

THE BROWARD COUNTY SCHOOL BOARD, FLORIDA

THE BROWARD COUNTY SCHOOL BOARD¹,

Petitioner,

v.

SHEILA LEWIS,

Respondent.

_____ /

**THE BROWARD COUNTY SCHOOL BOARD'S DISMISSAL WITH PREJUDICE OF
RESPONDENT'S AMENDED REQUEST FOR ADMINISTRATIVE HEARING**

THIS CAUSE concerns the request for the AMENDED REQUEST FOR ADMINISTRATIVE HEARING (“Amended Request”) filed by SHEILA LEWIS (“Lewis”) with the Broward County School Board (hereinafter “School Board”) on or about June 4, 2019. (Exhibit A).

UNDISPUTED FACTS

1. Prior to being promoted to an Assistant Principal, Lewis worked for the School Board as a teacher pursuant to a professional services contract.
2. Lewis was demoted on June 18, 2018 from her former position as an Assistant Principal to a teacher position effective for the 2018-2019 school year.
3. The Respondent notified Lewis on May 17, 2019, that her employment contract would not be renewed for the 2019-2020 school year.
4. The only disputed issues of material fact identified in the Amended Request were as follows:

¹ The style of the case has been changed to reflect the governing agency pursuant to 28-106.2015 (4) F.A.C. 2019.

The following are disputed issues of material fact: 1) whether Lewis was entitled to be reinstated to a professional services contract upon demotion from the Assistant Principal position; and 2) whether the School Board must establish just cause to non-renew the Petitioner's contract for employment.

CONCLUSIONS OF LAW

5. Florida Statutes § 120.569 provides:

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c). (emphasis added)

6. Rule 28-106.2015 (4) F.A.C. (2019), which governs “Agency Enforcement and Disciplinary Actions” provides in part that requests for hearing must include, “A statement requesting an administrative hearing identifying those material facts that are in dispute.”

7. The only “issues of material fact” identified by Lewis are actually issues of law, rather than issues of fact; and, therefore, Lewis has failed to demonstrate an entitlement to a hearing.

8. Moreover, it is evident from the face of the Amended Request that the defect cannot be cured.

9. An administrator, who held a professional service contract in the district prior to

accepting a position as administrator, is not entitled to return as a teacher under a professional service contract upon non-renewal as an administrator. Bd. Of Ed of Levy v. Terrell, 967 So. 2d 394 (Fla. 1st DCA 2007).

10. Florida Statutes § 1012.335(6) further provides that an individual newly hired as instructional personnel by a school district is ineligible for a professional services contract.

11. Lewis was properly placed on an annual contract for the 2018-2019 school year when she was rehired as a teacher, after her contract as an administrator was not renewed.

12. An employee is not entitled to hearing under due process or under the Administrative Procedure Act when her annual contract is not renewed at the conclusion of the contract's term. Jones v. Miami-Dade County, Public Schools, 816 So. 2d 824 (Fla. 3d DCA 2002).

13. Moreover, the SCHOOL BOARD's "decision not to enter [into a] new annual contract . . ." is "not reviewable." Fertally v. Miami-Dade Community College, 651 So. 2d 1283 (Fla. 3d DCA 1995); See Cox v. School Board of Osceola County, 996 So. 2d 353 (Fla. 5th DCA 1996) (stating the School Board lacks jurisdiction regarding employees whose contracts are not renewed and have no authority to reinstate an employee who the Superintendent has refused to nominate).

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

The School Board of Broward County, Florida dismisses Lewis' Amended Request with prejudice.

DONE AND ORDERED in Fort Lauderdale, Broward County, Florida this ____ day of July, 2019.

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____
HEATHER P. BRINKWORTH, CHAIR

Filed in Official School Board Records the
____ day of _____, 2019.

Supervisor, Official School Board Records

Copies furnished to:

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Assistant General Counsel
Office of the General Counsel
Broward County School Board
600 S.E. Third Avenue – 11th Floor
Fort Lauderdale, Florida 33301

MELISSA C. MIHOK, ESQUIRE
CPLS, P.A.
201 East Pine Street
Suite 445
Orlando, Florida 32801

ROBERT W. RUNCIE, Superintendent of Schools
Office of the Superintendent
The School Board of Broward County, Florida
600 Southeast Third Avenue - 10th Floor
Fort Lauderdale, Florida 33301

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Section 120.68, Fla. Stat., a party to this proceeding may seek judicial review of the School Board's Dismissal in the appropriate district court of appeal by filing a notice of appeal with Noemi Gutierrez, Agency Clerk, Official School Board Records, The School Board of Broward County, Florida, 600 Southeast Third Avenue – 2nd Floor, Fort Lauderdale, Florida 33301, on or before thirty (30) days from the date of this Dismissal. A copy of the notice and a copy of this Dismissal, together with the appropriate filing fee, must also be filed with the Clerk, Fourth District Court of Appeal, 1525 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2399. If you fail to file your notice of appeal within the time prescribed by laws and the rules of court, you will lose your right to appeal this Dismissal.

BEFORE THE SCHOOL BOARD
OF BROWARD COUNTY, FLORIDA

SHEILA LEWIS,)
)
 Petitioner,)
)
 vs.)
)
 ROBERT W. RUNCIE, as)
 Superintendent,)
)
 Respondent)
)

AMENDED REQUEST FOR ADMINISTRATIVE HEARING¹

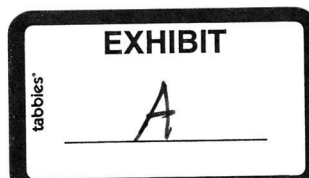
Petitioner, SHEILA LEWIS, requests an Administrative Hearing regarding the non-renewal of the Petitioner's contract for employment and return to annual contract status and states as follows:

1. The name and address of the Petitioner is Sheila Lewis, 1229 Spring Circle Drive, Coral Springs, FL 33071 (954) 254-2514.

2. The name, address, and telephone number of the Respondent is Robert W. Runcie, as Superintendent of the Broward County School District, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.

3. The name, address, and telephone number of the Respondent's attorney is Melissa C. Mihok, CPLS, P.A., 201 E. Pine St., Ste. 445, Orlando, FL 32801, 407-647-7887.

¹ Amended to reflect correct name of Petitioner due to scrivener's error.



4. The Petitioner is currently employed by the School Board as a teacher.

5. The Petitioner was demoted on June 18, 2018 from her position as an Assistant Principal to a teacher position effective the 2018-2019 school year.

6. Prior to being promoted to an Assistant Principal, the Petitioner worked for the School Board as a teacher pursuant to a professional services contract.

7. The Petitioner's professional contract status should have been reinstated upon the demotion to a teacher position.

8. The Respondent notified the Petitioner on May 17, 2019 that her employment contract would not be renewed for the 2019-2020 school year.

9. The Respondent did not provide just cause for the non-renewal of the Petitioner's contract.

10. The Petitioner's substantial interest is affected by the Superintendent's recommendation that the School Board return the Petitioner to annual contract status and to not renew the Petitioner's contract for employment without establishing just cause.

11. The following are disputed issues of material fact: 1) whether the Petitioner was entitled to be

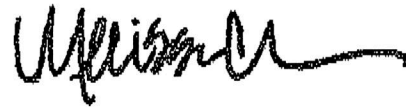
reinstated to a professional services contract upon demotion from the Assistant Principal position; and 2) whether the Respondent must establish just cause to non-renew the Petitioner's contract for employment.

12. The specific acts that warrant the School Board rejecting or modifying the recommendation to non-renew the Petitioner's contract for employment are as follows: Petitioner was employed pursuant to a professional services contract and the Respondent is required to establish just cause to non-renew the contract.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document was served on June 3, 2019 via U.S. Mail and fax upon: Robert W. Runcie, Superintendent, Broward County School District, 600 3rd Ave., Ft. Lauderdale, FL 33301 (754) 321-2701 and to Office of the General Counsel, 600 3rd Ave., Ft. Lauderdale, FL 33301 (754) 321-2705.

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