

No. 1-10-3501

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THOMAS R. LONG,	)	APPEAL FROM THE
Plaintiff-Appellant,	)	CIRCUIT COURT OF
	)	COOK COUNTY
v.	)	
	)	
BOARD OF EDUCATION OF BURBANK	)	No. 09 CH 44925
SCHOOL DISTRICT NO. 111, COOK COUNTY	)	
ILLINOIS; FRANK C. KRIEGSEIS; DAVID	)	
KASPER; DANNETTE WILLIAMS; KATHLEEN	)	
SMITH; CARLEEN SKOWRONSKI; LINDA	)	HONORABLE
CUSAK; and DONNA ZARNECKI,	)	LEROY MARTIN, JR.,
Defendants-Appellees.	)	JUDGE PRESIDING.

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PRESIDING JUSTICE STEELE delivered the judgment of the court.  
Justices Neville and Murphy concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Illinois courts had jurisdiction to review the dismissal of a school superintendent employed under a multi-year, performance-based contract with the school district. The former superintendent failed to show he was denied his due process right to an impartial hearing before the board of the school district. The decision to terminate the superintendent for cause was not an abuse of discretion. The judgment of the circuit court is affirmed.

¶ 2 Plaintiff Thomas R. Long appeals an order of the circuit court of Cook County dismissing his complaint seeking review of his dismissal as superintendent by the defendant Board of Education (Board) of Burbank School District No. 111 (District) under a common law writ of *certiorari*. The issues on appeal are: (1) whether the circuit court had jurisdiction to review the Board's dismissal; (2) whether the Board denied Long his due process right to an impartial hearing; and (3) whether the Board's decision was an abuse of discretion. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the Board hired Long as a business manager in 1996. The Board employed Long as superintendent under annual contracts from 2004 to 2007. The Board then entered into a multi-year, performance-based contract with Long for the period of 2008-12.

¶ 5 The Contract

¶ 6 The multi-year contract between the Board and Long provided for an annual evaluation of Long's performance by the Board. Paragraph 12 of the contract provided in relevant part:

"Failure by the Board to complete an evaluation does not preclude the Superintendent's dismissal \*\*\*. If the Board does not tell the Superintendent about the matters of concern in his evaluation, then such matters will not be grounds for suspension or ridicule. The Superintendent must be given reasonable opportunity to cure any remediable defects."

Paragraph 13 of the contract also provided that Long shall be subject to discharge by mutual agreement, retirement, resignation upon 90 days' written notice, permanent disability or incapacity, or for cause. The contract defined "for cause" as:



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purchase to the Board), as well as computer software to track and monitor telephone calls, and to alter a digital recording of a message left by a Board member; (3) directed that a former employee not be recalled in violation of a collective bargaining agreement in retaliation for the former employee's support of a former principal during a Board meeting; (4) created a hostile workplace by threatening to ruin employees' pensions and ability to find other employment; threatened to underpay deductions to cause employees tax problems; created false disciplinary actions and false sexual harassment complaints; reviewed the vacation schedule of a female employee with other administrators to determine whether she had breast augmentation surgery; threatened to sue employees who talked to the Board; conducted excessive meetings with a union representative; and directed a private investigator be retained on false premises to conduct surveillance on a former director of buildings and grounds; (5) engaged in inappropriate workplace conduct by pointing a loaded pellet gun at a former administrative assistant then undergoing cancer treatment and firing the gun in his office; failed to discipline a coworker who joked about the former administrative assistant when she was scheduled for surgery on her left breast; ridiculed and increased the workload of this assistant, directing the assistant to add language to a classroom lease without the other party's knowledge; directed a school nurse to have an employee with a lapsed nursing certification monitor a student's blood pressure; directed the business manager to prepare a false memorandum regarding a finance committee meeting and misrepresent the memo to the Board; set a "booby trap" in his office that caused an employee to fall into his office; and damaged District property; (6) was dishonest to Board members, beyond the prior allegations, by telling the Board president when Long was suspended with pay and

directed to return District property that he had a District tablet computer at home when he had directed the business manager to place the computer in his car trunk 30 minutes earlier; and (7) failed to follow Board directives regarding a proposal for the boundaries of the Fry school and to provide records of his "swipe-in" times for a Board review.

¶ 9 In a letter dated October 7, 2009, Long requested, through counsel, a closed hearing on the Board's reasons for discharge, as well as a bill of particulars. In a letter dated October 14, 2009, the Board provided Long's counsel with a bill of particulars and noted the closed hearing was scheduled for the evening of October 21, 2009.

¶ 10 The Termination Hearing

¶ 11 A. The District's Witnesses

¶ 12 The hearing was held on the evenings of October 21 and 22, 2009, after the Board denied Long's request for a continuance.

¶ 13 At the hearing, Sharon Weil testified she was the executive secretary to the superintendent's office from 1991 through her retirement in 2009. Weil worked closely with Long during his time as superintendent. Weil stated Long threatened, intimidated and mistreated her.

¶ 14 Weil testified that in March 2005, Long directed her to alter a classroom lease in a manner that would not be noted by casual inspection of the document. Weil refused. Weil forwarded an email containing the text of the contract to Long; the other party to the lease later caught changes made to the document.

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¶ 15 According to Weil, in April 2005, Long started referring to a newly-elected Board member as a liar, evil, the Hindenburg, Led Zeppelin, and a blimp. Weil added that Long referred to the Board member's husband as a child molester.

¶ 16 Weil testified that on May 13, 2005, a principal submitted her resignation letter to the District. Weil stated on May 16, 2005, Long telephoned her to summon the principal to his office at 10 a.m., saying he was going to place the principal on administrative leave.

Immediately after the meeting, the principal handed Weil her cellphone and keys to the building. Long then summoned assistant superintendent for instruction in human resources Fred Wagner and Sue Laff (who served as Long's administrative assistant and later District building manager) and sent them to the principal's school in the middle of the day to "pack up her shit." Weil begged Wagner not to go during the day because it would upset the children. According to Weil, Wagner and Laff went to the school and it was a horrendous experience for the staff and students.

¶ 17 Weil also testified that in an October 12, 2005, meeting, Long claimed that someone was undermining him with the Board and said if he found out it was her, he would tear her apart limb by limb, and take away her job and pension. Weil further testified that in the same month, Long complained about a District employee (now a Board member) raising questions about the funding of a project during a public event, saying that he allowed her to express her first amendment rights, but it would never happen again. Weil stated that Long made disparaging comments about other District residents who raised questions, including the wife of the current Board president.

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¶ 18 Weil further testified that after the Thanksgiving holiday in 2005, she found two or three of her file cabinets had been opened and files had been removed. Later that day, after discussing the situation with him, Long said that he warned her to lock the cabinets and again threatened to take her home and property if he discovered she was leaking information to the Board.

¶ 19 Weil saw a therapist from December 2005 through 2006 to address the stress from her job. Weil said the therapist gave her strategies for working with the fear and threats. According to Weil, the therapist recommended she quit her job, but Weil said she really needed the job.

¶ 20 Moreover, Weil testified that in December 2005, she found a man from Sound Incorporated installing telephone call tracking software in Long's office. Raymond Ali, the District's technology director, told Weil that Long would be able to track every call placed from their specific phone extension and all calls coming into the District office.

¶ 21 Weil testified that in 2006, after Fred Wagner was appointed assistant superintendent for instruction in human resources, he routinely began to follow employees in the administration building and there were rumors he carried a tape recorder. Weil stated that she once found Wagner "plastered flat against the wall, with his hands back and his head turned right at the edge" of the doorway as she left the office of another assistant superintendent. Weil also testified Ali told her Wagner was taping people's conversations. Weil stated she saw Wagner standing in a darkened board room, listening to conversations. Weil further testified that there were many occasions when she heard Long and Wagner listening to taped conversations and laughing.

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¶ 22 Weil's job duties included preparing the minutes of the Board's meetings from her notes. Weil stated Long would question her minutes, saying "that's not what was on the tape." Weil never taped the Board meetings. Long never provided her with tapes of Board meetings.

¶ 23 Moreover, Weil testified she was diagnosed with breast cancer in August 2007. After Weil informed Long and Wagner that she would need a second surgery, she was invited into Long's office, where Wagner put a piece of library tape on the left side of his chest, then ripped it off and screamed. Weil returned to her desk. Wagner later stopped at her desk and told her the incident was not about her. In June 2008, Weil was reprimanded in writing concerning the wig she wore following chemotherapy, which she thought was in retaliation for failing to name an employee who said "better you than me" regarding Long's treatment of Weil. According to Weil, in September 2008, Long made a point of commenting on her short hair the first day she came to work without a wig.

¶ 24 Furthermore, Weil testified that in October 2007, Long pointed a pellet gun taken from a student at her, then turned and fired several pellets into his office. Weil stated she should have telephoned the police about the incident, as she would have reported a student for firing a loaded pellet gun. Weil explained she did not contact the police because she knew it would have been the end of her career at the District.

¶ 25 On April Fool's Day of 2008, when she went to unlock Long's office as part of her morning routine, she was immediately pulled into his office because a bungee cord had been attached to the inside of the door. Weil almost fell on the corner of Long's desk. Weil stated she

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had a dual port for chemotherapy implanted in the right side of her chest and that any accident or impact to the dual port could cause a fatal blood clot.

¶ 26 Weil testified that on April 17, 2008, following an argument about the handling of tickets to a school play, Long told her she could stay until the end of the year, but she was "out of here."

¶ 27 Moreover, Weil testified that in June 2008, she found a technical item behind books on top of her file cabinet. Weil contacted Erwin Tye in the tech department, who identified the item as a computer hard drive. Weil stated Tye was shocked because Long had earlier accused members of the tech department of stealing his computer hard drive. Weil testified that Tye said Long was trying to set up Weil. Weil put the drive in her filing cabinet. When Long came into the office, Weil explained that she found the drive behind the books atop her file cabinet and showed him where she had put the drive. According to Weil, Long responded the drive had been up there for a while.

¶ 28 Weil further testified that Long once demonstrated software on his laptop computer that could alter voicemail messages by inserting profanity into a voicemail from a Board member.

¶ 29 Mark Antkiewicz, an assistant principal at Liberty Junior High School, testified that in October 2007, he was told to bring the pellet gun to the District offices. Antkiewicz stated that he gave the gun to Long, who was "stretching it out" before firing a few rounds at the wall, and one into his own arm.

¶ 30 Kelly Ambre testified that she worked for School District 110, but was a school nurse for the District during 2007-08. Ambre testified that she was told by Long, Wagner and then assistant superintendent Cheryl Kalkirtz to allow a nurse's aide to monitor the blood pressure of a

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student with kidney issues, although the aide had not been recertified as a certified nurse's assistant (CNA) and was not qualified to monitor a renal patient. Ambre also testified that Long once accused her of spreading a rumor that he had been telling her dirty jokes and threatened to get rid of her if she was saying such things. Ambre further testified to hearing Long or Wagner joking about Weil being Long's "lap dog."

¶ 31 Erwin Tye, an information systems specialist for the District supervised by Raymond Ali, testified that Long once showed him a high-quality voice recorder and felt his conversations may be recorded without his permission. Tye stated that in late 2008 or early 2009, Long directed him to purchase wireless cameras to be installed in advance of a Board meeting. Tye bought and installed the security cameras as indicated by Long. According to Tye, Long directed him to leave the digital video recorder (DVR) running in the office. The next day, Tye was uncomfortable and informed Ali about the installation. That same day, Long asked Tye to copy the contents of the DVR to a digital video disc (DVD) and then reformat the DVR to erase its contents. According to Tye, Long later asked him to install a camera and DVR in his office before meeting with a Board member, but could not because the DVR would not fit in Long's closet.

¶ 32 Tye also testified that he installed a software program from Ableton on Long's computer that had the ability to match the pitch and tone of voices. Tye further testified that Long accused him of stealing Long's computer hard drive, which Tye denied.

¶ 33 Sandra Krsak, an employee of and union representative for the District, testified that she received ongoing complaints of eavesdropping, including by hidden cameras, from District

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employees. Krsak stated the claims were denied by administrators, so there was not much she could do. Krsak also testified the eavesdropping complaints were discussed during building committee meetings. Krsak further testified that Long later accused her of making a personal telephone call and mishandling confidential information. She denied the accusation, which she believed was in retaliation for her union activities. Krsak testified that she brought her concerns to the Board in a closed session and later discovered Long's purchase of the telephone tracking software through a freedom of information request. In a subsequent meeting, Long assured her the telephone tracking software had never been used. According to Krsak, Long became agitated in another meeting following her request for a report from the date on which she allegedly made the personal call, but apologized when Krsak terminated the meeting.

¶ 34 Following Krsak's testimony, at approximately 10:40 p.m., there was a colloquy about recessing the hearing to the following evening. However, after a colloquy both off and on the record, the hearing continued, over the objection of Long's counsel.

¶ 35 Michelle Mendoza, who worked in various positions with the District and currently works as the superintendent's secretary, testified at the hearing. Mendoza stated her time working for Long had been stressful due to tension between Long and the Board. In particular, Board members would inquire as to whether Long was in the office, but Long was not always in the office during the morning. After the subject came up in a closed session of the Board, Long told her that her name came up and it was not good for her. The next morning, Long telephoned her from his cellphone five or six times and hung up each time. According to Mendoza, Long

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later told her that "Fred" was out to get her.<sup>2</sup> Mendoza also testified that Long often remained in the office after the end of her work day.

¶ 36 District technology director Raymond Ali testified that he had daily contact with Long while Long was superintendent. Ali described the atmosphere at the District under Long as hostile. Ali stated that he would be summoned into Long's office and asked whether he was talking about Long. According to Ali, on other occasions, Long threatened him and Weil with misreporting their withholdings to cause them tax or retirement problems.

¶ 37 Ali also testified he saw Long with a voice recorder several times. According to Ali, Long would open his jacket and ask him to say something. Ali stated that it made him feel as though his conversations were being recorded, particularly when unusual phrases he used were repeated to him verbatim within hours of a conversation.

¶ 38 Ali further testified that Long had access to the security cameras under his own account, but Tye informed him Long had also created alias accounts. Ali stated that Long asked him to install hidden wireless cameras in the Board's meeting room before a meeting, ostensibly because a Board member might be quitting and Long wanted to observe the reaction of other Board members. Ali resisted the request and went home for the day. The next day, Tye told Ali he had installed the cameras but felt uncomfortable doing it.

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<sup>2</sup> Mendoza's testimony does not include a last name. However, Mendoza testified the comment was made regarding a dispute involving the administrative procedures manual, which suggests "Fred" is Fred Wagner.

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¶ 39 Moreover, Ali testified about a meeting where Long complained that his computer hard drive was missing. According to Ali, the drive had been removed from Long's computer because there were problems with the drive after a piece of software was installed.

¶ 40 Ali testified that in 2005, he had a conversation with Long and another administrator about a female technician, in which the administrator asked whether the technician had a breast augmentation. Ali stated that he responded he did not know and did not look at her that way. According to Ali, in a later conversation with the technician, she said that guys were staring at her breasts. He responded there were a couple of males in the administrative building who were asking about a possible augmentation. The technician never made a complaint against Ali, as far as he knew, but Long mentioned to him the technician might be "going to the Board" about the subject.

¶ 41 District building manager Susan Laff had daily contact with Long's office and previously served as Long's administrative assistant. Laff testified they initially had a cooperative relationship, which later became rather difficult. Laff experienced stress and trouble sleeping.

¶ 42 Laff also testified about Long's purchase of telephone tracking software. According to Laff, Long was concerned that Weil was making telephone calls undermining him. Laff added that from time to time, Long considered it possible that anyone was undermining him.

¶ 43 Laff acknowledged that Long sent her to a school to pick up the belongings of a principal in May 2005. Laff stated she asked Long whether he was really sure he wanted to do that. Long responded that he was sure; Laff did not further contest the decision.

¶ 44 Laff testified that a bill for a private investigating firm was authorized by Long.

Although Long expressed concerns to Laff about the whereabouts and residency of certain employees, such investigations were ordinarily conducted in-house. Laff also testified that Long directed her to write a memorandum for the financial review committee and was uncomfortable because it could be implied she vouched for its contents.

¶ 45 Laff further testified that on August 19, 2009, at approximately 3 p.m., Long came into her office. There was a closed meeting of the tech department, from which Long had been excluded. Long told Laff he did not like this and instructed her to take his laptop out to his car, which she did.

¶ 46 On cross-examination, Laff stated that she submitted her retirement letter two weeks prior to the hearing because she believed it was in her interest to do so. Laff also testified that Weil had a reputation for gossiping and embellishing the truth.

¶ 47 Over the objection of Long's counsel, the Board admitted an affidavit from Cheryl Kalkritz, who served as the District's assistant superintendent for special services in 2007-08, in lieu of testimony. The District's attorney stated Kalkritz had been in an automobile accident, with injuries requiring physical therapy and making her attendance impossible. In the affidavit, Kalkritz averred that she heard Long and Wagner listening to recordings including her voice and made without her consent. After admitting other evidence and taking notice of its own records, the Board continued the hearing to the following evening.

¶ 48

B. Long's Witnesses

¶ 49 On October 22, 2009, Long submitted his answers to the Board's bill of particulars. Two former Board members, Burton Blake and Pamela Duzakowitcs, both testified in general support of Long's performance as superintendent.

¶ 50 Long testified on his behalf. Long stated that in February 2008, he slipped and fell on District premises, causing injuries that made it difficult for him to process information. Long also stated his cognitive speech therapist suggested he carry a recorder to address his memory problems. Long carried two recorders, at least one of which was a USB digital recorder. He used them for some time since his accident.

¶ 51 Long denied eavesdropping on employees. Long stated that he told Wagner he always had to have permission to record conversations. According to Long, the tapes he heard were primarily tapes of Board meetings and other mundane matters. Long did not recall listening to staff members, except those at Board meetings. However, Wagner would speed up and slow down the recordings, "and that was a chuckle for about a minute." Long denied concealing his recorders. Long also denied directing Wagner to eavesdrop. Long further denied recording any of the Board's closed sessions or that anyone recorded them at his request. Long added that Wagner's alleged conduct was never reported to him.

¶ 52 Long testified he made copies of voicemails left for him if they were profane or weird. According to Long, Weil was lying about him altering a voicemail to insert profanity and stated the software does not work that way. Long acknowledged that he told Tye that the Ableton software could be used to insert words into audio, explaining that Tye was asking unusual

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questions about Board members and "wanted to see where it would go." Long concluded that where it went was the charges against him. According to Long, he approved the purchase of the Ableton software to expand the music curriculum at one of the District's schools. Long denied putting copies of the Ableton software in his desk, but directed Tye to make copies in accordance with legally acceptable use policies.

¶ 53 Long also testified he did not have total access to the District's security cameras and created only one account, for the purpose of copying video if necessary. Long claimed the tech department had an "unknown" account in addition to the tech account. Long stated that he told the tech people to create accounts for themselves with secret passwords to ensure accountability.

¶ 54 Long acknowledged he directed Tye to buy wireless security cameras prior to a Board meeting, but stated he did not inform the Board because he did not want to cause a "ruckus." Long denied misrepresenting to the Board that the cameras were purchased for security. According to Long, threats had been made at a prior forum hosted by the Board and there were instances of yelling and finger-pointing, but there was only one person recording the meetings. Long stated that he told Tye not to record the meeting because there was no public announcement that the meeting would be recorded. Long testified that Tye said they could not record the meeting because of wireless interference with security cameras in the District warehouse. Long claimed he saw a USB memory stick attached to the DVR, which disappeared after Long went to the restroom; another tech person denied removing it. Long searched the DVR for a recording of the meeting, but found none. Long denied telling Tye to copy the DVR's contents to a DVD and using the phrase "scrub the disc."

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¶ 55 Long acknowledged he directed the purchase of telephone call tracking software, as part of long-range planning for the District's telecommunications needs. Long denied purchasing the software to monitor calls made by his secretary or the union representative. Long stated the software worked for only two weeks. Long added the system stopped working after he saw Ali and a Sound Incorporated employee in his office. Long said his copy of the PC Anywhere software needed to run the system disappeared from his closet. Long did not recall telling the Board the telephone tracking system had been purchased by a prior superintendent.

¶ 56 Long denied telling anyone that he purchased the telephone tracking system because he believed Weil was undermining him with the Board. Long stated Weil was a longtime Burbank resident who knew Board members and it would have been pointless to monitor her calls because she could have telephoned, emailed or faxed information from her home.

¶ 57 Long also denied directing that a former employee not be recalled in retaliation for the former employee's support of a former principal during a Board meeting. Long stated he did not know to which former employee the charge referred.

¶ 58 Long further denied telling employees he would ruin their pensions, employment and ability to find future employment. Long added it appeared to him there were corrupt individuals acting in collusion to sue the District and that the accusation was defamatory. Long stated the claims he threatened anyone limb by limb also were libel or slander.

¶ 59 Moreover, Long testified that he did not accuse two technology department employees of stealing his hard drive, but did meet with them after they installed software on his office computer that would back up information to storage on the Internet without his authorization.

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¶ 60 Long denied holding excessive meetings with Krsak in her capacity as union representative to attempt to intimidate or coerce her in the performance of her duties. Long stated he did briefly inquire whether Krsak made union-related telephone calls all day on a particular day.

¶ 61 Long testified the District used private investigators on residency and workers' compensation cases. Long added that when he subpoenaed the tape of a closed Board meeting, it would prove that someone else told the Board it was a residency case. Long testified the firm was hired outside the normal process to follow the former director of buildings and grounds, who Long said was caught with thousands of dollars of school equipment.

¶ 62 Long denied disparaging Board members, their spouses and residents. Long stated Wagner and Ali made disparaging comments and he told them to knock it off. According to Long, he did not want to hear it and he knew someone was eavesdropping on his office. Long denied referring to Board members as evil, but stated he thought some evil things took place.

¶ 63 Long testified that the discussion regarding whether the female technician had a breast augmentation occurred in 2009, not 2005, and that the other administrator did not make such comments. Long believed Wagner and Ali falsely accused the woman of saying false things.

¶ 64 Long denied pointing the pellet gun at Weil, but acknowledged firing it into his office. Longer confirmed the incident in which Wagner ripped a piece of tape from his chest in front of Weil, but stated Wagner – a former heart attack victim – later explained he had been faking a heart attack. Long denied disparaging Weil during her chemotherapy. Long claimed Weil

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harassed him, but he could not fire her because she knew everyone on the Board. Long claimed the changes to the classroom lease were necessary, but Weil refused to make them.

¶ 65 Moreover, Long denied directing Ambre to allow the uncertified nurse's aide to monitor the student's blood pressure. Long also denied causing Wagner to obtain a revised physician's order allowing the aide to monitor the student.

¶ 66 Regarding the claim that he created a false claim of sexual harassment by a contractor to remedy union issues that arose on the project, Long testified that he asked the woman (a District technology employee) whether everyone had been treating her okay. According to Long, the woman responded "something along the lines of well, okay." Long said he asked whether there were any whistles, comments and such. Long testified that she replied there was not too much. Long stated he went to the construction manager because "not too much" or "for the most part" is not good enough.

¶ 67 Long then sought a continuance, due to a cheek infection that was swelling and causing his nose to run. After an argument involving counsel for both sides and Board members, the hearing continued. Long stated that on April 1, 2008, he attached bungee cords to his pals' doors, but not to his own. Long had not heard of the incident involving Weil and the bungee cord.

¶ 68 Long admitted stating his laptop computer was at home when it was in his car trunk. Long explained he wanted to copy files on the computer to defend himself from the charges against him. Long did not feel that the Board's attorney had any right to access his car.

¶ 69 The minutes for the Board's December 2008 meeting directed Long to submit a boundary proposal for the Fry school the following month. Long admitted he did not submit a proposal

until May 27, 2009. Long testified that he complied with the Board's directive to supply swipe-in reports to ensure he arrived by 7:45 a.m. daily while working on the Fry project. However, Long believed he was harassed by such requirements.

¶ 70 Following the close of evidence and closing statements by counsel for both sides, the Board closed the hearing. The Board reconvened in open session at 3:48 a.m. on October 23, 2009. The Board found a preponderance of evidence to support charges 1, 2, 4, 5, 6, and 7 stated in the Board's letter outlining reasons for Long's discharge. The Board voted to allow Long to tender his immediate resignation on terms acceptable to the Board, stating that if he did not resign, he would be discharged for cause. On October 30, 2009, following the exchange of proposals by both sides, the Board dismissed Long as superintendent.

¶ 71 Circuit Court Review

¶ 72 On November 12, 2009, Long filed a complaint in the circuit court of Cook County for review of the Board's decision pursuant to common law writ of *certiorari*. On July 19, 2010, following briefing and argument, the circuit court remanded the matter to the Board for new and complete findings of fact and conclusions of law, but retained jurisdiction and set a status hearing for September 13, 2010. On that date, the Board filed its findings of fact and conclusions of law with the circuit court. Long also prepared answers to the Board's findings and conclusions. On October 19, 2010, following a hearing, the circuit court dismissed Long's complaint with prejudice. On November 18, 2010, Long filed a timely notice of appeal to this court.

¶ 73

## DISCUSSION

¶ 74

### I. Jurisdiction

¶ 75 Initially, we address the issue of jurisdiction. The issue is whether Long waived his right to all judicial review in Illinois courts, where Long waived his right to review under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2006)) by entering into multi-year, performance-based contract with the District under the Code.

¶ 76 The Board argues Illinois courts lack jurisdiction to review its dismissal of Long under section 10-23.8 of the Code (105 ILCS 5/10-23.8 (West 2010)). Whether an agency action is reviewable is an issue of statutory construction. *Outcom, Inc. v. Illinois Dept. of Transportation*, 233 Ill. 2d 324, 332 (2009). "Courts must consider whether the statute which confers power on the agency to act indicates that the legislature intended the agency's decisions to be reviewable." *Id.* at 332-33. The legislature's intent is clear where the agency's enabling statute expressly provides for review under our Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2006)). In other instances, the enabling statute does not adopt the Administrative Review Law and provides no other method for review; in such instances, common law *certiorari* survives as an avenue of review. *Id.* Most agency actions are presumed reviewable, but where " 'there is a statutory bar to review or if statutory language commits the agency decision to unreviewable agency discretion,' no presumption of reviewability arises." *Id.* (quoting *Hanrahan v. Williams*, 174 Ill. 2d 268, 273 (1996)). In addition to the language of the statute, we consider the structure and objectives of the statutory scheme and whether the standards exist to support review and the

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nature of the action involved. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 497-98 (1988).

¶ 77 The Board argues the circuit court lacked jurisdiction to review its decision, based on section 10-23.8 of the Code, which provides:

"After the effective date of this amendatory Act of 1997 and the expiration of contracts in effect on the effective date of this amendatory Act, school districts may only employ a superintendent under either a contract for a period not exceeding one year or a performance-based contract for a period not exceeding 5 years.

Performance-based contracts shall be linked to student performance and academic improvement within the schools of the districts. No performance-based contract shall be extended or rolled-over prior to its scheduled expiration unless all the performance and improvement goals contained in the contract have been met. Each performance-based contract shall include the goals and indicators of student performance and academic improvement determined and used by the local school board to measure the performance and effectiveness of the superintendent and such other information as the local school board may determine.

By accepting the terms of a multi-year contract, the superintendent waives all rights granted him or her under Sections 24-11 through 24-16 of this Act only for the term of the multi-year contract. Upon acceptance of a multi-year contract, the superintendent shall not lose any previously acquired tenure credit with the district."

105 ILCS 5/10-23.8 (West 2010).

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In turn, section 24-16 of the Code (105 ILCS 5/24-16 (West 2010)) provides:

"The provisions of the Administrative Review Law, and all amendments and modifications thereof and the rules adopted pursuant thereto, shall apply to and govern all proceedings instituted for the judicial review of final administrative decisions of the hearing officer for dismissals pursuant to Article 24A of this Code or of a school board for dismissal for cause under Section 24-12 of this Article. The term 'administrative decision' is defined as in Section 3-101 of the Code of Civil Procedure."

Thus, the Code expressly adopted the provisions of the Administrative Review Law, but superintendents who sign a multi-year contract waive the application of that law to judicial review of a dismissal for cause.

¶ 78 The Board also notes that section 10-23.8 of the Code plainly states, with regard to a superintendent's multi-year contract, that the formulation of goals, indicators of student performance and academic improvement, as well as the manner in which these objectives are to be measured, is left explicitly and exclusively to the local school board's determination. See *Board of Education of Proviso Township High School District No. 209 v. Jackson*, 401 Ill. App. 3d 24, 33 (2010). The Board further notes the standard of review for a writ of *certiorari* and actions under the Administrative Review Law is essentially the same. See *Sroga v. Personnel Board*, 359 Ill. App. 3d 107, 110 (2005). The Board thus argues that *certiorari* review would defeat the legislative intent that superintendents waive rights when signing a multi-year contract.

¶ 79 However, a statutory waiver of the Administrative Review Law is not the same as a statutory bar of *all* judicial review. Section 10-23.8 of the Code, viewed in the context of the

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Code as a whole, shows a legislative intent that the firing of a superintendent under a multi-year contract be governed by the terms of the contract instead of statutory tenure rules. A contract should be interpreted as a whole, giving meaning and effect to each provision thereof. *E.g.*, *Bjork v. Draper*, 381 Ill. App. 3d 528, 541 (2008).

¶ 80 In this case, the contract provided Long could be discharged for cause, based on conduct substantially detrimental to the best interest of the District, defined as being irremediable, egregious conduct or involving moral turpitude. This court has previously found such language supports judicial review. See, *e.g.*, *Arroyo v. Chicago Transit Authority*, 394 Ill. App. 3d 822, 829 (2009); *Bono v. Chicago Transit Authority*, 379 Ill. App. 3d 134, 142 (2008). The contract also entitled Long to written reasons for discharge, notice and a hearing before the Board on the causes for discharge at which Long could be represented by counsel. Such terms are consistent with administrative due process, which requires a definite charge, adequate notice, and a full, impartial hearing. *E.g.*, *Walsh v. Champaign County Sheriff's Merit Comm'n*, 404 Ill. App. 3d 933, 938 (2010). The contract further provided that the Board could not arbitrarily or capriciously call for the dismissal of the superintendent. The requirement that a dismissal not be arbitrary and capricious is consistent with the lowest standard of administrative review, often equated to an abuse of discretion. *E.g.*, *Pollachek v. Department of Professional Regulation*, 367 Ill. App. 3d 331, 342 (2006) (discussing *Greer*, 122 Ill. 2d at 496-97). If the parties intended to bar judicial review, the contract would not have provided termination for cause with specific definitions, required a due process hearing and referred to a generally accepted standard of

administrative review. Thus, we conclude Illinois courts have jurisdiction to review Long's dismissal.

¶ 81

## II. Due Process

¶ 82 Long argues he was denied his due process right to an impartial hearing. Generally, as this court noted in *Danko v. Board of Trustees of City of Harvey Pension Board*, 240 Ill. App. 3d 633, 641 (1992):

"The function of the circuit court on judicial review of an administrative determination is not to reweigh the evidence, but merely to determine if the conclusion is against the manifest weight of the evidence. *Collura v. Board of Police Commissioners*, 113 Ill. 2d 361, 372-73 (1986). However, this deferential standard is not controlling where the Board is prejudiced or biased against the claimant and incapable of giving him a fair hearing. *Carrao v. Board of Education*, 46 Ill. App. 3d 33, 39 (1977). In order to establish the bias or prejudice of an administrative decision maker, a claimant must show more than the mere possibility of bias or that the decision maker is familiar with the facts of the case. *Collura*, 113 Ill. 2d at 370; *Grissom v. Board of Education*, 75 Ill. 2d 314, 320 (1979); *Batka v. Board of Trustees*, 186 Ill. App. 3d 715, 721 (1989); *Carrao*, 46 Ill. App. 3d at 39. The claimant must demonstrate that the decision maker is not 'capable of judging a particular controversy fairly on the basis of its own circumstances.' *Grissom*, 75 Ill. 2d at 320 (citing *Hortonville Joint School District v. Hortonville Education Association*, 426 U.S. 482, 493 (1976)); accord, *Carrao*, 46 Ill. App. 3d at 39. Although there is a presumption that administrative decision makers are 'men of conscience and

intellectual discipline' who are able to objectively and fairly judge each particular case on its own facts and set aside their own personal views (*Grissom*, 75 Ill. 2d at 320), a claimant may show bias or prejudice '\*\*\* if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it.' *A.R.F. Landfill, Inc. v. Pollution Control Board*, 174 Ill. App. 3d 82, 89 (1988). Additionally, if one decision maker on an administrative body is not completely disinterested, his participation 'infects the action of the whole body and makes it voidable.' *Board of Education v. Regional Board of School Trustees*, 127 Ill. App. 3d 210, 213 (1984) (citing *Naperville v. Wehrle*, 340 Ill. 579, 581 (1930).) 'Interest' does not necessarily mean a pecuniary interest, '[i]t need only be an interest which can be viewed as having a potentially debilitating effect on the impartiality of the decision maker.' *International Harvester Co. v. Bowling*, 72 Ill. App. 3d 910, 914 (1979)."

Long raises a number of arguments alleging bias, which we address in turn.

¶ 83 A. Prejudgment

¶ 84 Long first argues the Board was biased because it suspended him prior to dismissing him. However, familiarity with the facts of a case gained by an agency in the performance of its statutory role does not disqualify a decisionmaker. *Grissom*, 75 Ill. 2d at 320. Due process requirements do not disqualify a school board from deciding to terminate employment where the board had been involved in earlier events upon which its present decision was based. *Hortonville Joint School District No. 1*, 426 U.S. at 496-97; *Gilliland v. Board of Education of Pleasant*

*View Consolidated School Dist. No. 622 of Tazewell County*, 67 Ill. 2d 143, 155-56 (1977). Due process is not denied where investigative, judicial and prosecutorial functions are combined in one agency. *Prato v. Vallas*, 331 Ill. App. 3d 852, 870 (2002); *Crystal Food & Liquor, Inc. v. Howard Consultants, Inc.*, 276 Ill. App. 3d 504, 509 (1995). Some mixture of judicial and prosecutorial function is acceptable in administrative proceedings, provided the person performing the quasi-prosecutorial function is not also a member of the tribunal. *Crystal Food & Liquor*, 276 Ill. App. 3d at 509. Long suggests the Board performed a quasi-prosecutorial function, but the record shows that function was performed by an attorney for the District. Moreover, as the Board notes, the process Long received was that to which he was entitled under the contract, waiving any entitlement to a wholly neutral decisionmaker. See, e.g., *Batagiannis v. West Lafayette Community School Corp.*, 454 F.3d 738, 741 (7th Cir. 2006). Thus, Long cannot show a due process violation simply from the fact that it exercised its lawful role in suspending Long before dismissing him. Long's claims that the Board was biased because he was charged with surreptitiously recording conversations with Board members and not following the Board's orders, and because the Board heard testimony that Long disparaged the Board and some of their spouses, fail for the same reasons. *Gilliland*, 67 Ill. 2d at 155-56.

¶ 85 Long cites a newspaper article quoting a Board member stating, "We've made a decision." However, this statement referred to Long's suspension, not his dismissal. Long also refers to quotations from the District's attorney, who is separate from the Board. Long further refers to the Board serving as hearing officers, but the record shows Long's hearing had an attorney serving as the hearing officer.

¶ 86 Long notes that various Board members had previously voted not to renew his contract. This does not establish bias sufficient to support a due process claim. *Hortonville Joint School District No. 1*, 426 U.S. at 496-97; *Gilliland*, 67 Ill. 2d at 155-56.

¶ 87 Long next complains the Board prejudged his case because one witness who provided the basis for some of the charges against him did not complain to the Board until after he was suspended. Long forfeits the argument for lack of citation to authority. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Moreover, we have found no authority holding the Board could not consider additional charges when considering a dismissal, provided Long had proper notice of them prior to the hearing on his dismissal.

¶ 88 Long argues the Board demonstrated it prejudged his case because it issued its decision in less than two hours after the close of the hearing. Again, Long cites no authority holding that a short deliberation is proof of bias.

¶ 89 **B. Procedural Rulings**

¶ 90 Long next argues the Board's bias may be shown by its procedural rulings during the hearing. Long first points to the Board's denial of his requests for a continuance. Long cites no authority regarding bias proven from the denial of a continuance. Generally, the decision to grant or deny a continuance rests within the broad discretion of the Board and will not be a basis for reversal absent prejudice to the plaintiff. See, e.g., *Bickham v. Selcke*, 216 Ill. App. 3d 453, 459-60 (1991). Where the tribunal has acted within its discretion in denying a continuance, a claim of bias will fail. See *Korbelik v. Staschke*, 232 Ill. App. 3d 114, 120 (1992).

¶ 91 In this case, Long first moved for a continuance as the hearing commenced, claiming a February 2009, accident left him with an organic brain syndrome affecting his ability to process information rapidly. Long supplied a doctor's note dated September 14, 2009, stating Long was unable to work in his job as a result of the condition. However, Long's attorney conceded Long continued to work after the accident. Long points to various portions of the transcript to support his claim that he had trouble remembering the details of the charge against him to claim he could not assist his attorney in refuting the testimony against him or give meaningful testimony himself. Long does not explain what assistance he would have offered or what testimony he would have given, had the continuance been granted. Based on the record before us, the denial of Long's last-minute request was not arbitrary or biased.

¶ 92 Long again moved for a continuance at 10:40 p.m. Although Long's brief claims the Board adamantly refused to continue the hearing, the record reflects that during a recess, Long's attorney had agreed to continue the hearing while he waited for his wife to pick him up.

¶ 93 Long made a third request for a continuance on the second night of the hearing. Long asserted he had some sort of infection growing in his cheek. However, Long's brief does not identify how the Board's denial of his continuance request prejudiced his case. Again, Long does not explain what assistance he would have offered or what testimony he would have given had the continuance been granted. Thus, the Board did not abuse its discretion and Long's claims of bias in this regard fail.

¶ 94

### C. Pecuniary Interest

¶ 95 Long argues the Board had a pecuniary interest in his termination. Long notes " 'the principle of disqualification applies even if the pecuniary interest is only an indirect outgrowth of public official's desire to protect official funds.' " *E & E Hauling, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586, 596 (1983) (quoting *Meyer v. Niles Township*, 477 F. Supp. 357, 362 (N.D. Ill. 1979)). Long notes that in June 2009, he announced his intent to retire early. Long asserts the Board would save a great deal of money by terminating him as superintendent, but again cites no authority and nothing in the record to support this claim. In sum, Long fails to show he was denied his due process right to an impartial hearing.

¶ 96

### III. The Merits

¶ 97 Lastly, Long argues the Board's decision was against the manifest weight of the evidence. However, as noted earlier, the parties agreed only that a dismissal would not be arbitrary and capricious. Again, this standard is often equated to an abuse of discretion. *E.g., Pollachek*, 367 Ill. App. 3d at 342 (discussing *Greer*, 122 Ill. 2d at 496-97). An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004); *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). "[I]t is not the function of a reviewing court to reweigh the evidence or assess the witnesses' credibility; and 'if there is evidence of record that supports the agency's determination, it must be affirmed.' " *Arroyo*, 394 Ill. App. 3d at 830 (quoting *Bono*, 379 Ill. App. 3d at 143).

¶ 98 In this case, the Board discharged Long for cause, defined by the contract as acts or omissions which are irremediable or involve egregious conduct or moral turpitude. The

two-pronged test for determining whether a cause for dismissing a teacher was irremediable is: (1) whether damage was done to students, the faculty or the school; and (2) whether the conduct could not have been corrected had superiors warned the individual charged. *Gilliland*, 67 Ill. 2d at 153. The dismissal of a superintendent, who occupies a higher place in the education hierarchy, implicates additional concerns. The dismissal of a superintendent may be affirmed where he or she: (1) has been the subject of much controversy, conflict and dissension, resulting in a condition detrimental to the best interests of the students in the district's schools; (2) actively participated in fomenting such controversy, conflict and dissension; or (3) failed to cooperate properly with the Board and his subordinate administrators and teachers. See, e.g., *Keyes v. Board of Education of Maroa Community Unit School Dist. No. 2*, 20 Ill. App. 2d 504, 507 (1959). Individual acts, separately remediable, may be irremediable when considered in totality. *Board of Education of City of Chicago v. Harris*, 218 Ill. App. 3d 1017, 1023 (1991). Cruel, immoral, negligent, or criminal conduct is irremediable *per se*. *Younge v. Board of Education of City of Chicago*, 338 Ill. App. 3d 522, 533 (2003). The determination of whether a cause for dismissal is irremediable is a factual question involving the exercise of judgment and, therefore, lies within the discretion of the Board. *Prato*, 331 Ill. App. 3d at 864.

¶ 99 In his brief, Long mounts a point-by-point response to the charges against him. Long's responses are largely based on the premise that his testimony was credible and the testimony of the Board's witnesses was not. However, the Board found the testimony from Weil, Laff, Ali, Tye, Krsak, Ambre, Antkiewicz, and Mendoza to be credible based on substance and demeanor, and found Long's testimony was not credible to the extent it conflicted with the testimony of

these witnesses. Long cites *Smith v. O'Keefe*, 9 Ill. App. 3d 814, 816-18 (1973), for the proposition that this court is not required to believe the questionable testimony of one witness when it is contradicted by corroborated evidence in the record. However, the cited portion from *Smith* does not expressly stand for this proposition, but merely discusses the evidence in that particular case and concludes a board's decision was against the manifest weight of the evidence. *O'Keefe*, 9 Ill. App. 3d at 816-18.

¶ 100 However, even applying that standard, the example Long cites is unpersuasive. Long argues that Weil's testimony about the pellet gun incident was not credible and contradicted by Antkiewicz. Long notes that Antkiewicz testified it was a clear plastic gun, which Long claims contradicts Weil's testimony that it looked like the "real deal." Long's argument presumes that Weil would have a good look at the gun as it was pointed at her, and that pointing a pellet gun at someone should not provoke fear or concern in those targeted. Long also argues that Antkiewicz did not testify that Long pointed the gun at Weil, which is not contradiction or corroboration.

¶ 101 Reviewing the record before us, there is ample evidence from which the Board could draw inferences and conclude Long had engaged in the conduct that ultimately formed the basis for his dismissal. As the Board's decision may rest on the totality of Long's conduct, we will not miss the forest for the trees in an attempt to catalog each individual charge.

¶ 102 Long conceded that both he and Wagner carried voice recorders. Long offered an explanation for his practice and claimed he always had consent, which the Board could choose to disbelieve in favor of Ali's testimony that Long would open his jacket and ask him to say something, a practice from which it could be inferred that Long was concealing his recorder.

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Long offers no explanation of Wagner's practices, other than denying he directed Wagner to eavesdrop on other employees' conversations, which the Board could choose to disbelieve in favor of the testimony that he and Wagner listened to recorded conversations and chuckled about them. Long explained he and Wagner laughed when Wagner changed the speed of the recording, which the Board could choose to disbelieve in the light of testimony from various witnesses of Long's ongoing concerns that other employees were undermining him.

¶ 103 Long admitted that he directed the purchase and installation of wireless cameras in the Board's meeting room. Long claimed he did so only to record public meetings for security purposes. However, as Long notes, the public meetings were already being videotaped. The Board could choose to disbelieve Long's explanation in favor of the testimony of Long's ongoing concerns that other employees were undermining him, particularly in light of Long's admission that he did not inform the Board he was having cameras installed. The Board could choose to believe Tye's testimony that Long instructed him to leave the DVR running, copy its contents to a DVD, and then erase its contents.

¶ 104 Further, Long conceded he spent \$3,456 on telephone tracking software. The Board chose to believe Laff's testimony that Long did so to monitor Weil's telephone calls, rather than Long's testimony that he was assessing the District's telecommunications needs. Even assuming *arguendo* the system stopped functioning after a few weeks (and the record is silent as to whether the Board so assumed), the Board could reasonably infer Long did not seek to fix the system to avoid attracting attention to the effort. Again, the Board could evaluate this testimony in light of

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the testimony that Long was concerned that Weil and others were undermining him and leaking information to the Board.

¶ 105 Weil and Ali testified to instances of Long's abusive and threatening behavior. Long denied these claims, but the Board accepted their testimony over his. The Board could choose to believe Weil's testimony of repeated instances of Long and his assistant being cruel to her before and during her treatment for breast cancer. Given the totality of the evidence of Long and Wagner's treatment of Weil, the Board could choose to disbelieve that the tape-pulling "joke" was not directed at Weil or that Long told Wagner to explain otherwise.

¶ 106 Weil testified that Long's placing of a principal on immediate administrative leave was damaging to the students and staff of the school. Laff testified that she questioned Long's decision at the time. Weil testified that she sought therapy to address the stress of working under Long; Laff testified that she lost sleep. Given the evidence that both Weil and Laff worked with Long over a substantial period of time, the Board could choose to conclude Weil and Laff corroborated each other on these points.

¶ 107 The Board could have reasonably concluded that Long falsely accused subordinates of stealing his hard drive. Long denies the incident, yet also argues that any such claim would have been made in good faith. Long does not explain how he knew the drive was located behind books on top of Weil's file cabinet. The Board could deem this as evidence that Long fomented controversy, conflict and dissension and failed to cooperate with administrators and teachers.

¶ 108 The Board found that Long hired a private investigator to surveil the director of buildings and grounds and directed the investigator to describe the investigation as involving residency so

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that the expenditure would go unnoticed. Long testified that the investigation revealed the subject spent an entire morning with others at a local breakfast restaurant, but Long dropped the matter because it was not the information he sought. Long claimed the subject was caught with thousands of dollars of school equipment, but offered no support for his assertion. While Long claimed the District hired private investigators on certain occasions, the Board is in a better position than this court to assess the ordinary spending policies of the District. Moreover, Long's response does not address the claim the investigation was not properly authorized.

¶ 109 Long admitted misrepresenting the location of his laptop computer to a Board member upon his suspension. Long explained that he had files on the computer that might aid his defense. This does not alter the fact of the dishonesty or that Long retained unauthorized control over District property. Moreover, the Board could infer that Long had the opportunity to delete inculpatory information from the computer.

¶ 110 Long admitted he failed to provide a timely boundary proposal for the Fry school and to provide the Board with the credentials of technology department employees, though he blames the latter failure on Wagner, to whom he delegated the task.

¶ 111 Finally, Long contends the Board failed to consider his medical condition. The record shows the vast majority of the conduct at issue occurred prior to Long's February 2009 injury. Moreover, Long continued to work after the injury. There is no evidence that Long claimed his performance was affected by a disability prior to the dismissal proceedings initiated against him. The Board had the opportunity to observe the degree of Long's asserted disability at the hearing.

¶ 112 Based on the record before the court, a reasonable factfinder could find not only that Long engaged in the major acts and omission forming the basis of his discharge, but also find that Long created an ongoing, hostile work environment of conflict, dissension and paranoia detrimental to the District and failed to cooperate properly with the Board and his subordinate administrators and teachers. Although Long was not given an opportunity to remedy his behavior, the Board could reasonably find the incidents described involved cruel, immoral, or possibly criminal conduct, and thus, were irremediable *per se*. Moreover, based on the record before us, the Board could reasonably find the misconduct described was also egregious. Thus, we find the Board did not abuse its discretion in discharging Long as superintendent.

¶ 113

#### CONCLUSION

¶ 114 In sum, the circuit court had jurisdiction to review Long's complaint. Also, the Board did not deny Long an impartial hearing regarding his dismissal as superintendent. Finally, the Board's decision to discharge Long was not an abuse of discretion. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 115 Affirmed.