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2019 IL App (3d) 170076-U

Order filed October 1, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

TIMOTHY J. BURGESS,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiff-Appellant,	)	La Salle County, Illinois.
	)	
v.	)	
	)	
ILLINOIS STATE BOARD OF EDUCATION,	)	Appeal No. 3-17-0076
BOARD OF EDUCATION OF OTTAWA	)	Circuit No. 15-MR-365
TOWNSHIP HIGH SCHOOL DISTRICT NO.	)	
140, and DANIELLE CARNE, in her official	)	
Capacity as Hearing Officer,	)	
	)	
Defendants-Appellees.	)	The Honorable
	)	Joseph P. Hettel,
	)	Judge, presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The decision of the Board of Education of Ottawa Township High School District No. 140, which dismissed a tenured teacher for cause and insubordination, was clearly erroneous.

¶ 2 In 2015, the plaintiff, Timothy J. Burgess, was dismissed by defendant Board of Education of Ottawa Township High School District No. 140 (OTHS Board) from his position as

a tenured teacher at Ottawa Township High School (OTHS). Burgess appealed the decision to defendant Illinois State Board of Education,<sup>1</sup> and defendant Danielle Carne was the Hearing Officer assigned to review the case. Carne recommended that Burgess be reinstated, but the OTHS Board rejected Carne's recommendation and instead upheld Burgess' dismissal. Burgess appealed to the circuit court, which affirmed the OTHS Board's decision. Burgess has now appealed to this court, arguing that: (1) several of the OTHS Board's findings were erroneous; (2) his conduct did not constitute cause for dismissal; and (3) he did not violate the notice to remedy in a clear and material manner. We reverse and remand.

¶ 3

### I. BACKGROUND

¶ 4

The following facts have largely been gathered from testimony elicited at the hearing held upon Burgess' appeal of his 2015 dismissal.

¶ 5

In 1989, Burgess began teaching at OTHS. At the time of his dismissal in 2015, he was tenured, had been teaching physical education, and had been serving as a strength and conditioning coach. He received excellent ratings on each of his last four teaching evaluations, which occurred in 2008, 2010, 2011, and 2013.

¶ 6

During his 26 years at OTHS, Burgess incurred three disciplinary actions. The first action was taken on December 8, 1993. Burgess, who was an assistant basketball coach at the time, had communication difficulties with the head basketball coach, with whom Burgess was good friends. Burgess had loaned \$2,000 to the head coach to cover a gambling debt. After

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<sup>1</sup> Despite its inclusion as a party, the Illinois State Board of Education played no substantive role in the process that culminated in Burgess' dismissal. Pursuant to statute, the local school board is the initial decision-maker, advocate before the hearing officer, and reviewer of the hearing officer's recommendation. See 105 ILCS 5/24-12(d) (West 2014).

some time had passed without repayment, Burgess began asking for the money back. The head coach always came up with excuses and did not repay the debt. Eventually, the head coach told Burgess he was not going to pay him back, and their communications were strained from that point on. A disciplinary letter was placed into Burgess' permanent record, which in part referenced an unspecified "unacceptable" incident that occurred on November 12, 1993.

¶ 7 A second disciplinary action was taken against Burgess in 2002. On this occasion, Burgess had a dispute with the head of the physical education department based on a mutual misunderstanding of each other's schedules. Another disciplinary letter was placed into Burgess' permanent record, which in part directed him to "maintain [his] professionalism and refrain from losing [his] temper in the presence of students."

¶ 8 Burgess' third disciplinary action occurred in 2003 as a result of his involvement in an incident with a parent of an OTHS student who had been cut from the sophomore team by another coach. On a day in September of that year, Burgess was driving to school and was stopped at a controlled intersection across the street from OTHS. He heard his last name being called by someone across the street; when he looked, it was the disgruntled parent. The man had a yellow basket in his hand and was grabbing his crotch while asking if Burgess "want[ed] some of this." Burgess called from his car that the man should "take that yellow basket and stick it up [his] ass." The man alleged that Burgess told him to "[g]et a fucking life" and that his comments were unprovoked. During the first hour of the school day, as Burgess was taking his biology students to a nearby park, the same parent was at the school's main doors and he verbally accosted Burgess, which including some yelling and screaming. Although Burgess did not respond, another disciplinary letter was placed into his permanent record, which in part directed

him to avoid such confrontations, walk away from such confrontations if they do arise, conduct himself professionally at all times, and conduct himself as a role model for students.

¶ 9 *2009 Tuition Waiver Issue, Teachers' Strike, and Notice to Remedy*

¶ 10 Six years later, in 2009, Burgess learned of a rule in another school district that allowed teachers' children to attend the school at which the parent worked even though the family did not live in that school district. Prior to the beginning of the new school year, Burgess met with the superintendent to discuss whether a similar rule could be adopted so his daughter could attend OTHS tuition-free even though he lived outside of the school district in Utica. The superintendent liked the idea and said he would try to get it implemented. Because the deadline for the first semester of 2009 had already passed, the superintendent told Burgess that he would have to move to Ottawa for a three to four-month period prior to the implementation of the change. Subsequently, Burgess retained his house in Utica but got an apartment in Ottawa so his daughter could attend OTHS.

¶ 11 Shortly thereafter, OTHS teachers went on strike after negotiations broke down regarding a new contract. Burgess, who was a strong proponent of the strike, served as a spokesperson for the teachers' union and was on the negotiations team. Other OTHS teachers, including Mark Cartwright, Peter Marx, and Steve Doerrer, were opposed to the strike, which by all accounts was bitter and divisive. After the strike started, the superintendent passed away and was replaced by Matt Winchester, who had been serving as OTHS principal.

¶ 12 Burgess' tuition-waiver request was addressed by the OTHS Board on December 14, 2009, and was unanimously rejected. Burgess felt the rejection may have been retaliation for the teachers' strike. Burgess verbally berated the OTHS Board members immediately after the vote, including calling one of the members a "phony," alleging that the vote was a reprisal for the

strike, deriding the vote as “crap,” and asking Winchester whether this was the way he was going to run the school. Three days later, Burgess met with Winchester and several other people and was informed that the OTHS Board was going to consider issuing him a notice to remedy.

Burgess again called one of the OTHS Board members a “phony,” stated that the Board president would lie because he was an attorney, and called the entire OTHS Board “a bunch of lying, filthy cheaters.”

¶ 13 On December 22, 2009, the OTHS Board in fact issued Burgess a notice to remedy. The letter stated, *inter alia*, that Burgess’ conduct following the OTHS Board’s denial was inappropriate and unprofessional. The letter further noted his three prior disciplinary actions and concluded that Burgess had “repeatedly displayed a problem with anger management” during his employment by OTHS. The OTHS Board also stated that Burgess’ recent conduct was grounds for dismissal unless remedied in the following fashion: (1) “cease and desist from any further displays of anger in front of staff, parents, students, members of the Board of Education, or the public with regard to any matter having a nexus to the school district;” (2) “cease and desist from referring to staff, parents, students or members of the Board of Education in a derogatory, inappropriate or unprofessional manner;” (3) “conduct yourself in a professional manner at all times;” and (4) “conduct yourself as a role model for OTHS students at all times.” Finally, the letter informed Burgess that a violation of any of those directives would result in his dismissal.

¶ 14 Burgess filed an unfair labor practice complaint against the OTHS Board based on the issuance of the notice to remedy. After a hearing, an administrative law judge ruled against Burgess and in favor of the OTHS Board.

¶ 15 *September 2014 Union Meeting*

¶ 16 In September 2014, a union meeting was held in an OTHS choir room, which had tiered seating rows. It was generally known prior to the meeting that Burgess was going to move for a vote of no confidence in Superintendent Winchester. Approximately 80 people attended the meeting, although not everyone stayed until the end. Burgess was seated in one row and Cartwright was seated in the row behind Burgess and slightly to the right. During the meeting, exchanges occurred between Burgess and Cartwright.

¶ 17 Burgess gave his account of those exchanges at a hearing in 2015. Burgess moved for a vote of no confidence in Winchester, and after the motion was seconded, Marx interposed an objection. Discussion ensued about the proper procedure for addressing both the motion and the objection. It was decided that a vote would be taken, but some confusion remained as to whether the vote would be on Burgess' motion or Marx's objection. When Burgess sought clarification, Cartwright told him to sit down and let the union committee do its job. After a second request from Burgess for clarification, Cartwright repeated his demand.

¶ 18 In Burgess' version, after a silent vote was taken in which Marx's objection was defeated, Cartwright said that he was tired of listening to Burgess' shit for the last 11 years. Burgess responded that as a union member he had the right to speak and that Cartwright should pull his long hair over his ears so he would not have to listen. Shortly thereafter, Cartwright said Burgess was nothing but a fucking pea brain. Doerrer, who was seated in the row behind Cartwright, leaned toward Burgess and said Burgess was all bark and no bite. Burgess responded, "sit down little man, I'm not afraid of you." Burgess stated that he was holding a file folder, and he denied making a comment, as alleged, that he ought to slap Cartwright upside the head. Although Marx's objection had been defeated, no vote was taken on Burgess' motion.

¶ 19 Multiple witnesses in addition to Burgess testified at the 2015 hearing regarding the events at the September 2014 union meeting. Cartwright testified that he told Burgess to let the union committee do its job; that Burgess told Cartwright twice that he did not like what Cartwright said; that he told Burgess he had been listening to Burgess say things for 11 years and that Burgess responded “tough shit”; that Burgess pointed a file folder at Cartwright; that Burgess told him to get a haircut so he could hear; that he said talking to Burgess was like talking to a pea brain; that Burgess said “sit down, little man” to someone; and that he “very clearly” heard Burgess say “I ought to slap him upside the head” twice. Cartwright denied directing vulgar language at Burgess. Further, while he contemplated filing a complaint and had some discussions related to such a filing with Winchester and OTHS principal Michael Cushing, he ultimately chose not to do so.

¶ 20 Doerrer testified that Cartwright raised his voice and told Burgess to let the union committee do its job; that Burgess made a comment about Cartwright’s long hair covering his ears; that he noticed an escalation in the exchange such that he stood up and put his arm on Cartwright’s shoulder, and then Burgess told him, “sit down, little guy”; that Burgess was red-faced and waving a file folder; that Cartwright made a comment about Burgess having a pea brain; that Burgess said “if [Cartwright] calls me stupid again, I’m going to smack him upside the head”; that Cartwright made a comment about having to listen to Burgess for 11 years. Doerrer stated that Cartwright did not use any vulgar language toward Burgess. Doerrer further testified that he did not care about Burgess’ opinions, but that he took exception to Burgess’ “aggressive hostile attitude.” He also stated that he had met with Marx before the meeting to craft a strategy aimed at preventing the no-confidence vote from going forward.

¶ 21 Marx testified that he heard Cartwright tell Burgess to let the union committee do its job; that Burgess made a comment about Cartwright's long hair preventing him from being able to hear; that Cartwright called Burgess a pea brain; that Burgess responded by saying he ought to smack Cartwright upside the head; that Burgess was waving a file folder; that Burgess made a comment about Doerrer being a little man or little guy and told him to sit down; that Doerrer leaned in when talking to Burgess; and that he did not hear any comment about Cartwright being tired of listening to Burgess. In addition, Marx denied working with Doerrer on the plan aimed at blocking Burgess' no-confidence vote, but he did admit talking to Doerrer prior to the meeting about what he was planning to do. Marx also testified that he coaches with Burgess and gets along with him.

¶ 22 OTHS teacher Brian Guenther testified that people were generally afraid to speak up after the teachers' strike for fear of retaliation, but Burgess was one of the individuals not afraid to speak up. He also testified that he heard Cartwright say that he was sick of listening to Burgess' shit; that Burgess told Cartwright to pull his hair over his ears so he did not have to hear; that Cartwright loudly stated that Burgess had a brain the size of a fucking pea; that Doerrer stood up and told Burgess that he was all bark and no bite; that Burgess told Doerrer, "sit down, little man. You don't scare me"; and that he did not hear Burgess make any comment about slapping Cartwright upside the head. Guenther was approximately 8 to 10 feet away from Burgess and Cartwright during their exchange.

¶ 23 OTHS teacher Joe Haywood testified that Doerrer told Burgess, "sit down, asshole"; and that Cartwright called Burgess a fucking pea brain and told him he was being a fucking asshole. He could not recall Burgess making any comment about slapping Cartwright upside the head. Haywood was approximately 10 feet away from Burgess and Cartwright during their exchange.



¶ 24 OTHS teacher Tracey O’Fallon testified that Cartwright called Burgess a fucking pea brain.

¶ 25 OTHS teacher Kevin Augenbaugh testified that Cartwright told Burgess to sit down and shut up; that when Burgess asked for clarification about the vote, Cartwright said, “you’re the only one that doesn’t understand it, pea brain”; that Burgess said to Cartwright he might be able to understand Burgess if his hair was not covering his ears; and that he did not hear any vulgar language used during the exchanges. He did not hear Burgess make any comment about slapping Cartwright upside the head. Augenbaugh was between two and three feet away from Burgess and Cartwright during their exchange.

¶ 26 OTHS teacher Mark Andrews testified that Cartwright told Burgess to sit down and keep his mouth shut so the union committee could do its job; that Burgess told Cartwright to pull his hair over his ears so he did not have to hear what Burgess had to say; and that Cartwright called Burgess a fucking pea brain. He did not hear Burgess make any comment about slapping Cartwright upside the head. Andrews was approximately six to eight feet away from Burgess and Cartwright during their exchange.

¶ 27 OTHS counselor Kim Swords testified that Cartwright told Burgess to sit down and shut up; that Cartwright called Burgess a fucking pea brain; and that Burgess told Cartwright to put his hair behind his ears so hear better.

¶ 28 OTHS teacher Ryan Voitik testified that Cartwright called Burgess a pea brain and said he talked too much; and that Burgess told Cartwright to move his hair so he could hear better.

¶ 29 *November 2014 Union Meeting*

¶ 30 In November 2014, another union meeting was held in an OTHS choir room at which a vote was scheduled to be held on the no-confidence motion. Approximately 80 people were

present. During the meeting, an exchange took place between Burgess and Doerrerr. Several witnesses testified at the 2015 hearing on Burgess' dismissal regarding this exchange.

¶ 31 Burgess testified that the vote resulted in a 39-39 tie, with three members abstaining. An additional vote was taken on whether to make the results of the no-confidence vote public. Burgess was in favor of making the results public. However, the members who remained at the meeting for the second vote ended up voting 27-12 to keep the results private. After the meeting ended, Burgess was walking down the stairs toward the front of the room. Doerrerr approached him and said you better not put the vote results on social media. Burgess responded that he did not have any social media presence. Doerrerr then said he was going to be all over social media watching to ensure. Doerrerr then walked out of the room. Burgess denied making any comment to Doerrerr about him being all over underage girls.

¶ 32 In contrast, Doerrerr testified that just before he left the room, it was Burgess who told Doerrerr not to go posting anything on social media, to which Doerrerr responded sarcastically that he was all over social media. Burgess stated, “[w]e know. You’re all over a lot of things. We know all about you[.]” Doerrerr responded, “yeah, I know all about you too.” Doerrerr also alleged that Burgess made a comment in a low tone that Doerrerr was all over underaged females. He thought others may have heard the comment, including Sarah Reckmeyer, who was approximately 1½ feet behind him. Reckmeyer did not testify at the hearing.

¶ 33 On November 17, 2014, Doerrerr sent a letter to Cushing complaining of Burgess' conduct. Doerrerr testified that he discussed the matter with Cartwright and Marx before the complaint was filed.

¶ 34 Doerrerr also claimed that he never informed Winchester of what had transpired in the September and November 2014 union meetings. However, Winchester testified that Doerrerr and

Marx told him after the September meeting (and before the November meeting) that Burgess had moved for the no-confidence vote and that the vote had been delayed.

¶ 35 Marx testified that he heard Burgess tell Doerrer not to post anything on social media, which was a sarcastic comment due to the vote to keep the results private. Marx also heard that “I know all about you.” He was a few feet ahead of Doerrer as they walked out of the room. He did not hear Burgess make any comment about Doerrer and underaged females. Additionally, Marx admitted that he filed a Freedom of Information Act request to obtain Burgess’ disciplinary file out of “pure curiosity.”

¶ 36 *December 2014 Investigatory Meeting*

¶ 37 During the school day on December 8, 2014, Winchester called Burgess into a meeting. Several witnesses testified regarding the meeting at the 2015 hearing on Burgess’ dismissal.

¶ 38 Burgess testified that Winchester called him during the school day and told him to check his email. Burgess did, learned that a complaint had been filed against him, and saw that he was being summoned to a meeting that was starting in seven or eight minutes at which he would be allowed to have union representation. Winchester would not tell Burgess what the meeting was about; that Burgess would find out at the meeting. Burgess selected OTHS teacher and union representative Robert Bradish to take notes at the meeting.

¶ 39 When he arrived at the meeting, Burgess noted that Winchester was accompanied by Cushing and the OTHS Board’s attorney. They told Burgess that Doerrer had filed a written complaint against him, and they handed Burgess a copy. Burgess stated that he wanted an attorney because the OTHS Board’s attorney was present. Burgess also asked for the UniServ Director from the Illinois Education Association, Stacie Walton. Both requests were denied, and Burgess was told that this was an investigation and he was going to be asked questions.

¶ 40 Burgess was asked questions about Doerrer's complaint, as well as about the exchange with Cartwright, even though no complaint had been filed regarding that exchange. Burgess admitted that he was apprehensive when answering questions because he had no legal representation, they were asking about union activity during a union meeting, nothing had been placed in writing regarding the exchange with Cartwright, and he could not recall everything due to the time that had elapsed since the union meetings.

¶ 41 Winchester testified that the questions they asked Burgess included whether he had called Doerrer a little man or little guy during the 2014-15 school year. Burgess gave multiple responses to that question, including that he did not make any comment in Doerrer's presence, that he could not recall, and that he did not make any such comment at all. Cartwright stated that Burgess gave an account of the exchange with Doerrer, including that Burgess told Doerrer he better not post on social media about the meeting's events, that Doerrer responded "like I'm all over social media," and that no further comments were exchanged. Burgess denied making any comment about Doerrer being all over underage girls.

¶ 42 Winchester further testified that they asked Burgess questions about the exchange with Cartwright. Burgess denied having an argument with Cartwright on the date of Doerrer's document and outright denied having any argument with Cartwright during the 2014-15 school year. Burgess gave multiple answers to a question about whether he made any comments about Cartwright's hair during the 2014-15 school year, including that he did do so on the date of the document and that he did not make any such comment at all. Burgess denied making any comment about slapping Cartwright upside the head.

¶ 43 Regarding the procedural aspects of the meeting, Winchester testified that Burgess was given several opportunities to leave the room to consult with Bradish. Winchester also stated

that he could not recall if Burgess had asked to have an attorney present, but he did recall Burgess requested the presence of the UniServ Director, which they denied.

¶ 44 Winchester stated that he believed Burgess was evasive in answering questions posed to him at the meeting. He stated that “[Burgess] always qualified the answers with either [‘]not with this document or on the date of this document,[’] [‘]not during the school day[’] or [‘]I don’t recall[’]” to almost every question that was asked. Cushing also testified that he believed Burgess had been evasive and dishonest when answering questions. He described the same type of responses from Burgess that Winchester described. At the end of the meeting, they handed Burgess a letter informing him that he was being suspended with pay while the investigation was ongoing.

¶ 45 *Dismissal and Subsequent Administrative Hearing*

¶ 46 On January 9, 2015, the OTHS Board adopted a resolution authorizing the dismissal of Burgess, charging that he had communicated with other staff members in an unprofessional and disparaging manner; had been insubordinate, and had been dishonest during the investigation into his conduct. In particular, regarding the September 2014 union meeting, the OTHS Board found that Burgess: (1) provoked an argument with Cartwright; (2) displayed anger toward Cartwright; (3) made a derogatory comment to Cartwright about his hair interfering with his ability to hear; (4) stated that he was going to slap Cartwright upside the head; and (5) made a derogatory comment to Doerrer about being a “little man” or “little guy.” Regarding the November 2014 union meeting, the OTHS Board found that Burgess: (1) displayed hostility and anger toward Doerrer; (2) called Doerrer “little man”; and (3) told Doerrer “I know all about you and how you’re all over underage females.” The OTHS Board further found that Burgess was dishonest during the December 2014 investigatory meeting, had been insubordinate, and that his

conduct was irremediable and constituted cause for his immediate dismissal. Burgess requested a hearing on the OTHS Board's resolution, and a three-day hearing was held before hearing officer Carne.

¶ 47 On September 11, 2015, Carne issued a written decision recommending a reversal of the OTHS Board's decision to dismiss Burgess. Specifically, Carne found that the evidence presented at the hearing established the following regarding the September meeting: (1) Burgess made a comment about Cartwright's long hair and that he should pull it over his ears to keep him from hearing Burgess; and (2) Doerrer leaned in during that exchange and Burgess told him to "sit down, little man." Carne further found the evidence established that during the November meeting, Burgess told Doerrer not to post the results of the vote on social media and that the two men exchanged several statements about knowing all about each other.

¶ 48 Carne further found that there was insufficient evidence to show by a preponderance that Burgess made the comment about slapping Cartwright upside the head and the comment to Doerrer about underage females. Carne found that despite the large number of people present and the distance between the row Burgess was in and the row Cartwright was in, only Cartwright, Doerrer, and Marx heard Burgess say that he ought to slap Cartwright upside the head. Several other witnesses testified that they either did not recall hearing Burgess make that statement or denied that Burgess made it. Carne found that the testimony of these latter witnesses was corroborated by the fact that Cartwright did not report any physical threat when he went to discuss the matter with Winchester, and neither Doerrer nor Marx initially reported the physical threat from that union meeting.

¶ 49 Regarding the alleged comment to Doerrer about underage females, Carne found that there was no corroboration that Burgess in fact made the statement, which was suspect because

there were many people at the meeting and some in close proximity to Doerrer when Burgess allegedly made the statement, including Reckmeyer, who was not called to testify at the hearing. Carne also noted that Marx did not hear the comment and Cartwright was not questioned at the hearing regarding the comment.

¶ 50           Regarding witness credibility, Carne found that it was unreasonable to credit the testimony of Cartwright, Marx, and Doerrer over Burgess due to the “strong, long-held feelings they [had] toward the Union and Burgess,” including that they were often at odds with Burgess on union matters. Carne also noted that Doerrer had consulted with Marx prior to the September 2014 union meeting on how to attempt to block a vote on Burgess’ no-confidence motion. Further, Carne emphasized that Doerrer had testified at the hearing that he did not talk to Winchester about what had been transpiring in the September and November 2014 union meetings, but Winchester testified that Cartwright, Marx, and Doerrer all informed him about the no-confidence motion and attempt to block it. Accordingly, Carne found:

“Given the inconsistent (and, in Doerrer’s case, completely uncorroborated) testimony regarding these two allegations, and given the factors that call into question the objectivity among the witnesses, I’ve concluded that the District has failed to meet its burden to show that the slap statement and the under-aged females statement actually occurred. There is simply not sufficient, reliable evidence on which to base a finding regarding either allegation.”

¶ 51           Carne also found that the OTHS Board failed to show by a preponderance of the evidence that Burgess started an argument with Cartwright at the September 2014 union meeting. Further,

she found that any anger and hostility Burgess displayed was not an atypical occurrence at union meetings and as such did not warrant discipline.

¶ 52           Regarding whether Burgess was dishonest at the December 2014 investigatory meeting, Carne found that the evidence was insufficient to support such a conclusion. Carne found that the evidence presented at the hearing was overly generalized and lacked precision on what exact answer Burgess gave to which question. Further, Carne found that, given the circumstances, it was understandable for Burgess to be guarded in his responses:

“As I write this decision I still find it difficult to understand how the Cartwright allegations played a role in the investigatory meeting. They were not mentioned in Doerrer’s complaint, and Cartwright decided not to file any kind of complaint. Second, the written complaint from Doerrer referred exclusively to events that occurred on November 6, 2014, but the questions in the interview were framed to encompass the entire 2014-2015 school year. After Burgess had been told that he was brought in because of a complaint and handed a piece of paper that identified, in its subject line, ‘November 6, 2014’ as the date of the infraction, it is not terribly surprising that Burgess repeatedly referred back to that date when answering questions about what occurred. A complaint had been filed, an investigation was being performed, and a lawyer was present. Any employee in those circumstances would be cautious or even paranoid about responding, and the broad nature



of the questions posed by the District made that reaction even more likely.”

In addition, Carne expressed concerns over Winchester being able to conduct an objective investigation given that he was the subject of the no-confidence motion advanced by Burgess.

¶ 53 After making these findings, Carne reiterated that the only statements proven by the OTHS Board by a preponderance of the evidence were: (1) Burgess made a derogatory comment about Cartwright’s hair and it interfering with his ability to hear; (2) Burgess called Doerrer a “little man” when he told him to sit down; (3) Burgess told Doerrer not to post the results of the vote on social media and Doerrer responded “yeah, I’m all over social media”; and (4) Burgess and Doerrer exchanged comments about knowing all about each other. Carne then concluded:

“Given the nature of the conduct and the specific circumstances in which it occurred, it did not constitute a violation of the prohibitions and mandates in the Notice to Remedy. Also, the question of whether the conduct that occurred was remediable does not apply here, because it should not have been a subject of discipline. Finally, the proven conduct does not support the dismissal of an employee with Burgess’ tenure and evaluative history. For these reasons, the undersigned recommends that the dismissal be reversed.”

¶ 54 *OTHS Board Upholds the Dismissal*

¶ 55 On September 29, 2015, the OTHS Board issued its final decision in which it rejected Carne’s recommendation and affirmed its dismissal of Burgess. In so ruling, the OTHS Board found that “many of the findings of fact by the Hearing Officer are against the manifest weight

of the evidence and many of her conclusions are otherwise erroneous[.]” At times in the decision, the OTHS Board used strong language when describing Carne’s findings (or alleged lack thereof), including that her findings and statements were “illogical,” “simply inconsistent,” “without considered reason,” “[didn’t] make sense,” and “patently unreasonable.” The OTHS Board also stated, *inter alia*, that Carne “inappropriately attempted to attack the credibility of the Board’s witnesses,” and that her “findings based upon material not contained in the record or based upon a misinterpretation of the evidence brings the objectivity of her findings into serious disrepute.”

¶ 56 Of particular note, the OTHS Board found that Carne erred regarding her findings and conclusions made (or not made) in relation to: (1) Burgess’ alleged statement that he ought to slap Cartwright upside the head; (2) Burgess’ alleged statement that Doerrer was all over underage females; and (3) Burgess’ allegedly dishonest testimony at the December 2014 hearing. The OTHS Board found the evidence presented on these matters rested on witness credibility, stating that “[w]hile the Hearing Officer seems to question the credibility of Messrs. Marx, Doerrer, and Cartwright throughout the Findings, the majority of her actual factual findings credit their testimony over the testimony presented by Burgess and his witnesses on numerous occasions.” In support of this claim, the OTHS Board found that Carne credited the OTHS Board’s witnesses over Burgess’ witnesses regarding what was said during the September 2014 union meeting because she did not find that profanity was used as alleged by Burgess’ witnesses. Additionally, the OTHS Board found:

“The findings further demonstrate her crediting the testimony of Messrs. Cartwright, Doerrer and Marx when faced with conflicting evidence from Burgess and several of his witnesses regarding the

following incidents: (a) Burgess was never told to ‘sit down’ by Mr. Cartwright during the September meeting, (b) Burgess was waving and pointing a folder at Mr. Cartwright during the September meeting, (c) Burgess made a derogatory comment about Mr. Cartwright’s hair prior to Mr. Cartwright referring to him as a ‘pea brain’ in the September meeting, (d) Mr. Cartwright did not use the word ‘shit’ when addressing Burgess in the September meeting, (e) Mr. Doerrler never stated to Burgess ‘you’re all bark and no bite’ during the September meeting, and (f) the interchange between Burgess and Mr. Doerrler on November 6 occurred after the meeting had concluded and started with Burgess directing Mr. Doerrler that he (Mr. Doerrler) better not be putting things on social media. By accepting the testimony of the Board’s witnesses on the majority of disputed evidentiary items and then later challenging whether they were credible to testify about other issues is simply inconsistent, illogical and without considered reason. As such, the Board modifies the Findings of the Hearing Officer in which she questions the credibility of Messrs. Cartwright, Doerrler and Marx and finds their testimony to be credible.”

Next, the OTHS Board concluded:

“In addition, after reviewing the evidence it is clear that the testimony of Messrs. Cartwright, Doerrler and Marx is far more consistent and reliable than the testimony of Burgess and the

witnesses that he provided. The witnesses provided by Burgess told numerous contradictory versions of the events that took place and several only recalled details which would seemingly benefit Burgess. As such, the Hearing Officer's Findings are supplemented to include a finding that the testimony of Messrs. Cartwright, Doerrler and Marx were [*sic*] credible and should be credited to the extent that they conflict with Burgess or any of his witnesses."

¶ 57 The OTHS Board next attacked Carne's statement that she could not determine whether the slap comment was made because no one else in the room heard the comment; namely, Guenther, Haywood, Augenbaugh, or Andrews. The OTHS Board stated, "[t]his rationale is unpersuasive since, as stated above, she did not credit much of the other testimony from these witnesses in the Findings" and that those witnesses stated they were unsure whether they even heard the entire exchange. The OTHS Board then concluded that Burgess did in fact make the slap comment.

¶ 58 Regarding the underage females comment, the OTHS Board stated:

"The Hearing Officer finds that the 'underage female' comment may not have been said because there were 'about 80 people who attended this meeting' and the statement was 'plain as day.' [Citation.] Her statement implies that the statement was made loudly by Burgess and capable of being heard by everyone else in the room. Her statement in this regard misconstrues the evidence and should be modified.

“Mr. Doerrler was testifying that the statement was ‘plain as day’ to him because he was asked by counsel whether it was possible that he misunderstood what Burgess had said. [Citation.] He then testified that Burgess ‘hissed’ the statement at him while he was walking down a stairwell to exit the room and while Burgess was hanging over a half wall which abutted the stairwell. [Citation.] He also testified that Burgess said the statement ‘in a low tone.’ [Citation.] The hearing officer’s allusion that the other 80 people in the room could or should have heard this comment doesn’t make sense and is erroneous. As such, the Board modifies the Findings to state that Burgess made a statement to Mr. Doerrler on November 6, 2014, while Mr. Doerrler was exiting the choir room that ‘he was all over underaged females’ in a low tone.”

The OTHS Board also noted that Marx’s credibility was bolstered by the fact that he testified that he did not hear the comment: “If his testimony and the testimony of Messrs. Cartwright and Doerrler was contrived, as the Hearing Officer alludes to, it is simply illogical for Mr. Marx to have denied hearing this statement made by Burgess.” Lastly, the OTHS Board stated Carne had been derelict in her fact-finding duties because she allegedly “failed to make an ultimate determination regarding whether the ‘slap comment’ or the ‘underage girls’ comments were actually ever made or not.”

¶ 59           Regarding whether Burgess had been dishonest during the December 2014 meeting, the OTHS Board noted that Carne found Burgess was the one who told Doerrler not to post on social media after the November 2014 union meeting. The OTHS Board also noted that Burgess

denied making that statement to Doerrer in his answer to the complaint and that he stated in the December 2014 meeting, his answer, and his hearing testimony that Dorrer was the one who made that statement to Burgess. Given these discrepancies, the OTHS Board found that Carne's failure to specifically find that Burgess was not credible was "patently unreasonable and should be modified." Further, the OTHS Board stated:

"Her failure to find that Burgess was dishonest, or to even evaluate his credibility at all, is even more striking since Burgess concocted an entire story about the order of the announced votes regarding confidentiality and the vote of no confidence in a belated attempt to create a back story in order to describe why Mr. Doerrer would have approached him on November 6, 2014 as opposed to him approaching Mr. Doerrer."

The OTHS Board also criticized Carne for "[excusing] Burgess' dishonesty with administration, stating that the administration had the right to expect truthful answers from Burgess and finding that his dishonesty at the December 2014 meeting was insubordinate and cause for dismissal.

¶ 60 After dismissing Carne's findings about the "general tenor" of the union meetings, the OTHS Board also found that Carne erroneously emphasized Burgess' evaluative history, which the OTHS Board minimized by noting that the only evaluations were from 2008, 2010, 2011, and 2013 and that "[t]hese evaluations took place sporadically and only involved a single class period of observation." The OTHS Board stated that the emphasis should have been more on Burgess' disciplinary history.

¶ 61 In addition, the OTHS Board stated:

“The Hearing Officer finds that the conduct ‘should not have been the subject of discipline.’ (Findings, Ex. 26). The Finding in this regard is not explained and has no basis in fact. Making derogatory personal attacks on staff members, threatening to slap other people upside the head and characterizing a staff member as a pedophile is certainly conduct which could and should subject a teacher to discipline. In fact, Burgess admitted that all of this conduct was inappropriate and unprofessional. As such, the Hearing Officer’s finding in this regard is modified to read that Burgess’ conduct was properly a subject of discipline.”

After discounting Carne’s findings about Burgess’ conduct being understandable given the general tenor of union meetings and finding that Burgess’ conduct was irremediable, the OTHS Board made 110 findings of fact. Regarding credibility, the OTHS Board found that: (1) Cartwright, Doerr, Marx, Cushing, and Winchester were all credible witnesses; (2) Burgess’ testimony “was seriously lacking in credibility” and, in the case of conflicts, would not be credited over the testimony of Cartwright, Doerr, Marx, Winchester, or Cushing; (3) the testimony of Cartwright, Doerr, Marx, Winchester, and Cushing would be credited over the testimony of Burgess’ witnesses; and (4) Doerr’s testimony would be credited over Winchester’s testimony in the case of conflicts.

¶ 62           Regarding the September 2014 union meeting, the OTHS Board found, *inter alia*, that: (1) Cartwright felt that Burgess’ questioning of the process was inappropriate so he told Burgess to let the union committee do its job; (2) Burgess turned around and said that he did not like what Cartwright said; (3) Cartwright said he had been listening to Burgess for 11 years; (4) Burgess

said “tough shit”; (5) after the vote, Burgess told Cartwright again that he did not like what Cartwright had said; (6) Cartwright told Burgess that he talked too much; (7) Burgess encouraged Cartwright to talk more; (8) Cartwright said he liked to talk when he knew people would listen; (9) Burgess was upset and displaying anger toward Cartwright; (10) the union president came over and told Burgess and Cartwright to calm down; (11) Burgess pointed a file folder toward Cartwright; (12) Burgess initiated an argument with Cartwright; (13) Burgess told Cartwright to get a haircut so he could hear what Burgess was saying; (14) the hair comment was derogatory, unprofessional, and inappropriate; (15) during the exchange, Doerrer turned around and leaned toward Burgess but did not speak; (16) Burgess commented to Doerrer to the effect of “sit down, little man”; (17) Burgess’ comment was derogatory, unprofessional, and inappropriate; (18) Cartwright said, regarding speaking to Burgess, that “I feel like I’m talking to a pea brain”; (19) Andrews stepped between Cartwright and Burgess; (20) Burgess commented to the effect of “I ought to slap him [Cartwright] upside the head”; (21) the slap comment was a personal, derogatory attack toward Cartwright; and (22) Burgess’ comments toward Cartwright and Doerrer “caused harm to the professional environment of the school district.”

¶ 63

Regarding the November 2014 union meeting, the OTHS Board found, *inter alia*, that: (1) during the tabulation of the vote on Burgess’ no-confidence motion, Marx moved to keep the results of the vote confidential; (2) a majority of the union members voted to keep the results confidential; (3) the vote on Burgess’ motion ended in a 39-39 tie, with three members abstaining; (4) after the meeting concluded, Burgess approached Doerrer and said, “[y]ou better not post this on social media, little guy”; (5) Doerrer responded, “[y]eah, I’m all over social media”; (6) Burgess responded, “we know you. You’re all over a lot of things”; (7) Doerrer responded, “yeah, I know all about you too”; (8) Burgess and Doerrer repeated those statements



to each other; (9) at that time, while Doerrer was on the stairs walking out of the room, Burgess was hanging over the half-wall abutting the stairs; (10) Burgess said to Doerrer, “we know all about you. You’re all over those underaged females”; (11) Burgess’ comments to Doerrer were derogatory, unprofessional, and inappropriate; and (12) Burgess’ comments “caused harm to the school by diminishing its professional environment.

¶ 64           Regarding the December 2014 meeting, the OTHS Board found that: (1) Winchester was obligated to conduct an investigation into Doerrer’s complaint about Burgess; (2) On December 8, 2014, Winchester sent Burgess an email advising him that a complaint had been filed against him and that he needed to come to a meeting; (3) Winchester’s email stated that Burgess could bring union representation to the meeting; (4) Burgess arrived at the meeting with Bradish as his union representative; (5) Burgess was told to answer questions truthfully; (6) Burgess was not entitled via contract or law to have an attorney or other union representatives present; (7) Burgess was allowed to leave the room with Bradish multiple times to discuss the investigation; (8) when asked whether he had called Doerrer a “little man” or “little guy” during the 2014-15 school year, Burgess initially said “not in his presence,” but eventually said he did not say that to Doerrer during that school year; (9) Burgess’ answer to that question was false; (10) when asked several times whether he had been in an argument with Cartwright during the 2014-15 school year, Burgess initially said not on the date in Doerrer’s complaint, said later not during the work day, and then said he did not recall; (11) Burgess’ answers to those questions were false; (12) when asked several times whether he had made a derogatory comment about Cartwright’s hair during the 2014-15 school year, Burgess initially said not on the date in Doerrer’s complaint, said later not during the school day, and then said he did not recall; (13) Burgess’ answers to those questions were false; (14) when asked whether he had said during the 2014-15 school year

that he wanted to slap Cartwright upside the head, Burgess denied making such a comment; (15) Burgess' answer to that question was false; (16) when asked several times whether he had made any comment about making physical contact with Cartwright during the 2014-15 school year, Burgess initially said not on the date of the complaint, said later not during the work day, and then said that he had not made any such statement; (17) Burgess' answers to those questions were false; (18) when he was asked whether any staff members had to step in between him and Cartwright during the 2014-15 school year, Burgess said no; (19) Burgess' answer to that question was false; (20) Burgess' statement during the investigation that Doerrer told him not to post anything on social media was false; (21) when asked whether he had said anything to Doerrer during the 2014-15 school year about Doerrer "being all over underaged girls," Burgess said no; (22) Burgess' answer to that question was false; and (23) Burgess was evasive and dishonest during the December 2014 meeting.

¶ 65 In conclusion, the OTHS Board found that: (1) it had provided sufficient evidence at the hearing to establish that Burgess engaged in the charged conduct; (2) each of the three charges individually constituted sufficient cause for dismissal; (3) Burgess' conduct at the September 2014 and November 2014 union meetings violated the notice to remedy and was irremediable; and (4) Burgess' dishonesty at the December 2014 meeting was insubordinate and irremediable. Thus, the OTHS Board set aside Carne's recommendation and upheld its decision to dismiss Burgess.

¶ 66 On October 25, 2015, Burgess filed a complaint for administrative review in the circuit court, which sought a reversal of the OTHS Board's decision, reinstatement to his position, and reimbursement for lost wages and benefits. On October 24, 2016, the circuit court issued its ruling. The court found that the OTHS Board erred in finding that Carne's findings of fact were

against the manifest weight of the evidence; however, the court also found that Burgess' conduct was not remediable. Accordingly, the court affirmed the OTHS Board's dismissal of Burgess.

¶ 67 Burgess appealed.

¶ 68 II. ANALYSIS

¶ 69 This appeal involves the dismissal of a tenured teacher, which is controlled by section 24-12(d) of the School Code (105 ILCS 5/24-12(d) (West 2014)). Section 24-12(d) provides, in relevant part, that if a tenured teacher's dismissal is sought for cause, "the board must first approve a motion containing specific charges by a majority vote of all its members." 105 ILCS 5/24-12(d)(1) (West 2014). Ultimately, the teacher is entitled to request a hearing on the matter to be conducted by a hearing officer whom the board and teacher mutually select. *Id.* At the hearing, it is the school board's burden to prove the charges against the teacher by a preponderance of the evidence. *Beggs v. Board of Education of Murphysboro Community Unit School Dist. No. 186*, 2016 IL 120236, ¶ 53. "Proof by a preponderance of the evidence means that the fact at issue \*\*\* is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686 (2006).

¶ 70 In relevant part, section 24-12(d)(7) provides that within 30 days of the hearing's conclusion, the hearing officer must "report to the school board findings of fact and a recommendation as to whether or not the teacher shall be dismissed for cause[.]" 105 ILCS 5/24-12(d)(7) (West 2014). Section 24-12(d)(8) states that the hearing officer's findings of fact and recommendation must include indications as to: (1) whether the conduct at issue in fact occurred; (2) whether the conduct was remediable; and (3) whether the proposed dismissal should be sustained. 105 ILCS 5/24-12(d)(8) (West 2014). Within 45 days of receiving the hearing officer's findings of fact and recommendation, the school board is required to "issue a

written order as to whether the teacher must be retained or dismissed for cause from its employ.” *Beggs*, 2016 IL 120236, ¶ 54. Section 24-12(d)(8) mandates that the school board’s written order “incorporate the hearing officer’s findings of fact, except that the school board may modify or supplement the findings of fact if, in its opinion, the findings of fact are against the manifest weight of the evidence.” 105 ILCS 5/24-12(d)(8) (West 2014). The school board’s decision is final. 105 ILCS 5/24-12(d)(9) (West 2014).

¶ 71 If review of the school board’s decision is sought, section 24-12(d)(9) requires the reviewing court to “give consideration to the school board’s decision and its supplemental findings of fact, if applicable, and the hearing officer’s findings of fact and recommendation in making its decision.” *Id.* Our supreme court in *Beggs* clarified that this provision “simply reinforces the existing statutory and case law requirement that the court on administrative review should consider the entire record.” *Beggs*, 2016 IL 120236, ¶ 61. To be clear, then, *Beggs* emphasized:

“on administrative review the court still only reviews the agency’s findings of fact under the manifest weight of the evidence standard, not the hearing officer’s recommendation and factual findings. [Citation.] This is the case even when the findings of fact depend on the credibility of the witnesses—and even if the hearing officer, rather than the board, observed those witnesses.”  
*Id.*

¶ 72 Thus, when faced with administrative review of the dismissal of a teacher, we employ a two-part process. *Id.* ¶ 63. First, “we will review the OTHS Board’s supplemental factual findings, as well as the factual findings of the hearing officer that were incorporated unmodified

unto the OTHS Board’s decision, to determine whether those findings were against the manifest weight of the evidence.” *Id.* Second, we apply the clearly erroneous standard of review to the mixed question of law and fact of whether the OTHS Board’s findings of fact provide a sufficient basis for its conclusion regarding whether the teacher should be dismissed or retained. *Id.* In other words, the second step requires us to determine “whether we are ‘left with the definite and firm conviction that a mistake has been committed’ when applying the established facts to the applicable legal standard for discharge.” *Id.* (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001)).

¶ 73 With these principles in mind, we turn to the specific arguments Burgess raises on appeal. Burgess challenges two factual findings made by the OTHS Board regarding two of the three instances of conduct that ultimately resulted in his dismissal. He also challenges the OTHS Board’s ultimate decision to discharge him from employment. Pursuant to *Beggs*, we will address Burgess’ challenges to the OTHS Board’s factual findings first. See *Beggs*, 2016 IL 120236, ¶ 63.

¶ 74 *Challenges to the Board’s Factual Findings*

¶ 75 Burgess argues that two of the OTHS Board’s factual findings were erroneous: (1) that during the September 2014 union meeting, he said he ought to slap Cartwright upside the head; and (2) that during the November 2014 union meeting, he told Doerrer that he (Doerrer) was all over underage females.

¶ 76 Both of these findings must be assessed in relation to the OTHS Board’s credibility findings. In this regard, we note:

“The administrative agency is the judge of the credibility of the witnesses; that does not mean, however, that reviewing courts may

never determine that a witness' testimony has been discredited to a degree that acceptance of that testimony is contrary to the manifest weight of the evidence." *Polk v. Board of Trustees of Police Pension Fund of the City of Park Ridge*, 253 Ill. App. 3d 525, 536 (1993).

In this case, the OTHS Board found a hierarchy to the credibility of witnesses. At the bottom were Burgess and all of his witnesses. Above them were all of the Board's witnesses. Within that latter group, the OTHS Board credited Doerr's testimony over Winchester's testimony, but did so *without any fact-finding or explanation*. A review of the hearing reveals why—Winchester testified that Doerr and Marx had reported to him about what was occurring in the union meetings in September and November 2014 with respect to the vote of no confidence in Winchester. Doerr testified unequivocally that he did *not* keep Winchester informed of the union meeting details. This discrepancy certainly weighs against Doerr's credibility, and if Doerr's credibility was at all questionable, the OTHS Board's case becomes far less plausible. While the OTHS Board advanced significant reasoning for its finding that Burgess lacked credibility, the manifest weight of the evidence does not support its finding that Doerr was more credible than Winchester, and its sleight-of-hand acceptance of at least Doerr's testimony—and at most its credibility hierarchy—is extremely suspect.

¶ 77           Regarding the slap comment, it must be noted that the testimony varied wildly on what was said and not said at the September 2014 union meeting. For example, witnesses were split on whether profanity was used and whether Burgess' statement about Cartwright's hair was that he should pull the hair over his ears or push it away from his ears. Ignoring theoretical questions about humans' ability to observe and recall events objectively, we note that the only witnesses to

allegedly hear the slap comment were Cartwright, Marx, and Doerrer: Cartwright, who was seated in the row behind Burgess and slightly to the right; Doerrer, who was seated in the row behind Cartwright and to the right; and Marx, who was seated to the left of Doerrer. No other witnesses heard the comment, including several people who were within 10 feet of Burgess, one being Augenbaugh, who was just two to three feet from Burgess at the time. It is critical to note here that the evidence linked Cartwright, Marx, and Doerrer in ways that it did not link Burgess and the witnesses who did not hear any slap comment. Cartwright admitted that he told Burgess during the September 2014 union meeting that he was tired of listening to Burgess for the past 11 years. Marx and Doerrer at least discussed, and possibly collaborated to craft a strategy on, the motion aimed at preventing the vote of no-confidence in Winchester. Marx attempted to obtain Burgess' disciplinary file, allegedly out of "pure curiosity." Cartwright, Marx, and Doerrer opposed the strike, which Burgess supported. In contrast, there was no evidence to show any discernible bias in the witnesses who did not hear any slap comment.

¶ 78           Moreover, there was even inconsistency in the testimony of Cartwright, Marx, and Doerrer regarding the alleged comment, as Cartwright testified that he heard Burgess make the slap comment twice but Doerrer and Marx did not corroborate that testimony. In addition, despite Doerrer's perch atop the OTHS Board's credibility hierarchy, the OTHS Board did not accept his testimony that he in fact stood up during the exchange, which was followed by Burgess' "sit down, little guy" comment. Rather, the OTHS Board found that Doerrer only leaned toward Burgess. These are two examples of the evidence not supporting the OTHS Board's credibility findings.

¶ 79           In addition, while the OTHS Board went to great lengths to discredit the testimony of the witnesses who did not hear any slap comment, we note that its finding that Burgess' witnesses

were less credible than its own witnesses on this matter was due in large part to its conclusion that Carne actually credited the Board’s witnesses’ testimony regarding whether Cartwright said “pea brain” or “fucking pea brain” (Burgess’ witnesses testified to the latter). It is clear from the evidence that *at least* “pea brain” was said, and the evidence was insufficient to support a finding that “fucking pea brain” was said. Thus, Carne’s finding in this regard was more about finding a common ground about what was or was not said, as opposed to an actual credibility determination. The OTHS Board’s use of Carne’s finding as support for a conclusion that Cartwright, Doerrler, and Marx were more credible than anyone else at the meeting is not supported by the manifest weight of the evidence.

¶ 80 Further, the discrepancy with the “pea brain” testimony differs in a crucial aspect from the slap comment testimony—there was no consensus that a slap comment was made. As previously mentioned, proof by a preponderance of the evidence requires a showing that a fact’s existence is more likely than not. *Houar*, 365 Ill. App. 3d at 686. Our review of the OTHS Board’s findings reveals that the evidence did *not* establish that it was more likely than not that Burgess made the slap comment. Under these circumstances, we hold that the OTHS Board’s finding that Burgess made the slap comment is against the manifest weight of the evidence.

¶ 81 The underaged females comment presents a simpler question than the slap comment. It is significant that only Doerrler claims to have heard the underaged females comment, despite the undisputed testimony that Marx was slightly in front of Doerrler and Reckmeyer was within two feet behind him at the time the comment was allegedly made. Marx testified that he did not hear any such comment, and Reckmeyer did not testify at all. Even accepting the testimony that Burgess did not speak at a normal volume when allegedly uttering the comment, it is implausible that the comment would not have been heard by anyone else. Absent any corroboration, and



when considered in light of the fact that Doerrer’s testimony was not as credible as the OTHS Board maintained, we hold that the evidence did *not* establish that it was more likely than not that Burgess made the underaged females comment. Accordingly, we hold that the OTHS Board’s finding that Burgess made the underaged females comment is against the manifest weight of the evidence.

¶ 82 Having addressed Burgess’ challenges to the OTHS Board’s factual findings, we now turn to his challenge to the decision to discharge him from employment. See *Beggs*, 2016 IL 120236, ¶ 63.

¶ 83 *Challenge to the Board’s Dismissal Decision*

¶ 84 Burgess argues that the OTHS Board’s decision to discharge him for cause was clearly erroneous and that his conduct did not violate the notice to remedy in a clear and material way.

¶ 85 “‘Cause’ has been defined as that which law and public policy deem as some substantial shortcoming which renders the teacher’s continued employment detrimental to discipline and effectiveness.” *Davis v. Board of Education of the City of Chicago*, 276 Ill. App. 3d 693, 697 (1995). Whether sufficient cause exists is a question for the Board; we must not substitute our judgment for that of the Board. *Raitzik v. Board of Education of the City of Chicago*, 356 Ill. App. 3d 813, 831 (2005). Significantly, “[a] logical nexus must exist between the individual’s fitness to perform as a teacher and the misconduct in question which led to her dismissal.” *Raitzik*, 356 Ill. App. 3d at 831. Despite the deference due to the OTHS Board’s determination of whether sufficient cause existed, that determination “is not *prima facie* true and correct; it is instead subject to reversal where it is arbitrary, unreasonable, or unrelated to the requirements of service.” *Beggs*, 2016 IL 120236, ¶ 63.

¶ 86 As previously noted, when reviewing whether the OTHS Board’s findings of fact provide a sufficient basis for its conclusion regarding cause for dismissal under the clearly erroneous standard, we are to determine “whether we are ‘left with the definite and firm conviction that a mistake has been committed’ when applying the established facts to the applicable legal standard for discharge.’ ” *Id.* (quoting *AFM Messenger Service*, 198 Ill. 2d at 393).

¶ 87 The notice to remedy instructed Burgess to: (1) “cease and desist from any further displays of anger in front of staff, parents, students, members of the Board of Education, or the public with regard to any matter having a nexus to the school district;” (2) “cease and desist from referring to staff, parents, students or members of the Board of Education in a derogatory, inappropriate or unprofessional manner;” (3) “conduct yourself in a professional manner at all times;” and (4) “conduct yourself as a role model for OTHS students at all times.”

¶ 88 The context of Burgess’ prior conduct leading up to the issuance of the notice to remedy is highly significant. The three previous disciplinary actions were all unquestionably related to his fitness as a teacher and to the school’s interests in maintaining discipline and operating effectively. The first two such actions were related to disputes he had with other staff members and they directly related to job performance. The third disciplinary action was related to a public incident with a parent of an OTHS student. The conduct that actually precipitated the notice to remedy occurred at a public meeting of the school board. In marked contrast, the conduct that allegedly violated the notice to remedy and resulted in his dismissal was not related to his job performance, nor was it related to any impact on students, parents, members of the OTHS Board, the general public, or staff in a school context.

¶ 89 The first two instances of conduct that the OTHS Board found violated the notice to remedy and constituted cause for Burgess’ dismissal took place in *private* contexts: (1) at the

September 2014 union meeting, Burgess started an argument with Cartwright, displayed anger toward Cartwright, made a comment about Cartwright's hair interfering with his ability to hear, and called Doerrer a little man while telling him to sit down; and (2) at the November 2014 union meeting, Burgess communicated in a hostile and angry manner with Doerrer and called him a little man while telling him not to post anything about the meeting on social media. The fact that these union meetings took place in the OTHS building is of no consequence. These were closed-door meetings and the conduct at issue—absent the two comments we have held the OTHS Board failed to prove—cannot reasonably be said to be of the type of conduct that led to the notice to remedy. While we certainly do not condone Burgess' conduct, we hold that no logical nexus exists between this conduct and Burgess' fitness to perform as a teacher. See *Raitzik*, 356 Ill. App. 3d at 831. Accordingly, we hold that the OTHS Board's decision to discharge Burgess based on this conduct was arbitrary, unreasonable, and unrelated to the requirements of service and, therefore, clearly erroneous.

¶ 90 The third instance of conduct that the OTHS Board found violated the notice to remedy and constituted cause for Burgess' dismissal took place is not problematic for the same reason as the first two instances of conduct. Rather, the OTHS Board's conclusion that Burgess' dishonesty in answering questions at the December 2014 investigatory meeting was irremediable and insubordinate does not follow from the evidence presented.

¶ 91 Irremediable misconduct can serve as cause for dismissal. *Ahmad v. Board of Education of the City of Chicago*, 365 Ill. App. 3d 155, 163 (2006). "The test in determining whether a cause for dismissal is irremediable is whether damage has been done to the students, faculty or school, and whether the conduct resulting in that damage could have been corrected had the teacher's superiors warned her." *Gilliland v. Board of Education of Pleasant View Consolidated*

*School District No. 622*, 67 Ill. 2d 143, 153 (1977). In instances of immoral conduct, Illinois courts have held that the second prong of the *Gilliland* test is unnecessary, as the focus is not on whether the conduct itself could have been corrected, but on whether the effects of the conduct could have been corrected. *Board of Education of Sparta Community Unit School District No. 140 v. Board of Education*, 217 Ill. App. 3d 720, 729 (1991).

¶ 92 Insubordination can also serve as cause for dismissal. *Board of Education of the City of Chicago v. Weed*, 281 Ill. App. 3d 1010, 1018 (1996). Insubordination connotes a willful or intentional disregard of a reasonable rule existing in an employment relationship. *Board of Education of Round Lake Area Schools v. Community Unit School District No. 116*, 292 Ill. App. 3d 101, 110 (1997).

¶ 93 Again, it is important to note the context in which Burgess' conduct took place when determining whether the OTHS Board's conclusions were clearly erroneous. The meeting was sprung on Burgess, in that he was given only seven to eight minutes notice, and he was asked questions by not only the superintendent, but also the OTHS Board's attorney. More importantly, despite the fact that the formal complaint filed by Doerrer alleged a specific date—*i.e.*, the date of the November 2014 union meeting—Burgess was asked questions about whether any such conduct occurred at any time during the 2014-15 school year. Coupled with the fact that the alleged conduct occurred during private union meetings, Burgess' hesitancy to answer these questions was understandable and was not indicative of immorality or an absolute willful or intentional intent to disregard a rule. In addition, we have found no evidence to support the OTHS Board's finding that Burgess' conduct "[caused] harm to the District's ability to conduct thorough and appropriate investigations." There was nothing to show that Burgess's conduct compromised the OTHS Board's ability to conduct investigations, promoted widespread

insubordination, or was anything more than an isolated incident. Indeed, the letter placing him on paid leave stated the investigation remained ongoing. Under these circumstances, we hold that the OTHS Board's decision that Burgess' conduct during the December 2014 investigatory meeting was irremediable and insubordinate was arbitrary, unreasonable, and unrelated to the requirements of service and, therefore, clearly erroneous.

¶ 94 In sum, we hold that the OTHS Board's decision to discharge Burgess based on his conduct at the September 2014 union meeting, November 2014 union meeting, and December 2014 investigatory meeting was clearly erroneous.

¶ 95 III. CONCLUSION

¶ 96 The order of the Board of Education of Ottawa Township High School District No. 140 dismissing Burgess is reversed and the cause is remanded to the circuit court of La Salle County for further proceedings consistent with this decision and section 24-12(d)(10) of the School Code (105 ILCS 5/24-12(d)(10) (West 2014)).

¶ 97 Reversed and remanded.