

2019 IL App (1st) 180673-U

No. 1-18-0673

Order filed June 28, 2019

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DON GIBSON,)	Petition for Review of a Final
)	Administrative Decision of the
Petitioner,)	Board of Education of the City
)	of Chicago
v.)	
)	
THE CHIEF EXECUTIVE OFFICER OF THE BOARD)	
OF EDUCATION OF THE CITY OF CHICAGO; THE)	
BOARD OF EDUCATION OF THE CITY OF)	
CHICAGO; and THE ILLINOIS STATE BOARD OF)	
EDUCATION,)	
)	Board Resolution No. 18-0228-
Respondents.)	RS6

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* The Board of Education’s decision terminating petitioner’s employment as a tenured teacher is affirmed where petitioner forfeited any argument that he successfully remediated his unsatisfactory performance and has not shown that the Board committed any prejudicial procedural errors during the remediation process.

¶ 2 The Board of Education of the City of Chicago (Board) instituted proceedings to terminate Don Gibson’s employment as a tenured teacher under section 34-85 of the School Code (105 ILCS 5/34-85 (West 2016)) after Gibson failed to remediate his unsatisfactory performance in accordance with section 24A-5 of the Code (105 ILCS 5/24A-5 (West 2016)). After a two-day hearing, an administrative hearing officer made findings of fact and recommended Gibson’s dismissal. The Board subsequently adopted the hearing officer’s findings and terminated Gibson’s employment. Gibson now seeks our direct review of the Board’s decision pursuant to section 3-113 of the Administrative Review Law (735 ILCS 5/3-113 (West 2016)) and section 34-85(a)(8) of the School Code (105 ILCS 5/34-85(a)(8) (West 2016)). He argues that the Board’s decision cannot stand because it committed several procedural errors during the remediation process. For the reasons that follow, we affirm the Board’s decision.¹

¶ 3 I. BACKGROUND

¶ 4 The School Code requires school districts to biennially evaluate tenured teachers and rate their performance as either “excellent,” “proficient,” “needs improvement,” or “unsatisfactory.” 105 ILCS 5/24A-5(e) (West 2016). A teacher rated “unsatisfactory” must be given 90 school days to remediate his or her performance with the assistance of a consulting teacher. 105 ILCS 5/24A-5(i)-(k) (West 2016). The district must re-evaluate the teacher at the midpoint and end of the remediation period. 105 ILCS 5/24A-5(k) (West 2016). Any teacher who fails to complete

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

the remediation period with a performance rating of “proficient” or better must be dismissed. 105 ILCS 5/24A-5(m) (West 2016).

¶ 5 Pursuant to a collective bargaining agreement (CBA), Chicago teachers are evaluated using the Chicago Public Schools (CPS) Framework for Teaching, which measures teacher performance in 19 aspects of teaching (called components) that are grouped into four domains—planning and preparation, classroom environment, instruction, and professional responsibility. The Framework’s purpose is to provide a common definition of effective teaching for administrators and teachers. A companion Arts Addendum discusses how the Framework’s components apply to the “unique aspects” of arts (including music) teaching.

¶ 6 Using the Framework, a teacher is scored on each teaching component on a scale of one (for unsatisfactory) to four (for excellent).² The component scores for each domain are averaged to arrive at domain scores, and a teacher’s overall performance score is produced by calculating a weighted sum of the domain scores—40% for instruction; 25% each for planning and preparation and classroom environment; and 10% for professional responsibility—and multiplying by 100. A score between 100 and 209 is “unsatisfactory”; between 210 and 284 is “needs improvement”; between 285 and 339 is “proficient”; and between 340 and 400 is “excellent.”

¶ 7 Gibson was a tenured music teacher at John Marshall Metropolitan High School (Marshall) in Chicago. In October 2014, CPS informed Gibson that his performance during the 2013-2014 school year had been rated unsatisfactory. During that evaluation period, Gibson received average scores of 2 in the planning and preparation domain, 1.81 in the classroom

² The Framework refers to the categories as “unsatisfactory,” “basic” or “developing,” “proficient,” and “distinguished.” We use the statutory terminology for the sake of clarity.

environment domain, 1.65 in the instruction domain, and 2.2 in the professional responsibility domain, resulting in an overall performance score of 183.

¶ 8 In December 2014, Marshall’s principal, Lori Campbell, appointed Heidi Stirling to serve as Gibson’s consulting teacher, and the three met to formulate Gibson’s remediation plan. The plan focused on ways to improve Gibson’s performance in his most deficient components—designing student assessments, establishing a culture of learning, managing student behavior, using questioning and discussion techniques, and engaging students in learning. Campbell advised Gibson to better engage students in the learning process by asking “higher-order,” “open-ended questions,” and to use “exit slips” at the end of each class period to assess student learning in real time. Campbell also stressed the need for Gibson to manage student behavior by using a “hierarchy” of discipline methods. During the meeting, Campbell, Stirling, and Gibson reviewed both the Framework and the Arts Addendum.

¶ 9 Between December 17, 2014 and May 22, 2015, Stirling met with Gibson on a near-weekly basis, frequently observing him in the classroom and offering feedback and advice on how to improve his performance and meet the goals of his remediation plan. In total, Stirling and Gibson met 19 times during the remediation period, eleven times prior to Gibson’s midpoint evaluation and eight times following it. At their last meeting on May 22, 2015, Gibson praised Stirling for the quality of her assistance. He told her that “the strategies [she] told [him] about were great ideas,” and that the time she spent with him and the information she imparted “opened [his] mind to possibilities.” In particular, Gibson told Stirling that the remediation process had heightened his “awareness of higher-level questioning” and methods of achieving “student engagement.”

¶ 10 In March 2015, Campbell conducted Gibson’s midpoint evaluation, which consisted of a formal classroom observation as well as pre- and post-observation conferences with Gibson. Campbell rated Gibson as “proficient” in 14 of the Framework’s 19 components and as “needs improvement” in the remaining five. Although Gibson’s performance had improved, his overall performance score of 276 remained below the “proficient” category’s threshold of 285.³

¶ 11 Because Gibson was absent for eight days during the remediation period, the ninetieth school day of the period fell on June 5, 2015. By that time, only two weeks remained in the school year. Seniors had already graduated and were no longer regularly attending classes, and underclassmen were scheduled to take final exams the following week. During the final week of the school year, class periods would often be shortened to accommodate various end-of-year activities and would generally include more lighthearted instruction. For that reason, CPS decided to postpone Gibson’s final evaluation until October 22, 2015, several weeks into the next school year to ensure that Campbell could observe Gibson in a regular classroom teaching environment.⁴ CPS did not make Stirling available to Gibson during the new school year. As noted above, their last meeting took place on May 22, 2015.

¶ 12 Like the midpoint evaluation, the final evaluation consisted of a classroom observation session and pre- and post-observation conferences. After this evaluation, Campbell rated Gibson as “proficient” in just six of the Framework’s components, “needs improvement” in eleven, and

³ The record does not contain a calculation of Gibson’s overall performance score from the midpoint evaluation. We have used the formula discussed above to calculate it based on his individual component scores.

⁴ Although not mandated by the CBA, the postponement of Gibson’s final remediation observation was consistent with the CBA’s rule that regular teacher observations may not take place during the first four weeks or last four weeks of a school year.

“unsatisfactory” in two. His overall performance score was 219, placing him at the lower end of the “needs improvement” category, well below the minimum score of 285 necessary to qualify as “proficient” and avoid dismissal.

¶ 13 Campbell testified at the administrative hearing that Gibson’s performance during the final evaluation had regressed from the midpoint evaluation. She explained that Gibson did not timely submit a complete lesson plan prior to the pre-observation conference and appeared “totally unprepared” for the meeting. Gibson likewise appeared unprepared for the classroom observation session the following week. His lesson was “extremely low level,” asking students yes-or-no questions about whether music from prior eras was similar to modern music. The lesson plans he submitted for subsequent weeks were similarly simplistic, asking students to describe whether music was fast or slow and loud or soft. During the classroom observation session, Gibson spent most of his instructional time completing non-teaching tasks such as having students copy text from the blackboard and checking their binders for compliance. Campbell noted that the students were not engaged. She also noted that several students continued to misbehave, such as by lying down or yelling across the classroom.

¶ 14 Marshall’s assistant principal, Daisy Stewart, regularly reviewed Gibson’s lesson plans and informally observed his classroom teaching during the remediation period, and her impressions of Gibson’s performance were largely consistent with Campbell’s. Stewart testified that Gibson’s lesson plans were repetitive and non-rigorous, and he often failed to submit them on time. She explained that Gibson did not regularly use exit slips to assess his students’ progress, and she noted that his “classroom management was out of control,” with a number of students talking to each other during class rather than engaging with the lesson. A high

percentage of Gibson's students were receiving Ds or Fs in his class, which Stewart explained was "a teacher problem, not a student problem." Finally, Stewart testified that Gibson often failed to implement the advice that she gave him on how to improve his performance.

¶ 15 Campbell testified that she did not consider Stewart's observations when conducting her final evaluation of Gibson because only she was authorized to evaluate Gibson's performance during the remediation period. Campbell also testified that she did not consider her own midpoint evaluation of Gibson during the final evaluation. When asked by the hearing officer whether she had considered the midpoint evaluation, Campbell initially responded, "That's to say at the midpoint where you are progressing." But she later responded affirmatively when asked whether "the only consideration" in the termination decision following a remediation period is "whether the teacher in the final observation was proficient or not proficient." Finally, Campbell testified that she did not consult the Arts Addendum when assessing Gibson's performance.

¶ 16 Gibson testified that he had been prepared for his final evaluation to take place in June and did not agree to postpone it to October of the following school year. He also testified that he desired additional assistance from Stirling prior to his final evaluation because "she was the key to [his] success" during the midpoint evaluation. Gibson disputed several of Campbell's negative assessments of his performance during the midpoint evaluation—such as whether he failed to timely submit lesson plans and grades and adequately manage student behavior—but he did not similarly contest any of her conclusions about his final evaluation performance. In fact, Gibson agreed that he did not perform well at the final observation, but he claimed that he would have done better if the evaluation had not been delayed and he had been able to have Stirling "coach

[him] through it.” He testified that he disagreed with his final performance rating, but only because he did not think it was fair for the final observation to have been postponed.

¶ 17 In his post-hearing brief, Gibson argued that the Board lacked authority to terminate him because it had not strictly complied with the School Code’s procedural requirements governing the remediation process. In particular, he argued that the Board improperly extended the remediation period beyond 90 school days; that it failed to provide him the assistance of a consulting teacher during the extended portion of the remediation period; and that Campbell erred in failing to consider his performance throughout the entire remediation period when conducting her final evaluation.

¶ 18 The hearing officer rejected Gibson’s arguments and recommended that he be dismissed. At the outset, the hearing officer noted that Gibson asserted only procedural defects in the remediation process and did not challenge the substance of the Board’s allegation that he failed to successfully remediate his performance. Turning to Gibson’s contentions, the hearing officer found that the Board “reasonably extended” Gibson’s final evaluation because conducting it during the last two weeks of the school year—after seniors had graduated and when underclassmen were focused on final exams and other end-of-year activities—would not have provided the type of regular classroom environment necessary for accurately assessing Gibson’s teaching performance. The hearing officer also noted that Gibson had not presented any evidence that his final evaluation performance would have been better in June than it was in October. In addition, the hearing officer explained that the failure to strictly comply with the School Code’s timing requirements for the remediation process does not render the results of a remediation plan invalid.

¶ 19 Next, the hearing officer held that “Stirling’s non-involvement subsequent to the June 5, 2015 end of the remediation period was not impermissible” because the School Code did not require the Board to provide Gibson a consulting teacher “beyond the 90 day period of the remediation plan.” Finally, the hearing officer held that Campbell was not required to consider Gibson’s performance throughout the remediation period when conducting his final evaluation. According to the hearing officer, the School Code only required an assessment of Gibson’s performance between the midpoint and final evaluations. The hearing officer noted, however, that Campbell’s final evaluation of Gibson was “consistent with her assessments of Gibson at other times during the remediation period” and recognized Gibson’s “regression from the performance progress * * * he had made at the time of his midpoint evaluation.”

¶ 20 After considering Gibson’s written exceptions to the hearing officer’s report, in which Gibson restated his contentions of procedural error during the remediation process, the Board adopted the hearing officer’s factual findings and conclusions of law and terminated Gibson’s employment. Gibson then filed a timely petition for our review of the Board’s decision. See 105 ILCS 5/34-85(a)(8) (West 2016); 735 ILCS 5/3-113 (West 2016).

¶ 21

II. ANALYSIS

¶ 22 Our standard of review of an administrative agency’s decision depends on the nature of the question being considered. See *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50. We defer to the agency’s factual findings and will depart from them only if they are against the manifest weight of the evidence. *Id.* We review questions of law *de novo*. *Id.* And we review mixed questions of law and fact, *i.e.*, the agency’s application of the law to the facts, for clear error. *Id.* Although the final agency

decision under review is that of the Board, we must necessarily review the hearing officer's findings and conclusions where, as here, the Board adopted them without modification. See *Russell v. Board of Education of City of Chicago*, 379 Ill. App. 3d 38, 46 (2007). Ultimately, we may affirm the agency's decision on any basis supported by the record. See *Young-Gibson v. Board of Education of City of Chicago*, 2011 IL App (1st) 103804, ¶ 56.

¶ 23 Although a tenured teacher may only be dismissed for cause, 105 ILCS 5/34-85(a) (West 2016), the failure to successfully complete a remediation plan with a performance rating of proficient or better provides cause for dismissal. *Davis v. Board of Education of the City of Chicago*, 276 Ill. App. 3d 693, 697 (1995). The existence of cause “must be proved by the Board at the hearing by a preponderance of the evidence.” *Beggs*, 2016 IL 120236, ¶ 53. “In discharge cases, the scope of review is generally a twofold process.” *Id.* ¶ 63. We first “apply the manifest-weight standard to the [Board's] factual determinations.” *Id.* We then “determine whether the findings of fact provide a sufficient basis for the [Board's] conclusion that cause for discharge * * * exist[s].” *Id.* We may reverse the Board's decision that cause exists only if it is “arbitrary, unreasonable, or unrelated to the requirements of service.” *Id.*

¶ 24 At the outset, we hold that Gibson has forfeited any challenge to the existence of cause for his dismissal by failing to argue, either here or before the hearing officer, that he successfully completed the remediation period with proficient performance. In his brief in this court, Gibson contends that the hearing officer erred in concluding that he had not challenged the substance of Campbell's final evaluation. But he makes no affirmative argument that he achieved proficiency by the conclusion of the remediation process, nor that the Board failed to carry its burden of proof on that point at the hearing. Instead, he merely recounts his hearing testimony disputing

several facets of Campbell's assessment of his performance (primarily during her midpoint evaluation) without arguing that Campbell's final evaluation was unsupported by the record. Accordingly, to the extent that Gibson challenges the substance of Campbell's final evaluation and the existence of cause for his dismissal, we find his undeveloped argument forfeited. *Block 418, LLC v. Uni-Tel Communications Group, Inc.*, 398 Ill. App. 3d 586, 590 (2010) (citing Ill. Sup. Ct. R. 341(h)(7)).

¶ 25 Gibson also forfeited any challenge to the substance of Campbell's final evaluation and the existence of cause for his dismissal by failing to raise the argument at the administrative level. We agree with the hearing officer that Gibson did not contest the substance of his final performance evaluation. That conclusion is evident from Gibson's post-hearing brief and the subsequent written exceptions he submitted to the Board, both of which were limited to contentions that the Board lacked authority to discharge him due to procedural defects in the remediation process. Gibson argues that he preserved a challenge to the substance of Campbell's final evaluation by testifying that he disagreed with her assessment of his performance. To preserve the issue, however, Gibson was required to argue that the evidence did not support Campbell's final evaluation of his performance, not merely testify that he personally disagreed with her assessments. Yet Gibson made no "oral closing statement incorporating arguments of fact and law" at the conclusion of the hearing, 23 Ill. Admin. Code § 51.60(c)(12), and he failed to include any argument in either his post-hearing brief or written exceptions challenging the substance of Campbell's final evaluation of his performance or the existence of cause for his dismissal. By failing to raise the argument at the administrative level, Gibson forfeited it for

judicial review. See *Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO v. Chicago School Reform Board of Trustees*, 338 Ill. App. 3d 90, 103 (2003).

¶ 26 We thus turn to Gibson’s contentions of procedural error in the remediation process. A school board’s decision to terminate a tenured teacher’s employment will be reversed based on the board’s failure to adhere to the procedural requirements governing the remediation process only where the procedural deficiencies prejudice, or “substantially affect,” the teacher’s rights. *MacDonald v. State Board of Education*, 2012 IL App (4th) 110599, ¶ 12; *Waller v. Board of Education of Century Community Unit School District No. 100*, 13 Ill. App. 3d 1056, 1058 (1973).

¶ 27 Gibson first argues that Campbell erred by failing to consider the Arts Addendum when evaluating his performance.⁵ The Board responds that Campbell was not required to consider the Arts Addendum because the CBA provides that the Framework is “the sole measure of performance during the remediation period.” This argument overlooks the fact that the Arts Addendum is *part* of the Framework. Its full title is the “CPS Framework for Teaching Companion Guide Arts Addendum,” and its introduction states that it “should be used in conjunction with the full CPS Framework for Teaching Companion Guide.” Campbell thus erred in failing to consider the Arts Addendum when evaluating Gibson’s performance as a music teacher. Nevertheless, this omission by Campbell does not necessitate reversal of the Board’s termination decision because Gibson has not shown that he was prejudiced by it. The Arts Addendum addresses the same components and domains of teaching identified in the

⁵ Although Gibson did not raise this issue at the administrative level, we consider it here because the Board itself has forfeited any forfeiture argument. See *People v. De La Paz*, 204 Ill. 2d 426, 433 (2003) (holding that party “may waive waiver”).

Framework. Its stated purpose is to help teachers and evaluators “recognize” that the “unique aspects” of arts teaching “align with” and are “articulated in” the Framework. Notably, Gibson has not explained how Campbell’s evaluation of his performance would have been different if she had explicitly considered the Arts Addendum in addition to the Framework. He faults Campbell for being unable to explain certain music teaching strategies identified in the Arts Addendum, but nothing in the record suggests that Gibson employed those strategies in his lesson plans or observation sessions. Accordingly, there is no support for Gibson’s assertion that his performance evaluations were negatively affected by Campbell’s failure to consult the Arts Addendum.

¶ 28 Gibson next argues that Campbell erred by failing to consider his performance throughout the remediation period when making her final evaluation. The School Code states that the midpoint and final evaluations “shall assess the teacher’s performance during the time period since the prior evaluation; provided that the last evaluation shall also include an overall evaluation of the teacher’s performance during the remediation period.” 105 ILCS 5/24A-5(k) (West 2016). The hearing officer held that Campbell was not required to consider Gibson’s performance throughout the entire remediation period when conducting her final evaluation. We reject that conclusion, which the Board does not defend. The School Code’s plain language dictates that the final evaluation “shall * * * include an overall evaluation of the teacher’s performance during the remediation period.” 105 ILCS 5/24A-5(k) (West 2016). Campbell was therefore required, as part of her final evaluation, to consider Gibson’s performance throughout the remediation period and not just during the period since the midpoint evaluation.

¶ 29 The Board contends that the hearing officer found that Campbell did consider Gibson's performance throughout the remediation period when conducting her final evaluation. We disagree that the hearing officer made such a finding. The hearing officer noted that "the conclusions reached by Campbell after her October evaluation were consistent with her assessments of Gibson at other times during the remediation period," but that is not the same as saying that Campbell *considered* Gibson's performance at other times during the remediation period when reaching her final evaluation conclusions. Likewise, we do not read the hearing officer's reference to Campbell's testimony concerning Gibson's regression from the midpoint evaluation to the final evaluation as a factual finding that Campbell considered Gibson's midpoint performance when determining his final performance score. Rather, we think the hearing officer reached the opposite conclusion. The hearing officer's findings of fact describe Campbell as having "testified that her final rating was based on how Gibson performed at the time of her October observation," which was likely a reference to Campbell's affirmative answer to the question whether "the only consideration" in the termination decision was "whether the teacher in the final observation was proficient or not proficient." For these reasons, we cannot conclude that the hearing officer made a factual finding that Campbell's final evaluation of Gibson's performance included an overall assessment of his performance throughout the remediation period.

¶ 30 Regardless, Gibson cannot show that he was prejudiced by Campbell's failure to consider his overall performance throughout the remediation period when conducting her final evaluation. Gibson contends that he was prejudiced by the failure because he received "mostly proficient" scores during the midpoint evaluation. While it is true that Gibson performed better at the

midpoint evaluation than he did at the final evaluation, his overall performance score for the midpoint evaluation was also less than proficient. Gibson does not explain how consideration of his less-than-proficient performance at the midpoint of the remediation period in addition to his even poorer performance at the conclusion could have raised his overall rating to “proficient.” Even if Campbell had expressly considered Gibson’s midpoint performance as part of her final evaluation, there is no reasonable chance that she would have concluded that Gibson “complete[d] [the] remediation plan with a rating equal to or better than * * * ‘proficient,’” as needed to avoid dismissal. 105 ILCS 5/24A-5(m) (West 2016).

¶ 31 Gibson’s next contention is that the Board improperly extended his remediation period. The School Code states that a remediation plan “shall provide for 90 school days of remediation within the classroom, unless an applicable collective bargaining agreement provides for a shorter duration,” 105 ILCS 5/24A-5(i) (West 2016), and provides that the teacher shall be subject to a final evaluation “at the end of the remediation period,” 105 ILCS 5/24A-5(k) (West 2016). It is undisputed that the ninetieth school day of Gibson’s remediation period fell on June 5, 2015, yet the Board postponed his final evaluation until October 22, 2015. Gibson contends that the delay in conducting his final evaluation necessitates reversal of the Board’s decision to terminate him. We disagree.

¶ 32 Gibson received the 90 school days of remediation guaranteed by the School Code. He argues, however, that the Board contravened the Code by postponing his final evaluation by several school weeks following the ninetieth day of the remediation period, which he contends effectively extended his remediation period. We need not decide whether the Board was authorized to postpone the final evaluation or extend the remediation period in this manner

because the Code expressly provides that the “[f]ailure to strictly comply with the time requirements contained in Section 24A-5 shall not invalidate the results of the remediation plan.” 105 ILCS 5/24A-5 (unnumbered penultimate paragraph) (West 2016). Accordingly, to warrant reversal of the Board’s termination decision, Gibson must show that the Board failed to “substantially comply” with the Code’s time requirements “or act reasonably under the circumstances,” and that the failure resulted in prejudice. *MacDonald*, 2012 IL App (4th) 110599, ¶¶ 16, 31.

¶ 33 Gibson argues, to the contrary, that strict compliance was necessary. He cites *Buchna v. Illinois State Board of Education*, 342 Ill. App. 3d 934 (2003), which reversed a termination decision based on the Board’s failure to strictly comply with the School Code’s requirement of a three-tiered rating system. But *Buchna* recognized that, unlike the rating requirement at issue there, the Code’s timing requirements are not subject to a strict compliance standard. *Id.* at 939. The two other decisions that Gibson cites are also inapposite. In *Raitzik v. Board of Education of the City of Chicago*, 356 Ill. App. 3d 813, 826 (2005), the court rejected as factually baseless a teacher’s contention that the Board conducted her final evaluation after the ninetieth day of the remediation period. In light of that finding, the court did not consider whether, or under what circumstances, delay in conducting a final evaluation would warrant reversal of a termination decision. See *id.* The decision in *Chicago Board of Education v. Smith*, 279 Ill. App. 3d 26 (1996), likewise did not address the question. There, the court reversed a termination decision where the school principal had recommended a teacher’s dismissal *before* conducting a final evaluation. *Id.* at 35. The court rejected the Board’s attempt to rely on the principal’s after-the-fact evaluation, not because it took place outside the 90-school-day remediation period, but

because it “clearly did not play a role in [the] determination to recommend [the teacher’s] dismissal.” *Id.* at 35-36.

¶ 34 Gibson has not shown that the Board failed to substantially comply with the Code’s timing requirements or acted unreasonably in postponing his final evaluation. The hearing officer found that by the ninetieth school day of the remediation period seniors had already graduated and no longer regularly attended classes, and class sessions for underclassmen were significantly altered by their impending final exams and other end-of-year activities. The hearing officer further found that conducting a final evaluation under those circumstances would not have provided an appropriate classroom environment for assessing Gibson’s teaching performance. Gibson contests these findings, but we must defer to them as they are not against the manifest weight of the evidence. And in light of these factual findings, we cannot say that the hearing officer clearly erred in concluding that the Board “reasonably extended” the date of Gibson’s final evaluation.

¶ 35 Gibson also has not shown that he was prejudiced by the delayed final evaluation. He contends that the delay was unfair because he worked hard to prepare for an evaluation in June. But, as the hearing officer noted, Gibson presented no evidence suggesting that he would have performed better at a June evaluation than he did at the October evaluation. Even now, Gibson does not explain how providing him *additional* time to prepare for his final evaluation caused his performance to suffer. In *MacDonald*, the court found that a delay in drafting a teacher’s remediation plan was prejudicial because it deprived the teacher of the opportunity to use the summer break “to attend a professional development class, rewrite his lesson plans, organize his classroom per the administration’s specifications, or begin to address any other deficiencies cited

in the plan.” 2012 IL App (4th) 110599, ¶ 32. By contrast, postponing Gibson’s final evaluation until the new school year provided him additional time to do all those things.

¶ 36 Gibson contends that the delay was prejudicial because the Board deprived him of access to Stirling over the summer break and in the beginning weeks of the new school year prior to the final evaluation. According to Gibson, his final performance would have benefitted from Stirling’s assistance with his “lesson plans, instructional techniques, and in other areas” where he ultimately performed poorly. But Stirling met with Gibson eight times in the two-month period following his midpoint evaluation, providing ample opportunity for Stirling to assist Gibson in preparing for the final evaluation. Stirling observed Gibson’s classroom sessions multiple times in that span and offered him feedback and advice on how to improve his performance. At their last meeting in late May, Gibson told Stirling that her assistance had increased his “awareness of higher-level questioning” and methods of achieving “student engagement,” and he praised her for the “strategies” and “information” she taught him, which “opened [his] mind to possibilities.” Ultimately, Gibson was unable to effectively put those tools into practice at the final evaluation, but that outcome was consistent with Stewart’s testimony that Gibson often failed to implement advice that was given to him. Gibson’s speculation that he would have performed better if given *less* time to prepare for the final evaluation is insufficient to demonstrate that he was prejudiced by the delay.

¶ 37 Gibson’s final contention is that the Board’s failure to make Stirling available to him during the extended portion of the remediation period itself violated the School Code. The Board responds that it had no obligation to provide Gibson with access to a consulting teacher after his 90 school days of remediation ended, even if it postponed his final evaluation by several school

weeks thereafter. As the Board notes, the School Code provides only that “[t]he consulting teacher shall provide advice to the teacher [under remediation] on how to improve teaching skills and to successfully complete the remediation plan,” 105 ILCS 5/24A-5(k) (West 2016), and does not “dictat[e] how many times a consulting teacher must conduct observations or how she is to assist or provide advice to a teacher in the remediation process,” *Raitzik*, 356 Ill. App. 3d at 826. In *Raitzik*, the court rejected a teacher’s contention that her rights under the School Code were violated by her consulting teacher’s failure to meet with her for several weeks, where the two nevertheless met 14 times during the remediation period. *Id.* The Board contends that the same result is warranted here because Stirling and Gibson met 19 times during the remediation period. But *Raitzik* does not control the issue presented here. The contention there was that the consulting teacher did not adequately fulfill her duties, not that the school itself cut off access to the consulting teacher prior to the conclusion of the remediation period, as Gibson contends happened here. However, just as we found it unnecessary to decide whether the Board was permitted to delay Gibson’s final evaluation, we likewise need not decide whether, if so, it was obligated to extend Gibson’s access to his consulting teacher. As discussed above, Gibson has not shown that he was prejudiced by the lack of additional access to Stirling.

¶ 38

III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the Board’s decision terminating Gibson’s employment.

¶ 40 Affirmed.