No. 125785

IN THE
SUPREME COURT OF ILLINOIS

BOARD OF EDUCATION OF THE CITY OF CHICAGO, *et al*,
Appellants,

-v-

Daphne Moore,
Appellee.

Appeal from the Illinois Appellate Court
First District, No. 18-2391
There Heard on a Petition for Administrative Review
from the Board of Education of the City of Chicago
Nos. 18-1024-RS5 and 18-1024-EX11

BRIEF OF APPELLANTS BOARD OF EDUCATION OF THE CITY OF CHICAGO AND JANICE K. JACKSON

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Oral Argument Requested

POINTS AND AUTHORITIES

NATURE OF THE CASE

This appeal arises from an administrative review of a decision in a teacher discipline case. Appellee Daphne Moore was a tenured teacher at Chicago Public Schools, which are run by Appellants, the Board of Education of the City of Chicago and Janice Jackson (the CPS Chief Executive Officer).

After an incident involving student safety in Moore's eighth-grade classroom, the Board began discipline proceedings against Moore, seeking her dismissal. During that administrative process, Moore was suspended without pay. At the conclusion of the process, the Board decided not to dismiss Moore but instead elected (1) to reinstate her; (2) to issue a Warning Resolution to reprimand her for negligent conduct; (3) to require her to attend additional training on crisis response; and (4) to suspend her for ninety days on a time-served basis (*i.e.*, as a deduction from her backpay). Moore appealed, and the Illinois Appellate Court ruled in her favor, finding that the Board did not have the authority to suspend her in these circumstances. *Bd. Educ. v. Moore*, 2019 IL App (1st) 182391. In this appeal, the Board asks this Court to clarify the scope of a school board's disciplinary authority. Pursuant to Rule 341(h)(2), this appeal does not raise questions on the pleadings.

This brief cites to the Record on Appeal as follows: citations to "*C*__" refer to the pages in the Common Law Record; citations to "*E*__" refer to the Exhibits; and citations to "*R*__" refer to the pages in the Report of Proceedings. Citations to "*A*__" refer to the Appendix attached to this Brief.

ISSUE PRESENTED

At the conclusion of a tenured teacher termination hearing, does the Board of Education have authority to order a lesser corrective action (such as a disciplinary suspension) in lieu of dismissal?

JURISDICTION

Under Supreme Court Rule 315, jurisdiction is proper in this Court. On October 24, 2018, the Board suspended Moore for 90 days and issued her a formal Warning Resolution (*C207; A24; C214; A31; C217; A32).* Moore filed for administrative review, and on December 23, 2019, the Illinois Appellate Court reversed the Board's suspension decision. *Bd. of Educ. v. Moore,* 2019 IL App (1st) 182391; *A13-22*. On January 17, 2020, the Illinois Appellate Court denied the Board's request for rehearing (*A10*). On February 21, 2020, the Board filed a timely Petition for Leave to Appeal (*id.*). This Court granted the Board's Petition for Leave to Appeal. *Bd. of Educ. v. Moore*, 202 Ill. LEXIS 472 (May 27, 2020).

STATUTES INVOLVED

This appeal does not ask this Court to invalidate any statute. However, this appeal asks this Court to construe and apply several sections from Article 34 of the School Code. Section 105 ILCS 5/34-18 (West 2016) provides, in pertinent part:

> The board shall exercise general supervision and jurisdiction over the public education and the public

> school system of the city, and, except as otherwise provided by this Article, shall have power:
>
> * * * *
>
> The specifications of the powers herein granted are not to be construed as exclusive but the board shall also exercise all other powers that they may be requisite or proper for the maintenance and the development of a public school system, not inconsistent with the other provisions of this Article or provisions of this Code which apply to all school districts.

Section 105 ILCS 5/34-85(a)(2) (West 2016) provides, in pertinent part:

> Pending the hearing of the charges, the general superintendent or his or her designee may suspend the teacher or principal charged without pay in accordance with rules prescribed by the board, provided that if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation.

Section 105 ILCS 5/35-85(a)(7) (West 2016) provides:

> The board, within 45 days of receipt of the hearing officer's findings of fact and recommendation, shall make a decision as to whether the teacher or principal shall be dismissed from its employ. The failure of the board to strictly adhere to the timeliness contained herein shall not render it without jurisdiction to dismiss the teacher or principal. In the event that the board declines to dismiss the teacher or principal after review of a hearing officer's recommendation, the board shall set the amount of back pay and benefits to award the teacher or principal, which shall include offsets for interim earnings and failure to mitigate losses. The board shall establish procedures for the teacher's or principal's submission of evidence to it regarding lost earnings, lost benefits, mitigation, and offsets. The decision of the board is final unless reviewed in accordance with paragraph (8) of this subsection (a).

STATEMENT OF FACTS

The Board operates Chicago Public Schools, and Janice Jackson is the CPS CEO (105 ILCS 5/34-2 (West 2016); *C156; C215*). Daphne Moore was a tenured teacher at Charles W. Earle Elementary School, a CPS school located at 2040 W. 62nd Street (*R107:15-108:24; E14; E15; C27 ¶ 1*). The school is sometimes called Earle STEM Academy (*R56:23-57:5; R70:16-18; R109:14-15*); it has roughly 400 students enrolled (*R56:23-57:2*).

On September 13, 2016, ZC (an eighth-grade girl at Earle) brought two vials of pills to school (*E17*). ZC had been having a difficult time socially at school (*R46:14-47:24; E17*). ZC arrived for her third-period science class, in Moore's classroom, along with approximately 27 other students (*R33:8-34:9; R110:20-22; R129:10-15*). The third period ran from roughly noon until 1:00 pm (*R74:13-19; R110:10-17*). When ZC arrived, she was quiet, and she sat with her head down on her desk (*R45:19-22; E21*). At the start of period, Moore asked ZC if she was ok, or if she wanted to call her mother, but ZC responded that she was ok (*R117:13-118:1; R129:17-131:1; E21; C142; C151*). ZC continued with her head down (*R131:12-134:17; E21*). Moore then proceeded to teach her planned lesson for the class (*R19:23-20:10; R117:13-118:1; R132:3-133:14; C142*).

ZC then took the pills, during Moore's class (*R34:14-20; E17*). Several of her classmates were aware that she took the pills (*R34:21-35:12; R38:11-39:1; E17-18*). Two of ZC's classmates then left Moore's third-period

classroom -- in the middle of class -- to go get help for ZC (*R40:21-41:20; E19; E20; E26-27*). Moore did not ever notice that those two students had left her classroom (*R118:22-24; R129:4-6; R135:11-13; E21*). Near the Main Office (downstairs from Moore's classroom), those students found a security officer (Larry Johnson) and alerted him that ZC had taken pills (*R57:18-58:23; E19; E26-27*). Johnson alerted the Main Office by walkie-talkie (*R58:14-23; R59:21-60:6; E24*), he proceeded urgently upstairs to Moore's classroom, and seconds later Principal Cederrall Petties joined him in Moore's classroom (*R41:22-42:5; R58:14-23; R60:19-24; R61:18-62:6; R65:17-19; R76:24-77:8*).

At almost the same time -- that is, while Johnson and Petties were on their way to Moore's classroom -- another student in Moore's science class (NK) asked Moore if she was aware of what was happening with ZC (*R111:18-112:23; C142; C151*). When Moore responded that she was unaware, NK told Moore that ZC had taken pills (*R19:15-22; R111:18-112:23; R131:7-11; E17; C28 ¶ 2; C56; C142*). Moore gave conflicting statements on what she did next: Moore initially said that she had not yet hit the buzzer in her classroom to alert the Main Office (*E21*; see also *C142*), but later Moore said that she thought she had pushed the buzzer (*R112:24-115:10; R127:13-128:3*). Others at the school said that Moore never pushed the buzzer (*R51:4-12*; see also *R62:14-63:24; R82:15-83:13*). (That buzzer was connected to a two-way intercom, to permit teachers to communicate with the Main Office (*R82:5-83:9; R93:6-96:7; R126:18-127:11*)). Moore may have asked a teaching

assistant in the room (Jeriesha Mahone) to take ZC down to the office, but Mahone never did so (*R115:11-14; E27*). But see *E22* and *R120:8-23* (showing that Mahone may not have been in the room at all). See also *R:21:17-22:2; R40:11-20; R46:4-6; R51:4-12; E17-19; E21-22; E24* (showing that Moore may have done nothing to respond to the crisis).

Before Moore successfully contacted anyone from outside her classroom (*E22; R21:17-22:2; R128:4-11*), Petties and Johnson arrived in her classroom, and Petties took charge of the situation (*R62:7-10; R65:17-66:20; R74:24-75:7; R76:24-77:8; R115:20-116:14; C143*). By this time, it was 12:45 pm (*R73:2-24; R74:13-75:4; E24; C142*). Upon entering Moore's classroom, Petties found a hectic situation, with students mulling around (*R73:2-24; R97:4-98:8; R99:6-100:24; E15*). Petties asked Moore what was happening, and Moore responded that she did not know (*R73:2-24; R80:13-81:4; R98:9-14; R101:17-102:7*). Petties went to ZC, who nodded when Petties asked her if she had taken pills (*R73:2-24; R77:9-20; R103:3-13*). Petties radioed back to the Main Office, asking them to initiate a 911 call for an ambulance (*R43:8-19; R73:2-74:9; E15; E24*). Petties stayed with ZC, who was listless and nonverbal (*R43:20-44:8; R77:16-79:20; R102:8-18; R104:5-10; E15; E24*). When the ambulance arrived, the Emergency Response personnel left with ZC on a stretcher (*R43:13-23; R45:6-9; R79:22-80:12; R104:11-21; E24*). ZC spent five days in the hospital (*E16; E18*). The pills turned out to have been prescription antibiotics from ZC's house (*E15-16; E17*). An hour after the

incident, Moore wrote up what had happened in an email to Petties (*R122:7-123:18; C56*).

On April 25, 2017, CPS began disciplinary proceedings against Moore relating to her handling of the September 13th classroom incident (*C5-9*). As part of that discipline process, CPS suspended Moore without pay during the pendency of the discipline case (see *C4*). On March 8, 2018, the parties participated in a one-day hearing before a Hearing Officer (*R2-147*). The parties submitted post-hearing briefs, and the Hearing Officer issued a Report to the Board on September 7, 2018 (*C180-192*). In that Report, the Hearing Officer said that the Board had not proven that Moore failed to act when notified that ZC had ingested pills, and he further said that Moore had not been dishonest with a CPS investigator (*C192*). On that basis, the Hearing Officer stated that the Board did not have a basis to terminate Moore's employment (*C192*).

On October 2, 2018, the Board filed a written response to that Report, agreeing that dismissal was not warranted but proposing a 50% reduction in Moore's backpay (that is, roughly eight months' worth of pay) (see *C195-201*). Moore objected, arguing that such a reduction was not supported by the evidence and that it was outside the scope of the Board's powers under the School Code (see *C202-03*). On October 24, 2018, the Board considered the documentary evidence and the testimony, the parties' briefs, and the Report (see *C208; A25*). The Board issued an Opinion and Order (*C208-14; A25-31*),

finding that NK had notified Moore that ZC had taken pills (*C211; A28*), that Moore did not alert the Main Office (*C209-11; A26-28*), and that Moore did not otherwise respond responsibly (*C209-12; A26-29*). The Board found that Moore had acted negligently (*C213-14; A30-31*). The Board decided not to dismiss Moore, but instead decided to (1) reinstate Moore; (2) issue a Warning Resolution; (3) require Moore to attend training on crisis response; and (4) suspend Moore for 90 days, applied on a time-served basis (*C207; A24; C213-14; A30-31*). See also *C215-18*.

Moore filed a petition for administrative review, and the Illinois Appellate Court reviewed the Board's decision. *Bd. of Educ. v. Moore*, 2019 IL App (1st) 182391; *A13-22*. The appellate court noted that Moore was not challenging the sufficiency of the evidence (*id.,* ¶ 22) but was instead challenging only the scope of the Board's authority (*id.*). The appellate court held that the Board could only exercise powers conferred upon it by law (*id.,* ¶ 11) and further noted that Section 34-85 of the School Code provided that, once the Board began termination proceedings, the Board could only dismiss or reinstate with full back pay (*id.,* ¶¶ 12-13). The appellate court held that the Board had no authority to respond with any other measures (*id.,* ¶¶ 14-15). See also *Id.* ¶¶ 16-21. That is, the appellate court ruled that, under Section 34-85, the Board has only a binary choice: dismiss or reinstate (*id.*, ¶¶ 14, 16). Thus, the appellate court set aside the Board's suspension decision (*id.,* ¶¶ 25-26).

STANDARDS OF REVIEW

When an administrative review case comes to this Court, this Court focuses on the decision from the administrative agency, not on the determination from the appellate court. *Bd. of Educ. v. Illinois Educ. Labor Relations Bd.*, 2015 IL 118043, ¶ 14. The applicable standard of review depends on whether the issue presented is a question of law or a question of fact. *Id.*

Question of Law: Scope of the Board's Authority. This appeal centers on a pure question of law: did the Board act within the scope of its authority when it imposed a lesser disciplinary response -- that is, less than dismissal -- after it had initiated a proceeding to dismiss a tenured teacher. The scope of a government agency's authority is a question of law. *Cnty. of Knox ex rel Masterson v. Highlands*, 188 Ill. 2d 546, 554-55 (1999). In an administrative review appeal, this Court uses a *de novo* standard to review a question of law. *Bd. of Educ.*, 2015 IL 118043, ¶ 15.

Question of Fact: Basis for the Board's Decision. If any fact becomes an issue in this appeal, this Court should defer to the Board's findings of fact. In an administrative review appeal, the agency's findings of fact are *prima facie* correct. *Id.,* ¶ 15. When this Court reviews an agency's factual findings, it does not reweigh the evidence or substitute its own judgment for that of the agency. Rather, this Court should set aside the

agency's factual findings only if those findings are shown to be against the manifest weight of the evidence. *Id*.

ARGUMENT

I. The Board had authority to suspend Moore under *Spinelli* and other authorities, which recognize that school boards have flexibility when addressing discipline and safety issues.

Moore's conduct on September 13, 2016, raised serious concerns. The Board found that Moore failed to respond properly after learning that ZC had swallowed an unknown quantity of pills (*C209-12; A26-29*) and found that Moore's failures were negligent (*C213-14; A30-31*). The evidence, as discussed above (pp. *4-7*), supported the Board's factual findings. Moore's conduct raised serious questions about her judgment and possibly posed a future risk to student safety (*R92:6-93:3*). This Court should not second-guess the Board's findings of fact regarding what happened that day at Earle School. *Bd. of Educ.*, 2018 IL 118043, ¶ 15 (agency findings of fact are *prima facie* correct).

With those fact-findings in hand, the Board had to decide how to respond, in order to best serve safety and discipline at CPS. Instead of dismissing Moore, the Board decided to use a less-severe response. The Board issued a formal written Warning Resolution (*C217; A32*); required Moore to undergo additional training on crisis responses (*C214; A31*); and issued a 90-day suspension (*C207; A24; C214; A31*). The Board's flexible response was well within the scope of its authority, under *Spinelli v. Immanuel Lutheran Evangelical Congreg., Inc.*, 118 Ill. 2d 389 (1987). In *Spinelli*, this Court considered whether a local school board

had authority to suspend a tenured teacher for disciplinary reasons. *Spinelli*, 118 Ill. 2d at 394-95. This Court held that, under the School Code, a school board has a duty to adopt and enforce all necessary rules for the management and government of its schools. *Id.* at 404-05. With that duty, a school board has the power to fashion effective sanctions as enforcement against teachers who violate the school board's rules. *Id.* That authority derived from the School Code, which authorized the school board to exercise powers as needed to carry out its mission. *Id.* See also 105 ILCS 5/10-20 (West 2016) (empowering non-Chicago school boards to exercise powers that are "requisite or proper" to fulfill their mission). This Court adopted the following reasoning, from another opinion, as a statement of the law in Illinois (*Spinelli,* 118 Ill. 2d at 405):

> If the Board is to adequately manage and govern, as it is obligated to do by this section, the rules and regulations which it adopts, for teachers and students and other personnel, must have some means of enforcement which are effective. There is implied in this obligation to make rules and regulations, and to enforce them, a power in the board to mete out discipline to those who violate the rules and regulations. Enforcement envisions effective sanctions of some sort. If that were not the case, the power to make rules would indeed be a hollow one and effective management and government could not be accomplished. Thus, it is from this section of the School Code that the power to make temporary disciplinary suspensions arises. [Citation.]

This Court concluded that a school board has power to fashion effective discipline. *Id.* at 405-06. This Court thus concluded that a school board has authority to suspend a tenured teacher, and that authority does not arise from the School Code provisions that govern dismissal. *Id.* at 406.

Spinelli arose from a teacher discipline case from a school board in Peoria County (*id.* at 394-95), which was subject to Articles 10 and 24 of the School Code (105 ILCS 5/10-1, *et seq* (West 2016) and 105 ILCS 5/24-1, *et seq* (West 2016)). Here, the Board is in Chicago and is governed by Article 34 of the School Code (105 ILCS 5/34-1, *et seq* (West 2016)). The distinction is immaterial for the purposes of this analysis, because Articles 10, 24, and 34 have substantially parallel provisions. The Board's enumerated powers under Section 34-18 (105 ILCS 5/34-18 (West 2016)) are not exclusive, and the Board has "all other powers that may be requisite or proper for the maintenance and the development of a public school system, not inconsistent with the other provisions of this Article or provisions of this Code which apply to all school districts." *Id.* Section 34-18's "requisite or proper" clause parallels the clause that was at issue in *Spinelli.* Compare 105 ILCS 5/10-20 (provision regarding the powers of non-Chicago school boards) with 105 ILCS 5/34-18 (provision regarding the powers of the Board of Education of the City of Chicago). See also *Harbaugh v. Bd. of Educ.*, 815 F. Supp. 2d 1026, 1031 (N.D. Ill. 2011).

Under *Spinelli* and related cases, the Board's responses in Moore's case were within the scope of its authority, as discussed below.

A. The Board had authority to impose a suspension as a discipline and safety response.

Under the plain holding of *Spinelli*, the Board had authority to suspend Moore. *Spinelli* holds that the School Code empowers the Board to use suspensions when needed in schools. 118 Ill. 2d at 404-05. Other courts have

recognized that school boards have broad powers to use suspensions when needed to address safety and discipline issues.

- In *Kearns v. Bd. of Educ.,* 73 Ill. App. 3d 907 (1st Dist. 1979), the appellate court held that the power to suspend is not an outgrowth of the power to dismiss, but is instead an implied power that necessarily arises from a school board's obligation to manage and govern schools. 73 Ill. App. 3d at 910-12.
- In *Stutzman v. Bd. of Educ.,* 171 Ill. App. 3d 670 (1st Dist. 1988), the appellate court cited *Spinelli* and held that a school board had jurisdiction to consider and issue a disciplinary suspension without pay. 171 Ill. App. 3d at 673-74.
- In *Sweeney v. Bd. of Educ.*, 746 F. Supp. 758, 765 (N.D. Ill. 1990), the court considered a teacher's due process claim, and noted that, under *Spinelli*, a school board's authority to suspend a teacher does not depend on the school board's authority to dismiss a teacher.

Under *Spinelli* and these other cases, the Board had authority to issue a 90-day suspension. That authority derived from the School Code: the power to suspend is part of the powers that are "requisite or proper" to run CPS in 105 ILCS 5/34-18 (West 2016). (As discussed below, in Part II, the Board does not surrender that suspension power when it begins a dismissal proceeding under Section 34-85.)

Moreover, under *Spinelli* a school board does not owe extensive Due Process to a tenured teacher before issuing a disciplinary suspension. The process

leading up to a suspension will be sufficient if it gives the teacher notice of the misconduct charged and an opportunity to be heard regarding that misconduct charge. See *Spinelli*, 118 Ill. 2d at 406-07. Applying that principal here, the Board gave Moore enough process before suspending her.

Thus, the Board had authority to suspend Moore. And because the facts supported a 90-day suspension (see *p. 10*, above), the Board's decision was proper.

B. The Board also had authority to issue a Warning Resolution and to prescribe additional training as part of its discipline and safety response.

In addition to the 90-day suspension, the Board issued a formal Warning Resolution and directed that Moore needed more training on crisis response (*C214; A31*; see also *C217; A32*). Those additional corrective actions were within the scope of the Board's authority, as the Illinois Supreme Court recognized in *Bd. of Educ. v. Illinois Educ. Labor Relations Bd.*, 165 Ill. 2d 80, 91 (1995). See also 105 ILCS 5/34-85(a); and see *James v. Bd. of Educ.*, 2015 IL App (1st) 141481, ¶¶ 25-28 (Hall, J. dissenting) (noting that, at the end of a dismissal hearing, the Board may issue discipline short of dismissal). On appeal, Moore has not challenged the Board's authority to issue a written warning or require remedial training.

II. Section 34-85 of the School Code does not deprive the Board of its authority to issue a suspension (or to use other corrective measures, such as a written Warning Resolution or additional training).

As discussed above (in Part I), the Board has authority to use corrective measures with teachers to promote school safety and discipline. Ordinarily the

Board has authority to suspend a teacher when fashioning a response to a problem at school. See *Spinelli*, 118 Ill. 2d at 404-05. But in this case, the appellate court overlooked that long-established authority, effectively ruling that the Board has less flexibility in a situation that might be serious enough to justify dismissing the teacher under Section 34-85 of the School Code (105 ILCS 5/34-85 (West 2016)). See *Moore*, 2019 IL App (1st) 182391,¶¶ 14, 16 (finding that, under Section 34-85, the Board has only a binary choice: dismiss or reinstate); *A17-19*. That is, under the appellate court's analysis, the Board surrendered its ability to impose a disciplinary suspension when the Board pursued dismissal proceedings under Section 34-85. *Moore*, 2019 IL App (1st) 182391, ¶¶ 18, 25; *A19-22*.

The appellate court's decision reads this Court's holding from *Spinelli* incorrectly. The appellate court acknowledged that the School Code permits suspensions in some circumstances (*Moore*, 2019 IL App (1st) 182391, ¶ 19; *A20*), but the appellate court also concluded that, as soon as a school board initiates a teacher dismissal proceeding under Section 34-85, the school board can only dismiss or reinstate in full, with no other options. *Id.*, ¶¶ 14, 16. The appellate court said that *Spinelli* prohibits a school board from issuing a disciplinary suspension at the end of a dismissal proceeding because Section 34-85 does not mention disciplinary suspensions. *Id.*, ¶¶ 17-18. But that is an incorrect reading of *Spinelli*, because *Spinelli* permits school boards to use suspensions when needed to manage their schools, and that authority to suspend does not arise from the teacher dismissal provisions of the School Code. *Spinelli*, 118 Ill. 2d at 405-06.

Because a *Spinelli* suspension does not rely on the Board's dismissal powers, Section 34-85 should not displace the Board's otherwise-proper authority to suspend a teacher.

In other settings, courts have held that Section 34-85 does not override other provisions of the School Code that delegate powers to the Board. In *Land v. Bd. of Educ.*, 202 Ill. 2d 414, 424-25 (2014), this Court held that Section 34-85 does not limit the Board's power to lay off teachers under 105 ILCS 5/34-18(31) (West 2016). In *Chicago Teachers Union v. Bd. of Educ.*, 2012 IL 112566, ¶¶ 16-26, this Court held that Section 34-85 did not limit the Board's authority when recalling teachers after a layoff under 105 ILCS 5/34-18. In *Moore v. Bd. of Educ.*, 2016 IL App (1st) 133148, ¶¶ 32-33, the appellate court held that Section 34-85 does not override the School Code provisions regarding how a teacher could reinstate a lapsed teacher certificate. And in *Young-Gibson v. Bd. of Educ.*, 2011 IL App (1st) 103804, ¶¶ 41-45, the appellate court held that Section 34-85 did not limit the Board's ability to remove a principal when a school underperforms under 105 ILCS 5/34-8.3 (West 2016).

All of these cases put a proper frame around Section 34-85. Under these cases, Section 34-85 provides procedures for the Board to dismiss a tenured teacher (or contract principal), but Section 34-85 does not define or limit the Board's powers that are otherwise established in the School Code. To be sure, Section 34-85 states that, if the Board elects not to dismiss a teacher, then the Board should make the teacher whole for income lost from the dismissal

proceeding (105 ILCS 5/34-85(a)(2)). See also 105 ILCS 5/34-85(a)(7). But that part of Section 34-85 should not be read in isolation. See *Land*, 202 Ill. 2d at 421-22. A statute should be read to give meaning to all of its provisions, with an eye on the plain meaning of the statute. *Id.* at 422. Each section of a statute should be read together to produce a harmonious result. *Id.*

Applied here, those principles mean that Section 34-85 should not be construed to prohibit the Board from exercising its properly delegated authority, under Section 34-18, to issue suspensions when needed. See *Spinelli*, 118 Ill. 2d at 404-05. The Board's implied power to discipline teachers would be severely hampered if it were limited only to dismissal. See *Wilson v. Illinois Dept. of Prof'l Regulation*, 317 Ill. App. 3d 57, 64 (1st Dist. 2000) ("Administrative agencies are given wide latitude in fulfilling their duties."). Nothing suggests that legislature intended to require the Board to engage in separate procedures for each disciplinary action regarding the same conduct or to prohibit the Board from issuing a lesser sanction where misconduct occurred but dismissal was not warranted. Rather, "administrative officers may validly exercise discretion to accomplish in detail what is legislatively authorized in general terms." *Lake Cnty. Bd. of Review v. Property Tax Appeal Bd.*, 119 Ill. 2d 419, 428 (1988). Thus, the Board's action to discipline Moore following a dismissal hearing was a reasonable means of accomplishing its broad purpose to manage the public schools in Chicago.

A recent opinion -- *Mohorn-Mintah v. Bd. of Educ.*, 2019 IL App (1st) 182011-U -- offers a helpful analysis. (On January 10, 2020, the Board moved to publish the *Mohorn-Mintah* decision. That motion remains pending.) In *Mohorn-Mintah*, the Board considered the record from a teacher dismissal proceeding under Section 34-85. *Mohorn-Mintah,* 2019 IL App (1st) 182011-U, ¶¶ 2-4. The Board decided against dismissing the teacher, but instead issued a Warning Resolution and reduced the teacher's backpay by 50%. *Id.* ¶¶ 9-10. The appellate court held that, under *Spinelli*, the Board has the power to manage and govern schools, which includes the power to find "sanctions of some sort." *Id.* ¶¶ 23-24 (quoting *Spinelli*, 118 Ill. 2d at 405). That is, the Board's decision was proper (*Id.* ¶ 26):

> The Board's implied power to discipline teachers would be severely hampered if it were limited only to dismissal. [Citation.] As we have already stated that the Board has the power to suspend tenured teachers, we do not believe that the intent of the legislature was to require the Board to engage in separate procedures for each disciplinary action regarding the same conduct or to prohibit the Board from issuing a lesser sanction where misconduct occurred but dismissal was not warranted.

On that basis, "the Board had implied authority to suspend or impose other sanctions on Mohorn-Mintah pursuant to the School Code and the Board acted within the scope of that authority in reducing her backpay" (*id.* ¶ 27). The *Mohorn-Mintah* decision is helpful here because it correctly analyzes the scope of the Board's authority.

The Board also urges this Court to bear in mind the practical impact of this issue. Consider what it might mean if Section 34-85 barred a school board from adopting any corrective measure short of dismissal. Under such an approach, if a school board began dismissal proceedings because it had discovered serious misconduct, then that school board might limit its own ability to respond flexibly as circumstances developed. Under that approach, a school board could be boxed into a "dismiss-or-else-reinstate-in-full" choice when considering how to handle teacher misconduct. That kind of rigid, binary decision-making could mean that some matters would be treated too severely, while others would be treated too leniently. Flexibility will lead to better outcomes in more cases.

Moreover, the "time-served" aspect of Moore's suspension does not require this Court to set aside the Board's entire order dated October 24, 2018. That order imposed the 90-day suspension, accounting for it as a reduction in backpay (see *C213-14; A30-31; C207; A24*). That approach permits a reinstated teacher wrap up the matter faster. And that "time-served" approach is fully consistent with the principle that, when an administrative agency issues a decision that properly exercises two of its delegated powers at the same time, the agency may combine its decisions into a single order for the sake of efficiency. See *Lake Cnty. Bd. of Review*, 119 Ill. 2d at 427-31.

This Court should conclude that, under *Spinelli* and the School Code, the Board has authority to issue a suspension and other corrective measures, when

required by the facts. Section 34-85 does not diminish the Board's authority to issue a suspension.

CONCLUSION

This Court should reinstate the Board's decision dated October 24, 2018, in full and should vacate the appellate court's decision.

August 5, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rule 341(a) and (b). The length of this Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 20 pages.

Verification by Certification: Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

August 5, 2020 /s/ Thomas A. Doyle

CERTIFICATE OF SERVICE

I certify that:

1. On August 5, 2020, I filed the foregoing Brief (and the attached Appendix) with the Clerk of the Illinois Supreme Court, by electronic means, using the Odyssey eFileIL service; and
2. On August 5, 2020, before 5 p.m., I served the foregoing Brief (and the attached Appendix) on opposing counsel by electronic delivery (via the Odyssey eFileIL service) and by email, addressed to jgroff@laboradvocates.com (Josiah Groff, *Counsel for Daphne Moore*) and amaskaleris@atg.state.il.us (Ann Maskaleris, *Counsel for ISBE*).

Verification by Certification: Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

August 5, 2020 /s/ Thomas A. Doyle

Appendix

No. 1-18-2391

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAPHNE MOORE, Respondent-Appellant, -vs.- BOARD OF EDUCATION OF THE CITY OF CHICAGO, JANICE JACKSON, Chief Executive Officer, and ILLINOIS STATE BOARD OF EDUCATION, Petitioners-Appellees.	)	On Petition for Review from a Final Administrative Decision of the Board of Education of the City of Chicago Board Resolution Nos. 18-1024-RS5, 18-1024-EX11

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E-FILED
6/4/2020 11:42 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

No. 1-18-2391

E-FILED
Transaction ID: 1-18-2391
File Date: 12/27/2018 11:39 AM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAPHNE MOORE, Respondent-Appellant, -vs.- BOARD OF EDUCATION OF THE CITY OF CHICAGO, JANICE JACKSON, Chief Executive Officer, and ILLINOIS STATE BOARD OF EDUCATION, Petitioners-Appellees.	)	On Petition for Review from a Final Administrative Decision of the Board of Education of the City of Chicago Board Resolution Nos. 18-1024-RS5, 18-1024-EX11

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E-FILED
Transaction ID: 1-18-2391
File Date: 12/27/2018 11:39 AM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-18-2391

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAPHNE MOORE, Respondent-Appellant, -vs.- BOARD OF EDUCATION OF THE CITY OF CHICAGO, JANICE JACKSON, Chief Executive Officer, and ILLINOIS STATE BOARD OF EDUCATION, Petitioners-Appellees.	)	On Petition for Review from a Final Administrative Decision of the Board of Education of the City of Chicago Board Resolution Nos. 18-1024-RS5, 18-1024-EX11

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Carolyn Taft Grosboll
SUPREME COURT CLERK

No. 1–18–2391

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAPHNE MOORE, Appellant, vs. THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, JANICE JACKSON, Chief Executive Officer, and ILLINOIS STATE BOARD OF EDUCATION, Appellees.	)	On Petition for Review from a Final Administrative Decision of the Chicago Board of Education Board Resolution Nos. 18-1024-RS5 18-1024-EX11

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RECORD FROM

Appellate Court, First District

TO

Supreme Court

CIRCUIT COURT NO. 18-1024-RS5, 18-1024-EX11

APPELLATE GEN. NO. 1-18-2391

SUPREME COURT GEN. NO. 125785

DAPHNE MOORE

Plaintiff-Appellant

vs.

BD. OF ED. OF THE CITY OF CHICAGO,

Plaintiff-Appellee.

Form 16

Case Information: 1-18-2391			
Court:	Appellate Court - 1st District	**Filed:**	11/13/2018
Classification:	Petition for Review - Administrative Order - Civil	**Case Status:**	Supreme Court Docket
Short Title:	DAPHNE MOORE v. BOARD OF EDUCATION	**Rule:**	335
Full Title:	DAPHNE MOORE, Plaintiff-Appellant vs BOARD OF EDUCATION OF THE CITY OF CHICAGO, JANICE JACKSON, Chief Executive Officer, and ILLINOIS TATE BOARD OF EDUCATION, Plaintiff-Appellees	**Trial Court Case Number:**	18-1024-RS5, 18-1024-EX11
County/Agency:	Illinois Educational Labor Relations Board	**Related Case (s):**	125785
District:		**Associated Case(s):**	125785
Circuit:		**Consolidated Case(s):**	
Recusal:		**Track:**	
Division:	1st		

Panel Assigned

- Case Notes

Entry Date	Priority	Notes	User	Modified
Authorized Court Users				
07/08/2019 10:07 AM	Normal	Spoke with Josah Groff. Will file a Sup motion. Sup record in queue.	rfontaine	rfontaine: 07/08/2019

- Milestone Summary

Ready:	08/22/2019
Submitted:	08/22/2019
Disposition:	Opinion Filed
Disposition Date:	12/23/2019
Disposition Decision:	Reversed and Remanded

- Trial Court Information

Illinois Educational Labor Relations Board

Case(s): 18-1024-RS5

18-1024-EX11

- Panel Information

No records were found.

Justice/Judge Name	Replaced Justice/Judge Name	Date Created
Pierce, Daniel J. (Author)		08/22/2019
Hyman, Michael B.		08/30/2019
Griffin, John C.		08/22/2019

- Party Information

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			Y	Y	Linda Hogan	Law Offices of Linda Hogan, 4044 North Lincoln Avenue, #243 Chicago IL 60618 Work Phone: (773) 259-5806 Work Fax: Primary E-Mail:
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Other Participants

- Financials By Case Participant

Name	Role	Fee Type	Date	Total	Status
Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich	Appellant	Docketing	12/04/2018	$50.00	Paid
Groff, Josiah Aeschliman	Appellant	Docketing	12/04/2018	$50.00	Paid
Attorney General of Illinois - Civil Division	Appellee	Appearance	06/06/2019	$30.00	Paid
Attorney General of Illinois - Civil Division	Appellee	Appearance	11/28/2018	$0.00	No Fee
Board Of Education Of The City Of Chicago	Appellee	Appearance	06/06/2019	$30.00	Paid
Doyle, Thomas Arthur	Appellee				

Hogan, Linda	Appellee	Appearance	06/06/2019	$30.00	Paid
Lowder, Lee Ann	Appellee	Appearance	06/06/2019	$30.00	Paid
Lowder, Lee Ann	Appellee	Appearance	11/19/2018	$30.00	Paid

- Record Information

Record Information

Filed Date	Record Type	Record Description	Access	Location
No records were found.				

Checkouts

Record Description	Comments	Checked Out To	Date Checked Out	Date Checked In	Added/Edited
No records were found.					

- Ticklers

Due Date	Original Due Date	Status	Tickler	Due From
01/27/2020	01/27/2020	Overdue	Release for Publication	

- Brief(s) Docket Entries

Document Description	Filing Date
Briefs - Appellant Reply Brief Filed (Down, Bloch, Bennett, Cervone, Auerbach & Yokich)	09/09/2019
Briefs - Appellee Brief Filed (Law Offices of Linda Hogan)	07/22/2019
Briefs - Appellant Brief Filed (No Oral Requested)	05/13/2019

- Docket Entries

Document Description	Filing Date	Docket Entry Type	Docket Entry Subtype
• Supreme Court - PLA - Notice of PLA Filed (125785).	02/21/2020	Supreme Court - PLA	Notice of PLA Filed
• Petition for Rehearing * - Petition for Rehearing Filed (BOARD OF ED)	01/13/2020	Petition for Rehearing *	Petition for Rehearing Filed
• Petition for Rehearing * - Petition for Rehearing Denied	01/17/2020	Petition for Rehearing *	Petition for Rehearing Denied
• Paper Copy - Paper Copy Received	01/15/2020	Paper Copy	Paper Copy Received
• Disposition * - Opinion Filed	12/23/2019	Disposition *	Opinion Filed
• Order - Court's Own Motion - Case Taken for Consideration Without Oral Argument	12/19/2019	Order - Court's Own Motion	Case Taken for Consideration Without Oral Argument
• Call of the Docket - Oral - Oral Argument Waived	12/19/2019	Call of the Docket - Oral	Oral Argument Waived
• Correspondence - Decision Notification Monday December 23, 2019	12/18/2019	Correspondence	Decision Notification
• Briefs - Appellant Reply Brief Filed (Down, Bloch, Bennett, Cervone, Auerbach & Yokich)	09/09/2019	Briefs	Appellant Reply Brief Filed
• Paper Copy - Paper Copy Received	09/24/2019	Paper Copy	Paper Copy Received

• Call of the Docket - Submitted	08/22/2019	Call of the Docket	Submitted
• Call of the Docket - Case Ready	08/22/2019	Call of the Docket	Case Ready
• 8 - Motion - Extension of Time Reply Brief (1st request) until September 10,2019 due August 5, 2019	08/01/2019	Motion - Extension of Time *	Reply Brief
• Order - Responding Order - Allowed	08/07/2019	Order - Responding Order	Allowed
• Briefs - Appellee Brief Filed (Law Offices of Linda Hogan)	07/22/2019	Briefs	Appellee Brief Filed
• Paper Copy - Paper Copy Received	07/24/2019	Paper Copy	Paper Copy Received
• Call of the Docket - Oral - Oral Argument Requested	07/22/2019	Call of the Docket - Oral	Oral Argument Requested
• Record -1 of 1 Supplement to Record Filed	07/17/2019	Record	Supplement to Record Filed
• 7 - Motion - Supplement * - Record (record in que)	07/09/2019	Motion - Supplement *	Record
• Order - Responding Order - Allowed	07/17/2019	Order - Responding Order	Allowed
• 6 - Motion - Extension of Time * - Appellee Brief (1st request) tai July 22, 2019 due June 17, 2019	06/06/2019	Motion - Extension of Time *	Appellee Brief
• Order - Responding Order - Allowed	06/11/2019	Order - Responding Order	Allowed
• Appearance - Entry of Appearance (Linda Hogan - lindahoganattorney@gmail.com)	06/06/2019	Appearance	Entry of Appearance
• Briefs - Appellant Brief Filed (No Oral Requested)	05/13/2019	Briefs	Appellant Brief Filed
• Paper Copy - Paper Copy Received	05/13/2019	Paper Copy	Paper Copy Received
• 5 - Motion - Supplement * - Record (no record in que 5/13/19 @10:36 a.m.)	05/09/2019	Motion - Supplement *	Record
• Order - Responding Order - Denied No record filed. Appellant has until June 28, 2019 to properly file record in this court.	05/14/2019	Order - Responding Order	Denied
• 4 - Motion - Extension of Time * - Appellant Brief (3rd request) tai May 16, 2019 due April 11, 2019	04/10/2019	Motion - Extension of Time *	Appellant Brief (3rd request)
• Order - Responding Order - Allowed Final Extension	04/16/2019	Order - Responding Order	Allowed Final Extension
• 3 - Motion - Extension of Time * - Appellant Brief (2nd request) tai April 11, 2019 due March 7, 2019	03/01/2019	Motion - Extension of Time *	Appellant Brief
• Order - Responding Order - Allowed	03/07/2019	Order - Responding Order	Allowed
• 2 - Motion - Extension of Time * - Appellant Brief (1st request) tai March 7, 2019 due Janaury 31, 2019	01/29/2019	Motion - Extension of Time *	Appellant Brief
• Order - Responding Order - Allowed	02/05/2019	Order - Responding Order	Allowed
• Record - 1 of 1 Record on Appeal Filed	12/27/2018	Record	Record on Appeal Filed
• Record -1 of 2 Report of Proceedings Filed	12/27/2018	Record	Report of Proceedings Filed
• Record -1 of 3 Exhibit Filed	12/27/2018	Record	Exhibit Filed
• 1 - Motion - Record/Exhibit - Record on Appeal (Record in que) Instanter	12/21/2018	Motion - Record/Exhibit	Record on Appeal
	12/27/2018		Allowed

• Order - Responding Order - Allowed		Order - Responding Order	
• Appearance - Entry of Appearance (Attorney General)	11/27/2018	Appearance	Entry of Appearance
• Docketing Statement - Docketing Statement Filed (Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich - efile@laboradvocates.com)	11/21/2018	Docketing Statement	Docketing Statement Filed
• Appearance - Entry of Appearance (Lee Ann Lowder)	11/16/2018	Appearance	Entry of Appearance
• Petition for Review - 335 Petition for Review Filed in AC	11/13/2018	Petition for Review	335 Petition for Review Filed in AC

- Motions for Extension of Time

Document Description	Filing Date	Filed By	On Behalf Of
• 8 - Motion - Extension of Time Reply Brief (1st request) until September 10,2019 due August 5, 2019	08/01/2019	Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich	Moore, Daphne
• Order - Responding Order - Allowed	08/07/2019		
• 6 - Motion - Extension of Time * - Appellee Brief (1st request) tai July 22, 2019 due June 17, 2019	06/06/2019	Hogan, Linda	Board of Education of the City of Chicago - Law Department
• Order - Responding Order - Allowed	06/11/2019		
• 4 - Motion - Extension of Time * - Appellant Brief (3rd request) tai May 16, 2019 due April 11, 2019	04/10/2019	Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich	Moore, Daphne
• Order - Responding Order - Allowed Final Extension	04/16/2019		
• 3 - Motion - Extension of Time * - Appellant Brief (2nd request) tai April 11, 2019 due March 7, 2019	03/01/2019	Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich	Moore, Daphne
• Order - Responding Order - Allowed	03/07/2019		
• 2 - Motion - Extension of Time * - Appellant Brief (1st request) tai March 7, 2019 due Janaury 31, 2019	01/29/2019	Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich	Moore, Daphne
• Order - Responding Order - Allowed	02/05/2019		

2019 IL App (1st) 182391

FIRST DIVISION
December 23, 2019

No. 1-18-2391

BOARD OF EDUCATION OF THE CITY OF CHICAGO, JANICE JACKSON, Chief Executive Officer, and ILLINOIS STATE BOARD OF EDUCATION, Petitioners-Appellees, v. DAPHNE MOORE, Respondent-Appellant.	Petition for Review from a Final Administrative Decision of the Chicago Board of Education Nos. 18-1024-RS5, 18-1024-EX11

JUSTICE PIERCE delivered the judgment of the court, with opinion.
Presiding Justice Griffin and Justice Hyman concurred in the judgment and opinion.

OPINION

¶ 1 The Board of Education of the City of Chicago (Board) filed disciplinary proceedings against Respondent, Daphne Moore, seeking her dismissal pursuant to section 34-85 of the Illinois School Code (105 ILCS 5/34-85 (West 2016)). After a hearing, the hearing officer recommended that Moore be reinstated. The Board adopted the hearing officer's recommendation and declined to dismiss Moore. However, the Board rejected the hearing officer's finding that Moore's version of events was credible and issued a Warning Resolution to Moore. The Board further found "that Moore's misconduct warrants a 90-day time-served suspension to be deducted from her net back pay." Moore appeals, arguing that the suspension and reduction in her back pay are unauthorized by law. For the following reasons, we agree and reverse the final administrative decision of the

Board and remand for further proceedings.

¶ 2 BACKGROUND

¶ 3 On April 25, 2017, the Chief Executive Officer of the Board approved charges and specifications against Moore. The Board sought dismissal of Moore, a tenured teacher at Charles W. Earle Elementary School in Chicago, because of her response to an incident that occurred in September 2016. The Board sent a dismissal letter to Moore, notifying her that charges had been approved pursuant to section 34-85 of the School Code (105 ILCS 5/34-85 (West 2016)). The letter also informed Moore that she could be suspended without pay pending the outcome of the dismissal hearing. In the dismissal letter, the Board identified eight charges against Moore that generally alleged a failure of supervision, a failure to perform certain duties, and a failure to comply with Board policies and state ethical and professional teaching standards.

¶ 4 On March 8, 2018, a dismissal hearing under section 34-85 was held on the charges and specifications before a mutually-selected hearing officer. Testimony was taken from several witnesses. On September 7, 2018, the hearing officer issued his findings and recommendations. The hearing officer found that the Board had not met its burden to show that Moore acted negligently and that the Board had not met its burden to show that Moore lied to the Board's investigator. Based on those findings, the hearing officer found that the Board had not established cause to dismiss Moore.

¶ 5 On October 24, 2018, the Board issued its Opinion and Order adopting in part and rejecting in part the hearing officer's findings. Relevant to this appeal, the Board adopted the hearing officer's finding that it did not have cause to discharge Moore. However, because the Board found that Moore "failed to act in a prudent and responsible manner," the Board reinstated Moore and issued a Warning Resolution directing her to receive certain training. The Board concluded its

order by stating "[M]oreover, the Board finds that Moore's misconduct warrants a 90-day time-served suspension to be deducted from her net pay."

¶ 6 Plaintiff timely sought administrative review in this court, challenging only the imposition of the "time-served suspension" and the corresponding deduction of salary from her net back pay.

¶ 7 ANALYSIS

¶ 8 The issue before us is whether dismissal proceedings against a tenured teacher under section 34-85 of the School Code authorize the imposition of a "time-served suspension" with a corresponding deduction of salary from the teacher's back pay and benefits award. Moore argues that section 34-85 authorizes only a termination finding and, where termination is not ordered, the Board must make the reinstated teacher whole for lost earnings. Moore further argues that if the Board issued the suspension and salary reduction penalty under a different section of the School Code, her due process rights were violated because she was never notified that it was proceeding on these alternate grounds. The Board argues that even if the time-served suspension without pay penalty is not provided for in section 34-85, other sections of the School Code allow the Board to suspend teachers without pay, and Moore's due process rights were not violated by the imposition of this penalty. For the following reasons, we reverse the decision of the Board and remand for calculation of Moore's back pay award.

¶ 9 The School Code provides for judicial review of Board decisions made pursuant to section 34-85. The School Code incorporates the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)), but requires administrative review to be initiated in this court. 105 ILCS 5/34-85(a)(8) (West 2016). In an administrative review action, an agency's decision on a question of law is not binding on the reviewing court. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). "Where resolution of an issue turns on the

interpretation of a statute, our review is *de novo*." *Finko v. City of Chicago Department of Administrative Hearings*, 2016 IL App (1st) 152888, ¶ 17.

¶ 10 We first consider whether section 34-85 of the School Code authorizes the Board to reduce a reinstated teacher's back pay as a disciplinary penalty. We find that it does not. Section 34-85 sets forth the procedures for removal of a teacher for cause. In relevant part, section 34-85 provides,

> "Pending the hearing of the charges, the general superintendent or his or her designee may suspend the teacher or principal charged without pay in accordance with rules prescribed by the board, provided that if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation."

105 ILCS 5/34-85(a)(2) (West 2016). The term "mitigation" in this section references "offsets for interim earnings and failure to mitigate losses." *Id.* § 34-85(a)(7). Because the word "must" is used in the context of safeguarding a teacher's right to full compensation in the event that discharge is not ordered, the use of the word "must" makes this statutory provision mandatory. *Andrews v. Foxworthy*, 71 Ill. 2d 13, 21 (1978).

¶ 11 As an administrative agency, a school board has "only those powers expressly conferred upon it by the General Assembly." *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 403 (1987). Because the powers of an administrative agency are strictly confined to those granted in its enabling statute, the agency "must find within the statute the authority which it claims." *Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 113 (1976). Where a penalty issued by an agency is not provided for in the statutory authority granted to the agency, the penalty is void. *Id.* at 115.

¶ 12 The Board sought to terminate Moore under the authority of section 34-85. Pending the termination hearing, section 34-85(a)(2) authorizes the teacher's suspension without pay. 105 ILCS 5/34-85(a)(2) (West 2016) ("[P]ending the hearing of the charges, the [Board] may suspend the teacher or principal charged without pay."). However, section 34-85(a)(2), also specifically provides that the teacher is to be made whole if termination is not ordered ("provided that if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation.").

¶ 13 The Board's authority to terminate after a hearing is provided for in section 34-85(a)(7). *Id.* § 5/34-85(a)(7) ("The board, within 45 days of receipt of the hearing officer's findings of fact and recommendation, shall make a decision as to whether the teacher or principal shall be dismissed from its employ."). After a hearing, there is no grant of authority to do anything other than to order discharge or to decline discharge. Had the legislature wanted the Board to have the option of suspending the teacher without pay after a hearing it would have said so. Where the Board "declines to dismiss the teacher or principal after review of a hearing officer's recommendation, the board shall set the amount of back pay and benefits to award the teacher or principal, which shall include offsets for interim earnings and failure to mitigate losses." *Id.* Again, had the legislature wanted to allow for a suspension without pay in lieu of an order of termination it would have said so. Looking at subsections (a)(2) and (a)(7), it is clear that a period of suspension is only authorized pending the final decision of the board and, after a full hearing, if dismissal is not ordered, the teacher is to be made whole through reimbursement of back pay and benefits less statutory offsets.

¶ 14 Here, the Board sought to dismiss Moore pursuant to section 34-85. After the hearing officer filed his findings of fact and recommendation, the Board declined to dismiss Moore. A

plain reading of section 34-85 shows that, because the Board did not dismiss Moore, the Board was required to make her whole for lost earnings and benefits, less setoffs. The Board failed to do so. Instead, the Board exceeded the limitations of section 34-85 by imposing its own disciplinary penalty, which it termed a "90-day time-served suspension to be deducted from her net back pay." Because a disciplinary fixed period of suspension and a corresponding reduction in back pay is not authorized by section 34-85, the penalty imposed on Moore is void. This conclusion is consistent with the section 34-85(a)(2) requirement that a teacher suspended pending a termination hearing must be made whole in the event the board declines to dismiss the teacher.

¶ 15 We reject the Board's argument that section 34-85 confers implied authority to impose lesser sanctions, such as suspension without pay, as an alternative to dismissal. Our objective in construing a statute is to give meaning to the intent of the legislature. *People v. Lewis*, 223 Ill. 2d 393, 402 (2004). The courts must consider the plain and unambiguous language of a statute as the best indicator of legislative intent. *Id.* Courts should not depart from the plain statutory language by adding provisions or reading in exceptions, limitations, or conditions that were not expressed by the legislature. *Id.*

¶ 16 Section 34-85 does not expressly authorize the Board to issue suspensions or other disciplinary reductions in back pay. The legislature specifically prescribed two possible outcomes for proceedings instituted under section 34-85: dismissal or reinstatement with back pay and restoration of benefits. We will not insert a provision for an alternative penalty that was not expressed by the legislature. Because the legislature did not grant the Board the power, after the hearing, to impose a disciplinary suspension without pay in section 34-85, the Board was required to make Moore whole and it did not have the authority to reduce Moore's back pay through the

"time-served suspension." Because the Board declined to terminate Moore, it had no authority to reduce Moore's back pay award and therefore this penalty is void.

¶ 17 The Board's argument that the power to suspend Moore is implied in section 34-85 finds no support in our case law. Moore cites to two cases from different appellate districts that dealt with the issue of whether statutory termination proceedings allowed for the suspension of a teacher. In *Craddock v. Board of Education*, 76 Ill. App. 3d 43, 45 (1979), the Third District found that a suspension was in effect a temporary dismissal, and a school board's power to suspend was derived from the section of the School Code that authorized the dismissal of tenured teachers in school districts outside of Chicago. However, in *Kearns v. Board of Education of North Palos Elementary School District No. 117*, 73 Ill. App. 3d 907, 912 (1979), the First District held that suspensions were not encompassed in the term "dismissal," so a suspension was not authorized by the School Code section providing for removal of tenured teachers. Instead, the *Kearns* court held that suspension was an implied power of the school board under the section of the School Code that allowed the school board to "adopt and enforce all necessary rules for the management and government of the public schools of their district." *Id.* at 911. Our supreme court reviewed both cases and ultimately agreed with the reasoning in *Kearns* and rejected the reasoning of the *Craddock* majority. *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 403 (1987). The *Spinelli* court stated that the legislature clearly used the word "suspend" when it intended do so, and "if the legislature intended suspension to be treated the same as dismissals, it would have said so." *Id.* at 405-406 (quoting *Kearns*, 73 Ill. App. 3d at 912).

¶ 18 Following the reasoning in *Spinelli*, we find that where the Board fails to meet its burden of proof in a section 34-85 termination proceeding, the Board does not have express or implied authority to impose a suspension without pay in lieu of termination. As discussed above, because

a suspension is outside the authority granted to the Board in section 34-85, the penalty imposed on Moore is void.

¶ 19 In the alternative, the Board argues that even if it did not have the authority to order a suspension without pay under section 34-85, it had the power to suspend Moore under other sections of the School Code, and so its penalty is proper. There is no dispute that the Board has the power to suspend teachers without pay under section 34-8.1 (105 ILCS 5/34-8.1 (West 2016)) and section 34-18 (*id.* § 5/34-18). Moore argues that we must reject this argument as impermissible *post hoc* justification. We agree.

¶ 20 Moore cites to *Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 2018 IL App (4th) 160827, where the Illinois Labor Relations Board (ILRB) declared a bargaining impasse using a three-factor test, rather than the usual five-factor test. The ILRB did not explain its reasoning before the board and did not explain its reasoning for departing from the administrative law judge's finding that there was no bargaining impasse. On appeal, we rejected the State's argument that the appellate court can affirm on any basis in the record when the agency itself failed to provide an explanation for its action. We found that "the courts may not accept appellate counsel's *post hoc* rationalizations for agency action. [Citation.] It is well established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Id.* at ¶ 37 (quoting *Motor Vehicle Manufacturers Ass'n of the United States v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 50 1983)).

¶ 21 Here, the Board clearly articulated that section 34-85 was the basis for the suspension it imposed on Moore. The Board stated in its dismissal letter that the proceedings against Moore were instituted under section 34-85. The termination hearing was held, and the hearing officer issued his recommendation, under the provisions of section 34-85. In the "Applicable Law and

Policy" section of its final decision, the Board cited only section 34-85 when discussing the legal effect of its factual findings. The Board's argument on review that its final order was vague and did not reference the basis for the suspension is completely refuted by the repeated references to section 34-85 in the record. The Board points to no other legal basis in the record below to justify the order of suspension without pay. Therefore, we reject the Board's arguments on appeal that Moore's penalty is proper under other provisions of the School Code.

¶ 22 The Board reminds this court that we may affirm its decision on any basis in the record. Specifically, the Board argues that the record supports the imposition of a suspension without pay. This argument misses the point: Moore only challenges the penalty imposed after the termination hearing, not the sufficiency of the evidence. We have found that the Board acted beyond the scope of authority granted to it in section 34-85. The Board elected to proceed under section 34-85; it conducted its termination hearing and issued its final order pursuant to this section. The Board chose an all or nothing proceeding, and, to its credit, decided that termination was not the proper order. It now must comply with the remainder to the statute and make Moore whole.

¶ 23 Having found that the penalty of suspension and a corresponding reduction in net back pay is not an authorized order under section 34-85, we need not address Moore's due process argument.

¶ 24 CONCLUSION

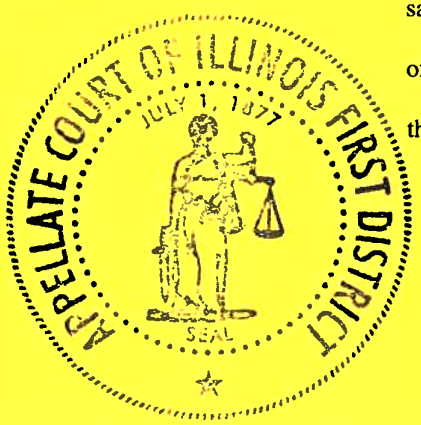
¶ 25 Based on the foregoing, we find that Section 34-85 does not grant the Board the authority to reduce a reinstated teacher's back pay award as a disciplinary penalty or through a "time-served suspension." We therefore reverse the Board's decision to issue Moore a "90-day time-served suspension to be deducted from her net pay" as void and outside the statutory authority granted in section 34-85. We remand to the Board to issue an administrative decision as to the amount of

back pay and benefits due to Moore in accordance with section 34-85(a)(8) of the School Code (105 ILCS 5/34-85(a)(8) (West 2016)).

¶ 26 Board decision reversed and remanded for further proceedings.

I, THOMAS D. PALELLA Clerk of the Appellate Court, in and for the First District of the State of Illinois and keeper of the records, files and seal thereof, Do HEREBY CERTIFY That the foregoing is a true copy of the final order and judgment and all other proceedings of the said Appellate Court in the above entitled cause, of record in my office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 28th day of May in the year of two thousand and twenty



Thomas D. Palella

Clerk of the Appellate Court of the First District, Illinois

18-1024-RS5

October 24, 2018

RESOLUTION BY THE BOARD OF EDUCATION OF THE CITY OF CHICAGO REGARDING THE DISCHARGE OF DAPHNE MOORE, TENURED TEACHER, ASSIGNED TO EARLE STEM ACADEMY

WHEREAS, pursuant to Section 34-85 of the Illinois School Code, 105 ILCS 5/34-85, a hearing was conducted before an impartial hearing officer, Brian Clauss, certified by the Illinois State Board of Education; and

WHEREAS, after the conclusion of the dismissal hearing afforded to Daphne Moore, the Hearing Officer made written findings of fact and conclusions of law, and recommended the reinstatement of Ms. Moore; and

WHEREAS, the Board of Education of the City of Chicago has reviewed the post-hearing briefs and hearing transcript and exhibits ("record"), along with the findings of fact, conclusions of law, and recommendation of Hearing Officer Clauss; and

WHEREAS, the parties were given an opportunity to submit exceptions and a memorandum of law in support of or in opposition to the Board's adoption of Hearing Officer Clauss's recommendation; and

WHEREAS, the Board of Education of the City of Chicago accepts in part and rejects in part the factual findings and conclusions of the hearing officer, and it concludes that the record does not establish sufficient cause for dismissal of Ms. Moore.

NOW THEREFORE, be it resolved by the Board of Education of the City of Chicago, as follows:

Section 1: After considering (a) the Hearing Officer's findings of fact, conclusions of law and recommendation, (b) the record of the dismissal hearing, and (c) any exceptions and memoranda of law submitted by the parties, the Board of Education of the City of Chicago accepts in part and rejects in part the Hearing Officer's findings of fact and legal conclusions, and it makes additional findings as detailed in an attached Opinion and Order adopted under separate cover, on the basis of which the Board accepts the Hearing Officer's recommendation for reinstatement.

Section 2: Daphne Moore is hereby reinstated to her employment with the Board of Education of the City of Chicago, and less the wage amount for a 90-day suspension (deemed as time served) and the amount of mitigation by the teacher.

Section 3: This Resolution shall take full force and effect upon its adoption.

THEREFORE, this Resolution is hereby adopted by the members of the Board of Education of the City of Chicago on October 24, 2018.

ILLINOIS STATE BOARD OF EDUCATION
BEFORE HEARING OFFICER BRIAN CLAUSS

IN THE MATTER OF THE CHARGES PREFERRED AGAINST	)	
DAPHNE MOORE,	)	
Respondent,	)	Teacher Dismissal Proceeding
by	)	
THE CHIEF EXECUTIVE OFFICER OF THE CHICAGO BOARD OF EDUCATION,	)	
Petitioner.	)	

OPINION AND ORDER

This cause comes before the Board of Education of the City of Chicago on the recommended decision of Hearing Officer Brian Clauss ("HO Clauss"), who found that Petitioner did not meet her burden of establishing that the Board has cause to discharge Daphne Moore ("Moore") for negligently failing to act when notified that a student in her class had ingested an unknown quantity of unknown pills. (Recommended Decision, pp. 13).[1] As discussed more fully below, after carefully reviewing the transcript of the proceedings, documents admitted into evidence, positions of the parties, and HO Clauss' recommendation, the Board partially rejects and partially adopts his recommended findings of fact and legal conclusions and reinstates Moore, but reduces her net back pay by payment for 90 work days as a time-served suspension, and issues a separate Warning Resolution to Moore.

[1] All citations are to the pages of HO Clauss' Recommended Decision, unless otherwise indicated.

FINDINGS OF FACT

I. Factual Findings the Board Adopts from HO Clauss' Recommendation.

The Board adopts HO Clauss' factual finding that Moore was notified that student Z. had taken pills by student N._, another student in her class. (11).

The Board further adopts HO Clauss' finding that it does not have cause to discharge Moore. (13).

II. Legal Conclusions and Factual Findings the Board Rejects from HO Clauss' Recommendation, and Additional Factual Findings by the Board

The Board rejects HO Clauss' findings that Moore hit the buzzer to alert the office of an emergency situation and thus was not negligent. (11). The Board further rejects HO Clauss' findings that Student Z.C. took pills at lunch, not in Moore's classroom. *Id.* The Board also rejects HO Clauss' finding that there is nothing in the record to indicate what students M. and N. said to Moore. *Id.* The Board further rejects HO Clauss' finding that Moore went to check on student Z. after learning that she had ingested pills. *Id.*

A. The Board Rejects HO Clauss' Finding That Moore Hit the Buzzer to Alert the Office of an Emergency Situation.

HO Clauss found the Moore's statement that she pressed the buzzer is not contradicted. (10). The Board rejects this finding. Moore herself contradicted this statement – both in testimony and in writing. In the statement made to the CPS investigator, Moore stated that before she could "hit the bell and alert the office, [Principal Petties] walked in the classroom." Petitioner's Exhibit 6 at Bates Stamp 20. Moore initially testified that she "immediately kind of went out -- walked out of the closet area asking, Z., did you take anything at lunch? And as I'm doing this, I'm walking towards the buzzer. She never really responded. So I hit the buzzer. And

I said to Ms. Mahone [the special education classroom assistant in Moore's room], can you take her to the office?" Hearing Transcript at 112.

Moore initially testified that the buzzer was located under the Promethean board. She then testified that she wasn't sure where the buzzer was located because she had switched classrooms three times. Moore continued: "So I'm trying to remember my – my normal – board – it would have been over on this board, and I may have gone to the motion for this and never hit the bell." Tr. at 112-113 (emphasis added). Moore equivocated further when she testified that she thought the buzzer was below the board, but she may have been thinking of a previous classroom: "I motioned for it. Let's say that. I don't know if I motioned and didn't see it, but I thought I hit it." Tr. at 113. This testimony by Moore was consistent with her statement to the investigator that she did not buzz the office. Moore made that statement to the investigator just three weeks after the incident happened. Pet. Ex. 6 at 20.

Moore also testified that no one responded to her page. Tr. at 127. She did not hear anyone speak over the intercom. She did not hear anyone answer her page. *Id.* If the clerk had just let the principal know that Security Officer Johnson told her that Z. had taken pills, it is unlikely that the clerk left her post just after Principal Petties rushed from the office.

Further, it is unlikely that Moore paged the office and the clerk did not answer because Principal Petties testified that he radioed the office to call 911 and the ambulance arrived. Tr. at 73. Further Principal Petties testified that the clerk was expected to answer pages within five seconds. If the clerk did not answer the intercom then it continues to beep intermittently until it is answered. Tr. at 94-95.

The finding that Moore paged the office is also contradicted by Security Officer Johnson. Johnson testified that when he entered the classroom, Moore was standing by her desk about three to four feet away from Z.'s desk – toward the back window. Tr. at 60, 63. According to

Johnson, the buzzer in Moore's classroom is on the far side of the room away from Johnson's desk. Tr. at 64.

Accordingly, a preponderance of the evidence establishes that Moore did not hit the buzzer to alert anyone even though she was notified that student Z. had swallowed an unknown quantity of pills.

B. The Board Rejects HO Clauss' Finding That Z.C. Took Pills At Lunch Rather Than In Moore's Classroom.

HO Clauss found that Z. had taken pills at Lunch rather than in Moore's classroom. (11). HO Clauss presumably based this finding on Moore's testimony when she stated that "N._ asked did I want to know what was wrong with her. . . . I told her, yes. She then said she thought she had taken pills during lunch." Tr. at 112. The Board rejects this finding. Z. herself testified clearly, and unequivocally that she herself took the pills approximately midway through Moore's class. Tr. 33-34. Moore provided no testimony about having seen Z. take the pills, and her account of what N._ told her is less determinative that the clear testimony of Z. herself. Accordingly, the Board rejects HO Clauss' finding and finds that Z. took the pills approximately midway through Moore's class.

C. The Board Rejects HO Clauss' Finding That There is Nothing In The Record To Indicate What Students M._ and N._ Said To Moore

HO Clauss found that there is nothing in the record to indicate what students M. and N. said to Moore. (11). The Board rejects this finding. Moore herself testified that N. notified her that Z. had taken pills, which HO Clauss acknowledges in his decision three sentences later. (11). Accordingly, the Board finds that N. notified Moore that Z. had taken pills.

D. The Board Rejects HO Clauss' Finding That Moore Went To Check On Z. After Learning That She Had Taken Pills

HO Clauss found that Moore went to check on Z. after being notified that Z. had taken pills. (11). The Board rejects this finding.

HO Clauss accepted the testimony of Security Officer Larry Johnson that students ran downstairs to tell him Z. had ingested something. (5). Further, Z. testified that that Moore never came to ask Z. if she was okay. Tr. at 39. Moore did not ask Z. if she had taken pills. She did not ask Z. what kind of pills she took or how many pills she took. Tr. at 41-42. Moore's version of events, where she immediately acted upon learning that Z. had taken pills, is inconsistent with testimony from Z. herself and does not make logical sense given the testimony of the other witnesses that established the students left the room to get help. Accordingly, the Board finds that Moore failed to check on the well-being of student Z. after learning that she had ingested an unknown quantity of pills.

LEGAL ANALYSIS

I. Applicable Law and Policy.

Before service of notice of dismissal charges on causes that may be deemed to be remediable, the teacher must be given reasonable warning in writing, stating specifically the causes that, if not removed, may result in dismissal. 105 ILCS § 5/34-85(a). However, Conduct that is cruel, immoral, negligent or criminal is irremediable *per se*. *Younge v. Board of Education of City of Chicago,* 338 Ill.App.3d 522, 534, 275 Ill. Dec. 277, 788 N.E.2d 1153 (3d Dist. 2003). The Board does not need to show that this type of conduct caused any damage, only that the behavior occurred. (*Id.* 533–34, 788, 1153). Negligence is defined as "[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." BLACK'S LAW DICTIONARY (9th ed. 2009).

The Board's Misconduct/Discipline Matrix also prohibits the failure to act in the manner of a reasonably prudent educator in the supervision of students, the failure to follow Board policies concerning students, and the failure to perform one's duties. (Pet. Ex 3). Moreover, the Illinois State Board of Education requires Illinois educators to maintain a high level of professional judgment. (Pet. Ex. 7-8).

II. Moore Was Not A Credible Witness.

Moore's testimony on several issues was wholly inconsistent with a preponderance of other evidence presented at hearing. Moore claimed Z. walked out of the room under her own power, which was contradicted by multiple other witnesses. Tr. 42, 79, 116. Moore claimed that no students left her room, which was, again, contradicted by multiple other witnesses. Tr. 117, 128, 134. Importantly, HO Clauss made no specific finding that Moore was a credible witness. The absence of such a finding, taken in conjunction with Moore's contradictory testimony on multiple matters, including her pressing of the intercom, and the totality of the evidence and testimony presented leads the Board to find that, even if Moore did attempt to page the office via the intercom button after N._ told her Z. had just taken pills, then her slow response was negligent.

III. Moore's Failure to Act when Notified That Z.C. Had Ingested Pills was Negligent, Caused Harm to Z.C., and warrants the issuance of a Warning Resolution and a reduction in back pay.

While the Board accepts HO Clauss' recommendation not to discharge Moore, it finds that Moore's misconduct warrants a Warning Resolution and a 90-day reduction in the net back pay paid out to her. Specifically, the Board finds that totality of the evidence and testimony presented at hearing indicates that Moore failed to press the intercom button, or take any other action to notify Earle Elementary Administration, that student Z. had taken an unknown quantity of pills despite being notified of the same. Moore's failure to act in the face of an emergent medical situation resulted in a delay in student Z. receiving medical attention and placed her health and well-being in jeopardy. Moore acted negligently when she failed to check on student Z. or notify the Earle Administration promptly of the situation. Any reasonably prudent educator would have immediately notified school officials upon learning that a student had ingested an unknown quantity of unknown pills.

It is not disputed that Moore was notified that Z. had consumed an unknown quantity of unknown pills. However, the only testimony alleging any facts to support the contention that Moore

pressed the intercom button in her classroom came from Moore herself. Importantly, Moore could not affirmatively state that she notified the administration – she equivocated multiple times in both prior statements and her sworn testimony. Pet. Ex. 6 at 20; Tr. 112-113 (Moore told the investigator that the principal came in before she could hit the buzzer, and then testified that she did not see the buzzer but she "motioned for it." This, taken in conjunction with Moore's overall lack of credibility as a witness, leads the Board to find that Moore failed to act in a prudent and responsible manner upon learning of Z.'s emergent medical situation.

Accordingly, the Board adopts HO Clauss' recommendation to reinstate Moore, and the Board finds that Moore's misconduct warrants the issuance of a separate Warning Resolution, directing her to attend training on emergency responsiveness and suicide prevention (with proof of compliance to be filed by December 31, 2018), and that she must ensure to follow Board and school policies in responding to emergency situations in her classroom, and to act with the reasonable care required of an educator when dealing with the supervision and care of students. Moreover, the Board finds that Moore's misconduct warrants a 90-day time-served suspension to be deducted from her net back pay.

CONCLUSION

The Board partially rejects and partially adopts his recommended findings of fact, reinstates Moore, effective October 24, 2018, and issues Moore a separate Warning Resolution and reduces Moore's net back pay by 90 working days.

The Opinion and Order has been adopted by the Board of Education of the City of Chicago.

Frank M. Clark
President
Board of Education of the City of Chicago

Decided: October 24, 2018
Issued: October 24, 2018
Board Report: 18-1024-RS5

18-1024-EX11

October 24, 2018

WARNING RESOLUTION – DAPHNE MOORE, TENURED TEACHER, ASSIGNED TO CHARLES W. EARLE STEM ELEMENTARY SCHOOL

TO THE CHICAGO BOARD OF EDUCATION

THE CHIEF EXECUTIVE OFFICER RECOMMENDS THE FOLLOWING:

That the Chicago Board of Education adopts a Warning Resolution for Daphne Moore and that a copy of this Board Report and Warning Resolution be served upon Daphne Moore.

DESCRIPTION: Pursuant to the provisions of 105 ILCS 5/34-85, the applicable statute of the State of Illinois, and the Rules of the Board of Education of the City of Chicago, a Warning Resolution be adopted and issued to Daphne Moore, Tenured Teacher, to inform her that she has engaged in unsatisfactory conduct.

The conduct outlined in the Warning Resolution will result in the preferring of dismissal charges against Daphne Moore, pursuant to the Statute, if said conduct is not corrected immediately and maintained thereafter in a satisfactory fashion following receipt of the Warning Resolution. Directives for improvement of this conduct are contained in the Warning Resolution.

LSC REVIEW: LSC review is not applicable to this report.

AFFIRMATIVE ACTION REVIEW: None.

FINANCIAL: This action is of no cost to the Board.

PERSONNEL IMPLICATIONS: None.

Respectfully submitted,

Janice K. Jackson, Ed. D.
Chief Executive Officer

Approved as to legal form:

Joseph T. Moriarty
General Counsel