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NO. A10-1272

State of Minnesota
In Court of Appeals

Patricia Murphy,

Relator,

v.

St. Paul Public Schools,
Independent School District 625,

Respondent.

BRIEF, ADDENDUM AND APPENDIX OF RELATOR

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

Issue 1: Did Independent School District 625 violate the Minnesota Teacher Tenure Act, Minn. Stat. § 122A.41, by removing Relator as Principal and demoting her to a lesser rank or lower branch of service as an Assistant Principal?

Manner issue was raised before Board: The School Board failed to provide Relator notice and a hearing required by Minn. Stat. § 122A.41, subd. 7, and Relator then objected to the demotion and failure to provide a hearing. App. 51.

District's ruling: The District demoted Relator.

Preservation of issue for appeal: Relator objected to the demotion and failure to provide a hearing. App. 51

Apposite authorities:

McManus v. Indep. Sch. Dist. No. 625, 321 N.W.2d 891 (Minn. 1982);

Sweeney v. Special Sch. Dist. No. 1, Minneapolis, 368 N.W.2d 288 (Minn. Ct. App. 1985);

State ex rel. Haak v. Bd. of Educ. of Indep. Sch. Dist. No. 625, St. Paul, 367 N.W.2d 461 (Minn. 1985);

Foesch v. Indep. Sch. Dist. No. 646, 300 Minn. 478, 223 N.W.2d 371 (Minn. 1974);

Minn. Stat. § 122A.41, subd. 7.

* * * * *

Issue 2: Did Independent School District 625 violate the Minnesota Teacher Tenure Act, Minn. Stat. § 122A.41, when it failed to provide a hearing to Relator in connection with her demotion?

Manner issue was raised before Board: The School Board failed to provide Relator notice and a hearing required by Minn. Stat. § 122A.41, subd. 7, and Relator then objected to the demotion and failure to provide a hearing. App. 51.

District's ruling: The District did not provide Relator a hearing.

Preservation of issue for appeal: Relator objected to the demotion and failure to provide a hearing. App. 51.

Apposite authorities:

Sweeney v. Special Sch. Dist. No. 1, Minneapolis, 368 N.W.2d 288 (Minn. Ct. App. 1985);

State ex rel Haak v. Bd. of Educ. of Indep. Sch. Dist. No. 625, St. Paul, 367 N.W.2d 461 (Minn. 1985);

Foesch v. Indep. Sch. Dist. No. 646, 300 Minn. 478, 223 N.W.2d 371 (Minn. 1974);

Minn. Stat. § 122A.41, subd. 7.

* * * * *

Issue 3: Did the failure to furnish a Principal position to Relator, a veteran tenured Principal, and give such positions to a number of individuals with less seniority or tenure, violate the provision of the Teacher Tenure Act required under Minn. Stat. § 122A.41, subd. 14(a) that when a Principal's position is discontinued, Principals must be eliminated "in the inverse order in which they were employed"?

Manner issue was raised before Board: The School Board failed to provide Relator notice and a hearing required by Minn. Stat. § 122A.41, subd. 7, and Relator then objected to the demotion and failure to provide a hearing. App. 51.

District's response: The District elevated other untenured employees with less seniority, including some who had never served as Principal in the district to Principal positions in lieu of Relator.

Preservation of Issue for appeal: Relator objected to the assignment of untenured individuals with less seniority and employees who had never served as Principal in the district to Principal positions. App. 51.

Apposite authorities:

State ex rel. Marolt v. Indep. Sch. Dist. No. 695, 299 Minn. 134, 217 N.W.2d 212 (Minn. 1974);

Klein v. Bd. of Educ. of Indep. Sch. Dist. No. 671, 497 N.W.2d 620 (Minn. Ct. App. 1993), *rev. granted* (May 18, 1993), *appeal dismissed* (June 28, 1993);

Minn. Stat. § 122A.41, subd. 14(a).

STATEMENT OF THE CASE

This case arises out of the demotion of a veteran tenured principal, Relator Patricia Murphy, by the St. Paul Public Schools, Independent School District 625, without notice and hearing before its Board of Education, in violation of the Teacher Tenure Act, Minn. Stat. § 122A.41. The Superintendent informed Relator of her demotion in a meeting on June 1, 2010, which she clarified in a memorandum dated June 9, 2010, and a letter after this proceeding was commenced on July 29, 2010.

In a series of meetings on June 1, 2010, June 15, 2010 and July 13, 2010, the Board then approved the appointment of thirteen principals. Five of them did not have tenure at the time of their appointment, and a sixth had not achieved tenure at the time Relator Murphy was demoted. A fourteenth, who had never been a principal in the District, was also appointed Principal, although the timing of his appointment is unknown. At least three of the fourteen **never** had been principals in the District.

Relator Murphy then initiated this Certiorari proceeding seeking to reverse the action of the District in demoting her and seeking an Order that the Board appoint her to a position of Principal.

STATEMENT OF THE FACTS

Relator Patricia Murphy brings this Certiorari proceeding against the District to contest her demotion from the position of Principal, for which she has tenure, to that of Assistant Principal, a position of lower rank, with a lower pay scale and lesser benefits.

Relator Murphy, who has a doctoral (Ed.D.) degree, has a long career as an educator. She began teaching in 1985, later achieving her Master of Science in Health Education from Mankato State University and her Doctorate in Educational Leadership from the University of St. Thomas. She is licensed by the state of Minnesota as a principal in Grades K-12. App. 50.¹

Relator Murphy began work with the St. Paul Public Schools, Independent School District 625, in September, 2002, as a Teacher on Special Assignment performing administrative work. She was promoted to Assistant Principal on August 9, 2004, and to Principal at Arlington Senior High School on the east side of St. Paul effective August 8, 2005, where she continued to serve until her recent demotion to Assistant Principal in June 2010.

The School District is a large public school district in a city of the first class, mainly serving students who live in the City of St. Paul. The District has had budget problems, as have all Districts in the State of Minnesota, due to a decline in enrollment, budget cuts, and diminution of outside funding. As part of its efforts to balance its

¹ “App. _____” refers to Relator’s Appendix hereto. “Add. _____” refers to Relator’s Addendum.

shrinking budget, the District decided to close three schools after the end of the 2009-2010 school year. Arlington High School, where Relator Murphy had been principal for the past five years, was one of the schools slated for closure. In addition, the district combined 8 individual elementary schools into 4 buildings, reducing by another 4 the number of principals required. This resulted in the total loss of 7 principal slots. App. 44.

But at the same time, a number of principals left the district through retirement or resignation, leave of absence, or termination, including 3 in the period of April 27-May 24, 2010 alone. App. 7, 10, 11. This necessitated a shuffling of personnel in the Principal ranks. But in the ensuing shuffle, akin to musical chairs, Relator Murphy was shuffled out of a Principal position and preference was given to at least 6 others without tenure, including 3 who had never been Principals in the District.

Rather than provide Murphy with another Principal position, the School District informed her that she was to be demoted to Assistant Principal, a position of lower rank, lesser duties, a lower pay scale, and fewer benefits. Add. 6, 7. Relator Murphy was not provided notice or a hearing prior to, or after, her demotion.

On May 27, 2010, she met with her immediate supervisor, Denise Quinlan, the Assistant Superintendent for Secondary Schools. The Assistant Superintendent told her that the District's Superintendent had decided she was not going to appoint her to another school as Principal because her husband has cancer and the Superintendent was

concerned she might need time off work because of his medical condition.² Dr. Murphy was summoned to a meeting with the Superintendent on June 1, 2010, where she was told that the Assistant Superintendent had been premature in her discussion with Murphy, and Murphy left the meeting with the belief that she would be given a Principal position in another school, would be assigned as a co-principal, or possibly assigned a role as principal on special assignment in the area of curriculum and instruction. Relator made it clear she would not voluntarily accept an Assistant Principal position. App. 1³

The Superintendent clarified her position in a letter dated June 9, 2010, in which she indicated that Murphy would not be provided a Principal position in the 2010-2011 school year. Add. 6. Instead, she was told that she was to become an Assistant Principal, a position of lower rank, responsibilities, and status, although her salary and benefits would remain the same. The duties of the Assistant Principal position were spelled out in a letter from the Superintendent to Relator Murphy of July 29, 2010, after the Certiorari proceeding was commenced. Add. 7. She was told she would maintain the same “rank,” a lightly veiled attempt to abide by that portion of the statute in name only. *Id.* But the rest of the letter belied that statement. In that letter, she was told “you are directed to report to Como Park Senior High at 8:00 a.m. on August 9, 2010 to commence employment for the 2010-2011 school year **in your assigned position of assistant**

² Relator Murphy has commenced a separate proceeding claiming discrimination before the Minnesota Department of Human Rights, which is not part of this appellate proceeding.

³ Also in attendance at the June 1, 2010 meeting were the District’s attorney, Jeffrey Lalla, the attorney for the St. Paul’s Principals Association; Roger Aronson, attorney for the Union; and a Union Representative.

Principal.” *Id.* (emphasis added). The demotion to Assistant Principal is a lesser position because:

- She will not be the building leader;
- She will report to, and be “directed by” the Principal; and
- Her duties will be as described in the “District’s generic job description for Assistant Principal” with a few added duties.

Add. 6-7.

Relator Murphy remained firm in her position that she would not voluntarily accept a demotion. Through her counsel she protested the demotion and failure to provide a hearing under the Teacher Tenure Act. Add. 1; App. 51-55.

Meanwhile, the Superintendent made recommendations to the Board of Education for the appointment of personnel for the 2010-2011 school year. In meetings on June 1, 2010, June 15, 2010 and July 13, 2010, the Board approved the appointment of thirteen Principals. Add. 1, 2, 4. A fourteenth non-tenured person who had not been a principal previously with the District, also was appointed principal, but the timing of his appointment is unclear. App. 4, 42. **Thus, seven of the fourteen, or 50%** of the Principals appointed for the 2010-2011 school year, **did not have tenure** as Principals at the time of Relator’s demotion.⁴ Add. 1, 2, 4; App. 2-4, 42 Moreover, **three** of the persons appointed to Principal positions not only lacked tenure as Principal, but **had never served as Principals** in the St. Paul School District. Add. 1, 2, 4; App. 2-4, 42.

⁴ One of the seven was tenured when she was appointed, but was not tenured at the time that Dr. Murphy was demoted on the pretense of lack of available positions.

The following chart reflects the persons who bypassed Dr. Murphy and were given Principal positions, while Relator was given the shaft.

<u>Name</u>	<u>School</u>	<u>Level of Seniority</u>
Adrian Pendelton	Barack & Michelle Obama Service Learning Elementary	Not tenured at time of appointment
Steve Flucas	Dayton's Bluff Achievement Plus Elementary	Not tenured, first assignment as principal
Debra McCain	Galtier Magnet	Not tenured, first assignment as principal
Michael Thompson	Gordon Parks High School	Not tenured, first assignment as principal
Stacey Karmas	Frost Lake Magnet	Not tenured as of 6/30/10⁵
Barbara Evangelist	North End Elementary and Franklin Music Magnet	Not tenured
Al Levin	Riverview West Side School of Excellence	Not tenured, first assignment as principal

Add. 1, 2, 4; App. 2-4, 42.

The Superintendent never brought the issue of Murphy's demotion before the Board and she was demoted to the Assistant Principal position without notice or a hearing. She protested the demotion in the May 27, 2010 meeting with the Assistant Superintendent, the June 1, 2010 meeting with the Superintendent, and through her counsel. Add. 6, App. 51-55. Then, in order to preserve her rights, she initiated this

⁵ Ms. Karmas achieved tenure as of June 30, 2010, **after** Relator's demotion, but was tenured at the time of her own appointment.

Certiorari proceeding asserting that the demotion violates her rights under the Minnesota Teacher Tenure Act, Minn. Stat. § 122A.41.

SUMMARY OF ARGUMENT

The District's demotion of Relator violated multiple provisions of the Teacher Tenure Act, Minn. Stat. § 122A.41, and should be reversed and remanded with instruction to assign her to a Principal position. Assigning her as an Assistant Principal, while giving at least a half-dozen others without tenure to Principal positions: (1) constitutes a demotion without notice and hearing, transgressing § 122A.41, subd. 7; and (2) violates the tenure requirement of § 122A.41, subd. 14(a).

The definition of "teacher" under the Act expressly includes Principals. Minn. Stat. § 122A.41, subd. 1(a). The statute requires that they be provided a hearing before being demoted, which is defined as "to reduce in rank **or** to transfer to a lower branch of service **or** to a position carrying a lower salary or compensation." Minn. Stat. § 122A.41, subd. 1(c) (emphases added). After the District decided to close the school at which she served as Principal, Relator was demoted to the position of Assistant Principal. Although her current salary and benefits are unchanged at this time, the new position is a lower rank, a lower branch or service, and carries a lower salary and compensation scale. Add. 7; App. 31, 34-38.

Because Relator is protected under the Act, she was entitled to notice and a hearing before the Board of Education, prior to being demoted. Minn. Stat. § 122A.41, subd. 7. The District violated the Act when it failed to provide her a notice and a hearing.

Even if it had provided a notice and a hearing, which it did not do, the demotion of Relator violated the portion of the statute that provides that when a Principal's position is to be "discontinued" principals in the district must be eliminated "in the inverse order in which they were employed" with tenured principals given preference over non-tenured principals. Minn. Stat. § 122A.41, subd.14 (a); *Marolt v. Indep. Sch. Dist. No. 695*, 299 Minn. 134, 142, 217 N.W.2d 212, 217 (1974).⁶ Moreover, a Principal whose job is eliminated "must receive first consideration for other positions in the district." Minn. Stat. § 122A.41, subd.14 (a).

Because the District improperly demoted Relator without notice and a hearing, while giving Principal positions to persons without tenure and persons who had never been principals with the District, it twice violated the Teacher Tenure Act. The action must be reversed and the District Ordered to appoint Relator to a Principal position for the 2010-2011 school year and on an ongoing basis, consistent with the Act.

STANDARD OF REVIEW

On an appeal by Writ of Certiorari, this appellate court reviews whether the decision was "fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within the school board's jurisdiction or is based on an erroneous

⁶ *Marlot* dealt with the "continuing contract" provision for teachers not in districts in cities of the first class, now renumbered Minn. Stat. § 122A.40, while this case deals with the "teacher tenure" statute for school districts in cities of the first class, Minn. Stat. § 122A.41. This Court has held that "tenure" is "equivalent" to "continuing-contract status." *Montplaisir v. Indep. Sch. Dist. No. 23*, 779 N.W.2d 880, 881 n.1 (Minn. Ct. App. 2010). While there are some differences between the statutes, none of those differences are pertinent here, rendering cases applying both sections relevant to the present analysis.

theory of law.” *Ganyo v. Indep. Sch. Dist. No. 832*, 311 N.W. 2d 497, 500 (Minn. 1981) (citations omitted). *See also Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 675 (Minn. 1990), *reh’g denied*, (Oct. 12, 1990). The court does not make factual findings or credibility determinations. *Kroll v. Indep. Sch. Dist. No 593*, 304 N.W.2d 338, 342 (Minn. 1981). “However, the school bears the burden of making an adequate record to prove its actions were justified.” *Strege v. Indep. Sch. Dist. No. 482*, 2000 WL 1855070, No. C1-00-867, at *2 (Minn. Ct. App. Dec. 19, 2000) (citing *Dokmo*, 459 N.W.2d at 676).

Both the burden of proof and the burden of creating a record “falls on the school board.” *Dokmo*, 459 N.W.2d at 676-77. It is the *school board’s obligation* to make a sufficient record to prove its actions were justified. *Id.*⁷

Questions of law, and construction of statutes and ordinances are reviewed *de novo*. *In re Molly*, 712 N.W.2d 567, 571 (Minn. Ct. App. 2006). *See also Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998).

ARGUMENT

I. THE DISTRICT CONTRAVENED RELATOR MURPHY’S RIGHT TO A HEARING UNDER THE TEACHER TENURE ACT

The Teacher Tenure Act requires that Principals with tenure be provided notice, a

⁷ Where there is no hearing, as here, what constitutes the “record” is unclear. In *Harms v. Indep. Sch. Dist. 300, LaCrescent*, 450 N.W.2d 571, 577 (Minn. 1990), a case in which no hearing was held, the Court included in the “record” correspondence between the school and teacher regarding the issue, records reflecting realignment proposals, and documents concerning the school board action.

hearing, and a determination that the demotion meets one of the criteria enumerated under the Act, before they are “demoted.” Minn. Stat. § 122A.41. The District’s action in this situation constitutes a demotion. In addition, it was done without a notice, hearing, or a determination that the criteria of the Act had been met. Therefore, the District violated Relator’s rights under the Teacher Tenure Act.

A. As Principal, Relator is Covered by the Act

The term “teacher” is defined to include Principals under the Act. Minn. Stat. § 122A.41, subd. 1(a). (The term “teacher” includes every person regularly employed, as a principal ...). *See also McManus v. Indep. Sch. Dist. No. 625*, 321 N.W.2d 891, 892 (Minn. 1982) (stating that secondary school principal “comes within the definition of teacher” under the Act); *Mohn v. Indep. Sch. Dist. No 697, Eveleth*, 471 N.W.2d 723, 726 (Minn. Ct. App. 1991), *rev. denied*, (Aug. 29, 1991).

B. Relator Murphy was Demoted

Principals are protected from demotion under the Act. The statute defines “demotion” in three disjunctive ways: “to reduce in rank **or** to transfer to a lower branch of service **or** to a position carrying a lower salary or compensation.” Minn. Stat. § 122A.41, subd. 1(c) (emphases added). Since the District bears the burden of proof, it must establish that **none** of the three enumerated actions constituting demotion have occurred. The District cannot do so.⁸

⁸ The use of the term “or” signifies that these are alternative elements. *State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000); *State v. Rossow*, 247 N.W.2d 398, 401 (Minn. 1976), *reh’g denied*, (Dec. 7, 1976). Thus, if the District fails to meet its burden as to just one of them, a demotion has occurred.

Murphy's transfer from Principal at Arlington, which has now closed, to Assistant Principal at Como Park Senior High School is a reduction in "rank." The Principal of a School is the top executive at the school and has supervisory authority over the rank of Assistant Principal. Add. 6-7; App. 31. The new role assigned by the District to Relator Murphy is subordinate to the Principal. In a Memorandum from the Superintendent to Relator Murphy, the Superintendent states:

You will be assigned to provide administrative support to a secondary principal. That support will allow you to use your strengths in the areas of curriculum and instruction but will also include the range of duties typically ascribed to a secondary assistant principal. As for your title, there are two options that I am willing to consider. You may be referred to as an "administrator" or an "assistant principal." **Any other title in a school leads to ambiguity as to who the building leader is,** and in no scenario should your placement be construed as a "co-principal."

Add. 6. (emphases added). Whether her title is that of "administrator" or "assistant principal," it is undeniable that the new position into which Dr. Murphy has been placed strips her of her role as "building leader" — the top position as Principal — and places her into a subordinate function. *Id.* She has been instructed by the Superintendent that her new job duties may be "modified and/or directed by the Principal." Add. 7. She is now no longer the top block, but an inferior building block.

The major differences in duties between Principal and Assistant Principal are contrasted as follows:

	Principal	Assistant Principal
Primary Duty	“leader of School staff, students and school communities.”	Assistant Principal; Discipline of students
Contact with District Office	Liaison with District office; participates in professional development opportunities at district office around District initiatives, and presents that information to team.	None
Reports to	Assistant Superintendent for Secondary Schools.	Principal
Legal Responsibility	Oversees various programs such as Title 1, Special Education, Gifted and Talented Program, and No child Left Behind to assure that the school is following state and federal laws and regulations.	Assist in tasks delegated by Principal
Educational Programs	Responsible for determining that all state and federal laws and regulations concerning educational programs, content, testing and graduation requirements are followed.	Assist in tasks delegated by Principal
Curriculum	Develops and implements changes to curriculum, evaluates teacher effectiveness, mentors educational staff, and oversees training and remediation of teachers geared to achieving student effectiveness.	Projects may be delegated by Principal
Responsibility concerning subordinates	Responsible to hire, train, mentor, evaluate, discipline, and discharge all educational staff, including teachers,	No subordinates

	educational assistants, librarians, counselors, and assistant principals. Staff size varies, depending on the size of the school (between about 25 to 140).	
Budgetary Responsibility	Responsible for budget for school building.	Projects may be assigned by Principal

In a related attempt to meet the “rank” requirement, the District, in a letter to Relator after this certiorari proceeding was commenced, told her she would retain the same “rank.” Add. 8. But, in the same letter, she was “directed to report . . . in [her] assigned position of Assistant Principal.” Add. 7-8. Clearly, if her “assigned position” is “Assistant Principal,” that is not the same “rank” as Principal. Saying that she retained her “rank” does not make it so.⁹ *Id.* Likewise, listing out certain duties the District perceives as her strengths does not elevate her position, as she will be performing these duties as “directed by the Principal.” Add. 6-7. The District made starkly clear Dr. Murphy’s inferior rank in its letter of June 9, 2010, stating that “in no scenario should your placement be construed as a ‘co-principal’” as such a designation might create “ambiguity around who the building leader is” — not Relator. Add. 6.

Although not defined in the statute, the meaning of the word “rank” is not difficult to ascertain. It connotes “relative standing or position” or “a grade of official standing.”

⁹ The attempt to reverse reality by changing or assigning a name is such a ubiquitous ploy that it has become the topic of numerous common sayings: “you can put lipstick on a pig, but it’s still a pig (anonymous); “you can’t make a silk purse out of a sow’s ear” (anonymous) and “What’s in a name? That which we call a rose by any other name would smell as sweet.” William Shakespeare, *Romeo & Juliet*, II, ii, 43. The District’s action in this case does not pass the clichéd “smell test.”

See Webster's New Collegiate Dictionary, 956 (1979). App. 62. An assistant to the Principal has lower "standing or position" than the Principal she assists and, thus, necessarily ranks lower than the Principal. This definition may, of course, be applied in this case. *See* Minn. Stat. § 645.08, subd. (1) when ascertaining the meaning of Minnesota statutes "words and phrases are construed according to . . . their common and approved usage"); *State v. Carufel*, 783 N.W.2d 539, 542 (Minn. 2010) (when analyzing the plain and ordinary meaning of words or phrases, dictionary definitions may be considered).

The downward mobility foisted upon Relator meets the second statutory alternative as well, since she has been "transfer[ed] to a lower branch of service." Minn. Stat. § 122A.41, subd. 1(c). The position is "lower" because she will no longer be a "building leader;" she will report to and "provide administrative support" to a secondary principal, rather than being the Principal herself. Add. 6. Her duties are subject to modification by the Principal and she is to be "directed by the Principal." Add. 7. She is the equivalent to a restaurant's sous chef to the head chef; a team's assistant coach to the head coach; a movie's assistant director to the director; a physician's assistant to the doctor; a business' executive assistant to the executive.

Further, that Relator has been offered the same salary for the upcoming school year as she received in the 2009-2010 school year does not negate the third statutory prong, which addresses diminution in salary "or compensation." Minn. Stat. § 122A.41, subd. 1(c). Even if she did not satisfy the first two standards, **which she does**, she would be considered "demoted" if she was moved "to a position *carrying* a lower salary or

compensation” *Id.* (emphasis supplied). Under the Collective Bargaining Agreement between the District and the Principals’ Association, which functions as a union, a Principal’s pay scale offers much greater compensation than that of an Assistant Principal, both in regular lane and step payments, as well as in potential for bonuses. The primary differences are:

	Principal	Assistant Principal
Salary	Higher at each step and lane, tops out at \$115,581. App. 37.	Lower at each step and lane, tops out at \$104,445. App. 37.
Service Recognition Payment	<p>After 15 years, annual increase of \$2,000 per year. App. 35.</p> <p>After 20 years, annual increase of \$5,000 per year. App. 35.</p>	<p>After 10 years, one time payment of \$1,000. App. 38.</p> <p>After 15 years, one time payment of \$1,000. App. 38.</p>

Thus, her new position of “Assistant Principal,” unlike her prior position as “Principal” carries “lower salary” and other “compensation.” This satisfies the third standard for “demotion” under the Act. Minn. Stat. § 122A.41, subd. 1(c). In short, the District has the burden of proving that *none* of the three shafting criteria exist here. The record shows, however, that *all* three exist.

That Murphy was demoted is compelled not only by statutory semantics, lexicographic logic, and common sense, but case law as well. In another case involving the same St. Paul School District nearly 30 years ago, the Supreme Court decided that movement from a principal to an assistant principal position was a demotion. *McManus*, 321 N.W.2d at 891. Thus, even though Ms. Murphy’s salary would not be lowered this

year, her (a) reduction in rank or (b) transfer to a lower branch of service alone, or (c) taking a position which is “carrying” a lower salary and benefit scale constitutes a “demotion” subject to the strictures of the Act. While any one triggers statutory protection—notice and a hearing—all three occurred here.

Another portion of the Act supports the position that Relator was demoted. Minn. Stat. § 122A.41, subd. 4, requires that Principals continue to hold “their respective position” and not be discharged or demoted except for cause after a hearing. Relator, however, was summarily stripped of her position, without cause and without a hearing.

In sum, Relator was “demoted” as defined by the Act. The District cannot meet its burden to establish that none of the three criterion are present. Her disposition satisfies **all** three of the criteria for demotion, even though only **one** is required. She was (1) “reduce[d] in rank” **and** (2) “transfer[ed] to a lower branch of service,” **and** (3) transferred “to a position *carrying* a lower salary or compensation.” Minn. Stat. § 122A.41, subd. 1(c) (emphasis added). She also was not allowed to hold her “respective position” under Subdivision 4. Each of these actions violates the Teachers Tenure Act.

II. RELATOR WAS DEPRIVED OF A HEARING REQUIRED BY THE ACT

Because Relator is covered by the Act and was “demoted,” the District was required to give her notice and a hearing before the Board of Education. § 122A.41, subd. 7. It did not do so.

Under the Act, after notice and a hearing, a school district may discharge or demote a principal for performance reasons, because she carries certain communicable diseases, or because of lack of pupils. § 122A.41, subd. 6. In this case, the District has never maintained any performance reasons on the part of Relator Murphy justifying the demotion, nor did the District assert that she had a communicable disease contemplated by the Act.¹⁰ Rather, she was reassigned based on a lack of pupils that resulted in the closing of three schools and a merger of eight others into four. When demotion is caused by lack of pupils, the Principal is entitled to notice and a hearing before the Board of Education prior to a demotion. Minn. Stat. 122A.41, subd. 7 provides in part:

Hearing of charges against teacher. The charges against a teacher must be in writing and signed by the person making the same and then filed with the secretary or clerk of the school board having charge of the school in which the teacher is employed. Before the school discharges or demotes a teacher, the board must notify the teacher in writing and state in reasonable detail its grounds for the proposed discharge or demotion, together with a statement that the teacher may request in writing within ten days after receiving the notice a hearing before the board.

See also State ex rel. Haak v. Bd. of Educ. of Indep. Sch. Dist. No. 625, St. Paul, 367 N.W.2d 461, 463 (Minn. 1985) (individual hearings provided by District to persons affected by proposed demotions). Foesch v. Indep. Sch. Dist. No. 646, 300 Minn. 478, 479, 223 N.W.2d 371, 372 (Minn. 1974) (teacher terminated due to decreased enrollment was provided notice and hearing under Teacher Tenure Act).

¹⁰ Relator would have even greater hearing rights if she had been demoted for performance reasons or because of a communicable disease. In those situations, she could either elect a hearing before the Board or a hearing before an independent arbitrator. Minn. Stat. § 122A.41, subs. 7, 13.

Relator Murphy never received a notice of her right to a hearing or a hearing before the Board prior to her demotion, as required by the Act. The failure to provide her notice and a hearing not only violates her rights under the Act, but also her right to Due Process of law under the Minnesota and Federal Constitutions. *Sweeney v. Special Sch. Dist. No. 1, Minneapolis*, 368 N.W.2d 288, 292 (Minn. Ct. App. 1985).¹¹ Because Relator was not given a hearing before the Board, the demotion should be reversed, and the District ordered to place her in an assignment with the duties, title, and pay of a principal.¹²

This case should not be remanded to the Board for reconsideration. Although other Principals may have been displaced, too, none of them brought a timely certiorari action contesting their treatment. Relator did, and has established that she has priority over at least a half a dozen (or more) untenured persons with less seniority who were appointed Principal. For those reasons, the Court should order that Relator be appointed to a Principal position, leaving to the discretion of the District which school to assign her to lead.

¹¹ Any assertion by the District that a Principal is not entitled to a hearing for “demotion” due to lack of pupils is wrong. Minn. Stat. § 122A.41, subd. 7, provides for a right to a hearing before the Board generally, and then provides for an alternative hearing before an arbitrator, but only in cases of discharge for performance reasons or a communicable disease, specifically citing those provisions. If the legislature meant to limit hearings before the Board to these provisions, it could have done so as it did later in subdivision 7.

¹² Where the record lacks adequate findings to support the Board’s decision, but an issue of fact remains, the Court may remand for an evidentiary hearing and further fact finding, or reverse the District’s decision “for failing to show a substantial basis in the record or for misapplying applicable law.” *Dokmo*, 459 N.W.2d at 675 and cases cited therein.

III. THE DISTRICT VIOLATED RELATOR'S TENURE RIGHTS BY DEMOTING HER WITHOUT FOLLOWING "INVERSE ORDER" AS REQUIRED BY THE ACT

Even if she had been provided notice and a hearing, *which she was not*, the demotion of Relator Murphy violates her rights under the Act. The Act provides that Principals who complete a probationary period, like her, "shall *continue in service and hold their respective positions* during good behavior and efficient and competent service and must not be discharged or demoted except for cause after a hearing." Minn. Stat. § 122A.41, subd. 4(a) (emphases supplied). Relator Murphy had completed her probationary period. Her behavior and competence have not been questioned. Yet she received no notice and no hearing.

The Act further requires that Principals whose schools are closed because of lack of pupils, as hers was, be re-assigned based on seniority among tenured principals. Minn. Stat. § 122A.41, subd. 14(a). That provision states:

A teacher whose services are terminated on account of discontinuance of position or lack of pupils **must receive first consideration** for other positions in the district for which that teacher is qualified. In the event it becomes necessary to discontinue one or more positions, in making such discontinuance, teachers must be discontinued in any department **in the inverse order in which they were employed**¹³

¹³ There is an exception to Minn. Stat. § 122A.41, subd. 14 if "a board and the exclusive representative of teachers in the district negotiate a plan providing otherwise." There is no such contrary plan in the Agreement between the St. Paul Principals' Association and the District. App. 31. In fact, it provides for a 2 year probationary period for Assistant Principal, and "an additional two (2)-year probationary period for an assistant principal appointed to the position of principal." App. 31.

In applying the Act, a school district may not “terminate a tenure teacher and retain a nontenure teacher to fill a position for which the tenure teacher was qualified.” *Marolt*, 217 N.W.2d at 217. See also *Klein v. Bd. of Educ. of Indep. Sch. Dist. No. 671*, 497 N.W.2d 620, 623-24 (Minn. Ct. App. 1993), *rev. granted*, (May 18, 1993), *appeal dismissed*, (June 28, 1993) (stating District violated Act in displacing principal with less senior administrator).

Relator Murphy is qualified and licensed by the state of Minnesota as a Principal for grades K-12. App. 50. She could have, and should have, been assigned as an elementary or secondary school principal according to the order of seniority among the tenured principals. In *McManus*, the Court held that in determining seniority of principals, the lay-off must be determined on a district-wide basis, rather than based on the school building the principal lead at the time of its closing. 321 N.W.2d at 893.

After Relator Murphy was told she was being demoted by the Superintendent, the Board appointed thirteen persons to serve as Principals in the District. A fourteenth was also appointed, but the timing is unknown. That number was unlucky for Relator because six of those appointees did not even have tenure at the time of their appointment, a seventh did not have tenure at the time Dr. Murphy was demoted, and three of those seven never had been Principals in the District. Under the Act, Relator Murphy had priority over those seven persons who were not tenured when she was demoted, yet she was denied a Principal position. The failure to assign her one of those seven open principal positions violates the “inverse order” mandate of the statute.

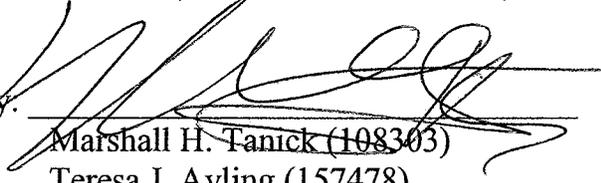
Therefore, the Court should reverse the action of the District and remand this matter to the Board of Education with a directive to appoint Relator Murphy to the position of Principal of a school in the District, "according to seniority," as required by law.

CONCLUSION

For the above reasons, the Court should reverse the action of the District and remand this matter to the Board of Education of the St. Paul Public Schools, Independent School District 625, with an Order to appoint Relator Murphy to the position of Principal of a school within the District.

MANSFIELD, TANICK & COHEN, P.A.

Date: August 18, 2010

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