

New Jersey Commissioner of Education

Final Decision

Yolanda Greene,

Petitioner,

v.

Board of Education of the Burch Charter School
of Excellence, Essex County,

Respondent.

Synopsis

Pro se petitioner, formerly employed by the respondent Board as a non-tenured vice principal, appealed the non-renewal of her employment and sought reinstatement to the position of vice principal. Petitioner contended that the Board's handling of a grievance filed against her and her subsequent non-renewal were improper. The Board asserted that petitioner's non-renewal was not arbitrary, discriminatory, retaliatory, or capricious, but was based, *inter alia*, on a pattern of parental concerns, staff issues, and petitioner's failure to perform a required racial sensitivity training.

The ALJ found, *inter alia*, that: petitioner was employed by the Board as a vice principal from January 2016 to June 30, 2018; the two pivotal issues in this case concern the propriety of the Board's decisions to compel petitioner to take a cultural sensitivity class as a result of a grievance filed against her and the propriety of the Board's determination not to renew petitioner's employment for the 2018-2019 school year; as to the grievance, the Board's failure to issue a *Rice* notice to petitioner regarding the meeting in which petitioner's appeal of the requirement that she take a sensitivity training class was discussed voids the Board's decision to compel her to take the class; as to the Board's non-renewal of petitioner's employment, a board of education has broad discretionary authority to decide whether non-tenured staff are renewed; here, the petitioner failed to demonstrate that the Board's refusal to renew her contract was arbitrary, capricious or discriminatory. Accordingly, the ALJ voided the Board's determination as to the grievance filed against petitioner, but affirmed the Board's action in non-renewing petitioner's employment for the 2018-2019 school year.

Upon comprehensive review, the Commissioner concurred with the findings and determination of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner noted that a board of education has virtually unlimited discretion in renewing non-tenured staff members absent constitutional constraints or legislatively-conferred rights. Where a non-tenured staff member challenges a district board's decision to terminate her employment on the grounds that the reasons provided by the board are not supported by the facts, she is entitled to litigate that question only if the facts she alleges, if true, would constitute a violation of constitutional or legislatively-conferred rights. Petitioner herein has not asserted or proven that the Board violated any constitutional or legislatively-conferred rights. Accordingly, the petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

February 4, 2020

New Jersey Commissioner of Education
Final Decision

Yolanda Greene,

Petitioner,

v.

Board of Trustees of the Burch Charter
School of Excellence, Essex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the parties pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed. Neither party filed a reply to the other party's exceptions.

These consolidated matters concern allegations by petitioner, a non-tenured vice principal, that the Board's handling of a grievance filed against her and her subsequent non-renewal were improper. After multiple days of hearings, the Administrative Law Judge (ALJ) found that the Board's decision to require petitioner to attend sensitivity training as a result of the grievance was void, in part because the Board failed to issue a *Rice* notice to petitioner for the meeting during which petitioner's appeal of the Board's decision to require sensitivity training was discussed. The ALJ further found that petitioner failed to demonstrate that the Board's non-renewal was arbitrary, capricious, or unreasonable and thus affirmed the non-renewal.

In her exceptions, petitioner argues that the Board should not have considered the complaints made against her by a parent and by two teachers during their non-renewal exit

interviews because she did not have an opportunity to address those complaints before the Board voted. She contends that because the grievance process was flawed, the Board's consideration of her failure to attend sensitivity training as part of the non-renewal decision was also flawed. Finally, petitioner argues that her non-renewal is contrary to public policy, because the Board failed to adhere to the grievance policy and did not honor her requests for public discussion of her employment matters, which she alleges violated the Open Public Meetings Act (OPMA).

The Board's exceptions largely reiterate its submissions below, arguing that it complied with the grievance policy. The Board further contends that its determination to require petitioner to undergo racial sensitivity training was made at the November 14, 2017 meeting, for which petitioner received a *Rice* notice. According to the Board, it was not obligated to have another discussion or board meeting to address petitioner's appeal of the decision.

Upon a comprehensive review of the record, the Commissioner concurs with the ALJ's findings and determinations in this matter. Regarding the grievance, an employee is entitled to advance notice when a board of education intends to discuss in closed session a personnel matter that could adversely affect the employee. *Rice v. Union County Reg'l High Sch. Bd. of Educ.*, 155 N.J. Super. 64, 73 (App. Div. 1977). Regardless of whether the grievance policy requires the Board to hold another meeting to address an appeal, here the Board did discuss the appeal in closed session and then took action on the appeal by affirming the decision, at a meeting for which they did not issue a *Rice* notice to petitioner. The requirement to undergo sensitivity training can be construed as an adverse employment action – indeed, the Board's actions in sending *Rice* notices to petitioner for the prior meetings discussing the matter suggest that it believed the same – and thus the Board's failure to issue a *Rice* notice for a meeting in

which that requirement was discussed in closed session and then affirmed renders its action void.¹

With respect to the Board's non-renewal decision, a board of education has virtually unlimited discretion in hiring or renewing non-tenured staff members absent constitutional constraints or legislatively-conferred rights. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* 447, 456 (App. Div. 1982). Here, while petitioner expressed her belief that the non-renewal was discriminatory because the grievant is Caucasian and petitioner is African American, she presented no evidence to support that theory. The two Board members who testified regarding the non-renewal denied any discriminatory motive and provided other reasons for the non-renewal that were not based in any way on petitioner's race.

Moreover, while the Board's requirement that petitioner undergo sensitivity training is void, and thus petitioner's failure to do so should be removed from the Board's consideration regarding non-renewal, the complaints against petitioner by a parent and two teachers provided the Board with additional reasons for the non-renewal decision, as testified to by the Board members. Although petitioner disputes the substance of those complaints, when a non-tenured staff member challenges a board's decision to terminate her employment on the grounds that the reasons provided by the board are not supported by the facts, she is entitled to litigate that question only if the facts she alleges, if true, would constitute a violation of constitutional or legislatively-conferred rights. *Guerriero v. Bd. of Ed. of the Borough of Glen Rock*, decided by the State Board of Education February 5, 1986, *aff'd* Docket #A-3316-85T6 (App. Div. 1986). Petitioner has not asserted or proven that the Board violated any constitutional or legislatively-conferred right by considering these complaints.

¹ Because the failure to send a *Rice* notice renders the Board's decision void, the Commissioner need not reach the other issues regarding the grievance raised by petitioner.

Furthermore, while petitioner is dissatisfied with the nature of the public discussion during the board meetings in which her non-renewal was at issue, the Board has fulfilled its OPMA obligations by providing her with the required *Rice* notices for these meetings and giving her the opportunity to be heard in public. The New Jersey Supreme Court has recognized that the practice of discussing personnel matters during subcommittee meetings in advance of taking public action is common practice and that the OPMA does not contain any requirement about the robustness of the discussion that must take place on a topic. *Kean Fed'n of Teachers v. Morell*, 233 N.J. 566, 587-88 (2018). For these reasons, petitioner has not established a violation of a constitutional or legislatively-conferred right and her non-renewal was therefore within the Board's discretion.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board's decision requiring petitioner to undergo sensitivity training is void. The Board's decision not to renew petitioner's contract is affirmed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: February 4, 2020
Date of Mailing: February 4, 2020

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMMENDED

INITIAL DECISION

OAL DKT. NO. EDU 05122-18

AGENCY DKT. NO. 68-3/18

YOLANDA GREENE,

Petitioner,

v.

**THE BURCH CHARTER SCHOOL OF
EXCELLENCE BOARD OF TRUSTEES, ESSEX
COUNTY,**

Respondent.

OAL DKT. NO. EDU 10040-18

AGENCY DKT. NO. 146-6/18

YOLANDA GREENE,

Petitioner,

v.

**THE BURCH CHARTER SCHOOL OF
EXCELLENCE BOARD OF TRUSTEES, ESSEX
COUNTY,**

Respondent.

Yolanda Greene, petitioner, pro se

Elizabeth Butler, Esq., for respondent

Record Closed: October 8, 2019

Decided: November 26, 2019

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Yolanda Greene contests the non-renewal of her employment as a vice-principal by the Burch Charter School at the conclusion of the 2018 school year. She also contests the manner in which her former employer handled a grievance which was filed against her by a former teacher at the school.

On or about March 19, 2018, and June 7, 2018, respectively, Yolanda Greene filed two petitions with the Commissioner of Education.

The first petition alleges that respondent failed to provide her with adequate procedural due process in a grievance that was filed against her by a former teacher. The second petitioner alleges respondent acted in an arbitrary, capricious and discriminatory manner against her in making a determination that she should not be offered a contract for renewal for continued service as a vice principal for the 2018–19 school year.

On or about July 6, 2018, respondent filed Answers to the petitions. The Department of Education transmitted the matter to the Office of Administrative Law for a determination as a contested case. Hearings were conducted on September 18, 2018, October 29, 2018, November 19, 2018, December 4, 2018, February 22, 2019, March 5, 2019, and oral argument was conducted on October 8, 2019.

Based upon a review of the documentary and testimonial evidence presented, and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below:

Petitioner is an African American woman with a bachelor's degree in political science and communications from Rutgers University. She has a master's degree from Nova Southeastern University in curriculum, instruction, and technology. Her prior experience in the field of education includes positions as a classroom teacher, math coach, education supervisor, district administrator, interim director of professional development, and vice principal.

Respondent Burch Charter School is an alternative to public school for select students whose parents want to give them an opportunity to achieve their dreams and goals. The student body, administration, and faculty are diverse, consisting primarily of African American and Hispanic ethnicity.

Lindsay Fink is a Caucasian physical education teacher who was employed by the respondent from 2012-2018, until she left for another position in another school district. On May 17, 2018, Fink was teaching a class when she heard one of her students say something to the effect of "these white teachers." The comments were directed to Fink after she questioned the student who made the remarks as to why the student was not wearing a gym uniform, which is required.

Disturbed by what she heard, in an effort to secure advice as to how to handle the situation, Fink immediately contacted petitioner to determine the appropriate course of action. Petitioner, who was busy at the time handling another matter, told Fink that she could write the student up if she wanted. In the same conversation, petitioner responded to Fink, "you are white, aren't you?" and told Fink she did not believe the student's comment was racially motivated.

Taken aback by what she perceived to be a muted response to what she had just experienced, Ms. Fink testified that she contacted the principal of the school, and the person to whom Ms. Greene reported to, Theodore Boler. One week after the incident with the student, with no satisfaction that her concerns were being addressed, Ms. Fink filed a grievance against petitioner.

The grievance procedure is memorialized in the Burch Charter School Handbook. At the time of the incident, the 2014 Employee Handbook was in effect, which included a five-step procedure to be used to address complaints and grievances.

Step 1 of the process calls for an informal mediation between the aggrieved party and the accused, overseen by a designated school compliance official, in this case, Patricia Holness, the school social worker and compliance officer.

After meeting with Ms. Fink and the petitioner, Ms. Holness concluded that the matter could not be resolved informally. She then commenced the next step in the process, which was to conduct a formal mediation. The Handbook calls for the entire procedure to be completed within sixty days, unless the person who filed the complaint seeks a written extension. Due to the fact that the matter and subsequent grievance were brought very close to the end of the school year, Ms. Holness concluded the formal mediation would occur in September. (Ms. Fink, who was a ten-month employee, did not want to deal with the matter over the summer when she was not paid to be in school.)

Petitioner contends her due process rights were violated, since the formal mediation was not completed within sixty days of the filing of the grievance, in accordance with the timelines set forth in the Handbook. She did not express this objection at the time both mediations were being conducted.

After school re-opened in September 2017, the Board, at its September 11 meeting, appointed attorney Rashida Hassan to handle the formal mediation.

Ms. Hassan was on a pre-approved list for selection as needed. Ms. Hassan is an experienced attorney, with expertise in the area of mediation.

Ms. Hassan testified that she met with the parties separately, but never met with them together. Ms. Fink's position was that before reaching the formal stage of mediation, with an apology or a concession from petitioner that her response was abrupt, Ms. Fink would not have pursued it any further. Ms. Hassan's assessment of Ms. Green was that she was rigid and unwilling to compromise in order to resolve the matter.

Petitioner steadfastly maintained that she did nothing wrong and would do what she did again and saw no harm in her comments to Ms. Fink.

Ms. Hassan then concluded the mediation without a resolution. However, within the report she filed with the Board, she recommended that petitioner consider a cultural-sensitivity training program and acknowledge to Ms. Fink that her comments were inappropriate. For reasons unknown, a copy of the report was not provided to petitioner at the time it was written.

On October 4, 2017, Holness informed petitioner of the mediator's recommendation and told the petitioner it would be discussed at the Board's next meeting on October 16, 2017. The next day, October 5, Mr. Boler sent petitioner the required Rice notice to inform petitioner that something related to her employment would be discussed at the next Board meeting. The discussion of the report was tabled at the October 16 meeting because petitioner had not been provided with a copy of the report. She received the report shortly thereafter.

On November 14, 2017, the Board's personnel services committee reviewed the mediator's report and recommended that it be adopted by the Board as a whole. Later that evening, the entire board met, and after giving petitioner an opportunity to speak, the Board adopted the mediator's report and recommendation.

On November 27, 2017, Mr. Boler informed petitioner in writing that the Board adopted the mediator's report and recommendation, and that, within thirty days she needed to take a racial-sensitivity class and acknowledge that the incident could have been handled differently. That same day, petitioner exercised her right of appeal to the Board requesting consideration.

At the next board meeting on December 12, 2017, the Board considered the appeal and affirmed its decision. (P-11.)

Heather Martindale is a founding member of the Burch Charter School who got involved as a member of the Board because in her own words "she is passionate about kids." She has been a Board member since the inception of the school over fifteen years ago, and serves on the personnel committee together with Mr. Boler, her sister Paulita Martindale, and Carolyn Hee. The personnel committee is responsible for hiring, significant personnel changes, review, renewals, and salaries.

Ms. Martindale's justification for voting to accept the mediation report and later to not to renew petitioner's contract was based on several factors, including her concern that one parent, who at one time had three children in the school, left the school completely due to what the parent felt was indifference by Ms. Greene to a matter involving her child and another student. According to Ms. Martindale, this was a "big deal" to the Board, since the school has a reputation for listening to parents. Ms. Martindale also considered information she received from another teacher, Ms. Dickerson, who left the school due to unfavorable interactions with Ms. Greene. But this information was never shared with Ms. Greene prior to the vote on non-renewal.

A large part of Ms. Martindale's vote to not renew Ms. Greene's contract was based on her disappointment that Ms. Greene never took the recommended sensitivity class. In February 2018, Ms. Martindale asked Mr. Boler if Ms. Greene had completed the class. And this view of the situation was triggered by Ms. Martindale's belief that the way Ms. Greene handled the situation with Ms. Fink showed a lack of understanding of the feelings of the person she was speaking to. She believed Ms. Greene's behavior

was intolerant in relation to that particular situation with Ms. Fink; that it was inappropriate and unprofessional as a person. On March 14, 2018, Mr. Boler reminded petitioner of her obligation to take the sensitivity class.

Prior to making the decision not to renew, Ms. Martindale communicated with Mr. Boler seeking a current review of her performance which was supposed to occur twice a year. Upon reviewing the document, Ms. Martindale expressed her opinion to Mr. Boler that it was incomplete, inappropriate, and unprofessional. The evaluation only consisted of a few bullet points and it did not reflect parent or staff complaints about Ms. Greene. Mr. Boler apparently did not document complaints about Ms. Greene, but they were known to the members of the Board, including petitioner's response to the incident with Ms. Fink.

Another Board member, Beverly Canady is a site director and mental health therapist at a school in a community nearby Burch. She is also the co-director of a grief center. Ms. Canady is a licensed professional counselor and has a Bachelor's Degree in sociology from Rutgers and a master's in counseling from Wichita State University, and a post-master's degree from Caldwell College. She is the Board secretary at Burch and serves on the curriculum committee.

Ms. Canady corroborated the Board's thought process discussed by Ms. Martindale about parent voices not being heard, and the manner in which petitioner spoke to people. She expressed concern about petitioner's response to Ms. Fink as not being consistent with the climate the board believes is important for the school to follow. The culture at Burch, according to Canady, is supposed to be one of teachers and administrators working together. She believes petitioner's comments to Ms. Fink were intolerant, and not consistent with the culture and climate expected of staff at Burch. Ms. Canady was disappointed that a family with three children in the school left due in part to their interactions with Ms. Greene.

Ms. Canady also confirmed as Board secretary that when it came time for Ms. Greene to speak at the public meeting on May 14 concerning her employment status, the minutes reflect she remained silent and waived her right to speak.

The final witness was petitioner Yolanda Greene. She too was a credible witness, but she had a different perspective on the events leading to her non-renewal starting with the incident with Ms. Fink. From her perspective, she called the incident a “teachable moment.” Busy with another matter at the time of Ms. Fink’s call, she did not deem the matter serious enough to stop what she was doing to meet with Ms. Fink. She defended herself by explaining her analytical approach to the situation, that it was an opportunity in a school setting to learn more from the student about why they said what they said to Ms. Fink.

A significant portion of Ms. Greene’s testimony focused on her concerns and objections to the manner in which the grievance investigation and mediation was handled. But when it came time to address her concerns about the non-renewal process, she indicated that she decided to remain silent at the May 14 meeting where her employment was being discussed, because of the way the Board handled the mediation process. Essentially, she admitted she remained silent and waived her right to speak in public and waived her right to a Donaldson hearing after she was notified that she would not be renewed. When asked why she never took a cultural-sensitivity class, she first offered that she felt that Ms. Fink should also have been told to take a class. She then indicated that even after Mr. Boler reminded her the Board expected her to take a class by the end of March 2018, she had a hard time finding a class on this subject. While most of Ms. Greene’s testimony was credible, her excuse for not locating a class on cultural sensitivity over a period of five months does not seem credible. It will never be known if she had done so if a new contract would have been offered.

LEGAL ANALYSIS AND CONCLUSION

In this matter, petitioner was employed by the Burch Charter School from January 2016 to June 30, 2018. The pivotal issues concern the propriety of the Board’s decisions

to compel petitioner to take a cultural-sensitivity class based on the recommendation of a mediator and the propriety of the board's determination not to renew petitioner's employment for the 2018–19 school year.

Pursuant to N.J.S.A. 18A:6-9, the Commissioner of the Department of Education has jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws. N.J.A.C. 6A:3-1.1 to 1.17. sets forth the rules of procedure for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9. N.J.A.C. 6A:3-1.1(a).

The Petition requests that the undersigned set aside the Board's adoption of a mediation recommendation to take a cultural-sensitivity class, and to determine that the Board acted in an arbitrary capricious and discriminatory manner in not renewing her contract to serve as a vice principal at the school for the next calendar school year.

“School Law vests the management of the public schools in each district in the local boards of education, and unless they violate the law or act in bad faith, the exercise of their discretion in the performance of the duties imposed upon them is not subject to interference or reversal.”

From a procedural standpoint, the Board complied with all the statutory requirements governing the non-renewal of a teacher. Petitioner contends that the mediation process to which she was a party was faulty in that it was not completed within sixty days, and the mediator took sides when she made a recommendation in the conclusion of her report that petitioner should undergo cultural-sensitivity training.

After the informal mediation failed to produce a resolution towards the end of the 2017–18 school year, school officials determined that the formal mediation could not be completed prior to the conclusion of the school year. The Personnel Handbook upon which petitioner relies says the procedure must be completed in sixty days, unless the complainant agrees in writing to extend the time. While it was not done in writing, the

Board substantially complied with this provision in that when Ms. Fink was consulted, she did not want to be called in over the summer, as she was only a ten-month employee.

As to petitioner's complaint about process, the Board properly sent a Rice notice to petitioner on October 3, 2017, that something related to her employment was going to be discussed at the next Board meeting. Rice notices do not have to specify what will be discussed, just the fact that something related to an individual's employment will be discussed. Petitioner requested that the matter be discussed in public. When it was learned that petitioner had not received a copy of the mediator's report, the conversation was tabled until the next month's meeting. Petitioner admits in her own summation that she knew the matter was tabled; that two weeks later she received a copy of the report; and together with another Rice notice that something related to her employment may be discussed at the Board's next meeting.

At the November 14 meeting, the Board did in fact discuss and adopt the mediator's report. There was some discussion during the hearing as to whether or not it was appropriate for the mediator to make a recommendation, a fact to which petitioner strongly objected. Petitioner requested and was given an opportunity to speak.

But the fact that it was a recommendation, and not a mandate, does not mean that the mediator exceeded the scope of her authority. Her report to the Board was just that, a recommendation after she determined that Ms. Fink was somewhat flexible in her position, and petitioner was not, and saw nothing wrong with the undisputed remarks that were made to Ms. Fink. Instead of entering into a dialogue with the Board and her immediate supervisor Mr. Boler about the recommendation, petitioner filed an appeal for the Board to reconsider.

At its December 12, 2017, meeting, the Board affirmed its adoption of the mediator's recommendation and report. Petitioner takes issue with this action as she did not receive another Rice notice concerning discussion of the appeal. She indicated that she was present for the first part of the meeting but had no idea her appeal was on

the agenda or she would have stayed for the entire meeting and possibly spoken in public again. By the Board's failure to list the appeal as an agenda item, failure to send her a third Rice notice, and voting to affirm its earlier decision without a public discussion, petitioner contends that by affirming its prior decision and rejecting petitioner's appeal, the board was in violation of the open Public Meetings Act, N.J.S.A. 10:4-6 to -21. See also Kean Fed'n of Teachers v. Morrell, 233 N.J. 566 (2018); Caldwell v. Lambrou, 161 N.J. Super. 284 (App. Div. 1978).

During the October 8 argument, school counsel was asked whether the mediator exceeded her authority by including a recommendation in her report which was ultimately adopted by the board. Counsel indicated that this was acceptable under the revised manual which was put in place in October 2018. But as petitioner correctly pointed out, the manual under which the grievance process was commenced was in place effective 2014. She objects to the combination of an adopted mediation recommendation, as well as the fact that the board met a third time to discuss something related to her employment status, without another Rice notice and without it being included on the agenda for the meeting.

As to petitioner's complaint that she did not receive procedural due process in connection with the grievance mediation process, I agree in part as to the contention that though not intentionally, to some extent the mediator exceeded her authority by making a recommendation as to only one of the parties, and the resulting adoption of the recommendation as to only one of the parties, and rejection of the appeal without a Rice notice and agenda item was flawed. This is further evident by virtue of the fact that the grievance procedure also required the compliance officer to submit a report to the board if the formal mediation failed to achieve a resolution, which was not submitted.

Therefore, I **CONCLUDE** that while the informal mediation process and part of the formal mediation process followed the necessary protocol, the incorporation of a recommendation by the mediator as to only one of the one of the parties (in this case the petitioner), the resulting adoption, and the discussion of petitioner's appeal at the December 2017 meeting without a new Rice notice and the Board's failure to include

the appeal as an agenda item were flawed. To the extent that a Board directive was issued to petitioner arising from the mediation, as well as the fact that Step 5 in the grievance process was not followed by failing to issue a final report from the compliance officer, this aspect of the relief sought by petitioner is **GRANTED**, and I **CONCLUDE** the action of the Board in adopting and implementing the mediator's recommendation which essentially determined petitioner was at fault is deemed **VOID**.

Turning to the issue of non-renewal, petitioner contends in this matter that when respondent determined in May 2018 that her employment would not be extended, the Board's actions were arbitrary, capricious, unreasonable and discriminatory. The caselaw in this area is well settled.

Boards have broad discretionary authority to decide whether a teacher, or in this case a vice principal should or should not be re-engaged. Donaldson v. N. Wildwood Bd. of Educ., 65 N.J. 236 (1974). No obligation exists on the part of board to renew non-tenured teachers. Wyckoff Twp. Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497 (App. Div. 1979).

There are some limits and procedural safeguards afforded to school employees when their employment status is due to be considered. A board of education is required to send a "Rice notice" any time it has placed on its agenda any matters involving the employment, evaluation appointment, evaluation of performance or discipline. N.J.S.A. 10:4-12(b)(8). This provides the affected employee with an opportunity to decide whether they desire a public discussion and prepare and present an appropriate request in writing. See Rice v. Union Cty. Reg' High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div. 1977).

On May 8, 2018, the Board issued another Rice notice to petitioner indicating that her employment status would be discussed at its meeting on May 14, 2018. Ms. Martindale indicated in her testimony that may was traditionally the time when the Board would discuss the contract status of several employees whose contracts were

under consideration for renewal or non-renewal. As it turned out, petitioner was one of several employees whose status was being discussed that night.

As part of his duties as petitioner's supervisor and as a member of the personnel committee, Mr. Boler supported the continued employment of petitioner, and to that end, although some of his reviews were incomplete, he had written favorable comments about her performance. While petitioner contends, she should have been evaluated twice a year, a board's failure to comply with statutory evaluation procedures is not fatal to a decision to terminate or not renew a contract. See El-Hewie v. Bd. of Educ. of the Bergen Cty. Vocational Sch. Dist., No. A-6310-07T3 (App. Div. Dec. 24, 2009). Both Ms. Martindale and Ms. Canady indicated that while Mr. Boler's position was considered, it was but one factor in the Board's ultimate decision not to renew petitioner's contract.

Board members were concerned about petitioner's interactions with parents and co-workers, in addition to the situation that occurred between Ms. Greene and Ms. Fink. Staff members on exit interviews expressed their dissatisfaction with Ms. Greene. It was stated by at least one other staff member that "petitioner did not know how to talk to people and did not support teachers." And the interaction between petitioner and Ms. Fink that led to the grievance which petitioner did not seem to see the offensive nature of her comments was also considered by the Board in deciding not to renew her contract.

Although petitioner acknowledged receipt of the May 8 Rice Notice, she remained silent at the meeting during the public portion, thus waiving her right to challenge the Board's decision not to renew.

Following the meeting, the next day, May 15, 2018, Mr. Boler notified petitioner in writing that the Board did not renew her contract for the next school year. As was her right, petitioner asked for and received a statement of reasons behind the decision not to renew. But for reasons unknown, despite her emphasis in this appeal on procedure, petitioner did not follow up with a request for a Donaldson hearing which would have

afforded her the opportunity to have a formal dialogue with the Board and perhaps convince the Board that it should reconsider its decision.

There is simply no evidence that the Board acted in a discriminatory or arbitrary and capricious manner in deciding not to renew petitioner for the next school year. Petitioner is an African American female with an impressive educational background. The Board for the most part, consists of African American members, and both Martindale and Canady are African American. Mr. Boler is African American. And the student body for the most part and their respective families are African American or other minority groups. So it is hard to understand petitioner's argument that she was the victim of discrimination when all of the decision makers were of the same ethnicity as petitioner.

Petitioner also complained that the board failed to give proper consideration to the favorable reviews she received from Mr. Boler. "In determining whether to renew a teacher's contract, a local board has the right to base its decision not to re-employ on matters outside of a teacher's evaluations." Dore v. Bedminster Twp. Bd. of Educ., 185 N.J. Super. 447 (App. Div. 1982). A board of education's decision to non-renew the contract of a non-tenured employee should not be disturbed unless it is arbitrary or capricious. See N.J.S.A. 18A:27-4.1.

In this case, petitioner received a Rice notice in advance of the May discussion concerning her employment status. She remained silent during the public portion of the meeting. And after asking for and receiving a written statement of reasons why her contract was not renewed, she waived her right to request a Donaldson hearing.

While the evidence supports petitioner's contention that the Board did not follow proper protocol in part by adopting a recommendation from the mediator that exceeded the scope of the mediator's authority, there is no evidence that the Board of Education violated any law as to the more critical contract renewal process and I therefore **CONCLUDE** that petitioner has failed to demonstrate that the Board's refusal to renew her contract was arbitrary, capricious or discriminatory.

ORDER

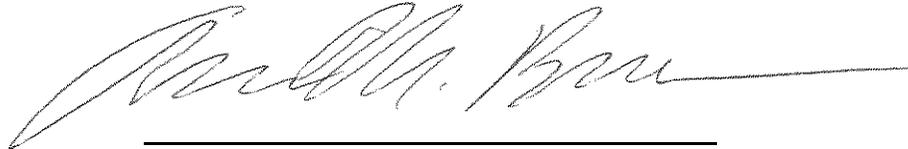
It is **ORDERED** that the Burch Charter School Board's determination as to the grievance filed against petitioner is deemed void, and it is further **ORDERED** that the decision by the Burch Charter School Board of Education, the result of which was to not renew petitioner's contract for the 2018–2019 school year, is **AFFIRMED**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This order on application for emergency relief may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If (title of agency head) does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 20, 2019
DATE



ANDREW M. BARON, ALJ

Date Received at Agency:

November 20, 2019

Date Mailed to Parties:
mm

APPENDIX

Witnesses

For Petitioner:
Yolanda Greene

For Respondent:
Heather Martindale
Patricia Holness
Theodore Boler
Beverley Canady
Rashida Hassan

Exhibits

For Petitioner:

- P-1 Grievance Policy Timeline
- P-2 Burch Charter School Employee Handbook, dated September 9, 2014. The revised handbook dated October 5, 2017 was not marked but is included.
- P-3 Rice Notice, dated May 8, 2018
- P-4 Rice Notice, dated May 15, 2018
- P-5 Mediator Report
- P-6 Evaluation, dated 2015/2016
- P-7 Evaluation, dated 2016/2017
- P-8 Evaluation, dated 2017/2018
- P-9 Meeting Minutes, dated August 14, 2017
- P-10 Meeting Minutes, dated May 14, 2018
- P-11 Meeting Minutes, dated December 12, 2017
- P-12 Email
- P-13 Rice Notice/Mediation Report, dated October 3, 2018
- P-14 Request for Public Meeting, dated October 13, 2018
- P-15 Board Agenda, dated October 10/16/18

As reflected in the transcripts, some items testified to by petitioner were given consideration but not formally marked into evidence and/or introduced by both sides. Certain exhibits were either marked out of order, nor marked. See email exchange of April 12, 2019.

For Respondent:

- R-1 Meeting minutes, dated May 7, 2018
- R-2 Rice Notice, dated May 8, 2018
- R-3 Omit
- R-4 Omit
- R-5 Letter, dated October 3, 2017
- R-6 Letter, dated October 19, 2017
- R-7 Letter, dated December 27, 2017
- R-8 Mediator's Report, dated October 4, 2017
- R-9 Email, dated September 25, 2017
- R-10 Holness/Greene letter, Dated December 19, 2017
- R-11 Greene to Cole, dated May 5, 2017
- R-12 Rutgers Principal Evaluations
- R-13 Meeting Minutes, dated October 16, 2017
- R-14 Meeting Minutes, dated November 14, 2017
- R-15 Meeting Minutes, dated March 13, 2018
- R-16 Grievance

Court: Court 1-Contract

Respondent's exhibits were marked at D-1 to D-16 but should have been marked as R-1 to R-16. Certain exhibits were marked by both sides and some were marked out of order. See email exchange of April 12, 2019.