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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0624**

In the Matter of the Teaching License of Herandez Cortez Evans.

**Filed January 13, 2020
Affirmed
Johnson, Judge**

Minnesota Professional Educator Licensing and Standards Board
File No. 459792

Herandez Cortez Evans, St. Paul, Minnesota (*pro se* relator)

Keith Ellison, Attorney General, Jennifer A. Kitchak, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Professional Educator Licensing and Standards Board)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

The Minnesota Professional Educator Licensing and Standards Board revoked Herandez Cortez Evans's teaching license after determining that he engaged in immoral conduct and unreasonably disciplined students while working as a teacher at an elementary

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

school. We conclude that the board's decision was not based on unlawful procedures. Therefore, we affirm.

FACTS

Evans was employed as a full-time second-grade teacher at a public elementary school in Minneapolis from March 22, 2017, to April 25, 2017. On or about April 19, 2017, several children reported to the school's principal that they had been removed from Evans's classroom and left in a hallway without supervision, that Evans had squeezed their hands in a painful manner, that Evans had spanked them and smacked their heads, and that Evans had held a child in the air by the child's wrist. Evans was warned by the principal that he "should never put his hands on the kids." The principal contacted an investigator employed by the Minnesota Department of Education (MDE) and was advised to file a formal complaint if additional complaints were made.

The next day, the principal received a complaint from a special-education teacher, who found two of Evans's students alone in a hallway. The children indicated that Evans had removed them from his classroom. One of the children was a special-education student who was considered "medically fragile." The special-education teacher discovered that Evans's classroom door was locked. After the special-education teacher knocked on the door, Evans said that the children could not return to class, and Evans became aggressive when the special-education teacher challenged his actions. The principal warned Evans again four days later, on April 24, 2017.

Also on April 24, 2017, three children in Evans's class told another second-grade teacher that Evans had squeezed their arms, spanked them, and hit them. The other teacher,

who previously had observed Evans holding a child in the air by the child's armpits, reported the incident to the principal and filed a written maltreatment report with MDE.

The next day, Evans walked off the job in the middle of the school day. The substitute teacher who replaced him later filed a maltreatment report with MDE after children in the class reported that Evans had "hit and spanked and squeezed" them.

In December 2017, MDE notified Evans that it had made five determinations of maltreatment. Evans did not dispute the determinations and did not request reconsideration. *See* Minn. Stat. § 626.556, subd. 10i(a) (2018).

In February 2018, the Minnesota Professional Educator Licensing and Standards Board gave notice to Evans that it had started its own investigation and that disciplinary action could result. In July 2018, the board's disciplinary committee commenced disciplinary proceedings against Evans. The amended notice alleged that Evans should be disciplined on the grounds that he engaged in immoral conduct, *see* Minn. Stat. § 122A.20, subd. 1 (2018), and that he engaged in unreasonable discipline of students, *see* Minn. R. 8710.2100, subps. 2(D), 5(E) (2019).

In February 2019, an administrative-law judge (ALJ) conducted an evidentiary hearing. The board's disciplinary committee called five witnesses, including Evans. After the board's disciplinary committee rested its case, Evans testified on his own behalf but did not call any other witnesses. In March 2019, the ALJ issued a 17-page, single-spaced report with findings of fact, conclusions of law, and a recommendation. The ALJ concluded that the board's disciplinary committee had proved by a preponderance of the evidence that Evans engaged in both immoral conduct and unreasonable discipline of

students. The ALJ recommended that the board impose discipline on Evans. In April 2019, the board adopted the ALJ's report in its entirety and revoked Evans's teaching license. Evans appeals by way of a writ of certiorari.

D E C I S I O N

Evans argues that the board erred by revoking his teaching license based on two procedural errors in the evidentiary hearing before the ALJ. He requests that this court reverse the revocation of his teaching license and remand the matter to the board.

Before we consider Evans's arguments for reversal, we will review the applicable law. A person who wishes to teach in a public school is required to hold a license issued by the Minnesota Professional Educator Licensing and Standards Board. Minn. Stat. §§ 122A.15, subd. 1, 122A.16 (2018). The board is composed of eleven Minnesota residents, who are appointed by the governor with the advice and consent of the senate. Minn. Stat. § 122A.07, subd. 1 (2018). The board's duties are defined by statute and include the licensing of teachers. Minn. Stat. § 122A.09, subd. 4 (2018). The board is authorized by statute to impose discipline on a licensed teacher by refusing to renew, suspending, or revoking the teacher's license for any of five specified reasons, including "immoral character or conduct." Minn. Stat. § 122A.20, subd. 1(a), 1(a)(1).

The board is authorized by statute to adopt administrative rules pursuant to chapter 14 of the Minnesota Statutes. Minn. Stat. § 122A.09, subd. 9 (2018). The board has done so. *See* Minn. R. 8710.0100-.9010 (2019). The board's rules provide that a teaching license may be revoked or suspended for a violation of section 122A.20 or a violation of the Code of Ethics for Minnesota Teachers, which is incorporated into an administrative

rule. *See* Minn. R. 8710.0800, subp. 1 (2019) (citing Minn. R. 8710.2100, subp. 2). A disciplinary action to enforce the code of ethics must comply with certain procedures in section 214.10 of the Minnesota Statutes. *See* Minn. R. 8710.2100, subp. 3 (2019) (citing Minn. Stat. § 214.10, subds. 1, 2, 3).

A hearing on a complaint against a licensed teacher must be conducted “in accordance with” chapter 14 of the Minnesota Statutes, the Minnesota Administrative Procedure Act (MAPA). Minn. Stat. § 214.10, subd. 2 (2018). After such a hearing, a disciplined teacher “is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68.” Minn. Stat. § 14.63 (2018). On judicial review under MAPA, this court may reverse or modify the board’s decision if it (a) violates constitutional provisions, (b) exceeds the authority of the agency, (c) was made using unlawful procedure, (d) was affected by an error of law, (e) is unsupported by substantial evidence, or (f) is arbitrary or capricious. Minn. Stat. § 14.69 (2018). In conducting judicial review, we generally defer to the board’s expertise and special knowledge in its field. *See In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 515 (Minn. 2007).

A.

Evans first argues that his discipline should be reversed on the ground that he “was not able to submit the evidence [he] wanted to in the administrative hearing.” Specifically, he contends that he was not allowed to introduce the testimony of the MDE investigator who conducted the maltreatment investigation. He contends that the ALJ required the attorney representing the board’s disciplinary committee to assist him in serving a

subpoena on the investigator but that the attorney did not provide such assistance, and he further contends that the ALJ refused during a pre-hearing telephone conference to issue a subpoena for the investigator. He also contends that he was unable to call additional witnesses because of severe winter weather on the day of the evidentiary hearing. In response, the board argues that Evans's arguments are not supported by the record.

In a contested-case hearing, evidence is admissible if it “possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs” and is inadmissible if it is incompetent, irrelevant, immaterial, or repetitive. Minn. Stat. § 14.60, subd. 1 (2018); Minn. R. 1400.7300, subp. 1 (2019). Each party has a right to cross-examine witnesses and to submit rebuttal evidence. Minn. Stat. § 14.60, subd. 3. But the rules of evidence do not apply to a contested-case hearing before an ALJ. *Falgren v. State Bd. of Teaching*, 545 N.W.2d 901, 906-07 (Minn. 1996); *Ostlund v. Independent Sch. Dist. No. 47*, 354 N.W.2d 492, 498 (Minn. App. 1984).

The record available to this court does not support Evans's arguments. The agency record includes a pre-hearing order, which advised Evans that he was required to request subpoenas in writing by January 16, 2019, and provided him with a link to an online subpoena-request form. It appears that Evans did not request any subpoenas. The agency record does not include any transcripts of any pre-hearing conferences, so it is impossible to determine whether the ALJ required the attorney representing the board's disciplinary committee to assist Evans in serving subpoenas or whether the ALJ refused to issue a subpoena for the investigator. The transcript of the evidentiary hearing itself does not

include any request by Evans for a subpoena for the investigator or any objection by Evans to the absence of such a subpoena.

With respect to other witnesses, Evans stated during the evidentiary hearing that he had “asked” one other person to come to the hearing but that she “had to work today, and there was some problems with the weather.” Evans did not request a continuance to allow that person to testify on another day, and he did not request permission to allow her to testify by telephone, as one of the board’s disciplinary committee’s witnesses had done. At the conclusion of the hearing, the ALJ asked Evans whether he had “any other evidence or testimony . . . to offer.” Evans answered in the negative and rested his case.

Thus, the ALJ did not prevent Evans from introducing the testimony of the investigator or any other person.

B.

Evans also argues that his discipline should be reversed on the ground that “[t]he issues in the hearing went beyond the notice of hearing.” His argument has two parts. First, he argues that the attorney representing the board’s disciplinary committee “presented evidence that I quit my job and discussed again in her closing arguments that I worked at 12 different schools.” He also argues that he was not allowed to introduce evidence that he had not quit. Second, Evans argues that the attorney representing the board’s disciplinary committee stated that he had “left bruises on a child.”

The amended notice of hearing, which was served on Evans in January 2019, alleged, among other things, that complaints were made that Evans had “engaged in corporal punishment of five students, including spanking, slapping, and pinching students,

as well as grabbing student’s wrists and hands in a painful manner, to reform the conduct of the students.” The notice also alleged that MDE had determined that Evans had “physically abused the students, using corporal punishment, including spanking, slapping, pinching, and grabbing and squeezing students’ hands and wrists very hard.” The notice identified two issues to be determined at the evidentiary hearing: “Whether Respondent’s conduct . . . constitutes immoral conduct under Minnesota Statutes section 122A.20, subdivision 1(a)(1)?,” and, “Whether Respondent’s conduct . . . to reform student conduct is disciplinary action that is not reasonable, in violation of the Code of Ethics for Minnesota Teachers, Minnesota Rule 8710.2100, subpart 2(D)?”

With respect to the first part of Evans’s argument, the record shows that it was Evans—not the board’s disciplinary committee—who introduced the evidence about which he complains. Evans testified at length about quitting his job at the school where the complaints arose. He agreed that he intentionally quit, that he understood at the time that he was taking “action to terminate [his] own employment,” and that the school principal did not fire him. At no point in the hearing did Evans testify that he did not quit. In addition, Evans testified that, “over my teaching career, I’ve taught at 12 different schools.” The board’s disciplinary committee did not elicit any evidence concerning the number of schools at which Evans has taught. Furthermore, the attorney representing the board’s disciplinary committee did not address Evans’s employment history in her written closing argument.

With respect to the second part of Evans’s argument, the evidence and argument was well within the scope of the amended notice. As stated above, the notice specifically

referred to allegations and determinations that Evans had “grabb[ed] student’s wrists and hands in a painful manner” and that he had “grabb[ed] and squeeze[ed] students’ hands and wrists very hard.” During the hearing, the board’s disciplinary committee introduced the written report prepared by the MDE investigator, which stated that a student “received one mark on the wrist from being hit and squeezed by [Evans].” In a written closing argument, the attorney representing the board’s disciplinary committee highlighted that report by stating that Evans had grabbed a student’s hand “with sufficient force” to leave “a lasting mark.” There is nothing improper in the reference to that part of the MDE report in the closing statement.

Thus, the ALJ did not allow the evidentiary hearing to exceed the scope of the notice of hearing.

In sum, the board did not revoke Evans’s teaching license based on unlawful procedures.

Affirmed.