2016 IL App (1st) 160061-U

FIFTH DIVISION
December 23, 2016

No. 1-16-0061

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAN COYNE, Respondent-Appellant, v. FORREST CLAYPOOL, Chief Executive Officer, and BOARD OF EDUCATION OF THE CITY OF CHICAGO, Petitioners-Appellees.	)	On Petition for Review of a Final Administrative Decision of the Board of Education of the City of Chicago Board Resolution No.: 15-1216-RS8

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the decision of a board of education dismissing an employee for noncompliance with a residency policy.

¶ 2 Employees of the Board of Education of the City of Chicago (Board) generally are required to reside in Chicago. The Board, however, may grant "special needs waivers" of the residency requirement for employees hired to positions designated by the Board as special needs positions. When Dan Coyne (Coyne), a longtime resident of Evanston, Illinois, was hired by the Board as a Chicago Public Schools (CPS) social worker in 2002, he applied for a special needs

waiver. Within a few years, thereafter, the Board no longer designated social work as a special needs position. Coyne, a tenured educator, was the subject of a CPS residency audit in early 2010 and received a warning resolution from the Board. Around the same time, Coyne garnered significant media attention when he donated a kidney to a relative stranger. After media outlets questioned how the Board could pursue Coyne's dismissal while honoring him for his kidney donation, Ron Huberman (Huberman), the chief executive officer of CPS at that time, met with Coyne. The Board subsequently rescinded the warning resolution in October 2010.

¶ 3 More than three years later, Coyne was again informed that an audit indicated his non-compliance with the Chicago residency requirement. Coyne continued to reside in Evanston, and the Board initiated dismissal proceedings. A hearing officer recommended that the decision to dismiss Coyne be rescinded, finding that the Board did not act within a reasonable time period after its rescission of the 2010 warning resolution to require that Coyne become compliant with the residency policy. The Board partially adopted and partially rejected the recommendations of the hearing officer and dismissed Coyne. In this direct appeal for administrative review pursuant to section 34-85 of the School Code (105 ILCS 5/34-85(a)(8) (West Supp. 2015)), Coyne challenges his dismissal based on waiver, equitable estoppel, ratification, and other grounds. For the reasons discussed below, we affirm the decision of the Board.

¶ 4 BACKGROUND

¶ 5 The CPS residency policy provides that employees hired on or after November 20, 1996, are required to be actual residents of the city of Chicago within a specified time after the commencement of their employment. Employees working in special needs areas, however, may apply for a renewable three-year waiver from the residency requirement. When Coyne was hired as a social worker in 2002, social work was designated as a special needs position.

¶ 6 On October 25, 2002, Coyne signed an Employee Sworn Residency Statement that referenced the Chicago residency requirement, listing his Evanston address. He also signed and completed an application for a residency policy waiver. Directly above the signature block, the application states, in part: "I also understand that should my position change from a non-special needs area during the school year, my exemption will be revoked." By 2004 or 2005, social work was not a special needs position.

¶ 7 On January 20, 2010, Coyne received an email from CPS regarding audit findings that indicated his non-compliance with the residency policy. In an emailed response on the following day, Coyne stated, in part: "If my particular situation can be waived for the time being (three years perhaps?), I will try my hardest to make the necessary arrangements to fully comply with the CPS residency policy within the time lines set forth by you and/or CPS administration." Coyne subsequently received a warning resolution, dated May 26, 2010, alleging that he was in violation of the residency policy. Coyne was directed to establish residence in Chicago no later than July 30, 2010.

¶ 8 In the summer of 2010, various media outlets reported on Coyne's kidney donation earlier that year. For example, the *Chicago Tribune* newspaper published an article on June 18, 2010, entitled "Kidney donor's firing by CPS is frozen." According to the article, Coyne "received accolades and districtwide attention" in March 2010 after he had donated a kidney to a grocery cashier whose checkout line he frequented. Huberman is quoted as praising Coyne's "selfless act of kindness." The article indicated that Huberman would personally review Coyne's residency case and that "[a]ctions regarding Coyne will be frozen until the review is complete."

¶ 9 In early October 2010, Coyne met with Huberman and Alicia Winckler (Winckler), the Chief Talent Officer for CPS. As discussed below, Coyne's understanding and recollection of

their meeting differed from that of Huberman and Winckler.

¶ 10 A letter from Huberman to Coyne dated October 29, 2010, provided, in part, that, "At its October 27, 2010 meeting, the [Board] adopted the [CPS]'s Chief Executive Officer's recommendation to rescind a Warning Resolution issued to you in [*sic*] May 26, 2010." (Emphasis in original.) The "Rescind Warning Resolution" referenced in and enclosed with Huberman's letter included the following description:

> "A Warning Resolution was issued to Dan Coyne at the May 26, 2010 meeting of the Board of Education of the City of Chicago, Board Report No. 10-0526-EX37, informing him that he was in violation of the Board's Residency Policy. Subsequent to the Issuance of the Warning Resolution, the Board's Office of Labor and Employee Relations received additional information that the Board has never sent Dan Coyne an appropriate notification letter that his social worker position was no longer classified as a 'special needs' position exempt from the Board's Residency Policy. Accordingly, Dan Coyne had not been appropriately notified that he must become a resident of the City of Chicago within six (6) months from when his position was removed from the 'special needs' exemption category. Accordingly, the Warning Resolution was sent prematurely to Dan Coyne without giving him an opportunity to become a resident of the City of Chicago in accordance with the Board's Residency Policy.
>
> Based on the above, the Board of Education of the City of Chicago rescinds Warning Resolution Board Report No. 10-0526-EX37 issued to Dan Coyne at the May 26, 2010 meeting."

¶ 11 The Chicago Teachers Union (Union) subpoenaed Coyne to appear as a witness in

dismissal proceedings before the Illinois State Board of Education (ISBE) involving other CPS employees during the period from July through October 2011. In one such hearing, Coyne testified regarding his meeting with Huberman and Winckler in October 2010:

> "I asked [Huberman] if I have a job. They both said yes, you do, and they told me they had made a mistake through due process in informing me about the residency situation. And that they told me at that time they were submitting a request to the School Board to give me a permanent waiver, residency waiver. And they asked me to please keep this sort of out of the media for a while because they needed a chance for the Board to be able to put it in writing."

During cross-examination, Coyne acknowledged the rescission did not mention a permanent waiver. He was "concerned" and "[p]rayed about it" but did not contact the Board or the CPS chief executive officer.

¶ 12 In September 2011, the Board's Office of the Inspector General (OIG) requested an interview with Coyne. In an email from Coyne to Inspector General James Sullivan (Sullivan) dated September 14, 2011, Coyne wrote, in part:

> "Thank you for clarifying that I am not being investigated by your office regarding alleged employee misconduct. Thank you for letting me know the purpose of our meeting this morning was to help you and your office discern/improve upon the City of Chicago's Residency Waiver Policy and Procedures. My family and I are much relieved to learn we do not have to move to Chicago and that my lifetime waiver is real."

Sullivan responded:

> "As I stated in the interview, we wanted to interview you because of the

> waiver you were given. The OIG is currently investigating a variety of waivers that have been issued in the recent past. The OIG is not currently investigating your residency – we are investigating the circumstances surrounding your waiver.
>
> The letter you received to come to the OIG is a standard letter that we send out requesting employees to come in to our office for an interview. Please do not interpret that letter to reflect that we are investigating you for misconduct."

¶ 13 An investigative summary prepared by the OIG, dated October 11, 2011, indicated that the Board's failure to take action "has amounted to a constructive waiver of the Residency Policy on the basis of personal character and individual circumstances." The OIG noted, however, that the Board's residency requirement "makes no provision for such an exception to [the] residency requirement." Sullivan drafted a confidential memorandum to the CPS chief executive officer and the Board president, members, and general counsel recommending that "the CPS administration rescind the constructive residency waiver granted to Dan Coyne and other employees who have been effectively granted constructive waivers based on CPS's failure to address their residency issues."

¶ 14 In a letter to Coyne dated December 2, 2013, CPS stated that the "most recent audit" indicated that he was not in compliance with the residency requirement. Coyne was directed to comply by June 15, 2014. After a meeting in February 2014 with the CPS Director of Employee Engagement and the Board's deputy general counsel, Coyne's counsel was informed that "no exception will be allowed for Mr. Coyne."

¶ 15 Coyne was issued a warning resolution on June 25, 2014, directing him to establish residence in Chicago no later than August 29, 2014, or face dismissal. He continued to reside in Evanston. In a letter dated September 25, 2014, the chief executive officer of CPS notified

Coyne of the approval of dismissal charges against him. The Union, on behalf of Coyne, requested a hearing, and the parties selected an ISBE hearing officer. In his answer and defenses submitted to the hearing officer, Coyne asserted, in part, that (a) he had received a lifetime residency waiver from Huberman and (b) the Board's "inaction to enforce" the residency requirement "amounts to a constructive waiver and is evidence of the Board's ratification." The Board filed an answer denying such defenses.

¶ 16 Thomas Krieger (Krieger), the assistant director in the Board's Office of Employee Engagement, testified during the hearing that only the Board – not the chief executive officer – could grant a special needs waiver by passing a resolution after a meeting was conducted addressing the issue of residency. Krieger explained that the Board anticipated economic layoffs in the summer of 2010 and decided to audit employee compliance with the residency and other requirements so as to lay off fewer employees who were in compliance with Board policies. He confirmed that several hundred employees received letters similar to Coyne in January 2010; fewer than 80 employees received a warning resolution in May 2010. Krieger testified that social workers were "unique" because the Board "recognized that the job title of social worker had actually been a special needs position at one time and had come off the list and that social workers had not ever received an official notification from CPS of this having happened." According to Krieger, the warning resolutions to social workers, including Coyne, were rescinded because the Board "wanted to basically undue [*sic*] the formal final warning and give them a chance to come into compliance outside of the onerous discipline process." Krieger stated that the rescission sent to Coyne did not reference any permanent or lifetime waiver of the residency policy.

¶ 17 Krieger further testified that in December 2013, Coyne and two other social workers

received "basically identical" correspondence from Krieger's former superior. The two employees came into compliance with the residency requirements, but Coyne did not. Krieger did not do anything to ensure that Coyne came into compliance with the residency policy between October 2010 and 2013.

¶ 18 Huberman testified that he was the CPS chief executive officer from 2008 to 2010. He described the October 2010 meeting with Coyne and Winckler as "very pleasant," although he did not recall many details. According to Huberman, they discussed Coyne's kidney donation and the residency issue. He testified, in part: "I don't recall any discussion as to a permanent waiver. I do recall as it related to this particular warning resolution that I stated that this particular warning resolution would not in essence be in effect." Huberman also recalled that "in the course of reviewing Mr. Coyne's case, the Board discovered that it had not properly notified a whole grouping of social workers, and, thus, gave an opportunity to rescind the warning resolution." Huberman testified that he "wanted to find a way to assist Mr. Coyne, given his generous act, and it turned out I had an ability to do so because the Board had not followed the proper procedure which enabled me to then make a recommendation to the Board to rescind the residency violation."

¶ 19 Winckler testified that Coyne had asked Huberman about residency during the October 2010 meeting. She believed that Huberman responded "something to the effect that [Coyne] didn't need to be concerned with it at this time." She specifically recalled Huberman's use of "at this time." According to Winckler, Coyne appeared to feel "relief." She did not recall any discussion during the meeting that Coyne would need to move to Chicago. She also did not recall Huberman using the word "permanent."

¶ 20 Sullivan testified that the rescission "just withdrew the warning resolution. There was no

resolution to the fact that [Coyne] still lived outside the city and was not in a waiverable position." According to Sullivan, the purpose of the September 2011 interview was to discuss Coyne's "side of the story as to *** [why] he considered himself to have a waiver." Regarding the email communications after the interview, Sullivan was asked whether his reference to Coyne's "waiver" was an acknowledgment that Coyne had a waiver. Sullivan responded, "To the extent that he said he had a waiver and to the extent that nothing had been acted on since the rescission of the warning resolution, I used the word 'waiver.' "

¶ 21 Sullivan acknowledged that the Board did not accept his subsequent recommendation regarding Coyne. Other than conversations between him and a Board attorney, Sullivan was not aware that any action had taken place regarding Coyne until December 2013. When asked, "Did you feel that Mr. Coyne's waiver, however you want to call it, was improperly granted by Ron Huberman?," Sullivan responded "[y]es."

¶ 22 Coyne testified that he had lived in his Evanston home for twenty-four years. He indicated that he had not read the application for a residency policy waiver at the time he signed it in 2002. From 2002 until January 2010, Coyne did not receive any communication from CPS regarding his noncompliance with the residency requirement. He further testified that no one at CPS had spoken to him regarding a special needs residency waiver prior to January 2010. Coyne described his offer to move to Chicago within three years as a "beginning negotiation."

¶ 23 Coyne testified, in part, as follows regarding the October 2010 meeting:

> "Right off the bat before speaking, Mr. Huberman shook my hand and stated that this was going to be a fun and enjoyable meeting and that he had good news for me. Alicia Winckler also stood and shook hands and congratulated me.
>
> We sat down. And for about five minutes, we talked about the residency

> situation. Mr. Huberman spoke most of the time and said that my family and I had nothing to worry about, we didn't have to move to Chicago, that he would work out with the Chicago Public School attorneys to figure out how to word it or do what they have to do, but my family and I never have to worry about moving into Chicago."

Coyne's "[a]bsolutely clear" understanding from the meeting was that he did not need to move to Chicago. According to Coyne, the question of whether "appropriate notice" had been provided was "never brought up" during his meeting with Huberman and Winckler. Upon receipt of the Rescind Warning Resolution, he believed that "Huberman kept his word" and he communicated with "everyone [he] knew that there was good news." Coyne subsequently testified that he reviewed the cover letter from Huberman that accompanied the Rescind Warning Resolution but did not review the rescission itself until preparing for his dismissal hearing in 2015.

¶ 24 Coyne was questioned regarding certain employee dismissal proceedings in 2011, wherein he testified that he was concerned that he had not received anything in writing from Huberman regarding a permanent waiver. Coyne also was questioned regarding his testimony during the multiple dismissal hearings whether a "due process problem" was discussed at the Huberman meeting. Coyne did not recall informing Sullivan about any due process issue, despite Sullivan's notes to the contrary. As of the time of his 2015 hearing, Coyne did not recall Huberman or Winckler having mentioned any due process problem during their meeting.

¶ 25 The parties submitted post-hearing memoranda, and the hearing officer issued a recommended decision. The hearing officer found that the Board's inaction prior to January 2010 did "not provide a sufficient basis upon which to find that there was a waiver, ratification or ground for estoppel." The hearing officer found, however, that the Board did not act within a

reasonable time period after it rescinded the 2010 warning resolution to require that Coyne become compliant with the residency policy. Such delay, according to hearing officer, created a presumption that the conduct at issue was condoned by the Board. Concluding that the Board "did not meet its burden of proof to establish that its decision to terminate [Coyne] was irremediable conduct," the hearing officer recommended that the Board's decision to dismiss Coyne be rescinded.

¶ 26 In an opinion and order from the Board issued on December 16, 2015, the Board partially rejected and partially adopted the hearing officer's recommendations and discharged Coyne, effective June 24, 2016. The Board concluded, among other things, that: Coyne did not comply with the directive in the 2014 warning resolution; its charges against Coyne were not stale; it did not condone Coyne's non-Chicago residence; and it has the sole authority to grant special needs waivers. Coyne filed a timely petition for administrative review. The appellees herein are the Board and Forrest Claypool, the current chief executive officer of CPS.

¶ 27 ANALYSIS

¶ 28 Coyne advances four arguments on appeal. First, he contends that the Board erred in concluding that it did not waive its right to enforce the residency requirement and to discharge Coyne. Second, Coyne asserts that even if the Board did not waive its right to enforce the residency policy, application of the doctrine of equitable estoppel should prevent such enforcement. Third, he claims that the Board erred in concluding that it did not ratify his continued residency outside of Chicago by retaining the benefits of his employment for more than three years. Finally, Coyne argues that "the Board errs in its attempts to treat [him] like any other employee in light of his unique circumstances."

¶ 29 Under the Administrative Review Law (735 ILCS 5/3-101 (West 2014)), we review the

administrative board's decision and not the decision of the hearing officer. *Kinsella v. Board of Education of City of Chicago*, 2015 IL App (1st) 132694, ¶ 19; *Raitzik v. Board of Education of City of Chicago*, 356 Ill. App. 3d 813, 823 (2005) (noting that the decision of the hearing officer is "merely a recommendation to the Board"). We review pure questions of law *de novo*. *Kinsella*, 2015 IL App (1st) 132694, ¶ 20. "When issues of fact are raised, we only determine whether the findings of fact are against the manifest weight of the evidence." *Id*. An administrative board's decision is against the manifest weight of the evidence if the opposite conclusion is clearly evident or when the findings are unreasonable, arbitrary, or not based on the evidence. *Id.* ¶ 22.

¶ 30 An administrative board's decision on the legal effect of a given set of facts presents a mixed question of law and fact and is reviewed under the clearly erroneous standard. *Kinsella*, *Id.* ¶ 23. The clearly erroneous standard falls between a manifest weight of the evidence standard and *de novo* review, so as to give some deference to the board's experience and expertise. *Id*. Under a clearly erroneous standard, the board's conclusion will not be reversed unless, after review of the entire record, we are left with the definite and firm conviction that a mistake has been committed. *Id*.

¶ 31 Coyne initially argues that the Board erred in concluding that it did not waive its right to enforce the residency requirement and to discharge him. The Board contends that waiver is a question of fact. See, *e.g.*, *Ryder v. Bank of Hickory Hills*, 146 Ill. 2d 98, 105 (1991). Coyne responds that the Board "misapplied the law by not considering what circumstances can give rise to waiver." See, *e.g.*, *State Farm Mutual Automobile Insurance Co. v. Easterling*, 2014 IL App (1st) 133225, ¶ 23 ("When there is no dispute as to the material facts and only one reasonable inference can be drawn, it is a question of law as to whether waiver has been established.").

According to Coyne, "[e]ven construing in the Board's favor the outcome of the 2010 meeting (that Huberman told Coyne only that he need not be concerned about moving to Chicago 'at this time') the Board still erred in reviewing the Hearing Officer's recommendation because it ignored relevant law about what constitutes waiver." Regardless of the applicable standard of review, we reject Coyne's arguments regarding waiver.

¶ 32 Waiver is the intentional and voluntary relinquishment of a known right by conduct inconsistent with an intent to enforce that right. *In re Nitz*, 317 Ill. App. 3d 119, 130 (2000). "Waiver may be made by an express agreement or it may be implied from the conduct of the party who is alleged to have waived a right." *Ryder*, 146 Ill. 2d at 105. On appeal, Coyne invokes the doctrine of implied waiver, arguing that "the Board's conduct misled Coyne into a reasonable belief that it was intentionally and permanently waiving the residency requirement."

¶ 33 An implied waiver may arise from either of two situations: (1) an unexpressed intention to waive can be clearly inferred from the circumstances; or (2) the conduct of one party has misled the other party into a reasonable belief that a waiver has occurred. *Solai & Cameron, Inc. v. Plainfield Community Consolidated School District No. 202*, 374 Ill. App. 3d 825, 845 (2007); *In re County Treasurer and Ex Officio County Collector*, 373 Ill. App. 3d 679, 696 (2007). " 'The party claiming implied waiver has the burden of proving a clear, unequivocal, and decisive act of its opponent manifesting an intention to waive its rights.' " *Id.*, citing *Nitz*, 317 Ill. App. 3d at 130.

¶ 34 The Board asserts that its rules and residency policy make clear that only the Board, and not Huberman or anyone else, could grant a waiver. Coyne responds that he "does not contend that it was the act of Huberman alone that bound the Board, nor does he contend that Huberman had apparent authority to bind the Board." Coyne instead contends that "it was the Board's

affirmative act of issuing the Rescind Warning Resolution combined with the circumstances of the 2010 meeting between Coyne and Huberman, and the Board's deliberate decision not to enforce the policy for the next three years." "Those three events," Coyne argues, "would give any person the reasonable belief that the Board waived its right to enforce the policy."

¶ 35 According to Coyne, the rescission of the warning resolution was "unconditional and did not indicate that the warning could or would be reinstated in the future." He asserts that the "last word from the Board" was the rescission and that the "Board's reasoning for rescinding the warning is irrelevant." We disagree. Coyne's position fails to recognize that the plain language of the Rescind Warning Resolution does not state or suggest that the Board was waiving its right to enforce the residency policy. The document indicates that the Board learned, subsequent to its warning resolution, that Coyne had not been properly notified that his social work position was no longer designated as "special needs." The rescission expressly provides that the earlier warning resolution was sent to Coyne "prematurely," without allowing him the opportunity to become a Chicago resident. Such language would not lead a recipient to a "reasonable belief" that the Board waived any rights to enforce its residency policy. *Solai*, 374 Ill. App. 3d at 845.

¶ 36 Coyne also contends that the Board "inexplicably concludes from Coyne's testimony that he did *not* think he had a permanent, lifetime waiver." (Emphasis in original.) However, the Board's statement in its opinion and order that "Coyne's own admissions show *** that he did not actually rely on Huberman's statements" is supported by the record. For example, Coyne asserts on appeal that he "testified that when he received the Rescind Warning Resolution after his meeting with Huberman, he believed that the Board would not force him to move to Chicago." During his testimony in dismissal proceedings involving another CPS employee in 2011, however, Coyne acknowledged that he was "concerned" and had prayed after his receipt of

the rescission because it did not reference any permanent or lifetime waiver. We further note that such 2011 testimony appears inconsistent with his testimony in his own proceedings, *i.e.*, that he had not reviewed the Rescind Warning Resolution (as opposed to Huberman's cover letter) until his preparation for his 2015 hearing.

¶ 37 We further note that in an email to Sullivan following their meeting in September 2011, Coyne expressed relief that his "lifetime waiver is real" – a sentiment that is arguably at odds with any definitive belief that he had been granted a lifetime waiver in 2010. Coyne asserts on appeal that "Sullivan said nothing to refute [his] assertion." However, Sullivan responded, in part, that "[t]he OIG is not currently investigating your residency – we are investigating the circumstances surrounding your waiver." Sullivan's reference to no *current* investigation of Coyne's residency does not constitute a "clear, unequivocal, and decisive act" manifesting the Board's intention to waive any rights.

¶ 38 Citing *In re County Treasurer*, 373 Ill. App. 3d at 696, Coyne contends that "[a] waiver need not be express, and it can arise from a party's reasonable belief based on a period of inaction." The appellate court in that case, however, stated that waiver arises through "conduct," *i.e.*, a clear, unequivocal and decisive *act. Id.* See also *Washburn v. Union National Bank and Trust Co. of Joliet*, 151 Ill. App. 3d 21, 26 (1986) (noting that inaction by a bank did not constitute an implied waiver of its rights as a secured lender). The Board's failure to actively pursue enforcement proceedings with respect to the residency policy against Coyne until late 2013 does not mean that the Board forever waived the right to do so. We thus conclude that the Board did not err in its decision that it had not waived its enforcement rights against Coyne.

¶ 39 Coyne next contends that "[e]ven if this Court disagrees that the Board intentionally relinquished its right to enforce the residency policy against [him], the Board should be estopped

from doing so because the Board induced [him] to rely on its conduct." He asserts that the Board did not consider his equitable estoppel argument in its opinion and order. For the reasons discussed below, the Board's failure to expressly address any equitable estoppel argument does not constitute error as the doctrine is inapplicable to the circumstances herein.

¶ 40 "The doctrine of equitable estoppel may be invoked by a court to prevent fraud or injustice." *Solai*, 374 Ill. App. 3d at 842. Under the doctrine, "where a person has said or done something, and another party has reasonably and detrimentally relied upon that statement or conduct, the person cannot deny it." *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 35. "Equitable estoppel is defined as the effect of a voluntary conduct of a party whereby he is precluded from asserting rights which may have otherwise existed against a party who has relied in good faith upon such conduct and has been led to change his position for the worse." *Douglas Transit, Inc. v. Illinois Commerce Comm'n*, 164 Ill. App. 3d 245, 252 (1987).

¶ 41 Equitable estoppel may apply against municipalities in "extraordinary and compelling circumstances." *Patrick Engineering*, 2012 IL 113148, ¶ 35. Accord *Morgan Place*, 2012 IL App (1st) 091240, ¶ 32 (noting that "courts do not favor applying the doctrine of equitable estoppel against a public body"); *Douglas Transit*, 164 Ill. App. 3d at 252 (stating that estoppel principles usually do not apply to public bodies). "Illinois courts have traditionally stated that, in order to apply equitable estoppel against a municipality, there must be an act by a municipality that induces reliance by a private party." *Patrick Engineering*, 2012 IL 113148, ¶ 39. Mere inaction is not sufficient. *Id*. "The act must be affirmative, but may be either an act by the municipality itself, such as legislation, or an act by an official with express authority to bind the municipality." *Id.* "Additionally, the reliance must be detrimental and reasonable." *Id*. Accord *McDonald v. Illinois Dept. of Human Services*, 406 Ill. App. 3d 792, 804 (2010).

¶ 42 Based on our review of the record, Coyne's purported reliance on any actions of the Board appears unreasonable. He signed documentation at the commencement of his employment expressly acknowledging the residency requirement. As discussed above, the plain language of the Rescind Warning Resolution gave no indication that Coyne had been granted a permanent or lifetime waiver. In any event, the board's inaction between the rescission and its December 2013 correspondence does not constitute an "affirmative" act necessary for the application of equitable estoppel against a municipal entity. See *Patrick Engineering*, 2012 IL 113148, ¶ 39.

¶ 43 We further observe that there is no indication that Coyne "change[d] his position for the worse" due to any actions of the Board. *Douglas Transit*, 164 Ill. App. 3d at 252. See also *Solai*, 374 Ill. App. 3d at 843 ("Estoppel requires reliance and a change of position by one party"). Coyne lived in Evanston prior to and throughout his CPS tenure. Coyne did not search for a new home to purchase or rent in Chicago. He states on appeal that he "kept his kids in school and his family involved in activities and their church in Evanston." As the Board observes, "Coyne offered no evidence that he suffered detriment by continuing to work for and be paid by the Board while living in Evanston." Because, among other things, the record does not support any conclusion that Coyne's reliance was reasonable or detrimental, the Board's failure to explicitly address any equitable estoppel argument in its opinion and order does not constitute error.

¶ 44 Coyne also argues on appeal that the Board erred "by not applying the law of ratification when it determined that it did not ratify the supposedly unauthorized conduct of Huberman." Although the Board contends that ratification is a question of fact (*e.g.*, *Progress Printing Corp. v. Jane Byrne Political Committee*, 235 Ill. App. 3d 292, 311 (1992)), we review Coyne's

contention that the Board misapplied the law *de novo*. *Kinsella*, 2015 IL App (1st) 132694, ¶ 20.

¶ 45 "Where an agent has acted outside the scope of his or her authority, a principal may ratify the unauthorized act and the ratification is equivalent to original authority confirming that which was originally unauthorized." *Athanas v. City of Lake Forest*, 276 Ill. App. 3d 48, 56 (1995). "The doctrine of ratification applies to municipal and other public bodies." *Id.*

¶ 46 "Ratification occurs when the principal learns of an unauthorized transaction, then retains the benefits of the transaction or takes a position inconsistent with nonaffirmation." *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 858 (1998); accord *Cove Management v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶ 31. "For ratification to occur, the principal must, with full knowledge of the act, manifest an intent to abide and be bound by the transaction." *Stathis*, 295 Ill. App. 3d at 858. "Ratification may be inferred from surrounding circumstances, including long-term acquiescence, after notice, to the benefits of an allegedly unauthorized transaction." *Id.*

¶ 47 According to Coyne, the Board "didn't limit the duration or effectiveness of the rescission. There were absolutely no conditions attached." As noted above, we reject this assessment. The rescission, on its face, states that the prior warning resolution was "sent prematurely" because Coyne "had not been appropriately notified that he must become a resident of the City of Chicago within six (6) months from when his position was removed from the 'special needs' exemption category." The rescission neither memorializes nor implies any permanent or lifetime waiver. Furthermore, we do not view the time period between Sullivan's memorandum to the Board regarding Coyne's perceived waiver and the Board's correspondence to Coyne in late 2013 as "inconsistent with nonaffirmation" (*Stathis*, 295 Ill. App. 3d at 858), particularly given that the Board governs "one of the nation's largest schools systems." *Crowley*

v. Board of Education of City of Chicago, 2014 IL App (1st) 130727, ¶ 33. In any event, the Board's second warning resolution in 2014 "started the clock ticking again so as to obviate any possible reliance" that Coyne may have had regarding any "past nonenforcement of the residency policy." *Id.* ¶ 34.

¶ 48 Coyne also asserts that the Board "accepted three more years of the benefits of Coyne's employment and positive publicity." Given that Coyne was paid for his continued employment by the Board, we fail to see how the Board "retain[ed] the benefits of the transaction." *Stathis*, 295 Ill. App. 3d at 858. Compare *Progress Printing*, 235 Ill. App. 3d at 311 (affirming a circuit court's finding of ratification where a political committee did not fully pay for printed campaign materials that it had accepted and used). In sum, we reject Coyne's contention that the "Board's failure to recognize that ratification occurred and equated to a permanent residency waiver constitutes reversible error."

¶ 49 Coyne's final argument is that "the Board errs in its attempts to treat Coyne like any other employee in light of his unique circumstances." However, "[c]ause for discharge can be found regardless of whether employees have been disciplined differently." *Crowley*, 2014 IL App (1st) 130727, ¶ 30. While we acknowledge Coyne's contentions regarding his communications with Huberman and Sullivan and regarding the Board's non-enforcement of the residency requirement for a period of time, they do not justify a reversal of the Board's decision. "[A]n employee's violation of a residency requirement is valid cause for discharge." *Id.* ¶ 35. "The termination of a teacher is not clearly erroneous if it is based on the teacher's failure to comply with the conditions, laws, policies, and/or other requirements imposed for the protection of the school district." *Id.* ¶ 31. Based on Coyne's refusal to comply with the residency policy upon receipt of a warning resolution in 2014, and for the other reasons discussed herein, we are not left with a

definite and firm conviction that a mistake has been committed.

¶ 50 CONCLUSION

¶ 51 We affirm the decision of the Board of Education of the City of Chicago terminating Dan Coyne's employment.

¶ 52 Affirmed.