

No. 1-13-3548

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---|---|----------------------------|
| SUNDAY UWUMAROGIE,                            | ) |                            |
|   | ) |                            |
|   | ) |                            |
| Petitioner-Appellant,                         | ) |                            |
|   | ) |                            |
| v.  | ) | Petition for Review of an  |
|   | ) | Order of the Chicago Board |
|   | ) | of Education               |
| BOARD OF EDUCATION OF THE CITY OF             | ) |                            |
| CHICAGO, DAVID VITALE, President; JESSE RUIZ, | ) |                            |
| CARLOS AZCOITIA, HENRY BIENEN, MAHALIA        | ) |                            |
| HINES, DEBORAH QUAZZO, ANDREA ZOPP, Board     | ) |                            |
| Members; CHIEF EXECUTIVE OFFICER OF THE       | ) | No. 13-1023-RS4            |
| BOARD OF EDUCATION OF THE CITY OF             | ) |                            |
| CHICAGO, Barbara Byrd-Bennett; ILLINOIS STATE | ) |                            |
| BOARD OF EDUCATION and LISA SALKOVITZ         | ) |                            |
| KOHN, Hearing Officer,                        | ) |                            |
|   | ) |                            |
|   | ) |                            |
| Respondents-Appellees.                        | ) |                            |
|   | ) |                            |

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JUSTICE REYES delivered the judgment of the court.  
Justices McBride and Gordon concurred in the judgment.

**ORDER**

¶ 1 *Held:* Affirming the Board's determination to discharge petitioner where: (1) the Board did not waive its right to terminate his employment; (2) the Board applied the appropriate legal standard; and (3) the Board's findings were not against the manifest weight of the evidence.

¶ 2 Petitioner-appellant Sunday Uwumarogie (petitioner) was discharged from his employment as a principal in the Chicago Public Schools (CPS) system following an administrative hearing pursuant to section 34-85 of the School Code (105 ILCS 5/34-85 (West 2012)). A hearing officer found petitioner engaged in conduct that was irremediable and upheld the decision of respondent Board of Education of the City of Chicago (Board) to terminate petitioner's employment. The Board adopted the recommendations of the hearing officer in their entirety and terminated petitioner. On direct review to this court, petitioner contends for various reasons that his termination was in error and requests we reverse the Board's decision and reinstate him with full back pay and other benefits to which he would have been entitled. For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 **I. Dismissal Charges**

¶ 5 The record demonstrates that petitioner worked under contract as a principal for CPS at Eugene Field Elementary School (Eugene Field) from July 1, 2008 until April 6, 2011, when he was reassigned to his home.<sup>1</sup> On February 22, 2012, the Board set forth 20 charges against petitioner including 13 violations of the Employee Discipline and Due Process Policy (EDDPP). Specifically at issue on appeal are the charges regarding sexual misconduct involving two female Eugene Field students, O.P. and J.R. During the 2009-2010 school year, petitioner began engaging in a practice of giving O.P. frontal hugs when she was in his office with the door closed. While in his office, petitioner asked O.P. whether she had a boyfriend, was a virgin, and other questions regarding her sexual behavior. In addition, petitioner would tell O.P. she was his

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<sup>1</sup> Petitioner's contract for employment provided he would be employed as a principal at Eugene Field until June 30, 2012. Petitioner's contract, however, was not renewed.

girlfriend and that he was going to give her a makeover to look older. The charges further alleged that on March 17, 2011, petitioner kept O.P. in his office alone with the door closed for "an inordinate period of time" where O.P.'s mother had to call petitioner in order to have petitioner release O.P. Additionally, the following day, petitioner kissed O.P. on the left ear and cheek at the conclusion of a meeting with him while in his office and gave her a tight frontal hug.

¶ 6 Petitioner was also charged with an act of sexual misconduct regarding J.R. The charges alleged that in March 2011 petitioner met with J.R. in his office where he asked J.R. questions about her sexual activity and told J.R., "These young boys can't do anything for you. I'll wait until your [*sic*] 18 and I'll do something for you.'" The Board alleged these acts of sexual misconduct against O.P. and J.R. were "irremediable," warranting discharge without a written warning.

¶ 7 **II. Dismissal Hearing**

¶ 8 An administrative hearing regarding petitioner's dismissal was conducted over four days: February 6, February 7, March 8, and April 11, 2013. The Board presented eight witnesses: (1) O.P.; (2) Dalila P., O.P.'s mother; (3) J.R.; (4) Sylvia Soto, an investigator for the Board; (5) Thomas Krieger, an assistant director at the Office of Employee Engagement for CPS; (6) Helen Cunningham, a teacher at Eugene Field; (7) Sandra Burns, a clerk at Eugene Field; and (8) Kathryn Zalewski, a telecommunications manager for CPS. Petitioner presented four witnesses: (1) Clyde Gee, a teacher at Eugene Field; (2) Detra Aikens, a member of the local school council; (3) Deborah Cummings, a curriculum coordinator at Eugene Field; and (4) petitioner.<sup>2</sup> Only the testimonies relevant to the issues on appeal are discussed below.

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<sup>2</sup> We address herein the testimony of the witnesses in the same order as they testified before the Board. As detailed below, certain witnesses listed testified in rebuttal and sur-rebuttal.

¶ 9

A. O.P.

¶ 10 At petitioner's discharge hearing, the Board called upon O.P. as its first witness. At the time of her testimony, O.P. was in tenth grade at Lane Technical High School (Lane). O.P. testified that during the 2009-2010 school year she was a seventh grade student at Eugene Field. In May 2010 she was called out of class to meet with petitioner in his office. During the meeting, petitioner and O.P. were alone with the door to the office closed. O.P. was directed by petitioner to sit down across from him in front of his desk. O.P. could not recall how their conversation began, and testified:

"I just remember him saying, like, do you have a boyfriend? I think he asked me that question first. I said, no. Then he was like, are you a virgin? Are you having sex? I was like, no. He was like, how do I know if you're telling the truth or if you're lying? I'm like, I'm telling you the truth. He was just like, okay. I felt like he didn't believe me. I didn't understand why he was asking me those questions. So I was just scared.

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That's the only time he ever asked me, like, was I [a] virgin or sexual questions."

¶ 11 O.P. further testified that petitioner "always gave me hugs. Like, when I left his office, he would give me a hug." O.P. explained that the hugs were not uncomfortable at first, "[t]hey were just like a hug you give a teacher[,] I guess." The hugs, however, began "getting tighter, like, a long period of time we were hugging." O.P. described those hugs as being "uncomfortable" and that they occurred inside petitioner's office. The type of hug also changed over time. O.P. testified, "At first, like I would just put my arm around him. Like, he would pat my back. He was like, okay. It was kind of weird, but I would just move away real quick. Then it would be real close like he was my boyfriend. Like, I was just real close to him."

¶ 12 O.P. also described what she believed to be inappropriate comments made by petitioner to her and other students. She testified, "He would say, like, we were his girlfriends. Like, when we get older, we would be his girlfriends. He would give us makeovers. We didn't look our age. We were, like, fully developed, some stuff like that."

¶ 13 After the May 2010 meeting with petitioner, O.P. apprised J.R., her best friend and fellow Eugene Field classmate, of what had occurred. J.R. encouraged O.P. to tell a teacher. O.P. approached Dwain Paredes, her homeroom teacher, but was "scared because he was a man" and she believed if she told Paredes, he would inform petitioner and she "didn't want to get in trouble." Thereafter, O.P. and J.R. spoke with Helen Cunningham, their seventh grade reading and literature teacher, about the incident. Cunningham advised the girls to write down their statements and return the statements to her. O.P. provided Cunningham with a written statement.

¶ 14 O.P. next testified regarding petitioner's inappropriate behavior towards her in March 2011 when she was an eighth grade student at Eugene Field. On March 17, 2011, at 2 p.m., O.P. was paged to come to petitioner's office. O.P. met with petitioner in his office alone with the door closed. Regarding her conversation with petitioner, O.P. testified:

"He was upset because I didn't want to go to Lane Tech. I had missed the deadline to apply or something. He was like, why you not finnin [*sic*] to go there. It's a better school. I just told him I wanted to go to school with my friends at Senn High School.

He wasn't happy about that. He was like, I will call the principal and tell her, like, I know her or something, that you should go there. I was just like, I don't want to go there. I remember being there for a long time, like, just constantly going back and forth about me going to a school that I didn't even want to go to."

During their discussion, O.P.'s younger sister, A.P., began sending O.P. text messages because she was waiting for O.P. so they could walk home together from school. O.P. did not respond because she believed petitioner would "get mad." Shortly thereafter, petitioner received a telephone call. At that point, O.P. had been in petitioner's office for close to an hour, so she believed it was her mother, Dalila, calling to request that petitioner allow her daughter leave his office. Petitioner then excused O.P. from his office.

¶ 15 The next day, March 18, 2011, while O.P. was waiting for A.P. outside of the school building with friends Y.E., J.M., A.V., and J.R., she observed petitioner exit his vehicle in an adjacent parking lot. Petitioner signaled to O.P. to come towards him. According to O.P.:

"He was like, hi. I believe he was talking about Lane Tech. I was like, I don't want to go to that school. Then he told me to come to his office. So I went back to my friends. I was like, I'm going to the principal's office. I'm going to come back. Then Mr. Gomez unlocked the door and let us go in, but I don't remember Mr. Gomez coming in the office with us.

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We went in his office, and he was like—I don't remember what he was talking about, but he was like, I'm here for you if you need me. I think that's when he said something about, like, him calling the principal [at Lane] and making sure I got into the school. That's when he kissed me, and then we kept talking."

Regarding the kiss, O.P. testified:

"First he kissed me on my ear. Then we was, like, in a hug, and he kissed me right on my neck. That's when he pulled out his wallet and he was like, I'm here for you. I don't give out a dollar. So he gave me \$2 or \$3. Then that's when I was like, can I

leave? And then he let me leave."<sup>3</sup>

¶ 16 After the brief meeting, O.P. exited petitioner's office and went back to her friends who were waiting for her outside of the school. She testified she was "happy he gave me \$2 I guess, but I was sad. Like, I felt violated. I just—I didn't want to tell nobody because I didn't want nobody to like—I was just embarrassed. So I went to my friends. I was like, let's go to the store. I wasn't really talking like that. I didn't feel like myself."

¶ 17 At an unspecified date, O.P. disclosed to J.R. the events of March 18, 2011. J.R. advised O.P. to tell a teacher about what had occurred. J.R. was also "going through something" at the time, so they went together to school counselor Roshawn Bowens's office.<sup>4</sup> O.P. informed Bowens about petitioner's inappropriate behavior.<sup>5</sup> According to O.P., "he just automatically got really upset. He was like, don't tell nobody. Nobody is going to believe you. That's the principal. You can't come and say something like that and think they going to believe you over the principal." O.P. left Bowens's office and contacted her mother to tell her what had happened with petitioner.<sup>6</sup>

¶ 18 On cross-examination, O.P. testified that on March 17, 2011, it was likely 2:30 p.m. when she was paged to come to petitioner's office. O.P. recalled Sandra Burns being at her desk

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<sup>3</sup> On cross-examination, O.P. explained that she believed her mother had called petitioner on March 17, 2011, "because I knew my sister was outside waiting for me because she had text[ed] my phone, and she has a bad attitude problem. So I know if she was waiting for me, she would have called my mom and told her to call the school since I wasn't answering the phone." O.P. admitted there was nothing petitioner said on the phone that lead her to believe he was speaking with her mother.

<sup>4</sup> Petitioner's brief inaccurately refers to Bowens as "Bowman." Defendant refers to Bowens as "Roshaun Bowens." The record, however, indicates two different spellings of Bowens's first name: "Roshawn" and "Roshaun."

<sup>5</sup> O.P. did not specify whether she informed Bowens about petitioner's conduct in March of 2011 or May 2010.

<sup>6</sup> O.P. does not specify what exactly she told her mother.

at that time and denied that petitioner telephoned her mother when she was in his office on March 17, 2011. O.P. further testified she did not recall telling the investigator that petitioner had kissed her on the cheek and could not remember petitioner patting her on the shoulder. O.P. also could not recall whether Burns was at her desk when O.P. left petitioner's office around 3:30 p.m. O.P. further testified petitioner was putting pressure on her to attend Lane and that she did not like him pressuring her. O.P. stated it "annoyed" her when petitioner continued to discuss her decision not to go to Lane with her.

¶ 19 O.P. further testified on cross-examination that during the 2009-2010 school year petitioner would arbitrarily call her over the intercom to come to his office. While there, O.P. and petitioner would mostly discuss "personal stuff." The only time they discussed Lane was when she was in eighth grade. O.P. testified petitioner hugged her more than 20 but less than 30 times and she did not tell her mother about the hugging. However, on March 31, 2011, O.P. informed her mother about the hugs, kissing, and inappropriate comments made by petitioner.

¶ 20 B. Dalila P.

¶ 21 O.P.'s mother, Dalila, testified to the following facts. On March 17, 2011, she received a text message from her daughter A.P. after school had been let out informing her that O.P. had not yet exited the school building. At 3:35 p.m., Dalila called the school and spoke to petitioner, asking him to release O.P. because A.P. was outside waiting for her. Petitioner did not "get into detail about anything" other than indicating that he would release O.P. There was no discussion about O.P. attending Lane.

¶ 22 Dalila could not recall the date she was informed by O.P. of petitioner's inappropriate behavior. She did, however, recall that O.P. informed her that petitioner had given her money, kissed her, and asked her personal questions, all of which made O.P. uncomfortable. Upon

learning this information, Dalila called Donna Bedtke of CPS to report petitioner's behavior.<sup>7</sup>

¶ 23 On cross-examination, Dalila testified O.P. has lied to her before "like little kids do."

Dalila further testified that if O.P. had a problem she would come to her with those issues. O.P., however, did not inform her about the statement she had written in May 2010.

¶ 24 C. J.R.

¶ 25 J.R. testified to the following facts. She attended Eugene Field in seventh and eighth grade, with her friend O.P. In J.R.'s seventh grade year, O.P. revealed to her that petitioner was behaving inappropriately. Specifically, he asked O.P. whether she was a virgin and "kissed her on the cheek." J.R. went to her teacher Ms. Cunningham and told her about what had happened to O.P. Cunningham instructed J.R. to write down what O.P. told her. J.R. wrote out the statement and provided it to Cunningham. J.R. further testified that during the 2009-2010 school year petitioner would call her "his little girlfriend and stuff like that."

¶ 26 J.R. recalled that on March 17, 2011, O.P. was called over the intercom to the principal's office around 2:30 or 3 p.m. After school, J.R. waited for O.P. along with A.P. and two other girls so they could all walk home together. While they waited, A.P. texted and called her mother and asked her to call petitioner to let O.P. out because they had to go home. O.P. exited the school building about two minutes after A.P. telephoned her mother.

¶ 27 The following day, March 18, 2011, J.R. and the same girls were waiting outside the school building when petitioner pulled into the school parking lot in his vehicle. Petitioner told them to "get off [the] property." According to J.R., O.P. then turned to her and "was like, come on, let's hurry up and go because I know he's going to call my name." J.R. further testified:

"So when we get to walking, he called her [O.P.]. She was talking to him, and then she

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<sup>7</sup> The record discloses that this occurred on March 31, 2011.

came back. She was like, can you all hold my belongings? He want to talk to me. So I was like, sure. So we waited on her. It was him and Mr. Gomez, which was the assistant principal at the time, and they went into the building."

¶ 28 On March 31, 2011, J.R. approached petitioner to discuss physical threats she had received. She testified, "It was some girls that attended Sullivan High School. They were trying to jump on me for some boy, and I was telling them, like, I don't go with your boy. They were sending me messages on Facebook." At first, J.R. and her mother went to the police; however, the police instructed them to discuss the issue with J.R.'s principal. According to J.R.:

"So I went—I went to school the next day. It was in the morning. They was giving out breakfast. I had to wait in the lunchroom for breakfast to get over, and then we went into his office. I was telling him, like, they're planning on jumping on me and, like, I don't feel safe, like, to go home.

Then he asked me, like, was all this over a boy. I was like, yes. Then he was like, hold on. See, these young boys can't do anything for you. I can do something for you. I was like, what's that supposed to mean? He was like, let's get back to the subject. So he starts talking about who are the girls and stuff like that.

He said it again. He said, see, these young boys can't do nothing for you. I can do something for you. When you turn 18, I'll call you. I have your number. I'm like, what is that supposed to mean? So he was like, nothing. I'll just have security watch you home after school."

J.R. testified this meeting occurred when she was alone in petitioner's office with the door closed. J.R. further testified that later in the day, Clyde Gee, J.R.'s science teacher, overheard her discuss petitioner's behavior with O.P. Gee took J.R. and O.P. out into the hallway and asked

them what was wrong. After telling him what occurred, Gee advised J.R. to tell her mother, which she did that same day.

¶ 29 J.R. and O.P. then discussed the incident with Mrs. Bowens, another teacher. J.R. testified he told them, "[I]t's your word against his. You all are children. So no one will believe you. He was like, I'm going to keep this between us."

¶ 30 On cross-examination, J.R. testified she observed petitioner hug O.P. previously and that he had also hugged her. J.R., however, did not inform the investigator that petitioner had hugged her in the past. J.R. further testified she was disciplined for issues with regarding her attitude and fighting while attending Eugene Field.

¶ 31 D. Sylvia Soto

¶ 32 Sylvia Soto, an investigator with the Board, testified to the following facts. As an investigator she is charged with looking into various acts of employee misconduct and, as of the time of the hearing, had been employed as an investigator for four years. Soto conducted this investigation with Michael Mahone, another investigator. During the course of the investigation, O.P. informed Soto and Mahone about inappropriate behaviors demonstrated by petitioner. O.P. informed them that during the 2009-2010 school year, petitioner often gave her hugs. These hugs initially began as a "one arm around the shoulder type thing" and progressed to petitioner "pressing his chest against her breast which she stated obviously made her feel uncomfortable." O.P. also informed them of an incident where petitioner had pulled her from a classroom and while in his office asked whether she had a boyfriend. O.P. said no and petitioner asked if she was a virgin. O.P. again stated no. O.P. informed investigators that she answered his questions because, "she kind of felt obligated to do so because it was her principal."

¶ 33 Soto further testified to another incident that happened to O.P. later in the 2009-2010

school year wherein O.P. was walking down the hallway and petitioner asked her, "[H]ow is my girlfriend doing, or something to that effect. Then he said that he would like to give her a makeover to make her look older." Thereafter, "sometime in May [2010]," O.P. informed two teachers, Parades and Cunningham, of petitioner's behavior. Cunningham had O.P. prepare a written statement and sent it to Abbie Meyers, a children's advocate at the CPS regional office.<sup>8</sup>

¶ 34 Soto and Mahone also interviewed O.P. regarding petitioner's inappropriate behavior in the 2010-2011 school year. Soto testified that O.P.'s interview was consistent with her hearing testimony. In addition, Soto testified she obtained the text messages and phone records from Dalila to verify whether Dalila called petitioner. According to Soto, petitioner denied that Dalila had called him that day and insisted he was the one who called Dalila. Through her investigation, Soto discovered it was Dalila who telephoned petitioner on March 17, 2011, at 3:36 p.m.

¶ 35 Regarding the events of March 18, 2011, Soto testified O.P. informed investigators that at 3 p.m. she was outside of the school waiting for A.P. with a group of friends. While waiting, she observed petitioner, teacher Natalia Riordan, and assistant principal Juvenal Gomez, exit petitioner's vehicle.<sup>9</sup> Petitioner called O.P. over to him. O.P. stated to Soto that she was hesitant to speak to petitioner. O.P. and petitioner spoke briefly about whether or not she had reached a decision regarding which high school she would attend. O.P. stated she had not yet made a decision. Petitioner then asked her to follow him into the school to discuss it further. O.P. went back to her group of friends and asked them to look after her belongings while they waited for her. She then entered the building with petitioner and Gomez.

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<sup>8</sup> Petitioner's brief inaccurately refers to Meyers as "Myers."

<sup>9</sup> Defendant refers to Riordan as "Nataliya Riordan," however, the record reflects the her name is also spelled "Natalia."

¶ 36 Soto's testimony regarding O.P.'s statements about what occurred in petitioner's office was consistent with O.P.'s testimony with the exception that when interviewed O.P. indicated petitioner patted her on the back gave her two kisses, one just below the ear and the other one on her left cheek.

¶ 37 Soto next testified regarding her interview with J.R. about the events of March 31, 2011. Soto's statements were consistent with J.R.'s testimony.

¶ 38 Soto also testified about her interview with petitioner regarding the March 17, 2011, incident. According to Soto, petitioner told her and Mahone that at 2:50 p.m. Bowens approached him and informed him that O.P. had not provided her admission documents to Lane. Petitioner then asked Burns to pull O.P. from class. At 2:55 or 3 p.m., as O.P. was coming down the hallway, petitioner stopped her and asked her if she had given further consideration to attending Lane. According to Soto, "She must have sarcastically said no or said something— was loud or was inappropriate. I'm not sure exactly what terminology he used, but he stated that he didn't feel like getting into an argument with her in the hallway. So then he directed her to go back to his office and then spoke to her further in his office."

¶ 39 Soto questioned petitioner regarding what occurred in his office on March 17, 2011. Petitioner informed Soto that he asked O.P. why she did not want to attend Lane and she replied that she wanted to be with her friends. Petitioner explained to O.P. that just because she attended a different school it did not necessarily mean that she was no longer going to be with her friends. Petitioner advised O.P. that attending Lane would open more possibilities to her and that she would be able to attend an Ivy League school, obtain a better job, and possibly even make more money than him. Soto explained, "When he wasn't having any luck with [O.]P. I guess changing her mind, he stated that it was at that point he contacted [Dalila] to speak with her." When he

contacted her she indicated she was not aware that O.P. did not want attend Lane and asked him to speak to O.P. further and convince her. According to Soto, petitioner informed her he touched O.P. during the March 17, 2011, meeting. Specifically, petitioner "stated shortly after they ended their meeting he came from around his desk, kind of patted her on the back, and said that they would talk about it the following day further." Petitioner informed investigators he was in the meeting with O.P. for "no more than ten minutes."

¶ 40 As for the March 18, 2011, incident, Soto testified petitioner told her that he had returned from a meeting at 3 p.m. with Riordan and Gomez. After he pulled into the parking lot, he exited his vehicle, observed a group of students congregating and yelled at them to go home. It was then that he spotted O.P. He "kind of motioned for her forward, asked her to come here." O.P. complied. Petitioner spoke with her briefly about attending Lane. O.P. then went back to her friends and left the school grounds. Petitioner told Soto that O.P. never entered the school building at that point of time on March 18, 2011.

¶ 41 Soto asked petitioner whether he ever inquired whether O.P. was a virgin, to which petitioner "seemed offended by the question and denied asking if she ever had a boyfriend, asking if she was a virgin." He also denied ever giving O.P. money.

¶ 42 Regarding the March 31, 2011, incident with J.R., Soto testified petitioner informed her that he took J.R. into his office where she showed him the Facebook messages. As he was speaking to J.R., he asked Burns to call school security guards Richard James and Nosa Ibizugbe into his office to assist him in formulating a security plan for J.R.<sup>10</sup> According to Soto, petitioner denied telling J.R., "[T]hese boys can't do anything for you, I'll wait until you're 18, and then I'll do something for you."

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<sup>10</sup> We note that petitioner's brief refers to Ibizugbe as "Mr. Nosa." Nosa, however, is Ibizugbe's first name.

¶ 43 On cross-examination, Soto testified ten individuals were interviewed during the course of the investigation. Soto was not able to identify any other students who complained of inappropriate touching or comments from petitioner. Soto also testified that when interviewed, Gomez informed her that O.P. did not enter the school on March 18, 2011, although he did observe her outside the school.

¶ 44 E. Clyde Gee

¶ 45 Clyde Gee testified on behalf of petitioner to the following facts. He has been employed by the City of Chicago Board of Education for 12 years and resigned in March of 2012. He began working as a teacher for Eugene Field in summer of 2010. O.P. and J.R. were students in his eighth grade reading and science classes. Gee could not recall whether O.P. and J.R. had a conversation in his classroom regarding petitioner in March 2011. Gee could also not recall making statements that he overheard J.R. say "how dare he say that because he doesn't know me" and describing J.R. and O.P.'s demeanor as "being insulted, distressed, or in disbelief" as he had stated in his April 2011 interview with investigators. Gee did recall telling investigators that J.R. told him that petitioner said to her "wait until you're 18 or 19." Gee also recalled advising J.R. and O.P. to speak with their parents and Bowens, but Gee did not make a report on the students' behalf.

¶ 46 Gee further testified he never observed petitioner hug students in the hallway nor had he ever observed petitioner have physical contact with any student. Gee also had never heard petitioner make inappropriate statements to students or have any inappropriate contact with a student.

¶ 47 On cross-examination, Gee testified he could not recall many of the statements he made to investigators in April of 2011. He indicated during his testimony, however, that those

statements must have been accurate as they were made closer in time to the event.

¶ 48 F. Detra Aikens

¶ 49 Petitioner next called Detra Aikens who testified that as a member of the local school counsel, she was involved in the selection of petitioner as the principal for Eugene Field. Aikens met and interviewed petitioner in 2008 and believed him to have an "[a]mazing" reputation for honesty and truthfulness, "he took the entire school and the educational population and raised the standards." Aikens also testified she had known O.P. and J.R. as students at Eugene Field and "from the neighborhood."

¶ 50 Aikens further testified that during petitioner's tenure as principal at Eugene Field, Cunningham "spearheaded the opposition to Mr. Uwumarogie's administration." She also never observed petitioner touch or hug any student. Regarding O.P. and J.R.'s reputation for truthfulness, Aikens testified, "I think those girls are troubled. I don't think they were prone to always tell the truth."

¶ 51 G. Deborah Cummings

¶ 52 Petitioner's next witness, Deborah Cummings, testified she worked with petitioner at Hinton School as assistant principal from 2003 until 2007 when she retired. In 2009, she commenced working at Eugene Field as the curriculum coordinator, but was dismissed in April 2011. According to Cummings, petitioner was an excellent principal, "He improved the problems so much that our enrollment [at Eugene Field] went up." Petitioner was also "very much ahead of the game" when it came to evaluating teachers. Cummings never observed him touch or speak to a student in an inappropriate manner. According to Cummings, petitioner is "an extremely honest person" and it would be "out of character" for him to have called O.P. and J.R. his girlfriends.

¶ 53 Cummings further testified she knew O.P. and J.R. through their activities with the student council. Regarding O.P., Cummings stated:

"[I]n Grade 7, students and teachers would tell me things about her that I could never see. She was always very quiet, and I don't know if the student council was just held over her head, but I never saw any of the behavior that most of the teachers talked about with her being smart mouthed or talking back or she's this way or she's that way. I never saw that in her, and I constantly applauded her."

When asked her opinion regarding O.P.'s truthfulness, Cummings responded:

"I think that she wore a halo with me because she was involved in student council. I do think that she's—that she would probably be capable of maybe stretching the truth if she would want to get her own way because she was one that liked having her own way. She was a pretty smart young lady though, too. She had a pretty good grade-point average."

¶ 54 In reference to J.R., Cummings testified that "at one point in time [J.R.] used to get in a lot of skirmishes with various students. She used to fight a lot. \*\*\* But in Grade 8, she seemingly had gotten much better especially when she became a delegate [on the student council]." According to Cummings, J.R. was helpful, eager, and enjoyed taking part in school programs. When asked if she had an opinion regarding J.R.'s truthfulness, Cummings responded:

"Well, I think that [J.R.] was constantly at times trying to get attention, and a lot of the teachers gave her that attention because she always had some kind of problem. Some kid is bothering her. Some kid wants to beat her up."

¶ 55 H. Petitioner

¶ 56 Petitioner testified as follows. He had been employed for the past 28 years with the

Chicago Board of Education, becoming a tenured teacher in 1990. He was employed as the principal of Eugene Field from July 1, 2008 until he was removed on April 6, 2011. Prior to becoming a principal at Eugene Field he worked as the principal of Hinton School for four years.

¶ 57 According to petitioner, in January 2009 three teachers, including Cunningham, filed union and individual grievances with the CPS labor relations office against him. During the 2009-2010 school year, a warning resolution was issued against him based on a speech he gave during a staff development program which was "harassing and intimidating the teachers." He received a 15-day suspension without pay as a result of the warning resolution.

¶ 58 Petitioner testified he had known J.R. and O.P. since September 2008 when they were fifth graders at Eugene Field and having issues with fighting in school. Petitioner invited the girls and their parents, along with three other students and their parents, to a conference where he explained to them his expectations. Petitioner had no other contact with J.R. or O.P. during the 2008-2009 school year.

¶ 59 Petitioner denied speaking with O.P. in his office in May of 2010. He further denied asking O.P. if she was sexually active or if she was a virgin in May 2010 or at any time.

¶ 60 Regarding the events of March 17, 2011, petitioner testified that Bowens stopped him in the hallway around 2:50 p.m. to inform him that O.P. had not signed her acceptance letter to Lane. Petitioner wanted to discuss this with O.P. so he had Burns page O.P. to come to his office. He and Bowens met O.P. in the hallway and asked her why she was not going to Lane. O.P. responded in a rude, boisterous manner and as a result petitioner requested she come with him to his office. Bowens did not accompany them. O.P. entered petitioner's office and took a seat across the desk from petitioner. Petitioner again asked her why she did not want to attend Lane. O.P. responded that she wanted to be with her friends. Petitioner explained that attending

Lane would not prevent her from seeing her friends and he continued to talk to her about the success she could have if she attended Lane. Petitioner could tell O.P. was not going to change her mind, so he "picked up the telephone and [he] called her mother, and talked to her mother on the phone. [He] said, do you know that your daughter [O.]P. said that she don't [*sic*] want to go. And she said, would you please try to convince her and talk to her to make her go to Lane Tech."

¶ 61 After speaking with Dalila, petitioner allowed O.P. to leave because Dalila had requested her daughter be sent home immediately. Before dismissing her, however, petitioner advised O.P. that if she attended Lane she could be admitted to an Ivy League college and that she could make more money than him. O.P. did not respond. While standing in the doorway of his office, petitioner then told O.P. that they would have this discussion tomorrow. O.P. again indicated she would not be attending Lane. As O.P. walked out of petitioner's office with petitioner behind her, he touched O.P. on the back of her right shoulder, but did not hug or embrace her. Petitioner then went to speak with Burns in the main office. According to petitioner, the meeting with O.P. was "not more than ten minutes." Additionally, petitioner denied receiving a telephone call from Dalila at 3:36 p.m. and stated he was not in his office at 3:36 p.m., as he was "still back in the hallway \*\*\* making sure that the kids have all left the building."

¶ 62 The following day, March 18, 2011, petitioner attended a meeting from noon until 2 p.m. and returned to Eugene Field with Gomez and Riordan at 3:30 p.m. Petitioner pulled his vehicle into the parking lot and observed a group of ten children on Lunt Street just outside of the school. Petitioner yelled out to the children that they needed to go home. As they dispersed, petitioner observed O.P. and called to her over to him. Petitioner testified he wanted to discuss her attending Lane. In the presence of Gomez, petitioner asked O.P. why she was still on school property, and she replied that they were leaving. He then asked her whether she had thought

about the discussion they had the previous day. She responded yes and said she was thinking about attending Lane. O.P. then left and petitioner started walking towards the school building. O.P. did not accompany him into the building.

¶ 63 Regarding J.R., petitioner testified she was "aggressive" and in her eighth grade year would get into fights "maybe once a month or once every two months." Petitioner, however, did allow her to be a member of the student council. Petitioner denied ever referring to J.R. or O.P. as his "little girlfriends."

¶ 64 Petitioner further testified that on March 31, 2011, at 9:55 a.m. J.R. approached him as he was overseeing breakfast distribution and indicated she wanted to speak with him. Petitioner asked J.R. to wait for him in the main office. J.R. then left. After he finished distributing the breakfasts, petitioner proceeded to his office. J.R. met him in the hallway outside the main office door. It was there that petitioner asked J.R. what she wanted to discuss. J.R. did not say anything, so petitioner assumed she did not wish to speak with him in the hallway because of the presence of other students. Petitioner escorted J.R. to his office where she had a seat in front of his desk and he sat behind his desk.

¶ 65 J.R. informed him that, "a group of kids [were] going to beat her up after school." Petitioner then called Burns and had her call school security officers James and Ibizugbe. J.R. then showed petitioner the threats made against her on her mobile phone. Petitioner testified he read a couple of the messages, but could not understand them and asked J.R. what the messages were about. Petitioner learned that J.R. was being threatened "because of a boy." Petitioner was surprised and asked J.R., "[I]s this all about a boy?" Before petitioner had finished reviewing the messages, James and Ibizugbe arrived at his office. Petitioner explained to them what J.R. told him and asked them to watch J.R. after school. J.R. then left petitioner's office with the security

officers.

¶ 66 Petitioner denied telling J.R. that "these boys can't do anything for you, I'll wait until you're 18, and I'll do something for you." He further denied telling J.R. that she needed someone older like him.

¶ 67 On cross-examination, petitioner testified that on March 17, 2011, Burns and Irma Tinajero (another school clerk) were in the main office when O.P. came to his office and that he was alone with O.P. in his office for no more than five or six minutes. After being shown the time record for Burns, petitioner admitted Burns left at 1 p.m. on March 17, 2011. Petitioner also stated that on December 20, 2010, he had three teachers under the E-3 remediation process, including Cunningham.<sup>11</sup>

¶ 68 I. Helen Cunningham

¶ 69 In rebuttal, the Board called Helen Cunningham, a teacher at Eugene Field, who testified to the following facts. During the 2009-2010 school year, she taught seventh grade language arts and social studies. O.P. and J.R. were her students. On May 24, 2010, J.R. came to her and asked if she could step outside of the classroom to talk. Cunningham did and J.R. informed her that petitioner said something inappropriate to O.P. Cunningham instructed J.R. to sit in the classroom and asked O.P. to step out into the hallway. O.P. then informed Cunningham that petitioner "asked me about sex." Cunningham requested each girl write separate statements. Cunningham then took the two statements, placed them in her briefcase, and brought them home with her. Although Cunningham read the statements, she did not question the students about them. Thereafter, Cunningham mailed the statements to Abbie Meyers, a children's advocate at the CPS regional office.

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<sup>11</sup> The record discloses that an E-3 remediation is a notice a teacher receives when the principal is in the process of terminating the teacher's employment.

¶ 70 According to Cunningham, she did not contact DCFS because petitioner:

"was very, very aggressive. I would often get called into the office, and I would get yelled at, and I'd sit there. I wouldn't say anything because I'd get written up for insubordination. I knew that if I had called DCFS, the first place they'd go was to the office, and the principal would have to talk to them. I thought he would retaliate against me."

Cunningham also testified that she was the union delegate at the school during the 2009-2010 school year and filed grievances on behalf of the teachers at Eugene Field. Additionally, three years prior, petitioner was responsible for the issuance of an E-3 remediation process against her.

¶ 71 On cross-examination, Cunningham testified that she did not follow-up with Meyers after the statements were mailed.

¶ 72 J. Sandra Burns

¶ 73 In rebuttal, the Board also called Sandra Burns, a clerk at Eugene Field, as a witness who testified to the following facts. She began working at Eugene Field in 1992 and was consistently employed in that role throughout petitioner's tenure as principal. Burns was familiar with O.P. and J.R. as students who attended the school. According to Burns, O.P. was "a pretty decent nice girl. A very good girl, a good student" and J.R. "had good days and bad days but pretty much [was] a good student, a very honest student."

¶ 74 On March 17, 2011, Burns testified she clocked in at the school at 7:41 a.m. and left at 1:13 p.m., taking a half a personal day. She did not return to the school.

¶ 75 On March 18, 2011, petitioner, Riordan, and Gomez attended a conference outside of the school in the morning and returned after 3 p.m. but before 4 p.m. Upon returning from the meeting, Riordan came to the office to clock out and petitioner went to his office with the door

closed. Burns said goodbye to petitioner in his office before she left at 5:41 p.m.

¶ 76 On cross-examination, Burns testified the date of March 17, 2011, used in the investigators report was incorrect, as she "never gave a date of March 17th" and she was not in the office in the afternoon on that date. Regarding the events of March 18, 2011, Burns clarified that she observed Riordan and Gomez come through the main office after the conference, however she did not observe petitioner come through the main office. Burns further testified that in her first interview with the investigator that she did not recall seeing O.P. on March 18, 2011.

¶ 77 K. Exhibits Entered into Evidence

¶ 78 Among the relevant exhibits entered into evidence were the EDDPP, the investigative report, the supplemental investigative report, and the telephone records of the school and Dalila. The relevant portion of the EDDPP provided:

"Staleness – If the Board does not take disciplinary action against an employee within a reasonable time after it knew or should have known of an alleged rule infraction, then the Board will have waived its right to do so. An unreasonable delay shall mean a period of time that renders it difficult or impossible to ascertain the truth of the matters in controversy or as to create a presumption that the conduct at issue was condoned by the Board. The date a final investigative report is served on the Board is the date the Board is presumed to have knowledge of the rule infraction."

¶ 79 Included in the investigative report were interviews with individuals who were not called to testify at the hearing. Pertinent to this appeal are the interviews of Gomez, Meyers, J.M., and Y.E. Although Burns testified at the hearing, her interview with investigators is similarly pertinent and will be discussed herein.

¶ 80 Gomez was interviewed twice by investigators. During his first interview on April 4,

2011, Gomez informed investigators that he recalled attending the meeting with petitioner and Riordan on March 18, 2011, but could not recall seeing O.P. and her friends standing outside the school. According to the investigative report:

"When asked if he recalled the principal calling [O.P.] over to him in the parking lot, on March 18, 2011, Mr. Gomez stated, 'I do remember he called someone but I don't remember who it was.' Mr. Gomez recalled that he, Mr. Uwumarogie, and the individual whom Mr. Uwumarogie called over, 'all walked in together.' When asked where they all walked to, Mr. Gomez stated, 'We went to his (Mr. Uwumarogie) office.' Mr. Gomez also recalled that Mr. Uwumarogie 'was never alone with the student.' When the R/I asked Mr. Gomez if he recalled hearing Mr. Uwumarogie talk to the student about attending a better high school, Mr. Gomez suddenly started to remember that the student Mr. Uwumarogie was speaking to was [O.P.]. Mr. Gomez stated, 'I do recall that conversation. It was regarding a high school.' The R/I asked Mr. Gomez how long [O.P.] was in Mr. Uwumarogie's office. Mr. Gomez then retracted his initial statement and stated, 'No, she never went into the building. She came within 10 footsteps of the door and left.' Mr. Gomez stated, 'I remember it was getting dark outside. It was about 7:00 p.m. I think that's why we originally called them over.' Mr. Gomez estimated that Mr. Uwumarogie spoke to [O.P.] for approximately 2 minutes. After [O.P.] left, Mr. Gomez stated that he and Mr. Uwumarogie walked into the school together."

¶ 81 On April 6, 2011, during Gomez's second interview, Gomez stated he returned with petitioner and Riordan from the meeting at 5 p.m. He recalled petitioner calling O.P. over to him. According to the investigative report:

"When asked specifically what was being said between Mr. Uwumarogie and [O.P.], Mr.

Gomez stated, 'I don't know. I wasn't really paying attention. I heard Mr. Uwumarogie tell her that she should go to the other high school.' Mr. Gomez explained that [O.P.] seemed upset 'because he (Mr. Uwumarogie) called her over to us.' According to Mr. Gomez, [O.P.] never walked into the building with him or Mr. Uwumarogie. Once [O.P.] rejoined her friends, Mr. Gomez stated he unlocked the door and allowed Mr. Uwumarogie to walk in before him. Mr. Gomez stated, 'I don't remember her coming in. What I told you is all I remember . . . it's possible. I forget things because of stress with school and my personal life.' "

¶ 82 The investigative report further detailed an interview with Meyers in which she recalled receiving a letter from Cunningham regarding the May 2010 incident. According to the report, at the time Meyers received the letter "there were several issues involving [petitioner]" and "she disregarded it because she believed it was a retaliatory action being taken against Mr. Uwumarogie."

¶ 83 Two of O.P.'s friends were interviewed by investigators, J.M. and Y.E. When interviewed, both stated that on March 17, 2011, they waited outside the school for O.P. for 45 minutes or "almost an hour." Additionally, both stated that on March 18, 2011, they observed O.P. be called over by petitioner and then walk into the school with petitioner and Gomez.

¶ 84 Burns was interviewed twice by investigators. During her first interview on April 4, 2011, Burns stated that she could not remember whether O.P. met with petitioner on March 17, 2011; however, she did remember a student coming into the office. Additionally, "When asked if she recalled seeing [O.P.] walk into Mr. Uwumarogie's office when he returned from a meeting with Mr. Gomez and Ms. Riordan, on March 18, 2011, she stated, 'I don't recall seeing her.' " During Burns' second interview on April 7, 2011, she stated that on March 17, 2011, she

was asked by petitioner to call O.P. to his office. She called O.P. down between 1 and 2 p.m. and O.P. spoke with petitioner for " 'at most 10-20 minutes.' " Regarding the events of March 18, 2011, Burns stated that petitioner returned from a meeting between 3 and 4 p.m. and that she never observed petitioner enter the office with O.P., nor did she enter his office at any time. She did, however, observe Gomez and Riordan enter petitioner's office.

¶ 85 L. Posthearing Briefs

¶ 86 After the hearing, the parties filed posthearing briefs. Petitioner argued that: (1) the Board waived its right to bring charges against him because it failed to do so within a reasonable amount of time after it knew or should have known of the alleged rule infraction pursuant to the EDDPP; (2) he was denied due process because the Board failed to conduct a fair investigation; and (3) the Board failed to meet its burden on "the issue of irremediability."

¶ 87 The relevant portions of the Board's posthearing brief contended O.P. and J.R. presented credible testimony, as their accounts were consistent and they lacked motivation to lie. The Board identified inconsistencies in petitioner's testimony, specifically that he "lied when he told the investigators and this hearing officer that he initiated the call with Dalila P. on March 17, 2011" and that the meeting only lasted five or ten minutes. In addition, the Board asserted petitioner's staleness argument is without merit, as petitioner was quickly removed as principal in April 2011, when the allegations came to light, and the investigation was not completed until late June 2011. Moreover, petitioner was represented by counsel at that time who was attempting to amicably resolve the matter. The Board asserted that when an amicable resolution was no longer possible, formal dismissal charges were filed in February 2012.

¶ 88 III. Hearing Officer's Recommendation and Board Adoption

¶ 89 After evaluating the various testimonies and exhibits at the proceeding, the hearing

officer rendered her findings of fact and recommendations to the Board. The hearing officer concluded the Board satisfied its burden and proved that petitioner's conduct justified his dismissal without warning, as sexual misconduct involving a student is irremediable. The hearing officer expressly found petitioner's conduct "crossed the boundary from appropriate academic leadership and concern to prohibited sexually-charged conduct that violated Board rules and constituted conduct that was irremediable *per se* under the standard set forth in the School Code, 105 ILCS 5/34-85."

¶ 90 In rendering her determination, the hearing officer utilized the preponderance of the evidence standard. The hearing officer then determined the accounts of O.P. and J.R. were more credible than the petitioner's denials. The hearing officer further found that no evidence was presented that either O.P. or J.R. was motivated to lie about petitioner's conduct toward them and adopted the findings of fact as set forth in the testimony of O.P. and J.R. The hearing officer, however, did not consider J.R.'s testimony that petitioner hugged her, as this was first asserted at the dismissal hearing.

¶ 91 After considering all the evidence presented, including the testimony of Aikens and Cummings, the hearing officer stated:

"In sum, the Board has presented credible evidence to support the conclusions in the February 22, 2012 specifications that[:]

1. Uwumarogie hugged O.P. inappropriately during the 2009-2010 and 2010-2011 school years;
2. Uwumarogie questioned O.P. inappropriately in May 2010, in a one-on-one conversation in his office, about whether she had a boyfriend and whether she was a virgin;

3. Uwumarogie kissed O.P. in his office on March 18, 2011, hugged her, and gave her money with the comment, "I am here for you if you need me."

4. Uwumarogie questioned J.R. inappropriately about her activity with boys on March 31, 2011, and told her that the boys couldn't do anything for her, but "I can do something for you. When you turn 18, I'll call you. I have your number."

In addition, the hearing officer found "it does not appear that Mr. Uwumarogie's conduct on March 17, 2011, violated any School or Board rules or policies."

¶ 92 Regarding petitioner's staleness argument, the hearing officer concluded that the proceedings against petitioner were not stale under the EDDPP. Accordingly, the Board did not waive its right to take action against petitioner. Specifically, the hearing officer found that petitioner was aware these matters were under investigation in April 2011 and that the delay did not render it difficult or impossible to ascertain the truth of the matters in controversy or create a presumption that the conduct was condoned by the Board.

¶ 93 In regards to petitioner's due process argument, the hearing officer acknowledged that Cunningham and Meyers's failure to follow-up after learning of O.P. and J.R.'s May 2010 statements created an 11-month delay in an investigation. The hearing officer stated that "[t]his might under some circumstances be deemed a violation of Mr. Uwumarogie's due process rights." The hearing officer, however, ultimately concluded that petitioner failed to establish that his due process rights were violated because he "failed to demonstrate any specific way that this 11-month delay impeded the investigation or his ability to frame and present his defense at the hearing."

¶ 94 On October 23, 2013, the Board adopted the recommendations of the hearing officer and petitioner was dismissed from his employment with the Board. This appeal followed.

¶ 95

## ANALYSIS

¶ 96 Petitioner asserts three arguments on appeal: (1) the Board waived its right to terminate his employment pursuant to the staleness provision of the EDDPP; (2) the Board applied the improper legal standard in its determination; and (3) the Board's findings were against the manifest weight of the evidence.

¶ 97 The applicable standard for judicial review of an administrative decision "depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." (Internal quotation marks omitted.) *Medina v. Board of Education of the City of Chicago*, 2014 IL App (1st) 130588, ¶ 16.

¶ 98 The decision of the Board to terminate petitioner's employment is an administrative decision and judicial review is governed by the Administrative Review Law (735 ILS 5/3-101 *et seq.* (West 2012)). 105 ILCS 5/34-85b (West 2012). Although the hearing officer acts as the factfinder and in that capacity hears the testimony of witnesses, determines their credibility and the weight to be given their statements, and draws reasonable inferences from all evidence produced in support of the charges against the accused (*Ahmad v. Board of Education of the City of Chicago*, 365 Ill. App. 3d 155, 162 (2006)), the decision of the hearing officer is merely a recommendation to the Board (*Raitzik v. Board of Education of the City of Chicago*, 356 Ill. App. 3d 813, 823 (2005)). Thus, in administrative review cases, we do not review the decision of the hearing officer; rather, we review the decision of the Board. *Ahmad*, 365 Ill. App. 3d at 162.<sup>12</sup>

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<sup>12</sup> We note, however, that this court has previously acknowledged that where the Board has adopted the decision of the hearing officer, "the Board's decision is a mere proxy for that of the hearing officer; therefore, we must review the opinion of the hearing officer for error." *Russell v. Board of Education of the City of Chicago*, 379 Ill. App. 3d 38, 47 (2007). Taking these cases into consideration, herein we will refer to the hearing officer's findings as the Board's

¶ 99 The findings and conclusions of the administrative agency on questions of fact are held to be *prima facie* true and correct, and no new or additional evidence on the points at issue may be considered. 735 ILCS 5/3-110 (West 2012). On administrative review, this court does not reweigh evidence or make an independent determination of the facts. *Crowley v. Board of Education of the City of Chicago*, 2014 IL App (1st) 130727, ¶ 28. When an administrative agency's factual findings are contested, the court will only ascertain whether such findings of fact are against the manifest weight of the evidence. *Ahmad*, 365 Ill. App. 3d at 162. "An agency's findings are against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id.*

¶ 100 If the only point in dispute is an agency's conclusion on a point of law, the decision is subject to *de novo* review. *Jones v. Board of Educ. of City of Chicago*, 2013 IL App (1st) 122437, ¶ 6. *De novo* consideration means we perform the same analysis that a trial judge would perform. *Kimble v. Illinois State Board of Education*, 2014 IL App (1st) 123436, ¶ 76.

¶ 101 When the dispute concerns the legal effect of a given set of facts, such as when the facts and the law are undisputed, and the issue is whether the facts satisfy the statutory standard, the case presents a mixed question of law and fact, and we review the agency's decision under a clearly erroneous standard. *Crowley*, 2014 IL App (1st) 130727, ¶ 28. We now turn to address petitioner's first argument.

¶ 102 I. Due Process

¶ 103 Petitioner contends the Board waived its right to terminate his employment due to its failure to timely bring disciplinary action against him within a reasonable amount time pursuant to the EDDPP. Whether the Board's decision that the termination proceeding was not stale is

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findings.

reviewed under the clearly erroneous standard. *Crowley*, 2014 IL App (1st) 130727, ¶ 34. An administrative decision is clearly erroneous only when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Medina*, 2014 IL App (1st) 130588, ¶ 18.

¶ 104 Specifically, petitioner asserts that in May 2010 Cunningham and Meyers became aware of O.P.'s allegations against him, however, no investigation into those allegations was commenced until April 2011, leading to an 11-month delay. Such delay, petitioner argues, was unreasonable and, therefore, the Board erred in failing to find the alleged rule infractions were stale. Petitioner further argues there was an additional "10-month delay" between the June 2011 final investigative report and when the Board approved the charges against him in February 2012.<sup>13</sup> Petitioner contends this delay was similarly unreasonable as it "could have operated as an intimidating influence on any teachers or administrators with knowledge of facts supporting [him]." In particular, it "could have implicitly sent an intimidating message to persuade witnesses favorable to [him] not to support him or risk retaliatory action."

¶ 105 We find that the Board's decision that the termination proceeding was not stale was not clearly erroneous. According to the EDDPP, the Board "will have waived its right" to discipline an employee if it "does not take disciplinary action against [the] employee within a reasonable time after it knew or should have known of an alleged rule infraction." Although petitioner asserts the Board was aware of the May 2010 incident through the knowledge of its employees, Cunningham and Meyers, he fails to cite any authority in support of this position. Illinois Supreme Court Rule 341 provides that the argument section of the brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the

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<sup>13</sup> We note that in his brief petitioner consistently refers to a "10-month delay"; however, the time period is actually 8 months.

pages of the record relied on." Ill. S. Ct. R. 341 (eff. Feb. 6, 2013). "The court is not merely a repository into which an appellant may dump the burden of argument or research." (Internal quotation marks omitted.) *Janousek v. Slotky*, 2012 IL App (1st) 113432, ¶ 16. Failing to cite to relevant facts and authority results in the party forfeiting consideration of the issue. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. In addition, petitioner does not argue that the 11-month delay in this cause made it difficult or impossible to ascertain the truth or that the delay lead to a presumption that the Board condoned the conduct at issue. Our supreme court's rules are mandatory rules of procedure, not mere suggestions (*Menard v. Illinois Workers' Compensation Comm.*, 405 Ill. App. 3d 235, 238 (2010)); thus, we find petitioner's arguments regarding the unreasonableness of the 11-month delay to be forfeited pursuant to Illinois Supreme Court Rule 341.

¶ 106 We note, however, that petitioner was not discharged from his employment as principal based solely on the May 2010 incident. The complaint also alleged he engaged in multiple acts of sexual misconduct in March 2011. O.P. and J.R. reported these acts on March 31, 2011, and an investigation into the incidents commenced immediately on April 1, 2011. Petitioner was informed of the investigation, as first interviews regarding the allegations commenced on April 4, 2011. The record further indicates petitioner was represented by counsel as early as April 2011. Thereafter, on April 6, 2011, the Board reassigned petitioner to his home without pay. Two months later, on June 22, 2011, the Board received the investigation report and the record demonstrates that petitioner's counsel was attempting to negotiate with the Board until charges were filed in February of 2012. Based on the record before us, we find the Board commenced disciplinary action within a reasonable amount of time after it became aware of the rule infractions. Accordingly, the Board's decision that the proceedings were not stale was not

clearly erroneous. See *Crowley*, 2014 IL App (1st) 130727, ¶ 34 (upholding the Board's decision that the termination proceedings were not stale).

¶ 107

## II. Improper Legal Standard

¶ 108 Petitioner argues the Board applied the inappropriate "credible evidence" standard rather than the preponderance of the evidence standard. Whether an administrative agency applied the proper standard is question of law which we review *de novo*. *Ahmad*, 365 Ill. App. 3d at 162-63. "The proper standard of proof applicable to tenured-teacher dismissal proceedings, including those where conduct that might constitute a crime is charged, is the preponderance of the evidence standard." *Board of Education of the City of Chicago v. State Board of Education*, 113 Ill. 2d 173, 189 (1986) (addressing the standard for dismissals pursuant to a preceding version of section 34-85 of the School Code, which included the procedures for the dismissal of principals).<sup>14</sup>

¶ 109 Here, in considering the merits of petitioner's termination, the Board applied the appropriate legal standard. Petitioner points to a particular sentence in the findings adopted by the Board, which stated, "[i]n sum, the Board has presented credible evidence to support the conclusions in the February 22, 2012 specifications" and argues this demonstrates the incorrect legal standard was applied. We find, however, when reading the findings in their entirety, that this sentence merely summarized the findings of fact and the "credible evidence" standard was not applied to the matter as a whole. Notably, when considering the merits of petitioner's termination, it was expressly set forth in the recommendations adopted by the Board that, "The Board has the burden of proving by a preponderance of the evidence that there was cause for

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<sup>14</sup> Subsequent amendments to section 34-85 of the School Code (105 ILCS 5/34-85 (West 2012)) did not alter the fact that it provides detailed procedures for the protection of tenured teachers *and* principals faced with dismissal for cause. See 105 ILCS 5/34-85 (West 2012).

removal based on the conduct charged in the specifications and bill of particulars." Additionally, the Board indicated that it "carefully reviewed and evaluated each witness' testimony and demeanor, the opportunity or motivation for purposeful untruthful or deceptive testimony and/or for inadvertent inaccuracy, and other factors that may tend to make one witness' account of a particular incident more compelling than other conflicting testimony or evidence," thus refuting petitioner's argument that it "failed to diligently examine and weigh the contrary evidence supporting Mr. Uwumarogie." The Board ultimately adopted the conclusion of the hearing officer that, "The Board has satisfied its burden in this case." Accordingly, we find the appropriate legal standard was applied to the instant matter.

¶ 110

### III. The Board's Findings

¶ 111 In his third and final argument, petitioner contends that four of the Board's findings were against the manifest weight of the evidence. Specifically, that petitioner: (1) hugged O.P. inappropriately during the 2009-10 and 2010-11 school years; (2) questioned O.P. inappropriately in May 2010, in a conversation in his office about whether she had a boyfriend and whether she was a virgin; (3) kissed O.P. in his office on March 18, 2011, hugged her, and gave her money with the comment, "I'm here for you if you need me"; and (4) "questioned J.R. inappropriately about her activity with boys on March 31, 2011, and told her that boys couldn't do anything for her, but 'I can do something for you. When you are 18, I'll call you. I have your number.'" <sup>15</sup>

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<sup>15</sup> We acknowledge that petitioner argues in his brief that he "does not limit his analysis to discussion of factual issues" and argues these findings were also "arbitrary and unreasonable." Typically, we review the Board's finding of cause under the "arbitrary and unreasonable" standard. See *Crowley*, 2014 IL App (1st) 130727, ¶ 29. Here, however, petitioner does not argue that the Board was without cause to terminate his employment. Indeed, petitioner's specific arguments solely deal with the Board's findings of fact. Accordingly, despite petitioner's bare assertion that he is not limiting his argument to factual issues, we conclude he has and will

¶ 112 In reviewing the actions of the Board, "[t]he 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 2012). A reviewing court is not to reweigh the evidence or make an independent determination of the facts. *Kimble*, 2014 IL App (1st) 123436, ¶ 73. Accordingly, a reviewing court will not reverse an agency's findings unless they are against the manifest weight of the evidence. *Ahmad*, 365 Ill. App. 3d at 162. An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Kimble*, 2014 IL App (1st) 123436, ¶ 74. "The fact that the opposite conclusion is reasonable or that the reviewing court may have reached a different outcome does not justify reversal of the administrative findings. [Citation.] If the record contains evidence to support the agency's decision, it should be affirmed. [Citation.]" (Internal quotation marks omitted.) *Id.* Our review of the record leads us to conclude that the Board had before it sufficient evidence to support its findings here.

¶ 113 With regards to the first factual finding, petitioner argues that the 20-30 hugs O.P. testified she received in the 2009-2010 and 2010-2011 school years "strongly suggests that someone would have seen them or learned of them." However, no one testified at the hearing that these hugs occurred. Petitioner asserts that Burns testified that she did not suspect petitioner of inappropriately touching O.P., nor did she observe O.P. in petitioner's office multiple times over the school year. Additionally, petitioner contends, without any citation to authority, the fact that O.P. waited for over a year to report the hugs supports the conclusion that the hugs never occurred.

¶ 114 The record demonstrates that the Board had before it sufficient evidence to support its

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review the matter only in regard to whether the Board's findings were against the manifest weight of the evidence.

finding that petitioner hugged O.P. inappropriately during the 2009-2010 and 2010-2011 school years. Here, the hearing officer heard all of the witnesses, reviewed the evidence presented, and found the account of O.P. to be more credible than petitioner's denials. See *Hall v. Board of Education of the City of Chicago*, 227 Ill. App. 3d 560, 574 (1992) (it is the hearing officer who determines witness credibility and weighs the evidence and testimony). The Board then adopted these findings in toto. In making such a finding, the Board considered O.P.'s testimony that petitioner hugged her inappropriately during her seventh and eighth grade years at Eugene Field. The Board further adopted the findings that these hugs occurred when petitioner was alone with O.P. in his office with the door closed, thus precluding other individuals such as Burns from witnessing the hugs. Further findings were rendered that O.P. informed investigators of the hugs and that she had no motivation to lie to investigators. As such, we cannot substitute our judgment for that of the Board, and reversal of the Board's decision is not justified simply because the opposite conclusion is reasonable or because we might have ruled differently. *Raitzik*, 356 Ill. App. 3d at 823.

¶ 115 Petitioner next argues that the finding that petitioner questioned O.P. inappropriately in May 2010 was in error, as the Board failed to consider substantial evidence that: (1) O.P. had an incentive to lie; (2) O.P.'s story was lacking corroborating evidence; and (3) O.P. had a reputation for dishonesty and inappropriate behavior. Additionally, petitioner contends the Board failed to consider that Cunningham's bias against petitioner could have been "instrumental in guiding O.P. and J.R. to make false statements." Petitioner also points to Meyers's statement to Board investigators that she disregarded O.P. and J.R.'s May 2010 statements because she believed it was a form of retaliation against him.

¶ 116 We initially point out that the hearing officer expressly indicated in her recommendations

to the Board that she considered all the testimonies and exhibits produced at the hearing. This would include the testimonies of Dalila, Aikens, Cummings, and Burns, who testified to O.P.'s character. As previously discussed, it is the hearing officer who is in the best position to weigh the evidence and consider the testimony of witnesses, and here, in light of these testimonies, she found that O.P.'s account of the events of May 2010 was credible. The hearing officer further concluded that the charge against petitioner was proven by a preponderance of the evidence and these findings were adopted in their entirety by the Board.

¶ 117 Additionally, petitioner points to no evidence in the record that Cunningham was "instrumental" in guiding O.P. and J.R.'s statements. O.P. and J.R. testified consistently that they each spoke briefly to Cunningham in the hallway alone and she asked them to write their statements individually, which they did. The direct and cross examinations of O.P., J.R., and Cunningham did not reveal that Cunningham asked either girl follow-up questions regarding petitioner's behavior or attempted to sway their statements. As for petitioner's argument regarding Meyers, we note that petitioner did not call Meyers as a witness at the dismissal hearing. Moreover, the record demonstrates the Board considered the investigative report, which included an interview with Meyers, and despite Meyers's statements still concluded that petitioner questioned O.P. inappropriately in May 2010. Thus, we find that the Board's determination that petitioner questioned O.P. inappropriately in May 2010 was not against the manifest weight of the evidence.

¶ 118 Petitioner further argues that the Board wrongly found that petitioner kissed O.P. in his office on March 18, 2011, hugged her, and gave her money with the comment, "I am here for you if you need me," as the evidence did not establish that O.P. went into the school with petitioner that day. Specifically, petitioner asserts that the Board did not consider the statements

of Gomez and Burns who indicated that they did not see O.P. go into the school building or in petitioner's office on March 18, 2011.

¶ 119 We conclude that the Board proved this charge by a preponderance of the evidence. The Board found the testimony of O.P. and J.R. that petitioner entered the school building with O.P. on March 18, 2011, to be credible. In rendering this determination, the investigative report was also considered, which included interviews with two female students who stated they observed petitioner walk into the school building with O.P. on March 18, 2011. Notably, each of the girls' statements was consistent with the other as well as with O.P.'s and J.R.'s testimonies and prior interviews.

¶ 120 Petitioner asserts that Gomez's statements to investigators were not considered; however, the recommendations adopted by the Board expressly stated all the evidence submitted was considered. In addition, the record demonstrates that when interviewed two weeks after the incident, Gomez initially stated that a student walked into the building with petitioner. He subsequently retracted that statement during the same interview when he realized the student was O.P. In another interview two days later, Gomez stated, " I don't remember her coming in. What I told you is all I remember . . . it's possible. I forget things because of stress with school and my personal life.' "

¶ 121 Burns' testimony was similarly confused. In her statements to investigators two weeks after the March 18, 2011, incident, she did not inform them that she had taken half a personal day on March 17, 2011, despite answering questions specifically directed to the March 17 date. At the dismissal hearing, Burns testified the report was incorrect, stating it was impossible for her to have provided any information about March 17, 2011, because she was not there. In addition, Burns testified that she did not observe O.P. *or* petitioner enter his office on March 18,

2011. The credibility of the witnesses is exactly what the Board is charged with discerning; thus, it is not our place to substitute our opinion for that of the Board in this instance. *Kimble*, 2014 IL App (1st) 123436, ¶ 73. Based on the record before us, we cannot say that the finding that petitioner acted inappropriately towards O.P. on March 18, 2011, was against the manifest weight of the evidence.

¶ 122 Lastly, petitioner argues that the hearing officer was not presented with credible evidence that petitioner inappropriately questioned J.R. on March 31, 2011, where J.R. had "plenty of motivation to fabricate and suffered from a reputation for troublemaking and dishonesty." As the hearing officer failed to consider J.R.'s "checkered past," petitioner asserts the finding was in error, particularly in light of the testimony of Aikens and Cummings.

¶ 123 Our review of the record demonstrates that the Board had before it sufficient evidence to determine that petitioner inappropriately questioned J.R. on March 31, 2011. No evidence was presented that J.R. had a reputation for "troublemaking and dishonesty." In contrast, Burns testified that J.R. was "a very honest student." The witnesses identified by petitioner merely indicated that in her seventh grade year J.R. had been disciplined for fighting and that the following year she engaged in far fewer fights. There was no testimony elicited that J.R. instigated fights; rather Cummings testified that J.R. would come to her asserting that "[s]ome kid wants to beat her up." In fact, Cummings testified to J.R.'s good character in that J.R. was helpful, eager, and enjoyed taking part in school programs. Accordingly, the record fails to support petitioner's argument that J.R.'s disciplinary issues had any correlation with a motive to lie in the instant matter.

¶ 124 As none of the findings challenged by petitioner were against the manifest weight of the evidence, we affirm the Board's decision to discharge petitioner.

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¶ 125

## CONCLUSION

¶ 126 For the reasons stated above, the decision of the Board discharging petitioner is affirmed.

¶ 127 Affirmed.