2017 IL App (5th) 150405-U

NO. 5-15-0405

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

SHANNON HORN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 14-MR-468
	)	
BOARD OF EDUCATION OF THE CAHOKIA SCHOOL DISTRICT NO. 187,	)	
	)	
Defendant-Appellee,	)	
	)	
and	)	
	)	
THE ILLINOIS STATE BOARD OF EDUCATION and BRIAN CLAUSS, Hearing Officer,	)	
	)	Honorable
	)	Robert P. LeChien,
Defendants.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The petitioner's dismissal from service by the Board of Education for the Cahokia Unit School District No. 187 is affirmed where the Board's determination that his conduct was irremediable and therefore required termination was not arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 2 The petitioner-appellant, Shannon Horn (Horn), appeals from the order in the circuit court of St. Clair County denying his petition for administrative review concerning his dismissal from service by the defendant-appellee, the Board of Education for the Cahokia Unit School District No. 187 (Board). For the following reasons, we affirm.

¶ 3 The facts of this case are not generally in dispute. Horn was a tenured special education teacher with the Cahokia Unit School District No. 187 (District). On December 16, 2013, Horn wrote in the signature of the District's local education authority (LEA) designee on a student's individual education plan (IEP), whose signature constitutes an enforcement of a legal document binding the District to provide the services outlined in the IEP to the student. On April 14, 2014, the president of the Board approved charges and specification seeking Horn's dismissal. The charges read as follows:

> "1. Falsified documents, namely you personally forged the Local Education Agency Designee's signature on an individualized education plan.
>
> 2. Committed acts of negligence in that you submitted an individualized education plan while knowing that the individual education plan contained a forged signature.
>
> 3. Committed acts of negligence in that you failed to timely complete an individualized education plan and thus failed to obtain the Local Education Agency Designee's name on the individualized education plan.
>
> 4. Committed acts of negligence in that you failed to obtain the Local Education Agency Designee's name on the individualized education plan.
>
> 5. Committed acts of negligence in that you failed to prepare a proper individualized education plan and exposed the District to sanctions for failure to comply with Federal and State law and/or regulations.

6. Committed acts of negligence in that you submitted an individualized education plan containing a forged signature of the Local Education Agency Designee's and exposed the District to sanctions for failure to comply with Federal and State law and/or regulations.

7. In the opinion of the Board, you are not qualified to teach.

8. In the opinion of the Board, your dismissal is in the best interests of the school."

Horn made a timely request for a hearing. The hearing was held on July 21, 2014, before hearing officer Brian Clauss. The following facts were adduced from the testimony presented at the hearing.

¶ 4 Horn had been working for the District for 12 years as an educator prior to his termination. In this role, he had a duty to participate and prepare his special education students' IEPs, which are required for special needs students to receive special education services. By law, an IEP must be annually reviewed and renewed by the District. An IEP renewal begins with the special education teacher submitting a draft IEP for review to the LEA designee. The LEA designee is the District official, generally a teacher, who is authorized to commit the District to the plan. The LEA designee at the time of this incident was Michele Quirin.

¶ 5 An IEP is reviewed annually at an annual review meeting. The educator's IEP draft is to be entered into the District's computer system prior to this meeting in order to allow special education central office personnel to review and comment prior to the meeting; the goal of this draft process is to have a more meaningful discussion and to allow the final edits to the IEP to be completed at the annual review meeting. The IEP is reviewed in a conference with the student's general education teacher, the special

education teacher, and the LEA designee; the parents and the student are invited to attend, but their presence is not required. The final IEP must be signed by the student's general education teacher, the special education teacher, and the LEA designee. At the conclusion of the annual review meeting, the special education teacher is tasked with completing the IEP for the upcoming calendar year and preparing and filing the necessary copies. The timelines for submission of IEP drafts, annual review meeting dates, and deadlines for filing the final IEPs are provided to the special education teachers at the beginning of the school term. The absence of an IEP may subject the District to liabilities for a due process violation that includes providing compensatory services for the student.

¶ 6 Satisfactory completion of students' IEPs is a consideration for the evaluation of teachers in Horn's role. Teachers are evaluated once every two years. If a teacher is found to be deficient during his evaluation year, the administration will speak to him. If the concern is significant enough to go into his evaluation, the administration will commence an "awareness phase," which is the first of three phases in disciplinary action. Unsatisfactory completion of this process can result in termination from employment. Horn was evaluated in 2007-08 and placed on an awareness phase for issues relating to deficient completion of his IEPs. He completed this awareness phase successfully. He was not placed on awareness in 2009-10 but was again placed on an awareness phase for the same issue in 2011-12, which was also completed successfully. At the time of the incident, Horn had not yet received his evaluation for the 2013-14 school year.

¶ 7 In this case, an annual review meeting was scheduled for special education student C.M. on October 10, 2013. The meeting took place with all required persons present, and all the parties agreed on the substance of C.M.'s IEP for the upcoming year. There was a great deal of paperwork on the table at the meeting, and, due to an oversight, Quirin failed to sign C.M.'s IEP. After the meeting, Horn was to complete and turn in the final IEP on or before October 25, 2013.

¶ 8 On November 15, 2013, Victoria Breckel, assistant director of special education, informed Horn via email that there were still corrections that he needed to make to the IEPs that he had turned in and that she wanted to meet on December 3, 2013, to review the corrections. In order to complete the IEPs, Breckel, Quirin, and Horn met on December 3 to review and finalize the edits to nine IEPs. There were no changes made to C.M.'s IEP after that meeting.

¶ 9 On December 16, 2013, the day before the beginning of winter break, Horn went to make copies of his final IEPs and noticed that C.M.'s IEP had not been signed by Quirin. Horn testified that he attempted to contact Quirin but could not reach her. He stated that he called her office phone, which just rang; he contacted the secretary, who did not know Quirin's whereabouts; and he talked with two other teachers, neither of whom knew Quirin's whereabouts.[1] Horn decided to sign her name on the IEP and have her initial it after winter break. Horn testified that he made the signature because he was

[1]School attendance records indicate that Quirin was not absent any day during the month of December 2013.

late in turning in his IEPs and wanted to avoid any problems, due to it being an evaluation year. He conceded that he benefitted from turning in the IEP before winter break, as the failure to turn in an IEP before winter break could result in being placed on "awareness phase" for deficient conduct.

¶ 10 Quirin testified that, due to her name being misspelled, she discovered that her name had been signed on February 4, 2014, at a conference held for C.M.'s triennial evaluation of special education services. She stated that Horn never called, emailed or approached her about the unsigned IEP. She was upset at the unauthorized signature, and Horn admitted to signing her name and forgetting to tell her. She initialed the IEP to verify her attendance, and the IEP was copied and distributed with Horn's version of the signature so that the IEP evaluation would not be held up and potentially affect the student. She testified that her failure to sign the IEP initially was due to an oversight, not a deficiency in the IEP. Quirin agreed that C.M.'s services were not interrupted due to the incident, and Horn's actions did not cause the District to suffer harm.

¶ 11 Breckel testified that, at the time of the incident, the District was on an action plan with the State for special education, and IEP accuracy was one of the issues raised in the District's action plan. A violation of the action plan imposed on the District during its compliance review could have ramifications on the District's ability to provide services. Breckel testified that while C.M. had received all of the services required by the IEP and that it had not expired when Horn submitted it, while the signature went undiscovered, the IEP was a legally unenforceable document; thus, for the duration that the signature was on the IEP, the District was out of compliance with state and federal regulations.

Horn's actions could have resulted in a violation of the action plan, leading to the possibility of sanctions from the State Board of Education or a due process claim from the parent. However, Breckel testified that, because the signature was discovered and corrected, the District was not out of compliance after that point; to her knowledge, the District did not suffer harm resulting from the incident.

¶ 12 Arthur Ryan, the District superintendent, testified that Breckel and the high school principal, Kevin Bement, brought the IEP signature to his attention. Ryan testified that he met with Horn and his union representative, where Horn admitted to writing Quirin's name on the IEP. Ryan recommended to the Board that Horn be terminated.

¶ 13 Ryan testified that Horn's actions constituted fraud, that his conduct showed a moral indifference to what one would expect a good and respectable teacher to do, and that his conduct breached his duty to the faculty and to the students; Ryan opined that Horn's actions were inexcusable. Ryan agreed that the District's students did not suffer educational harm but that Horn's actions caused damage to the faculty and the operation of the District. Specifically, Ryan stated that the special education department lost confidence and trust in Horn, and a violation of trust affects the entire operation because it forces the creation of "special circumstances" to track employees that cannot be trusted to operate independently. Ryan stated that allowing Horn's actions to have no consequences would have sent a detrimental message to other staff members in the District. Ryan asserted that not terminating Horn could set a precedent for the perception that there are no consequences for falsifying a legal document; Ryan agreed that such a perception among District staff would absolutely damage his ability to operate and

manage the District. Ryan further explained that he would recommend termination of an employee who falsified a purchase order, and if a student had forged a document, the student would be suspended or expelled. The decision to terminate Horn was tantamount to holding him to a standard at least as high as a student would be held. Ryan did not believe that a warning could have prevented this situation, stating that "I can't in my mind fathom that I would have to warn somebody not to forge a name on a legal document."

¶ 14 Leslie Harder, president of the teacher's union, testified that she became aware of the signature in February 2014 at a joint committee meeting. She met with Horn and Ryan at the end of February to discuss a previous case in the District that had resulted in termination, that being a teacher who had forged a doctor's note in order to be able to return to work. Harder agreed that, while it was a mistake for Horn to forge the document, Horn did not act maliciously or for personal gain. Harder believed that Horn should have been given an opportunity to correct his behavior before termination resulted.

¶ 15 At the hearing, all of the witnesses, including Horn and Harder, testified that Horn's conduct was inconsistent with the conduct that one would expect from a certified teacher. Both parties submitted posthearing briefs to the hearing officer in support of their positions.

¶ 16 Hearing officer Clauss issued his findings of fact and recommendation on October 5, 2014. Under a section entitled "Facts," Clauss thoroughly summarized the witnesses' statements at the hearing. Clauss noted that, because Horn was not given a prior written warning before dismissal, the Board was required to prove that his conduct was

irremediable. Irremediability is determined by a two-prong test laid out in *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977). The *Gilliland* test requires a showing that (1) the conduct caused damage to a student, faculty, or the school and (2) a warning would not have corrected the conduct.

¶ 17 Clauss found that the District's cited evidence of harm, *i.e.*, Ryan's testimony that Quirin can no longer trust Horn and that another teacher may engage in similar conduct, was a theoretical harm, and such speculation is insufficient to establish the first prong. Clauss also found that there was no showing that a warning would not have corrected the conduct, noting that the evidence shows that Horn corrected Quirin's oversight by writing her name where she would have signed the IEP.

¶ 18 Clauss also addressed the District's argument that Horn's conduct was *per se* irremediable because committing forgery is immoral conduct, which is defined as "shameless conduct showing moral indifference to the opinion of good and respectable members of the community." Clauss found that this was a high standard that the District's evidence did not overcome, "because the evidence shows that [Horn] corrected a mistake—not that he engaged in s [*sic*] forgery for some nefarious purpose." Clauss also concluded that the District could not show that Horn committed the crime of forgery because no proof of an intent to defraud existed per the requirements of the criminal statute. Clauss opined that, even if the District proved that Horn's sole motivating factor for forging Quirin's signature was to avoid discipline for a late IEP, "it is insufficient proof of an 'intent to defraud.' "

¶ 19 Clauss concluded that the Board failed to meet the burden of proof to establish that Horn was removed for cause. Clauss recommended that Horn be returned to work and made whole.

¶ 20 Pursuant to the requirements of article 24-12(d)(8) of the School Code (105 ILCS 5/24-12(d)(8) (West 2014)), the Board considered hearing officer Clauss's recommendation and could decide thereafter to either reinstate or dismiss Horn. Under a section entitled "Findings of Fact," the Board reiterated many of hearing officer Clauss's findings in his "Facts" section; this court discerned no relevant additions to the Board's supplemental facts. Under a section entitled "Evidence as to Harm," the Board reiterated Ryan's testimony that Horn's conduct caused damage to the faculty and operation of the department of special education and that a warning would not rectify the damage. The Board noted that Breckel, Quirin, and Horn all testified that Horn's conduct was a breach of his duty to prepare IEPs; Breckel, Quirin, and Ryan testified that Horn's conduct constituted a moral indifference to behavior expected of good and reasonable teachers. Harder and Horn testified that Horn's conduct was not consistent with the behavior expected from a teacher.

¶ 21 The Board concluded that the following conclusions of the hearing officer were against the manifest weight of the evidence:

> "(a) the conduct of Horn did not damage CUSD #187, (b) a warning would have rectified the damage to CUSD # 187, (c) the conduct of Horn was not irremediable under *Gilliland*, (d) Horn's conduct did not demonstrate a moral indifference to the opinions of good and respectable members of his community, (e) Horn's conduct did not constitute a forgery with an intent to defraud, (f) Horn did not personally gain from the signing of Quirin's name, (g) Horn's signing of

> Quirin's name actually kept CUSD #187 in compliance, and (h) the conduct of Horn was not irremediable *per se*."

¶ 22 The Board concluded the following: Horn's conduct caused damage to the operation of the school and its faculty and students; a warning would not have prevented the harm; Horn's conduct was irremediable under the *Gilliland* test; Horn's conduct showed a moral indifference to the opinions of good and respectable members of the community; Horn knowingly forged the LEA designee's name on student C.M.'s IEP with an intent to defraud; Horn delivered the forged IEP to the special education department knowing that the IEP contained a forged signature; Horn's forgery of the LEA designee's name caused C.M.'s IEP to be invalid and exposed the District to noncompliance with state and federal special education laws and regulations; and, Horns' conduct was irremediable *per se* for immoral conduct that is inconsistent with his peer community and for conduct that was possibly criminal. Horn was dismissed by the November 10, 2014, order.

¶ 23 Horn filed a petition for administrative review in the circuit court. On September 9, 2015, the circuit court affirmed the Board's decision. This appeal followed.

¶ 24 On review, this court shall consider the Board's decision and the hearing officer's findings of fact and recommendation in making our decision. 105 ILCS 5/24-12(d)(9) (West 2014). The scope of review in discharge cases is a twofold process. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 63. We apply the manifest weight of the evidence standard to the Board's supplemental factual findings and the unmodified findings of the hearing officer

incorporated into the Board's findings. *Id.* We then determine whether the findings of fact provide a sufficient basis for the Board's conclusion that cause for discharge does or does not exist. *Id.*

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

¶ 26 It is undisputed that Horn signed the name of the LEA designee without her knowledge or assent on a legally binding IEP. No witness disputed that such actions do not comport with the expectations of a teacher in the District. The Board did not dispute any of hearing officer Clauss's factual findings, but simply reiterated the findings it felt pertinent to its decision. We find that the Board's factual determinations are not contrary to the manifest weight of the evidence.

¶ 27 We now must determine whether the findings of fact provide a sufficient basis for the Board's conclusion that cause for discharge existed in this instance. *Id.* Again, reversal by this court is only appropriate where the Board's decision to terminate Horn was arbitrary, unreasonable, or unrelated to the requirements of service. *Id.*

¶ 28 Section 24-12 of the School Code dictates the circumstances under which teachers in contractual continued service may be dismissed. See 105 ILCS 5/24-12 (West 2014).

No tenured teacher may be removed from employment except for cause. *Board of Education of Round Lake Area Schools v. State Board of Education*, 292 Ill. App. 3d 101, 110 (1997). Two types of misconduct may constitute cause: conduct considered "irremediable" and conduct considered "remediable." *Ahmad v. Board of Education of the City of Chicago*, 365 Ill. App. 3d 155, 163 (2006). "Remediable" conduct is defined as conduct by a teacher which could ordinarily be remedied if called to his or her attention; it has been applied to situations concerning deficiencies in teaching performance or corporal punishment. *Id.* A teacher is entitled to a written warning before being dismissed if the conduct is remediable, but no written warning is required if the conduct is irremediable. *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024 (1987). Here, Horn received no written warning, and the Board dismissed him based on the determination that his conduct was irremediable.

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

¶ 30 The first prong of the *Gilliland* test is whether any damage has been done, not whether damage might occur in the future. *Morris v. Illinois State Board of Education*, 198 Ill. App. 3d 51, 57 (1990). Noting that "every one of the Board's witness[es] testified that no actual harm occurred," Horn asserts that the Board presented no evidence that any

actual damage occurred and thus did not meet its burden under this first prong. However, we cannot say the Board's conclusion on this issue was unreasonable.

¶ 31 All of the witnesses at the hearing indeed testified that no legal harm occurred; it is clear from the record that the District was not sanctioned in direct response to Horn's actions, and student C.M. received all of the services under her IEP despite its legal invalidity for a period of time. However, it is not true that all of the witnesses testified that no *actual* harm occurred. Superintendent Ryan specifically testified that damage had been done to the faculty and operation of the special education department, and there was a significant loss of trust between Horn and his colleagues in the special education department, as well as between Horn and the administration. Horn's conduct caused a loss of confidence in the faculty's ability to be trustworthy with important legal documents. As this court has found that harm to the reputation and faith in the faculty and school is an appropriate consideration in determining the satisfaction of the first prong of *Gilliland* (see *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024, 1028 (1987)), we find that the Board's determination that Horn's conduct caused sufficient actual harm is not unreasonable.

¶ 32 While the traditional second prong of the Gilliland test is determining whether a warning would have corrected the conduct, Illinois courts have held that criminal or immoral conduct is irremediable *per se* and fulfills the second prong of the *Gilliland* test. *Fadler v. Illinois State Board of Education*, 153 Ill. App. 3d 1024, 1029 (1987); *McBroom v. Board of Education, District No. 205*, 144 Ill. App. 3d 463, 474 (1986); *Board of Education of Sparta Community Unit School District No. 140 v. Illinois State*

Board of Education, 217 Ill. App. 3d 720, 729 (1991). It is undisputed that Horn wrote Quirin's name on C.M.'s IEP. The question before us, then, is whether the Board could reasonably find that the signature constituted conduct sufficiently immoral and/or criminal to validate Horn's termination.

¶ 33 Citing examples from previous cases, Horn argues that signing an IEP on behalf of someone who has already approved the plan "comes nowhere close to the criminal or immoral conduct needed to sustain termination" under this prong. Horn asserts that his case is distinguishable from the deplorable conduct deemed immoral in other cases, such as molestation charges (*Fadler*, 153 Ill. App. 3d 1029), theft from a student (*McBroom*, 144 Ill. App. 3d at 473), or possession of marijuana (*Chicago Board of Education v. Payne*, 102 Ill. App. 3d 741, 749 (1981)).

¶ 34 However, a finding of immoral conduct is not necessarily so limited. The Board found that Horn's conduct was irremediable *per se* "for immoral conduct that is inconsistent with his peer community and for conduct that was possibly criminal." Illinois courts have defined immoral conduct as "shameless" conduct showing "moral indifference to the opinions of the good and respectable members of the community." (Internal quotation marks omitted.) *Ahmad*, 365 Ill. App. 3d at 165. While the teachers' actions in the cases that Horn cites certainly meet the definition of immoral conduct, immoral conduct is not necessarily so very odious in all cases. Applying this definition

to the present case, we find that the record sufficiently supports the Board's determination that Horn's conduct was immoral and possibly criminal.[2]

¶ 35 Ryan testified that Horn's conduct was fraudulent, inexcusable, and breached his duty to the faculty and the students. Breckel, Quirin, and Ryan testified that Horn's conduct did not meet the standards of good moral conduct expected of teachers; even Horn and his union representative acknowledged that his conduct was inconsistent with behavior expected from teachers. Furthermore, Horn agreed that he stood to personally gain from writing Quirin's signature, as he was trying to avoid being placed back on an awareness phase, which is the first step in being removed from employment. The evidence supports the notion that Horn signed Quirin's name to avoid the personally negative consequences, not to do Quirin a favor or for C.M.'s benefit. Succinctly, Horn put the District and student C.M. at risk for personal gain. We therefore find that the evidence supports the conclusion that Horn's actions demonstrated a moral indifference to the opinions of the faculty and the District, and as such the Board's determination regarding the immorality of Horn's conduct was not unreasonable.

¶ 36 Finally, Horn also focuses on the phrasing of *Fadler*, in which the court described the alternate second prong as focusing on "not whether the conduct itself could have been

[2]The Illinois Criminal Code of 2012 states that "[a] person commits forgery when, with intent to defraud, he or she knowingly: (1) makes a false document or alters any document to make it false and that document is apparently capable of defrauding another; or (2) issues or delivers such document knowing it to have been thus made or altered[.]" 720 ILCS 5/17-3 (West 2014).

corrected by a warning but whether the effects of the conduct could have been corrected." *Fadler*, 153 Ill. App. 3d at 1029.

¶ 37 However, even pursuant to this lens, we find that the Board had sufficient evidence to support its decision. As Ryan testified, the primary damage done by Horn's actions was to the faculty. The effect of Horn's act could not be corrected because, as Ryan explained, to allow Horn to escape with only a warning sends a message to District employees that such clearly inappropriate behavior does not have serious consequences. It is reasonable to conclude that a warning could not have corrected the conduct or the effects of Horn's conduct, *i.e.*, the damage to the trust among his colleagues and the reputation of the District when such conduct occurs.

¶ 38 While this court may not agree with the Board's decision to terminate Horn, particularly as his conduct did not impact the District's ability to provide services or cause educational harm to the student, our supreme court has made it clear that reversal is only appropriate where the Board's decision to terminate was arbitrary, unreasonable, or unrelated to the requirements of service. See *Beggs*, 2016 IL 120236, ¶ 63. While termination is perhaps a disproportionately harsh result, we may not reverse this Board's decision pursuant to this standard. We therefore affirm the decision.

¶ 39 Affirmed.