
COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

DAR No.:
Appeals Court Docket: 2026-P-0308

MARINA VYRROS

v.

CITY OF BOSTON & PHILLIP BRANGIFORTE

On Appeal from Middlesex County Superior Court

**APPELLANT'S APPLICATION FOR
DIRECT APPELLATE REVIEW**

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INTRODUCTION

In January 2016, the Appellees fired Appellant Marina Vyrros from her position as a tenured teacher. The Appeals Court held they did so illegally, declaring her resigned, despite all evidence to the contrary.¹ It held that this fiction was used to unlawfully circumvent procedural protections under the Massachusetts constitution and state statute, remanding to the trial court to enter judgment for the Appellant and order an appropriate remedy. But the court below refused to give her any relief at all, denying her request for back pay, lost retirement benefits, and a declaration of rights. Vyrros therefore brings a second appeal.

Vyrros seeks Direct Appellate Review because her claim of entitlement to relief implicates an important matter of state constitutional law upon which the Commonwealth's two appellate courts have issued contrary decisions. That is, whether a person who suffers injury by virtue of the denial of her right to due process under the Massachusetts constitution is entitled to be made whole. DAR is appropriate to make clear that Appeals Court decisions relied on by the court

¹ *Vyrros v. Boston*, 104 Mass.App.Ct. 1110 (decided pursuant to Rule 23.0), *review denied*, 494 Mass. 1106 (2024) (“Appeals Court decision”) (“...the record contains no support for the defendants’ contention that Vyrros either explicitly or implicitly manifested her intent to resign”). Since the Appeals Court decision is unpublished and pages unnumbered, pinpoint cites refer to the numbered pages of the copy of the decision attached at Addendum [“Add.”] 44. The quoted language appears at page 11, Add. 54, and discussion relevant to the resignation issue at pages 10-12, Add. 53-55.

below are at odds with this Court's binding precedent.² Appellant asserts that the public will benefit from this Court's review and resolution of these matters.

STATEMENT OF PRIOR PROCEEDINGS

In December of 2016, Appellant brought this action alleging Appellees violated her procedural rights under the Massachusetts Declaration of Rights by terminating her tenured public teacher position without notice or an opportunity to be heard and without otherwise complying with the process set out in G.L. c. 71, § 42 ("§ 42").³ The Superior Court granted summary judgment for Appellees on

² As discussed below at pp. 12-15, the trial court relied on *Martino v. Hogan*, 37 Mass. App. Ct. 710 (1994), and *Doe v. Sex Offender Registry Bd.*, 94 Mass. App. Ct. 52 (2018). Both cases hold that persons whose rights are violated under the Massachusetts constitution have no right to relief in the absence of an enforcing statute. As discussed below, this Court in *Layne v. Mass. Superintendent, Massachusetts Correctional Inst., Cedar Junction*, 406 Mass. 156 (1989) held to the contrary.

³ The Appeals Court aptly summarized rights under § 42 as follows: ". . . a teacher employed for at least ninety days must be given written notice by the school administrators of an intent to dismiss, along with an explanation of the grounds for dismissal and documents relating to those grounds. G.L. c. 71, § 42, second par. A teacher 'may [then] seek review of a dismissal decision within thirty days after receiving notice of [their] dismissal by filing a petition for arbitration with the commissioner.' *Id.* at fourth par. 'At [any subsequent] arbitral hearing, the teacher and the school district may be represented by an attorney or other representative, present evidence, and call witnesses and the school district shall have the burden of proof'; in deciding whether the district met its burden, 'the arbitrator shall consider the best interests of the pupils in the district and the need for elevation of performance standards.' *Id.* at fifth par." *See Appeals Court Decision at 6-7, Add. 49-50.* The Appeals Court further noted that, under § 42: "A teacher like Vyrros, with professional status, 'shall not be dismissed except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or

February 7, 2020.⁴ The Appeals Court reversed this decision, holding that Appellees violated Vyrros’s procedural rights.⁵ It “remanded for entry of new judgment in favor of Vyrros, and for a determination of remedy.”⁶

On October 1, 2024, the Superior Court, in accordance with the Appeals Court’s instruction, entered judgment on liability in favor of Appellant and instructed the parties to submit briefing on “the nature and scope of damages legally recoverable.”⁷ Appellant asked the court to employ its equitable powers to order back pay and other relief arising from her dismissal, including a restructuring of her pension so that retirement checks would be reflective of her years of service had she not been fired, and funds to off-set the tax liability associated with the lump sum receipt of back pay.⁸ Appellees contended that Appellant was entitled to

failure ... to satisfy teacher performance standards ... or other just cause.”” *Id.* at 7, n. 5 citing *School Dist. of Beverly v. Geller*, 435 Mass. 223, 227 (2001).

⁴ Memorandum of Decision and Order on Plaintiff’s and Defendants’ Cross-Motions for Summary Judgment, Middlesex Superior Court Docket Number (“Dkt. No.”) 28. Vyrros thereafter unsuccessfully went to trial on other issues that are not implicated in this Appeal. Dkt. No. 94.

⁵ Appeals Court Decision at 12, Add. 55.

⁶ *Id.*

⁷ See Order and Expanded Endorsement, Dkt. No. 105. On November 4, 2024, the Parties filed briefs setting out their respective positions. See Rule 9A Packet on Plaintiff’s Motion for Remedy for Deprivation of Property without Due Process and supporting memoranda, as well as Defendants’ Memorandum on Remedy and the Parties’ oppositions to each other’s motions, Dkt. Nos. 108-108.5, Add. 57.

⁸ Plaintiff’s Memorandum in Support of her Motion for Remedy for Deprivation of Property without Due Process, Dkt. No. 108.1 at 1, Add. 62.

nothing more than a declaration of rights.⁹

On February 13, 2025, the trial court entered its Decision and Order on Plaintiff's Motion for Remedy ("Remedy Decision").¹⁰ It did not contemplate the use of its equitable powers and denied Appellant's request for what it characterized as damages, holding that Appellant is entitled, "[a]t most" to "declaratory or prospective injunctive relief."¹¹ Appellant accordingly moved the trial court to issue a declaration to the effect that Appellees denied her notice and an opportunity to be heard in violation of due process requirements under the Massachusetts Constitution and § 42.¹² After hearing, the Court entered final judgment for Appellant on August 27, 2025, but refused to issue a declaration of rights under G.L. c. 231A, § 1.¹³ At hearing, the Court reasoned that a declaration was unnecessary because the Appeals Court's unpublished decision sufficiently memorialized the illegality of Appellees' conduct toward the Appellant.¹⁴

⁹ Defendants' Opposition to Plaintiff's Motion for Remedy, Dkt. No. 108.2 at 5-6, Add. 75-76.

¹⁰ Decision and Order on Plaintiff's Motion for Remedy, Dkt. No. 109 at 2, Add. 96.

¹¹ *Id.*

¹² See Rule 9A Packet on Plaintiff's Motion for Entry of Final Judgment for Declaratory Relief, including their memorandum in support, and Defendants' Limited Opposition to the Motion, Dkt. Nos. 110-110.3, Add. 98. G.L. c. 71, § 42 governs the termination of tenured teachers, providing for binding arbitration.

¹³ Judgment and Order, Dkt. 111, Add. 140; see also Plaintiff's Motion for Entry of Final Judgment for Declaratory Relief at 1, Add. 101, seeking declaratory relief.

¹⁴ Transcript of Hearing, 16:3-8, *Vyrros v. City of Boston, et al.*, 1681CV03647 (Mass. Super. Ct. August 27, 2025), Add. 135. The trial court's reasoning is belied

STATEMENT OF FACTS RELEVANT TO THIS APPEAL

The City of Boston dismissed Vyrros on January 27, 2016, effective January 26, 2016.¹⁵ By letter, dated January 11, 2016, Appellees gave her ten business days to report for work or be granted a leave of absence or she would “be considered to have irrevocably resigned” from her position.¹⁶ Vyrros immediately responded to this notice.¹⁷ She was confused as to why she received it, but nevertheless formally requested a leave of absence for medical reasons.¹⁸ Appellees fired her when she could not provide documentation to support her requested leave within the ten-day time frame,¹⁹ deeming her to have resigned.²⁰ They did not provide Vyrros with

by Appellee’s apparent continued reliance on the policy under which it operated in terminating Appellant’s employment. *See* n. 25, *supra*.

¹⁵ Vyrros’s dismissal ended her employment in the Boston Public Schools (“BPS”), which began in 2006. *See* Relevant Portions of Appellee BPS’s response to Appellant’s First Set of Requests for Admissions, March 27, 2019 at ¶ 14, Add. 165. She taught ESL at East Boston High Schools (“EBHS”) from September 2012 to January 2016. *See Id.* at ¶ 15. Vyrros’s last day teaching was November 4, 2015. *See* Relevant Portions of Appellee BPS’s response to Appellant’s Second Set of Requests for Admissions, May 20, 2019, at ¶ 136, Add. 167.

¹⁶ *See* Second Letter from Phillip Brangiforte to Marina Vyrros, dated January 11 and mailed January 13, 2016, Add. 153.

¹⁷ Email exchange between Marina Vyrros and Phillip Brangiforte, January 14-15, 2016, Add. 154-156.

¹⁸ *Id.*; Notification of Leave of Absence Request, submitted by Marina Vyrros, January 15, 2016, Add. 157; Acknowledgement of Leave Request, January 22, 2016, Add. 158.

¹⁹ Boston Public Schools Personnel Action Request Form, January 27, 2016, Add. 160.

²⁰ Appellant responded promptly to the letter with a leave of absence request, signaling her intent to remain in Appellees’ employ. Add. 154-156.

notice of her dismissal in the manner required by § 42, or at all.²¹

Throughout these proceedings, Appellees denied that Appellant’s termination was based on her performance.²² The City relied exclusively on its “AWOL Guidelines” in justification for Appellant’s dismissal.²³ These are contained in a “Superintendent’s Circular” developed by attorneys in the City’s Office of Labor Relations.²⁴ This policy statement remains posted online without material revision, notwithstanding the Appeals Court decision in this matter.²⁵

STATEMENT OF ISSUE OF LAW

This appeal raises the following question relevant to this Application for Direct Appellate Review:

Does Appellee’s disregard of Appellant’s procedural rights under the Massachusetts Constitution and G.L. c. 71, § 42, resulting in the deprivation of

²¹ See n. 3, *supra*, for a summary of substantive and procedural rights under § 42.

²² Deposition of Phillip Brangiforte, March 18, 2018, p. 26, lines 21-22, Add. 139; Relevant Portions of Appellee BPS’s response to Appellant’s Second Set of Requests for Admissions, May 20, 2019, at ¶ 178, Add. 168.

²³ “AWOL Guidelines” re. 12/18/15. Add. 150. The Guidelines govern treatment of employees deemed absent without leave.

²⁴ Relevant Portions of Statement of Facts in Support of Appellant’s Motion for Partial Summary Judgment, August 29, 2019, Add. 171, *See* Appellees’ Response to Uncontroverted Fact 52.

²⁵ Boston Public Schools, Office of Human Capital, *Absent Without Leave, District-wide Policy*, available at WWW.BOSTONPUBLICSCHOOLS.ORG, <https://sites.google.com/bostonpublicschools.org/officeofhumancapital/absent-without-leave> (last visited Mar. 16, 2026). The current Policy changes employees’ time to respond to AWOL notices to fifteen days. *Id.*

Appellant’s protected property interest in continued public employment as a tenured Boston school teacher, entitle her to relief for consequent losses of income and benefits?

This issue was raised and properly preserved before the lower court.²⁶

ARGUMENT

Marina Vyrros was a “professional teacher” when she was fired.²⁷ The Appeals Court held that teachers with this status may not be dismissed except in accordance with constitutionally mandated substantive and procedural protections such as those set out in § 42.²⁸ It determined that the Appellee’s circumvention of

²⁶ Appellant will also ask the Court to issue a Declaration of Rights under G.L. c. 231 A, which was denied in the trial court. Since, as stated at n. 25, *infra*, Appellees have not rescinded or pertinently amended the policy upon which they relied in firing Appellant, it is entirely possible that it may be used to circumvent another public employee’s due process rights. Such person would be entitled to bring an action under G.L. c. 231A, § 5 (persons affected by the “same or similar administrative practice or procedure” once deemed illegal may sue for relief without reestablishing liability). Additionally, guidance from the Court in the form of a declaration regarding the constitutional question raised in this case is in the “public interest” and therefore may be appropriately entered notwithstanding any mootness. *See Metros v. Secretary of Commerce*, 396 Mass. 156, 159 (1985); *see also Dimino v. Secretary of Commerce*, 427 Mass. 704, 708 (1998).

²⁷ As defined by G.L. c. 71, § 41, first para.

²⁸ Appeals Court Decision at 6-7, Add. 49-50. There was no contention in the proceedings below that § 42 procedures were either insufficient or exceeded constitutional requirements.

statutory requirements violated both § 42 and due process under the state constitution.²⁹

The Superior Court wrongly denied Appellant relief from the illegal termination of her employment. It failed to properly consider SJC precedent to the effect that an entitlement to relief can arise from violations of state constitutional rights, even in the absence of an enforcement statute.³⁰ Vyrros is entitled to be made whole.

I. The Trial Court Relied on Appeals Court Cases that are not Good Law.

The trial court held that there is no right to relief from a violation of the state constitution. It relied chiefly on two Appeals Court cases holding that constitutional violations are not compensable directly under the Declaration of Rights because the legislature did not waive sovereign immunity to such claims by

²⁹ *Id.* at 12, Add. 55.

³⁰ *See Layne*, 406 Mass. at 159-60 (holding that “judicial relief” is available for state constitutional violations arising out of claims brought by disabled prisoners for denial of access to the law library; remanding to the trial court for further proceedings). The Court did not distinguish between relief characterized as “damages” and relief that flows from the exercise of equitable powers. *Layne* is discussed further at pp. 12-15 and in notes 32-34 and 36, *infra*; *see also Phillips v. Youth Development Program, Inc.* 390 Mass. 652, 657-660 & n.4, (1983) (damages may be available for violations of due process under the Massachusetts Constitution arising from the discharge of a social-services supervisor by a privately run youth-development program).

enacting a statute creating a right to relief.³¹ These cases are not good law because they hold the opposite from what the SJC determined in the *Layne* case.³²

In *Layne*, this Court held that that persons who suffer violations of state constitutional rights are entitled to relief even in the absence of an enforcing statute.³³ The Court stated that: “Certainly a State may not violate a person's constitutional rights and then fairly assert that no redress can be had because the State has not provided a statutory means of enforcing those rights.”³⁴

The Appeals Court in *Martino* did not follow the SJC. It incorrectly stated that *Layne* did not result in an “actual decision,” regarding what it called the SJC’s “discussion” of a right to damages directly under the state constitution as dicta.³⁵

³¹ The trial court cited *Doe v. Sex Offender Registry Bd.*, 94 Mass. App. Ct. 52, 65 (2018) and *Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994). See Remedy Decision at 2, Add. 96.

³² *Layne*, 406 Mass. 156. Section 42 likely renders *Martino* and *Doe* distinguishable from the case at bar, notwithstanding that it does not explicitly afford a right to sue for relief when it is violated. Enacted post-MTCA in 1993 (see St.1993, c. 71, § 44), § 42 affords wrongfully fired teachers’ rights to arbitration and compensation, which is likely sufficient to waive sovereign immunity. Compare *Todino v. Wellfleet*, 448 Mass. 234, 239-40 (2007) (implying a statutory right to interest on back pay in order to carry out legislative intent to make injured police officers “whole”). No such statute was in play in *Martino* or *Doe*.

³³ *Layne*, 406 Mass. at 169.

³⁴ “We have noted,” stated the Court, “that a person whose constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief.” *Id.*, 159-160, quoting *Phillips*, 390 Mass. at 657-58. The Court essentially converted the “may” in the quoted text to an affirmative mandate.

³⁵ *Martino*, 37 Mass. App. Ct. at 720.

In justification of its reliance on Appeals Court precedent over that of this Court, the court below miscited *Layne* as supportive of its holding that there is no right to tangible redress for state constitutional violations.³⁶

In fact, this Court in *Layne* set binding precedent to the opposite effect. Though the *Layne* Court remanded and did not award the plaintiff damages, it engaged in more than “discussion.” It found that if the prisoner plaintiff could prove a violation of his right to be free from disability discrimination under Article 114 of the state charter, he would be entitled to judicial relief; ordering the trial

³⁶ See Remedy Decision at 2, Add. 96. The trial court cited *Layne* for the proposition that Appellant was “at most” entitled to nothing more than declaratory and injunctive relief. *Id.*, citing *Layne*, 406 Mass. at 160. In a footnote, the trial judge further stated that if Vyrros was not barred from receiving relief, her entitlement would be limited to nominal damages unless she could show that her firing was not “nevertheless justified.” Remedy decision at 2, n. 2., Add. 96. Essentially, said the court, Appellees failure of due process was harmless unless Appellant could show that her firing was unjustified. But the Appeals Court, based on an undisputed record, already determined that Vyrros’ firing was *not* justified as a matter of law. Appeals Court decision at 10-12. Add. 53-55. In other words, Vyrros already cleared the hurdle the court asserted was in the way of affording her relief. Further, the trial court relied on inapposite authority, citing *Hall-Brewster v. Boston Police Dep’t*, 96 Mass. App. Ct. 12, 27 (2019). In that case, the plaintiff police officer was accused of misconduct and received only nominal damages for the denial of certain procedural rights because a two-day administrative trial resulted in the conclusion that his dismissal was amply warranted. *Id.* The Appellant here was not accused of misconduct, received no notice of her firing or the basis for it, and was denied any opportunity to contest her termination. If such a denial may be considered harmless, due process has no meaning.

court on remand to determine if plaintiff could make this case.³⁷ There was no cause for this instruction if there was no right to relief regardless.

The Court thus rendered a “determination of a matter of law pivotal” to the terms of the remand.³⁸ It issued a holding that constitutes binding precedent. Thus, neither the trial court here nor the Appeals Court in *Martino* was entitled to treat the Court’s holding in *Layne* as dicta.

II. This Court in *Layne* Exercised Well-Established Authority in a Manner Consistent with Precedent in Holding that State Constitutional Rights are Directly Enforceable.

It wasn’t necessary for this Court to explicitly address sovereign immunity in *Layne*. It is long established that “[s]ince sovereign immunity is a judicially created common law concept,” this Court is free to establish its limits.³⁹ In fact, the SJC carved out exceptions to the doctrine over the course of many years,⁴⁰ and continues, post-MTCA, to assert its authority to set the contours of sovereign

³⁷ E.g., whether the defendants offered “accommodations” that “substantially satisfied the reasonable needs of the plaintiffs for access to law library facilities.” *Layne*, 406 Mass. at 160.

³⁸ HOLDING, Black's Law Dictionary (12th ed. 2024), (defining “holding” as the portion of an opinion that establishes a legal principle binding in future cases).

³⁹ *Morash & Sons, Inc. v. Com.*, 363 Mass. 612, 615 (1973) (rejecting the “assumption” that “consent of the Commonwealth to suit may be derived only from the Legislature”).

⁴⁰ *Whitney v. Worcester*, 373 Mass. 208, 210-213 (1977) (citing plenitude of rules and exceptions developed over time).

immunity.⁴¹ This authority is aptly exercised when constitutional rights are involved, given this Court’s historic role in interpreting the Commonwealth’s fundamental charter.⁴²

Further, shielding the State from liability in this case would be inconsistent with what this Court has described as the purpose of sovereign immunity.

Application of the doctrine is appropriate when it affords protection to “public officers” who exercise “a high degree of discretion and judgment” and thus “should be insulated from a form of review which might impede governmental operations by subjecting governmental decision making to after-the-fact judicial tort analysis.”⁴³ But when the challenged conduct involves “the carrying out of previously established policies or plans,” sovereign immunity is inapplicable.⁴⁴

⁴¹ The Court reaffirmed its authority to abrogate sovereign immunity, even when immunity was not waived in the Act, in decisions subsequent to the MTCA’s passage in 1978. *See Randall v. Haddad*, 468 Mass. 347, 356–57 (2014), which reversed an Appeals Court decision denying trustee process to judgment creditors seeking to recover fraudulently obtained funds deposited in defendant’s retirement account managed by the State Board of Retirement, despite the sovereign immunity-based bar to impleading state agencies. *Id.* The Court stated that it has “long recognized” that sovereign immunity is “subject to judicial abrogation or limitation,” citing *Morash* and *Whitney*. *Id.* at 356. *See also Walter E. Fernald Corp. v. Governor*, 471 Mass. 520, 525–26 (2015) (denying the Commonwealth immunity from a suit to obtain land claimed by the Commonwealth).

⁴² *See Jenkins v. Chief Justice of Dist. Court Dep’t*, 416 Mass. 221, 238 (1993) (“It is emphatically the province and duty of the judicial department to say what the law is,” quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803).

⁴³ *Whitney*, 373 Mass. at 217.

⁴⁴ *Id.* at 218-19.

Though *Whitney*'s articulation of this analysis predates the MTCA, this Court subsequently reaffirmed its pertinence after the Act's passage.⁴⁵

The conduct at bar does not involve planning and § 42 does not afford public officials "discretion" to ignore its procedural protections. Pretextual circumventions of mandated procedures are "unauthorized actions" that are not protected by sovereign immunity.⁴⁶ The court below wrongly denied Vyrros relief.⁴⁷

⁴⁵ *Shapiro v. Worcester*, 464 Mass. 261, 270 (2013) citing *Whitney*, 373 Mass. at 217 ("demarcation" between discretionary conduct to which immunity applies and non-discretionary conduct that can confer liability "is guided by our opinions predating the enactment").

⁴⁶ *Fernald Corp*, 471 Mass. at 526, quoting *Randall*, 468 Mass. at 358.

⁴⁷ Even if Vyrros has no right at law, she should be granted equitable relief that makes her whole. The Court has broad powers to "provide a remedy where none currently exists." *Lanier v. President & Fellows of Harvard Coll.*, 490 Mass. 37, 73 (2022) (Cypher, J., concurring) citing *Loffredo v. Center for Addictive Behaviors*, 426 Mass. 541, 545-546 (1988). Though no Massachusetts court has addressed the question of whether back pay may constitute an equitable remedy, the First Circuit considers it a form of equitable relief for the unlawful deprivation of employment. See *Santiago-Negrón v. Castro-Davila*, 865 F.2d 431, 441 (1st Cir. 1989), in which the court likened back pay to reinstatement – an equitable remedy – upon the wrongful termination of an employment relationship, as opposed to compensation for a tort-like injury. *Id.* See also *Ramos v. Roche Prods., Inc.*, 936 F.2d 43, 50 (1st Cir. 1991) (reinstatement and backpay are "primarily equitable-injunctive" in nature). Rights in equity equally extend to losses attributable to employment-based civil rights violations other than salary. See *Gutzwiller v. Fenik*, 860 F.2d 1317, 1333 (6th Cir.1988) (relief for due process denial "should completely redress the economic injury" and include back pay "as well as sick leave, vacation pay, pension benefits and other fringe benefits"). Cf. *U.S. v. Burke*, 504 U.S. 229, 238-239 (1992) (equitable relief for discrimination includes "fringe benefits"); *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368, 383, n. 17 (1st Cir. 2004) (including award of disability benefits to which employee entitled in

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Several of the criterion governing applications for Direct Appellate Review apply here.⁴⁸ Review by this Court is appropriate because the matter at bar raises a question of State constitutional law.⁴⁹ This question is unsettled due to a split between the Commonwealth’s two appellate courts on whether its residents are entitled to relief when their rights under the Massachusetts charter are violated.⁵⁰ Further, the enforceability of rights set out in the document that controls the legality of all other state law – all statutes and rules that regulate the behavior of Massachusetts residents – is indisputably a matter of substantial public interest.⁵¹ “[J]ustice requires” a determination as to whether state government can abrogate protected individual rights without consequence.⁵²

Moreover, the constitutional question at bar is raised in a significant context.

equitable relief a “logical outgrowth of the principle that back pay should put the plaintiff in the position he or she would have been in but for the unlawful discrimination”).

⁴⁸ Direct Appellate Review is appropriate in cases raising: “(1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.” Mass. R. App. P. 11(a). The second and third criterion apply here.

⁴⁹ *Id.* at (a)(2).

⁵⁰ *See* Argument at pp. 13-15.

⁵¹ *Id.* at (a)(3).

⁵² *Id.*

Teachers play a vital role in our society.⁵³ Accordingly, in enacting § 42, the Legislature saw fit to protect teachers, and their students, against arbitrary dismissal. The Appeals Court found that due process under the Declaration of Rights demands compliance with § 42. Justice requires vindication of this constitutional principle in the face of Appellee’s cynical circumvention.

Justice also requires clarification of whether residents of the Commonwealth are protected against the violation of their rights in the absence of a relevant statute. The lower court followed the decision in *Martino*, in which the Appeals Court wrongly regarded this Court’s holding in *Layne* as dicta.⁵⁴ This mistake may be replicated in any number of other cases.

The case at bar is demonstrative of why it is important for the Court to take the opportunity to affirm the meaning of its decision in *Layne* – that the State “may not violate a person's constitutional rights and then fairly assert that no redress can be had.”⁵⁵ Allowing the *Martino* rule to stand will devalue constitutional rights. Here, Vyrros was pretextually fired late in her career. Denied an opportunity to

⁵³ See *Ricca v. Board of Education of City School District of City of New York*, 47 N.Y.2d 385, 391 (1979) (statutory tenure benefits to teachers are a “legislative expression of a firm public policy” that the public interest in education “can best be served by a system designed to foster academic freedom in our schools” and protect “teachers from the abuses they might be subjected to if they could be dismissed at the whim of their supervisors”).

⁵⁴ See Argument at pp. 13-15.

⁵⁵ 406 Mass. 159-60.

defend herself and her livelihood, she was forced to retire prematurely and to live out her days without the income to which she would otherwise have been entitled. Denying her relief would be unjust. Direct Appellate Review is appropriate.

CONCLUSION

Appellant respectfully requests that this Court accept Direct Appellate Review in this matter.

Respectfully submitted,

Dated: March 24, 2026

/s/ Phillip J. Kassel
Phillip J. Kassel
(BBO No. 231920)
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(BBO No. 708874)
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Attorneys for Petitioner-Appellant
Marina Vyrros

ADDENDUM

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1681CV03647 Vyrros, Marina vs. City of Boston et al








- Case Type:
Actions Involving the State/Municipality
- Case Status:
Open
- File Date:
12/21/2016
- DCM Track:
A - Average
- Initiating Action:
Tortious Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
12/21/2016
- Case Judge:
- Next Event:













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 [Party](#) |
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 [Tickler](#) |
 [Docket](#) |
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Docket Information














<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/21/2016	Attorney appearance On this date Chetan Tiwari, Esq. added as Private Counsel for Plaintiff Marina Vyrros		
12/21/2016	Case assigned to: DCM Track F - Fast Track was added on 12/21/2016		
12/21/2016	Original civil complaint filed.	1	
12/21/2016	Civil action cover sheet filed.	2	Image
12/21/2016	Demand for jury trial entered.		
12/29/2016	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed with Supplemental affidavit Upon review and consideration of the Affidavit and Supplemental Affidavit, the request is ALLOWED as to normal fees and costs at this time. The request to waive extra fees and costs is DENIED at this time without prejudice. Regarding such extra costs, the plaintiff shall provide support for their requests, such as an experts estimate of fees. The names of persons to be deposed and support for the costs of same. The requests related to appellate costs are premature. The Court will again examine the plaintiff's ability to pay when the extra costs are again sought. (Hogan, J.). (IMPOUNDED)	3	
02/17/2017	Service Returned for Defendant City of Boston: Service through person in charge / agent; Kellie Donovan, on 1/17/17, at 1 City Hall Square, Boston, MA 02201	4	 Image
02/27/2017	Attorney appearance On this date Sarah Onori, Esq. added for Defendant City of Boston		
02/27/2017	Attorney appearance On this date Sarah Onori, Esq. added for Defendant Philip R Brangiforte		
02/27/2017	Attorney appearance On this date Sarah Onori, Esq. added for Defendant Jaime Staraitis		
02/27/2017	Defendants's Notice of intent to file motion to Dismiss. Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant); Staraitis, Jaime (Defendant)	5	
03/09/2017	Service Returned for Defendant Brangiforte, Philip R: Service in hand on 1/12/17, at 96 White Street, East Boston High School, East Boston, MA 02128	6	 Image
03/09/2017	Service Returned for Defendant Staraitis, Jaime: Service in hand on 1/12/17, at 96 White Street, East Boston High School, East Boston, MA 02128	7	 Image







<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/20/2017	Defendants Philip R Brangiforte, Jaime Staraitis, City of Boston's Pursuant to Rule 12(b)(6) and Rule 12(b)(10) Motion to dismiss	8	
03/20/2017	City of Boston, Philip R Brangiforte, Jaime Staraitis's Memorandum in support of its Motion to dismiss	8.1	 Image
03/20/2017	Opposition to Defendants' Motion to dismiss Pursuant to Rule 12(b)(6) and Rule 12(b)(10) filed by Applies To: Vyrros, Marina (Plaintiff)	8.2	  Image
03/20/2017	Defendants City of Boston, Philip R Brangiforte, Jaime Staraitis's Motion to Correct the Tracking Order	9	
03/20/2017	Opposition to Defendants' Motion to Correct the Tracking Order filed by Applies To: Vyrros, Marina (Plaintiff)	9.1	  Image
03/23/2017	The following form was generated: Notice to Appear Sent On: 03/23/2017 10:01:36		
04/03/2017	Case assigned to: DCM Track A - Average was added on 04/03/2017		
04/26/2017	The following form was generated: Notice to Appear Sent On: 04/26/2017 10:05:42		
04/26/2017	Event Result: The following event: Rule 12 Hearing scheduled for 07/26/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date		
07/12/2017	Attorney appearance On this date Katherine Skubecz, Esq. added for Plaintiff Marina Vyrros		
07/25/2017	Event Result: The following event: Rule 12 Hearing scheduled for 07/25/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled		
08/01/2017	Endorsement on Motion to dismiss (#8.0): DENIED After hearing, and upon renewed consideration, the Motion to dismiss is DENIED. The issues raised in the Motion are more properly raised through a Motion for Summary Judgment. See Barbuto v Advantage Sales and Marketing, LLC 2017 WC 3015 716(sup. Jud. CT., 7/17/17) (Fishman, Justice) Dated: July 26, 2017 and notices mailed		 Image
08/30/2017	Received from Defendants City of Boston, Phillip R. Brangiforte, and Jaime Staraitis: Answer to original complaint; Demand for jury trial. Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant); Staraitis, Jaime (Defendant)	10	 Image
05/08/2018	Plaintiff Marina Vyrros's EX PARTE Motion for the authorized payments of deposition costs from the Indigent Persons Fund (Filed in Court this day)	11	
05/08/2018	Plaintiff Marina Vyrros's Application for fee waiver and ex-parte motion arguments (Filed in Court this day)	13	
05/17/2018	Endorsement on Motion for the authorized payments of deposition costs from the Indigent Persons Fund. (#11.0): Other action taken This ex-parte motion appears to seek costs pertaining to four depositions in this civil case, but also appears to seek \$15,000, which is not consistent with "costs" . The motion is denied without prejudice to its renewal, which may also be ex-parte. The renewed motion shall identify the specific amount sought to be paid and whether it is deposition costs, or something else. Judge: Barry-Smith, Hon. Christopher K		
06/01/2018	Affidavit of Indigency and request for waiver substitution of state payment of fees and costs filed with Supplemental affidavit Filed in Court (IMPOUNDED)	14	
06/01/2018	Brief filed: Other - by Plaintiff In Support of Plaintiff's Ex-Parte Motion for Costs. Filed in Court. Applies To: Vyrros, Marina (Plaintiff)	16	
06/01/2018	Plaintiff(s) Marina Vyrros's EX PARTE Motion for Authorized Payments of Deposition Costs from Indigent Persons Fund. Filed in Court.	15	 Image










<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/04/2018	Endorsement on Motion for the Authorized Payments of Deposition Costs from Indigent Persons Fund. (#15.0): ALLOWED Motion ALLOWED, ex-parte, up to \$4,500.00. Dated: June 1, 2018. Notices mailed 6/4/18. Judge: Barry-Smith, Hon. Christopher K		 Image
06/22/2018	Attorney appearance On this date Chetan Tiwari, Esq. dismissed/withdrawn as Private Counsel for Plaintiff Marina Vyrros		
06/22/2018	Attorney appearance On this date Susan Fendell, Esq. added as Private Counsel for Plaintiff Marina Vyrros		
06/22/2018	Attorney appearance On this date Robert L Hernandez, Esq. added as Private Counsel for Plaintiff Marina Vyrros		
08/27/2018	Attorney appearance On this date Karen G Castaneda, Esq. added for Defendant City of Boston		
08/27/2018	Attorney appearance On this date Sarah Onori, Esq. dismissed/withdrawn as Private Counsel for Defendant City of Boston		
03/25/2019	Plaintiff, Defendant Marina Vyrros, City of Boston, Philip R Brangiforte, Jaime Staraitis's Joint Motion to Extend Tracking Order	17	 Image
03/28/2019	Endorsement on Motion to Extend Tracking Order (#17.0): ALLOWED No further extensions. Dated: March 27, 2019 Judge: Fishman, Hon. Kenneth J		 Image
05/13/2019	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 05/13/2019 11:16:40		
05/15/2019	Attorney appearance On this date Karen G Castaneda, Esq dismissed/withdrawn as Counsel for Defendant City of Boston		 Image
05/15/2019	Attorney appearance On this date S Michael Pidani, Esq added as City Counsel for Defendant City of Boston		 Image
06/17/2019	Plaintiff Marina Vyrros's Motion to Extend Deadline for Service of Rule 56 Motion	18	 Image
06/27/2019	Endorsement on Motion to Extend Deadline for Service of Rule 56 Motion (#18.0): ALLOWED Upon consideration, Motion Allowed. Dated: June 26, 2019 and notices mailed 6/27/19 Judge: Hogan, Hon. Maureen		 Image
07/10/2019	Defendants's Notice of intent to file motion for summary judgment. Applies To: Brangiforte, Philip R (Defendant); Staraitis, Jaime (Defendant)	19	 Image
07/24/2019	Party(s) file Stipulation of Dismissal The parties to the above-entitled action, pursuant to the provisions of Mass. R. Civ. P. 41(a)(1)(ii), hereby stipulate that said action, as to the defendant Jaime Staraitis, be dismissed with prejudice, without costs or fees, waiving all rights of appeal. Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff); Onori, Esq., Sarah (Attorney) on behalf of Staraitis, Jaime (Defendant)	20	 Image
07/24/2019	Party status: Defendant Staraitis, Jaime: Dismissed by agreement of parties; Ref #20		
07/31/2019	Plaintiff Marina Vyrros's Motion for Leave To Amend Complaint	21	 Image
07/31/2019	Opposition to Plaintiff Marina Vyrros's Motion for Leave To Amend Complaint filed by	21.1	 Image
07/31/2019	Plaintiff Marina Vyrros's Reply to Opposition To Defendant's Motion for Leave To Amend Complaint	21.2	 Image
08/29/2019	The following form was generated: Notice to Appear Sent On: 08/29/2019 08:25:06		
09/03/2019	Defendants City of Boston, Philip R Brangiforte's Motion for summary judgment, MRCP 56	22	 Image
09/03/2019	City of Boston, Philip R Brangiforte's Memorandum of Law in support of Motion for Summary Judgment	22.1	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/03/2019	Marina Vyrros's Memorandum in opposition to Defendants' Motion for Summary Judgment	22.2	 Image
09/03/2019	Statement of Undisputed Facts Joint Statement of Undisputed Material Facts	22.3	 Image
09/03/2019	Attorney appearance On this date S. Michael Pidani, Esq. added as Private Counsel for Defendant Philip R Brangiforte		
09/03/2019	Affidavit of compliance with Superior Court Rule 9A Applies To: Pidani, Esq., S. Michael (Attorney) on behalf of Brangiforte, Philip R, City of Boston (Defendant)	22.4	 Image
09/03/2019	City of Boston, Philip R Brangiforte's Joint Appendix of Exhibits		
09/04/2019	Plaintiff Marina Vyrros's Motion for summary judgment, MRCP 56 against Defendants, City of Boston and Phillip Brangiforte	23	 Image
09/04/2019	Marina Vyrros's Memorandum in support of her Motion for Summary Judgment	23.1	 Image
09/04/2019	Opposition to Plaintiff's Motion for Summary Judgment, MRCP 56 against Defendants, City of Boston and Phillip Brangiforte filed by Applies To: Vyrros, Marina (Plaintiff)	23.2	 Image
09/04/2019	Plaintiff Marina Vyrros's Reply to Defendants' opposition to her Motion for summary Judgment,	23.3	 Image
09/04/2019	Plaintiff Marina Vyrros's Statement of Facts in support of Plaintiff's Motion for Summary Judgment	23.4	 Image
09/04/2019	Marina Vyrros's Joint Appendix of Exhibits		
09/12/2019	The following form was generated: Notice to Appear Sent On: 09/12/2019 09:18:24		
09/18/2019	Plaintiff Marina Vyrros's Motion to Authorize Payment of Costs from the Indigent Persons Fund	24	 Image
09/18/2019	Marina Vyrros's Memorandum in support of Plaintiff's Ex Parte Motion for costs	24.1	 Image
09/18/2019	Affidavit of Counsel in Support of Ex Parte Motion to Authorize Payment of Costs From the Indigent Persons Fund	24.2	 Image
09/24/2019	Attorney appearance On this date Phillip Jack Kassel, Esq. added as Private Counsel for Plaintiff Marina Vyrros (Filed in Court this day)		
09/24/2019	Event Result:: Motion Hearing to Amend Complaint scheduled on: 09/24/2019 02:00 PM Has been: Held as Scheduled Hon. Janice W Howe, Presiding Appeared: Plaintiff Phillip Jack Kassel, Esq., Private Counsel Defendant S. Michael Pidani, Esq., City / Town Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
09/30/2019	Endorsement on Motion to Authorize Payment of Costs (#24.0): ALLOWED After review, the Plaintiff's Motion is ALLOWED. Dated: September 24, 2019 Judge: Howe, Hon. Janice W		 Image
09/30/2019	Endorsement on Motion for Leave to Amend (#21.0): ALLOWED After hearing, and consideration of the submissions of the parties, the plaintiff's motion for leave to amend the complaint is ALLOWED. Dated: September 26, 2019 Judge: Howe, Hon. Janice W		 Image
09/30/2019	Amended: amended complaint filed by Marina Vyrros	24.3	 Image














<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/24/2019	Received from Defendant City of Boston: Answer to amended complaint;	25	 Image
10/24/2019	Received from Defendant Brangiforte, Philip R: Answer to amended complaint; see paper #25		
11/04/2019	Defendants's Notice of intent to file motion for Summary Judgment Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant)	26	 Image
11/14/2019	Defendants City of Boston, Philip R Brangiforte's Motion for summary judgment, MRCP 56 Supplemental Motion for summary judgment	27	 Image
11/14/2019	City of Boston, Philip R Brangiforte's Memorandum in support of its supplemental Motion for summary judgment	27.1	 Image
11/14/2019	Marina Vyrros's Memorandum in opposition to City of Boston, Philip R Brangiforte's supplemental Motion for summary judgment	27.2	 Image
11/14/2019	Statement of Undisputed Facts Defendant's supplemental joint statement of undisputed material facts	27.3	 Image
11/14/2019	Joint appendix for Summary Judgment motion package filed. Exhibit list	27.4	 Image
11/14/2019	Affidavit of compliance with Superior Court Rule 9A Applies To: Pidani, Esq., S. Michael (Attorney) on behalf of City of Boston (Defendant)	27.5	 Image
11/18/2019	Matter taken under advisement: Rule 56 Hearing scheduled on: 11/18/2019 02:00 PM Has been: Held - Under advisement Hon. Maureen Hogan, Presiding Appeared: Plaintiff Katherine Skubecz, Esq., Robert L Hernandez, Esq., Private Counsel Phillip Jack Kassel, Esq., Private Counsel Defendant S. Michael Pidani, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
02/07/2020	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S AND DEFENDANTS' CROSS-MOTIONS FOR SUMMARY JUDGMENT:(which see 23 pages) ORDER: For the foregoing reasons, the defendants' motion for summary judgment is ALLOWED as to Count III and as to that aspect of Count II that concerns a violation of G.L.c.151B, section4(4), otherwise DENIED: and Vyrros' motion for Summary Judgment is DENIED. Dated: February 5, 2020 and copies mailed 2/7/2020. Judge: Hogan, Hon. Maureen	28	
02/19/2020	The following form was generated: Notice to Appear Sent On: 02/19/2020 11:12:55		
02/27/2020	Plaintiff's Notice of intent to file motion To Reconsider Applies To: Vyrros, Marina (Plaintiff)	29	 Image
03/04/2020	Defendant's Notice of intent to file motion for reconsideration. Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant)	30	 Image
05/11/2020	The following form was generated: Notice to Appear Sent On: 05/11/2020 08:46:54		
06/26/2020	Plaintiff, Defendant Marina Vyrros, City of Boston, Philip R Brangiforte's Joint Motion to extend tracking order and continue final pretrial hearing schedule for July 9, 2020	31	 Image




















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/09/2020	Endorsement on Motion to Extend Tracking Order (#31.0): ALLOWED Dated: July 6, 2020 Judge: Doolin, Hon. Michael		 Image
07/09/2020	Event Result:: Final Pre-Trial Conference scheduled on: 07/09/2020 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Michael Doolin, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
07/09/2020	The following form was generated: Notice to Appear Sent On: 07/09/2020 14:29:57		
07/29/2020	Defendant City of Boston's Motion for Reconsideration	33	 Image
07/29/2020	Affidavit of Compliance with Rule 9A Applies To: Pidani, Esq., S. Michael (Attorney) on behalf of City of Boston (Defendant)	33.1	 Image
07/29/2020	City of Boston's Memorandum in support of Motion for Reconsideration	33.2	 Image
07/29/2020	Opposition to Motion for reconsideration filed by Marina Vyrrosand Motion to Strike and Request for Sanctions	33.3	 Image
07/29/2020	Marina Vyrros's Memorandum in opposition to to Motion for Reconsideration and in Support of Motion to Strike	33.4	 Image
07/29/2020	Reply/Sur-reply Defendants' reply to Plaintiff's Opposition and to Motion to Strike	33.5	 Image
08/27/2020	Attorney appearance On this date S. Michael Pidani, Esq. dismissed/withdrawn as Private Counsel for Defendant Philip R Brangiforte		 Image
09/02/2020	Plaintiff Marina Vyrros's EX PARTE Motion to Authorize Payment of Costs from the Indigent Persons Fund	34	 Image
09/02/2020	Marina Vyrros's Memorandum in support of its Ex Parte Motion for Costs	34.1	 Image
09/04/2020	Event Result:: Motion Hearing scheduled on: 09/04/2020 02:00 PM Has been: Held as Scheduled Comments: Ex-parte motion hearing conducted by ZOOM conference. Hon. Michael Doolin, Presiding Appeared: Plaintiff Robert L Hernandez, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
09/10/2020	Endorsement on Motion to Authorize Payment of Costs from the Indigent Persons Fund (#34.0): ALLOWED After Ex Parte hearing and review for up to \$4,000.00. Dated: Sept. 4, 2020 and notices mailed 9/10/20 Judge: Doolin, Hon. Michael		 Image
09/11/2020	Attorney appearance On this date Michael Kamari Leung-Tat, Esq added as Counsel for Defendant City of Boston		 Image
09/11/2020	Attorney appearance On this date Michael Kamari Leung-Tat, Esq added as Counsel for Defendant Philip R Brangiforte		 Image
09/16/2020	Defendants City of Boston, Philip R Brangiforte's Assented to Motion to Postpone Pre-Trial Conference and Case Resolution	35	 Image
09/16/2020	Endorsement on Motion of defendants to postpone final pre-trial conference and case resolution; assented to (#35.0): ALLOWED Judge: Doolin, Hon. Michael		 Image




<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/17/2020	<p>Notice of Appeal Under Mass. Gen. Laws Ch. 261 27D: gives notice that she appeals the order of September 10, 2020, which partially denies her Ex Parte Motion to Authorize Payment of Costs from the Indigent Persons Fund in an amount up to \$13,800, which motion she filed as an indigent individual under Mass. Gen. Laws ch. 261 27A, Par. 1(b), on or about September 1, 2020. Plaintiff further requests a stay of Superior Court proceedings, including discovery, until entry of a final order on this appeal.</p> <p>Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)</p>	36	 Image
09/22/2020	<p>Event Result:: Final Pre-Trial Conference scheduled on: 10/29/2020 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Maureen Hogan, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate</p>		
09/22/2020	<p>The following form was generated:</p> <p>Notice to Appear Sent On: 09/22/2020 10:23:45 Notice Sent To: Robert L Hernandez, Esq. Mental Health Legal Advisors Committee 24 School St 8th Floor, Boston, MA 02108 Notice Sent To: Michael Kamari Leung-Tat, Esq. City of Boston Law Department - BPS Office of Lega 2300 Washington St, Boston, MA 02119</p>		
10/07/2020	<p>Plaintiff Marina Vyrros's EMERGENCY Motion to authorize payment of costs from the indigent persons fund for transcript of hearing for appeal</p>	37	 Image
10/30/2020	<p>Endorsement on Motion of defendant City of Boston for reconsideration (#33.0): DENIED</p> <p>Judge: Hogan, Hon. Maureen</p>		 Image
11/19/2020	<p>Endorsement on Motion to Authorize Payment of Costs for Transcript of hearing for appeal (#37.0): ALLOWED Upon consideration, Motion allowed</p> <p>Judge: Hogan, Hon. Maureen</p>		 Image
01/14/2021	<p>Plaintiff, Defendant Marina Vyrros, City of Boston, Jaime Staraitis's Assented to Motion to postpone pre-trial conference and case resolution</p>	38	 Image
01/14/2021	<p>Attorney appearance On this date Michael Kamari Leung-Tat, Esq. dismissed/withdrawn as City / Town Counsel for Defendant Philip R Brangiforte</p>		 Image
01/14/2021	<p>Attorney appearance On this date Michael Kamari Leung-Tat, Esq. dismissed/withdrawn as City / Town Counsel for Defendant City of Boston</p>		
01/21/2021	<p>Event Result:: Final Pre-Trial Conference scheduled on: 01/21/2021 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Michael Doolin, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate</p>		
01/22/2021	<p>Attorney appearance On this date Megan P Trachman, Esq. added as Private Counsel for Defendant City of Boston.</p>		 Image
01/22/2021	<p>Attorney appearance On this date Megan P Trachman, Esq. added as Private Counsel for Defendant Philip R Brangiforte.</p>		
01/22/2021	<p>The following form was generated:</p> <p>Notice to Appear Sent On: 01/22/2021 17:15:11 Notice Sent To: Robert L Hernandez, Esq. Mental Health Legal Advisors Committee 24 School St 8th Floor, Boston, MA 02108 Notice Sent To: S. Michael Pidani, Esq. Office of Legal Advisor to Boston Public Schools 2300 Washington St 4th Floor, Roxbury, MA 02119 Notice Sent To: Michael Kamari Leung-Tat, Esq. City of Boston Law Department - BPS Office of Lega 2300 Washington St, Boston, MA 02119 Notice Sent To: Sarah Onori, Esq. Georgetown University M 36 Darnall Hall 37th and O Streets NW, Washington, DC 20007</p>		
01/27/2021	<p>Endorsement on Motion to Postpone Pre-Trial Conference and Case Resolution (#38.0): ALLOWED Dated: Jan.17, 2021 and notices mailed 1/27/21</p> <p>Judge: Doolin, Hon. Michael</p>		 Image
























<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/02/2021	CD of Transcript of 09/04/2020 02:00 PM Motion Hearing received from Cambridge Transcriptions. 1 Paper Transcript	39	
03/02/2021	Notice of assembly of record sent to Counsel	40	
03/02/2021	Notice to Clerk of the Appeals Court of Assembly of Record	41	Image
03/02/2021	Appeal: Statement of the Case on Appeal (Cover Sheet).	42	
03/04/2021	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that on March 4, 2021, the following entry was made on the docket of the a above-referenced case: ORDER: The Middlesex Superior Court Clerk's office has transmitted an appellate court entry statement form, a copy of the docket sheets,	43	Image  Image
03/08/2021	Plaintiff, Defendant Marina Vyrros, City of Boston's Joint Motion to continue final pretrial hearing scheduled for March 25, 2021 and to conduct status conference in its place	44	 Image
03/16/2021	Endorsement on Motion to Continue Final Pretrial (#44.0): ALLOWED Dated: March 11, 2021 Judge: Doolin, Hon. Michael		 Image
03/25/2021	Event Result:: Final Pre-Trial Conference scheduled on: 03/25/2021 02:00 PM Has been: Held as Scheduled Comments: Event conducted by ZOOM conference. Hon. Michael Doolin, Presiding Appeared: Plaintiff Katherine Skubecz, Esq., Robert L Hernandez, Esq., Private Counsel Defendant Megan P Trachman, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
03/25/2021	The following form was generated: Notice to Appear Sent On: 03/25/2021 14:24:00 Notice Sent To: Katherine Skubecz, Esq. The Law Office of Katherine Skubecz 1 Broadway 14th Floor, Cambridge, MA 02142 Notice Sent To: Robert L Hernandez, Esq. Mental Health Legal Advisors Committee 24 School St 8th Floor, Boston, MA 02108 Notice Sent To: Megan P Trachman, Esq. Office of Legal Advisor - Boston Public Schools 2300 Washington St, Boston, MA 02119		
03/25/2021	The following form was generated: Notice to Appear Sent On: 03/25/2021 14:26:18 Notice Sent To: Katherine Skubecz, Esq. The Law Office of Katherine Skubecz 1 Broadway 14th Floor, Cambridge, MA 02142 Notice Sent To: Robert L Hernandez, Esq. Mental Health Legal Advisors Committee 24 School St 8th Floor, Boston, MA 02108 Notice Sent To: Megan P Trachman, Esq. Office of Legal Advisor - Boston Public Schools 2300 Washington St, Boston, MA 02119		
03/30/2021	Plaintiff Marina Vyrros's Joint Motion to Extend Tracking Order	45	
04/09/2021	Attorney appearance On this date Mauricio J Vaca, Esq. added as Private Counsel for Defendant City of Boston		Image 
04/14/2021	Endorsement on Motion to Extend Tracking Order (#45.0): ALLOWED After review, motion ALLOWED. Dated: April 13, 2021 Judge: Hogan, Hon. Maureen		Image  Image
05/20/2021	Event Result:: Conference to Review Status scheduled on: 05/26/2021 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Comments: Time revision ONLY. Hon. Maureen Hogan, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
05/25/2021	Plaintiff, Defendants Marina Vyrros, City of Boston, Philip R Brangiforte's Joint Motion to modify tracking order and status report.	46	 Image








<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/26/2021	Event Result:: Conference to Review Status scheduled on: 05/26/2021 11:00 AM Has been: Held as Scheduled Comments: Event conducted by ZOOM conference with the Session Clerk. Motion for reconsideration forthcoming. Appellate remains outstanding. Arthur T DeGuglielmo, Presiding Appeared: Plaintiff Katherine Skubecz, Esq., Robert L Hernandez, Esq., Private Counsel Defendant Mauricio J Vaca, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
05/26/2021	The following form was generated: Notice to Appear Sent On: 05/26/2021 11:18:19 Notice Sent To: Katherine Skubecz, Esq. The Law Office of Katherine Skubecz 1 Broadway 14th Floor, Cambridge, MA 02142 Notice Sent To: Robert L Hernandez, Esq. Mental Health Legal Advisors Committee 24 School St 8th Floor, Boston, MA 02108 Notice Sent To: Mauricio J Vaca, Esq. Boston Public Schools - Office of Legal Advisor 2300 Washington St 4th Floor, Boston, MA 02119		
06/04/2021	Endorsement on Motion to Modify Tracking Order (#46.0): ALLOWED After review, Motion Allowed. Dated: June 2, 2021 and notices mailed 6/4/21 Judge: Hogan, Hon. Maureen		 Image
06/25/2021	Notice of docket entry received from Appeals Court Please take note that on June 25, 2021, the following entry was made on the docket of the above-referenced case: ORDER: The following order entered on this docket on 03/04/2021: ORDER:	47	 Image
07/06/2021	Finding by Court: FINDINGS PURSUANT TO G.L. c. 261, s 27C(4) The Court finds that \$4,000 is " reasonably necessary " for the plaintiff to secure a qualified forensic economist to prepare a report analyzing the plaintiff's economic losses arising from her alleged unlawful treatment by the defendants. See G.L.c. 261, s. 27C(4). If the plaintiff decides to depose such expert she can return to the Court to ask for additional funds. Judge: Doolin, Hon. Michael	48	 Image
07/07/2021	Plaintiff Marina Vyrros's Motion to that the Court Reconsider its Memorandum of Decision and Order on Plaintiffs and Parties Cross-Motions for Summary Judgment	49	 Image
07/07/2021	Marina Vyrros's Memorandum in support of Motion for Reconsideration of the Court's Memorandum of Decision and Order on Plaintiffs and Defendants' Cross Motions for Summary Judgment	49.1	 Image
07/07/2021	City of Boston, Philip R Brangiforte's Memorandum in support of its Opposition to Plaintiff's Motion to Reconsider Re: Order on Plaintiff's Motion for Summary Judgment	49.2	 Image
07/07/2021	Reply/Sur-reply to Defendants' Memorandum in Support of its Opposition to Plaintiff's Motion to Reconsider Re: Order on Plaintiff's Motion for Summary Judgment Applies To: Vyrros, Marina (Plaintiff)	49.3	 Image
07/13/2021	Notice of docket entry received from Appeals Court NOTICE OF DOCKET ENTRY: Please take note that on July 12, 2021, the following entry was made on the docket of the above-referenced case: ORDER: This matter came before the single justice pursuant to G.L. c. 261, s. 27D.	50	 Image
07/26/2021	Plaintiff, Defendants Marina Vyrros, City of Boston, Philip R Brangiforte's Submission of Status Report and Joint Motion to Modify Tracking Order	51	 Image
07/28/2021	Event Result:: Conference to Review Status scheduled on: 07/28/2021 02:00 PM Has been: Held as Scheduled Comments: Event conducted by ZOOM conference. Motion to extend tracking order allowed. Hon. Michael Doolin, Presiding Appeared: Plaintiff Robert L Hernandez, Esq., Private Counsel Defendant Mauricio J Vaca, Esq., Private Counsel		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
08/02/2021	Endorsement on Motion to Modify Tracking Order (#51.0): ALLOWED Dated: July 28, 2021, and notices mailed 8/2/21 Judge: Doolin, Hon. Michael		 Image
08/05/2021	Plaintiff, Defendants Marina Vyrros, City of Boston, Philip R Brangiforte's Submission of Joint Confidentiality Stipulation and Order	52	 Image
08/10/2021	Endorsement on Stipulation and Order (#52.0): ALLOWED Dated: August 9, 2021 Judge: Doolin, Hon. Michael		 Image
03/25/2022	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 03/25/2022 09:11:38		
03/25/2022	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 03/25/2022 09:16:05		
05/23/2022	Conference Memorandum Joint final pre-trial memorandum.	53	 Image
05/26/2022	Event Result:: Final Pre-Trial Conference scheduled on: 05/26/2022 02:00 PM Has been: Held via Video/Teleconference Comments: Event conducted by the Session Clerk. Arthur T DeGuglielmo, Presiding Appeared: Plaintiff Robert L. Hernandez, Esq. Katherine Skubecz, Esq., Omar Kazmi, Esq. Defendant Mauricio J Vaca, Esq., Private Counsel Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
05/26/2022	Scheduled: Event: Jury Trial Date: 07/24/2023 Time: 09:00 AM Result: Not Held		
06/13/2022	Endorsement on Motion for reconsideration. After review, motion (#49.0): DENIED Judge: Hogan, Hon. Maureen		 Image
03/28/2023	Defendant City of Boston, Philip R Brangiforte's Motion for Leave to Depose Expert (Unopposed)	54	 Image
03/28/2023	Certificate of Compliance Superior Court Rule 9A & 9C Applies To: Vaca, Esq., Mauricio J (Attorney) on behalf of City of Boston (Defendant)	54.1	 Image
03/29/2023	Attorney appearance electronically filed.		 Image
03/29/2023	Attorney appearance On this date Omar H Kazmi, Esq. added as Private Counsel for Plaintiff Marina Vyrros		 Image
04/03/2023	Endorsement on Motion of defendants for leave to depose expert (#54.0): ALLOWED after review and by agreement (*dated 03/31/2023) Judge: Barry-Smith, Hon. Christopher K		 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to Exclude Alleged Statements Of East Boston High School Students At Trial	55	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to exclude collateral source income, including workers' compensation benefits	56	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Motion in limine to exclude collateral source income, including workers' compensation benefits	56.1	 Image















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/05/2023	Opposition to plaintiff's Motion in limine to exclude collateral sources. (workers Compensation Payments.) (see P#56) filed by City of Boston, Philip R Brangiforte	56.2	 Image
07/05/2023	Exhibits/Appendix RE: P#56.2		 Image
07/05/2023	Certificate of Compliance Superior Court Rule 9A, Superior Court Rule 9C	56.3	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to exclude all evidence or mention of plaintiff's job search as evidence at trial	57	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Motion in limine to exclude all evidence or mention of plaintiff's job search as evidence at trial	57.1	 Image
07/05/2023	Opposition to Motion in limine to exclude early job search efforts prior to awol. (see P#57). filed by City of Boston, Philip R Brangiforte	57.2	 Image
07/05/2023	Certificate of Compliance Superior Court Rule 9A, Superior Court Rule 9C	57.3	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to request specific voir dire questions	58	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Motion in limine to request specific voir dire questions	58.1	 Image
07/05/2023	Reply/Sur-reply Defendants' reply to plaintiff's Motion for panel voir dire and individual voir dire	58.2	 Image
07/05/2023	Certificate of Compliance Superior Court Rule 9A, Superior Court Rule 9C Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	58.3	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in Limine Requesting Attorney-Directed Panel Voir Dire	59	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Her Motion In Limine Requesting Attorney-Directed Panel Voir Dire	59.1	 Image
07/05/2023	Defendants City of Boston, Philip R Brangiforte's Reply to Plaintiff's Motions For Panel Voir Dire And Individual Voir Dire	59.2	 Image
07/05/2023	Certificate of Compliance Superior Court Rule 9C, Superior Court Rule 9A	59.3	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to Exclude Plaintiff's Medical Records As Evidence At Trial	60	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Her Motion In Limine To Exclude Plaintiff's Medical Records As Evidence At Trial	60.1	 Image
07/05/2023	Opposition to To Plaintiff's Motion In Limine To Exclude Medical Records filed by City of Boston, Philip R Brangiforte	60.2	 Image
07/05/2023	Certificate of Compliance Superior Court Rule 9C, Superior Court Rule 9A	60.3	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to Exclude All Evidence Of Plaintiff's Performance Evaluations	61	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Plaintiff's Motion In Limine To Exclude All Evidence Of Plaintiff's Performance Evaluations	61.1	 Image
07/05/2023	Opposition to Plaintiff's Motion In Limine To Exclude All Evidence Of Plaintiff's Performance Evaluations filed by City of Boston, Philip R Brangiforte	61.2	 Image
07/05/2023	Certificate of Compliance Superior Court Rule 9A, Superior Court Rule 9C	61.3	 Image
07/05/2023	Exhibits/Appendix RE: P#61		 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in Limine to Exclude Evidence Concerning Dismissal of Jaime Staraitis as Defendant	62	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Plaintiff's Motion in Limine to Exclude Evidence Concerning Dismissal of Jaime Staraitis as Defendant	62.1	 Image















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/05/2023	Opposition to Plaintiff's Motion in Limine to Exclude Mention of Prior Claims Against Staraitis filed by City of Boston, Philip R Brangiforte Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant)	62.2	 Image
07/05/2023	Affidavit of compliance with Superior Court Rule 9A, Superior Court Rule 9C Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	62.3	 Image
07/05/2023	Plaintiff Marina Vyrros's Motion in limine to Exclude the Contents of Plaintiff's Workers' Compensation File Being Introduced as Evidence at Trial	63	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Her Motion in Limine to Exclude Contents from Plaintiff's Workers' Compensation File as Evidence at Trial	63.1	 Image
07/05/2023	Opposition to Plaintiff's Motion in Limine to Exclude Workers Compensation File filed by City of Boston, Philip R Brangiforte Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant)	63.2	 Image
07/05/2023	Affidavit of compliance with Superior Court Rule 9A, Superior Court Rule 9C Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	63.3	 Image
07/05/2023	Defendants City of Boston, Philip R Brangiforte's Motion in limine and/or Daubert Motion to Exclude Mr. Schap's Opinion and Report (with Exhibits A-C)	64	 Image
07/05/2023	Plaintiff Marina Vyrros's Cross Motion in limine Requesting that the Court Find that David Schap, Ph.D. Qualifies under Daubert Standards to Testify and Opine on Her Economic Losses	65	 Image
07/05/2023	Marina Vyrros's Memorandum in opposition to Defendants' Daubert Motion and/or Motion in Limine to Exclude Dr. Schap's Opinion and Report and in Support of Her Cross-Motion	65.1	 Image
07/05/2023	Exhibits/Appendix Re: P#65.1		 Image
07/05/2023	Brief filed: Reply to Plaintiff's Memorandum in Opposition to Defendants' Daubert Motion and/or Motion in Limine to Exclude Mr. Schap's Opinion and Report and Objection to Motion to Strike Cross-Motion and Late Disclosed Opinion Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant)	65.2	 Image
07/05/2023	Defendants City of Boston, Philip R Brangiforte's Motion in limine to Exclude Irrelevant "Institutional" or Disparate-Impact Discrimination Evidence (with Exhibits A-F)	66	 Image
07/05/2023	Marina Vyrros's Memorandum in support of Defendants' Motion in Limine to Exclude Irrelevant "Institutional" or Disparate-Impact Discrimination Evidence	66.1	 Image
07/05/2023	Defendants City of Boston, Philip R Brangiforte's Motion in limine to Exclude Damages Barred by Statutory Presumption of Incapacity With or Without Accommodations.	67	 Image
07/06/2023	Marina Vyrros's Memorandum in opposition to Defendants' Motion in limine to Exclude Damages Barred by Statutory Presumption of Incapacity With or Without Accommodations.	67.1	 Image
07/06/2023	Reply/Sur-reply Defendants' Reply to Opposition Re Defendants' MIL Re Damages Barred by Statutory Presumption of Incapacity	67.2	 Image
07/06/2023	Defendants City of Boston, Philip R Brangiforte's Motion in limine to Exclude Equity Chart	68	 Image
07/06/2023	Reply/Sur-reply Plaintiff's Reply of Non Opposition to Def's MIL Re Equity Chart	68.1	 Image
07/06/2023	Certificate of Compliance Superior Court Rule 9A and Notice of Filing Applies To: Vaca, Esq., Mauricio J (Attorney) on behalf of City of Boston (Defendant)	68.2	 Image
07/06/2023	Certificate of service of attorney or Pro Se: Mauricio J Vaca, Esq.	68.3	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/06/2023	Plaintiff Marina Vyrros's Motion in limine to Request Pre-Charge Instructions on Legal Principles Significant to this Case	69	 Image
07/06/2023	Marina Vyrros's Memorandum in support of Motion in limine Requesting Pre-Charge Instructions on Legal Principles Significant to this Case	69.1	 Image
07/06/2023	Opposition to and/or motion to strike precharge to the jury. filed by City of Boston, Philip R Brangiforte	69.2	 Image
07/06/2023	Certificate of Compliance Superior Court Rule 9C and Notice of Filing Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	69.3	 Image
07/06/2023	Plaintiff Marina Vyrros's Motion in Limine Requesting Judicial Notice Of Relevant Dates	70	 Image
07/06/2023	Marina Vyrros's Memorandum in support of Her Motion In Limine Requesting Judicial Notice of Relevant Dates	70.1	 Image
07/06/2023	Exhibits/Appendix		 Image
07/06/2023	Opposition to Plaintiff's Motion For Judicial Notice Of Calendar And Request For Other Judicial Notice Facts filed by City of Boston, Philip R Brangiforte	70.2	 Image
07/06/2023	Plaintiff Marina Vyrros's Reply to Defendant's Opposition To Plaintiff's Motion For Judicial Notice of Calendar And Opposition To Defendant's Request For Other Judicial Notice Facts	70.3	 Image
07/06/2023	Exhibits/Appendix		 Image
07/06/2023	Certificate of Compliance Superior Court Rule 9A, Superior Court Rule 9C Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	70.4	 Image
07/07/2023	Attorney appearance On this date Adam D Johnson, Esq. added as Private Counsel for Defendant City of Boston		 Image
07/07/2023	Attorney appearance On this date Adam D Johnson, Esq. added as Private Counsel for Defendant Philip R Brangiforte		 Image
07/07/2023	Plaintiff Marina Vyrros's Motion in limine to Exclude Alleged Statements of East Boston High School Students at Trial.	71	 Image
07/07/2023	Marina Vyrros's Memorandum in support of Motion in limine to Exclude Alleged Statements of East Boston High School Students at Trial.	71.1	 Image
07/07/2023	Opposition to Motion in limine to Exclude Student Statements. filed by City of Boston, Philip R Brangiforte	71.2	 Image
07/07/2023	Reply/Sur-reply Plaintiff's Reply to Defendants Opposition to Plaintiff's Motion in limine to Exclude Alleged Student Statements	71.3	 Image
07/07/2023	Plaintiff Marina Vyrros's Notice of Notice of Filing Pursuant to Rule 9A Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	71.4	 Image
07/07/2023	Certificate of Compliance Superior Court Rule 9C Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	71.5	 Image
07/07/2023	Plaintiff Marina Vyrros's Motion in Limine Requesting Supplemental Juror Questionnaire	72	 Image
07/07/2023	Marina Vyrros's Memorandum in support of Proposed Supplemental Juror Questionnaire	72.1	 Image
07/07/2023	Affidavit of compliance with Superior Court Rule 9A Applies To: Hernandez, Esq., Robert L (Attorney) on behalf of Vyrros, Marina (Plaintiff)	72.2	 Image
07/07/2023	General correspondence regarding Plaintiff's Proposed Jury Instructions Applies To: Vyrros, Marina (Plaintiff)	73	 Image
07/10/2023	Witness list Applies To: Vyrros, Marina (Plaintiff)	74	 Image

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07/12/2023	Event Result:: Final Trial Conference scheduled on: 07/12/2023 02:00 PM Has been: Canceled For the following reason: Court Closure Comments: Session down this day. Hon. William F Bloomer, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
07/17/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 07/24/2023 Time: 09:00 AM Result: Held as Scheduled		
07/17/2023	Event Result:: Jury Trial scheduled on: 07/24/2023 09:00 AM Has been: Not Held For the following reason: Transferred to another session Hon. Christopher K Barry-Smith, Presiding Staff: Arthur T DeGuglielmo, Assistant Clerk Magistrate		
07/17/2023	Event Result:: Final Trial Conference scheduled on: 07/18/2023 10:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
07/17/2023	Defendants City of Boston, Philip R Brangiforte's Objection to and Opposition to Plaintiff's Motion for Supplemental Juror Questionnaire	75	 Image
07/19/2023	Witness list Applies To: City of Boston (Defendant); Brangiforte, Philip R (Defendant)	76	 Image
07/19/2023	Event Result:: Final Trial Conference scheduled on: 07/19/2023 10:00 AM Has been: Held as Scheduled Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
07/19/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 07/25/2023 Time: 09:00 AM Result: Held as Scheduled Result: Held as Scheduled		
07/19/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 07/26/2023 Time: 09:00 AM Result: Held as Scheduled		
07/19/2023	Endorsement on Motion in limine (#56.0): to Exclude Collateral Source Income, Including Workers' Compensation Benefits ALLOWED Dated 7/19/23		 Image
07/19/2023	Endorsement on Motion in limine (#57.0): to Exclude ALL Evidence or Mention of Plaintiff's Job Search as Evidence at Trial REVERSED Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#58.0): Requesting Specific Voir Dire Questions ALLOWED in Part. Court will incorporate certain questions into those asked of the venire. Dated 7/19/23		 Image
07/19/2023	Endorsement on Motion in limine (#59.0): Requesting Attorney Directed Panel Voir Dire DENIED Attorney conducted Voir Dire at sidebar will be permitted. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#60.0): to Exclude Plaintiff's Medical Records as Evidence at Trial REVERSED until Trian and pending determination of relevance and prejudice. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image


<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/19/2023	Endorsement on Motion in limine (#61.0): to Exclude All Evidence of Plaintiff's Performance Evaluations REVERSED until Trial. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#62.0): to Exclude Evidence Concerning Dismissal of Jaime Staraitis as defendant REVERSED Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#63.0): to Exclude the Contents of Plaintiff's Workers' Compensation File being Introduced as Evidence at Trial ALLOWED Subject to use for impeachment purposes. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#64.0): to Exclude Mr. Schap's Opinion and Report ALLOWED as to basis for pension damages - Expert must rely on selection actually made by the plaintiff. Otherwise deferred until trial. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#65.0): Requesting that the Court Find that David Schap, Ph. D. Qualifies under Daubert Standards to Testify and Opine on Her Economic Losses REVERSED Dated 7/19/23		 Image
07/19/2023	Endorsement on Motion in limine (#66.0): to Exclude Irrelevant "Institutional" or Disparate-Impact Discrimination Evidence ALLOWED without opposition. Dated 7/19/23		 Image
07/19/2023	Endorsement on Motion in limine (#67.0): to Exclude Damages Barred by Statutory Presumption of Incapacity With or Without Accommodations REVERSED Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#68.0): to Exclude Equity Chart ALLOWED without opposition. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#69.0): Requesting Pre-charge Instructions on legal Principles Significant to this Case DENIED in this form but the Court will provide an appropriate pre-charge. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#70.0): Requesting Judicial Notice of Relevant Dates REVERSED Dated 7/19/23		 Image
07/19/2023	Endorsement on Motion in limine (#71.0): to Exclude Alleged Statements of East Boston High School Students at Trial ALLOWED subject to being revisited if the plaintiff opens the door on issues related to performance. Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Endorsement on Motion in limine (#72.0): Requesting Supplemental Juror Questionnaire DENIED Dated 7/19/23 Judge: Tingle, Hon. Brent A		 Image
07/19/2023	Plaintiff Marina Vyrros's Motion in limine to Exclude Use of Plaintiff's Daughter's Name, with Memo in support attached ALLOWED as to child's name. Dated 7/19/23	77	 Image
07/19/2023	Plaintiff Marina Vyrros's Motion in limine to Admit Deposition of Diane Cassiani-Knox Judge: Tingle, Hon. Brent A	78	 Image
07/19/2023	Marina Vyrros's Memorandum in support of her motion (re: #78) - ALLOWED Subject to objections/cross designations to be ruled on by the Court. Dated 7/19/23	78.1	 Image
07/19/2023	Affidavit of Audrey Buffi	78.2	 Image
07/20/2023	Plaintiff Marina Vyrros's Motion in limine to exclude use of Plaintiff's daughter's name.	79	 Image













<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/20/2023	Marina Vyrros's Memorandum in support of her motion in limine to exclude use of Plaintiff's daughter's name.	79.1	
07/20/2023	Plaintiff Marina Vyrros's Motion in limine to admit deposition of Diane Cassiani-Knox	80	
07/20/2023	Marina Vyrros's Memorandum in support of her motion in limine to admit deposition of Diane Cassiani-Knox	80.1	
07/20/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 07/27/2023 Time: 09:00 AM Result: Held as Scheduled		
07/20/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 07/28/2023 Time: 09:00 AM Result: Held as Scheduled		
07/20/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 07/31/2023 Time: 09:00 AM		
07/20/2023	Scheduled: Judge: Tingle, Hon. Brent A Event: Jury Trial Date: 08/01/2023 Time: 09:00 AM		
07/20/2023	Endorsement on Motion in limine (#79.0): to Exclude Use of Plaintiff's Daughter's Name Other action taken See Ruling on paper #77. Dated 7/20/23		
07/21/2023	Proposed Filings/Orders Re: Defendant's Proposed Statement of the Case	81	
07/21/2023	Proposed Filings/Orders Re: Defendant's Proposed Verdict Slip	82	
07/21/2023	Witness list (Joint) Applies To: Vyrros, Marina (Plaintiff)	83	
07/21/2023	Proposed Filings/Orders Re: Plaintiff's Statement of the Case	84	
07/21/2023	Proposed Filings/Orders Re: Plaintiff's Proposed Verdict Slip	85	
07/21/2023	Exhibits/Appendix Re: Joint Documents List	86	
07/21/2023	Proposed Filings/Orders Re: Plaintiff's Proposed Documents Objected to by Defendants	87	
07/21/2023	Plaintiff Marina Vyrros's Objection to Defendants' Intended Designations of Deposition of Dianne Cassiani-Knox	88	
07/24/2023	Event Result:: Jury Trial scheduled on: 07/24/2023 09:00 AM Has been: Held as Scheduled Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
07/25/2023	Endorsement on Objection to Defendant's Intended Designations of Deposition of Dianne Cassiani-Knox (#88.0): Other action taken After review the plaintiff's objections are overruled with the exception of P.169: Lines 16-21. Dated 7/25/23 Judge: Tingle, Hon. Brent A		


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07/25/2023	Marina Vyrros's Memorandum of Law Concerning Agency of Jaime Staraitis	89	 Image
07/25/2023	Event Result:: Jury Trial scheduled on: 07/25/2023 09:00 AM Has been: Held as Scheduled Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		 Image
07/26/2023	Event Result:: Jury Trial scheduled on: 07/26/2023 09:00 AM Has been: Held as Scheduled Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
07/27/2023	Objection to Defendants' calling of Raecia Catchings to testify. filed by Marina Vyrros	90	 Image
07/27/2023	Event Result:: Jury Trial scheduled on: 07/27/2023 09:00 AM Has been: Held as Scheduled Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		 Image
07/27/2023	Defendant City of Boston, Philip R Brangiforte's Request for Jury Intructions	91	 Image
07/27/2023	Defendant City of Boston, Philip R Brangiforte's Motion for Directed Verdict at the close of plaintiff's case	92	 Image
07/27/2023	Defendant City of Boston, Philip R Brangiforte's Motion for Directed Verdict at the close of all evidence	93	 Image
07/28/2023	Endorsement on Motion for directed verdict at the close of plaintiff's case (#92.0): DENIED after hearing. Judge: Tingle, Hon. Brent A		 Image
07/28/2023	Endorsement on Motion for for directed verdict at the close of all evidence (renewed) (#93.0): DENIED Taking the evidence in the light most favorable to the plaintiff, she has put forth sufficient evidence to make out a prima facia case on both of her claims. Judge: Tingle, Hon. Brent A		 Image
07/28/2023	Event Result:: Jury Trial scheduled on: 07/28/2023 09:00 AM Has been: Held as Scheduled Hon. Brent A Tingle, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
07/28/2023	Verdict of jury for party 1. Did the defendants discriminate against the plaintiff on the basis of her handicap? Answer: NO. 5. Did the defendants retaliate against the plaintiff by terminating her for filing a worker's compensation claim? Answer: NO Judge: Tingle, Hon. Brent A	94	 Image
07/28/2023	List of exhibits Judge: Tingle, Hon. Brent A (See 3 pages)	95	 Image
07/28/2023	Exhibits Returned All trial exhibits returned to trial counsel. Judge: Tingle, Hon. Brent A	96	 Image
07/28/2023	JUDGMENT on jury verdict for the Defendant(s), City of Boston, Philip R Brangiforte against Plaintiff(s), Marina Vyrros, who will not recover statutory costs. Judge: Tingle, Hon. Brent A	97	 Image
07/28/2023	Docket Note: Judgment scanned and emailed to counsel.		
08/24/2023	NOTICE OF APPEAL	98	 Image

Plaintiff Marina Vyrros ("Plaintiff"), through her attorneys, gives notice that she appeals the Judgment of the Court in this matter, dated July 28, 2023, and, specifically, that portion of its Memorandum of Decision and Order of February 7, 2020 (Docket 28), denying her motion for summary judgment, and granting summary judgment to the Defendants, on Count III of her complaint for violation of her due process rights.

Applies To: Vyrros, Marina (Plaintiff)

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
09/13/2023	CD of Transcript of 11/18/2019 02:00 PM Rule 56 Hearing received from Donna Holmes Dominguez. 1	99	
09/18/2023	Notice of assembly of record sent to Counsel	100	
09/18/2023	Notice to Clerk of the Appeals Court of Assembly of Record	101	
09/18/2023	Appeal: Statement of the Case on Appeal (Cover Sheet).	102	
10/06/2023	Appeal entered in Appeals Court on 10/05/2023 docket number 2023-P-1160 In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on October 4, 2023	103	
08/05/2024	Rescript received from Appeals Court; judgment VACATED, REMANDED RE: No. 2023-P-1160 The judgment in favor of the defendants on count three of the first amended complaint is vacated, and that count is remanded for further proceedings consistent with the memorandum and order of the Appeals Court. In all other respects, the judgment is affirmed..	104	
08/08/2024	Event Result:: Conference to Review Status scheduled on: 09/24/2024 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Comments: Counsel had a scheduling conflict with 9/24/24 date. Hon. Sarah Weyland Ellis, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
09/30/2024	Event Result:: Conference to Review Status scheduled on: 09/30/2024 02:00 PM Has been: Held as Scheduled Hon. Sarah Weyland Ellis, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
10/01/2024	ORDER: AND EXPANDED ENDORSEMENT: After a hearing on September 30, 2024, I find as follows: The period to request clarifications to Massachusetts Appeals Court decision 23-P-1160 of June 6, 2024, has expired. The parties now disagree about the interpretation of the Appeals Court decision. The Plaintiff argues the Appeals Court (1) vacated the finding of the Superior Court in favor of the Defendants' Motion for Summary Judgment on Count III, (2) found in favor of the Plaintiff's Motion for Summary Judgment as to Count III, (3) ordered the Superior Court to enter Judgment for the Plaintiff on Count III, and (4) directed the Superior Court to hold a hearing on damages. In contrast, the Defendants argue that the Appeals Court only vacated the Superior Court ruling in favor of Defendants' Motion for Summary Judgment as to Count III, but the Appeals Court did not allow the Plaintiff's Motion for Summary Judgment. The Defendants argue the Appeals Court directed the Superior Court to hold a hearing for determination of remedy, meaning whether to hold a trial as to Count III or whether a settlement or other disposition may be reached. The Defendants also argue that the Plaintiff may not recover monetary damages under Count III. Upon further review of the Appeals Court's decision, I interpret the decision in accordance with the Plaintiff's interpretation. I find the Appeals Court 1) entered an order vacating the finding of the Superior Court in favor of the Defendants' Motion for Summary Judgment as to Count III, 2) allowed the Plaintiff's Motion for Summary Judgment as to Court III, 3) entered judgment as to Count III in favor of the Plaintiff, and 4) directed the Superior Court to hold a hearing as to remedy as a result of the judgment in favor of the Plaintiff on Count III. Judgement shall enter accordingly, and the matter shall be scheduled by the Clerk for a preliminary hearing on remedy pursuant to the Judgment in favor of the Plaintiff on Count III. This preliminary hearing will address any legal issues raised by the Defendants about the nature of the damages recoverable under Count III. All pleadings about the nature and scope of damages legally recoverable shall be filed pursuant to Superior Court Rule 9A. Thereafter, a second hearing shall be scheduled as needed to provide the parties an opportunity to present evidence and argument on damages. So ordered this 1st day of October 2024. /s/ SWE Sarah Weyland Ellis Justice of the Superior Court	105	
10/08/2024	Plaintiff, Defendant Marina Vyrros, City of Boston, Philip R Brangiforte, Jaime Staraitis's Joint Motion for Scheduling	106	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/15/2024	Endorsement on Submission of Joint Scheduling Motion (#106.0): ALLOWED Clerk shall schedule preliminary hearing regarding remedy. Further, the preliminary hearing regarding remedy is scheduled for 01/13/25 at 2:30 pm in person in Courtroom 620. The Zoom conference scheduled for 10/28/24 is cancelled. Judge: Ellis, Hon. Sarah Weyland		
10/15/2024	Event Result:: Conference to Review Status scheduled on: 10/28/2024 02:00 PM Has been: Not Held For the following reason: Joint request of parties Comments: See endorsement Paper #106. Hon. Sarah Weyland Ellis, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
10/25/2024	Plaintiff, Defendant Marina Vyrros, City of Boston's Joint Motion to Extend Time to File 9A Package(s) on Remedy	107	 Image
10/28/2024	Endorsement on Motion to extend time to file 9A package on remedy (#107.0): ALLOWED Filing of 9A package extended to November 4, 2024. Judge: Bloomer, Hon. William F		 Image
11/04/2024	Plaintiff Marina Vyrros's Motion for Remedy for Deprivation of Property Without Due Process	108	 Image
11/04/2024	Marina Vyrros's Memorandum in support of Motion for Remedy for Deprivation of Property Without Due Process	108.1	 Image
11/04/2024	Opposition to Motion for Remedy filed by City of Boston, Philip R Brangiforte	108.2	 Image
11/04/2024	City of Boston, Philip R Brangiforte's Memorandum Regarding Remedy on Count III	108.3	 Image
11/04/2024	Plaintiff Marina Vyrros's Reply to Defendant's Brief Regarding Remedy on Count III	108.4	 Image
11/04/2024	Plaintiff Marina Vyrros's Submission of List of Documents	108.5	 Image
01/13/2025	Matter taken under advisement: Motion Hearing scheduled on: 01/13/2025 02:30 PM Has been: Held - Under advisement Hon. William F Bloomer, Presiding Staff: Martha Fulham, Assistant Clerk Magistrate		
02/13/2025	Endorsement on Motion for Remedy for Deprivation of Property Without Due Process (#108.0): DENIED Separate Decision and Order issued.		 Image
02/13/2025	ORDER: DECISION AND ORDER ON PLAINTIFF'S MOTIONS FOR REMEDY (Paper No. 108) ORDER For the reasons stated, the plaintiff's motion for remedy is DENIED. William F. Bloomer Justice of the Superior Court Date: February 13, 2025 (See scanned image, 3 pages)	109	 Image
02/14/2025	Docket Note: Case is in a box		
05/05/2025	Attorney appearance On this date Deborah Alyse Dorfman, Esq. added as Private Counsel for Plaintiff Marina Vyrros		
05/05/2025	Attorney appearance electronically filed.		 Image
05/30/2025	Event Result:: Status Review scheduled on: 06/02/2025 03:00 PM Has been: Canceled For the following reason: Joint request of parties Hon Diane Freniere, Presiding Staff: Joshua Pakstis, Assistant Clerk Magistrate		
06/25/2025	Plaintiff Marina Vyrros's Motion for Entry Of Final Judgment For Declaratory Relief	110	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/25/2025	Marina Vyrros's Memorandum in support of Plaintiff's Motion For Entry Of Final Judgment For Declaratory Relief	110.1	
06/25/2025	Opposition to Plaintiff's Motion For Entry Of Final Judgment For Declaratory Relief filed by City of Boston, Philip R Brangiforte	110.2	 Image
06/25/2025	Certificate of Compliance Superior Court Rule 9C Applies To: Kazmi, Esq., Omar H (Attorney) on behalf of Vyrros, Marina (Plaintiff)	110.3	 Image
08/26/2025	Event Result:: Motion Hearing scheduled on: 08/27/2025 03:00 PM Has been: Not Held For the following reason: Transferred to another session Hon. Patrick Haggan, Presiding Staff: Joshua Pakstis, Assistant Clerk Magistrate		
08/27/2025	Judgment and Order. It is ORDERED and ADJUDGED:: That final Judgment enter in favor of the Plaintiff on Count III , No Damages Awarded . This matter is hereby Dismissed	111	 Image
08/27/2025	Event Result:: Motion Hearing scheduled on: 08/27/2025 03:00 PM Has been: Held as Scheduled Hon. Sarah Weyland Ellis, Presiding Staff: Debra J Newman, Assistant Clerk		
09/24/2025	NOTICE OF APPEAL Plaintiff Marina Vyrros, through her attorneys, gives notice that she appeals the Judgment of the Court in this matter, dated August 27, 2025 (Docket 111), which followed hearing at which Plaintiff's request for declaratory relief was denied, as well as the Court's order of February 13, 2025, which denied equitable relief in the form of compensation for lost wages and other benefits arising from Defendants' conduct that the Appeals Court deemed violative of due process on June 6, 2024 (Docket 109). Applies To: Vyrros, Marina (Plaintiff)	112	 Image
10/07/2025	Attorney appearance On this date Susan Fendell, Esq. dismissed/withdrawn as Private Counsel for Plaintiff Marina Vyrros		
10/07/2025	Certification/Copy of Letter of transcript ordered from Court Reporter 01/13/2025 02:30 PM Motion Hearing, 08/27/2025 03:00 PM Motion Hearing	113	 Image
10/27/2025	Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that the September 30, 2024 hearing transcript has been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).		 Image
10/27/2025	Notice of assembly of record sent to Counsel	114	 Image
10/27/2025	Notice to Clerk of the Appeals Court of Assembly of Record	115	 Image
10/27/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	116	 Image
02/19/2026	Notice of assembly of record sent to Counsel	117	 Image
02/19/2026	Notice to Clerk of the Appeals Court of Assembly of Record	118	 Image
02/19/2026	Appeal: Statement of the Case on Appeal (Cover Sheet).	119	 Image
03/05/2026	Appeal entered in Appeals Court on 03/04/2026 docket number 2026-P-0308	120	 Image

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

23-P-1160

MARINA VYRROS

vs.

CITY OF BOSTON & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Marina Vyrros began working at the East Boston High School as an "English as a second language" teacher during the 2012-2013 school year. After a series of events led to the end of her employment in 2016, Vyrros filed a lawsuit alleging discrimination in violation of G. L. c. 151B, § 4 (16); retaliation in violation of G. L. c. 151B, § 4 (4), and G. L. c. 152, § 75B; and violations of procedural due process. Some of those claims, including as relevant here Vyrros's allegation that the defendants violated her right to due process (count three of the first amended complaint), were resolved in favor of the defendants on cross motions for summary judgment. Other

¹ Phillip R. Brangiforte.

claims were tried to a jury, which returned verdicts in favor of the defendants. After a final judgment entered, Vyrros appealed. The sole issue on appeal concerns the entry of summary judgment for the defendants on Vyrros's due process claim. We agree with Vyrros that summary judgment should not have entered for the defendants on count three of the first amended complaint, and accordingly we vacate that portion of the judgment.

Background. We summarize the uncontested facts as follows, based on the summary judgment record. After working as a teacher in the district for the two previous school years, Vyrros applied for a long-term leave of absence on March 23, 2015. While waiting for approval, Vyrros used her available paid sick time. Her request for long-term leave was granted for the period between March 23, 2015, and June 30, 2015.²

Vyrros returned to work for the 2015-2016 school year. On November 2, 2015, the head of her department conducted an unannounced observation of one of her classes. The next day, the head of her department, along with members of the administrative team, returned to observe Vyrros's class. On November 4, 2015, Vyrros met with Phillip Brangiforte, the

² Vyrros did not return to work during the 2014-2015 school year.

school's headmaster, and others³ to discuss their observations. Vyrros left the meeting crying, left work early, and went to Boston Medical Center for treatment. Vyrros then applied for workers' compensation benefits. The intake form described her as suffering from anxiety, depression, and posttraumatic stress disorder (PTSD) triggered by the observations of her teaching by school administrators and the follow-up meeting.

On November 9, 2015, Vyrros sent an occupational injury report to Brangiforte which stated that Vyrros had suffered an occupational injury. She asked Brangiforte to sign the form and submit it to the workers' compensation office. Brangiforte did not sign the form and, consequently, Vyrros's claim was denied on November 12, 2015. Vyrros, who had not been to work since the November 4, 2015 meeting, continued to remain out of work and did not return to work after her workers' compensation claim was denied. On December 10, 2015, having exhausted her paid sick time, Vyrros sent an email message to the director of human capital operations for the Boston public schools, describing herself as "a teacher on medical leave" and asking if she was eligible to apply for benefits under the paid sick leave bank. Initially, she was told that she should be eligible, but later was told that she was ineligible because she was required to "be

³ Vyrros's "peer assistant" and union representative were also present.

on an approved leave of absence in order to apply for [the] sick bank."

On January 11, 2016, Brangiforte sent Vyrros a letter stating that she had been absent without leave since November 6, 2015, and that if she did not report to work or receive a grant of a leave of absence by January 5, 2016, her failure to report to work would operate as a resignation. After Brangiforte was informed by another school administrator that the January 5, 2016, date for Vyrros to either return to work or be granted a leave of absence was incorrect, he sent a second letter to Vyrros, identical to the first in all respects except that it gave the date of January 26, 2016, by which Vyrros had to report to work or be granted a leave of absence.⁴

On January 14, 2016, before Vyrros received the second letter, she sent an email message to Brangiforte expressing confusion over the return-to-work date contained in the original letter and advising Brangiforte that she had filed a workers' compensation claim and her intention was to return to work in a modified position. She expressed concern about filing a leave of absence request where the city's lawyers and her workers' compensation lawyer were close to reaching an agreement that

⁴ Although the second letter was also dated January 11, 2016, it obviously was sent at some point on or after January 13, 2016, the date Brangiforte was informed that the listed January 5, 2016, date was incorrect.

would allow her to return to work with some accommodations. That same day, Brangiforte sent an email message to Vyrros that her claim for workers' compensation did not excuse her from the normal leave of absence process and that she would need to correct the situation prior to January 26, 2016, by applying for leave and providing the necessary documentation signed by her treating physician. Vyrros applied for leave the next day but did not submit the required form from her physician by January 26, 2016. On January 22, 2016, the defendants sent Vyrros an email message reminding her to submit the appropriate documentation. On January 27, 2016, Brangiforte filed a "Personnel Action Request Form." The action taken was specified by a check mark in the box titled "TERMINATION/RETIREMENT." The reason for the action also was specified by a check mark, in the box for absence without leave (AWOL). The effective date of the termination was shown by a handwritten notation "1/26/16." Although the defendants claim that Brangiforte notified Vyrros of her AWOL status and the effective date of her resignation on January 27, 2016, nothing in the record supports an inference that Vyrros received any notice from the defendants regarding her employment status at any point after she received the email message on January 22, 2016.

On January 29, 2016, Vyrros sent an email message to the defendants containing a doctor's note dated November 5, 2015,

and which stated that Vyrros would be "unable to work for the remainder of the trimester, and should be able to return after the Holidays." On February 29, 2016, Vyrros visited her doctor, who described her as being extremely stressed.

Discussion. "Our review of a decision on a motion for summary judgment is de novo." Berry v. Commerce Ins. Co., 488 Mass. 633, 636 (2021). "[I]f the 'pleadings, depositions, answers to interrogatories, and responses to requests for admission under [Mass. R. Civ. P. 36, 365 Mass. 795 (1974)], together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law,' then summary judgment shall be rendered forthwith." Jenkins v. Bakst, 95 Mass. App. Ct. 654, 656 (2019), quoting Mass. R. Civ. P. 56 (c), as amended, 436 Mass. 1404 (2002). "Summary judgment, when appropriate, may be rendered against the moving party." Mass. R. Civ. P. 56 (c).

Vyrros contends that the defendants violated her State constitutional right to due process by terminating her employment without proper notice and by failing to follow their own AWOL policies. The parties agree that when a teacher voluntarily resigns from employment, no due process is required. The parties also agree that when the defendants terminate the employment of a public schoolteacher who served in the district

for the three previous consecutive school years -- a teacher with "professional teacher status," G. L. c. 71, § 41, -- they are required to follow the procedures outlined in G. L. c. 71, § 42 (section 42).

Those procedures are that a teacher employed for at least ninety days must be given written notice by the school administrators of an intent to dismiss, along with an explanation of the grounds for dismissal and documents relating to those grounds. G. L. c. 71, § 42, second par.⁵ A teacher "may [then] seek review of a dismissal decision within thirty days after receiving notice of [their] dismissal by filing a petition for arbitration with the commissioner." Id. at fourth par. "At [any subsequent] arbitral hearing, the teacher and the school district may be represented by an attorney or other representative, present evidence, and call witnesses and the school district shall have the burden of proof"; in deciding whether the district met its burden, "the arbitrator shall consider the best interests of the pupils in the district and the need for elevation of performance standards." Id. at fifth par.

⁵ A teacher like Vyrros, with professional status, "shall not be dismissed except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure . . . to satisfy teacher performance standards . . . or other just cause." G. L. c. 71, § 42, third par. See School Dist. of Beverly v. Geller, 435 Mass. 223, 227 (2001).

Here, the judge denied Vyrros's motion for partial summary judgment on the defendants' liability under G. L. c. 152, § 75B, after concluding that there was a material issue of fact as to whether Vyrros resigned or was terminated. He then allowed in part the defendants' cross motion for summary judgment on all claims. As the judge explained, even if Vyrros was terminated, that decision was subject to arbitration within the statutory time frame of thirty days, and Vyrros failed to file a petition for arbitration within that time frame. As a result, the judge reasoned, the due process claim was time barred, and the defendants were entitled to summary judgment on count three of Vyrros's first amended complaint.

When reviewing the defendants' motion for summary judgment, we must view the facts in the light most favorable to Vyrros. See Sullivan v. Liberty Mut. Ins. Co., 444 Mass. 34, 38 (2005). We accordingly assume that Vyrros was terminated and did not resign from her position. Similarly, we also assume for the limited purpose of discussing the defendants' motion for summary judgment that Vyrros did not receive proper notice of such action. Without sufficient notice, Vyrros argues she had no opportunity to file a timely petition for arbitration. Put another way, the thirty-day clock was not triggered.

Based on our review of the record, there is no evidence that the defendants gave Vyrros any warning that they intended

to dismiss her, as required under section 42. Instead, the letters sent by the defendants stated only that they intended to treat her failures, namely her failure to report to work if she had not received an approved leave of absence, as a resignation. Under section 42 the defendants were required to furnish Vyrros with "written notice of [their] intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds for dismissal" (emphasis added). G. L. c. 71, § 42, second par. Because they did not, Vyrros had no opportunity to respond or put the defendants to their burden of proving "inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure . . . to satisfy teacher performance standards . . . or other just cause." G. L. c. 71, § 42, third par. Thus, we agree with Vyrros that her procedural due process rights were violated as a matter of law and she is entitled to judgment in her favor on count three of the first amended complaint.

The defendants argue that summary judgment for Vyrros on count three of the first amended complaint is not warranted because of the existence of disputed issues of material fact relating to whether Vyrros's failure to return to work can be considered a voluntary resignation. In support of their position, they rely only on their own policies and procedures

that Vyrros's failure to report to work (if she had not received an approved leave of absence) was, in their interpretation, the equivalent of a resignation. Specifically, the defendants rely on a document called the "Superintendent's Circular" for the school year of 2015-2016, which described an employee's obligations when seeking an extension of approved leave:

"The employee must request an extension from the Office of Human Capital prior to the expiration of the approved leave, this will include submission of medical documentation and the proper application. If the employee does not return from the leave of absence and does not request an extension, the employee will be deemed AWOL. AWOL employees may be deemed to have voluntarily resigned from their position or may be subject to termination."

The defendants' position fails for several reasons. First, even if this circular was somehow binding on teachers, an issue we need not address, the defendants have failed to show that this policy applied to Vyrros. Vyrros was not seeking to extend an approved leave, because as Brangiforte and the director of human capital operations explicitly told her, she was not on an approved leave at any point between the first day she failed to show up to work (November 5, 2015) and the final day when the defendants determined that she was AWOL. The policy also did not apply to Vyrros given the undisputed facts that she returned to work in the 2015-2016 school year and was not on an approved leave of absence when she failed to return to work on November 5, 2015.

Second, the defendants' claim that they can unilaterally determine that a teacher's lack of action is a communication tantamount to a resignation is without support in the case law or statutes. We are not persuaded by the cases cited by the defendants as they do not address the issue before us: whether a teacher's failure to perform essential duties, such as reporting to work, can constitute a resignation without the teacher communicating their intent to resign. Here, the record contains no support for the defendants' contention that Vyrros either explicitly or implicitly manifested her intent to resign. See Monahan v. Romney, 625 F.3d 42, 47 (1st Cir. 2010), cert. denied, 563 U.S. 976 (2011) (describing evidence that plaintiff voluntarily resigned). To the contrary, after Vyrros received a letter from the defendants that said they would consider her absence as a resignation, Vyrros immediately communicated directly with the defendants that it was her intent to return to work in a modified capacity. Contrast Lyons v. Sullivan, 602 F.2d 7, 10 (1st Cir.), cert. denied, 444 U.S. 876 (1979) (plaintiff took leave of absence then resigned). The failure to provide the defendants with requested medical paperwork did not demonstrate Vyrros's intent to resign, nor does it detract from Vyrros's explicit communication that she intended on returning to the school. Vyrros's lack of action alone simply did not communicate an intent to resign; more was required for the

defendants to meet their summary judgment burden. Stone v. University of Md. Med. Sys. Corp., 855 F.2d 167, 173 (4th Cir. 1988) ("A public employer obviously cannot avoid its constitutional obligation to provide due process by the simple expedient of forcing involuntary 'resignations'").

To be clear, nothing in this decision limits the right of the defendants, where otherwise permitted by law to do so, to terminate a public schoolteacher's employment if they fail to show up to work for a period of time. However, in order to do so, they must comply with the requirements set forth in section 42. Had they done so in this case, Vyrros would have had thirty days to file a petition seeking arbitration and, if she then neglected to do so, we might reach a different result. Instead the defendants deprived Vyrros of notice and the opportunity to be heard, protected by the Massachusetts Declaration of Rights and section 42, by unilaterally determining that she had resigned.

For all these reasons the judgment in favor of the defendants on count three of the first amended complaint is vacated. That count is remanded for entry of a new judgment in favor of Vyrros, and for a determination of remedy. In all other respects, the judgment is affirmed.⁶

⁶ Both parties requested that we tax the costs of the appeal to the opposing party under Mass. R. A. P. 26 (a), as appearing

So ordered.

By the Court (Vuono, Rubin &
Walsh, JJ.⁷),


Assistant Clerk

Entered: June 6, 2024.

in 481 Mass. 1655 (2019). Costs in this case are taxed only as ordered by us because we are vacating only part of the judgment. See *id.* at (a) (4). We hold that costs shall be taxed against the defendants because we are vacating only the part of the judgment that Vyrros requested. We decline to address Vyrros's request for attorney's fees under 42 U.S.C. § 1988, because it does not rise to the level of appellate argument under Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1628 (2019).

⁷ The panelists are listed in order of seniority.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

MIDDLESEX SUPERIOR COURT
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,

Plaintiff,

v.

CITY OF BOSTON and
PHILIP BRANGIFORTE,

Defendants.

In accordance with the Court’s Order of October 1, 2024, and subsequent scheduling orders, Plaintiff on behalf of all parties submits the following:

RULE 9A PLEADINGS

1. Plaintiff’s Motion for Remedy for Deprivation of Property Without Due Process
2. Plaintiff’s Memorandum in Support of Motion for Remedy
3. Defendants’ Opposition to Plaintiff’s Motion for Remedy
4. Defendants’ Brief Re: Remedy on Count III
5. Plaintiff’s Response to Defendant's Brief Re: Remedy on Count III

AGREED UPON ISSUE

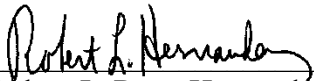
After the parties’ service of their respective pleadings/requests and responses thereto, the parties agree that remedy should be framed under principles of equity. The general question before the Court is: what equitable remedies are available for a State constitutional violation?

DISAGREEMENT: FORM OF EQUITABLE RELIEF & POSITIONS

1. What form of Equitable Relief is appropriate?
 - a) **Plaintiff:** The Court Should Order Backpay and Pension Reformation to make Plaintiff whole.
 - i) Plaintiff is still employed by the Commonwealth.
 - ii) The Court can and should order the Commonwealth to pay the wages and benefits it has failed to pay since January 27, 2016.
 - iii) The Court can and should enhance the back pay to avoid negative tax consequences to Plaintiff.
 - iv) The Court should reform Plaintiffs retirement to reflect service to the date of proper termination.
 - b) **Defendant:** Monetary remedies in the form of Backpay or Pension Diminution are not available under the text of the State Constitution, but prospective declaratory or injunctive relief are potentially available remedies.
 - i) Count III is sourced from the text of the Constitution, not the Legislature
 - ii) Plaintiff failed to exhaust remedies including but not limited to: G.L. c. 12 §§ 11H-J, 42 U.S.C. § 1983, and G.L. c. 71 § 42
 - iii) Sovereign immunity
 - iv) Undue Prejudice to Defendants/Unequitable
2. Should Plaintiff be granted her costs and attorney's fees?
 - a) **Plaintiff:** Yes.
 - b) **Defendant:** No, Plaintiff is not entitled.

Respectfully submitted,

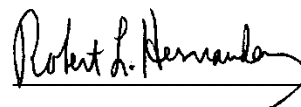
Dated: November 4, 2024


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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on counsel for defendants by electronic mail on November 4, 2024.



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO. 1681CV03647

_____)
MARINA VYRROS,)
Plaintiff)
v.)
CITY of BOSTON, <i>et al</i> ,)
Defendants)
_____)

PLAINTIFF’S MOTION FOR REMEDY FOR DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS

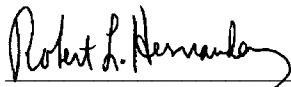
Now comes Plaintiff, through her attorneys, and, for reasons set forth in the accompanying memorandum, respectfully urges the Court to implement the Appeal Court rescript order on determining a remedy for Defendants’ violation of her due process rights (Count III of the complaint) by ordering the following:

1. That Plaintiff is currently an employee of the City with ongoing rights to her wages and benefits until she resigns or is dismissed in accordance with the law.
2. Defendants are to calculate and report to the Court Plaintiff’s correct current salary and benefits, including any wage increases that Plaintiff would have received, since January 27, 2016¹;
3. Defendants shall pay Plaintiff her current salary and benefits forthwith;
4. Defendants are to calculate and report to the Court the pay and benefits Plaintiff is due from January 27, 2016 to a date of resignation agreed to by the parties or set by the Court;
5. Upon receipt of a satisfactory calculation from Defendant of back pay missed and owed, Plaintiff shall have the opportunity to present evidence of an appropriate amount to off-set the tax consequences of receiving back pay in a lump sum;

¹ That amount for the current academic year is \$113,847.26, plus benefits.

6. The Court shall award Plaintiff back pay with an add-on to off-set tax consequences;
7. Defendants shall take all steps necessary to restructure Plaintiff's pension to pay her full pension benefits beginning on the date set under 4, above, based on total years of service;
8. Plaintiff shall have leave to file a petition to award costs and reasonable attorney fees against Defendants.

Respectfully submitted,



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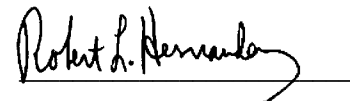
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Dated: October 15, 2024

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I certify that the foregoing document was served on counsel for defendants by electronic mail on October 15, 2024.



initially dismissed on cross motions for Summary Judgment.⁴

B. The Decision

The Appeals Court found that Defendants violated Plaintiff's procedural rights under the Massachusetts Declaration of Rights and state statute, holding that "[T]he defendants were required to furnish Vyrros with "written notice of [their] intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds for dismissal" (emphasis added). G. L. c. 71, § 42, second par. Because they did not, Vyrros had no opportunity to respond . . . [W]e agree with Vyrros that her procedural due process rights were violated as a matter of law and she is entitled to judgment in her favor on count three of the first amended complaint."⁵

"[T]he judgment in favor of the defendants on count three of the first amended complaint is vacated. That count is remanded for entry of a new judgment in favor of Vyrros, and for a determination of remedy."⁶

C. Relevant Facts

The Defendant City of Boston hired Plaintiff Marina Vyrros to teach English as a Second Language ("ESL") in July, 2006. The City employed Plaintiff as a Second Language ("ESL") teacher at East Boston High School ("EBHS") beginning September 2012. The City kept Plaintiff on the payroll through January 26, 2016. Defendant Phillip Brangiforte unconstitutionally removed Plaintiff from the payroll on January 27, 2016, "effective" the previous day.

D. Construction of a Remedy

Although no statute provides a remedy to this violation of Plaintiff's constitutional rights, she is entitled to be made whole.⁷ The Court has broad powers under the common law to "provide a

whether the district met its burden, "the arbitrator shall consider the best interests of the pupils in the district and the need for elevation of performance standards." *Id.* at fifth par. Decision at 7 (footnote omitted).

⁵ Decision at 9.

⁶ Decision at 12.

⁷ See *Layne v. Supt., Massachusetts Corr. Inst., Cedar Junction*, 406 Mass. 156, 159–60 (1989) ("a State may not violate

remedy where none currently exists.⁸ To enforce a right which does not have a statutory remedy, the Court may look to “any appropriate common law remedy that is available. Otherwise, the right would be useless and illusory.”⁹

If common law remedies are insufficient, the Court may and should use its equitable powers. Federal courts have long recognized that equity gives courts broad powers to exercise to remedy the breach of an individual’s Constitutional rights.¹⁰ Although federal precedents and practices are generally not binding upon them, Massachusetts courts regularly look to federal interpretations of laws parallel to those of Massachusetts for guidance.¹¹ Here, federal courts’ use of equitable authority to remedy constitutional wrongs is instructive.

Defendants’ constitutional wrong has continued unabated for more than eight years and continue to the day of this motion. Her unlawful termination forced Plaintiff to retire prematurely at a lower monthly benefit amount and to engage in lengthy and costly legal battles, while Defendants insisted that they were not required to follow the procedures set out in statute and basic law school constitutional law classes. The Court can and should take this conduct into account in framing an equitable remedy.¹²

a person's constitutional rights and then fairly assert that no redress can be had because the State has not provided a statutory means of enforcing those rights.”). Plaintiff is “entitled to judicial relief even in the absence of a procedural vehicle for obtaining relief.” *Id.*, quoting *Phillips v. Youth Dev. Program, Inc.*, 390 Mass. 652, 657–658 (1983).

⁸ *Lanier v. President & Fellows of Harvard Coll.*, 490 Mass. 37, 73 (2022)(Cypher, J., concurring)(citing *Loffredo v. Center for Addictive Behaviors*, 426 Mass. 541, 545-546 (1998)).

⁹ *Gabriel v. Borowy*, 324 Mass. 231, 234 (1949). See *Ludlow Educ. Assn. v. Ludlow*, 31 Mass.App.Ct. 110, 119 (1991). See also *Meehan vs. Med. Info. Tech., Inc.*, Mass., 488 Mass. 730 (2021)(authority of Court to develop common law to fill gaps based on important public policy).

¹⁰ See *Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *Vazquez-Burgos v. Rodriguez-Perez*, 111 F. Supp. 3d 135, 138 (D.P.R. 2015); see also *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975) (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946) (“(W)here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.”).

¹¹ See, e.g., *Morrill v. Tong*, 390 Mass. 120, 126 n. 7 (1983) (Federal Rules of Civil Procedure); *Patsos v. First Albany Corp.*, 433 Mass. 323, 330 (2001) (looking to federal courts’ interpretation of nature of simple broker-client relationship under Massachusetts law); *C.M. v. Comm’r of Dep’t of Children & Families*, 487 Mass. 639, 646 (2021)(“ ‘[A]lthough we give respectful consideration to such lower Federal court decisions as seem persuasive,” Commonwealth v. Pon, 469 Mass. 296, 308, 14 N.E.3d 182 (2014), quoting *Commonwealth v. Hill*, 377 Mass. 59, 61(1979), ‘we are not bound by decisions of Federal courts except the decisions of the United States Supreme Court on questions of Federal law.’”)

¹² “[T]he hallmark of equity is the ability to assess all relevant facts and circumstances and tailor appropriate relief on a case by case basis.”); *Medlock v. Ortho Biotech, Inc.*, 164 F.3d 545, 555 (10th Cir.), cert. denied, 528 U.S. 813 (1999), quoted in *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368, 383 (1st Cir. 2004).

II. Current Pay and Benefits

As a first obvious step to making Plaintiff whole, she asks that the Court order the Defendant City to return Plaintiff to the payroll until such a time as she resigns or Defendants follow due process to dismiss her. Because Defendants' act of removing Plaintiff from the payroll was *ultra vires*, she has never been legally terminated and remains legally employed by the City. Her employment can be terminated by her resignation or dismissal with due process.¹³ Thereafter she should begin to collect her full pension.¹⁴

III. Back Pay

Beginning January 27, 2016 to the present day, Defendants have not paid Plaintiff her wages, including regular salary increases and benefits accrued such as sick leave. Plaintiff asks that the Court order Defendants to provide forthwith a full accounting of the pay and benefits accruing to her from January 27, 2016 to the date of the first resumed paycheck. Upon a satisfactory submission by Defendants, she asks that the Court establish the present value of Plaintiff's unpaid wages and benefits.¹⁵

Back pay is an appropriate remedy. Most statutes protecting employees from wrongful termination provide back pay as a remedy to help make the wronged employee "whole."¹⁶ For example, Title VII of the U.S. Civil Rights Act of 1964 provides for "back pay" as a form of equitable relief for employment discrimination.¹⁷ Even when a protective statute is silent on the availability of this remedy, federal courts have regularly invoked the "historic power of equity" to award lost wages to remedy similarly wronged employees.¹⁸

¹³ To facilitate resolution, Plaintiff is willing to agree to a reasonable date-certain for resignation, at any time on or after her 65th birthday.

¹⁴ See p. 6, below

¹⁵ Plaintiff asks below that this "back pay" amount be adjusted upward to account for tax consequences.

¹⁶ Wrongful termination case law provides some guidance but does not control remedy for this constitutional tort.

¹⁷ *Spencer v. Walmart*, 469 F.3d at 315. See 42 U.S.C. § 2000e-5(g)(1). Relief is intended to make the plaintiff whole, and "restore the plaintiff ... to the position he otherwise would have been in absent discrimination." *Gunby v. Pa. Elec. Co.*, 840 F.2d 1108, 1122 (3d Cir.1988) (quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975)); *Hare v. Potter*, 549 F. Supp. 2d 688, 691-92 (E.D. Pa. 2007).

¹⁸ See *id.* (award of lost wages to workmen discriminated against under Fair Labor Standards Act of 1938, 52 Stat. 1060, as amended, 29 U.S.C. §217).

IV. Adjustment for Taxes

Making Plaintiff “whole” from the injuries she suffered means to restore her “to the economic status quo that would exist but for the [illegal] conduct.”¹⁹ That requires taking into account the tax consequences of Plaintiff receiving the years of unpaid wages as a lump sum. Back pay awards are taxable in the year they are paid.²⁰ “[R]eceipt of a lump sum back pay award could lift [Plaintiff] into a higher tax bracket for that year, meaning [Plaintiff] would have a greater tax burden than if she were to have received that same pay in the normal course.”²¹ Accordingly, equity requires an upward adjustment of the back pay award to compensate for this tax-related loss.²² “Without this type of equitable relief in appropriate cases, it would not be possible ‘to restore the employee to the economic status quo that would exist but for the employer's conduct.’”²³

The precise calculation of the tax-neutralized amount must await the Court’s decision on the base back pay award.

V. Pension

As an employee of the Defendant City of Boston, Plaintiff was eligible for and paid into the City of Boston retirement system. After Defendant stopped paying her on January 27, 2016, Plaintiff was forced to retire well before her 65th birthday. The calculation of her pension was based on her age and year of service. Had she continued to be paid as an employee of the Boston Public Schools and was able to wait to collect on retirement benefits beginning on November 29, 2024 when she

¹⁹ *In re Continental Airlines*, 125 F.3d 120, 135 (3d Cir.1997).

²⁰ *See Comm’r of Internal Revenue v. Schleier*, 515 U.S. 323 (1995) (*modified on other grounds*); *Robinson v. Se. Pa. Transp. Auth.*, 982 F.2d 892, 898 (3d Cir.1993).

²¹ *Eshelman v. Agere Sys., Inc.*, 554 F.3d 426, 441 (3d Cir. 2009).

²² *See Sears v. Atchison, Topeka & Santa Fe Ry. Co.*, 749 F.2d 1451, 1456 (10th Cir.1984) (compensation for the additional tax liability incurred as a result of receiving seventeen years of back pay in a lump sum); *O’Neill v. Sears, Roebuck & Co.*, 108 F.Supp.2d 443, 446 (E.D.Pa.2000) (“Plaintiff is entitled to an award for negative tax consequences....”) (Hart, Mag. J.); *E.E.O.C. v. Joe’s Stone Crab, Inc.*, 15 F.Supp.2d 1364, 1380 (S.D.Fla.1998) (“[A] district court, in the exercise of its discretion, may include a tax component in a lump sum back pay award to compensate prevailing Title VII plaintiffs.”).

²³ *Eshelman* 554 F.3d at 441-42, *quoting* *In re Continental Airlines*, 125 F.3d at 135. *See also Broderick v. Evans*, 570 F.3d 68, 72 (1st Cir. 2009)(affirming trial court's additional compensation of \$563,626 to account for incremental taxes on plaintiff’s award).

turns 65, her monthly income would be significantly greater, reflecting her 25+ years of state employment. She currently receives or will receive \$52,732 annually. Were she fully vested, as she would have been but for the City's deprivation of her due process rights, she would receive \$69,067 annually.

Plaintiff asks that the Court order the Defendant City to take such steps as are necessary as to reform her pension, allowing her to receive the full benefits to which she has right.²⁴

VI. Attorneys' fees and costs

“Although the traditional American rule ordinarily disfavors the allowance of attorneys' fees in the absence of statutory or contractual authorization, federal courts, in the exercise of their equitable powers, may award attorneys' fees when the interests of justice so require²⁵. . . and federal courts do not hesitate to exercise this inherent equitable power whenever ‘overriding considerations indicate the need for such a recovery.’”²⁶ This authority is deeply rooted in equity.²⁷ State jurisdictions regularly recognize the equitable authority of courts to shift costs and award attorney fees in appropriate circumstances.²⁸ In their exercise of discretion, courts may consider the defendants conduct during the

²⁴ The logical common law alternative – paying Plaintiff the difference between the two monthly award figures – is difficult to calculate, as it would require an estimation of Plaintiff's life span.

²⁵ *Hall v. Cole*, 412 U.S. 1, 4–5 (1973)(internal footnotes omitted).

²⁶ *Id.*, quoting *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392(1970); citing *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718 (1967). See also *Vaughan v. Atkinson*, 369 U.S. 527, 530 (1962).

²⁷ See *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 164-66 (1939) (“The sources bearing on eighteenth-century English practice—reports and manuals—uniformly support the power not only to give a fixed allowance for the various steps in a suit, what are known as costs ‘between party and party,’ but also as much of the entire expenses of the litigation of one of the parties as fair justice to the other party will permit, technically known as costs ‘as between solicitor and client.’”). See also *Killian v. Ebbinghaus*, 110 U.S. 568 (1884) (“Federal Courts when sitting as a chancellor to do equity may in their discretion award attorney fees in the absence of statutory or contractual provisions for same.”); *MT BALTIC COMMANDER Schiffahrtsgesellschaft MBH & Co. KG v. Massachusetts Port Auth.*, 918 F. Supp. 2d 105, 112 (D. Mass. 2013)(equitable fee-shifting under admiralty law).

²⁸ See *Berry v. Fitzhugh*, 299 Va. 111, 119, 846 S.E.2d 901, 905 (2020), quoting *Brown v. Coates*, 165 Va. 254, 258, 182 S.E. 554 (1935) (“The apportionment of costs is a matter within the sound judicial discretion of the trial court.”); *McDonald v. Ins. Co. of State of Pennsylvania*, 460 S.W.3d 58, 67 (Mo. Ct. App. 2015), quoting *Bd. of Managers of a part of Peppertree Square, Section No. 1 v. Ricketts*, 701 S.W.2d 767, 769–70 (Mo.App.1985)(“In equity cases, the trial court has an inherent, discretionary power to award costs to either party or to award them proportionately among the parties.”), *Sasnett v. Jons*, 400 S.W.3d 429, 441 (Mo.App.2013); *Peet v. Randolph*, 157 S.W.3d 360, 366 (Mo.App.2005) (“The award of costs is a matter within the circuit court's sound discretion[.]”); *Francis v. Fonfara*, 303 Conn. 292, 304, 33 A.3d 185, 193 (2012)(“[I]n equitable actions the court must exercise its discretion in awarding costs.”); *Hoskins v. Hoskins*, 259 N.C. 704, 707, 131 S.E.2d 326, 328 (1963), *Bailey v. State*, 348 N.C. 130, 162, 500 S.E.2d 54, 73 (1998) (“If an action is equitable in nature, the taxing of the costs is within the discretion of the court, and the court may allow costs in favor of one party or the other or require the parties to share the costs.”); *State ex rel. Neese v. Montgomery Circuit Court, et al.* (1980), 272 Ind. 495, 399 N.E.2d 375; *Neese v. Richer*, 428 N.E.2d 36, 38–39 (“The allowance of costs in a suit of equity is within

course of litigation.²⁹

In this matter, Plaintiff has waited more than eight years to receive justice. This is at least in substantial part due to the fact that Defendants employed an extremely cynical argument (albeit initially accepted by the trial court, reversed on appeal) that Plaintiff was not fired; she “resigned,” notwithstanding all evidence to the contrary.³⁰ In an obvious circumvention of statutory requirements, Defendants gave Plaintiff no notice she was dismissed and contended she had no right to redress because she did not timely assert rights she had no reason to know were available. As recently as September 29, 2024, at hearing, they argued, frivolously, that the Appeals Court decision did not say what it said.

Defendants are violators of the Constitutions of the United States and Massachusetts.³¹ Awarding Plaintiff her attorney fees can serve as a deterrent to Defendants and other public employers. The decision confers benefits affecting all public employees.³²

Although zealous representation is ethically obliged, the Defendants’ zeal to avoid correcting an obvious wrong justifies taxing them with Plaintiff’s legal costs, including attorney fees.³³ Defendants, not Plaintiff, should bear the cost of reimbursing the Commonwealth for the expert fees advanced to her under G.L. ch. 261 (“the Indigent Court Costs Act”) or by counsel.³⁴

the sound discretion of the trial court. The exercise thereof cannot be interfered with on appeal unless it is manifestly abused.), quoted in *Scott v. Anderson Newspapers, Inc.*, 477 N.E.2d 553, 564 (Ind. Ct. App. 1985) *Estrin v. Fromsky* 53 Cal.App.2d 253, 127 P.2d 603(1942) (allowance of costs in equity within trial court’s discretion).

²⁹ *Aiello v. Aiello*, 63 Mass. App. Ct. 914, 915 (2005) (“In some proceedings, the conduct of the litigation itself may give rise to equitable considerations favoring deviation from the presumptive proportionate allocation (such as, for example, when the petitioner needlessly pursues a course that causes the cost of the proceedings to escalate...).” *Accord: Gonzalez v. Pierce-Williams*, 68 Mass. App. Ct. 785, 789 (2007).

³⁰ Decision at 11 (“the record contains no support for the defendants’ contention that Vyrros either explicitly or implicitly manifested her intent to resign.”)

³¹ *Cf. Christiansburg Garment Co. v. Equal Employment Opportunity Comm’n*, 434 U.S. 412, 418, (1978) (“[W]hen a district court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law.”)

³² *See Hall*, 412 U.S. at 5 (fees justified in equity where plaintiff’s successful litigation confers “a substantial benefit on the members of an ascertainable class.”)

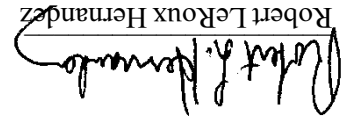
³³ *Aiello v. Aiello*, 63 Mass. App. Ct. 914, 915 (2005) (“In some proceedings, the conduct of the litigation itself may give rise to equitable considerations favoring deviation from the presumptive proportionate allocation (such as, for example, when the petitioner needlessly pursues a course that causes the cost of the proceedings to escalate...).” *Accord: Gonzalez v. Pierce-Williams*, 68 Mass. App. Ct. 785, 789 (2007).

³⁴ As reflected in the docket, the Court waived filing fees, approved funds to secure records, for depositions and for an expert in forensic economics. Counsel have advanced additional funds for such purposes and will supply verification when the fee entitlement is established.

Had Plaintiff sought relief under 42 U.S. § 1983, the Appeals Court ruling would establish that Defendants deprived her of secured rights while acting under color of law. As prevailing party, she would be entitled to an award of attorney fees.³⁵ Although she does not claim under the federal Civil Rights Act, it is not inappropriate for a court in equity to offer comparable recompense to a prevailing litigant whose state and federal due process rights were violated.

At this juncture, Plaintiff seeks leave to file a petition for attorney's fees reasonably representing that portion of the legal time expended on the successful claim.

Respectfully submitted,



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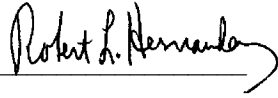
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Katherine Skubecz

/s/ Katherine Skubecz

CERTIFICATE OF SERVICE

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 1681CV03647

MARINA VYRROS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON, AND)
 PHILLIP BRANGIFORTE,)
)
 Defendants.)

DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR REMEDY

Defendants, City of Boston (the “City”) and Phillip Brangiforte (“Brangiforte”) respectfully oppose the Plaintiff’s motion for monetary remedy, and suggest the alternative remedy of a declaratory judgment specifying those due process rights guaranteed by G.L. c. 71 § 42 to the Plaintiff and those individuals similarly situated.

I. INTRODUCTION

The fundamental problem with the Plaintiff’s Motion for Remedy is that it discusses a different case than the one she chose to litigate. That aside, she does not and cannot cite any case holding that liability on a claim brought solely under the Massachusetts Constitution entitles a plaintiff to an award of monetary damages. On the contrary, the opposite is true; the law is clear that a plaintiff is not entitled to monetary or compensatory damages for a constitutional deprivation of procedural due process. See, Doe v. Sex Offender Registry Bd., 94 Mass. App. Ct. 52, 64 (2018). Instead, she is, at most, “potentially” entitled to an equitable remedy in the

form of declaratory or injunctive relief. Id. (“As to the remedies for any such State constitutional [due process] violations, declaratory and injunctive relief are potentially available.”)

Rather than acknowledge the well-settled law on this issue, and even though the parties have litigated this case for years relying on the Plaintiff’s counseled representations that she brought her procedural due process claim only under the Massachusetts Constitution, she now for the *first time* claims that she is entitled to compensatory damages and attorneys’ fees because she *could have* brought the claim through a federal cause of action such as 42 U.S.C. § 1983.¹

Despite her averments to the contrary, the Plaintiff is not without recourse. As noted above, case law holds that she may be entitled to some form of equitable remedy, in the form of declaratory or injunctive relief. See, Doe, 94 Mass. App. Ct. 52, 64. Because the Plaintiff brought her claim directly under the text of the Massachusetts Declaration of Rights, and at each juncture the parties were in accord that such was the claim, the Court is respectfully limited to some form of injunctive or declaratory relief as a remedy. Id. This injunctive or declaratory relief is limited to – at most – a declaration of the Plaintiff’s rights under GL. c. 71 § 42, or an order prospectively enjoining Defendants from relying on the notice in this case in the future.

II. MEMORANDUM OF LAW AND ARGUMENT

The core of the Plaintiff’s argument is that this Court should craft an unprecedented judicial remedy for her counseled decision to press her procedural due process claim only under the Massachusetts Constitution, rather than availing herself of other remedies the Legislature has provided. However, because she admits she can point to “no statute [that] provides a remedy” for the claim *she* chose to bring (Pl.’s Memo. 2), it is inaccurate to claim, as she does, that there

¹ Defendants would be unduly prejudiced to this proposed remedy because not only would they have sought removal of any federal claims to the United State District Court, but they have not had the opportunity to conduct discovery on the vague § 1983 claims alleged in the Plaintiff’s motion.

were no adequate remedies at law available to her. On the contrary, there were a number of potential avenues for relief that the Plaintiff could have alleged at the inception of this case; she could have sought arbitration under the very statute that she alleges the City violated – G.L. c. 71 § 42, fourth par.; she could have pursued a claim against the individual defendants under the Massachusetts Civil Rights Act, G.L. c. 12 § 11H-J (the “MCRA”)²; and, as even the Plaintiff acknowledges in her Motion, she could have brought a federal deprivation of rights claim pursuant to 42 U.S.C. § 1983. The Plaintiff never attempted to avail herself of any of these remedies, despite having counsel and her union at the ready since the inception of this case, claiming wrongful termination throughout.

The Plaintiff’s affirmative choice – solely under the Massachusetts Declaration of Rights – to forego other legal remedies and to fully litigate her chosen constitutional claims should not prejudice Defendants by permitting the Plaintiff to deliberately shift her posture *eight years* into the litigation, or to reset the clock to 2016 and demand arbitration.³

A. The Plaintiff Admits Her Claim Is Based Directly on the Text of the Constitution, and Not Statute.

The Plaintiff admits she never claimed a statutory right of action pursuant to 42 U.S.C. § 1983, nor under the MCRA. Plt. Memo, 7-8. The Court of Appeals has recognized that where, as here, the Legislature has chosen “to occupy the field” by enacting a comprehensive remedial

² The SJC has long held that a person may sue the responsible State officer in their official capacity to enjoin deprivations of one's State constitutional rights. Doe v. Sex Offender Registry Bd., 94 Mass. App. Ct. at 63–64 (citing Lane v. Commonwealth, 401 Mass. 549, 552 (1988); Ex Parte Young, 209 U.S. 123, 159-160 (1908)).

³ G.L. c. 71 § 42, at fourth par., grants teachers who have attained professional status the ability “to seek review of a dismissal decision within thirty days after receiving notice of his dismissal by filing a petition for arbitration.” However, this paragraph of §42 was not alleged to have been violated, and is outside the scope of the Plaintiff’s due process claim. Further, by her filing of this claim and proceeding through nearly ten years of litigation, she has waived any right to such an arbitration.

scheme such as the MCRA, there is no need and, thus, no occasion to *even consider* fashioning remedies under the text of the Constitution. Martino v. Hogan, 37 Mass. App. Ct. 710, 720 (1994) (Emphasis added). The Plaintiff’s counseled decision not to press any of the alternative claims discussed above has waived her right to – and therefore her current demand for – any award of monetary damages.

Thus, where, as here, a plaintiff elects not to pursue a claim under any of the relevant statutes, she is not entitled to monetary compensation and is instead limited to “potential,” but by no means guaranteed, equitable relief in the form of a declaratory judgment that the defendant violated a given right, or injunctive relief enjoining the defendant from continuing such violations. See, Doe, 94 Mass. App. Ct. at 64 (2018). As the Court of Appeals explained, a plaintiff “cannot recover damages for any alleged State constitutional violations” where she “has not sued under any applicable procedural statute, such as the Massachusetts Civil Rights Act.” O’Brien v. King, 103 Mass. App. Ct. 1121, at *2 (2024) (Vuono,⁴ Milkey & Hand, JJ). For one thing, the Legislature made the considered judgment to enact the MCRA and has imposed a different standard of liability than the Constitutional claims alleged here. Compare e.g., Sarvis v. Boston Safe Deposit & Tr. Co., 47 Mass. App. Ct. 86, 91 (1999), with Andover v. State Fin. Servs., Inc., 432 Mass. 571, 574 (2000) (discussing procedural due process notice standards). And for another, the fact that the Legislature affirmatively chose to abrogate sovereign immunity⁵ in a comprehensive remedial scheme occupying the same field means that a waiver of

⁴ Justice Vuono was on the panel that heard the appeal in this case.

⁵ The Commonwealth and its municipalities may only be sued in state court where it has *statutorily* waived sovereign immunity. See, e.g., Irwin v. Comm'r of Dep't of Youth Servs., 388 Mass. 810, 812 (1983); see also Edelman v. Jordan, 415 U.S. 651, 673 (1974)). Neither the Commonwealth nor the City of Boston have waived immunity in the situation that faces this Court.

such sovereign immunity should not lightly be implied, absent express legislative authorization. Lopes v. Commonwealth, 442 Mass. at 176.

B. Only Equitable Relief Is Available, and Specifically in the Form of Prospective Injunctive or Declaratory Relief.

Where the Legislature has elected not to waive sovereign immunity, relief sought directly under the text of the Massachusetts Constitution, if any, is limited to equitable relief in the form of prospective injunctive or declaratory relief to correct ongoing constitutional violations. For example, though “[t]he Ex Parte Young doctrine permits suits to proceed against state officers in their official capacities to compel them to comply with [the] law,” see, e.g., Vaqueria Tres Monjitas, Inc. v. Irizarry, 587 F.3d 464, 477–478 (1st Cir. 2009) (citing Ex Parte Young, 209 U.S. at 128), “such suits ‘may only seek prospective injunctive or declaratory relief; they may not seek retroactive monetary damages or equitable restitution.’” Id., at 477-78 (citing Edelman, 415 U.S. at 664–65), Lopes, 442 Mass. 170, 178-80 (2004) (citing Quern v. Jordan, 440 U.S. 332, 342 (1979), and Ex Parte Young, stating “The Court in [Ex Parte Young] held that a plaintiff may maintain an action for prospective relief against a State official acting in his official capacity, to correct an ongoing violation of the United States Constitution.”)⁶ The law is clear that monetary compensation under the guise of equitable restitution is not appropriate. Id. Indeed, the SJC has held that equitable restitution, in contrast to restitution at law, seeks “to impose a constructive trust or equitable lien on ‘particular funds or property in the defendant's possession.’” Hitachi High Techs. Am., Inc. v. Bowler, 455 Mass. 261, 268 (2009) (citing Sereboff v. Mid Atl. Med. Servs., Inc., 547 U.S. 356, 362 (2006)). Whereas equitable restitution proceeding under statute is wholly distinct, and does not include monetary damages. These cases

⁶ But notably, in the case at bar, there has been no showing of some ongoing systemic violation. Rather, Plaintiff sought redress as to a letter’s notification of dismissal.

deal with a remedy for recovery of overpaid monies, none of which are applicable in this case, much less where the Legislature has not waived sovereign immunity. See, id.

The Court of Appeals decision in Doe, cited above, is on par with the instant case, and holds that monetary relief is not an available remedy. In that case, as here, the plaintiff claimed a violation of the Massachusetts Declaration of Rights, and claimed that he was entitled to monetary damages. Doe, 94 Mass. App. Ct. at 63. The Court of Appeals flatly rejected that argument, reasoning that where, as here, a plaintiff has claimed a constitutional deprivation alone, with no reference to any statutory cause of action such as the MCRA, equitable relief was the only “potentially” available remedy. Id. And just like the Plaintiff here, the Court noted that the Doe plaintiff could have proceeded under an alternative statutory theory of liability, but his decision to proceed only on the constitutional due process claim barred him from pressing any claim for money damages. Id., at 64. Like in the plaintiff in Doe, the Plaintiff here brought a claim under the State Constitution’s Declaration of Rights, and is only entitled to some form of equitable remedy in the form of injunctive or declaratory relief.

The SJC’s decision in Lane v. Commonwealth, 401 Mass. 549, is also on point. Under Lane, the SJC ruled that a plaintiff may have been entitled to an injunction specifically tailored to certain supervisory officials who were alleged to have violated the plaintiff’s rights. Id., at 552-3. Such relief would only be appropriate after a showing of systematic deprivation, which is absent in our present case. Id.

Other cases similarly have held that only an injunction to bar continued misconduct would be available where sovereign immunity applies. For example, in Bourne v. Gardner, the court reasoned that “[i]f the plaintiff is correct that the allegations contained in the letter are false, then basic fairness requires that he have some recourse to remove these purported false

assertions from his chain of title.” See, 98 Mass. App. Ct. 1110 (2020) (removing language from a letter as potentially injunctive relief to a claim of defamation) (1:28 Decision); Williams v. Dep't of Correction, 100 Mass. App. Ct. 1118, *1 (2021) (sovereign immunity barred money, but injunctive relief was available) (1:28 Decision). But no case provides that a retroactive award of back pay, frontpay, or pension diminution, is available when a counseled plaintiff makes the strategic decision to proceed only under the state Constitution.

Contrary to the Plaintiff’s arguments, the decision in Layne supports the Defendants, as it too forecloses any award of damages under the circumstances here. The Court certainly did not hold that monetary compensation was awardable as a matter of law or equity, but instead, simply clarified that the Commonwealth could not avoid equitable relief in the form of declaratory judgment. Layne v. Supt., Massachusetts Corr. Inst., Cedar Junction, 406 Mass. 156, 160 (1989). Indeed, in the roughly 35 years since the SJC decided Layne, no Massachusetts court has recognized a monetary remedy for claims brought only under the Massachusetts Declaration of Rights. Pimentel v. Methuen, 323 F. Supp. 3d 255, 273 (D. Mass. 2018). In sum, no Court has held that the text of the Constitution entitles a plaintiff to monetary compensation, especially where the Legislature has enacted multiple comprehensive remedial schemes.

Accordingly, even if the Plaintiff had sought relief in the form of a prospective injunction or a declaration of its rights, the sole remedy available to her under Layne and its progeny would be an order declaring that the letter sent by Mr. Brangiforte in January 2016 was insufficient to satisfy the requirements of G.L. c. 71, sec. 42, and that the Defendants should be barred from relying on such notice in similar situations in the future.

Moreover, the Plaintiff asks for attorneys' fees and costs, but acknowledges the default American rule that fees are not shifted unless statutory authorization allows this. The Plaintiff

cites no such statute supporting this Court's authority to do so, and cannot now bring such a claim. To do so in this case would turn the American rule against fee shifting on its head, crafting an exception so missing the mark that it would swallow the rule.

WHEREFORE, Defendants, City of Boston and Phillip Brangiforte, respectfully request:

- (1) an Order denying the Plaintiff's request for monetary relief,
- (2) the equitable remedy in this case as to Count III shall be a declaration as to the Plaintiff's rights under G.L. c. 71, sec. 42,
- (3) such other relief as this Court deems just and proper.

Dated: October 24, 2024

Respectfully Submitted,

City of Boston, and Phillip Brangiforte,
By Their Attorney,
Adam Cederbaum, Corporation Counsel

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CERTIFICATE OF SERVICE

I, Mauricio J. Vaca, counsel for Defendants do hereby state that I did cause a copy of the foregoing to be served to Plaintiff's Counsel of Record by email, on October 24, 2024.

By: /s/ Mauricio J. Vaca

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 1681CV03647

MARINA VYRROS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON, AND)
 PHILLIP BRANGIFORTE,)
)
 Defendants.)

DEFENDANTS’ BRIEF REGARDING REMEDY ON COUNT III

Defendants, City of Boston and Phillip Brangiforte (“the City”), hereby submit this brief regarding remedy on Count III (Declaration of Rights deprivation under the State Constitution), seeking an Order that to the extent a remedy will be issued on Plaintiff’s Count III, her claim under the State Constitution, it shall be an equitable one, stating as follows:

I. OUTSTANDING LEGAL ISSUES

A. Question. What remedy, if any, is available to Plaintiff for her State Constitution claim, given G.L.c. 71 § 42 deems the statutory remedy as exclusive, subject to judicial review?¹

B. Proposal for Analysis. The City proposes the answer to this question should be analyzed through the following questions: 1) to what remedy does a claim under the text of the Constitution potentially entitle a plaintiff? 2) are there specific statute-based remedies otherwise available to Plaintiff, and what are those statutory mandates? 3) are there sovereign immunity principles that should be followed?

¹ Plaintiff’s claim is: “Defendants violated Plaintiff’s right to due process protected by the Massachusetts Declaration of Rights in terminating her employment without following its own written procedures.” See, Am. Compl., at thirty-sixth par.

C. **Answer.** Under a State Constitution claim, equitable relief is potentially available based on the legal authorities and case developments.

II. **RELEVANT BACKGROUND TO REMEDY DETERMINATION**

A. **Plaintiff's Claims of Termination.**

i) *The MCAD and Superior Court Complaints.*

On May 27, 2016, Plaintiff filed a Complaint at the Massachusetts Commission Against Discrimination (“MCAD”) claiming the City had discriminated and retaliated against her. The MCAD’s general function is to administer adverse employment action claims where those adverse employment actions result from discrimination or retaliation. Plaintiff claimed she had her computer shut off with no access to email, and was treated as a “former employee” after “late January 2016.” In essence, Plaintiff claimed she was constructively terminated as of late January 2016. She would later remove her MCAD charge to the Superior Court claiming termination. Plaintiff was represented by counsel since at least May 27, 2016, and was previously represented by different counsel throughout the pendency of a workers compensation claim. Plaintiff also had union representation at her disposition, and in fact, she did so avail herself thereof.

As of the date of her MCAD charge, Plaintiff was in possession of an AWOL (absence without leave) notice letter from Mr. Brangiforte, the School Principal. That notice informed Plaintiff of her AWOL status, and notified her that continued failure to obtain a positive leave status or failure to report to work by January 26, 2016 would result in an “irrevocabl[e]” resignation as of that date. Ultimately, the facts show Plaintiff was absent for at least eighty days between the time of her departure and the date she was considered irrevocably resigned. The Appeals Court agreed that Plaintiff’s due process rights under the Massachusetts Declaration of Rights were violated because Plaintiff did not know she was terminated as of January 26, 2016.

Yet, on December of 2016 and earlier (by natural deduction), Plaintiff claimed she had been “fired” or “terminated,”² and the facts show she obtained another position at a different public school. This was claimed at the outset of the case in the Superior Court and throughout at each juncture, including at the summary judgment stage in 2019, the summary judgment hearing in 2019,³ trial in 2023, and appeal in 2023-2024.

Following 2017 and 2018, in the seventh month of 2019, Plaintiff moved the Court to add a Count III, claiming a procedural due process deprivation under the State Constitution’s Declaration of Rights. This was approximately 31 months after Plaintiff’s initial Complaint. Plaintiff’s stated basis to the Court to add the pure constitutional violation claim was that no additional discovery would be forthcoming and that the Defendants would not be prejudiced in the addition. In other words, this claim has been accepted by the parties and the Court as a claim based on the Declaration of Rights under the Massachusetts Constitution.

ii) Trial.

In late July of 2023, Plaintiff’s claims for damages under G.L. c. 151B and G.L. c. 152 were tried to a jury of her peers. The trial was weeklong. Plaintiff claimed there that she had been terminated and sought monetary damages, classifying those damages as: backpay, frontpay, emotional distress, and diminution of pension. The questions resolved by the jury were specifically:

1. “Did the defendants discriminate against the plaintiff on the basis of her handicap?”
2. “Did the defendants retaliate against the plaintiff by ‘terminating’ her for filing a worker's compensation claim?”

² See, Compl. and Am. Compl., Docket Entry 1, and 21-21.2.

³ Summ. J. Hr’g Transcript, 8:3, 10; 9:19, 25; 11:10, 12, 21; 12:3; 13:7; see also, Plt. Mtn. Summ. J., Docket Entry 23.1.

The jury was instructed that if they find the “termination” was motivated by discrimination or was otherwise in retaliation to the workers compensation claim, they were to award compensatory damages: “backpay, frontpay, emotional distress, diminution of pension.”⁴

iii) Reliance on Plaintiff’s Claim, and Current Posture.

While recognized as self-evident by courts, a court and defendants are entitled to rely on the claims of a plaintiff as the sole controller of her cause. By the time this case was brought to the Appeals Court, long after discovery had closed, long after summary judgment was decided, and the parties had tried the discriminatory and retaliatory termination counts to a jury of Plaintiff’s peers, the parties were in concurrence that the sole remaining cause of action on appeal was one under the State Constitution’s Declaration of Rights. This Honorable Court need only examine the summary judgment record, and the Appeals Court decision to confirm this fact.

Turning to the posture of the case now, the question for the Court is what remedy considerations should be given on Plaintiff’s State Constitution claim. Plaintiff sought redress as follows: “Defendants violated Plaintiff’s right to due process protected by the Massachusetts Declaration of Rights in terminating her employment without following its own written procedures.” The law more meaningfully confirms that if any remedy is available, it is equitable. It is against both legal principles, and principles of fairness and equity to now request that a deprivation of the rights claim under the Declaration of Rights, should be allowed to morph into a damages claim under some “tort,” thereby supplanting the exclusive remedy under G.L. c. 71 § 42, and other statutory remedies including G.L. c. 151B and G.L. c. 152.

B. Arbitration is Favored; Decisions are Subject to Judicial Review.

Notably, Plaintiff, whether by union or counsel, chose to forego arbitration at the point she claimed termination in December of 2016. The clear legislative intent is that arbitration is

⁴ Jury Instructions, Pgs. 4, 8, 13, 16.

“the exclusive remedy” of a teacher claiming wrongful termination under G.L. c. 71 § 42, sixth par. As far as the City is aware, no letter or petition was ever sent to an arbitrator or the School Committee claiming that the termination was wrongful as required by G.L. c. 71 § 42. Crucially, no arbitrator has determined, nor was given the opportunity to determine, that Plaintiff waived her rights under G.L. c. 71 § 42. Ultimately, that decision “shall be subject to judicial review as provided in chapter one hundred and fifty C.” G.L. c. 71 § 42, at sixth par. Instead, Plaintiff chose to continue to adjudicate claims pursuant to G.L. c. 151B and G.L. c. 152, claiming wrongful termination throughout.

C. Union Representation and Responsibility.

As a member of the Boston Teachers Union, Plaintiff was entitled to union representation to represent her in her claims of wrongful termination as of May 27, 2016, or December 21, 2016. The City is not aware of the Boston Teachers Union’s involvement on any claims of wrongful termination under G.L. c. 71 § 42 as of January 26, 2016, May 27, 2016, December 21, 2016, or any other date up until the date of this motion. Whether the Plaintiff advised her union is not currently known. See, e.g., G.L. c. 150E § 5 (discussing union’s exclusive responsibility). Certainly, it would have been in her interest to do so, but this fact should not prejudice the City.

III. MEMORANDUM OF LAW AND ARGUMENT

A. The Massachusetts Constitution is a Statement of General Principles.

When construing the State Constitution, the Supreme Judicial Court (“SJC”) looks to its language and structure, bearing in mind that the “Constitution is a statement of general principles and not a specification of details...[i]t is to be interpreted as the Constitution of a State and not as a statute or ordinary piece of legislation.” Brookline v. Sec’y of Com., 417 Mass. 406, 419 (1994) (citing McDuffy v. Secretary of the Executive Office of Educ., 415 Mass. 545, 559

(1993), Cohen v. Attorney Gen., 357 Mass. 564, 571 (1970), Tax Comm'r v. Putnam, 227 Mass. 522, 523–524 (1917)). “As this court counseled nearly 200 years ago, ‘it must never be forgotten, that [our Constitution] was not intended to contain a detailed system of practical rules, for the regulation of the government or people in after times; but that it was rather intended, after an organization of the government, and distributing the executive, legislative and judicial powers, amongst its several departments, to declare a few broad, general, fundamental principles, for their guidance and general direction.’” Lyons v. Sec’y of Commonwealth, 490 Mass. 560, 568 (2022) (citing Commonwealth v. Blackington, 41 Mass. 352 (1837), Moore v. Election Comm’rs of Cambridge, 309 Mass. 303, 312 (1941)).

B. Judgment on a State Constitution Claim Does Not Entitle Plaintiff to Money Damages, But Equitable Relief is “Potentially” Available.

No Massachusetts case has recognized a claim for money damages brought under the State Constitution against State officers for actions taken as State officers. Doe v. Sex Offender Registry Bd., 94 Mass. App. Ct. 52, 64 (2018). A claim under the State Constitution’s Declaration of Rights does not entitle a plaintiff to damages, but equitable relief is “potentially” available as binding authority dictates. Doe, 94 Mass. App. Ct. at 63–64, see also, O’Brien v. King, 103 Mass. App. Ct. 1121, at *2 (2024) (Vuono,⁵ Milkey & Hand, JJ) (“By contrast, the plaintiff cannot recover damages for any alleged State constitutional violations because he has not sued under any applicable procedural statute, such as the Massachusetts Civil Rights Act.”). The Massachusetts Civil Rights Act, for example, requires a different standard of proof. See e.g., Sarvis v. Boston Safe Deposit & Tr. Co., 47 Mass. App. Ct. 86, 91 (1999); see also, e.g., Pimentel v. Methuen, 323 F. Supp. 3d 255, 273 (D. Mass. 2018).

⁵ Justice Vuono was on the panel that heard the appeal in this case.

Massachusetts’ refusal to recognize a private right of action for damages under the Declaration of Rights “is soundly rooted in long-standing sovereign immunity law, which holds that the Commonwealth and its officers are generally immune from suits for damages for actions taken as State officers, unless the Legislature has acted expressly to abrogate that immunity.” Doe, 94 Mass. App. Ct. at 64–65; see also, Sullivan v. Chief Justice for Admin. & Mgmt. of Trial Court, 448 Mass. 15, 31 (2006). As the Appeals Court has held, § 1983 and its state analogue, the MCRA, “may be thought, as it were, to occupy the field” such that those seeking to litigate Constitutional claims may bring a claim under the relevant statutory standards. See, Martino v. Hogan, 37 Mass. App. Ct. 710, 720 (1994), see also, Howcroft v. Peabody, 51 Mass. App. Ct. 573, 593 (2001). Courts should not “abrogate sovereign immunity by fashioning a judicial remedy where the Legislature did not.” See, Doe, 94 Mass. App. Ct. at 65. The purpose of sovereign immunity is to protect “the public treasury against money judgments and public administration from interference by the courts at the behest of litigants except in instances and by procedures the Legislature has authorized.” New Hampshire Ins. Guar. Ass’n v. Markem Corp., 424 Mass. 344, 351 (1997).

In Doe, 94 Mass. App. Ct. at 63, the plaintiff claimed a Massachusetts Declaration of Rights violation. The Doe plaintiff sought monetary damages based on the state constitutional claims. Id. However, the Appeals Court reasoned that where a plaintiff has claimed a Declaration of Rights deprivation, without reference to any statutory cause of action such as the Massachusetts Civil Rights Act, equitable relief was “potentially” available. Id. The Court specifically considered the plaintiff’s choice not to proceed under the Massachusetts Civil Rights Act, G.L. c. 12, §§ 11H-11J. Id. at 64. “In contrast, it is unclear whether damages are available for deprivations of State constitutional rights...plaintiffs have not alleged a ‘threats, intimidation

or coercion' claim under the Massachusetts Civil Rights Act." Id. at 57. Like in Doe, Plaintiff here brought a claim under the State Constitution's Declaration of Rights, and is only potentially entitled to equitable relief.

Indeed, 35 years ago, in Layne v. Supt. , Massachusetts Corr. Inst., Cedar Junction, 406 Mass. 156, 156 (1989), the SJC reasoned similarly that the Layne plaintiff was potentially entitled to equitable relief because plaintiff had brought a constitutional claim under art. 114 of the Amendments to the Constitution. The Layne Court distinguished a constitutional claim from those that were raised under the Massachusetts Civil Rights Act, which were statutory in nature. Id. at 160. Since Layne, courts have refused to award monetary damages under the text of the Constitution. See, Pimentel, 323 F. Supp. 3d at 273 (explaining the history of jurisprudence).

Here, Plaintiff has at all material times sought to remedy a deprivation under the State Constitution, a claim of *procedural* due process: "Defendants [] violated Plaintiff's right to due process protected by the Massachusetts Declaration of Rights in terminating her employment without following its own written procedures." Am. Compl., at thirty-sixth par. At the appellate level, Plaintiff addressed the question of whether the notice on January 26, 2016 was sufficient notice under the State Constitution. To say that this claim entitles her to money damages is simply unfounded and against legal principles. Plaintiff is the master of her complaint and has had her cause heard. See, e.g., Caterpillar Inc. v. Williams, 482 U. S. 386, 398–399 (1987) ("Since the plaintiff is 'the master of the complaint,' the well-pleaded-complaint rule enables [her], 'by eschewing claims based on [] law, ... to have the cause heard...").

C. Undue Prejudice Against the City in Allowing Money Damages.

The City would be unduly prejudiced in allowing Plaintiff to seek monetary damages on a claim arising from the text of the State Constitution. Any such remedy would result in the

abrogation of sovereign immunity by a court of law, and not the legislature. In other words, the City should not be prejudiced by being subjected to money damages claims in the absence of the legislature's approval and, to the extent applicable, subject to the legislature's conditions as imposed through law. Moreover, Plaintiff at all times had available remedies at law, and failed to avail herself of them, including but not limited to: G.L. c. 71 § 42, and G.L. c. 12, §§ 11H-11J. Ultimately, to allow a pecuniary remedy to flow from the text of the State Constitution to Plaintiff would be unduly prejudicial as a matter of law and equity.

D. Failure to Exhaust or Avail of Remedies at Law.

The City submits the Court should consider Plaintiff's failures to exhaust her remedies at law now that the Court is sitting in the judgment phase as to Count III. For example, under G.L. c. 71 § 42, Plaintiff's remedies were the "exclusive remedies available to teachers for wrongful termination." As above, Plaintiff neither filed any action for arbitration as of May 2016 or December 2016, nor allowed an arbitrator to assess her claims which are all subject to judicial review. As such, in addition to the reasons set forth above, this Court is also exceedingly well within its discretion to consider the remedy as potentially equitable under the Doe rule. 94 Mass. App. Ct. at 63.

WHEREFORE, Defendants, City of Boston and Phillip Brangiforte, respectfully request an Order ruling that to the extent a remedy will be assessed by the Court, it shall be equitable, subject to Court approval, and further briefing as needed, and for all other relief this Court deems just and fair.

SIGNATURE & CERTIFICATE OF SERVICE PAGE FOLLOWS

Dated: October 15, 2024

Respectfully Submitted,

City of Boston, and Phillip Brangiforte,
By Their Attorney,
Adam Cederbaum, Corporation Counsel

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CERTIFICATE OF SERVICE

I, Mauricio J. Vaca, counsel for Defendants do hereby state that I did cause a copy of the foregoing to be served to Plaintiff's Counsel of Record by email, on October 15, 2024.

By: /s/ Mauricio J. Vaca

parties served their initial briefs as ordered on October 15, 2024. Plaintiff here responds to Defendants' October 15 submission.

ARGUMENT

Defendants seem to deny the Decision's plain meaning⁵ by, in effect, challenging the Appeals Court decision on liability. They revisit resolved matters and raise arguments that do not bear on the remedy issue. Plaintiff's motion, on the other hand, offers a clear path to making Plaintiff whole. Defendants' position wholly lacks merit.

1. The Court should ignore a significant portion of Defendants' brief as irrelevant.

Rather than address the remedy issue as required by both this and the Appeals Court, Defendants spend much time rearguing liability.⁶ They rebut claims that Plaintiff never proffered,⁷ and rebut bases for relief under statutes that are unavailable to Plaintiff and which she never cited.⁸ For example, Defendants speculate about such matters as union rights⁹ and redress under the MCRA.¹⁰ Their argument generally deflects from a record focused on the Decision. They bring to the Court's attention partial analyses of relatively irrelevant collateral matters. Because they are irrelevant and serve only to complicate what should be relatively straightforward determination of remedies (back pay and benefits; reformed retirement; costs and fees), Plaintiff does not further address them at this time. She does not thereby accept or concur with Defendants' flawed premises and speculations.

⁵ They reframe the question "What remedy, *if any*." Defendants' Brief Regarding Remedy on Count III ("DB") at 1 (emphasis added).

⁶ *See id.* at 1-5.

⁷ *See, e.g., id.* at 8.

⁸ *See id.* at 5 (G.L. c. 150E § 5); at 6-8 (G.L. c. 12, §§ 11H-11J).

⁹ *See id.* at 5.

¹⁰ *Id.* at 7-8.

2. Defendants concede that equitable relief is available

Plaintiff's memorandum in support of her motion explains in detail that case precedent clearly supports the use of the Court's equity powers to construct an appropriate remedy. Defendants concede this point.¹¹

Defendants argue that because the remedy must be equitable, money damages are foreclosed.¹² Their position is unsupported by the weight of precedent.¹³ Back pay is an equitable remedy, available to make Plaintiff whole.¹⁴ Plaintiff, never lawfully terminated, is still employed by Defendant City of Boston, who may be ordered to pay unpaid wages and benefits.

3. The Defendant City cannot avoid an equitable remedy on the basis of sovereign immunity

For the first time in this case, which was filed in December 2016, Defendants cite the principle of sovereign immunity as a barrier to awarding damages against the City.¹⁵ The principle is inapplicable here, however, because the legislature waived sovereign immunity when it authorized Courts to require school districts that fail to comply with G.L. c. 71, § 42 to afford a remedy to those they unlawfully terminate, including "back pay, benefits, reinstatement, and any other appropriate non-financial relief or any combination thereof."¹⁶ The presumption of sovereign immunity is overcome here because "consent to suit has been 'expressed by the terms

¹¹ *Id.* at 2: "Under a State Constitution claim, equitable relief is potentially available based on the legal authorities and case developments."

¹² *Id.* at 6-7.

¹³ *See* Plaintiff's Memorandum in Support of Her Motion at 4, nn.17-18.

¹⁴ *Id.* at 4.

¹⁵ *See* Defendants' Brief Regarding Remedy on Count III at 7-8.

¹⁶ GL 71, § 42.

of a statute . . .”¹⁷ Accordingly, courts on multiple occasions awarded teachers damages when school districts failed to comply with the procedural provisions of c. 71, §. 42.¹⁸

4. Plaintiff should not be denied a remedy because she did not exercise a recourse to which she was denied access.

The Appeals Court has ruled that Defendants failed to give Plaintiff notice of their action and thereby foreclosed her ability to invoke statutory protections of G.L. c. 71 § 42. Defendants argue that “the Court should consider Plaintiff’s failures to exhaust her remedies at law” now that the Court has already ordered judgment as to Count III.”¹⁹ Liability has been established and surely the Appeals Court ruling estops such an argument. Defendants can point to no authority which would support the notion Plaintiff was required to exhaust before seeking enforcement of her due process claim.

By depriving Plaintiff of written notice of dismissal, the City failed to comply with its due process obligations under c. 71, s. 42. Defendants deprived plaintiff of her opportunity to arbitrate and receive relief in the manner prescribed by the Legislature. Defendants are

¹⁷ See *Bain v. Springfield*, 424 Mass. 758, 763 (1997) (quoting *C&M Constr. Co. v. Commonwealth*, 396 Mass. 390, 392 (1985)) (G.L. c. 151B waived sovereign immunity for the city of Springfield because “the statute specifically provides for the award of ‘actual and punitive damages’ and includes the “‘Commonwealth and all political subdivisions ... thereof’ in the “statutory definition of persons and employers subject to the statute.” *id* at 763). Compare *Smith v. Com.*, 347 Mass. 453, 460 (1964) (G.L. c.92, §§10-32, which formerly regulated metropolitan water districts, did not waive sovereign immunity because the Commonwealth did not manifest intent to be subject to liability; the relevant statute had no provision “for a remedy or a method for the determination of damages in the event of injury or damage.”).

¹⁸ See, e.g. *Nutter v. Sch. Comm. of Lowell*, 5 Mass. App. Ct. 77, 80, 82 (1977); *Woodward v. Sch. Comm. of Sharon*, 5 Mass. App. Ct. 84, 88 (1977).

¹⁹ See DB at 9. Defendants’ suggestion that this case now go to arbitration is senseless. Not only is the proposition meritless, trying to arbitrate something that happened almost 10 years ago when many of the people involved are no longer with the District would be highly prejudicial to Plaintiff. The constitutional harm Defendants caused Plaintiff cannot be remedied, as if time stood still, by providing her the recourse now which they deprived her when they terminated her almost a decade ago.

disingenuously proposing to remedy the constitutional harm they inflicted upon Plaintiff -- beginning when they took her off the payroll and treated her as having “resigned” without further notice--by providing her the recourse now which they deprived her when they terminated her almost a decade ago. Surely, they cannot now complain that the Court cannot award the same type of remedies available to Plaintiff had she been given notice and not deprived of her statutory rights.

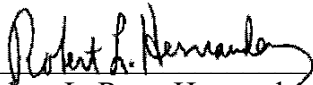
5. Equity requires that Plaintiff be put in same position as if Defendants had fulfilled their statutory duties.

Plaintiff urges that the Court adopt the framework she proposed in her motion and supporting memorandum. The forms of relief she might have received from an arbitrator had she received proper notice are a base line for the Court in framing a proper remedy, including an award of back pay. Equitable authority allows the Court to order the City to reform Plaintiff’s retirement and to provide such other relief as would do justice.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully urges the Court to dismiss Defendants’ and develop a remedy based on the framework proposed by Plaintiff in her Motion and Memorandum in Support.

Respectfully submitted,


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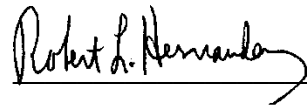
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/s/ Katherine Skubecz
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Dated: October 24, 2024

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on counsel for defendants by electronic mail on October 24, 2024.



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1681CV03647

MARINA VYRROS

vs.CITY OF BOSTON & another¹**DECISION AND ORDER ON PLAINTIFF'S MOTION FOR REMEDY (Paper No. 103)**

The plaintiff, Marina Vyrros ("Vyrros"), commenced this action in 2016, alleging that the defendant City of Boston wrongfully terminated her from her teaching position in the Boston Public Schools, and bringing associated claims under G. L. c. 151B. The complaint also named as a defendant the headmaster of her school, Philip R. Brangiforte. In 2019, she amended her complaint to include a claim for "violation of due process." In its entirety, the new claim (Count 3) alleged that "Defendants violated Plaintiff's right to due process protected by the Massachusetts Declaration of Rights in terminating her employment without following its own written procedures." On February 7, 2020, the Defendants' motion for summary judgment on Count 3 was allowed. See Docket No. 28. The remaining c. 151B claims proceeded to a jury trial in July 2023, after which verdicts entered in the Defendants' favor.

On appeal, the Appeals Court reversed on Count 3 only, and "remanded for entry of a new judgment in favor of Vyrros, and for a determination of remedy." *Vyrros v. Boston*, 104 Mass. App. Ct. 1110, 2024 WL 2859875, at *5 (2024). See Docket No. 103. After judgment so entered, Vyrros filed a Motion for Remedy, the matter presently before the court. Therein, Vyrros seeks "equitable relief" to make her "whole," including an award of backpay, wages,

¹ Philip R. Brangiforte.

benefits, and attorney's fees. Defendants oppose on the ground that Vyrros is not entitled to monetary damages. On this issue, the court agrees with the Defendants.

Count 3 consists solely of a claim for violation of procedural due process rights under the Massachusetts Declaration of Rights. Although judgment entered in Vyrros's favor on this claim, under unambiguous controlling caselaw, she is not entitled to monetary damages. See *Doe v. Sex Offender Registry Bd.*, 94 Mass. App. Ct. 52, 65 (2018) ("plaintiffs cannot recover damages on their claims for deprivation of due process brought directly under the State Constitution"), quoting *Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994), (Civil Rights Act "occup[ies] the field" in this area). Thus, the "make whole" relief she seeks, which is compensatory, or damages-based in nature, is unavailable to her. See generally *Governo Law Firm LLC v. Bergeron*, 487 Mass. 188, 199 (2021). At most, Vyrros is entitled to declaratory or prospective injunctive relief. See G. L. c. 231A, §§ 1-2; *Layne v. Superintendent, Mass. Corr. Inst., Cedar Junction*, 406 Mass. 156, 160 (1989). Because the relief Vyrros presently seeks is not framed in these terms, i.e. a "declaration[] of right, duty, status and other legal relations," G. L. c. 231A, § 1, her motion as it stands must be **DENIED**.²

² The court further notes that in cases where damages are available for procedural due process violations in the context of employment termination, a plaintiff's entitlement to more than nominal damages "turns on whether the constitutional violation -- the failure to provide a pre-termination opportunity to contest termination -- did in fact cause the harm asserted -- the loss of job and related benefits." *Hall-Brewster v. Boston Police Dep't*, 96 Mass. App. Ct. 12, 27 (2019), quoting *Whalen v. Massachusetts Trial Court*, 397 F.3d 19, 29 (1st Cir.) (2005). If the termination was nevertheless justified, only nominal damages may be awarded. *Id.* at 26-27. In other words, even if Vyrros were entitled to damages, the fact of the violation alone would not be enough to entitle her to backpay, wages, or other like relief.

ORDER

For the reasons stated, the plaintiff's motion for remedy is **DENIED**.



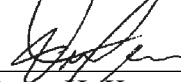
William F. Bloomer
Justice of the Superior Court

Dated: February 13, 2025

Respectfully submitted,

MARINA VYRROS

By her Attorneys:



Omar H. Kazmi

BBO No. 708874

Deborah A. Dorfman

BBO No. 625003

Phillip Kassel

BBO No. 555845

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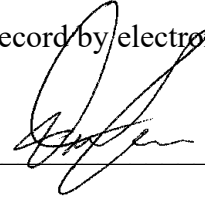
ddorfman@mhlac.org

pkassel@mhlac.org

Dated: June 25, 2025

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on all counsel of record by electronic mail this 25th day of June, 2025.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a surname, positioned above a horizontal line.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON, *et al.*,)
 Defendants)

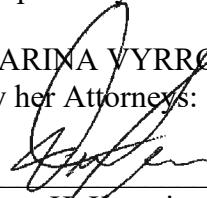
**PLAINTIFF’S MOTION FOR
ENTRY OF FINAL JUDGMENT
FOR DECLARATORY RELIEF**

Pursuant to Mass. R. Civ. P. 58(a)(2), and for the reasons set forth in the accompanying memorandum, Plaintiff Marina Vyrros hereby moves this Court, in accordance with its decision of February 13, 2025, to declare that Defendants unlawfully terminated her employment in violation of the Massachusetts Declaration of Rights and G.L. c. 71, § 42 and enter final judgment in her favor on Count III of her Amended Complaint. Plaintiff proposes an Order for the Court’s consideration.

Respectfully submitted,

MARINA VYRROS

By her Attorneys:



Omar H. Kazmi

BBO No. 708874

Deborah A. Dorfman

BBO No. 625003

Phillip Kassel

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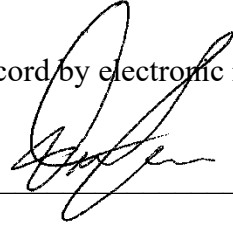
ddorfman@mhlac.org

pkassel@mhlac.org

Dated: May 30, 2025

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on all counsel of record by electronic mail on 30th day of May 2025.



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON, *et al.*,)
)
 Defendants)

**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S MOTION FOR
ENTRY OF FINAL JUDGMENT
FOR DECLARATORY RELIEF**

I. INTRODUCTION

In accordance with this Court’s decision both denying and granting relief in this matter, Plaintiff Marina Vyrros seeks an order for declaratory relief and entry of final judgment in accordance with Mass. R. Civ. P. 58(a)(2).

II. RELEVANT FACTS AND BACKGROUND

Plaintiff brought this action alleging Defendants violated her procedural rights under G.L. c. 71, § 42 and the Massachusetts Declaration of Rights by terminating her tenured public teacher position on January 26, 2016. This Court granted summary judgment for Defendants on February 7, 2020.¹ The Appeals Court thereafter reversed this decision and “remanded for entry of new judgment in favor of Vyrros, and for a determination of remedy.”² On October 1, 2024, this Court, in accordance with the appellate instruction, entered judgment on liability in favor of Plaintiff and instructed the Parties to submit pleadings on “the nature and scope of damages

1 Memorandum of Decision and Order on Plaintiff’s and Defendants’ Cross-Motions for Summary Judgment, Dkt. No. 28.

2 *Vyrros v. Boston*, 104 Mass. App. Ct. 1110, at *5 (2024).

legally recoverable.”³

Accordingly, on November 4, 2024, the Parties filed briefs setting out their respective position under Superior Court Rule 9A.⁴ Plaintiff sought, among other things, back pay, arguing that she was entitled to be made whole.⁵ Defendants contended that Plaintiff was entitled to nothing more than a declaration of rights.⁶

A hearing was held on January 13, 2025. On February 13, 2025, the Court issued its Decision and Order (“Decision”) denying Plaintiff’s request for relief and agreeing with Defendants’ position.⁷ The Court found that Plaintiff “is entitled to declaratory or other injunctive relief.”⁸

In accordance with the Court’s decision, Plaintiff respectfully requests, without waiving her right to appeal the denial of back pay and other equitable relief, that the Court issue a declaration finding that Defendants violated Plaintiff’s due process and statutory rights under the Massachusetts Constitution and G.L. c. 71, § 42, respectively, and Order that final judgment be entered in this matter.

III. ARGUMENT

Mass Rule of Civil Procedure 58(a)(2) instructs courts that render decisions granting

3 *See* Order and Expanded Endorsement, Dkt. No. 105.

4 *See* Rule 9A packet, including Plaintiff’s Motion for Deprivation of Property without Due Process and supporting memoranda, as well as Defendants’ Memorandum on Remedy and the Parties’ oppositions to each other’s motions. Dkt. Nos. 108-108.5.

5 Plaintiff’s Memorandum in Support of Motion for Remedy for Deprivation of Property without Due Process, Dkt. No. 108.1, at 1.

6 Defendants’ Opposition to Plaintiff’s Motion for Remedy, Dkt. No. 108.2, at 5-6.

7 Dkt. No. 109.

8 Decision and Order on Plaintiff’s Motion for Remedy, Dkt. No. 109, at 2.

parties certain forms of relief to “approve the form of judgment” for entry by the clerk.⁹ The judgment must be set forth “on a separate document.”¹⁰ The Court’s decision denying the relief requested by Plaintiff but stating her entitlement to a declaration of rights leaves nothing more to litigate in this action. Plaintiff therefore asks the Court to “approve” final judgment in the form of a declaration of rights that the Court deems appropriate for entry by the Clerk of Court pursuant to Civil Rule 58(a)(2). Plaintiff proposes an Order for the Court’s consideration.¹¹

IV. CONCLUSION

For the foregoing reasons, the Court should allow Plaintiff’s Motion, declare that Defendants unlawfully terminated her employment in violation of the Massachusetts Declaration of Rights and G.L. c. 71, § 42, and enter final judgment in her favor on Count III of her Amended Complaint in accordance with the Court’s decision and in the form Plaintiff proposes.

9 This pertains to decisions awarding “other relief” than that resulting from decisions or agreements for judgments for a “sum certain” or that deny all relief, which are entered “without awaiting any direction from the court.” See Civil Rule 58(a)(1).

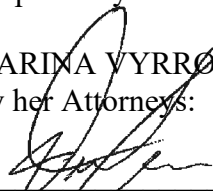
10 Civil Rule 58(a)(2). See also *Lindor v. McDonald’s Restaurants of Mass, Inc.*, 80 Mass. App. Ct. 909, 956 (2011) (a judgment only exits when written on a separate paper and entered on the docket).

11 Civil Rule 58(a)(2) states that the court, on motion, may allow a hearing on the form of judgment. A case conference in this matter is set for June 2, 2025, which the Court may wish to utilize to hear the parties on the form of the declaration of rights to which the Court deemed Plaintiff entitled.

Respectfully submitted,

MARINA VYRRØS

By her Attorneys:



Omar H. Kazmi

BBO No. 708874

Deborah A. Dorfman

BBO No. 625003

Phillip Kassel

BBO No. 555845

Mental Health Legal Advisors Committee

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Dated: May 30, 2025

EXHIBIT

A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,)
Plaintiff,)
v.)
CITY OF BOSTON, *et al.*,)
Defendants.)

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S OPPOSED MOTION
FOR ENTRY OF FINAL
JUDGMENT FOR
DECLARATORY RELIEF**

This matter came before the Court on Plaintiff’s Opposed Motion for Entry of Final Judgment for Declaratory Relief. The Court has reviewed the briefs and the arguments of the parties and all supporting documents submitted therewith, as well as the Court’s October 1, 2024 Order and Expanded Endorsement, entering judgment in favor of Plaintiff on Count III of her First Amended Complaint pursuant to the June 6, 2024 Court of Appeal’s Rescript Order and this Court’s February 13, 2025 Decision and Order on Plaintiff’s Motion for Remedy, denying her request for money damages, including back pay and other equitable relief. Having considered the foregoing, it is hereby DECLARED that:

Defendants’ termination of Plaintiff’s employment violated the Massachusetts Declaration of Rights and G.L. c. 71, § 42 because Defendants failed to furnish Plaintiff with written notice of their intent to dismiss her from her employment, offer an opportunity to respond, and otherwise follow the procedures set out in § 42.

It is further ORDERED that:

Final judgment in favor of Plaintiff on Count III of her First Amended Complaint be entered accordingly.

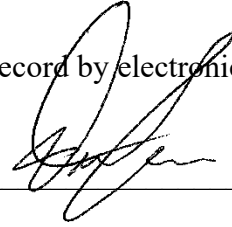
SO ORDERED.

Dated:

, J.

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on all counsel of record by electronic mail this 30th day of May, 2025.



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON, AND)
 PHILLIP BRANGIFORTE,)
)
 Defendants.)

DEFENDANTS’ LIMITED OPPOSITION TO PLAINTIFF’S MOTION FOR ENTRY OF FINAL JUDGMENT FOR DECLARATORY RELIEF

In response to Plaintiff’s Motion for Entry of Final Judgment for Declaratory Relief, the City of Boston and Phillip Brangiforte (hereinafter together “the City”) submit this limited opposition, not opposing the “potential entitlement” to declaratory relief, but opposing positions raised or implied by Plaintiff’s Motion and proposed order, and maintaining principles resting on the City’s sovereign and governmental immunities:

The City does not deny that the Court is within its discretion to enter declaratory relief, however, to the extent it is so inclined, the City requests the below principles be considered, attaching its own proposed order to the extent the Court is inclined to issue declaratory relief. See, Exhibit 1, Proposed Order.

RELEVANT FACTUAL BACKGROUND

On October 8, 2024, the Parties filed a Joint Scheduling Motion for “outstanding legal issues to be resolved as to remedy.” Docket Entry No. 106. Thereafter, Plaintiff moved for remedy, asking the court to, among other things, decide that “Plaintiff is currently an employee of the City

with ongoing rights to her wages.” Docket Entry No. 108. Plaintiff sought to recover money in the form of “Current Pay and Benefits,” “Back Pay,” “Adjustment for Taxes,” “Pension,” etc. Docket Entry No. 108.1. The City, opposing Plaintiff’s motion, separately also submitted its own brief that argued, in relevant part, that a remedy for a pure constitutional due process claim under the State Declaration of Rights is potentially available as prospective declaratory or injunctive relief. The Court denied Plaintiff’s motion on February 13, 2025, stating, in part, that Plaintiff was “[a]t most, Vyrros is entitled to declaratory or prospective injunctive relief.” Docket Entry No. 109, at third par.

ARGUMENT

The City does not contest the Court has broad discretion “for a determination of remedy” as set forth in the Court of Appeals’ ruling. Moreover, the City does not contest that case law would allow for “at most...declaratory or prospective injunctive relief” as this Court’s decision and order holds. Docket Entry No. 109, at third par. However, the City states that, unlike Plaintiff’s position that it is now an automatic right of declaratory relief, the City oppose certain positions referenced in Plaintiff’s papers:

Despite Plaintiff’s suggestion that this Court decided that she is “entitled to declaratory or prospective injunctive relief,” intimating automatic entitlement, the Court actually stated that “[a]t most, Vyrros is entitled to declaratory and injunctive relief,” citing Layne v. Superintendent, Mass. Corr. Inst., Cedar Junction, 406 Mass, 156, 160 (1989), and G.L. c. 231A ss. 1-2. Entitlement to a declaratory relief necessarily requires the Court’s analysis of a showing of “ongoing violations” or mootness, especially in this case and given the long factual history. See, McHugh v.

Commonwealth, 97 Mass. App. Ct. 1104, at *3 (2020) (citing Doe v. Sex Offender Registry Bd., 94 Mass. App. Ct. 52, 63-4 (2018)), see also, G.L. c. 231A, § 2.¹

Above all, the amended complaint and case facts have shown Plaintiff’s cause of action is and has always been a personal one. In this case, there already has been an appellate opinion setting forth its reasonings. Thus, with the above authorities in mind, to the extent the Court is inclined to provide declaratory relief as requested by Plaintiff, the discretion of the Court should be guided by the facts of the case, first assessed before its decision on Plaintiff’s motion—which necessarily implicates principles of sovereign and governmental immunities of the City. See, Layne, 406 Mass. at 160; Lane v. Com., 401 Mass. 549, 553 (1988).

Next, to the extent Plaintiff’s proposed order and memorandum suggest that she was previously entitled to monetary damages, “or other equitable relief,” the City seeks to reaffirm its disagreement as to the form of equitable relief characterized in Plaintiff’s papers. See, Edelman v. Jordan, 415 U.S. 651, 664-7 (1974) (rejecting equitable restitution couched as equitable in the context of sovereign immunity issues, when “equitable restitution [] is in practical effect indistinguishable in many aspects from an award of damages against the State”); see also, Doe, 94 Mass. App. Ct. at 65, Governo Law Firm LLC v. Bergeron, 487 Mass. 188, 199 (2021) (distinguishing between make whole types of relief).

¹ Declaratory relief procedures under G.L. c. 231A, § 1 “may be used in the superior court to ... obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official which practices or procedures are alleged to be in violation of the Constitution of the United States or of the constitution or laws of the commonwealth, or are in violation of rules or regulations promulgated under the authority of such laws, *which violation has been consistently repeated.*” G.L. c. 231A, § 2.

Above all, the City's limited opposition seeks to continue to reaffirm principles of sovereign and governmental immunities, as set forth in their pleadings and arguments following the Appeals Court decision.

WHEREFORE, Defendants City of Boston, and Phillip Brangiforte, respectfully request a hearing, and further request that to the extent the Court is inclined to grant Plaintiff's Motion, consider the Motion within the framework of the foregoing authorities and facts, or otherwise deny the Motion, and for any other relief this Court may grant the City in its discretion.

Respectfully Submitted,

Defendants, City of Boston and Phillip Brangiforte
By their Attorney, Adam Cederbaum
Corporation Counsel
/s/ Mauricio J. Vaca

Mauricio J. Vaca, BBO#704470
Assistant Corporation Counsel
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mauricio.vaca@boston.gov

Dated: June 12, 2025

CERTIFICATE OF SERVICE

I, Mauricio J. Vaca, hereby certify that on June 12, 2025, a copy of the foregoing was served upon the attorneys of record via electronic mail on.

/s/ Mauricio J. Vaca
Mauricio J. Vaca, BBO#704470

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1681CV03647

_____)
MARINA VYRROS,)
))
Plaintiff,)
))
v.)
))
CITY OF BOSTON, AND)
PHILLIP BRANGIFORTE,)
))
Defendants.)
_____)

PROPOSED ORDER

THE COURT, having heard the Plaintiff’s Motion for Declaratory Judgment, and heard argument, it is hereby **DECLARED** that:

1. Defendants deprived Plaintiff of the rights under the Massachusetts Declaration of Rights and G.L. c. 71, § 42 set forth and specified in the Appeals Court Decision, for reasons stated therein.

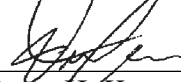
SO ORDERED

, J.

Respectfully submitted,

MARINA VYRROS

By her Attorneys:



Omar H. Kazmi

BBO No. 708874

Deborah A. Dorfman

BBO No. 625003

Phillip Kassel

BBO No. 555845

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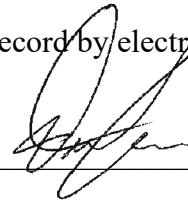
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Dated: June 25, 2025

CERTIFICATE OF SERVICE

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Volume I
Pages: 1-20
Exhibits: 0

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

MARINA VYRROS *
Plaintiff *

v. * DOCKET NUMBER 1681CV03647

City OF BOSTON ET AL *
Defendant *

HEARING
BEFORE THE HONORABLE SARAH WEYLAND ELLIS

APPEARANCES:

For the Plaintiff:
Mental Health Legal Advisors Committee
24 School Street, 8th Floor
Boston, Massachusetts 02108
By: Deborah Alyse Dorfman, Esq.
Omar H. Kazmi, Esq.

For the Defendant:
City of Boston Law Department
One City Hall Square, Room 615
Boston, Massachusetts 02201
By: Mauricio J. Vaca, Esq.
Adam D. Johnson, Esq.

Woburn, Massachusetts
Courtroom 720
August 27 2027

Recording produced by digital audio recording system. Transcript
produced by Approved Court Transcriber, Donna Dominguez

I N D E X

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

None - Hearing

P R O C E E D I N G S

(Court called to order 2:55:35 p.m.)

THE CLERK: And, Your Honor, the next matter on our list is an add on from the D Session. Docket Number 1681CV3647, Marina Vyrros v the City -- is it Vyrros?

MR. KAZMI: It's Vyrros.

THE CLERK: Vyrros, sorry, v. The City of Boston et al.

Could parties identify themselves for the record, starting with the Plaintiff.

MR. KAZMI: Good afternoon. My name is Omar Kazmi. I'm a staff attorney at Mental Health Legal Advisors Committee here for Plaintiff, and I'll let my colleague introduce herself.

THE COURT: Thank you.

MS. DORFMAN: Good afternoon, Your Honor. My name is Deborah Dorfman and I'm an attorney for Mental Health Legal Advisors Committee on behalf of Plaintiff.

MR. VACA: Good afternoon, Your Honor. Mauricio Vaca for the Defendant, City of Boston for Philip Brangiforte.

MR. JOHNSON: Adam Johnson, also for the Defendants.

THE COURT: Okay, thank you.

So I have to admit, I'm a little confused. Why -- why is -
- what -- what entity do you represent, Counsel?

MR. KAZMI: We represent the Plaintiff, Marina Vyrros. We both are attorneys at an organization called the Mental Health Legal Advisors Committee.

1 THE COURT: Okay, so you don't -- okay, that was my
2 confusion. But you do represent the Plaintiff in this case.

3 MR. KAZMI: That's correct, Your Honor.

4 THE COURT: Okay, very good.

5 So I actually encountered this case about a year ago, as
6 memory has it, after the Appeals Court Decision had come down
7 and there was some confusion in -- in interpreting the Decision,
8 which hopefully my Order clarified my position on it. I saw the
9 case that went to Judge Bloomer on the issue of whether or not
10 the Plaintiff on this surviving Count that was overturned on
11 Summary Judgment and the Appeals Court could seek monetary
12 damages, and I see that Judge Bloomer found she could not.

13 So in -- to my mind, I had expected that that would end
14 this case. But I see that now you're back before the Court
15 seeking a Declaratory Judgment; is that correct?

16 MR. KAZMI: That's correct, Your Honor.

17 THE COURT: Okay. Was that something that you were seeking
18 from the beginning? My impression when I heard the case a year
19 ago was the issue was monetary damages and whether or not Ms.
20 Vyrros was in a position to recover money as a result of the
21 Appeals Court Decision and whether there needed to be a hearing
22 on monetary damages.

23 MR. KAZMI: Right, Your Honor. We are requesting a final
24 entry of Judgment, which essentially needs to be on a separate
25 paper, including a Declaration that Defendants violated the

1 Plaintiff's Due Process Rights when they terminated her
2 employment.

3 THE COURT: Okay. Well, what did the Appeals Court say
4 about the Declaratory Judgment aspect?

5 MR. KAZMI: The Appeals Court didn't speak directly to the
6 Declaratory Relief aspect, but the Appeals Court did say that
7 the Defendants violated her Due Process Rights when they
8 terminated her employment.

9 THE COURT: So I see that the Defendants are not disputing
10 that there should be a Final Judgment that enters. But, you
11 know, their position, and I'll give you a chance to speak in a
12 moment, is basically that the Appeals Court has spoken, in terms
13 of the Declaratory Judgment, and that any Judgment I enter
14 should just refer to the Appeals Court Judgment, which I guess,
15 resolved this issue.

16 MR. KAZMI: Right, Your Honor, but it's -- we -- we think
17 that the Final Judgment or Order, the way that the Defendants
18 have framed it, essentially is saying that the Defendants
19 violated due pro -- the Due Process Rights of the Plaintiff for
20 the reasons state for -- for the reasons stated in the Appeals
21 Court Decision would require an individual looking at the
22 Declaration to read it in conjunction with a long Appeals Court
23 Order. So we thought it would be more efficient for the
24 Declaration to state that the Defendants violated her Due
25 Process Rights for the reasons the Appeals Court stated. That

1 they denied her the opportunity to be heard, they didn't provide
2 her with proper notice of her termination, et cetera.

3 THE COURT: Okay, and why is it important to your client to
4 receive this as a Declaratory Judgment?

5 MR. KAZMI: It's not just important to our client, Your
6 Honor. It would be important for someone else who potentially
7 faced the same unlawful termination to be able to assert their
8 rights thereafter.

9 THE COURT: Okay. So you're pursuing this final course of
10 action not because it benefits your client in any tangible way,
11 but just to keep the record straight and to set precedent?

12 MR. KAZMI: Do you want to speak?

13 MS. DORFMAN: Go ahead.

14 MR. KAZMI: Yes, Your Honor.

15 THE COURT: Okay, let me just pull out -- let me see if I
16 can find the Appeals Court Decision.

17 I actually didn't --

18 THE CLERK: It might be in the box.

19 THE COURT: I know.

20 THE CLERK: Hold on.

21 THE COURT: It won't let me just -- we have a very large
22 file on this, and I should have thought to read it this morning.

23 As you may know, we -- we took this case from the D Session
24 because the Judge was -- unexpectedly had an emergency, and I
25 didn't want you to have to keep waiting to just have this

1 resolved one way or the other today.

2 MR. KAZMI: Thank you, Your Honor.

3 MR. VACA: Thank you.

4 THE COURT: And thank Clerk Newman for making sure she put
5 it on our list.

6 MR. KAZMI: Thank you, Clerk.

7 THE CLERK: I don't know about that.

8 THE COURT: She's the real -- she's the brains behind the
9 operation.

10 THE CLERK: Repeat the number.

11 THE COURT: I bet it's -- let's see. I remember when I
12 read it a year ago. I had to read it about three times. But I
13 just want to see if there's very specific language that I could
14 just -- maybe we could agree, I could just quote, and put in
15 that Order.

16 THE CLERK: There never is.

17 THE COURT: All right. You know what's going to be faster?
18 If I just look it up on Lexus. It's just, I know I had printed
19 it at some point.

20 MR. KAZMI: Your Honor, I -- I apologize. I should have
21 printed it out too.

22 THE COURT: That's okay. You know what?

23 THE CLERK: It's paper number 104.

24 THE COURT: I'm just realizing I have the wrong --

25 (Discussion off the record.)

1 THE COURT: I'm just going to -- I'm going to step off for
2 a moment and get my computer, and see if I can just pull it up.
3 If you could find a Citation for me, that would be really
4 helpful.

5 (Discussion off the record.)

6 MR. KAZMI: Madam Clerk, may I approach?

7 THE CLERK: Yes.

8 MR. KAZMI: To give her the Citation.

9 THE CLERK: You have it?

10 MR. KAZMI: Yes.

11 THE CLERK: Perfect. Thank you.

12 MR. KAZMI: It's right at the bottom here.

13 THE CLERK: That's not the Appeals Court, though.

14 MR. KAZMI: That's the -- that's the Appeals Court
15 Citation.

16 THE CLERK: The number.

17 MR. KAZMI: Yes.

18 THE CLERK: Sorry.

19 (Discussion off the record.)

20 THE COURT: Okay. So I'm just going to take a moment and
21 read what they're ultimately holding.

22 MR. KAZMI: There's language on page eight.

23 THE COURT: All right, so tell me again; what is the
24 language that the Plaintiff would like me to enter regarding the
25 Appeals Court Decision in an Order by this Court?

1 MR. KAZMI: Your Honor, I can -- I can read -- I can read
2 to you from the Proposed Order that we provided to the Court
3 with our Motion, if that'd be okay.

4 THE COURT: That's fine.

5 MR. KAZMI: "Defendants failed to furnish Plaintiff with
6 written notice of their intent to dismiss her from her
7 employment, offer an opportunity to respond and otherwise follow
8 the procedures set out in Section 42 of General Laws, Chapter
9 71."

10 THE COURT: Okay, so it looks to me like the Decision is
11 that they agree that Vyrros's Procedural Due Process Rights were
12 violated because she was not given written notice or an
13 opportunity to respond. Was there language about other
14 procedures in Section 42 that were not -- not followed?

15 MR. KAZMI: I believe we added that, Your Honor, so it
16 might not be reflected in the -- in the Decision itself.

17 THE COURT: Okay. So if I were to limit the Proposed Order
18 to the statement that the Defendant singular's termination, no,
19 plural. Okay. Defendants' termination of Plaintiff's
20 employment violated General Laws, Chapter 71, Section 42,
21 because Defendants failed to furnish Plaintiff, thank you, with
22 written notice of their intent to dismiss her from her
23 employment or offer an opportunity to respond.

24 Would you have a concern with that?

25 MR. VACA: Yes, Your Honor. Before we get there, we -- as

1 Your Honor suggested earlier in this hearing, we too were
2 surprised that months later, after what -- what -- the issue had
3 been resolved regarding the monetary damages, that this
4 Declaratory Judgment issue came up regarding Declaratory Relief.
5 Primarily because there was already an Appeals Court Order that
6 went through all the reasonings that's -- that's there and it's
7 publicly available. So we have and understood from the
8 Plaintiff in this case that they are intending to appeal
9 whatever Judgment the Court's going to enter at -- at -- at this
10 time regarding the Declaratory Judgment.

11 So therefore, at that point in time, we took it upon
12 ourselves to do the research and -- and provide the -- the
13 thoughts behind whether or not they're entitled to -- they're
14 automatically entitled to Declaratory Judgment, and the answer
15 there is not an ad -- it is no. They're not automatically
16 entitled to Declaratory Judgment at this stage and we cited Case
17 Law at that, you know, to -- to talk about then. We cited 231A,
18 Sections 1 and 2, which Judge Bloomer wrote about in his -- his
19 - in his opinion. There the Court it appears that we would have
20 to find an ongoing violation and also assess issues of mootness
21 as to whether or not they can -- it can even enter Declaratory
22 Judgment in this case.

23 However, to the extent the Court is inclined to do so,
24 that's -- our -- our position is that -- that it -- the Court
25 should do it in the most efficient way as possible and just

1 reference the Appeals Court Order. Our main intent, with the
2 limited Opposition, is to preserve our -- our arguments
3 regarding Sovereign Immunity, regarding Declaratory Judgment
4 regarding all the things that are laid out, including some
5 representations in the Plaintiff's Motion regarding equitable --
6 the phrasing of Equitable Relief at this point in time. But we
7 just think the simplest -- at this point, this simplest Order
8 would be best. If -- if the Court is inclined.

9 THE COURT: So what the Appeals Court says in its Decision
10 is, "Judgment in favor of the Defendants on Count 3 is vacated.
11 That Count is remanded for entry of a new Judgment in favor of
12 Vyrros and for a determination of remedy." So Count three; was
13 that a plea for Declaratory Relief?

14 MR. KAZMI: I don't have it. I -- I unfortunately don't
15 have the Amended Complaint right in front of me, Your Honor.

16 THE COURT: Okay. Does anyone?

17 MR. VACA: I -- I don't believe it was.

18 THE COURT: If it wasn't a plea for Declaratory Relief, I
19 don't know how I would enter that. Let's see.

20 MR. VACA: That's my own recollection, Your Honor, though.

21 THE COURT: All right, well, we need to see that. It's the
22 First Amended Complaint.

23 MR. KAZMI: Your Honor, if my recollection --

24 THE COURT: We're not going with recollection.

25 MR. VACA: Sorry.

1 THE COURT: We've got to see what it says. I'm sure you
2 have a great recollection, but I just have to see what it says
3 in writing.

4 (Discussion off the record.)

5 THE COURT: I have a print out of the Docket, so I'm going
6 to see if I can find the paper number.

7 THE CLERK: All right. It should have been at the
8 beginning of the case; right?

9 THE COURT: Well, it was the First Amended.

10 MR. KAZMI: It was filed in 2019.

11 THE CLERK: 2019. Okay. Hold on.

12 MR. VACA: It's close to the beginning, but there wasn't --

13 THE CLERK: Yes, sure. All right.

14 THE COURT: Came after Summary Judgment.

15 THE CLERK: It came after Summary Judgment?

16 THE COURT: I don't know.

17 MR. KAZMI: Your Honor, I have it.

18 THE COURT: Yes.

19 MR. KAZMI: The Prayer for Relief in the First Amended
20 complaint asks the Court to adjudge, among other things, number
21 four, that the City of Boston and Brangiforte individually are
22 liable for violating Plaintiff's right to Due Process before
23 termination of her employment.

24 THE COURT: So, I'm sorry, what? This is Count three.

25 MR. KAZMI: It's Count -- the Prayer for Relief. It's

1 number four in the Prayer --

2 THE COURT: What does Count 3 say?

3 MR. KAZMI: Count 3, "Defendants violated Plaintiff's right
4 to Due Process, protected by the Massachusetts Declaration of
5 Rights in terminating her employment without following its own
6 written procedures."

7 THE COURT: Okay, I think I just need to look at the whole
8 Complaint. Okay, so the Answer is 25.

9 THE CLERK: Yes. Well, I see the Motion for Leave to Amend
10 was allowed.

11 THE COURT: Yes, so maybe it was attached to that.

12 MR. VACA: I do remember there being some trouble tracking
13 it down when I first got assigned to the case, and I think that
14 was where I found it. It was attached to the Exhibit.

15 THE COURT: It's probably attached.

16 THE CLERK: And it was never Docketed.

17 MR. VACA: No, we -- we made an issue out of that earlier,
18 but we just --

19 THE CLERK: Look at you remembering.

20 THE COURT: Everyone's remembering.

21 MR. VACA: It's the only thing I remember about this case.

22 THE CLERK: All right, hold on. I don't -- paper number 21
23 it must be. Motion to Amend.

24 THE COURT: Yes, you're right it's 21.

25 THE CLERK: No, that's not where it is because this is only

1 three pages, I don't see it there. Do this again. Summary
2 Judgment.

3 THE COURT: Yes, it doesn't look like it has a paper
4 number.

5 THE CLERK: Judgment --

6 THE COURT: I'm going to look in here.

7 No, this is the wrong thing here.

8 Okay. Why don't we do this? Because I think it's going to
9 take us some time to try to find it. So I was hoping I could
10 just make a final Decision -- Decision while you sat here, but I
11 just think I need to read the Complaint. So it's your position
12 that the Court can't enter Declaratory Relief at this time?

13 MR. VACA: The Court has the discretion to -- to do what it
14 -- what it would like to do. However, there are issues that it
15 -- that should be assessed before it can do so, specifically, in
16 231A, Section 1 and 2, and so to the extent the Court will --
17 will do that and -- and make a finding, we'd say that the
18 Proposed Order that we've submitted is the most efficient way to
19 do that, primarily because I don't think there's been any
20 showing of an ongoing violation. It's been a very personal one
21 to Ms. Vyrros and because it's been a very personal one to Ms.
22 Vyrros. The Appeals Court Decision, being a very personal one
23 to Ms. Vyrros, is the sufficient language that I -- that I think
24 the Court should just reference. At the end of the day,
25 Plaintiffs are going to Appeal this one way or -- or another it

1 sounds like.

2 THE COURT: Well, I think one of the things that's very
3 confusing about this Motion is that you had a whole hearing in
4 front of Judge Bloomer about what the remedy would be, and if
5 the remedy you were seeking wasn't money, but was Declaratory
6 Action, why wasn't that litigated in front of Judge Bloomer?
7 Why am I holding a second hearing today on a remedy when Judge
8 Bloomer has already determined that there is no remedy
9 available?

10 MR. KAZMI: Your Honor, just one thing I wanted to clarify
11 is that we weren't necessarily planning on Appealing any -- any
12 Judgment that the Court issues based on -- based on this hearing
13 or the -- or the Motion that -- that's at issue today.

14 Judge Bloomer -- we didn't request Declaratory Relief at
15 that time because we were seeking monetary damages. Judge
16 Bloomer did say in his Decision that the Plaintiff may be
17 entitled to Declaratory Relief, but he -- he resisted issuing
18 Declaratory Relief because the Motion for Remedy wasn't framed
19 in that regard.

20 THE COURT: So I -- so why isn't that your chance to, like,
21 why are you now having gotten the Ruling in your favor from the
22 Appeals Court, having gotten the Ruling in your favor from me,
23 having been afforded a hearing to argue remedy, the Court gave
24 you that hearing, and you didn't ask for Declaratory Relief.
25 You did ask for money. You were foreclosed. What gives you the

1 ability to come back before the Court and request a second
2 hearing now for Declaratory Relief?

3 And secondly, how would I be in a position to declare
4 relief when it was the Appeals Court that issued the Ruling in
5 your favor that they would supplant anything that I would say?
6 And what, I'm just going to reiterate what the Appeals Court
7 said. What does that get you? You know, how does that benefit
8 you or clarify the Docket in any way?

9 MR. KAZMI: Your Honor, what we're trying to achieve right
10 now is a Final Judgment that is on a separate piece of paper.
11 Judge Bloomer's Order was not a Final Judgment.

12 THE COURT: So he did write Final Judgment. It may not
13 have been Docketed, but, I mean, one option is to Docket Judge
14 Bloomer's Order as a Final Judgment. Another option would be to
15 Docket Final Judgment for the Plaintiff as Ordered by the
16 Appeals Court. But there's no remedy. I mean, there's just --
17 you didn't -- you didn't win that Motion.

18 MR. KAZMI: Understood, Your Honor.

19 THE CLERK: I can't -- this is the Motion for Relief to
20 Amend the Complaint, but there's no Amended Complaint in that.
21 I -- I cannot find an Amended Complaint.

22 MR. VACA: And I -- I'm also looking on the online system.
23 I just don't see it. We have a copy of it in our file. I don't
24 know how it got in our file. It came in after that did happen,
25 so --

1 THE CLERK: There's no Amended Complaint in -- in all this
2 paperwork.

3 THE COURT: Okay, why don't we do this? So I'll issue a
4 Decision that will be a Final Judgment. Either it will
5 incorporate Judge Bloomer's, or I'll just -- I'll talk to the
6 Clerk about the best, most efficient way to do that. I'm not
7 inclined to myself order Declaratory Relief where we've already,
8 you know, been down the avenue of an appeal and a Decision and
9 then a Motion for Remedy, which the Court decided. But I
10 appreciate your need to have a Final Order on the Docket. We
11 certainly can accommodate that.

12 THE CLERK: We can do the -- we can do a Final Judgment,
13 and it is Ordered and judged that the matter is dismissed in its
14 entirety based upon the Appeals Court Decision. I mean I don't
15 --

16 THE COURT: Well, it's not really a dis -- I mean, it's not
17 dismissed. It's a Judgment for the -- for the Plaintiff on
18 Count 3.

19 THE CLERK: But the case is dismissed.

20 THE COURT: Case is dismissed.

21 THE CLERK: Right.

22 THE COURT: Okay, and then in terms -- I mean, if you are
23 going to Appeal this, I think you need the Amended Complaint as
24 part of the record, and I don't know why it's not there. It's
25 never been Docketed.

1 THE CLERK: It's never been Docketed.

2 THE COURT: So that is problematic. But if you -- because
3 you're going to have to assemble the record, you know, if you
4 want to file. If -- if there's an agreement about what the
5 document is and you want to file a Motion to have that Docketed,
6 you can do that.

7 MR. KAZMI: Thank you, Your Honor, we'll --

8 THE COURT: Because we can't find it.

9 MR. KAZMI: -- we'll definitely address that issue.

10 THE CLERK: No, I mean, it appears, your Motion to Amend
11 and the allowance and the Exhibits. But there's no Amended
12 Complaint.

13 MR. KAZMI: There's no Motion or there's no Amended
14 Complaint. Thank you.

15 THE COURT: But there is an Answer.

16 THE CLERK: There is an Answer to the Amended Complaint.

17 THE COURT: So at some point in time, there's clearly
18 something you were answering.

19 MR. KAZMI: Must have answered something.

20 THE COURT: Yes.

21 MR. VACA: And I -- I think when we were at the Court of
22 Appeals that we put the Complaint -- the Amended Complaint in
23 the record already the first time we were there.

24 THE COURT: Yes, right. The Appeals Court clearly had it,
25 so. All right, then thank you for your arguments. I'll take

1 the matter under advisement. I'll work with the Clerk. We'll
2 issue a Final Judgment today.

3 MR. KAZMI: Thank you, Your Honor.

4 MR. VACA: Thank you.

5 THE COURT: Thank you.

6 THE CLERK: Can I just get that back?

7 MR. KAZMI: I was going to bring it to you after Your Honor
8 stepped away.

9 THE COURT: No, I'm staying on.

10 MR. KAZMI: Okay.

11 THE CLERK: Thank you.

12 MR. KAZMI: Thank you for accommodating this hearing.

13 THE COURT: Of course. Thank you.

14 THE CLERK: Thank you.

15 THE COURT: Have a good day. Nice to see everyone.

16 MR. VACA: Have a good one.

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(Adjourned)

Certificate of Accuracy

I, Donna Dominguez, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording provided to me by the Middlesex County Superior Court regarding proceedings in the above-entitled matter.

I, Donna Dominguez, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.


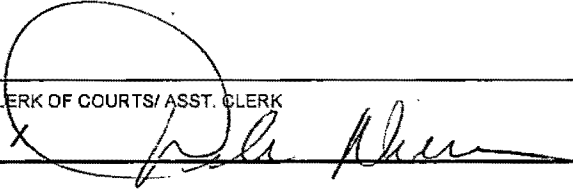
I, Donna Dominguez, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

"/s/ Donna Dominguez"
Donna Dominguez, ACT, CET
Notary Public, Commission Expires 4-24-31

October 27, 2025
Date

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JUDGMENT		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER 1681CV03647		Michael A. Sullivan, Clerk of Court Middlesex County	
CASE NAME Vyrros, Marina vs. City of Boston et al		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801	
<p>This action came before the Court, Hon. Sarah Weyland Ellis, presiding, and upon consideration thereof,</p> <p>It is ORDERED and ADJUDGED:</p> <p>That final Judgment enter as to the Plaintiff on Count III , No Damages</p>			
DATE JUDGMENT ENTERED 08/27/2025	CLERK OF COURTS/ ASST. CLERK 		

CERTIFICATE OF SERVICE

I, Omar H. Kazmi, hereby certify on September 24, 2025, I served the foregoing on counsel for Defendants by electronic mail to:

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Adam Johnson

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Omar H. Kazmi
BBO No. 708874

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XII. Education (Ch. 69-78a)
Chapter 71. Public Schools (Refs & Annos)

M.G.L.A. 71 § 41

§ 41. Tenure of teachers and superintendents; persons entitled to professional teacher status; dismissal; review

Effective: March 18, 2011

[Currentness](#)

For the purposes of this section, a teacher, school librarian, school adjustment counselor, school nurse, school social worker or school psychologist who has served in the public schools of a school district for the three previous consecutive school years shall be considered a teacher, and shall be entitled to professional teacher status as provided in [section forty-two](#). The superintendent of said district, upon the recommendation of the principal, may award such status to any teacher who has served in the principal's school for not less than one year or to a teacher who has obtained such status in any other public school district in the commonwealth. A teacher without professional teacher status shall be notified in writing on or before June fifteenth whenever such person is not to be employed for the following school year. Unless such notice is given as herein provided, a teacher without such status shall be deemed to be appointed for the following school year.

School principals, by whatever title their position may be known, shall not be represented in collective bargaining, but each principal, upon the written request of the principal, shall meet and discuss the terms and conditions of the principal's employment in the principal's school district with the district's superintendent or the superintendent's designee, at a time to be determined by the superintendent and may be represented by an attorney or other representative. School principals shall enter into individual employment contracts with their employing districts concerning the terms and conditions of employment. The initial contract with each individual school district shall be for not less than 1 year nor more than 3 years. The second and subsequent contracts shall be for not less than 3 nor more than 5 years unless: (i) said contract is a 1 year contract based on the failure of the superintendent to notify the principal of the proposed nonrenewal of his contract pursuant to this section; or (ii) both parties agree to a shorter term of employment. Notwithstanding the past employment conditions of a school principal, the conditions established by this paragraph shall apply to the initial contract of each school principal. Failure of the superintendent to notify a principal of the proposed nonrenewal of his contract at least sixty days prior to the expiration date of such contract shall automatically renew the contract for an additional one year period.

Except as provided herein, [section forty-two](#) shall not apply to school principals, assistant principals or department heads, although nothing in this section shall deny to any principal, assistant principal or department head any professional teacher status to which he shall otherwise be entitled. A principal, assistant principal, department head or other supervisor who has served in that position in the public schools of the district for three consecutive years shall not be dismissed or demoted except for good cause. Only a superintendent may dismiss a principal. A principal, assistant principal, department head or other supervisor shall not be dismissed unless he has been furnished with a written notice of intent to dismiss with an explanation of the grounds for the dismissal, and, if he so requests, has been given a reasonable opportunity within fifteen days after receiving such notice to review the decision with the superintendent at which meeting such employee may be represented by an attorney or other representative to present information pertaining to the bases for the decision and to such employee's status. A principal, assistant principal, department head or other supervisor may seek review of a dismissal or demotion decision by filing a petition with the commissioner for arbitration. Except as provided herein, the procedures for arbitration, and the time allowed for the arbitrator to issue a decision, shall be the same as that in [section forty-two](#). The commissioner shall provide the parties with the names of three arbitrators who are members of the American Arbitration Association. The arbitrators shall be different from those

developed pursuant to [section forty-two](#). The parties each shall have the right to strike one of the three arbitrator's names if they are unable to agree upon a single arbitrator from amongst the three.

A school committee may award a contract to a superintendent of schools or a school business administrator for periods not exceeding six years which may provide for the salary, fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties or office, liability insurance, and leave for said superintendent or school business administrator. Nothing in this section shall be construed to prevent a school committee from voting to employ a superintendent of schools who has completed three or more years' service to serve at its discretion.

Credits

Amended by St.1947, c. 597, § 1; St.1950, c. 283; St.1953, c. 372; St.1956, c. 132, § 1; St.1972, c. 464, § 1; St.1973, c. 847, § 6; St.1988, c. 153, § 2; St.1990, c. 404, § 2; St.1993, c. 71, § 43; St.1994, c. 346; St.1995, c. 209, § 3; St.1996, c. 99; St.1996, c. 450, § 127; St.2006, c. 267, eff. Oct. 22, 2006; St.2008, c. 314, § 1, eff. Nov. 12, 2008; St.2010, c. 399, eff. Mar. 18, 2011.

[Notes of Decisions \(168\)](#)

M.G.L.A. 71 § 41, MA ST 71 § 41

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XII. Education (Ch. 69-78a)
Chapter 71. Public Schools (Refs & Annos)

M.G.L.A. 71 § 42

§ 42. Dismissal or demotion of teachers or other employees of school or school district; arbitration

Effective: September 1, 2016

[Currentness](#)

A principal may dismiss or demote any teacher or other person assigned full-time to the school, subject to the review and approval of the superintendent; and subject to the provisions of this section, the superintendent may dismiss any employee of the school district. In the case of an employee whose duties require him to be assigned to more than one school, and in the case of teachers who teach in more than one school, those persons shall be considered to be under the supervision of the superintendent for all decisions relating to dismissal or demotion for cause.

A teacher who has been teaching in a school system for at least ninety calendar days shall not be dismissed unless he has been furnished with written notice of intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds for dismissal, and, if he so requests, has been given a reasonable opportunity within ten school days after receiving such written notice to review the decision with the principal or superintendent, as the case may be, and to present information pertaining to the basis for the decision and to the teacher's status. The teacher receiving such notice may be represented by an attorney or other representative at such a meeting with the principal or superintendent. Teachers without professional teacher status shall otherwise be deemed employees at will.

A teacher with professional teacher status, pursuant to [section forty-one](#), shall not be dismissed except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards developed pursuant to [section thirty-eight](#) of this chapter or other just cause.

A teacher with professional teacher status may seek review of a dismissal decision within thirty days after receiving notice of his dismissal by filing a petition for arbitration with the commissioner. The commissioner shall forward to the parties a list of three arbitrators provided by the American Arbitration Association. Each person on the list shall be accredited by the National Academy of Arbitrators. The parties each shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from amongst the three. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association to be consistent with the provisions of this section. The parties each shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from amongst the three. The board of education shall determine the process for selecting arbitrators for the pool. The fee for the arbitration shall be split equally between the two parties involved in the arbitration.

At the arbitral hearing, the teacher and the school district may be represented by an attorney or other representative, present evidence, and call witnesses and the school district shall have the burden of proof. In determining whether the district has proven grounds for dismissal consistent with this section, the arbitrator shall consider the best interests of the pupils in the district and the need for elevation of performance standards.

The arbitrator's decision shall be issued within one month from the completion of the arbitral hearing, unless all parties involved agree otherwise, and shall contain a detailed statement of the reasons for the decision. Upon a finding that the dismissal was

improper under the standards set forth in this section, the arbitrator may award back pay, benefits, reinstatement, and any other appropriate non-financial relief or any combination thereof. Under no circumstances shall the arbitrator award punitive, consequential, or nominal damages, or compensatory damages other than back pay, benefits or reinstatement. In the event the teacher is reinstated, the period between the dismissal and reinstatement shall be considered to be time served for purposes of employment. The arbitral decision shall be subject to judicial review as provided in chapter one hundred and fifty C. With the exception of other remedies provided by statute, the remedies provided hereunder shall be the exclusive remedies available to teachers for wrongful termination. The rules governing this arbitration procedure shall be the rules of the American Arbitration Association as pertains to arbitration.

Nothing in this section or [section 41](#) shall affect the right of a superintendent to lay off teachers pursuant to reductions in force or reorganization resulting from declining enrollment or other budgetary reasons. No teacher with professional teacher status shall be laid off pursuant to a reduction in force or reorganization if there is a teacher without such status for whose position the covered employee is currently certified or if there is a less qualified teacher with such status holding the same or similar position for which the covered employee is currently certified. No teacher with such status shall be displaced in accordance with the terms of a collective bargaining agreement or otherwise by a more senior teacher with such status unless the more senior teacher is currently certified pursuant to [section 38G](#) and is at least as qualified for the position as the junior teacher holding the position. The criteria for determining a qualified teacher under this paragraph shall be subject to the collective bargaining provisions of chapter 150E; provided, however, that any such collectively bargained for qualifications shall include, as the primary factors, indicators of job performance, including overall ratings resulting from comprehensive evaluations conducted consistent with [section 38](#) and the best interests of the students in the school or district; and provided further, that for the purposes of this paragraph, no distinction shall be made between the overall performance ratings established by the board of elementary and secondary education finding that the teacher has met or exceeded acceptable performance standards developed under said [section 38](#) and that are defined by the board as proficient and exemplary. The school committee and the collective bargaining representative may negotiate for seniority or length of service only as a tie-breaker in personnel actions under this paragraph among teachers whose qualifications are no different using the qualifications collectively bargained for in accordance with this paragraph.

Credits

Amended by St.1934, c. 123; St.1946, c. 195; St.1947, c. 597, § 2; St.1953, c. 244; St.1956, c. 132, § 2; St.1966, c. 185, §§ 1, 2; St.1970, c. 388, § 1; St.1972, c. 464, § 2; St.1985, c. 188, § 18; [St.1988, c. 153, §§ 4 to 6](#); [St.1993, c. 71, § 44](#); [St.2012, c. 131, § 3, eff. Sept. 1, 2016](#).

[Notes of Decisions \(233\)](#)

M.G.L.A. 71 § 42, MA ST 71 § 42

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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FROM: Customer Name:

Marina Vyrras

Company/Address

Phone:

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TO: Receiver Name:

Phil Brangiforte

Company

East Boston High School

City/State/Country:

FAX #:

[REDACTED]

NOTES:

Dear Phil:

Plz sign & have it
resubmitted to: Worker's Comp
Attn: Audrey Solarzano

W/in 24 hrs

Thanks, Marina

Superintendent's Circular #HRS-PP7, 2011-2012
September 1, 2011
Page 5 of 5

REPORT OF OCCUPATIONAL INJURY OR ACCIDENT - Page 2

SECTION E - NATURE OF INJURY OR ILLNESS

(Redacted) Source of injury or illness (e.g. machine, etc.): Contentious admin. meeting
--

SECTION F - THE ACCIDENT

Describe the circumstances leading up to and including the incident:

I suffer from (Redacted) (Redacted) (Redacted), known to my employer. After a turbulent 2 days of schedule & room changes, my administrators

see attached

What do you think was the source of this accident (e.g. faulty equipment, etc.):

Contentious meeting

SECTION G - EMPLOYEE'S VERIFICATION OF REPORT AND CONSENT FOR RELEASE OF MEDICAL INFORMATION

I hereby verify that all of the information contained in this report of occupational injury or accident is accurate to the best of my recollection of the circumstances leading up to and including the incident which caused the injury. I also acknowledge and provide my consent to the City of Boston, Workers' Compensation Services and/or their agent to obtain medical records and reports relating to this injury.

Employee's Name (PRINT): BPS/East Boston High School	Occupation: teacher
Employee's Signature: <i>Madina Lyons</i>	Date Report Completed: (MM) 11 (DD) 05 (YY) 15

PART II
SECTION H - CORRECTIVE ACTION

Has there been a follow-up investigation conducted into this report of accident? YES NO

If NO, why not?

If YES, what correction action has been taken to prevent a similar accident from happening (e.g. equipment repaired, etc.):

Did you have any additional recommendations for preventing injuries of this type?

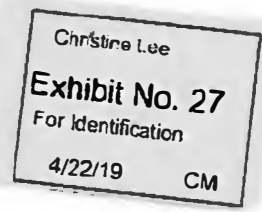
SECTION I - SUPERVISOR'S VERIFICATION OF REPORT AND INVESTIGATION

Supervisor's Name (PRINT):	Title:
Supervisor's Signature:	Date Report Completed: (MM) (DD) (YY)

WORKER'S COMPENSATION OFFICE USE ONLY

Date Reported to WCPA: (MM) (DD) (YY)	Case Manager:
File No.:	Phone No.:

observed me, previously, observation, I was tasked at having to do an extra formative assessment. This was traumatic for me, causing a leave of absence, once again, as a remedy for recommendations after observing during a time of turbulence, my administrators have tasked me w/ another formative assessment. This has exacerbated my [REDACTED] leaving me unable to work.



AWOL Guidelines

rev. 12/18/15

General Guidelines

1. An employee is absent without leave (AWOL) if the employee, for example:
 - i. Did not notify you of the absence;
 - ii. Took an unauthorized personal, conference day, etc.; or
 - iii. Has not provided a physician's certificate supporting an absence of six or more days within a reasonable time (generally no more than 5 days) after you requested such documentation. (See Superintendent's Circular HRS-PP12 "Employee Sick Leave Policy" for what constitutes an adequate physician's certificate.) NOTE: You should request a physician's certificate from the employee on the 6th day on an employee's absence and notify the employee that he/she will be considered absent without leave if he/she does not provide a physician's certificate that comports with HRS-PP12 by the deadline you set.
2. An employee's time reporting code should be marked as "NO PAY" for all unauthorized absences.
3. If the employee has already returned to work, the AWOL should be treated as a disciplinary matter. (Refer to the Supervisor's Guide and Employee Discipline Policy HRS-PP10 for guidance.)
4. If the employee has not returned to work, you should follow the guidelines below. Note that some schools may be exempt from BPS practices based on their status, e.g., as a Horace Mann charter school.
5. If you have logistical issues with mailing from your school, please contact your OHC School Partner for support.

Employee-Group Specific Guidelines

1. **Teachers**
 - a. Send "AWOL Letter 1" to the employee via certified mail and email, ideally within five days of the first unauthorized absence; complete the letter following the guidelines contained in the letter template. Retain a copy of the signed letter with the certified mail receipt and return receipt (if you receive one back) in the employee's school file.
 - b. If the teacher does not return to work or adequately justify his/her absences by the letter's response deadline, send a PS03 to the Director of Human Capital Operations terminating the employee as AWOL and attach a copy of the AWOL letter and the return receipt and/or USPS tracking information.
2. **BASAS members--See "Teachers."**
3. **Guild members in Civil Service Positions (e.g. Secretaries, Clerks)**

- a. On the 15th calendar day of the unauthorized absence, send a copy of “AWOL Letter 2” to the employee via Registered Mail and attach a copy of the “Civil Service Attachment.” Complete the letter following the guidelines contained in the letter template. Retain a copy of the signed letter with the registered mail receipt in the employee’s school file.
- b. Also send a copy of the letter to the Massachusetts Personnel Administrator, whose address is listed at the bottom of the letter.
- c. Send a PS03 terminating the employee as AWOL to the Director of Human Capital Operations and attach a copy of the AWOL letter and the tracking information.

4. Paraprofessionals

- a. Send “AWOL Letter 3” to the employee via certified mail and email within five days of the first unauthorized absence; complete the letter following the guidelines contained in the letter template. Retain a copy of the signed letter with the certified mail receipt and return receipt (if you receive one back) in the employee’s school file.
- b. If the paraprofessional does not return to work or adequately justify his/her absences within 10 calendar days of the date of the letter, send a PS03 to the Director of Human Capital Operations terminating the employee as AWOL and attach a copy of the AWOL letter and the return receipt and/or USPS tracking information.

5. Lunch Monitors--See “Paraprofessionals.”

6. Custodians--Refer cases of AWOL custodians to the Assistant Director of Facilities Management.

7. Bus Monitors

a. School-Based Bus Monitors

- i. If a bus monitor fails to provide notice of his/her absence on three consecutive day or does not return to work within seven days of the termination of a leave of absence, send “AWOL Letter 4” to the employee via certified mail. Complete the letter following the guidelines contained in the letter template. Retain a copy of the signed letter with the certified mail receipt and return receipt (if you receive one back) in the employee’s school file.
- ii. Send a PS03 to the Director of Human Capital Operations terminating the employee AWOL and attach a copy of the letter and tracking information.

b. Centrally Deployed Bus Monitors

- i. Refer cases of AWOL centrally deployed bus monitors to the SPED Monitor Unit Leader in the Transportation Office.

8. Managerial

- a. If a managerial employee is AWOL, you can make a recommendation for termination to your Principal Leader.
- 9. **Cafeteria Workers**--Refer cases of AWOL cafeteria workers to Food and Nutrition Services.
- 10. **Civil Service Positions**--See "Guild members in Civil Service Positions"
- 11. **Non-Civil Service Positions** (not covered by another category)--See "Paraprofessionals"

BOSTON PUBLIC SCHOOLS



EAST BOSTON HIGH SCHOOL

PHILLIP R. BRANGIFORTE
HEADMASTER

JUDITH BLANCO
ASSISTANT HEADMASTER

January 11, 2016

East Boston High School
[REDACTED]

Marina Vyrros
[REDACTED]

Dear Ms. Vyrros:

Please be advised that the failure of any teacher or member of the supervising staff to report for work for a period of thirty (30) consecutive days without justification shall operate as a resignation from service. Such absence is justified only if the teacher or member of the supervising staff has been granted a leave of absence for the period in question, or if the absence is beyond the control of the teacher or member of the supervising staff.

To date you have absent without leave since November 6, 2015. Should you fail to report to work or be granted a leave of absence by January 26, 2016 you will be considered to have irrevocably resigned from your position with the Boston Public Schools.

Sincerely,

Phillip R. Brangiforte
Headmaster, East Boston High School

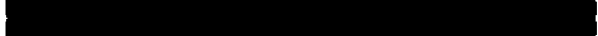
From: [Vyrros, Marina](#)
To: [Phillip R. Brangiforte](#)
Subject: Re: Jan. 11 letter
Date: Friday, January 15, 2016 1:42:12 PM

Phil....

Thanks for the clarification. As per your request, I submitted a leave request on The Hub and will have my physician fill out paperwork before Jan. 26.

-Marina

On Thu, Jan 14, 2016 at 12:54 PM, Phillip R. Brangiforte

 wrote:

Good Afternoon Ms. Vyrros,

I hope you are doing well. I wanted to clarify a few things about you not attending work. I wanted you to know just because an employee files a claim with Worker's Comp, it does not excuse them from the normal leave of absence process with the BPS. Employees would still have to maintain a positive leave statuses. If they don't, they should be subject to the same policy as any other employee who does not report to work. This would mean your AWOL notice stands.

If you would like to correct the situation, you will need to (1) apply for a leave on the Hub and (2) have your Physician complete the FMLA documentation. This need to be done prior to Wednesday January 26, 2016.

Please let me know your plans.

Thanks

Phil

Phillip R. Brangiforte

Headmaster

East Boston High School

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (F)
[REDACTED]

"We can change textbooks, shrink class sizes, publish test scores, and build new buildings, but unless we change what adults do every day inside their classrooms, we cannot expect student outcomes to improve." Thomas Kane



From: Vyrros, Marina [mailto:[REDACTED]]
Sent: Thursday, January 14, 2016 8:30 AM
To: Phillip Brangiforte
Cc: [REDACTED]; Gina D'addario
Subject: Jan. 11 letter

Dear Phil....

I'm writing in response to a letter I received yesterday dated Jan. 11 stating if I should not report to work by (Jan. 5?) it will be considered a resignation.

It seems there has been a failure to communicate by all parties; so, I'm writing to fill things in.

After I filled out an accident report and received a response from the City, I subsequently obtained an attorney (cced, on this e-mail) who filed a worker's comp claim with Industrial Accidents on my behalf.

There was a conciliation on Dec.24, at which point, the conciliator deemed the case appropriate to be brought before a judge.

As per BPS worker's comp procedure, my attorney asked for a return to work in a modified position. The City's attorney (John Walsh) indicated that upon return from the holiday, he would speak to OHC liaison to investigate this possibility. We're waiting for a response.

I did not apply for a leave of absence since it would be deceitful to do so and anticipated that OHC, via the City's attorney, would be apprised of the situation.

If there's any further documentation that I can provide you to ameliorate this situation, please let me know.

Thanks,

Marina Vyrros

From: [REDACTED]
To: Phillip Branciforte
Subject: New LOA Request From: Marina Vyrros
Date: Friday, January 15, 2016 1:39:40 PM

Notification

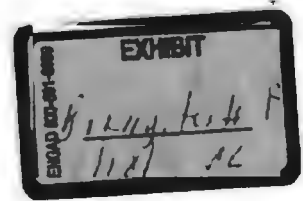
Process Notification - Assignment

Please review the Leave of Absense Request originally from Marina Vyrros on Jan 15, 2016 1:38 PM. You may access the document directly by clicking on this document link.

- [Leave of Absense Request](#)

Click the Inbox link to see all of your assigned documents.

- [Inbox](#)





From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: LOA Request #: 8819 - Pending Documentation
Date: Friday, January 22, 2016 9:36:12 AM

PLEASE DO NOT REPLY TO THIS EMAIL ADDRESS - SEE CONTACT INFORMATION BELOW

BOSTON PUBLIC SCHOOLS
OFFICE OF HUMAN RESOURCES
2300 Washington Street
BOSTON, MA 02119

Marina Vyrros
BPS East Boston High
091217
Request #: 8819

Dear Marina Vyrros:

Your request on 2016-01-15 for a leave of absence from 2015-12-08 to 2016-02-29 is pending.

In order for your leave to be approved, the appropriate documentation must be delivered to the Office of Human Resources immediately.

Documentation Required:

Maternity – Maternity: Physician's certification of FMLA form #WH-380-E/FMLA for employee's own serious health condition. Form must be signed by a medical doctor only and include the anticipated due date and expected length of recovery. This form may be found on U.S. Dept. of Labor/Wage and Hour division web page at www.dol.gov/whd

Personal Illness – Personal Illness: Physician's certification of FMLA form WH-380-E/Family and Medical Leave Act for employee's own serious health condition. Form must be signed by a Medical Doctor only. This form may be found on U.S. Dept. of Labor/Wage and Hour division web page at www.dol.gov/whd
The form must include a statement indicating an understanding of the requirements of the position and confirmation the employee is unable to perform those duties. The form must also clearly indicate the anticipated dates the employee will be out of work.

Note: The terms indefinite and unknown are not acceptable and will not be processed.

Family Illness – Family Illness: Physician's certification of FMLA form WH-380-F/FMLA Certification of Health Care Provider for family member's serious health condition. Form must be signed by a medical doctor only and include a statement regarding the relationship of the individual to the employee and the anticipated dates the employee will be on leave. This form may be found on U.S. Dept. of Labor/Wage and Hour division web page at www.dol.gov/whd

Note: The terms indefinite and unknown are not acceptable and will not be

processed.

Personal Reasons – Employee must include a brief statement outlining the purpose & duration of the leave. This type of leave requires the approval of both the Department Head and Assistant Superintendent of Human Capital.

Education/Study – Original document from Registrars office verifying acceptance into full time program of study.

Military – Original annual duty orders, outline specific dates. If deployed, provide original orders along with verification of military salary on official letterhead.

Career Transition – Employee must include a brief statement outlining the purpose and year of the leave. Please note, if approved, an employee may not return to work before the leave has expired.

For more information please review HRS-PP12 Employee Sick Leave Policy and/or HRS-PP13 Family & Medical Leave Act and Small Necessities Leave Act.

[http://bostonpublicschools.org/files/HRS-PP12 Employee Sick Leave Policy.doc](http://bostonpublicschools.org/files/HRS-PP12%20Employee%20Sick%20Leave%20Policy.doc)
[http://bostonpublicschools.org/files/HRS-PP13 Family and Medical Leave Act.pdf](http://bostonpublicschools.org/files/HRS-PP13%20Family%20and%20Medical%20Leave%20Act.pdf)

Please submit documentation in person or by mail to:
Dianne Cassiani-Knox
Attn: LOA Documentation

[REDACTED]

If you have any further questions regarding your leave of absence, please contact Dianne Cassiani-Knox at [REDACTED] or [REDACTED]

Office of Human Resources
Boston Public Schools



**BOSTON PUBLIC SCHOOLS
PERSONNEL ACTION REQUEST FORM**

Name: <u>Mamma VYROS</u>		Employee ID (six digits): <u>091217</u>	Dept./School: <u>EBHS</u> RC Number: <u>101641</u>
ACTION	REASON	REQUIRED INFORMATION	
POSITION CHANGE <small>(re mgr/teacher/principal/department head signature required)</small>	<input type="checkbox"/> Position Change within Department/School	<input type="checkbox"/> Designation/Teacher in Charge	Proposed Effective Date:
	<input type="checkbox"/> Job Reclassification		To Position Number:
LEAVE OF ABSENCE/RETURN FROM LEAVE <small>(re mgr/teacher/principal signature required)</small>	<input type="checkbox"/> Following Adoption	<input type="checkbox"/> Education/Study	Effective Date: Return Date:
	<input type="checkbox"/> Family & Medical Leave Act	<input type="checkbox"/> Military Service	Position Number: Title:
	<input type="checkbox"/> Maternity/Paternity (application required)	<input type="checkbox"/> Personal Reasons	
	<input type="checkbox"/> Personal Illness	<input type="checkbox"/> Return from Leave	
TERMINATION/RETIREMENT	<input checked="" type="checkbox"/> AWOL	<input type="checkbox"/> Retirement	Effective Date: <u>1/26/16</u>
	<input type="checkbox"/> Discharge for Cause	<input type="checkbox"/> Death	
	<input type="checkbox"/> Dismissal	<input type="checkbox"/> Failed Probationary Period	
	<input type="checkbox"/> Non-R/A	<input type="checkbox"/> Resignation (letter from employee required)	
	<input type="checkbox"/> Layoff		
PAY ADJUSTMENT <small>(employee signature required)</small>	<input type="checkbox"/> Adjusted Payroll Date (Civil Service - original documentation required)	<input type="checkbox"/> Career Award (Specify)	<i>For HR Use Only</i>
	<input type="checkbox"/> Salary Step (Specify)	<input type="checkbox"/> Salary Lane (Specify) (original transcripts required)	Effective Date:
	<input type="checkbox"/> Outside Service (original documentation required)	<input type="checkbox"/> Tuition Reimbursement (original transcripts, documentation of payment and signed affidavit required)	Old Salary: New Salary:
PERSONAL DATA CHANGE <small>(employee signature required)</small>	<input type="checkbox"/> Name Change	<input type="checkbox"/> Home Address Change (W-4 and M-4 required)	New Name:
	<input type="checkbox"/> Telephone Change	<input type="checkbox"/> Mailing Address Change	New Address:
		<input type="checkbox"/> Change in Federal/State Withholding (W-4 and M-4 required)	New Phone:
Originator's Signature:		Date: <u>1/27/16</u>	
For HR Use Only: <input type="checkbox"/> Approved <input type="checkbox"/> Not Approved		HR Signature: _____ Date: _____	

PLEASE NOTE: All hiring of staff new to the department/school should be completed through the BPS Recruiting Center in Kenexa. The PS03 form will no longer be used for hiring. Please contact the Office of Human Resources with any questions.

Additional Explanation (if necessary):

Phillip Brangiforte
March 18, 2019

Volume II Pages 1-112

Exhibits D-X

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT

TRIAL COURT DIVISION

C.A. NO. 1681CV03647

ORIGINAL

MARINA VYRROS

Plaintiff

v.

CITY OF BOSTON, et al.

Defendants

DEPOSITION OF PHILLIP BRANGIFORTE

taken on March 18, 2019

at 24 School Street, 8th Floor

Boston, Massachusetts 02108

Sonya Lopes, RPR, CSR

Accurate Court Reporting
1500 Main Street, Suite 222
Springfield, Massachusetts 01115
413-747-1806

Accurate Court Reporting
(413)747-1806 Fax: (413)747-1818

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1 assistant anymore because it's, like, a two-year
2 program. I think after two years, you got to go
3 back into the classroom.
4 It's actually a job at Boston Public
5 Schools. So if you're a veteran teacher in good
6 standing -- don't quote me, but I think this is how
7 it works -- then for two years, you work for the
8 district as a peer assistant. Then after that, you
9 go back to your teaching assignment. I can't think
10 of her name.
11 Q. So the peer assistant was part of the
12 observations of Marina?
13 A. Not with me. I'm not sure if she observed
14 any of the -- but she was in Marina's class and
15 working with Marina, so she seen Marina.
16 Q. But she was not part of the observation?
17 A. No, not with me she wasn't.
18 Q. Okay. Was the peer assistant an ELL
19 certified teacher?
20 A. That, I don't know. Can I ask a question?
21 All due respect, Marina got terminated for not
22 showing up to work. She didn't get evaluated out.
23 So I don't know why -- what is all this process
24 here?

Page 27

1 MR. PIDANI: They can ask whatever
2 questions they want.
3 THE WITNESS: I know. But to me, it's,
4 you know.
5 Q. Can other headmasters who might consider
6 hiring a teacher for their school see that teacher's
7 evaluation or assessment?
8 A. Yes.
9 Q. Both? Can they see the notes from the
10 observations and the assessment?
11 A. They can't see the notes from the
12 observations. They can see the observation -- the
13 report.
14 Q. Is the report the same as the assessment?
15 A. What assessment? What are you talking
16 about? I don't understand the question.
17 Q. Sometimes when you reply to a question, you
18 talk about an assessment; and sometimes you talk
19 about an observation. Is the report from the
20 observation the same as what you're referring to
21 also as an assessment?
22 A. No.
23 Q. What is the difference?
24 A. The difference is the observation is when

Page 28

1 we go in. The formative assessment -- they call it
2 "formative assessment" -- if you're on a one-year
3 plan, that would be kind of, like, an evaluation.
4 Q. And the basis for the formative assessment
5 is the evaluations -- I mean, is the observations?
6 Excuse me.
7 Is the basis for the formative assessment
8 what is seen in the observations?
9 A. Yes.
10 Q. Can you explain to me the difference
11 between structured English emersion and sheltered
12 English instruction?
13 A. I thought they were one in the same. I'm
14 not an ELL expert.
15 Q. Do you know what method was used for the
16 classes that Marina taught?
17 A. She taught ESL classes.
18 Q. So do you know if her classes were
19 structured emersion classes or sheltered English
20 instruction?
21 A. I don't know.
22 Q. Who decided the methodology of instruction
23 that was appropriate for Marina to use in her
24 classes?

Page 29

1 A. BPS, as far as I know.
2 Q. Did Jaime Staraitis have any input into how
3 the classes were taught?
4 A. How they were taught?
5 Q. The method of instruction that was used in
6 Marina's classes.
7 A. I don't know. I'm not sure.
8 Q. Who was the substitute coordinator between
9 2014 and 2016?
10 A. I'm not sure if it was Charles Cauley. It
11 was either Charles Cauley or Josephine Tescione, one
12 of the two. Might have been Charles. I'm not
13 positive.
14 Q. Can you spell "Tescione"?
15 A. T-e-s-c-i-o-n-e. I believe it was her.
16 Q. As SPED director, did you know any students
17 with anxiety disorders?
18 A. Probably. Don't recall.
19 Q. Do you remember any specific students with
20 anxiety disorders?
21 A. No.
22 Q. Do you remember any students with severe
23 depression when you were SPED director?
24 A. Nope.

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1 REPORTER'S CERTIFICATE

2 I, SONYA LOPES, Registered Professional

3 Reporter and Notary Public in and for the

4 Commonwealth of Massachusetts, certify;

5 That the foregoing proceedings were taken

6 before me at the time and place therein set forth,

7 at which time the witness was properly identified

8 and put under oath by me;

9 That the testimony of the witness, the

10 questions propounded, and all objections and

11 statements made at the time of the examination were

12 recorded stenographically by me and were thereafter

13 transcribed;

14 That the foregoing is a true and correct

15 transcript of my shorthand notes so taken.

16 I further certify that I am not a relative or

17 employee of any attorney of the parties, nor

18 financially interested in the action.

19 I declare under penalty of perjury that the

20 foregoing is true and correct.

21 Dated this 18th day of March, 2019.

22

23 Sonya Lopes My Commission Expires:

24 Notary Public March 6, 2020

Page 111

1 WITNESS: Phillip Brangiforte [Volume II]

2 DATE: March 18, 2019

3 CASE: MARINA VYRROS v. CITY OF BOSTON,

4 et al.

5

6

7 DISTRIBUTION TO COUNSEL The original signature

8 page/errata sheet was sent to S. Michael Pidani,

9 Esq., to obtain signature from the deponent. When

10 signed, please send original to Susan Fendell, Esq.,

11 who will supply a copy of the signed errata sheet to

12 other counsel present at the deposition.

13

14 WITNESS INSTRUCTIONS After reading the transcript

15 of your deposition, please note any change or

16 correction and the reason for it on the errata

17 sheet. DO NOT make any notations on the transcript

18 itself. Use additional sheets if necessary.

19

20 SIGN AND DATE THE ERRATA SHEET under the pains and

21 penalties of perjury and return it, along with the

22 transcript, to your counsel.

23

24

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1 COMMONWEALTH OF MASSACHUSETTS

2 MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT

3 TRIAL COURT DIVISION

4 C.A. NO. 1681CV03647

5

6 MARINA VYRROS

7 Plaintiff

8 V.

9 CITY OF BOSTON, et al.

10 Defendants

11

12 I, PHILLIP BRANGIFORTE, do hereby certify,

13 under the pains and penalties of perjury, that the

14 foregoing testimony is true and accurate, to the

15 best of my knowledge and belief, with the addition

16 of the following changes/corrections:

17 Page/ Line/ Change/Correction

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 WITNESS MY HAND, this day of _____, 2019.

26

27 _____

28 PHILLIP BRANGIFORTE

29

30 cc: Susan Fendell, Esq.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,)
Plaintiff,)
)
v.)
)
CITY OF BOSTON;)
PHILLIP BRANGIFORTE;)
and)
JAMIE STARAITIS,)
Defendants.)

**DEFENDANT CITY OF BOSTON’S RESPONSE TO PLAINTIFF’S
FIRST SET OF REQUESTS FOR ADMISSIONS**

1. This Court has jurisdiction over Ms. Vyrros's claims of discrimination against her former employer under Mass. Gen. Laws c. 151B§9.

RESPONSE NO 1. Admitted.

2. Plaintiff, prior to bringing this action, on or about May 27, 2016, filed a charge of discrimination against the defendants ("the Charge") with the Massachusetts Commission Against Discrimination (MCAD).

RESPONSE NO 2. Admitted.

3. Exhibit "A" is a true and authentic copy of the Charge.

RESPONSE NO. 3. Denied. BPS lacks the information to authenticate such document as it was not generated by BPS.

9. Under Mass. Gen. Laws ch. 40, §1B, the City has the capacity to sue and be sued.

RESPONSE NO. 9. Admitted.

10. The City has direct control over the Boston Public School ("BPS").

RESPONSE NO. 10. As framed, denied.

11. Employees of the Boston Public School are agents of the City.

RESPONSE NO. 11. Objection. Such a statement seeks a legal conclusion and seeks information that is protected by attorney-client privilege and work product doctrine. To the extent a response is necessary, this statement in paragraph "11" is denied as framed.

12. Ms. Vyrros resides in Cambridge, Middlesex County, Massachusetts.

RESPONSE NO. 12. Denied. BPS lacks the information necessary to conclusively admit or deny this statement.

13. Ms. Vyrros taught in public schools in Massachusetts from September 1999 until April 2016.

RESPONSE NO. 13. As framed, denied.

14. In July, 2006 the City hired the Plaintiff to teach English as a Second Language (ESL).

RESPONSE NO. 14. Admitted.

15. The City employed Ms. Vyrros as an English as a Second Language ("ESL") teacher at East Boston High School ("EBHS") from September 2012 to January 2016.

RESPONSE NO. 15. Admitted

16. Between September 1999 and April 2016, Ms. Vyrros suffered from Major Depressive Disorder.

130. Vyrros took leave in March 2015 after attending parents' night.

RESPONSE NO. 130. Admitted, as to Plaintiff took leave after parents' night. Denied as to Plaintiff being in attendance at parents' night.

131. Vyrros uploaded artifacts after she applied for leave but before BPS approved her leave in March 2015.

RESPONSE NO. 131. Admitted, as to Plaintiff uploaded artifacts after she applied for leave.

132. At least one classroom period ("project period") was reserved for ESL students who first attend classes after the beginning of the school year in September 2015.

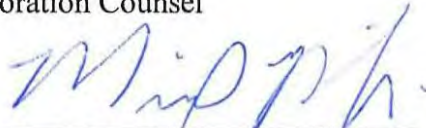
RESPONSE NO. 132. Denied.

133. In September 2015, Staraitis assigned 4 teachers, including Ms. Vyrros, to ESL project duty and required them to meet with her weekly.

RESPONSE NO. 133. Admitted, as to Staraitis assigned Plaintiff to an ESL project duty. Denied, as to the rest of the statement in paragraph "133".

Respectfully Submitted,
Respondent, Boston Public Schools,

By its Attorney,
Eugene O'Flaherty
Corporation Counsel

By: 
S. Michael Pidani BBO# 698754
Assistant Corporation Counsel
Boston Public Schools
2300 Washington Street, 4th Floor
Roxbury, MA 02119
(617) 635-9320

Dated: March 27, 2019

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
TRIAL COURT DIVISION
CIVIL ACTION NO. 1681CV03647

MARINA VYRROS,)
Plaintiff,)
)
v.)
)
CITY OF BOSTON;)
PHILLIP BRANGIFORTE;)
and)
JAMIE STARAITIS,)
Defendants.)
_____)

**DEFENDANT CITY OF BOSTON’S RESPONSE TO PLAINTIFF’S
SECOND SET OF REQUESTS FOR ADMISSIONS**

134. On November 4, 2015, Plaintiff, Phillip Brangiforte and Jaime Staraitis met in Mr. Brangiforte’s office in East Boston High School (“the school”).

RESPONSE NO. 134: Admitted.

135. Following the November 4, 2015 meeting, Plaintiff left the school.

RESPONSE NO. 135: Admitted.

136. Plaintiff did not return to work at East Boston High School after November 4, 2015.

RESPONSE NO. 136: Admitted.

137. On November 9, 2015, Phillip Brangiforte received a fax from Plaintiff.

RESPONSE NO. 137: Admitted.

138. Exhibit “A,” is a true copy of the fax received by Phillip Brangiforte from Plaintiff on November 9, 2015.

RESPONSE NO. 138: Admitted.

139. In Exhibit “A,” Plaintiff requested that Mr. Brangiforte sign a “Report of Occupational

February 29, 2016, referencing her pending worker's compensation claim.

RESPONSE NO. 174: Admitted.

176. Phillip Brangiforte acknowledged Plaintiff's request for leave on January 15, 2016.

RESPONSE NO. 176: Admitted.

177. On March 22, 2016, BPS, by Dianne Cassiani-Knox, denied Plaintiff's request for leave.

RESPONSE NO. 177: Admitted.

178. BPS never terminated Plaintiff's employment because of her poor performance or as a result of her evaluations.

RESPONSE NO. 178: Admitted.

179. BPS terminated Plaintiff's employment because of poor performance or as a result of her evaluations.

RESPONSE NO. 179: Denied.

180. BPS considers that Plaintiff's employment ended because she had failed to report for work for more than 30 consecutive days and had therefore irrevocably resigned her position.

RESPONSE NO. 180: Admitted, as to Plaintiff was considered to have irrevocably resigned her position because she failed to report to work for more than 30 consecutive days without justification.

181. At all times in January 2016, BPS was aware that Plaintiff had an outstanding workers' compensation claim.

RESPONSE NO. 181: Denied.

182. Vyrros was a qualified handicapped individual at the time of her request for accommodations in August 2015.

RESPONSE NO. 182: Denied.

183. The Defendant City of Boston was in possession of the medical records produced by Plaintiff, Marina Vyrros, in the Department of Industrial Accidents Case Number 4004753 prior to April 11, 2019.

RESPONSE NO. 183: Admitted.

206. By order dated March 31, 2016, the Department of Industrial Accidents ordered Defendant to pay Plaintiff worker's compensation.

RESPONSE NO. 206: Admitted.

207. By letter dated April 1, 2016, the Defendant, through the Office of the Mayor's Worker's Compensation Service, requested that the Superintendent of BPS place Plaintiff on the "injury payroll" for the week ending April 1.

RESPONSE NO. 207: Admitted.

208. Defendant complied with the April 1, 2016 request from the Mayor's office.

RESPONSE NO. 208: Admitted.

209. Defendant did not comply with the April 1, 2016 request from the Mayor's office.

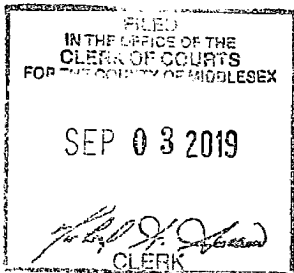
RESPONSE NO. 209: Denied.

Respectfully Submitted,
Respondent, Boston Public Schools,

By its Attorney,
Eugene O'Flaherty
Corporation Counsel

By: _____
S. Michael Pidani BBO# 698754
Assistant Corporation Counsel
Boston Public Schools
2300 Washington Street, 4th Floor
Roxbury, MA 02119
(617) 635-9320

Dated: May 20, 2019



23.4

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT TRIAL COURT DIVISION CIVIL ACTION NO. 1681CV03647

MARINA VYRROS, Plaintiff v. CITY of BOSTON, Et Al, Defendants

STATEMENT OF FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

- 1. Boston Public Schools ("BPS") is an agency of the Defendant City of Boston. Defendant City of Boston's Admission ("DCBA") 157, Joint Appendix ("JA") 000010.

Defendants' Response to Fact No. 1: Uncontroverted.

- 2. In July, 2006 the Defendant City of Boston ("the City") hired the Plaintiff to teach English as a Second Language ("ESL"). DCBA 14, JA 000002.

Defendants' Response to Fact No. 2: Uncontroverted.

- 3. The City employed Plaintiff as a Second Language ("ESL") teacher at East Boston High School ("EBHS") from September 2012 to January 2016. DCBA 15, JA 000002.

Defendants' Response to Fact No. 3: Uncontroverted.

- 4. On January 27, 2016, Defendant Phillip Brangiforte ("Brangiforte") filed a Personnel Action Request Form which terminated the Plaintiff's employment by the City effective

52. The AWOL guidelines to which Lee directed Brangiforte reflect procedures negotiated between the City and the Boston Teacher's Union. Lee Deposition, 96:22-97:1, JA 000059-60.

Defendants' Response to Fact No. 52: Controverted. This fact is not supported by the materials cited. See JA 000059-60. The AWOL guidelines were created and provided by attorneys in the Office of Labor Relations; the instructions/guidelines differ depending on which union the employee is in. See JA 96: 5-8, 24; 97: 1-12, JA 000059-60.

53. The AWOL Letter 1 provides the recipient notice that the recipient will be considered to have "irrevocably resigned" unless the recipient returns to work or be granted a leave of absence within 10 working days. Lee Deposition, 98:20-99:20, JA 000062-63; Exhibit 28, JA 000104.

Defendants' Response to Fact No. 53: Uncontroverted.

54. AWOL guidelines revised December 18, 2015 required the response date set as the date the letter *is sent* plus 10 working days Lee Deposition, 97:2-5, JA 000061; 99:7-100:3, JA 000063-64; Exhibit 27, JA 000105.

Defendants' Response to Fact No. 54: Uncontroverted.

55. The operative date referenced for the running of the 10 working days is the day the letter is sent, not the date at the top of the letter. Lee Deposition, 99:17-100:3, JA 000063-64.

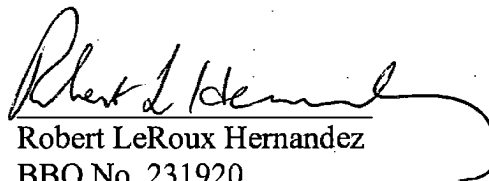
Defendants' Response to Fact No. 55: Uncontroverted.

56. On January 11, 2016, Brangiforte sent out AWOL Letter 1 ("the first AWOL letter"), stating Plaintiff was absent without leave since November 6, 2015 and would be

Respectfully submitted,

Plaintiff Marina Vyrros
By her attorneys:

Dated: August 29, 2019

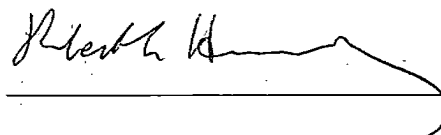


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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on counsel for defendants by electronic and first class mail on August 29, 2019.



CERTIFICATE OF COMPLIANCE

**Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure**

I hereby certify, to the best of my knowledge, that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs. The brief is in the Times New Roman font, with a text size of 14 point, and headings either in 14 or 16 point, as provided in Mass. R. App. P. 20(a)(4)(B). The brief was composed in Microsoft Word, version 2602, build 19725.20078, and the portions of the brief subject to length limitation, as provided in Mass R. App. P. 11(b) contains 1,976 words based upon the word count provided by that software.

March 24, 2026



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CERTIFICATE OF SERVICE

I, Omar H. Kazmi, hereby certify, under the penalties of perjury, that on March 24, 2026, I caused a true and accurate copy of the foregoing to be filed via the Massachusetts Court System efileMA site in the office of the clerk of the Supreme Judicial Court and upon the following counsel by electronic mail:

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