

No. 1-11-2558

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

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SUNDAY UWUMAROGIE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 10CH30676
CHICAGO PUBLIC SCHOOLS, CHERYL	)	
J. COLSTON, Director of the Department of	)	
Human Resources Office of Employee Relations,	)	The Honorable
DEBORAH ESPARZA, Chief Area Officer, and	)	Nancy J. Arnold,
ALLAN N. GROSSMAN, Hearing Officer,	)	Judge Presiding.
	)	
Defendants-Appellees.	)	

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Circuit court order upholding an administrative decision disciplining plaintiff for committing acts of misconduct during his tenure as a school principal affirmed where the plaintiff was afforded a fair and impartial hearing and where the administrative agency's findings were supported by the evidence.

¶ 2 Plaintiff Sunday Uwumarogie appeals an order of the circuit court upholding the decision

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of Chicago Public Schools (CPS) to suspend him for 15 days after finding that he violated several rules set forth in the CPS Employee Discipline and Due Process Policy (Policy). On appeal, plaintiff contends that the circuit court erred in upholding CPS's decision, arguing that the proceedings failed to accord with the requirements of due process and that CPS's findings and conclusions were not supported by the evidence. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3

### I. BACKGROUND

¶ 4 Plaintiff became the principal of Eugene Field Elementary School (Field School) in September 2008. At a June 24, 2009, meeting of the Board of Education of the City of Chicago (Board), Dolores Burdick, a teacher at Field School, addressed the Board members and spoke about the "educational crisis" that she believed existed at Field School. Ms. Clark and Ms. Turner, two other teachers from Field School, stood with and supported Burdick while she addressed the Board; however, neither teacher spoke before the Board individually. Marilyn Stewart, president of the Chicago Teacher's Union (CTU or Union), also addressed the Board and spoke briefly in support of Burdick and the other Field School teachers.

¶ 5 Before the start of the 2009-2010 school year, plaintiff presided over a mandatory Field School all-staff development meeting on September 4, 2009. During that meeting, plaintiff showed a video of the statements that Burdick and Stewart had made about Field School during the June 24, 2009, Board meeting. Plaintiff then showed Field School staff members a power-point presentation he had created about the importance of staff cooperation, "knowledge" and "culture." One of the slides was entitled "Displaced Teachers" and depicted six former

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employees identified as employees "A" through "F" who lacked appropriate culture and no longer taught at Field School. No former employees were named, but six employees had been dismissed the previous school year.

¶ 6 On September 10, 2009, following the Field School all-staff meeting, Dolores Burdick wrote a letter to the Chicago Teacher's Union complaining about plaintiff's actions during the recent all-staff meeting. Burdick alleged that plaintiff showed a video of her statements before the Board and gave the power-point presentation to punish her for publicly speaking out against him and "to intimidate the new teachers, to make them mistrust the [U]nion, and to keep them from speaking up." She further alleged that plaintiff called Union President Marilyn Stewart a "liar" and disparaged Union activity.

¶ 7 Upon receipt of Burdick's complaint, Deborah Esparza, chief area officer of the Department of Human Resources Office of Employee Relations, initiated disciplinary proceedings against plaintiff and issued him a written Notice of a Pre-Disciplinary Hearing. In her detailed written letter, Esparza stated as follows:

"Dear Mr. Uwumarogie:

A pre-discipline hearing is scheduled for you \* \* \*. The pre-discipline hearing concerns allegations that you violated the following sections of the Employee Discipline and Due Process Policy, Board Report No. 04-0728-PO1:

1) Act of Misconduct Section 4-16 that prohibits retaliating against an employee; (a) who reasonably and in good faith has filed a grievance, charge, or complaint regarding the terms and conditions of employment; or (b) against an

employee who has properly testified, assisted or participated in any manner in an investigation, proceeding or hearing regarding such grievance, charge or complaint; and

2) Act of Misconduct Section 4-26 that prohibits violating School rules, Board rules, policies or procedures that result in behaviors that seriously disrupt the orderly educational process in the classroom, in the school, and may occur on or off the school grounds or assigned work location.

These sections of the Acts of Misconduct were violated based upon the following allegations:

A) On or about September 4, 2009, you conducted a staff meeting. During that staff meeting, you did the following:

- 1) You showed portions of the Board's June 2009 monthly meeting in which some of your teachers and union representatives publicly complained about Eugene Field Elementary School and your administration;
- 2) After showing the video, you then stated that the teachers and union representatives were 'liars.'
- 3) You then made disparaging comments about the Chicago Teachers Union and requested that the staff review who they selected as their school union delegate;
- 4) You further stated to your staff words to the effect that when you

complain about Eugene Field Elementary School or me, you hurt only yourself [implying losing one's job];

5) You then presented a chart rating six teachers who were no longer assigned to Eugene Field Elementary School. You rated these teachers regarding their 'knowledge' and 'culture.' You stated words to the effect that teachers who do not cooperate, collaborate, have teamwork, or have the wrong culture would not be allowed to stay at Eugene Field Elementary School;

6) Your statements made during the September 4, 2009 staff meeting had the effect of threatening retaliation against any staff employee that engaged in protected union activity or spoke out on issues of public concern;

7) Your statements made during the September 4, 2009 staff meeting created a chilling effect on staff members engaging in protected activities."

¶ 8 Thereafter, CPS commenced a formal investigation into the allegations against plaintiff. Harold Ardell was the investigator assigned to the case. During the course of his investigation, Ardell conducted numerous witness interviews, including interviews with Dolores Burdick as well as with a number of other Field School teachers who had been present at the September 4, 2009, Field School all-staff meeting. Ardell also interviewed plaintiff. During that interview plaintiff acknowledged showing his faculty and staff the video of Burdick's statements before the Board as well as a power-point presentation, but denied that his motives in doing so were to intimidate or threaten Burdick or any other teachers. Instead, plaintiff explained that his motive

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was simply to provide his staff with information about what was being publicly said about Field School. In addition to witness interviews, Ardell also reviewed documentary evidence, including a letter of support signed by over twenty Field School staff members on behalf of plaintiff. In the letter, the Field School employees denied that plaintiff had called CTU President Marilyn Stewart a liar, slandered teachers who had recently left their employ at Field School or caused them to feel intimidated by his actions during the all-staff meeting. Investigator Ardell also reviewed slides contained in plaintiff's power-point presentation.

¶ 9 After reviewing the evidence obtained during the course of his investigation, Ardell made a number of written "investigatory findings." In his written report, Ardell stated:

"Credible evidence **does exist** to support the allegation that on Friday, September 4, 2009, Mr. Sunday Uwumarogie, the principal of Field School, played a video of the June 24th Board meeting presentations of Ms. Dolores Burdick and Ms. Marilyn Stewart for the purpose of instilling fear in those employees who would otherwise voice critical opinions of him, resulting against pitting one group of employees against another.

Credible evidence **does exist** to support the allegation that on Friday, September 4, 2009, Mr. Uwumarogie called Ms. Marilyn Stewart 'a liar' after showing a video of a June 24th Board meeting at which Ms. Stewart spoke about an educational crisis at the Field School.

Credible evidence **does exist** to support the allegation that during a September 4, 2009, faculty meeting, Mr. Uwumarogie gave a power-point presentation featuring former Field School employees for the purpose of instilling fear in those who would otherwise

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voice an opinion different from his own.

\* \* \*

Credible evidence **does exist** to support the finding that near the end of September 2009, Mr. Uwumarogie possessed prior knowledge of the intent of certain [Field School staff] members having to compose a letter in support of him and gave them the go-ahead, then denied either prior knowledge or complicity." (Emphasis in original)

¶ 10 On February 5, 2010, following Ardell's investigation, a pre-discipline hearing was held, the transcripts of which do not appear in the record on appeal. Following the pre-disciplinary hearing, Deborah Esparza issued plaintiff a written Notice of Disciplinary Action. Esparza's written notice provided as follows:

"Dear Dr. Uwumarogie:

A pre-discipline hearing was held on February 5, 2010, at which time you were represented by counsel and had a full opportunity to present evidence regarding the allegations set forth against you in a notice of pre-disciplinary hearing form that had previously been served on you. After carefully reviewing all documents submitted and statements made, I find that you violated \* \* \* sections [4-16 and 4-26] of the Employee Discipline and Due Process Policy \* \* \*.

These sections of the Acts of Misconduct were violated based upon the following actions:

A) On or about September 4, 2009, you conducted a staff meeting. During that staff meeting, you did the following:

1) You showed video with certain segments of the June 24, 2009 Board meeting in which three Field teachers spoke about the 'educational crisis' at Field School. You also showed a portion of the Board meeting in which Marilyn Stewart spoke briefly in support of the teachers.

2) The weight of the evidence shows that after the video was over, you stated, 'Marilyn Stewart is a liar and she lied at the Board meeting,' or words to that effect. You went on to state that each staff member would have to judge the effectiveness of the CTU on your own, but then you opined that the current leadership of the CTU failed to protect teachers from losing their positions;

3) You then presented a power-point presentation. One part of the presentation defined the 'Quality of Staff' into two categories: (1) 'Knowledge' of the subject matter; and (2) 'school culture.' In this power-point presentation, you defined 'school culture' as 'cooperation' with the administration, among other things;

4) Another power-point slide had the heading, 'Displaced Teachers.' You listed six teachers, not by name, but by the letters A through F (notably six teachers were displaced from Field School at the end of the 2008-2009 school year). After each teacher, two categories were listed – Knowledge and Culture. In each category, you either placed a green or red coding system – green for good and red for bad. For some teaching categories,

the teachers either had all red, all green, one red or green in the 'culture' category, or one red or green in the 'knowledge' category;

5) The message you were attempting to convey to your staff was that even if you lack 'knowledge' of the subject matter, I can still work with you.

However, if you do not have the right 'culture' (i.e., the red coding), then I cannot work with you;

6) Overall, the purpose of your presentation of the video clip, negative comments about the CTU, and your power-point presentation was to send a message to your staff that if you speak out against me, you risk losing your job."

¶ 11 As a result of his violations of the two aforementioned provisions in the Policy, Esparza informed plaintiff that he would be suspended from his duties as Field School Principal for 15 days without pay.

¶ 12 After receiving Esparza's Notice of Disciplinary Action, plaintiff initiated proceedings to appeal his suspension. Allen Grossman was the hearing officer who presided over plaintiff's appeal hearing. At the hearing, CPS elected to "stand by the documentation that has been submitted to the Hearing Officer already." CPS did not call any live witnesses to testify.

Counsel for plaintiff did not raise any explicit objection to the documentation that was previously submitted by CPS, but merely pointed out that CPS did not provide any testimonial or other evidence to substantiate its claim that plaintiff's use of the tape of the June 2009 Board meeting was anything other than a neutral act, designed merely to inform his employees about what

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certain staff members were publicly saying about Field School. Plaintiff then called several witnesses to testify on his behalf.

¶ 13 Deborah Cummings, a curricular coordinator at Field School, testified that she had worked with plaintiff for six years and was his assistant principal at another school before he became the principal at Field School. She was also familiar with Dolores Burdick and had become aware that Burdick had made some disparaging remarks about Field School during a recent Board meeting. Cummings, however, had not seen a video recording of Burdick's statements, prior to the September 4, 2009, Field School all-staff meeting. She confirmed that plaintiff played the tape during the staff meeting, but indicated that "[t]here was absolutely nothing said in regards to the tape after the tape was played." She specifically confirmed that plaintiff never called Union President Stewart a liar or disparaged the effectiveness of union activity. Cummings also denied being intimidated by the tape, explaining that plaintiff "considers his faculty and his staff part of a family and, you know, if you have a family you believe in sharing information. So I viewed the tape as [plaintiff], as usual, just sharing information as he does in most of his meetings" because he "wants his faculty to be informed."

¶ 14 Cummings also denied that the videotape made her feel uncomfortable or uneasy or that any Field School teachers or staff members appeared stunned or upset by plaintiff's actions during the staff meeting. Cummings did confirm that plaintiff gave a power-point presentation after playing video footage of the Board meeting. She acknowledged that one slide referenced "displaced" teachers, but emphasized that no actual names of any of the six teachers who left Field School's employ the prior year were included in plaintiff's power-point presentation. In

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addition, plaintiff did not mention Burdick's name or speak to her directly during the all-staff meeting and Cummings did not observe any teachers or staff members avoid Burdick following plaintiff's presentation. After Cummings learned that Burdick had written a letter and complained to CPS about plaintiff, she confirmed that she wrote her own letter to CPS in support of him.

¶ 15 Natalia Reardon, a teacher at Field School, confirmed that she was shown a videotape of statements that Dolores Burdick and Marilyn Stewart had made at a recent Board meeting during the September 4, 2009, Field School all-staff development meeting. Reardon did not feel shocked or intimidated by plaintiff's use of the video and did not interpret plaintiff's actions as an effort to intimidate Burdick. She also did not remember plaintiff calling Union President Stewart a liar or speaking negatively about union activity. Reardon did recall that plaintiff gave a power-point presentation after playing the video, but she did not remember the specifics of the slides. She denied that she had felt intimidated by plaintiff's presentation. After learning that Burdick had written a letter to CPS complaining of plaintiff's actions during the all-staff meeting, Reardon confirmed that she joined a group of other Field School teachers in writing a letter in support of plaintiff. Reardon denied that Burdick's claims about plaintiff that she made in the letter were true. She specifically denied that any of the Field School teachers sat in stunned silence following plaintiff's presentation. Reardon further testified that she did not believe that plaintiff's actions had a "chilling effect" on members of the Field School faculty. She interpreted plaintiff's presentation as an attempt to be motivational. Reardon acknowledged that she spoke to investigators assigned to investigate Burdick's allegations, but testified that the investigators

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"yell[ed] and scream[ed] at" her, "made fun of" her, and "twist[ed] [her] words." She explained that it was evident that the investigators wanted her to say that plaintiff was aware of, and orchestrated the letter that members of his staff wrote in support of him to CPS.

¶ 16 Richard Carl James, a security officer at Field School, testified that plaintiff assigned him to maintain a presence in Dolores Burdick's classroom on a daily basis to "keep control and management in her room." He began this assignment in 2008, shortly after plaintiff became principal at Field School. Although there were only two security officers at Field School, James confirmed that he was exclusively assigned to Burdick's classroom. James was also present at the September 4, 2009, Field School all-staff meeting and viewed the video of the Board meeting where Burdick made public negative statements about Field School. James testified that plaintiff did not call CTU President Marilyn Stewart a liar after showing the video. He further testified that he was not intimidated by the video and that he did not interpret plaintiff's actions to be a threat against Burdick or an attempt to intimidate her. James confirmed that plaintiff did not address Burdick or refer to her by name at any time during the all-staff meeting. Following the video, James recalled that plaintiff did give a power-point presentation about "staff \* \* \*, knowledge, culture [and] education."

¶ 17 Plaintiff elected to testify and stated that he had worked in education for over 18 years prior to becoming principal of Field School in 2008. At the time that he arrived, plaintiff did not find that the teaching and leadership at the school were at the level that he expected and explained that he immediately made efforts to improve Field School and the academic achievements of its students. Prior to the start of the 2009-2010 school year, plaintiff

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acknowledged that he learned that Dolores Burdick had made negative statements about him and Field School at a recent Board meeting. Plaintiff subsequently obtained a videotape of the Board meeting to view. He then elected to show the video to his staff members at the September 4, 2009, Field School all-staff meeting. He explained that the purpose behind showing a video was to "share information with [his] staff." Plaintiff further explained: "I believe and it has been my practice that the foundation of a culture of collaboration, cooperation and team building is founded on sharing information so that everybody can have all the available information that the team can brainstorm and reflect on that information and then you can come up with a terms of approach dealing with that information. That is my motive and continues to be my motive why I share information with my staff." Plaintiff denied that he made any disparaging remarks about the content of the video either before or after playing the video for his staff members. He specifically denied calling CTU President Marilyn Stewart a liar or speaking to or about Dolores Burdick during the all-staff meeting. Plaintiff, however, did acknowledge that he told his faculty and staff to "make [their] own judgment of what [they] saw" on the videotape. He denied that there was anything that he said or did during the meeting that would have given Burdick the impression that he wanted to terminate her. He also denied speaking out against the two other Field School teachers who appeared with Burdick on the video. No members of his staff appeared upset or shocked during or after his all-staff meeting.

¶ 18 Plaintiff also acknowledged delivering a power-point presentation to his staff following the video. In that presentation he identified "knowledge" and "culture" as two characteristics that were important for his staff members to possess. Plaintiff explained that "knowledge" pertained

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to a teacher's understanding and mastery of school curriculum while "culture" referred to a teacher's ability to cooperate, collaborate and work as a member of a team. Plaintiff denied that he made any statement indicating that a teacher's failure to possess the requisite "culture" at Field School would lead to that teacher's termination. Although one of the slides of his presentation was captioned "Displaced Teachers," plaintiff denied that a portion of his presentation pertained specifically to six teachers who had recently left their employ at Field School. Plaintiff denied that his actions were intended to retaliate against Burdick for her negative statements to the Board.

¶ 19 Plaintiff did acknowledge that he considered Burdick a "disgruntled" employee and indicated that he became aware of her difficulties in maintaining control over her classroom shortly after becoming Principal of Field School in 2008. He also acknowledged informing his staff members that Burdick had lodged an official complaint against him after the all-staff meeting and explained that he shared that information with them because it was his "philosophy" to do so. Although he did not agree with Burdick's assessment that Field School was in the midst of an "educational crisis," plaintiff denied that he had a negative reaction toward her statements before the Board; rather, he was "neutral." Plaintiff reiterated that he did not initiate any disciplinary proceedings against Burdick or any other staff members as a result of the comments made before the Board.

¶ 20 After presenting the aforementioned evidence, plaintiff was informed in a letter dated June 16, 2010, by Cheryl Colston, Director of the Department of Human Resources Office of Employee Relations, that his appeal of his suspension had been denied.

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¶ 21 Plaintiff subsequently filed a complaint for administrative review in the circuit court on July 6, 2010. In pertinent part, plaintiff argued that the "hearing and decision \* \* \* constituted a denial of substantive due process of law" and that "[t]he findings of fact d[id] not support the charges made against [him]."

¶ 22 Following a hearing, the transcripts of which do not appear in the record, the circuit court upheld CPS's decision. In a brief written order, the court stated:

"This cause coming on for hearing, parties being present by counsel, the court having reviewed the pleadings and having heard argument, and being advised in the premises, the court determines that the decision below was not against the manifest weight of the evidence, and there was no violation of due process. It is hereby ordered that the decision of the Chicago Public Schools is affirmed."

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, plaintiff argues that the circuit court erred in upholding the decision of CPS to suspend him for 15 days as punishment for his violation of provisions of CPS's Employee Discipline and Due Process Policy. He argues that the hearing officer relied solely on hearsay evidence, namely Ardell's investigative report, to find that he violated several Policy provisions and that CPS thus "committed reversible error by denying [him] his due process right to an administrative hearing in which testimony of his accusers is presented under oath and subject to cross-examination."

¶ 26 CPS responds that plaintiff's due process rights were not violated by the hearing officer's

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consideration of Ardell's investigative report. CPS observes that plaintiff did not object to the admission and use of the report and argues that he "should not now be heard to complain that its admission violated his due process rights."

¶ 27 This appeal is governed by administrative review law. 735 ILCS 5/3-101 *et seq.* (West 2008). In accordance with administrative review law, this court reviews the decision of the administrative agency, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006); *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). "Agency determinations have historically been entitled to great deference due to an agency's experience and expertise in interpreting its governing statutes[,] rules and policies. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 529-30 (2005). On review, the "findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2010). A reviewing court will not reweigh the evidence or substitute its judgment for that of the administrative agency, and will not reverse an agency's factual findings unless they are against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 534. " 'An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *Marconi*, 225 Ill. 2d at 534, quoting *Abrahamson v. Illinois Department of Regulation*, 153 Ill. 2d 153 Ill. 2d 76, 88 (1992). Accordingly, if the record contains any evidence to support the agency's decision, that decision should be upheld. *Marconi*, 225 Ill. 2d at 534. An administrative agency's legal conclusions, however, are reviewed *de novo*, while its application of law to its factual findings is reviewed under the clearly erroneous standard. *Provena Covenant Medical Center*, 236 Ill. 2d 368, 387

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(2010). However, "[e]ven where review is *de novo*, an agency's construction is entitled to substantial weight and deference. Courts accord such deference in recognition of the fact that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislatures intent." *Id.* at fn 9.

¶ 28 It is well-established that administrative proceedings must accord with the fundamental principles and requirements of due process of law. *Abrahamson*, 153 Ill. 2d at 92; see also *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 426 (2005) ("Due process requires a fair trial before a fair tribunal and applies to both courts and administrative agencies performing adjudicatory functions"). Due process, however, is a "flexible concept" that is determined by the nature of the interest affected and the context in which the deprivation occurs. *Abrahamson*, 153 Ill. 2d 76, 92 (1992); *Chamberlain v. Civil Service Commission of the Village of Gurnee*, 2014 IL App (2d) 121251, ¶ 46; *Colquitt v. Rich Township High School District No. 227*, 298 Ill. App. 3d 856, 863 (1998). "Although due process envisions an orderly proceeding wherein notice and an opportunity to be heard are afforded, procedural due process in an administrative setting does not always require application of the judicial model." *Colquitt*, 298 Ill. App. 3d at 860-61, citing *Stratton v. Wenona Community Unit Dist. No. 1*, 133 Ill. 2d 413, 433 (1990); see also *Peterson v. Plan Commission*, 302 Ill. App. 3d 461, 466 (1998) (recognizing that due process in an administrative setting does not require an official judicial proceeding). The "essence of due process is based on the concept of fundamental fairness" and is satisfied where a person "receive[s] a fair hearing before a fair tribunal." *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 983 (1999); see also *Colquitt*, 298 Ill. App. 3d at 863 ("The immutable minimum requisites

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of due process, however, are notice and a meaningful opportunity to be heard"). It is the burden of the party advancing a due process violation claim to establish that he was prejudiced by the alleged violation during administrative proceedings. *All American*, 2013 IL App (1st) 113400, ¶ 36; *Sudzus*, 393 Ill. App. 3d at 825.

¶ 29 Given that due process is a flexible concept and that administrative proceedings are unique and distinct from other legal proceedings, courts have recognized that "cross-examination—and, impliedly, a prohibition of hearsay—is not always required by due process" in the administrative context. *Chamberlain*, 2014 IL App (2d) 121251, ¶ 46. As a general rule, although hearsay evidence should not be admitted during an administrative proceeding. (*Abrahamson*, 153 Ill. 2d at 94; *Sudzus*, 393 Ill. App. 3d at 828), courts have determined that unobjected-to hearsay statements may be considered and should be given their natural probative value (*Jackson v. Board of Review of the Department of Labor*, 105 Ill. 2d 501, 508 (1985); *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 525 (2008)). Accordingly, "where there is sufficient competent evidence to support an administrative decision, the improper admission of hearsay testimony in the administrative proceeding is not prejudicial error." *Abrahamson*, 153 Ill. 2d at 94, quoting *Goranson v. Department of Registration & Education*, 92 Ill. App. 3d 496, 501 (1980). Indeed, section 3-111(b) of the Illinois Code of Civil Procedure expressly provides: "Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and

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resulted in substantial injustice to him or her." 735 ILCS 5/3-111(b) (West 2008). Thus, where hearsay is admitted, but there is additional competent evidence to support an administrative agency's decision, that decision should be upheld; whereas, where there is no competent evidence to corroborate the hearsay and the administrative agency's decision is thus based solely on the admission and consideration of hearsay evidence, the agency's proceedings can not be deemed to have accorded with the requirements of due process of law and its decision should be reversed. Compare *Chamberlain*, 2014 IL App (2d) 121251, ¶ 54 (finding that the agency's consideration of hearsay evidence did not violate the plaintiff's procedural due process rights where the plaintiff did not object to the use of the hearsay and where there was a "marginal" risk that the evidence could result in an error in the agency's decision-making process given the evidence in the record) with *Colquitt*, 298 Ill. App. 3d at 866 (finding that the "expansive use of accusational hearsay" during administrative proceedings was "inconsistent with and violative of due process" where the evidence was admitted and considered despite counsel's hearsay objections). Whether a party's due process rights were violated during the course of administrative proceedings is an issue of law, which is subject to *de novo* review. *Marconi*, 225 Ill. 2d at 532; *Board of Education of Valley View Community Unit School Dist. No. 365 v. Illinois State Board of Education*, 2013 IL App (3d) 120373, ¶ 40.

¶ 30 Here, in accordance with CPS's School-Based Employee Reprimand or Suspension Procedures, plaintiff was afforded "written notice" containing a "description of the alleged misconduct and what Acts of Misconduct [we]re alleged to have been violated" prior to a pre-disciplinary hearing. He was also given copies of "[a]ll documents intended for use" at the pre-

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disciplinary conference. At that conference, plaintiff was permitted the assistance of counsel, "informed of the allegations against him, provided with an explanation of the basis of the allegations, and afforded an opportunity to respond to the allegations." Following the conference and his receipt of Esparza's written Notice of Disciplinary Action, plaintiff was also permitted an appeal in which he was "entitled to a hearing review" before a hearing officer.

¶ 31 At that review hearing, the hearing officer addressed both parties, explained that the proceeding was "not a trial," that each party was permitted to make a presentation and would be afforded an opportunity to respond. Counsel for CPS then responded: "Just generally for the presentation, we'll stand by the documentation that has been submitted to the Hearing Officer already," including the investigative report. He noted that there had already been a pre-disciplinary hearing in which plaintiff took part and "was allowed to present documentation and make statements regarding the incident." Counsel for plaintiff did not raise an objection to or seek a ruling from the hearing officer regarding the admissibility of the investigative report. Instead, plaintiff's counsel delivered his opening remarks and emphasized that no evidence had been presented to substantiate the allegation that plaintiff's actions during his September 4, 2009, all-staff meeting had been performed with the intent to intimidate or retaliate against Dolores Burdick. Thereafter, plaintiff's counsel began to call various witnesses. As the proceedings continued, counsel did reference due process and hearsay in response to rulings made by the hearing officer that prevented him from presenting evidence that the hearing officer deemed irrelevant; however, no specific coherent hearsay or due process objection was raised with respect to the investigative report itself and counsel never sought a ruling regarding the

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admissibility or lack thereof of that report. Because any objection to evidence, hearsay or otherwise, must be raised with specificity (*Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504 (2002)), the lack of such an objection meant that the report could be considered and given its natural probative value and its consideration did not violate plaintiff's due process rights (*Jackson*, 105 Ill. 2d at 508; *Village Discount Outlet*, 384 Ill. App. 3d at 525).

¶ 32 Moreover, although plaintiff notes that he was not able to cross-examine Dolores Burdick because she was not called by CPS, there is no evidence that plaintiff himself was precluded from calling her as a hostile witness and subjecting her to examination. In addition, although plaintiff has consistently disputed the motivation behind his actions, the underlying actions themselves were never disputed. All of plaintiff's witnesses as well as plaintiff himself confirmed that he played a video depicting Burdick's negative statements about Field School before the Board during a Field School all-staff meeting and then delivered a power-point presentation highlighting the importance of "culture" amongst Field School's faculty, which plaintiff had defined as the ability to cooperate with each other and with the administration. One of the slides depicted in plaintiff's presentation was of teachers who had been "displaced" for failing to possess the appropriate culture. Based on that undisputed evidence alone, the hearing officer could have drawn one of two conclusions: plaintiff's actions during the all-staff meeting were done to retaliate against Burdick or were done simply to provide information to the staff members about public comments that had been made about their school. Ultimately, after reviewing the record in its entirety, we are unable to conclude that the administrative proceedings below were conducted in violation of plaintiff's due process rights. Plaintiff was afforded notice

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and an opportunity to be heard and the admission of hearsay evidence in the case at bar did not amount to a due process violation. See, e.g., *Chamberlain*, 2014 IL App (2d) 121251, ¶ 54; *Dombrowski*, 363 Ill. App. 3d at 426-27; *Morelli v. Ward*, 315 Ill. App. 3d 492, 498 (2000).

¶ 33 We are also unpersuaded by plaintiff's contention that CPS's determination that he violated two provisions of its Employee Discipline and Due Process Policy is clearly erroneous. Plaintiff suggests that even if CPS's findings of fact regarding his conduct were true, its conclusion that those actions amounted to misconduct as described by sections 4-16 and 4-26 of CPS's Policy is not supported by the evidence. Again, those provisions, provide as follows:

"Act of Misconduct Section 4-16 that prohibits retaliating against an employee; (a) who reasonably and in good faith has filed a grievance, charge, or complaint regarding the terms and conditions of employment; or (b) against an employee who has properly testified, assisted or participated in any manner in an investigation, proceeding or hearing regarding such grievance, charge or complaint; and

Act of Misconduct Section 4-26 that prohibits violating School rules, Board rules, policies or procedures that result in behaviors that seriously disrupt the orderly educational process in the classroom, in the school, and may occur on or off the school grounds or assigned work location."

¶ 34 As set forth above, an agency's determinations on mixed questions of fact and law, that is the application of an established set of facts to an undisputed legal standard, will not be reversed unless they are clearly erroneous. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008). The clearly erroneous standard is a deferential standard of

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review, and as such, an agency's decision will only be deemed clearly erroneous where the reviewing court is left "left with the definite and firm conviction that a mistake has been made." *Id.*, quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). Keeping this standard in mind, after reviewing the record we are unable to conclude that CPS's findings that plaintiff's conduct in showing the video and delivering the aforementioned power-point presentation during his all-staff meeting amounted to "retaliation" under section 4-16 and "seriously disrupt[ed] the educational process \* \* \* in the school" as set forth in section 4-26 were clearly erroneous.

¶ 35 We also reject plaintiff's argument that CPS also erred in finding that he interfered with his employees rights as set forth in the Illinois Education Labor Relations Act, including the right to free speech. Based on the record, it is not apparent that such a finding was ever made. See *Foutch*, 99 Ill. 2d at 391 (any doubts arising from an incomplete record must be resolved against the appellant). In the written Notice of Disciplinary Action sent by Esparza to plaintiff following the pre-disciplinary hearing, Esparza indicated that plaintiff had violated sections 4-16 and 4-26 CPS's Policy, imposed a 15-day suspension, and then set forth several "Directives for Improvement." The final such directive stated: "Do not interfere, restrain or coerce employees in the exercise of their rights guaranteed under the Illinois Labor Relations Act, the Illinois School Code, or applicable federal and state laws governing the free exercise of speech on matter of public concern or protected concerted activity." Esparza's findings were upheld after plaintiff's appeal before the hearing officer. There is nothing in the record to suggest that a finding was made that plaintiff violated Burdick's right to free speech or that he was disciplined for anything

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other than violating the aforementioned provisions of CPS's policy. Because no such finding was made, we necessarily reject plaintiff's claim of error.

¶ 36

### III. CONCLUSION

¶ 37 Accordingly, we find that the underlying administrative proceedings were not conducted in violation of plaintiff's due process rights and that the findings were supported by the evidence.

The judgment of the circuit court upholding CPS's decision is thus hereby affirmed.

¶ 38 Affirmed.