2015 IL App (1st) 140098-U

No. 1-14-0098

June 26, 2015

FIFTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MARK PAYE, Petitioner-Appellant, v. BOARD OF EDUCATION OF THE CITY OF CHICAGO, DAVID VITALE President, JESSE RUIZ, Member, HENRY BIENEN, Member, MAHILIA HINES, Member, PENNY PRTIZKER, Member, ROD SIERRA, Member, ANDREA ZOPP, Member, BARBARA BYRD-BENNETT, Chief Executive Officer, BRIAN CLAUSS, Hearing Officer, and ILLINOIS STATE BOARD OF EDUCATION, Respondents-Appellees.	)	Petition for Review of an Order of the Chicago Board of Education No. 13-1210-RS5

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

O R D E R

Held: The decision of the Board of Education of the City of Chicago to discharge petitioner is affirmed where the Board's factual findings were supported by the evidence and its finding that sufficient "cause" existed for petitioner's dismissal was not against the manifest weight of the evidence.

¶ 1 Petitioner, Mark Paye, seeks review of a final administrative decision of the Board of Education of the City of Chicago (Board) terminating his employment as a tenured teacher at Roberto Clemente High School (Clemente). On appeal, petitioner argues the Board's finding that he violated CPS guidelines for the use of momentary physical interventions was against the manifest weight of the evidence and that the Board failed to demonstrate sufficient "cause" for his termination. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 In January 2012, petitioner physically restrained Mercedes M., a high school senior, after Mercedes and another student, B.C., became engaged in a verbal altercation in the hallway. In July 2012, then Chief Executive Officer of Chicago Public Schools (CPS) Jean-Claude Brizard approved charges against petitioner, seeking petitioner's dismissal. The charges alleged that petitioner engaged in conduct unbecoming of a CPS employee and that he violated various portions of CPS's Employee Discipline and Due Process Policy (Discipline Policy), including those sections that prohibited employees from (1) using corporal punishment that results in the deliberate use of physical force; (2) using physical restraint; (3) engaging in cruel, immoral, negligent, or criminal conduct or communication that causes a student psychological or physical harm; (4) engaging in conduct prohibited by Board rules, the City of Chicago Municipal Code, Illinois statutes, or any applicable state or federal law; and (5) violating Board rules or policies, which results in behavior that grossly disrupts the orderly educational process.

¶ 4 A hearing on the charges commenced in June 2013, at which the parties presented the following evidence.

¶ 5 Mercedes M. testified that she was walking through a hallway on the seventh floor of Clemente with her boyfriend, M.Q., when she passed B.C., who looked at M.Q. "the wrong

way." Mercedes began walking away, but B.C. started to cuss at her. Mercedes turned around and said to B.C., "if you want to act like little girls, we can act like little girls." B.C.'s boyfriend, A.G., was trying to hold B.C. back but both B.C. and Mercedes "kept on." Mercedes told B.C., "we can handle this right now." Afterward, M.Q. started to guide Mercedes away. As they were walking, however, petitioner grabbed Mercedes from the back by her neck and put her in a headlock. At no point did petitioner direct Mercedes to stop arguing with B.C. or to go to class, nor did he warn her that he was going to call security or touch her.

¶ 6 Mercedes, who had asthma, panicked and "went crazy." She and petitioner fell to the floor, next to each other, with petitioner's arm still around her neck. Mercedes heard her cousin asking petitioner to let her go and heard students saying, "get a security guard." Terrance Higgins, another staff member at Clemente, arrived and instructed petitioner to release Mercedes approximately four times. Mercedes also asked petitioner more than five times to let her go, although she acknowledged that her voice was very soft. After about one or two minutes, petitioner released Mercedes. Mercedes experienced back pain for about an hour after the incident, and her mother and brother picked her up from school and took her to a doctor later that day. She could not breathe while petitioner held her in the chokehold. Mercedes and B.C. never physically fought, nor had Mercedes ever been in a fight at school. In addition, Mercedes did not threaten petitioner; however, she did punch him in the head after they fell to the ground. After the incident, Mercedes avoided petitioner by walking a different way to her locker.

¶ 7 Clemente principal Marcey Sorensen testified that Mercedes appeared in assistant principal Menendez's[1] office "furious, upset, angry, [and] crying," reporting that petitioner had choked her. After another staff member accompanied Mercedes upstairs, petitioner appeared in

[1] The witnesses did not testify as to assistant principal Menendez's first name.

Menendez's office and stated that he had just been attacked by a student. Petitioner had a red mark on his ear and was "[u]pset, distraught, [and] excited." He expressed that he wanted to press charges, so Sorensen directed him to the police officer on the third floor.

¶ 8 Sorensen went upstairs to the seventh floor and observed about 15 to 20 students in the hallway. Some were upset and some were asking questions. Over the course of the day, Sorensen spoke to Higgins, Christopher Ellis, and David Garst, three staff members who had witnessed parts of the altercation. She also spoke to Albert Lawson, a dean of students, who observed the meeting between petitioner and the school's police officer. Sorensen filed a report with safety and security and the law department. She described the incident between petitioner and Mercedes as "a large event" and explained that conducting an investigation into the incident "took people off of where they needed to be. It took managing students' emotions and calming kids down. It took calming a parent down because now a parent felt as though the child was not safe in school. So it was all encompassing for that entire day." In her 17 years as an educator, Sorensen had never seen an incident like the one between petitioner and Mercedes.

¶ 9 Sorensen, who was a little over five feet tall, had prior experience physically intervening to separate students were potentially going to engage in physical altercations. In those situations, Sorensen would get in between the students and put her hands up, which she said was "what we learned in de-escalation training." Staff members could also take a "supportive stance," pursuant to which they would hold students around their middles and pull backward. In addition, a staff member was supposed to identify himself to the student so the student would not flail his arms without knowing who they were potentially striking. Sorensen expected that a teacher handling a verbal conflict between two students would "de-escalate using social/emotional types of interventions, making eye-to-eye contact with kids, using a calm voice." Teachers were provided

"that kind of social/emotional training." If students were engaged in a physical altercation, Sorensen would expect a teacher to respond "in a de-escalation type manner" and request the help of security as soon as possible before using the appropriate restraining methods. She demonstrated the appropriate restraining method, which the hearing officer described as similar to "hugging a tree."

¶ 10 Christopher Ellis, a Clemente "community relations rep," testified that he was eating lunch in a room about 20 feet from Mercedes and petitioner when a teacher, Janet Pena-Davis, frantically asked him to follow her. As Ellis reached Mercedes and petitioner, he observed students gathered in a circle, screaming, "let her go, let her go, he's choking her, he's choking her." Mercedes was on the ground, gasping for air, and petitioner was on her side, holding her in a headlock. Ellis kneeled in front of petitioner and yelled at him about three times that he could release Mercedes and Ellis would take over. He also slapped petitioner on the arm. However, petitioner did not respond, instead displaying "a blank look like he just zoned out."

¶ 11 Ellis stood up and waved to Higgins, who approached immediately. As Ellis tried to disperse the crowd, Higgins spoke to petitioner. At some point, petitioner released Mercedes, and Ellis took her to another room. She was a little dizzy and light-headed. Ellis acknowledged that in his written statement to Sorensen, he said he observed Pena-Davis attempting to remove a teacher from a student; however, he said he did not see Pena-Davis trying to get petitioner off of Mercedes. However, after stating that his written statement was probably "accurate," Ellis then testified that Pena-Davis tried to remove petitioner from Mercedes while he was tapping petitioner and telling him to let her go.

¶ 12 Ellis had prior experience separating students engaged in fights. To separate students engaged in verbal combat that had not yet turned physical, Ellis would try to de-escalate the

whole area by keeping everything calm, and he would simply separate the students by moving the angrier person away. He had never had to use physical tactics to separate students before an impending fight; instead, he was able to "kind of just talk them down."

¶ 13 Terrance Higgins, a community service assistant at Clemente, testified that on the day of the altercation, Ellis motioned for him to come toward petitioner's room. After running down the hallway, Higgins observed Mercedes on the ground and petitioner on top of her. Petitioner "had [Mercedes] in a hold," with his arm around her neck, and Ellis was telling petitioner to release her. When petitioner did not do so, Higgins leaned over, made a hand motion, and told petitioner two or three times to release Mercedes. Eventually, petitioner let her go.

¶ 14 Higgins testified that when he had to intervene to prevent a physical altercation, he would inform the students of his presence and tell them to relax. If the students did not respond, Higgins would call for support in taking the students to different rooms. To move the students, Higgins would verbally command them or step between them and put his hands up to his sides. He "rarely" had to touch students if they had not yet started to fight. If Higgins observed students who had already started to physically fight, he would first ask for help from others over his walkie-talkie. He would then try to remove the aggressor of the fight by picking him up in a loose "hug" position and holding him down or moving him to an empty space. Placing a student in the "hug" position prevented the student from moving and swinging his arms. Higgins would never grab a student by the neck, as "it's just not ethical for us to do that. It's not what we are supposed to do, and the backlash that can come behind that is just—I wouldn't want to face it.." Higgins acknowledged that he was "a lot bigger than" petitioner and that teachers did not have walkie-talkies.

¶ 15 David Garst testified that he was teaching at Clemente on the day of the altercation when he heard shouting. He then looked out of his classroom and observed petitioner holding one student back from another. Petitioner was holding the student in a headlock, which Garst described as holding "someone's arms and their head at the same time." Garst demonstrated a headlock for the hearing officer, and the hearing officer described the move Garst performed as a "full Nelson." Petitioner yelled, "I need security," so Garst went to look for security, but he could not find anybody. He then returned to the incident and observed petitioner still holding the student, but both petitioner and the student were now on the floor. The student was screaming, "let me go." Eventually, security arrived, and petitioner slowly released the student.

¶ 16 Janet Pena-Davis testified that as she was walking down the hallway, she saw petitioner standing behind Mercedes, trying to defuse an altercation between Mercedes and B.C. Specifically, petitioner was telling them to "please be quiet" and to "stop it." At one point, Mercedes took off her backpack and threw it on the ground, "as if ready to pounce on B.C." At that point, petitioner put his arm around Mercedes' waist to try to hold her back. Pena-Davis started walking around the hallway, screaming for security. Eventually, she found Higgins and Ellis. By the time she returned to the altercation, petitioner was on his back "as if he had slipped" and Mercedes was on her back, facing petitioner's chest. Petitioner's arms were still around Mercedes' waist. He did not have Mercedes in a chokehold.

¶ 17 To Pena-Davis's knowledge, B.C. and Mercedes never fought. However, in a statement Pena-Davis gave to Sorensen, she indicated that the "swinging started" and that she saw Mercedes swing to hit B.C. Pena-Davis explained that "when one physically fights, I'm assuming that the other one is going to respond in kind. What I saw was *** the swinging started and I saw

Mercedes swing to hit B.C." Mercedes' punch did not connect. Pena-Davis made no attempt to intervene because Mercedes was a "big girl" and she did not want to risk her own safety.

¶ 18 Petitioner testified that he taught at Clemente for 12 years. He described Clemente as having a "very chaotic environment," with violence and fights occurring "on a weekly/monthly basis." On the day of the incident, petitioner was talking to a student outside of his door when the student pointed and said "there's something going down." Petitioner looked down the hallway and saw Mercedes and M.Q. arguing. Petitioner did not see any security nearby, so he walked toward the two students and stood next to M.Q., facing Mercedes. Petitioner told the students to go to class but they continued "kind of arguing and talking loud." Mercedes abruptly threw down her backpack and started to call out in threatening language. Petitioner was not sure "what was going on," but Mercedes was "starting to move, and M.Q. was starting to hold her back." Petitioner turned and saw another female student five to seven feet away and realized Mercedes was directing her threats toward the female student.

¶ 19 Petitioner spread his hands out and stood directly in front of Mercedes. Mercedes brushed up against him, and he called for security while standing on his "tippy-toes." Mercedes continued to push against petitioner as if she was trying to get past him. Gradually, petitioner and Mercedes moved from one side of the hallway to the other. Petitioner, who was five feet, five inches tall and weighed 155 pounds, struggled to hold Mercedes back. Eventually, he restrained her by putting one hand on her arm and one hand on her shoulder. As Mercedes continued pushing against petitioner, he thought, "any second now security is going to come." However, nobody arrived.

¶ 20 Believing that a fight was imminent, petitioner thought he had to take immediate action. He executed a "controlled takedown" to bring Mercedes to the ground in order to keep Mercedes

and B.C. safe. Specifically, petitioner, whose left hand was on Mercedes' right bicep and whose right arm was on her Mercedes' left shoulder, pivoted, wrapping his hand over her left shoulder. Petitioner learned his maneuver from the time he spent as a wrestling coach. Mercedes and petitioner both fell to the ground, with petitioner lying on top of Mercedes. Mercedes punched him in the right ear and right temple. He denied using a headlock or chokehold at any point. Before touching Mercedes, he did not direct B.C. to leave the area. Petitioner also acknowledged that B.C. and Mercedes never made physical contact with each other, and B.C. was five feet away from Mercedes when petitioner put his hands up to try to stop the fight.

¶ 21 Petitioner pinned Mercedes down for about 20 to 40 seconds before Higgins arrived. Petitioner estimated that he and Mercedes were on the ground for up to a minute total. He acknowledged that he was not aware of B.C.'s location when he was restraining Mercedes on the floor. Petitioner did not observe that Mercedes was experiencing difficulty breathing, nor did he hear her say, "get off of me, I have asthma." When security arrived, petitioner heard one of the guards telling him to "let her up," but, as a safety precaution, he refused to release Mercedes until somebody else had physical control of her, given that she had just punched him. As soon as Higgins got closer and "came up on" petitioner, petitioner felt comfortable letting Mercedes go.

¶ 22 Petitioner maintained that he restrained Mercedes to prevent her from attacking B.C., not to punish her. He had no doubt that Mercedes was the initial aggressor based on her actions of throwing down her backpack, using threatening postures and language, refusing to listen to petitioner's commands to stop, and trying to push past petitioner. Petitioner had intervened in other fights prior to the altercation with Mercedes; however, during most of those, other staff members were present. CPS did not teach petitioner that the controlled takedown was a mechanism for dealing with student conflict. When asked when it would be appropriate to use a

wrestling move to stop a fight that had not started, petitioner responded, "It would be appropriate to do that if you believed that you were not going to be capable for much longer of holding back a student who is bigger than you and that you felt at any second that person was going to break through to attack another student."

¶ 23 After the incident with Mercedes, petitioner told Sorensen that a student had assaulted him and he wished to press charges. Petitioner also spoke to a Chicago police officer about the incident and demonstrated the move he used with Mercedes on Lawson. Petitioner denied recalling whether the officer told him that Mercedes was the victim, although he remembered the officer stating he would not perform that move on a person. After speaking with the officer, petitioner did not pursue any type of criminal complaint against Mercedes. Petitioner finished teaching the rest of the school year.

¶ 24 In rebuttal, Lawson testified that he accompanied petitioner to the police officer's room, wherein petitioner used Lawson to demonstrate the move he used to take down Mercedes. Lawson, who coached wrestling, described the maneuver that petitioner performed as a wrestling move called a "hip toss." Lawson explained that petitioner put his hands on Lawson's hip, picked him up, and spun him to face the opposite direction. Lawson would never use the maneuver to restrain a student "[b]ecause once you bring the person up, you're restricting the airway. Then you take them down, and your weight is carried on down with that person. That's not the proper way the Board teaches you to restrain or redirect somebody." Lawson was a little over five feet, ten inches tall and weighed 218 pounds.

¶ 25 The hearing officer admitted into evidence the Discipline Policy which prohibited, among other things, the use of (1) physical restraint that violates physical restraint procedures, (2) corporal punishment that results in the deliberate use of physical force with a student, (3) any

"cruel, immoral, negligent, or criminal conduct or communication to a student that causes psychological or physical harm or injury to a student," (4) engaging in conduct prohibited by Board rules, the City of Chicago Municipal Code, Illinois statutes, or relevant state or federal laws; and (5) violating Board rules or policies that resulted in behavior that grossly disrupted the orderly educational process. The Discipline Policy also specified that a teacher could be discharged for repeated or flagrant violations of the physical restraint or corporal punishment policy; for using cruel, immoral, negligent, or criminal conduct or communication with a student; for violating Board Rules, the City of Chicago Municipal Code, Illinois laws, or any applicable state or federal laws; and for violating Board rules, which resulted in grossly disruptive behaviors. The hearing officer also admitted into evidence the Board's "Policy on the Use of Momentary Physical Interventions with Students" (Physical Intervention Policy). That policy allows the use of momentary physical intervention, *i.e.* "the temporary physical restriction of a student using limited force" or "the temporary restriction of a student's movements," only in two situations: (1) in an "emergency" situation, to prevent a student from causing potential physical harm to himself or another or damage to property; or (2) to remove a disruptive student who is unwilling to leave an area.

¶ 26 Following the hearing, the parties submitted written post-hearing briefs. In his brief, petitioner argued, *inter alia*, that the Board failed to demonstrate sufficient "cause" for his dismissal.

¶ 27 In November 2013, the hearing officer issued a decision recommending that petitioner be dismissed from his position. The officer found that petitioner intervened in a conflict between two students by using a wrestling move on a student and placing her in a chokehold. Regardless of whether petitioner used a "chokehold, Full Nelson or a hip check," none of the wrestling

moves were appropriate for use on a student. The hearing officer further found that when petitioner intervened, he was required to comply with CPS's guidelines, and CPS had "very limited parameters for when physical force may be used on a student." Petitioner did not follow CPS's guidelines. Moreover, petitioner's conduct caused damage, as Mercedes testified she was frightened and had asthma issues as a result of petitioner's admitted use of a wrestling move. A warning would not have corrected petitioner's behavior given that he was "on notice about CPS rules for use of physical force with a student." Petitioner's conduct was also *per se* irremediable, as he physically harmed Mercedes. In sum, the officer concluded the charges were proven where the evidence established petitioner "engaged in the irremediable conduct of grabbing a student, throwing her to the ground, placing the student in a chokehold, and lying on top of her." The hearing officer also concluded the charges were sufficient cause under the School Code for petitioner's dismissal.

¶ 28 Thereafter, the parties filed post-hearing briefs. In his memorandum in opposition to the hearing officer's recommended decision, petitioner again claimed, *inter alia*, that no cause existed for his dismissal.

¶ 29 In December 2013, the Board issued a decision accepting the hearing officer's findings of fact and legal conclusions and dismissing petitioner. Petitioner then filed a petition for review of the Board's decision.

¶ 30 II. ANALYSIS

¶ 31 On appeal, petitioner argues (1) the Board's finding that he violated CPS guidelines regarding the use of momentary physical intervention was against the manifest weight of the evidence and (2) the Board failed to demonstrate sufficient "cause" for his termination. We first set forth the relevant standard of review, then address petitioner's contentions in turn.

¶ 32 I. Standard of Review

¶ 33 Our review of the Board's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2012)). 105 ILCS 5/34-85(a)(8) (West 2012). The standard of review we employ turns on whether the issue presented is a question of fact, question of law, or mixed question of fact and law. *James v. Board of Education of City of Chicago*, 2015 IL App (1st) 141481, ¶ 12. The Board's factual findings are entitled to deference and will be reversed only where they are against the manifest weight of the evidence. *Id.* By contrast, we employ a *de novo* standard of review when considering an agency's conclusion on a question of law. *Id.* Finally, we review a mixed question of law and fact under the clearly erroneous standard. *Id.*

¶ 34 In reviewing an administrative agency's decision to discharge an employee, we employ a two-step analysis. *Crowley v. Board of Education of City of Chicago*, 2014 IL App (1st) 130727, ¶ 29. First, we determine whether the findings of fact are contrary to the manifest weight of the evidence. *Id.* Next, we consider whether the factual findings provide a sufficient basis for the agency's conclusion that cause for discharge exists. *Id.*

¶ 35 II. The Board's Finding That Petitioner Knew Of CPS's Policy on Physical Restraint

¶ 36 Petitioner first argues the Board's finding that he violated CPS guidelines on the use of momentary physical restraint was against the manifest weight of the evidence. He does not contest the Board's findings that he used a wrestling move, threw Mercedes to the ground, or placed her in a chokehold. Rather, his sole contention is that the Board erred when it found he knew of CPS's guidelines and procedures regarding the appropriate use of momentary physical restraint. We disagree.

¶ 37 At the hearing, The Board admitted into evidence CPS's Physical Intervention Policy, which clearly sets forth that a teacher can only use momentary physical intervention (1) in an

"emergency," to prevent the student from causing harm to himself or another or damage to property, or (2) to remove a disruptive student who is unwilling to leave an area.[2] The policy also defines momentary physical intervention as "the temporary physical restriction of a student using limited force" or "the temporary restriction of a student's movements." Thus, CPS's policy on physical restraint was clearly set forth in that document which was admitted into evidence. Petitioner at no time denied being provided with the Physical Intervention Policy pursuant to his employment. Furthermore, Sorensen testified that teachers were instructed on using social and emotional types of interventions, including making eye contact and using a calm voice with students. She also testified "we learned in de-escalation training" to stand between students and hold up one's arms if it seemed students were going to engage in a physical fight. Presumably, by "we," Sorensen meant herself and other CPS staff members. In addition, staff members could use a "supportive stance" in which they would hold students around their middles and pull backward. Higgins said he would never grab a student by the neck, explaining "[i]t's not what we are supposed to do." Instead, he would place a student in a loose "hug" position. Lawson said the manner in which petitioner restrained Mercedes was "not the proper way the Board teaches you to restrain or redirect somebody."

¶ 38 Based on all of the foregoing, the Board could reasonably find that petitioner, like the other staff members, received instructions on the type of physical force that was appropriate, which did not include a wrestling move. In addition, CPS's written policy notified petitioner as to when the use of a momentary physical intervention was appropriate and provided a definition of

[2] The record before us also includes a two-page document entitled "Momentary Physical Intervention Guidelines," which provides examples of permissible and impermissible physical intervention. It is marked as Board's Exhibit No. 6 and is included in the record directly behind the "Policy on the Use of Momentary Physical Interventions With Students," which is also marked as Board's Exhibit No. 6. However, the record is unclear as to whether the Momentary Physical Intervention Guidelines" document was admitted, and the petitioner and the Board both seem to agree that it was not. Accordingly, we will not consider it.

a momentary physical intervention. Accordingly, the evidence supports the Board's finding that petitioner was on notice of CPS's guidelines on the use of momentary physical intervention and chose to ignore them.

¶ 39 III. The Board's Finding That "Cause" Existed For Petitioner's Dismissal

¶ 40 Petitioner next argues the Board failed to demonstrate sufficient cause for his dismissal.

¶ 41 A tenured teacher can be removed from his position only for cause. 105 ILCS 5/34-85(a) (West 2012). "Cause" has been defined as "that which law and public policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness." (Internal quotation marks omitted.) *James,* 2015 IL App (1st) 141481, ¶ 16. It has also been defined as "something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position." (Internal quotation marks omitted.) *Id.* The existence of sufficient cause is a question of fact; thus, we employ the manifest weight of the evidence standard. *James,* 2015 IL App (1st) 141481, ¶ 16. We will overturn a Board's finding of cause for discharge only where "it is arbitrary and unreasonable or unrelated to the requirements of service." *Crowley*, 2014 IL App (1st) 130727, ¶ 29. A decision is arbitrary or unreasonable where an agency relies on factors the statute does not intend it to rely on, fails to consider an issue, or renders an implausible decision. *Arroyo v. Chicago Transit Authority,* 394 Ill. App. 3d 822, 831 (2009).

¶ 42 Petitioner makes two arguments as to why the Board's finding of cause should be overturned. First, he claims, the Board ignored his contention that he was justified in using physical force, which he included in both his post-hearing brief and memorandum in opposition to the hearing officer's recommendation. Petitioner observes that the School Code requires teachers to "maintain discipline" in school and that it prohibits the Board from enacting a policy

that precludes teachers from using "reasonable force as needed to maintain safety for the other students." 105 ILCS 5/34-84a (West 2012). Petitioner further notes the School Code and Illinois Administrative Code allow for the use of momentary periods of physical restriction, "accomplished with limited force," where the restriction is designed to (1) prevent a student from completing an act that would cause potential physical harm to herself or another or damage to property, or (2) remove a disruptive student who is unwilling to voluntarily leave the area. 105 ILCS 5/34-18.20 (West 2012); 23 Ill. Adm. Code. 1.285(c). CPS's written policy on the use of momentary physical intervention contains nearly identical language.

¶ 43 Contrary to petitioner's assertion, the Board did not "ignore" his argument that he was legally justified in using force. In its written decision, the hearing officer explicitly noted petitioner's claims that a takedown was required by the situation, that he reacted to an immediate need to protect a student, that his actions were appropriate to the student's misconduct, and that the Board failed to establish cause for his dismissal. Nonetheless, the hearing officer found the Board had proved its charges against petitioner and that those charges constituted sufficient cause for petitioner's dismissal. The Board noted that CPS set forth "very limited parameters for when physical force may be used on a student," and petitioner failed to follow CPS's guidelines.

¶ 44 Moreover, petitioner's claim that he was legally justified in using force is meritless. Although teachers may use limited force to prevent a student from harming another or damaging property, the evidence in this case fails to establish that anyone's safety or property was in danger. Mercedes and B.C. were standing five feet away from each and were engaged in a purely verbal altercation. Although Mercedes told B.C. "we can handle this right now," she started walking away with M.Q. after making her statement. Furthermore, Mercedes had never been in a

fight before, nor did she threaten petitioner. Thus, petitioner had no reason to believe physical force was necessary.

¶ 45 In addition, even assuming petitioner was required to use physical force, he fails to explain how the force he used was limited or reasonable. To the contrary, he pulled Mercedes to the floor by using a wrestling move, and then continued to hold her even though he did not know if B.C. was still nearby. He also refused to immediately release Mercedes even after both Ellis and Higgins arrived and instructed him to do so. It is disingenuous for petitioner to argue that his "only alternative" in this situation was "to do nothing." The testimony of Sorensen and Higgins established that plaintiff could have employed one of several other tactics, including using the intercom in his classroom to contact the main office, employing the "hug" approach Higgins described, or grabbing the student around the waist, as Sorensen described. In sum, petitioner has failed to show the Board's finding of cause was against the manifest weight of the evidence.

¶ 46 Petitioner next asserts the Board's finding of cause must be overturned in that the Board failed to prove a logical nexus existed between his teaching performance and his alleged violation of the Board's policy. See *Davis v. Board of Education of City of Chicago*, 276 Ill. App. 3d 693, 697 (1995) ("There must be a logical nexus between the individual's fitness to perform as a teacher and the misconduct in question"); see also *Crowley*, 2014 IL App (1st) 130727, ¶ 29 (a finding of "cause" for discharge will be overturned if it is "unrelated to the requirements of service"). Petitioner observes that he continued to teach at Clemente for six months after the incident with Mercedes, and he argues his policy violation did not impact the operation of Clemente or CPS in any way.

¶ 47 First, the record belies petitioner's claim that Clemente's operations were unaffected, as Sorensen testified she spent a day investigating the incident and Mercedes testified she actively

avoided petitioner after the event. Moreover, no serious argument can be made that petitioner's use of a wrestling move against a student who was engaged in a purely verbal altercation was unrelated to his fitness to teach. Our court has affirmed teachers' dismissals even for misconduct that occurred outside of school and had less of a direct impact on students' well-being. See, *e.g.*, *Crowley*, 2014 IL App (1st) 130727, ¶¶ 32, 35 (finding sufficient cause for discharge existed where teachers violated the residency policy); *Jones v. Board of Education of City of Chicago*, 2013 IL App (1st) 122437, ¶¶ 21, 33 (affirming the dismissal of a teacher who provided a false address in order to obtain tuition-free education). The finding of cause for dismissal in this case was not arbitrary, unreasonable, or unrelated to the requirements of petitioner's position.

¶ 48 Finally, petitioner argues CPS's policy regarding momentary physical intervention was unreasonable in that it did not provide any guidelines for compliance. In support of his claim, he cites *Board of Education of Round Lake Area Schools, Community Unit School District No. 116 v. State Board of Education*, 292 Ill. App. 3d 101 (1997), in which the appellate court stated "[a] rule is not reasonable unless it provides guidelines that are or should be known by the employee." *Id.* at 111. However, *Round Lake* involved a vacation leave policy that "was never reduced to writing, was ineffectively, if at all, communicated to the teachers, and was inconsistently administered." *Id.* Here, by contrast, CPS's written policies made clear that limited physical restraint could be used only in certain enumerated circumstances, and the Discipline Policy made clear that violations of certain sections could result in dismissal. Accordingly, we find no error in the Board's dismissal of petitioner.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm the Board's dismissal of petitioner from his employment with the Board.

¶ 51 Affirmed.