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2015 IL App (3d) 130705-U

Order filed October 1, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2015

THE BOARD OF EDUCATION OF)	Appeal from the Circuit Court
PEORIA PUBLIC SCHOOL DISTRICT)	of the Tenth Judicial Circuit,
NO. 150,)	Peoria County, Illinois,
)	
Plaintiff-Appellee,)	
)	
v.)	
)	
MARY DAVIS,)	
)	
Defendant-Appellant,)	Appeal No. 3-13-0705
)	Circuit No. 12-MR-619
and)	
)	
THE ILLINOIS STATE BOARD OF)	
EDUCATION, CHRISTOPHER KOCH,)	
State Superintendent, Illinois State Board)	
of Education, ROBERT FITZGERALD,)	
Hearing Officer, Illinois State Board)	
of Education,)	Honorable
)	Michael Brandt,
Defendants.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice O'Brien dissented.

ORDER

¶ 1 *Held:* The administrative hearing officer’s decision was clearly erroneous by finding that the Peoria School Board did not have just cause for the dismissal of Davis, its tenured employee, after Davis entered a guilty plea to criminal charges admitting that, in 2009, Davis “knowingly furnished false information” to a peace officer investigating her alleged misuse or theft of school district funds.

¶ 2 The Board of Education (Board) for Peoria Public School District No. 150 (District) voted for the dismissal of defendant Mary Davis, a tenured employee, based upon irremediable conduct regarding an activity fund account.¹ Davis filed a request for an administrative hearing to challenge her dismissal. The hearing was continued by agreement until the resolution of related pending criminal charges. An administrative hearing officer, appointed by the Illinois State Board of Education (ISBE), found that the Board improperly dismissed Davis and ordered the Board to reinstate Davis to the same or a substantially comparable position with full back pay.

¶ 3 Consequently, the Board filed a complaint for administrative review in the circuit court challenging the hearing officer’s decision. The circuit court found the hearing officer’s decision was clearly erroneous and against the manifest weight of the evidence and ordered the Board had just cause for Davis’ dismissal. Davis appeals the circuit court’s decision and asks this court to confirm the ISBE administrative decision entered in her favor. We reverse the administrative hearing officer’s decision and affirm the decision of the circuit court.

¹The statutory language in section 24-12 of the Illinois School Code (Code) (105 ILCS 5/24-12 (West 2010)) refers to the termination of a teacher’s employment as a “dismissal,” as do the notices provided by the District to Davis. The administrative hearing officer and Davis’ appellate brief refer to her termination as a “discharge.” To provide consistency, we use the word “dismissal” when referring to the termination of Davis’ employment with the District.

¶ 4

BACKGROUND

¶ 5

The District hired Davis as a certified teacher in August of 1985. After working various positions as a teacher and dean of students within the District, Davis was promoted to principal of Lindbergh Middle School (Lindbergh) from 2003-2008. Davis left Lindbergh in June of 2008 after being promoted to the position of Academic Officer for the District.

¶ 6

As the principal of Lindbergh from 2003-2008, Davis was solely responsible for approving requests to expend money from the Lindbergh activity fund account, which was derived from various school activity fees and District funding.² Davis was the only signatory allowed to write checks from the activity fund account. While Davis was principal, the administration did not review the activity fund expenditures approved and paid for by Davis. The activity fund account was to be used for school activities, or for activities that enhanced the school or student achievement. During the administrative hearing, Davis testified the activity fund account contained discretionary funds that could also be used to purchase, “[t]hings for the school, equipment, supplies.”

¶ 7

I. Criminal Investigation and Davis’ Guilty Plea

¶ 8

In April of 2009, Davis became the subject of a yearlong criminal investigation to determine whether the activity funds were misused or misappropriated while Davis was serving as the principal of Lindbergh. On two occasions in 2009, Detective Marvin Kenser personally spoke to Davis regarding her use of a Sam’s Club Discover credit card, issued in her name and the District’s name, to purchase a Montblanc pen that cost \$477.68 and to purchase two books

²Student activity funds are authorized by the Code and allow school classes, clubs, and associations to collect or acquire money through donations or fundraisers in the school’s name to be used solely for student groups, extracurricular programs, and for the school. See 105 ILCS 5/10-20.19 (West 2010).

from Amazon.com for \$39.89. Davis gave two conflicting explanations for the pen purchase during the two interviews.³

¶ 9 As detailed in police reports that were admitted as evidence during the administrative hearing, during a first interview on June 18, 2009, Davis explained to Detective Kenser that, when she became principal, she acquired a “Sam’s Club Discover Card” account for herself and several employees at the Lindbergh Middle School in the name of the school. According to Davis, she put the card in the school’s name to facilitate purchases for the school without the requirement of paying sales taxes. However, Davis told the detective she never considered this to be a “school credit card” because it had her own social security number on it. Davis told the detective that she was not authorized by the District to obtain this school credit card. Detective Kenser asked Davis about the Montblanc pen purchase and the “Request for Funds” form (request form) she prepared to cover the cost of the pen from the activity fund for “office supplies/books.” During this interview, Detective Kenser also asked about the location of records to support \$4000 that was paid to that Discover card from activity fund accounts and Davis told the detective that the 2007-2008 receipt records were missing. However, Davis told Detective Kenser she had never used the Lindbergh activity fund account for personal reasons.

¶ 10 During a second interview on August 13, 2009, as detailed in the police reports, Detective Kenser first advised Davis of her Miranda warnings. Detective Kenser asked Davis about the request form documents that showed Davis approved the reimbursement for the Montblanc pen and a copy of the check to pay for the pen that was drawn from the school’s activity fund account and written to her Sam’s Club Discover account for the “7th Grade Trip.”

³Detective Kenser’s police reports were admitted as evidence during the administrative hearing in this case, marked as Board Exhibits 5 and 6, and are part of the record.

During this second interview, the report says Davis told Detective Kenser that she thought she repaid the District for the cost of this pen, but she could not remember when or how this occurred. No records indicated Davis ever reimbursed the activity fund account for this expense. The police report regarding the second interview with Davis stated the detective showed Davis copies of the 2006-2007 Lindbergh activity fund account and it appeared that over \$6,000 was unaccounted for during that year. The records for the 2007-2008 receipts were still missing.

¶ 11 On April 25, 2010, the State's Attorney of Peoria County charged Davis with sixteen felony charges, including eight counts of theft and eight counts of official misconduct based on these thefts, based on Davis' conduct from August 12, 2005, to January 24, 2007. Nearly two years later on February 21, 2012, by agreement and while the administrative dismissal charge remained unresolved, the State filed an additional criminal information adding a count 17, which charged Davis with misdemeanor attempt obstructing justice based on her conflicting statements to the detective on June 24, 2009, and August 26, 2009. The attempt obstructing justice count alleged that Davis, "with the intent to commit the offense of obstructing justice in violation of 720 ILCS 5/31-4(a) performed a substantial step toward the commission of that offense in that she[,] with the intent to prevent the apprehension or obstruct the prosecution of herself[,] knowingly furnished false information to Marvin Kenser, a peace officer, as to the use of Lindbergh Middle Schools [*sic*] Funds."

¶ 12 On February 21, 2012, pursuant to a fully-negotiated plea agreement, Davis pled guilty to attempt obstructing justice by admitting she "knowingly furnished false information" to Detective Kenser regarding the use of Lindbergh Middle School funds. In exchange for this guilty plea, the negotiated plea agreement presented to the court on February 21, 2012, required the State to dismiss the 16 felony charges pending against Davis involving official misconduct

and theft. Pursuant to the fully-negotiated plea agreement, Davis agreed to waive any statute of limitations violation, which would have barred the attempt obstructing justice charge filed on February 21, 2012, based on conduct occurring more than 18 months prior to the filing of this amended count.

¶ 13 The factual basis recited to the court established that the State's evidence would show that, during Davis' police interview in June of 2009, Davis denied using Lindbergh activity funds for any personal reasons. Later, in a follow up interview with Detective Kenser in August of 2009, Davis furnished information that was contradictory to her June 2009 statement to Detective Kenser.

¶ 14 According to the terms of the negotiated plea agreement, the court sentenced Davis to successfully complete 24 months of probation. The court also ordered Davis to pay restitution in the amount of \$10,000 to the District, pursuant to the terms of the plea agreement, and to pay restitution in the amount of \$5,000 to the Peoria County State's Attorney for the services of the State's expert witness.

¶ 15 II. School Board's Notice of Charges and Dismissal of Davis

¶ 16 Initially, after the State's Attorney filed 16 felony charges against Davis on April 25, 2010, the Board adopted a resolution authorizing a notice of charges and dismissal of Davis, a tenured employee of the District, on June 7, 2010. The Board's notice of charges and attached bill of particulars were dated June 8, 2010, and alleged that Davis, acting as an employee of the District, committed multiple acts of theft between the dates of May 24, 2006, and January 24, 2007, that involved "immoral" conduct and "harmed the District." The Board's notice stated Davis was no longer qualified to teach or act as an administrator in the District, and that her

immoral conduct required her dismissal. This notice also informed Davis that she was immediately suspended without pay from all duties with the District.⁴

¶ 17 On June 16, 2010, Davis requested review of the Board’s decision to terminate her employment by asking the ISBE for an administrative review of the Board’s decision. Davis asked the ISBE to reinstate her to her recent administrative position on the grounds that the Board improperly terminated her employment as a tenured employee. By agreement, the administrative hearing was continued pending resolution of Davis’ criminal charges.

¶ 18 Davis pled guilty to the criminal offense of attempt obstructing justice on February 21, 2012. On July 23, 2012, after Davis entered the guilty plea, the Board entered a second resolution amending the original 2010 resolution by adding Davis’ plea and criminal conviction regarding Lindbergh Middle School funds as an additional charge for her dismissal for immoral conduct. The Board then sent Davis an amended notice of charges and amended bill of particulars on July 23, 2012. This amended notice retained the theft and official misconduct charges set out in paragraphs 1-6 of the original notice of charges, but added a seventh allegation as grounds for Davis’ dismissal due to Davis being convicted of a criminal offense following her guilty plea to “Attempt to Obstructing Justice” [*sic*] on February 21, 2012. The seventh allegation further stated that, during her guilty plea, Davis admitted that she “knowingly furnished false information to Peace Officer Marvin Kenser, as to the use of Lindbergh Middle School Funds,” with the intent to prevent the apprehension or prosecution of herself. In the amended notice of charges and bill of particulars, the Board concluded that Davis was no longer

⁴Prior to the Board’s notice of dismissal, based on the ongoing investigation, the Board placed Davis on administrative leave with pay beginning September 8, 2009.

qualified to teach or act as an administrator, her conduct was “immoral and unprofessional” and her dismissal was in the best interest of the District.

¶ 19 III. Administrative Hearing Evidence

¶ 20 The administrative hearing requested by Davis in June of 2010 was delayed by agreement pending resolution of the Illinois criminal court action and a federal court action.⁵ The administrative hearing began in August of 2012, six months after Davis pled guilty to attempt obstructing justice and one month after Davis received the amended notice of charges from the Board on July 23, 2012. During the administrative hearing, the parties presented the testimony of 12 witnesses from August 21, 2012, through August 22, 2012, including: Davis, Detective Kenser, Assistant State’s Attorney Seth Uphoff, Michelle Burks, Geri Hammer, George Williams, Timothy Smith, Michael McKenzie, Mark Nicholas, Debbie Logan, and Judith Serritella. Several pages of documentation were also tendered as evidence during the administrative hearing. The evidence presented during the administrative hearing is outlined below.

¶ 21 A. Evidence from School Administrators and Auditors

¶ 22 As principal of Lindbergh Middle School from 2003-2008, Davis directly oversaw the Lindbergh activity fund expenditures, which were derived from District funds, student activity fees, fundraising and donations. During this time period, the District allowed these activity fund accounts to be managed completely by the principals of their respective schools, without any oversight from the District administration. After Davis completed her term as principal, the

⁵The hearing officer in his final report and decision stated, “[t]he delay between assignments of the case to the *** Hearing Officer was caused by the existence of 5th Amendment Rights of Davis in other litigation. Both a State Court Criminal Case, and a Federal Court action, which involved 5th [sic] Amendment Rights, made the completion of a Hearing in this matter unlikely * * * until the resolution of those cases.”

District modified the practice of allowing a principal to unilaterally determine the appropriate use of activity funds to require oversight by the District.

¶ 23 Beginning in 2009, Michael McKenzie, the Assistant Comptroller for the District, began double-checking the disbursements of the activity funds. McKenzie met with the principals at each school, and reviewed bank statements and samples of the transactions completed during the year to determine whether the principals properly approved payments pursuant to request forms and attached corresponding receipts. McKenzie also verified that each school balanced its checking and bank statements for the activity funds. McKenzie reviewed the records concerning the Lindbergh activity fund account in 2009 and explained discrepancies in the accounts.

¶ 24 In addition to McKenzie, the accounting firm of Clifton Gunderson (Gunderson) examined the Lindbergh activity fund records for the 2007-2008 school year sometime after Davis left her position as principal. The letter indicated that, of the 20 items Gunderson reviewed, documentation supported that payments were for reimbursements to the persons involved, and they found no checks payable directly to the principal.

¶ 25 In 2009, the District witnesses testified that Julie McArdle, the current principal of Lindbergh Middle School, raised issues to the District regarding concerns about the possible misappropriation of funds by Davis during Davis' tenure as the previous principal. The District Superintendent, Ken Hinton, asked the District's assistant comptroller, Michael McKenzie, to "look into it." McKenzie discovered that records for the Lindbergh activity fund did not include the required receipts documenting all of the payments from the activity fund that Davis approved during the 2007-2008 school year. Consequently, the District contacted the police to report the suspected misuse of school funds by Davis during her tenure as principal.

¶ 26 As part of his yearlong investigation, Detective Kenser reviewed the District's bank and credit card records, Davis' personal checking and credit account records, and activity fund records provided to him by McKenzie, the assistant comptroller for the District. Detective Kenser interviewed numerous present and past school employees. The detective also interviewed Davis on two occasions and his police reports were admitted as evidence during the administrative hearing.

¶ 27 The Lindbergh activity fund was a single checking account that included commingled money from various sources, such as the student council, book fair sales, teacher contributions to their respective funds, and gate receipts from athletic events. The largest source of income for the activity fund came from Pepsi sales from the vending machines in the school building. The source of the funds deposited into the activity fund bank account was listed on an Excel spreadsheet created by Davis, which identified the sources of funds (e.g. concession sales, fundraisers, donations) that were deposited into the activity fund. Davis wrote checks disbursing money from the activity fund after receiving and approving properly completed request forms. The request forms included a space for the person requesting funds to document the reason for the expenditure. Purchase receipts were required to be attached to the request form when reimbursement for expenses was requested.

¶ 28 B. Montblanc Pen

¶ 29 On July 10, 2006, Davis filled out her own request form to pay a \$507.56 charge she made on the Sam's Club Discover credit card that she personally acquired as a school credit card account. Davis approved her own request form bearing the date of July 10, 2006. This request form indicated the purchase involved office supplies and books, but Davis did not specify on the request form that the office supply she purchased was a \$467.75 Montblanc pen for her exclusive

personal use. Davis attached a receipt for the Montblanc pen she ordered from a business named FPI Fahrney in the amount of \$467.75. She also attached copies of two additional receipts for supplies purchased with the Sam's Club Discover credit card from Amazon.com, one for \$20.27, and another for \$19.56, which were identified as expenses for books. On July 24, 2006, Davis wrote a check for \$507.56 made out to the Sam's Club Discover credit card account. The school records document the check was drawn from the "Lindbergh Activity Fund's Seventh Grade Field Trip account."⁶ Davis paid the \$507.56 check to her Sam's Club Discover credit card account, the one Davis acquired as a tax-free school account without school authorization.

¶ 30 Detective Kenser first questioned Davis on June 24, 2009, about her decision to use Lindbergh funds to purchase the Montblanc pen. On June 24, Davis told Detective Kenser she bought the pen for her personal use.

¶ 31 During a second interview conducted by Detective Kenser on August 26, 2009, Davis explained to the detective that, although she paid for the pen with Lindbergh activity funds, she later reimbursed the District for the Montblanc pen purchase. However, she could not recall how or when she reimbursed the District for \$467.75, and she could not prove she had done so. According to Detective Kenser, he did not find any documentation confirming that Davis had reimbursed the District for the Montblanc pen purchase.⁷

¶ 32 C. Custodial Work

¶ 33 On September 13, 2006, Davis submitted and approved a request form in the amount of \$100 for "Custodian Work (overtime not covered by District)." On that same date, Davis also

⁶Copies of the request forms, receipts, cashed checks and other pertinent documents reviewed in the administrative hearing were admitted into evidence.

⁷Detective Kenser's police reports regarding both interviews with Davis were admitted into evidence as Board Exhibits 5 and 6.

signed a check from the activity fund account in the amount of \$100, which was made out to George Williams, the head custodian at Lindbergh.

¶ 34 On June 22, 2007, Davis signed another check from the activity fund account issued to Williams in the amount of \$100. The memo line on the face of the check includes the notation, “overtime.” Davis signed another activity fund check on May 8, 2008, issued to Williams in the amount of \$100.

¶ 35 Williams and the night custodian, Tim Smith, both received checks from Davis drawn on the activity fund account. These checks did not include the required payroll deductions or credit the custodians’ pensions for the hours they had worked. Williams testified that the overtime payments from the activity fund occurred on two separate occasions about six months to one year apart, after Davis told him she was unable to get overtime approved by the Board. Williams explained that, after a conversation with Smith, Williams asked Davis to stop paying overtime in this manner because it affected their pensions. Williams stated that Davis agreed not to do so in the future.

¶ 36 Regarding personal work performed for Davis, Williams told Detective Kenser he moved a freezer at Davis’ home and Davis had paid him \$100 for this work with a Lindbergh activity fund check. Williams went to Davis’ house on a second occasion to move items, and Davis again paid him with a Lindbergh check.

¶ 37 D. Checks to Michelle Burks

¶ 38 Michelle Burks worked as the secretary to the principal of Lindbergh Middle School from the fall of 2002 until November 2006. When Davis became principal in 2003, Davis became Burks’ direct supervisor. School records indicate that on August 12, 2005, Davis

submitted a request form in the amount of \$250 for M. Burks. Davis approved the request form and signed a \$250 check from the activity fund account issued to Burks on August 16, 2005.

¶ 39 Davis previously issued a check to Burks, on August 12, 2005, in the amount of \$600. Both checks were written by Davis on the activity fund account and both were issued to a person named “Mary” Burks. According to bank records, a person endorsed each check by signing “Michelle,” rather than Mary. Each check was cashed on the same day that Davis approved the request form and signed the checks. After being charged with the felony offenses in 2010, Davis hired an expert to review the financial records. In 2011, Davis told her defense expert that the checks totaling \$850 were paid to Burks to compensate her for overtime hours Burks devoted to the new computerized student management system.

¶ 40 When Detective Kenser interviewed Davis in 2009 about the checks issued to Burks, Davis could not recall the reason she paid \$600 to Burks, but she told the detective the receipt was included with the 2005-2006 school year receipts. Kenser testified that he searched through the 2005-2006 school receipts, but he did not find receipts that matched either the \$600 or the \$250 check amounts. During the course of the 2009 investigation, Davis did not advise Detective Kenser that she paid Burks \$850 for overtime related to her secretarial duties.

¶ 41 When testifying at the administrative hearing in 2012, Burks said that \$850 would have equaled 40 hours of her work. When asked whether there was “any way that you worked two weeks to install Skyward [software] into the Lindbergh computer system,” Burks replied, “No.” Burks’ salary at that time was approximately \$17,000. During her testimony, Burks stated she did not recall receiving or cashing checks totaling \$850, but she agreed the documentation showed she cashed the checks. Burks believed she must have received the money for a legitimate purpose.

¶ 42

E. Blank Checks

¶ 43

Regarding the Board's sixth charge, the writing of blank checks, Davis observed that the blank checks written on the activity fund account totaled \$911.30. Davis believed that a failure to write the payee name on a check might be careless, but not grounds for dismissal. Davis noted that, during her five-year tenure as principal at Lindbergh, she had written only eight checks without having properly filled them out. Davis said she made a mistake by not putting the names on the checks, but she did not believe it was her general practice to do so.

¶ 44

F. Guilty Plea

¶ 45

Seth Uphoff testified at the administrative hearing that he was an Assistant State's Attorney for Peoria County. On April 23, 2010, Uphoff charged Davis with sixteen felony counts: eight for theft and eight for official misconduct based on theft. All felony charges were related to improper expenditures of school funds.

¶ 46

On February 21, 2012, a new seventeenth count was filed charging Davis with misdemeanor attempt obstructing justice and listing the offense occurred on the dates of June 24, 2009, through August 26, 2009. The information specified that Davis provided false information to Detective Kenser in an attempt to prevent the apprehension or prosecution of herself. The guilty plea hearing transcript was entered into evidence during the administrative hearing. The transcript showed that Davis waived the statute of limitations violation regarding the attempt obstructing justice charge. The trial court read the seventeenth count to Davis, which alleged, "that between the dates of June 24, 2009, through August 26, 2009, [Davis] committed the offense of attempt obstructing justice when [Davis], with the intent to commit the offense of obstructing justice * * * performed a substantial step toward the commission of that offense in that [Davis], with the intent to prevent the apprehension or obstruct the prosecution of

[herself], knowingly furnished false information to Marvin Kenser, a peace officer, as to the use of Lindbergh Middle School funds.” The transcript shows that Davis told the trial judge she understood the new allegation and agreed that she wanted to plead guilty to this charge. The judge read the sentencing options to Davis and the trial rights she was giving up, and Davis understood these admonitions. Davis was represented by an attorney for the plea proceedings.

¶ 47 Uphoff presented a factual basis to the court to support the charge of attempt obstructing justice. Those facts demonstrated that, on or about June 24, 2009, Detective Kenser interviewed Davis and Davis denied ever using Lindbergh Middle School funds for any personal reasons. On August 26, 2009, Detective Kenser conducted a follow up interview with Davis. On this occasion, Davis furnished information that was in contradiction to her original statement to Detective Kenser. Davis agreed to the factual basis, and she knowingly and voluntarily entered into the guilty plea.

¶ 48 The trial judge entered Davis’ judgment order and conviction on February 21, 2012, which required Davis to pay restitution in the amount of \$15,000: \$10,000 to the District as reimbursement for money that was improperly reimbursed to Davis by the District, and \$5,000 as reimbursement to the State’s Attorney for expenses related to the prosecution. As part of the negotiated agreement, Davis agreed to pay these amounts. Davis was also sentenced to successfully serve the maximum term of 24-months’ probation.

¶ 49 G. Mary Davis’ Testimony

¶ 50 Mary Davis testified at the administrative hearing that she had a Ph.D., an Administrative Certificate, and a Superintendent’s Certificate. Davis testified that, as principal of the Lindbergh Middle School from 2003-2008 she directly oversaw the activity fund expenditures. According to Davis, the activity fund could be used for “anything that enhanced the school, student

achievement, equipment, [or] supplies that were needed in the office or in the classroom.” Davis testified that in her prior position as Dean of Students at Richwoods High School she had been paid from the Richwoods activity fund for overtime she worked attending an overnight graduation party hosted for the students.

¶ 51 Davis testified that she did not have training in bookkeeping or accounting and the only training Davis received regarding how to administer the activity fund was in a 15-minute meeting with Assistant Superintendent Cheryl Sanfilip, her direct supervisor. Davis said Sanfilip told Davis she could use the “slush fund/Activity Fund” for anything that Davis could not buy with the pupil or incentive money. Davis did not receive any written District policies or guidelines regarding use of the activity fund.

¶ 52 Davis said she created and maintained an activity fund check register as an Excel spreadsheet on her office computer. Davis also separately maintained the current year’s record of the activity fund, including the request forms and receipts, in a notebook in her office. Records from prior years’ activity fund expenditures were placed into yellow envelopes labeled with the year the expenditure occurred and the envelopes were placed in a file cabinet drawer marked “Banking,” which was kept in a room across the hall from Davis’ office.

¶ 53 Davis met with auditing personnel from the Gunderson accounting firm when they inspected the Lindbergh 2007-2008 records. The Gunderson staff returned the records to her and Davis said she left them in the file cabinet for the next principal. Regarding her recordkeeping process, Davis explained to the hearing officer that when she completed a request form, she would write the check, document the check number on the request form, and place the request form next to her computer. Later, when Davis had time, she would enter the check number and

amount, the date, the payee name, the account the money came out of, and the reason for the payment into her computer bookkeeping system.

¶ 54 According to Davis, when she first began the process in 2003, she often failed to document the reason for payment. Davis would occasionally write a check without first completing a request form, such as when paying for delivery of an item. In those cases, Davis would write and deliver the check, or have the secretary deliver the check, and Davis would complete a request form for the payment after she paid the receipt. Davis placed receipts in a folder in a bottom drawer of her desk, and would later put the receipt with the request form.

¶ 55 Davis admitted she made purchases out of the activity fund with the Sam's Club Discover credit card. In such cases, Davis placed the receipt in the bottom desk drawer and when the credit card statement arrived she also put that in the drawer. When she was ready to pay the credit card bill and other bills, Davis would try to match the receipts to the credit card statement. Davis occasionally used the same Sam's Club Discover credit card for her own personal purchases. If Davis saved a receipt for a school purchase, she would attach a portion of her credit card statement to the request form to show the reason for the purchase.

¶ 56 Regarding the Montblanc pen, Davis testified that during the summer of 2006 she purchased the pen for \$467.75 with the Sam's Club Discover card. Davis said she attached the receipt to a request form Davis filled out that included the charge for the pen. During her testimony before the hearing officer, Davis acknowledged that she wrote on the request form that the money for the pen was being taken for the purpose of the seventh grade field trip, but she said it did not necessarily come from that account as the field trip had already taken place. Davis agreed that the "Charge To" line on the request form said "7th Grade Trip," and that the \$507.58 request included the purchase of the Montblanc pen. Davis initially charged the pen to the Sam's

Club Discover card, and then she paid \$507.58 directly to Discover using a Lindbergh check drawn on the activity fund account.

¶ 57 At the time, Davis thought it was a nice pen and she was going to be doing a lot of writing, so she bought it for professional use. Looking back on the purchase, she believed it might not have been the smartest decision. Davis said she did not consider the pen to be her property, it was normally kept in her desk drawer, and she would take it home if she attended a meeting away from the school. She also probably used the pen for personal business. When she left Lindbergh in 2008, Davis said she left the pen in the middle drawer of her desk.

¶ 58 Davis was cross-examined about her statement to Detective Kenser during the June 24, 2009, interview that the Montblanc pen was a personal purchase for her personal use. Davis agreed that according to what the detective had written in the report, her story at that time had been that she had purchased the pen for personal use.

¶ 59 During her testimony, Davis was asked to view Detective Kenser's report pertaining to the second interview on August 26, 2009. Davis was asked about what she told the detective during the August 2009 interview, and agreed the police report stated she told Detective Kenser that, after thinking it over, she thought she had personally reimbursed the District for cost of the pen, but she had no documentation to substantiate that she reimbursed the District for the pen purchase and probably could not prove she reimbursed the District. Davis testified, "Well, I want to make it clear that I don't recall saying those things at all." Davis denied that her first story to Detective Kenser had been a lie, and when confronted with contradictions between her statements in the two interviews, Davis repeatedly replied that this was only according to the police report.

¶ 60 Next, Davis was asked about her guilty plea to a charge of attempt obstructing justice. She testified that she understood that she was pleading guilty to a crime of dishonesty at that time. Regarding the guilty plea, Davis would only say that she understood she was admitting that the facts in the police reports from the two interviews showed there were differing accounts of what she told Detective Kenser.

¶ 61 When confronted with the specific language of the plea agreement transcripts, that she understood the facts alleged and she was pleading guilty because the facts were true and she was guilty of the charges, Davis responded, “Absolutely is true, his report.” Davis said she agreed to the guilty plea because of the contents of the police report, and she asserted that, because 16 felony charges had been dropped. Davis felt the prosecutor added the misdemeanor count because he needed something due to the media attention arising from this case. Davis claimed to have a good defense to the charges.

¶ 62 Regarding the contradictions between her first and second interviews with Detective Kenser, Davis stated she could not say whether those had been her actual statements “because he wrote the report.” Davis asserted she did not recall talking with Detective Kenser during the first interview. Regarding the second interview, she did not recall signing a waiver of counsel, and she denied calling the District’s counsel, Peter Jennetten, as written in the report.

¶ 63 Davis denied having a practice of writing blank checks on the Lindbergh activity fund account. Viewing an exhibit containing copies of blank checks she had written, Davis agreed that the “Pay To The Order Of” line was blank on all of the checks shown and the total amount of the blanks checks listed was \$911.30. Davis believed that a failure to write the payee name on a check might be careless, but testified she had written only eight improperly filled out checks during her five-year tenure as principal at Lindbergh.

¶ 64 Regarding having Williams move the freezer at her house in the fall of 2005, Davis said that her housemate, Debbie Logan, was in charge of the move. Davis did not pay Williams for moving the freezer, but Logan bought him a case of beer and Davis delivered it to Williams. Davis denied paying Williams for this service from the activity fund, and she denied writing any checks to Williams from the activity fund in 2005.

¶ 65 Regarding Michelle Burks, Davis said they had a supervisor/secretary relationship and did not socialize outside work. Davis recalled that Burks had a difficult pregnancy during the beginning of a school year, which is the busiest time of the year, and the District was converting to new student management system software. The District had indicated that no overtime would be paid for the conversion process. Davis said Burks volunteered to start work a week early to enter student data. The request forms for the two checks to Burks did not state it was for her overtime, and the face of the checks did not identify the reason Davis paid Burks with Lindbergh school funds. Davis had no reason for this omission other than, “[j]ust carelessness.” Davis said there would not have been a reason to pay Burks from the activity fund out of the goodness of her heart.

¶ 66 Davis agreed she had written two checks to Burks in 2005. Regarding a \$600 check, Davis filled out a request form indicating it was to be charged to the activity fund, and nothing was written on the request form to show the purpose for the payment of the money. Davis wrote on the request form that M. Burk had requested the money, and Davis also approved the expenditure. Burks cashed the \$600 check, which was dated August 12, 2005.

¶ 67 On the same day, August 12, Davis prepared a request form in the amount of \$250. Davis affirmed she had approved two separate request forms with the same date on them for funds to be paid to Burks. On both request forms, the line indicating the purpose of the payment

was blank. Davis wrote that “M. Burks” had requested the funds, and Davis signed the approvals. The \$250 check was dated August 16, 2005, and Burks cashed the check. Davis did not have receipts for the payments to Burks.

¶ 68 Davis agreed in 2011 she told Mark Nicholas, the auditor she hired for her criminal case, that the checks were for overtime paid to Burks. She said there was no other reason she would have paid the money to Burks. Davis acknowledged that she did not write the word “overtime” on the request form or on the check memo line. Davis was surprised to hear that Burks had no memory of working any overtime related to the two checks. Davis recalled that Burks miscarried about the time the checks were written.

¶ 69 H. Mark Nicholas, C.P.A.

¶ 70 Davis’ criminal attorney retained Mark Nicholas, a Certified Public Accountant, Fraud Examiner, and Valuation analyst, to review documentation regarding the criminal case and to provide an opinion as to what had occurred. Nicholas reviewed voluminous records, check stubs, expense reimbursement requests, credit card statements and receipts, copies of checks, the activity fund receipts, and he interviewed Davis. Nicholas said he did not speak to any District administrators, Michelle Burks, Tim Smith, George Williams, or police officers, and he did not read police reports regarding Davis’ criminal investigation of the Montblanc pen.

¶ 71 Nicholas agreed that the request form filled out by Davis relating to the pen purchase did not indicate that a Montblanc pen was being purchased. Nicholas said the request form generalized the purchase in terms of office supplies and books, and it was charged to the 7th grade field trip. Davis included receipts for book purchases in the amount of \$30, to justify the request form. Nicholas said the pen purchase was an excessive expense, but he could not say it was fraud or misappropriation.

¶ 72

IV. The Decision of the Hearing Officer

¶ 73

In his final report and order, the hearing officer, Robert Fitzgerald, found it significant that there had been no direct evidence, testimony, or affidavit from Davis' successor principal, Julie McArdle, or from her then supervisor. He found the lack of evidence from McArdle left an unexplained gap in time from Davis' departure from Lindbergh in 2008 to 2009, to the time when McArdle told her supervisor about the missing records and her suspicions that Davis had committed a theft of activity fund assets.

¶ 74

The hearing officer also found there was an absence of written Board policies concerning bookkeeping requirements or authorized purchases with or uses for the activity fund money. The hearing officer found that the absence of evidence to support the Board's position that the payment of money to Davis' secretary and the maintenance workers for overtime "was a conspiracy from which Davis profited monetarily, is a substantial gap in this case."

¶ 75

The hearing officer separately considered the additional charge for dismissal involving the Montblanc pen. The hearing officer found that Davis testified credibly that her purchase of the pen was for use for activity fund business, and that, while the cost of the pen was higher than other available pens, it was sufficiently durable to be used until Davis departed after her promotion. The hearing officer found Davis' testimony unrebutted that she left the pen in her desk when she left Lindbergh. Although the cost of the pen may have been extravagant, the hearing officer found there was no evidence that the purchase put the activity fund in jeopardy, and it was neither deceptive nor criminal.

¶ 76

Concerning custodial overtime payments set out in the third and fourth charges, the hearing officer found there was no evidence that Davis benefitted monetarily from the overtime

payments, or evidence of a conspiracy. The hearing officer noted the Board had not disciplined the employees who accepted the payments and had not sought the return of the money.

¶ 77 With reference to Williams providing labor at Davis' home, the hearing officer found Davis' roommate, Logan, testified credibly that Williams refused monetary payment. The hearing officer found it was significant that Williams' testified he would not accept overtime wages he considered improper. However, the hearing officer then found Williams' remaining testimony was ambiguous. The hearing officer noted that Davis immediately stopped paying for overtime out of the activity fund account once the custodians expressed concerns about losing pension contributions for those hours.

¶ 78 Regarding payments to Burks, the hearing officer found these payments were to compensate her for overtime work outside her regular work hours "to meet a time deadline for a new [f]und procedure." He noted that Burks had not testified that any of the money paid to her went to Davis, there was no claim of wrongdoing in her accepting the money, and no attempt by the Board to discipline Burks or to require a refund. The hearing officer found the amount of money paid to Burks was not unreasonable, "particularly in light of her meager wages and personal situation."

¶ 79 The hearing officer found the evidence regarding the allegations that Davis signed blank checks without designating a payee was deficient. He found no evidence was presented that proved a monetary loss to the activity fund, or that Davis benefitted monetarily from these payments.

¶ 80 Regarding the guilty plea, the hearing officer found that Davis' criminal attorney testified credibly that the collateral benefits of this plea agreement allowed Davis to keep her pension benefits while avoiding the inherent risks of trial. The hearing officer found it was not

reasonable to impute criminal intent to Davis because she had taken advantage of the procedural mechanism of a plea bargain. Further, the hearing officer noted that Davis' brother, an out-of-state attorney, also advised her to accept the plea agreement. The hearing officer further found that the plea agreement could not be applied retroactively to the Board's [dismissal] of Davis, which had occurred two years earlier.

¶ 81 The hearing officer concluded that the Board failed to meet its burden of proof that the dismissal of Davis was valid, without evidence of financial loss to the school or its activity fund or harm to the student body. Further, the hearing officer found that any adverse publicity was a direct result of acts by McArdle and her supervisor that resulted in criminal charges being brought against Davis. The hearing officer found the proper remedy was to make Davis whole for loss of back wages, offer reinstatement to the same or substantially comparable position of employment, and to expunge her records of the discharge.

¶ 82 V. Administrative Review by the Circuit Court

¶ 83 The Board challenged the hearing officer's decision in the circuit court and the court held a hearing on August 27, 2013. The court found Davis' guilty plea was proof beyond a reasonable doubt that Davis knowingly gave false information to Detective Kenser regarding the Lindbergh activity funds, and that Davis' "conduct was irremediable" resulting in damage to the students, faculty, and school. Consequently, the court found the administrative hearing officer's decision was clearly erroneous and against the manifest weight of the evidence, and that the Board had just cause for the dismissal of Davis. Davis filed a timely notice of appeal.

¶ 84 ANALYSIS

¶ 85 In this case, the circuit court reversed the hearing officer's decision that the Board failed to meet its burden of proof finding that Davis was properly dismissed from her employment for

cause. Consequently, Davis now appeals the decision of the circuit court reversing the hearing officer's determination and raises four contentions of error for our review.

¶ 86 Davis first argues that the hearing officer's decision that the Board failed to prove Davis committed theft was not contrary to the manifest weight of the evidence. Second, Davis claims the hearing officer correctly determined the Board failed to prove allegations that Davis did not properly perform her duties in administering the activity fund account. Third, Davis claims the hearing officer properly found that the District could not belatedly amend the charges supporting Davis' dismissal to include her guilty plea, entered nearly 21 months after its original decision to request dismissal. Finally, Davis claims the hearing officer's determination that her guilty plea to attempt obstructing justice was not a sufficient basis for dismissal and was not clearly erroneous.

¶ 87 I. Standards of Review

¶ 88 When reviewing administrative cases, this court reviews the decision of the administrative agency and not the circuit court decision. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). To determine the applicable standard of review of an administrative decision, the court must consider whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Id.* at 532. Rulings on questions of fact by the hearing officer will be reversed only if against the manifest weight of the evidence; questions of law are reviewed *de novo*; and mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.*; *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 472 (2005). A decision of an administrative agency that presents a mixed question of law and fact "will be deemed 'clearly erroneous' only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been

committed.’ “ *Comprehensive Community Solutions*, 216 Ill. 2d at 472 (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 89 Section 10-22.4 of the Code allows the Board to dismiss a teacher for cause based on “incompetency, cruelty, negligence, immorality, or other sufficient cause,” or if the Board determines the teacher is not qualified to teach or it is in the interests of the school to dismiss a teacher. 105 ILCS 5/10-22.4 (West 2010). The proper standard of proof applicable to tenured-teacher dismissal proceedings is the preponderance of the evidence standard. *Board of Education of City of Chicago v. State Board of Education*, 113 Ill. 2d 173, 189 (1986).

¶ 90 Remediable v. Irremediable Conduct

¶ 91 The Board initially determines whether a teacher’s conduct is remediable and, if so, give the teacher is entitled to an opportunity to remedy his or her conduct if possible before dismissal occurs. 105 ILCS 5/24-12 (West 2010). However, when the Board determines a teacher’s conduct is irremediable, the teacher is not entitled to an opportunity to correct his or her conduct and the Board may serve the teacher with a notice of dismissal. *Id.* The Board’s determination of remediability, should not be overturned by the hearing officer unless the reasons given for dismissal are against the manifest weight of the evidence or the Board acted in an arbitrary or capricious manner. *Board of Education of Sparta Community Unit School District No. 140 v. Illinois State Board of Education*, 217 Ill. App. 3d 720, 728 (1991); *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024, 1027 (1987).

¶ 92 Our supreme court has established a two-prong test to determine whether a Board properly determined if a cause for dismissal is irremediable. The first prong focuses on whether the teacher’s conduct resulted in damage to the students, faculty or school, and the second prong

focuses on whether the conduct resulting in that damage may be corrected by the teacher with a proper warning by his or her superiors. *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622 of Tazewell County*, 67 Ill. 2d 143, 153 (1977); *Younge v. Board of Education of the City of Chicago*, 338 Ill. App. 3d 522, 531-32 (2003).

¶ 93 Illinois courts have held that criminal conduct is irremediable *per se* and fulfills the second prong of the *Gilliland* test. *Younge*, 338 Ill. App. 3d at 532; *Board of Education of the City of Chicago v. Harris*, 218 Ill. App. 3d 1017, 1023 (1991); *McBroom v. Board of Education, District No. 205*, 144 Ill. App. 3d 463, 474 (1986). In fact, this court has previously held that “[s]hocking or criminal conduct is never remediable.” *Joliet Township*, 331 Ill. App. 3d at 134. Therefore, we conclude the District properly determined Davis’ actions were irremediable *per se* based on her pending criminal charges which eventually resulted in her guilty plea and corresponding criminal conviction for an offense involving dishonesty.

¶ 94 Amended Notice of Dismissal

¶ 95 Here, the Board made an initial determination that there were grounds to dismiss Davis on June 7, 2010, based on her pending criminal charges involving felony theft and official misconduct. Thereafter, the Board amended the notice and allegations concerning the basis for dismissal in 2012, after Davis pled guilty to attempt obstructing justice. In other words, the Board added the attempt obstructing justice *conviction* as an additional ground for dismissal.

¶ 96 In this case, when the Board approved the issuance of charges to dismiss Davis in 2010, this action initiated and set “ ‘ the dismissal process in motion.’ ” *Board of Education of Community Consolidated School District No. 54 v. Spangler*, 328 Ill. App. 3d 747, 753 (2002) (quoting *Combs v. Board of Education of Avon Center School District No. 47*, 147 Ill. App. 3d 1092, 1096 (1986)). Although the Board possesses the power to dismiss a teacher, once a

teacher challenges that dismissal, the procedure by which the dismissal is finalized is delayed until due process governed by the requirements of section 24-12 of the Code (105 ILCS 5/24-12 (West 2010)) if afforded to the teacher. *Board of Education of Round Lake Area Schools, Community Unit School District No. 116 v. State Board of Education*, 292 Ill. App. 3d 101, 110 (1997).

¶ 97 In this case, the administrative hearing began in August of 2012, six months after Davis pled guilty to attempt obstructing justice and one month after Davis received the amended notice of charges from the Board on July 23, 2012. It is undisputed that the dismissal hearing was postponed for over two years, by agreement, until the criminal charges could be resolved.

¶ 98 Since Davis' hearing to determine the finality of the notice of dismissal was postponed pending the outcome the criminal case, the Board had an opportunity to amend the grounds for dismissal to reflect Davis stood *convicted* of a criminal offense in addition to the allegations that she committed a theft of school funds. Since the Board amended the notice of charges pertaining to the grounds for dismissal before the administrative hearing began in 2012, we conclude the hearing officer's finding that the grounds for dismissal could not be amended after 2010 was clearly erroneous.

¶ 99 Collateral Attack on Guilty Plea

¶ 100 Next, we consider whether the hearing officer properly allowed Davis to collaterally attack the significance of her Davis' guilty plea and resulting conviction. Our review of the legal significance of Davis' guilty plea is a question of law subject to *de novo* review. *Comprehensive Community Solutions*, 216 Ill. 2d at 472.

¶ 101 Judicial admissions are defined as “ ‘deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge.’ ” *North Shore Community Bank and Trust*

Co. v. Sheffield Wellington LLC, 2014 IL App (1st) 123784, ¶ 102 (quoting *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998)). They are “ ‘formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the [function] of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.’ “ *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 557-58 (2005) (quoting J. Strong, *McCormick on Evidence* § 254, at 142 (4th ed. 1992)). If a fact is judicially admitted, as in the case at bar, the adverse party has no need to submit any evidence on that point. *North Shore*, 2014 IL App (1st) 123784, ¶ 102. A guilty plea constitutes a judicial admission of guilt concerning the charged criminal offense. *Spircoff v. Stranski*, 301 Ill. App. 3d 10, 15-16 (1998).

¶ 102 In her appellate brief, Davis suggests that case law allows the hearing officer to consider Davis’ plea of guilty and judicial admission, arguing the plea should not be viewed in a vacuum, but should be considered together with circumstances which surround it. Davis cites to the following cases: *Chicago Board of Education v. Payne*, 102 Ill. App. 3d 741 (1981); *McCullough v. Illinois State Board of Education*, 204 Ill. App. 3d 1082 (1990), and *McBroom*, 144 Ill. App. 3d 463. Davis incorrectly applies the law in these three cases by suggesting that the circumstances surrounding the guilty plea itself should be considered when determining what weight to give the plea and the judicial admissions.

¶ 103 In all three cases cited by Davis, the courts held that the criminal convictions constituted irremediable conduct by the respective teachers. However, the courts went on to consider the circumstances underlying the admitted criminal conduct to determine whether there was just cause for dismissal based on the teacher’s admitted misconduct.

¶ 104 The cases cited by Davis do not stand for the proposition that the hearing officer could negate Davis’ admission of criminal intent to provide less than truthful information during a

doubt that knowledge of a teacher’s involvement in illegalities such as possession of marijuana would have a major deleterious effect upon the school system and would greatly impede that individual’s ability to adequately fulfill his role as perceived by the Board. * * * We can only find that general awareness of possession of marijuana by a teacher in Payne’s position directly and adversely affects that individual’s ability to effectively perform as a teacher.” *Id.* at 748.

The *Payne* court ultimately held that the circuit court correctly reversed that hearing officer’s finding against dismissal and held that Payne’s conviction constituted cause for dismissal. *Id.* at 749.

¶ 108 We further note that in *Payne* the criminal conviction arose from activities that occurred *outside* of the school environment. *Id.* at 747. Here, Davis’ judicial admission and plea of guilty to attempt obstructing justice was directly related to the criminal investigation of Davis’ conduct, while acting as the school principal, regarding the misappropriation of or theft from the school’s activity fund account.⁸

¶ 109 In *McCullough*, a teacher was convicted for failure to file income tax returns arising from criminal conduct occurring *outside* of the school environment. *McCullough*, 204 Ill. App. 3d at 1087. In comparison to *Payne*, the *McCullough* court noted that Illinois courts recognized that a criminal conduct by a teacher diminishes his effectiveness and warrants dismissal. *Id.* Specifically, in *McCullough*, the court held that “teachers, administrators, parents and school children had lost respect for plaintiff, and that the publicity surrounding his criminal case and his behavior during its pendency had harmed the school’s reputation.” *Id.* The court held that

⁸Although *Payne* remains instructive, we note that the *Younge* court held that the *Payne* decision was superseded by an amendment to the relevant statute and the six factors considered by the *Payne* court were no longer controlling. *Younge*, 338 Ill. App. 3d at 535.

McCullough's conviction harmed his reputation and credibility and was sufficient cause for dismissal. *Id.* at 1088.

¶ 110 Finally, in *McBroom*, the court held the *Gilliland* remediality test "was not intended to apply to criminal conduct which has no legitimate basis in our society." *McBroom*, 144 Ill. App. 3d at 474. We note that *McBroom* was similar to the instant case because it involved criminal charges and a conviction based on the teacher committing a theft of a student's \$290 check that occurred on school premises. *Id.* at 469. The *McBroom* court upheld the teacher's dismissal for the theft finding that the evidence of the teacher's criminal actions had a major deleterious effect on the school and her "credibility and effectiveness in teaching students honesty and ethical values was substantially impaired as a result of her misconduct and notoriety in the community." *Id.* at 470.

¶ 111 We agree with the hearing officer's observation that Davis' guilty plea could not be considered as an admission of her intent to commit a *theft* against the District. However, Davis' guilty plea should have been considered by the hearing officer as proof by judicial admission of her criminal intent to commit another criminal offense, the offense of attempt obstructing justice, which she committed in 2009 while acting in her capacity as a tenured school employee.

¶ 112 Here, we conclude that Davis, after giving false information to a detective concerning her possible misappropriation or theft of District funds as a school principal, would no longer have credibility by or respect of teachers, students, administrators, and the community in the future. The criminal conviction not only would have a substantial adverse impact on Davis' effectiveness as an administrator or a teacher, but would also have a major deleterious effect upon the school and the District.

¶ 113 The case law recognizes criminal conduct has no legitimate basis in our society, and “[t]o claim that such conduct was remediable, distorts the thrust and purpose of the rule. Criminal activity of this nature is conduct which cannot be remedied by a warning.” *McBroom*, 144 Ill. App. 3d at 474. In this case, we conclude the conviction for the criminal offense of attempt obstructing justice by Davis in 2009, while Davis was providing information about her conduct as a school principal, was sufficient to support the dismissal of Davis, a tenured school employee, without prior notice or warning.

¶ 114 Harm to Student Body or Financial Loss to Middle School

¶ 115 Finally, we examine the hearing officer’s conclusion that the Board failed to meet its burden of proof because the Board did not offer evidence proving that Davis’ actions resulted in harm to the student body or a financial loss to Lindbergh Middle School or the Lindbergh activity fund. This factor is relevant to misconduct that is *not* criminal in nature and applies only when the trier of fact must consider the two-part *Gilliland* test to first determine if the tenured employee’s non-criminal misconduct was remediable. *Gilliland*, 67 Ill. 2d at 153. Here, the *Gilliland* test does not apply and the hearing officer’s decision to consider harm or financial loss as a factor to be established by the Board was clearly erroneous.

¶ 116 Nonetheless, even if this factor had relevance, the hearing officer’s finding of no harm to the District ignored that Davis agreed to pay *restitution* to the District in the amount of \$10,000 as part of her fully-negotiated plea agreement. This part of the fully-negotiated agreement provides support for the Board’s position that Davis’ misconduct had a significant, negative financial impact on the District.

¶ 117 Further, the *Payne*, *McCullough*, and *McBroom* courts all held that the criminal convictions of the teachers damaged the reputation and credibility of each teacher in the eyes of

the students, other teachers, and community and were proper cause for dismissal. *Payne*, 102 Ill. App. 3d 741; *McCullough*, 204 Ill. App. 3d 1082, and *McBroom*, 144 Ill. App. 3d 463. Thus, we conclude that Davis' credibility was damaged by her conviction for providing false information to a detective about her own possible misappropriations of District funds while acting as a school principal. Davis' reduced credibility unavoidably adversely impacts Davis' future effectiveness with other teachers, students, administrators, and the community.

¶ 118 Accordingly, the hearing officer's determination that the Board did not prove just cause for Davis' dismissal was clearly erroneous. Consequently, it is unnecessary for us to address any remaining issues raised by Davis in her appellate brief.

¶ 119 CONCLUSION

¶ 120 For the foregoing reasons, we set aside the decision of the ISBE hearing officer finding that the Board did not prove just cause for Davis' dismissal as a District employee and thereby uphold the Board's dismissal of Davis.

¶ 121 Administrative order set aside.

¶ 122 JUSTICE O'BRIEN, dissenting.

¶ 123 In an administrative action, the hearing officer is responsible to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in testimony. *Younge v. Board of Education of City of Chicago*, 338 Ill. App. 3d 522, 529-30 (2003). The reviewing court should not reweigh the evidence or independently determine the facts. *Younge*, 338 Ill. App. 3d at 530. That is exactly what the trial court and the majority order does in the instant case. The majority discredits the hearing officer's factual determinations and reweighs the evidence in affirming the trial court and reversing the administrative decision. Because the reviewing court is limited to determining whether the hearing officer's findings were supported by the evidence, I dissent.

¶ 124 The hearing officer found the Board's failure to have Davis' replacement and her supervisor testify left a gap in the evidence, the Board had no policies concerning bookkeeping or activity fund purchases, the facts did not support the Board's claims regarding the overtime payments, Davis' testimony that she used the pen for school purposes and left it in the desk drawer was credible, the testimony of Davis' partner that she paid for the school janitor to move a refrigerator at their house was credible, there was no monetary loss from Davis' failure to fill out the blank checks, and testimony of Davis' criminal attorney was credible regarding the logic that resulted in Davis accepting the guilty plea. The hearing officer's findings were supported by the evidence, and in my view, the majority's rejection of the findings based on its own weighing of the evidence, credibility determinations, and resolution of conflicts in the testimony is inappropriate.

¶ 125 The majority relies on *Chicago Board of Education v. Payne*, 102 Ill. App. 3d 741 (1981), *McCullough v. Illinois State Board of Education*, 204 Ill. App. 3d 1082 (1990), and *McBroom v. Board of Education District No. 205*, 144 Ill. App. 3d 463 (1986). In *McCullough* and *McBroom*, the reviewing courts accepted the agency findings and affirmed the decisions of the hearing officers who had determined the dismissals were appropriate. *McCullough*, 204 Ill. App. 3d at 1086; *McBroom*, 144 Ill. App. 3d at 474. They do not support the majority's failure to accept the hearing officer's factual findings in the absence of contrary evidence here. *Ahmad v. Board of Education of City of Chicago*, 365 Ill. App. 3d 155, 162 (2006) (administrative findings of fact are considered *prima facie* true and correct).

¶ 126 In *Payne*, the reviewing court considered whether the teacher's criminal conduct adversely impacted the teacher's ability to perform his duties, *Payne*, 102 Ill. App. 3d at 747. As the majority notes, the factors used in *Payne* were superseded by statute in 1995. The amended

statute provides that a teacher's criminal conduct is irremediable *per se*, eliminating the need for a school board to employ the factors used in *Payne*. While the majority finds *Payne* instructive, I consider it inapplicable as it is based on a prior version of the School Code. 105 ILCS 5/1-1 *et seq.* (West 2008) (immoral, criminal, conduct, cruel and negligent conduct is irremediable *per se*); see *Younge*, 338 Ill. App. 3d at 535 ("the decision in *Payne* pre-dated the 1995 amendment to the School Code and is not controlling).

¶ 127 For the above reasons, I would reverse the trial court and affirm the hearing officer.