COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

May 13, 2024

Middlesex, ss.

Docket No. CR-15-533

CHERYL MAGUIRE, Petitioner

v.

MALDEN RETIREMENT BOARD, Respondent

DECISION

Appearance for Petitioner:

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Patrick P. MacDonald, Esq.
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Appearance for Respondent:

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Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Accidental Disability Retirement (ADR) - Psychological or emotional injury - Public school food system and nutrition director - Employment contract nonrenewal - ADR denial without convening medical panel - Directed decision after hearing - ADR denial affirmed.

Where (1) petitioner, a former Malden public schools Director of Food Service and Nutrition, and the School Superintendent had differed over school lunch program management, including the implementation of a written policy regarding the payment of unpaid school lunch balances and a suggestion of school lunch program privatization, as a result of which the petitioner perceived she was being dealt with unfairly and harassed; and (2) the Superintendent had placed petitioner on paid leave temporarily for allowing her school custodian son's girlfriend to cash checks at a school cafeteria that were subsequently dishonored; but (3) the petitioner's employment contract provided that its nonrenewal by the Superintendent did not require just cause, and that nonrenewal was not a dismissal, the petitioner had no reasonable expectation of contract renewal; and the nonrenewal of her contract without cause was not a "personal injury sustained or hazard undergone" by her "while in the performance of her duties at a definite time and place," a key prerequisite for public employee accidental disability retirement (ADR) under M.G.L. c. 32, § 7. Even if employment contract nonrenewal is considered to be a compensable personal injury, petitioner's direct case did not show that nonrenewal was based predominantly upon intent to inflict emotional distress upon her rather than having arisen out of a bona fide personnel action related to personal check cashing at the school cafeteria.

Accordingly, the Malden Retirement Board properly denied petitioner's ADR application without medical panel review. Following petitioner's appeal to the Division of Administrative Law Appeals and the completion of her direct case during a hearing, the Board's motion for a directed decision in its favor is granted, and its denial of the petitioner's ADR application is affirmed.

Background

Petitioner Cheryl Maguire, the former Director of Food Services for the City of Malden, Massachusetts School Department, appealed, pursuant to M.G.L. c. 32, § 16(4), the September 15, 2016 decision of respondent Malden Retirement Board denying her application for accidental disability retirement benefits pursuant to M.G.L. c. 32, §§ 6 and 7 based upon a disabling work-

related emotional injury or exposure—differences of opinion between her and the School Superintendent regarding the operation of the Malden School Lunch Program and related alleged unfair treatment and harassment, with "a final stressful encounter" with the Superintendent on March 3, 2014, when he notified her that her employment contract would not be renewed for an additional school year. The Board denied Ms. Maguire's application without first referring the matter to a regional medical panel. In its view, Ms. Maguire had failed to claim "a personal injury sustained or hazard undergone as a result of, and while in the performance of, her duties at some definite place and definite time," *see* M.G.L. c. 32, § 7(1), and therefore failed to establish her entitlement to an accidental disability retirement as a matter of law.

Ms. Maguire timely appealed the Board's denial to the Division of Administrative Law Appeals (DALA) on September 25, 2015. She requested that DALA vacate the denial and remand her ADR application for a medical panel evaluation before the Board decided whether to allow or deny it.

In response to DALA's first prehearing order, Ms. Maguire filed a prehearing memorandum together with six proposed hearing exhibits (Exhs. 1, 1A, 1B, 1C, 2 and 3).[1] The Board filed a

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[1]/ Ms. Maguire's Exhibit 1 is her Accidental Disability Retirement application dated April 9, 2015. It included an Addendum of documents comprising letters and records from Ms. Maguire's treating psychiatrist (Dr. Farrokh Kahjavi) and licensed social worker Mary E. Flynn Shaw), and the statement of treating physician Dr. David Siegenberg regarding Ms. Maguire's ADR application, together with an attached addendum sheet prepared by licensed nurse practitioner Catherine Santom Murphy. Following the exhibit lettering in Ms. Maguire's ADR application addendum, these documents were marked for identification as Exhibits 1A (Dr. Kahjavi's letters and records), 1B (Dr. Siegenberg's May 7, 2014 letter to the Malden School Superintendent recommending that Ms. Maguire stay out of work starting May 12, 2014), and 1C (records of LICSW Mary E. Flynn Shaw; and the Treating Physician's Statement of Dr.

prehearing memorandum with six proposed hearing exhibits (Exhs. 4-9) on December 7, 2016.

I began the scheduled hearing at the Division of Administrative Law Appeals in Boston on November 15, 2017. This hearing session was recorded digitally. I marked all of the proposed hearing exhibits in evidence, without objection. Both parties waived opening statements but reserved their respective rights to present closing statements and file post-hearing memoranda. Ms. Maguire alone testified during the November 15, 2017 hearing session. Her testimony was completed on that date, including cross-examination, redirect examination, and re-cross examination.

Ms. Maguire's testimony focused to a significant extent upon her employment contract with the Malden School District, including her responsibilities under the contract as the Malden Public Schools Director of Nutrition and Food Services, and the contract's provisions regarding dismissal and extension. No copy of the contract had yet been offered in evidence, however. When Ms. Maguire's testimony concluded, I asked counsel for the parties to find her employment contract and file it before I scheduled a second hearing session, during which the Board was expected to present witness testimony. On December 11, 2017, Board counsel filed a copy of the contract employing Ms. Maguire as Director of Nutrition and Food Services of the Malden Public Schools for the period July 1, 2008 through June 30, 2010. It included an attached "Contract Amendment" continuing Ms. Maguire's employment as Director from July 1, 2010 through June 30, 2013, signed by Ms. Maguire and the Chairperson of the Malden School District on Sept. 15, 2011. I marked the employment contract and its extension as Exhibit 10 in evidence, without objection.

Siegenberg regarding Ms. Maguire's ADR application). *See* Appendix of hearing exhibits at the end of this Decision.

Also on December 11, 2017, Board counsel stated that after obtaining and filing a transcript of the electronically-recorded first day of hearing, he would file and serve a motion to dismiss Ms. Maguire's appeal on the ground that Ms. Maguire's direct case had not demonstrated her entitlement to an accidental disability retirement. The transcript of the digital hearing recording was filed in late January 2017. The Board filed its motion to dismiss—which I have treated as a motion for a directed decision made at the conclusion of Ms. Maguire's direct case—on February 23, 2018, and Ms. Maguire filed her opposition to the motion on March 30, 2018. In view of the Board's motion, I did not reschedule a second hearing session.

As neither the motion nor the opposition proposed any additional exhibits, there are a total of 12 hearing exhibits (Exhs. 1, 2, 3A, 3B, 3C, and 4-10) in evidence that I consider in deciding the Board's motion for a directed decision. (*See* attached Appendix.)

Findings of Fact

In deciding the Board's motion for a directed decision, I make the following findings of fact facts based upon Ms. Maguire's testimony and the hearing exhibits, and the reasonable inferences drawn from them:

Initial School Department Employment

1. Petitioner Cheryl Maguire began her Malden School Department employment in December 1984 and remained a School Department employee until June 30, 2014. (Maguire direct

testimony, TR. 7-8.)[2]

. 2. As a Malden School Department employee, Ms. Maguire was a member of the Malden Retirement System, one of the Commonwealth's public employee retirement systems. Respondent Malden Retirement Board administers the Malden Retirement System.

3. Ms. Maguire worked initially in the Malden High School cafeteria's "dish room," cleaning dishes and pans. Starting in approximately January 1985, she worked as the cafeteria's "food server," preparing and serving lunches and also bringing student cash payments for lunches to the cafeteria director's office. In 1989, the cafeteria's manager retired, and Ms. Malden replaced her as manager, working in this position until 1997 (*Id.*; TR. 8-10.)

4. In 1997, Ms. Maguire was appointed as the Malden Public Schools Director of Food Services, with responsibility for food service planning, ordering food, and managing and controlling the federally-funded school lunch program for all ten of the city's public schools. The position was later renamed "Director of Food Services and Nutrition."

(a) Ms. Maguire's supervisor in this position was the Malden School Superintendent.

(b) Ms. Maguire was responsible for (among other things) tallying each school's daily cash receipts, bringing the money collected from students for school lunches to the bank, and balancing each school's school lunch program budget against the city comptroller's monthly statements.

(c) During her tenure as Director, Malden did not itself fund the school lunch

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[2]/ References to "TR" are to the written transcript of the hearing session held on November 15, 2017, which was prepared from the digital recording.

program. Although the program was administered municipally , it was funded federally and from student lunch payments. The Malden School System had a cafeteria budget deficit of approximately $150,000 when Ms. Maguire was appointed Director of Food Services in 1997. It had a cafeteria budget surplus of approximately $550,000 at the end of the 2013-14 school year. (Exh. 10: Ms. Maguire's employment contract dated Jul. 8, 2010; Maguire direct testimony; TR. 11-13, 19-20.)

Employment as Director of Nutrition and Food Services

Initial Contract Term, and Renewals

5. On July 8, 2010, Ms. Maguire and the Malden School Superintendent at the time signed, retroactively, a contract employing Ms. Maguire as Director of Nutrition and Food Services of the Malden Public Schools for the period July 1, 2008 through June 30, 2010. (Exh. 10; 2010 employment contract; Exh. 5: employment contract pages 6-8 listing Ms. Maguire's job duties; Administrative Magistrate's colloquy with counsel regarding the employment contract's initial term; Maguire direct testimony; TR. 13- 15.)

(a) Ms. Maguire's original employment contract included an automatic extension provision. If the Superintendent did not give Ms. Maguire notice of intent to not renew the contract by April 1, 2010, the contract would be renewed automatically for one year, from July 1, 2010 to June 30, 2011. (Exh. 10: Contract at 2, para. 2(b); and Contract Amendment.) Subsequent one-year automatic renewals would occur if the School Superintendent did not give Ms. Maguire notice of nonrenewal by April 30 of the then-current school year. (*Id.*)

(b) The Superintendent did not give Ms. Maguire notice of intent to not renew her contract by April 1, 2010. Ms. Maguire's employment contract was therefore renewed automatically for the 2010-11 school year (from July 1, 2010 through June 30, 2011). (*Id.*)

6. Ms. Maguire's original employment contract was extended by agreement for three additional school years (2011-12,; 2012-13; and 2013-14). (Exh. 10: Contract Amendment.)

(a) On September 15, 2011, Ms. Maguire and the Chairperson of the Malden School District signed a contract amendment continuing her employment as the Malden Public Schools Director of Nutrition and Food Services for three additional school years, retroactively from July 1, 2010 through June 30, 2013. (*Id.*)

(b) Because the contract amendment was retroactive, it superseded the original contract's automatic renewal for the 2010-11 school year.

(c) The only material contract provision that the amendment altered was the salary paid to Ms. Maguire, which the amendment increased. The amendment carried over, intact, the original contract provision regarding automatic renewal for an additional year if notice of intent not to renew the contract was not given by April 1 of the current school year. (*Id.*)

(d) The Superintendent did not give Ms. Maguire notice of intent not to renew her contract by April 1, 2013. Ms. Maguire's amended employment contract was therefore renewed automatically for the 2013-14 school year (from July 1, 2013 through June 30, 2014). (*Id.*)

Job Duties Specified by the Employment Contract

7. Ms. Maguire's original (2010) employment contract specified her job duties as the Malden Public Schools Director of Food Services and Nutrition. They included:

(a) Overseeing the administration of the school district's fee and reduced price meals program according to federal regulations;

(b) Inspecting school lunch facilities and operations to ensure that diet, cleanliness, health and safety standards are maintained;

(c) Planning and analyzing school breakfast, lunch and after-school menus for all schools in the district to insure that all USDA meal pattern and nutritional requirements are met;

(d) Enforcing federal and state regulations regarding nutritional standards, reports and records, and preparing and maintaining all records for required audits and reviews;

(e) Preparing, monitoring and administering the district's food service budget, monitoring and analyzing the food service's revenue resources, and reviewing and authorizing all food service program expenditures;

(f) Maintaining an efficient food service operation and high quality food service and lunch aid staff by recruiting, selecting, training, scheduling and supervising and evaluating all personnel in school lunch facilities;

(g) Preparing all government reimbursements related to the school district's food service program;

(h) Preparing all food and Lunch Aid personnel payrolls; and

(i) Processing all applications for federally-funded free and reduced-price public school student lunches under applicable guidelines.

(Exh. 5: Employer's statement pertaining to Ms. Maguire's accidental disability retirement application; Attachment A: Pages 6-8 of Ms. Maguire's Employment Contract as Malden Public School Director of Nutrition and Food Services for the period July 1, 2008 through June 30, 2010, stating her job duties in this position; Maguire direct testimony; TR. 15-17.)

Contract Provisions Regarding Dismissal or Suspension, and Contract Renewal or Nonrenewal

8. Ms. Maguire's employment contract provided that while she served as Director of Nutrition and Food Services, she could be dismissed or suspended for "good cause," which included a "good faith determination" by the Superintendent that she had "failed to meet goals, objectives and standards" by which her performance was to be measured. The contract required that Ms. Maguire receive written notice specifying the grounds for her dismissal or suspension, and stating her appeal and hearing rights. (Exh. 10: Ms. Maguire's contract at 2-3, § 3.b.) Ms. Maguire understood that the Superintendent would determine whether she was performing her duties under the contract "up to par," and whether her employment contract would be renewed. (Maguire direct testimony; TR. at 23.)

9. Ms. Maguire's employment contract also provided that the Malden School Superintendent could decide not to reappoint her as Director when the original contract term expired, or when any prior renewal of the contract expired. The contract stated that Ms. Maguire's "non-

reappointment" would "not be considered a dismissal" and did not require good cause. (*Id*. at 3, § 2.b, last para.)

10. None of these provisions was changed by the 2011 contract amendment that extended Ms. Maguire's employment as Director of Nutrition and Food Services through June 30, 2013. (*See* Exh. 10.)

Disagreements and Difficulties with the School Superintendent

11. Dr. David DeRuosi, Jr. was appointed Superintendent of the Malden Public Schools before the 2011-12 school year began in September 2011. (Maguire direct testimony; TR. at 24.) Two matters in particular generated friction between Superintendent DeRuosi and Ms. Maguire—resolving a school system-wide problem regarding the payment of unpaid school lunch balances, and ending the practice of school lunch program funds being used to cash personal checks, including checks Ms. Maguire cashed for the girlfriend of her son, a Malden public school custodian. Ms. Maguire felt that the Superintendent treated her harshly with respect to these two subjects, among other things by engaging in personal attacks on her, and that the Public School administration harassed her on a regular basis after Dr. DeRuosi was appointed as Malden's School Superintendent. (*See* Findings 12-40, below.)

Unpaid School Lunch Balances

12. Through at least the 2013-14 school year, many Malden public school students purchased lunches at the school cafeteria, and while lunch was not denied to a student who did not or could not pay, a student with an unpaid school lunch balance would receive a cold lunch, meaning

a lunch that included a sandwich, a fruit, a milk and a desert, rather than a hot one. Nevertheless, the unpaid school lunch balances needed to be repaid, or federal school lunch program funding might be withheld. Although that had never happened, Ms. Maguire was concerned that it could occur, and she wanted to avoid this possibility by complying with federal lunch program funding requirements. (Maguire direct testimony; TR. at 24-33; cross examination, TR. at 120-127; redirect examination, TR. at 158-60.)

(a) Some school lunch balances were not paid by students or their parents before the school year ended on June 30th. The school lunch budget was funded by the federal government and was separate from the School Department budget. For many years, it had been the Malden School Department ‘s practice to pay unpaid school lunch balances at the end of a school year from its own budget and the budgets of individual Malden public schools, but no written policy required this. As the 2011-12 school year began, the Malden Public Schools had no written policy in place at all regarding the payment of unpaid school lunch balances at the end of a school year. (Maguire direct testimony; TR. at 24-33.)

(b) Ms. Maguire understood that the Malden Public Schools could lose federal school lunch funding if they did not have in place a written policy for repaying unpaid school lunch balances. (*Id.*; Maguire cross examination, TR. at 120-127; redirect examination, TR. at 158-60.)

(c) It was unclear to Ms. Maguire whether, and to what extent, unpaid school lunch balances would be repaid out of a school's cafeteria budget or out of the school's budget as a whole, or whether the Malden School Department would pay school lunch balances

separately from a school's budget or cafeteria budget. Although the entire school lunch arrearage before the start of the school year in September 2013 was approximately $3,000, having to pay that amount out of a school's cafeteria budget could make it difficult to continue giving nonpaying students even a cold lunch. Having to pay the arrearage out of a school's budget, or out of the School Department budget, would reduce funding available to purchase food for the Malden school lunch program or to pay lunch program staff, including cafeteria employees. (Maguire cross examination, TR. at 120-127; redirect examination, TR. at 158-60.)

(d) Ms. Maguire was concerned that these budget impacts would worsen if federal funding for the school lunch program (which was the source of roughly 90 percent of the Malden school lunch budget of approximately $850,000 per month) was reduced or withheld for noncompliance with federal school lunch arrearage payment requirements. (Maguire cross examination, TR. at 120-127; redirect examination, TR. at 158-60.)

13. In performing her job duties as Director of Food Services and Nutrition (*see* Finding 7), Ms. Maguire understood that she was responsible of maintaining the fiscal integrity of Malden's school lunch program. This included assuring that each of Malden's public schools complied with the School Department's policy regarding the payment of unpaid school lunch balances.

(a) Ms. Maguire believed that failure to have such a policy in writing, or to comply with it, would be blamed on her, and could result in the loss of critical federal school lunch program funding and the loss of jobs for program administrators, including her own. (Maguire direct testimony; TR. at 24-33; redirect examination, TR. at 159-162; testimony

in response to questions from the Administrative Magistrate, TR. at 167-68.)

(b) No policy regarding the payment of unpaid school lunch balances was in place at the start of 2012. Although the record does not make clear whether it was one of Ms. Maguire's implied job duties to draft such a policy if none was in place, she took the initiative and drafted one in January 2012, which she then discussed with Superintendent DeRuosi. Although the Superintendent told Ms. Maguire during this meeting that he would work on her draft proposal, she was unaware of any action he had taken on it during the remainder of the 2011-12 school year. (*Id.*)

14. In August 2012, one of Malden's elementary school assistant principals, Carol Keenan, sent Ms. Maguire an email asking that she "zero out" the unpaid school lunch balances of students attending that school. To Ms. Maguire, this would mean changing School Department records to reflect that the students did not owe money for school lunches when in fact they did. She thought this would be contrary to what the regulations governing federally-subsidized school lunch programs required. (Maguire direct testimony; TR. at 33-35.)

15. In September 2012, Ms. Maguire met with Superintendent DeRuosi and Ms. Keenan to express her concern about "zeroing out" unpaid student school lunch accounts. Although the Superintendent did not appear to Ms. Maguire to be overly concerned about whether "zeroing out" unpaid lunch balances would conflict with federal regulatory requirements, she understood, by the end of the meeting, that she was not to "zero out" these accounts. (*Id.*; TR. at 35-36.)

16. In October 2012, Ms. Maguire met with Superintendent DeRuosi and several Malden public school vice principals about how to handle unpaid school lunch balances. No written policy

was yet in place, but Ms. Maguire stated her understanding that it would remain the practice for the School Department to pay a Malden public school's unpaid student lunch balances at the end of the school year, using funds from the school's budget to do so. Ms. Maguire handed out the proposed policy she had drafted in January 2012 implementing this practice. During a follow-up meeting with Ms. Maguire and the vice-principals later in October 2012, Superintendent DeRuosi directed that monies owed for unpaid school lunches be collected before the school year ended or they would be paid out of the school's budget. However, the Superintendent did not formally implement the policy Ms. Maguire had drafted. (*Id.*; TR. at 39-41.)[3]

17. At approximately the same time, Ms. Maguire sent Malden's Mayor a copy of the policy she had drafted in January 2012 and informed him that a written policy needed to be implemented to avoid the possibility of a school lunch program audit by the federal government. The Mayor told Ms. Maguire to inform the school committee chair about this issue, which she did. Ms. Maguire was not aware of any action the school committee chair took in response. (*Id.*; TR. at 41-42.)

18. In January 2013, Ms. Maguire was notified that the Massachusetts Department of Education (DESE) would audit the Malden school lunch program that spring. She also learned that Ms. Keenan had instructed the cafeteria staff at the Salemwood elementary school, where she was the Assistant Principal, to "put all students that owe money in as a free student," meaning to "zero

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[3]/ As a result, it remains unclear whether, as of October 2012 or afterward, the practice was to have a student's unpaid student school lunch balance collected from the parents, or whether the unpaid balances would be paid out of the school's budget before the school (and fiscal) year ended on June 30, or out of the school's budget for the following school year.

out" their accounts. Ms. Maguire understood that this was "way against federal regulations." She "was getting anxious" about such practices, and also about the continuing absence of an unpaid school lunch policy, and both matters caused her to start experiencing "panic attacks" at work when she thought about them. (Maguire direct testimony; TR., 48-49.)

19. In February 2013, Ms. Maguire learned that the school service director at the Salemwood elementary school had complied with an oral directive to place all of the school's unpaid student lunch balances into "free" student accounts (zeroing these account out, in other words), because she was frightened about the possible consequences of disobeying the directive.

(a) Concerned that this action violated federal regulatory requirements, Ms. Maguire remotely accessed the student school lunch accounts that had been "zeroed out," and changed them so that they remained on a school's accounting records as unpaid. She also conveyed her misgivings about "zeroing out" unpaid student lunch accounts to Dr. DeRuosi. She recalled the Superintendent as having responded "[o]h well." (*Id.*; TR. at 51-52.)

(b) Ms. Maguire recalled thinking (although she did not say so to the Superintendent), "Why are you doing this to me? You know . . . the federal regulations. I explained them to you." She felt as if "things were being done" to her to get her "into trouble" and perhaps attack her for the way she performed her job as Director of Food Services and Nutrition. (*Id.*; TR. at 51.)

20. In March 2013, Ms. Maguire, Superintendent DeRuosi and a representative from "Project Bread" (a charitable organization that helped children receive nutritious food) met to discuss a possible Project Bread grant for serving breakfasts and lunches to Malden Public School students

in their classrooms.

(a) As the Project Bread representative was discussing what a grant would cover, including school food refrigeration and using "cooling bags" so meals could be brought to classrooms, the Superintendent stated "[w]e can't do that here," and when the Project Bread representative explained how her staff would help with this classroom meal distribution, the Superintendent stated "[n]o, it won't work here." (Maguire direct testimony; TR. at 53-55; cross-examination, TR. at 127-29.)

(b) Ms. Maguire felt humiliated and embarrassed by the Superintendent's statements because, after scheduling the meeting and inviting the Project Bread representative, the Superintendent appeared to be dismissing the representative's proposal out of hand; in addition, the Superintendent's response suggested to Ms. Maguire and she and her staff were not capable of carrying out the proposal, which made Ms. Maguire feel personally humiliated. (Maguire cross-examination; TR. at 128-29.)

(c) Ms. Maguire began "hyperventilating and shaking." She got up and walked out of the meeting with the Project Bread representative. On the following day, she reported to the Mayor what had happened, and his response was "Cheryl, just keep doing your job." (Maguire direct testimony; TR. at 53-55.)

21. On or about April 5, 2013, a reviewer from the Massachusetts Department of Early and Secondary Education (DESE) Bureau of Safety and Nutrition conducted an audit of the Malden Public Schools school lunch program. Upon completing the audit, the DESE reviewer held an "exit review" with Ms. Maguire and Superintendent DeRuosi to discuss her findings.

(a) The reviewer stated she had found no unpaid lunch policy in place, that this "was against federal regulations," and that it was Ms. Maguire's "job to follow regulations." (Maguire direct testimony; TR. at 55-56.)

(b) At that point, the Superintendent allegedly "screamed" that Ms. Maguire had "called the state on" him. The DESE reviewer responded that Ms. Maguire had done nothing of the sort, and that she had reached her conclusion based upon her audit. The Superintendent responded that Ms. Maguire "didn't feed kids" or "feed all the kids." (Id.; TR. at 58-59.)

(c) Ms. Maguire recalled that she felt frustrated and embarrassed, started shaking and crying, and could not breathe, and that the Superintendent "threw a box of Kleenex" toward her and said "[w]hat are you crying for? I'm not." That made Ms. Maguire feel disrespected, and she began experiencing heart palpitations. (*Id.*)

22. Ms. Maguire reported this incident to the Mayor in mid-April 2013. The Mayor told Ms. Maguire that the Superintendent was going to pay for all the outstanding school lunch balances, and directed Ms. Maguire to email the school committee members and set up a subcommittee to "do a lunch policy." (*Id.*; TR. at 61.)

23. Ms. Maguire felt anxious and depressed, and that she was no longer the person who used to be able to "handle anything in life." She attributed this to how the Superintendent had treated her. She engaged in some "self-help" by employing exercise and breathing techniques to help alleviate anxious feelings. (*Id.*; TR. at 62-63.)

24. In May 2013, Ms. Maguire attended a meeting with Superintendent DeRuosi and a Malden Public School employee who was working on budgeting for food services. As she was

explaining what equipment the school kitchen would need to serve more nutritious food, including vegetable steamers, the Superintendent stated, "Oh, by the way, what do you think of privatization?" Ms. Maguire understood the question to relate to privatizing school lunch administration and delivery. She replied that she did not think it worked. Having visited food store-rooms and freezers at privatized school cafeterias, Ms. Maguire had found the quality of the products served by private school lunch programs to be poor; they purchased low-quality foods and dented canned goods; and were interested mostly in making money, not in providing nutritious meals. Ms. Maguire was concerned that privatization would undo her efforts as Food Service Director to introduce high quality foods in serving school meals, including salad bars and whole-grain breads, and eliminating French Fries. She told the Superintendent, as well, that privatizing school food service would also mean eliminating union cafeteria workers, and also supervisors who were interested in prioritizing school lunch nutritional quality. On a more personal level, Ms. Maguire was convinced that the real purpose of privatizing Malden's school food services would be to eliminate her position and get rid of her, and that the Superintendent's privatization comment was intended to send her a message to this effect. (Maguire direct testimony, TR. at 63-65; cross-examination, TR. at 130-31.)

25. After the May 2013 meeting, Ms. Maguire requested that her secretary attend any meetings she had with Superintendent DeRuosi. She did this because she believed the Superintendent had "targeted" and "penalized" her, and was not cooperating with her— particularly as to the unpaid school lunch policy that remained unimplemented—so that he could undo the school lunch program she had developed and replace it with a program that would end up serving "horrible food." Ms. Maguire was also convinced that the Superintendent wanted to remove her from her

position, and was "looking over [her] shoulder, nitpicking at everything [she] was trying to do," trying to find a reason to retaliate against her and get rid of her. (Maguire direct testimony; TR. at 65-66; cross-examination, TR. at 132-33.)

26. Also in May 2013, the DESE reviewer who had audited Malden's school lunch program sent a "Corrective Action Plan" to Ms. Maguire and to Superintendent DeRuosi. Among the reviewer's findings was the need to implement a policy regarding the payment of unpaid student lunch balances. The reviewer's findings were listed on the left side of each page of the proposed Plan. The school system's response was to be entered to the right of each finding, and the completed Plan and responses were to have been returned to the DESE reviewer within "a reasonable time." (Maguire direct testimony; TR. at 72-73.)

> (a) Shortly after receiving her copy of the Plan, Ms. Maguire responded, on the right side of each page, to each finding whose correction fell within her responsibilities as Director of Food Service for the Malden Public Schools. She did not fill in a response to the reviewer's findings regarding school lunch payment policy or how unpaid school lunch balances were be collected or paid by June 30 of each school year, because it was the Superintendent's responsibility to implement corrective measures. Ms. Maguire sent her copy of the DESE reviewer's Corrective Action Plan, with her responses, to the Superintendent before the end of May 2013. (*Id.*)
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> (b) The Superintendent was responsible for reviewing the Plan, adding his responses to the unpaid school lunch policy and collection findings, and returning the Plan and responses to Ms. Maguire so she could send it to the DESE reviewer. The Superintendent

still had not done so by October 2013, and, as a result, Ms. Maguire had been unable to return the Plan and responses to the DESE reviewer. DESE's Bureau of Nutrition reminded Ms. Maguire that the School Department's responses had not yet been returned. She called the Superintendent to ask where his response was. During the conversation that followed, the Superintendent asked Ms. Maguire what he needed to do. She told him to fill in the responses she had not completed that related to unpaid school lunch balance collection policy. (*Id.*; TR. at 74-75.)

(c) Superintendent DeRuosi completed his responses. These stated (among other things) that an unpaid school lunch policy had been "in place" as of September 2013, and that the School Department had transferred funds to pay school lunches balances that remained unpaid on June 30, 2013. He returned the Plan with his responses to Ms. Maguire at some point in October 2013. Ms. Maguire was certain that the Superintendent's responses as to the unpaid school lunch policy, and as to the transfer of funds to pay for unpaid lunches, were false. (*Id.*; TR. at 75-76.)[4]

(d) Ms. Maguire was "extremely upset" that the Superintendent had made these statements, and was unsure what she needed to do next since it was improper to file a false response to the Corrective Action Plan, particularly because it was related to the use of federal funds. She believed that if she sent the responses to the DESE reviewer, it would appear as if she had filled in the false responses as to the policy and funds transfer and had therefore lied in doing so. She wondered why the Superintendent had done this, and why he

[4]/ The response to the DESE reviewer's Corrective Action Plan is not in the record.

wanted her "to look bad, like I filled it out and I lied." (*Id*.; TR. at 76-77.)

27. In October 2013, Ms. Maguire met with a Malden School Committee subcommittee to discuss drafting a policy regarding unpaid school lunch balances. The subcommittee voted to approve the policy that Ms. Maguire had drafted in January 2012 (*see* Finding 13(b)). (Maguire direct testimony; TR. at 71-72.)

28. In November 2013, the DESE Bureau of Nutrition asked Ms. Maguire if she had a copy of the unpaid school lunch policy. Ms. Maguire responded that the School Committee subcommittee had voted to approve the policy in October 2013. Ms Maguire thought that in view of this response, the DESE Bureau of Nutrition would know that the Superintendent had not been truthful in stating that an unpaid school lunch policy was place as of September 2013. (*Id*.; TR. at 78-79.)

Personal Check Cashing at the High School Cafeteria, and Dishonored Checks

29. During the 2012-13 school year, Ms. Maguire's son was employed by the Malden School Department as a custodian in Assistant Principal Keenan's elementary school. In May 2013, Ms. Maguire's son received a verbal warning from Ms. Keenan about his work absences and lateness. (Maguire direct testimony; TR. at 67.)

(a) Ms. Maguire's son told her about this during a telephone call on or about May 20, 2013, approximately 15 minutes after Assistant Principal Keenan had told the son he was being issued a warning but was not being disciplined. The son related that Ms. Keenan told him she did not want to hear excuses about the son's bipolar girlfriend being sick, or his father being sick. Ms. Maguire and her son had learned recently that the father had been

diagnosed with kidney cancer and needed to have a kidney removed. Ms. Maguire was upset that Assistant Principal Keenan would bring up her husband's illness, and thought that doing so had been very unprofessional. (Maguire direct testimony; (*Id.*; TR. at 68.)

(b) Ms. Keenan told her son to do his job and say nothing to Ms. Keenan. That evening, Ms. Maguire sent an email to Ms. Keenan stating that she thought it had been very unprofessional for the Assistant Principal to "drag [her] husband into reprimanding" her son. (*Id.*; TR. at 69-70).[5]

30. Ms. Maguire remained upset about this matter, and on May 21, 2013, she emailed Superintendent DeRuosi asking to discuss it with him and Ms. Keenan. The Superintendent held this meeting on June 14, 2013. During the meeting, the Superintendent asked Ms. Maguire if she had sent the May 20, 2013 email concerning her son to Ms. Keenan. She recalled Superintendent DeRuosi yelling at her during the meeting and stating "Do you know what you did by sending that email? You could ruin her [Ms. Keenan's] career." Ms. Maguire recalled being too stressed to say much other than that she had been stressed over her husband's condition and was sorry she had sent the email to Ms. Keenan, and that she had subsequently left the meeting. (*Id.*; TR. at 70-71.)

31. In December 2013, Superintendent DeRuosi learned that the Malden Public Schools Cafeteria Department was cashing personal checks for individuals, and that some of the cashed checks had been dishonored for insufficient funds by the bank upon which they had been drawn.

(a) Superintendent DeRuosi and a Malden Public Schools attorney met with Ms. Maguire regarding school cafeteria check cashing on December 18, 2013 and asked her about

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[5]/ The email is not in the record.

four personal checks she had cashed for her son's girlfriend, using cash from the school lunch account to do so. Ms. Maguire had deposited these checks almost immediately, but the checks were dishonored because the girlfriend's checking account lacked sufficient funds to cover them. Ms. Maguire had personally repaid into the school lunch account the amount of cash she had disbursed to the girlfriend. Ms. Maguire acknowledged to Superintendent DeRuosi and the School Department attorney that she had shown poor judgment in cashing her son's girlfriend's checks. (Maguire direct testimony; TR. at 79-85; cross-examination, TR. at 138-39.)

(b) During the December 18, 2013 meeting, Ms. Maguire also explained that the Malden Public High School cafeteria had been cashing teachers' and other employees' personal checks since she had worked as the cafeteria manager in the late 1980s. The cash given to teachers and others whose checks were cashed came from the school lunch account. During the same time period, the school cafeteria had accepted payment by check from parents of students with unpaid school lunch balances. Many of those checks had "bounced." Generally, the amount of a parent's dishonored check, and any related return fee the bank charged the school, were added to the unpaid lunch account for the parent's child. (*Id.*; TR. at 81-82, 85-87, 88-89.)

(c) There was no policy in place prohibiting this practice. During the December 18, 2013 meeting, Superintendent DeRuosi told Ms. Maguire that this practice was to stop immediately, and that a policy prohibiting check cashing at the school cafeteria would be put in place. Ms. Maguire immediately stopped check cashing at the school cafeterias. However,

she believed she had not done anything wrong, in view of the prior cafeteria check cashing practice. She also felt the Superintendent had made an issue out of the check cashing because her son had been involved in the most recent cashed check bouncing incidents. In her view, this became an excuse to embarrass her and cause her to experience anxiety, even though in cashing her son's girlfriend's checks she had admittedly shown poor judgment. Ms. Maguire was also aware that under the prior cafeteria check cashing practice, the son's girlfriend was not a person for whom personal checks would have been cashed, as she was neither a school employee nor the parent of a student with an unpaid school lunch balance. (*Id*.; TR. at 83-84, 91-92; *see also* Maguire cross-examination, TR. at 136-41.)

(d) Also during the December 18, 2013 meeting, the Superintendent informed Ms. Maguire that she had been placed on paid administrative leave pending an audit of the school lunch program, and was not to report to work or be present at any school building or on any school property. It is unclear whether the Superintendent told Ms. Maguire that he was doing this because she had allowed check cashing at the school cafeteria. The Superintendent's December 18, 2013 written notice to Ms. Maguire of her placement on paid administrative leave stated no reason for this action. Ms. Maguire felt like "a criminal," and was particularly saddened because she was not allowed to retrieve Christmas gifts she had left at the high school. (Maguire direct testimony; TR. at 90-91; Exh. 6: Letter, Superintendent DeRuosi to Ms. Maguire dated Dec. 18, 2013).

(e) Ms. Maguire continued to perform her job as Director from home during the unpaid leave. This included submitting unpaid school lunch claims for reimbursement, and

ordering food and planning menus for all of the Malden public schools. Ms. Maguire informed the Superintendent that she was performing this work from home during her administrative leave. His response was that possibly something could be worked out so she was authorized to enter a school building to complete her work after hours. (Maguire direct testimony; TR. at 93-94.)

(f) The cafeteria audit was completed in early January 2014. Ms. Maguire's unpaid administrative leave ended, and she returned to work at the high school, on or about January 20, 2014. (*Id.*; TR. at 91, 92-93.)

The March 3, 2014 Warning Letter

32. Superintendent DeRuosi signed a warning letter to Ms. Maguire, dated March 3, 2014, regarding unsatisfactory job performance. (Exh. 7.) It is unclear whether this warning letter was actually sent to Ms. Maguire.

(a) The letter stated that the unsatisfactory job performance warning was based upon the cashing of personal checks by the "Cafeteria Department" that were dishonored for insufficient funds; Ms. Maguire's "acknowledgment" that she had "exercised poor judgment" in cashing those checks; and the Superintendent's verbal order during the December 18, 2013 meeting that the practice of cashing personal checks using school lunch funds was to stop immediately. (*Id.*)

(b) The warning letter did not assert that Ms. Maguire had disobeyed this verbal order. It stated that "[f]ailure to adhere to conditions of this written warning, development of new or related problems, and/or continued unsatisfactory performance" would lead to

"more serious corrective action up to and including termination" of Ms. Maguire's employment. (*Id.*)

(c) The warning letter was not sent by certified mail, and a line at the bottom of the letter where Ms. Maguire was to have acknowledged receipt was not signed. (*Id.*)

(d) Ms. Maguire denied having received the warning letter at the time. When the warning letter was shown to her during the hearing, she testified that it was the first time she had seen it. (Maguire testimony in response to the Administrative Magistrate's questions; TR. at 170-72.)

Notice of Contract Nonrenewal for the 2014-15 School Year

33. What Superintendent DeRuosi unquestionably did on March 3, 2014 was to inform Ms. Maguire that he would not be renewing further, for the 2014-15 school year, the contract employing her as Director of Nutrition and Food Services for the Malden Public Schools.

(a) On that day, the Superintendent called Ms. Maguire to his office to tell her he would not be renewing her employment contract. When Ms. Maguire asked why, the Superintendent answered that he was "going [in] a different direction," and declined to explain further when Ms. Maguire asked, other than to say "because I can do it." (Maguire direct testimony; TR. at 96-97.)

(b) The Superintendent confirmed, in a letter dated March 3, 2014, his decision not to renew her employment contract, and that her last day of employment as Director would therefore be June 30, 2014. The letter gave no reason for the Superintendent's decision not to renew Ms. Maguire's employment contract. This letter was sent to Ms. Maguire via

certified mail, and she signed a receipt acknowledging that she had received it. (Exh. 8: Letter, Superintendent DeRuosi to Ms. Maguire re his decision not to renew her contract, dated Mar. 3, 2014.)

34. After receiving the Superintendent's March 3, 2014 letter regarding the nonrenewal of her contract, Ms. Maguire felt that the Superintendent had terminated her employment, even though the Superintendent had stated his action to have been a decision to not renew her employment contract for the following school year. (Maguire cross-examination; TR. at 147.)

Emotional Effects of Contract Nonrenewal, and Related Treatment

35. After learning, on March 4, 2014, that her employment contract would not be further renewed, Ms. Maguire was unable to perform her job duties, even though her employment was to continue under the extended contract then in place until it expired on June 30, 2014. She felt anxious, depressed and "in shock," was unable to eat, and cried frequently afterward. Ms. Maguire met with the Malden Mayor to ask why her employment contract was not being renewed. He responded that it was for budgetary reasons, and when Ms. Maguire protested that her school lunch program showed a $550,000 surplus, the Mayor responded "That's all I can tell you." After that meeting, Ms Maguire felt that she "just snapped." She felt as if she had been punished for doing her job, particularly for insisting on school lunch program compliance with federal regulations. (Maguire direct testimony; TR. at 97-100; cross-examination, TR. at 146-48.)

36. Although she was taking several prescribed medications, including antidepressants and anti-anxiety and insomnia medication, Ms. Maguire returned to work, hoping to be able to do so until the end of her contract term. However, she was unable to work without crying, could not

focus or concentrate on her work, and became increasingly unable to perform her job functions. She stopped working on May 20, 2014. (Maguire direct testimony; TR. at 97-100; cross-examination, TR. at 146-50; Exh. 1A: Maguire Accidental Disability Retirement Application; Addendum: Letter, Dr. Farrokh Khajavi to Attorney Christopher G. Fallon, dated Jun. 16, 2014,)

37. Ms. Maguire did not file any incident report with the Malden Public Schools regarding conflicts she had with, or alleged harassment by, Superintendent DeRuosi or injuries she claimed to have suffered as a result.

38. Prior to receiving the Superintendent's March 3, 2014 contract nonrenewal letter, Ms. Maguire did not seek treatment from her primary care physician, or from any psychiatrist, clinical social worker or other medical or health care professional regarding the physical and mental health effects of her conflicts with the Superintendent.

Treatment with Dr. Siegenberg and RN Murphy

39. Ms. Maguire had been a patient of internist Dr. David Siegenberg since 2000. In March 2014, Ms. Maguire told Dr. Siegenberg and Registered Nurse Catherine Santom Murphy that she was experiencing generalized anxiety and panic-type symptoms related to "problems with her supervisor." Her symptoms included excessive worry, crying, insomnia, weight loss and being unable to eat. In view of the severity of these symptoms, she was referred to therapy with Licensed Social Worker Mary E. Flynn Shaw. Dr. Siegenberg placed Ms. Maguire on Alprazolam (a benzodiazepine used to treat anxiety and panic disorders), 25 mg twice daily; Temazepam (a benzodiazepine used to treat insomnia), 15 mg at bedtime, as needed; and hydrobromide (an antidepressant), 40 mg. (Exh. 1C: Treating Physician's Statement of Dr. David Siegenberg

Pertaining to Ms. Maguire's ADR Application, dated Jun. 13, 2014; Addendum Sheet to the Treating Physician's Statement prepared by Catherine Santom Murphy, RN; *see also* Exh. 1A: ADR Application Addendum: Letter, Dr. Farrokh Khajavi to Mary E. Flynn Shaw, LICSW, dated May 20, 2014 (listing the medications prescribed by Dr. Siegenberg).)

40. On May 7, 2014, Dr. Siegenberg notified Superintendent DeRuosi that he had advised Ms. Maguire to stay out of work on May 12, 2014 and indefinitely after that date, "due to extreme stress and anxiety related to her work . . . ." (Exh. 1B.)

Treatment with Licensed Social Worker Shaw

41. Ms. Maguire first saw Licensed Social Worker Mary E. Flynn Shaw on April 30, 2014 for therapy relative to emotional issues including depression, crying, headaches, loss of appetite, insomnia, and poor attention and ability to concentrate that she had started to experience six weeks earlier, after being told that her employment contract would not be renewed. (Exh. 1C: Records of Mary E. Flynn Shaw, LICSW, dated Apr. 30, 2014 through Mar. 12, 2015; Ms. Shaw's handwritten notes of Apr. 4, 2014 appointment, second page (Bates p. 03).)

42. During this initial appointment, Ms. Shaw diagnosed Ms. Maguire as suffering from major depression related to what Ms. Maguire had related as a history of depression and being "torn away" from her life's work and the destruction of her career, as a result of her employment contract not having been renewed, and the resulting "anticipated destruction" of the program she had built as Director of the public school nutrition program. (*Id.*)

43. During appointments on May 4 and 15, 2014, Ms. Maguire told Ms. Shaw that over the two years following Superintendent DeRuosi's appointment, she had developed "crippling

symptoms of anxiety and depression," including elevated blood pressure, heart palpitations, loss of appetite and weight loss, insomnia, crying spells, and poor concentration and attention. Ms. Maguire reported becoming preoccupied with trying to please her new boss and feeling hopeless about doing so; she related having had "flashbacks, every day, to events in which she was harassed and humiliated," as well as drinking "more than usual in an attempt to reduce her symptoms." Although Ms. Maguire related that a [Malden] City Councilor was going to try and make the case for continuing her school lunch program and not privatizing it, she told Ms. Shaw she could not return to work even if the program remained in place. Ms. Maguire thought it would be too painful to keep remembering, or flashing back to, her experiences and the "disrespect and betrayal" she had felt as to how the Superintendent had treated her. (*Id*.; Ms. Shaw's handwritten notes of May 6, 2014 and May 15, 2014 appointments (Bates pp. 003 and 004).)

44. On May 15, 2014, Ms. Shaw diagnosed post traumatic stress disorder, on account of Ms. Maguire's flashbacks to "events in which she was harassed and humiliated" at work "and the proximity of the harassment to the symptoms." While she referred Ms. Maguire to psychiatrist Dr. Farrokh Khajavi to assess psychopharmacological treatment, Ms. Shaw planned to work with Ms. Maguire on stress reduction and grief management with the "hope" of returning her "to her previous level of functioning." While she hoped that Ms. Maguire might return to work "in a matter of months," Ms. Shaw also concurred with Dr. Siegenberg's advice that Ms. Maguire remain out of work indefinitely. (Exh. 1C: Ms. Shaw's records; Letter, Mary E. [Flynn] Shaw, LICSW to Kate Stanton Murphy, NP-C (Dr. Siegenberg's office), dated May 15, 2014.)

45. On March 2, 2015, Ms. Shaw noted that Ms. Maguire had complied with treatment

plans recommended by her, by Dr. Khajavi, and by NP Murphy at Dr. Siegenberg's office; she had tried behavioral therapy and psychotherapy related to managing stress and emotions, and had been tried on "a variety of medications," and had achieved modest improvement in stemming her weight loss and insomnia. Ms. Maguire was able to leave her home "so long as she avoid[ed] triggers that set off crying jags," which, Ms. Shaw noted, was difficult since she lived in the city where she had been employed. These "reminders" of her past work" occurred quite frequently, causing regression and interfering with long term progress." Based upon "the current severity" of these symptoms Ms. Shaw did not believe that Ms. Maguire would be able to work "at any job for at least a year." (*Id*.; Ms. Shaw's letter to Katie E. Hislop, Esq., Fallon Law Office (Ms. Maguire's counsel) dated Mr. 15, 2015.)

Treatment with Psychiatrist Dr. Farrokh Khajavi

46. Ms. Maguire related similar symptoms, and attributed them to conflict with and harassment by the School Superintendent, as well as her attempt to self-medicate with alcohol, when she treated with Dr. Khajavi starting on May 13, 2014. Dr. Khajavi treated her through April 8, 2015. Dr. Khajavi described Ms. Maguire as "a well-functioning person" who had been employed by the City of Malden for 30 years and who had been the Malden Public Schools Director of Food Services, stationed at Malden High School, for several years through early 2014. Ms. Maguire told him, during her initial visit, that she had "differences of opinion" with the new School Superintendent and that the School Administration had harassed her on a regular basis, as a result of which she had become increasingly depressed, anxious, unable to sleep or concentrate well, cried frequently, and was unable to cope with stressors in her daily work. Ms. Maguire also told Dr.

Khajavi that her husband, who was at home with a heart condition, had been severely affected by his wife's condition, and that the couple were "anticipating severe financial hardship " if Ms. Maguire was unable to perform her job duties. He also recorded that Ms. Maguire's employment had been "on a contractual basis [and] has been threatened not to be renewed," and that this "adds to patient's and husband's level of anxiety and apprehension." Dr. Khajavi continued Ms. Maguire on anti-depressant, anti-anxiety, and anti-insomnia medications, and noted that she was receiving "cognitive and behavioral therapy to deal with stress, grief and sense of not being appreciated by her employer." (Exh. 1A: Letters, Dr. Khajavi to Ms. Shaw, dated May 20, 2014; and letters, Dr. Khajavi to Attorney Christopher G. Fallon, Esq. dated Jun. 16, 2014 and Apr. 8, 2015.)

47. As of April 8, 2015, when Ms. Maguire had not worked for nearly a year, Dr. Khajavi diagnosed major depression and anxiety disorder with panic, a history of alcohol abuse, and significant psychosocial stressors, as well as hypertension, being overweight, high cholesterol, and generalized fatigue; she continued to have difficulty sleeping, felt fatigued and disinterested; cried easily; and complained of difficulty with memory and concentration. Dr. Khajavi found Ms. Maguire "incapable of engaging in any gainful activities." He thought Ms. Maguire needed to remain on her medications and receive intensive counseling, and suggested that she enter a partial hospitalization program for five days a week. His prognosis for Ms. Maguire's recovery was "guarded." (*Id*.; Letter, Dr. Khajavi to Attorney Christopher G. Fallon re Cheryl Maguire, dated April 8, 2015.)

Ms. Maguire's ADR Application

48. Ms. Maguire's employment as Director of Nutrition and Food Services of the Malden Public Schools, and her employment by the Malden School District, ended on June 30, 2014 as a

result of the Superintendent's nonrenewal of her contract for the 2014-15 school year. (Exh. 1: Maguire ADR Application at 3; Exh. 8: Letter, Superintendent DeRuosi to Ms. Maguire, dated Mar. 3, 2014 *re* nonrenewal of her contract; Exh. 10: Ms. Maguire's 2010 employment contract as amended in 2011.)

49. On August 15, 2014, Ms. Maguire filed a complaint with the Massachusetts Commission Against Discrimination alleging that the Malden Public Schools had engaged in age and gender discrimination against her between March 28, 2013 and June 30, 2014. (Exh. 9: Cover letter accompanying Ms. Maguire's Charge of Discrimination Form and Verified Complaint filed with the Massachusetts Commission Against Discrimination, dated Aug. 14, 2014; Maguire cross-examination; TR. at 150-51; Exh. 9.) Ms. Maguire recalled that MCAD dismissed her discrimination complaint following its investigation. (Maguire cross-examination; TR. at 151.)[6]

50. On April 9, 2015, Ms. Maguire filed an application for accidental disability retirement with the Malden Retirement Board based upon a psychological or emotional injury—major depression and anxiety disorder with panic—that left her permanently unable to perform any of her duties as Director of Food Services for the Malden Public Schools as of May 12, 2014. (Exh.1: ADR application at 2 and *passim.*)

51. In her ADR application, Ms. Maguire claimed to have suffered from job related stress since 2012 "as a result of a strained working relationship with" Superintendent DeRuosi, and

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[6]/ During the hearing, I gave the parties an opportunity to file documents showing the MCAD complaint's disposition. (*See* Administrative Magistrate's colloquy with counsel during Maguire cross-examination; TR. at 151-53.) Neither party did so. Ms. Maguire's recollection that MCAD dismissed her complaint is, therefore, uncontested.

"personal and unwarranted attacks against her by the Superintendent" and feeling "as though she was the target of unfair treatment and harassment by the administration," culminating in "a final stressful encounter with the Superintendent on March 13, 2014, when he notified her that her contract would not be renewed." (Exh. 1 at 5.)

ADR Denial, and Appeal

52. On September 16, 2015, the Board voted to deny Ms. Maguire's ADR application, without first referring it to a regional medical panel for evaluation. It did so on the ground that she had not alleged "a personal injury sustained or hazard undergone as a result of, and while in the performance of, her duties at some definite place and definite time," *see* M.G.L. c. 32, § 7(1), and that as a result, Ms. Maguire had not shown entitlement to an accidental disability retirement as a matter of law. Board counsel notified Ms. Maguire of the ADR denial on September 22, 2015. (Exh. 2.)

53. Ms. Maguire timely appealed the Board's denial of her ADR application to DALA on September 25, 2015. (Exh. 3.)

Discussion

1. Directed Decision

In a hearing conducted pursuant to the Standard Rules of Adjudicatory Practice and Procedure, 801 C.M.R. § 1.01 *et seq*., as here, a respondent may move to dismiss the proceeding "[u]pon completion by the Petitioner of the presentation of his evidence . . . on the ground that upon the evidence, or the law, or both, the Petitioner has not established his case." 801 C.M.R. § 7(g)1. In

terms of its grounds, timing and purpose, a dismissal under 801 C.M.R. § 7(g)1 is analogous to a directed verdict under Mass. R. Civ. P. 50(a).[7] In the adjudicatory context, where there are no verdicts, a decision dismissing a proceeding on the grounds recited by 801 C.M.R. § 7(g)1 is a directed decision.

Unlike the other types of dismissal made available by the Standard Adjudicatory Rules, a directed decision is not based upon a claim's abandonment, *see* 801 C.M.R. § 1.01(7)(g)2 (dismissal for lack of prosecution), or a jurisdictional defect, *see* 801 C.M.R. § 1.01(7)(g)3 (dismissal for lack of jurisdiction). It is based, instead, upon the insufficiency of a party's direct case, either because the direct case shows no legal error as to the appealed agency action, or because the evidence presented does not meet the party's burden of proof.

The Board's motion for a directed decision in this case is based upon both types of deficiencies. It asserts that Ms. Maguire's direct case (1) did not show that she was disabled emotionally as the result of a injury sustained, or hazard undergone, while in the performance of her job duties; and (2) did not sustain her burden to show that a work-related incident or hazard undergone, or a series of them—other than what comprised a bona fide personnel action—was the predominant contributing cause of her claimed emotional disability. As a result, the Board argues

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[7]/ Mass. R. Civ. P. Rule 50(a) provides in pertinent part that:

> A party may move for a directed verdict at the close of the evidence offered by an opponent, and may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A party may also move for a directed verdict at the close of all the evidence . . . A motion for a directed verdict shall state the specific grounds therefor . . . .

further, Ms. Maguire did not show that she qualifies for accidental disability retirement, which left no basis for convening a regional medical panel to opine as to whether Ms. Maguire was disabled as she alleged, whether the disability was likely permanent, and whether her disability was possibly the result of workplace incident(s) or exposure(s) at a definite time and place.

Ms. Maguire counters that her direct case raised at least the possibility of a likely-permanent emotional injury, or a work-related aggravation of her emotional problems to the point of likely-permanent disability, enough to entitle her to medical panel review of her ADR application before it could be rejected for not meeting a strict work-related causation standard. The Board responds that, even if viewed in a favorable light, Ms. Maguire's direct case does not show even the medical *possibility* of a work-related injury or aggravation that would entitle her to medical panel review—either because her employment contract was subject to nonrenewal without good cause (or any cause), or because, in the circumstances presented, contract nonrenewal was not based predominantly upon an intentional infliction of emotional distress and, instead arose out of a bona fide personnel action.

2. Accidental Disability Retirement: What the applicant must prove

a. Generally

A public contributory retirement system member may receive accidental disability retirement benefits when she can show a likely-permanent "personal injury sustained" or "hazard undergone," without misconduct on her part, during the performance of essential job duties. *See* M.G.L. c. 32, § 7(1). The ADR applicant must demonstrate either that a disability "stemmed from a single work-

related event or series of events" or, "if the disability was the product of a gradual deterioration, that the employment [had] exposed [the employee] to an identifiable condition . . . that is not common and necessary to all or a great many occupations." *Coughlin v. Lawrence Retirement Bd.*, Docket No. CR-17-822, Decision at 8 (Mass. Div. of Admin. Law App., May 29, 2020), *and McDonough v. State Bd. of Retirement*, Docket No. CR-15-98, Decision at 12 (Mass. Div. of Admin. Law App., Sept. 8, 2017), *both quoting Blanchette v. Contributory Retirement Appeal Bd.*, 40 Mass. App. Ct. 479, 485, 481 N.E.2d 216, 220 (1985).

b. ADR application based upon work-related emotional or psychiatric medical condition

When an ADR application is based upon an emotional or psychiatric injury, the work-related event or events in question must be shown to have been "the predominant contributing cause" of the disability; and, in addition, the event or events cannot have arisen out of a "bona fide" personnel action or actions. *Caldieri v. Massachusetts Teachers' Retirement System*, Docket No. CR-14-299, Decision at 156 (Mass. Div. of Admin. Law App., Mar. 3, 2023), *citing, inter alia*, *B.G. v. State Bd. of Retirement*, Docket No. CA-20-207, Decision at 27 (Mass. Div. of Admin. Law App., Oct. 8, 2021). That is because an emotional injury, or an injury that is psychiatric in nature, may be a personal injury for accidental disability retirement purposes under M.G.L. c. 32, § 7(1) if it meets the definition of "personal injury" recited by the Massachusetts Workers' Compensation Act, M.G.L. c. 152. *Fender v. Contributory Retirement App. Bd.*, 72 Mass. App. Ct. 755, 894 N.E.2d 295, 299 (2008). The Workers' Compensation Act definition states, in pertinent part, that:

> Personal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events

> occurring within any employment . . . No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter.

M.G.L. c. 151, § 1(7A).[8]

If it is determined that the emotional or mental disability in question "arose principally from a 'bona fide personnel action' taken at work . . . the disability is not deemed a personal injury unless the employer's action amounted to the intentional infliction of emotional distress." *B.G.*, Decision at 27, *citing* M.G.L. c. 152, §1, As *B.G.* explained:

> A case for intentional infliction of emotional harm can be made out only if [the] evidence shows that 1) the perpetrator intended or knew (or should have known) that emotional distress would likely result from his conduct, 2) the conduct was "extreme and outrageous" and "beyond all possible bounds of decency," 3) the actions complained of caused the distress, and 4) the emotional distress sustained was "severe and of a nature that no reasonable man could be expected to endure it." *Agis v. Howard Johnson Company*, 371 Mass. 140, 144-145, 355 N.E.2d 315, 318-319 (1976). These stringent requirements are aimed at preventing litigation featuring only bad manners and hurt feelings.

Id.

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[8]/In 1991, the Legislature substituted "predominant" for "substantive" contributing cause in the Workers' Compensation Act as the standard for showing that a work-related injury or injuries had the requisite causal nexus with a claimed emotional or mental injury. *See* St. 1991, c. 398, § 1. The "predominant contributing cause" standard for a claimed emotional or mental work-related injury was prospective in its operation, and continues to apply in Workers' Compensation cases. *See Robinson's Case*, 416 Mass. 454, 458 n.2, 623 N.E.2d 478, 480 n.2 (1993). It continues to apply in public employee accidental disability retirement cases as well.

3. Sufficiency of direct case as to work-related injury or exposure

a. Centrality of employment contract nonrenewal to ADR application

The elements of Ms. Maguire's claim of a work-related emotional injury include the nonrenewal of her employment contract as the Malden Public Schools Director of Nutrition and Food Services. Her ADR application and the underlying theory of her case make it clear that the March 3, 2014 notice of contract nonrenewal was the principal component of the work-related injury sustained and hazard exposure on the basis of which she claimed an accidental disability retirement, and cannot be readily unbundled from the job-related stresses, including harassment, that allegedly caused her emotional disability.

Ms. Maguire claimed, in her ADR application, that she "began experiencing job related stress in 2012 as a result of a strained working relationship with" Superintendent DeRuosi, "culminating in [her] receiving notice, on March 13, 2014, that the administration had decided that her contract would not be renewed." (Exh. 1: Application for Disability Retirement, dated Apr. 9, 2015 at 5.) The ADR application described the "job related stress" that Ms. Maguire experienced starting in 2012 as having been "due to differences of opinion between her and the Superintendent, and a series of, what [she] deems, personal and unwarranted attacks against her by the Superintendent," as a result of which she "felt as though she was the target of unfair treatment and harassment by the administration." *Id*. The ADR application described the March 3, 2014 notice of contract nonrenewal as "a final stressful encounter with the Superintendent." *Id*. Ms. Maguire stated that she had "performed her job functions" as the Malden Public Schools Director of Nutrition and Food Services "while, and in spite of, suffering

from these conditions until May 12, 2014, when her physician advised that she remain out of work indefinitely due to job-related extreme emotional stress and anxiety." *Id*.

Ms. Maguire's prehearing memorandum described similarly the personal injury she sustained or hazard to which she was exposed. It stated that she experienced job-related stress starting in 2012 "as a result of a strained work relationship" with Superintendent DeRuosi starting in 2012 and "culminating in [her] receiving notice, on March 13 2014, that the administration had decided that her contract would not be renewed." *Petitioner's Prehearing Memorandum* at 1, Part A, Statement of Relevant Fact No. 3 (Oct. 6, 2016). Ms. Maguire's prehearing memorandum described the "event or series of events" that she alleged to have been "the predominating contributing cause" of her permanently-disabling "major depression and anxiety disorder with panic" as comprising two interrelated elements—the strained work relationship with the Superintendent that was "initiated" in 2012, and its "culmination" in the March 3, 2014 notice that her employment contract as Director would not be renewed. *Id*. at 2, Statement of Relevant Fact No. 9; and at 3, Part D, Summary of Legal Issues and Petitioner's Position, third para.

Ms. Maguire maintained this theory of her ADR case throughout her hearing testimony, including her assertion that the Superintendent's March 3, 2014 decision not to renew her employment contract would not be renewed was the final stressful encounter she had with the Superintendent that left her unable to perform her job duties as Director of Food and Nutrition Services any further. (*See, e.g*., Findings 34, 35, 41, 42, 45, 46.)

b. Employment contract nonrenewal was not a work-related injury or hazard undergone qualifying Ms. Maguire for emotional injury-based ADR

The initial contract term of Ms. Maguire's employment as Director of Nutrition and Food Services of the Malden Public Schools ended on June 30, 2010, the end of the 2009-10 school year, but it was renewed automatically for an additional school year. (Finding 5(b).) This renewal was superseded by an agreed-upon contract amendment signed on September 15, 2011 that extended Ms. Maguire's employment as Director retroactively, from July 1, 2010, through June 30, 2013. (Finding 6(b).). An original contract provision that the 2011 amendment carried over without change provided that if the School Superintendent did not give Ms. Maguire notice of intent to not renew the contract by April 1 of the current school year, the contract would be renewed automatically for an additional school year. (*Id.*) The Superintendent did not give Ms. Maguire notice of intent not to renew her contract of April 1, 2013. Ms. Maguire's amended employment contract was therefore renewed automatically for the 2013-14 school year (from July 1, 2013 through June 30, 2014). (Finding 6(d).)

The 2011 contract extension carried over, without change, the original contract provisions regarding renewal. Per these provisions, contract renewal for a subsequent school year was not guaranteed, and could be denied without cause, even if the contract had been renewed for one or more previous years. Automatic renewal for an additional school year would occur only if the Superintendent did not furnish notice of nonrenewal by April 1 of the current school year. There was no contract provision stating, or suggesting, that one or more automatic renewals, or even a contract extension, precluded the Superintendent from declining to renew Ms. Maguire's employment contract further, provided he gave timely notice of nonrenewal by April 1 of the current school year, which he

did in 2014.

Ms. Maguire regarded the nonrenewal of her contract as a termination of her employment; on other words, as a dismissal. Were that the case, nonrenewal, like dismissal, would require good cause justification. The employment contract stated expressly, however, that contract renewal was not a dismissal, and did not require that nonrenewal be for good cause, or for any cause.

Ms. Maguire was not dismissed from her position as Director of Food and Nutrition Services for the Malden Public Schools, therefore. Instead, the Superintendent notified her in March 2014 that her contract would be renewed for the 2014-15 school year without giving a reason, which was in accordance with the express terms of the original and extended contracts regarding nonrenewal. Ms. Maguire had, as a result, no reasonable expectation of further employment contract renewal for the 2014-15 school year; and contract nonrenewal in 2014 did not become, *per se*, a work-related personal injury or hazard undergone qualifying Ms. Maguire for accidental disability retirement.

i. What Ms. Maguire needed to show for her employment contract nonrenewal to have been an adr-qualifying injury or exposure

Reasonable expectations aside, there remained a possibility that the nonrenewal of Ms. Maguire's employment contract might have qualified her for ADR because it did, in fact, cause her an emotional injury. That was not the case here, as her direct case proved no such causation.

In order for the nonrenewal of her employment contract to have been emotionally injurious to the point of likely-permanent disability, so as to qualify Ms. Maguire for an accidental disability retirement, the Superintendent's decision not to renew her employment contract must meet the strict causation standard of M.G.L. c. 32, § 7 by having been either a "personal injury sustained" in the

performance of her duties as Director, or "a hazard undergone," *i.e.*, "an identifiable condition not common or necessary to a great many occupations." *See Blanchette v. Contributory Retirement App. Bd.*, 20 Mass. App. Ct. 479, 487, 481 N.E.2d 216, 221-22 (1985). The same principle applies if the contract nonrenewal is seen as the culminating event in a series of related workplace incidents or occurrences leading up to it. The specific event Ms. Maguire alleged to have been "culminating" for disability causation purposes —employment contract nonrenewal—and the specific event or series of events allegedly leading up to it, "need not have been unusually stressful or traumatic to support a recovery so long as the event or events in fact cause[d] the disability." *Id.*; 20 Mass. App. Ct. at 485 n.4, 481 N.E.2d 216 at 220 n.4 , *citing Kelly's Case*, 394 Mass. 684, 687, 477 N.E.2d 582, 584 (1985). What this meant for Ms. Maguire was that her direct case had to show not only that she suffered emotional harm after her employment contract was not renewed, but also that contract renewal was a personal injury she sustained or an unusual hazard she endured.

Kelly's Case presented, in the context of entitlement to Workers' Compensation benefits, the question of whether an alleged emotional disability— a breakdown that occurred when an employee "learned that she would be laid off from one department and assigned to another"—arose "in the course of employment, as is required for entitlement to workers' compensation under G.L. c. 152." 394 Mass. at 686, 477 N.E.2d at 584. The "only new question presented" to the Court was, whether "viewed as a forced transfer from one position to another or as a layoff," the worker's "experience" could be said to have arisen "out of and in the course of" her employment, meaning that it was "attributable to the 'nature, conditions, obligations or incidents of the employment; in other words, [to] employment looked at in any of its aspects.'" *Kelly*; 394 Mass. at 686-87, 477 N.E.2d at 683-84,

quoting and citing Zerofski's Case, 385 Mass. 590, 592, 433 N.E.2d 869 (1982), and *Caswell's Case*, 305 Mass. 500, 502, 26 N.E.2d 328 (1940). The Supreme Judicial Court concluded that Ms. Kelly's disability "was an incident of her employment 'in any of its aspects' . . . particularly in view of the long-standing principle that the workers' compensation statute should be construed, whenever possible, in favor of the employee so as 'to promote the accomplishment of its beneficent design,'" all of which placed Ms. Kelly "within the class of persons the Legislature sought to protect by G.L. c. 152." *Kelly*; 394 Mass. at 686-87, 477 N.E.2d at 684.

As *Blanchette* noted, what constitutes a personal injury for accidental retirement eligibility purposes under M.G.L. 32 is informed by how personal injury has been defined for workers' compensation purposes under M.G.L. c. 152. As a result, an emotional injury may qualify an employee for ADR, and for workers' compensation benefits, despite having occurred without physical injury and without having been stressful or traumatic. The workplace incident that occurred in *Kelly* and qualified the employee for workers' compensation benefits—whether viewed as a "forced transfer from one position to another or as a layoff"—might also qualify an employee for ADR as a work-related, likely-permanent disabling emotional injury, depending upon the medical evidence. Far less clear is whether the nonrenewal of an employment contract whose nonrenewal required neither good cause nor any cause at all (as was the case here) can be said to have occurred "in the course of," or "as an incident of," employment, even if the standard applied by *Kelly's Case* in the M.G.L. c. 152 workmen's compensation context applied in the Chapter 32 accidental disability retirement context as well.

Applying this standard here automatically would, in effect, qualify the end of any employment under the terms of an employment contract as a work-related injury or exposure for ADR qualification

purposes. In turn, that would create an expectation of perpetual employment even though the employment contract created none and was nonrenewable at will, making anything of lesser duration than perpetual employment the potential cause of a disabling work-related emotional injury.

My attention has not been directed to any Chapter 32 caselaw so holding, and I have found none. Strictly speaking, *Kelly's Case* concerned emotional injury based upon a work reassignment, not the nonrenewal of an employment contract, and is therefore not entirely instructive here. I also do not read *Kelly's Case* as requiring that I read M.G.L. c. 32, § 7 expansively, so as to transform the at-will nonrenewal of an employment contract *per se* into a work-related injury and exposure for ADR qualification purposes, even if such nonrenewal might have qualified Ms. Maguire for worker's compensation benefits as an incident of her employment.[9]

What I determine, instead, is whether Ms. Maguire had a more limited potential expectation as to the renewal of her Director employment contract. She may have had one if her direct case showed that employment contract nonrenewal was based upon any of the caselaw-created, and public policy-based, exceptions to at-will employment that is otherwise terminable for any, or no, cause. Her direct case did not show, however, that the nonrenewal of her employment contract in 2014 was based upon any ground offensive to public policy if this type of exception is recognized as applicable in the accidental disability retirement context.

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[9]/ In saying this, I note that Ms. Maguire neither applied for nor received Worker's Compensation benefits on account of the injuries alleged as the basis for her ADR application. (*See* Exh. 4: Employer's Statement pertaining to Ms. Maguire's ADR App., signed by Malden School Superintendent David DeRuosi, Jr,, dated Jul. 1, 2015.)

ii. Determining whether a limited reasonable expectation of employment contract renewal existed here, referencing at-will employment caselaw by analogy

Subject to a "public policy exception," employment at will in Massachusetts (which is, basically, any employment not governed by a collective bargaining agreement) "can be terminated for any reason or for no reason." *Meehan v. Medical Information Technology, Inc*., 488 Mass. 730, 732, 177 N.E.3d 917, 920 (2021), *quoting Harrison v. NetCentric Corp*., 433 Mass. 465, 478, 744 N.E.2d 622 (2001). The Massachusetts courts have "recognized limited exceptions to the general rule when 'employment is terminated contrary to a well-defined public policy.'" *Meehan*, 488 Mass. at 732, 177 N.E.3d at 920, *quoting Wright v. Shriners Hosp. for Crippled Children*, 412 Mass. 469, 472, 589 N.E.2d 1241, 1244 (1992).[10]

The prohibited grounds for terminating at-will employment include race, national origin, religion, disability, sex, veteran status, pregnancy, or age; or other grounds proscribed by federal and state law. In Massachusetts, for example, jury duty service, retaliation for filing a workers' compensation claim or filing a workplace safety violation complaint, or retaliation for filing a disability-related reasonable workplace accommodation claim or request, are not legitimate grounds for terminating at-will employment. *See, e.g.,* M.G. L. c. 151B, § 4 (16) (it is an unlawful practice for an employer to refuse to hire, or to dismiss, because of [her] handicap, any person alleging to be a qualified handicapped person, capable of performing the essential functions of the position involved with reasonable accommodation, "unless the employer can demonstrate that the accommodation

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[10]/ Termination of at-will employment may also be limited by the provisions of the employment contract, or the employer's handbook for its employees (if any).

required to be made to the physical or mental limitations of the person would impose an undue hardship to the employer's business"); *see also Barbuto v. Advantage Sales and Marketing, LLC*, 477 Mass. 456, 78 N.E.3d 37 (2017)(reversing the dismissal, for failure to state a claim for relief, of a private sector employee's action under M.G.L. c. 151B, § 4(16) challenging her employment termination following a urine test that was positive for marijuana, which she used pursuant to prescription to treat her debilitating Crohn's disease; based upon the facts asserted by the plaintiff and assumed to be true on a motion to dismiss, the relief potentially available to her included a reasonable accommodation of her handicap, such as the use of medicinal marijuana off-premises and beyond working hours).

There are additional public policy-based exceptions to at-will employment termination that the applicable caselaw recognizes. For example, an at-will employee cannot be terminated for refusing to testify falsely on the employer's behalf, as this would undermine the public interest in having witnesses testify under oath truthfully. *See DeRose v. Putnam Management Co., Inc.*, 398 Mass. 205, 208-10, 496 N.E.2d 428, 430-31 (1986). An at-will employee also cannot be terminated for refusing to provide personal information to an employer, *e.g.*, on a questionnaire given by a company to its salesmen, when doing so would interfere seriously or substantially with privacy, given the public policy preference for protecting privacy against unwarranted intrusion. *See Cort v. Bristol–Myers Co.*, 385 Mass. 300, 306–10, 431 N.E.2d 908-11 (1982).

Notwithstanding this expansion of the public policy exception, the rule remains that the exception "should be narrowly construed to avoid converting the general at-will rule into 'a rule that requires just cause to terminate an at-will employee.'" *Meehan*; 488 Mass. at 732, 177 N.E.3d at 920,

quoting King v. Driscoll, 418 Mass. 576, 582, 638 N.E.2d 488, 492 (1994).

Applying this narrow construction, the Massachusetts courts have declined to include an expectation of "job security" as a ground for precluding or limiting at-will employment termination for any or no reason. *Cort*; 398 Mass at 305, 431 N.E.2d at 911, *citing Gram v. Liberty Mutual Insurance Co.*, 384 Mass. 659 665-66, 429 N.E.2d 421, 425-26 (1981).[11]

Also excluded by the Massachusetts courts from the public policy exception to terminating at-will employment for any or no reason is an employer's "false reason or a pretext for the discharge of an employee at will" given by an employer who "ha[d] no duty to give any reason at the time of discharging an employee at will." *Cort*; 398 Mass at 305, 431 N.E.2d at 911. As the SJC explained in *Cort*, "[w]here no reason need be given, we impose no liability on an employer for concealing the real reason for an at-will employee's discharge or for giving a reason that is factually unsupportable." *Id.*

As well, the Massachusetts courts have declined to bring workplace "internal matters" within the ambit of the public policy exception to at-will employment termination for any or no cause, so as to require "just cause" for such terminations. In *King v, Driscoll*, the SJC described this as a "consistent" holding that "the internal administration, policy, functioning, and other matters of an

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[11]/ Although the discharged sales representative in *Gram* was not entitled to normal contract damages for the termination of his at-will employment, he was entitled to recover "identifiable, reasonably anticipated future compensation, based on his past services, that he lost because of his discharge without cause." The discharged employee had lost reasonably-ascertainable future commissions he earned on the insurance policy sales he made prior to the termination of his at-will employment, but that he was not paid. The SJC regarded this as unpaid money earned previously. Its nonpayment was the result of a "bad faith termination of a business relationship which involved overreaching by one party seeking to deny the reasonable expectations of the other party to a financial benefit of that relationship," with a resulting unjust financial benefit to the employer at the discharged employee's expense. *Gram*, 384 Mass. at 665-66, 429 N.E.2d at 425-26.

organization cannot be the basis for a public policy exception to the general rule that at-will employees are terminable at any time with or without cause." *King*; 418 Mass. at 582, 638 N.E.2d at 492 (plaintiff, employed at-will as president of a closely-held corporation's manufacturing division, and who was also a shareholder, was terminated as an officer following internal strife and plaintiff's participation in a shareholders' derivative action against the corporation's directors involving an agreement to buy back the corporation's shares; although the termination was both retaliatory and pretextual, the plaintiff's at-will employment could be terminated for any reason or without cause, and the fact that the termination appeared to be retaliatory for participating in a shareholders' derivative action against the employed did not violate any public policy that would preclude termination based upon a public policy exception to at-will termination with or without cause).

Each of these grounds is a specific exception to the general rule that at-will employment is employment at the employer's will. Absent any of the public policy-based exceptions recognized by caselaw, an employer may terminate at-will employment for any reason, or even without giving a reason, including an employee's preference for a particular sports team or music, or comments made on social media regarding an after-hours party, as frivolous and unrelated to work duties as these may appear.[12]

There is no evidence that the Superintendent's decision not to renew Ms. Maguire's employment contract for the 2014-15 school year was based upon a ground deemed offensive to public

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[12]/ This well-known characteristic of at-will employment limits significantly the legal remedies available for terminated at-will employees. *See*, e.g., Keches Law Group, "At-Will Employees," https://kecheslaw.com/practice- areas/ employment-law/at-will-employees/ (retrieved Apr. 30, 2024).

policy under at-will employment termination caselaw, even if that caselaw were properly applied here by analogy. I note that MCAD dismissed Ms. Maguire's age discrimination complaint regarding the 2014 nonrenewal of her employment contract. (*See* Finding 49 n. 6.) Ms. Maguire's testimony raised the possibility that while the contract required no just cause (or any cause) for nonrenewal, the Superintendent decided not to renew her employment as Director for the 2014-15 school year in retaliation for having opposed his implied suggestion that the Malden school lunch program be privatized, and for insisting that he implement a written policy regarding the payment of unpaid school lunch balances as federal school lunch program regulations, and DESE, required. This alleged, but unexpressed, cause for nonrenewal is facially irrelevant because the extended contract's terms required no cause for its nonrenewal. That aside, Ms. Maguire posits workplace internal matters that the Supreme Judicial Court declined to recognize in *King v. Driscoll* as a public policy-based exception to at-will employment termination without cause. *King*, *supra* at 50-52.

In the circumstances present here, I conclude that the Malden School Superintendent's March 2014 decision not to renew Ms. Maguire's employment contract for an additional school year was not a "personal injury sustained or hazard undergone" by Ms. Maguire in the performance of her Director's duties. By law, it cannot be a "significant contributing cause" of the emotional disability she alleged as the basis for her accidental disability retirement application; instead, employment contract nonrenewal without cause was both a condition of employment of which Ms. Maguire was aware, and a risk she assumed when she signed the initial contract and its extension. The nonrenewal of her employment contract was also not "an identifiable condition not common or necessary to a great many occupations" in which employment contract renewal can be denied with or without cause. On this

point, the caselaw applicable to employment at will is instructive, by analogy, as to why a public policy exception cannot be read here into employment contract nonrenewal without cause, as Ms. Maguire's contract allowed. Neither the ADR application nor Ms. Maguire's testimony regarding the Superintendent's decision not to renew Ms. Maguire's contract for the 2014-15 school year raised any genuine factual issue as to whether the Superintendent might have declined contract renewal on a ground considered contrary to public policy, such as those recognized by caselaw as exceptions to at-will employment termination.

I conclude, therefore, that Ms. Maguire's direct case did not show a "personal injury sustained, or hazard undergone" while she performed her duties as Director that would entitle her to accidental disability retirement benefits. The Malden Retirement Board's denial of her ADR application may be sustained by a directed decision on this ground in the Board's favor.

4. Contract Nonrenewal not shown by Ms. Maguire's direct case to have been based predominantly upon an intentional infliction of emotional distress rather than to have arisen out of a bona fide personnel action

Even if the nonrenewal of Ms. Maguire's employment contract and the events leading up to it are considered to have been a personal injury sustained or hazard undergone for M.G.L. c. 32, § 7(1) purposes, her direct case does not make the showing need to entitle her to accidental disability retirement based upon a disabling work-related emotional injury or hazard undergone. Specifically,, Ms. Maguire's direct case did not show that the nonrenewal of her employment contract for the 2014-15 school year was based predominantly upon an intentional infliction of emotional distress rather than as having arisen out of a bona fide personnel action.

Beginning in December 2013, the Superintendent's attention was drawn to personal check cashing at the Malden High School cafeteria, including the cashing of checks for Ms. Maguire's son's girlfriend that were returned afterward for insufficient funds. During her December 18, 2013 meeting with Superintendent DeRuosi, Ms. Maguire conceded that allowing the son's girlfriend's personal checks to be cashed using cafeteria funds was a lapse in judgment. The matter raised an issue of work performance and cafeteria fiscal integrity, and the Superintendent had genuine cause to be concerned. His reaction was neither irrational nor excessive; he requested an outside audit of the school cafeteria, and he placed Ms. Maguire on temporary paid leave pending the audit's completion, during which she could not work at the high school but continued her administrative work from home. The Superintendent did not dismiss her, and she returned to work at the high school in late January 2014. However, he clearly remained concerned with cafeteria check cashing and cashed check bouncing; several weeks later, he drafted a warning letter to Ms. Maguire regarding unsatisfactory job performance related to cafeteria check cashing and the return of several cashed checks for insufficient funds. While the warning letter may not have been sent, it reflects the Superintendent's thinking as of March 3, 2014, when he notified Ms. Maguire that her employment contract would not be renewed for an additional school year. While the contract did not require just cause (or any cause) for nonrenewal, or a prior warning letter regarding unsatisfactory job performance, the record shows that the Superintendent had such cause in mind when he declined to renew Ms. Maguire's contract.

Without question, Ms. Maguire was personally upset by the Superintendent's contract nonrenewal decision. She had reason to be upset by the Superintendent's seemingly casual treatment of the school lunch arrearage policy issue and of the DESE investigator's finding that a written policy

was required but not implemented. Ms. Maguire was justifiably defensive of the school lunch program's fiscal integrity. She was also justifiably upset at the Superintendent's casual mention of school lunch program privatization, given her commitment over many years to building a school lunch program run by the School Department in accordance with federal requirements. In terms of assuring that the Malden school lunch program complied with applicable federal policy, and with the DESE audit findings that Malden was required to implement a written policy regarding the payment of unpaid school lunch balances, Ms. Maguire did everything she could within the scope of her authority as Director. In addition to pressing the Superintendent to implement such policy, Ms. Maguire presented a policy she had drafted earlier in 2013 to the City Council for approval when the Superintendent continued to treat the matter casually. As well, Ms. Maguire was upset by being placed on paid temporary leave after she had admitted a lapse of judgment regarding the cashing of her son's girlfriend personal checks using school cafeteria funds, and she had repaid the dishonored checks personally. Ms. Maguire may have thought the matter had been resolved fully when she was allowed to return to her workplace, and that her employment contract would be renewed automatically. Possibly in view of this expectation, which had no basis in the plain language of her renewed employment contract, she was taken aback when the Superintendent gave her notice that her contract would not be renewed for the 2014-15 school year.

The Superintendent most definitely had a personnel action in mind starting in late December and through his March 3, 2014 decision not no renew Ms. Maguire's employment contract further. Cashing personal checks for her son's girlfriend was entirely without justification or precedent in the high school cafeteria. While the school cafeteria had previously cashed checks for teachers and parents,

there was no practice of check cashing for family relatives and their friends, none of whom was a parent of a school student or a teacher. When the checks were dishonored, the cafeteria lost money. Even though Ms. Maguire repaid the dishonored checks personally, she elevated the personal financial needs of her son and his girlfriend over preventing unnecessary school lunch program financial losses, particularly those that were unrelated to providing students with nutritious lunches.

The check cashing was also not in keeping with Ms. Maguire's justifiable insistence that the fiscal integrity of the Malden school lunch program be maintained. During her December 2013 meeting with the Superintendent, she conceded that cashing her son's girlfriend's personal checks had been a lapse in judgment. The Superintendent could have imposed discipline in those circumstances, including not only the temporary paid leave on which he placed Ms. Maguire, but also dismissal, even though he did elected not to do so. In the end, he simply exercised his authority under Ms. Maguire's employment contract to not renew it, without having to show just cause or any cause, such as the check cashing in question. It is possible the Superintendent did this, and also may have withheld issuing the March 4, 2013 warning letter, to spare Ms. Maguire unnecessary public embarrassment. Had he needed to cite just cause for not renewing her contract, however, he had a genuine personnel issue in mind on March 4, 2013, and could have cited it. He did not need to do so, and he did not, but the looming presence of this personnel action-related cause was undeniable.

Ms. Maguire's direct case did not prove that the nonrenewal of her employment contract was based predominantly upon intent to inflict emotional distress upon her rather than having arisen out of a bona fide personnel action. A directed decision in the retirement board's favor is justified on this ground if there is doubt her that the nonrenewal of Ms. Maguire's employment contract falls outside

the bounds of a work-related personal injury or hazard exposure needed to qualify for accidental disability retirement under M.G.L. c. 32, § 7.

Disposition

For the reasons stated above, the nonrenewal of Ms. Maguire's extended employment contract without cause, as the contract allowed, and the events said to have led up to nonrenewal, (1) were not a personal injury sustained or hazard undergone for M.G.L. c. 32, § 7(1) purposes; and (2) even if contract nonrenewal could be regarded as such, Ms. Maguire's direct case did not show that nonrenewal for the 2014-15 school year was based predominantly upon intent to inflict emotional distress upon her rather than to have arisen out of a bona fide personnel action related to the cashing of her son's girlfriend's personal checks out of school cafeteria funds, and the subsequent dishonoring of those checks for insufficient funds.

Accordingly, upon the completion of Ms. Maguire's direct case, I grant the Malden Retirement Board's motion for a directed decision and affirm its denial of Ms. Maguire's accidental disability retirement application without convening a medical panel to review it.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: May 13, 2024

APPENDIX TO THE DECISION: HEARING EXHIBITS

Exh. 1. Ms. Maguire's Application for Disability Retirement Application (ADR App.) dated Apr. 9, 2015.

Addendum to the ADR Application:

(Exh. 1A): Letter, Dr. Farrokh Khajavi to Christopher G. Fallon, Esq. Dated Jun. 16, 2014.

(Exh. 1B): Letter, Dr. David Siegenberg to Superintendent DeRuosi dated May 7, 2014 re Ms. Maguire advised to stay out of work starting May 12, 2014 and continuing indefinitely.

(Exh. 1C): Records of Mary E. Flynn Shaw, LICSW, dated Apr. 30, 2014 through Mar. 12, 2015; and Treating Physician's Statement of Dr. David Siegenberg Pertaining to Ms. Maguire's ADR App, dated Jun. 13, 2014, with Addendum by Catherine Santom Murphy, RNP.

Exh. 2. Letter, Attorney Michael Sacco to Attorney Katie Hislop re notice of Malden Retirement Board's vote to deny Ms. Maguire's ADR application and statement of Ms. Maguire's appeal rights, dated Sept. 22, 2015.

Exh. 3. Ms. Maguire's appeal from the Malden Retirement Board's denial of her ADR application, dated Sept. 25, 2015.

Exh. 4. Employer's Statement pertaining to Ms. Maguire's ADR App., signed by Malden School Superintendent David DeRuosi, Jr,, dated Jul. 1, 2015.

Exh. 5. Attachment A to Employer's Statement pertaining to Ms. Maguire's ADR App., accidental disability retirement application, comprising 6-8 of Ms. Maguire's Employment Contract as Malden Public School Director of Nutrition and Food Services for the period July 1, 2008 through June 30, 2010 (*see* Exh. 10 below), stating her job duties as Director.

Exh. 6. Letter, Superintendent DeRuosi to Ms. Maguire re her placement on paid administrative leave, dated Dec. 18, 2013.

Exh. 7. Letter, Superintendent DeRuosi to Ms. Maguire re written warning for unsatisfactory job performance, dated Mar. 3, 2014, with no acknowledgment of receipt by Ms. Maguire.

Exh. 8. Letter, Superintendent DeRuosi to Ms. Maguire, dated Mar. 3, 2014 *re* his decision to not renew her contract as Director of Nutrition and Food Services for the Malden Public Schools, with receipt of the letter acknowledged by Ms. Maguire..

Exh. 9. Cover letter accompanying Ms. Maguire's Charge of Discrimination Form and Verified Complaint filed with the Massachusetts Commission Against Discrimination, dated Aug. 14, 2014.

Exh. 10. Ms. Maguire's Employment Contract as Malden Public School Director of Nutrition and Food Services for the period July 1, 2008 through June 30, 2010, signed by the School Superintendent and by Ms. Maguire on July 8, 2010; with single-page Contract Extension for the period July 1, 2010 through June 30, 2013, signed by the Malden School District Chairperson and by Ms. Maguire on Sept. 15. 2011.

(There are no further Hearing Exhibits)