

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of:

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Case Number: MUP-19-7713

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WORCESTER SCHOOL  
COMMITTEE

\*

\*

and

\*

Date Issued: May 27, 2021

\*

MARTHA VAZQUEZ

\*

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Hearing Officer:

Meghan Ventrella, Esq.

Appearances:

Jonathan R. Atwater, Esq. – Representing the Worcester School Committee

Ryan P. Avery, Esq. – Representing Martha Vazquez

HEARING OFFICER’S DECISION

SUMMARY

1 The issue in this case is whether the Worcester School Committee (School  
2 Committee) violated Section 10 (a)(3), and derivatively, Section 10(a)(1) of  
3 Massachusetts General Law Chapter 150E (the Law) by: 1) relocating Martha Vazquez  
4 (Vazquez) out of her designated classroom and instructing her to alternate between  
5 shared classrooms and to meet with students individually at their desks or in groups for  
6 the remainder of the 2018-2019 school year; 2) failing to notify Vazquez about ESL-ILT  
7 meetings; 3) not permitting Vazquez to participate in MCAS testing as an exam proctor;  
8 4) instructing Vazquez not to attend Kindergarten Training; 5) instructing Vazquez not to

1 attend the 2019 Kindergarten Open House; 6) refusing to request an additional year  
2 waiver for Vazquez to teach during the 2019-2020 school year; and 7) issuing Vazquez  
3 a non-renewal letter.

4 I find that the School Committee did not violate the Law.

5 STATEMENT OF THE CASE

6 On November 25, 2019, Vazquez filed a charge of prohibited practice (Charge)  
7 with the Department of Labor Relations (DLR) alleging that the School Committee had  
8 violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. On January 31,  
9 2020, a DLR Investigator investigated the Charge. On April 7, 2020, the Investigator  
10 issued a seven-count Complaint of Prohibited Practice and Partial Dismissal (Complaint)  
11 alleging that the School Committee violated Section 10(a)(3) and, derivatively, Section  
12 10(a)(1) of the Law. On April 16, 2020, the School Committee filed its Answer to the  
13 Complaint. On September 15, 2020, September 22, 2020, and October 5, 2020, I  
14 conducted a hearing by video conference during which the parties received a full  
15 opportunity to be heard, to examine and cross-examine witnesses, and to introduce  
16 evidence. On December 23, 2020, the parties filed post-hearing briefs. Based on my  
17 review of the record, including my observation of the demeanor of the witnesses, I make  
18 the following findings of fact and render the following opinion.

19 STIPULATIONS OF FACT

- 20
- 21 1. The City of Worcester is a public employer within the meaning of Section 1 of G.L.  
22 c. 150E.
  - 23
  - 24 2. The Worcester School Committee is the collective bargaining representative of the  
25 City for the purpose of dealing with its school employees.
  - 26
  - 27 3. The Education Association of Worcester (Association) is an employee organization  
28 within the meaning of Section 1 of G.L. c. 150E.

- 1  
2 4. The Association is the exclusive bargaining representative for two bargaining units  
3 of employees (Units A and B) employed by the Committee. Unit A includes all  
4 classroom teachers, including ESL teachers, guidance personnel, librarians and  
5 department heads in the elementary, junior high and senior high schools and  
6 vocational school, and assistants to the principals in the elementary schools.  
7
- 8 5. Claimant Martha Vazquez (Vazquez) accepted a position as an English as Second  
9 Language (ESL) Teacher at Belmont Community School [Belmont] on or around  
10 November 11, 2018 with the position retroactive to September 10, 2018.  
11
- 12 6. Vazquez earned a Masters Step 8 teachers' salary of \$75,218.00 for the first half  
13 of the 2018-2019 school year and \$75,970.00 for the second half of the 2018-2019  
14 school year.  
15
- 16 7. At all relevant times, Jennifer Keating (Keating) was Principal at [Belmont].  
17
- 18 8. Nelsy Pepler (Pepler) was a system-wide ESL COACH during the 2018-19  
19 academic year, and BCS was one of the schools under her purview for some  
20 portion of the 2018-2019 academic year.  
21
- 22 9. Gail Ball (Ball) was the ESL Title III Coordinator for the Committee for the 2018-  
23 2019 academic year.  
24
- 25 10. At all relevant times, Roger Nugent (Nugent) was the Association President.  
26
- 27 11. At all relevant times, Beth Kaake (Kaake) was an Association Field  
28 Representative.  
29
- 30 12. The Committee and the Association are parties to a collective bargaining  
31 agreement that is effective from September 1, 2016 – August 31, 2017 and  
32 September 1, 2017 – August 31, 2020 (Agreement).  
33
- 34 13. Article XIX, Section A of the Agreement referenced in Paragraph 14 pertains to  
35 "Teacher Facilities" and states in full: The Association recognizes and the  
36 Committee agrees to continue the present policy in the planning of new schools to  
37 make provisions for adequate and proper work and rest areas for professional staff  
38 and attest to its intent to provide the same whenever possible in old school  
39 buildings. Existing school buildings should include, whenever possible, the  
40 following facilities: 1) Space in the school where each teacher may safely store a  
41 reasonable amount of instructional materials and supplies and, where possible, a  
42 desk for each teacher. 2) An appropriate room for reporting before school for  
43 teachers in the secondary school who are not assigned home room duty. 3) The  
44 Parties agree that as part of annual building assessments, the District will include  
45 in such assessments a review of the available space for special education teachers  
46 without classrooms and itinerant teachers.  
47

- 1 14. Vazquez and Peppler were Association members during the 2018-2019 academic  
2 year.
- 3
- 4 15. Keating was not an Association member during the 2018-2019 academic year.
- 5
- 6 16. On or about January 25, 2019, Vazquez met with Peppler, Ball and Keating.
- 7
- 8 17. At some point during the 2018-[20]19 academic year, Keating relocated Vazquez  
9 out of her designated classroom.
- 10
- 11 18. At the beginning of the 2018-2019 school year, the Committee issued an ESL  
12 Department Meeting Schedule (ESL) for ESL teachers at BCS.
- 13
- 14 19. Vazquez attended ESL meetings prior to January 16, 2019.
- 15
- 16 20. In May of 2019, the Committee conducted a Kindergarten Open House.
- 17
- 18 21. Cheryl DelSignore (DelSignore) was the Committee Staffing/Mentor Coordinator  
19 for the 2018-2019 academic year.
- 20
- 21 22. By e-mail on March 6, 2019, DelSignore requested to meet with Vazquez.
- 22
- 23 23. On April 12, 2019, Vazquez e-mailed DelSignore.
- 24
- 25 24. By the end of the 2018-2019 school year, the Committee did not request an  
26 additional year waiver for Vazquez.
- 27
- 28 25. On June 10, 2019 the Committee issued Vazquez a non-renewal letter.
- 29
- 30 26. Committee teachers on the Masters Step 8 earned base salaries of \$77,489.00  
31 during the 2019-2020 school year.
- 32
- 33 27. Claimant's proposed exhibits Q-Y represent complete, genuine, and authentic  
34 copies of those records subpoenaed from the Committee by Claimant as part of  
35 this matter.
- 36

37 FINDINGS OF FACT

38 **Vazquez's Education Background**

39 In 1992, Vazquez graduated from high school in Puerto Rico. While in Puerto Rico,  
40 Vazquez earned a two-year college degree in business and administration. In 1995, after  
41 Vazquez moved to Massachusetts, she took English as Second Language (ESL) and

1 early childhood education classes at Quinsigamond Community College. Eventually,  
2 Vazquez transferred to Becker College. In 2009, Vazquez earned her bachelor's degree  
3 in psychology from Becker College. In 2013, Vazquez earned her master's degree in  
4 education from Cambridge College.

#### 5 **Vazquez's Employment Background**

6 For approximately 22 years, the School Committee has hired Vazquez on a yearly  
7 basis in a variety of jobs in many of the schools in the Worcester School District (District).  
8 In 1997, the School Committee first hired Vazquez as a Bilingual Office Aide at Columbus  
9 Park School. After working as an office aide, the School Committee hired Vazquez as a  
10 Confidential Secretary in the Superintendent's Office. Following her work in the  
11 Superintendent's Office, the School Committee hired Vazquez as a Secretary in the  
12 Human Resources Department. Afterwards, the School Committee hired Vazquez as a  
13 paraprofessional at Elm Park School. After a time at Elm Park School, the School  
14 Committee hired Vazquez as a paraprofessional at Forest Grove Middle School. Next,  
15 the School Committee hired Vazquez as a paraprofessional at Nelson Place School. The  
16 School Committee hired Vazquez as a bilingual office secretary at North High School.  
17 The School Committee then hired Vazquez as an ESL tutor at the Quinsigamond  
18 Community School. For the 2018/2019 school year, the School Committee hired Vazquez  
19 to work as an ESL teacher at Belmont.

#### 20 **The 2018/2019 School Year**

21 At the beginning of the 2018/2019 school year, Vazquez received a text message  
22 from then ESL coach Nelsy Peppler (Peppler), informing Vazquez that the School  
23 Committee was hiring ESL teachers. Peppler instructed Vazquez to contact Carmen

1 Melendez-Quintero (Melendez), the Director of the ELL program.<sup>1</sup> Shortly thereafter,  
2 Melendez offered Vazquez her choice of three different ESL teacher positions at various  
3 locations in the Worcester Public Schools. Vazquez choose the ESL position at Belmont.

#### 4 **The Waiver Application Process**

5 In Massachusetts, a teacher must either be licensed, or the Department of  
6 Secondary Education (DESE) must grant the teacher a yearly waiver to teach in a  
7 classroom. To be licensed, an individual must pass the Massachusetts Test for Educator  
8 Licensure (MTEL) exam. Once a teacher has passed the MTEL exam and received a  
9 Sheltered English Immersion (SEI) endorsement from DESE, the teacher must apply for  
10 a professional teaching license which lasts for five years. After DESE grants the first five-  
11 year professional license, an individual can apply for an initial extension one time for an  
12 additional five years. Afterwards, a teacher must apply to renew their license every five  
13 years.

14 In order for a school committee to hire a teacher on a waiver, it must make a good  
15 faith effort to hire a licensed educator by posting the job for at least two weeks;<sup>2</sup> make a  
16 list of all licensed applicants for the position; provide reasons for why the licensed  
17 applicants were not hired for the position, specifically addressing what knowledge, skills  
18 or ability the licensed candidate was lacking; and provide an explanation as to why the  
19 unlicensed candidate is qualified for the role. A school committee hires teachers on a  
20 waiver when there is a critical shortage of licensed teachers in an area of education. After

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<sup>1</sup> First year teachers are assigned a mentor and a coach.

<sup>2</sup> The school committee must post the job position internally and externally and interview all licensed teachers who are interested in the position.

1 a school committee requests a waiver for the teacher, and DESE approves the waiver,  
2 the teacher can work in the classroom for one school year.

3 Only DESE has the authority to grant a waiver, but the school committee must  
4 request the waiver. A waiver cannot last for more than a year. Each subsequent year,  
5 the school committee must reapply for another year's waiver for the teacher, and DESE  
6 must approve it again. DESE does not require a school committee to request a second-  
7 year waiver on behalf of a teacher. The school committee has discretion over whether it  
8 rehires an unlicensed teacher for another year and applies for a second-year waiver. If a  
9 teacher wants the school committee to consider applying for another year's waiver on  
10 their behalf, they must have made continuous process toward their license during the  
11 school year. If the school committee applies for another year's waiver for a teacher, it  
12 must complete the same process of posting the job opening and explaining to DESE why  
13 it hired an unlicensed teacher.

14 After the District hires an unlicensed teacher, DelSignore, the District's Staff  
15 Mentor Coordinator meets with the teacher to inform them of the waiver process.  
16 DelSignore instructs the school principal who hired the teacher to fill out a form explaining  
17 why the individual was hired over any licensed candidates. After collecting the teacher's  
18 college transcripts, job posting, and letter from the principal, DelSignore sends the  
19 paperwork to DESE. Additionally, the teacher must apply for a provisional license and  
20 SEI endorsement and inform DelSignore that those steps were taken. DESE can take  
21 months to approve an SEI endorsement and waiver application.

22 During the school year, DelSignore meets with the unlicensed teacher on their first-  
23 year waiver to discuss continuous progress points and the steps the teacher needs to

1 take to obtain their license and/or be eligible for potentially a second-year waiver.  
2 DelSignore requires all unlicensed teachers working under a waiver to provide  
3 documentation of the steps they have taken to obtain their license and/or gain continuous  
4 progress points by April 1 of that school year. After meeting with the teacher in April,  
5 DelSignore informs the Human Resource Department (HRD) of the teacher's progress.  
6 At this point, DelSignore does not know if the teacher will be rehired for the following  
7 school year. Afterwards, HRD, in conjunction with the personnel directors and principals  
8 for each school, makes teacher hiring decisions for the following school year. At the end  
9 of the school year, each school within the District informs DelSignore who is being hired  
10 or rehired for the following school year. If a school plans to rehire an unlicensed teacher  
11 for another year, DelSignore would meet with the teacher and begin the waiver application  
12 process again.

### 13 **Vazquez's 2018/2019 Waiver**

14 In the beginning of the 2018/2019 school year, DelSignore informed Vazquez that  
15 she must first apply for a provisional license and an SEI endorsement with DESE for the  
16 School Committee to complete her waiver application.<sup>3</sup> On September 6, 2018, Vazquez  
17 and DelSignore signed a Teachers Individual Licensure Plan for 2018-2019.<sup>4</sup> The Plan  
18 stated:

19 The Worcester School Committee requires all teachers to be licensed or  
20 on a waiver (issued for one school year). You must commit to taking the  
21 following steps in order to meet the April 1, 2018 deadline for licensure  
22 or waiver eligibility: Apply for Provisional licensure by ASAP. Send

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<sup>3</sup> DelSignore retired on September 30, 2019.

<sup>4</sup> As the Staff Mentor Coordinator, DelSignore was responsible for on-boarding new teachers, making recommendations for hiring to Principals and Directors, and running the mentor program.



1 confirmation of your application to Cheryl DelSignore. She will apply for  
2 your waiver.

3  
4 The necessary steps for completion of licensure from September 1, 2018  
5 forward are as follows:

6  
7 1) Register and sit for all available MTEL tests until passing score is  
8 achieved. 2) Send copy of results to Cheryl DelSignore as soon as  
9 available (pass or fail). 3) Take graduate level classes as determined  
10 toward licensure (2 graduate courses usually secures waiver). 4) Send  
11 official transcripts of all classes taken this school year to Cheryl  
12 DelSignore by April 1, 2019.

13  
14 Other as listed: Take and pass applicable MTEL's and coursework  
15 required for licensure MTEL dates for paper-based testing schedule and  
16 Computer based testing available: \_\_\_\_\_October, 2018, \_\_\_\_\_March,  
17 2019, \_\_\_\_\_May, 2019.

18  
19 I am fully aware of the steps necessary in order to obtain the License on  
20 or before April 1, 2019. The teacher also understands that constant  
21 monitoring of her/his license with the DOE and contact with the DOE  
22 regarding licensure status is necessary. The teacher is fully aware that  
23 failure to have the necessary license by [the] April 1, 2019 deadline will  
24 result in the Worcester Public Schools not reappointing the employee at  
25 the end of the 2018-2019 school year.

26  
27 On September 10, 2018, Vazquez applied for an ESL pre-K through 6<sup>th</sup> grade provisional  
28 license. On September 14, 2018, Vazquez applied for the SEI endorsement with DESE.  
29 Thereafter, Vazquez informed DelSignore that she had completed the two requirements  
30 of applying for a provisional license and SEI endorsement.<sup>5</sup>

31 By letter dated November 11, 2018, Jennifer Boulais (Boulais), Chief Human  
32 Resource Officer for the Worcester Public Schools, confirmed Vazquez's acceptance of

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<sup>5</sup> At the hearing, Vazquez presented a printout from the DESE website that stated that her 2018/2019 waiver application was still pending. However, the School Committee has no control over whether DESE approves or denies a waiver application. The School Committee only has control over submitting the required materials for the waiver application. In this case, it is clear that DelSignore submitted all necessary paperwork to DESE for Vazquez's 2018/2019 waiver application.

1 a position as an ESL teacher at Belmont effective September 10, 2018. The November  
2 11 letter stated in relevant part:

3 You do not currently possess the required teaching license from the  
4 Massachusetts Department of Elementary and Secondary Education  
5 (DESE). Your appointment is for the 2018-2019 school year only and  
6 you will [be] terminate[d] on June 30, 2019; however, it may be  
7 extended pending (but not exclusively) evidence that you have obtained  
8 the appropriate license. You have been granted until April 1, 2019, to  
9 obtain the license; and, the district will need a copy of your endorsement  
10 prior to April 1, 2019 for continued employment. Possession of the  
11 appropriate DESE license is required for continued employment but  
12 does not guarantee employment for 2019-2020.

13  
14 You also do not currently possess the SEI endorsement from the  
15 Massachusetts Department of Elementary and Secondary Education.  
16 Your appointment is for the 2018-2019 school year only and will  
17 terminate on June 30, 2019 and you will be changed to the Day by Day  
18 substitute payroll and no longer be benefits eligible; however, it may be  
19 extended pending (but not exclusively) evidence that you have obtained  
20 the SEI endorsement. All core content teachers employed by the  
21 Worcester Public Schools are required to hold the SEI endorsement  
22 from the Massachusetts DESE. You have been granted until June 1,  
23 2019, to obtain the SEI endorsement. The district will need a copy of  
24 your endorsement prior to June 1, 2019, for continued employment.  
25 Possession of the SEI endorsement is required for continued  
26 employment but does not guarantee employment for 2019-2020.

27  
28 As of the date of the hearing, Vazquez had not passed the MTEL exam.<sup>6</sup> However, after  
29 each time Vazquez took an MTEL exam, she informed DelSignore of her results. Through  
30 the 2018/2019 school year, DelSignore and Vazquez met approximately five times to  
31 discuss her progress in obtaining a license.<sup>7</sup>

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<sup>6</sup> A teacher does not need to have passed the MTEL exam to work under a waiver.

<sup>7</sup> Vazquez and DelSignore met in September, November, January, March and May of the 2018/2019 school year. Vazquez described her relationship with DelSignore as positive. By email dated August 21, 2019, Vazquez asked DeLSignore if she had time to discuss any possibilities of her returning to Worcester Public Schools as a Secretary. DelSignore never answered Vazquez's email. However, as previously noted, DelSignore retired in September of 2019.

1 **Vazquez's 2018/2019 Continuous Progress towards obtaining a License**

2 The Committee follows DESE's "New Continuous Progress Policy for an Academic  
3 Licensure Hardship Waiver" when considering whether to request an additional year  
4 waiver for unlicensed teachers. By email dated March 6, 2019, DelSignore informed  
5 Vazquez that:

6 Please call me this week and schedule a meeting to discuss your  
7 continuous progress on your DESE waiver status. You will need to have  
8 obtained at least 6 continuous progress points during this school year.  
9 You will need to bring all applicable official transcripts for coursework  
10 taken since being on the waiver, and copies of DESE MTEL passing  
11 documents to the meeting. We must meet within the next 3 weeks.  
12 Attached see the regulation and the continuous progress information  
13 you need to allow for a possible subsequent waiver application IF you  
14 will not be licensed prior to the end of this school [year]. This meeting  
15 is imperative for Human Resources to have all your updated information  
16 to share with the principals and Chief Human Resources Officer as we  
17 plan for the 2019/2020 staffing decisions.<sup>8</sup>

18  
19 On March 11, 2019, DelSignore forwarded Vazquez DESE's New Continuous Progress  
20 Policy for an Academic Licensure Hardship Waiver.<sup>9</sup>

21 After a teacher is approved by DESE to work under a waiver for the first year of  
22 teaching, if they wish to be employed on a waiver in the second and subsequent years,  
23 they must demonstrate a certain amount of "continuous progress" towards their license  
24 by April 1 of that year. For example, if a teacher passes a full MTEL exam, they would  
25 receive two continuous progress points for that year. If a teacher passes only half of an  
26 MTEL exam, they receive only one point. If a teacher takes one credit hour of a graduate

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<sup>8</sup> Despite receiving extensive literature on the subject, Vazquez erroneously believed that her initial waiver period was for five years.

<sup>9</sup> DelSignore and Vazquez met to discuss her continuous progress within the requested 3 week timeframe.

1 course, they receive one point. A teacher does not receive any points for just applying for  
2 the SEI or provisional license. A teacher may demonstrate continuous progress by  
3 completing at least one aspect of the licensure requirements for the role. This can include  
4 any of the following:

- 5 a. Passing an MTEL
- 6 b. Passing a subject of an MTEL or one or more Performance Assessment for  
7 Leaders (PAL)
- 8 c. SEI endorsement requirement completed and approved
- 9 d. Meeting a “coverage of” competency through 10 professional development  
10 points or 10 hours of mentored experience
- 11 e. Enrollment and progress in or completion of an MTEL preparation course  
12 or equivalent effort to deepen knowledge and/or skills aligned with MTEL  
13 test objectives (e.g. college course in the subject area, district-run sessions,  
14 etc.)
- 15 f. Enrollment and progress in or completion of an approved preparation  
16 program
- 17 g. The assignment of a subject-matter expert/court and the additional district  
18 support to provide at least 25 hours of content-specific coaching in the  
19 individual classroom. This support is in addition to any standard induction  
20 and mentoring support provided to first-year educators. Documentation of  
21 this would include a letter from the district outlining the supports in place as  
22 well as a time log signed by the individual on the waiver and the assigned  
23 subject-matter expert/coach
- 24 h. Additional MTEL or PAL attempts, even if unsuccessful as long as there  
25 was supports in place to improve performance moving forward.

26  
27 In addition to demonstrating continuous progress through one of the requirements above,  
28 districts need to confirm that the educator has received an evaluation rating of at least  
29 “needs improvement or higher” in the preceding school year.

30 By email dated December 5, 2018, Martha Cole (Cole) a District Title III  
31 Implementation Coach for English Learners, informed Vazquez that: “According to my  
32 records you are on a Waiver in the ESL Department. Can you please let us know where  
33 you are at in the process of getting your ESL certification? Have you taken the ESL  
34 MTEL? Are you scheduled for an upcoming one? Are you actively working on the

1 practicum with the mentor?" Cole provided Vazquez with a hyperlink to resources for the  
2 ESL MTEL. Later that same day, Vazquez responded to Cole via email stating that:

3 I am currently working on getting my ESL License. I did apply and [I]  
4 submitted all my paperwork for my provisional License and SEI  
5 endorsement as well. I am scheduled to take my first MTEL January 4<sup>th</sup>,  
6 [2019], and I am taking two in February [,2019]. I am taking one  
7 February 19<sup>th</sup> and February 26<sup>th</sup>[, 2019]. Besides that, I am registered  
8 to take a few courses that I paid [for] to help me pass the MTEL test in  
9 Boston. Besides [that] I am studying at home and I practice on the  
10 computer at least 3-4 [times] a week. I printed all the MTEL materials  
11 [from] the Department of Education and I have all the material that Dr.  
12 Oliveras gave us before she retired. I am actively working with my  
13 mentor on the practicum. I also had a meeting with Cheryl to make sure  
14 all my paperwork was in order and submitted copies and proof of all the  
15 things that I am doing for the current school year. I haven't missed any  
16 staff meetings or training[s] since my start da[te]."  
17

18 Vazquez sat for the MTEL exam on January 4<sup>th</sup>, February 19, and February 26, 2019, but  
19 did not pass the exam or a subtest of it on any of those occasions. In early spring of  
20 2019, Vazquez met with DelSignore to inform her of the results each time Vazquez sat  
21 for the MTEL exam in January and February of 2019.

22 As part of an evaluation, Michael Dunphy (Dunphy), Belmont Assistant Principal,  
23 observed Vazquez in the classroom three times.<sup>10</sup> On April 12, 2019, Dunphy authored a  
24 "Teacher Formative Assessment Report Form" for Vazquez's performance during the  
25 2018/2019 school year from the March observation. Under the "Teaching All Students"  
26 section, Dunphy checked that Vazquez was on target to achieve proficiency or above.

27 Vazquez sent DelSignore an email dated April 12, 2019 stating: "Regarding our  
28 last meeting, I want to thank you for giving me the opportunity to have a waiver for next  
29 year. I forgot to ask you about going to Eagle Hill this summer. I know you had mentioned

---

<sup>10</sup> Dunphy observed Vazquez in January, March, and April of 2019.

1 it to me before that if I had a waiver that I would need to go, so I wanted to check on this.  
2 Just to let you know, I have already paid to retake the Communication and Literacy and  
3 the ESL MTEL with accommodations. If there is anything else, I need to do, please let me  
4 know.”<sup>11</sup> By email dated April 17, 2019, DelSignore responded stating that the Eagle Hill  
5 Summer Program was no longer offered but there were other opportunities for PD  
6 classes.

7 In the beginning of April of 2019, Vazquez meet with DelSignore within the three-  
8 week deadline. At the meeting, Vazquez brought DelSignore copies of her transcripts  
9 from the PD classes she took that year and the registration for the MTEL tests she had  
10 signed up for. In May of 2019, Vazquez met with DelSignore again to discuss her  
11 progress towards the six continuous progress points she needed to be eligible for a  
12 second year waiver.

13 On May 20, 2019, Dunphy authored a “Teacher Formative Assessment Report  
14 Form” for Vazquez’s performance during the 2018/2019 school year from the April  
15 observation. Under the Teaching All Students section, Dunphy checked off that Vazquez  
16 was on target to achieve proficiency or above. Under the Family & Community  
17 Engagement section, Dunphy checked that Vazquez was on target to achieve proficiency  
18 or above. For the 2018/2019 school year, Vazquez received an evaluation rating of at  
19 least a “needs improvement” or higher.

20 Vazquez applied for the SEI endorsement, however, DESE never approved the  
21 application. Vazquez did not submit a time log demonstrating that she met with an  
22 assigned subject-matter expert or coach for at least 25 hours. Vazquez did not continue

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<sup>11</sup> DelSignore denied ever informing Vazquez that she would have a waiver for next year.

1 to take graduate level classes after obtaining her degree, but she did take professional  
2 development and MTEL preparation classes. On February 23 & 24, 2019, Vazquez  
3 attended a two-day workshop on the ESL MTEL.<sup>12</sup> On June 4, 2019, Vazquez emailed  
4 Boulais stating that she would like to schedule a meeting to discuss accommodations and  
5 plans for the 2019/2020 school year. Boulais never replied.

#### 6 **Vazquez's Classroom**

7 In the beginning of September of 2018, Belmont Principal Keating assigned  
8 Vazquez to assist in teaching ESL for kindergarten and 3<sup>rd</sup> grade. Belmont has three third  
9 grade classrooms, and Vazquez was assigned to Ms. Ramos' third grade class.<sup>13</sup>  
10 Belmont has four kindergarten classrooms, and Vazquez was assigned to assist with  
11 teaching ESL in all four classes.

12 At the beginning of the 2018/2019 school year, Keating assigned Vazquez to a  
13 designated classroom that could hold between seven and nineteen students. The  
14 "classroom" was a windowless supply closet in the basement which was dark and damp  
15 with significant water damage and ventilation problems.<sup>14</sup> Due to the smell and ventilation  
16 issues, Vazquez experienced frequent headaches, shortness of breath, and nausea.  
17 Additionally, the water leakage and dampness of the room damaged Vazquez's personal

---

<sup>12</sup> Even if an individual meets the continuous progress requirements for applying for another year's waiver, the School Committee does not have to employ that teacher for another year.

<sup>13</sup> From September 2018 to January 2019, Vazquez taught ESL third grade students from Ms. Ramos' class every day from 9:05 a.m. to 9:50 a.m., except Thursday when she would teach the students at 8:20 to 9:05 a.m. Vazquez taught kindergarten ESL classes the rest of the school day.

<sup>14</sup> The room was entirely concrete with exposed water pipes that would persistently leak.

1 teaching supplies.<sup>15</sup> Vazquez pulled students out of the general classroom to teach in her  
2 classroom.<sup>16</sup>

3 In September and October of 2018, Vazquez spoke with the Belmont custodian  
4 about the leaking pipes and air quality in the room. However, the custodian was not able  
5 to fix the leaking pipes or improve the air quality. In October of 2018, Vazquez informed  
6 Keating that she was experiencing serious water damage in her classroom, and it was  
7 damaging her property and her health. Keating assured Vazquez that someone from the  
8 school would come and assess the condition of her classroom. In November of 2018,  
9 Peppler visited Vazquez at her classroom and suggested that Vazquez go to the Union if  
10 she was concerned about the condition of the room.

11 During the first week of January, Keating informed Vazquez that someone from  
12 the school looked at her classroom over Christmas vacation, and she had nothing to worry  
13 about. Keating also informed Vazquez that she shouldn't keep any personal belongings  
14 in the room and should teach with the door open. Afterwards, Tiana Philips (Philips), a  
15 General Education Coach for Belmont, visited Vazquez's classroom. Phillips informed  
16 Vazquez that she thought the room contained asbestos and mold.

17 In early January of 2019, Vazquez met with Peppler, Union President Roger  
18 Nugent (Nugent), and Union Field Representative Beth Kaake (Kaake) pursuant to Article  
19 XIX, Section A of the Agreement, to complain about the mold, leaking water, and other

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<sup>15</sup> Vazquez attempted to make the best of the subterranean room by decorating, buying rugs to cover the wet floor, and a humidifier. However, the leaking pipes continued to pool dirty water in the classroom and caused significant water damage.

<sup>16</sup> To "pull in" students from a classroom means that the students leave the general classroom for a period to learn with the ESL teacher in another space.



1 conditions in her classroom.<sup>17</sup> On January 25, 2019, Vazquez met with Peppler, ESL Title  
2 III Coordinator Gail Ball (Ball), and Keating to discuss the conditions of Vazquez's  
3 classroom including concerns about mold.<sup>18</sup> Vazquez expressed to Keating her concerns  
4 about the conditions of the room and requested that she be assigned another room to pull  
5 in students.<sup>19</sup> Keating stated that the school did not have another available space for  
6 Vazquez to have a designated classroom to pull in students.<sup>20</sup> Kaake and Ball asked  
7 Keating if Vazquez could "push into" classrooms for the rest of the year.<sup>21</sup> <sup>22</sup> Keating  
8 asked Vazquez who informed her that the classroom had mold and asbestos, and  
9 Vazquez stated that it was Philips.<sup>23</sup>

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<sup>17</sup> Peppler testified that Vazquez was nervous about meeting with the Union over the classroom issues because she had heard the "stories of what happened when you complain about a principal in Worcester." However, Peppler did not divulge what "stories" she or Vazquez had heard.

<sup>18</sup> Peppler testified that Keating retaliated against her for her role in Vazquez's communications with the Union over the classroom issues. According to Peppler, Keating retaliated against her by speaking with Peppler's supervisor without consulting her first and having her removed from assignments at Belmont. However, after the classroom meeting, Peppler applied to and was chosen for the position of ESL Coordinator.

<sup>19</sup> Peppler, Ball, and Keating testified that the meeting was cordial.

<sup>20</sup> Keating did assign Vazquez a small section of the ESL Department staff room as her "office". However, the space was not big enough to provide services to more than 3 to 5 kids, and therefore, Keating decided that Vazquez would push into classrooms. Vazquez was allowed to keep her supplies in the ESL department staff room.

<sup>21</sup> "Push in" means that the ESL teacher takes the students to the back of the general classroom to work instead of taking the students to another location separate from the rest of the class.

<sup>22</sup> Peppler agreed that Vazquez's classroom either needed to be changed or she needed to change to a push-in model.

<sup>23</sup> Vazquez alleged that Keating stated during the January 25 meeting that she wished Vazquez had come to her first before meeting with the Union, or words to that effect. However, Keating denied that the topic of the Union had come up at the meeting, and

1 By email dated January 25, 2019, Keating informed Vazquez that:<sup>24</sup>

2 Although there is no evidence of mold in your classroom or closet, I  
3 think it would be best to move your room and belongings altogether. I  
4 am going to have the custodians move the things you would like to  
5 keep at Belmont to the old speech area in the ELL quad. On Monday,  
6 would you please label what should stay at Belmont and what you  
7 would like to take home with you. The Custodians and assistant  
8 principal will help you with the move. Now that you will be pushing in  
9 all Kinder classes we do not have to worry about spacing and size of  
10 your area. Facilities is going to have that room thoroughly cleaned  
11 when at your items have been removed. Any other concerns please  
12 let me know.

13  
14 Vazquez responded that she will “work on [it] that Monday morning.” On January 27,  
15 2019, Peppler emailed Vazquez that she was available to help her move her belongings  
16 on Monday.<sup>25</sup> After Vazquez moved her belongings from the room, Keating directed the  
17 custodian to clean the room.

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Ball did not have any recollection of the Union being mentioned. Peppler and Vazquez’s testimony was unclear as to who had allegedly brought up the Union meeting to Keating. However, both Peppler and Vazquez clearly testified that Vazquez had asked the Union representatives not to inform Keating that they had met with the Union. Additionally, Peppler and Vazquez testified that they were hesitant to go to the Union because of all the stories they had heard about alleged retaliation. Given that Peppler and Vazquez asked the Union not to mention their meeting to Keating, I do not find it credible that either of them had mentioned meeting with Union representatives to Keating in the January 25 meeting. Additionally, Vazquez did not provide any evidence to suggest that Keating learned of her meeting with the Union from an outside source. Vazquez did not establish that the Union representatives ever reached out to Keating or anyone else at the School Committee to address Vazquez’s concerns about the classroom. As I find that neither Vazquez nor Peppler brought up the meeting with the Union to Keating, I do not credit their testimony that Keating stated that “she wished Vazquez had come to her before meeting with the Union” or words to that effect.

<sup>24</sup> Keating copied the email to Gary Archambault (Archambault), the Day custodian, and Dunphy.

<sup>25</sup> Vazquez forwarded Keating’s email to Peppler.

1           On or about January 28, 2019, Keating relocated Vazquez out of her designated  
2 classroom and instructed her to alternate between shared classrooms and to push into  
3 classrooms by meeting with students individually at their desks or in groups at the back  
4 of the classroom for the remainder of the 2018-2019 school year.<sup>26</sup> By email dated  
5 February 8, 2019, Keating issued Vazquez a new push in schedule. Keating informed  
6 Vazquez that she had spoken with all the kindergarten teachers, and Vazquez could work  
7 out with the teachers what tables to use in their rooms and where the students would sit.  
8 Otherwise, Vazquez's schedule remained the same, and she taught the same students  
9 in the same classes as the first half the school year.

10           At Belmont, Vazquez was the primary ESL kindergarten teacher as she spent the  
11 most time with the kindergarten classes out of all the other ESL teachers at Belmont. In  
12 March of 2019, Keating informed Vazquez that she would only teach kindergarten classes  
13 and no longer push into Ms. Ramos' third grade class. Keating decided that Vazquez  
14 would no longer teach 3<sup>rd</sup> grade because Belmont had such a high number of English  
15 language learners in kindergarten that the school was out of compliance with the  
16 Department of Justice for ESL services. As Vazquez was already the primary ESL  
17 kindergarten teacher, Keating thought it made the most sense for her to take over  
18 kindergarten entirely.

### 19 **ESL-LIT Meetings**

20           At the beginning of the 2018-2019 school year, Justine Nugent (Nugent), who was an  
21 ESL teacher and Vazquez's mentor, provided Vazquez with an ESL Department Meeting

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<sup>26</sup> The School Committee has other ESL teachers at Belmont push into classrooms, and Vazquez had been pushing in to the third-grade classrooms earlier in the year.

1 Schedule for ESL teachers at Belmont. The ESL meeting schedule stated that meetings  
2 would be held on the 2<sup>nd</sup> Friday in the month from 1:20 p.m. to 2:00 p.m. Additionally, the  
3 schedule listed the following dates for the 2018/2019 school year: September 14, October  
4 12, November 9, December 14, January 11, February 8, March 8, April 12, and May 10.  
5 On September 14, October 12, November 9, and December 14, the Committee held the  
6 ESL department meetings, and Vazquez attended the meetings. In addition to all ESL  
7 teachers, Vazquez, Keating, Dunphy, and Phillips attended the meetings.<sup>27</sup>

8 The School Committee cancelled the ESL Department meetings on January 11  
9 February 8, and March 8<sup>th</sup> for all ESL teachers because of a conflict with ACCESS<sup>28</sup>  
10 preparation and testing. The School Committee cancelled the April 14 and May 10  
11 meetings for all ESL teachers due to MCAS preparation and testing. During the spring  
12 semester of 2019, all department meetings stopped in the building.<sup>29</sup> Departmental  
13 meetings are routinely cancelled each year at Belmont during the spring semesters  
14 because of ACCESS and MCAS testing.

15 **MCAS Testing**

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<sup>27</sup> In addition to the scheduled ESL department meetings, the School Committee held three to four more meeting in the September to December timeframe.

<sup>28</sup> The School Committee did instruct Vazquez to participate as a proctor in ACCESS testing, which is the test given to students who speak English as a second language to measure their English proficiency.

<sup>29</sup> At several times during the spring semester of 2019, Vazquez allegedly noticed a meeting of the ESL teachers, Dunphy, Keating and Phillips. When Vazquez inquired with Nugent and ESL teacher Kathy Sundstrom (Sundstrom), they informed her the meetings were “not about kindergarten” students or that “she is better off in the classroom.” No one ever told Vazquez that the gatherings she observed were the monthly ESL Department meetings.

1           Between February and June of 2019, the School Committee permitted some ESL  
2 teachers to participate in MCAS testing as exam proctors and administrators. However,  
3 the School Committee notified Vazquez that she was not needed to proctor the tests and  
4 instructed her to help cover the kindergarten classrooms while the other teachers were at  
5 the test.<sup>30</sup> Keating choose which teachers proctored and administrated the MCAS test  
6 based on the testing accommodations that the students required. At Belmont, many of  
7 the students were given accommodations for a familiar test administrator, and Keating  
8 based assignments for MCAS testing on those accommodations. Any grade 1 and 2 ESL  
9 teachers who participated in MCAS testing had previously worked with the students who  
10 were participating in the test, and therefore, the students were familiar with those  
11 teachers. Kindergarten students do not participate in MCAS testing; consequently,  
12 Vazquez would not have been familiar to most of students participating in the test.

### 13 **Kindergarten Training**

14           By email dated May 29, 2019, the School Committee notified all principals,  
15 kindergarten teachers and kindergarten assistants that it was hosting a kindergarten  
16 training on June 5, 2019. The May 29 email was not sent to any ESL teachers. Typically,  
17 the ESL Department hosts its own trainings, therefore ESL staff members are not invited  
18 to the kindergarten trainings. The School Committee did not invite the ESL Department  
19 at Belmont to the June 5 training.

20           By email dated Wednesday May 29, 2019, Vazquez asked Keating the following  
21 questions: "I was wondering about next Wednesday? I know it's Kindergarten open house

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<sup>30</sup> Instructional assistants usually participate in MCAS testing because they are easier to pull from a classroom than a teacher.

1 and Kindergarten [has] training at North High[?]"<sup>31</sup> Later that day, Keating responded that:  
2 "I am going to have you work with grade 3 ELL's for the day. They could use the extra  
3 support." Keating did not invite or permit Vazquez to attend the training because she was  
4 an ESL teacher and the School Committee did not invite the ESL Department to the  
5 training. On or about June 5, 2019, the School Committee conducted a district wide  
6 kindergarten Training.

### 7 **Kindergarten Open House**

8 On June 5, 2019, the School Committee hosted a Kindergarten Open House. The  
9 Kindergarten Open house is for prospective students therefore, the School Committee  
10 instructs all the current kindergarten students to stay home. The Open House allows the  
11 School Committee to assess the "school-readiness" of prospective students. Typically, at  
12 Belmont, the ESL teachers do not attend the Kindergarten Open House.

### 13 **Second Year Waiver and Non-Renewal Letter**<sup>32</sup>

14 The principals of each school have autonomy to hire licensed teachers. However,  
15 if a principal wants to hire an unlicensed teacher, they must ask through the Human  
16 Resources Office and the Superintendent's Office for the School Committee to request a  
17 waiver on behalf of a teacher. The principal must explain why they want to hire an  
18 unlicensed teacher. Although the Superintendent will listen to the recommendations of  
19 the principals and department heads on whether the School Committee should hire an

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<sup>31</sup> Vazquez testified that she meant this email as a request to Keating to attend the training. However, Keating understood this email as a request for instructions on what Vazquez should do given that her kindergarten students would not be in school that day.

<sup>32</sup>At some point in the 2018/2019 school year, Vazquez requested a handicap parking spot. On several occasions throughout the school year, Keating asked Vazquez to provide a medical note to support her request.

1 unlicensed teacher, it is ultimately the Superintendent's decision.<sup>33</sup> The principal of each  
2 school has the authority to terminate a teacher with the approval of the Superintendent.

3 On June 10, 2019, Keating called Vazquez to her office.<sup>34</sup> At the meeting, Keating  
4 issued Vazquez a non-renewal letter. When Keating handed Vazquez the non-renewal  
5 letter, Keating told her that "it was not personal" and wished her "the best of luck."<sup>35</sup> The  
6 letter stated:

7 I am notifying you, in accordance with M.G.L.ch 71, sec 41, of my  
8 intent to non-renew you as a teacher without professional status  
9 effective June 30, 2019. Enclosed please find information on applying  
10 for unemployment benefits. If you have medical or dental insurance  
11 with the City of Worcester, you will receive information on your rights  
12 under COBRA in a separate mailing.<sup>36</sup>  
13

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<sup>33</sup> The principal of each school has authority to choose not to present an unlicensed candidate to the Superintendent.

<sup>34</sup> In May of 2019, Keating called Vazquez to her office to discuss missing ESL school materials. Vazquez alleged that Keating informed Vazquez that she was not happy about Vazquez going to the Union, and "now this." At the request of Keating, Kelly McNamara (McNamara) was present at the meeting. Keating denied ever mentioning the Union during this meeting. Both Vazquez and Keating testified that Keating requested McNamara to attend the meeting as a witness. At the hearing, neither party called McNamara as a witness. I credit Keating's testimony that she did not mention the Union during the May meeting. As Keating was the individual who requested to have a witness present, it does not comport that she would use that opportunity to make negative comments about Vazquez or the Union.

<sup>35</sup> Vazquez testified that Keating said that "things did not work out between them," that "she was thinking about this since the day she went to the Union," and that "this was personal". However, I found that Keating said that "it was not personal" and wished Vazquez luck. Furthermore, I found that Vazquez did not establish that Keating ever knew she had met with the Union. I credited Keating's testimony that she did not mention the Union during the June meeting.

<sup>36</sup> The non-renewal letter was signed by Superintendent Binienda.

1 Keating decided to issue Vazquez a non-renewal letter because Vazquez was not  
2 licensed.<sup>37</sup> For the 2019/2020 school year, Keating decided to hire a candidate that had  
3 passed her MTEL exam and applied for her teaching license with DESE.<sup>38</sup>

4 At Belmont, Vazquez was the only unlicensed teacher for the 2018/2019 school  
5 year. For the 2019/2020 school year, Keating did not hire any other unlicensed teachers.<sup>39</sup>  
6 Keating wanted to hire a licensed teacher because the School Committee considers a  
7 licensed teacher more qualified than an unlicensed teacher. The School Committee and  
8 DESE have a strong preference for hiring licensed teachers, and the School Committee  
9 only hires unlicensed teachers if there is a critical shortage of licensed teachers in a  
10 particular education area such as ESL. The School Committee and DESE believe that it  
11 is in the best interests of the students to have licensed, rather than unlicensed teachers  
12 whenever possible as they are the most qualified.

13 **Other Employees**

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<sup>37</sup> In September or October of 2019, Vazquez reached out to Melendez about employment with the Worcester School Committee. Melendez informed Vazquez that she could inquire on SchoolSpring for any job openings. SchoolSpring is an online portal that lists open job positions in the School District.

<sup>38</sup> By the end of the 2018/2019 school year, the applicant who replaced Vazquez had passed her MTEL exams. However, DESE did not approve her license application until February of 2020. By the end of the 2018/2019 school year, Vazquez had not passed any MTEL exams.

<sup>39</sup> Vazquez presented statistical data indicating that Belmont had 40.5 teachers in the 2019/2020 school year and 97.5% of them were licensed teachers. According to Vazquez, the data demonstrates that at least one teacher was unlicensed at Belmont for the 2019/2020 school year. Vazquez did not provide the name of the individual who was allegedly unlicensed. Even if there was an unlicensed teacher at Belmont for the 2019/2020 school year, Vazquez did not present any evidence to suggest that the unlicensed teacher was hired over any licensed candidates.





1 activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000);  
2 Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (November 9, 1985).

### 3 Protected Activity and Employer Knowledge

4 The Commonwealth Employment Relations Board (CERB) has decided that an  
5 employee's activity is protected if it focuses on generally applicable terms and conditions  
6 of employment that impact the collective bargaining unit as a whole. City of Boston, 8  
7 MLC 1872, 1875, MUP-3994 (February 25, 1982); Town of Shrewsbury, 5 MLC 1519,  
8 1523, MUP-2999 (December 22, 1978). To be concerted, the evidence must demonstrate  
9 that the employee is acting with other employees, or on the authority of other employees,  
10 rather than acting out of self-interest. Town of Southborough, 21 MLC 1242, 1249, MUP-  
11 8521 (August 29, 1994)(citing Meyers Industries, 268 NLRB 493, 115 LRRM 1025  
12 (1984)). Commonwealth of Massachusetts, 14 MLC 1743, 1747, SUP-3081  
13 (May 19, 1988)(probationary employee's complaints with other employees about  
14 unhealthy working conditions constituted concerted activity) with Town of Athol, 25 MLC  
15 208, 211, MUP-1448 (June 11, 1999)(employee's safety and work break complaints did  
16 not constitute concerted activity, because the employee was acting alone and without the  
17 authority of other employees); Higher Education Coordinating Council, 24 MLC 97,102,  
18 SUP-4095, 4096, 4098, 4099 (April 27, 1998)(without evidence that the employee was  
19 acting with other employees or acting on their authority, the filing of a sexual harassment  
20 complaint is not concerted activity).

1 Vazquez demonstrated that she engaged in actions protected by Section 2 of the  
2 Law when she went to the Union for help concerning her working conditions.<sup>42</sup> Whether  
3 or not the Union decided to move forward with Vazquez's concerns, I find that Vazquez's  
4 attempts to engage the Union in addressing her concerns constituted concerted,  
5 protected activity. Additionally, I find that each time Vazquez complained to Keating about  
6 her designated classroom, including the January 25, 2019 meeting with herself, Keating,  
7 Ball, and Pepler, Vazquez engaged in concerted, protected activity. Health and safety  
8 concerns fall within terms and conditions of employment. Therefore, each time Vazquez  
9 raised with Keating the health and safety concerns caused by her classroom, she  
10 engaged in protected activity.

11 The School Committee argued that Vazquez's complaints to Keating were not  
12 concerted activity because she was acting in her own self-interest. However, the CERB  
13 has adopted the "Interboro" doctrine, holding that under some circumstances, individual  
14 activity may be regarded as concerted activity where such activity involves an attempt to  
15 enforce the provisions of a collective bargaining agreement. Town of Shrewsbury, 5 MLC  
16 1519 (1978); *citing* Interboro Contractors, Inc., 157 NLRB 1295, 61 LRRM 1537, 399 F.2d  
17 495, 67 LRRM 208 (2d Cir. 1967). In this case, Article XIX, Section A of the collective  
18 bargaining agreement between the Union and the School Committee pertains to "Teacher  
19 Facilities." The CBA states that in existing school buildings such as Belmont, the School  
20 Committee will provide whenever possible, the following facilities: 1) space in the school

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<sup>42</sup> The School Committee argued that Vazquez had never reached out to the Union for help. However, I found Vazquez and Pepler's testimony that they met with Union representatives about the subpar conditions in Vazquez's assigned classroom to be credible.

1 where each teacher may safely store a reasonable amount of instructional materials and  
2 supplies and, where possible, a desk for each teacher; 2) an appropriate room for  
3 reporting before school for teachers in the secondary school who are not assigned home  
4 room duty; and 3) as part of annual building assessments, the District will include a review  
5 of the available space for special education teachers without classrooms and itinerant  
6 teachers. Vazquez's complaints about her unsafe and subpar classroom was an attempt  
7 to enforce the provisions of the contract. As such, I find that Vazquez engaged in  
8 concerted, protected activity under the Law.

9 Vazquez also demonstrated that the School Committee was aware of her  
10 concerted, protected activity. As Keating is the principal of Belmont, it is undisputed that  
11 the School Committee was aware of each time Vazquez directly complained to Keating  
12 about her working conditions in the classroom. However, the School Committee argued  
13 that it was not aware that Vazquez had met with Union representatives until the prohibited  
14 practice charge was filed. For reasons described supra, I have credited Keating's  
15 testimony that Vazquez's Union meeting was never mentioned during the January 25  
16 meeting with herself, Vazquez, Ball and Pepler. Additionally, Vazquez did not provide  
17 any evidence to suggest that Keating subsequently learned that Vazquez had met with  
18 the Union after the January 25 meeting. Consequently, although Keating was aware of  
19 Vazquez's complaints about her working conditions, Keating was not aware of Vazquez's  
20 meeting with Union representatives.

#### 21 Adverse Actions

22 Vazquez contends that the School Committee took the following adverse actions  
23 against her: 1) failing to notify her about ESL-ILT meetings, 2) not permitting her to

1 participate in MCAS testing as an exam proctor, 3) instructing her not to attend the 2019  
2 Kindergarten Open House, 4) relocating her out of her designated classroom and  
3 instructing her to alternate between shared classrooms and to meet with students  
4 individuals at their desks or in groups for the remainder of the 2018-2019 school year, 5)  
5 instructing her not to attend Kindergarten training, 6) refusing to request an additional  
6 year waiver for her to teach during the 2019-2020 school year, and 7) issuing her a non-  
7 renewal letter.

8           The CERB has consistently defined adverse action as an adverse personnel  
9 action, such as a suspension, discharge, involuntary transfer or reduction in supervisory  
10 authority. City of Boston, 35 MLC 289, 291, MUP-04-4077 (May 20, 2009); Town of  
11 Dracut, 25 MLC 131, 133, MUP-1397 (February 17, 1999). Many management decisions,  
12 though possibly inconvenient or even undesirable, do not constitute adverse employment  
13 actions unless the charging party is materially disadvantaged in some way. See City of  
14 Boston, 35 MLC 289, 291, MUP-04-4077 (May 20, 2009)(citing MacCormack v. Boston  
15 Edison Co., 423 Mass. 652, 662 (1996)(plaintiff failed to prove adverse action element of  
16 a prima facie case of unlawful retaliation where there was no evidence that he had been  
17 disadvantaged in respect to salary, grade, or other objective terms and conditions of  
18 employment); Sallis v. Univ. of Minnesota, 408 F.3d 470, 476 (8<sup>th</sup> Cir. 2005)(termination,  
19 reduction in pay or benefit, and changes in employment that significantly affect an  
20 employee's future career prospects constitute material employment disadvantage but  
21 minor changes that merely inconvenience an employee or alter work responsibilities do  
22 not)). I address each alleged adverse action below.

23           ESL Meetings

1 Vazquez contends that the School Committee took adverse action against her  
2 when it failed to notify her of the January, February, March, April or May monthly ESL  
3 Department meetings. Vazquez argues that the School Committee continued to host the  
4 ESL monthly meetings as evidenced by her alleged firsthand observations of ESL  
5 teachers meeting with Keating and Dunphy. Vazquez did not provide any evidence that  
6 any of the ESL teachers ever told her that the alleged gatherings were the ESL  
7 department meetings. Vazquez did not call any of the ESL teachers to confirm that what  
8 she allegedly witnessed was the monthly ESL meeting.

9 However, Keating and Dunphy testified that all departmental meetings, including  
10 the ESL monthly meetings, were cancelled in the months of January, February, March,  
11 April and May because of MCAS and ACCESS testing, and that each school year  
12 departmental meetings, including the ESL department meetings, are usually cancelled in  
13 the spring semester because of ACCESS and MCAS testing. Furthermore, Vazquez first  
14 complained to Keating about her classroom in October, but was still notified and invited  
15 to ESL Department meetings in November and December. Also, Keating cancelled the  
16 January 11 ESL Department meeting for ACCESS and MCAS testing preparation before  
17 Vazquez met with Keating, Pepler and Ball on January 25, 2019.

18 I have found that the School Committee did not host the ESL Department  
19 meetings in January, February, March, April or May of 2019, therefore it did not fail to  
20 notify Vazquez of the meetings. As such, Vazquez failed to present sufficient evidence to  
21 demonstrate that the School Committee took adverse action against her by failing to notify  
22 her of the monthly ESL meetings. Accordingly, the evidence does not show that the

1 School Committee violated the Law in the manner alleged, and I dismiss this allegation  
2 of the complaint.

3 MCAS Testing

4 Vazquez contends that the School Committee took adverse action against her  
5 when it did not permit her to participate in MCAS testing as a proctor. The CERB has  
6 decided that an employer's conduct is not an adverse employment action unless it  
7 materially disadvantages the affected employee in some way. City of Boston, 35 MLC  
8 289 (May 20, 2009). There is a material disadvantage when objective aspects of the work  
9 environment are affected. See King v. City of Boston, 71 Mass. App. Ct. 460, 468 (2008)  
10 (failing to provide female superior officers with rank-specific locker rooms rises to the level  
11 of an adverse action). In this case, Vazquez did not demonstrate how she was materially  
12 disadvantaged by the School Committee's decision to not permit her to proctor MCAS  
13 tests. Vazquez did not demonstrate that proctoring the MCAS tests was prestigious,  
14 helped her career in anyway, resulted in additional payment, or that her terms and  
15 conditions of employment were impacted at all.

16 The Law requires proof of real harm, and subjective feelings of disappointment  
17 and disillusionment will not suffice. See MacCormack v. Boston Edison, Co., 423 Mass.  
18 652, 663-664 (1996) (former employee's claims of adverse action were based upon  
19 subjective feelings of disappointment and disillusionment rather than objective evidence  
20 that he had been disadvantaged in terms and conditions of employment); see also City  
21 of Holyoke, 35 MLC 253, 156 (2008) (co-workers' subjective opinions and office banter  
22 do not render as adverse a previously requested transfer). Vazquez may have felt  
23 disadvantaged by the School Committee's decision not to let her proctor the MCAS test,

1 but she did not provide any evidence that she was materially disadvantaged.  
2 Consequently, the School Committee's decision not to allow Vazquez to proctor the  
3 MCAS tests was not an adverse action under the Law. Therefore, Vazquez failed to  
4 present sufficient evidence to fulfill the third prong of the prima facie case regarding her  
5 MCAS proctoring allegation. Accordingly, I do not find sufficient evidence to believe that  
6 the School Committee violated the Law in the manner alleged, and I dismiss this portion  
7 of Vazquez's complaint.

8 Kindergarten Open House

9 Vazquez contends that the School Committee took adverse action against her  
10 when it instructed her not to attend the 2019 Kindergarten Open House. Again, Vazquez  
11 failed to provide any evidence that attending the Kindergarten Open House provided  
12 additional income, impacted her career, or her terms and conditions of employment in  
13 any way. Vazquez was not materially disadvantaged when the School Committee  
14 instructed her to help the 3<sup>rd</sup> grade rather than attend the Kindergarten Open House. Just  
15 as with the MCAS testing, Vazquez may have felt slighted by the instruction, however,  
16 she did not provide any evidence to show that she was disadvantaged in any way. The  
17 School Committee's decision not to invite Vazquez to the Kindergarten Open House was  
18 not an adverse action under the Law. Therefore, I find that Vazquez failed to present  
19 sufficient evidence to fulfill the third prong of its prima facie case for this action.  
20 Accordingly, I dismiss this portion of Vazquez's complaint.

21 Classroom

22 Vazquez contends that the School Committee took adverse action against her  
23 when it relocated her out of her designated classroom and instructed her to alternate



1 between shared classrooms and to meet with students individually at their desks or in  
2 groups for the remainder of the 2018-2019 school year. However, Vazquez did not  
3 demonstrate how the School Committee's decision to relocate her out of her designated  
4 classroom and instruct her to push-into classrooms for the remainder of the school year  
5 materially disadvantaged her in terms of traditional terms and conditions of employment,  
6 e.g. by reducing her pay or benefits or otherwise change her terms and conditions of  
7 employment. Somerset School Committee, 41 MLC 335, MUP-13-3085 (May 21,  
8 2015)(removal of the charging party's name from the faculty list and email system were  
9 not adverse actions because there was no evidence that the charging party was  
10 negatively affected by the actions in any way).

11 Additionally, Vazquez did not provide any evidence to support that the classroom  
12 relocation would have hurt her stature at school. Vazquez acknowledged that other ESL  
13 teachers use the push-in model, and there is no evidence to suggest that Vazquez was  
14 the only teacher at Belmont to be assigned a small and less than ideal dedicated space  
15 for their personal school supplies. Accordingly, she did not establish a prima facie case  
16 for her classroom relocation allegation, and I dismiss this portion of the complaint.

17 *Kindergarten Training*

18 Vazquez contends that the School Committee took adverse action against her  
19 when it instructed her not to attend Kindergarten Training. Vazquez's attendance at the  
20 Kindergarten training would have provided her with an opportunity to learn and strengthen  
21 skill sets that would be beneficial in advancing her career prospects. As such, the School  
22 Committee's decision not to allow Vazquez to attend the Kindergarten training was an

1 adverse action under the Law. Board of Higher Education and Massachusetts Community  
2 College Council, MTA/NEA, 32 MLC 181, SUP-02-4892 (June 21, 2006).

3 Waiver

4 Vazquez contends that the School Committee took adverse action against her  
5 when it refused to request an additional year waiver for her to teach without a license  
6 during the 2019-2020 school year. As previously noted, for an unlicensed teacher to teach  
7 at Belmont, the School Committee would need to request a waiver from DESE on behalf  
8 of the teacher. As Vazquez was an unlicensed teacher, the School Committee would not  
9 have been able to continue to employ her as a teacher without requesting an additional  
10 years' waiver and receiving DESE's approval of the request. The School Committee's  
11 refusal to apply for a waiver on behalf of Vazquez for the 2019/2020 school year  
12 significantly impacted Vazquez's career options as she could not work as a teacher  
13 without a waiver. As such, the School Committee's conduct constituted an adverse action  
14 under the Law. City of Holyoke, 35 MLC 153, 156, MUP-05-4503 (2009) (citing Town of  
15 Dracut, 25 MLC 131, 133, MUP-1397 (February 17, 1999)).

16 Non-renewal

17 Vazquez contends that the School Committee took adverse action against her  
18 when it issued her a non-renewal letter. The School's Committee's decision to issue  
19 Vazquez a non-renewal letter ended her employment as a teacher for Belmont therefore  
20 is an adverse action under the Law. City of Holyoke, 35 MLC 153, 156, MUP-05-4503  
21 (2009) (citing Town of Dracut, 25 MLC 131, 133, MUP-1397 (February 17, 1999)).

22 Unlawful Motivation

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

10 Unlawful motivation also may be established through circumstantial, or indirect,  
11 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35 MLC  
12 at 48 (citing Town of Brookfield, 28 MLC at 327-328). Several factors may suggest  
13 unlawful motivation, including: the timing of the alleged discriminatory act in relation to  
14 the protected activity; triviality of reasons, or shifting and inconsistent reasons given by  
15 the employer; disparate treatment; an employer's deviation from past practices; or  
16 expressions of animus or hostility towards a union or the protected activity. Town of  
17 Carver, 35 MLC at 48, MUP-03-3894 (June 30, 2008) (citing Melrose School Committee,  
18 33 MLC 61, 69, MUP-02-3549 (September 27, 2006)); Lawrence School Committee, 33  
19 MLC 90, MUP-02-3631 (December 13, 2006); Cape Cod Regional Technical High School  
20 District Committee, 28 MLC 332, 335, MUP-2541 (May 15, 2002).

21 *Direct Evidence of Unlawful Motivation*

22 Vazquez first argued that she established direct evidence of the School  
23 Committee's unlawful motivation. Vazquez asserted that Keating made anti-union

1 comments to her during the January 2019 meeting when she allegedly said that Vazquez  
2 didn't have to go the Union. Vazquez also asserted that Keating made anti-union  
3 statements during a meeting regarding missing school supplies in May of 2019 when  
4 Keating allegedly said "first you go to the Union and now this" or words to that effect.  
5 Finally, Vazquez asserted that Keating made anti-union comments when Keating handed  
6 Vazquez her non-renewal letter at the end of the 2018/2019 school year stating that this  
7 "was personal" and that [Keating] "had been waiting to do this since [Vazquez] went to  
8 the Union". However, in each instance of alleged direct evidence, I found that Keating did  
9 not make such statements.

10 Additionally, Vazquez argues that Keating called Phillips after the January 25  
11 meeting to discuss her conversation with Vazquez about the potential existence of mold  
12 and asbestos in Vazquez's classroom. However, Vazquez did not provide sufficient  
13 evidence to establish that Keating called Phillips after the January 25 meeting. Even if  
14 Keating had called Phillips, Vazquez has not provided sufficient evidence to establish that  
15 Keating made any anti-union comments or threats. Vazquez testified that Phillips was  
16 annoyed that Vazquez had mentioned her name and allegedly warned her about likely  
17 retaliation from Keating in the future. However, Phillips' impression of the situation or  
18 vague rumors are not evidence of Keating's anti-union animus.

19 Next, Vazquez argues that Keating's involvement in having Pepler transferred  
20 from Belmont after the January 25 meeting is direct evidence of unlawful motivation.  
21 According to Pepler, Melendez informed Pepler that Keating wanted Pepler  
22 transferred because she became too close to Vazquez's classroom situation. Vazquez  
23 alleges that Melendez complied with Keating's request, and that is evidence that she was

1 also displeased with Vazquez's continued complaints. First, Melendez is not Vazquez's  
2 supervisor and had no input or involvement on the School Committee's decisions at issue  
3 here.<sup>43</sup> Second, Keating was not Pepler's supervisor and had no authority to transfer  
4 Pepler.

5 The only evidence Vazquez offered that Keating was involved with Pepler's  
6 transfer or that her involvement was motivated by anti-union animus was Pepler's  
7 testimony that Melendez told her that Keating asked that Pepler be transferred because  
8 she got too close to the Vazquez situation. However, Vazquez's proffered evidence of  
9 Keating's involvement in Pepler's transfer is double hearsay and is not convincing or  
10 reliable. Vazquez further argued that because Keating did not explain Pepler's transfer  
11 it must have been unlawfully motivated. However, Keating's clear and credible testimony  
12 was that she had no authority over Pepler and was not involved in her transfer, which  
13 explains why she did not know why Melendez transferred Pepler. For all the above  
14 stated reasons, Vazquez has not established direct evidence of unlawful motivation.

#### 15 **Indirect Evidence of Unlawful Motivation**

##### 16 Anti-Union Animus

17 Vazquez also argued that she provided sufficient evidence to establish indirect  
18 evidence of unlawful motivation. First, Vazquez asserts that Keating's comments to

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<sup>43</sup> Vazquez's allegations that the School Committee violated Section 10(a)(3) and derivatively 10(a)(1) of the Law when it refused to allow Vazquez to proctor the MCAS tests, did not invite her to attend the Kindergarten open house, relocated her classroom or failed to notify her of ESL meetings have been dismissed because the actions were not adverse under the Law. However, even assuming Vazquez had provided enough evidence to establish those allegations were adverse action under the Law, Melendez still would not have had any involvement or input in those decisions.

1 Vazquez throughout the year were circumstantial evidence of anti-union animus.  
2 However, as stated above, I found that Keating did not make those comments.

### 3 Timing

4 Vazquez argues that the timing of Pepler's transfer and Vazquez's conversation  
5 with Phillips constitutes circumstantial evidence of unlawful motivation. However,  
6 Vazquez did not establish that Keating was involved in Pepler's transfer or that Keating  
7 made any anti-union comments to Phillips, therefore Vazquez has not demonstrated how  
8 the timing of such alleged events establishes indirect evidence of unlawful motivation.  
9 Next, Vazquez argued that the timing of Keating accusing Vazquez of stealing school  
10 supplies in May of 2019 and her repeated requests for Vazquez to submit doctors' notes  
11 to support her request for a handicap parking spot are dubious. I disagree and do not find  
12 that Keating's directive to submit medical documentation to support a request for  
13 handicap parking or her decision to question an employee about missing school supplies  
14 shows unlawful motivation.

15 Finally, Vazquez argued that the timing of the School Committee's decision not to  
16 invite Vazquez to ESL meetings, its refusal to allow her to proctor MCAS tests, refusal to  
17 allow her to attend the Kindergarten Open House or Training which culminated in the  
18 School Committee's decision to not request a second year waiver or renew Vazquez's  
19 employment for another year is indirect evidence of unlawful motivation. However, timing  
20 alone is insufficient to support a finding of illegal employer motivation. City of Holyoke, 38  
21 MLC at 156, MUP-05-4503 (January 9, 2009).

### 22 Triviality of Reasons

1 Vazquez contends that Keating's reason for refusing to allow her to proctor the  
2 MCAS tests was trivial. As stated above, I have dismissed this allegation as Vazquez did  
3 not demonstrate the School Committee's decision to refuse to allow Vazquez to proctor  
4 the MCAS exams was an adverse action under the Law. However, even if Vazquez had  
5 demonstrated the decision was an adverse action, which she did not, Keating's reason  
6 for not assigning her to proctor the MCAS tests was not trivial.

7 First, Vazquez argued that Keating's reasoning was trivial because she provided  
8 conflicting testimony. According to Vazquez, Keating's testimony that proctor  
9 assignments were based on familiarity accommodations and that sometimes first and  
10 second grade teachers are sometimes pulled from classrooms to proctor, highlights the  
11 triviality of Keating's reasons for informing Vazquez that she would not be proctoring the  
12 MCAS tests. I disagree. In Belmont, MCAS testing is only given to 3<sup>rd</sup> through 6<sup>th</sup> grades,  
13 therefore the participating students would be least likely to be familiar with Kindergarten  
14 teachers. Keating's testimony that occasionally first and second grade teachers are pulled  
15 out of classrooms to proctor MCAS tests does not trivialize Keating's reasons to prioritize  
16 proctor assignments based on familiarity accommodations.

17 Next, Vazquez argues that Keating's reasons are trivial because Dunphy's  
18 testimony that it is sometimes necessary for Kindergarten teachers to be pulled from  
19 classrooms to proctor MCAS tests conflicts with Keating's' testimony. Again, I disagree.  
20 Dunphy testified that it is sometimes necessary to pull kindergarten teachers to proctor  
21 MCAS tests, and this testimony does not conflict with or minimize Keating's reasoning for  
22 not assigning Vazquez to proctor the MCAS tests in 2019. Nor has Vazquez established  
23 that it was necessary in 2019 for Kindergarten teachers to proctor the MCAS tests.

1 Vazquez also contends that Keating's reasons for denying her request to attend  
2 the Kindergarten Open House were trivial. I have dismissed the allegation that the School  
3 Committee's decision to not invite Vazquez to the Kindergarten Open House constituted  
4 an adverse action. However, even if Vazquez had demonstrated the decision was an  
5 adverse action, which she did not, Keating's reason for not inviting Vazquez to the  
6 Kindergarten Open House were not trivial. Specifically, Vazquez argued that Keating did  
7 not provide a sufficient reason for inviting instructional assistants to the Open House, but  
8 not Kindergarten teachers. However, Keating clearly said the reason all Kindergarten ESL  
9 teachers are not invited to Kindergarten Open house is because teachers are harder to  
10 pull from a classroom than instructional assistants. If the School Committee needs extra  
11 support for the Kindergarten Open House, it makes sense to pull an instructional assistant  
12 rather a teacher from a classroom. Additionally, Vazquez had experience teaching third  
13 grade at Belmont, so it was understandable to assign her to help with the 3<sup>rd</sup> grade  
14 students that day. Vazquez has not established that Keating's reasons for not inviting her  
15 to the Kindergarten Open House were trivial.

16 Finally, Vazquez argues that Keating's reasons for not inviting her to the  
17 Kindergarten Training were trivial. Unlike the Open House and proctoring the MCAS tests,  
18 I found the School Committee's decision not to invite Vazquez to the training to be an  
19 adverse action under the Law. However, I found that none of the ESL staff, not just  
20 Vazquez, are invited to the Kindergarten Training, and the ESL Department hosts its own  
21 trainings. Vazquez argues that she specifically requested to attend the Kindergarten  
22 Training in the May 29 email, but Keating refused to recognize her request. First, Vazquez  
23 did not directly request that she attend the Open House or the Training in the May 29



1 email. Even if it was reasonable for Keating to assume that Vazquez wanted to attend  
2 those events from the May 29 email, it does not mean that Keating's reasons for not  
3 inviting her to the Kindergarten Training were trivial. Vazquez has not established that the  
4 School Committee's reason for not inviting her to the Kindergarten Training was trivial.

5 Shifting or Inconsistent Reasons<sup>44</sup>

6 Vazquez has argued that Keating's explanation for Vazquez's non-renewal shifted  
7 during the hearing. Specifically, Vazquez argued that Keating testified that she wanted to  
8 hire a licensed teacher, but then shifted her reason to hiring a "licensable teacher"  
9 because Vazquez's replacement was not licensed until February of 2020. However,  
10 Keating's explanation for Vazquez's non-renewal did not shift. Keating was clear that the  
11 School Committee prioritized hiring licensed teachers over unlicensed teachers.  
12 Additionally, Keating was clear that a candidate who had passed the MTEL exams and  
13 applied for their teaching license was preferable to a candidate like Vazquez who had not  
14 passed the MTEL exam. It is clear from the record that the School Committee has no  
15 control over when DESE approves license or waiver applications. Keating's decision to  
16 hire a candidate who had passed the MTELEs and who's only hurdle to acquiring a license  
17 was DESE's approval is consistent with the School Committee's practice of hiring  
18 licensed teachers over unlicensed teachers. Thus, Vazquez did not establish that  
19 Keating's reasons for issuing her a non-renewal letter shifted or were inconsistent.

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<sup>44</sup> Vazquez argued that Keating's explanation for denying Vazquez the opportunity to proctor MCAS exams shifted at hearing because she cited familiarity accommodations as the reason but later testified that sometimes first and second grade teachers get pulled from the classroom to proctor. I do not find Keating's reasoning to be inconsistent or shifting.

1 **Disparate Treatment**

2 Vazquez argues that she was disparately treated when the School Committee  
3 failed to notify her of the ESL Department meetings when it notified other ESL teachers.  
4 I dismissed this allegation as I found the ESL Department meetings did not occur in  
5 January, February, March, April or May of 2019. Next, Vazquez argues that she was  
6 disparately treated when the School Committee allowed other ESL teachers to proctor  
7 the MCAS tests, but she was denied the opportunity. Again, I determined that the School  
8 Committee did not host the ESL meetings and dismissed this allegation. Vazquez did not  
9 provide sufficient evidence that other kindergarten ESL teachers from Belmont were  
10 pulled from classrooms in 2019 to proctor the MCAS test. Vazquez testified that she knew  
11 of other ESL kindergarten teachers and instructional assistants from different schools who  
12 helped proctor MCAS tests in past years. However, it is entirely possible that at those  
13 other schools, it was necessary for kindergarten teachers to help with proctoring the  
14 MCAS tests just as it was possible for it to be necessary for kindergarten teachers to  
15 proctor at Belmont. Vazquez did not demonstrate that kindergarten teachers were  
16 consistently utilized to proctor MCAS tests at Belmont or any other school within the  
17 District.

18 Vazquez argues that she was disparately treated when she was not allowed to  
19 attend the Kindergarten Open House. Again, I dismissed this allegation for other reasons.  
20 However, Vazquez did not provide evidence to show that a similarly situated ESL  
21 Kindergarten teacher at Belmont was invited to the Open House. Vazquez did not provide  
22 any names or examples of any other ESL teachers being allowed to attend the  
23 Kindergarten Open House at Belmont.

1           Next, Vazquez argues that she was disparately treated when she was not allowed  
2 to attend the Kindergarten Training. Vazquez specifically argues that she had attended  
3 the Kindergarten Training in past years when she worked as an instructional assistant at  
4 other schools, and that other Belmont teachers thought she should attend the training.  
5 However, the opinions of other Belmont teachers do not constitute evidence of disparate  
6 treatment. Additionally, Vazquez worked as a ESL teacher for the first time in the  
7 2018/2019 school year, therefore whether she was invited to trainings in her other roles  
8 and when she was employed at other schools within the School District does not  
9 demonstrate that the School Committee disparately treated her in this instance. Vazquez  
10 did not provide any evidence that another Belmont ESL teacher was invited to the  
11 Kindergarten Training in 2019.

12           Finally, Vazquez claims that she was disparately treated when the School  
13 Committee failed to request a second-year waiver for her and issued a non-renewal letter.  
14 Vazquez argues that she presented evidence that the School Committee has hired  
15 unlicensed teachers and applied for second year waivers for other unlicensed teachers  
16 in the past few years. However, the School Committee's need to hire unlicensed teachers  
17 and apply for second year waivers for some of those individuals does not necessarily  
18 show that Vazquez was disparately treated.

19           The School Committee only applies for waivers and hires unlicensed teachers if  
20 no licensed teachers applied for the position and are as qualified as the unlicensed  
21 candidate. In Vazquez's case, Keating hired an ESL teacher who had passed the MTEL  
22 exam and only needed DESE to approve her license application. In contrast, Vazquez  
23 had not passed the MTEL exam. Vazquez did not provide any evidence that she was

1 somehow more qualified for the ESL teacher position despite not being licensed or  
2 passing the MTEL exam. Although Vazquez provided evidence that the School  
3 Committee applied for second year waivers and hired unlicensed teachers throughout the  
4 District, Vazquez did not provide evidence of a similarly situated unlicensed teacher being  
5 hired over an at least equally qualified teacher who had passed their MTELEs and just  
6 needed DESE to approve their license application.

7 Further, Vazquez argues that the fact that the School Committee gave her three  
8 choices for teacher positions during the 2018/2019 school year evidences disparate  
9 treatment. However, Vazquez did not provide any evidence that other positions  
10 throughout the School Committee existed at the end of the 2019 school year. Also, at the  
11 beginning of the 2018/2019 school year, the School Committee would not have known  
12 that Vazquez would take and fail the MTEL exams three times. Moreover, the fact that  
13 the School Committee previously offered her non-teacher positions at other schools within  
14 the District in past years does not mean she was disparately treated.

15 Vazquez further argues that the fact that she had filled all the requirements to be  
16 eligible for a second-year waiver is proof that she was disparately treated by the School  
17 Committee. The School Committee never denied that Vazquez had made continuous  
18 progress towards a second-year waiver, and the School Committee and Vazquez agreed  
19 that she did not obtain her license or pass a MTEL exam during the 2018/2019 school  
20 year. The School Committee did not request a second-year waiver for Vazquez because  
21 it issued her a non-renewal letter based on its hiring of a teacher who had passed the  
22 MTEL exam and would be licensed shortly.

1 Finally, Vazquez argues that everyone at the School Committee had “brushed her  
2 aside” when she attempted to speak to them about future employment. Specifically,  
3 Vazquez contends that she reached out to Melendez about job opportunities within the  
4 School District, and Melendez only offered her a generic suggestion to apply to open  
5 positions through SchoolSpring. However, Melendez’s response was appropriate and not  
6 evidence of disparate treatment.

7 In sum, Vazquez did not present any circumstantial evidence demonstrating that  
8 the School Committee’s decisions to: 1) relocate her designated classroom and instruct  
9 her to alternate between shared classrooms and to meet with students individually at their  
10 desks or in groups for the remainder of the 2018-2019 school year; 2) not notify her about  
11 ESL-ILT meetings; 3) not permit her to participate in MCAS testing as an exam proctor;  
12 4) instruct her not to attend Kindergarten Training; 5) instruct her not to attend the 2019  
13 Kindergarten Open House; 6) not request an additional year waiver for Vazquez to teach  
14 during the 2019-2020 school year; and 7) issue her a non-renewal letter, were motivated  
15 by a desire to penalize or discourage protected activity. Specifically, Vazquez did not  
16 present any evidence of disparate treatment, deviation from past practices, trivial  
17 reasons, or expressions of animus or hostility towards Vazquez or her protected activity.  
18 Thus, Vazquez has not satisfied the fourth element of the prima facie case of retaliation.

19 **Legitimate, Non-Discriminatory Motive**

20 However, even if Vazquez established a prima facie case of retaliation, which she  
21 did not, the School Committee may produce evidence that it had a legitimate, non-  
22 discriminatory motive for taking adverse action. Higher Education Coordinating Council,  
23 23 MLC 90, 93, SUP-4090 (September 17, 1996); Town of Clinton, 12 MLC 1361, 1365,

1 MUP-5659 (November 9, 1985) (citing Trustees of Forbes Library, 364 Mass. at 563).  
2 Here, the School Committee satisfied its burden. It produced credible evidence that it: 1)  
3 did not invite her to the Kindergarten Training because the ESL Department as a whole  
4 was not invited and hosts its own trainings; 2) did not request a second year waiver from  
5 DESE on her behalf because it had decided not to renew her employment for the next  
6 year; and 3) issued her a non-renewal letter because the School Committee must  
7 prioritize hiring licensed teachers and it found a candidate who had passed the MTEL  
8 exam – in contrast to Vazquez, who had failed the MTEL exam several times and was  
9 not close to getting her license.<sup>45</sup>

10 The School Committee established that Vazquez was not invited to the  
11 Kindergarten Training because the ESL Department conducts its own trainings and none  
12 of the ESL Kindergarten teachers at Belmont were invited to the training. The School  
13 Committee also established that it applies for waivers for teachers after budget and hiring  
14 decisions have been made for the following year. When the School Committee applies  
15 for a waiver for a teacher it must inform DESE why it hired an unlicensed teacher over  
16 any licensed applicants. The School Committee would not be able to complete the waiver  
17 application until it assessed all the candidates for an open position and decided which

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<sup>45</sup> The School Committee also satisfied its burden to produce credible evidence that: 1) Vazquez was not invited to proctor the MTEL exams because ESL Kindergarten teachers are last to be assigned to proctor MTEL exams due to familiarity accommodations; 2) Vazquez was not notified of ESL Department Monthly meetings because the monthly ESL meetings did not occur in January, February, March, April and May of 2019 due to MCAS and ACCESS testing; 3) Vazquez's classroom was relocated and she was instructed to utilize the push-in learning model because she was experiencing health problems in the designated classroom and there was no other available space; and 4) Vazquez was not invited to the Kindergarten Open House because at Belmont none of the ESL Kindergarten teachers are invited to the Kindergarten Open House.

1 candidate would be hired. In this case, the School Committee decided not to renew  
2 Vazquez as a teacher at Belmont, therefore it would have no reason to apply for a second  
3 year wavier on her behalf.

4 Finally, the School Committee demonstrated that it issued Vazquez a non-renewal  
5 letter because DESE requires schools to hire licensed teachers and only allows schools  
6 to hire unlicensed teachers when there is a critical shortage in a certain education area.  
7 Vazquez had taken the MTEL exam several times throughout the 2018/2019 school year  
8 and did not pass. However, the School Committee was able to find a candidate that had  
9 passed the MTEL exam and applied for their teaching license from DESE. Accordingly,  
10 even if Vazquez had satisfied her initial burden of establishing a prima facie case of  
11 retaliation, the School Committee satisfied its burden to produce credible evidence that  
12 legitimate reasons motivated its actions.

13 **But for Test**

14 Finally, Vazquez has not proved that but for the protected activity, the School  
15 Committee would have invited her to the Kindergarten Training, requested a second year  
16 waiver from DESE on her behalf, and renewed her employment as a teacher for the  
17 2019/2020 school year. Vazquez argues that the School Committee in recent years hired  
18 an increasing number of unlicensed teachers in certain critical shortage areas of  
19 education. Therefore, the School Committee did not re-hire Vazquez in retaliation for her  
20 concerted, protected activity. However, Vazquez's engagement in concerted, protected  
21 activity had nothing to do with DESE's requirement that the School Committee try to hire  
22 a licensed teacher for the 2019/2020 school year. Similarly, Vazquez's concerted,  
23 protected activity had nothing to do with the fact she did not pass the MTEL during the

1 2018/2019 school year. Moreover, the School Committee could not control or ignore the  
2 fact that a candidate who had passed the MTEL exam applied for the position.

3 Next, Vazquez argues that although Keating testified that she never hires  
4 unlicensed teachers at Belmont, a small percentage of unlicensed teachers are hired at  
5 Belmont each year. As such, Vazquez argues that but for her concerted, protected  
6 activity, she would have been rehired at Belmont. However, Keating was not involved in  
7 the hiring of unlicensed teachers in past years because the 2018/2019 school year was  
8 her first year as Belmont's principal. Even if Keating had hired Vazquez or any other  
9 unlicensed teacher in previous years, it does not change the fact that DESE requires  
10 schools to hire licensed teachers whenever possible. Additionally, it does not change the  
11 fact that passing the MTEL is a crucial benchmark in acquiring a teaching license.  
12 Keating's hiring record has no impact on the fact that the selected candidate did pass the  
13 MTEL exam and Vazquez had failed the MTEL exam on numerous occasions.

14 Vazquez further notes that the hired candidate was required to be licensed by April  
15 1 of the 2018/2019 school year but her license application was not approved until  
16 February of 2020. This argument is not persuasive because at the time Keating made the  
17 decision to issue Vazquez a non-renewal letter, the hired candidate had passed the MTEL  
18 exam and applied for her teacher's license, and Vazquez had not passed the exam.  
19 Additionally, the School Committee cannot control when DESE approves applications.

20 There is similarly no merit to Vazquez's argument that she and the hired candidate  
21 were equally qualified for the position because DESE had not approved either teachers'  
22 application for a license. The hired candidate had passed the MTEL, which was a  
23 significant hurdle in obtaining her license, and Vazquez did not pass the exam. Even if



1 DESE had not approved the hired candidate's application until the following school year,  
2 at the time of the hiring decision, Vazquez was not the most qualified candidate.

3 Vazquez further contends that Keating exhibited a pattern of retaliation which  
4 demonstrates that not but for her concerted, protected activity she would have been  
5 rehired. Specifically, Vazquez cites Keating's removal of Pepler from Belmont and her  
6 repeated actions to freeze Vazquez out of ESL meetings and kindergarten events.  
7 However, I have found that Vazquez had not demonstrated Keating was involved in  
8 Pepper's transfer, that the ESL meetings were discontinued in the Spring of 2019, and  
9 that Kindergarten ESL teachers were not normally invited to the Kindergarten Open  
10 House or Training at Belmont. Consequently, Vazquez has not demonstrated that Keating  
11 engaged in a pattern of retaliation.

12 Throughout the school year, the School Committee repeatedly informed Vazquez  
13 through emails, letters, and meetings with DeSignore that it was paramount she passed  
14 the MTEL exam and obtain her license if she wanted to be rehired. Even before Vazquez  
15 complained to Keating about the condition of her classroom, the School Committee had  
16 put Vazquez on notice that she would not be reappointed if she failed to have the  
17 necessary license by April 1, 2019. Given the School Committee's objective to hire  
18 licensed teachers, and its stated expectation that Vazquez pass the MTEL and obtain her  
19 license before the end of the school year, there is no evidence that the School  
20 Committee's decision to issue Vazquez a letter of non-renewal was motivated by  
21 retaliation.<sup>46</sup>

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<sup>46</sup> Vazquez argues that Keating issued her a non-renewal letter in June of 2019, and around the same time Jennifer Brunelle, Director for the Adult Learning Center informed Vazquez that her 10-year employment with the Adult Learning Center would be

1           Finally, Vazquez argues that despite being responsive throughout the 2018/2019  
2 school year, DelSignore ignored her emails after her non-renewal letter was issued. This  
3 argument has no merit because DelSignore was responsible for on-boarding teachers,  
4 and Vazquez's employment as a teacher ended at the end of the 2018/2019 school year.  
5 Additionally, DelSignore retired at the beginning of the 2019/2020 school year and had  
6 no obligation to contact Vazquez after her retirement. Similarly, Vazquez argues that  
7 Boulais and Melendez had ignored her emails about future employment with the School  
8 Committee after she was issued the non-renewal letter. Despite Vazquez's requests,  
9 Boulais and Melendez were not required to help her obtain another job. Although Vazquez  
10 argues that DelSignore, Boulais, and Melendez did not answer her about future  
11 employment because they knew Keating was displeased with Vazquez's engagement in  
12 concerted, protected activity, Vazquez did not demonstrate that Keating was displeased  
13 with her engagement in concerted, protected activity or that DelSignore, Boulais, or  
14 Melendez failed to respond to her because of Keating. In short, the record contains no  
15 evidence establishing that the School Committee would have invited Vazquez to the  
16 Kindergarten training, applied for a second year waiver on her behalf from DESE, and/or  
17 renewed her employment as a teacher at Belmont but for Vazquez's concerted, protected  
18 activity.

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terminated at the request of Keating. However, this allegation was dismissed at the investigation stage, and Vazquez did not appeal the dismissal. Moreover, Vazquez did not provide sufficient evidence that Keating had anything to do with her termination with the Adult Learning Center, which is not part of Belmont.


**CONCLUSION**

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The School Committee did not violate the Law by: 1) relocating Vazquez out of her designated classroom and instructing her to alternate between shared classrooms and to meet with students individually at their desks or in groups for the remainder of the 2018-2019 school year; 2) failing to notify Vazquez about ESL-ILT meetings; 3) not permitting Vazquez to participate in MCAS testing as an exam proctor; 4) instructing Vazquez not to attend the Kindergarten Training; 5) instructing Vazquez not to attend the 2019 Kindergarten Open House; 6) refusing to request an additional year waiver for Vazquez to teach during the 2019-2020 school year; or 7) issuing Vazquez a non-renewal letter. I therefore dismiss the Complaint.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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MEGHAN VENTRELLA, ESQ.  
HEARING OFFICER

**APPEAL RIGHTS**

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.