FIFTH DIVISION
April 12, 2013

No. 1-11-1244

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAI NAM "KENNY" CHAU,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 10 CH 1348
	)	
CHICAGO PUBLIC SCHOOL DISTRICT #299 and	)	
THE ILLINOIS STATE BOARD OF EDUCATION,	)	
	)	Honorable
	)	Kathleen Pantle,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Epstein concurred in the judgment.

ORDER

¶ 1 *HELD:* Plaintiff's investigation by the Office of Inspector General (OIG) and subsequent termination by the Board affirmed where the OIG's statutory authority was expanded by a Board resolution that was not expressly

withdrawn by a later resolution; OIG, as agent of the Board, had authority to grant "use" immunity; statute and Board policy regarding cooperation with the OIG not unconstitutional.

¶ 2 This appeal arises from an order of the circuit court which affirmed the decision of the Illinois State Board of Education (Board) and Chicago Public School District #299 (CPS) dismissing tenured Chicago public school teacher Kai Nam "Kenny" Chau (Chau) after his October 2008 arrest. On appeal, Chau contends that: (1) the Office of Inspector General (OIG) had no legal authority to investigate his arrest or grant him immunity from criminal prosecution; (2) the state law that classifies the failure to cooperate with the OIG as a crime is unconstitutional on its face and as applied to him; and (3) even if the OIG had authority to investigate his arrest and grant immunity, the CPS policy that makes failure to cooperate with the OIG irreparable cause for discharge without any proof of harm is unconstitutional on its face and as applied to him. For the following reasons, we affirm.[1]

¶ 3 BACKGROUND

¶ 4 Briefly stated, the evidence presented below established that Chau was a tenured teacher at Curie High School, a school within the Chicago Public School System (CPS), since 2002. In October 2008, Chau was arrested for public indecency, trespassing and resisting arrest. His arrest occurred at a location unconnected to CPS. Pursuant to a Chicago police department general order which requires arresting officers to contact the OIG when a CPS employee is arrested for a narcotics or sex crime, the arresting officer notified the OIG of Chau's arrest.

[1]Following Justice Gordon's death, Presiding Justice McBride was added as a panel member, has reviewed the briefs and listened to the oral argument.

¶ 5 Two months later, while Chau's criminal case was pending, the OIG subpoenaed Chau to appear before the OIG to answer questions regarding his arrest. Chau appeared with an attorney from the teachers' union in December 2008. Investigator Duffin gave Chau a written notice of his administrative rights prior to interviewing him and provided both Chau and his attorney with a copy of those rights. Those administrative rights included a provision that "any admission or statement made by [Chau] during the interview, and the fruits thereof, could not be used against [him] in any subsequent criminal proceeding."

¶ 6 During the interview, Chau repeatedly confirmed his understanding of Board Rule 4-4(m), that he could be terminated for not cooperating with the OIG. Because Chau's criminal case was still pending, however, both his criminal attorney (who was not present) and his union attorney advised him not to answer the OIG's questions and instead assert his fifth amendment right to remain silent. Chau followed the advice of his counsel and declined to answer any questions regarding his arrest, invoking his constitutional right against self-incrimination.

¶ 7 Shortly after the OIG interview, Investigator Duffin recommended that the Board terminate Chau based on his failure to answer any questions regarding his arrest during the interview. Based on Duffin's recommendation, CPS notified Chau that pending a hearing on the charges, he was dismissed from employment for violation of Board Rule 4-4(m) and section 13.1(d) of the School Code. Board Rule 4-4(m) of the Chicago Board of Education provides as follows:

> "Obligation to Cooperate in Inspector General Investigations and to Answer Inspector General's Questions. All employees are

obligated to cooperate with the Board's Inspector General in investigations or inquiries conducted by the Inspector General as required by 105 ILCS 5/34-13.1. Employees who are interviewed by the Inspector General or his/her authorized agents and who are given a notice of administrative rights by the Inspector General or his/her agents are directed by the Board of Education to answer all questions by the Inspector General. Employees who receive a notice of administrative rights from the Inspector General or his authorized agents may not refuse to answer based upon the assertion of that employee's privilege against self-incrimination. Any employee who refuses to answer questions by the Inspector General or his authorized agents after receiving a notice of administrative rights shall be considered flagrantly insubordinate and to have grossly disrupted the educational process within the meaning of the Employee Discipline and Due Process Policy. In addition to the penalties set forth in 105 ILCS 5/34-13.1, any employee who refuses to answer the questions of the Inspector General or his authorized agent after receipt of a notice of administrative rights shall be subject to dismissal from Board employment in accordance with the Employee Discipline and Due Process Policy."

¶ 8 Section 13.1(d) of the School Code (105 ILCS 5/1-1 *et seq.* (West 2008)) provides as follows:

> "(d) The Inspector General shall have the power to subpoena witnesses and compel the production of books and papers pertinent to an investigation authorized by this Code. Any person who (1) fails to appear in response to a subpoena; (2) fails to answer any question; (3) fails to produce any books or papers pertinent to an investigation under this Code; or (4) knowingly gives false testimony during an investigation under this Code is guilty of a Class A misdemeanor." 105 ILCS 5/34-13.1(d) (West 2008).

¶ 9 After receiving the notice, Chau, through his attorney, requested and received a hearing on his dismissal. The hearing was held in December 2009. Chau testified on his own behalf at the hearing, explaining the nature and circumstance of his arrest. Investigator Duffin also testified at Chau's hearing that the OIG derived its authority to initially interrogate Chau from the statute. He further testified that the OIG had no specific directive from the Board to interrogate Chau about his arrest.

¶ 10 After the hearing, the hearing officer issued his report, in which it found that Chau refused to answer most of the OIG investigator's questions on the advice of his counsel. Such refusal constituted a Class A misdemeanor, criminal activity that is irremediable *per se* and for which no prior warning is required for dismissal. The hearing officer further found that Chau's refusal to cooperate caused damage to the students and school which could not have been

corrected with a prior warning. He further found that Chau was repeatedly advised of the potential deleterious consequences of failing to cooperate, but still refused to answer the OIG's questions, thus a "warning resolution would have served no purpose." The hearing officer noted that Chau's arrest had not been advertised or publicized in the media and was known to only a few of his fellow teachers. He further noted that the Board had no established past practice of giving warning resolutions to individuals before seeking their termination for failing to cooperate with the OIG, and recommended Chau's discharge for irremediable conduct.

¶ 11 After the hearing officer's decision but prior to the Board's resolution, counsel for CPS filed a motion to supplement the hearing record with information pertaining to Chau's underlying criminal case, which was denied.

¶ 12 On December 16, 2009, the Board adopted a resolution terminating Chau's employment after adopting the hearing officer's recommendation.

¶ 13 Chau filed a petition for administrative review in the circuit court, arguing that the OIG did not have authority to grant him immunity and that the OIG had no legal authority to require him to answer any questions in the first place. The circuit court found that the statute allowed the OIG to "perform other duties as directed by the Board" and that the OIG has historically investigated teacher misconduct that was not connected to waste, fraud, or mismanagement. The circuit court concluded that the Board did not err in its finding that the OIG had authority to conduct Chau's investigation under the statute, and that the Board's findings were not against the manifest weight of the evidence. This timely appeal followed.

¶ 14 ANALYSIS

¶ 15 On appeal, Chau contends that: (1) the OIG had no legal authority to investigate his arrest or grant him immunity from criminal prosecution; (2) the state law that classifies the failure to cooperate with the OIG as a crime is unconstitutional on its face and as applied to him; and (3) even if the OIG had authority to investigate his arrest and grant immunity, the CPS policy that makes failure to cooperate with the OIG irreparable cause for discharge without any proof of harm is unconstitutional on its face and as applied to him.

¶ 16 Standard of Review

¶ 17 This court's standard of review of a hearing officer's decision is governed by the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2008). The hearing officer is responsible for weighing the evidence, determining the credibility of witnesses and resolving conflicts in the testimony. *Younge v. The Board of Education of the City of Chicago*, 338 Ill. App. 3d 522, 529-30 (2003). The scope of our review extends to "all questions of law and fact presented by the entire record" before us. 735 ILCS 5/3-110 (West 2008). Moreover, the findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2008). As a reviewing court, we do not weigh the evidence or substitute our judgment for that of the administrative agency. *The Cook County Board of Review v. The Property Tax Appeal Board*, 395 Ill. App. 3d 776, 784 (2009). Accordingly, we will not reverse the factual findings of an administrative agency unless they are against the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident. *Cook County Board of Review*, 395 Ill. App. 3d at 784. Conversely, an agency's determination on a question of law is not binding on us, rendering our review " 'independent and

not deferential.' " *Cook County Board of Review*, 395 Ill. App. 3d at 784, (quoting *Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)).

¶ 18 Administrative review proceedings present three different types of questions: those of fact, those of law, and mixed questions of law and fact. *Cook County Board of Review*, 395 Ill. App. 3d at 784. In turn, each type of question has a different standard of review. Factual determinations are subject to reversal only if they are against the manifest weight of the evidence. *Cook County Board of Review*, 395 Ill. App. 3d at 784. Determinations of questions of law are reviewed using a *de novo* standard of review. *Cook County Board of Review*, 395 Ill. App. 3d at 784-85. Mixed questions of law and fact are reviewed under the clearly erroneous standard, which gives a measure of deference to the underlying agency decision. *Cook County Board of Review*, 395 Ill. App. 3d at 785.

¶ 19 We now turn to the merits of Chau's appeal.

¶ 20 OIG's Authority to Investigate

¶ 21 Chau first contends that the OIG had no legal authority to investigate his arrest or grant him immunity from criminal prosecution. Specifically, Chau contends that the OIG had no legal authority to investigate his arrest absent any official directive from the Board. Additionally, Chau contends that the OIG had no legal authority to offer him "immunity" in order to compel him to waive his Fifth Amendment right against self-incrimination.

¶ 22 Under the Illinois School Code (School Code) (105 ILCS 5/1-1 *et seq.* (West 2008)), an Inspector General position was created under an amendatory Act of 1995. 105 ILCS 5/34-13.1 (West 2008). Under that section, the Inspector General has "the authority to conduct

investigations into allegations of or incidents of waste, fraud, and financial mismanagement in public education within the jurisdiction of the board by a local school council member or an employee, contractor, or member of the board or involving school projects managed or handled by the Public Building Commission." 105 ILCS 5/34-13.1(a) (West 2008). Additionally, the statute provides that the "Inspector General shall be independent of the operations of the board and the School Finance Authority, and shall perform other duties requested by the board." 105 ILCS 5/34-13.1(a) (West 2008).

¶ 23 In response, the Board contends on appeal that this court should take judicial notice of a 1998 Resolution in which it directed its Inspector General to conduct investigations into criminal activity by CPS employees, and directed this court to a website where the resolution may be found.[2] This argument was not raised at any time during the proceedings below, and Chau urges this court not to consider it.

¶ 24 According to the CPS website, that particular resolution was adopted on September 23, 1998, after Maribeth Vander Weele was appointed as Inspector General for the Board. The resolution provides, in pertinent part:

> "1) The Inspector General shall perform the following duties in addition to conducting the specific investigations outlined in the Illinois School Code:
>
> (a) initiate or conduct investigations into allegations of employee

[2]The website referenced is the Chicago Public Schools website: http://www.cps.edu/About_CPS/Departments/Pages/InspectorGeneralResolution98-0293-RS12.aspx

> misconduct, including allegations of criminal activity by employees and any other matter that would formerly have been the responsibility of the Internal Office of Investigations of the Board of Education of the City of Chicago, but excluding matters which the Board may direct other personnel to investigate * * *."

The Board contends that this court may take judicial notice of its 1998 resolution because it is a "public document containing facts capable of instant and unquestionable demonstration," citing *Young-Gibson v. Board of Education of City of Chicago*, 2011 IL App (1st) 103804, ¶ 52 in support.

¶ 25 Section 3-110 of the Administrative Review Law (735 ILCS 5/3-110 (West 2008)) provides, in part, that "[n]o new or additional evidence in support of or in opposition to any finding, order, determination[,] or decision of the administrative agency shall be heard by the [reviewing] court." *Illinois Department of Human Services v. Porter*, 396 Ill. App. 3d 701, 725 (2009). However, notwithstanding section 3-110, documents containing readily verifiable facts may be judicially noticed if taking judicial notice will " 'aid in the efficient disposition of a case.' " *Porter*, 396 Ill. App. 3d at 725, (quoting *Muller v. Zollar*, 267 Ill. App. 3d 339, 341 (1994)).

¶ 26 Here, we will take judicial notice of the Board's 1998 resolution as a readily verifiable public document. However, that does not end the inquiry as the CPS website contains a second Board resolution dated April 23, 2003, after the appointment of James Sullivan as the Board's Inspector General.[3] In the later resolution, the Board made the following statements in regards to

[3]According to the CPS website, James Sullivan is currently the Board's Inspector General.

the duties of the Inspector General (in pertinent part):

> "1) In performing the duties outline[d] in the Illinois School Code and in this Resolution, the Inspector General shall report directly to the Board and shall provide reports to the Chief Executive Officer of the Chicago Public Schools (the "Chief Executive Officer"), * * *
>
> 2) The Board also requests that the General Counsel provide legal counsel to the Inspector General as required to assist the Inspector General in performing the duties outlined in the Illinois School Code and in this Resolution, * * *
>
> 3) The Board further requests that the General Counsel represent the Inspector General in all instances in which the enforcement of a subpoena issued by the Inspector General is necessary.
>
> 4) The Board shall retain an attorney to provide legal counsel in those circumstances where this Resolution authorizes the Inspector General to seek the advice of outside legal counsel rather than the General Counsel."

¶ 27 While the 2003 resolution did not incorporate by reference the 1998 resolution, it did not expressly repeal the 1998 resolution either. See *Feret v. Schillerstrom*, 363 Ill. App. 3d 534, 540 (2006), (citing *Jahn v. Troy Fire Protection District*, 163 Ill. 2d 275, 280 (1994)); *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993)) (there are only two ways to

render legislation inoperative: expressly repeal it, or do so implicitly). Nor was it implicitly repealed. Repeal by implication only occurs if two pieces of legislation conflict with one another. *Feret*, 363 Ill. App. 3d at 540. In reviewing the language of the 1998 and the 2003 resolutions, there can be no suggestion that the two resolutions conflict. Thus, the earlier resolution is still operative.

¶ 28 Having made such determination, we now turn to the issue raised on appeal, namely whether the OIG had the legal authority to investigate Chau's arrest. As this is a question of law, our review is *de novo*. *Cook County Board of Review*, 395 Ill. App. 3d at 784-85.

¶ 29 As stated previously, the Inspector General's statutory duties, as defined by the School Code, are to "conduct investigations into allegations of or incidents of waste, fraud, and financial mismanagement in public education" and to "perform other duties requested by the board." 105 ILCS 5/34-13.1(a) (West 2008). We have already determined that the 1998 Board Resolution was still in effect at the time of the OIG's investigation of Chau, and that resolution extended special duties to the Inspector General beyond those contained in the statute, including initiating or conducting investigations into allegations of employee misconduct, including allegations of criminal activity by employees. Chau is correct in noting that the record indicates that at his hearing, Inspector Duffin indicated that the OIG had no directive from the board to investigate him. However, as we have taken judicial notice of the 1998 Board Resolution, this argument is of no consequence as there was a standing resolution which expanded the duties of the OIG.

¶ 30 As such, we find that the OIG had the legal authority to investigate Chau's arrest as such investigation was included in the scope of its authority as delineated by the Board's 1998

resolution. Thus, we conclude that the OIG's act of investigating Chau's arrest was not void.

¶ 31 Grant of Immunity

¶ 32 Chau further contends that the OIG had no legal authority to offer or confer any type of immunity on him when it attempted to interrogate him about his arrest.

¶ 33 According to the record, when advising Chau of his administrative rights, the OIG advised him that "by law any admission or statement made by [him] during the course of th[e] interview and the fruits thereof cannot be used against [him] in a subsequent criminal proceeding." Moreover, the Board's rule 4-4(m) provides as follows, in pertinent part:

> "All employees are obligated to cooperate with the Board's Inspector General in investigations or inquiries conducted by the Inspector General as required by 105 ILCS 5/34-13.1. Employees who are interviewed by the Inspector General or his/her authorized agents and who are given a notice of administrative rights by the Inspector General or his/her agents are directed by the Board of Education to answer all questions by the Inspector General. Employees who receive a notice of administrative rights from the Inspector General or his authorized agents may not refuse to answer based upon the assertion of that employee's privilege against self-incrimination."

¶ 34 The fifth amendment privilege against self-incrimination applies to criminal and civil proceedings, formal and informal, whenever an answer might tend to subject to criminal

responsibility the person giving the answer. *Lefkowitz v. Turley*, 414 U.S. 70, 77, 94 S. Ct. 316, 322 (1973); *Hoban v. Rochford*, 73 Ill. App. 3d 671, 677 (1979). Administrative hearings are not criminal proceedings, but if persons are compelled in those proceedings to furnish testimonial evidence that might incriminate them in later proceedings, they must be offered " 'whatever immunity is required to supplant the privilege' " and may not be required to " 'waive such immunity.' " *Baxter v. Palmigiano*, 425 U.S. 308, 316, 96 S. Ct. 1551, 1557 (1976), (quoting *Turley*, 414 U.S. at 77, 94 S. Ct. at 322).

¶ 35 However, the United States Supreme Court has found that answers may be compelled regardless of the privilege if there is immunity from federal and state use of the compelled testimony or its fruits in connection with a criminal investigation against the person testifying. *Gardner v. Broderick*, 392 U.S. 273, 277, 88 S. Ct. 1913, 1915 (1968). "The government has every right to investigate allegations of misconduct, including criminal misconduct by its employees, and even to force them to answer questions pertinent to the investigation, but if it does that it must give them immunity from criminal prosecution on the basis of their answers." *Atwell v. Lisle Park District*, 286 F. 3d 987, 990 (2002), (citing *Lefkowitz v. Cunningham*, 431 U.S. 801, 806, 97 S. Ct. 2132, 2136 (1977)). For these purposes, the state is treated as a unit; thus the Board's insistence that Chau give evidence that might show he had committed a crime could not be used by the state's attorney to prosecute him. See *Atwell*, 286 F.3d at 990.

¶ 36 That is precisely what occurred in the instant case. The administrative rights as given to Chau at the beginning of the interview, specifically encapsulated the Supreme Court's holding that a person be offered immunity to replace the fifth amendment privilege against self-

incrimination. We therefore conclude that Chau's argument is without merit, and that the OIG as an agent of the Board had the authority to grant him immunity in exchange for the required waiver of his fifth amendment rights.

¶ 37 Violation of the Supremacy Clause

¶ 38 Chau further contends that the state law which classifies the failure to cooperate with the OIG as a crime violates the supremacy clause and is unconstitutional on its face and as applied to him. Specifically, he contends that state statute section 13.1(d), conflicts with the Fifth Amendment's protections against self-incrimination and is thus preempted by federal law. We disagree.

¶ 39 Whether a statute is unconstitutional is a question of law, and our review is *de novo*. *In re Rodney H.*, 223 Ill. 2d 510, 516 (2006).

¶ 40 All statutes carry a strong presumption of constitutionality. *Rodney H.*, 223 Ill. 2d at 516. Accordingly, we will uphold a statute if reasonably possible to do so and will "resolve all doubts in favor of constitutional validity." *In re Marriage of Miller*, 227 Ill. 2d 185, 195 (2007), (quoting *People ex rel. Sheppard v. Money*, 124 Ill. 2d 265, 272 (1988)). The party challenging the statute bears the burden of rebutting the presumption by clearly demonstrating the statute's constitutional infirmity. *Miller*, 227 Ill. 2d at 195.

¶ 41 The supremacy clause of the United States Constitution states "the Laws of the United States * * * shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby * * *." U.S. Const., art. VI, cl. 2; *Castillo v. Jackson*, 149 Ill. 2d 164, 173 (1992). " ' "Any state law, however clearly within a State's acknowledged power, which interferes with or is

contrary to federal law, must yield." ' " *Wellington Homes, Inc. v. West Dundee China Palace Restaurant, Inc.*, 2013 IL App (2d) 120740, ¶ 20, (quoting *Felder v. Casey*, 487 U.S. 131, 138, 108 S. Ct. 2302, 2307 (1988), (quoting *Free v. Bland*, 369 U.S. 663, 666, 82 S. Ct. 1089, 1092 (1962))).

¶ 42 Section 13.1(d) of the School Code provides as follows, in pertinent part:

> "Any person who (1) fails to appear in response to a subpoena; (2) fails to answer any question; (3) fails to produce any books or papers pertinent to an investigation under this Code; or (4) knowingly gives false testimony during an investigation under this Code, is guilty of a Class A misdemeanor." 105 ILCS 5/34-13.1(d) (West 2008).

¶ 43 No question exists that our General Assembly possesses the authority to establish penalties for defined offenses. *Miller*, 227 Ill. 2d at 196. See also *Missouri Pacific Railway Co. v. Humes*, 115 U.S. 512, 523 (1885); *Knox County ex. Rel. Masterson v. The Highlands, L.L.C.*, 188 Ill. 2d 546, 559 (1999); *People v. P.H.*, 145 Ill. 2d 209, 233 (1991); *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 364 (1985). The legislature's authority to set a statutory penalty is limited by the requirements of due process. *Miller*, 227 Ill. 2d at 197.

¶ 44 A statute which imposes criminal punishment without affording an accused the procedural safeguards which accompany a criminal trial or the rights guaranteed by the fifth and sixth amendments of the Federal Constitution violates due process. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 164, 83 S. Ct. 554, 565 (1963). Whether a statute imposes a criminal

sanction is a matter of statutory construction. *Halvering v. Mitchell*, 303 U.S. 391, 399, 58 S. Ct. 630, 633 (1938).

¶ 45 It is clear that violations of section 13.1 of the School Code are criminal in nature because the possibility of imprisonment is a penalty; thus it is subject to the protections of the Constitution. See *Peoria County v. Schielein*, 87 Ill. App. 3d 14, 17 (1980).

¶ 46 However, as discussed above, the United States Supreme Court has held that a governmental entity can compel an employee's participation in an investigation that would ordinarily offend the fifth amendment privilege against self-incrimination as long as it offers a replacement immunity. See *Gardner*, 392 U.S. at 277; *Turley*, 414 U.S. at 77; *Baxter*, 425 U.S. at 316. That holding has been adopted by this court, which has held that a government employer can require that its employees fully participate in investigations by the OIG under the doctrine of use immunity and such requirement does not violate the constitution. See *Blunier v. Board of Fire and Police Commissioners of the City of Peoria*, 190 Ill. App. 3d 92, 103-04 (1989). Immunity statutes seek a rational accommodation between the imperatives of the privilege against self-incrimination and the legitimate demands of the government to compel citizens to testify. See *People v. Ousley*, 235 Ill. 2d 299, 318 (2009), (citing *Kastigar v. United States*, 406 U.S. 441, 445-46, 92 S. Ct. 1653, 1656-57 (1972)).

¶ 47 Here, Chau argues that the statute in question, 105 ILCS 5/34-13.1(d) (West 2008), is facially invalid because it classifies an employee's refusal to answer questions from the OIG as a criminal misdemeanor and as such, clearly penalizes such employee for invoking the fifth amendment. He further contends that there are no circumstances in which any person's

invocation of federal Constitutional rights can be classified as criminal. Chau's argument is without merit.

¶ 48 On its face, section 13.1(d) does not clearly penalize an employee for invoking the fifth amendment; rather it penalizes an employee for failing to cooperate with the OIG's investigation. As stated previously, the United States Supreme Court has clearly stated that compelling an employee's cooperation with an investigation does not violate the fifth amendment if a use immunity is offered. *Cunningham*, 431 U.S. at 805. There is no dispute that such protection in safeguarding Chau's fifth amendment rights was offered in this case in the form of immunity. Thus, Chau's constitutional rights were protected and we conclude that section 13.1 is not unconstitutional.

¶ 49 Failure to Cooperate with the OIG Unconstitutional

¶ 50 Finally, Chau contends that the Board's policy that makes failure to cooperate with the OIG irreparable cause for discharge without any proof of harm is unconstitutional on its face and as applied to him.

¶ 51 This argument is merely a restatement of Chau's previous arguments and we reject this argument for the same reasons as stated above. The Board's rule 4-4(m) is merely a restatement of section 13.1(d), which we have found not to violate the constitution. Additionally, Chau's refusal to answer questions after being ordered to do so can properly be used as the basis for suspending or discharging him if he has been adequately informed of the attachment of use immunity. See *Blunier*, 190 Ill. App. 3d at 104 (employee's refusal to answer can form the basis for disciplinary action if he has been informed that use immunity has attached).

¶ 52 CONCLUSION

¶ 53 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 54 Affirmed.