

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

BOSTON SCHOOL COMMITTEE

and

BOSTON TEACHERS UNION, LOCAL
66, AFL-CIO

Case No.: MUP-22-9394
MUP-23-9871

Issued: September 12, 2025

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Mary Kate Condon, Esq.
Helen Anderson, Esq.

Representing the Boston School Committee

Haidee Morris, Esq.

Representing the Boston Teachers Union,
Local 66, AFL-CIO

HEARING OFFICER'S DECISION

SUMMARY

1 There are three issues in these two consolidated cases: 1) whether the Boston
2 School Committee (BPS, School Committee, or Employer) violated Sections 10(a)(5) and,
3 derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by
4 discontinuing certain disciplinary dismissal procedures that apply to provisional teachers
5 without giving the Boston Teachers Union, Local 66, AFL-CIO (Union or BTU) prior notice
6 and an opportunity to bargain to resolution or impasse over the decision and the impacts
7 of the decision on employees' terms and conditions of employment (Count 1 of MUP-22-
8 9394); 2) whether the School Committee violated Sections 10(a)(5) and, derivatively,

1 10(a)(1) of the Law by failing to provide the BTU with requested information that was
2 relevant and reasonably necessary for the Union to execute its duties as a collective
3 bargaining representative (Count 2 of MUP-22-9394); and 3) whether the School
4 Committee violated Sections 10(a)(5) and, derivatively, 10(a)(1) of the Law by unilaterally
5 eliminating certain disciplinary dismissal hearing procedures from a document entitled
6 "Superintendent's Employee Discipline Procedures Circular (Circular)" (MUP-23-9871). I
7 find that the School Committee violated the Law as alleged in Count 1 of MUP-22-9394
8 and in MUP-23-9871. Regarding Count 2 of MUP-22-9394, I find that the School
9 Committee violated the Law by failing to provide the Union with certain information that
10 the Union requested, but that it did not violate the Law by failing to provide other
11 information, as further described in the decision below.

12 STATEMENT OF THE CASE

13 The Union filed the prohibited practice charge that was docketed as MUP-22-9394
14 with the Department of Labor Relations (DLR) on June 30, 2022, alleging that the School
15 Committee had violated Sections 10(a)(5) and, derivatively, Section 10(a)(1) of the Law.
16 A DLR investigator investigated the charge on September 15, 2022 and issued a two-
17 count Complaint of Prohibited Practice on December 2, 2022. Count 1 alleged that the
18 School Committee revised certain disciplinary procedures that apply to provisional
19 teachers without giving the BTU prior notice and an opportunity to bargain to resolution
20 or impasse over the decision and the impacts of the decision on employees' terms and
21 conditions of employment. Count 2 alleged that the School Committee failed to provide
22 the BTU with requested information that was relevant and reasonably necessary for the
23 Union to execute its duties as a collective bargaining representative. The BTU filed the

1 charge that was docketed as MUP-23-9871 on February 14, 2023, alleging that the
2 School Committee revised certain disciplinary procedures outlined in a document entitled
3 “Superintendent’s Employee Discipline Procedures Circular (Circular)” without giving the
4 BTU prior notice and an opportunity to bargain to resolution or impasse over the decision
5 and the impacts of the decision on employees’ terms and conditions of employment. A
6 DLR investigator investigated the charge on May 9, 2023 and issued a Complaint of
7 Prohibited Practice on September 29, 2023. The School Committee subsequently filed
8 answers to the Complaints,¹ and the DLR consolidated both cases for hearing.

9 I conducted the consolidated hearing on January 29 and February 5, 2024, at
10 which time both parties had the opportunity to be heard, to examine witnesses and to
11 introduce evidence. Both parties filed post-hearing briefs dated May 29, 2024.² Based
12 on the record, which includes witness testimony, my observation of the witnesses’
13 demeanor, admissions of fact, and documentary exhibits, and in consideration of the
14 parties’ arguments, I make the following findings of fact and render the following opinion.

15 STIPULATIONS OF FACT

- 16 1. The Boston Public Schools (Employer) is a public employer within the meaning of
17 Section 1 of Massachusetts General Laws, Chapter 150E (the Law).
- 18 2. The Union is an employee organization within the meaning of Section 1 of the Law.
- 19 3. The Union is the exclusive bargaining representative for certain employees employed
20 by the Employer, including the position of teacher.
- 21
- 22

¹ On October 6, 2023, the School Committee filed an answer in MUP-23-9871, and on December 4, 2023, the School Committee filed an answer in MUP-22-9394, with a document that bore a date of July 13, 2022.

² In its opening statement, the Union noted that it was not alleging that the BPS had failed to conduct preliminary investigations and investigatory meetings as alleged in the complaint for MUP-22-9394.

- 1 4. The Employer and the Union are parties to a collective bargaining agreement for the
2 period of September 1, 2018 to August 31, 2021.
3
- 4 5. The Employer and the Union are parties to a successor collective bargaining
5 agreement for the period September 1, 2021 to August 31, 2024.

6 FINDINGS OF FACT³

7 **M.G.L. c. 71, Section 42: (teacher dismissal/demotion)**
8

9 A principal may dismiss or demote any teacher or other person assigned full time
10 to the school, subject to the review and approval of the superintendent; and subject
11 to the provisions of this section, the superintendent may dismiss any employee of
12 the school district....
13

14 A teacher who has been teaching in a school system for at least ninety calendar
15 days shall not be dismissed unless he has been furnished with written notice of
16 intent-to-dismiss and with an explanation of the grounds for the dismissal in
17 sufficient detail to permit the teacher to respond and documents relating to the
18 grounds for dismissal, and, if he so requests, has been given a reasonable
19 opportunity within ten school days after receiving such written notice to review the
20 decision with the principal or superintendent, as the case may be, and to present
21 information pertaining to the basis for the decision and to the teacher's status. The
22 teacher receiving such notice may be represented by an attorney or other
23 representative at such a meeting with the principal or superintendent. Teachers
24 without professional teacher status shall otherwise be deemed employees at will.
25

26 A teacher with professional teacher status, pursuant to section forty one, shall not
27 be dismissed except for inefficiency, incompetency, incapacity, conduct
28 unbecoming a teacher, insubordination or failure on the part of the teacher to
29 satisfy teacher performance standards developed pursuant to ... or other just
30 cause.
31

32 A teacher with professional teacher status may seek review of a dismissal decision
33 within thirty days after receiving notice of his dismissal by filing a petition for
34 arbitration with the commissioner....
35

36 The arbitrator's decision shall be issued within one month from the completion of
37 the arbitral hearing, unless [t]he arbitral decision shall be subject to judicial
38 review as provided in chapter one hundred and fifty C. With the exception of other
39 remedies provided by statute, the remedies provided hereunder shall be
40 the exclusive remedies available to teachers for wrongful termination. The rules
41 governing this arbitration procedure shall be the rules of the American Arbitration
42 Association as pertains to arbitration....

³ The DLR's jurisdiction in this matter is uncontested.

Superintendent's Circular HRS-PP10

The BPS records certain internal policies in writings called Superintendent's Circulars. These documents are issued for a specific school year and contain policies on various subjects, such as employee discipline, corporal punishment, and child abuse and neglect. The BPS issues the circulars each school year and sends them to its teachers and other employees. Superintendent's Circular HRS-PP10 (HRS-PP10) is titled "Employee Discipline Procedures," and the BPS relies on the procedures it contains when it disciplines teachers and other employees. The procedures to be followed for dismissals of provisional teachers⁴ are the same in HRS-PP10 for school years 2015-2016, 2017-2018, 2019-2020, and 2021-2022.⁵

Circulars for School Years 2015-2016, 2017-2018, 2019-2020, 2021-2022⁶**Background**

...

"... nothing in these procedures is intended to create any rights or property interests of employees in addition to those provided by federal or state law or by applicable collective bargaining agreements. (Emphasis in original.)

D. Dismissal

...

⁴ As defined below, provisional teachers are those teachers who have worked in the BPS for 90 days or more but have not yet attained professional teacher status.

⁵ The record does not contain HRS-PP10 for school years before 2015-2016, or for school years 2016-2017, 2018-2019, and 2020-2021.

⁶ The subheadings and paragraph numbering/lettering changed slightly in HRS-PP10 for school years 2015-2016, 2017-2018, 2019-2020, and 2021-2022. The wording remained the same.

2. Teachers

The following rules and procedures relate to dismissal of teachers for all causes except failure to satisfy teacher performance standards (performance evaluation).

- i. **Probationary Teachers:** Probationary teachers are teachers who have been teaching in the system for less than ninety (90) calendar days. Probationary teachers are employees-at-will. No hearing is required prior to terminating their services.
- ii. **Teachers Without Professional Teacher Status:** Teachers without professional teacher status and who have taught for at least ninety (90) calendar days, are employees-at-will. However, the following procedure shall be followed for dismissals based upon disciplinary infractions:
 - o Preliminary Investigation and Investigatory Meeting: Allegations of misconduct of infraction of rules not personally observed by the administrator must be thoroughly investigated by the administrator. ...

Note, however, that if the alleged misconduct is being investigated by another agency, such as the Department of Social Services or law enforcement, the above paragraph might not apply....

- o Formal Hearing: If, as a result of the administrator's investigation, it appears that a dismissal might be warranted, a formal hearing is required. If the administrator conducting the investigation will not conduct the formal hearing as the Superintendent's designated hearing officer, then the administrator should send a written request to the Superintendent for a formal hearing. The administrator should include with her/his request a summary of the investigation and investigatory meeting, a recommendation for proposed discipline, supporting documents, if any, and prior discipline, if any.

Procedures to be followed by the hearing officer for formal hearing:

Notice. Send the teacher a written notice, stating briefly but with specificity the reasons for the hearing (i.e., the charges against the employee); a statement that discipline, including dismissal, could result; the date, time, and place of the hearing; and a reminder of the employee's right to have union or legal representation.

Hearing The hearing may be attended by the teacher, his/her legal or union representative, such witnesses as the teacher may choose, and other individuals who may be knowledgeable about the causes for the action or about the dismissal procedure. At the hearing the teacher should have full opportunity to call and cross examine witnesses and to provide other evidence. The rules of evidence are not applicable to such a hearing. Therefore, hearsay

evidence may be relied upon by the hearing officer in lieu of, or in addition to live, first hand testimony. The hearing officer shall assure that a complete and accurate record of the proceeding is compiled either on tape or by stenographic transcription.

Recommended Decision. The decision should issue promptly following the hearing. The hearing officer should submit a recommendation, in writing, within approximately one to three weeks to the superintendent. The recommendation should include a summary of the evidence; an evaluation of the evidence; and the recommendation to dismiss....

Decision: If the Superintendent reviews and approves the recommendation to dismiss, based on the evidence presented at the hearing, the Superintendent will communicate his/her decision to the administrator, who shall proceed to dismiss the teacher. (The Superintendent also may disagree with the recommendation and disapprove the imposition of dismissal or approve a different level of discipline.)

Notice of Dismissal: The teacher shall be provided with written notice of the intention to dismiss, which shall include the reasons for the dismissal stated in sufficient detail so that the teacher may respond, and with documents attached that provide the grounds for dismissal[.] If, in addition to the disciplinary determination from the hearing, the principal is relying upon poor performance evaluations and prior disciplinary actions, all those documents must be referenced and provided to the employee....

The notice also should inform the teacher that s/he may request a meeting with the principal within ten (10) school days of receipt of the notice to review the decision with the principal and to present information relative to the dismissal and the teacher's status....

Post notice meeting: If requested, the principal must have a meeting consistent with the requirements set out in the preceding paragraph.

Final dismissal determination: The principal must make a final decision whether to dismiss after the meeting, and so notify the teacher in writing.

Send copies of the dismissal papers, the Superintendent's approval, signed notices, and the principal's final determination signed by the teacher to the Office of Labor Relations.

iii. **Teachers with Professional Teacher Status**

Circular for School Year 2022-2023 (Issued on September 1, 2022)

Background

1 ...

2 "... nothing in these procedures is intended to create any rights or property
3 interests of employees in addition to those provided by federal or state law or by
4 applicable collective bargaining agreements.

5
6 Dismissal

7 **1. Civil Service Employees**

8 ...

9 **2. Teachers, BASAS and Other Unionized employees**

10 The following rules and procedures relate to dismissal of teachers for all causes
11 except failure to satisfy teacher performance standards (performance evaluation).

12
13 a. **Probationary Employees:** Probationary teachers are teachers ... who
14 have been teaching in the system for less than ninety (90) calendar days. For
15 all other unionized employees, their probationary period will depend on the
16 applicable collective bargaining agreement. Probationary teachers are
17 employees-at-will. No hearing is required prior to terminating their services....

18
19 b. **Teachers Without Professional Teacher Status:** Pursuant to G.L. c.71,
20 sections 41 and 42, teachers without professional teacher status and who
21 have taught for at least ninety (90) calendar days, are employees-at-will and
22 may be dismissed in accordance with the procedure outlined in G.L. c.71, sec.
23 42.

24
25 c. **Teachers with Professional Teacher Status and Unionized Employees**
26 **Who Have Completed Their Probationary Period**

27 **General Background**

28 Probationary teachers are those teachers who have been teaching in the Boston
29 Public Schools for less than ninety days. Teachers who have worked for ninety or
30 more, but have not yet attained professional teacher status, are known as provisional
31 teachers. Teachers who have served in a public school for three consecutive school
32 years are eligible for professional teacher status.

1 When the BPS decides, for any reason, that it does not wish to renew a provisional
2 teacher for the next school year, it gives them a non-renewal letter signed by the Chief
3 Human Capital Officer no later than June 15th of a given school year. The BPS sends a
4 copy of the letter to the BTU. If the BPS decides to dismiss a provisional teacher prior to
5 the end of the school year, it follows different procedures, and it is these procedures that
6 are at issue in this case. If the BPS wishes to dismiss the teacher, it gives the teacher an
7 “intent-to-dismiss” letter which describes the reason for the dismissal. Disciplinary intent-
8 to-dismiss letters are different than non-renewal letters in part because intent-to-dismiss
9 letters contain an explanation of the grounds for the dismissal.

10 **Provisional Teacher Dismissal Procedures before 2022**

11 As noted above, HRS-PP10 for School Year 2021-2022, which the BPS issued on
12 July 1, 2021, contained dismissal procedures for provisional teachers that included a
13 hearing before a BPS hearing officer at which the teacher could call witnesses and
14 introduce evidence, and a recommended decision from the hearing officer.⁷ After the
15 hearing officer issued a recommended decision, the superintendent would review it before
16 deciding whether to issue the teacher an intent-to-dismiss notice. After the intent-to-
17 dismiss notice was issued, the teacher would either resign or be dismissed by the school
18 principal. The period between the initial notice of a disciplinary hearing and receipt of the

⁷ The disciplinary dismissal procedures outlined in HRS-PP10 were the same for provisional teachers and teachers with professional teacher status. However, pursuant to G.L. c.71, Section 42, teachers with professional teacher status can seek review of a dismissal decision by filing a petition for arbitration with the Commissioner of the Department of Elementary and Secondary Education (DESE). Provisional teachers do not have the right to arbitrate dismissals.

1 hearing officer's recommended decision could be up to a month. During this time, a
2 teacher could be placed on paid administrative leave.

3 Before 2022, the School Committee followed the procedure outlined in HRS-PP10
4 when it dismissed provisional teachers.⁸ By letter dated May 13, 2019, BPS Hearing
5 Officer Coffey advised provisional teacher Daniel H. that he should contact BPS attorney
6 Cristina Keefe (Keefe) to schedule a disciplinary hearing regarding allegations of conduct
7 unbecoming a BPS employee. Specifically, Coffey's letter advised Daniel H. to:

⁸ The record does not quantify the number of disciplinary hearings for provisional teachers that the BPS held, nor does it contain the name of any provisional teacher who participated in a disciplinary hearing. Union attorney Jennifer Migliaccio (Migliaccio) testified that she participated in less than 10 disciplinary hearings for provisional teachers and those with professional teacher status. During her testimony, she could not name any provisional teacher who received a disciplinary hearing that she attended. Migliaccio and Union Executive Vice President Erik Berg (Berg) testified that they could not name any provisional teacher who received a formal disciplinary hearing because the process was the same for both provisional teachers and those with professional teacher status.

I credit the testimony of Migliaccio and Berg that the BPS held disciplinary hearings for provisional teachers prior to 2022. As noted above, the Superintendent Circulars HRS-PP10 that the BPS issued before September 1, 2022 documented these procedures and stated that they applied to provisional teachers who had been employed for more than ninety days. It is not reasonable to believe that the BPS would publish a document in successive years that contained a procedure that it never followed. Further, as described below, the hearing notice that BPS Hearing Officer Joseph Coffey (Coffey) forwarded to Daniel H. which offered him a disciplinary hearing, corroborates Migliaccio's and Berg's testimony, and it is inconsequential that Daniel H.'s hearing never took place. In making this finding, I recognize that School Committee witness Hilary Detmold (Detmold) testified that she did not recall conducting a disciplinary hearing for a provisional teacher and did not recall any of her colleagues conducting such a hearing either. Similarly, School Principal Carline Pignato (Dr. Pignato) testified that she was not aware of any provisional teacher who was terminated. However, these witnesses' lack of recall or awareness does not establish that the BPS never followed the procedures outlined in its circulars. Also, to rebut the Union's evidence, the School Committee could have provided evidence of a provisional teacher who was dismissed mid-year without being offered a disciplinary hearing. It did not do so. Although the School Committee does not have the burden to prove the absence of a past practice, the Union has aptly demonstrated, through documentary and testimonial evidence, that the BPS offered disciplinary hearings to provisional teachers whom it intended to dismiss.

1 Please contact, or have your attorney or representative contact, Cristina I. Keefe,
2 Esq. at the Boston Public Schools Office of Labor Relations ... within ten (10) days
3 of this letter to schedule a disciplinary hearing. This hearing is being held in
4 response to the following, alleged to have occurred in February 2019

5 In response, Union attorney Harold Jones (Jones) advised Keefe on June 5, 2019,
6 that he would be representing Daniel H. in the disciplinary hearing, requested certain
7 information to prepare for the hearing, and stated that he would contact Keefe to schedule
8 the matter for a hearing when he received the information. There is no evidence in the
9 record that BPS held a disciplinary hearing for Daniel H. However, the record includes a
10 non-renewal letter that Assistant Superintendent Emily Qazilbash (Qazilbash) gave
11 Daniel H. at the end of the 2018-2019 school year stating that he would not be employed
12 in the Boston Public Schools for the 2019-2020 school year.⁹

13 **Provisional Teacher Dismissal Procedures During and After 2022**
14

15 As noted above, the version of HRS-PP10, which the School Committee issued on
16 September 1, 2022 for School Year 2022-2023, eliminated the hearing and the
17 recommended hearing officer decision from the dismissal procedures for provisional
18 teachers. The Union learned that the BPS had eliminated hearings and recommended
19 hearing officer decisions in February of 2022 and April of 2022 when the BPS sought to
20 dismiss two provisional teachers, Ashley B. and Peter M., without offering them hearings,
21 as described below. The Union learned that the BPS had changed the language of HRS-
22 PP10 regarding dismissal procedures for provisional teachers when Migliaccio received

⁹ The record does not explain why Daniel H. did not have a disciplinary hearing, or why Qazilbash issued him a non-renewal letter at the end of the 2018-2019 school year instead.

1 an email describing the new language from BPS attorney Jeff Smith (Smith) in February
2 of 2023.

3 Ashley B.

4 Ashley B. was a provisional BPS teacher when, on February 28, 2022, Henry
5 Higginson School Principal Kayla Jenkins (Jenkins) notified her that Jenkins intended to
6 dismiss her for engaging in conduct “unbecoming a teacher” which violated the
7 Superintendent’s Circular on Child Abuse and Neglect. Jenkins’s “intent-to-dismiss”
8 notice advised Ashley in pertinent part that:

9 Pursuant to G.L. c.71, §42, within ten (10) school days of the receipt of this notice,
10 you may request a meeting with me to review my intent-to-dismiss you. At this
11 meeting, you may present information relative to the basis of this decision and your
12 status. Please be advised you are entitled to bring legal and/or union
13 representation to the meeting.

14 Union attorney Joseph Lettiere emailed BPS attorney Karen Castaneda Barbosa
15 (Barbosa) on March 11, 2022, stating:

16 While Ms. Ashley [B.] does not have professional teacher status (PTS), the above
17 referenced BPS Circular and past practice make it clear that the BPS is required
18 to provide her with a formal disciplinary hearing (D-Hrg.) prior to dismissing her
19 from her teaching position. This requirement applies notwithstanding the fact that
20 she will have a so-called 10 day pre-termination meeting as offered to her by
21 Higginson School Principal, Karla Jenkins. In anticipation of the possibility that
22 Principal Jenkins will still intend for Ms. [B.] to be terminated, after holding the 10
23 day meeting, please be advised that Ms. [B.] and the Boston Teachers Union ...
24 (BTU) hereby assert the right to a formal hearing prior to a final dismissal decision.

25
26 I therefore respectfully request your confirmation that the BPS will provide a formal
27 hearing for Ms. [B.] in the event that Ms. Jenkins ultimately maintains her intention
28 to dismiss.

29
30 The School Committee did not give Ashley B. a disciplinary hearing.

31 Peter M.

1 Peter M. was a provisional teacher at the William E. Channing School on April 20,
2 2022, when Channing School Principal Dr. Pignato emailed him an intent-to-dismiss
3 notice.¹⁰ This notice advised Peter M. that Dr. Pignato intended to dismiss him from the
4 BPS based on “substantiated findings” that his actions on March 23, 2022, violated
5 “Corporal Punishment” as described in Superintendent’s Circulars LGL-20.¹¹ Dr.
6 Pignato’s letter further stated:

7 Pursuant to G.L. c.71, §42, within ten (10) school days of the receipt of this notice,
8 you may request a meeting with me to review my intent-to-dismiss you. At this
9 meeting, you may present information relative to the basis of this decision and your
10 status. Please be advised you are entitled to bring a union representation (sic) to
11 the meeting.

12 By email dated April 22, 2022, Dr. Pignato sent Peter M. a copy of her April 20
13 Notice of Intent-to-dismiss, and “documentation related to the investigation of the March
14 2023 incident, as well as past instances of misconduct where the school provided
15 additional support and guidance.”¹²

¹⁰ Before she gave Peter M. the April 20, 2022 intent-to-dismiss notice, Dr. Pignato held an investigatory meeting with him and BTU representative Serena Lea on March 28, 2022, during which they discussed Peter M.’s conduct on March 23, 2022. By letter dated March 24, 2022, Chief Human Capital Officer Albert Taylor Jr. notified Peter M. that he was being placed on paid administrative leave pending the outcome of an investigation into the March 23, 2022 incident. The 2021-2022 Circular HRS-PP10, which was in effect at the time of Peter M.’s misconduct, provided for a notice of hearing, formal disciplinary hearing, and hearing officer decision for provisional teachers. However, at some point during her investigation into Peter M.’s actions, Dr. Pignato consulted with the BPS’ Office of Labor Relations regarding the formal hearing provision of the Circular.

¹¹ Peter M. was charged with having engaged in an inappropriate interaction with a child by “yanking a child’s feet to place them on the floor, then grabbing their hand to release [a musical] instrument, causing the child to almost fall out of their chair.”

¹² At some point after the March 23 incident, Dr. Pignato called the Department of Children and Families (DCF) and filed – by telephone - a so-called “51A” report. She did not file a report form. A DCF representative advised Dr. Pignato that they were familiar with BPS’s

1 Migliaccio responded by letter dated April 29, 2022, and advised Dr. Pignato that
2 she would represent Peter M. in the “dismissal action.” In her letter, Migliaccio requested
3 a meeting to review Dr. Pignato’s proposed decision, and certain information (detailed
4 below) that she believed was relevant and reasonably necessary to prepare for the
5 meeting. Because Dr. Pignato’s notice did not provide a disciplinary hearing for Peter M.,
6 Migliaccio protested the omission and requested a hearing. In addition to the information
7 request, Migliaccio stated that:

8 Additionally, while Mr. Peter [M.] does not have Professional Teacher Status
9 (PTS), the BPS Circular, Superintendent’s Circular HRS-PP10: EMPLOYEE
10 DISCIPLINE PROCEDURES, and past practice make it clear that the BPS is
11 required to provide him with a formal disciplinary hearing prior to dismissing him
12 from his teaching position. The Section 42 meeting does not satisfy this
13 requirement. Please be advised that the Boston Teachers Union ... hereby asserts
14 the right to a formal disciplinary hearing prior to a final dismissal decision. I
15 therefore respectfully request your confirmation that the BPS will provide a formal
16 disciplinary hearing for Mr. [M.] (Emphasis in original.)

17 On May 5, 2022, BPS attorney Mary Kate Condon (Condon) responded to
18 Migliaccio proposing certain meeting times to discuss Dr. Pignato’s proposed decision,
19 noting that Dr. Pignato had already provided “documents related to the grounds for
20 [Peter’s] dismissal,” listing the documents previously provided, and stating that “Mr. [M.]
21 has not obtained professional teacher status, and therefore is not entitled to a formal
22 hearing under G.L. c.71 section 42.” Migliaccio responded on May 9, 2022, reiterating
23 her request for a formal hearing pursuant to Superintendent’s Circular HRS-PP10, and
24 for certain documentation that Dr. Pignato had not previously provided (as described
25 below.) The BPS did not give Peter M. the formal hearing that Migliaccio requested.

protocol and would contact her if there were any additional issues. DCF did not provide any follow up to the BPS regarding this incident.

1 Stephanie G.

2 By letter dated December 21, 2022,¹³ Brighton High School Head of School
3 Andrew Bott (Bott) notified provisional teacher Stephanie G. that he intended to dismiss
4 her from the BPS because of misconduct on October 28, 2022. Bott's letter described the
5 misconduct at issue and stated in pertinent part:

6 Pursuant to G.L. c.71, §42, within ten (10) school days of the receipt of this notice,
7 you may request a meeting with me to review my intent-to-dismiss you. At this
8 meeting, you may present information relative to the basis of this decision and your
9 status. Please be advised you are entitled to bring legal and/or union
10 representation to the meeting.

11 When Migliaccio reviewed Bott's intent-to-dismiss letter, she noticed that the BPS
12 had not offered Stephanie G. a disciplinary hearing. By letter dated January 9, 2023,
13 Migliaccio advised Bott that she would represent Stephanie G. in the dismissal action and
14 requested certain information and documents. Migliaccio's letter further stated that:

15 Additionally, while Ms. Stephanie [G.] does not have Professional Teacher Status
16 (PTS), the BPS Circular, Superintendent's Circular HRS-PP10: EMPLOYEE
17 DISCIPLINE PROCEDURES, and past practice make it clear that the BPS is
18 required to provide her with a formal disciplinary hearing prior to dismissing her
19 from her teaching position. The Section 42 meeting does not satisfy this
20 requirement. Please be advised that the Boston Teachers Union...hereby asserts
21 the right to a formal disciplinary hearing prior to a final dismissal decision. I
22 therefore respectfully request your confirmation that the BPS will provide a formal
23 disciplinary hearing for Ms. Stephanie [G.] (Emphasis in original.)

24 On February 6, 2023, Smith responded to Migliaccio's email stating:

25 Please find the District's response to the Union's information request re: the
26 [Stephanie G.] intent-to-dismiss meeting attached. The District intends to hold this
27 intent-to-dismiss meeting within ten school days of this email... Please let us know
28 the employee's availability within that time frame.

29 Migliaccio responded by email stating:

¹³ The letter is dated December 21, 2020, however, the parties agreed that the date should have been December 21, 2022.

As indicated in my previous letter, according to BPS Circular, Superintendent's Circular HRS-PP10: EMPLOYEE DISCIPLINE PROCEDURES, and past practice, the BPS is required to provide Ms. [G.] with a formal disciplinary hearing prior to disciplining or deciding to dismiss her from her teaching position. The Section 42 meeting does not satisfy this requirement. (Emphasis in original.)

Smith replied by email on February 13, 2023, advising Migliaccio that Stephanie

G. would not receive a disciplinary hearing and stating as follows:

The District disagrees. Ms. [G.] does not have professional teacher status and a disciplinary hearing is not necessary. See pp. 16 of HRS-PP10:

"Teachers without Professional Teacher Status: Pursuant to G.L. c.71, sections 41 and 42, teachers (including teachers, school librarians, school adjustment counselors, school social workers, and school psychologists), without professional teacher status and who have taught for at least ninety (90) calendar days, are employees-at-will and may be dismissed in accordance with the procedure outlined in G.L. c.71, sec. 42."

In the subsequent paragraph, you'll see that the disciplinary hearing process applies to teachers with professional teacher status and other non-probationary Union employees. The District will proceed with the Section 42 hearing as issued in today's letter.

The dismissals of Stephanie G. and Peter M. were the first instances that Migliaccio had seen in which the BPS did not give a provisional teacher a disciplinary hearing. Smith's February 13 email was the first time Migliaccio learned of the new wording in HRS-PP10 that eliminated, for provisional teachers, their right to a disciplinary hearing and a recommended hearing officer decision and replaced it with new language stating that provisional teachers may be dismissed in accordance with the procedures outlined in Section 42 of G.L. c.71.

The Union sought disciplinary hearings for Ashley B., Peter M. and Stephanie G., the provisional teachers described above, for a variety of reasons. First, a disciplinary hearing includes a neutral, BPS-appointed hearing officer who has not reviewed the case, had any prior interaction with the matter, learned of the facts, or seen the evidence, and

1 who wasn't involved with the investigation. The teacher is represented by a Union
2 attorney, and can testify, call witnesses and cross-examine witnesses. The Union can
3 provide exhibits and evidence that contravene what the BPS is alleging against the
4 teacher. Without a disciplinary hearing, the provisional teacher receives a meeting with
5 whomever conducts the disciplinary investigation, there are no witnesses, and they
6 cannot cross-examine anyone.

7 **Bargaining over the New Language in the Circular Regarding Disciplinary**
8 **Procedures**

9 The School Committee did not give the Union prior notice and an opportunity to
10 bargain before it stopped including dismissal hearings and hearing officer decisions in the
11 dismissal procedures for provisional teachers and changed the language of HRS-PP10.

12 **Request for Information Regarding Peter M.'s Dismissal**

13 As noted above, by letter dated April 29, 2022, Migliaccio asked Dr. Pignato to
14 provide certain information/documents to prepare for a meeting to review Dr. Pignato's
15 "proposed decision" to dismiss Peter M. Migliaccio requested:

- 16 1. A copy of [Peter M.'s] personnel file with the BPS (release attached);
- 17 2. A precise listing of the particulars of the allegation(s), including but not
- 18 limited to the particulars of all alleged misconduct and the date(s), time(s),
- 19 and location(s) of any and all alleged misconduct;
- 20 3. A list of all the names of all complainants and percipient witnesses regarding
- 21 any and all alleged misconduct and any reports or statements generated by
- 22 or received from them regarding same;
- 23 4. The identities of all witnesses, including their job titles;
- 24 5. Copies of all notes, reports, witness statements, memoranda, investigative
- 25 summaries or other documents that were generated and/or received in
- 26 connection with the investigation(s) of the alleged misconduct;
- 27 6. Copies of all documents and/or evidence in your possession regarding this
- 28 matter, including but not limited to any and all reports, photographs, videos,
- 29 emails, and statements.
- 30 7. The identities of all individuals present at the investigatory meetings
- 31 convened relative to the allegations raised by the notice of disciplinary
- 32 hearing in this matter;

- 1 8. Copies of any notes or records prepared by BPS personnel present at the
- 2 investigatory meetings mentioned in Paragraph 7, above;
- 3 9. A list of all individuals interviewed in connection with the investigation(s) of
- 4 the alleged misconduct and a copy of any and all notes, memorandum,
- 5 statements or the other documents generated and/or received as part of
- 6 those interviews;
- 7 10. Copies of any and all documentation, records, notes, and/or emails of
- 8 additional support and guidance referred to in your email dated April 22,
- 9 2022;
- 10 11. Please state whether a paraprofessional is assigned to this classroom and
- 11 if a paraprofessional was present during the alleged misconduct;
- 12 12. Please state if the student has a history of behavioral issues; and, if so,
- 13 please provide the student's history of such issues;
- 14 13. Copies of all written documents setting forth any and all policies of Boston
- 15 Public Schools or of the School Committee, if any, which you contend Peter
- 16 [M.] has breached; and
- 17 14. Copies of any 51A reports filed and 51B investigation(s) relating to the
- 18 allegation(s) including, but not limited to, the interviews conducted and the
- 19 findings/results of such investigation(s).

20 By responsive email dated May 5, 2022, Condon stated that "Principal Pignato has
 21 already provided 'documents relating to the grounds for dismissal' that satisfy her
 22 obligations under G.L. section 4." Condon listed the documents as follows:¹⁴

- 23 1. A copy of a presentation given to teachers regarding the Student Support
- 24 Team;
- 25 2. Email dated 1.5.2020 from Principal Pignato to staff;
- 26 3. Email dated 9.26.2019 from Principal Pignato to staff;
- 27 4. Email dated 11.16.21 from Peter [M.] to Principal Pignato;
- 28 5. Email dated 11.16.21 from Principal Pignato to Peter [M.]
- 29 6. Email chain dated 12.16.19 from Principal Pignato to Peter [M.]
- 30 7. A copy of a presentation given to teachers regarding Trauma [;]
- 31 8. A copy of Principal Pignato's notes from her investigatory meeting on 3.28.22
- 32 with Peter [M.]
- 33 9. A copy of Principal Pignato's notes from her investigatory meeting on 3.05.22
- 34 with Peter [M.]
- 35 10. Notice of Investigatory Meeting dated 3.24.22[;]
- 36 11. Copy of witness statements collected by Principal Pignato during her
- 37 investigation into the 3.23.22 incident.

¹⁴ In Dr. Pignato's April 22, 2022 email to Peter M., she attached "supporting documentation" that was related to BPS' investigation of the March 23, 2022 incident. Dr. Pignato did not give the Union any of the information that she attached to her email to Peter M.

1 On May 9, 2022, at 3:45 p.m., Migliaccio responded to Condon's May 5 email.

2 Migliaccio wrote, inter alia, that

3 ...we also have a right to request information/documents which are relevant and
4 reasonably necessary to prepare for the meeting. [Peter M.] has a statutory right
5 at a Section 42 meeting to present information pertaining to the basis of the
6 decision and his status. In my letter to Principal Pignato (attached), I requested
7 such documents and information. You failed to provide responsive information,
8 including but not limited to Mr. [M.'s] personnel file, the BPS policies which the
9 Principal alleges that [Peter M.] has violated, a copy of all 51A reports filed and
10 51B investigations including any letters of non-support, as well as failure to provide
11 information responsive to items #2 – 12. I am, again, requesting this information.

12 Condon responded to Migliaccio on May 9, 2022 at 4:22 p.m. stating:

13 Thank you for your response. Our office's position is that we have met our
14 obligations pursuant to c.71 section 42. Furthermore, we have no additional
15 obligations based on the circular or past practice. As far as our discovery
16 obligations, section 42 is clear that we are to provide "documents relating to the
17 grounds for dismissal." It does not specify any continuing discovery obligations
18 after we have provided those foundational documents. Nevertheless, I agree that
19 we did utilize the corporal punishment circular, and have attached it here

20 Condon did not tell Migliaccio that they had given Peter M. some of the information that
21 Migliaccio requested.

22 Peter M. forwarded Migliaccio for her review, the packet of information that BPS
23 sent him, including emails between Peter M. and BPS staff members regarding past
24 behavior and interactions within the classroom, notes from the investigatory meeting, and
25 copies of witness statements.¹⁵ Some of the information contained in the materials that
26 BPS sent to Peter were responsive to Migliaccio's April 29 information request. However,
27 Migliaccio did not know if the packet contained *all* the information that BPS had that was
28 responsive to her request, and thus, she asked for the information again. Because the

¹⁵ Witnesses' names were redacted from the witness statements that the BPS gave Peter M.

1 BPS did not respond to Migliaccio's specific information requests as they had done in the
2 past, Migliaccio was unclear about whether the BPS was "cherry picking" what they were
3 giving her, or whether they had given her everything that existed that was responsive to
4 her request.

5 The Union's information request was purposefully broader than just what
6 supported the BPS' grounds for dismissing Peter M. In addition to seeking information
7 about the statutory grounds for dismissal, Migliaccio wanted all relevant and reasonably
8 necessary information, including potentially exculpatory information, so the Union could
9 argue for a lesser degree of discipline. She sought Peter M.'s personnel file to determine
10 whether he previously had been disciplined, had received progressive discipline, or was
11 being dismissed after never having received discipline. The Union wanted a list of all
12 Peter M's prior misconduct since the intent-to-dismiss letter referred to past incidents of
13 misconduct and prior support and guidance. Migliaccio requested videos or photos
14 because the BPS was alleging that Peter M. used physical force against a student, and
15 she wanted to see if there were photographs of an injury. She wanted the identities of all
16 the individuals who were present at the investigatory meetings so the Union would know
17 if someone besides Dr. Pignato was taking notes or had other information. The question
18 about whether there was a paraprofessional in the classroom when the incident occurred
19 pertained to whether another individual should have been in the classroom to assist Peter
20 M.

21 Because the BPS alleged that Peter M. had violated the corporal punishment
22 policy and used physical force on a child, the Union also believed that it was important to

1 know about the student's history of behavioral issues, if any.¹⁶ The physical force
2 allegations also prompted the Union to request copies of any 51A report filed and any
3 51B investigation conducted, since if the physical force did not trigger mandated
4 reporting, the Union might have been able to argue that Peter M. did not violate the
5 corporal punishment policy.

6 In sum, the packet of information that the BPS attached to the email it sent to Peter
7 M. on April 22, 2022, contained some information that was responsive to Migliaccio's April
8 29 information request. However, the BPS never gave that information directly to the
9 Union, never advised the Union that it had given it to Peter M., and never responded to
10 each listed request specifically. The BPS provided the Union with a copy of the
11 Superintendent's Circular for Corporal Punishment, in response to information request
12 number 13. The BPS never gave the Union or Peter M. the following information that
13 Migliaccio requested on April 29: 1) Peter M.'s personnel file,¹⁷ 2) an answer to the
14 question of whether a paraprofessional was in the classroom during the alleged
15 misconduct, 3) a statement concerning whether the student at issue had a history of
16 behavioral issues, and 4) copies of any 51A reports filed and 51B investigation(s) related
17 to the allegation(s).

18 OPINION

19 **Unilateral Change: Count I of MUP-9394 and MUP-23-9871**

¹⁶ BPS had no records of any disciplinary issues with the student at issue. Also, BPS attorney Detmold testified that a student's behavioral record would not impact a finding that a teacher violated the BPS policy regarding corporal punishment.

¹⁷ Dr. Pignato did not review Peter M.'s personnel file during her investigation into the misconduct for which she dismissed him from employment.

1 A public employer violates Sections 10(a)(5) and (1) of the Law when it unilaterally
2 alters a condition of employment involving a mandatory subject of bargaining without first
3 negotiating with the union to resolution or impasse. School Committee of Newton v. Labor
4 Relations Commission, 388 Mass. 557 (1983). The employer's obligation to bargain
5 before changing conditions of employment extends to working conditions established
6 through a past practice, as well as those specified in a collective bargaining agreement.
7 Town of Wilmington, 9 MLC 1694, 1699, MUP-4688 (March 18, 1983).

8 However, some managerial decisions cannot be delegated by public employers to
9 be made the subject of collective bargaining. Town of Dennis, 12 MLC 1027, 1030, MUP-
10 5247 (June 21, 1985). In the public education setting, school committees have the
11 exclusive prerogative to determine educational policy. Lowell School Committee, 26 MLC
12 111, MUP-1775 (January 28, 2000). Decisions that are within the zone of managerial
13 prerogative over educational policy are committed to the judgment of the school
14 committee alone. School Committee of Boston v. Boston Teachers Union, 378 Mass. 65
15 (1979); Boston Teachers Local 66 v. School Committee of Boston, 386 Mass. 197 (1982).

16 In this case, I must decide whether the BPS unlawfully: 1) changed the disciplinary
17 procedures it had previously followed for provisional teachers facing dismissal by
18 eliminating disciplinary hearings before a hearing officer and recommended hearing
19 officer decisions; and 2) revised HRS-PP10 for School Year 2022-2023 by eliminating
20 language regarding disciplinary dismissal procedures that applied to provisional teachers
21 and replacing the language with the declaration that "teachers without professional status
22 are employees at will and may be dismissed in accordance with G.L.c.71, §42."

1 To establish that an employer made an unlawful unilateral change, a union must
2 demonstrate that: 1) the employer altered an existing practice or implemented a new one;
3 2) the change affected a mandatory subject of bargaining; and 3) the change was
4 implemented without prior notice and an opportunity to bargain to resolution or impasse.
5 Bristol County Sheriff's Department, 31 MLC 6, 18, MUP-2872 (July 15, 2004). Here, the
6 Union argues that there was a past practice of the School Committee providing
7 disciplinary hearings to provisional teachers facing dismissal and that the School
8 Committee changed the practice when it denied disciplinary hearings to Peter M., Ashley
9 B., and Stephanie G. and removed those procedures from the 2022-2023 HRS-PP10.
10 The Union contends that disciplinary procedures are mandatory subjects of bargaining
11 and that the School Committee failed to give it prior notice and an opportunity to bargain
12 to resolution or impasse before making the changes at issue. The School Committee
13 does not dispute that it ceased providing disciplinary hearings to provisional teachers
14 facing dismissal and that it altered the language of HRS-PP10. Instead, as discussed
15 below, the School Committee contends that it had no obligation to bargain over those
16 changes.

17 To determine whether a binding past practice exists, the Commonwealth
18 Employment Relations Board (CERB) analyzes the combination of facts upon which the
19 alleged practice is predicated. Commonwealth of Massachusetts, 23 MLC 171, 172, SUP-
20 3586 (January 23, 1997). The CERB examines whether employees in the unit have a
21 reasonable expectation that the practice will continue and whether the practice is
22 unequivocal, has existed substantially unvaried for a reasonable period, and is known
23 and accepted by both parties. Commonwealth of Massachusetts, 34 MLC 143, 146, SUP-

1 04-5052 (June 17, 2008). The definition of practice necessarily involves the CERB's
2 policy judgment as to what combination of circumstances establishes the contours of a
3 past practice for purposes of applying the law prohibiting unilateral changes. Id.

4 The evidence shows that for many years prior to School Year 2022-2023, HRS-
5 PP10 provided for disciplinary hearings before a BPS hearing officer, and, on at least
6 one occasion, the BPS followed the procedure outlined in the Circular by offering a
7 disciplinary hearing to provisional teacher Daniel H., whom the BPS initially intended to
8 terminate before the end of the school year. Additionally, the description of the procedure
9 in HRS-PP10 says "... the following procedure **shall be followed** for dismissals" for
10 teachers without professional teacher status. (Emphasis added.) Although the record
11 contains no evidence of a hearing held for a specific provisional teacher, because the
12 BPS offered a hearing to Daniel H. and put this language in successive annual circulars
13 between School Years 2015-2016 and 2020-2021, I find that provisional teachers had a
14 reasonable expectation that the BPS would follow this practice. Thus, the evidence is
15 sufficient to establish that the parties had a binding practice of providing disciplinary
16 hearings to provisional teachers facing termination.

17 There is no dispute that the BPS changed the language of HRS-PP10 for School
18 Years 2022-2023, and did not give Ashley B., Peter M., and Stephanie G. disciplinary
19 hearings before issuing them intent-to-dismiss letters. It is also undisputed that the BPS
20 did not give the Union prior notice and an opportunity to bargain over its actions.
21 Disciplinary procedures are mandatory subjects of bargaining. Boston Police Superior
22 Officers Federation, 24 MLC 89, 91, MUP-9234 (April 1, 1998). Thus, the Union has

1 satisfied all the requisite elements of a unilateral change, and I next consider the School
2 Committee's arguments that it did not unlawfully fail to bargain.

3 **BPS Defenses**

4 The School Committee defends its decision not to bargain over the changes that
5 it made to the disciplinary procedures here by focusing on the language, construction,
6 purpose, and interpretation of G.L. c.71, §42 (Section 42). The School Committee first
7 argues that the language of the statute makes clear that disciplinary procedures for
8 provisional teachers are an impermissible subject of bargaining because the statute
9 expressly defines the due process rights of provisional teachers and states that those
10 rights are a teacher's exclusive remedy. Also, contrasting the statute's silence on a
11 district's obligation to bargain over dismissal procedures for provisional teachers with
12 language specifying that districts may negotiate over matters of layoff, the School
13 Committee argues that the statute's construction demonstrates that dismissal procedures
14 for provisional teachers are not a mandatory subject of bargaining. Citing Spencer-East
15 Brookfield Reg'l School District vs. Spencer-East Brookfield Teachers Association
16 (Spencer-East Brookfield), 93 Mass. App. Ct. 324 (2018), the School Committee then
17 argues that the Appeals Court has interpreted Section 42 to supersede and prohibit the
18 enforcement of any past practice regarding termination procedures for provisional
19 teachers. Next, relying on what it contends is the legislative purpose of Section 42, the
20 School Committee claims that it cannot be required to negotiate practices, which
21 contravene that legislative purpose, and that the disciplinary hearing process that the
22 Union seeks to restore will give provisional teachers due process protections beyond what
23 the Legislature provided.

1 In a related argument, the School Committee contends that the disciplinary hearing
2 language in the pre-2022-2023 circulars cannot create a binding past practice because
3 other language in the circulars states that state law supersedes any rights that the circular
4 may contain. Specifically, it relies on the unchanged language of the old and new
5 circulars which states that: "... nothing in these procedures is intended to create any rights
6 or property interests of employees in addition to those provided by federal or state law or
7 by applicable collective bargaining agreements." According, to the School Committee,
8 this language shows that it had the discretion to deviate from what it describes as the
9 "guidance" in the pre-2022-2023 circulars, so long as it gave the employees the statutory
10 rights that they were due. Finally, the BPS argues that it followed the 2022-2023 Circular
11 and the requirements of Section 42 when it terminated Peter M., Ashley B., and Stephanie
12 G. I am not persuaded by these arguments and address each one in turn.

13 First, I do not agree that the language and/or construction of Section 42 makes
14 disciplinary procedures for provisional teachers an impermissible subject of bargaining.
15 Section 42 provides, inter alia, that provisional teachers must receive written notice of an
16 intent-to-dismiss along with an explanation of the grounds for dismissal. If the provisional
17 teacher requests, he or she will be given a reasonable opportunity to review the dismissal
18 with the principal or superintendent within ten days of receiving the notice. The teacher
19 may be represented by an attorney or other representative at the meeting with the
20 principal or superintendent and may present information to them. The statute also states
21 that "[w]ith the exception of the other remedies provided by statute, the remedies provided
22 thereunder shall be the exclusive remedies available to teachers for wrongful
23 termination."

1 Although the statute does not refer to provisional teachers receiving a disciplinary
2 hearing or a hearing officer decision, it also does not prohibit the pre-termination
3 disciplinary practices that are codified in the Circular. There is no conflict between the
4 past practice and the due process rights that Section 42 does give to probationary
5 teachers, because the disciplinary hearings that the Union seeks to restore do not entitle
6 provisional teachers to post-termination arbitration or any type of post-termination review.
7 Rather, the pre-termination hearings produce non-binding hearing decisions for a
8 principal to consider *before deciding* to dismiss a provisional teacher. Similarly, because
9 the procedures in the pre-2022-2023 circulars did not undermine the principal's ultimate
10 and final authority to dismiss provisional teachers and did not provide post-termination
11 relief, the hearing procedures do not contravene the exclusivity provision in the statute.
12 In School Committee of Newton v. Newton School Custodians Association, 438 Mass.
13 739, 751 (2003), a case involving the hiring prerogatives of school principals, the
14 Supreme Judicial Court (SJC) reconciled the authority over personnel selection that the
15 Legislature granted individual principals under G.L. c. 71, §59B and the right of school
16 committees to resolve issues related to personnel procedures by a grievance procedure
17 including final and binding arbitration that was collectively bargained. The SJC noted in
18 the absence of explicit legislative commands to the contrary, statutes must be construed
19 to harmonize and not to undercut each other. Id. at 751.

20 For similar reasons, I reject the School Committee's argument that Spencer-East
21 Brookfield holds that statutory provisions supersede any existing disciplinary past practice
22 for provisional teachers. In that case, the Appeals Court held that a union had no right to
23 pursue arbitration on behalf of a terminated teacher who had worked for the school district

1 for less than ninety days. Id. at 330. The Appeals Court noted that when there are
2 potentially contradictory provisions in a statute and a collective bargaining agreement
3 (CBA), Section 42 provides the exclusive remedy for a teacher who is aggrieved by their
4 termination, irrespective of the terms of any applicable CBA. The Appeals Court further
5 clarified that since the enactment of Chapter 71, the “source, authority, and scope of
6 arbitration for terminated teachers derive[s] from c.71, §42, not from the contract.” Id. at
7 329.

8 However, Spencer-East Brookfield does not prohibit the practice that the Union
9 seeks to enforce in this case. The teacher at issue in Spencer-East Brookfield was
10 employed for less than ninety days before his dismissal and was seeking post-termination
11 arbitration and reinstatement pursuant to the collective bargaining agreement.
12 Conversely, here the Union **is** not seeking reinstatement of dismissed provisional
13 teachers, and the School Committee has simply given provisional teachers the
14 opportunity to have a pre-termination hearing and a decision from a hearing officer, which
15 the school principal is free to reject. Notably, the Appeals Court’s holding did not prohibit
16 a school committee from agreeing to additional procedures that enabled provisional
17 teachers to present evidence at a disciplinary hearing to avert a termination decision.
18 Compare School Committee of Danvers v. Tyman, 372 Mass. 106 (1977) (finding that
19 “although a school committee may not surrender its authority to make tenure decisions,
20 there is no reason that a school committee may not bind itself in the making of such a
21 decision.”) As previously noted, the disciplinary dismissal practice that the School
22 Committee bound itself to here occurs before the principal makes the non-reviewable
23 decision to dismiss a provisional teacher. Thus, there is no statutory reason that the

1 School Committee should not be held to the disciplinary hearing procedures that are
2 embedded in the pre-2022-2023 HRS-PP10 circulars and the parties' practice.

3 I also find no merit to the School Committee's argument that the disciplinary
4 hearings contravene the legislative purpose of expediting teacher terminations by
5 imposing an arbitration-like process that extends the time it takes to terminate a
6 provisional teacher. In School District of Beverly v. James Geller, 435 Mass. 223, 225
7 (2001), the SJC noted that one of the goals of Section 42 was to "streamline the dismissal
8 process by requiring that contested dismissals proceed directly to arbitration, where
9 timelines for decisions and detailed statements of supporting reasons are mandated."
10 The School Committee has not demonstrated that allowing provisional teachers a pre-
11 termination disciplinary hearing contravenes legislative intent because the Legislature did
12 not build specific timelines into the statute that would be thwarted by the time it would
13 take a BPS hearing officer to convene a hearing and draft a decision. Also, the parties
14 are free to structure the disciplinary process to occur expeditiously. Further, the fact that
15 a disciplinary hearing allows the Union to call and cross-examine witnesses on behalf of
16 the provisional teacher does not transform the process into arbitration because no third
17 party can overturn a principal's decision to dismiss a provisional teacher.

18 I am also not persuaded by the School Committee's argument that legislative
19 silence regarding bargaining over the provisional teacher terminations, coupled with
20 statutory language allowing bargaining over teacher layoffs, shows a legislative intent to
21 prohibit bargaining over the disciplinary hearing procedures at issue here. In the absence
22 of a specific statutory mandate, the CERB previously has declined to find that a statute's
23 silence on a change in a mandatory subject of bargaining constitutes a waiver of the

1 employer's obligation to bargain. See City of Newton, 42 MLC 181, 183-184, MUP-12-
2 2122 (January 29, 2016) (declining to find that G.L. c.31 waived the employer's obligation
3 to bargain over the implementation of a continued condition of employment for a
4 provisional fire fighter) (citing Adams v. Boston, 461 Mass. 602, 608 (2012) (in light of
5 statutory silence, municipalities may agree via collective bargaining to pay more than one-
6 half of educational incentives to police officers)).

7 Finally, there is no merit in the School Committee's argument that the disciplinary
8 hearing procedure described in the pre-2022-2023 circulars could not constitute a binding
9 past practice because of language in the circulars noting that they did not give provisional
10 teachers any more rights than they have pursuant to Section 42. The School Committee
11 is correct in noting that Section 42 does not give provisional teachers the right to a
12 disciplinary hearing before a hearing officer that the pre-2022-2023 circulars provided.
13 However, the flaw in the School Committee's argument is that while the language of the
14 circulars may curtail the creation of additional employee rights, it cannot eliminate the
15 BTU's statutory right to bargain over changes to a past practice. This disciplinary
16 procedure is not a right that runs to individual teachers and individual teachers cannot
17 enforce or waive enforcement of the School Committee's obligation to bargain over any
18 changes to that disciplinary procedure only the Union can do so.

19 In sum, I am not persuaded by the School Committee's arguments and find that it
20 unlawfully failed to bargain over the decision and the impacts of the decision to eliminate
21 the pre-termination disciplinary hearing procedure for provisional teachers. I need not
22 address the School Committee's contention that it followed the requirements of the new,

1 changed procedure because its compliance with an unlawfully implemented procedure is
2 inconsequential.

3 **Count 2 of MUP-22-9394: Failure to Provide Requested Information**

4 If a public employer possesses information that is relevant and reasonably
5 necessary to an employee organization in the performance of its duties as the exclusive
6 collective bargaining representative, the employer is generally obligated to provide the
7 information upon the employee organization's request. Higher Education Coordinating
8 Council, 23 MLC 266, 268, SUP-4142 (June 6, 1997). The employee organization's right
9 to receive relevant and reasonably necessary information is derived from the statutory
10 obligation to engage in good faith collective bargaining, including both grievance
11 processing and contract administration. Boston School Committee, 10 MLC 1501, 1513,
12 MUP-4468 (April 17, 1984).

13 The CERB's standard in determining whether the information requested by an
14 employee organization is relevant is a liberal one, similar to the standard for determining
15 relevancy in civil litigation proceedings. Id. Information about terms and conditions of
16 employment of bargaining unit members is presumptively relevant and necessary for an
17 employee organization to perform its statutory duties. City of Lynn, 27 MLC 60, 61, MUP-
18 2236, 2237 (December 1, 2000).

19 As a threshold matter, the School Committee argues that its obligation to provide
20 information supporting the termination of a provisional teacher is governed by c.71, §42
21 not G.L. c. 150E. The School Committee notes that Section 42 requires it to provide
22 "documents relating to the grounds for dismissal," and argues that it satisfied its statutory
23 obligation and was not obligated to go beyond it. I am not persuaded by this argument.

1 The School Committee cited no case law holding that it is not bound by c.150E's
2 obligation to provide relevant and reasonably necessary requested information or that the
3 Educational Reform Act has limited or supplanted a school committee's duty to provide
4 information. The School Committee does not dispute that the Union had an obligation
5 and opportunity to represent Peter M. regarding his potential dismissal and does not
6 persuasively explain how or why Section 42 would thwart the Union's ability to represent
7 its members by diminishing its ability to gather the information that it needs to perform
8 that role. Consequently, I consider whether c.150E requires the School Committee to
9 give the Union all the information it requested.

10 It is well-settled that an employer must provide a union with information that a union
11 requests to assist bargaining unit members in disciplinary proceedings. See Worcester
12 Couty Jail and House of Correction, 28 MLC 189, 190-191, MUP-1885 (December 28,
13 2001) (finding that a union's request for investigatory materials to prepare for a
14 disciplinary hearing was relevant and reasonably necessary to its role as bargaining
15 representative). The CERB has held that a union must have access to the information
16 surrounding the disciplinary proceedings, including witness statements, transcripts or
17 notes of witness statements, and investigative reports that contain witness statements as
18 well as other relevant information, to properly fulfill its role. Boston School Committee, 36
19 MLC 48, MUP-05-4532 (September 30, 2009). In City of Boston, 22 MLC 1698, 1707,
20 MUP-9605 (April 26, 1996), where the union represented police officers at internal
21 disciplinary proceedings stemming from citizen complaints, the CERB noted that the
22 employer must provide exculpatory information to the union, as the union is not required
23 to rely on the employer's assessment of whether the requested information would be

1 helpful. In Boston School Committee, supra the CERB required the BPS to give the Union
2 unredacted student witness statements to prepare for a teacher disciplinary hearing to
3 address misconduct. In other cases, the CERB has ordered employers to provide
4 information that had a direct bearing on a union's ability to evaluate the merits of a
5 grievance, such as personnel files. See Boston School Committee, 24 MLC 8, MUP-1410,
6 1412 (August 26, 1997).

7 The information that Migliaccio requested in her April 29, 2022 letter pertained to
8 Dr. Pignato's decision to dismiss Peter M. and could have helped the Union evaluate his
9 situation and assist him in the disciplinary process. Peter M.'s personnel file would have
10 shown whether he had received previous and progressive discipline. The Union needed
11 to see a list of all Peter M.'s prior misconduct since Dr. Pignato's intent-to-dismiss letter
12 referred to past incidents of misconduct and prior support and guidance. Migliaccio
13 needed any available videos or photos because the BPS was alleging that Peter M. used
14 physical force against a student, and she wanted to see if there were photographs of an
15 injury. The request for the identities of all the individuals who were present at the
16 investigatory meetings would have indicated whether someone besides Dr. Pignato was
17 taking notes or had other information. Knowing whether there was a paraprofessional in
18 the classroom when the incident occurred could have identified a potential witness to the
19 misconduct or enabled the Union to argue that another individual should have been in the
20 classroom to assist the teacher. Any information that could potentially be exculpatory
21 could enable the Union to argue for imposition of a lesser degree of discipline.

22 It is undisputed that the School Committee gave Peter M. some of the information
23 that the Union requested, and that Peter M. forwarded the materials he received to

1 Migliaccio. However, it is also undisputed that the School Committee never gave the
2 information to the Union, never told the Union that it had given the information to Peter
3 M., and never clarified or confirmed whether the packet of materials that it gave Peter M.
4 contained everything that Migliaccio had requested. Based on the case law cited above,
5 I find that the School Committee unlawfully failed to give the Union all the information that
6 Migliaccio had requested in her April 29, 2022 email, with one exception which I explain
7 below. Providing the information to Peter M. did not satisfy the School Committee's
8 obligation to the Union because the availability of information from another source does
9 not satisfy an employer's obligation to provide it to a union. Commonwealth of
10 Massachusetts, 12 MLC 1590, 1598, SUP-2619, SUP-2638 (January 31, 1986).
11 Additionally, the School Committee was obligated to provide information in a manner that
12 addressed Migliaccio's uncertainty over whether she had all the available information or
13 just those selected portions that the School Committee was willing to provide. See
14 generally, Malden Police Patrolmen's Association, 50 MLC 5, 10-11, MUPL-19-7698,
15 7699 (August 15, 2023) (duty to provide information obligated a union's detail board to
16 search its records to ensure that it provided all requested information that was within its
17 possession and control).

18 I also find that the School Committee unlawfully failed to provide the BTU with a
19 statement regarding whether the student at issue in Peter M.'s dismissal had a history of
20 behavioral issues.¹⁸ Although Attorney Detmold opined that a student's behavioral record

¹⁸ Because the hearing record shows that the student had no disciplinary history, I need not determine whether the School Committee would have been obligated to give the Union the student's behavioral or disciplinary history records or whether those records are subject to protections under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C., §1232 g, and/or M.G.L. c.71, §34D.

1 would not impact BPS' finding that a teacher violated the corporal punishment policy, as
2 noted above, a union is not required to accept an employer's assessment of whether
3 information that the employer holds would be useful. City of Boston, supra. Dr. Pignato
4 acknowledged during the hearing that the student at issue did not have any disciplinary
5 record, and the School Committee did not give any reason why it could not have provided
6 a simple statement to that effect at the time of Migliaccio's request.

7 I turn now to consider the Union's request for the 51A report that Dr. Pignato filed
8 and the findings/results of any 51B investigation that DCF conducted (DCF 51B
9 findings/results.)¹⁹ The Union explained the relevance of the request for this information
10 by stating that if the physical force that Peter M. had used with the student did not trigger
11 mandated reporting, it might have been able to argue that Peter M. did not violate the
12 BPS corporal punishment policy. However, the fact that the information may be relevant
13 and reasonably necessary to the Union's role as the exclusive representative does not
14 end my inquiry.

15 Once a union has established that the requested information is relevant and
16 reasonably necessary to its duties as the exclusive representative, the burden shifts to
17 the employer to establish that it has legitimate and substantial concerns about disclosure
18 and that it has made reasonable efforts to provide the union with as much of the requested
19 information consistent with its expressed concerns. Board of Higher Education, 26 MLC
20 91, 93, SUP-4509 (January 11, 2000). If an employer advances legitimate and

¹⁹ It is undisputed that the School Committee provided the Union with the circular on corporal punishment; consequently, the School Committee did not refuse to provide the Union with information on "Copies of all written documents setting forth any and all policies of Boston Schools or of the School Committee, if any, which you contend Peter [M.] has breached."

1 substantial concerns about the disclosure of information to a union, the CERB will
2 examine the facts contained in the record. Boston School Committee, 13 MLC 1290,
3 1294-1295, MUP-5905 (November 2, 1996). The employer's concerns are then balanced
4 against an employee organization's need for the information. Commonwealth of
5 Massachusetts, Chief Administrative Justice of the Trial Court, 11 MLC 1440, 1443-1444,
6 SUP-2746 (February 21, 1985) (adopting the balancing test approach used by the United
7 States Supreme Court in Detroit Edison v. NLRB, 440 U.S. 301 (1979)). Absent a
8 showing of a great likelihood of harm flowing from disclosure, the requirement to furnish
9 a bargaining representative with relevant information necessary to carry out its duties
10 overcomes any claim of confidentiality. Greater Lawrence Sanitary District, 28 MLC 317,
11 318-319, MUP-2581 (April 19, 2002).

12 The School Committee did not advise the Union that it had legitimate and
13 substantial concerns about providing the 51A report and the DCF 51B findings/results,
14 nor did it attempt to provide as much information as it could. However, the law and
15 regulations pertaining to reports of child abuse and neglect impose restrictions on the
16 disclosure of those reports. G.L. c.119, Section 51E states that written reports prepared
17 under Sections 51A-51D "shall be confidential"²⁰ and allows DCF to release them only in

²⁰ G.L. c.119, §51E provides in part as follows: The department shall maintain a file of the written reports prepared under this section and sections 51A to 51D, inclusive. These written reports shall be confidential. Upon request and with the approval of the commissioner, copies of written reports of initial investigations may be provided to: (i) the child's parent, guardian, or counsel, (ii) the reporting person or agency, (iii) the appropriate review board; (iv) a child welfare agency of another state for the purpose of assisting that agency in determining whether to approve a prospective foster or adoptive parent, or (v) a social worker assigned to the case. No such report shall be made available to any persons other than those specified in this section without the written and informed consent of the child's parent or guardian, the written approval of the commissioner, or an order of a court of competent jurisdiction.

1 limited circumstances. See generally, Gymetta Brantley v. Hampden Division of the
2 Probate and Family Court Department, 457 Mass. 172, 188 n. 22 (2010). However, G.L.
3 c.119, Section 51E does not address the BPS' obligation to preserve the confidentiality
4 of Section 51A reports and the DCF 51B findings/results that were within BPS'
5 possession, nor does that statute specifically address oral 51A reports.

6 If statutory defenses exist to an employer's failure to provide a union with
7 requested relevant information, the CERB reviews the cited statutory provisions in light
8 of the employer's obligation under the Law. If the requested information is not exempt
9 from disclosure under the cited statutes, it must be furnished to the union unless there
10 exist other legitimate and substantial concerns that outweigh the union's need for the
11 information. Sheriff's Office of Middlesex County, 30 MLC 91, 98, MUP-2754 (December
12 31, 2003). Resolution of statutory concerns raised by an employer may require
13 harmonizing statutory schemes, each of which protects a significant public interest.
14 Bristol County Sheriff's Office, 28 MLC 113, 121, MUP-1820 (Oct. 10, 2001), aff'd sub
15 nom, Sheriff of Bristol County, 62 Mass. App. Ct. 665 (2004).

16 Reviewing first the Union's request for the 51A report that Dr. Pignato submitted, I
17 note that the report was submitted orally and never reduced to writing. However, the
18 School Committee never confirmed to the Union that Dr. Pignato had filed the report or
19 described the information that she provided to DCF. The Union's need for the information
20 to properly represent Peter M. must be reconciled with the confidentiality concerns
21 inherent in 51A reports. The BPS' production of the requested information to the Union
22 with certain safeguards attached harmonizes the applicable statutory schemes by
23 enforcing the BPS' obligation to bargain in good faith with the need to protect the

1 information from public disclosure. If the BPS provides the information to the Union with
2 safeguards on the dissemination of the information in a manner consistent with the
3 judicially approved protections in Boston Police Superior Officers Federation v. City of
4 Boston, 414 Mass. 458, 461 n. 5 (1993), the Union's need for the information outweighs
5 concerns about public exposure of confidential information. Consequently, the BPS acted
6 unlawfully when it failed to corroborate that Dr. Pignato had filed the 51A report and to
7 provide the Union with a description of the information contained in Dr. Pignato's oral
8 report applying applicable safeguards concerning dissemination of the information.

9 Although the Union also requested that BPS provide the DCF 51B findings/results,
10 the hearing record clearly shows that the BPS never received any information from DCF
11 confirming that a 51B investigation had been conducted. Rather, if the DCF 51B
12 findings/results existed, the information remained within DCF's sole access and control.
13 It is well-established that an employer is not required to provide a bargaining
14 representative with information that is not within the employer's possession or control.
15 See Bristol County Sheriff's Department, 32 MLC 75, MUP-01-3068 (August 3, 2025);
16 Board of Regents, 19 MLC 1248, 1271, SUP-3267-3272 (August 24, 1992); Woods Hole,
17 12 MLC 1531, 1545-1547, UPL-100 (January 21, 1986). Because the BPS did not have
18 the DCF 51B findings/results within its possession or control, the BPS did not violate
19 Section 10(a)(5) of the Law by failing to provide that requested information to the Union.

20 CONCLUSION

21 Based on the record and for the reasons explained above, I conclude that the
22 School Committee violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law
23 as alleged in Count I of MUP-22-9394 and in MUP-23-9871 when it unilaterally changed

1 the disciplinary dismissal procedures for provisional teachers and removed the prior
2 disciplinary procedures from the Superintendent's Circular HRS-PP10 for School Year
3 2022-2023. I also find that the School Committee unlawfully failed to provide certain
4 information to the Union that was relevant and reasonably necessary to the Union to fulfill
5 its role as the exclusive collective bargaining representative as alleged in Count 2 of MUP-
6 22-9394. However, the School Committee did not violate Section 10(a)(5) of the Law by
7 failing to provide the Union with the DCF 51B findings/results.

8 REMEDY

9 Section 11 of the Law authorizes the CERB to issue orders "requiring the charged
10 party to cease and desist from such prohibited practice and take such further affirmative
11 actions as will comply with the provisions of this section." This language gives the CERB
12 broad discretion in fashioning remedies that effectuate the purposes of the Law and vitiate
13 the effects of the violation. Boston Police Patrolmen's Association, Inc., 8 MLC 1993,
14 2002, MUPL-2049, MUPL-2050 (February 2, 1982 and March 23, 1982), Secretary of
15 Administration and Finance v. Labor Relations Commission, 434 Mass. 340 (2001).

16 Remedies are generally designed to restore employees to the same position that
17 they would have been in but for the employer's unlawful action. Town of Lexington, 37
18 MLC 115, MUP-08-5313 (December 9, 2010). Thus, to remedy the School Committee's
19 unlawful changes to the information in the 2022-2023 Circular and disciplinary dismissal
20 procedures, I order the School Committee to restore the practice of providing a
21 disciplinary hearing and a recommended hearing officer decision to a provisional teacher

1 whom a school principal seeks to dismiss,²¹ and restore the language regarding the
2 disciplinary dismissal procedure for provisional teachers that was removed from the
3 Superintendent's Circular HRS-PP10 for the 2022-2023 School Year.

4 However, I do not order the School Committee to provide the information that the
5 Union had requested regarding Peter M. The CERB has declined to order employers to
6 supply requested information in cases where the charging parties no longer have a
7 practical need for the information. See, e.g., City of Newton, 36 MLC 71, 75, MUP-05-
8 4489 (October 28, 2009) (no current need for information concerning disciplined
9 employees, because the union resolved one employee's discipline and the other
10 employee resigned) and Boston School Committee, 36 MLC at 53 (the redacted names
11 of students who had made statements regarding alleged teacher misconduct were no
12 longer needed because the students had not testified at the teacher's arbitration hearing).
13 Although the Union argues in its brief that it is still seeking the information that it requested
14 for Peter M., the Union has not indicated that it is still challenging his dismissal, including
15 in what forum, as Section 42 does not provide for such a challenge, nor has it explained
16 why it has any practical need for the information. Additionally, the Union already has much
17 of the requested information because Peter M. forwarded the information that he received
18 to Migliaccio. Consequently, I order the School Committee to cease and desist from

²¹ In its brief, the Union asks that I order the School Committee to return to the status quo and follow all procedures for provisional teachers subject to discipline above a written reprimand. However, the Complaint in MUP-22-9394 alleges that the School Committee failed to bargain in good faith by not following certain procedures before issuing dismissal notices to provisional teachers. Consequently, I have not considered whether the School Committee unlawfully changed any procedures for discipline below the level of dismissal.

1 failing to provide information to the Union in the future that is relevant and reasonably
2 necessary to the Union's role as the exclusive bargaining representative.

3 ORDER

4 WHEREFORE, based on the foregoing, I hereby order the Boston School
5 Committee to:

6
7 1. Cease and desist from:

- 8
9 a) Failing to provide the Union with information that is relevant and reasonably
10 necessary to the Union's role as the exclusive representative.
11
12 b) Unilaterally changing the parties' past practice by failing to provide
13 provisional teachers with a disciplinary dismissal procedure that includes a
14 hearing before a hearing officer and a recommended decision.
15
16 c) Removing the language describing the disciplinary dismissal procedure for
17 provisional teachers from the Superintendent's Circular HRS-PP10.
18
19 d) In any like or related manner, interfering with, restraining, or coercing its
20 employees in the exercise their rights guaranteed under Section 2 of the
21 Law.
22

23 2. Take the following affirmative action that is necessary to effectuate the purposes
24 of the Law:

- 25
26 a) Restore the practice of providing provisional teachers with a disciplinary
27 dismissal procedure that includes a hearing before a hearing officer and a
28 recommended decision.
29
30 b) Restore the language in the Superintendent's Circular HRS-PP10 that
31 provides provisional teachers with a disciplinary dismissal procedure.
32
33 e) Bargain to resolution or impasse over the decisions to remove the language
34 from the Superintendent's Circular HRS-PP10 that provided provisional
35 teachers with a disciplinary dismissal procedure and to eliminate the
36 practice of providing provisional teachers with a disciplinary dismissal
37 procedure that include a hearing before a hearing officer and a
38 recommended decision and the impacts of those decisions on bargaining
39 unit members' terms and conditions of employment.
40
41 c) Immediately post signed copies of the attached Notice to Employees in all
42 conspicuous places where members of the Union's bargaining unit usually
43 congregate, or where notices are usually posted, including electronically, if

1 the BPS customarily communicates with these unit members via intranet or
2 email and display for a period of thirty (30) days thereafter, signed copies
3 of the attached Notice to Employees.
4

- 5 d) Notify the DLR in writing of the steps taken to comply with this decision
6 within ten (10) days of receipt of this decision.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their rights, pursuant to M.G.L. c. 150E, Section 11, and 456 CMR 13.19, to request a review of this decision by the CERB 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 the ten days, this decision shall become final and binding on the parties.



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A hearing officer of the Massachusetts Department of Labor Relations has held that the Boston School Committee (School Committee) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of M.G.L. c.150E by changing disciplinary dismissal procedures for provisional teachers, removing certain disciplinary dismissal procedures from the Superintendent's Circular HRS-PP10 for School Year 2022-2023, and failing to provide certain requested information to the Boston Teachers Union (BTU) that was relevant and reasonably necessary for the BTU to fulfill its role as the exclusive collective bargaining representative.

Section 2 of M.G.L. c.150E gives public employees the following rights: to engage in self-organization, to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purposes of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT:

- Fail to provide the BTU with information that is relevant and reasonably necessary to the BTU's role as the exclusive representative.
- Unilaterally change the parties' past practice by failing to provide provisional teachers with a disciplinary dismissal procedure that includes a hearing before a hearing officer and a recommended decision.
- Remove the language in the Superintendent's Circular HRS-PP10 that provided provisional teachers with a disciplinary dismissal procedure.
- In any like or similar manner, interfere with, restrain, or coerce any other employee in the exercise of their Section 2 rights.

WE WILL:

- Restore the practice of providing provisional teachers with a disciplinary dismissal procedure that includes a hearing before a hearing officer and a recommended decision.
- Restore the language in the Superintendent's Circular HRS-PP10 that provided provisional teachers with a disciplinary dismissal procedure.
- Bargain to resolution or impasse over the decisions to remove the language from the Superintendent's Circular HRS-PP10 that provided provisional teachers with a disciplinary dismissal procedure and to eliminate the practice of providing provisional teachers with a disciplinary dismissal procedure that included a hearing before a hearing officer and a recommended decision and the impacts of those decisions on bargaining unit members' terms and conditions of employment.

Boston School Committee

Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, Lafayette City Center, 2 Avenue de Lafayette, Boston, MA 02111 (Telephone: (617) 626-7132).