

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

GLENN SIROIS,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2:11-cv-00422-NT
)	
MAINE SCHOOL)	
ADMINISTRATIVE DISTRICT NO.)	
17,)	
)	
Defendant.)	

ORDER ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

From October 2005 to July 2010, the Plaintiff, Glenn Sirois, was employed by the Defendant, Maine School Administrative District Number 17 (“MSAD 17”), as Director of Transportation. In June of 2010, after a difficult year during which he was diagnosed with and treated for prostate cancer, Sirois received official notification that MSAD 17 had decided not to renew his contract.

The Plaintiff filed a four-count complaint alleging violations of the Maine Human Rights Act and Americans with Disabilities Act, a violation of procedural due process under 42 U.S.C. § 1983, and breach of contract. Pl.’s Compl. and Jury Demand (the “Complaint”) (ECF No. 1). Before the Court is the Defendant’s motion for summary judgment on all counts of the Complaint (ECF No. 19). For the reasons that follow, the Defendant’s motion is **DENIED IN PART** and **GRANTED IN PART**.

I. Facts

A. Background

The Court sets forth the facts in the light most favorable to the Plaintiff. *Jones v. Walgreen Co.*, 679 F.3d 9, 12 (1st Cir. 2012).

MSAD 17, which is a school administrative unit in Oxford County, Maine, hired Sirois as Director of Transportation in approximately October of 2005.¹ Prior to joining MSAD 17, Sirois worked for twenty years at Hudson Bus Lines where he managed transportation and supervised the drivers for the Lewiston-Auburn schools.² During the time Sirois worked for MSAD 17, Mark Eastman was superintendent; Richard Colpitts was assistant superintendent; and Cathy Fanjoy Coffey, MSAD 17's business manager, was Sirois's direct supervisor.³ The parties dispute the terms and length of Sirois's employment contract, and the Court will discuss those issues in greater detail in sections V and VI, *infra*.

Sirois's job description as Director of Transportation included: supervising the bus drivers and other staff, managing the everyday operation of the transportation department, developing and maintaining the department's annual budget, monitoring time cards for accuracy, maintaining the safety of the bus garage and adjacent areas, supervising the development and maintenance of a

¹ Def.'s Statement of Material Facts in Supp. of Def.'s Mot. for Summ. J. ("DSMF") ¶ 1 (ECF No. 20).

² DSMF ¶ 2; Pl.'s Add'l Statement of Material Facts in Dispute ("PSAMF") ¶ 1 (ECF No. 21).

³ DSMF ¶¶ 3-5.

routing system for student transportation, and ensuring the safety of busses and students.⁴

B. 2005-2007

During the first three years of his employment with MSAD 17, Sirois did not receive any discipline or negative feedback from his supervisors on his job performance.⁵ When Sirois started as Transportation Director, morale in the Transportation Department improved, and there were fewer staff complaints.⁶ Coffey did not evaluate Sirois in 2006 and 2007.⁷

C. 2008

In 2008, Sirois took five days off to care for his wife and took a five-day bereavement leave after she died on June 4, 2008.⁸ During this time, Coffey became concerned that Sirois was not at work as many hours as he should be. She asked Sirois to give her a schedule showing when he came in to work and when he left.⁹

Coffey first formally evaluated Sirois in November of 2008.¹⁰ The evaluation was divided up into four general performance areas — knowledge of specialty, application of knowledge, management skills, and professionalism — that were further divided into specific sub-areas.¹¹ For each sub-area, the rating system called for a score of: 1 for superior, 2 for satisfactory, 3 for needs improvement, or 4 for

⁴ DSMF ¶ 6.

⁵ PSAMF ¶¶ 2, 8.

⁶ POSMF ¶ 9.

⁷ Pl.'s Opposing Statement of Material Facts in Opp'n to Summ. J. ("POSMF") ¶ 9 (ECF No. 21).

⁸ PSAMF ¶¶ 5, 7; Sirois Aff. ¶¶ 7, 9 (ECF No. 21-2).

⁹ PSAMF ¶ 4; Def.'s Opp'n to Pl.'s Add'l Statement of Material Facts ("Def.'s Opp'n to PSAMF") ¶ 4 (ECF No. 25).

¹⁰ DSMF ¶ 14.

¹¹ DSMF Ex. 13 (ECF No. 20-13).

unacceptable. Sub-area ratings were then averaged for a total rating for each performance area.

Coffey rated Sirois 1 or “superior” in the following sub-areas:

- Displays personal and professional integrity in all relationships with staff and students.
- Provides and encourages staff development.
- Fosters staff morale by various means, including seeking to know and use their individual talents. Coffey noted: “Glenn has demonstrated exceptional skills in dealing with what is known to be a very difficult staff. He has quickly transformed the work environment and earned the trust and respect of his drivers, mechanics and support staff.”¹²

Coffee rated Sirois 1.5 in the sub-area of “Works well with staff and public.”¹³

Coffey rated Sirois 2, or “satisfactory” in the following sub-areas:

- Possesses appropriate qualifications.
- Possesses current information and skills.
- Demonstrates knowledge of current programs and encourages use when appropriate within school setting.
- Assists in the implementation of Board policies.
- Provides leadership for setting a climate that enhances staff learning and improvement. Coffey noted: “Glenn has played an integral role in building a cohesive and professional team that is dedicated to the safety of our students.”
- Assist in the hiring of new personnel.
- Supports the Superintendent of Schools and the School Directors in carrying out policies and regulations.
- Works effectively with the appropriate people to coordinate the department.
- Prompt and carries out tasks in an effective, efficient manner.
- Accepts and adapts to change.
- Appearance is professionally appropriate.
- Keeps appropriate personnel informed of concerns and problems.
- Serves as role model for students and staff.¹⁴

Coffey rated Sirois 2.5 in the following sub-areas:

¹² PSAMF ¶ 11.

¹³ PSAMF ¶ 12.

¹⁴ PSAMF ¶ 12.

- Maintains school-community relations. Coffey commented: “Glenn needs to hold his staff accountable for insensitive or inappropriate communications with the public. Public relations are vitally important for our school system and can be easily eroded if citizens feel that district employees have not treated them respectfully or appropriately. We have had frequent complaints from community members after they have called the bus garage.”
- Manages a crisis effectively. Coffey commented: “Glenn was out of district when we had the major crisis of a bus fire recently. Neither his supervisor nor the Superintendent knew or approved leave for that afternoon.”
- Participates in professional educational organizations.¹⁵

Coffey rated Sirois 3, or “needs improvement” in the following sub-areas:

- Supervises and evaluates staff effectively. Coffey noted: “Glenn has the respect and loyalty of his staff. However, evaluations are not being conducted as required. Glenn needs to dedicate significant efforts this year in evaluating his staff and using this process as a tool to improve employee and department performance.”
- Initiates and implements collaboratively developed strategies for continuous improvement.
- Evaluates existing programs and recommends appropriate changes.
- Adequately maintains the approved budget.¹⁶

Sirois received no 4 ratings for “unacceptable” performance.¹⁷

Sirois’s average rating in the area “Knowledge of Specialty” was 2; his average rating in “Application of Knowledge” was 2.5; his average rating in “Management Skills” was 2.5; and his average rating in “Professionalism” was 2.¹⁸

In her narrative at the end of the evaluation, Coffey said:

Glenn has had a difficult year, personally. It is nearly impossible, under such difficult circumstances, to keep work performance from being impacted. Although Glenn is still impacted by his loss, and understandably so, the department needs to move forward and improve.

¹⁵ DSMF Ex. 13, at 2.

¹⁶ DSMF ¶ 16; DSMF Ex. 13, at 1.

¹⁷ DSMF Ex. 13.

¹⁸ Def’s Opp’n to PSAMF ¶¶ 11-12; DSMF Ex. 13.

This is a critical year for the school district as energy costs rise, a major recession looms, and public pressure to reduce the cost of education continues. Our non-instructional departments in particular, need to streamline in every way possible in order to maximize the resources that can be devoted to direct instruction of our students. We are confident that Glenn can provide the leadership his department needs to become more efficient and effective.¹⁹

Generally, Sirois understood from the November 2008 evaluation that Coffey had some concerns about his performance, but in many areas his performance was satisfactory or superior.²⁰ He largely believed that the performance problems identified in his evaluation were attributable to time he took off to care for his wife and grieve her loss.²¹ In his self-evaluation, Sirois gave himself a “needs improvement” rating on “supervises and evaluates staff effectively” because he had been unable to complete staff evaluations during his wife’s illness.²²

After receiving the November 2008 evaluation, Sirois understood that Coffey wanted him to improve his oversight of his staff’s time sheets and his supervision of his dispatcher, Kim Ballard.²³ After the evaluation, Sirois attempted to address his supervisor’s concerns, and he became more critical of Ballard, verbally reprimanding her several times for raising her voice with callers to the bus

¹⁹ DSMF ¶ 15; DSMF Ex. 13, at 3.

²⁰ DSMF ¶ 18; POSMF ¶ 18. The Defendant argues in its Reply in Support of Motion for Summary Judgment that the Plaintiff cannot use his affidavit to re-write his earlier deposition testimony. *Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d 11, 26 (1st Cir. 2002) (“a party opposing summary judgment cannot create a genuine issue of material fact by the simple expedient of filing an affidavit that contradicts clear answers to unambiguous questions in an earlier deposition”). The Court does not agree that this statement of fact, which is supported by Sirois’s affidavit — or the other facts that the Court has included in its summary of the facts and that are supported by Sirois’s affidavit — directly contradict Sirois’s deposition testimony.

²¹ POSMF ¶ 18.

²² POSMF ¶ 17.

²³ DSMF ¶ 19.

garage.²⁴ Sirois also made suggestions for changes to the existing bus routes, however those were denied by Eastman.²⁵ Sirois testified that maintaining the budget over the course of the year was “almost impossible” because of the varying cost of fuel and because his department’s money was used to cover other departments’ vehicles.²⁶ For example, once, after assuring Sirois that the money for replacing a kitchen van would not come out of his department, Coffey and Eastman replaced the kitchen van using his department’s money.²⁷

Eastman did not notice an improvement in Sirois’s performance after the November evaluation.²⁸ In December of 2008, Ballard purchased a part for her personal vehicle using MSAD 17’s charge account and tax ID number, and Sirois approved the invoice.²⁹ Sirois, who was responsible for reviewing about 50 purchase orders for a fleet of over 50 vehicles each week, told Coffey that Ballard’s charge for her personal vehicle slipped by him.³⁰ Eastman reprimanded Ballard in writing.³¹

D. 2009

In February of 2009, Sirois began experiencing symptoms of painful urinary tract infections.³² He visited the doctor several times throughout February and March of 2009 for the infections and took sick time on six days in February and

²⁴ POSMF ¶ 20, 23; Sirois Dep. 41:7-25, 42:1.

²⁵ POSMF ¶ 19.

²⁶ POSMF ¶ 19; Sirois Dep. 42:7-25, 43:1-8 (ECF No. 21-4).

²⁷ Sirois Dep. 42:24-25, 43:1-8.

²⁸ Eastman Aff. ¶ 6 (ECF No. 20-1).

²⁹ DSMF ¶¶ 21-22.

³⁰ POSMF ¶ 22.

³¹ DSMF ¶ 23.

³² PSAMF ¶ 16.

three and a half days in March.³³ In April of 2009, he took a half day and took another half day in May to deal with medical issues.³⁴

Around June of 2009, Eastman asked John Parsons to look into issues in the Transportation Department. In a June 10, 2009, status report to Eastman, Parsons reported time card problems in the department. He also reported that many bus drivers stopped at McDonalds during their shifts.³⁵

Sirois was diagnosed with prostate cancer on June 26, 2009. He told Coffey about his diagnosis that same day.³⁶ In total, Sirois took sick time on thirteen different days in the spring of 2009.³⁷

On June 30, 2009, one of Sirois's bus drivers, Patricia Chenery, who did not know that Sirois had just been diagnosed with prostate cancer, went to Colpitts with concerns about Sirois.³⁸ Colpitts asked her to put her concerns in writing.³⁹ According to Colpitts, Chenery "listed everything that she could think of at the time."⁴⁰ Chenery's written complaint, a five and a half page, single-spaced document dated June 30, 2009, entitled "Concerns with Glenn Sirois," raised dozens of issues ranging from bus maintenance to improper signage to issues with Sirois's management style.⁴¹ On June 30, 2009, Chenery's written complaint was presented

33 PSAMF ¶¶ 17-19.

34 PSAMF ¶¶ 23-24.

35 DSMF ¶ 24.

36 POSMF ¶ 28.

37 PSAMF ¶ 26.

38 POSMF ¶ 25; DSMF ¶ 29.

39 POSMF ¶ 25.

40 POSMF ¶ 25.

41 DSMF Ex. 15 (ECF No. 20-15).

to Coffey who reviewed it with Chenery and then took it to Eastman. Eastman assigned Colpitts to conduct an investigation.⁴²

Colpitts investigated Chenery's complaints in July of 2009, determining that only the following complaints were credible: Sirois had told Chenery that he would look into putting a bus stop sign at a certain point on her route but had not done so; bus drivers felt that their complaints about broken buses were not taken seriously, and their vehicles would go unrepaired for long periods of time; and Sirois did not intervene in a dispute between Chenery and another driver about leaving a lunch bag on the break room table.⁴³

Eastman, Coffey, and Colpitts met with Sirois to summarize the results of Colpitts's investigation and to discuss their concerns with Sirois about his performance.⁴⁴ They gave Sirois a letter from Eastman and Coffey dated July 29, 2009 that listed issues which "must be addressed to improve the overall operation of the garage and increase staff morale." The letter told Sirois that he "must be the responsible leader of the Cost Center," "[a]t no time is safety of students or staff to be compromised," and "[s]taff morale must be addressed." The letter informed Sirois that these issues would be subject to monthly review by the Superintendent, that Sirois would be assigned David Marshall as a mentor, that Marshall and Sirois

⁴² Coffey Dep. 58:7-17 (ECF No. 20-9).

⁴³ DSMF ¶ 27; POSMF ¶¶ 26-27; Colpitts Dep. 31:19-25, 32:1-11, 27:10-25, 28:1-11, 35:2-5 (ECF No. 21-5).

⁴⁴ DSMF ¶ 31.

would fill out a weekly monitor sheet to be forwarded to the Superintendent, and that his next year was a probationary period.⁴⁵

Sirois disagreed with many of his supervisors' criticisms.⁴⁶ He did not believe that he should take personal responsibility for policies set in place by the central office, and he disputed that he let unsafe buses leave the bus garage.⁴⁷

Sirois took one sick day in August of 2009 and two sick days in September of 2009 for pre-surgical testing and procedures prior to his October surgery.⁴⁸ On October 14, 2009, Sirois took two weeks of leave for surgery for his prostate cancer.⁴⁹ On October 27, 2009, Sirois's treating physician approved Sirois to return to work without restrictions, and he returned to work full-time on October 29, 2009.⁵⁰ After his surgery, Sirois continued to experience urinary problems and infections. He was tired and in pain, and he took sick time on five days in December of 2009.⁵¹

Coffey was concerned in the fall and winter of 2009 that Sirois was inadequately supervising maintenance at the bus garage and that unsafe buses were going out, which she thought was "a disaster in the making" that had been "building."⁵²

In December of 2009, Sirois began meeting weekly first with Parsons, then Marshall, and the Assistant Director of Transportation, Diana Gordon. At each

⁴⁵ DSMF Ex. 16 (ECF No. 20-16).

⁴⁶ POSMF ¶ 33.

⁴⁷ Sirois Dep. 71:2-22; POSMF ¶ 33.

⁴⁸ PSAMF ¶ 32; Sirois Aff. ¶ 33.

⁴⁹ DSMF ¶ 37.

⁵⁰ DSMF ¶¶ 38-39; POSMF ¶¶ 38-39.

⁵¹ POSMF ¶ 38; PSAMF ¶¶ 34, 37.

⁵² PSAMF ¶ 45; Def.'s Opp'n to PSAMF ¶ 45.

meeting, Parsons or Marshall would go over a weekly transportation department survey with Sirois.⁵³ The survey in the record is divided up into “Status of Buses,” “Status of Drivers,” “Maintenance Status,” “Personnel Issues,” “Public Relations,” “District Communications,” “Timecards,” “Funding Curtailment,” “Departmental Positives (What is going well?),” “Departmental Needs (What is not going well and needs to be addressed?),” “What do you need to support your efforts?,” and “To do list.”⁵⁴ During their weekly meetings, Marshall would go over the list, ask Sirois about each issue on the list, and record in the survey what Sirois reported.⁵⁵ At each weekly meeting, Marshall asked Sirois about his health. Sirois told him that he was having trouble sleeping, urinary trouble, and pain.⁵⁶

E. 2010

In January of 2010, Sirois changed his schedule to start work at 9:00 a.m. rather than 8:00 a.m. because he was so tired.⁵⁷ In February of 2010, Sirois took four sick days.⁵⁸ Eastman,⁵⁹ Coffey,⁶⁰ Marshall,⁶¹ and Parsons⁶² all testified that they were aware that Sirois was having difficulty sleeping at night and felt fatigued during the day due to complications with his condition. MSAD 17 gave Sirois all of the time off that he requested and allowed him to leave early when he was tired or

⁵³ POSMF ¶¶ 44-45.

⁵⁴ POSMF Ex. 7 (ECF No. 21-7).

⁵⁵ DSMF ¶ 45; POSMF ¶ 45.

⁵⁶ Marshall Dep. 23:7-22 (ECF No. 21-6).

⁵⁷ POSMF ¶ 42.

⁵⁸ PSAMF ¶ 37.

⁵⁹ Eastman Dep. 53:13-22 (ECF No. 25-5).

⁶⁰ Def.’s Opp’n to PSAMF ¶ 47.

⁶¹ Marshall Dep. 35:4-10.

⁶² Parsons Dep. 58:17-19 (ECF No. 25-8).

not feeling well.⁶³ The Assistant Transportation Director, sometimes assisted by Marshall, stepped in for Sirois when he was absent.⁶⁴

Sirois contends that his performance improved in the spring of 2010 as he began to feel better, and his testimony is supported by the March 5, 2010 survey that Marshall filled out, which shows that Sirois was making progress on many of the goals his supervisors had set for him. He had scheduled a bus routing training, the driver information board was up to date, the inventory was up to date, bus inspections were almost done, and there were no public relations issues. The Departmental Positives section read: “No major issues. Mechanics at training on new buses at Cressey. Things are going smoothly. Attitudes of drivers and mechanics are positive. Inspections almost done. All district vehicles’ registrations renewed. Two mechanics received coolant training for new busses.” In the section headed “Departmental Needs (What is not going well and needs to be addressed?)” the only item was a shop truck which was still having problems. The survey also says, under the “Update manual” subsection, “Great meeting 3/03/10. All felt that a lot was accomplished. Next meeting 3/10/10.”⁶⁵

In March of 2010, Eastman and Coffey decided that Sirois’s contract should not be renewed at the end of his term on June 30, 2010.⁶⁶ Eastman and Coffey wrote a letter to Sirois, dated March 10, 2010, that stated: “The reality is that you appear to be unable to provide the necessary leadership, oversight and direction

⁶³ DSMF ¶¶ 40, 43.

⁶⁴ Def.’s Opp’n to PSAMF ¶ 44; Marshall Dep. 20:14-19.

⁶⁵ POSMF ¶ 46; POSMF Ex. 7.

⁶⁶ DSMF ¶47.

that is critical to the success of the Department.”⁶⁷ The letter cited his November 2008 evaluation “which noted deficiencies in knowledge, application, school community relations and management skills.”⁶⁸ It also cited the June 29, 2009 letter, stating that “as the result of an investigation into departmental issues, you were again cited for leadership, safety and staff issues.”⁶⁹ The letter listed Sirois’s “ongoing issues,” including: “Not willing to make the time commitment to address issues in a timely manner.”⁷⁰ The letter concluded: “These leadership, staff and safety issues still remain. You are unable to lead this department.”⁷¹ Sirois did not receive this letter.⁷²

Eastman and Coffey met with Sirois at some point during March. Eastman told Sirois that his contract would not be renewed and asked him to resign. Sirois told his supervisors that he had been sick for months and was only starting to feel better.⁷³ He asked for more time to improve his performance, and Eastman agreed to delay the decision another month.⁷⁴ However, Coffey told Sirois at the meeting that his termination was “inevitable.”⁷⁵ She testified:

Q: Why did you feel it was inevitable that he would be terminated?

A: I never saw in him the ability to do the job or even to grasp the issues.

A: During this meeting did you consider any of the health effects that he had been suffering from as a result of cancer?

⁶⁷ DSMF ¶ 48; DSMF Ex. 17 (ECF No. 20-17).

⁶⁸ DSMF Ex. 17.

⁶⁹ DSMF Ex. 17.

⁷⁰ DSMF Ex. 17.

⁷¹ DSMF Ex. 17.

⁷² Sirois Dep. 96:3-14.

⁷³ PSAMF ¶ 42.

⁷⁴ DSMF ¶¶ 50-51.

⁷⁵ POSMF ¶ 47.

A: I thought about it during the meeting, but in my mind, his inability to perform was related to his – to him as a person, not because of any illness. He just – just didn’t have the ability to do this job.

Q: In arriving at that conclusion, did you ask him if, for instance, his illness was affecting his ability to be a leader?

A: I don’t believe I asked him that at this meeting.⁷⁶

Some of the “ongoing issues” listed in the March 10, 2010 letter were not mentioned at the March meeting.⁷⁷

After the month grace period, Eastman believed that Sirois had not improved.⁷⁸ Although Sirois was feeling better, he still continued to experience significant urinary obstruction at this time. He took half a sick day in April and a full day in May for doctor appointments.⁷⁹ In May of 2010, Eastman met with Sirois to tell him that his contract as Transportation Director would not be renewed.⁸⁰ Eastman offered Sirois a head custodian position or a bus driver position; Sirois declined because both positions would significantly decrease his salary.⁸¹ Eastman convinced Sirois to stay on after June 30, 2010 to run transportation for the Nateva Music Festival in July of 2010.⁸²

By letter dated June 28, 2010, Eastman told Sirois that his employment was terminated effective July 16, citing “[t]he many issues involving your lack of leadership that we have discussed are critical to leading that department into the future.”⁸³ Sirois continued to be paid his Transportation Director salary during the

⁷⁶ Coffey Dep. 83:5-16.

⁷⁷ POSMF ¶ 48.

⁷⁸ DSMF ¶ 52.

⁷⁹ PSAMF ¶ 40; Sirois Aff. ¶¶ 44-45.

⁸⁰ DSMF ¶ 53.

⁸¹ DSMF ¶ 54; POSMF ¶ 54.

⁸² DSMF ¶ 55.

⁸³ DSMF ¶ 57; DSMF Ex. 18 (ECF No. 20-18).

Nateva Music Festival in addition to a per diem salary,⁸⁴ but he understood that his employment was over after the Nateva Music Festival.⁸⁵

II. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56, the Court shall grant summary judgment if the movant shows “that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A ‘genuine’ issue is one that could be resolved in favor of either party, and a ‘material fact’ is one that has the potential of affecting the outcome of the case.” *Calero-Carezo v. U.S. Dep’t of Justice*, 355 F.3d 6, 19 (1st Cir. 2004) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986)).

“To demonstrate the existence of a genuine issue of material fact, plaintiffs must point to concrete, admissible evidence. Mere allegations, or conjecture unsupported in the record, are insufficient.” *Rivera-Marcano v. Nor meat Royal Dane Quality*, 998 F.2d 34, 37 (1st Cir. 1993) (citations omitted). “So long as the plaintiff’s evidence is both cognizable and sufficiently strong to support a verdict in her favor, the factfinder must be allowed to determine which version of the facts is most compelling.” *Calero-Carezo*, 355 F.3d at 19. The “ground rules for summary judgment leave ‘no room for credibility determinations, no room for the measured weighing of conflicting evidence such as the trial process entails, no room for the judge to superimpose his own ideas of probability and likelihood (no matter how reasonable those ideas may be)’ on the cold pages of the record.” *Rodriguez v.*

⁸⁴ DSMF ¶ 56 POSMF ¶ 56.

⁸⁵ DSMF ¶ 59.

Municipality of San Juan, 659 F.3d 168, 175 (1st Cir. 2011) (quoting *Greenburg v. P.R. Mar. Shipping Auth.*, 835 F.2d 932, 936 (1st Cir. 1987)).

III. Counts I & II: Violations of the Maine Human Rights Act and the Americans with Disabilities Act

A. Applicable Law

Section 12112 of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213, states: “No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112. Section 4572 of the Maine Human Rights Act (“MHRA”), 5 M.R.S.A. §§ 4551-4634, provides: “A covered entity may not discriminate against a qualified individual with a disability because of the disability of the individual in regard to . . . advancement or discharge of employees.” 5 M.R.S.A. § 4572(2).⁸⁶

In a disability discrimination case under the ADA where the plaintiff has no direct evidence of discrimination, the plaintiff carries an initial burden of establishing a prima facie case of disability discrimination. To make out a prima facie case, the plaintiff must establish:

(1) That she was “disabled” within the meaning of the ADA; (2) that she was able to perform the essential functions of her job with or

⁸⁶ In analyzing the ADA and MHRA, the Court need not continuously distinguish between the two statutes as to their scope and general intent because Maine courts consistently look to federal law in interpreting state anti-discriminatory statutes. Thus while the Court will focus on the ADA, the necessary conclusions as to the Plaintiff’s MHRA claim flow directly from this analysis.

Soileau v. Guilford of Maine, Inc., 928 F. Supp. 37, 45 (D. Me. 1996) (citations omitted).

without accommodation; and (3) that she was discharged or adversely affected, in whole or in part, because of her disability.

Jones, 679 F.3d at 14 (quoting *Ruiz Rivera v. Pfizer Pharm., L.L.C.*, 521 F.3d 76, 82 (1st Cir. 2008)). Once the plaintiff establishes these elements, the burden shifts to the employer “to articulate a legitimate, non-discriminatory reason for its employment decision and to produce credible evidence to show that the reason advanced was the real reason.” *Tobin v. Liberty Mut. Ins. Co.*, 433 F.3d 100, 105 (1st Cir. 2005) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)).

The defendant’s burden at this stage is only a burden of production; the burden of proof remains with the plaintiff at all times. If the defendant meets this burden, the presumption of discrimination created by the prima facie case drops away and the burden of production shifts back to the plaintiff to show that the employer’s stated nondiscriminatory reason was a pretext for discrimination.

Dominguez-Cruz v. Suttle Caribe, Inc., 202 F.3d 424, 430 (1st Cir. 2000).

Where, as here, the plaintiff challenges the employer’s explanation that the plaintiff’s poor performance motivated the termination, the plaintiff must: (1) refute the employer’s evidence that it was poor performance and not his disability that was the real reason for his termination, and (2) “advance evidence of his own showing that [his employer’s] asserted reason was a pretext hiding discrimination.” *Tobin*, 433 F.3d at 105. “An employee can establish pretext ‘by showing weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions *in the employer’s proffered legitimate reasons* such that a factfinder could infer that the employer did not act for the asserted non-discriminatory reasons.” *Carreras v. Sajo, Garcia & Partners*,

596 F.3d 25, 37 (1st Cir. 2010) (quoting *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 56 (1st Cir. 2000)). At the motion for summary judgment phase, “the focus should be on the ultimate issue: whether, viewing the ‘aggregate package of proof offered by the plaintiff’ and taking all inferences in the plaintiff’s favor, the plaintiff has raised a genuine issue of fact as to whether the termination of the plaintiff’s employment was motivated by [unlawful] discrimination.” *Dominguez-Cruz*, 202 F.3d at 431.

B. Discrimination Because of Disability

1. MSAD 17’s Non-Discriminatory Reason

The Court follows the Defendant’s lead in assuming, for the purposes of this summary judgment motion, that the Plaintiff has satisfied the elements of his prima facie case. In order to meet its burden of articulating a legitimate, non-discriminatory reason for terminating Sirois’s employment, the Defendant asserts that: “Plaintiff had ongoing, uncorrected, performance issues – including his lack of leadership abilities, his failure to supervise and discipline employees, his failure to address bus safety issues, and his failure to properly manage the transportation department budget and expenses.” Def.’s Mot. for Summ. J. and Inc. Memo. of Law (“Def.’s Mot. for Summ. J.”) 10 (ECF No. 19). The Defendant supports this non-discriminatory reason with Sirois’s November 2008 evaluation, the Chenery concerns, Eastman and Coffey’s July 29, 2009 letter to Sirois, Eastman and Coffey’s March 2010 meeting with Sirois, the March 10, 2010 letter containing their

concerns about his performance, and Eastman's letter to Sirois informing him of MSAD 17's decision not to renew his contract, which references these documents.

The Defendant's stated reason for terminating Sirois's contract is legitimate and non-discriminatory, and the Defendant has produced sufficient evidence supporting this reason to discharge the Defendant's burden of production.

2. The Plaintiff's Evidence of Pretext

The Plaintiff disputes that he had serious performance problems and argues that after three years without significant negative feedback from MSAD 17, the timing of the July 29, 2009 letter, the March 10, 2010 letter, the March meeting, and his termination in May, raise a reasonable inference that he was terminated "because of" his June 26, 2009 cancer diagnosis.

a. The November 2008 Evaluation

Coffey's November 2008 evaluation of Sirois, his first evaluation since he was hired in October of 2005, supports an inference that Coffey was satisfied with Sirois's performance. Coffey complimented Sirois on his "dedication to your department and your staff while suffering such an incredible loss" telling him that she was "thankful that I have you as part of my team." DSMF Ex. 12, at 1. Coffey specifically noted that Sirois had "quickly transformed the work environment and earned the trust and respect" of his staff. She praised his "exceptional skills" in dealing with his "difficult staff," whose "respect and loyalty" he had earned. She commented that "Glenn has played an integral role in building a cohesive and professional team that is dedicated to the safety of our students." Coffey concluded:

“We are confident that Glenn can provide the leadership his department needs to become more efficient and effective.” Despite criticizing Sirois’s failure to complete staff evaluations, Coffey herself had not formally evaluated Sirois once in his first three years with MSAD 17. The Plaintiff has created a factual dispute on whether efficient routing was a major source of concern since the bus routes were in place when he came on board and any changes that he suggested were denied by his supervisors. The Plaintiff has also offered evidence suggesting that maintaining the Transportation Department’s approved budget was somewhat outside his control. In response to his borderline “needs improvement” rating in maintaining school-community relations, Sirois became tougher on Ballard, his dispatcher.

b. Chenery’s Concerns and the July 29, 2009 Letter

While the record is undisputed that Chenery did not know of Sirois’s cancer diagnosis at the time of her complaint, the Plaintiff has offered evidence that Coffey knew of Sirois’s cancer diagnosis as of June 26, 2009, four days before Chenery committed her concerns to writing. Despite the fact that, after his July 2009 investigation into Chenery’s concerns, Colpitts found many of the complaints not credible, Coffey and Eastman wrote Sirois a critical letter itemizing issues that needed to be addressed and placing him on probation.⁸⁷ The letter, dated July 29, 2009 came a month after Sirois disclosed his diagnosis to Coffey. The July 29, 2009 letter is inconsistent with Coffey’s November 2008 performance evaluation, which identified no unacceptable performance issues and lauded Sirois as having

⁸⁷ The Court notes that placing Sirois on probation could be considered an adverse employment action.

“exceptional skills in dealing with what is known to be a very difficult staff.” Given both the timing and inconsistencies between the November 2008 evaluation and the July 29, 2009 letter, a reasonable jury could infer that MSAD 17’s decisions to conduct a widespread investigation and to place Sirois on probation were motivated by unlawful discrimination.

c. The March 31, 2010 Meeting and Sirois’s Termination

The Plaintiff has offered evidence that his performance began to improve in the spring of 2010, yet his supervisors decided in March not to renew his contract. Marshall’s March 5, 2010 survey confirms that the Transportation Department was running smoothly. However, as of March 10, 2010, when Coffey and Eastman wrote the letter to Sirois (that Sirois never received), they had decided not to renew his Transportation Director contract. At the meeting in March, they asked Sirois to resign. Sirois told them that he was beginning to feel better, his performance was improving, and he asked for more time. While his supervisors agreed to defer their decision on his contract another month, Coffey made clear that his termination was “inevitable.” After a year where Sirois had to miss work because of cancer treatment and its side effects and complications, the March 10, 2010 letter referencing his unwillingness “to make the time commitment to address issues in a timely manner” raises the inference that his supervisors’ decision was motivated by his disability. Additional support for this inference can be found in the facts that: (1) the mentor assigned to Sirois in July did not start meeting with him until December; (2) by March, Coffey considered his termination “inevitable,” even though the most recent

mentor survey was positive; (3) Sirois was never given the March 10th letter; (4) some of the reasons listed in the letter for his termination were not raised with him at the March meeting; and (5) the letter mentions neither his surgery nor his treatment, but obliquely references MSAD 17's frustration at the amount of time Sirois has been experiencing personal difficulties.⁸⁸ Making all inferences in the Plaintiff's favor, the Plaintiff has raised a genuine issue of fact as to whether MSAD 17's termination of the Plaintiff was motivated by discriminatory animus.

IV. Failure to Reasonably Accommodate

Discrimination under the ADA includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee” 42 U.S.C. § 12112(b)(5)(A). Section 1630.2(o)(3) of the ADA's regulations provides that:

To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

29 CFR § 1630.2(o)(3). “Interactive process . . . is the first step in a proper response to a disabled employee's request for reasonable accommodation.” *Tobin*, 433 F.3d at 108. “Thus, once the employer becomes aware of the disability of an employee, he is expected to engage in a meaningful dialogue with the employee to find the best means of accommodating that disability.” *Id.* “The scope of the employer's obligation

⁸⁸ The March 10, 2010 letter states: “We were hopeful that, as you recovered from the loss of your wife, we would begin to see leadership. We had already put our expectations on hold for over a year.”

in this process is not crystal clear, but ‘[t]he employer has at least some responsibility in determining the necessary accommodation,’ since ‘the regulations envision an interactive process that requires participation by both parties.’” *Calero-Cerezo*, 355 F.3d at 24 (quoting 29 C.F.R. § 1630.2(o)(3)). “There may well be situations in which the employer’s failure to engage in an informal interactive process would constitute a failure to provide reasonable accommodation that amounts to a violation of the ADA.” *Jacques v. Clean-Up Group, Inc.*, 96 F.3d 506, 515 (1st Cir. 1996). “Reasonable accommodations under the ADA can include ‘[j]ob restructuring [and] part-time or modified work schedules’” *Criado v. IBM Corp.*, 145 F.3d 437, 443 (1st Cir. 1998).

The Plaintiff has demonstrated that his supervisors were on notice that he had been diagnosed with prostate cancer, was recovering from surgery and undergoing radiation, and needed frequent sick days and an adjusted schedule to accommodate his fatigue in the winter of 2009. It is undisputed that MSAD 17 gave Sirois all the time off he asked for. But a jury could infer from the March 10, 2010 letter, that Eastman and Coffey’s decision to terminate him was based at least in part on Sirois’s unwillingness “to make the time commitment to address issues in a timely manner.” “Asserting that the termination was based on [the employee’s] absenteeism rather than her disability does not justify [the employer’s] action where the absence was the requested accommodation.” *Criado*, 145 F.3d at 444. Although MSAD 17 provided Sirois with the sick time he requested, it then used his

failure to make the necessary time commitment, at least in part, as a basis for his termination.

Because the Plaintiff can point to concrete, cognizable evidence that could support a verdict in his favor, the Defendant's motion for summary judgment on Counts I and II is denied.

V. Count III: Deprivation of Procedural Due Process Under § 1983

The Defendant moves for summary judgment on Count III on the grounds that the Plaintiff did not have a property interest in the renewal of his contract with MSAD 17 and that, even if he could establish such an interest, he received all the process he was due. The Plaintiff counters that: (1) he had a property interest in continued employment as Director of Transportation with MSAD 17 after his employment contract ended on June 30, 2010; and (2) he was deprived of this property interest without due process of law in violation of the Due Process Clause of the Fourteenth Amendment.⁸⁹

The Plaintiff's argument hinges on his claim that in order to terminate his contract, the MSAD 17 Board of Directors were required to vote on a recommendation by the superintendent not to renew. The Plaintiff goes on to contend that because Eastman failed to seek this vote, Sirois's contract was automatically renewed when the 2010-2011 Agreement Between the M.S.A.D. # 17 Board of Directors and Oxford Hills School District Supervisors (the "2010-2011 Agreement") went into effect on June 22, 2010. *See Sirois Aff. Ex. B (ECF No. 21-2).*

⁸⁹ The Fourteenth Amendment provides in relevant part: "nor shall any state deprive any person of life, liberty, or property, without due process of law . . ." U.S. Const. amend. XIV, § 1.

The Plaintiff believes that his claim is strengthened by the fact that he actually worked through July 16, 2010 in order to provide the bus service for the Nateva festival.

The Court looks to the terms of any employment contracts, Maine law and rules, and any other understandings between the parties to determine whether an employee had a legitimate entitlement to continued employment. If Sirois had a legitimate entitlement to continued employment, it could not be taken away from him without due process of law. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *Perry v. Sindermann*, 408 U.S. 593, 601-602 (1972); *Harron v. Town of Franklin*, 660 F.3d 531, 537 (1st Cir. 2011). Maine law consistently holds that a state employee does not have property interest in contract renewal if the employer may decline to renew the contract at will. *Parks v. City of Brewer*, 56 F. Supp. 2d 86, 104 (D. Me. 1999); *Cook v. Lisbon Sch. Comm.*, 682 A.2d 672, 676 (Me. 1996).

The Plaintiff has not produced a contract term,⁹⁰ statute,⁹¹ rule, or understanding between the parties that creates a reasonable inference that he had a legitimate entitlement to employment after July 16, 2010. Eastman testified that

⁹⁰ The only relevant written contracts in the record are the 2008-2010 Agreement Between the M.S.A.D. # 17 Board of Directors and Oxford Hills School District Supervisors (the “2008-2010 Agreement”) and the 2010-2011 Agreement. Sirois Aff. Ex. A (ECF No. 21-2) & Sirois Aff. Ex. B.

⁹¹ The Plaintiff unsuccessfully turns to the Maine Freedom of Access Act for help. The Act protects “the public’s right to obtain information about their government and governmental policies.” *Cook*, 682 A.2d at 677. While section 407(2) of the Act requires that agencies make written records of their decisions involving the dismissal or non-renewal of employees, it does not establish procedural requirements for contract non-renewals, and it does not make Sirois’s employment contract non-renewable only for cause. 1 M.R.S.A. § 407(2). Section 407(2) also carves out an exception for probationary employees, and Sirois acknowledges that he was in a probationary status. 1 M.R.S.A. § 407(2). Finally, even if Sirois were covered by section 407(2), Eastman’s June 28, 2010 letter provided Sirois and the public with MSAD 17’s “adequate and rational basis” for its decision not to renew Sirois’s contract, which is all that is required by section 407(2). *See Cook*, 682 A.2d at 677.

in May of 2010, he decided that Sirois's contract should not be renewed, and he told Sirois of this decision. Eastman discussed with Sirois keeping him on until July 16, 2010 so that he could supervise the drivers for the Nateva festival. Sirois was paid his regular salary through July 16th and paid on a per diem basis for his work during the Nateva festival. There is no evidence that Eastman's decision to have Sirois supervise the Nateva festival drivers renewed his Transportation Director employment contract another year. Eastman's June 28, 2010 letter to Sirois is clear that his employment with MSAD 17 finished on July 16, 2010. Sirois testified in his deposition that he knew that his employment with MSAD 17 ended on July 16, 2010.

Superintendent Eastman's testimony suggests that only contract renewals require recommendations to the Board of Directors and Board votes, not contract non-renewals. Eastman Dep. 65:1-3, 65:14-17, 71:25-72:6.⁹² The 2008-2010 Agreement contains no language contradicting Eastman's testimony. Article 13 of the 2008-2010 Agreement provides that it remains in effect until June 30, 2010 or until a successor agreement is entered. Eastman told Sirois, and Sirois understood, that he was not going to be the Director of Transportation going forward. The 2010-2011 Agreement, which became effective as of July 1, 2010 was never intended to govern the employment relationship between MSAD 17 and Sirois. The absence of a

⁹² The Plaintiff has tried to admit board meeting minutes, and the Defendant has objected to them, arguing that they lack foundation. The Plaintiff has provided no foundation for the meeting minutes, and so the Defendant's objection is **SUSTAINED**. Even if the meeting minutes were admissible, the cited portion shows votes on contract renewals, position eliminations, and contract terminations as a result of position eliminations, not contract non-renewals. See POSMF Ex. 11 (ECF No. 21-11).

vote by the Board of Directors does not support a reasonable inference that Sirois's employment contract was somehow automatically renewed.

There is some testimony in the record that Sirois had a yearly contract that expired each year on June 30, 2010. Because there is no such written contract in the record, the Court assumes that this reference is to a verbal contract or a general understanding between the parties that the employment of the Transportation Director would be renewed on an annual basis by a vote of the Board of Directors. But regardless of whether Sirois had an annual contract extending from July 1st to June 30th every year or just the 2008-2010 Agreement, the record is clear that both contracts ended on June 30, 2010. Even if Sirois had a separate yearly employment contract with MSAD 17, that contract, like the 2008-2010 Agreement, ended on June 30, 2010. There is nothing in the record to suggest that Sirois understood that he was going to be employed as the Director of Transportation for the 2010-2011 school year. The Plaintiff has shown no evidence to support his claim that Eastman's failure to bring a "nonrenewal" of a contract up for a vote by the Board of Directors in June of 2010 constituted an automatic "renewal" of the contract.

Because the Plaintiff has failed to establish that he had a property interest in continued employment with MSAD 17, the Defendant is entitled to summary judgment on Count III.

VI. Count IV: Breach of Contract

The Plaintiff alleges in the Complaint that he had a contract with MSAD 17 until June 30, 2011 that permitted termination only for just cause, but that he was

not terminated for just cause. Under Maine law, a plaintiff bringing a breach of contract claim must establish: (1) the existence of an enforceable contract, (2) breach of a material contract term, (3) causation, and (4) damages. *Scotia Prince Cruises Ltd. v. Pricewaterhousecoopers*, No. Civ.A. CV-04-489, 2005 WL 2708311, at *2 (Me. 2005).

As discussed in further detail in section IV, *supra*, Sirois's employment contract for his position as Director of Transportation ended on June 30, 2010. Sirois's employment with MSAD 17 extended only through July 16, 2010 so that he could supervise transportation for the Nateva festival. There is no evidence in the record that Sirois's contract was extended after June 30, 2010. The Plaintiff has failed to establish that he had an enforceable contract with the Defendant after June 30, 2010. The Defendant is entitled to summary judgment on Count IV.

CONCLUSION

The Defendant's motion for summary judgment is hereby **DENIED IN PART** as to Counts I and II and **GRANTED IN PART** as to Counts III and IV.

SO ORDERED.

Dated this 21st day of December, 2012.

/s/ Nancy Torresen
United States District Judge

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