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was denied her constitutional right to confront the key witnesses against her. (2) The hearing officer did not err in admitting evidence of past conduct which was relevant to material issues other than her propensity to engage in the conduct with which she was charged. (3) A finding that the teacher corporally punished a student was not against the manifest weight of the evidence notwithstanding the impeachability of the student who testified to the punishment in contradiction to the testimony of the teacher.

¶ 1 Respondent, the Board of Education of the City of Chicago ("Board"), appeals from a judgment of the circuit court reversing the Board's dismissal of petitioner Linda Rule, a tenured teacher for the Chicago Public Schools. Rule had been discharged for hitting two of her students and for pressuring one of those students, as well as her mother, to retract their accusations. Respondent contends that: (1) contrary to the circuit court's ruling, Rule was not denied due process of law when she was unable to cross-examine one of the two students who she was accused of striking during class; and (2) in any event, the fact that she struck the other student should have been sufficient to sustain the Board's decision to discharge her.

¶ 2 BACKGROUND

¶ 3 The record shows that Rule worked as a teacher for the Chicago Public Schools from 1991 until 2007. On August 15, 2007, when Rule was teaching second grade at Alfred David Kohn Elementary School, the Board charged Rule with: (1) grabbing, pushing and striking her 7-year old student Lloyd on December 11, 2006; (2) hitting her 7-year old student Briana on the

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back of her head while yelling in her ear on or about December 18, 2006¹; and (3) pressuring Briana to retract her accusation and inducing her to have her mother write a false statement of retraction.

¶ 4 According to those charges, Rule violated multiple "resolutions," or rules, of the Chicago Public Schools' Employee Discipline and Due Process Policy, including a resolution in which the Board "deemed that acts of corporal punishment that result in the deliberate use of physical force with a student are prohibited and shall be presumed to be irremediable and to justify immediate discharge of employees." Additionally, Rule was charged with violating two "warning resolutions," which are formal notifications of her acts of misconduct, that had been previously issued to her in July and August of 2002. One of those warnings directed Rule to "cease making profane gestures and/or threatening language on school grounds, or disrupt the orderly educational process in the school or on the school grounds ***." The other warning directed Rule to "conduct [herself] in a trustworthy and appropriate fashion such that [she] present[s] [herself] as a role model to [her] students and to cease providing false and inaccurate information for [her] own gain."

¶ 5 At Rule's discharge hearing on October 21, 2008, the Board called upon Tom Krieger, the assistant director in the office of labor and employment relations of the Chicago Public Schools, as its first witness. Krieger testified that Rule had a record of past misconduct. He stated that

¹While the charges state that the incident involving Lloyd occurred on or about December 12, 2006, and those involving Briana on or about December 18, 2006, the evidence in the record indicates that they, in fact occurred, respectively, on December 11, 2006, and at some time in the week preceding December 18, 2006.

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the reason for the warning issued in July, 2002, was Rule's use of "profane language," and that the warning from August of that same year was because Rule had provided inaccurate information about her income in order to obtain free school lunches for her own children.

Additionally, Krieger stated that in September, 2003, Rule engaged in a physical altercation with another school employee, for which she was disciplined. He explained that the Board encourages the use of "progressive discipline," which, as stated in the Chicago Public Schools Policy Manual, is a system that takes various factors into account in correcting unwanted behavior in employees. Such factors include, but are not limited to, the seriousness of the offense, the employee's prior acts of misconduct, her work history and the totality of the circumstances. Krieger further testified that under the employee disciplinary code followed by the Chicago Public Schools, an act of corporal punishment against a student, such as slapping or hitting, is a type of misconduct for which a teacher may be discharged.

¶ 6 The Chicago Schools Public Manual, which was admitted into evidence, provides that "[u]sing corporal punishment that results in the deliberate use of physical force with a student (e.g. slapping, hitting ***)" is a Type IV misconduct, and one of the disciplinary options for such misconduct is the teacher's discharge.

¶ 7 The Board next called Detective Kenneth Wiggins, an investigator for the Chicago Board of Education, who also worked as a detective for the Chicago Police Department. Detective Wiggins testified that he was called upon to investigate the charges involving Briana and Lloyd and that he prepared an incident report about it. While examining that witness, the Board sought to introduce his incident reports, which the hearing officer admitted over Rule's hearsay

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objection. Rule's counsel again objected when Detective Wiggins initially read from his report, but the detective then proceeded to testify without referring to the report.

¶ 8 According to Detective Wiggins, he was assigned to investigate allegations of physical abuse by Rule on February 6, 2007. The detective stated that he went to Kohn Elementary on March 9, 2007, and interviewed the two alleged victims, Briana and Lloyd. He testified that he also interviewed other students who witnessed one or both incidents, namely, Rashiana, Carissma and Brianna A. (referring to a different student from the alleged victim, Briana). With respect to the incident involving Briana, Detective Wiggins testified that Briana told him that on December 18, 2006, she was sitting at a table with a reading group, and that Rule was sitting next to her. The detective further stated that Briana had explained to him that she was erasing something from her homework from the night before, and when Rule saw that, she slapped Briana on the back of her head. Detective Wiggins also testified, without further elaboration, that Brianna A. And Rashiana "gave the same version of the incident" as Briana.

¶ 9 With regard to the incident involving Lloyd on or about December 12, 2006, Detective Wiggins stated that Lloyd had told him that he got up during a class session to press the buzzer connected to the main office because he wanted to inform the office that Rule was upset, and that he wanted someone to calm her down. Lloyd further explained to the detective that Rule approached him at that time, struck him on the back of the head, grabbed him by the arm and placed him back into his seat. The detective further stated, again without further detail, that both Briana, who he also interviewed in connection to the incident involving Lloyd, and Carissma, "gave the same account of the story as Lloyd did." The detective's report, which was admitted

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into evidence, was consistent with his testimony, but it also stated that Brianna A. and Rashiana did not observe the incident that involved Lloyd.

¶ 10 In addition to the students, Detective Wiggins also interviewed Rule herself, who told him that she did not remember the incident with Briana. Rule further told detective Wiggins that after Christmas break, Briana's mother sent a note to the school, which stated that the incident did not happen. According to the detective, Rule did not tell him that she ever had a conversation with Briana's mother. It does not appear that the detective was asked whether he discussed with Rule the incident involving Lloyd.

¶ 11 After interviewing Rule, detective Wiggins called Briana's mother, who told the officer that Briana had told her about the incident of December 18 on the day that it happened. She further told the detective that after that day, because of the incident, Briana would cry every morning and did not want to go to school. According to detective Wiggins, Vergie, Briana's mother, told him that her daughter later changed her story and said that the incident had not occurred. While the detective stated that Vergie did not tell him why Briana changed her story, he acknowledged that his investigative report stated that this was occasioned by an instruction from Rule to Briana to write a retraction note.

¶ 12 Next, the Board called Dina Everage, the assistant principal at Kohn Elementary, who stated that she was Rule's direct supervisor at the time of the alleged incidents. Everage stated that in the fall of 2006, Rule had "discipline problems" with Lloyd, who was diagnosed with attention deficit hyperactivity disorder ("ADHD"). According to Everage, she encouraged Rule to document her interactions with Lloyd, and to state whether the results were negative or

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positive. Everage further stated that those discipline problems with Lloyd were incurred every day, and that sometimes Rule would send Lloyd to the office or remove him from class before he even entered her classroom.

¶ 13 Everage went on to state that Lloyd's mother came to the school on December 12, 2006, and told her that on the previous day, Rule had hit Lloyd, cursed at him and pushed him into the fish tank on the day before. According to Everage, Lloyd's mother reported to her that on December 11, before striking Lloyd, Rule had become angry at Lloyd, who had been talking, and told him to "shut his ass up." At that time, Lloyd approached the intercom to call someone to calm Rule down because she was screaming and out of control. Everage stated that according to Lloyd's mother, as he was reaching for the intercom buzzer, Rule grabbed him by his hoody and slapped him on the face, whereupon he fell into a fish tank in the classroom. While Everage admitted that she did not see marks on Lloyd, she believed that Rule pulled him by his hoody and that he may have fallen onto the fish tank.

¶ 14 Once Everage received that account of the events from Lloyd's mother, she reported the incident to the Board, the police and the Department of Children and Family Services ("DCFS"), which was the procedure usually followed in such situations. However, Everage acknowledged that Rule was not arrested, and that she does not know whether the DCFS investigated the incident.

¶ 15 According to Everage, Lloyd was not officially removed from Rule's classroom after the incident was reported, but Rule would still instruct Lloyd to leave her classroom. Everage then identified a set of letters which Rule had instructed her students write about the incident with

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Lloyd on December 12, 2006. Everage stated that it was inappropriate for Rule to engage her eight-year old students in writing letters “passing judgment” on their classmate, which was a form of publicly humiliating Lloyd. Furthermore, several letters stated that they gave Rule "permission" to share the letter with others, and in Everage's opinion, those students would not have come up with that language on their own, and most would not even be able to spell the word "permission." Rule's counsel did not object to the admission of the letters written by Rule's students.

¶ 16 With regard to the incident Briana, Everage testified that Briana's mother, Vergie, came in on December 18, 2006, and reported that she had been told by Briana that Rule had hit her in the back of the head and yelled in her ear repeatedly. Briana's mother further told Everage that Briana was afraid to go to school and cried every morning. When Everage spoke to Briana herself, the student told her the same story. Further, when Everage went into Rule's classroom to get Briana, Rule was having a discussion with the other students and two or three parents, who were going to chaperone a field trip, about whether she had hit Briana and the importance of the student telling the truth. Everage stated that she considered that conduct inappropriate because Rule was publicly humiliating and intimidating Briana.

¶ 17 Everage testified that when she spoke with Rule about the incident, Rule became defensive and agitated, and said that she did not know why Briana was accusing her. According to Everage, Rule then stated that she may have bumped into Briana by accident, and demonstrated how such an accident may have happened in the classroom. As with the incident involving Lloyd, Rule's conduct toward Briana was also reported to the police and DCFS.

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¶ 18 Everage then identified a note, over Rule's objection, which Vergie, Briana's mother, wrote in her presence, stating her concerns about what had happened in Rule's classroom, and the fact that Briana did not want to go to class. Further, Everage testified that, two days after the incident with Briana, Rule gave her a second letter, also written by Vergie, attempting to negate Briana's previous accusation. When Everage asked Vergie about that second letter, Vergie stated that Rule had called her and asked her to send another letter to the school. Rule had told Vergie that she was going to get fired, that she did not want to lose her job, that she did not have any problems with Briana, and that she knew that Briana lies. Vergie told Everage that she had felt bad for Rule, and did not know what to do after that phone call.

¶ 19 Additionally, Everage testified that on March 12, 2007, she spoke to the parents of Carisma and Rashiana, who had been interviewed by Detective Wiggins the previous week. Those parents complained to Everage that Rule had kept those students late, ostensibly for writing a note that she found on the floor, but which in reality was in retaliation for speaking to Detective Wiggins. Upon receiving the foregoing complaint, Everage paged Rule and asked her to come to her office, but Rule refused and responded, through the PA system, that she was "off the clock." When Everage went to Rule's classroom looking for her, she found Rule hiding in a closet with her hands in front of her face. Everage asked Rule to talk, and Rule again stated that she was "off the clock" and handed Everage three discipline referrals, which are write-ups telling how the three students had violated the student code of conduct.

¶ 20 The Board subpoenaed both Briana and her mother, but apparently neither of them came to the hearing to testify.

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¶ 21 Next, the Board called Karen Love, a reading coach at Kohn Elementary. Love's office was separated from Rule's classroom by a movable partition which allowed Love to hear what was happening in Rule's class. Love would hear Rule yelling at her students 80 to 90 percent of that time, and sometimes she tried to intervene and ask Rule if she needed help.

¶ 22 The Board next called Carol Briggs, the principal of Kohn Elementary. Briggs testified that in the 2006-2007 school year, she received complaints from Everage and Love about Rule's behavior in screaming and yelling at her students in the classroom. Briggs further stated that while Lloyd was not officially removed from Rule's classroom after the incident, Rule would often refuse to let him in, refusing to accept him after his accusation. In fact, Briggs received a note from Rule after the incident from December 11, stating that "[i]n lieu of the false allegations against [her], it's best that he is not in [her] presence."

¶ 23 Further, with regard to the incident involving Briana, Briggs stated that Briana's mother reported to Everage that Rule had struck her in the back of the head and yelled in her ear, and that Briana was afraid to go to school. Briggs testified that when she saw Vergie's second letter, recanting her prior accusation, she contacted Vergie, who told Briggs that Rule had convinced Briana to say that the incident had never happened. In contrast to Everage's earlier testimony, Briggs stated that, according to Vergie, Rule had directly told Briana that Rule was going to lose her job. According to Briggs, Vergie told her that she wrote the letter because she was afraid of what was going to happen with Briana.

¶ 24 Briggs further testified that she received complaints from parents that Rule had directed the students to write letters about the incident with Lloyd and that Rule used verbally abusive

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language in her classroom. In March, 2007, a parent had told Briggs that Rule did not want her daughter in her classroom, and that Rule had told her students that they were "slow" and that she was angry with the school's administrators. Other parents had complained to Briggs that Rule had used "verbally abusive" and "derogatory" language to her students. As a result, Briggs had a pre-discipline hearing for Rule

¶ 25 The Board next called Lloyd, who was nine years old at the time of the hearing. He testified that he had Rule as his second grade teacher and that, one day, when he came back into her classroom after gym class, Rule was yelling. Lloyd further stated that he and the other children became nervous, and some students were hiding under their chairs. He testified that he got up to ring the buzzer to get somebody to calm her down, and that he spoke to a lady in the school office, who told him that it was not necessary for anyone to go to the classroom at that time. According to Lloyd, she then pulled him by his hoody and he felt choked, and that when he got back up, she slapped him. He further explained that he did not tell anyone that Rule had hit him on the face and pushed him into a fish tank because he did not want to be embarrassed.

¶ 26 Lloyd further testified to the incident involving Briana, which differed from the testimony given by Wiggins, Everage and Briggs. According to Lloyd, on the date of that incident, Rule had told the students that they could only sharpen their pencils once, which Briana did not hear and got up to sharpen her pencil a second time. Lloyd stated that Rule told Briana "[y]ou didn't hear what I said," and then pushed her down on the floor, after which Briana became scared and ran back to her seat. According to Lloyd, Rule pushed Briana on the floor so hard that "she almost broke her spine."

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¶ 27 The next witness called by the Board was Lloyd's mother Tamika, who testified that she had met with Rule on several occasions to discuss the behavioral problems that Lloyd was having in class. Tamika informed Rule that Lloyd had been diagnosed with ADHD, which was the reason for those problems, and that she was seeking treatment for Lloyd's disability. Tamika stated that at that time, she spoke to the school administrators about placing Lloyd in special education classes, and that she was trying to find treatments that did not include medication, but Rule would send her notes about medications which she believed Lloyd should take for his ADHD. According to Tamika, Rule would call her at work multiple times a day, and that she went to so many school meetings about Lloyd that she was eventually fired due to poor attendance. Tamika stated that in early November she asked Briggs and Everage to have Lloyd removed from Rule's classroom because she did not feel that Rule was willing to work with her to help Lloyd, but the school refused.

¶ 28 Tamika further testified that when she picked Lloyd up from school on December 11, 2006, he appeared upset and looked like he had been crying. When Tamika asked Lloyd how his day had been, he answered that it was terrible, because Rule had hit him. At home, Lloyd told his mother that Rule had been yelling and screaming, and that he got up to press the intercom button and summon someone to the classroom to calm Rule down. Lloyd further explained to Tamika that Rule told him to "sit your ass down," snatched him by his hoody and pulled him down, and that when he got up, Rule "smacked" him, causing him to hit his head against the fish tank that was near the intercom. She acknowledged that she did not observe any marks on

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Lloyd's face. Tamika stated that she went to the school the following morning and told Everage what had happened.

¶ 29 According to Tamika, Lloyd came from school on the following day with a note which revealed that he had been suspended for 10 days for misbehaving in class and cursing at Rule. When Tamika went to school to find out what had happened, she was told by a school administrator that Lloyd was not suspended, and apparently Rule requested that suspension as a form of retaliation.

¶ 30 The Board's counsel then showed Tamika an e-mail that Rule had sent Everage stating that Lloyd recanted his story to her, as well as his mother, father and grandmother. Tamika stated that she had never seen that document before, that Lloyd had never recanted his story to her or his grandmother, and that he did not even have a father at home.

¶ 31 Before closing the Board's case, the hearing officer allowed defense counsel to call Syvilla Rushdan, a teacher at Kohn Elementary who was staffed as a librarian and reading interventionist in the 2006-2007 school year. As an interventionist, she was assigned to Rule's classroom for one hour a day to help students who were slow readers. Rushdan described Rule's teaching style as a little untraditional, but also creative, in that she would wear clothing similar to those of book characters to get the children more interested.

¶ 32 Rushdan further testified that Lloyd was in her library class and was one of the students with whom she worked. She stated that Lloyd would often refuse to follow rules, crawl around the floor and bother other children. Rushdan averred that she had heard Lloyd curse, and that she had seen him strike other children. According to Rushdan, Lloyd would lie to the school's

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security about his behavior when she summoned them for help. Further, Rushdan stated that she met Lloyd's mother in 2005, but when she tried to talk to her about Lloyd's behavior, she did not believe that Lloyd would act that way in class. In addition, Rushdan testified that Rule had requested on multiple occasions to transfer Lloyd from her classroom because of his behavior and because he would lie to his mother about what happened in class.

¶ 33 Next, the defense called Tanya Walls, who works at the office of Kohn Elementary, and was on intercom duty in the fall of 2006. Walls stated that on December 11 and 12, 2006, she did not receive any calls over the intercom from Lloyd. She explained that she could not recall getting a response over the buzzer from a child who identified himself as Lloyd.

¶ 34 The defense then called Karen Jasper, a school social worker for Kohn Elementary. Jasper testified that she interacted with Rule because of Lloyd's behavior. She stated that she had to go in Rule's classroom and make observations so that the special education team could begin the process of providing services if deemed necessary. Walls had met with Tamika about possible treatments for Lloyd's ADHD, and while Walls recommended medication, Tamika was against it.

¶ 35 Furthermore, Jasper identified a letter that she wrote to document an incident when a young girl reported that Lloyd said something offensive to her and another girl heard her. Lloyd denied it, but when Jasper was talking to one of the girls, she heard a commotion behind her and when she turned around, Lloyd was pointing and laughing. Additionally, Jasper stated that no student had ever complained to her that Rule had hit a student. In fact, Jasper noted that in her experience Rule always acted professionally and appropriately in front of her students.

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¶ 36 Although the defense had already examined several witnesses in its case-in-chief, it was not until well after Jasper's testimony that the Board rested its case. The last defense witness remaining was Rule, who testified on her on behalf next.

¶ 37 Rule testified that she had worked for the Chicago Public Schools since 1991. She identified a document, which was admitted into evidence, and consisted of a daily report of Lloyd's behavior, which she had agreed to submit to his mother after each day. Rule then read from the document, which stated that in the morning of December 11, 2006, Lloyd attempted to leave the classroom without permission, then hid underneath a table and hit a girl named Jamarra, and laid in his seat backwards. In addition, the document stated that in the afternoon, Lloyd said "I would knock Ms. Rule A out. Bitch stop playing with me." The document further revealed that Lloyd slammed his body against the railing and against a wall, broke an ink pad stamp, kicked and punched other students. Rule then testified that at the end of that day, she had no knowledge that she had been accused of slapping Lloyd.

¶ 38 Rule further stated that prior to that date, she had spoken to Tamika about Lloyd's behavior, and once she was informed that he had ADHD, she tried to seek out services from Logan and other strategies to help him. According to Rule, she had a difficult time with Lloyd in the fall of 2006 because he would hit and kick other children, and curse them out. She explained that she would send Lloyd to Everage's office if his behavior became extremely disruptive.

¶ 39 Further, Rule noted that she was first confronted with Lloyd's allegations on December 12, 2006, when she was called into the officer and spoke to a police officer. Rule heard the

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police officer say to Tamika, who was in the office as well, that if Lloyd had been slapped into the fish tank, he would have an injury and the fish tank would have shattered. Rule noted that there were no charges filed against her. In addition, Rule spoke to an investigator from DCFS, but was also not charged by that entity either.

¶ 40 Rule was then shown the letters written by her students, and explained that she was being accused of striking Lloyd and wanted the children to write down what they observed the day before as it related to Lloyd to the best of their memory. Further, Rule could not remember whether she has asked the students to write on their letters that they gave her permission to use them, but she believed that an eight-year old could have written it on their own.

¶ 41 Furthermore, Rule averred that even though Lloyd had behavioral issues in class, she did not strike him, just as she would not want someone else to strike her own children. She further stated that she asked the office to transfer Lloyd from her classroom after she was accused of hitting him so that she could focus more on teaching and he could have a new start. After the principal refused to transfer Lloyd from her classroom, Rule contacted Arne Duncan, the CEO of the Chicago Public Schools, but his office denied her request as well. In fact, Lloyd remained in her classroom until Rule was removed from the school on March 16, 2007.

¶ 42 With respect to the incident involving Briana, Rule also denied hitting her, and stated that she was in shock when she first learned that she had been accused of hitting Briana. Rule further testified that she had not called Briana's mother and asked her to write the letter recanting Briana's accusation. Instead, Rule stated that it was Briana's mother who called Rule the day before she sent that letter and told Rule that Briana recanted her story. That letter, which was

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admitted into the record, states that Briana had lied about the incident and that Rule had not, in fact, hit her. However, the letter is inconsistent with Briana's previous accusation in that it states that Rule never hit Briana's hand, as opposed to the back of her head. According to Rule, she never had any confrontations with Briana, who was a quiet child.

¶ 43 Moreover, Rule testified that she did not know that the Board had any intention to terminate her until March 16, 2007, when she was removed from Kohn Elementary. Rule further stated that Love, who had testified that she heard Rule yelling at her students through a movable wall, could be "in cahoots" with the school's administration in trying to remove Rule. In fact, Rule believed that the school conspiratorially wanted to terminate her because she contacted Arne Duncan's office about transferring Lloyd from her classroom, which, according to Rule, did not reflect well on the school's administration.

¶ 44 On cross-examination, Rule was asked about one of the warnings issued against her in 2002 for falsely stating that her income was below the poverty line in order to get free lunches for her children for five years. In response, Rule stated that she did not know "right of the top of [her] head" whether her income was, in fact, below the poverty line at the time in question. After Rule's testimony, the defense rested.

¶ 45 Among the exhibits admitted into evidence was a manual by the Board entitled "employee discipline and due process," which states that employees may be discharged for certain acts of misconduct, including the use of "corporal punishment that results in the deliberate use of physical force with a student (e.g. slapping, hitting, pushing, ***.)"

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¶ 46 At the conclusion of the hearing, the officer found that Rule's conduct was irremediable, and recommended that the teacher be discharged from her employment at the Chicago Public Schools. In arriving at that conclusion, the officer found that on December 11, 2006, Rule grabbed and struck Lloyd, and that during the week prior to December 18, 2006, Rule hit Briana on the back of her head while yelling in her ear. The officer further found that in January of 2007, Rule pressured Briana and her mother to retract the complaint filed by Briana's mother on December 18, 2006, which charged that Rule had hit Briana.

¶ 47 In doing so, the hearing officer found Lloyd's testimony more credible than Rule's testimony with respect to the events that transpired on December 11, 2006. The officer noted that while Lloyd changed minor details of the incident during the lengthy questioning at the hearing, he remained consistent on the facts that: (1) he perceived Rule as angry; (2) he attempted to call the office using the intercom button; and (3) at that point, Rule grabbed him by his hoody, hit him on the head and knocked him into the fish tank. Additionally, she noted that Lloyd did not have the maturity or sophistication necessary to fabricate a story about Rule's behavior with the intent of getting his teacher in trouble, and recruiting another student, namely, Briana, to corroborate his story. With respect to Briana, the officer found that she could find no plausible explanation for Vergie's letter recanting Briana's story other than pressure from Rule. Additionally, the officer noted that Rule's conspiracy theory involving the students, parents, the school's administration and other staff members' being "in cahoots" lacks inherent probability.

¶ 48 Additionally, the officer noted that Rule's conduct demonstrated two types of damage to her students. First, hitting Lloyd and Briana damaged their sense of safety and their relationship

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of trust with Rule. Second, Rule's pattern of retaliation and intimidation against those involved in the controversy caused disruption to the educational programming and damaged the school's learning climate. The officer further found that Rule's conduct could not have been corrected if she had been warned because: (1) the disciplinary code clearly prohibits corporal punishment and contains an explicit warning; and (2) Rule had already received a warning in 2002 against assault, threat, intimidation or verbal abuse.

¶ 49 The Board accepted the hearing officer's recommendation and discharged Rule. On administrative review, the circuit court reversed the board's decision and reinstated Rule. In doing so, the court found that there was a denial of due process in this case because Rule was not permitted to confront or cross-examine either Briana or her mother, in connection with the charge that she hit Briana and the charge that she coerced Briana and her mother to retract their accusations. The court stated that:

¶ 50 "[I]f the only charge related to Lloyd and that one incident, I would be more inclined to affirm than reverse because as is clear from the record, the hearing officer recognized the difficulty she was relating to Lloyd's credibility and weighed those against the evidence that she heard and concluded that Lloyd's version of events was more consistent and more properly true than Ms. Rule's. If that was the only incident, as I said, I would be inclined to affirm, but it is not the only incident. *** And Ms. Rule was entitled to having been charged with three separate incidents to be able to confront and cross-examine the evidence against her, and she was not permitted to do so on this record."

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¶ 51 The court then concluded that because the incident relating to Briana and the incident relating to Rule's alleged coercion of Briana and her mother to recant their statements were two of the three charges that Rule faced at the hearing, it could not sustain the termination of Rule's employment on those grounds. Pursuant to those findings, the circuit court ordered the Board to: (1) reinstate Rule; (2) pay her \$178,469.30 in back pay and \$2,796 in additional earnings; and (3) restore her seniority and benefits.

¶ 52 ANALYSIS

¶ 53 On appeal from that order, the Board now contends that the circuit court improperly reversed the Board's decision to terminate Rule because the hearing officer did not violate Rule's right to due process in finding that Rule had struck Briana and pressured her to retract her accusation. Alternatively, the Board contends that, even if it could not prove that Rule struck Briana, her conduct in striking Lloyd was sufficient to sustain the Board's decision to discharge her.

¶ 54 We first address the Board's contention that the admission of hearsay statements by Briana and her mother did not violate Rule's right to due process. It is well established that a tenured teacher has a property interest in continued employment that is protected by the principles of due process. *Board of Educ. of Community Consol. School Dist. No. 54 v. Spangler*, 328 Ill. App. 3d 747, 755-56 (2002). Further, our supreme court has held that a fair hearing before an administrative agency includes "the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 95 (1992). If the procedures used

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by an administrative agency during a proceeding violate fundamental fairness and a party's right to due process, the appellate court should reverse the agency's decision. *Hearne v. Chicago School Reform Board of Trustees of Board of Education for City of Chicago*, 322 Ill. App. 3d 467, 484 (2001).

¶ 55 We note that the strict rules of evidence that apply in a judicial proceeding are not applicable to proceedings before an administrative agency. *Ivy v. Illinois State Police*, 263 Ill. App. 3d 12, 19 (1994); *MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 149 (2007).

Furthermore, an administrative agency's decision regarding admission of evidence is discretionary and will not be disturbed absent an abuse of discretion. *MJ Ontario, Inc.*, 371 Ill. App. 3d at 149. For instance, the improper admission of hearsay testimony does not warrant reversal of an administrative agency's decision where there is other evidence which supports the hearing officer's findings. See e.g. *Morelli v. Ward*, 315 Ill. App. 3d 492, 498 (2000) (improper admission of hearsay testimony of a police officer's girlfriend did not require reversal of his termination where there was other, properly admitted evidence, corroborating the girlfriend's statement that the police officer had attacked her.) However, where there is no competent evidence which corroborates the improper hearsay testimony, and the credibility of those statements are outcome determinative, the admission of that testimony is a denial of due process where it involves a constitutionally protected interest. *Colquitt v. Rich Township H.S. Dist. No. 227*, 298 Ill. App. 3d 856, 864-65 (1998); see *Kaske v. City of Rockford*, 96 Ill. 2d at 309 ("while the rules of evidence are not so rigidly applied at an administrative hearing, such relaxation of rules 'cannot abrogate the right to a just, fair and impartial hearing.' ")

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¶ 56 In *Colquitt*, 298 Ill. App. 3d at 864-65, this court held that a student in an expulsion proceeding was denied his right to due process where he did not have the opportunity to cross-examine the only witnesses who had allegedly observed the entire incident which gave rise to the expulsion. In that case, the Board expelled plaintiff from school following a hearing during which the school principal testified that he spoke to three students who had witnessed plaintiff threaten other students during a verbal altercation. *Id.* at 858. The principal, who did not witness the altercation himself, also introduced written statements signed by the students. *Id.* at 858. Three additional witnesses testified at the hearing that they observed plaintiff make certain remarks during the incident, but that they did not observe the entire altercation from its inception. *Id.* at 859. Plaintiff presented four witnesses, in addition to his own testimony, contradicting the testimony that he had threatened any of those students. *Id.* at 859. The Board entered a notice of expulsion against plaintiff, and the circuit court later reversed that decision. *Id.* at 860. In affirming the circuit court's decision, this court found that plaintiff's right to cross-examine the only witnesses who observed the incident from its inception was imperative in that case, where the outcome of the hearing depended directly on the credibility of those witnesses. *Id.* at 864.

¶ 57 In this case, the Board introduced the testimony of Everage, as to statements made by Briana to her mother, and by Briana's mother to Everage, that Rule had struck Briana on the back of her head while yelling in her ear. The Board also introduced Detective Wiggins' testimony as to Briana's statements to him about the incident. Additionally, the Board introduced a written statement by Briana's mother and Detective Wiggins' incident report containing the statement

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that he took from Briana and his conclusory statement that the other students corroborated Briana's statement. Neither Everage nor Detective Wiggins observed the incident, and only introduced hearsay statements from Briana and her mother. The only witness present at the hearing who had, in fact, observed the alleged incident was Lloyd, a young witness who had been diagnosed with ADHD, and whose version of the events were significantly different from that of Briana. According to Lloyd, Rule pushed Briana onto the classroom floor when Briana got up to sharpen her pencil, while the statement that presumably emanated from Briana was that Rule hit her on the back of the head when they were both sitting at a table. Furthermore, while the parties dispute the circumstances under which Briana's mother recanted her previous statement, there is no dispute that she did, in fact, retract her previous accusations about Rule.

¶ 58 Likewise, with respect to the charge that Rule pressured Briana to retract her accusation, the only evidence of Rule's communications with Briana and her mother to recant their statements consisted of Vergie's statements to Everage and Briggs, whose accounts were inconsistent. While Everage averred that Vergie told her that Rule called Vergie directly, Briggs stated that Vergie learned from Briana that Rule asked the student to recant. Although Everage personally observed Rule talking about the importance of Briana telling the truth in an intimidating setting, she did not hear Rule ask Briana or her mother to recant their accusations. Thus, as in *Colquitt*, the outcome of the hearing with respect to the charge that Rule struck Briana, and the charge that Rule pressured Briana and her mother to recant, was directly dependent on the credibility of the statements given by Briana and Vergie. Accordingly, Rule's right to due process was violated where she did not have the opportunity to cross-examine

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Briana and Vergie with regard to Rule's corporal punishment of Briana, as well as Rule's pressure on Briana to recant her accusation, since their testimony was indispensable to the outcome of a hearing in which her constitutionally protected interest in continued employment was at stake.

¶ 59 The Board's reliance on *Dookeran v. County of Cook*, 396 Ill. App. 3d 800 (2009), for the proposition that it is not a denial of due process to introduce hearsay testimony of an absent witness, is misplaced. Unlike this case, the plaintiff in *Dookeran* did not contest the complaints introduced as hearsay, and the proceeding in that case was governed by bylaws which allowed the introduction of those complaints. *Id.* at 814.

¶ 60 The Board next contends that Detective Wiggins' investigation report and the letter from Briana's mother were properly admitted as business records of the school district, pursuant to Illinois Supreme Court Rule 236(a), which provides that "any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter." S. Ct. R. 236(a). However, that contention lacks merit.

¶ 61 The credibility of a business record depends on the prompt and systematic nature of the entries and the fact that they are relied upon in the operation of a business. *Ocasio-Morales v. Fulton Mach. Co.*, 10 Ill. App. 3d 719, 725 (1973). Thus, a report which was not a routine

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business entry, but was prepared by a third party in preparation of litigation, is not admissible under the business records exception to the hearsay rule. *Id.*; see generally *Cleary and Graham* (1999), § 803.10 (all persons furnishing and recording information must be under a duty to do so). Furthermore, in *People v. Ullrich*, 328 Ill. App. 3d 811, 820-21 (2002), this court held that a police report offered for the truth of the matter asserted in a civil case was inadmissible hearsay, and not considered a business record, because the report was prepared during an investigation and in anticipation of litigation, and therefore, lacked indicia of reliability. In this case, neither Vergie's letter, nor Detective Wiggins' report, were routine business entries, and they appear to have been prepared in anticipation of litigation during the investigation of Rule's conduct in striking her students.

¶ 62 The Board, nevertheless, contends that Rule waived her objection to the hearsay statements by Briana and Vergie, introduced through Everage and Wiggins' testimony, because she failed to raise them at the hearing. We note that generally, issues which were not raised during the administrative hearing are not preserved for review. *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 858 (2007). However, it is settled that "a reviewing court may, in furtherance of its responsibility to provide a just result and to maintain a sound and uniform body of precedent, override considerations of waiver that stem from the adversarial nature of our system." *Severino v. Freedom Woods, Inc.*, 407 Ill. App. 3d 238, 249 (2010) (quoting *In Re Mark W.*, 383 Ill. App. 3d 572, 588 (2008) (quoting *State Chamber of Commerce v. Filan*, 216 Ill. 2d 653, 664 (2005))) (internal quotation marks omitted). Thus, this court may reach an issue regarding the admissibility of certain evidence, despite waiver, to reach a just result. See *Sekerez v. Rush*

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University Medical Center, 2011 IL App (1st) 090889, ¶64 (this court may reach the merits of an issue of whether testimony was properly admitted, even where that evidence was not objected to at trial, since that issue may rise again on remand). Further, this rule is applicable to appeals in this court under the Administrative Review Act. *Village of Marywood v. Health, Inc.*, 104 Ill. App. 3d 948, 952 (1982).

¶ 63 Here, although Rule did not object to Detective Wiggins' and Everage's testimony about statements made by Briana and her mother, or to Briggs' testimony about Vergie's explanation about her recanting letter, Rule's counsel did object to the introduction of documents containing that hearsay. Rule objected to Briana's and Vergie's hearsay statements contained in Detective Wiggins' report, as well as to Vergie's letter to Everage, containing double hearsay testimony as to what Briana told her mother. In addition, Rule objected to the hearsay contained in Everage's report to Briggs, containing that double hearsay. In overruling those objections, the hearing officer noted that Briana and her mother had been subpoenaed and were still expected to testify in person. However, as explained above, those witnesses never arrived. Further, the hearing officer stated that she would admit the hearsay statements, noting that the rules of evidence applicable to trials before the circuit court are not as strictly applied to hearings before administrative agencies, thereby discouraging any objections from being made to such evidence. Furthermore, the Board never raised before the circuit court the argument that Rule had waived her due process objection to the hearsay testimony, thereby arguably waiving the issue of waiver. See e.g. *People v. De La Paz*, 204 Ill. 2d 226, 233 (2003) (a party may waive waiver).

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Thus, in the exercise of this court's discretionary authority, we consider Rule's contention that she was denied due process at the administrative hearing.

¶ 64 However, we reject Rule's contention that the decision of the circuit court to reinstate Rule should be affirmed based on the hearing officer's improper admission of hearsay evidence from Briana and her mother. We note that while the Board introduced hearsay testimony that Briana and Carissma corroborated Lloyd's story, Rule does not claim that she was denied due process with respect to the Board's finding that she struck Lloyd. Instead, she maintains that her alleged conduct in striking Lloyd would not, in itself, warrant her termination, because that conduct would have been remediable. In fact, we note that since Lloyd himself testified about the incident, his mother testified about his behavior after the incident and Love confirmed that Rule often yelled at her students, we would not have been persuaded by a contention that the introduction of hearsay to corroborate Lloyd's story violated Rule's due process rights. See, e.g. *Morris v. Department of Professional Regulation*, 356 Ill. App. 3d 83, 91 (2005) ("[w]here there is sufficient competent evidence to support an administrative decision, the improper admission of hearsay evidence in the administrative proceeding is not prejudicial error and does not constitute a due process violation.")

¶ 65 In fact, as previously noted, the Board contends that even if Rule's right to due process was violated by the hearsay evidence from Briana and her mother, the decision to discharge her should nevertheless be sustained because the Board proved that Rule struck Lloyd without the need to rely on hearsay testimony from Briana or her mother. According to the Board, corporal punishment against Lloyd was in and of itself sufficient cause for Rule's discharge, even if the

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Board had not proved that Rule had hit Briana, or that she pressured Briana to retract her statement.

¶ 66 While we agree that corporal punishment against students may be considered sufficient cause to discharge a teacher without prior warning, this court does not need to affirm the Board's decision based on only one incident where the Board based its decision on two incidents of corporal punishment and one incident of pressuring a student to retract her accusation. We note that a tenured teacher may be removed from employment only "for cause." *Board of Education v. State Board of Education*, 160 Ill. App. 3d 769 (1987). There are two kinds of misconduct that may constitute cause for termination of a tenured teacher: (1) irremediable conduct, which is the type of conduct which causes damages to students, the faculty or the school, and could not have been corrected if warnings had been given; and (2) remediable conduct, which could ordinarily be remedied if called to the teacher's attention. *Gilliand v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977). Before terminating a teacher for remediable conduct, the Board must provide the teacher with written notice of those "causes which, if not removed, may result in charges." In *Gilliand*, 67 Ill. 2d at 153, our supreme court set forth a two-part analysis as to whether a teacher's conduct is irremediable: (1) whether the conduct caused significant damage to students, faculty and the school; and (2) whether the teacher would not have corrected her conduct, even if she had been issued a written warning and a period of remediation. *Id.*

¶ 67 We note that this court has held that corporal punishment against students may be considered an irremediable cause for discharge where it causes psychological harm to the

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students and the teacher is aware that the school district prohibits it. *Rush v. Board of Education of the Crete Monee School Dist., No. 201*, 312 Ill. App. 3d 473, 476-77 (2000) (use of electric shock from small engine in lieu of detention was considered irremediable conduct). However, in *Miller v. Board of Education of School District No. 132, Cook County*, 51 Ill. App. 3d 20, 36-37 (1964), although a relatively early case, this court held that a teacher's use of corporal punishment, while improper, could be remediable, where the students affected were unruly and difficult to control. In doing so, the court stated that "we must consider the type of students with whom we are dealing and the rather fantastic atmosphere which existed at the school." *Id.*

¶ 68 In this case, the Board presented Lloyd's own testimony that Rule struck him in her classroom, which the hearing officer found more credible than Rule's testimony that she had not done so. However, Rule introduced testimony that Lloyd was diagnosed with ADHD, which caused him to have serious behavioral problems in the classroom.

¶ 69 Moreover, while this court may affirm or reverse an agency's decision on any basis appearing in the record (*Ahmad*, 365 Ill. App. 3d at 162), it is not precluded from remanding it back to the Board for additional consideration. See *John Sexton Contractors Co. v. Illinois Pollution Control Bd.*, 201 Ill. App. 3d 415, 426-27 (1990). While Rule's conduct in striking Lloyd may have provided a sufficient basis to warrant discharge, the hearing officer based her recommendations not only on that incident, but also on her findings that Rule had struck Briana and pressured Briana to retract her accusation. As explained above, the last two charges were based largely on hearsay evidence from Briana and her mother, the admission of which we found to infringe upon Rule's right to due process. Thus, a remand would be appropriate to determine

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whether the Board would support its discharge sanction if it were based solely on the charge of corporal punishment of Lloyd alone, now that the charges with respect to Rule's treatment of Briana has been found to be constitutionally invalid. This is particularly true in light of the fact that there is little dispute that Lloyd suffered from ADHD and that his behavior was volatile and difficult to control, and given the further fact that his testimony regarding his own conduct when he was allegedly struck was subject to some impeachment. See, e.g., *John Sexton Contractors Co.*, 201 Ill. App. 3d at 426-27 (where the ruling of an agency rested upon multiple grounds, but one of the agency's findings was erroneous, remand was proper to allow the agency to determine whether to rest its ruling on the remaining grounds).

¶ 70 Rule contends, however, that her discharge should be reversed outright because her right to due process was also violated at the hearing when the hearing officer improperly considered the following evidence: (1) testimony concerning Rule's conduct underlying her prior warning resolutions issued to her in 2002; (2) Briggs' testimony, corroborated by a notice of a pre-disciplinary hearing, that in 2007, other parents complained that Rule used derogatory language in the classroom and told students that she was angry with the administration; (3) Everage's testimony that Rule requested her students to write letters about the day of the alleged incident with Lloyd; (4) Everage's testimony that she engaged other students and parents in a discussion about Briana's allegations; and (5) Briggs' and Everage's testimony that Rule retaliated against students who talked to Detective Wiggins. According to Rule, those allegations were outside the scope of the charges filed against her, and the Board lacked jurisdiction to consider them in its decision to discharge Rule. She further argues that even if that evidence was introduced only to

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show that she engaged in the conduct of which she was charged, it was improperly admitted because it consisted of evidence of past misconduct to show her propensity to hit Lloyd and Briana, and to pressure Briana to retract her complaint. We disagree.

¶ 71 Rule's contention that the foregoing evidence pertained to matters outside the scope of the charges is unpersuasive. The allegations enumerated above and any evidence introduced in their support were not additional charges against Rule, but merely evidence to support the specifications that were actually filed against her, namely, that she hit Lloyd and Briana, and pressured Briana to retract her accusation, thereby disrupting the educational process, in violation of, *inter alia*, prior warning resolutions issued in 2002. The hearing officer's recommendations do not suggest that she considered those accusations as additional charges against Rule. In fact, in the section of the recommendations captioned as "findings of fact," the only facts listed by the officer were that: (1) Rule was a second grade teacher at Kohn Elementary during the 2006-2007 school year; (2) that she struck Lloyd on or about December 11, 2006; (3) that she struck Briana during the week prior to December 18, 2006; and (4) that she pressured Briana and her mother to retract the complaint against Rule in January of 2007. Accordingly, the hearing officer did not improperly consider those allegations or the evidence in their support. See, e.g., *deOliveira v. State Board of Education*, 158 Ill. App. 3d 111, 127 (1987).

¶ 72 Plaintiff's reliance on *Board of Education v. State Board of Education*, 113 Ill. 2d 173 (1986), is misplaced. In that case, the board amended its charges against plaintiff to add new charges, after the hearing officer had been chosen. *Id* at 184. In this case, however, the board

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did not amend its charges, and merely introduced evidence in support of the charges filed against Rule.

¶ 73 With regard to Rule's argument that the evidence enumerated above was improperly considered to show her propensity to commit the actions with which she was charged, we find it similarly unpersuasive. We first note that Rule did not object to any evidence that: (1) Rule had her students write letters about the incident with Lloyd; (2) Rule discussed Briana's allegations with other students and parents; and (3) other parents complained about Rule's use of derogatory language in the classroom. Thus, she waived her argument that such evidence was improperly admitted to show propensity. See *Hermesdorf*, 372 Ill. App. 3d at 858.

¶ 74 Moreover, none of the evidence to which Rule now objects warrants reversal of the Board's decision. As previously noted, an administrative agency's admission of evidence is discretionary and will not be disturbed absent an abuse of discretion. *MJ Ontario, Inc.*, 371 Ill. App. 3d at 149. Although a hearing officer may not consider unrelated events to "color [her] outlook" as to whether the plaintiff had a propensity to commit the acts with which she was charged, she may consider evidence of past conduct to the extent that it is relevant to other material issues in the case. See *Secrest v. Department of Corrections*, 64 Ill. App. 3d 458, 460-61 (1978); *deOliveira*, 158 Ill. App. 3d at 127. For instance, while it is improper to consider testimony of past incidents for the purpose of concluding that he is "given" to commit attacks (*Secrest*, 64 Ill. App. 3d at 460), the hearing officer may consider evidence of past conduct to determine whether her bad acts can be attributed to her recently diagnosed depression (*deOliveira*, 158 Ill. App. 3d at 127).

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¶ 75 Further, even the common law evidentiary rule that bars the admission of prior bad acts to prove a party's culpability on another occasion is not applicable where such evidence is introduced for another purpose. *People v. Figueroa*, 341 Ill. App. 3d 665, 671 (2003); *All Purpose Nursing Service v. Illinois Human Rights Com'n*, 205 Ill. App. 3d 816, 824 (1990). Courts of this state have recognized that "[e]vidence of a defendant's commission of other crimes is admissible where relevant to prove any material question other than the defendant's propensity to commit a crime, including *modus operandi*, intent, identity, motive or absence of mistake." *Figueroa*, 341 Ill. App. 3d at 671.

¶ 76 In this case, the evidence admitted at plaintiff's hearing had relevance to material issues other than propensity. Briggs' testimony that other parents complained about Rule's use of derogatory language with her students in 2007 and was subject to a hearing, as well as evidence of Rule's conduct underlying the warning resolutions issued against her in 2002 were material to the sanction which she could receive for the conduct with which she was charged. Krieger testified that the Board has a policy of taking into account an employee's prior acts of misconduct in administering discipline of those employees, a system known as progressive discipline. Thus, Rule's prior acts for which she received warnings in previous years were not merely relevant to show propensity to commit another act, which would have been improper, but they were relevant factors to the Board's decision in determining the propriety of its sanction. In fact, the hearing officer's findings indicate that she considered the warning resolutions from 2002 only to determine whether Rule has violated those resolutions with her conduct towards Lloyd and Briana, and we presume that the officer considered only properly admitted evidence in

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reaching her decision. See, e.g., *Watkins v. American Service Ins. Co.*, 260 Ill. App. 3d 1054, 1067 (1994).

¶ 77 Likewise, Briggs' and Everage's testimony that Rule retaliated against students who cooperated with Detective Wiggins' investigation was relevant to show that she tried to cover the incidents by punishing students who corroborated Lloyd's and Briana's stories. The same can be inferred from Rule's pressing her students to write letters about the incident with Lloyd, directly show her attempts to defend herself from Lloyd's accusations by coaching her students to negate Lloyd's story, and is relevant as an implied admission to the extent it could be construed as an effort to cover her conduct before charges were made.

¶ 78 Further, Everage's testimony that Rule engaged parents and other students in a discussion about Briana's allegations directly shows her attempt to pressure Briana to retract her accusation that Rule had hit her, which does pertain to a charge against her. Moreover, even if it were used to establish her propensity to physically assault Briana, it would be of no consequence, since the findings with respect to Briana have already been found invalid on constitutional grounds.

¶ 79 Rule further argues that her right to due process was violated when the hearing officer incorrectly stated that in 2002, she received an additional warning resolution, which charged her with assaulting a teacher, when in fact, she received only a suspension for that conduct. According to Rule, the hearing officer's incorrect belief that her actions violated that third warning resolution unduly affected the Board's decision to terminate her. However, having decided to remand this case for further proceedings, we direct the Board to take note of the fact

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that while Rule was disciplined for assaulting a teacher in 2002, it does not appear from the record before us that she received a warning resolution for that conduct.

¶ 80 Lastly, Rule contends, alternatively, that the Board's decision should be reversed outright and her employment should be reinstated because the Board's findings with respect to her conduct towards both Briana and Lloyd are against the manifest weight of the evidence. However, having found that the Board violated Rule's right to due process in improperly admitting hearsay evidence of Rule's alleged conduct in striking Briana and pressuring her to recant her accusation, we need now address only her contention that the Board's finding that she struck Lloyd was against the manifest weight of the evidence.

¶ 81 In administrative review cases, the hearing officer acts as the fact finder, and in that capacity, hears the testimony of witnesses, determines the credibility and the weight to be given their testimony, and draws reasonable inferences from all the evidence produced in support of the charges against the accused. *Ahmad v. Board of Educ. Of the City of Chicago*, 365 Ill. App. 3d 155, 162 (2006). An agency's findings of fact are considered *prima facie* true and correct, and this court will not reverse those findings unless they are against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only where the reviewing court determines, viewing the evidence in the light most favorable to the agency, that no rational trier of fact could have agreed with the agency. *Scadron v. Zoning Board of Appeals*, 264 Ill. App. 3d 946, 949 (1994). The mere fact that an opposite conclusion would have been reasonable or that the reviewing court might have ruled differently will not justify a reversal of the administrative findings. *Abrahamson*, 153 Ill. 2d at 88. In fact, the reviewing court will not

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substitute its own judgment for that of the agency, and if the record contains any competent evidence to support the agency's decision, it will be affirmed. *Scadron*, 264 Ill. App. 3d at 949 (citing *Abrahamson*, 153 Ill. 2d at 88).

¶ 82 In light of that standard, there was sufficient evidence to support the Board's finding with respect to Rule's conduct towards Lloyd. The hearing officer's finding that Rule struck Lloyd was based on the officer's credibility determinations after observing the testimony of Lloyd himself, his mother, Detective Wiggins, who interviewed Lloyd and other witnesses, as well as Briggs and Everage, who spoke to Lloyd's mother about the incident. Lloyd's testimony about Rule's behavior was corroborated by Love, who stated that she often heard Rule yelling at students. While some of that testimony from Lloyd's mother, Detective Wiggins, Everage and Briggs was hearsay, there was no objection and no due process contention as a result of it.

¶ 83 Rule argues that the charge that she struck Lloyd was "unsubstantiated" because of inconsistencies during each time that Lloyd had told his story, as well as between Lloyd's testimony and what Detective Wiggins learned from Lloyd himself and from other students. She maintains that the testimony from an office clerk negated Lloyd's testimony that he spoke to someone over the intercom, and that evidence showed that Lloyd's mother had a motive to have him fabricate that story, namely, to have Lloyd transferred from Rule's classroom. Rule further argues that the evidence did not support the hearing officer's determination that Lloyd's testimony was more credible than Rule's account of the events, because Jasper and Rushdan testified that Lloyd had lied before. In addition, Rule claims that the Board improperly ignored the portion of Detective Wiggins' statement which stated that Rashiana and Brianna A. did not

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see the incident involving Lloyd, and that it ignored the letters from students that corroborated Rule's version of the events. Rule argues that the Board improperly inferred guilt from Rule's attempt to document Lloyd's disruptive behavior and request her students to write their letters describing the incident. She further maintains that the Board improperly inferred that Rule hid evidence by noting that only letters of 12 of Rule's 20 students were provided, because Rule was never asked how many students had written letters.

¶ 84 The hearing officer noted, however, that while Lloyd changed minor details of his account of the incident, which had taken place almost two years before the hearing, he had remained consistent about the most significant facts. He consistently stated that Rule was angry, that he got up to call someone over the intercom to calm Rule down, and that Rule then struck him on the head. Although Lloyd's mother acknowledged that she had requested the school administration to transfer Lloyd from Rule's classroom, the officer further noted that Lloyd did not demonstrate sufficient maturity to fabricate that story, or to recruit Briana to corroborate it. Such evidence sufficiently supports the Board's finding that Rule struck Lloyd. While Rule denied Lloyd's account of the incident and presented evidence that he had lied in the past and that he did not speak to anyone on the intercom on the date of the incident, as he claimed, it was within the Board's purview to determine the witnesses' credibility. *Ahmad*, 365 Ill. App. 3d at 162. Further, while the letters from Rule's students corroborated her testimony that she did not hit Lloyd on the date in question, the hearing officer noted that Rule had been in a position of control over her students and what they wrote, and that the fact that she did not document her punishment of Lloyd did not mean that it did not happen. Neither did Detective Wiggins'

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acknowledgment that two students did not see the incident mean that Rule did not strike Lloyd as he testified. Additionally, although Rule did not have a chance to explain why the letters of only 12 of her 20 students had been introduced, the hearing officer appears to have simply noted that exonerating statements from less than half of her class was insufficient to negate Lloyd's testimony. Thus, while the record indicated that Lloyd was diagnosed with ADHD, which may have affected his credibility, the hearing officer's finding that Rule struck Lloyd was not against the manifest weight of the evidence.

¶ 85 Rule, nevertheless, maintains that the all of Board's findings are against the manifest weight of the evidence because both DCFS and the Chicago police department investigated the allegations that Rule had struck Lloyd and Briana and failed to charge Rule. However, DCFS and the Board have different standards in sanctioning a teacher for engaging in corporal punishment against a child. While DCFS is responsible for investigating allegations of child abuse under the Abused and Neglected Child Reporting Act ("Act"), the Act defines child abuse, in pertinent part, as occurring when "a person responsible for the child's welfare *** inflicts *excessive* corporal punishment." 325 ILCS 5/3(e) (West 2008) (emphasis in original). In contrast, the Board prohibits all forms of corporal punishment against students, and provides that a teacher may be terminated for use of such corporal punishment. Similarly, a criminal conviction requires proof reasonable doubt, which is a substantially higher standard that which has to be met by the Board in dismissing a teacher, namely, preponderance of the evidence. *Younge v. Board of Education of the City of Chicago*, 338 Ill. App. 3d 522, 534 (2003).

¶ 86 For the foregoing reasons, we affirm in part and remand in part.

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¶ 87 Affirmed in part and remanded in part.