” and explained that she was trying to help the teachers understand how much of an emotional effect the curriculum would have on the children. Although the Association argues that Mead’s testimony about the problems with the meeting was “quite surprising” as compared to the observation report, Mead does reference in her report that such conversations can be challenging, and that asking questions to understand the teachers’ perspective is a good place to start. Further, although Finley’s choice of words in describing the meeting as “tenuous” is a bit confusing, the totality of her testimony about the meeting, in addition to her demeanor, convinces me that there were at least moments where the meeting was difficult.

²⁷ Mead also described an incident where Finley did not report that a METCO child was being bullied on the bus. Because school officials took no further action after they learned of the situation, I decline to credit the School Committee’s assertion that Finley should have taken any different action.

1 had other responsibilities²⁸ and did not have the appropriate professional
2 qualifications.²⁹

3 **Section 51A Situation**

4 As a LICSW, Finley is a mandated reporter under M.G.L. c. 119, c. 51A (Section
5 51A) and is thus familiar with the statute's requirements.³⁰ In her position as METCO
6 Social Worker, Finley was required to report suspected abuse or neglect to the school's
7 principal or assistant principal.

8 On a Friday morning, a student reported potential abuse to Finley.³¹ At some
9 point during the school day, Finley tried to contact Trach about it, but she was told that
10 Trach and the assistant principal were in meetings all day and were not available.
11 Finley therefore left a message that she needed to speak with Trach about an issue, but

²⁸ The bus monitor also supervises children at breakfast and lunch.

²⁹ On rebuttal, Finley testified that she requested that the bus monitor take her groups because she had done so before. When cross-examined during her rebuttal, she added that Mead told her to have the bus monitor cover her group in the past. However, I do not credit this testimony because Finley did not testify to this during her direct or cross-examination although it would have been an important point to make. Further, given Mead's credible testimony regarding her objection to this, I do not believe that she had previously instructed Finley to have the bus monitor cover her group.

³⁰ I take administrative notice that Section 51A requires that mandated reporters immediately report suspected child abuse or neglect to the Massachusetts Department of Children and Families.

³¹ No witness identified the date on which this occurred. When questioned on cross-examination, both Trach and Nobles testified that they believe it occurred before they made the decision not to renew Finley, although neither was definitive. Finley did not state when the event occurred during her direct or cross-examination, nor did she rebut the testimony of Nobles or Trach during her rebuttal. I therefore find that this event occurred prior to the meeting in which it was decided that Finley would not be renewed.

1 did not tell anyone that there was an allegation of child abuse. A little after 4PM, Finley
2 met with Nobles and told her about the potential abuse, and that Trach was in meetings
3 all day so she had left her a message. Nobles informed Finley that she had to interrupt
4 Trach's meeting because she had to inform her of the potential abuse.³² However, the
5 child went home for the weekend and Trach did not learn about the situation until the
6 following Monday.³³

7 **Meeting Between Finley, Nobles, and Mead**

8 In January 2014 or later, Mead asked Nobles to join a meeting with Mead and
9 Finley.³⁴ Mead felt that Finley was not receiving her messages because she did not see
10 Finley implement any of her suggestions.³⁵ She believed that they could also discuss

³² Although Trach was in meetings, she was in the building all day.

³³ Finley's testimony on this subject was at times defensive and evasive, continuing to insist that Trach was not available, but offering no explanation as to why she did not make someone aware that there was a potential abuse issue that Trach needed to address. When questioned about whether she left the message for Trach on the main school number, she responded that she was not sure and "I left a message, I believe, for Principal Trach." Nor did she specifically state when she left the message for Trach, other than "[i]t was before the end of the day." In addition, she did not offer any explanation as to whether she tried to reach Trach again after speaking with Nobles, or whether she did anything further at all.

³⁴ The record does not indicate the exact date of this meeting, although Nobles recalled that it occurred after she returned from her leave of absence, which was in January 2014.

³⁵ For example, Mead made suggestions regarding confirming check-ins with teachers, but Finley did not make any changes.

1 with Nobles whether the suggestions were good, and that Nobles could assist in getting
2 the message to Finley to help improve her performance.³⁶

3 Prior to the meeting with Mead, Nobles spent over an hour with Finley explaining
4 that she had to understand what each principal's expectations were of her, and that she
5 had to meet those expectations.³⁷

6 **Incident with Glick**

7 Prior to Finley's formative assessment, Anton learned from the educational team
8 supervisor that Finley had spoken loudly and disrespectfully to Glick in front of office
9 staff. In response, Anton spoke with Nobles and Finley to advise Finley that this was
10 not an appropriate way to interact.³⁸

11

³⁶ Finley's testimony was particularly confusing, and even evasive, when questioned about this meeting on cross-examination to her rebuttal. For example, she claimed that the meeting was about her "work" and not her "work performance," even after admitting that they discussed why she had not attended a meeting. She also responded vaguely and inconsistently when asked if it was a regular occurrence for Nobles to attend meetings with her and Mead or other principals.

³⁷ Nobles also credibly testified that this was an example of a time she had difficulty communicating with Finley because "Finley took it more of people saying she wasn't doing her job and she just, we spent well over an hour just trying to work through that...". In addition, Nobles considered Finley's weakness to be her difficulty in seeing others' perspectives when working with colleagues, and that made it challenging for her "to help move them along if they needed to be moved along or for her to be able to meet them in the middle if there was a need for compromise." I find Nobles testimony about Finley particularly illustrative of the difficulty Finley had receiving criticism, which Finley also at times demonstrated at hearing.

³⁸ Although this incident is based on double hearsay, Finley did not deny that Anton spoke to her about the incident or that the incident occurred. I therefore credit Anton's testimony.

1 Goals and Evaluations**2 Goals**

3 Finley worked with Crowder to develop goals for her position. Her student
4 learning goals included: “[i]dentify all students in the METCO program DRA
5 [Developmental Reading Assessment]³⁹ reading level at beginning of academic year.
6 Identify all students in the METCO program and show academic progress toward
7 proficiency.” Her professional practice goals included: “collect and make available
8 resources related to culturally relevant issues; provide workshop on strategies which
9 may be effective when working with students in the METCO program; provide research-
10 based information on the important cultural differences related to Racial Identity
11 Development.”

12 Formative Assessment

13 Finley’s supervisors completed her formative assessment in early February 2014,
14 and Finley signed it on February 27, 2014. Anton prepared the assessment after

³⁹ The DRA are reading scores.

1 gathering input from Colella, Mead, Nobles, and Glick. Ash also reviewed the
2 assessment before it was finalized.⁴⁰ The assessment provided in relevant part:

3 **Progress Toward Student Learning Goal(s)**

4 **Describe current level of progress and feedback for improvement.**

5 Ms. Finley's student learning goal concerns the examination of DRA data
6 for METCO students. To date you have not provided evidence of the work
7 that you are doing toward the proficiency in this goal.⁴¹ It will be important
8 to talk with each of the principals that you work [with] in regard to this goal,
9 the specifics of how you will share the outcomes that you discover with
10 each building and any help you or the METCO department might need in
11 accessing data. I recommend that you and Ms. Crowder plan a common
12 reporting tool across the six buildings so that you are providing similar
13 information and comparable data. ...

⁴⁰ Ash testified that it was unusual for him to review the formative assessment of a NPTS teacher, but he reviewed Finley's because he wanted to be sure that they were doing everything that was proper, ethically and legally, and to make sure that Finley was treated fairly by the district. Although the Association attempts to discredit Ash's explanation by arguing that his testimony on this point was "muted and reluctant," I find this testimony credible, as it is likely that Ash would be concerned with handling things properly after finally resolving Finley's grievance and other associated issues, including Finley's accusation against Colella. Additionally, Ash told the evaluators to expect a response from Finley to the assessment. Although the Association characterizes this as "underscoring his disdain for [Finley's] willingness to grieve unjustified criticism of her performance," I find that Ash's expectation supports his concern with handling the formative assessment properly.

⁴¹ At the beginning of the year, Finley got the initial DRA numbers on her students at Bowman and Bridge. She did not get the numbers for her students at Harrington. During the school year, she tracked her students' reading progress "in terms of how they were reading and when they were reading," but not by using the DRA. Finley testified that this was because Nobles determined that she needed a more social work-focused goal, and the DRA was more of an educator goal. After a discussion with Finley, Anton offered her an instrument she could use to look at motivation around reading to assess children's attitudes toward reading, rather than simply looking at children's reading levels.

1 Recommendations

- 2
- 3 - Develop a common reporting form including student data with Ms.
4 Crowder.⁴²
- 5 - Meet with each principal to report on the work that you are doing in this
6 area.⁴³
- 7 - Report out at each school's data team on the results of your work in
8 this area (successes and concerns).
- 9

10 **Progress Toward Professional Practice Goal(s)**

11 **Describe current level of progress**

12

13 Ms. Finley has a professional practice goal that includes providing information
14 and support to teachers and buildings on developing cultural proficiency and on
15 strategies that might be effective with students from Boston. This goal includes
16 both informal informational sharing and workshops with teachers and
17 administrators.

18 To date you have made some progress toward this goal as evidenced by your
19 work in the following areas:

- 20
- 21 - Presentation with Ms. Nobles and Ms. Crowder at Bridge around the
22 METCO program.
- 23 - Work with individual teachers around behavioral management.
- 24 - Participation in the Culture and Learning faculty discussions and
25 lecture series at Bowman.
- 26 - Participation in the district-wide Social Studies Curriculum Review and
27 in conversations with fifth grade teachers and Ms. Hundley about the
28 challenges teaching about slavery poses for students of African
29 American descent.

⁴² Finley worked on a common reporting form with Crowder, but did not complete it. Anton acknowledged that the Association contended that Finley and Crowder had developed a common reporting form at the grievance meeting on Finley's non-renewal, but she did not follow-up on this with Crowder.

⁴³ Finley testified that she met with the principals at least once a week to discuss where she was in achieving her goals, and that she documented the meetings. As explained below in footnote 53, I find that Finley met with Mead approximately once per week, but met with Anton and Trach less frequently.

1 Commendations

- 2
- 3 - Your passion, understanding and knowledge-base on the impact that
 - 4 culture and ethnicity [have] on student experience is extensive and is a
 - 5 great asset to us all.
 - 6 - Your willingness to have the hard conversations is acknowledged and
 - 7 appreciated.
 - 8 - Your work to begin to share efficacy work with teachers.
 - 9 - Your ability to correct areas of concern when brought to your attention.

10

11 Recommendations

- 12
- 13 - At times your passion can result in the delivery of a message that is
 - 14 strong and feels intimidating to the receiver. We recommend that you
 - 15 explore ways to examine where the individuals you are interacting with
 - 16 are in their own development and understanding of the topic, and that
 - 17 you adjust your delivery to better meet people where they are. We
 - 18 believe that in this way you will be better able to coach people to share
 - 19 your understandings.
 - 20 - We encourage you to establish faculty time at each building to share
 - 21 the language of the efficacy work you are doing with ALL teaching
 - 22 staff.⁴⁴
 - 23 - We encourage you to meet with each building principal to lay out your
 - 24 hoped for plan for achieving your Professional Practice goal and to
 - 25 discuss with each principal the kinds of outreach and activities that you
 - 26 hope to accomplish before the end of the year, as well as your longer
 - 27 range goals.

28

29 The next section of the evaluation addresses four standards: Curriculum,

30 Planning and Assessment; Teaching All Students; Family and Community Engagement;

31 and Professional Culture.

⁴⁴ Finley did not establish faculty time in each building to share the language of efficacy work because time did not permit.

1 **Performance on Each Standard (describe performance and feedback**
2 **for improvements)**

3 **I: Curriculum, Planning, & Assessment**

4
5 ...

6
7 Observed evidence includes:

- 8
9 - Establishing effective check-ins with students.
10 - Working with a range of students in a short period.
11 - Establishing warm rapport with students.
12 - Providing clear expectations.
13 - Your first grade efficacy group demonstrated the most specific and
14 planned content and use of goal setting.

15
16 Recommendations:

- 17
18 - Establish a lesson plan and goal for each lunch and efficacy group to
19 make the most of the short time that you have (explicit teaching,
20 setting objectives).
21 - Set goals for the students that you are working with (both individually
22 and in small group).
23 - Establish a reporting system that is consistent across schools for
24 sharing with each teacher and administration (student goal setting,
25 teacher communication).
26 - Provide information for data teams on student needs in person or in
27 writing (if you are not able to attend data meetings).

28
29 **II: Teaching All Students**

30
31 ...

32
33 To date you have demonstrated a strong understanding of:

- 34
35 - Ways to create a safe learning environment for students.
36 - Student behavioral needs and individualized planning for these needs.
37 - Anecdotally we have seen both evidence of strong collaboration with
38 teachers at some buildings, and less consistent effective collaboration
39 with teachers at others.
40 - Effective use of the efficacy language with children (what it takes to get
41 smarter and smarter – Obs#3).
42 - The affirmations uploaded to evidence are useful and appreciated.

1 helping parents come back to the table to have open and honest
2 conversations about race and racism is to be greatly admired. ...
3

4 Harrington:

5 Outreach to families encourages family participation and supports
6 partnerships with school.
7

8 Bridge:

9 Ms. Finley continues to work on advocating for student needs and being
10 proactive in reaching out to families.
11

12 METCO – Ms. Nobles:

13 Ms. Finley is a strong student advocate, putting the needs of the students
14 first. METCO parents are clearly developing a trusting relationship with
15 Ms. Finley and see her as a resource. ...
16
17

18 **IV: Professional Culture**
19

20 This is an area in which each principal and Ms. Nobles would like to see
21 additional progress. It is expected that Ms. Finley be able to establish
22 herself in each building as a resource for staff, working on establishing
23 positive, professional relationships. ...
24

25 At times Ms. Finley has been hard to reach or has conflicting meetings
26 scheduled.⁴⁷ With three schools and the METCO department to schedule,
27 Ms. Finley needs to be many places at the same time.⁴⁸ Ms. Finley is
28 encouraged to consider a technical solution to some of these questions
29 about where she needs to be. One area to consider with each principal is
30 which faculty meetings during the year they wish for her to attend. ...
31

32 Ms. Finley is a beginning METCO Social Worker with a long history in the
33 district. She brings a great knowledge base to the position, and the
34 position is new to her. In this position as both experienced in Lexington
35 and brand-new in this particular position and to METCO across three

⁴⁷ Weeks after her transfer, Finley advised Neufeld that all three principals were making comments to her about her performance, specifically not attending data team meetings, the number of meetings she had with the principals, and “knowing the kids.”

⁴⁸ At some point, Mead offered organizational suggestions to Finley because she was concerned with her organization around serving three schools with multiple demands and multiple case loads.

1 buildings, she is strongly encouraged to seek clarification or information
2 when she does not understand or know a procedure, expectation, or
3 aspect of the job or program.

4
5 Recommendations:
6

- 7 - Ms. Finley would benefit from checking in with colleagues with whom
8 she is working to ensure that effective communication is taking place
9 (i.e., paraphrasing what she thinks she has heard, summarizing action
10 steps, asking the other party to share what they understand).
11 - Reflect on the challenge of intent vs. impact, and how cultural styles of
12 speaking are a factor for all human communication. Understand that
13 when styles conflict, misunderstanding is common.
14 - Consider strategies for walking away or otherwise handling situations
15 when angry or upset so as to not inadvertently appear unprofessional.
16 - Establish a calendar to ensure that meetings are not double booked.
17 Check the district calendar and ask for clarification if unsure which
18 meeting she needs to attend. One technical solution to locating Ms.
19 Finley in the district might be to have a shared calendar on the
20 FirstClass desktop. In this way when meetings change or
21 emergencies arise, changes could be logged. This is similar to what
22 math coaches do.⁴⁹
23

24 Finley did not add any responsive comments to the formative evaluation.

25 Summative Assessment

26 Finley's summative assessment mirrors the format of the formative assessment,
27 and includes some recommendations and observations from the formative to discuss
28 progress.⁵⁰ Anton, Mead, Trach, and Nobles contributed to the summative assessment.

⁴⁹ Finley did not implement a shared calendar as suggested because Nobles told her it would be too difficult for her to do. Anton advised her that she should at least email principals when she would not be somewhere as expected. However, Anton explained that Finley was not consistent with this and it was still at times unclear where Finley would be.

⁵⁰ Finley was expected to show progress on her initial goals by the time of the summative assessment.

1 It begins with her progress on her student learning and professional practice goals, with
2 available ratings of “Did Not Meet,” “Some Progress,” “Significant Progress,” “Met,” and
3 “Exceeded.”⁵¹

4 Finley’s evaluators rated her as “Some Progress” on her student learning goal.

5 The comments included, in relevant part:

6 In this first year of establishing student learning goals, Ms. Finley’s goal is
7 an academic one that is less linked to her social worker goal that she
8 might create at this point in time. She has checked in on student progress
9 through her lunch bunches and her efficacy work, however, to date she
10 has not uploaded evidence that reflects on her students’ progress towards
11 this goal. In March the Bowman principal and Ms. Finley discussed the
12 ways in which motivation to read might be a more appropriate focus, as
13 students who report liking to read and seeing the real world value of
14 reading are more likely to read more and persist when reading and writing
15 tasks are difficult Ms. Finley was provided with a “Motivation to Read”
16 survey as a possible tool for beginning to investigate this aspect of reading
17 achievement.

18
19 To date discussion of specific outcomes around the goal and/or student
20 progress (in terms of motivation or academics) have not been held at
21 Bowman, Harrington or Estabrook. No reporting at data team meetings
22 has occurred at Bowman, despite explicit expectation of attendance and
23 participation at these meetings on the days that she is at Bowman. At
24 Bowman, Ms. Finley came late to the data team and left before METCO
25 children were discussed. At Estabrook, Ms. Finley is unaware of METCO
26 student academic or social performance, and depends on the principal to
27 learn about METCO students’ needs.

28
29 In Professional Practice Goals, Finley received a “Significant Progress” rating.

30 The evaluator comments include:

- 31 • To date Ms. Finley has worked diligently to consider both the message
32 that she wishes to convey and the group to which she is speaking. Her

⁵¹ Anton signed the summative assessment on May 15, 2014.

1 willingness to reflect with the Bowman principal and with Ms. Nobles on
2 the ways to share her insights, the developmental needs of differing adults
3 and ways in which she might approach situations has been good.
4

- 5 • To date Ms. Finley has established Efficacy Groups in two out of three
6 buildings. She has not yet made arrangements to share the language of
7 efficacy with the staff at faculty, although she has provided some teachers
8 with efficacy affirmations. Ms. Finley does not have efficacy groups at
9 Estabrook, but expressed to Ms. Trach that she hopes to take all METCO
10 students in grades K-3 next year. Ms. Trach reviewed student
11 performance data for Ms. Finley and recommended a few students Ms.
12 Finley could see for efficacy this spring.
13
- 14 • To date, Ms. Finley has established some ongoing meetings with
15 principals at Estabrook and Harrington. At Bowman she has had difficulty
16 finding time in her schedule to meet (one meeting every 6-8 weeks) and
17 then has canceled some of these meetings due to other things that come
18 up.⁵² At Estabrook, Ms. Finley has had some meetings with Ms. Trach,
19 Estabrook Principal, but these have not focused on student needs, and
20 she is unaware of student performance unless directed by Ms. Trach.⁵³
21

22 The next section includes four standards and the available ratings for each
23 standard are “Unsatisfactory,” “Needs Improvement,” “Proficient,” and “Exemplary.”

⁵² Nobles acknowledged that it is not unusual for METCO staff to have scheduling challenges due to the fact that they work in multiple buildings, which is why communication is so important.

⁵³ Neufeld testified that the Association presented evidence at Finley’s step 2 grievance hearing (concerning her non-renewal) of 15-20 dates that she met with the principals in the Spring of 2014. When asked on cross whether the Association presented evidence that Finley met with her principals and supervisors fairly frequently, Anton testified, “they presented evidence, yes.” Finley herself testified that she met with Trach between 4-6 times, and that she met with Mead about once a week. Finley did not dispute that she only had one meeting with Anton every 6-8 weeks.

1 In the first category of this section, Curriculum, Planning & Assessment, Finley's
2 evaluators rated her as "Needs Improvement."⁵⁴ The comments included:

- 3 • Ms. Finley is demonstrating a growing knowledge of the Efficacy
4 program. She engages small groups in the context of the program.
5 She is encouraged to continue to expand [her] approach to lesson
6 planning to include a focus on key vocabulary and concepts.
7 Developing charts with the students would provide evidence of prior
8 learning and would provide a visual reminder of the big ideas in the
9 lesson or sequence of lessons.
10
- 11 • Ms. Finley's evidence (behavioral check lists, charts and other
12 evidence) suggests that she is creating goals for students in social
13 emotional areas and is using a range of techniques to meet student
14 needs. Reports from individual schools suggest that some students
15 who were previously receiving counseling with the previous METCO
16 Social Worker are not currently being seen for this work. At Estabrook,
17 one student who has been in significant need for counseling, and who
18 had a counseling relationship with the previous social worker, was not
19 seen by Ms. Finley. Ms. Trach had to direct Ms. Finley to see this
20 student for counseling. Another student who was experiencing
21 significant social need was only being seen 1 x 15 min/week. Ms.
22 Trach had to inform Ms. Finley of this student's need and direct her to
23 increase counseling.
24
- 25 • To date, no common reporting system has been shared with principals
26 or teachers to support teacher communication around goal setting. At
27 some schools, Ms. Finley is unaware of student performance in the
28 classroom or the outcomes of data team, until it is brought to her
29 attention. Ms. Finley has not presented evidence of meetings with
30 teachers, where student performance has been discussed.
31

32 In the next category of this section, Teaching All Students, Finley received a
33 "Needs Improvement." The comments highlighted the fact that Finley's work with

⁵⁴ Nobles credibly testified that she believes Finley's strengths are that she has very good classroom management skills, and her ability to work with students and have them be responsive and organized. She also noted that Finley has good clinical skills, but did not specifically describe them.

1 students is “culturally sensitive and motivating for students of color, this is a clear
2 strength that METCO students benefit from” and that she has developed “warm, close
3 relationships with students in some buildings, but in others she is still getting to know
4 students and their families.” The comments also note that teacher affinity groups have
5 not been started, and that efficacy groups are in progress at Bowman and Harrington,
6 but not at Estabrook.⁵⁵ Also, it is noted that “methods for consistently sharing
7 information and communicating across building[s] around student needs have not been
8 established.” The evaluators recommended:

- 9 • While maintaining confidentiality, share with teachers and
10 administrators the goals and objectives of the work you are doing with
11 students and how it is aligned with their desired outcome for students’
12 pro-social growth and/or academic achievement.
- 13 • Collaborate and update teachers on a regular basis regarding the
14 progress of a student.
- 15 • Establish clear indicators to assess students’ cognitive and emotional
16 growth toward goals.
- 17
- 18
- 19

20 In the next category, Family/Community Engagement, the evaluators rated Finley
21 as “Proficient.” The principals of Bowman and Harrington, as well as Nobles,
22 recognized Finley’s strength in this area. Their comments included, “Ms. Finley is
23 available should needs come up at times when she is not at Bowman. Ms. Finley’s
24 support with some extremely volatile family situations ha[s] been much appreciated,”

⁵⁵ Finley worked at Estabrook for approximately 15 – 20 days after her transfer to the school. Within the first few days of working at Estabrook, Finley met with Nobles for about an hour to discuss her expectations at Estabrook. She also shadowed Crowder during the first week of the transfer.

1 "Ms. Finley has established trust among the METCO parent community," and "[Finley]
2 effectively facilitated the small group discussions at our Lexington METCO Parents
3 meeting by engaging parents to participate in the conversation, answering questions
4 and responding in a supportive empathetic way to concerns raised." In contrast, the
5 comments about Finley's performance at Estabrook were more critical, noting that "Ms.
6 Finley does not know the METCO students' parents" and:

7 Recently, Ms. Finley missed a parent meeting for a Boston student who
8 was struggling in school. Both parents came in, but Ms. Finley did not
9 show, leaving the teacher without social work partnership in the meeting.
10 When Ms. Trach asked about why she missed the meeting, Ms. Finley
11 reports leaving a message on the school voicemail midday saying she
12 was not coming.⁵⁶

13
14 Finley was rated a "Needs Improvement" in the last category, "Professional
15 Culture." Her evaluation included positive comments, such as "Ms. Finley has
16 demonstrated greater openness to feedback provided during department and building
17 level supervision by actively engaging in the discussion and not becoming defensive
18 when differing perspectives are being shared or not understood" and "Ms. Finley has
19 implemented recommendations made in supervision and department meetings."
20 However, there are also multiple areas for growth, including:⁵⁷

⁵⁶ Nobles explained that although she had asked Finley to transport students that day, she asked Finley to do so a little early so that she could still attend the meeting, and not in lieu of attending the meeting. Finley first testified on cross-examination that she did not miss the meeting. During rebuttal, after providing confusing testimony claiming that the meeting was not at Estabrook, she eventually admitted that she missed the meeting at Estabrook.

⁵⁷ This section also references the Section 51A issue described above as a concern.

- 1 • An area for growth for Ms. Finley is in reflective practice. Although she
2 has been open to feedback on scheduling and communication, there
3 has been limited evidence that she has used these insights to improve
4 practice at the school level.
5
6 • Ms. Finley serves three schools and many teachers. She has provided
7 limited consultations to classroom teachers.⁵⁸ Her communication
8 across the schools regarding her attendance has been inconsistent.
9
10 • Concerns in regard to Ms. Finley's availability for, attendance at and
11 follow through with expected meetings and direct requests continue to
12 be a concern at the school level. At Estabrook, Ms. Finley did not
13 attend the last data team,⁵⁹ and she recently missed a parent meeting
14 for a Boston student.
15

16 Finley's overall performance rating was "Needs Improvement." The final section on
17 the evaluation, entitled "Rationale, evidence, and feedback for improvement for overall
18 performance" stated:

19 Ms. Finley is in her first full year as a METCO Social Worker. She has
20 been working at the Bowman and Harrington schools since August and
21 the Estabrook school since February in this capacity. Ms. Finley brings
22 great strengths to the position in her understanding of the needs of
23 students from Boston in their adjustment to Lexington, her ability to form

⁵⁸ Anton described a situation in which Ms. Leveque, a classroom teacher, was having difficulty scheduling time with Finley so that they could agree to a behavior plan for a child. They did eventually develop a plan for the student, but only after Leveque consulted with Anton several times to strategize how to get a response from Finley, and how to partner with Finley and the student's parents.

⁵⁹ Finley testified that she did not attend data team meetings at Estabrook because she did not know the schedule. On recross-examination she testified that she later found out that the data team meetings were posted on the Estabrook announcements and that she read the announcements, but did not see the data team meetings posted. However, when questioned on rebuttal about Trach's testimony that all staff members were required to check the Estabrook announcements, Finley testified that she was not made aware of any of the protocols at Estabrook. I do not find Finley's inconsistent attempts to justify missing the meetings credible.

1 close and responsive relationships with students and their families and her
2 desire to share her knowledge base around the ways in which identity
3 develops. Ms. Finley's performance this year has been variable. She has
4 established some strong relationships with students which allows her to
5 support student pro-social and academic growth. With three different
6 schools, four different supervisors and multiple classroom teachers,
7 guidance counselors and special educators to work with, communication
8 and follow-through in meeting student needs and reporting back has been
9 a challenge. Prioritizing and communicating where she will be and who
10 she is working with has been a challenge. Ms. Finley has a great deal of
11 knowledge to share and would benefit by being in one building as she
12 refines this area of her practice. It is the recommendation that she be
13 non-renewed for the METCO Social Worker position.
14

15 **Non-Renewal Meeting**

16
17 On or about April 29, 2014, Anton, Trach, Mead, Nobles, and Ash met to discuss
18 whether to renew Finley's employment for the next school year. They did not discuss
19 Finley's October 2013 grievance at this meeting.⁶⁰ They did discuss their concerns that
20 Finley was not adequately performing her job at all locations, that not all the students
21 were receiving services they needed, that she was not following through and
22 communicating as expected, and that she was not growing based on their
23 recommendations and suggestions throughout the evaluation process. They also
24 considered whether the supervision they could provide the following year would bring

⁶⁰ Each witness credibly testified that they did not discuss the grievance. In addition, Trach testified that she was not aware of the grievance at the time of the non-renewal meeting. When questioned on cross-examination, she explained that although she had been surprised when Finley transferred to Estabrook, she did not know why Finley was transferred, nor did she ask why. Although the Association, through its questioning, attempted to suggest that Trach was not being forthright with her responses about her knowledge of the grievance, I decline to make this finding and instead find Trach's testimony credible, as there is no evidence to suggest that Trach was aware of the grievance.

1 Finley to a proficient level and concluded that it would not. Although Ash made the final
2 decision not to renew Finley,⁶¹ everyone at the meeting agreed that she should not be
3 renewed.⁶² Anton and Nobles advised Finley on May 9, 2014 that her employment
4 would not be renewed. Prior to this, nobody had informed Finley that she was at risk of
5 not being renewed.

Opinion

6 Section 10(a)(3)

7 The Association alleges that the School Committee violated Section 10(a)(3) of
8 the Law by failing to renew Finley's employment. To establish a prima facie case of a
9 violation under Section 10(a)(3), a charging party must show that: 1) the employee
10 engaged in concerted activity protected by Section 2 of the Law; 2) the employer knew
11 of the concerted, protected activity; 3) the employer took adverse action against the
12 employee; and 4) the employer's conduct was motivated by a desire to penalize or
13 discourage the protected activity. Town of Carver, 35 MLC 29, 47, MUP-03-3894 (June
14 30, 2008) (citing Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29,
15 2000)); Commonwealth of Massachusetts, 25 MLC 44, SUP-4128 (August 24, 1998).

16 The School Committee does not dispute that Finley's non-renewal was an
17 adverse action, that she engaged in protected, concerted activity, or that it knew of her

⁶¹ In accordance with M.G.L. c. 42, the decision whether to renew an educator that works at multiple sites is to be made by the superintendent. The decision whether to renew an educator that only works at one site may be made by the building principal.

⁶² Ash, Anton, Mead, Trach, and Nobles all credibly testified to this.

1 protected activity. Rather, it argues that her non-renewal was not motivated by her
2 protected activity.

3 To support a claim of unlawful motivation, the last element of the Association's
4 prima facie case, a charging party may proffer direct or indirect evidence of
5 discrimination. Lawrence School Committee, 33 MLC 90, 97, MUP-02-3631 (December
6 13, 2006) (citing Town of Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002),
7 aff'd sub nom., Town of Brookfield v. Labor Relations Commission, 443 Mass. 315
8 (2005)). Direct evidence is evidence that, "if believed, results in an inescapable, or at
9 least a highly probable inference that a forbidden bias was present in the workplace."
10 Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass.
11 655, 667 (2000) (quoting Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300
12 (1991)).

13 Unlawful motivation also may be established through circumstantial, or indirect,
14 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35
15 MLC at 48 (citing Town of Brookfield, 28 MLC at 327-328). Several factors may
16 suggest unlawful motivation, including the timing of the alleged discriminatory act in
17 relation to the protected activity, triviality of reasons given by the employer, disparate
18 treatment, an employer's deviation from past practices, or expressions of animus or
19 hostility towards a union or the protected activity. Town of Carver, 35 MLC at 48 (citing
20 Melrose School Committee, 33 MLC 61, 69, MUP-02-3549 (September 27, 2006));

1 Cape Cod Regional Technical High School District Committee, 28 MLC 332, 335, MUP-
2 2541 (May 15, 2002); Bristol County, 26 MLC 105, 109, MUP-2100 (January 28, 2000).

3 **Direct Evidence**

4 In this case, there is direct evidence that the School Committee was unlawfully
5 motivated when it did not renew Finley's employment.⁶³ Specifically, as described
6 above, I found Ash's comments to Neufeld and Finley questioning how Finley could be
7 expected to be hired the following year and be effective in her role "if she persisted" to
8 be, in part, referring to Finley's grievance.⁶⁴ See, City of Easthampton, 35 MLC 257
9 MUP-04-4244 (April 23, 2009) (statements such as "you are a new employee and you
10 are already putting in a grievance? I am the one who decides who gets a job around
11 here. You are not going to get this job..." constitute direct evidence of anti-union
12 animus); Town of Brookfield, 28 MLC 320, 328, MUP-2538 (May 1, 2002) (selectman's

⁶³ In my ruling on the School Committee's Motion to Dismiss, I found that the Association had established a prima facie case of discrimination by providing indirect evidence of improper motivation. Upon further consideration, I have also found that the Association met the higher burden and established direct evidence of discrimination.

⁶⁴ As discussed above, I have concluded that Ash's comments also referred to Finley's accusation that Colella was a racist, which the Association has not alleged was protected activity. Although I find that Ash's comments constitute direct evidence of retaliation because they are, in part, referring to Finley's grievance, I also must note that Ash's statements that the racism accusation "elevated the issue," and that he had a duty to investigate, strongly suggest that the racism accusation played a large part in his negative reaction to the grievance. I am not convinced that he would have had the same reaction to the grievance standing alone.

1 statement that unions were trouble and employee might not be around to enjoy a union
2 directly evidences anti-union animus).⁶⁵

3 **Legitimate Reason**

4 Because the Association has established through direct evidence that a
5 proscribed factor played a motivating part in the challenged, adverse employment
6 action, the burden shifts to the School Committee to show that its legitimate reason,
7 standing alone, would have induced it to make the same decision. Wynn v. Wynn, 431
8 Mass. at 666; City of Easthampton at 265.

9 The School Committee contends that it made the decision to not renew Finley
10 solely because of her work performance.⁶⁶ Specifically, it notes that Finley was rated as
11 “Needs Improvement” on her summative assessment with regard to Curriculum,
12 Planning, and Assessment; Teaching All Students; and Professional Culture, and that
13 she received an overall rating of “Needs Improvement.” It further contends that five
14 different supervisors documented her deficiencies in her ability to engage students,
15 utilize data to benefit students, effectively communicate with colleagues about her
16 students, demonstrate proper organizational skills, exercise appropriate professional

⁶⁵ The Association argues that even if Ash’s statements referred to Finley’s refusal to accept criticism, as he contends, they are still direct evidence of anti-union animus because Finley refused to accept criticism by filing a grievance, which is protected activity. Because I find that Ash’s statements were referring to Finley’s grievance, it is not necessary to consider this argument.

⁶⁶ In its brief, the School Committee explains that Finley’s NPTS status gave the School Committee wide latitude with regard to personnel decisions, such as non-renewal. Finley’s NPTS status is irrelevant to the issue of whether the School Committee failed to renew her because of her protected activity, so I will not address this argument further.

1 judgment when communicating with colleagues, and reliably attend meetings. The
2 School Committee also argues that certain actions were so egregious that they alone
3 could have provided a basis for her dismissal, specifically, her failure to timely notify
4 Trach of potential child abuse and her request that a METCO bus monitor cover her
5 METCO classes. For the following reasons, the School Committee's arguments have
6 persuaded me that it would have not renewed Finley's employment because of her
7 deficient work performance, standing alone.

8 Although there is no dispute that Finley developed good relationships with her
9 students and their families, the School Committee established that her performance was
10 lacking in other important aspects of her job. Much of this evidence Finley and the
11 Association attempted to explain, excuse, or recharacterize, but did not outright dispute,
12 such as her meeting with Mead and Nobles about her communication difficulties with
13 Mead, her failure to attend a parent meeting or data team meetings at Estabrook, the
14 bus monitor issue, and the Section 51A issue. Further, Finley's testimony and
15 demeanor at the hearing evidenced that she had difficulty acknowledging some of her
16 weaknesses and would instead at times provide explanations that were not credible.
17 Despite the Association's argument that none of Finley's observation reports gave any
18 indication that she was at risk for non-renewal, many of her weaknesses were in areas
19 that would not be observed while she was conducting a class. Therefore, the fact that
20 her observation reports were more positive than her formative and summative
21 assessments is not evidence that Finley's *overall* performance in a position that

1 involved much more than instructing students was acceptable.⁶⁷ There is also no
2 record evidence that Finley was “developing a strong job performance record as a
3 METCO Social Worker” before the grievance, as the Association contends, where the
4 only evidence of Finley’s performance before the grievance was her first observation in
5 October 2013.⁶⁸ The record does, however, provide ample evidence of Finley’s
6 difficulties in the position. The following are the primary areas where Finley’s
7 performance was deficient.

8 Utilizing Data

9 After Mead’s November 20, 2013 observation of Finley, Mead suggested that
10 Finley create a form to collect data from the teachers so she could link it to her student
11 check-in data to create feedback loops for teachers and students. Although Finley
12 created a form to collect information that students provided, there is no evidence that
13 she created a form to collect data from the teachers.

⁶⁷ Notably, four out of five of Finley’s so-called positive observations occurred after her protected activity of filing the grievance. This indicates that Finley’s supervisors were not attempting to create pre-textual reasons for discriminating against her, but rather were honestly evaluating her during these observations.

⁶⁸ The Association attempts to link much of the Schools Committee’s alleged retaliation to the parties’ *resolution* of the grievance in February 2014, which coincides with the formative assessment and the beginning of Finley’s supervisors’ criticism of her performance, rather than Finley’s actual filing of the grievance in October 2013. For example, it notes in its brief that the “radical turn in the Respondent’s opinion of Ms. Finley’s job performance in precise coincidence with the resolution of a grievance the Superintendent obviously found distasteful is clear evidence of the Respondent’s discriminatory motive.” However, I must consider all of the School Committee’s actions after the protected activity of filing the grievance, and not just what happened after the parties settled the grievance. It is also worth noting that an employer may view the initial filing of a grievance more negatively than the grievance settlement.

1 In addition, Finley's formative assessment of February 2014 recommended that
2 she develop a common reporting form including student data with Crowder. In her
3 summative assessment, approximately three months later, it is noted that "no common
4 reporting system has been shared with principals or teachers." Although there is
5 evidence that Finley worked on a form with Crowder, she did not complete it.

6 Organization/Meetings

7 It is clear that Finley's supervisors were not happy with her infrequent attendance
8 and participation in data team meetings. For example, her summative assessment
9 states that no reporting at data team meetings had occurred at Bowman despite explicit
10 expectations of attendance and participation at the meetings. Finley also did not attend
11 data team meetings at Estabrook. She attempted to justify this at the hearing by
12 claiming that she did not know when the meetings were held, but the School Committee
13 established that the meetings were reported in the school announcements, which Finley
14 admitted she read.

15 The principals also expressed to Finley that they did not always know where she
16 was and that she was not responding to emails. Mead at one point offered guidance to
17 Finley because she was concerned with her organization around serving three schools.
18 In addition, it is noted in her formative assessment that at times she had been hard to
19 reach or had conflicting meetings scheduled. It was suggested that she establish a
20 calendar to make sure that she is not double booked, and check the district calendar
21 and ask for clarification if she is unsure which meetings she needs to attend. However,

1 despite these suggestions, Finley's summative assessment evidences that the
2 principals still had concerns with her attendance and communication about her
3 attendance. There is no evidence that Finley attempted to implement her supervisors'
4 suggestions, or that she sought further guidance.

5 A specific meeting that Finley missed was with the parents of an Estabrook
6 METCO student and the student's teacher, which left the teacher without social work
7 support at the meeting. Finley's testimony at hearing about this meeting is an example
8 of her testimony being confusing and/or not completely forthright, as she first claimed
9 that she did not miss the meeting, but eventually admitted that she did miss the
10 meeting, but did not offer any explanation. In its brief, the Association argues that
11 Nobles gave testimony that clarified that Finley was absent from the meeting because
12 Nobles had instructed Finley to transport a student while the meeting was being held.
13 This is inaccurate. Rather, Nobles testified that although she had asked Finley to
14 transport students that day, she asked Finley to do so a little early so that she could still
15 attend the meeting, and not in lieu of attending the meeting.

16 Communication with Colleagues and Supervisors

17 One of the main areas of the School Committee's concern was Finley's
18 communication with colleagues and principals. The School Committee provided several
19 credible examples of instances in which Finley demonstrated difficulty in interactions
20 with others. One example is when Anton was told that Finley had spoken loudly and
21 disrespectfully to Glick in front of office staff.

1 Mead established that she was also having difficulty communicating with Finley,
2 and felt that Finley was not receiving her messages, so she asked Nobles to attend a
3 meeting between her and Finley. Nobles very credibly testified that she had spent over
4 an hour explaining to Finley that she had to understand each principal's expectations
5 and meet those expectations. I find that Nobles, more than any other School
6 Committee witness, was able to succinctly describe much of Finley's problems,
7 specifically, that she had difficulty in seeing others' perspectives because she "took it
8 more of people saying she wasn't doing her job." Clearly, a position that is supervised
9 by four different people, and interacts with many more, must have the ability to see
10 others' perspectives without becoming defensive or disregarding those perspectives.

11 In the Professional Culture standard of Finley's formative assessment, it stated
12 that it was expected that Finley establish herself in each building as a resource for staff.
13 The recommendations included reflecting on the challenge of how cultural styles can
14 conflict and lead to misunderstanding, as well as considering strategies to handle
15 situations so as not to appear unprofessional. Despite this expectation being spelled
16 out in her formative assessment, the rating on Finley's summative assessment for this
17 standard is "Needs Improvement." Although the narrative includes positive comments,
18 there are still many areas for growth in her communication across schools. On one
19 occasion, a classroom teacher, Ms. Leveque, had difficulty scheduling time with Finley
20 to develop a behavior plan for a student and had to strategize with Anton on how to get
21 a response from Finley.

1 Bus Monitor Issue

2 Mead established that it was very inappropriate for Finley to request that a
3 METCO bus monitor cover her efficacy groups because the bus monitor did not have
4 the professional qualifications to do so. As explained above, I do not credit Finley's late
5 attempt to claim that Mead had previously told Finley to have the bus monitor cover her
6 groups.

7 Chapter 51A Issue

8 Finley's handling of the Chapter 51A incident is arguably the most concerning of
9 all the areas with which the School Committee took issue.⁶⁹ Finley admitted that the
10 student reported possible abuse to her on a Friday morning, yet the student went home
11 for the weekend with no action being taken. Finley did not take the appropriate steps to
12 address the situation, such as ensuring that Trach's meetings were interrupted for an
13 issue involving potential abuse. She did not even tell anyone why she was trying to
14 reach Trach until she finally notified Nobles at the end of the day. Even after Nobles
15 directed Finley to interrupt Trach's meeting, there is no evidence that Finley did
16 anything further.

17 The Association argues that "Ms. Finley explained in detail the steps she took to
18 report the possible instance of neglect or abuse of an Estabrook student, and how what
19 she did was consistent with District policy and state law, and Ms. Nobles confirmed her

⁶⁹ Although the School Committee argued that both this and the bus monitor incident would each have been reasons for termination under M.G.L. c. 71, Section 42, there is no record evidence concerning this and I therefore do not consider this argument.

1 account,” and that if the School Committee wants to impose a more detailed reporting
2 requirement, it may do so only after bargaining to impasse or agreement. First, the
3 issue of whether the School Committee bargained its reporting requirements is not
4 before me. Second, Finley testified that she was required to tell a principal or assistant
5 principal about the suspected abuse. There is no evidence that simply leaving a vague
6 message with her principal was consistent with District policy or state law. And third,
7 even common sense dictates that when a student reports possible abuse in the
8 morning, it is, at minimum, unreasonable to wait until 4:00 to actually speak to a
9 supervisor about the situation, and then not follow through with the supervisor’s
10 instructions. Finley’s actions show a serious lack of judgment. Further, her testimony
11 and evasiveness at the hearing show that she is unwilling to acknowledge that she did
12 not handle the situation properly.

13 **Supervisors’ Credibility**

14 The Association attempts to discredit the School Committee’s legitimate
15 concerns by insisting that Ash made the decision in February 2014 that Finley would not
16 be renewed and somehow non-verbally communicated that decision to Finley’s
17 supervisors by his involvement in reviewing the formative assessment, which was
18 “extremely prejudicial” and implied that Ash considered Finley a “*persona non grata*.”
19 As a result, Finley’s supervisors knew they had to create reasons to fault Finley
20 regardless of their independent judgment. The fatal flaw in the Association’s argument,
21 however, is that I would have to be convinced that Finley’s four supervisors either 1)

1 conspired to not renew her because of her grievance, or 2) each independently created
2 pre-textual reasons for her non-renewal because of her grievance. There is no
3 evidence that either of these scenarios occurred. In fact, each supervisor credibly
4 testified that they did not discuss the grievance at the non-renewal meeting, and each
5 credibly explained their reasons for the decision.⁷⁰

6 According to the Association, Finley's supervisors' testimony regarding the
7 reasons for non-renewal was inconsistent, which is an obvious signal that the reasons
8 were pretextual. In fact, each supervisor's testimony was different because they each
9 had their own reasons for concluding that Finley should not be renewed based on their
10 own individual experiences with her.

11 The Association attempts to overcome the fact that Trach did not even know
12 about the grievance by arguing that she still somehow knew that because Ash
13 transferred Finley, it meant that Finley "was in the Superintendent's proverbial dog
14 house and should be regarded as such." Further, it contends that the fact that Ash did
15 not explain to Trach the reasons for transferring Finley leads "to the unavoidable
16 conclusion that the [School Committee] was motivated by anti-union animus to ensure
17 Ms. Finley's non-renewal...". The Association's theory would essentially require that
18 Trach could read Ash's mind, and is too implausible to be persuasive.

⁷⁰ Nobles, Anton, Mead, and Trach each offered consistent testimony that they did not discuss the grievance at the non-renewal meeting, even though they were sequestered during the hearing.

1 The Association is also critical of the fact that Trach actively participated in the
2 decision not to renew Finley since she only supervised her for a short time and did not
3 conduct any formal observations.⁷¹ However, Trach's issues with Finley included her
4 failure to attend data team meetings, missing a meeting with a student's parents, and
5 her handling of the Section 51A issue. Although these job duties are not part of an
6 observation, they are nevertheless important aspects of Finley's position. Further,
7 although Finley only worked at Estabrook for a relatively short period of time, these
8 were serious issues and Trach was appropriately concerned about Finley's performance
9 deficiencies in those areas. It is also appropriate for the School Committee to include
10 Trach in the decision-making process as she was one of Finley's current supervisors
11 and had knowledge of her performance.

12 With regard to Mead, the Association argues that her testimony about areas in
13 which Finley needed to show improvement in teaching evidences that her reasons are
14 pre-textual as they are not contained in her observation report. While I agree that
15 Mead's observation does not reflect her testimony on this point, her concerns about
16 Finley were not limited to her teaching ability. Contrary to the Association's argument
17 that Mead testified that her concerns about Finley's job performance related to
18 instruction, and not her communication skills, Mead actually testified that she also had
19 concerns that Finley was not receiving her messages because she was not

⁷¹ The Association also notes that Colella, who supervised Finley for over 1½ years, did not testify. I do not make any inference based on the School Committee's failure to call Colella as a witness as there is no evidence that she took part in the decision not to renew Finley.

1 implementing any of her suggestions. Because of these concerns, she included Nobles
2 in a meeting with Finley in order to better communicate with Finley.

3 The Association further contends that Nobles' demeanor while testifying and the
4 substance of her testimony suggests she had misgivings about not renewing Finley's
5 employment. In fact, Nobles' testimony and demeanor at the hearing were instrumental
6 in my conclusion that the School Committee's reasons for non-renewal were legitimate
7 and not improperly motivated. Nobles was very direct and matter of fact in her
8 demeanor. Although she did testify that Finley was strong in her relationships with
9 students and families, she also credibly testified that Finley was "not a good fit," and that
10 Finley's supervisors could not give her the support she needed in order to become
11 proficient in the areas of concern. Further, as explained above, Nobles' testimony about
12 her meeting with Finley regarding Finley's difficulty in seeing others' perspectives clearly
13 illustrates the difficulty in communication between Finley and the principals.

14 Based on the totality of the evidence presented, I conclude that the School
15 Committee had legitimate concerns with Finley's performance, which is the only reason
16 it did not renew her employment.⁷² While her supervisors readily admitted that Finley
17 did have her strengths, especially in her relationships with the students and parents,
18 they concluded that they could not give her the supervision she would need to become

⁷² The Association argues in its brief that the School Committee's objection during the Association's opening statement at hearing shows its "consciousness of guilt." As I explained to the parties at hearing, opening statements are not evidence and I will not consider them as such.

1 proficient in the areas in which she was deficient. In that regard, I find the following
2 description of Finley's overall performance in her summative assessment to be a
3 concise summary of the School Committee's reasons for non-renewal:

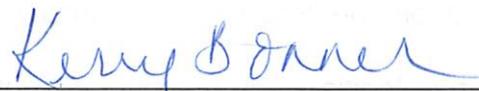
4 Ms. Finley's performance this year has been variable...[w]ith three
5 different schools, four different supervisors and multiple classroom
6 teachers, guidance counselors and special educators to work with,
7 communication and follow-through in meeting student needs and reporting
8 back has been a challenge. Prioritizing and communicating where she will
9 be and who she is working with has been a challenge. Ms. Finley has a
10 great deal of knowledge to share and would benefit by being in one
11 building as she refines this area of her practice.

12
13

Conclusion

14 Based on the record and for the reasons explained above, the School Committee
15 did not violate Sections 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by failing
16 to renew Finley's employment.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KERRY BONNER, ESQ.

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.02(1)(j), and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within the ten days, this decision shall become final and binding on the parties.