

ILLINOIS STATE BOARD OF EDUCATION

IN THE MATTER OF THE CHARGES)
PREFERRED AGAINST)

CATHERINE ALIA)

Respondent, Teacher,)

By)

THE BOARD OF EDUCATION OF THE)
CITY OF CHICAGO)

Petitioner, Employer.)

RECEIVED

JAN 10 2001

Legal Advisor

HEARING OFFICER: ANN S. KENIS

Arb. No. 00/009

APPEARANCES:

On Behalf of the Board:

Marilyn F. Johnson, General Counsel
Stephanie A. Benway, Assistant Attorney
David A. Hemenway, Assistant Attorney
James G. Ciesil
Board of Education of the City of Chicago
125 South Clark Street, 7th Floor
Chicago, Illinois 60603

On Behalf of the Respondent:

James B. Dykehouse
Witwer, Poltrack & Giampietro
125 South Wacker Drive, Suite 2700
Chicago, IL 60606

WITNESSES:

On Behalf of the Board:

Lemuel Hogue	Investigator, School and Regions
Gwendolyn McDonald	Parent volunteer, Revere Elementary School
Daneen Burrage-Brown	School clerk, Revere Elementary School
Pamela J. Parker	Assistant Principal, Revere Elementary School
Shelby L. Taylor	Principal, Revere Elementary School

On Behalf of the Respondent:

Catherine Alia	Respondent
Linda Rogers	Former Teacher Assistant, Revere Elementary School
Janet Harris	Parent of a Revere Elementary School student
Jackqueline Ward	Teacher, Revere Elementary School
Odessa Wiggins	Teacher, Revere Elementary School
Esther Blackwell	Guardian of a Revere Elementary School student

I. INTRODUCTION

This administrative proceeding involves the dismissal of a tenured teacher, Catherine Alia, by the Board of Education of the City of Chicago. On March 17, 2000, the Board's Chief Executive Officer, Paul G. Vallas, approved dismissal charges against the Respondent in connection with alleged violations of the Board's Employee Discipline Code. Respondent was suspended without pay pending dismissal based on specifications alleging that she had not sought immediate medical assistance nor did she timely inform supervision after slamming a classroom door on a student's fingertip.

Respondent filed a timely demand pursuant to Section 34-85 of the Illinois School Code, 105 ILCS 5/343-85, for a hearing on the charges and specifications. Under the aegis of the Illinois State Board of Education, the undersigned Hearing Officer was selected and a hearing was scheduled. The hearing took place on October 17, 18 and 19, 2000. After the presentation of

evidence and testimony by both the Board and the Respondent, the Hearing Officer granted the parties leave to submit post-hearing briefs. Each party thereafter filed a comprehensive post-hearing brief, the second of which (the Board's) was received on December 4, 2000, whereupon the hearing was declared closed.

Several motions in connection with pre-hearing discovery were presented prior to the hearing and were ruled upon by the undersigned Hearing Officer. The undersigned Hearing Officer will not address those issues again inasmuch as the rulings and a record of those issues have been fully developed.

II. CHARGES AND SPECIFICATIONS AGAINST THE RESPONDENT

The Chief Executive Officer approved the following charges against the Respondent:

CHARGES

1. Conduct unbecoming a Chicago Public School employee.
2. Violation of Section 4-8 of the Employee Discipline Code prohibiting any conduct which is cruel, immoral, negligent, criminal, or causes psychological or physical harm or injury to a student.
3. Violation of Section 4-9 of the Employee Discipline Code prohibiting violation of School Rules, or Board rules, policies or procedures which result in behaviors that grossly disrupt the orderly educational process in the classroom, in the school, and may occur on or off school grounds or assigned work location.

SPECIFICATIONS

1. On or about January 26, 2000 you slammed a classroom door shut on 9 year old J.W.'s finger such that the child's fingertip was severed and bled profusely.
2. You did not seek immediate assistance for the child.
3. You did not timely inform your principal or any supervisor of the child's injury.

III. STATEMENT OF FACTS

Respondent Catherine Alia is a tenured teacher who worked for the Chicago Public Schools for over 13 years. For the last ten years, Alia was assigned to Revere Elementary School, where she taught a cross-categorical special education class. Alia is certified in special education in the areas of learning disabilities, cognitive delayed, and emotional/behavioral disorders. In addition, she holds a general teaching certificate in science for grades 6-12 and a type 734 certificate in counseling.

During the 1999-2000 school year, Alia's cross-categorical special education class contained eight to ten students of different age and grade levels ranging from third to fifth grade. Alia was provided with a teaching assistant when one was available. Throughout the school year, Alia was assisted in her classroom by teaching assistants for part of the school day.

Shelby Taylor has been the Principal at Revere Elementary School for the last three years and has been with the Chicago Public Schools for 31 years. He testified that there are approximately 560 students at Revere School. The school itself is a three-story building that consists of three adjoining areas: the primary building, the middle school building, and the auditorium and gym. There is a security desk manned by a security guard at the entrance to the school. The entrance is located at the west end of the primary building, near the corridor which accesses the middle school, the auditorium and the gym. The principal's office, or the main office as it is called, is located on the first floor at the other end of the primary school, next to the pre-kindergarten classroom on the north end of the building. There is a second security desk stationed on the first floor of the middle school. In addition, there is a discipline office located in Room 100, at the west end of the middle school.

Ms. Alia was assigned to room 308 during the 1999-2000 school year. Her classroom was located on the third floor of the primary building, two floors above the main office.

The events that led to her dismissal took place on January 26, 2000. On that date, Ms. Alia's teaching assistant, Elaine Lockridge, entered the classroom shortly after lunch. Ms. Alia testified that several students - Jasmine, Alan and Kirk, were disrupting the class at that time by running around the room, jumping on the study carrels, and leaving the classroom. Ms. Alia stated that the students' behavior was not unusual in that regard. Whenever there was a change in routine, or when someone entered the classroom, some of these special education students tended to act out inappropriately.

In response to the disruption, Ms. Alia spoke to each of her students individually to explain that Ms. Lockridge was going to take over the reading lesson. As soon as Ms. Lockridge began the lesson, Jasmine began "acting up" again by running around the room, running out of the classroom, and running up and down the hall. Ms. Alia testified that Jasmine's behavior on January 26 was not unusual because the child regularly got out of her seat and ran into the hallway. As she had done on five to ten other occasions during the previous months, Ms. Alia took Jasmine into the hallway to write up a parent discipline conference request form. When she was finished, Ms. Alia sent Jasmine back into the classroom to join Lockridge's reading group, which was located just inside the entrance to the classroom.

After Jasmine joined the class, Ms. Alia noticed that Kirk was trying to instigate a fight, so she brought Kirk into the hallway to write him up as well. According to Ms. Alia's testimony, once Kirk exited the classroom, he ran across the hallway and into the boys' washroom. To prevent Kirk from re-entering the classroom before she had finished the disciplinary write-up, Ms.

Alia closed and locked the classroom door. The door to the classroom is approximately three inches thick, with a window panel covering the top half of the door. The door opens out into the hallway.

As Ms. Alia coaxed Kirk out of the washroom, she noticed the door to her classroom opening. At the same time, Kirk began running toward the classroom door to try to re-enter the classroom. To prevent him from doing this, Ms. Alia, who was looking at Kirk, quickly shut the door. She immediately heard a scream. Then she saw Jasmine standing at the door, her hand bleeding profusely. Jasmine's finger had been partially severed at the tip. Ms. Alia testified that she applied first aide to the wound by wrapping the finger and applying pressure to stop the bleeding.

Ms. Alia stated in her testimony that she did not "buzz" or notify the office of Jasmine's injury. Her testimony on that point conflicts with that of Assistant Principal Pamela Parker and school clerk Daneen Brown, who stated that they clearly heard Ms. Alia's voice on the intercom requesting a "clean up." There is no dispute, however, that Ms. Alia did not inform the office that a student had been injured nor did she tell them that Jasmine's finger had been partially severed. Assistant Principal Parker testified that a request for a "clean-up" is somewhat routine, and usually involves a spill or a child who has vomited. Thus, at that point, no one at the office knew that anything unusual had occurred in Ms. Alia's classroom.

Ms. Alia took Jasmine down the hallway, intending to go to the main office, according to her testimony. Ms. Alia stated that she initially planned to go to the main office with Jasmine but changed her mind when she saw the office "was crowded with people on the bench and everything." She decided instead to take Jasmine to the discipline office located in Room 100 at

the opposite end of the school to see Mr. Robertson, the disciplinarian. Explaining her actions, Ms. Alia testified that Robertson's office is not only used for discipline; teachers can use the office to make conference calls, whereas phones in the main office are used by school administration only.

It is Ms. Alia's testimony that she informed Ms. DeBerry, the security guard stationed at the front door to the building, to notify Mr. Robertson that she was on the way. Ms. Alia did not mention in her testimony that Revere School parent volunteer Gwendolyn McDonald was stationed at that security desk as well. McDonald testified that she saw Jasmine and Ms. Alia come down the stairs. Jasmine was crying and when McDonald asked what was the matter, Jasmine showed her that her fingertip had been severed. McDonald asked Ms. Alia where they were going, and Ms. Alia responded that they were headed to Mr. Robertson's office. When McDonald asked Ms. Alia whether the main office had been notified so that they could call the paramedics, Ms. Alia continued walking toward the middle school building and did not answer, McDonald testified. McDonald immediately went to the main office and reported that Jasmine had been injured.

Meanwhile, as Ms. Alia and Jasmine approached the discipline office, Ms. Alia was stopped by Security Officer Gregory Daggett, who also asked where she and Jasmine were going. Ms. Alia testified that she told Daggett she intended to take Jasmine to Robertson's office. At this point, Daggett intervened and advised Ms. Alia to take Jasmine to the main office. Ms. Alia

testified that Daggett told her there were no medical supplies at the disciplinarian's office.

Daggett then escorted them back to the main office.¹

Shortly thereafter, Daggett and Jasmine arrived at the main office, with Ms. Alia following behind them. Daggett announced that Jasmine's finger had been cut off, and the paramedics were contacted immediately. Daggett went and got a paper towel to wrap around the portion of Jasmine's finger he held in his hand. The office staff attempted to contact Jasmine's parents. Paramedics arrived three to five minutes later and Ms. Alia explained to them how the injury occurred. Jasmine was taken by ambulance to the hospital accompanied by a school assistant.

Ms. Alia filled out an incident report and then reported back to her classroom. Principal Taylor then discussed with Ms. Alia what had transpired. Ms. Alia described the incident and how Jasmine's finger got caught in the classroom door. According to Principal Taylor, Ms. Alia demonstrated little caring or concern for Jasmine's condition. Mr. Taylor also talked with Ms. Lockridge, whose version of the events concurred with Mrs. Alia's.

In addition, Mr. Taylor spoke with Security Officer Daggett and Ms. McDonald, the parent volunteer. Daggett informed him that, when he saw Ms. Alia and Jasmine walk by his station, he could see that Jasmine needed medical attention. Daggett also told Principal Taylor that he knew that they were on their way to the disciplinarian's office because Ms. Alia told him that she was taking Jasmine there. Similarly, Ms. McDonald expressed to Principal Taylor that she was "dismayed and concerned" when she saw Ms. Alia taking Jasmine, who was obviously injured, to the disciplinarian's office.

¹ Daggett and DeBerry did not testify at the hearing. Daggett is no longer in the employ of the Chicago Board of Education.

Attempts to contact Jasmine's parents were unsuccessful. Because they were unable to obtain parental consent for surgery, the doctors could not reattach the tip of her finger. The next day, Principal Taylor went to Jasmine's home to inquire about her injury. Principal Taylor testified that Jasmine, who is eight years old, was home alone with an eighteen-month old baby. According to Principal Taylor, he finally spoke with Jasmine's mother two days after the incident when she appeared at the school. Jasmine returned to school within a week after the incident occurred.

Principal Taylor held a disciplinary conference on February 16, 2000 in response to the events that occurred on January 26, 2000. According to the Discipline Hearing Summary, Ms. Alia was charged with negligent supervision of a student, resulting in physical or psychological injury. Principal Taylor testified that the meeting focused on the door-slammimg incident and his conclusion that Jasmine's injury was an accident. Based on that focus, Principal Taylor issued Ms. Alia a written reprimand.²

The Investigations Department for the Chicago Public School was notified and Investigator Lemuel Hogue was assigned to investigate the incident. Investigator Hogue came to Revere School on February 2, 2000, and spoke with Principal Taylor. Principal Taylor informed Investigator Hogue that he believed Jasmine's injury was accidental, but that it appeared that Ms. Alia had failed to report the incident to the school administrative staff. He also told Mr. Hogue that the matter was reported to the Department of Children and Family Services and to the Chicago Police Department, and that both declined to take any action.

² Ms. Lockridge, the teacher's assistant who was present in the classroom at the time of Jasmine's injury, received no discipline as a result of the incident.

Investigator Hogue also interviewed Ms. Alia after she refused Union representation. According to Hogue's unrefuted testimony, Ms. Alia told him that she had accidentally caught Jasmine's finger in the classroom door and that she was taking Jasmine to the disciplinarian's office. When Hogue asked why she was taking the child to the disciplinarian's office when Jasmine's finger had been severed, Ms. Alia responded that "the student had been bad all day and that she had been instructed that when a student has been disruptive or bad, that she should take them to the disciplinarian's office." Hogue asked again why she did not seek immediate medical assistance for Jasmine, but at that point Ms. Alia refused to comment any further.

Investigator Hogue interviewed several other school employees, including security guard Daggett and Ms. Alia's assistant, Ms. Lockridge. He also interviewed several students in Ms. Alia's classroom. Mr. Hogue testified that he does not make disciplinary decisions but merely ascertains whether there is sufficient evidence to warrant a belief that the situation occurred. Upon concluding his investigation, he issued a report finding that the matter should be classified as "substantiated."

After Investigator Hogue's report was issued, the written reprimand was rescinded. Principal Taylor testified that the reprimand was rescinded because he was not fully apprised of Ms. Alia's actions at the time the reprimand was issued. He stated that there was new information contained in Investigator Hogue's report that made it clear that Ms. Alia's actions after Jasmine had her finger severed had been improper. Principal Taylor stated that a teacher's immediate response when a student has been injured should be to call the office and seek medical care and that those actions should be given highest priority. Ms. Alia did not do that on January 26, 2000, Principal Taylor concluded.

On cross-examination, Principal Taylor acknowledged that cross-categorical classrooms can be difficult. Each student may have specific behavioral and learning problems that must be addressed individually. The teacher is required to follow the IEP (Individual Education Program) for each child. Principal Taylor conceded that teaching in such a classroom is “not an easy proposition.” He further stated that, in his view, Ms. Alia would never intentionally hurt a child and he acknowledged that he has never disciplined her in the past for neglecting a student’s needs. On the contrary, the record shows that Mr. Taylor gave Ms. Alia a rating of excellent for the 1998-1999 and 1999-2000 school years.

Three of Ms. Alia’s colleagues also testified at the hearing. Ms. Belinda Rogers, one of Ms. Alia’s teaching assistants, characterized Ms. Alia’s attitude toward her students as “very loving,” and stated that “she took a lot of time with her kids.” Rogers testified that she never saw Ms. Alia engage in any kind of conduct that would have placed her students at risk of injury. Ms. Jacqueline Ward, who also taught a cross-categorical classroom and currently teaches first grade, described Ms. Alia as perhaps “overly sensitive” to her students’ needs. She stated that Ms. Alia was very nurturing with the children and took a very personal approach in dealing with them on an individual basis when teaching and disciplining them. Ms. Odessa Wiggins, whose classroom was across the hall from Ms. Alia’s, described her as a very caring person who put forth a special effort to meet the students’ needs.

In addition, Ms. Esther Blackwell and Janet Harris, guardians of students in Ms. Alia’s classroom, testified at the hearing. Ms. Blackwell, grandmother to a student named Kirk and also a teacher volunteer at Revere School, indicated that her grandson did better in Ms. Alia’s classroom than in any other because she was patient and communicated so well about the

student's progress. Ms. Blackwell stated that it was her belief that Ms. Alia would never put a student in harm's way. Similarly, Ms. Harris, mother to Jason, testified that she was never concerned for her son's safety while he was in Ms. Alia's classroom. She further stated that her son was extremely upset when Ms. Alia was removed from the classroom.

Ms. Ward, who is also the Union delegate at Revere School, further testified that there are no written policies or procedures which address the manner in which teachers and staff are to deal with injured students. She stated that teachers have been issued plastic bags and rubber gloves to deal with possible blood contamination, but, beyond that, there has been no discussion as to the manner in which those supplies should be used. Similarly, Ms. Wiggins testified that, during her fifteen year tenure at Revere School, no principal has ever conducted a staff meeting or any kind of training to inform staff how to respond if a student is injured at the school.

IV. CONTENTIONS OF THE PARTIES

A. THE PETITIONER

The Board contends that it has met its evidentiary burden of proving by a preponderance of the evidence that the misconduct alleged in the dismissal charges has in fact occurred. There were three specifications in the dismissal charges directed against Ms. Alia. The Board maintains that there is really no dispute with regard to the first of the specifications; i.e., that she slammed a classroom door on Jasmine's finger such that the child's finger was severed and bled profusely. Ms. Alia acknowledged that the incident occurred as charged.

The second specification alleged that Ms. Alia did not seek immediate assistance for the child. The Board argues that this point, too, was proven by substantial evidence. In fact, the Board submits that Ms. Alia never sought medical assistance for Jasmine. The child was attended

to only when McDonald and Daggett intervened by bringing Jasmine to the main office. Moreover, Jasmine's injury was clearly traumatic. The fingertip had been severed. Both Daggett and McDonald immediately recognized that the main office should be notified. Similarly, personnel in the main office saw that the child's injury was severe and called 911 straightaway. The Board maintains that, except for Ms. Alia, everyone focused on Jasmine's well-being and the need to obtain immediate medical attention.

Ms. Alia's response, on the other hand, was to conceal the injury and prevent the child from receiving the medical help she needed. Ms. Alia had the means to quickly notify the office via intercom that a student had been hurt, but instead she called the office for a "clean up," failing to mention what the clean up was for. In so doing, Ms. Alia obscured what really happened and led the office to believe that something minor, such as spilled milk, had occurred. The Board further argues that Ms. Alia continued to cover up the incident and prevent Jasmine from obtaining immediate medical care by deliberately walking the child away from the main office towards the discipline office at the opposite end of the school.

The third specification was also fully proven, based on the evidence adduced on the record, the Board submits. That specification alleged that Ms. Alia failed to timely inform the principal or any supervisor of the child's injury. Ms. Alia had at least three opportunities to notify the main office of Jasmine's injury, but failed to do so. According to Principal Taylor, the appropriate response for a teacher when a child is injured is to immediately notify the main office so that medical attention can be provided. Thus, even though Ms. Alia could have alerted the office via the intercom, she chose not to take that action. Moreover, Ms. Alia could have taken Jasmine directly to the main office. Instead, she took the child to the discipline office in the

middle school, at the far opposite end of Revere School. Finally, Ms. Alia could have had a security office use their walkie talkie or pager to contact the main office. Ms. Alia testified that Revere School security officers carry walkie talkies. Despite her claim that she encountered Security Officer DeBarry shortly after leaving the classroom, Ms. Alia did not ask the security guard to use the walkie-talkie to alert the main office. In fact, at no time did Ms. Alia notify the office of Jasmine's injury.

Having proven that the charges were established by a preponderance of the evidence, the Board contends that Ms. Alia's dismissal was warranted. Ms. Alia's conduct both before and after Jasmine's injury was irremediable and constituted cause for her dismissal, the Board argues. The test for irremediability is whether the misconduct could have been corrected had the teacher been given prior warning. Conduct is irremediable where damage results therefrom which could not have been corrected regardless of whether the teacher received adequate timely warning.³

In the instant case, the Board contends that Ms. Alia's actions before Jasmine's injury were inappropriate and could not have been deterred by a warning. Ms. Alia knew that her students, and particularly Jasmine, regularly got out of their seats. Jasmine had been a handful only minutes before and had been written up. Moreover, Ms. Alia acknowledged that she was aware that when she went into the hallway with Kirk, Lockridge was conducting a reading lesson just inside the classroom door. Common sense dictated that Ms. Alia, who was familiar with her student's conduct and habits, should have anticipated the possibility that Jasmine or any other student could have been at the classroom door while she was out in the hallway. Common sense

³ Gilliand v. Board of Education, 365 N.E. 2d 322 (Ill. 1977); Chicago Board of Education v. Payne, 430 N.E. 2d 310 (1st Dist. 1981).

required that Ms. Alia look first through the classroom door window to see whether any children were present before slamming the door shut.

Ms. Alia's actions after Jasmine's injury were also objectionable, the Board submits. Once again, common sense should have compelled Ms. Alia to notify the main office that a student had been severely injured. There was no reasonable basis for Ms. Alia to have taken Jasmine to the discipline office located at the opposite end of the school. The discipline office is used for disciplining students; there is no nurses station or medical information located in that area. A student's safety and well-being should have taken precedence over discipline, the Board argues. This is a case where a warning would not have been effective in stopping or preventing Ms. Alia's serious dereliction of duty.

The Board therefore requests that the Hearing Officer make appropriate findings of fact to sustain the Board's decision to dismiss the Respondent.

B. THE RESPONDENT

The Respondent's position is that the Board has not met its burden of establishing that the conduct charged was irremediable cause for dismissal. Cause for dismissal is deemed irremediable when irreparable damage has already been done and cannot be remedied.⁴ Only after the Hearing Officer has independently confirmed a finding that the conduct charged has in fact occurred or the deficiencies alleged in fact existed may he or she then consider whether the merits of the underlying allegations constitute cause for dismissal. The Board of Education's decision may be overturned if the reasons given for the dismissal are against the manifest weight of the

⁴ Chicago Board of Education v. Van Kast, 253 Ill. App.3d 295, 624 N.E. 2d 206 (1st Dist. 1993); Jespen v. Board of Education, 19 Ill App. 204, 153 N.E. 2d 417 (1958).

evidence or the Board has acted in an arbitrary or capricious manner.⁵

Applying those standards to the instant case, the Respondent argues, first, that the incident severing Jasmine's finger was found to be an accident. Principal Taylor, who investigated the incident, concluded that the injury was unintentional and deemed it an accident. Principal Taylor was not concerned with the events afterward regarding Ms. Alia's rendering of first aid and seeking medical assistance. Instead, he relied upon Investigator Hogue's report as the basis to rescind Ms. Alia's written reprimand.

Second, although the Board's charges and specifications stated that Ms. Alia did not seek immediate medical assistance for the child, the Respondent reminds the Hearing Officer that Ms. Alia immediately rendered first aid herself to stop the bleeding. In addition, she preserved the fingernail for reattachment. The Board now attempts to portray Ms. Alia as insensitive because she was headed for the disciplinarian's office rather than the main office to call for paramedics. However, Ms. Alia testified that she saw a crowd in the main office and thought the quickest way to seek medical attention and prevent chaos was to go to the disciplinarian's office. She communicated this to security guards DeBerry and Daggett. There was no testimony by Ms. Alia, Principal Taylor or the three teachers who testified at the hearing that there was a set of procedures in place dictating what to do when a situation of this type occurred.

Third, Investigator Hogue's report, relied upon by Principal Taylor in rescinding the written reprimand, included the hearsay account of security guard Daggett, who informed Hogue that he "took control" of the situation and brought Jasmine to the office. Daggett also related to

⁵Chicago Board of Education v. Box, 191 Ill. App. 3d 31, 547 N.E. 2d 627 (1st. Dist. 1989); Morris v. Board of Education, 96 Ill. App. 3d 405, 421 N.E. 2d 387 (1981).

Hogue that Ms. Alia lacked concern for the child. But Daggett did not testify at the hearing, and his statements cannot be given the same weight as those of Ms. Alia, who provided direct testimony, and those additional witnesses who testified as to Ms. Alia's caring demeanor towards her students.

Fourth, the Respondent maintains that the Board of Education's Employee Discipline Code provides for disciplinary options short of dismissal for the charges and specifications in this case. Review of the provisions of the Employee Discipline Code makes clear that progressive discipline is to be implemented to correct unwanted behavior and deter its reoccurrence. There is no evidence in the record that Ms. Alia ever received any discipline of any kind prior to the present allegations at issue in this dismissal. In fact, it is undisputed that Ms. Alia received excellent ratings for the 1998-1999 and 1999-2000 school years. It was also determined that the incident that occurred was an accident and unintentional. Principal Taylor, who first issued a written reprimand, testified that Ms. Alia would never intentionally hurt a child. Yet, rather than keep the written reprimand, or even suspend Ms. Alia, the Board chose to charge her with irremediable conduct under a violation which is categorized as the most severe and which only provides for dismissal as the resulting discipline.

These factors, in the Respondent's view, compel the conclusion that the Board of Education has not met its burden of proof to support Ms. Alia's dismissal; that the decision to terminate Ms. Alia is against the manifest weight of the evidence; and further, that the dismissal action is arbitrary and capricious. Accordingly, she should be ordered reinstated to her tenured position with the Board of Education, with full back pay and benefits.

V. FINDINGS AND DISCUSSION

In the present case, the Chicago Board of Education dismissed the Respondent, Catherine Alia, on a "for cause" basis. In Illinois, no teacher in contractual continued service may be removed from employment except for cause. 105 ILCS 5/10-22.4 (1996). Cause connotes a serious, substantial shortcoming rendering continued employment detrimental or injurious to students or the effectiveness of the school. Section 10-22.4 of the School Code thus provides for dismissal only upon the following terms:

Dismissal of teachers. To dismiss a teacher for incompetency, cruelty negligence, immorality or other sufficient cause, to dismiss any teacher who fails to complete a 1-year remediation plan with a "satisfactory" or better rating, and to dismiss and teacher whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the school require it, subject however to the provisions of Section 24-10 and 24-15 inclusive. Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause of dismissal.

In order to determine whether the charges here are grounds for dismissal, the Hearing Officer has a two-fold responsibility. First, the Hearing Officer must determine as a threshold matter whether the misconduct charged has in fact occurred. In so doing, the proper standard of proof to be utilized is the preponderance of the evidence standard.⁶ That standard has been defined as "evidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (5th Ed. 1983), 616.

If the Hearing Officer independently confirms a finding that the conduct charged has in fact occurred or the deficiencies alleged in fact existed, then the Hearing Officer moves to the

⁶ Board of Education, City of Chicago v. Illinois State Board of Education, 113 Ill. 2d 173, 497 N.E. 2d 984 (1986).

second prong of the analysis to consider whether the merits of the allegations constitute “cause” for dismissal. The Board of Education’s dismissal decision may be overturned if the reasons given for the dismissal are against the manifest weight of the evidence or if the Board has acted in an arbitrary or capricious manner.⁷

Applying that two-pronged analysis to the instant case, the Hearing Officer is persuaded that there is probative evidence on this record to conclude that the conduct charged in fact occurred. In determining whether the Board has carried its evidentiary burden with respect to the specific charges herein, it should be noted that the record is, to a great extent, free of factual conflict. The Board has identified in its specifications three alleged acts of misconduct, including slamming the classroom door so as to sever Jasmine’s fingertip; failing to seek immediate medical assistance, and not timely notifying the Principal or any other supervisor of the child’s injury. Based on Ms. Alia’s own testimony and prior admissions, it is clear that the conduct upon which these specifications are predicated did occur on January 26, 2000.

There is really no dispute, for example, that Ms. Alia’s actions caused Jasmine’s finger to be severed. The testimony of Ms. Alia is uncontested that she closed the door to her classroom, heard a scream, and saw Jasmine standing inside the classroom with her fingertip severed and her hand bleeding.

By the same token, the record established that Ms. Alia did not promptly seek medical assistance for Jasmine or inform the administration of Jasmine’s injury. Although there is some conflict in the testimony as to whether or not Ms. Alia buzzed the office via the intercom to

⁷ Chicago Board of Education v. Box, 191 Ill. App. 3d 31, 547 N.E. 2d 627 (1st Dist. 1989); Morris v. Board of Education, 96 Ill. App. 3d 405, 421 N.E. 2d 387 (1981).

request a clean-up, Ms. Alia conceded that she did not notify the office to tell them that Jasmine had been injured or that the child had a severed finger. Even after leaving her classroom with Jasmine, Ms. Alia failed to alert the office despite having several opportunities to do so. By her own admission, Ms. Alia did not take Jasmine to the main office, and even though she testified that she passed two security guards with walkie-talkies - DeBerry and Daggett - she failed to tell them to notify the office that the child had been injured and that medical help was necessary.

Absent the intervention on the part of McDonald and Daggett in notifying the Assistant Principal and taking Jasmine to the office, it is unclear at what point the school administration would have been alerted to the fact that a student had sustained a serious injury.

There is thus ample evidence on this record to confirm a finding that the specifications directed against Ms. Alia were substantiated. The more difficult question, as the Hearing Officer views this case, is whether there was cause for dismissal. There are several troublesome aspects in this matter which compel the conclusion that sufficient cause was lacking. First, although there is no doubt that Ms. Alia meant to close her classroom door, there is no evidence whatsoever of intent to injure the student. Principal Taylor acknowledged that he determined that Ms. Alia did not intend to harm Jasmine and that the door-slamming incident had been an accident. Indeed, he conceded that Ms. Alia has never been disciplined for neglecting a child's needs and that she has received excellent ratings as a teacher at Revere School. Co-workers and student guardians stated that Ms. Alia has a caring manner toward her students and would never deliberately put a child in harm's way.

The Board has argued that Ms. Alia was not careful enough under the circumstances and that she risked injury to a student by closing her classroom door without checking to see if anyone

was on the other side. Based on the evidence, the Hearing Officer concurs with that argument, as far as it goes. The Board's contention, however, fails to take into account the surrounding circumstances at that time. Jasmine should not have been out of her seat or attempting to leave the class. In fact, she had only minutes earlier been disciplined for similar misbehavior. Jasmine was supposed to be participating in a reading lesson. Ms. Lockridge was supervising that lesson while Ms. Alia was out in the hall attending to a behavioral problem with Kirk, another student in the class. Even though maintaining discipline in this cross-categorical classroom is not an easy proposition, as witnesses for both parties agree, Ms. Lockridge bears some responsibility for failing to prevent Jasmine from leaving her seat and attempting to exit the classroom.

Moreover, while it is true that the accident would not have happened if Ms. Alia had been more prudent, it is equally true that Ms. Alia had her hands full at that moment with Kirk. That student had been running in the hallway and had refused to cooperate with her requests to conform his behavior to expectations. Ms. Alia was trying to prevent Kirk from entering the classroom when she closed her classroom door. She was clearly distracted and preoccupied with Kirk's behavior, the unrefuted evidence shows, and closed the door with her eyes on Kirk rather than the inside of the classroom. Thus, while the injury to Jasmine was proximately caused by Ms. Alia's actions, the behavior of the students and the inaction of Ms. Lockridge should also have been factored in when assessing the degree to which Ms. Alia was culpable.

Another key troublesome aspect of this case is that Principal Taylor initially issued Ms. Alia a written reprimand after investigating the matter, only later to conclude that "new information" elicited during Investigator Hogue's interviews warranted the far more serious discipline of dismissal. No explanation was forthcoming from Principal Taylor at the hearing as to

precisely what “new information” he relied upon. On the contrary, the evidence adduced on this record indicates that Principal Taylor questioned Ms. Alia, Ms. Lockridge, security guard Daggett and Ms. McDonald prior to making his initial determination that a written reprimand was the appropriate level of discipline. The information he obtained was not substantially different from the information obtained by Hogue during his subsequent investigation. Principal Taylor had been told by Daggett, for example, that Ms. Alia was headed for the disciplinarian’s office rather than the main office. Similarly, Ms. McDonald informed him that she was extremely concerned when she saw that Ms. Alia was not going straight to the main office to report the injury and obtain medical assistance. Hogue’s report merely corroborated what Principal Taylor already knew.

The Board has argued that Principal Taylor, in imposing the written reprimand, was focused solely on the door-slammimg incident and not on Ms. Alia’s subsequent course of conduct. Even if the Hearing Officer were to accept that argument, however, the record evidence fails to explain why, upon consideration of Ms. Alia’s conduct after the accident, the written reprimand was bumped up to a discharge. In order for a written warning to be converted to a discharge, there had to be additional proof of egregious or gross misconduct warranting summary dismissal. That evidence is lacking on this record.

This is not to say that the Hearing Officer condones Ms. Alia’s behavior. Her testimony that she was taking Jasmine to the disciplinarian’s office because the main office was too crowded and she needed to use a phone was not particularly plausible, for several reasons. First, Ms. Alia’s position at the hearing was inconsistent with her earlier admission to Investigator Hogue that Jasmine had “been bad all day” and that she was following school policy by taking her to the disciplinarian’s office. Second, Ms. Alia’s current explanation for her actions was illogical and

lacked believability. The disciplinarian's office was all the way over on the other side of the building at the far end of the middle school. Even though Ms. Alia had wrapped Jasmine's finger and preserved the fingertip, it was an exercise in bad judgment to take Jasmine, bleeding and crying, such a long distance to use a telephone.

This is particularly true since there is no evidence at all that, despite a crowd in the main office, the staff there would have been unresponsive to Jasmine's needs. On the contrary, the record shows that as soon as the staff was notified of Jasmine's injury, they immediately took action to secure her well-being. The paramedics were called. Attempts were made to contact Jasmine's parents. The school made arrangements for a staff employee to accompany Jasmine to the hospital. Jasmine's fingertip was wrapped more securely. Taking into consideration all these facts, it must be concluded that Ms. Alia's decision to go to the disciplinarian's office was ill-founded and unwarranted.

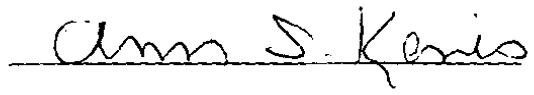
Nevertheless, the Board has failed to establish that Ms. Alia's actions provided a justifiable basis to transform a written warning into a dismissal action. The Board has contended that Ms. Alia's conduct was irremediable, and therefore summary discharge was proper. The test for determining whether conduct is irremediable was set forth by the Illinois Supreme Court in Gilliland v. Board of Education of Pleasant View Consolidated School District, 67 Ill. 2d 143, 365 N.E. 2d 322 (1977) and superseded by statute as stated in Board of Education v. Harris, 218 Ill. App. 3d 1017, 578 N.E. 2d 1244 (1991). Gilliland set forth a two pronged test for irremediability as follows: 1) whether damage has been done to the students, faculty or school; and 2) whether the conduct could not have been corrected had a warning been given. A finding of irremediable conduct requires satisfaction of both parts of the Gilliland test.

In the instant case, while there is no question that the student suffered a physical injury, the Board failed to establish that Ms. Alia's conduct could not have been corrected had she received a warning. The Board contended that Ms. Alia's actions both before and after Jasmine's injury lacked "common sense" and could not have been deterred by a warning resolution. However, that argument is contrary to the position taken by Principal Taylor, who initially determined that a warning reprimand was sufficient and appropriate discipline.

Moreover, there is no evidence on this record that Ms. Alia failed to conform to a policy or procedure when dealing with Jasmine's injury. In fact, no policy or procedure existed to guide teachers in the event of a student injury at school. The most that can be said, after careful consideration of the record evidence in its entirety, is that this is a valued teacher with many years of experience and no prior discipline who exercised poor judgment after an accident occurred. This incident stands alone on Ms. Alia's record. Jasmine's fingertip was severed but it clearly was an accident and it was unintentional. Ms. Alia immediately rendered first aid to stop and bleeding and she preserved the fingertip for reattachment. Lacking here is any indication of intent on the part of Ms. Alia to harm Jasmine. Ms. Alia made a mistake in attempting to take Jasmine to the disciplinarian's office, but the Hearing Officer is not persuaded that her actions in that regard reached the level of conduct envisioned under the test of irremediability. Discipline short of discharge was available under the Board's Employee's Discipline Code to correct Ms. Alia's conduct and deter its reoccurrence.

VI. DECISION

Based on all the foregoing reasons, it is determined that the Petitioner, the Chicago Board of Education, failed to establish by a preponderance of the evidence that the conduct of the Respondent, Catherine Alia, amounts to irremediable conduct for which dismissal was warranted and justified. Respondent is ordered reinstated, in accordance with the provisions of the School Code, with full restoration of seniority and other contractual benefits and with full back pay.



ANN S. KENIS, HEARING OFFICER

December 31, 2000
Chicago, Illinois