

No. 1-15-1456

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

OPHELIA LEE-DOYLE,)	Petition for Review of
)	Order of the Chicago
Respondent-Appellant,)	Board of Education
)	
v.)	No. 15-0422-RS3
)	
FORREST CLAYPOOL, Chief Executive Officer,)	
)	
Petitioner-Appellee,)	
)	
(Board of Education of the City of Chicago, Lawrence)	
Cohen, hearing officer, and Illinois State Board of)	
Education,)	
Appellees.))	

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Chicago Board of Education is confirmed, where the respondent failed to demonstrate that (1) the Board's finding that she failed to sufficiently remedy the deficiencies in her teaching performance under section 24A of the Illinois School Code (105 ILCS 5/24A (2012)) was against the manifest weight of the evidence, or (2) the Board's determination that there was sufficient cause for her termination was arbitrary or capricious.

¶ 2 The respondent, Ophelia Lee-Doyle, was terminated from her employment as a tenured teacher by the petitioner, the Chicago Board of Education (Board), following her failure to satisfactorily complete a teaching remediation plan under section 24A-5 of the Illinois School Code (Code) (105 ILCS 5/24A-5 (2012)). She now seeks review of the Board's decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)), contending that: (1) the finding that she failed to satisfactorily correct the deficiencies in her performance during the remediation period was against the manifest weight of the evidence; and (2) the Board's finding that there was cause to terminate her was arbitrary and unreasonable. For the reasons that follow, we confirm the decision of the Board.

¶ 3 Prior to the termination giving rise to this case, the respondent was employed as a tenured special education teacher at Daniel S. Wentworth Elementary School in Chicago, teaching students with learning disabilities in grades 5 through 8 or 6 through 8. On May 22, 2012, Wentworth's principal, Dina Everage, issued an unsatisfactory performance rating to the respondent along with an "E-3" notice, pursuant to the Board's Teacher Evaluation Plan and Handbook of Procedures. The notice identified several areas in which the respondent had demonstrated deficiency, including professional responsibility, planning and preparation for class, and classroom instruction and management. It also alleged that the respondent had a poor attendance record and was late in turning in her lesson plans, and that she failed to provide sufficiently rigorous instruction or properly manage her classrooms. The notice asserted that, as a result of the respondent's deficient instruction, her students had demonstrated a lack of growth.

¶ 4 Pursuant to section 24A-5 of the Code (105 ILCS 5/24A-5 (2012)), the respondent was ordered to participate in a remediation plan extending over 90 school days, during which she could attempt to correct the deficiencies alleged in the E-3 notice. However, in Everage's final

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evaluation of the respondent at the conclusion of the remediation period, she again gave her an unsatisfactory performance rating. The evaluation stated that, although the respondent complied with the school policies and manifested a sincere desire to improve her practice, she continued to demonstrate weaknesses, including failing to: select and align instructional learning outcomes to meet the needs of diverse grade levels and student abilities; show evidence of instruction and assessment of learning goals as stated in individualized education plans (IEPs); periodically evaluate students and keep proper records; exhibit and apply contemporary learning theory and teaching methodology; and use sound and professional judgment in setting IEP teaching goals in collaboration with other teachers.

¶ 5 On April 15, 2013, Everage notified the Board that the respondent's performance had proved irremediable, and recommended that she be terminated. On July 5, 2013, the Board approved dismissal charges against the respondent on the basis that she failed to complete the remediation plan with a satisfactory or better rating.

¶ 6 Upon a timely request by the respondent, the matter proceeded to a hearing pursuant to section 34-85 of the Code, before a hearing officer certified by the Illinois Board of Education. The hearing, which commenced on June 12, 2014, produced the following evidence which is relevant to our disposition on appeal.

¶ 7 The respondent had been employed as a teacher at the Chicago Public Schools since 1987. She is certified both in early childhood education and special education for kindergarten through eighth grade. The respondent had a total of 16 students in her class, 12 of whom also attended general education classes throughout the day. Three of the respondent's students had cognitive disabilities and one had emotional disabilities, and these four students stayed in her classroom all day.

¶ 8 Everage became Wentworth's principal in April of 2010. She testified that she had formal training in teacher evaluation, including knowledge regarding a new evaluation system called REACH that the Board put into place during the 2012-2013 school year. Everage stated that, throughout the year, she would frequently conduct informal observations of all of her teachers' classrooms. During the 2011-2012 school year, prior to issuing the E-3 notice to the respondent, Everage met with her on several occasions to discuss her "low level" of instruction. Everage testified in detail regarding several instances in which she and her assistant principal, Tiffany Phinn, observed the respondent's classroom. According to the notes and testimony of both Everage and Phinn, these observations revealed that aspects of the respondent's teaching method in math and reading were too rudimentary for the students' grade level and did not promote thinking or otherwise "meet the needs of diverse learners." Phinn additionally noted that the respondent's lesson plans failed to differentiate between grade levels, and that the claimant did not maintain proper classroom order. Finally, Everage testified that the respondent had been consistently untimely with her weekly lesson plans, even after she had given her additional leeway with the deadlines.

¶ 9 Tiffany Holmes was a specialized services administrator employed by the Board to work with network teams, including teachers, in order to provide support for students receiving special education. Holmes testified that she also observed the respondent's classroom sporadically throughout the 2011-2012 and 2012-2013 academic years, including during the remediation period. She helped train the respondent in the execution of IEPs, which were prepared for each special education student. According to Holmes, she was overseeing Wentworth's special education classes, in part, because the school was the subject of an audit resulting from a lawsuit brought by special education parents claiming that their children were not being taught the same

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curriculum or receiving the same services as general education students. Holmes helped the respondent prepare lesson plans, and also observed the respondent's classes to ensure that she was properly implementing the IEPs through her lesson plans. According to Holmes, although the respondent's students appeared well-behaved, her teaching methods caused Holmes concern, because the respondent was often observed teaching far below the grade-level of her students.

¶ 10 After the commencement of remediation, Everage was required to prepare written evaluations of the respondent's performance at the 30th, 60th, and 90th school days. In addition, Everage testified that she personally observed the respondent's classes on four occasions, and met with her for the required evaluations, at which time she would relay her impressions and provide the respondent with feedback. Shelia Morrow, an experienced consulting teacher, was assigned to observe and assist the respondent throughout the process. She testified that, prior to remediation, she met with Everage and the respondent and devised a remediation plan. Morrow observed the respondent's classroom on a weekly basis and then prepared a log reflecting her impressions and advice to the respondent. Morrow testified that she also met with Everage to provide input into the respondent's progress during the remediation.

¶ 11 Everage testified to several examples of the respondent's "low level" instruction. At the 30-day evaluation, she noted that she had observed the respondent teaching reading to two students with low cognitive abilities. Although the respondent's lesson plan was for the students to identify the traits of characters in a designated story, the respondent did not explain those traits or point them out as she was reading the story. Instead, after she finished reading, the respondent offered her own notes about the story to one student, who simply copied them. The other student did nothing, because he could not work independently. Everage noted that the respondent did not have any posted learning targets and did not model or demonstrate what her students should

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do. The respondent also failed to apply "contemporary principles of learning theory and teaching methodology," or properly assess her students' performance.

¶ 12 During the 60-day evaluation period, Everage noted that the respondent had improved, but was still not where she wanted her to be. Everage testified that she repeatedly asked the respondent to differentiate her lesson plans based upon the students' respective grade levels and what they were learning in their general education classes. Everage believed that, with proper instruction, 80% of the respondent's students had the ability to move toward the achievement of their general education peers and, eventually, to improve to their appropriate grade level. She stated that she observed two students in the respondent's class who were in different grades, but reading the same book. The respondent also asked two 7th graders to draw the phases of the moon, which is part of the 4th grade curriculum. Everage testified that she asked the respondent to bridge the gap between her students' deficiencies, and to enable her students to effectively participate with their peers in the real world. According to Everage, her overarching goal for special education students is to prepare them for the real world where they will not have special accommodations or settings.

¶ 13 Everage testified that, as time progressed, she failed to see any further improvement in the respondent's instructional difficulties. She observed a class in which the respondent had students from four different grades doing the same work without any differentiation. Although the respondent was supposed to be instructing students on how to analyze the plot of a story, the lesson was confined to basic recall of events. Everage gave another example in which the respondent's lesson plan was to teach the students how to add, subtract, and convert mixed numerals and fractions by making donuts. However, according to Everage, the students simply mixed the ingredients and then fried the donuts; the respondent did not teach them how to

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convert or add fractions. The only learning aspect occurred when the respondent asked the students about doubling the recipe; however, she still did not have them do the math that this would entail.

¶ 14 At the end of the 90-day remediation period, Everage gave the respondent an unsatisfactory performance rating. She testified that, although the respondent believed her students were meeting "growth targets," these targets are "the bottom rung on the ladder" as a measure of student progress. The Board does not rely upon growth targets as a means of assessment because they do not equate to grade-level achievement. Everage also testified that her notes reflected that the respondent's classroom attendance was at 89%. She stated that the Board's expectation was set at 95% and that, during the respondent's remediation period, Wentworth's other special education classes were averaging a 98% to 100% attendance rate. Everage believed that the respondent's poor student attendance was attributable to her lack of rigorous instruction, low student expectations, and treatment of students as if they were "dumb."

¶ 14 Morrow admitted that, as a consulting teacher, her job was not to evaluate the respondent, but merely to act as her advisor during the remediation process and support her in raising her performance to a satisfactory level. Morrow testified that, based upon her observations during the initial 30-day period, she concluded that the respondent was not an unsatisfactory teacher, but that there were things upon which she could improve, including the rigor of her instruction. During a visit to the respondent's classroom on October 15, 2012, Morrow noted the students were not working on the math lessons as described in the lesson plan. The respondent also read aloud to her students and then asked them simple recall questions. Morrow told the respondent that, although the "students are low," they "still need to read more rigorous text [and] Jack and the Beanstalk is ineffective in preparing them for the ISAT [Illinois

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Standards Achievement Test]." Morrow suggested that the respondent assign students more challenging reading to help them use higher order thinking skills.

¶ 15 According to Morrow's notes, during the 60-day evaluation period, she again asked the respondent to post her objectives and review them with the students before beginning the lesson. She reminded the respondent to teach higher order thinking skills in preparation for the ISAT. On November 13, Morrow asked the respondent to post more student work, noting that she had not changed the vocabulary words on her wall since remediation began. She also asked the respondent to review the lesson plans she had given her and make her own plans "more detailed as requested by your principal." The following day, Morrow gave the respondent a blank lesson-plan format to use to add rigor to her instruction.

¶ 16 In December 2012, Morrow provided the respondent with additional instructional advice and reiterated her suggestion that she "put more rigor" into her assignments. In January of 2013, Morrow noted that the respondent had neither posted a lesson objective nor reviewed one with her students. Morrow also noted that the respondent asked her teacher's aide to work with three students, but failed to properly monitor her. The aide worked on her laptop for 15 minutes without asking the students any questions or passing out the worksheet she had for them. Morrow stated that the students "looked lost."

¶ 17 In contrast to Everage, Morrow testified that, by the end of the 90-day period, she believed the respondent had demonstrated significant improvement in her teaching ability and had successfully remediated. She informed Everage that, in her observation, the respondent was meeting the needs of her students by taking attendance and engaging the students in a preset routine. On cross-examination, Morrow admitted that she never performed an evaluation of the respondent.

¶ 18 The respondent testified that her teaching evaluations in the years preceding the E-3 notice had been excellent and that, when she received the notice, she was "totally shocked." She also disagreed with Everage's assessment of her instruction as being "low-level." According to the respondent, this disagreement continued throughout the remediation process. She acknowledged that Everage's primary concern was the lack of rigor she was providing to her students. She also understood that Everage wanted her to expose her students to the same subject matter and concepts as the general education students, only "adapted" so that her students could comprehend them. In an effort to achieve Everage's directives, the respondent took a course on contemporary teaching methodology, among other courses, and tried to integrate the general education materials into her lessons. However, the respondent believed that, what constituted "rigor" for one student was often not the same as for another student, as many of her students were at comparatively low levels of ability. She also testified that, when she was teaching general education concepts to her students, it often "doesn't look the same."

¶ 19 At the conclusion of the hearing, the hearing officer issued a decision which initially noted that certain deficiencies alleged in the E-3 notice were either corrected during the remediation period, or proved insufficient to warrant the respondent's termination. These included, in relevant part, the respondent's alleged work attendance problems and her untimely submission of lesson plans. Nonetheless, the hearing officer concluded that the evidence showed that the respondent had failed to correct other deficiencies in her performance during remediation. In particular, the respondent's instruction continued to fall short of the level of "rigor" that Everage deemed necessary and attainable for the students' success, and she failed to expose her students to the text and vocabulary of the general education students. According to the hearing officer, the "major disagreement" between Everage and the respondent arose from a

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fundamental difference in their respective teaching philosophies for special education students. Therefore, noting that the principal's judgment on this issue must prevail, the hearing officer issued a decision recommending that the respondent be terminated for failing to sufficiently complete her remediation. The Board agreed with the recommendation of the hearing officer and, on July 5, 2015, terminated the respondent. The instant appeal followed.

¶ 20 Our jurisdiction in this case derives from section 34-85(a)(8) of the Code, which provides for review from a final decision of the Board under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)), but requires that such review be initiated in this court. See 105 ILCS 5/34-85(a)(8) (West 2012). On administrative review, we consider all issues of law and fact presented by the record. *Speed District 802 v. Warning*, 242 Ill. 2d 92, 111 (2011). We review the final decision of the Board and not that of the hearing officer, who is merely charged with making a recommendation to the Board. *Raitzik v. Board of Education of the City of Chicago*, 356 Ill. App. 3d 813, 826 (2005). As a reviewing court, we may not interfere with school board's discretionary authority, but may only review its decision to determine if it is against the manifest weight of the evidence. *Id.* at 823. The Board's findings on questions of fact are deemed *prima facie* true and correct (*Speed District 802*, 242 Ill. 2d at 111-12), and this court will not reweigh the evidence, make credibility determinations, or resolve disputes in testimony or evidence. See *Abrahamson v. Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). The Board's determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident, or, stated another way, if "all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous." *Raitzik*, 356 Ill. App. 3d at 824 (citing *Daniels v. Police Board*, 37 Ill. App. 3d 1018, 1023 (1976)).

¶ 21 The respondent argues that the Board's decision to terminate her was against the manifest weight of the evidence, because the evidence failed to show (1) that she was ever an unsatisfactory teacher deserving of an E-3 notice; or, in the alternative (2) that the deficiencies in her performance as set forth in its E-3 notice were not adequately rectified during the remediation period.

¶ 22 The respondent does not contest the procedures underlying the E-3 notice in this case. However, she disputes the allegation in the notice that she had a poor attendance record, arguing that she had provided Everage with a physician's note justifying her absence. She also challenges the assertion regarding the untimeliness of her lesson plans, pointing out that, once the time for turning in her lesson plans was adjusted to accommodate the demands of her teaching position, there were no further problems with this issue.

¶ 23 We note, however, that the hearing officer discounted certain deficiencies alleged in the E-3 notice as either having been corrected during remediation or having proved insufficient to warrant the respondent's termination. These deficiencies included those challenged here, the respondent's attendance problems and untimely submission of lesson plans. As these matters were not determinative in the Board's ultimate decision, there is no need to address them on review.

¶ 24 The respondent also points to Morrow's statement near the beginning of remediation, that she is a satisfactory teacher with "room for improvement." Morrow further testified that the respondent had successfully remediated by the end of the 90-day period.

¶ 25 Morrow's opinions with regard to the respondent's performance provide no basis for this court to question the decision of the Board. First, her belief that the respondent was a satisfactory teacher conflicted with that of Everage, Phinn, and Holmes, whose testimony the

hearing officer found to be undisputed and more persuasive on this issue. As the fact finder, the hearing officer was in the "best position to evaluate the conduct and demeanor of the witnesses" and determine the weight to be afforded to their testimony. *Cook v. AAA Life Insurance Co.*, 2014 IL App (1st) 123700, ¶ 51. We do not disturb the Board's findings and judgment if there is any evidence in the record which fairly supports them. *Id.*; *Raitzik*, 356 Ill. App. 3d at 824. More important, however, is the fact that Everage's opinion took precedence over that of Morrow. Under the Code, it was Morrow's duty, as consulting teacher, merely to provide advice to the respondent on how to improve her teaching skills and successfully complete the remediation plan. See 105 ILCS 5/24-5(k) (West 2012). However, the "final decision as to the evaluation" was to be executed "solely by the evaluator" (*Id.*), in this case, Everage. Everage testified clearly and unequivocally that the respondent failed to sufficiently correct the alleged deficiencies in her performance by end of the 90-day period.

¶ 26 The respondent disputes Everage's opinion that her instruction was "low level," or that she failed to adapt her lesson plans to mirror those of the general education curriculum. She asserts that she took the appropriate steps to achieve these goals, but that the correct level of rigor could not properly be measured by applying one universal standard to students of unequal ability. The respondent also argues that she provided empirical evidence proving that her students had, in fact, grown during their time in her classroom.

¶ 27 These arguments reflect a viewpoint consistently advanced by the respondent throughout this case. However, as observed by the Board, the primary issue here was the variance in teaching philosophy between the respondent and Everage. The Board reasoned that "[t]he choice of the correct learning theory and teaching methodology at any particular school, at least in the first instance, is made by that school's principal," and a teacher "is not free to choose a different

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method" simply because she believes it to be superior. Everage believed that, although the respondent made sincere efforts to raise the level of her instruction, she continued to fall short of what was necessary to foster the success of her students. She supported this view by testifying to specific examples of the simplistic form of instruction that continued to occur in the respondent's classroom, and her failure to distinguish her subject matter based upon grade level. Everage's testimony in this regard was corroborated to a significant extent by the notes taken by Morrow during her own observations of the respondent. Everage also testified that the respondent remained unable to present her subject matter so as to effectively mirror that of the general education curriculum. Finally, Everage took issue with the respondent's proof of the alleged growth of her students, stating that her method of evaluation, through the use of "growth targets," had been rejected by the Board as an ineffective means of measuring progress. This court may not substitute its judgment for that of the Board on disputed testimony, or re-evaluate conflicting facts; reversal of the Board's decision is not justified simply because the opposite conclusion is reasonable or because we might have ruled differently. *Raitzik*, 356 Ill. App. 3d at 823-24 (2005). Further, although the respondent had made some progress towards improving her methods, alleged improvement during a remediation period does not compel the finding that the teacher's dismissal is inappropriate. *Id.* at 830; *Davis v. Board of Education of the City of Chicago*, 276 Ill. App. 3d 693, 696 (1995). There is sufficient evidence here to support Everage's conclusion that the respondent failed to improve her performance during remediation so as to attain a "satisfactory" or better rating. Based upon this evidence, we are unable to conclude that the Board's decision to terminate the respondent is against the manifest weight of the evidence.

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¶ 28 The respondent also argues that the Board failed to demonstrate sufficient cause to justify her termination. We cannot agree.

¶ 29 Although "cause" is not specifically defined by the Code, this court has characterized it as "that which law and public policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness." *James v. Board of Education of the City of Chicago*, 2015 IL App (1st) 141481, ¶ 16 (citing *Raitzik*, 356 Ill. App. 3d at 831). The failure to complete a remediation plan under section 24A-5 of the Code with a rating of satisfactory or better constitutes "cause" for dismissal. See 105 ILCS 5/24A-5(j), 34–85 (West 2000); see also *Raitzik*, 356 Ill. App. 3d at 831; *Davis*, 276 Ill. App. 3d at 697. The existence of sufficient cause is a question of fact for the Board to determine (see *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n*, 85 Ill. 2d 547, 551-52 (1981)), and the Board's finding on this issue will be overturned only if it is unreasonable, arbitrary or capricious. *Raitzik*, 356 Ill. App. 3d at 831.

¶ 30 It is undisputed that the remediation proceedings here were conducted in compliance with the requirements of the Code. The respondent's final evaluation stated that, throughout the remediation process, she continued to demonstrate weaknesses as alleged in the E-3 notice, including failing to properly differentiate her instruction to meet the needs of diverse grade levels and student abilities, and to apply contemporary learning theory and teaching methodology. As stated above, despite some effort and improvements, the respondent was unable to rectify many of her teaching deficiencies in order to meet the requirements of Wentworth's curriculum and achieve a satisfactory performance rating. For these reasons, we conclude that the Board's determination that cause existed for her dismissal was not unreasonable, arbitrary or capricious. See *Raitzik*, 356 Ill. App. 3d at 831; *Davis*, 276 Ill. App. 3d at 697.

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¶ 31 For the foregoing reasons, we confirm the decision of the Board.

¶ 32 Confirmed.