

NOTICE  
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2018 IL App (5th) 170151-U

NO. 5-17-0151

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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| JAMES WATKINS,                    | ) | Appeal from the    |
|                                   | ) | Circuit Court of   |
| Plaintiff-Appellant,              | ) | St. Clair County.  |
|                                   | ) |                    |
| v.                                | ) | No. 16-MR-189      |
|                                   | ) |                    |
| THE BOARD OF EDUCATION OF THE     | ) |                    |
| HARMONY-EMGE SCHOOL DISTRICT      | ) |                    |
| #175; THE ILLINOIS STATE BOARD OF | ) |                    |
| EDUCATION; and ROGER MACDOUGALL,  | ) |                    |
| Hearing Officer,                  | ) | Honorable          |
|                                   | ) | Robert P. LeChien, |
| Defendants-Appellees.             | ) | Judge, presiding.  |

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JUSTICE WELCH delivered the judgment of the court.  
Presiding Justice Barberis and Justice Overstreet concurred in the judgment.

**ORDER**

¶ 1 *Held:* The plaintiff's dismissal by the Board of Education of the Harmony-Emge School District #175 is affirmed where the Board's determination that his conduct was irremediable and therefore required termination was not clearly erroneous.

¶ 2 The plaintiff, James Watkins, a tenured teacher, was dismissed for cause from his employment following a vote on November 30, 2015, by the Board of Education of the Harmony-Emge School District #175 (Board) finding that he "engaged in sexual harassment of a female staff member, retaliation, and insubordination." The Board

concluded that his actions constituted irremediable conduct. Watkins requested a hearing before a mutually selected hearing officer under section 24-12 of the Illinois School Code (105 ILCS 5/24-12 (West 2014)). Hearing Officer Roger MacDougall listened to two days of testimony and thereafter issued a "Findings of Fact and Recommendation" (recommendation) on May 6, 2016, recommending that Watkins' dismissal be sustained. The Board adopted the hearing officer's findings and recommendation on May 12, 2016. On June 8, 2016, Watkins filed a complaint in the circuit court of St. Clair County seeking administrative review of his dismissal pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)).

¶ 3 On March 17, 2017, the circuit court entered an order directing the Board to "undertake an objective analysis of all of the factors that go into evaluating the efficacy of remediation." The Board complied with this directive and issued a "Memorandum of Compliance" on March 31, 2017, wherein the Board again concluded that Watkins' conduct was immoral and irremediable. On April 6, 2017, the circuit court sustained the dismissal. On April 19, 2017, Watkins filed a notice of appeal.

¶ 4 The following evidence was adduced from the hearing held before the hearing officer on March 2 and 3, 2016. The Board dismissed Watkins for alleged misconduct beginning on Friday, October 30, 2015. At that time, Watkins had been employed by Harmony-Emge School District #175 (District) as a full-time tenured teacher for approximately 29 years, teaching seventh and eighth grade history at Emge Junior High School (Emge or the school). His colleague, Melissa White (White), had been employed by the District for approximately three years, also at Emge. White was the band director,

choir director, and an RTI aide, which is a program that helps students with reading difficulties.

¶ 5 October 30, 2015, was a parent-teacher conference day, and there were no students present at the school. White testified that she was sitting in her office around 8 a.m. when Watkins walked into her classroom. Watkins approached her to give her a side hug<sup>1</sup> and said, "You look really sexy in your low cut shirt." White stated that Watkins then "[s]tuck his finger in between my skin and my shirt and pulled it down." She stated that she covered herself, saying, "Um, no," and that Watkins then turned to leave, telling her to "[h]ave a nice day" as he walked out of her office. She testified that she was wearing a gray tank top style shirt with a maroon cardigan sweater over it.

¶ 6 After Watkins left, White sat down in her office "trying to figure out what just happened." She stated that she was shocked by Watkins' behavior and felt very uncomfortable. White decided to walk to the office of Amy Forby (Forby), her RTI supervisor, because she did not want to be alone. Still flustered by the encounter, White told Forby about Watkins' conduct.

¶ 7 Forby testified that White came to her room that morning and asked if her shirt was too low cut for work, to which Forby replied, "no." Forby stated that White told her that "Watkins had came [*sic*] in and made a comment that she looked sexy in her low cut shirt and kind of pinched her shirt," pulling it about one inch away from her chest. She stated that White appeared shaken and that she advised White to "just stay away from

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<sup>1</sup>The "side hugs" hereinafter mentioned are where a person puts one arm around another person's shoulders or waist from the side, as opposed to a hug where both arms are around that person from the front.

him." In the following days, Forby observed White walking different routes to avoid the seventh and eighth grade wing, where Watkins had his office.

¶ 8 White testified that, after telling Forby about the incident, she returned to her classroom and tried to work. At 9:13 a.m., White sent a text message to Emge principal Matt Graham (Graham), asking, "How long does [Watkins] have until he retires?" Graham responded, "Unsure...probably won't." She testified that she asked Graham that question because she had "dealt with this stuff last year," and if she could "just deal and avoid for another year and a half," she would not have to tell anyone what happened. She was reluctant to tell anyone what happened because she did not want to cause problems at the school. She stated that she has always dealt with difficult issues this way because, as a victim of abuse in high school, her typical response was to "reason it all away" and tell herself that "it wasn't that bad."

¶ 9 At around 10 a.m., White heard Watkins' voice in the hallway. She testified that she did not want to stay in her classroom by herself, so she printed classroom materials and went to retrieve them from the copier room. As she was exiting her classroom to go to the copier room, Watkins was outside her door. She testified that Watkins reached out his arm to hug her, which caused her to panic and hug him back even though she "wanted to get away [from him]." She stated that, as she was walking away, she folded her cardigan over to cover herself as much as possible; she "didn't want to take a chance of anything else [happening]" after what had occurred earlier in her classroom.

¶ 10 Video surveillance footage of this incident showed Watkins walking past White's door and pausing as he saw White exit her classroom. Watkins reached towards White

with his right arm and hugged White into his side. White and Watkins continued walking down the hall as White placed her left arm around Watkins and briefly touched her head to his shoulder. After this gesture, White and Watkins separated and White hugged her arms around herself. The encounter lasted approximately 10 seconds, as White and Watkins were walking down the hallway during this entire exchange.

¶ 11 After the encounter in the hallway, White decided to tell Graham about what happened so that someone else would know about it. She stated that she told Graham because he held a supervisory position over both her and Watkins.

¶ 12 Graham testified that White came into his office around 10 a.m. to discuss something serious. White told him that around 8 a.m., Watkins had come into her classroom, given her a side hug, "said something about her looking sexy in a shirt," and then "reached in with his finger and tried to open up her shirt and look down inside of it." He testified that White was upset, but she requested that he not tell anyone about the incident.

¶ 13 White testified that she declined Graham's offer to call Watkins down to his office and that she was only telling Graham in case something else happened. White wanted to first try avoiding Watkins to see if that would solve the problem, and Graham agreed to let her try this tactic. White did not see Watkins again that day.

¶ 14 On Monday, November 2, White changed her parking space from the one immediately adjacent to Watkins to one that was another space away. She testified that she only moved over one spot because she did not want to bring attention to the change. White did not see Watkins that day.

¶ 15 On Tuesday, November 3, White parked further away from Watkins. Later that day, Watkins entered White's classroom. Video surveillance footage showed Watkins entered White's classroom at 8:02 a.m. and exited approximately 30 seconds later. White testified that Watkins asked her if she was mad at him, noting that she was not parking next to him and not talking to him. She stated that he continued to ask her questions, but she "kept trying to get my stuff together and just ignoring him, trying to figure out how I was going to get out of the room, because he was standing there, so I can't get past him." She testified that Watkins attempted to give her a hug, but she pretended to be searching through her bag so that she would not have to accept the hug. After Watkins left her classroom, White waited until the bell rang and then left to go to her RTI position.

¶ 16 As she was walking to her RTI position, she encountered Graham with a student in the hallway. Graham asked White if she was okay. White testified that because Graham had a student with him, she could not "go into it," so she responded, "Yep." Later, however, White texted Graham that she had lied to him earlier about being okay and told him that Watkins had come into her classroom that morning. Graham responded that White was a bad liar. White later sent Graham an email explaining what had happened and stating that going forward, she intended to take routes in the school that did not take her past Watkins' classroom.

¶ 17 After passing Graham, White walked past Watkins, who was speaking to a student, A.W., in the hallway. White testified that Watkins told A.W. that White was mad at him, was not talking to him, would not park next to him, and that his self-esteem was low. White ignored Watkins and kept walking down the hall. Video surveillance

footage and the testimony of students A.W. and E.R. corroborate White's testimony regarding this encounter.

¶ 18 White testified that Watkins called her later that day, but she did not answer her phone because she was in the middle of teaching. Around 11:22 a.m., Watkins again came to her room to ask her about the date of the Christmas concert, as he was hoping to have an open gym that day. She testified that Watkins approached her and asked to use her pen to write that information down. She handed Watkins the pen and went to stand in the hallway until he left, waiting for her next students. She stated that Watkins had never before come to her room to ask about scheduling matters and that the concert's date was available on the school calendar. Video surveillance footage reflects that Watkins entered White's classroom after a group of students left; approximately 45 seconds later, White opened the door and remained there, holding the door open and looking down the hall. Watkins exited the room soon after.

¶ 19 At the end of the day, White had a fourth encounter with Watkins. White testified that she was walking in the hallway when she noticed Watkins, who was standing farther down the hallway, speaking with students. White stopped by a classroom and waited until she could walk with a student who was headed in Watkins' direction, so that she could stay turned away from Watkins and be speaking with the student while she passed him. She stated that she also offered to carry the student's jacket so that her hands would be full as she passed Watkins. As she and the student passed Watkins, Watkins tried to hug her, so she held out the jacket to show him that her hands were full. She testified that

as she passed by, Watkins told her, "Tomorrow, when I get here, you better be parked by me again."

¶ 20 Video surveillance footage showed Watkins standing against a wall in the hallway, talking to students. White walked past with a student on her right side, holding a jacket in her left hand. As White passed him, Watkins reached out towards White with his right arm, taking several steps towards her. Watkins leaned forward as though to take hold of White as she passed, but White kept walking. Watkins then backpedaled to the position he had been standing in previously.

¶ 21 Graham testified that he talked to White that afternoon because after reading her email, he was concerned that her plan to handle the situation herself was not working. He told White that he felt the situation needed to "go to the next level" and that he intended to speak to superintendent Pam Leonard (Leonard). As White still did not want to escalate the situation, Graham planned to have the conversation with Leonard under the guise of a hypothetical situation. However, Graham testified that, when he took the matter to Leonard as a hypothetical, Leonard insisted on knowing who was involved due to the seriousness of the allegations. Leonard instructed Graham to obtain a statement from White.

¶ 22 On Wednesday, November 4, Watkins again came into White's classroom. White testified that she did not interact with him because she had students. Later that day, White was delivering papers to the teacher's lounge when she saw Watkins exiting his classroom. She noted that she had been walking outside, around the building, to avoid going past Watkins' classroom. She testified that, when she saw Watkins coming down



the hall, she ducked into a fifth grade classroom to avoid him. She stated that she asked the teacher in the room, Lauren Fiss, if she could stay there for a moment because she was trying to avoid someone. Fiss assented, and they engaged in small talk for a minute before White left. Video surveillance footage and Fiss' testimony corroborate this testimony.

¶ 23 White testified that she exited Fiss' room, Watkins saw her and approached her to ask if they had a "SAP" teacher meeting that day, and she responded that they did not. She stated that it was strange that he would ask about the meeting because if it had not been cancelled, they would have been in it already. She testified that she then went into Forby's room so that she would not have to walk down the hallway with him.

¶ 24 Later that afternoon, White texted Graham, asking if he thought it would be a good idea for her to text or email Watkins and ask that, "after what he did on Friday," he would give her some space, but "if he continues we can do something more?" White did not receive a response from Graham. At this point, White was unaware that Leonard had already been apprised of the situation.

¶ 25 On Thursday, November 5, Watkins again came to White's classroom, bringing her son's "take-home" box from an assembly that had been held in his classroom earlier that day. White stated that Watkins told her that he forgot to bring the companion worksheet, so he left and returned with the worksheet a few minutes later. She testified that she had students in her classroom, so Watkins set it down and left. Video surveillance footage reflects these short encounters.

¶ 26 White again talked to Graham about Watkins' conduct, noting that even though she was trying to avoid Watkins, he was coming into her room frequently and she did not know what else to do. Graham told White that Leonard needed White to write a statement about Watkins' conduct. White gave her statement to Graham on Monday, November 9, and Graham also completed a written statement around the same time.

¶ 27 White's statement described "inappropriate" hugs from Watkins during the spring, wherein he would "wrap both arms around me putting one hand right at the top of my butt, curl his hips in towards me, and hold me tightly against him while he made a weird moan/grunt noise." After this happened once, she asked him not to hug her like that. However, following a few "normal" hug occurrences, the inappropriate hug happened again, so she switched to only giving him side hugs. She also described an incident where Watkins was sitting next to her on a bus ride back from the eighth grade class trip. She stated that, when the bus would turn, he would grab the inside of her leg, saying that he was trying not to fall off the seat. The remainder of her statement described the incidents of October 30 through November 5, 2015.

¶ 28 Leonard investigated Watkins' conduct towards White. She testified that this was not her first investigation of a sexual harassment claim. She confirmed that she consulted with an attorney for the District, who directed the investigation. When asked why Watkins was not charged with the springtime hugging incidents or the bus incident, she answered that they had happened too long ago for an investigation to be effective. She also agreed that she departed from the District's sexual harassment policy procedure, which would have had David Deets, the nondiscrimination coordinator named in the

policy, conduct the investigation. She stated that she took control of the investigation because there was no other female available at the time to conduct it. Deets' testimony confirmed he was the named nondiscrimination coordinator and had received training in this area; however, he had never conducted a sexual harassment investigation under the policy.

¶ 29 Leonard testified that on Thursday, November 12, 2015, she interviewed White about the October 30 incident. She stated that White was visibly shaken and uncomfortable when describing it, noting that "[i]t was very difficult for her." She testified that White's interview was consistent with her written statement. She confirmed that she interviewed Forby, Fiss, and the students and that she reviewed the video surveillance footage, which substantiated White's claims.

¶ 30 On Friday, November 13, 2015, Leonard sent Watkins a letter advising that he was suspended with pay pending the District's investigation. The letter directed Watkins to meet with Leonard and the Board's attorney on Monday, November 16, 2015, for an investigatory meeting, the purpose of which was to obtain Watkins' response to allegations that he physically touched a female staff member and engaged in other unwelcome conduct. The letter informed Watkins that he may have a union representative present at the meeting.

¶ 31 Watkins attended the November 16 meeting with Ray Roskos, his union representative, Leslie Wottowa, the president of the union, and Lloyd Cueto, an attorney. Barney Mundorf, the Board's attorney, conducted the interview, and Leonard also participated.

¶ 32 Roskos testified that he attended the meeting with Watkins, who had brought Cueto as his independent counsel. He agreed that there was some confusion about whether Watkins was going to answer the Board's questions; Cueto advised Watkins to plead the fifth amendment until more specifics on the charges were known, while Roskos advised Watkins that in his experience, "if you plead the Fifth, they are going to tell you you have to answer the questions," and if he did not answer the Board's questions, "they are going to charge you with something else, most likely insubordination."

¶ 33 Leonard testified that Watkins refused to answer any questions at the meeting, instead invoking his fifth amendment right against self-incrimination. After this invocation, a short break was taken; upon returning to the meeting, Watkins was offered limited-use immunity from criminal prosecution for any statements he made during the interview. However, even after he was granted this immunity, he continued to invoke his fifth amendment privilege.

¶ 34 Mundorf informed Watkins that his refusal to cooperate with the investigation would be considered insubordination. Following another short break, Watkins agreed to answer questions. Roskos told Watkins that he should answer truthfully and that if he could not remember the answers to the questions, he should respond, "I don't know" or "I can't remember."

¶ 35 Leonard testified that Watkins' answers were "very short" and "he seemed somewhat detached." During the interview, Watkins agreed that he would hug White twice a week, often at her request. Watkins denied having ever commented on White's looks and stated, "No, not that I recall" and "I don't think I would" when asked if he ever

told White that she looked sexy. He denied telling White that he was happy that she wore a low-cut top and that he pulled White's shirt out in an attempt to look down it. He agreed that, in early November, he thought White might be upset with him, as she had stopped parking next to him.

¶ 36 Watkins answered, "I do not recall" and "No, I didn't make [that statement]" when asked if he told student A.W. that White was mad at him while White was walking by in the hallway. He denied going to White's room on November 3 to ask her about the date of the Christmas concert, attempting to hug her after school, and telling her that she had better park by him the next day. He also denied asking White about the SAP meeting and bringing her son's take-home items to her classroom. Watkins could not think of any motive that White would have to make up the allegations.

¶ 37 On November 23, 2015, Leonard sent Watkins a letter advising that he was suspended without pay due to allegations that he sexually harassed a fellow teacher. The letter included a notice of charges, which stated:

1. You engaged in irremediable conduct when you violated the District's sexual harassment policy by engaging in unwelcome conduct of a sexual nature which included unwanted touching and verbal harassment of a female staff member. Specifically, you told the female staff member she 'looked really sexy in [her] low cut shirt' and stuck your finger between the female staff member and her shirt, attempting to pull her shirt down and look at her breasts. The female staff member told you 'no' and covered her chest with her hand.

2. You engaged in irremediable conduct when you violated the District's sexual harassment policy by retaliating against the same female staff member for refusing your sexual advances. After the same female staff member rebuked you [*sic*] advances, you chastised her and verbally harassed her by making the following statements: 'are you mad at me?', 'why aren't you parking by me?', 'yesterday you were a space away and today you are on the other side of the row',

'when [I] get there in the morning [you] better be parked next to [me] again', and telling a student as the female teacher was walking by that the female teacher 'was mad at him', 'wasn't talking to him', 'wouldn't park by him', and that she was 'hurting his feelings and making his self-esteem low.'

3. You have engaged in insubordination and irremediable conduct when you made false statements during your investigatory interview on November 16, 2015. Specifically, you denied pulling the female teacher's shirt down and telling her that she looked 'really sexy in her low cut shirt,' and you denied chastising and making harassing statements towards the female teacher, which [were] statements you knew to be false."

The letter also advised Watkins of his right to appear with a union representative before the Board on November 30, 2015, to give reasons why he should not be dismissed.

¶ 38 Watkins appeared at the hearing on November 30, 2015, with his union representative and new counsel. Watkins chose not to answer any questions or present evidence in his defense. Leonard recommended to the Board that Watkins be terminated, due to the seriousness of the allegations and Watkins' lack of response. The Board voted to dismiss Watkins that day. Watkins timely requested an administrative hearing before an impartial hearing officer to review the Board's decision.

¶ 39 The hearing took place on March 2 and 3, 2016. The Board called Watkins, White, Forby, students E.R. and A.W., Fiss, Graham, and Leonard. Watkins called Deets and Roskos. The majority of the witnesses' testimony was presented above; Watkins testified as follows.

¶ 40 Watkins stated that he had received and understood the District's sexual harassment policy and that he had received training on it on August 14, 2014. He agreed that he has hugged his female coworkers, including White. He testified that he did "not

necessarily" find White attractive but "tried to build her up" and complimented her because she seemed "needy" and "attention-seeking."

¶ 41 In regard to the investigatory meeting held on November 16, 2015, Watkins testified that Wottowa told him on Friday, November 13, that the sexual harassment allegations were likely coming from White. He agreed that, pursuant to the advice of his personal attorney, Cueto, he asserted his fifth amendment privilege at the meeting but eventually answered the questions. He stated that, during the course of the investigatory meeting, he sometimes "said no, under advisement," when the answer he meant was that he did not recall.

¶ 42 Watkins denied ever inappropriately hugging White or touching her leg during a bus ride. As to the events on Friday, October 30, he agreed that, after viewing the video, he was in White's classroom; however, he denied telling her that she looked sexy or putting his finger in her shirt.

¶ 43 In regard to the events on Tuesday, November 3, Watkins acknowledged that he may have asked White if she was upset with him and that he talked about White's being upset with him in the presence of A.W. After reviewing the statements and videos, he agreed that he went by her room to ask when the Christmas concert was scheduled. He stated that, after viewing the video of his encounter with her after school, he reached out towards her but did not know if he attempted to hug her; he felt that it looked more like he was pointing to something in her hand and engaging in conversation.

¶ 44 In regard to the events of Wednesday, November 4, after viewing the video, Watkins recalled asking White if there was a SAP meeting that day. He also remembered

taking a student's take-home box to White's classroom and then returning with a companion worksheet a few minutes later.

¶ 45 At the investigatory meeting, Watkins had stated that he did not think that White would have a motive to make up allegations against him. However, he testified at the hearing that he believed her motive was to seek attention from Graham. He also believed that Graham had a grudge against him. He agreed that, before this incident, he had never been formally disciplined during his career and had always had good evaluations.

¶ 46 Leonard testified that none of the decisions surrounding Watkins' termination were made because of his salary, which was around \$74,000. She agreed that his replacement earned approximately \$34,500. She reiterated that she had no reason to believe that White was lying about Watkins' conduct. She stated that Watkins' sexual harassment and retaliatory conduct impacted the District, the students, and White. She felt that Watkins could not have returned to work at the school.

¶ 47 White testified that, during the time period where Watkins was suspended without pay, she was "sick to [her] stomach" every day, waiting to find out if Watkins would return to school. She stated that if Watkins returned, she would be "scared all the time" and would attempt to avoid him; however, this would be difficult because they were on a committee together. She noted that, "not that I would want to, but I would probably look for a different job, because I wouldn't be able to stay there." As to the other ramifications of Watkins' conduct, White recounted that she was harassed by students after his suspension; they would put notes on her door, hit her door, call her a "snitch," and yell,



"save Mr. Watkins." She also had a student send her a rude email quitting her band and choir classes.

¶ 48 The parties submitted posthearing briefs to the hearing officer on April 7, 2016. On May 6, 2016, the hearing officer issued his recommendation.

¶ 49 The hearing officer found that the *Gilliland* two-prong test for irremediability was the appropriate analytical framework for the decision. He accepted that the second prong of the irremediability test was not appropriate in situations involving immoral conduct by a teacher.

¶ 50 The hearing officer found White's testimony credible, noting that White had nothing to gain, "and in fact many things to lose," by coming forward to address Watkins' behavior. He noted that her statements and testimony over the course of a year were not perfectly consistent but "that of witnesses seldom is." He noted that Graham and Leonard agreed on many of the details, and White's testimony concerning the dates and times of the various incidents was clearly corroborated by the videotape evidence. In particular, he found little distinction between White's statement that Watkins stuck his finger between her chest and her shirt and Forby's description of the conduct as a pinching of the shirt and pulling it out approximately one inch. He noted that neither of these actions are acceptable conduct, and both constitute sexual harassment as defined in the policy.

¶ 51 The hearing officer noted that the video evidence reflected that White put her arm around Watkins and leaned her head against his shoulder after the shirt incident. However, he accepted White's testimony that she panicked at that moment, noting that "it

is not uncommon for victims of abuse to behave in ways that seem at odds with normal behavior." As to Watkins' comments in front of the students, he found that the students had no motivation to lie in their testimony; thus, he accepted that Watkins made the alleged comments.

¶ 52 The hearing officer also reviewed the video evidence of the after-school encounter, noting that Watkins lunged towards White when she tried to pass him in the hall and White did everything she could to avoid his touch. He concluded that Watkins' actions in this encounter were at odds with his testimony, and overall, White's were not. He concluded that the evidence, combined with his observations of the witnesses' demeanors, support the conclusion that Watkins committed the alleged conduct. He noted that it was "particularly bothersome" that Watkins' investigatory interview answers shifted frequently, from "I don't recall," to "I don't think so," to "no."

¶ 53 With respect to the retaliation charge, the hearing officer found that as Watkins did place his finger down White's shirt, "he either knew, or clearly should have known, that this behavior was totally inappropriate" and thus it is reasonable to infer that he "knew exactly what he was doing" by making retaliatory comments to White in the hallway and in her classroom.

¶ 54 With respect to the insubordination charge, the hearing officer found that his ruling on the first charge instructed his decision on this charge; he concluded that Watkins lied to the Board during the course of the investigation and was therefore insubordinate.

¶ 55 The hearing officer found that the Board met its burden of proof on all charges regarding Watkins' termination and that White and the District have been irreparably harmed by Watkins' actions. He concluded that:

7.1. On the morning of October 30, 2015, Watkins did tell White she 'looked really sexy in her low cut shirt';

7.2. On the morning of October 30, 2015, Watkins did stick his finger between White and her shirt;

7.3. On the morning of October 30, 2015, Watkins did attempt to pull White's shirt down;

7.4. On the morning of October 30, 2015, Watkins did engage in behavior in an attempt to look down White's shirt at her breasts;

7.5. Watkins did make statements to White and in her presence, in effect asking her why she was no longer parking beside him and if she were mad at him in an attempt to retaliate and further harass White;

7.6. Watkins did lie to District officials when, in the meeting of November 16, 2015, he denied all of the statements and acts outlined in this section;

7.7. Watkins did act in a manner and engage in conduct which violated Board Policy 5:20 which prohibits sexual harassment in the workplace;

7.8. District officials did perform an investigation that satisfies the demand of Board Policy 5:20, which prohibits sexual harassment in the workplace."

He recommended that the Board sustain Watkins' dismissal. The Board adopted the hearing officer's findings and recommendation on May 12, 2016.

¶ 56 On June 8, 2016, Watkins filed a complaint for administrative review. The circuit court issued an order on March 17, 2017, advising the Board to undertake an objective analysis of all remediation factors, such as Watkins' life commitment to teaching and consider remedial alternatives such as victim-offender restorative justice. The court remanded the matter to the Board and advised the parties to "engage the purpose of the remand in good faith."

¶ 57 On March 27, 2017, the Board met and adopted a resolution making detailed findings that Watkins' acts of sexually harassing White and lying to the administration were immoral and had lasting effects on White, the students, and the community. In its March 31, 2017, memorandum of compliance with the court's order, the Board found that after analyzing the harm to White, the impact on the school's staff and students, and Watkins' lifetime loyalty to teaching and service to his community, victim-offender restorative justice was not appropriate due to the seriousness of Watkins' immoral conduct and the significant harm caused to White. The Board concluded that Watkins' acts could not be remedied by a warning. The Board requested that the court find Watkins' conduct irreparable and sustain the Board's decision to dismiss him from employment.

¶ 58 On April 6, 2017, the circuit court issued an order stating that the Board complied with its instructions and considered the relevant factors but renewed its decision to dismiss Watkins. The court noted that Watkins maintained that he did not sexually harass White, and thus, "the court's objective to remediate through victim-offender restorative justice was stymied at the outset" because Watkins could not acknowledge the offending conduct and assent to that approach to remediation. The court concluded that the Board's decision on the facts was not against the manifest weight of the evidence, its legal conclusions were not clearly erroneous, and the case could not be remediated. The court affirmed the Board's decision to dismiss Watkins. This appeal followed.

¶ 59 On review, this court shall consider the Board's decision and the hearing officer's findings of fact and recommendation in making our decision. 105 ILCS 5/24-12(d)(9)

(West 2014). The scope of review in discharge cases is a twofold process. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 63. We apply the manifest weight of the evidence standard to the Board's supplemental factual findings and the unmodified findings of the hearing officer incorporated into the Board's findings. *Id.* We then determine whether the findings of fact provide a sufficient basis for the Board's conclusion that cause for discharge does or does not exist. *Id.*

¶ 60 The Board determined that there was cause to discharge Watkins based on his conduct. A school board's determination of cause to discharge is subject to reversal only where it is arbitrary, unreasonable, or unrelated to the requirements of service. *Id.* We apply the clearly erroneous standard of review to this mixed question of fact and law, *i.e.*, whether we are left with the definite and firm conviction that a mistake has been committed when applying the established facts to the applicable legal standard for discharge. *Id.*

¶ 61 Watkins first asserts that the Board failed to prove that he attempted to pull and look down White's shirt, and by extension, also failed to prove that he retaliated against White for that alleged conduct and engaged in insubordination by lying about it. He argues that the Board's factual findings are against the manifest weight of the evidence, as the case is "a credibility contest, and White's story kept changing."

¶ 62 An administrative agency's factual findings are considered *prima facie* true and correct. 735 ILCS 5/3-110 (West 2014). In examining those factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the

agency; the agency's findings are to be reversed only if they are against the manifest weight of the evidence. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272-73 (2009). An administrative decision is against the manifest weight of the evidence only when, after viewing the evidence in a light most favorable to the agency, the court determines that no rational trier of fact could have agreed with the agency's decision. *Jones v. Department of Employment Security*, 276 Ill. App. 3d 281, 284 (1995).

¶ 63 The Board adopted the hearing officer's findings of fact, which concluded that on the morning of October 30, 2015, Watkins told White that she "looked really sexy in her low cut shirt," stuck his finger between her and her shirt, and attempted to pull her shirt down in an effort to look down her shirt at her breasts. The hearing officer drew these conclusions based on a specific determination of the witness's credibility and by corroborative testimony and video evidence.

¶ 64 Contrary to Watkins' argument, the hearing officer found White more credible than Watkins, noting that White had nothing to gain, and much to lose, by coming forward with the allegations. Watkins, on the other hand, had a motive to lie, and the hearing officer was concerned about his constantly changing investigatory interview answers.

¶ 65 The hearing officer also found that White's testimony was corroborated by other witness's testimony and other documentary evidence. Specifically, Forby confirmed that White was shaken after the encounter and that White told her about Watkins' conduct. Though Forby described the conduct as "pinching" White's shirt rather than pulling it, the hearing officer found "little distinction" between these descriptions; either way, the

conduct constituted sexual harassment. Additionally, Graham and Leonard agreed on many of the details, and White's written statement was generally consistent with her testimony. Video footage from the school also corroborates White's timeline of the events. In regards to the video showing White put her head on Watkins' shoulder during a "side hug," the hearing officer accepted her testimony that she was panicked at that moment, and that her behavior was consistent with that of an abuse victim. We cannot say that the Board's conclusion that Watkins inappropriately touched White and harassed her on October 30, 2015, was against the manifest weight of the evidence.

¶ 66 In regards to the retaliation charge, the hearing officer found that Watkins knew or should have known that his behavior following the shirt incident was inappropriate. He found White's accounts of the retaliatory incidents credible, and many of those incidents were also corroborated by witness testimony and documentary evidence. Text messages between Graham and White show that White was attempting, unsuccessfully, to avoid Watkins after the incident. Fiss testified that White came into her room because she was trying to avoid someone, and students A.W. and E.R. confirmed that Watkins was talking about White as she was passing in the hallway. Video evidence also showed Watkins lunging towards White in the hallway, where she did all she could to avoid his touch. The hearing officer found Watkins' actions inconsistent with his testimony, while White's actions were not. Again, we cannot say that the Board's determination that Watkins retaliated against White in the week following the incident on October 30, 2015, was against the manifest weight of the evidence.

¶ 67 With respect to the insubordination charge, Watkins testified that he "tried to build her up" by complimenting her but later could not recall ever commenting on her looks. He denied telling student A.W. that White was mad at him, but later acknowledged he may have asked White if she was upset with him. He also denied going to White's room to ask her about the Christmas concert and bringing a student's take-home box to her classroom, but later acknowledged that he did after viewing the video evidence. However, he continued to deny inappropriately touching White on October 30, 2015. The hearing officer noted in his recommendation that his decision on the first charge inevitably led him to his conclusion on this charge; because he accepted White's version of the events due to her credible testimony and the supporting witness and video evidence, he concluded that Watkins lied to the Board during the course of the investigation regarding the October 30, 2015, incident and the later encounters. Based on the foregoing analysis, we cannot say that the determination that Watkins was insubordinate for lying about the circumstances surrounding this case at his November 16, 2015, interview was against the manifest weight of the evidence.

¶ 68 It is not the duty of this reviewing court to reweigh evidence or determine the witnesses' credibility. *East St. Louis School District No. 189 v. Hayes*, 237 Ill. App. 3d 638, 646 (1992). Based on the evidence presented to the hearing officer, a rational trier of fact could agree with the Board's determinations. We therefore find that they are not contrary to the manifest weight of the evidence.

¶ 69 We now must determine whether the findings of fact provide a sufficient basis for the Board's conclusion that cause for discharge existed in this case. *Beggs*, 2016 IL



120236, ¶ 63. Again, reversal by this court is only appropriate where the Board's decision was arbitrary, unreasonable, or unrelated to the requirements of service. *Id.*

¶ 70 Section 24-12 of the School Code dictates the circumstances under which teachers in contractual continued service may be dismissed. See 105 ILCS 5/24-12 (West 2014). No tenured teacher may be removed from employment except for cause. *Board of Education of Round Lake Area Schools v. State Board of Education*, 292 Ill. App. 3d 101, 110 (1997). Two types of misconduct may constitute cause: conduct considered "irremediable" and conduct considered "remediable." *Ahmad v. Board of Education of the City of Chicago*, 365 Ill. App. 3d 155, 163 (2006). "Remediable" conduct is defined as conduct by a teacher which could ordinarily be remedied if called to his or her attention; it has been applied to situations concerning deficiencies in teaching performance or corporal punishment. *Id.* A teacher is entitled to a written warning before being dismissed if the conduct is remediable, but no written warning is required if the conduct is irremediable. *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024 (1987). Here, Watkins was not warned, and the Board dismissed him based on the determination that his conduct was irremediable. Watkins, however, argues that his alleged conduct was not irremediable.

¶ 71 The commonly cited irremediability standard is set out in *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977). The *Gilliland* test requires a showing that (1) the conduct caused damage to a student, faculty, or the school, and (2) whether the conduct resulting in that damage could have been corrected had the teacher been warned. *Id.*

¶ 72 As to the first prong, that the conduct caused damage to a student, faculty, or the school, the Board concluded that White and the District were irreparably harmed by Watkins' actions. Leonard testified that Watkins' conduct impacted the District, the students, and White. She felt Watkins could not have returned to work at the school. White testified more specifically about the effects of Watkins' conduct. She stated that she was sick to her stomach waiting for his potential return and that, if he returned to work at Emge, she would be "scared all the time." She testified that she would attempt to avoid him, as she had during the week of retaliatory conduct, but would likely seek a different job. White also recounted that she was harassed by students after Watkins' suspension. Though Watkins argues that it was "the upheaval in the wake of [his termination]," and not his conduct, that was the cause of White's harm, we note that the stress and anxiety White felt in the weeks after Watkins' actions would not have existed at all but for the harassment and retaliation; we therefore find this argument unconvincing. We cannot say that the Board's conclusion on this issue was unreasonable.

¶ 73 The second prong of *Gilliland* requires the Board to prove that the conduct resulting in the damage could have been corrected had the teacher been warned. *Gilliland*, 67 Ill. 2d at 153. However, Illinois courts have held that criminal or immoral conduct is irremediable *per se* and fulfills the second prong of the *Gilliland* test. *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024, 1029 (1987); *McBroom v. Board of Education, District No. 205*, 144 Ill. App. 3d 463, 474 (1986); *Board of Education of Sparta Community Unit School District No. 140 v. Illinois State Board of Education*, 217 Ill. App. 3d 720, 729 (1991). This is because "[i]f it took only a promise

never to engage in the improper conduct again, it is clear that it would be very difficult, if not impossible, to satisfy the second prong of the remediability test." (Internal quotation marks omitted.) *McBroom*, 144 Ill. App. 3d at 473. In such cases, the more appropriate focus is not whether the conduct itself could have been corrected by a warning but whether the effects of the conduct could have been corrected. *Fadler*, 153 Ill. App. 3d at 1028-29.

¶ 74 Watkins notes that there are no Illinois cases finding a single instance of sexual harassment irremediable. He asserts that his case is distinguishable from the reprehensible conduct deemed immoral in other cases, such as marijuana possession (*Chicago Board of Education v. Payne*, 102 Ill. App. 3d 741, 743 (1981)); tax evasion (*McCullough v. Illinois State Board of Education*, 204 Ill. App. 3d 1082, 1090 (1990)); molestation of a student (*Fadler*, 153 Ill. App. 3d at 1027); writing female students overtly sexual letters (*Sparta*, 217 Ill. App. 3d at 723); and transporting students to a teacher's home and allowing them to drink liquor (*Massie v. East St. Louis School District No. 189*, 203 Ill. App. 3d 965 (1990)).

¶ 75 However, a finding of immoral conduct is not limited to criminal behavior or sexually inappropriate conduct with students. Immoral conduct is conduct that has " 'no legitimate basis in school policy or society.' " *Sparta*, 217 Ill. App. 3d at 729 (quoting *Fadler*, 153 Ill. App. 3d at 1029). Sexual harassment is generally considered inappropriate by our societal norms, and indeed, is explicitly against this school's policy. Moreover, as the Board aptly points out, the fact that Watkins chose to victimize an adult

woman instead of a student does not mean that his conduct was somehow more appropriate or acceptable behavior by a teacher on school property.

¶ 76 Watkins also knowingly continued to harass White during the following week and lied to the Board about his conduct. Dishonesty for personal gain has been found to be immoral and *per se* irremediable, see *Ball v. Board of Education of the City of Chicago*, 2013 IL App (1st) 120136, ¶¶ 23, 33, 35 (teacher's false statements to investigators was for personal gain, to avoid responsibility for her negligent acts, and therefore was immoral and irremediable *per se*), and this court has held that a teacher's conduct is irremediable where he can no longer function as a role model to impart basic societal values and qualities of good citizenship to his students. See *McCullough*, 204 Ill. App. 3d at 1090. We find that it was reasonable for the Board to conclude that a warning would not have corrected the effects of Watkins' immoral conduct, which damaged not only White's sense of safety in her workplace but also the trust and confidence of the students and the District.

¶ 77 We briefly note at this point that several of Watkins' arguments revolve around an alleged settlement offer made to him at the November 16, 2015, meeting. However, as a general rule, matters concerning settlements and negotiations are not admissible. *Liberty Mutual Insurance Co. v. American Home Assurance Co.*, 368 Ill. App. 3d 948, 960 (2006). Moreover, no evidence regarding a settlement offer was presented to the hearing officer, and this court may not hear "new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency." 735 ILCS 5/3-110 (West 2014). We therefore must disregard any references to this offer.

¶ 78 The Board adopted the hearing officer's findings of fact and recommendation, which determined that Watkins sexually harassed White, retaliated against her for her reaction to that harassment, and then was dishonest with the Board about these events. We find that it was not arbitrary or unreasonable for the Board to conclude that Watkins' conduct has no legitimate basis in school policy or society, and no purpose would have been served by giving him a written warning. The Board's decision to terminate him for irremediable conduct was not clearly erroneous, and we therefore affirm the Board's decision.

¶ 79 Affirmed.