

2019 IL App (1st) 180463-U

No. 1-18-0463

Order filed October 15, 2019

Second Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THOMAS BILLUPS,)	Direct appeal of Order of the
)	Board of Education of the City
Petitioner,)	of Chicago.
)	
v.)	
)	No. 18-1024-RS8
CHIEF EXECUTIVE OFFICER OF THE BOARD OF)	
EDUCATION OF THE CITY OF CHICAGO,)	
)	
Respondent.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Coughlan concurred in the judgment.

ORDER

¶ 1 *Held:* The Board's decision to terminate petitioner's employment as a tenured teacher is reversed, where the Board failed to make factual findings that were material to the ultimate determinations of whether petitioner's conduct was unsatisfactory and whether petitioner failed to successfully complete his remediation plan.

¶ 2 Petitioner Thomas Billups appeals from a final administrative decision of the Board of Education of the City of Chicago (the Board), which resulted in the termination of his employment as a tenured teacher at Lovett Elementary School (Lovett). For the reasons below,

we reverse and remand the Board's decision for a fact finding hearing on Billups's termination for cause.

¶ 3 BACKGROUND

¶ 4 I. Dismissal Charges

¶ 5 On August 10, 2016, the Chief Executive Officer (CEO) of the Board approved two dismissal charges against Billups for “[u]nsatisfactory teaching performance” and “[f]ailing to attain a rating of ‘proficient’ or better after 90 school days of remediation.” The charges were supported by the following seven specifications:

“1. Your 2014-2015 summative [*sic*] rating from your evaluator was unsatisfactory.

2. At or around 30 school days after the issuance of your unsatisfactory summative rating, your evaluator selected a qualified consulting teacher to provide advice to you on how to improve your teaching skills and successfully complete the remediation plan.

3. At or around 30 school days after the issuance of your unsatisfactory summative rating, your evaluator developed a remediation plan that you and the consulting teacher had an opportunity to participate in developing.

4. During the 90-school-day remediation period, your evaluator conducted a formal mid-point evaluation of your performance using the [Chicago Public Schools (CPS)] Framework for Teaching.

5. At or around the conclusion of your 90-school-day remediation period, your evaluator conducted a final evaluation of your performance using the CPS Framework for Teaching.

6. Your evaluator determined that you failed to attain a ‘proficient’ or better level of teaching performance following 90 school days of remediation.

7. No further remediation is necessary, and you are subject to dismissal pursuant to Section 24A of the Illinois School Code.”

The notice of the charges and specifications concluded that Billups was “subject to dismissal due to [his] unsatisfactory teaching performance,” and that his dismissal “may result in [his] permanent ineligibility for future employment with the Board.” The Board sent Billups a letter dated August 10, 2016, which informed Billups of his charges and stated that a dismissal hearing was tentatively scheduled for September 2, 2016.

¶ 6 II. Pre-Hearing Events

¶ 7 On November 9, 2016, the Board’s counsel emailed an Illinois State Board of Education (ISBE) hearing officer and informed her that the parties had selected her to conduct Billups’s dismissal hearing. On December 4, 2016, the hearing officer provided potential hearing dates to the parties, and the parties agreed to a two-day hearing on March 24, 2017, and April 6, 2017. Then, in an email dated February 24, 2017, the Board’s counsel requested to continue the hearing to July or August because she had adopted a baby and was going on a three-month maternity leave. Billups’s counsel responded, “We are out of town the second half of June through July 3rd. After July 6th is good. Our client is anxious to expedite ***.” The Board’s counsel stated that certain witnesses were unavailable in July, and Billups’s counsel reiterated that Billups was

“really anxious” because he had seen other teachers’ proceedings “take*** a couple years.” Billups’s counsel subsequently stated that the “persistent delays” were causing Billups “substantial hardship,” and proposed that the unavailable witnesses be deposed before the hearing.

¶ 8 In an email dated March 28, 2017, a supervising attorney with the Board told the hearing officer that “[t]he delays have mostly been caused by several Board attorneys leaving the Law Department recently,” and that the Board’s counsel’s maternity leave “was rather sudden.” The hearing officer proposed the week of July 24, 2017, as well as August 1 and 2, 2017. The Board’s counsel stated that August 1 and 2 worked, and the officer scheduled the hearing for those two days. The next day, Billups’s counsel responded, “That works for [Billups].”

¶ 9 III. Dismissal Hearing

¶ 10 The hearing on Billups’s dismissal charges took place on August 1 and 2, 2017. The Board presented the following witnesses: Amanda Smith, an employee with CPS “in the manager role of remediation and professional development”; Mable Williams-Wimberly, who was the assistant principal at Helen M. Hefferan STEAM¹ Elementary School (Hefferan); Jacqueline Faye Hearn, who was the principal at Hefferan; Samantha Lam, a former assistant principal at Lovett; and Leviis Haney, who was principal at Lovett. Billups testified on his own behalf, and the Board called Haney once again in rebuttal.

¶ 11 A. Amanda Smith

¶ 12 Smith testified that from 2013 to the time of the hearing, CPS utilized an evaluation system called REACH, under which CPS teachers were rated according to a “framework” of 19

¹ Jacqueline Faye Hearn testified that “STEAM” stands for “science, technology, engineering, [arts,] and math.”

components organized under four “domains”: (1) planning and preparation, (2) classroom environment, (3) instruction, and (4) professional responsibilities. For each component, the framework under REACH listed “critical attributes,” which detailed specific qualities and actions for administrators to look for when rating teachers, and “provide[d] teachers with additional look-fors when they’re aiming to achieve a particular level of performance.” Teachers also received scores on each of the REACH frameworks’ components, and the scores could fall into one of four ranges ranked from worst to best: unsatisfactory, basic, proficient, and distinguished. In relevant part, the planning and preparation domain of the framework, which the Board entered into evidence, included a component titled “Designing Coherent Instruction,” under which a teacher could receive a proficient rating under the following circumstances:

“Teacher coordinates knowledge of content, students, and resources to design units and lessons. *** Tasks are cognitively challenging, designed for groups of students, and require students to provide evidence of their reasoning. There is evidence of scaffolding and differentiation for most students to access the content/skills. *** Units and lessons include grade-appropriate levels of texts and other materials, representing a cognitive challenge. The lesson or unit has a clear structure with intentional and structured use of instructional groupings that support the learning objectives.”

The critical attributes under this component include: “[u]nit and/or lesson plan reflects student achievement levels and learning styles which are aligned to appropriate content and resources”; “[c]lassroom activities are designed to meet the needs of most student achievement levels and learning styles”; and “[c]lassroom texts or other materials are challenging and relevant in supporting nearly all students’ learning.”

¶ 13 An administrator would conduct formal classroom observations of CPS teachers, which included a pre-observation and post-observation conference with the teacher. The scores that the teachers received on the REACH framework's components were based on these observations. The four domains' total scores were weighted differently and averaged to comprise a professional practice score. That professional practice score was then added along with other scores regarding student growth to reach a total rating, which could fall into one of four ranges from worst to best: unsatisfactory, developing, proficient, and excellent. Tenured teachers who received a total rating in the developing range received a professional development plan, consisting of resources for improving, for the following school year. Teachers who received two consecutive developing ratings without an improvement defaulted to an unsatisfactory rating.

¶ 14 Upon receiving an unsatisfactory rating, the teachers would then receive a 90-day remediation plan, which Smith described as a "starting point" for "resources and professional development" to assist the teachers in improving. A consulting teacher, who is a tenured teacher trained to serve as a mentor in the remediation process, would coach the teacher in remediation but could not conduct evaluations. Consulting teachers were "encourage[d]" to meet with the teacher in remediation every week. Additionally, teachers in remediation would receive two formal observations at the plan's midway point and conclusion. To successfully complete remediation, the teacher would have to receive an average rating of proficient or higher.

¶ 15 To facilitate "dialogue" in the evaluation process, teachers had access to a system called Reflect & Learn, through which they could view, among other things, historical data, evidence collected in classroom observations, and summative reports. Through Reflect & Learn, teachers could additionally enter information into pre-observation and post-observation conference forms,

upload documents they want an administrator to consider, and file an appeal. Teachers could also reference a “CPS Knowledge Center” to access resources specific to the subject they teach regarding the REACH evaluation framework.

¶ 16 Smith testified that during the 2013-14 school year, Billups received a total rating in the developing range. He was therefore placed on a professional development plan for the 2014-15 school year, during which he received a lower rating also within the developing range. Accordingly, Billups’s rating defaulted to unsatisfactory. Billups underwent remediation for the 2015-16 school year. He received an email dated November 6, 2015, which explained the remediation process and included resources regarding professional development opportunities. Upon the remediation plan’s conclusion, Billups received an unsatisfactory rating and a letter stating he did not successfully complete remediation.

¶ 17 B. Mable Williams-Wimberly

¶ 18 Williams-Wimberly testified that in October 2013, she became assistant principal at Hefferan, where Billups was teaching as a middle school math teacher. Billups had received a satisfactory rating at Goldblatt, the school where he previously taught. Williams-Wimberly observed Billups three times during the 2013-14 school year. She rated him as developing as to the component of designing coherent instruction, because there was no “instructional grouping” in Billups’s classroom, and Billups was primarily interacting with only three students in his classroom and “not providing service or differentiating the instruction” to address each student’s learning styles. Additionally, Billups was rated developing in engaging his students, as he did not effectively pace his lessons; developing in using assessments in instruction; and developing in communicating with families. During the 2014-15 school year, Williams-Wimberly met with

Billups and Hearn twice and suggested that Billups “develop*** instructional groups and not heterogeneous groups but homogenous groups,” and that he provide assessments based on “homogenous groupings.” Billups transferred to a new school at the end of that year.

¶ 19 On cross-examination, Williams-Wimberly stated that after Billups’s last formal evaluation, she checked to see if Billups had modified his approach, but he had not done so. She also testified Billups knew his students personally and “got along with them okay,” but she clarified on redirect examination that “[i]t was hard to gauge” whether Billups knew his students’ ability levels because he “did not differentiate the lessons.”

¶ 20 C. Jacqueline Faye Hearn

¶ 21 Hearn, the principal at Hefferan, testified that she hired Billups during the 2012-13 school year and formed his development plan. In that plan, Hearn suggested that Billups differentiate homework assignments based on students’ individual skill levels and implement a “small group instruction” style, as opposed to Billups’s “whole group style,” which “has some merit.” Hearn suggested that Billups implement differentiation because his students were at different skill levels and some of his classes included students from multiple grade levels, but Billups “basically” told her his students were all “at the same level.”

¶ 22 During the 2014-15 school year, Hearn conducted observations of Billups. She gave Billups a basic rating in the planning and preparation domain due to his “lack of knowledge of his students’ levels of academic development in math.” Additionally, she rated Billups as basic in creating an environment of respect and rapport, because he inconsistently disciplined his students for “inappropriate and disrespectful behaviors,” and basic in engaging students in the lessons. Hearn also observed that Billups was “resistant” to her “continuous” instructions to

differentiate his assignments, and that Billups blamed students or their homes for their lack of success. Additionally, Hearn testified that Billups gave his students “very few high level” questions that would display a “higher-functioning” student’s “problem-solving skills and how he actually came to that answer as opposed to just what answer did you get.” Hearn did not see Billups’s performance improve after the development plan.

¶ 23 D. Samantha Lam

¶ 24 Lam testified that she was the assistant principal at Lovett when Billups taught there, and she informally observed Billups four or five times throughout the 2015-16 school year. During those observations, she did not witness any “overtly egregious misbehavior” in Billups’s classroom, but observed that Billups’s questions were “low-level,” and his lessons “appeared to be one-size-fits-all” with no differentiation. Lam also stated that she saw test scores increase at Lovett in the 2015-16 school year, but the increases were schoolwide and occurred every school year.

¶ 25 E. Leviis Haney

¶ 26 Haney testified that he was the principal at Lovett, which had received recognition for its “accelerated form of differentiation,” through which students received “personalized learning experiences based on their needs, their interests, the way they like to learn, as well as their academic levels.” Haney hired Billups to teach math during the 2015-16 school year, and he informally observed Billups 5 to 10 times before Billups received a remediation plan. Haney eventually learned of Billups’s unsatisfactory rating after hiring Billups. On December 4, 2015, he met with Billups and the consulting teacher, Chinita Williams, to discuss Billups’s remediation.

¶ 27 Haney made several suggestions to Billups in the remediation plan, including that Billups “focus on critical attributes,” utilize a report called Descartes that gave “individualized pathway[s]” for students, “script high-level questions in advance,” and prompt students to discuss questions with each other. Billups had an opportunity to give input regarding his remediation plan, but did “[n]ot really” do so. According to Haney, Williams also had the opportunity to provide input and gave general suggestions. Haney, Williams, and Billups signed the remediation plan, and Billups and Williams left the meeting with hard copies of the plan.

¶ 28 On March 2, 2016, Haney met with Billups for a pre-observation conference and discussed what Haney would be looking for when observing Billups, and Haney observed Billups on March 11, 2016. As to the components in the REACH framework, Haney rated Billups unsatisfactory in designing a coherent instruction that connected related subjects, basic in designing student assessments that were differentiated, basic in questioning and discussion techniques, basic in demonstrating flexibility and responsiveness, and basic in reflecting on teaching and learning. He suggested that Billups help his students “tak[e] ownership of their learning” by showing how the lessons relate to their own experiences, and he again suggested that Billups script high-level questions in advance. Additionally, he suggested that Billups utilize the Descartes report to determine his students’ individual learning objectives.

¶ 29 Haney also walked around and observed the students’ work. While doing so, he noticed that the students’ assignments were not properly differentiated, because they contained different problems that were nonetheless at the same skill level. Haney testified that Billups wrote in the observation notes that his “[s]tudents were engaged in the activity,” and that “[s]tudent progress is as expected.” On March 16, 2016, Haney met with Billups for a post-observation conference,

and Haney provided Billups with an electronic copy of his observations. On March 21, 2016, Haney met with Williams and Billups for a “midpoint meeting.”

¶ 30 On May 20, 2016, Haney met with Billups for a pre-observation conference, and on May 31, 2016, Haney conducted a final observation of Billups’s teaching. As to the REACH framework, Haney rated Billups unsatisfactory in designing a coherent instruction, basic in designing student assessments, basic in establishing a culture for learning, unsatisfactory in managing student behavior, unsatisfactory in using questioning and discussion techniques, unsatisfactory in engaging students in learning, unsatisfactory in flexibility and responsiveness, basic in communicating with families, basic in reflecting on teaching and learning, and basic in growing and developing professionally. Haney asked one student what the purpose of the lesson was, and the student responded, “if they went to the casino, they could calculate the probability of winning.” Haney stated he was not “totally against that,” but felt that “every student is not going to relate to that as far as a purpose for the learning.” On June 2, 2016, Haney conducted a post-observation conference with Billups, and concluded that Billups’s overall rating was less than proficient and therefore defaulted to unsatisfactory.

¶ 31 On cross-examination, Haney testified that during the 2015-16 school year, Lovett went from the 34th percentile to the 98th percentile in standardized test scores for math, and he acknowledged that middle school math performance increased. He qualified that he could not say how much of this improvement was attributable to Billups, however, since Lovett’s “school growth as a whole went up,” and the data was not broken down “all the way” so you could see the impact of “certain subgroups.” Haney denied ever telling Billups “it will take a miracle to get [Billups] out of this mess.” He also testified that Billups expressed dissatisfaction with the

textbooks he was given and wanted a “lower-level textbook,” even though some of Billups’s students were at a more advanced level.

¶ 32 F. The Board’s Exhibits

¶ 33 The Board admitted into evidence, among other things, Billups’s remediation plan, which was dated December 4, 2015, and appeared to reflect the signatures of Billups, Haney, and Williams. A section in the plan containing Haney’s input states as follows:

“Focus on Critical Attributes on pages 11-16. Incorporate these into your lesson

Print out DesCartes [*sic*], utilize Decartes [*sic*] to determine your instruction for your differentiated instructional groups.

Script high level questions in advance.

Collaborate with Mr. Dockens and Ms. Hasapis, Ms. Matohem for collaborative lesson planning

Use technology to assist in differentiating instruction (think through math, compass learning activities)”

The section in the plan containing Williams’s input stated:

“Ensure that all group activities end with an individual accountability piece.

Teacher can use the resources, articles and/or videos located on the knowledge center to help improve practice.

Teacher can co-plan with special education resources in the building to assist in differentiating instruction.”

¶ 34 The Board also admitted Williams’s logs, which included an overview of Williams’s observations of Billups’s lessons, as well as weekly coaching notes. In those logs, several entries throughout January 2016 state:

“Did not have any copy of [Billups’s] current lesson plan and still waiting on the remediation plan to be emailed from the principal. Without a copy of the lesson plan I could not accurately determine if the lesson plan incorporated knowledge of students, learning tasks, materials, resources, instructional grouping and had a unit structure.”

The logs also contained suggestions “[b]ased on the Remediation Plan and the Observations,” which included: “[a]ligning small group instruction to Descartes”; “[c]hecking for understanding of the lesson at the conclusion of the lesson”; “[u]sing questioning and discussion techniques to challenge students cognitively”; and “[s]mall grouping charts/centers for differentiated instruction.” Williams additionally suggested that Billups: create a “[l]ist of grouping *** to show planning behind which group is working where/on what task”; “[c]reate rules and routines for small group independent work”; “[r]emember to always state objective and the reason why students are learning”; and to “[p]ost grouping so students know what group they belong too [sic].”

¶ 35 Further, the logs contained a number of positive comments on Billups’s teaching, including: the interactions between Billups and his students were respectful; students were “very eager and excited to collaborate and share their responses”; students showed “encouragement and respect to their peers”; Billups “made the learning environment a positive one by encouraging help or aid for the student in need and students came to the rescue and offer [sic] multiple solutions”; Billups asked “probing questions” and “tried to spark discussion and

discourse among students”; and Billups’s lesson plans displayed that he has a knowledge of his students. Billups also “[h]ad students evaluate each others [*sic*] answers and solutions and also create or generate new or different ways to a problem with the same outcome.” Williams’s negative comments included: on some days, some students were “not fully engaged”; on some days, Billups’s “objectives were very vague”; Billups sometimes “picked the same students to display work on the board”; and on one particular day, Billups gave an assignment which most students finished quickly, and the class grew loud and “out of control,” while Billups assisted a few students.

¶ 36 As to differentiation, Williams observed in multiple entries in February 2016, that Billups would work with a small group that was struggling while other students worked on another assignment. An entry on March 31, 2016, stated that “students [were] assigned differentiated assignments based on skill level while teacher worked with a small group,” and that Billups “worked with different tables helping students in small groups.” Entries on April 15, 2016, and May 12, 2016, also showed that Billups worked with “small groups.” Multiple entries in Williams’s logs, ranging from January to May, stated that Billups “could not show [her] how he groups students and the materials used for small group work.”

¶ 37 G. Thomas Billups

¶ 38 Billups testified that he started teaching in 1992, taught at Goldblatt Elementary School for about 14 years until it closed, and then taught at Hefferan. He believed that Hefferan heavily emphasized standardized test scores and felt pressured to cheat by helping students with questions during standardized testing. According to Billups, the initial observation of his classroom at Hefferan returned negative feedback, but the “evidence was undisputable,” and

Billups “got it” and “took it to heart.” Williams-Wimberly became assistant principal, however, and he began receiving more negative feedback and “didn’t see anything good.”

¶ 39 Hearn also observed him, but did so at a time that Billups and Hearn did not agree upon, and Billups had to “throw*** together” a lesson due to unforeseen circumstances. Hearn rated Billups “basic.” When Billups asked Hearn to explain the rating, she told him, “I walked in the room and I saw J. hit a boy with a pencil,” but she provided no other evidence. Hearn also observed that Billups “expresse[d] low expectations for his students” and was “resistant to differentiating assignments based on grade levels.” Billups disagreed and stated that what Descartes said his students were able to do did not correlate with what Billups’s students were “doing in front of him.” He thus told Hearn that “we can get here, but it’s just going to be a long road.”

¶ 40 Hearn told Billups to differentiate and hang banners in his classroom for the students to reference. Billups testified that his “differentiation strategies were more discussions and sort of modifying worksheets.” He “didn’t believe that [he] had to do six different lessons for six different groups,” and he “just thought [his] approach was I’ll teach the whole group, and then we’ll break up.” Then, if a student had “deficiencies” with learning a concept, he would let the student “work on the prerequisites for this concept while other students are *** working on various aspects of the concept.”

¶ 41 Billups stated that he nonetheless implemented the recommended changes, but his performance score became lower, and he received notice that he would be placed on remediation. An investigator later spoke with Billups about an accusation that there was cheating in Billups’s class based on a number chart hung in his classroom, but the accusation was cleared. Billups felt

that he and another teacher had been “set up” because they were from Goldblatt, and he left to teach at Lovett for the 2015-16 school year.

¶ 42 Billups received a “STEAM award” at Hefferan for the 2013-14 school year due to his “math scores” and “participation in the school becoming a Tier 1 school.”

¶ 43 At Lovett, Billups was the exclusive math teacher for the sixth, seventh, and eighth grades, and in November 2015, he learned that he was going to be in remediation. Billups testified that he did not receive a copy of the remediation plan at the initial remediation meeting, and he did not know whether Williams received a plan. He also testified that Williams filled a feedback log for December 2015 to May 2016, and that her suggestions in the logs did not vary but Billups “kept trying to implement” them. Billups felt that Williams’s notes were “pretty thorough” and included both positive and negative comments. He particularly emphasized two notes in the log that described two of Billups’s lessons as “very good.” Billups also confirmed that he discussed differentiation with Haney, and stated that he split his students into five to six groups according to their skill placement and how they “related to one another.” Additionally, Billups stated that he accessed and printed out materials from Descartes and other resources that provided objectives for his groups, and that he used the objectives that he was told to use.

¶ 44 Billups’s ratings from observations worsened as remediation proceeded. During a conference, Haney told Billups, “[I]t would take a miracle to get you out of this mess.” Billups disagreed with Haney’s low rating for student behavior in his classrooms. He “had no real problems” with his students, and the test scores in all of his classes increased, with two classes increasing “by double digits.” Billups believed that he “had everything to do with it.” Haney told

Billups that “different isn’t differentiation,” which Billups understood to mean that “[j]ust giving the kids something different to do isn’t differentiation” Billups agreed with this statement.

¶ 45 Billups then explained how he differentiated his instruction as follows:

“I didn’t give the kids something different to do. What I gave them was modified work, but it was all the same thing because my approach is they needed to be exposed to grade-level material. So I just simply had to modify what it is that they were doing.

*** [M]ost people who came in to observe *** wanted to see students doing different things. So I’m giving them a handout of some problems ***. The first five problems may be for the low group, the next five problem[s] may be for the middle group, and the last five problems may be for the top group.

*** So it was differentiated but *** it was the same handouts a lot of times.

*** [I]t looked like everyone was doing the same thing because they were all working on the same stuff, and it was confusing because it didn’t match what I was hearing and what I understood *** differentiation was. I was just trying not to create a whole lot of paperwork. I was just trying to do things that were manageable [so] I could give quick feedback to *** help the students understand these math concepts.”

Billups testified that during Haney’s two evaluations, he had his students broken up into groups based on Descartes, contrary to Haney’s testimony that the classes were not in groups. Billups also testified that he gave his students high-level questions.

¶ 46 IV. Conclusion of Hearing

¶ 47 After the witnesses testified, Billups’s counsel stated:

“I am compelled to note for the record that we had asked Chinita Williams to come. She apparently did show up. She budgeted 45 minutes and left. Therefore, we needed to proceed without her. So in a sense, I object to that. Otherwise, we’d close the evidence.”

The Board’s counsel responded that Billups did not subpoena Williams to testify. Billups’s counsel then explained that Williams was not subpoenaed pursuant to the direction of the Board’s counsel, who stated they would have objected on the basis that Williams could not be compelled to appear as a consulting teacher. Billups’s counsel continued that Williams would have been held in contempt if she was subpoenaed, and that she volunteered to testify and “show[ed] up,” but “decided she didn’t have time for this.” The hearing officer stated that the record would clearly show Williams’s “presence or absence.”

¶ 48 The officer additionally mentioned that parties typically submit written arguments instead of closing arguments, and asked the attorneys whether they wanted “to substitute [their] written argument for a closing argument.” Billups’s counsel stated, “No, no.” After discussing matters off the record, the hearing officer stated:

“In an off-the-record discussion, we have agreed that after the transcript is received, counsel for each party will communicate with the other party to determine an appropriate and timely date for receipt of written arguments. They will be e-mailed to the hearing officer with no copy to opposing counsel. When the hearing officer receives them, she will exchange them. And from that date, there will be 30 days until the decision is issued.

Any other questions before we go off the record?”

The parties' counsel confirmed that they had no questions.

¶ 49 V. Post-Hearing Proceedings

¶ 50 The Board's post-hearing brief argued, in relevant part, that the Board had proved by a preponderance of the evidence that "the Board substantially followed the remediation procedures outline in the Illinois School Code [(Code) (105 ILCS 5/1-1, *et seq.* (West 2016))]," and that "Billups did not improve his unsatisfactory teaching performance to proficient at the end of remediation." In response, Billups asserted that the Board had not met its burden, as there was "ample evidence" he was an "excellent teacher," but Haney "no longer wanted [him] on his team." According to Billups, Haney was "unfairly critical and biased" against him and did not provide Billups with sufficient tools to help him address his deficiencies. Billups also alleged that the remediation plan was "somewhat sketchy," because it provided "little else" instruction than "to focus and incorporate critical attributes into his lessons, use Descarte [*sic*], script high level questions in advance, collaborate with three other teachers in lesson planning, and use technology to assist in differentiating instruction." Additionally, Billups claimed that the remediation plan had procedural defects, as neither he nor Williams received the plan timely.

¶ 51 The hearing officer issued her findings of fact and recommendations, dated November 16, 2017, and stated the record was closed when she received the parties' briefs on October 27, 2017. The officer concluded that "Mr. Billups failed to achieve a proficient rating and *** should be dismissed."

¶ 52 As to the allegation that Billups and Williams did not timely receive the remediation plan, the officer noted that Billups, Williams, and Haney met on December 6 to discuss the expectations in the plan, and Haney testified that he gave Billups and Williams a copy. The

officer “conclude[d] that Mr. Billups had ample notice of the areas of instruction that he needed to improve.” As to Williams, the hearing officer observed that the apparent discrepancies between the date of the plan’s signatures on December 4, 2015, and Williams’s apparent lack of the plan in January 2016, “reside solely” in one of the Board’s exhibits.

¶ 53 Further, the officer noted that Lovett emphasized personalized learning through differentiation of instruction, and that the evidence showed Billups “did not differentiate based upon instructional skill level, but rather varied whole group instruction to address differences in learning style.” The officer also found that Williams’s logs corroborated the testimony at the hearing, as their contents were “not so different from the concerns expressed by Principal Haney” and they “reported no instructionally based, differentiated small group work” conducted by Billups. The officer noted Billups’s description of differentiation as a “murky concept,” and observed that Lovett’s expectations were “admittedly high.” Nonetheless, the hearing officer found that “[t]he REACH framework and the remediation system provided clear and specific rubrics and examples” of Haney’s expectations. Overall, the hearing officer stated that while the record showed Billups had made efforts to improve his practice, those efforts “did not meet the proficient level of instructional expectations of REACH.”

¶ 54 On January 24, 2018, the Board issued resolution 18-0124-RS8, stating that the Board “accepts the Hearing Officer’s findings of fact, legal conclusions and recommendation for discharge,” and that Billups “is hereby dismissed from his employment.” The record reflects that a letter dated January 29, 2018, notified Billups that his service as a tenured teacher for CPS was terminated and included a copy of the Board’s resolution.

¶ 55 ANALYSIS

¶ 56 On appeal, Billups argues that (1) there was an unreasonable delay in the scheduling of the hearing and receipt of the hearing officer's findings, in violation of the Code; (2) his due process rights were denied where he was not permitted to present the consultant teacher as a witness, where neither he nor Williams were timely provided with a remediation plan, and where he was not provided adequate consulting services; and (3) the Board failed to meet its burden of proof in showing that Billups's conduct was unbecoming of a CPS employee and that Billups failed to satisfy the remediation plan.

¶ 57 Section 34-85(a)(8) provides that a teacher dismissed in accordance with section 34-85(a) may seek judicial review of the board's decision. 105 ILCS 5/34-85(a)(8) (West 2016). This review is governed by the Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2016)) and is initiated in the First District of the Illinois Appellate Court (105 ILCS 5/34-85(a)(8) (West 2016)). This court will reverse rulings on questions of fact only if they are against the manifest weight of the evidence, we review questions of law *de novo*, and we review mixed questions of law and fact under the clearly erroneous standard. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). The Board's factual findings "are considered to be *prima facie* true and correct, and we may not reweigh the evidence or make any independent determinations of fact." *Raitzik v. Board of Education of City of Chicago*, 356 Ill. App. 3d 813, 823 (2005). Therefore, we will not substitute our judgment for that of the Board, and we will not reverse the Board's decision "simply because the opposite conclusion is reasonable or because we might have ruled differently." *Id.* at 823-24.

¶ 58 I. Delayed Proceedings

¶ 59 Billups first argues that the hearing on his dismissal charges did not comply with statutory requirements, because the scheduling of the hearing and receipt of the hearing officer's findings were unreasonably delayed. We consider the timeliness of the hearing and the timeliness of Billups's receipt of the officer's findings as separate issues.

¶ 60 A. Timeliness of the Hearing

¶ 61 Billups's challenge to the timeliness of the dismissal hearing is based on section 34-85(a)(5) of the Code (105 ILCS 5/34-85(a)(5) (West 2016)), which provides, in relevant part, as follows:

“The hearing officer shall commence the hearing within 75 calendar days and conclude the hearing within 120 calendar days after being selected by the parties as the hearing officer, provided that these timelines may be modified upon the showing of good cause or mutual agreement of the parties. Good cause for the purposes of this paragraph (5) shall mean the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission.”

¶ 62 According to Billups, the Board failed to show “good cause” for the delays in scheduling his dismissal hearing, and there was no mutual agreement to delay the hearing. The Board responds that Billups failed to argue before the hearing officer that his hearing date violated the Code and thus waived the issue. Additionally, the Board asserts that the “mutual agreement” exception in section 34-85(a)(5) applies because the parties' attorneys mutually agreed to the delayed hearing date by email. *Id.*

¶ 63 “[I]f an argument, issue, or defense is not presented in an administrative hearing, it is procedurally defaulted and may not be raised for the first time before the circuit court on administrative review.” *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008). Additionally, under the invited error doctrine, a party cannot “acquisc[e] to proceed in one manner and then contend*** on appeal that the requested action was error.” *Board of Education of Valley View Community Unit School District 365-U v. Illinois State Board of Education*, 2013 IL App (3d) 120373, ¶ 44. This rule is a form of procedural default also described as estoppel. *Id.*

¶ 64 The parties informed the hearing officer they had selected her on November 9, 2016, and agreed to a two-day hearing on March 24, 2017, and April 6, 2017. These dates were already well beyond 75 calendar days after the selection of a hearing officer. Then, on February 24, 2017, the Board’s counsel requested a continuance to July or August because she had adopted a baby and was going on a three-month maternity leave. Billups’s counsel noted that Billups was “anxious to expedite,” but nonetheless stated that “[a]fter July 6th is good.” When the Board’s counsel stated that the month of July was unavailable, Billups’s counsel expressed that Billups was undergoing “substantial hardship” due to the “persistent delays.” A supervising attorney with the Board then explained that the delays were “mostly *** caused by several Board attorneys leaving the Law Department ***.” The hearing officer set the hearing for August 1 and 2, 2017, and Billups’s counsel stated, “That works for [Billups].” While Billups’s counsel noted that Billups was “anxious” about the delays and suffered “substantial hardship,” counsel nonetheless agreed to the delays and did not object to the hearing officer’s decision. Compare *Board of Education of City of Chicago v. Illinois State Board of Education*, 2017 IL App (1st)

161147, ¶¶ 5-6, 16 (affirming the circuit court’s declaratory judgment stating there was no good cause to stay a dismissal hearing under section 34-85(a)(5), where the Board objected to the stay before the hearing officer, moved for the officer to reconsider the stay, and filed the declaratory judgment claim with the circuit court soon after). Accordingly, Billups cannot now raise this issue after inviting the delay in the proceedings, and we will not reverse the decision of the Board based on Billups’s assertion that his dismissal hearing was unreasonably delayed.

¶ 65 B. Timeliness of the Hearing Officer’s Findings

¶ 66 Billups’s challenge to the timeliness of his receipt of the hearing officer’s findings is based on section 34-85(a)(6) of the Code, which provides as follows:

“The hearing officer shall within 30 calendar days from the conclusion of the hearing report to the general superintendent findings of fact and a recommendation as to whether or not the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent.” 105 ILCS 5/34-85(a)(6) (West 2016).

¶ 67 The Board responds that, instead of giving closing arguments during the hearing, the parties agreed to a date on which they would submit post-hearing briefs, after which the hearing officer’s findings would be issued. Because the hearing officer’s findings were received within 30 calendar days of the post-hearing brief submissions, the Board argues that the findings were timely reported in compliance with section 34-85(a)(6).

¶ 68 The record shows that the hearing officer’s findings were received within the time frame to which the parties agreed. Specifically, after the parties presented their witnesses at the hearing, the hearing officer asked whether the parties wished to give closing arguments, as opposed to

written post-hearing briefs. Billups's counsel stated, "No, no." Then, the officer went off the record with the parties' counsel. After returning, the officer stated that the parties agreed to determine a date for receipt of their written arguments after the transcript was received. The officer then stated that the findings from the hearing would be issued within 30 days of receiving and exchanging the written arguments. The hearing officer's findings of fact and recommendations were dated November 16, 2017, within 30 days of the officer's receipt of the post-hearing briefs on October 27, 2017. Because Billups's counsel agreed to the time frame by which the hearing officer issued her findings, Billups has invited the alleged procedural error and cannot argue on appeal that the hearing officer's findings were untimely. *Board of Education of Valley View Community Unit School District 365-U*, 2013 IL App (3d) 120373, ¶ 44.

¶ 69 II. Due Process

¶ 70 Billups also argues that his due process rights were denied where he was not allowed to present the consultant teacher, Williams, as a witness; where he and Williams were not timely provided with the remediation plan; and where he received inadequate consultant services.

¶ 71 "[I]n administrative proceedings, due process is satisfied when the party concerned is provided an opportunity to be heard in an orderly proceeding which is adapted to the nature and circumstances of the dispute." (Internal quotation marks omitted.) *Board of Education of Round Lake Area Schools v. Community Unit School District No. 116*, 292 Ill. App. 3d 101, 113 (1997). " '[P]rocedural due process in an administrative proceeding does not require a proceeding in the nature of a judicial proceeding ***.' " *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 92 (1992) (quoting *Telcser v. Holzman*, 31 Ill. 2d 332, 339 (1964)). Nonetheless, as the reviewing court on administrative review, we " 'ha[ve] a duty to examine the

procedural methods employed at the administrative hearing, to insure that a fair and impartial procedure was used.’ ” *Id.* at 92-93 (quoting *Middleton v. Clayton*, 128 Ill. App. 3d 623, 630 (1984)).

¶ 72 “[A] tenured teacher has a property interest in continued employment that is protected by principles of due process.” *Board of Education of Community Consolidated School District No. 54 v. Spangler*, 328 Ill. App. 3d 747, 755-56 (2002). For a tenured public employee, due process “requires oral or written notice of the charges, an explanation of the employer’s evidence, and an opportunity to present her side of the story.” *Allen v. Board of Trustees of Community College District No. 508*, 285 Ill. App. 3d 1031, 1037 (1996) (citing *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985)). “Whether a party’s due process rights were violated during an administrative hearing is a question of law that we review *de novo*.” *Booker v. Board of Educ. of City Chicago*, 2016 IL App (1st) 151151, ¶ 56. We consider each of Billups’s due process claims separately.

¶ 73 A. Consultant Teacher’s Testimony

¶ 74 Billups asserts that the hearing officer denied him his due process rights by disallowing him from presenting the testimony of Williams. He moreover claims that he preserved an objection to his inability to call Williams and sought to admit her testimony, but the hearing officer closed the record. The Board responds that Billups did not preserve this issue, as his counsel simply noted Williams’s presence, but did not call any other witnesses, request to leave the record open, or request another day of hearing for Williams’s testimony. The Board also notes that the Code prohibited Billups from compelling Williams’s testimony, and so he did not have a right to call her as a witness to begin with. In his reply brief, Billups argues that Williams

“felt compelled to give up her vacation time to participate in the hearing,” but “was prevented from testifying even after she willingly sacrificed her valuable time to participate in the hearing.”

¶ 75 Despite Billups’s assertion to the contrary, there is nothing in the record showing that the hearing officer or the Board precluded Billups from presenting Williams’s testimony. Rather, the transcript of the proceedings shows that Williams volunteered to testify, but only “budgeted 45 minutes and left.”

¶ 76 Further, under section 24A-5(m) of the Code (105 ILCS 5/24A-5(m) (West 2016)), “[d]istricts and teachers subject to dismissal hearings are precluded from compelling the testimony of consulting teachers at such hearings under Section *** 34-85 of this Code, either as to the rating process or for opinions of performances by teachers under remediation.”² 105 ILCS 5/24A-5(m) (West 2016). Thus, once Williams left the proceedings, Billups could not have compelled her to return and testify, and the hearing officer could not have permitted Billups to do so. Because Billups was not precluded by the Board or the hearing officer from calling Williams as a witness, and because the Code prohibited Billups from compelling Williams’s testimony after she left the courtroom, we will not reverse the Board’s decision to terminate Billups’s employment based on Billups’s inability to present Williams’s testimony.

¶ 77 B. Provision of Remediation Plan and Consultation Services

¶ 78 Billups next claims that he was denied due process because he and Williams did not timely receive the remediation plan. We initially note that Billups does not cite any authority in the Code or elsewhere requiring the Board to provide him or Williams with a physical copy of the remediation plan by a certain time. See Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1,

² Billups does not challenge the constitutionality of section 24A-5(m) of the Code on appeal.

2017) (stating an appellant’s brief must contain “[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on”); see also *Fryzel v. Miller*, 2014 IL App (1st) 120597, ¶ 26 (“A party’s status as a *pro se* litigant does not relieve him of his obligation to comply with the appellate practice rules.”).

¶ 79 Nonetheless, Billups’s argument regarding whether he and Williams received the remediation plan essentially amounts to a dispute of the factual findings made by the hearing officer and adopted by the Board. At the hearing, Haney testified that at the initial remediation meeting, both Billups and Williams signed the remediation plan, and he gave a hard copy to both of them. Billups, however, testified that he did not receive a copy at the meeting, and in his post-hearing brief, he asserted that Williams’s teaching logs reflected that she did not receive a plan by email. The Board adopted the findings of the hearing officer, who noted Haney’s testimony and “conclude[d] that Mr. Billups had ample notice of the areas of instruction that he needed to improve.” As stated, we must consider the Board’s findings to be “*prima facie* true and correct, and we may not reweigh the evidence or make any independent determinations of fact.” *Raitzik*, 356 Ill. App. 3d at 823. As such, we cannot reweigh the conflicting testimony of Haney and Billups to conclude that Billups did not properly receive his remediation plan.

¶ 80 We also note that while Williams stated in her logs that she had not received the remediation plan by email, this statement did not necessarily mean Williams did not receive a physical copy at the meeting. Moreover, her logs expressly set forth suggestions for Billups based on the remediation plan. These suggestions, which included utilizing Descartes and differentiating instruction, were consistent with the feedback and suggestions for improvement

that Billups received in his remediation plan. There is thus nothing in the record that would suggest Williams lacked knowledge as to the substance of Billups's remediation plan, regardless of whether she received a copy of the plan by email. For these reasons, we find Billups was not denied his due process rights due to any failure to timely provide Billups or Williams with a copy of the remediation plan.

¶ 81 C. Adequacy of Consulting Services

¶ 82 Billups also claims in passing that he was denied his due process rights because he received inadequate consulting services. However, Billups does not set forth any specific shortcomings in Williams's conduct as a consulting teacher, and he does not set forth any regulation in the Code or elsewhere that Williams violated. See *Raitzik*, 356 Ill. App. 3d at 826 (rejecting a dismissed tenured teacher's challenge to the consulting teacher's services, where the teacher failed to raise "any regulation in the School Code or anywhere else" that the consulting teacher violated). Accordingly, we will not reverse the Board's decision on this ground.

¶ 83 III. Burden of Proof

¶ 84 Lastly, Billups asserts that the Board failed to meet his burden in showing that Billups's conduct was unbecoming of a CPS employee, and in showing that Billups failed the remediation plan and deserved to be terminated.

¶ 85 The Board must prove the charges supporting a tenured teacher's dismissal by a preponderance of the evidence. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 53. A tenured teacher may only be dismissed for cause. *Davis v. Board of Education of City of Chicago*, 276 Ill. App. 3d 693, 697 (1995). For purposes of dismissing a teacher, this court has defined "cause" as "that which law and public

policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness [citation], or something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position [citation]." (Internal quotation marks omitted.) *James v. Board of Education of City of Chicago*, 2015 IL App (1st) 141481, ¶ 16. This court has previously found that failure to complete a remediation plan with a satisfactory or better rating constitutes cause for dismissal. *Davis*, 276 Ill. App. 3d at 697.

¶ 86 "On review of an administrative decision, it is not the court's function to reweigh the evidence or make an independent determination of facts, but rather, to ascertain whether the findings and the decision of the agency are against the manifest weight of the evidence." *Board of Education of Rockford School District No. 205 v. Illinois Educational Labor Relations Board*, 258 Ill. App. 3d 859, 867 (1994). The Board's findings are against the manifest weight of the evidence when "all reasonable and unbiased persons would agree it is clearly evident the State Board erred and should have reached the opposite conclusion." *Board of Education of Round Lake Area Schools*, 292 Ill. App. 3d at 109. When determining whether the Board's findings of fact are against the manifest weight of the evidence, we only examine the final decision of the Board and not that of the hearing officer, which is only a recommendation to the Board. *Raitzik*, 356 Ill. App. 3d at 823. Upon determining whether the Board's findings of fact and decision were against the manifest weight of the evidence, we must then "determine whether those findings sufficiently support the Board's conclusion that cause for discharge or dismissal existed." *Id.*

¶ 87 Here, the Board did not make findings of fact itself but, rather, adopted the findings of the hearing officer. However, the hearing officer did not make a number of factual determinations that were material to determining whether Billups failed to successfully complete his remediation plan.

¶ 88 First, the Board failed to make or adopt any findings as to how differentiation should be defined or implemented, particularly in the context of middle school math. The testimony at Billups's dismissal hearing showed that Billups's lower ratings were largely based on his apparent failure to practice differentiation in the classroom. Thus, Billups's failure to differentiate was particularly central to the issue of whether Billups should have been terminated.

¶ 89 The principal and assistant principal at Hefferan both testified that Billups failed to practice differentiation and did not break his classes up into smaller instructional groups. The evidence and testimony concerning Billups's remediation proceedings at Lovett, however, showed that Billups was making efforts to differentiate his lessons and assessments.

¶ 90 Haney testified that he walked around Billups's classroom and observed an assignment Billups's students were working on. According to Haney, Billups provided his students with different questions, but those questions were at the same skill level. Haney stated that this was not proper differentiation. Billups, on the other hand, stated that he grouped his students according to skill level. He then differentiated his assignments by having different students answer different questions on the same handout, according to the groups the students were placed in. The logs of Williams, which the Board entered into evidence, also reflected that Billups consistently broke his classrooms up into smaller groups during his instruction, and one entry stated Billups's students received differentiated assignments. Williams's logs additionally

stated that Billups would often work with a small group of students who were struggling while other students worked separately.

¶ 91 Ultimately, the hearing officer did not make any factual findings as to how differentiation should be defined, and why Billups's apparent attempts to practice differentiation, if made, did not constitute proper differentiation. Moreover, the hearing officer did not make any specific findings as to how Billups should have practiced differentiation in the context of middle school math.

¶ 92 Second, Billups received an unsatisfactory rating for managing student behavior during his final evaluation at Lovett. Williams's logs, however, reflected a number of positive comments regarding the behavior in Billups's classes. Moreover, Lam, the assistant principal at Lovett, stated that she did not observe any "overtly egregious misbehavior." Given this conflicting testimony and evidence, the Board neither made nor adopted any findings of fact as to whether Billups's ability to discipline his students was sufficiently poor enough to support the lower ratings that Billups received during his remediation plan.

¶ 93 Third, Billups received negative feedback regarding his failure to coordinate his classes with other subjects. However, there were likewise no findings as to how Billups should have combined other classes' subject matter with middle school math.

¶ 94 Fourth, a significant amount of testimony suggested that Billups failed to present his students with "high-level" questions. Yet the Board made no findings as to what would constitute a "high-level" question, and whether Billups failed to provide the appropriate amount of "low-" and "high-level" questions so as to contribute to his lower ratings in remediation.

¶ 95 We also note that the Board could only dismiss Billups for “cause,” which we have defined as “that which law and public policy deem as some substantial shortcoming which renders a teacher’s continued employment detrimental to discipline and effectiveness.” (Internal quotation marks omitted.) *James*, 2015 IL App (1st) 141481, ¶ 16. Billups testified that he was the exclusive middle school math teacher at Lovett, and some of his classes’ test scores were improving in the double digits. Testimony from both Haney and Lam also reflected that Lovett’s middle school math test scores were increasing. Haney testified that Lovett went from the 34th percentile to the 98th percentile in standardized test scores for math. While we cannot reweigh the evidence or make independent determinations of fact on administrative review (*Board of Education of Rockford School District No. 205*, 258 Ill. App. 3d at 867), the Board neither made nor adopted any findings of fact as to why Billups’s performance as a teacher was unsatisfactory despite this evidence suggesting improvement in middle school math. The Board made no findings that Billups’s alleged failure to properly implement differentiation, along with Billups’s other purported failures, were substantial enough to support a finding of “cause.”

¶ 96 For the foregoing reasons, we must reverse and remand this case for further proceedings as to the absent factual determinations, as discussed above. See *Matlock v. The Illinois Department of Employment Security*, 2019 IL App (1st) 180645, ¶ 31 (on administrative review, reversing a board’s decision and remanding for a fact finding hearing, where the board failed to make factual determinations that were material to its ultimate decision).

¶ 97 CONCLUSION

¶ 98 For the reasons stated, we reverse and remand the decision of the Board for a fact finding hearing on Billups’s dismissal for cause.