

SECOND DIVISION  
October 7, 2014

No. 1-13-3808

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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BOARD OF EDUCATION OF TOWNSHIP HIGH,	)	
SCHOOL DISTRICT 214, COOK COUNTY, ILLINOIS,	)	
	)	
Plaintiff-Appellee,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
v.	)	
	)	
ILLINOIS STATE BOARD OF EDUCATION, an Illinois	)	
Administrative Agency, and STEVEN M. BIERIG, in his	)	
official capacity as an Illinois State Board of Education	)	No. 13 CH 17014
Hearing Officer,	)	
	)	
Defendants-Appellees,	)	
	)	
v.	)	
	)	
PAUL CARLINO	)	Honorable
	)	Thomas Allen,
	)	Judge Presiding.
Defendant-Appellant.	)	

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JUSTICE LIU delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

## ORDER

¶ 1 *HELD*: Circuit court order reversing hearing officer's decision to reinstate defendant as a teacher affirmed where the hearing officer's finding that criminal misconduct of teacher was remediable was against the manifest weight of the evidence.

¶ 2 Plaintiff, Board of Education of Township High School District 214 (Board), dismissed defendant, Paul Carlino, from his tenured position as a teacher following a series of very unfortunate and tragic occurrences culminating in Carlino's acts, on January 18, 2011, against a teacher from a different school district who had sexually abused Carlino's teenage son. Following a hearing before the Illinois State Board of Education, the hearing officer found that "[d]ismissal is not appropriate" because the January 18 incident "involve[d] a single isolated act by a very accomplished educator who was going through extreme duress at the time." The hearing officer reinstated Carlino without backpay, subject to a fitness for duty examination. The Board subsequently sought administrative review of this decision, and the circuit court reversed the hearing officer's decision, effectively sustaining Carlino's dismissal. On appeal, Carlino contends that the decision of the hearing officer was not against the manifest weight of the evidence and should have been upheld. For the following reasons, we affirm.

### ¶ 3 BACKGROUND

#### ¶ 4 A. The January 18, 2011 Incident

¶ 5 Most of the relevant facts, as testified to during the hearing, are not in dispute. Carlino was employed as a special education teacher at Rolling Meadows High School in District 214 for 25 years. He held a tenured position for 22 years, from 1989 until March 17, 2011, when he was discharged. Prior to his discharge, Carlino had responsibility for about 20 students with learning disabilities and behavioral disorders. He was routinely rated excellent as a teacher and had never received a negative or bad performance review or been disciplined. He is esteemed by his peers and former students and has also been awarded and commended for his service as a teacher.

¶ 6 In November 2010, Carlino learned that his son and a special education student had been sexually abused by R. Culver, a teacher from another school district. This news was especially difficult for Carlino, who had been a victim of sexual abuse during his own childhood. The situation worsened when his son subsequently became very angry with him and told Carlino, on a couple of occasions, that the abuse "would never have happened" had Carlino been around.

¶ 7 On January 18, 2011, Carlino returned home after work and had a couple of drinks. He subsequently became involved in a "text argument" with his son. At one point, his son sent a text defending Culver, stating that Culver was a role model and had taken care of him. Carlino responded that Culver "didn't care about [him]" and was a "pedophile." Carlino's son said, "Dad, if you're going to talk the talk, you have to walk the walk." Carlino took this as a challenge and decided to go and confront Culver.

¶ 8 Carlino went to Culver's house armed with an unloaded gun, with the intent simply "to scare him." Carlino rang the doorbell and when Culver answered, he asked Culver if he knew who he was. When Culver stated that he did not, Carlino told him who he was and then "lost it." Carlino began "screaming and yelling" and entered the house as Culver backed up inside. He then followed Culver into the kitchen, where Culver sat down in a chair. Carlino stood over him for about five minutes "letting him know how he spoiled [his] son and [that] what he took he'll never get back." Culver repeatedly apologized, saying, "I'm sorry." But, at one point, Culver implied that he was a victim and said, "Do you know how hard this has been on me? This has been so hard on me too." This prompted Carlino to take out the gun and place it in Culver's mouth, with the warning, "Don't say another word. I don't want you to say another word." He then put the gun away and resumed screaming at Culver. When Culver tried to get up at one point, however, Carlino hit him in the face twice with his fist, saying, "I'm not done talking to

you yet." Carlino left Culver's house after about 15 minutes in total. The next morning, he turned himself in to police, gave a confession, and was placed under arrest for home invasion.

¶ 9 B. The Administration's Response to the Incident

¶ 10 Randy Hawley, an associate superintendant for human resources in District 214, learned that Carlino was in jail from Dr. Charles Johns, the principal of the high school. Hawley initially informed Carlino by letter that he was being placed on paid leave of absence in light of his recent arrest and charge of home invasion. He then attended Carlino's arraignment and scheduled a meeting with Carlino to discuss the charges.

¶ 11 On January 21, 2011, Hawley, Carlino, and District 214 education association president Dick Trent met to discuss the incident. Carlino informed Hawley that his lawyer had advised him not to answer questions. Nevertheless, Hawley confronted Carlino with the charges that were read at his arraignment and asked if they were true. Carlino denied that he had hit Culver with a gun. Hawley informed Carlino that his suspension with pay would continue, but explained that the situation was "very serious." He informed Carlino that his options at that point were "he could either resign or we were going to move forward with a dismissal hearing."

¶ 12 On February 25, 2011, Hawley received two letters from Carlino's psychologist, Dr. Randy Kettering. In the first letter dated February 18, 2011, Dr. Kettering stated that he had met with Carlino on January 24. He noted that Carlino "presented with symptoms consistent with a Major Depression, single episode, severe" and that he had "begun responding to both pharmacologic and psychotherapeutic treatment efforts." He opined that Carlino was "not yet currently capable of resuming his teaching responsibilities," but "anticipate[d] that [Carlino would] be fully capable o[f] resuming those responsibilities as his treatment progresse[d]."

¶ 13 In the second letter dated February 25, 2011, Dr. Kettering described in detail the circumstances that led to Carlino's depressive episode. He explained that Carlino had recently become "estranged from his home and children as he was pursuing a divorce." Dr Kettering further stated that Carlino, upon discovering that his son had been victimized, "was immediately submerged into profound feelings of despair for failing in his life's primary task" and "was flooded with images and self-feelings from his own childhood that left him ruminating and struggling with [a] sense of helplessness." Dr. Kettering opined that Carlino could have been "experiencing a post-traumatic stress response" and that the addition of alcohol, on the night of January 18, contributed to "an impulsive lapse in judgment wherein [Carlino] decided to confront his son's victimizer and compel him to listen to [Carlino's] words and anguished feelings."

¶ 14 Dr. Kettering also suggested that Carlino was not yet capable of resuming his teaching responsibilities. However, Dr Kettering still "anticipate[d] that [Carlino would] be fully capable of resuming those responsibilities as his treatment progresse[d]."

¶ 15 C. The Board's Dismissal

¶ 16 On March 17, 2011, the Board adopted a resolution dismissing Carlino by a vote of 5-2. The following charges were submitted by the Board in support of his dismissal:

"1. On January 18, 2011, you forced your way at gunpoint into the home of another man. While yelling and cursing the man, you put your gun into his mouth and threatened to kill him if he reported your attack on him to the police. You struck him with the gun and with your fists.

\* \* \*

2. Your actions have shown you to be unfit to serve as a role model to any District 214 students and, in particular, to the behavior-disordered students whom you teach.

\* \* \*

3. Your actions have damaged the reputation of High School District 214.

\* \* \*

4. In the opinion of the Board of Education, your actions on January 18, 2011 were cruel and immoral and are sufficient cause for your discharge.

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5. In the opinion of the Board of Education, you are not qualified to teach and the interests of the District require your dismissal."

¶ 17 D. Evidence Presented at the Hearing

¶ 18 On March 25, 2011, Carlino submitted a request for a hearing before the State Board. A hearing officer chosen by the parties heard two days of testimony on April 30, 2012, and May 22, 2012. The following evidence was presented during the hearing.

¶ 19 As pertinent here, Dr. David Schuler, the superintendent of schools for District 214, testified that he recommended Carlino's dismissal to the Board. He believed that Carlino did not have the credibility to serve as a role model in the classroom after the incident in question, noting that Carlino's assignment was to teach children with behavioral disorders and that part of his responsibility was to "teach good decision making and making good choices." Dr. Schuler

believed that staff and students knew of Carlino's actions and testified that at least one parent had called "indicating that they did not want their kid in Mr. Carlino's class if he returned." Hawley also testified that the Rolling Meadows high school administration had informed him "that it was common knowledge that Mr. Carlino was the unnamed person" in newspaper articles about the incident in question. Neither Dr. Schuler nor Hawley believed that the incident in question could be kept a secret. Hawley, in particular, testified that in his 42 years of experience he has "never had a case \*\*\* where people didn't find out."

¶ 20 Dr. Richard Van Acker, an expert in special education, also testified that "it would be extremely difficult for an individual who has engaged in [behavior such as Carlino's] to be seen as credible and helping the students that he'd be working with to take responsibility for their behavior and act accordingly." He acknowledged that everyone "could understand where a person might feel like that's what you'd want to do." However, he testified that "having actually acted on those beliefs or those feelings puts [Carlino] in a situation now where it's going to be impossible for him to tell his students, 'You need to stand up and take responsibility for your behavior when I'm not willing to do that for mine.'" Dr. Van Acker believed that the credibility of the district's behavior disorder program could be called into question if Carlino were brought back to teach. He testified that Carlino would effectively be telling his students to do what he says, not what he does, but that "[c]hildren learn far more by modeling the adults and people around them than by listening to what they say."

¶ 21 Dr. Kettering testified, on Carlino's behalf, that he first met with Carlino on January 24, 2011, after the incident in question. He testified that Carlino described to him the breakdown of his 17-year marriage and expressed guilt about the fact that he had let down his sons and failed to protect his one son who had been victimized. Carlino informed him during their meeting that he

had been sexually abused as a child by an uncle and his parish priest. Dr. Kettering testified that the victimization of Carlino's son "stirred up a tremendous amount of vivid memories, flashbacks, anxiety and self-reproach for failing to discharge the responsibilities that he placed on his shoulders when he had children, and that was to protect them at all costs, to be certain that this kind of thing would never happen to them." Dr. Kettering ultimately diagnosed Carlino with a major depressive disorder and post-traumatic stress disorder; for treatment, he prescribed individual psychotherapy and referred Carlino to his primary care physician for the medication Effexor.<sup>1</sup>

¶ 22 Dr. Kettering opined that Carlino had suffered a temporary mental incapacity during the timeframe in question and was not a danger to anyone else as of February 18, 2011. He also testified that Carlino was fully capable of resuming his teaching duties sometime around the end of August or beginning of September 2011.

¶ 23 Carlino testified to the version of events as stated in section A *supra*. He additionally testified regarding the breakdown of his marriage, the effect on his son, and his feelings upon discovering the abuse of his child.

¶ 24 The hearing officer also considered the fact that, on October 3, 2011, Carlino pleaded guilty to the Class 3 felony of aggravated battery with a weapon and was sentenced to 24 months' probation. Carlino was ordered to perform 240 hours of community service as part of his sentence and to complete anger management counseling. At the time of the hearing officer's decision, Carlino had completed his community service and counseling requirements.

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<sup>1</sup> Dr. Kettering testified that Carlino had previously been on Effexor, but had discontinued use of the medication on New Year's Eve because he thought it "took away his edge and interfered with his being able to teach."



¶ 25

E. The Hearing Officer's Ruling

¶ 26 On June 15, 2013, the hearing officer issued a ruling sustaining the charges against Carlino in part and denying them in part. The hearing officer concluded that Carlino engaged in misconduct, but found:

"While the criminal conduct in the instant case, standing alone, would be irremediable, in the context of the specific circumstances of this case, I find that Carlino's personal situation between November 2010 and January 18, 2011 was the cause of his misconduct and is remediable with treatment, and such treatment has allowed him to resume teaching."

¶ 27 While acknowledging that Carlino had pleaded guilty to a felony conviction, the hearing officer noted that Carlino had served his sentence, "acknowledged his crime, paid his debt to society, and \*\*\* been successfully treated by Dr. Kettering." According to the hearing officer, Carlino had a "history of exemplary performance as a teacher" and "the event in question was an isolated incident that was the result of a combination of a number of unfortunate circumstances."

¶ 28 Recognizing the Board's concern that Carlino might no longer be capable of serving as a role model to his students, the hearing officer "agree[d] with the District that it may be difficult to permanently keep Carlino's actions secret, and there is a possibility that ultimately, he may have to address the situation." However, the hearing officer did not find the potential exposure of the incident to be a barrier to Carlino's ability to resume his teaching position.

¶ 29 The hearing officer further found that dismissal was "too severe a penalty" in this case. He therefore reinstated Carlino without backpay, subject to a fitness for duty examination.

¶ 30 On July 17, 2013, the Board filed a complaint for administrative review. On November 5, 2013, the circuit court reversed the hearing officer's decision, effectively sustaining the Board's decision to dismiss Carlino.

¶ 31 Carlino timely appealed the circuit court's ruling. We therefore have jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. May 30, 2008).

¶ 32 ANALYSIS

¶ 33 Our review of the hearing officer's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). 105 ILCS 5/24-16 (West 2012). In administrative review cases, we review the decision of the administrative agency, not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006).<sup>2</sup>

¶ 34 Carlino contends on appeal that the hearing officer's decision to reinstate him was not against the manifest weight of the evidence and should have been upheld. It is clear from the nature of his argument that he does not dispute that his criminal conduct constituted "cause" for dismissal under section 10-22.4 of the School Code (Code) (105 ILCS 5/10-22.4 (West 2010)); instead, he believes, as the hearing officer found, that his conduct was remediable and therefore necessitated a warning.

¶ 35 "Section 24-12 of the [Code] provides that before teachers may be dismissed for remediable conduct, they must receive a written warning to cease that conduct." *Board of Education of Joliet Township High School District No. 204 v. Illinois State Board of Education*, 331 Ill. App. 3d 131, 134 (2002) (citing 105 ILCS 5/24-12 (West 1998)). "Where no warning is given, the Board's evidence must prove that the teacher's conduct is irremediable." *McBroom v. Board of Education, District No. 205*, 144 Ill. App. 3d 463, 473 (1986). "Conduct is

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<sup>2</sup> The parties in this case devote an inordinate portion of their briefs to addressing the circuit court's ruling. We remind counsel that their discussion should be directed at the decision under review.

irremediable if it (1) causes damage to the students, faculty or school and (2) could not have been corrected if the teacher's superiors had warned [him]." *Board of Education of Joliet Township High School District No. 204*, 331 Ill. App. 3d at 134 (citing *Gilliland v. Board of Education of Pleasant View Consolidated School District*, 67 Ill. 2d 143, 153 (1977)).

¶ 36 "Whether a cause for dismissal is irremediable is a question of fact." *Id.* at 135. "The findings of an administrative hearing officer on questions of fact are considered to be *prima facie* true and correct and cannot be set aside unless they are against the manifest weight of the evidence." *Id.* A finding is against the manifest weight of the evidence "only when all reasonable and unbiased persons would agree it is clearly evident that the hearing officer erred and should have reached the opposite conclusion." *Id.*

¶ 37 In this case, the hearing officer concluded that Carlino's criminal misconduct was remediable because he acknowledged his crime, served his sentence, and received treatment for his depressive episode. Essentially, the hearing officer found that Carlino's criminal misconduct was an isolated incident in light of his long history of exemplary teaching.

¶ 38 We do not dispute the underlying factual findings of the hearing officer concerning Carlino's rehabilitation and exemplary teaching history. We cannot agree, however, that Carlino's criminal misconduct was remediable and subject to a warning.

¶ 39 In numerous cases, this court has found a teacher's criminal misconduct irremediable regardless of whether it occurs at or outside of school. See *e.g. McCullough v. Illinois State Board of Education*, 204 Ill. App. 3d 1082, 1090 (1990) (finding that teacher's failure to file income tax returns, which resulted in misdemeanor convictions, was irremediable conduct); *McBroom*, 144 Ill. App. 3d at 474 (finding that teacher's theft of a check from a student's unlocked locker, which resulted in misdemeanor conviction, was irremediable conduct); *Chicago*

*Board of Education v. Payne*, 102 Ill. App. 3d 741, 749 (1981) (finding that possession of marijuana outside of school was irremediable and that hearing officer erred in finding to the contrary)<sup>3</sup>. We have even gone so far as to hold that the second prong of the remediability test does not apply in situations where a teacher has engaged in criminal activity. *Board of Education of Joliet Township High School District No. 204*, 331 Ill. App. 3d at 134; *McCullough*, 204 Ill. App. 3d at 1090; *McBroom*, 144 Ill. App. 3d at 473.

¶ 40 We agree with the court in *McBroom* that "remedial conduct is misconduct by a teacher, in [his] ordinary course of duties, which, if called to [his] attention, can ordinarily be remedied." *McBroom*, 144 Ill. App. 3d at 473. We also agree that:

"[T]he concept [of remediable conduct] was not intended to apply to criminal conduct which has no legitimate basis in our society. Teachers, as leaders and role models, with their education and background, have the duty to implant basic societal values and qualities of good citizenship in their students. To 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." *Id.* at 474.

We therefore find the hearing officer's decision that Carlino's criminal misconduct was remediable to be against the manifest weight of the evidence.

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<sup>3</sup> In a subsequent case, this court found that *Payne* was not controlling on the issue of remediability because it pre-dated the 1995 amendment to section 34-85 of the Code, which added the following language: "No written warning shall be required for conduct on the part of a teacher or principal which is cruel, immoral, negligent, or *criminal* \*\*\* as that conduct is deemed to be irremediable." (Emphasis added.) *Younge v. Board of Education of City of Chicago*, 338 Ill. App. 3d 522, 533, 535 (2003); see 105 ILCS 5/34-85(a) (West 2012). We find that *Payne* is still good authority in this case, as the court applied the same standard we do here and no similar amendment has been made to section 24-12 of the Code. See *Payne*, 102 Ill. App. 3d at 749.

¶ 41 The tragic circumstances that gave rise to the underlying basis for Carlino's dismissal, given his popularity, favorable reputation, and the positive impact he had on his students over the years, do not provide a basis for a contrary finding. We live in a society with rules and our system of justice requires everyone to respect the manner in which justice is dispensed. It is the well established law of this state that the Board is entitled to dismiss a teacher who has engaged in criminal misconduct in order to protect the integrity of its schools. Our decision in this case is based on established legal precedent and merely preserves the Board's ability to gauge the potential for concern within the community and to make a decision whether a teacher who has engaged in criminal misconduct must be dismissed.

¶ 42 For the reasons stated, we affirm the order of the circuit court of Cook County reversing the decision of the Illinois State Board of Education hearing officer.

¶ 43 Affirmed.