

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

In the Matter of	*	
	*	
LEXINGTON SCHOOL COMMITTEE	*	Case No. MUP-14-3961
	*	
and	*	Date Issued: February 29, 2016
	*	
LEXINGTON EDUCATION ASSOCIATION	*	
	*	

Board Members Participating:

Marjorie F. Wittner, CERB Chair
Elizabeth Neumeier, CERB Member
Katherine G. Lev, CERB Member

Appearances:

Colby C. Brunt, Esq. - Representing Lexington School Committee
Ryan Dunn, Esq. - Representing Lexington Education Association

CERB Decision on Review of Hearing Officer's Decision

1 On October 19, 2015, a duly-designated Department of Labor Relations (DLR)
2 Hearing Officer dismissed a complaint alleging that the Lexington School Committee
3 (School Committee or Employer) had violated Sections 10(a)(3) and, derivatively,
4 Section 10(a)(1) of Massachusetts General Laws Chapter 150E (the Law) by failing to
5 renew Julia Finley's (Finley) appointment as a social worker in the Lexington public
6 schools in retaliation for her filing a grievance concerning a letter of expectation she

1 received from an elementary school principal.¹ After the submission of certain
2 stipulated facts and three days of hearing, the Hearing Officer concluded that there was
3 direct evidence that Finley's non-renewal was unlawfully motivated.² She nevertheless
4 dismissed the complaint, concluding that under the two-part test set forth in Wynn &
5 Wynn, P.C. v. Massachusetts Commission Against Discrimination & another (Wynn &
6 Wynn), 431 Mass. 655 (2000), the School Committee had satisfied its burden of
7 showing that its legitimate reasons, standing alone, would have induced it to make the
8 same decision. Id.

9 The Lexington Education Association (Union) filed a timely request for review to
10 the Commonwealth Employment Relations Board (CERB), claiming both legal and
11 factual error.³ The School Committee filed a reply to the Union's request for review.
12 For all the reasons stated in the Hearing Officer's decision, the CERB summarily affirms
13 the Hearing Officer's conclusion that the School Committee did not violate the Law as
14 alleged. None of the Union's arguments on review persuade us otherwise.

15 We first address the Union's claimed errors of law. The Union claims that a
16 finding of direct evidence of unlawful discrimination leads to the "unavoidable

¹ The Hearing Officer's decision is reported at 42 MLC 111 (2015) and attached as Appendix A to the slip opinion of this decision.

²The Hearing Officer found that the School Superintendent Paul Ash's (Ash) statement to Finley and the Union president at a Level 2 grievance meeting, asking Finley how she "expected to be hired the following year and be effective in her role if she persisted" was direct evidence that the School Committee was unlawfully motivated when it did not renew Finley's employment.

³ The CERB's jurisdiction is not contested.

1 conclusion” that the Employer has violated Section 10(a)(3) of the Law. Contrary to the
2 Union’s view, however, the analysis of whether an employer has violated Section
3 10(a)(3) of the Law does not end once a charging party proffers direct evidence of
4 unlawful discrimination. Rather, under the two-part Wynn & Wynn test correctly cited
5 and applied by the Hearing Officer, once the Union proffered evidence showing that
6 proscribed criteria played a part in the employer’s decision, the burden shifted to the
7 School Committee to demonstrate that it had legitimate reasons for not renewing
8 Finley’s appointment, and that those legitimate reasons, by themselves, would have
9 caused it to take the same action. Bristol County Sheriff’s Department, 31 MLC 6, 20,
10 MUP-2872 (July 15, 2004) (citing Wynn & Wynn, 431 Mass. at 667 (further citing
11 Johansen v. NCR Compten, 30 Mass. App. Ct. 294, 301 (1991)). The Hearing Officer’s
12 application of relevant law to the facts of this case was without error.

13 Factually, the Hearing Officer’s conclusion that the School Committee had met its
14 burden of proof was based on her careful and detailed analysis and weighing of the
15 testimony given by Finley’s former supervisors regarding their concerns with Finley’s
16 work performance during the 2013-2014 school year⁴ and Finley’s response thereto.⁵

⁴ The five primary areas of concern that the Hearing Officer identified were: Utilizing Data, Organizations/Meetings, Communications with Colleagues and Supervisors, Bus Monitor Issue and Chapter 51A issue.

⁵ Although as the Union points out, Superintendent Ash made the final decision not to renew Finley, the Hearing Officer found and the Union does not dispute, that at the meeting in which Finley’s renewal was discussed, Finley’s four supervisors and Ash all agreed that she should not be renewed.

1 Many of these findings required the Hearing Officer to make credibility resolutions,
2 which we will not disturb absent any request from the Union or basis to do so. See City
3 of Somerville, 23 MLC 11, 12, MUP-8450 (June 6, 1996)(CERB will not disturb a
4 Hearing Officer's credibility findings absent a clear preponderance of all relevant
5 evidence that the determination is incorrect). See also City of Easthampton, 35 MLC
6 257, 262, n. 22, MUP-04-4244 (April 23, 2009) (citing (Vinal v. Contributory Retirement
7 Appeal Board, 13 Mass. App. Ct. 85 (1982) (declining to amend hearing officer's
8 credibility determination where the basis for the determination was clearly stated and
9 the evidence did not require a contrary finding)). Contrary to the Union's claim, the
10 Hearing Officer's dismissal of the complaint was not based in whole or even in part on
11 her finding that Finley called the principal who issued the letter of expectation a racist.
12 Accordingly, we need not reach the Union's contention that this finding was erroneous
13 and should be stricken. See DLR Rule 13.15(4), 456 CMR 13.15(4) ("Only disputes as
14 to material issues of fact need be resolved by the [CERB] on appeal.").

15 The Union does not otherwise challenge the factual grounds on which the
16 Hearing Officer's legal conclusion was based. Thus, having reviewed the decision and
17 finding no errors of material fact or law, it is summarily affirmed.

18 Conclusion

19 For the reasons set forth above and in the Hearing Officer's decision, we
20 conclude that the School Committee did not violate Section 10(a)(3) and, derivatively,
21 Section 10(a)(1) of the Law by retaliating against Finley for engaging in protected,

- 1 concerted activity. We therefore affirm the Hearing Officer's decision and DISMISS the
- 2 Complaint.

SO ORDERED.

COMMONWEALTH EMPLOYMENT RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, CERB MEMBER

KATHERINE G. LEV, CERB MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c. 150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

HEARING OFFICER'S DECISION

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.

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

- 1
- 2 14. The date of the meeting to discuss Ms. Finley's non-renewal was on or about
- 3 April 29, 2014.
- 4
- 5 15. Ms. Finley's ratings on her summative evaluation are as follows:²
- 6
- 7 Progress Toward Student Learning Goal(s): Some Progress
- 8
- 9 Progress Toward Professional Practice Goal(s): Significant Progress
- 10
- 11 Standard I: Needs Improvement
- 12
- 13 Standard II: Needs Improvement
- 14
- 15 Standard III: Proficient
- 16
- 17 Standard IV: Needs Improvement
- 18
- 19 Overall: Needs Improvement.

Findings of Fact

20 **Background**

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

27 During Finley's time as a Special Class Teaching Assistant, she worked at the
28 Bowman Elementary School (Bowman) where Mary Anton-Oldenburg (Anton) was the

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 Principal. When the METCO Social Worker position became available, Anton
2 encouraged Finley to apply as she believed it would be a good next step for Finley.
3 Anton also recommended Finley for the position to Superintendent Paul Ash (Ash).
4 Finley applied for the position in the Fall of 2012, but she initially did not have the
5 necessary license from the Department of Elementary and Secondary Education
6 (DESE). Ash therefore held the position open until Finley was able to obtain the license
7 in January 2013.³

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

15 **October 2013 Grievance**

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 Prior to September 30, 2013, Finley left an article for Margaret Colella (Colella),
2 the Principal at Bridge Elementary School (Bridge) on institutional racism from the
3 National Association of Social Workers, with a note that said “can we have a
4 conversation after you read this,” or words to that effect. Finley also gave copies of the
5 article to Anton, Beth Glick (Glick), the Bowman Assistant Principal, and Elaine Mead
6 (Mead), the Principal of Harrington Elementary School (Harrington). Finley provided the
7 article because she felt that it set the groundwork for discussing race and how it impacts
8 social systems, and she wanted everyone “on the same page.”

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

17 On or about October 1, 2013, Finley and Colella had originally scheduled a
18 meeting to discuss Finley’s concern that she did not have enough space to meet with
19 the METCO students at Bridge. Instead, at this meeting, Colella informed Finley that

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

1 she was upset about the article. Colella also discussed her concerns with Finley's
2 performance, which Colella followed up with a letter of expectations to Finley on
3 October 4.⁸ In response, Finley wrote a rebuttal letter to the letter of expectations, in
4 which she referred to Colella as a racist.⁹

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

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

1 asked why Finley cared whether the letter of expectations was right or wrong because it
2 “just sits in her file,” and noted that she was “burning bridges” with her allies, specifically
3 Nobles and Anton, and making it hard to support her.¹¹

4 Sometime in February 2014, Ash discussed the grievance with Finley.¹² He told
5 her he was no longer her ally and that he needed to defend the district. He also asked
6 her why she was making such a big deal about the letter, and told her that if he were

notes from this meeting do not make any reference to Ash discussing Finley’s difficulty in taking feedback.

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.

1 her father he would tell her to stop this,¹³ that she was burning bridges, and that people
2 were no longer her allies.¹⁴

3 On February 26, 2014, the Association and School Committee settled the
4 Association's grievance about Finley's letter of expectations. The agreement provides
5 in relevant part:

- 6 1. The Superintendent agrees to remove and destroy the following
7 documents from Ms. Finley's personnel file:
 - 8 a. Letter of Expectations from Ms. Colella to Ms. Finley dated 10/4/13
 - 9 b. Response of Ms. Finley to Robert Harris¹⁵ dated 10/10/13
 - 10 c. Letter from Ms. Colella to Ms. Finley dated 10/2/13¹⁶
 - 11 d. Article submitted by Ms. Finley to Ms. Colella entitled "Institutional
12 Racism."
13
- 14 2. Ms. Finley agrees to a voluntary transfer from Bridge to Estabrook
15 Elementary School beginning on February 24, 2014.
- 16 3. Ms. Finley and the LEA agree to withdraw the grievance filed on
17 10/21/13.
18
19

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.

¹⁵ Robert Harris is the Assistant Superintendent for Human Resources.

¹⁶ There is nothing in the record about this letter.

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Prior to Finley's transfer, Ash had never voluntarily transferred a non-professional teacher status educator due to a disagreement with a principal.¹⁷ He agreed to transfer Finley because he felt that the relationship between her and Colella was broken, that the level of anger that Finley expressed toward Colella would be a distraction, and he wanted to give Finley a fresh start. During Finley's first week at Estabrook, she shadowed Crowder to familiarize herself with the school, but did not directly work with students.

11 **Observations of Finley's Performance**

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

15 Observation # 1

16 Anton conducted Finley's first observation on October 7, 2013 for 15 minutes
17 during a "lunch bunch" group of 12-13 4th grade students.¹⁹ Anton noted in her

¹⁷ A non-professional status teacher (NPST) is one who has not achieved professional teacher status, which is awarded after three consecutive years of service. Finley did not reach professional teacher status during her time as a METCO social worker.

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 observation form that Finley had established a warm rapport with the students, but that
2 a group of 12-13 was too large for an effective lunch bunch. Anton suggested that
3 Finley consider various configurations for the group to allow more students the
4 opportunity to participate, such as splitting the group or pair-shares. She also
5 suggested that Finley break down the core purposes and goals of the group into
6 student-friendly language.²⁰

7 Observation # 2

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

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.

1 teachers so that she could link it to her check-in data from the students to monitor
2 students and create feedback loops for teachers and students.²¹

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

6 Observation # 3

7 Glick conducted Finley's third observation, which was announced, on November
8 25, 2013 for 30 minutes during a first grade efficacy group.²³ In her observation form,
9 Glick noted that Finley provided clear expectations for the students from the moment
10 they came in the room, and that she quickly activated prior knowledge by asking the
11 students to think about what they had been learning in the group. Glick also stated, "[i]n
12 addition to having clear language and expectations, you used non-verbal signals to

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.

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 reinforce the behavioral expectations during the group.” Glick recommended that Finley
2 ask the students one or two open-ended questions as she reads a story, name the
3 positive behaviors she sees during the group and ask the students to do the same, and
4 ask the children to take their positive behaviors with them for hallway behavior,
5 classroom behavior, and throughout the school.

6 In response to these suggestions, Finley asked questions during reading, asked
7 children to name behaviors exhibited during reading, and asked students to take
8 positive behaviors into the hallway.

9 Observation # 4

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

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

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

5 Observation # 5²⁵

6 Mead conducted Finley’s 5th observation, which was unannounced, on January
7 15, 2014 for one hour during a meeting about the 5th grade social studies unit on the
8 enslavement period and the impact it would have on METCO students and African-
9 American Lexington students. Finley was asked to participate in this meeting with 5th
10 grade teachers and other staff because the teachers wanted guidance on how to be
11 sensitive to METCO students when discussing the enslavement period. Mead noted in
12 her observation that Finley was passionate about the importance of cultural proficiency
13 and the need to raise awareness regarding issues of race, and that she brought
14 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.

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

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

9 In January 2014 or later, Mead asked Nobles to join a meeting with Mead and
10 Finley.³⁴ Mead felt that Finley was not receiving her messages because she did not see
11 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

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

2 Goals and Evaluations**3 Goals**

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

13 Formative Assessment

14 Finley’s supervisors completed her formative assessment in early February 2014,
15 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

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 and brand-new in this particular position and to METCO across three
2 buildings, she is strongly encouraged to seek clarification or information
3 when she does not understand or know a procedure, expectation, or
4 aspect of the job or program.

5
6 Recommendations:

- 7
- 8 - Ms. Finley would benefit from checking in with colleagues with whom
9 she is working to ensure that effective communication is taking place
10 (i.e., paraphrasing what she thinks she has heard, summarizing action
11 steps, asking the other party to share what they understand).
 - 12 - Reflect on the challenge of intent vs. impact, and how cultural styles of
13 speaking are a factor for all human communication. Understand that
14 when styles conflict, misunderstanding is common.
 - 15 - Consider strategies for walking away or otherwise handling situations
16 when angry or upset so as to not inadvertently appear unprofessional.
 - 17 - Establish a calendar to ensure that meetings are not double booked.
18 Check the district calendar and ask for clarification if unsure which
19 meeting she needs to attend. One technical solution to locating Ms.
20 Finley in the district might be to have a shared calendar on the
21 FirstClass desktop. In this way when meetings change or
22 emergencies arise, changes could be logged. This is similar to what
23 math coaches do.⁴⁹
- 24

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

26 Summative Assessment

27 Finley's summative assessment mirrors the format of the formative assessment,
28 and includes some recommendations and observations from the formative to discuss

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.

1 progress.⁵⁰ Anton, Mead, Trach, and Nobles contributed to the summative assessment.
2 It begins with her progress on her student learning and professional practice goals, with
3 available ratings of “Did Not Meet,” “Some Progress,” “Significant Progress,” “Met,” and
4 “Exceeded.”⁵¹

5 Finley’s evaluators rated her as “Some Progress” on her student learning goal.
6 The comments included, in relevant part:

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

19
20 To date discussion of specific outcomes around the goal and/or student
21 progress (in terms of motivation or academics) have not been held at
22 Bowman, Harrington or Estabrook. No reporting at data team meetings
23 has occurred at Bowman, despite explicit expectation of attendance and
24 participation at these meetings on the days that she is at Bowman. At
25 Bowman, Ms. Finley came late to the data team and left before METCO
26 children were discussed. At Estabrook, Ms. Finley is unaware of METCO
27 student academic or social performance, and depends on the principal to
28 learn about METCO students’ needs.
29

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

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

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

2 The evaluator comments include:

- 3 • To date Ms. Finley has worked diligently to consider both the message
4 that she wishes to convey and the group to which she is speaking. Her
5 willingness to reflect with the Bowman principal and with Ms. Nobles on
6 the ways to share her insights, the developmental needs of differing adults
7 and ways in which she might approach situations has been good.
8
- 9 • To date Ms. Finley has established Efficacy Groups in two out of three
10 buildings. She has not yet made arrangements to share the language of
11 efficacy with the staff at faculty, although she has provided some teachers
12 with efficacy affirmations. Ms. Finley does not have efficacy groups at
13 Estabrook, but expressed to Ms. Trach that she hopes to take all METCO
14 students in grades K-3 next year. Ms. Trach reviewed student
15 performance data for Ms. Finley and recommended a few students Ms.
16 Finley could see for efficacy this spring.
17
- 18 • To date, Ms. Finley has established some ongoing meetings with
19 principals at Estabrook and Harrington. At Bowman she has had difficulty
20 finding time in her schedule to meet (one meeting every 6-8 weeks) and
21 then has canceled some of these meetings due to other things that come
22 up.⁵² At Estabrook, Ms. Finley has had some meetings with Ms. Trach,
23 Estabrook Principal, but these have not focused on student needs, and
24 she is unaware of student performance unless directed by Ms. Trach.⁵³
25

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

3 In the first category of this section, Curriculum, Planning & Assessment, Finley’s
4 evaluators rated her as “Needs Improvement.”⁵⁴ The comments included:

- 5 • Ms. Finley is demonstrating a growing knowledge of the Efficacy
6 program. She engages small groups in the context of the program.
7 She is encouraged to continue to expand [her] approach to lesson
8 planning to include a focus on key vocabulary and concepts.
9 Developing charts with the students would provide evidence of prior
10 learning and would provide a visual reminder of the big ideas in the
11 lesson or sequence of lessons.
12
- 13 • Ms. Finley’s evidence (behavioral check lists, charts and other
14 evidence) suggests that she is creating goals for students in social
15 emotional areas and is using a range of techniques to meet student
16 needs. Reports from individual schools suggest that some students
17 who were previously receiving counseling with the previous METCO
18 Social Worker are not currently being seen for this work. At Estabrook,
19 one student who has been in significant need for counseling, and who
20 had a counseling relationship with the previous social worker, was not
21 seen by Ms. Finley. Ms. Trach had to direct Ms. Finley to see this
22 student for counseling. Another student who was experiencing
23 significant social need was only being seen 1 x 15 min/week. Ms.
24 Trach had to inform Ms. Finley of this student’s need and direct her to
25 increase counseling.
26
- 27 • To date, no common reporting system has been shared with principals
28 or teachers to support teacher communication around goal setting. At
29 some schools, Ms. Finley is unaware of student performance in the
30 classroom or the outcomes of data team, until it is brought to her
31 attention. Ms. Finley has not presented evidence of meetings with
32 teachers, where student performance has been discussed.
33

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

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

23 In the next category, Family/Community Engagement, the evaluators rated Finley
24 as “Proficient.” The principals of Bowman and Harrington, as well as Nobles,
recognized Finley’s strength in this area. Their comments included, “Ms. Finley is

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 available should needs come up at times when she is not at Bowman. Ms. Finley's
2 support with some extremely volatile family situations ha[s] been much appreciated,"
3 "Ms. Finley has established trust among the METCO parent community," and "[Finley]
4 effectively facilitated the small group discussions at our Lexington METCO Parents
5 meeting by engaging parents to participate in the conversation, answering questions
6 and responding in a supportive empathetic way to concerns raised." In contrast, the
7 comments about Finley's performance at Estabrook were more critical, noting that "Ms.
8 Finley does not know the METCO students' parents" and:

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

15 Finley was rated a "Needs Improvement" in the last category, "Professional
16 Culture." Her evaluation included positive comments, such as "Ms. Finley has
17 demonstrated greater openness to feedback provided during department and building
18 level supervision by actively engaging in the discussion and not becoming defensive
19 when differing perspectives are being shared or not understood" and "Ms. Finley has
20

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.

1 implemented recommendations made in supervision and department meetings.”

2 However, there are also multiple areas for growth, including:⁵⁷

3 • An area for growth for Ms. Finley is in reflective practice. Although she
4 has been open to feedback on scheduling and communication, there
5 has been limited evidence that she has used these insights to improve
6 practice at the school level.

7
8 • Ms. Finley serves three schools and many teachers. She has provided
9 limited consultations to classroom teachers.⁵⁸ Her communication
10 across the schools regarding her attendance has been inconsistent.

11
12 • Concerns in regard to Ms. Finley’s availability for, attendance at and
13 follow through with expected meetings and direct requests continue to
14 be a concern at the school level. At Estabrook, Ms. Finley did not
15 attend the last data team,⁵⁹ and she recently missed a parent meeting
16 for a Boston student.

17
18 Finley’s overall performance rating was “Needs Improvement.” The final section on
19 the evaluation, entitled “Rationale, evidence, and feedback for improvement for overall
20 performance” stated:

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

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

19

20 **Non-Renewal Meeting**

21

22 On or about April 29, 2014, Anton, Trach, Mead, Nobles, and Ash met to discuss
23 whether to renew Finley's employment for the next school year. They did not discuss
24 Finley's October 2013 grievance at this meeting.⁶⁰ They did discuss their concerns that
25 Finley was not adequately performing her job at all locations, that not all the students
26 were receiving services they needed, that she was not following through and

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 communicating as expected, and that she was not growing based on their
2 recommendations and suggestions throughout the evaluation process. They also
3 considered whether the supervision they could provide the following year would bring
4 Finley to a proficient level and concluded that it would not. Although Ash made the final
5 decision not to renew Finley,⁶¹ everyone at the meeting agreed that she should not be
6 renewed.⁶² Anton and Nobles advised Finley on May 9, 2014 that her employment
7 would not be renewed. Prior to this, nobody had informed Finley that she was at risk of
8 not being renewed.

Opinion

Section 10(a)(3)

10 The Association alleges that the School Committee violated Section 10(a)(3) of
11 the Law by failing to renew Finley's employment. To establish a prima facie case of a
12 violation under Section 10(a)(3), a charging party must show that: 1) the employee
13 engaged in concerted activity protected by Section 2 of the Law; 2) the employer knew
14 of the concerted, protected activity; 3) the employer took adverse action against the
15 employee; and 4) the employer's conduct was motivated by a desire to penalize or
16 discourage the protected activity. Town of Carver, 35 MLC 29, 47, MUP-03-3894 (June

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 30, 2008) (citing Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29,
2 2000)); Commonwealth of Massachusetts, 25 MLC 44, SUP-4128 (August 24, 1998).

3 The School Committee does not dispute that Finley's non-renewal was an
4 adverse action, that she engaged in protected, concerted activity, or that it knew of her
5 protected activity. Rather, it argues that her non-renewal was not motivated by her
6 protected activity.

7 To support a claim of unlawful motivation, the last element of the Association's
8 prima facie case, a charging party may proffer direct or indirect evidence of
9 discrimination. Lawrence School Committee, 33 MLC 90, 97, MUP-02-3631 (December
10 13, 2006) (citing Town of Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002),
11 aff'd sub nom., Town of Brookfield v. Labor Relations Commission, 443 Mass. 315
12 (2005)). Direct evidence is evidence that, "if believed, results in an inescapable, or at
13 least a highly probable inference that a forbidden bias was present in the workplace."
14 Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass.
15 655, 667 (2000) (quoting Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300
16 (1991)).

17 Unlawful motivation also may be established through circumstantial, or indirect,
18 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35
19 MLC at 48 (citing Town of Brookfield, 28 MLC at 327-328). Several factors may
20 suggest unlawful motivation, including the timing of the alleged discriminatory act in
21 relation to the protected activity, triviality of reasons given by the employer, disparate

1 treatment, an employer's deviation from past practices, or expressions of animus or
2 hostility towards a union or the protected activity. Town of Carver, 35 MLC at 48 (citing
3 Melrose School Committee, 33 MLC 61, 69, MUP-02-3549 (September 27, 2006));
4 Cape Cod Regional Technical High School District Committee, 28 MLC 332, 335, MUP-
5 2541 (May 15, 2002); Bristol County, 26 MLC 105, 109, MUP-2100 (January 28, 2000).

6

7 **Direct Evidence**

8 In this case, there is direct evidence that the School Committee was unlawfully
9 motivated when it did not renew Finley's employment.⁶³ Specifically, as described
10 above, I found Ash's comments to Neufeld and Finley questioning how Finley could be
11 expected to be hired the following year and be effective in her role "if she persisted" to
12 be, in part, referring to Finley's grievance.⁶⁴ See, City of Easthampton, 35 MLC 257
13 MUP-04-4244 (April 23, 2009) (statements such as "you are a new employee and you
14 are already putting in a grievance? I am the one who decides who gets a job around

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 here. You are not going to get this job...” constitute direct evidence of anti-union
2 animus); Town of Brookfield, 28 MLC 320, 328, MUP-2538 (May 1, 2002) (selectman’s
3 statement that unions were trouble and employee might not be around to enjoy a union
4 directly evidences anti-union animus).⁶⁵

5 **Legitimate Reason**

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

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

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

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

1 her observation reports were more positive than her formative and summative
2 assessments is not evidence that Finley's *overall* performance in a position that
3 involved much more than instructing students was acceptable.⁶⁷ There is also no
4 record evidence that Finley was "developing a strong job performance record as a
5 METCO Social Worker" before the grievance, as the Association contends, where the
6 only evidence of Finley's performance before the grievance was her first observation in
7 October 2013.⁶⁸ The record does, however, provide ample evidence of Finley's
8 difficulties in the position. The following are the primary areas where Finley's
9 performance was deficient.

10 Utilizing Data

11 After Mead's November 20, 2013 observation of Finley, Mead suggested that
12 Finley create a form to collect data from the teachers so she could link it to her student
13 check-in data to create feedback loops for teachers and students. Although Finley

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 created a form to collect information that students provided, there is no evidence that
2 she created a form to collect data from the teachers.

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

8 Organization/Meetings

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

17 The principals also expressed to Finley that they did not always know where she
18 was and that she was not responding to emails. Mead at one point offered guidance to
19 Finley because she was concerned with her organization around serving three schools.
20 In addition, it is noted in her formative assessment that at times she had been hard to
21 reach or had conflicting meetings scheduled. It was suggested that she establish a

1 calendar to make sure that she is not double booked, and check the district calendar
2 and ask for clarification if she is unsure which meetings she needs to attend. However,
3 despite these suggestions, Finley's summative assessment evidences that the
4 principals still had concerns with her attendance and communication about her
5 attendance. There is no evidence that Finley attempted to implement her supervisors'
6 suggestions, or that she sought further guidance.

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

18 Communication with Colleagues and Supervisors

19 One of the main areas of the School Committee's concern was Finley's
20 communication with colleagues and principals. The School Committee provided several
21 credible examples of instances in which Finley demonstrated difficulty in interactions

1 with others. One example is when Anton was told that Finley had spoken loudly and
2 disrespectfully to Glick in front of office staff.

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

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

1 to develop a behavior plan for a student and had to strategize with Anton on how to get
2 a response from Finley.

3 Bus Monitor Issue

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

9 Chapter 51A Issue

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

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

16 **Supervisors’ Credibility**

17 The Association attempts to discredit the School Committee’s legitimate
18 concerns by insisting that Ash made the decision in February 2014 that Finley would not
19 be renewed and somehow non-verbally communicated that decision to Finley’s
20 supervisors by his involvement in reviewing the formative assessment, which was
21 “extremely prejudicial” and implied that Ash considered Finley a “*persona non grata*.”

1 As a result, Finley's supervisors knew they had to create reasons to fault Finley
2 regardless of their independent judgment. The fatal flaw in the Association's argument,
3 however, is that I would have to be convinced that Finley's four supervisors either 1)
4 conspired to not renew her because of her grievance, or 2) each independently created
5 pre-textual reasons for her non-renewal because of her grievance. There is no
6 evidence that either of these scenarios occurred. In fact, each supervisor credibly
7 testified that they did not discuss the grievance at the non-renewal meeting, and each
8 credibly explained their reasons for the decision.⁷⁰

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

14 The Association attempts to overcome the fact that Trach did not even know
15 about the grievance by arguing that she still somehow knew that because Ash
16 transferred Finley, it meant that Finley "was in the Superintendent's proverbial dog
17 house and should be regarded as such." Further, it contends that the fact that Ash did
18 not explain to Trach the reasons for transferring Finley leads "to the unavoidable
19 conclusion that the [School Committee] was motivated by anti-union animus to ensure

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 Ms. Finley's non-renewal...". The Association's theory would essentially require that
2 Trach could read Ash's mind, and is too implausible to be persuasive.

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

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

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 instruction, and not her communication skills, Mead actually testified that she also had
2 concerns that Finley was not receiving her messages because she was not
3 implementing any of her suggestions. Because of these concerns, she included Nobles
4 in a meeting with Finley in order to better communicate with Finley.

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

16 Based on the totality of the evidence presented, I conclude that the School
17 Committee had legitimate concerns with Finley's performance, which is the only reason
18 it did not renew her employment.⁷² While her supervisors readily admitted that Finley

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.

