

NO. A09-1715

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State of Minnesota  
In Court of Appeals

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Corey Christopher,

*Relator,*

v.

Windom Area School Board,

*Respondent.*

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**BRIEF OF RESPONDENT**

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## STATEMENT OF LEGAL ISSUES

1. Whether the procedures employed by Independent School District No. 177, Windom, in non-renewing Relator as head boys' basketball coach conformed to the requirements of Minn. Stat. § 122A.33?

**Agency held in the affirmative.**

Apposite Cases:

*In the Matter of Hahn*, 386 N.W.2d 789 (Minn. App. 1986).

Apposite Statutes:

Minn. Stat. § 122A.33.

Minn. Stat. § 645.16.

Minn. Stat. § 645.17.

2. Whether Relator had a protected property interest in continued employment as a head coach?

**Agency implicitly found in the negative.**

Apposite Cases:

*Schocker v. State Depart. of Human Rights*, 477 N.W.2d 767 (Minn. App. 1992).

*Phillips v. State*, 725 N.W.2d 778, 783 (Minn. App. 2007).

*Gibson v. Caruthersville School District No. 8*, 336 F.3d 768, 772 (8<sup>th</sup> Cir. 2003).

Apposite Statutes:

Minn. Stat. § 122A.33.

3. If Relator did have a protected property interest in continued employment as a head coach, did the School Board meeting satisfy procedural due process requirements?

**Agency implicitly held in the affirmative.**

Apposite Cases:

*Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

*Mathews v. Eldridge*, 424 U.S. 319 (1976).

4. Whether this appeal is moot because Relator resigned from “all duties at Windom Schools” effective September 4, 2009?

**Agency did not have the occasion to address this issue.**

*Apposite Cases:*

*Pechovnik v. Pechovnik*, 765 N.W.2d 94 (Minn. App. 2009).

## STATEMENT OF THE CASE

This matter involves a certiorari appeal of a decision of Independent School District No. 177, Windom, Minnesota (“District”) to uphold its non-renewal of Corey Christopher (“Relator”) as head boys’ basketball coach at a special School Board meeting conducted on August 4, 2009 (the “School Board Meeting”). School Board Chair Barb Jones presided over this proceeding. Relator appealed the Board’s decision based on the assertion that the School Board Meeting violated Minnesota Statutes Section 122A.33, violated his procedural due process rights, and constituted arbitrary and capricious action.

## STATEMENT OF THE FACTS

On May 23, 2001 Relator was first employed by the District as a teacher, as the District’s Activities Director, and as the Assistant Boys’ Basketball Coach. A09-1715-1 p. 1; A09-1715-2 at p. 1.<sup>1</sup> Relator was then promoted to the Head Boys’ Basketball Coach for the 2002-2003 school year. A09-1715-4 p. 1. Relator held all three positions until March 23, 2009, when Relator was informed that his Activities Director contract with the District would be non-renewed. A09-1715-29 p. 1. This action meant that Relator would be returning full-time to the classroom. Relator does not challenge the non-renewal of the Activities Director contract.

On May 11, 2009, the School Board voted to non-renew Relator’s contract as Head Boys’ Basketball Coach. A09-1715-33. On May 12, 2009, the District sent Relator a letter informing him of the Board’s action. A09-1715-34 p. 1. Relator responded to the

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<sup>1</sup> Unless otherwise noted, this refers to a document contained in the administrative record, as labeled in the listing of the administrative record provided to the Court.

non-renewal of his coaching contract, through counsel, in a letter dated May 20, 2009. A09-1715-40 Ex. C. In this letter, Relator requested written reasons for his non-renewal, as well as a formal hearing before an independent hearing officer to evaluate the sufficiency of the reasons for his non-renewal. *Id.* Relator received the reasons for his non-renewal in a letter dated May 27, 2009. A09-1715-40 Ex. D. The stated reasons were as follows:

- (1) Lack of clear, organized, and linear boys' basketball program for grades 7-12.
- (2) Failure to communicate in a clear and effective manner in his role as head coach.
- (3) Mr. Christopher will be assigned grades 9 and 10 English for the 2009-10 school year. He will be returning to the classroom as a full-time teacher for the first time in seven years. Mr. Hanson and I both believe it is with utmost importance that Mr. Christopher gives his full efforts to the classroom above coaching. He will be the only teacher for these two grade levels. With the current stated mandated testing in these grades and the fact that all students will pass through his classroom, we feel it is vital that all of Mr. Christopher's efforts are focused on the primary purpose of teaching English.

*Id.*

His request for a formal hearing before an independent hearing officer was denied in a letter from District's legal counsel, dated May 28, 2009. A09-1715-40 Ex. E.

On June 1, the District sent Relator a letter informing him that he had a right to respond to the reasons he had been given at a School Board meeting, which may be open or closed at his election. A09-1715-40 Ex. F. In a letter dated June 4, 2009, counsel for Relator requested that the School Board meeting be open to the public. A09-1715-40 Ex. G. This letter further inquired as to whether subpoenas would be issued, and whether

Relator would be allowed to cross examine the Superintendent at the School Board meeting. *Id.* In a letter dated June 11, 2009, Counsel for the District indicated that subpoenas would not be issued and the Relator would not be allowed to cross examine the Superintendent. A09-1715-40 Ex. H.

In a letter dated July 15, 2009, Relator disclosed a list of witnesses he intended to call on his behalf at the School Board meeting. A09-1715-40 Ex. J. The letter went on to request that the District “produce” several employees to testify at the meeting. *Id.* This request was denied in a letter from District’s Counsel dated July 20, 2009. A09-1715-40 Ex. K.

The School Board meeting was held on August 4, 2009. *See* A09-1715-41. At this meeting, the reasons for Relator’s non-renewal were again fully stated and Relator was permitted to fully respond to these reasons. *Id.* Counsel for Relator was permitted to make an extensive opening and closing statement. Relator and sixteen other witnesses were permitted to testify as to why Relator’s coaching contract should not be non-renewed. *Id.* Finally, the Superintendent testified as to reasons why Relator’s coaching contract should be non-renewed. *Id.* Ultimately, the School Board unanimously voted to affirm its previous non-renewal decision. *Id.*

Subsequent to the Board’s action, on September 4, 2009, Relator submitted a letter resigning from “all duties” at the District. A09-1715-42 p.1. This resignation was formally accepted by the School Board on September 14, 2009. A09-1715-43. Relator was informed of the Board’s action in a letter dated September 15, 2009. A09-1715-44 p.1.

## STANDARD OF REVIEW

“[T]he proper and only method of appealing school board decisions on teacher related matters is by writ of certiorari.” *Dokmo v. Independent Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 673 (Minn. 1990). While the appellate courts generally review a school board action to determine if the action is “fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law,” the courts have provided an exception to this standard when reviewing a school board’s decision to non-renew a probationary teacher’s contract. *See Dokmo*, 459 N.W.2d at 675; *Allen v. Board of Educ. of Independent Sch. Dist. No. 582, Jasper, Minnesota*, 435 N.W.2d 124, 126 (Minn. App. 1989). Because the standard for a school board’s non-renewal of coaching contract is identical in substance to the standard for the non-renewal of a probationary teacher, courts should give the same level of deference to each decision.

A school board may non-renew a probationary teacher “as the school board shall see fit.” Minn. Stat. § 122A.40, subd. 5(a). Likewise, a school board may non-renew a coaching contract “as the board sees fit.” Minn. Stat. § 122A.33. The appellate courts have long held that a school board has total discretion when deciding not to renew the contract of a probationary teacher. *Pearson v. Independent Sch. Dist. No. 716*, 290 Minn. 400, 402, 188 N.W.2d 776, 778 (Minn. 1971); *Allen*, 435 N.W.2d at 126. Indeed, the Court of Appeals in *Allen* recognized that there was “no authority preventing a school district from refusing to renew an annual contract of a probationary teacher for an arbitrary reason.” *Allen*, 435 N.W.2d at 126.

In recognition that school boards must be given significant deference when deciding whether to continue the employment of a probationary employee or coach, the standard of review used by the Court of Appeals is very narrow and is limited to examining on the record whether the school district substantially complied, based upon the totality of the circumstances, with the provisions of the applicable statute. *See Savre v. Independent School District No. 283*, 642 N.W.2d 467, 471 (Minn. App. 2002); *Allen*, 435 N.W.2d at 127.

The burden of proof in such a proceeding lies with the party challenging the agency determination. *In re Expulsion of E.J.W. from Independent School Dist. No. 500*, 632 N.W.2d 775 (Minn. App. 2001). Certiorari is considered an extraordinary remedy to redress obvious defects of justice for which no ordinary remedy is available. *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981). On review by writ of certiorari, the court is not to retry facts or make credibility determinations. *Senior v. City of Edina*, 547 N.W.2d 411 (Minn. App. 1996). Additionally, the court must recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility; otherwise, the court will substitute its judgment for that of the agency. *In re Excess Surplus Status of Blue Cross and Blue Shield of Minnesota*, 624 N.W.2d 264 (Minn. 2001).

## ARGUMENT

### **I. THE SCHOOL DISTRICT FULLY COMPLIED WITH MINNESOTA STATUTES SECTION 122A.33 TO NON-RENEW RELATOR'S CONTRACT AS HEAD BOYS' BASKETBALL COACH.**

As Relator correctly states in his brief, the non-renewal of a head varsity coaching contract is governed by Minnesota Statutes Section 122A.33. However, any assertion that the District violated this statute is unsupported.

Pursuant to Minn. Stat. § 122A.33 subd. 2, "a person employed as a head varsity coach has an annual contract as a coach that the school board may or may not renew as the board sees fit." The only limitations on the board's decision are procedural in nature. Specifically, Minn. Stat. § 122A.33 subd. 3 provides that: (1) the coach must be notified of the board's decision not to renew within 14 days; (2) if requested, the coach is entitled to the reasons for the non-renewal; and (3) if requested, the coach must be provided a reasonable opportunity to respond to the reasons at a board meeting. The Board complied with all three requirements, and thus, there is no legal basis for Relator's challenge.

#### **A. The School District Notified Relator within Fourteen Days of Its Decision to Non-Renew his Coaching Contract.**

As required by Minnesota Statutes Section 122A.33, the School Board notified Relator of its decision not to renew his coaching contract within fourteen days of that decision. In fact, the Board notified Relator on May 12, 2009, one day after its decision was adopted at a regularly scheduled Board meeting on May 11, 2009.

**B. The School District Provided Relator with Its Reasons for the Non-Renewal in Writing within Ten Days of his Request.**

Minnesota law requires a school board to provide its reasons for non-renewing a coaching contract in writing within ten days of a request. Minn. Stat. § 122A.33. In a letter from his attorney dated May 20, 2009, Relator requested written reasons for the non-renewal. Relator was provided with the reasons why his coaching contract was non-renewed in a letter dated May 27, 2009. The stated reasons were as follows:

- (1) Lack of clear, organized, and linear boys' basketball program for grades 7-12.
- (2) Failure to communicate in a clear and effective manner in his role as head coach.
- (3) Mr. Christopher will be assigned grades 9 and 10 English for the 2009-10 school year. He will be returning to the classroom as a full-time teacher for the first time in seven years. [Principal] Hanson and I both believe it is with utmost importance that Mr. Christopher gives his full efforts to the classroom above coaching. He will be the only teacher for these two grade levels. With the current stated mandated testing in these grades and the fact that all students will pass through his classroom, we feel it is vital that all of Mr. Christopher's efforts are focused on the primary purpose of teaching English.

**C. The School District Provided Relator with a Reasonable Opportunity to Respond to the Reasons for Non-Renewal at the August 4, 2009 School Board Meeting.**

Finally, the School Board provided Relator with an opportunity to respond to the reasons at a School Board meeting, which was held on August 4, 2009. Relator cannot, and does not, dispute these facts. Instead, he argues that caselaw and the word "reasonable" in the phrase "reasonable opportunity to respond" gives him the right to a full hearing before an independent decision-maker. Such an assertion misinterprets

applicable law and stretches the phrase “reasonable opportunity to respond” past its breaking point.

The premise for Relator’s argument, namely that school employees are always entitled to a formal post-termination evidentiary hearing before an independent hearing officer, is fatally flawed. Relator cites a number of cases that he asserts stand for such a proposition. *See Ganyo v. Independent School District No. 832*, 311 N.W.2d 497 (Minn. 1982); *Pickney v. Independent School District No. 691*, 366 N.W.2d 362 (Minn. App. 1985); *Kroll v. Independent School District No. 593*, 304 N.W.2d 338 (Minn. 1981); *Schmidt v Independent School District No. 1*, 349 N.W.2d 563 (Minn. App. 1984). However, each of these cases is easily distinguishable from the situation at hand because they all involve either the termination of a tenured teacher or the placement of a tenured teacher on unrequested leave of absence.

Aside from the obvious difference between the termination or layoff of a tenured teacher and the non-renewal of a coaching contract that can be non-renewed as “the board sees fit,” the situations are governed by different statutory language. *See* Minn. Stat. §§ 122A.40 and .41, previously codified at 125.12 and 125.17, respectively; *cf.* Minn. Stat. § 122A.33. The statute governing teacher contract and termination rights, unlike the coaching non-renewal statute, specifically provides for certain procedural rights, such as the right to a hearing before an independent hearing officer. *See* Minn. Stat. § 122A.40, subs. 14 and 15; Minn. Stat. § 122A.41, subs. 7-10. Thus, the cases cited by Relator in support of his argument have no applicability to the case at bar.

Minnesota courts have not had an opportunity to analyze the requirements of Minnesota Statutes Section 122A.33 since its enactment in 1991. However, the Court of Appeals has considered the procedural requirements related to a school board's non-renewal of a coaching contract. *In the Matter of Hahn*, 386 N.W.2d 789 (Minn. App. 1986). In *Hahn*, which was decided before the enactment of Minnesota Statutes Section 122A.33, a girls' basketball coach's contract was non-renewed at the end of a season. The coach challenged the school district's decision, and the Court of Appeals upheld the district's decision. *Id.* In so doing, the Court specifically stated that where a school district decides not to renew a teacher's contract for coaching duties for a subsequent year, and does not terminate the duties during the life of the contract, there is no requirement to provide the coach with any kind of a hearing before an independent hearing officer. *Id.* at 792. "Where a school district decides to not renew a teacher's contract for coaching duties for a subsequent year and does not terminate the duties during the life of the contract, the notice and hearing requirements of Minn. Stat. § 125.121 [subsequently renumbered 122A.58] do not apply." *Id.* All that was deemed necessary was for the school district to follow the literal requirements of the applicable statute. *Id.* In the case at bar, the District has met its burden by complying with the requirements of Minnesota Statutes Section 122A.33, which specifically relates to the non-renewal of coaching contracts.

Relator appears to argue that the phrase "reasonable opportunity to respond" somehow guarantees a full evidentiary hearing before an independent decision-maker. Such an interpretation is inconsistent with the plain language of the statutory provision

and its legislative intent. As is evident from the record in this case, Relator had ample opportunity to respond to the School Board's reasons for non-renewing his coaching contract.

When interpreting a statutory provision, the court first determines whether the statute's language is ambiguous on its face. *See Amarol v. St. Cloud Hospital*, 598 N.W.2d 379 (Minn. 1999). A statute is ambiguous when its language is subject to more than one reasonable interpretation. *Id.* Thus, where the legislative intent is clearly discernible from the plain and unambiguous language of the statute, statutory construction is neither necessary nor permitted, and the plain and ordinary meaning of the statute must be applied. *Ed Herman & Sons v. Russell*, 535 N.W.2d 803 (Minn. 1995); Minn. Stat. § 645.16.

In the case at bar, the non-renewal process employed by the District conformed to the plain language of Minn. Stat. § 122A.33. Most significantly, the District held a special School Board meeting where Relator was given a reasonable opportunity to respond to the reasons for non-renewal through the following methods: (1) opening and closing statements of counsel; (2) the testimony of witnesses; and (3) his own testimony. To put it quite simply, the entire process, and specifically the opportunity to respond to the reasons for non-renewal, was certainly "reasonable." Thus, the District complied with the plain language of Minn. Stat. § 122A.33.

Even if the statutory language setting forth the procedural requirements could be considered ambiguous, well established principals of statutory construction support the conclusion that there is no right to a full evidentiary hearing before a neutral decision-

maker. If the Court were to read the statute as Relator suggests, it would have to disregard several canons of statutory construction. First, the legislature intends the entire statute to be effective and certain. Minn. Stat. § 645.17. By interpreting the statute to require a full evidentiary hearing, one must ignore the language granting a school board the authority to renew or not renew “as the board sees fit.”

Relator’s proffered construction would also violate the canon of *noscitur a sociis*, because it would be defining the phrase “reasonable opportunity to respond” without reference to the rest of the statute, particularly the provision granting school boards the discretion to non-renew coach contracts “as the board sees fit.” It would be nonsensical to say that a school board has complete discretion whether or not to renew a coach’s contract, but that if it decides not to renew, it must provide extensive procedural safeguards that are not even available to a probationary teacher whose employment is non-renewed. A clear reading of Minnesota Statutes Section 122A.33 demonstrates that it is a permissive statute that grants school boards a great deal of authority. The Court should seek to avoid any interpretation of Minnesota Statutes Section 122A.33 that unnecessarily creates any ambiguity.

Relator’s preferred interpretation of the statute also violates the canon of construction that public interests should be favored over private interests. As specifically stated by this Court, the preservation of public funds is in the public interest and is to be favored in the interpretation of an ambiguous statute. *In re Masson*, 753 N.W.2d 755 (Minn. App. 2008). Under Relator’s view, a full panoply of procedural rights, along with the expense associated with providing those rights, must be accorded to any coach whose

contract is non-renewed. Such a reading of the statute would favor the rights of private individuals in maintaining a position, which can be removed without or without cause, over the rights of the public in avoiding unnecessary hearings which waste public resources. Again, Relator's position is that a coach is to be provided with significantly more process than a probationary teacher. Such a result defies common sense.

Finally, Relator's interpretation reads words into the statute. Nowhere does Minnesota Statutes Section 122A.33 state that Relator must be provided a full hearing before an independent hearing officer. Nowhere does it say he has the right to subpoena witnesses. Nowhere does it say he has the right to conduct cross examination. Rather, the statute simply provides that he must have a reasonable opportunity to respond to the reasons for the non-renewal of his coaching contract. It would be improper for the Court to write in the new requirements requested by Relator. Had the legislature intended such protections, it would have expressly stated so, as it did in Minnesota Statutes Section 122A.40, subs. 14 and 15, and Minnesota Statutes Section 122A.41, subs. 7-10, the statutory sections dealing with termination or non-renewal of teachers; under Minnesota Statutes Section 122A.58, the provision dealing with the termination, rather than the non-renewal, of coaches; or under Minnesota Statutes Section 121A.47, the provision relating to student discipline.

All things considered, Relator's interpretation of Minnesota Statutes Section 122A.33 is simply wrong. It is out of accord with applicable case law, the plain language of the statute, and the clear legislative intent of the provision. Consequently, the Court should find that Minnesota Statutes Section 122A.33 requires just what it says, an

opportunity to respond. Because the School District provided Relator with such an opportunity, and thus, complied with the statutory requirements, Relator's appeal of the School Board's decision should be dismissed.

**II. THE SCHOOL BOARD HAS TOTAL DISCRETION WHEN DECIDING NOT TO RENEW RELATOR'S CONTRACT.**

In addition to arguing that the School District did not comply with the provisions of Minnesota Statutes Section 122A.33, Relator asserts that the School Board's decision must be overturned as arbitrary and capricious. In effect, Relator is attempting to challenge both the procedures used during the non-renewal process and the substance of the School Board's decision to non-renew the coaching assignment. In advancing his arbitrary and capricious challenge to the substance of the non-renewal decision, however, Relator has set forth and relied upon an incorrect standard of review. Moreover, Relator failed to timely appeal the Board's non-renewal decision. Finally, even under Relator's erroneous standard of review, the Board's decision to non-renew Relator's coaching contract was justified, and thus, must be upheld.

**A. Arbitrariness Is Not a Basis for Reversing the Non-Renewal of a Coaching Contract.**

Relator asserts that the School Board's decision to non-renew his coaching contract was arbitrary. Even if that were the case, it would not serve as the basis to overturn the School Board's decision. Whether or not the decision was arbitrary is immaterial. Under Minnesota law and the plain meaning of Minnesota Statutes Section 122A.33, arbitrariness is simply not a basis for reversal of a non-renewal decision. As a

result, even if Relator could prove that the Board's decision was arbitrary, which he has not done, he would not succeed in his appeal.

Among other reasons, the Minnesota Legislature enacted the coaching non-renewal statute to clarify that a person employed as a head varsity coach has an annual contract that "the school board may or may not renew as the board sees fit." Minn. Stat. § 122A.33, subd. 2. The statute, by its express language, confers considerable discretion on school boards to decide whether or not to renew coaching contracts. It does not impose any standard for the exercise of that discretion. Rather, if a coaching contract is not renewed, the statute simply requires the board to provide notice, and upon request, provide written reasons and an opportunity to respond. Such broad discretion cannot be successfully appealed by simply claiming that the decision was arbitrary.

The standard articulated in Minnesota Statutes Section 122A.33 is identical in substance to the standard for the non-renewal of a probationary teacher's contract. Minn. Stat. § 122A.40, subd. 5(a). In fact, the language in the coaching non-renewal statute ("the school board may or may not renew as the board sees fit") is strikingly similar to the language in the continuing contract law ("during the probationary period any annual contract with any teacher may or may not be renewed as the school board shall see fit"). It is clear that the legislature intended for school boards to have broad authority on decisions of coaching contract renewals.

In the teaching contract context, Minnesota courts have long held that a school board has total discretion when deciding not to renew the contract of a probationary teacher. *Pearson v. Independent Sch. Dist. No. 716*, 290 Minn. 400, 402, 188 N.W.2d

776, 778 (Minn. 1971); *Allen v. Board of Educ. of Independent Sch. Dist. No. 582, Jasper, Minnesota*, 435 N.W.2d 124, 126 (Minn. App. 1989). Indeed, the Court of Appeals in *Allen* recognized that there was “no authority preventing a school district from refusing to renew an annual contract of a probationary teacher for an arbitrary reason.” *Allen*, 435 N.W.2d at 126. A school board may non-renew a probationary teacher “as the school board shall see fit.” Minn. Stat. § 122A.40, subd. 5(a). In recognition that school boards must be given significant deference when deciding whether to continue the employment of a probationary employee, the standard of review used by the Court of Appeals is very narrow and is limited to examining on the record whether the school district substantially complied, based upon the totality of the circumstances, with the provisions of Minnesota Statutes Section 122A.40, subd. 5(a). *Savre v. Independent Sch. Dist. No. 283*, 642 N.W.2d 467, 471 (Minn. App. 2002); *Allen*, 435 N.W.2d at 127.

Likewise, school boards should be given the same deference, at a minimum, in the context of deciding whether or not to renew a coaching contract. It defies logic to conclude that, even though the legislature used very similar wording, it intended for one standard to apply to the non-renewal of a probationary teacher’s employment, but a higher standard to be applied to a coaching assignment. Yet, that is exactly what Relator is asking this Court to hold.

Based on the similar statutory language, the Court’s review in this case should be limited to determining whether the District substantially complied with the statutory requirements of Minnesota Statutes Section 122A.33. Relator has failed to provide a convincing argument why a school board should be held to a far more stringent standard

in renewal decisions involving coaches than the same decisions involving probationary teachers. Because the statute grants school boards the discretion to renew or not renew coaching contracts “as the board sees fit,” a school board’s decision must be given great deference, even if the decision was made for an arbitrary reason. Accordingly, Relator cannot prevail in this case by simply claiming that the School Board’s decision was arbitrary.

**B. Relator’s Claim that the School Board’s Decision to Non-Renew his Coaching Contract was not Supported and Must be Dismissed as Untimely**

Even assuming that Relator could prevail on the merits of his argument, Relator’s claims must be dismissed because he did not challenge the non-renewal of his coaching contract within sixty days of receiving notice of the non-renewal. Minnesota Statutes § 606.02 requires that a writ of certiorari be served upon an adverse party within sixty days of the date on which the party applying for the writ receives due notice of the proceeding sought to be reviewed. “Due notice” requires, at a minimum, that notice be in writing and be reasonably calculated to reach the party. *Bahr v. City of Litchfield*, 420 N.W.2d 604, 607 (Minn. 1988). In this case, the School Board’s decision to non-renew Relator’s coaching contract was made at a School Board meeting on May 11, 2009. Relator was informed of this decision in writing on May 12, 2009. Relator failed to initiate this challenge within sixty days of the School Board’s decision to non-renew Relator’s coaching contract, and thus, this Court is without jurisdiction to make any determination with respect to the School Board’s initial decision to non-renew.

Timely service of the writ of certiorari is the threshold for vesting jurisdiction in this Court to review the School Board's decision. *Savre v. Independent Sch. Dist. No. 283*, 642 N.W.2d 467, 470 (Minn. App. 2002), quoting *In re Termination of Gay*, 555 N.W.2d 29, 31 (Minn. App. 1996), *review denied* (Minn. Jan. 7, 1997). "[O]nce the period in which to petition for review expires, this court does not extend the time for appeal, regardless of mitigating circumstances." *Kenzie v. Dalco Corporation*, 245 N.W.2d 207, 208 (Minn. 1976). A writ of certiorari not served within the time required by statute or rule must be discharged for lack of jurisdiction. *Id.*; *Hickman v. Commissioner of Human Services*, 682 N.W.2d 697, 700 (Minn. App. 2004). Because of Relator's failure to timely seek review, this Court does not have jurisdiction to review the School Board's May 11, 2009 decision and this appeal must be dismissed.

Relator's appeal amounts to nothing more than dissatisfaction with the School Board's initial decision. However, the period for Relator to legally challenge the Board's May 11, 2009 decision by writ of certiorari elapsed in mid-July. As a result, this appeal constitutes an improper collateral attack on the School Board's May 11, 2009 decision to non-renew Relator's coaching contract.

It is expected that Relator will argue that his challenge is timely because he is challenging the School Board's decision made on August 4, 2009. However, any such argument must fail because it would amount to an impermissible collateral attack on the Board's May 11, 2009 decision to non-renew Relator's coaching contract. The School Board was under no obligation to take any action at all at the August 4, 2009 meeting, and all it did at the August 4th meeting was to affirm its May 11<sup>th</sup> decision. It had

already acted to non-renew Relator's coaching contract in May. The sole purpose of the August 4, 2009 meeting was to allow Relator an opportunity to respond to the reasons for the School Board's May 11th decision. No further action was required. The fact that the Board formally affirmed its original decision to non-renew Relator's coaching contract did not amount to a new decision amenable to appeal. The Board non-renewed Relator's coaching contract on May 11, 2009, and provided him with written notice the following day. Relator failed to initiate this action within sixty days of that decision, and thus, his claims relating to the sufficiency of the substance of the Board's decision to non-renew must be dismissed for lack of jurisdiction.

Minnesota courts have consistently protected the finality of judgments once the window of opportunity for appeal has expired. *See Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) (once the time for appeal from a judgment has expired, the judgment is final). In this case, the School Board's May 11, 2009 decision to non-renew Relator's coaching contract became a final judgment when Relator did not serve a writ of certiorari within sixty days. Minnesota courts have recognized the need for finality of valid decisions based on public policy. *See Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996). The doctrine that public policy protects final judgments against collateral attacks has been extended to quasi-judicial decisions of administrative bodies. *Martin v. Wolfson*, 218 Minn. 557, 564, 16 N.W.2d 884, 888 (Minn. 1944). Likewise, Relator's attempt to collaterally and untimely attack the Board's May 11, 2009 decision by simply asserting flaws in the August 4, 2009 meeting procedures must be dismissed.

Relator cannot avoid dismissal for his failure to institute a timely appeal by simply attacking a subsequent action of the School Board to affirm its decision to non-renew his coaching contract. Allowing him to do so would be contrary to public policy and undermine the finality of school board decisions. Because Relator failed to initiate this action within sixty days of the School Board's notice of its May 11, 2009 decision to non-renew his coaching contract, this appeal must be dismissed.

**C. The School Board Was Justified in Non-Renewing Relator's Coaching Contract.**

In forwarding his erroneous standard for the Board's decision, Relator asserts that the School Board's decision was not supported by substantial evidence. However, as set forth above, the School Board complied with Minnesota Statutes Section 122A.33 when non-renewing Relator's coaching contract, and thus, met its obligations. As such, the School Board's decision must be affirmed and the Court need not inquire into the specific reasons for the School Board's non-renewal of Relator's coaching contract. Even when applying Relator's erroneous standard for the sake of argument, the record supports the Board's reasons for non-renewing the coaching contract, and thus, the Board's decision was not arbitrary.

As a general proposition, an agency's conclusions are considered arbitrary and capricious only when there is no rational connection between the facts found and the choice made. *Fine v. Bernstein*, 726 N.W.2d 137 (Minn. App. 2007). If there is room for two opinions on a matter, the agency's decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached. *In re Review of*

*2005 Annual Automatic Adjustment of Charges for All Elec. and Gas Utilities*, 768 N.W.2d 112 (Minn. 2009). In this case, the School Board's reasons for non-renewing Relator's coaching contract were supported by the Superintendent's statements at the August 4, 2009 School Board Meeting. Whether or not Relator and his supporters agree with the rationale is irrelevant.

It is important to re-emphasize that the statutory standard for non-renewal is "as the board sees fit," which is an incredibly permissive standard. In fact, in *Hahn*, the Court of Appeals found that a school board's decision to non-renew a coach was perfectly acceptable when the sole stated reason was that "his coaching contract expired." *In re Hahn*, 386 N.W.2d 790. Any determination of whether the Board's action was arbitrary or capricious must necessarily be assessed with this standard in mind.

In the situation at bar, the Board conducted a special meeting to allow Relator to provide evidence, listened to a great deal of testimony in support of the renewal of Relator's coaching contract, and then it made a reasoned decision that found support in the record. While Relator may disagree with the School Board's decision, it would stretch credibility to say the decision was arbitrary and capricious.

Without citing any applicable authority to support his position, Relator asserts that the Board's failure to provide a full evidentiary hearing before an independent decision-maker compels the conclusion that the Board's action was arbitrary and capricious. Relator claims that the Board's decision was arbitrary because the District did not produce live witnesses (other than Superintendent Wormstadt) or exhibits at the School Board Meeting. To support such an assertion, Relator cites to *Beranek v. Joint*

*Independent School District No. 287*. 395 N.W.2d 123 (Minn. App. 1986). Relator's reliance on this case is misplaced, however, because *Beranek* was a case involving the termination of a tenured teacher, which can only be accomplished if specific standards are met and protective procedures were followed. It has no bearing on the non-renewal of a coaching contract.

Relator's assertion on this point implies that a school board is incapable of making a reasoned decision unless it calls live witnesses. Such an assertion is illogical and ignores the permissive intent of Minnesota Statutes Section 122A.33. The fact of the matter is the School Board had large portions of Relator's personnel file in front of it; it had the testimony of the Superintendent; and it had the testimony of Relator and sixteen other witnesses. With all this in mind, the only reasonable conclusion is that the Board did not act arbitrarily just because it did not happen to call live witnesses or present any exhibits.

In addition, Relator asserts that the Board's decision was flawed because his evaluations have been positive during his employment by the District. This argument is without merit, as the evaluations cited by Relator related to his employment as a teacher and activities director. The Board's decision in this case was limited to Relator's coaching contract. Accordingly, his previous evaluations for other positions do not provide any support for Relator's position. Moreover, even if Relator had received positive evaluations for his coaching, the School Board could still non-renew his coaching contract. See *Tornow v. Board of Education of Independent Sch. Dist. No. 118*,

435 N.W.2d 142 (Minn. App. 1999) (school board has total discretion to non-renew probationary teacher despite favorable evaluations).

Relator next asserts that the lack of a detailed investigation into Relator's performance made the Board's decision arbitrary and capricious. Notably absent in Relator's argument on this point is any authority for the notion that a School Board must "investigate" a coach's performance before deciding whether or not to renew a coaching contract. Relator quite simply cannot baldly assert that the Board is obligated to take steps above and beyond the requirements imposed by law. Moreover, Relator certainly cannot claim that the Board acted arbitrarily because it did not take these unnecessary steps.

At its core, Relator's argument is premised on the notion that the Board's decision was arbitrary and capricious because he produced some evidence of his positive coaching performance at the School Board meeting. However, the decision of a school board is not arbitrary and capricious simply because there was some evidence on the record to support a contrary conclusion. It is only arbitrary and capricious if there was no evidence to support the decision that was actually made. Thus, the fact that Relator adduced some evidence to support his position is legally irrelevant. Despite Relator's contention, the Board considered all evidence in making its decision to non-renew his coaching contract. The fact that Relator disagrees with the decision does not mean the decision was arbitrary or not supported by evidence.

Finally, Relator argues that one of the reasons for his non-renewal – that he should devote more attention his teaching duties – was arbitrary and capricious because the

replacement coach ultimately hired by the District after Relator's coaching contract was non-renewed is also a teacher. This assertion is flawed for several reasons. First of all, it ignores the fact that this is but one of three reasons given for Relator's non-renewal, and even if it were not sufficient on its own, there are two other reasons which are sufficient. Next, it presupposes that if the Relator is not able to effectively handle both coaching and teaching that nobody would be able to do so. Just because the Board felt that Relator could no longer handle the balancing act does not mean it would be unreasonable to assume that someone else would be able to handle it. Finally, and most importantly, this assertion ignores the fact that the main reason the Board wanted Relator to focus more on teaching is because his specific teaching assignment was of particularly vital importance and required more attention than other positions. Consequently, it was perfectly reasonable for the Board to hire a coach who would not be teaching the same courses as Relator. At the very least, the mere fact that the new coach was also a teacher did not render the Board's action arbitrary and capricious.

In sum, all of the reasons given by Relator fail to support the notion that the Board acted arbitrarily and capriciously. At most, they simply imply that more information could have been gathered, or that the Board could have reasonably found in favor of Relator. However, that does not make the Board's decision arbitrary and capricious.

### **III. THE SCHOOL DISTRICT DID NOT VIOLATE RELATOR'S DUE PROCESS RIGHTS.**

Relator next asserts that the non-renewal process employed by the District violated his procedural due process rights under the Federal and State Constitutions. At the onset,

it is important to note that the “due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States.” *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

According to the Eighth Circuit Court of Appeals, procedural due process claims require a two-step analysis. Initially, a plaintiff must demonstrate that the state deprived him of some “life, liberty, or property” interest. If successful, the plaintiff must then establish that the state deprived him of that interest without sufficient “process.” *Krentz v. Robertson*, 228 F.3d 897, 902 (8th Cir. 2000). In this case, Relator is unable to show that he was deprived of a protected interest such that due process requirements ever come into play. And, even if he could, Relator is unable to show that the procedures employed by the District deprived him of any process which he was due.

**A. Relator did not have a Protected Property Interest in Continued Employment as a Head Coach.**

Notwithstanding Relator’s assertions to the contrary, he had no property interest in his coaching position. “A government employee is entitled to due process only when he has been deprived of a constitutionally protected property or liberty interest.” *Gibson v. Caruthersville School District No. 8*, 336 F.3d 768, 772 (8th Cir. 2003), *citing Winegar v. Des Moines Independent Community Sch. Dist.*, 20 F.3d 895, 899 (8th Cir. 1994). Relator has completely failed to provide any authority for his contention that he had a constitutionally protected property interest in continued employment as a coach.

For purposes of property interests in government employment, the Minnesota Court of Appeals has stated that “[a] protected property interest is created when the

governing state law gives an individual an ‘entitlement’ that is only removable for cause.” *Schocker v. State Department of Human Rights*, 477 N.W.2d 767 (Minn. App. 1992), citing *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11-12 (1978). Minnesota law has not given varsity coaches an entitlement that is removable only for cause. Instead, such an assignment is removable as a school board sees fit under Minnesota Statutes Section 122A.33. There could not be a clearer statement that such an assignment is *not* removable only for cause. A coach has no continuing expectation of reemployment. Consequently, he or she has no property interest sufficient to trigger constitutional due process rights.

While it is true that there is a protected property interest in *tenured* teaching assignments, this is not so in situations where tenure does not exist, such as coaching positions. The Minnesota Court of Appeals has specifically stated that there is “no constitutional right to due process after [the] contractual term of employment” when the educational position at issue is untenured. *Phillips v. State*, 725 N.W.2d 778, 783 (Minn. App. 2007). In this case, there is no tenure associated with coaching assignments, and thus, the cases cited by Relator are inapplicable.

**B. Even if Relator had a Protected Property interest in Continued Employment as a Head Coach, the District’s Non-Renewal Process Satisfied Due Process Requirements.**

Even assuming *arguendo* that Relator was deprived of a constitutionally protected interest such that due process requirements would be triggered, the procedures employed by the District accorded Relator ample due process. Due process requirements are not fixed; they are quite flexible. As stated by the United States Supreme Court:

It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands. Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action. To say that the concept of due process is flexible does not mean that judges are at large to apply it to any and all relationships. Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure.

*Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In determining what process is due in a given situation, courts look to the balancing test articulated by the United States Supreme Court in *Mathews v. Eldridge*. 424 U.S. 319 (1976). The *Mathews* balancing test requires a court to consider: (1) the private interest that will be affected by the governmental action; (2) the risk of erroneous deprivation of this interest through the procedures used and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substantive procedural requirements would entail. *Id.*

In this case, all of the above factors support the conclusion that the procedures employed by the District provided Relator sufficient due process under the circumstances. First, the private interest at stake – Relator's interest in an assignment which pays approximately \$5,000 a year, and is only ancillary to his primary income as a teacher – is incredibly limited.

Next, there is almost no possibility of erroneous deprivation of the interest at stake due to the procedures employed. The District allowed Relator to respond to the reasons given for the non-renewal of his coaching contract; Relator was allowed to call sixteen witnesses; Relator had an opportunity to testify; and Relator was represented by an attorney who zealously represented his interests. Keeping the permissive standard of “as the board sees fit” in mind, it is quite clear that Relator was provided not only adequate procedural protections, but far more protections than logically seem necessary, or than are specified by Minnesota Statutes Section 122A.33.

Finally, there is a very strong public interest at stake here: the efficacy and financial stability of our public schools. Minnesota’s public schools are in a state of financial crisis, and it would be contrary to the public good for this Court to hold that extensive procedural safeguards must be exercised to non-renew a coaching assignment that pays approximately \$5,000 a year, when the applicable statute allows the board to non-renew as it sees fit. The scarce resources of public schools should be preserved for educational programs.

As described above, the cases cited by Relator in support of his due process argument have nothing to do with the non-renewal of a coach; they involve the termination of a tenured teacher or the placement of a tenured teacher on unrequested leave of absence. Those procedures are governed by different statutes that, unlike Minnesota Statutes Section 122A.33, mandate specific procedural protections.

Relator next asserts that his due process rights were violated for the following reasons:

- (1) He was not given a hearing before an independent decision-maker;
- (2) The School Board was advised by legal counsel of its legal rights and obligations throughout the non-renewal process;
- (3) The School Board had hired a new coach after non-renewing Relator;
- (4) He was not given notice of the reasons for his non-renewal in sufficient detail before the School Board Meeting;
- (5) He was not entitled to cross examine witnesses at the School Board Meeting; and
- (6) He was not entitled to subpoena witnesses at the School Board Meeting.

Each assertion is without legal or intuitive support. First of all, as repeatedly stated, the Board did not give Relator a hearing before an independent decision-maker because it was not required to do so. Unlike the statutory provisions dealing with the termination or non-renewal of a teacher, Minnesota Statutes Section 122A.33 does not require a hearing before an independent decision-maker. The only case on point, *Hahn*, specifically states that a hearing before an independent decision-maker is not required in these circumstances. Consequently, Relator's due process rights were not violated by the failure of the District to give Relator a hearing before an independent hearing officer.

Next, the assertion that the School Board was somehow an improper decision-maker because it received advice from legal counsel simply makes no sense. Legal counsel simply apprised the Board of its legal options. *See* A09-1715-41, pp. 104-105. This did not constitute a due process violation. Relator can point to no case which even remotely suggests that the retention of legal counsel makes a school board an improper decision-maker.

Relator's assertion that the School Board was an improper decision-maker because it hired another coach after the non-renewal of Relator's coaching contract is equally unsupportable. The School Board followed all statutory requirements in non-renewing Relator's coaching contract. After it had done so, the high school was without a boys' basketball coach. There was no requirement that the Board had to wait until Relator had the opportunity to respond to the reasons for the non-renewal before it could hire a new coach.

Relator asserts that his procedural rights were violated because he was not given notice of the reasons for his non-renewal in sufficient detail before the hearing. He asserts this because at the School Board Meeting the Superintendent more fully fleshed out the reasons for his non-renewal which were provided to Relator in the May 27, 2009 letter. Relator's assertion has no merit. The initial letter Relator received contained the reasons for non-renewing Relator's coaching contract. The Superintendent did not introduce new reasons at the hearing; he merely explained those reasons in greater detail. It would be illogical to limit the Superintendent to reading the reasons for non-renewal from the letter originally provided to Relator. In making its decision, the Board sought to consider all evidence, including information from the Superintendent. Finding a due process violation because the Superintendent took steps to more fully explain the reasons for non-renewal at the School Board Meeting would turn the notion of due process on its head.

Relator finally asserts that his due process rights were violated because he was not allowed to cross examine the Superintendent or issue subpoenas. However, Relator

cannot point to any authority which grants him those procedural rights. More significantly, Relator cannot establish that the School Board would have the authority to issue such subpoenas in the first place. School boards have no general, freestanding subpoena power. Rather, specific statutes grant school boards subpoena power only in limited situations. For example, school boards are authorized to issue subpoenas in teacher discharge hearings and student expulsion hearings. Minn. Stat. §§ 122A.40, subd. 14; 121A.47, subd. 7. Minnesota Statutes Section 122A.33 confers no such power on school boards. What is required by statute is simply an opportunity for Relator to respond to the reasons for the non-renewal. Such procedural rights as Relator is requesting are simply out of line with the character of the proceeding, which is not even a hearing in the traditional sense. Relator's dissatisfaction with the procedural rights afforded should not be confused with a violation of due process.

**IV. RELATOR'S CLAIM HAS BEEN RENDERED MOOT BECAUSE HE RESIGNED EFFECTIVE SEPTEMBER 4, 2009.**

Finally, even apart from all the considerations raised above, Relator's appeal should be dismissed because it has been rendered moot due to his resignation from "all duties at Windom Schools." Under Minnesota law, a case is moot if there is no justiciable controversy for a court to decide. *Pechovnik v. Pechovnik*, 765 N.W.2d 94 (Minn. App. 2009). A justiciable controversy allows for specific relief by a decree or judgment of a specific character as distinguished from an advisory opinion predicated on hypothetical facts. In the case at bar, by resigning "from all duties," Relator has made this a non-justiciable controversy. Even if the Court were to rule in his favor and

invalidate the Board's action, Relator would still not be the boys basketball coach because he resigned from all duties when he submitted his letter of resignation. That being the case, there is no relief the court may grant, so Relator's case must be dismissed as moot.

**CONCLUSION**

For all of the foregoing reasons, Respondent Independent School District No. 177, Windom, respectfully requests that the Court deny Relator's request to overturn the School Board's decision and instead affirm the actions taken by its School Board to non-renew Relator's coaching contract.

**RATWIK, ROSZAK & MALONEY, P.A.**

Dated: November 17, 2009

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