

No. 1-11-2324

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IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CLARENCE MONTGOMERY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 CH 38016
	)	
BOARD OF EDUCATION OF THE CITY OF	)	
CHICAGO,	)	The Honorable
	)	Sebastian Patti,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

**ORDER**

*HELD:* Issues not raised before a hearing officer on administrative review but only presented for the first time on appeal are forfeited and cannot be addressed by reviewing court. In addition, hearing officer's determination that consulting teacher adequately participated in development of remediation plan pursuant to statute was not against manifest weight of the evidence.

¶ 1 Plaintiff-appellant Clarence Montgomery (plaintiff) was dismissed from his position as a tenured teacher. Following an administrative hearing, a hearing officer issued her recommendation that plaintiff be discharged, and defendant-appellee Chicago Board of Education (Board) adopted this decision. After unsuccessfully seeking judicial review of the Board's decision, plaintiff now appeals *pro se*, raising several errors on the part of the trial court. Plaintiff asks that we reverse his discharge; reinstate him to his position as a tenured teacher; order that the Board pay him all back salary, benefits and wages, as well as compensate him for all losses, damages and expenses; and enter any other equitable relief we deem just. For the following reasons, we affirm.

¶ 2 **BACKGROUND**

¶ 3 The following facts are taken from the record on review.<sup>1</sup>

¶ 4 Phylis Hammond, the principal at Tilden High School, testified that she hired plaintiff to teach chemistry. However, she received complaints from parents and teachers that plaintiff was not teaching, that the students were not doing anything in his classroom, and that they never received homework. In addition, plaintiff had the highest percentage of failing students at the

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<sup>1</sup>Several motions were filed in our Court regarding plaintiff's statement of facts in his appellate brief. Included among these was a motion by plaintiff to correct his brief (which it appears he has done), as well as a motion by the Board to strike his brief due to his failure to provide record citations. In addition, in its own brief, the Board's first argument on appeal is that plaintiff's statement of facts should be stricken pursuant to Illinois Supreme Court Rules. Having again reviewed the prior rulings on motions, we enter the following: our order of April 18, 2012 is vacated, and we will consider plaintiff's brief in its entirety. Therefore, the Board's request in its brief is denied, and we will not address it further herein. (We note for the record that our grant of the Board's motion to strike various portions of plaintiff's reply brief remains in effect, as ordered.) Ultimately, we will proceed in this cause with our own thorough review of the record before us.

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school. By the 2006-07 school year, Hammond contacted administrator Linda Williams, the supervisor for the remediation of teachers, about these concerns. Williams discovered that Tilden did not have any “consulting teachers” on staff, which were required to be assigned to a teacher to begin a remediation process. Accordingly, without this, a remediation process<sup>2</sup> could not be initiated for plaintiff at this time.

¶ 5 During the next school year (2007-08), Edward Talbot, chair of the science department at Tilden, became a consulting teacher. At this time, Hammond formally observed plaintiff's classroom on two occasions. On the first, in October 2007, she found that plaintiff had no on-going contact with his students' parents, he was not complying with the Board's homework policy, and there was no justification for the grades he was giving his students. In addition, he was not accounting for differentiated learning styles among his students. Hammond observed that the majority of his students were either sleeping in his classroom or having private conversations among themselves. When a student asked plaintiff a question about a chemistry problem, plaintiff gave a negative answer and told the student to do it at home for homework. Hammond further noted that the seating plan was not being followed and that plaintiff did not have any laboratory materials in his classroom, which was to focus on laboratory chemistry. At the end of her observation, Hammond held a conference with plaintiff and offered eight specific

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<sup>2</sup>Briefly, pursuant to section 24A-5 of the Illinois School Code, tenured teachers are to be evaluated via two personal observation in their classrooms by a qualified district administrator and then rated; if a teacher is rated "unsatisfactory," a remediation process is commenced, which consists of the establishment of a remediation plan to correct the teacher's deficiencies, participation by a qualified administrator and a consulting teacher (who is to provide advice to the unsatisfactory teacher), and then re-evaluations at the 30, 60 and 90 day marks. See 105 ILCS 5/24A-5 (West 2008).

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recommendations to improve his performance. Hammond asked plaintiff to sign her notes and observation form, but he refused.

¶ 6 Hammond returned to observe plaintiff's classroom in November 2007, but nothing had changed. He did not have a lesson plan, he had not assigned homework (which was mandatory), his grade book was insufficient and he was not meeting the 95% attendance rate expected of teachers. Afterwards, during a conference with plaintiff, Hammond again made suggestions and encouraged plaintiff to work with other teachers in the science department to improve his teaching practices and procedures. Hammond again asked plaintiff to sign her notes and observation form, but plaintiff again refused.

¶ 7 Hammond renewed her contact with administrator Williams about pursuing a remediation process with plaintiff. On December 7, 2007, Hammond issued an unsatisfactory rating of plaintiff, basing this on his instructional performance (lesson planning, classroom management, student progress, etc.); his failure to foster school relations; and his failure to assume good work habits both personally and professionally. Hammond worked with Williams, whose job it was to assist principals with remediation, regarding the administration of the process according to the Illinois School Code (Code). Talbot,<sup>3</sup> who was by now a qualified consulting teacher, was assigned to plaintiff's cause. Soon thereafter, on December 10, 2007, Hammond and Talbot met with plaintiff to begin developing a remediation plan tailored to plaintiff's deficiencies. Williams testified that she had prepared a preliminary draft of a remediation plan based on Hammond's

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<sup>3</sup>As chair of the science department, Talbot, a physics teacher, was personally familiar with plaintiff and has an endorsement in chemistry.

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formal observations of plaintiff's classroom, as well as their (Williams and Hammond's) conversations. According to Williams, this draft was just to "start off the process" during the meeting, and was open to input from all three participants: Hammond, Talbot and plaintiff. However, plaintiff refused to participate during this meeting and left before its conclusion. He also refused to give any input into the draft plan and refused to sign it, telling Hammond to "do what you have to do" and informing her that his attorney had filed suit against her and the Board.

¶ 8 On December 14, 2007, Hammond, Talbot and plaintiff met again. A final remediation plan was proposed to plaintiff. Hammond presented the plan to Talbot and plaintiff and explained its contents in its entirety. Following her explanation, she asked Talbot and plaintiff if they had any questions and asked them to sign the plan. Talbot reviewed the plan as written and concluded he did not need to make any changes to it; he then signed the plan. Plaintiff, however, refused to sign the plan. Hammond put a copy of the remediation plan in plaintiff's mailbox at the school and mailed a copy to his home.

¶ 9 Plaintiff's official remediation process took effect on December 18, 2007. Among its goals, the plan asked plaintiff to submit written lesson plans in a timely manner, to start class on time, to have all his supplies prepared by the time class began, to be punctual and in regular attendance for his classes, and to accept and act on suggestions for professional growth. The remediation plan and process was to remain in effect for the next 90 days.

¶ 10 Talbot testified that, during the remainder of the 2007-08 school year, he observed plaintiff's classes 38 times. Talbot kept a detailed log of his visits, as well as the time per week he devoted to plaintiff's remediation in addition to his class visits. Of his 38 visits, plaintiff was

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late to teach his class 25 times. Moreover, Talbot's visits were not always well-received.

Particularly at the beginning, in January 2008, plaintiff would order Talbot to leave his classroom or spend class time scolding him in front of his students, asserting he was not qualified to be a consulting teacher. Plaintiff also interrupted Talbot's class and accused him of harassment in front of Talbot's students. Eventually, plaintiff acknowledged Talbot as his consulting teacher.

¶ 11 Generally, Talbot would sit at the back of plaintiff's class during his visits and take notes regarding what plaintiff wrote out for his students, how the students were grasping classroom concepts, student conduct and plaintiff's interaction with his students. After his observations, Talbot would give plaintiff verbal suggestions, such as arriving to class on time and differentiating his teaching methods to meet the needs of his students. Talbot would follow his verbal suggestions with written memos to plaintiff. As his visits continued, Talbot gave plaintiff written requests for his lesson plans, syllabus and laboratory activities. Plaintiff refused to provide them. On occasions when he did receive them, Talbot noted that the lesson plans were often inaccurate, that plaintiff had done no labs during the entire school year, and that several items listed in the syllabus worth point credit for grades were never done. Plaintiff was also still not assigning mandatory homework and refused to show Talbot his parental contact telephone log. Talbot continued to note that plaintiff's teaching was not improving over time. Particularly, he was not differentiating his teaching to his students' needs; Talbot observed that his students could rarely answer questions he would ask, and plaintiff would respond in an angry and demeaning fashion to their questions in return. In addition, Talbot modeled different lab experiments plaintiff could have his students conduct, and stepped in three times to teach the labs

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to plaintiff's students. However, when plaintiff tried to conduct labs, he was unprepared, did not obtain essential materials and failed to accomplish them for his class. Several times, Talbot noted that plaintiff left in the middle of class to answer his cell phone.

¶ 12 By April 2008, Talbot became concerned for his own safety. During one of his classroom observations, Talbot noted in his log that plaintiff "was very mad" and did not want Talbot in the room. Talbot also commented that when he tried to discuss solutions with plaintiff in person, "he [was] NOT willing to listen." One day in May 2008, plaintiff did not show up for school and did not call to report his absence. He was, therefore, suspended for a time, but did not leave any lesson plans or worksheets for the substitute teacher. When plaintiff returned to class, he did not have a lesson plan for the day. Talbot observed that, for the entire class period, the students just sat and talked. When Talbot approached plaintiff about this, plaintiff's explanation was that, because he had been suspended, he did not have to prepare any work. Talbot then informed plaintiff that his next observation would be his last until September, the start of the next school year. At this last visit, Talbot noted that plaintiff spent the entire class time collecting his students' textbooks. A final exam was listed on his syllabus for the next day, but plaintiff conducted no review for his students.

¶ 13 On September 15, 2008, Talbot arrived to plaintiff's class for his first observation of the new school year. Plaintiff engaged Talbot in a heated discussion, asserting that his 90-day remediation period must have ended by now. Plaintiff told Talbot that he was not prepared to teach that day; he did not have a lesson plan. Plaintiff spent the class time showing the students some slides, but never discussed them. Talbot's final observation occurred on September 22,

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2008. During this class period, Talbot recorded that plaintiff had an angry exchange with a frustrated student, refused to give a textbook page number when asked, and scolded a student for providing an answer to a question by reading it out of the textbook.

¶ 14 When asked by the hearing officer how he would rate plaintiff's teaching skills on a scale from 1 to 10, Talbot testified "around a 3 maybe" and categorized it as below average. He also reported that there were several problems plaintiff had failed to correct, including that, by the end of the school year, his students were still only grasping basic chemistry concepts and that plaintiff was still late to class, was late in submitting lesson plans, was teaching labs that were too simple, and was being antagonistic with the students who were still complaining that they did not understand the subject matter.

¶ 15 In addition to Talbot's myriad visits, Hammond observed plaintiff's class during the 30, 60 and 90 day marks of the remediation process. During the 30 day period, she visited plaintiff's classroom twice. During the first visit, she noted that the students were frustrated and insolent. The next day, she met with plaintiff to discuss her visit, and she suggested to him that he needed to personalize his teaching methods to his students. Plaintiff told Hammond that the students in that particular class "just don't want to learn" and were "play[ing] the situation" of her presence. Plaintiff also refused to sign Hammond's evaluation form. Hammond visited plaintiff again during a different class period the following month. Plaintiff was late to class; during this time, the students complained about him to Hammond. When he did arrive, he began to lecture to the students, and refused to assist them regarding an assignment. Hammond also noted that plaintiff had not presented his grades, lesson plans, telephone logs and seating chart as she had requested.

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¶ 16 At the 30 day mark, Hammond rated plaintiff unsatisfactory. She then held a meeting with plaintiff and Talbot. Plaintiff was presented with the rating. Talbot confirmed that he was meeting regularly with plaintiff and giving him suggestions for improvement. Hammond asked plaintiff if he had any concerns with Talbot as his consulting teacher or with the remediation process. Plaintiff responded no. Hammond then asked plaintiff to sign the presented documents. Plaintiff refused and became angry. He then told Hammond that, after the remediation process was finished, “I’m going to do what I have to do to you.” Talbot testified that he believed this to be a threat to Hammond. Hammond testified that she felt physically threatened, and she contacted the school police officer and reported the incident to the Central Office.

¶ 17 During the 60 day period, Hammond again observed plaintiff’s classroom. In her notes, she commented that plaintiff’s students did not understand their assignments, homework was not given or discussed, his students were not prepared for class, and plaintiff left to answer his cell phone. He also failed to provide her with lesson plans. Hammond held another meeting with plaintiff and Talbot to discuss her observations. She again rated plaintiff as unsatisfactory and provided him with the documentation. Hammond later met separately with Talbot on October 7, 2008, when the 90 day period ended. Hammond questioned Talbot regarding his views on plaintiff’s progress, and Talbot told Hammond there had not been enough. In particular, he cited plaintiff’s continued tardiness and the students’ consistent inability to understand the subject matter of his classes. Ultimately, Hammond informed plaintiff that he had failed to complete the remediation process with a satisfactory rating and she would be submitting a request for his dismissal to the Board.

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¶ 18 Several other witnesses testified at the hearing. Former assistant principal Michael Jacobson, who had also supervised the science department for a time, stated that plaintiff had terrible record keeping habits and often failed to take attendance in his classes, did not give grades, did not submit his parent telephone logs or lesson plans, had the highest percentage of failing students in the school, and did not use a suitable teaching method in his classes. Biology teacher and science department co-chair Patrick McGill stated that, during 2007-08, when he was in charge of maintaining the science teachers' lesson plans, plaintiff turned in only 5 or 6 out of the 38 required for the school year. He also received several complaints from students that they were not learning anything in plaintiff's class. He described an instance when plaintiff was scheduled to present a chemistry exhibit at a parent expo; plaintiff waited until the last minute to submit a flyer he was in charge of preparing, and the flyer contained misspellings and biology, instead of chemistry, terms. Anuradha Sood, along with plaintiff and two other teachers, taught chemistry at Tilden during the 2006-07 school year. She stated that the chemistry teachers had divided up portions of the weekly lesson plans to prepare and share with each other; plaintiff, however, never completed his portions. She also described plaintiff's anger when other teachers tried to share ideas and suggestions with him about labs. Parul Modha, who taught chemistry with plaintiff from 2005 to 2007, corroborated Sood's testimony, noting that plaintiff never prepared his portions of the lesson plans, timelines and exams the chemistry teachers had agreed to share. Modha also described several instances when plaintiff took lab handouts from him to use.

¶ 19 Plaintiff testified at the hearing. At the outset, he stated that he declined to sign anything

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during his remediation process because he did not want the documents to be used against him. He also stated, contrary to Hammond and Talbot's testimony, that he never received the full, official remediation plan and was not allowed to give any input in it. Regarding his failure to submit lesson plans, he explained that this did not occur; rather, he stated that he submitted all 38 lesson plans as required during the remediation period and they were never late. He described that, as the first teacher at the school to use a wireless computer, he took whatever training the Board offered to upgrade and bring his knowledge to the school. He also stated that he maintained his parent telephone log and submitted it to Hammond, and attended science department meetings. He described himself as a 'student-centered teacher,' who walks around the classroom with handouts ready in accordance with the official curriculum, along with a stress on mandatory homework and class preparedness which produced his well-mannered and engaged students. Regarding meetings during the remediation period, he disputed having a meeting with Hammond after her 30 day observation, he testified that he only met with her personally three times (when she gave him her ratings), and he never met personally with Talbot at all. Further, he testified about an incident when personnel arrived at the school to examine the science classrooms after continuous complaints he had made to the administration. Plaintiff alleged that Talbot arrived before the personnel and made changes to the classrooms in an effort to hide the problems plaintiff had cited and to undermine him. Plaintiff also devoted part of his testimony to his complaints regarding the working conditions at Tilden, such as having to move rooms during the day, sharing classrooms with other teachers, and having to transport his supplies. Finally, plaintiff stated that he believed Hammond's institution of the remediation process was

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“personal,” because he often complained about the school and made demands.

¶ 20 Former Tilden science teacher Ladesta Skulark, who taught chemistry or biology between 2000 and 2007, testified on plaintiff’s behalf. She stated that she co-taught with plaintiff for one year and described him as an “excellent teacher.” She noted that his students were well-behaved and that plaintiff had good classroom management skills. However, Skulark had also received an unsatisfactory rating prior to her departure from Tilden and had been the subject of parental complaints.

¶ 21 At the close of the hearing, the hearing officer issued her analysis and findings. She noted the three issues raised by plaintiff in his complaint and addressed each, along with their sub-arguments, separately. Plaintiff’s first argument was that the Board did not meet the procedural requirements of section 24A-5 of the Code when it placed him on remediation because Hammond had not provided an evaluation with supporting reasons prior to his unsatisfactory rating, which predicated the remediation period. The hearing officer found that proper procedure had been followed. She detailed Hammond's first two official observations of plaintiff's classes in October and November 2007, which she conducted before issuing plaintiff's unsatisfactory rating. The hearing officer reviewed Hammond's written reports from those visits and noted that Hammond's repeated written comments and suggestions regarding plaintiff's performance amounted to ample supporting reasons for her eventual rating.

¶ 22 Plaintiff's second argument was that the Board committed several procedural errors during the administration of the remediation plan because Talbot was not a qualified consulting teacher since he did not teach chemistry, Talbot had failed in his duties to give plaintiff advice

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for improvement during the remediation period, and Talbot had not participated in the development of the remediation plan as required under the Code. After reviewing the development of the plan, the hearing officer again found that proper procedure had been followed. She found "no validity" in the assertion that Talbot was not qualified to be a consulting teacher solely because he was not a chemistry teacher like plaintiff. As the hearing officer noted, the Code only requires that he have a "reasonable familiarity" with the subject matter of the teacher under remediation, and Talbot had a chemistry endorsement and was the chair of the science department. Regarding plaintiff's assertion that Talbot did not offer him advice as required during the remediation period, the hearing officer declared this to be "a misrepresentation of the record" and wholly disputed by the evidence. She pointed to various entries in Talbot's detailed consulting teacher log wherein he noted myriad times his offering of suggestions and opportunities to plaintiff to improve his performance. And, with respect to plaintiff's claim that Talbot had not participated in the development of the remediation plan as required under the Code, the hearing officer found this to be incorrect. She noted that administrator Williams had merely created a draft of the plan initially based on Hammond's observations and their conversations; Hammond held a meeting with plaintiff and Talbot to present the draft and discuss it, she then held a second meeting with plaintiff and Talbot to finalize the remediation plan, and she asked them for any changes or input. Talbot reviewed the plan and concluded that no changes were necessary; plaintiff, however, refused to look at it, to give any input, or to stay until the end of the meeting. Based on this evidence, the hearing officer concluded that Talbot sufficiently participated in the development of the remediation plan as

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required by the Code where he “attend[ed ] the two planning meetings,” was “thoroughly versed in the plan before its implementation,” and had the opportunity to change the plan at anytime before its official implementation (but simply chose not to do so).

¶ 23 Plaintiff's final argument presented to the hearing officer was that, if it was found that the Board had properly followed Code procedure, it still did not have the authority to discharge him because it failed to prove by a preponderance of the evidence that he failed to successfully remediate his teaching performance. After recalling all the evidence presented and considering the testimony of all the witnesses, the hearing officer held that the Board "has proven by a preponderance of the evidence" that plaintiff had "perform[ed] unsatisfactorily and fail[ed] to remediate pursuant to the required procedure.” Accordingly, the hearing officer recommended that plaintiff's dismissal be affirmed.

¶ 24 Upon receipt of the hearing officer's decision, the Board approved her recommendation and discharged plaintiff. Plaintiff sought administrative review in the trial court. The trial court upheld the Board's discharge.

¶ 25 ANALYSIS

¶ 26 As noted earlier, plaintiff raises several issues on appeal.<sup>4</sup> Specifically, he contends that

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<sup>4</sup>In the "Issue Presented for Review" section of his brief on appeal, plaintiff frames the series of issues proposed for our review as erroneous rulings or holdings by the trial court (*i.e.*, "Did the Judge err in \*\*\*?"). While he appears to move away from this framework when addressing his proposed issues in his "Argument" section, we wish to note for legal clarity that, pursuant to the Administrative Review Law, we review the final decision of the administrative agency—the Board here—and not the decision of the trial court. See 735 ILCS 5/2-101 *et seq.* (West 2008); *Young-Gibson v. Board of Educ. of City of Chicago*, 2011 IL App (1st) 103804, ¶ 39; accord *Mina ex rel. Anghel v. Board of Educ. for Homewood-Flossmoor*, 348 Ill. App. 3d 264, 272 (2004).

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the statute of limitations ran on initiating the remediation process against him; that Talbot was barred from testifying at the discharge hearing, from participating in his scheduled evaluations with Hammond, and from rating his performance; that Hammond and Talbot put an “unfounded” police report, along with privileged union materials and "derogative materials" in his personnel file in violation of his collective bargaining agreement; and that Talbot did not participate in the development of his remediation plan as required by the Code.

¶ 27 As a threshold matter, the Board asserts that plaintiff has forfeited all of his arguments raised on appeal, save for the last (*i.e.*, that Talbot did not participate in the development of his remediation plan). As the Board points out, plaintiff never raised any of those arguments before the hearing officer and, thus, he has waived them for our review.

¶ 28 The Board is correct. Any issue not raised before a hearing officer during administrative review of a cause will be forfeited upon judicial review by the party failing to raise that issue. See *Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO v. Chicago School Reform Bd. of Trustees*, 338 Ill. App. 3d 90, 103 (2003) (issue waived in appellate proceeding where party in school context failed to raise issue before hearing officer during administrative review); see, *e.g.*, *Board of Educ., Joliet Tp. High School Dist. No. 204 v. Board of Educ., Lincoln Way Community High School Dist. No. 210*, 231 Ill. 2d 184, 205 (2008); *Board of Educ. of Bremen High School Dist. No. 228 v. Mitchell*, 387 Ill. App. 3d 117, 123 (2008). It goes without saying, then, that this party may not present to the reviewing court on appeal any new or additional evidence; rather, all that we may examine is the administrative record. See 735 ILCS 5/3-110 (West 2008) (this is prohibited under Administrative Review Law); *Board of*

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*Education, City of Peoria School Dist. No. 150 v. State of Illinois Labor Relations Bd.*, 318 Ill.

App. 3d 144, 147 (2000); see also *Cook Cty. Bd. of Review v. Property Tax Appeal Bd.*, 395 Ill.

App. 3d 776, 786 (2009).

¶ 29 The administrative record before us contains the documents plaintiff filed against the Board for review by the hearing officer. Upon our review of those, it is clear that plaintiff raised only three issues before the hearing officer. These were, first, that the Board did not meet the procedural requirements when it placed him on remediation because Hammond had not provided an evaluation with supporting reasons prior to his unsatisfactory rating; second, the alleged improprieties surrounding Talbot, namely, that he was not a qualified consulting teacher, that he did not give plaintiff the required advice for improvement during the remediation period, and that he had not participated in the development of the remediation plan; and third, that the Board did not prove by a preponderance of the evidence that he failed to successfully remediate his teaching performance. Nowhere in the administrative proceeding did plaintiff raise an issue regarding the statute of limitations, the propriety of Talbot's testimony, or anything with respect to his personnel file. To the contrary, the record is clear that plaintiff raised these issues for the first, and only, time before the trial court. Accordingly, he has forfeited these issue, and we may not consider any of the evidence he directs us to in an effort to support these improper contentions.

¶ 30 This, then, leaves only one issue for our review. As noted, plaintiff argued before the hearing officer that Talbot had not participated in the development of his remediation plan, as required by the Code. The hearing officer found, based on the evidence presented, that this allegation was incorrect, and plaintiff raises it again on appeal. Plaintiff has followed correct

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procedure in saving this claim and, therefore, we now turn to its merits.

¶ 31 We begin by noting that, in administrative review cases, the hearing officer is the finder of fact; it is she who determines the credibility of the witnesses testifying before her and the weight to afford their testimony, and it is she who is to draw reasonable inferences from all the evidence presented. See *Young-Gibson*, 2011 IL App (1st) 103804, ¶ 56 (citing *Ahmad v. Board of Educ. of City of Chicago*, 365 Ill. App. 3d 155, 162 (2006)). Accordingly, we consider the hearing officer's findings to be *prima facie* true and correct, and we will not reverse her decision unless it is against the manifest weight of the evidence. See *Young-Gibson*, 2011 IL App (1st) 103804, ¶ 56 (citing *Ahmad*, 365 Ill. App. 3d at 162). A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent, or when it appears to be unreasonable, arbitrary or contrary to the evidence. See *Young-Gibson*, 2011 IL App (1st) 103804, ¶ 56. Ultimately, we may affirm the administrative decision on any basis supported by the record. See *Young-Gibson*, 2011 IL App (1st) 103804, ¶ 56 (citing *Ahmad*, 365 Ill. App. 3d at 162).

¶ 32 Section 24A-5(h) of the Code states, in relevant part:

"The consulting teacher shall participate in developing the remediation plan, but the final decision as to the evaluation shall be done solely by the administrator \*\*\*." 105 ILCS 5/24A-5(h) (West 2008).

¶ 33 Plaintiff claims that administrator Williams testified she created his remediation plan following a conversation she had with Hammond, and that Talbot testified he did not have any input in the plan but only signed it after Hammond read it to him. Plaintiff argues that this

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proves that Talbot did not meet section 24A-5(h)'s requirement that he "shall participate" in the plan's development and, thus, his discharge was improper. We wholly disagree.

¶ 34 Plaintiff mischaracterizes the testimony presented at the hearing. First, Williams did not testify that she developed plaintiff's remediation plan of her own accord, as plaintiff insists.

Rather, her testimony was that she had multiple conversations with Hammond, wherein Hammond discussed with her the concerns she had regarding plaintiff's performance and the procedural questions Hammond had about beginning the remediation process. In fact, Williams' job was just that—to assist principals with instituting the remediation process for tenured teachers at their schools by certifying that the principals timely follow the proper procedures, such as filing required paperwork and performing the required observations and conferences with the teachers. Regarding plaintiff's case, Williams testified that she spoke to Hammond after Hammond completed her two required observations of, and conferences with, plaintiff and prepared a draft remediation plan for her consideration. She noted that this was just a standard plan which she provided to Hammond based on their conversations, and indicated that this was "something to start off the process." She described that this was a conversation piece to be discussed during the initial meeting to take place between the principal, the consulting teacher and the teacher under remediation.

¶ 35 Further testimony reveals that no one ever presented this draft as the final, official remediation plan. Instead, after Hammond received the draft from Williams, she held a meeting with plaintiff and Talbot and showed it to them. She specifically asked them for their input in the plan. It was at this meeting that plaintiff refused to participate, did not want to look at the

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plan, and even left before the meeting was over. Moreover, he refused to give any input into the draft plan and refused to sign it, telling Hammond to "do what you have to do" and informing her that his attorney had filed suit against her and the Board.

¶ 36 Hammond, Talbot and plaintiff then met a second time regarding the development of the remediation plan. This time, Hammond presented the plan as final and explained its entire contents to both Talbot and plaintiff during the meeting. Following her explanation, she asked Talbot and plaintiff if they had any questions about the plan. Talbot took the plan and read it. He averred that, after doing so, everything appeared to be in order and he concluded that he did not need to make any changes to it. Talbot specifically corroborated Hammond's testimony by stating that Hammond explained the whole plan at the meeting and asked if anyone had any questions or changes. Talbot testified that he had none at the time following his review and, thus, he signed his approval. The remediation plan then went into effect.

¶ 37 Based on this, the hearing officer concluded that the provisions of section 24A-5(h) had been met. While noting that an administrator (rather than the principal, consulting teacher or teacher under remediation) had drafted the plan, the hearing officer observed that Talbot had attended both the draft plan discussion meeting as well as the finalization meeting. She further noted that the entire plan was read and reviewed by Talbot and he was specifically asked for suggestions and modifications to it. Accordingly to the officer, Talbot (as well as plaintiff) clearly had the opportunity to participate in the official remediation plan's development before it became final; he chose not to exercise this opportunity because, per his own testimony, he did not find anything wrong with it.

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¶ 38 We find no error in the hearing officer's determination in this respect. Plaintiff provides us with no caselaw, and we find none, that would require a consulting teacher to make an affirmative modification to a proposed remediation plan in order to satisfy the language "shall participate" as found in section 24A-5(h) of the Code. It is quite reasonable, and we are sure it has happened on multiple occasions, that a consulting teacher is called upon to review a draft of a remediation plan and finds it to be sufficient to the point that he does not deem it necessary to add to, or subtract from, its provisions. As the hearing officer found, "shall participate" must also include the freedom not to make any changes to a remediation plan when a consulting teacher does not believe any are required.

¶ 39 To us, the clear standard is whether Talbot participated in the development of plaintiff's final remediation plan. Based on the evidence in the record, we find that he met this basic standard. Again, Talbot attended two planning meetings regarding the remediation plan: the first was a presentation of the plan in draft form and the second was a presentation of the plan in final form. Hammond asked Talbot at both these meetings if he had any suggestions for modifications to the plan, and Talbot had the opportunity at both these meetings to modify it. Talbot reviewed the plan, and the plan was even read to him. Clearly, he was thoroughly consulted about the plan and was given the chance to consider making any changes before it was implemented. As Talbot himself testified, he simply did not have any changes and, thus, felt that the plan was adequate to begin plaintiff's remediation process.

¶ 40 Ultimately, based on this evidence, and without more, we do not find that the hearing officer's determination that Talbot sufficiently participated in the development of plaintiff's

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remediation plan in accordance with section 24A-5(h) of the Code be unreasonable, arbitrary or otherwise against the manifest weight of the evidence in this cause.

¶ 41

#### CONCLUSION

¶ 42 Accordingly, for all the foregoing reasons, we affirm the Board's discharge of plaintiff from his teaching position.

¶ 43 Affirmed.