

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of the Grievance of  
BENJAMIN WHITMORE  
Under the Grievance Procedure of  
MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0103  
Case Type: IHO

DECISION NO. 41338

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**Appearances:**

Elizabeth Pierson, Attorney, Pines Bach, 122 W. Washington Ave., Suite 900, Madison, Wisconsin, appearing on behalf of Benjamin Whitmore.

Debra Rash, Attorney, 5225 West Vliet Street, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Board of School Directors and Milwaukee Public Schools.

**DECISION OF THE IMPARTIAL HEARING OFFICER**

On June 19, 2025, the Wisconsin Employment Relations Commission received a joint request from the Milwaukee Public Schools and Benjamin Whitmore to appoint Katherine Scott Lisiecki, a member of the Commission's staff, to serve as the Impartial Hearing Officer (IHO) in a proceeding concerning Whitmore's termination. A hearing was held on October 21, 2025, by video conference. The hearing was transcribed, and the parties submitted written closing arguments on December 12, 2025. Having considered the evidence, the arguments of the parties, and the record as a whole, I issue the following decision.

**ISSUE**

Did the Milwaukee Public Schools have just cause to issue discipline to Benjamin Whitmore in the form of termination? If not, what is the appropriate remedy?

**FACTS**

Benjamin Whitmore (herein, Whitmore) worked as a special education teacher at the Ben Franklin Elementary School (herein, Franklin), part of the Milwaukee Public Schools (herein, MPS). Previously, he worked as a paraprofessional at the Barack Obama School of Career and

Technical Education. As a paraprofessional, he was not responsible for preparing IEPs or communicating with IEP team members.

In 2020, Whitmore was terminated for attendance issues during the COVID-19 pandemic and then reinstated via a “last-chance agreement.” *See* Transcript pg. 226; Exhibit 43. This agreement expired in October 2022. *Id.*

The 2024 – 2025 school year was Whitmore’s first year as a full-fledged teacher. As a special education teacher, Whitmore was responsible for preparing individualized education programs (IEPs) for his special needs students, developing the schedule, teaching students based on their IEPs, evaluating students, and communicating with students’ parents and IEP team members. *See* Transcript pg. 248. Whitmore was initially assigned to work with fourth, fifth, and sixth grade students, but later, second and third grade students were added to his caseload. *See* Transcript pg. 255.

On October 25, 2024, Franklin Principal Angela Fleming and Dorothy Watters met with Whitmore about his performance. *See* Exhibit 10, pgs. 444- 46. Whitmore was not offered the opportunity to bring a representative to this meeting. *See* Transcript pgs. 101, 103, 264. In fact, Whitmore believed the meeting was about a challenging student, not about his performance. *See* Transcript, pg. 264. On October 27, 2024, Fleming sent Whitmore a supervisory letter of concern but issued no discipline. *See* Exhibit 6, pgs. 184 – 186.

The supervisory letter of concern stated that Whitmore failed to timely correct an IEP, failed to contact students’ parents to schedule IEP meetings, and provide specifically designed instruction. *Id.* The letter stated that Fleming expected Whitmore to read and reply to email daily, set up annual IEP meetings with parents, make requested IEP corrections within 24 hours of receiving the correction request, fully complete an IEP draft 24 – 48 hours before all IEP meetings, review and update his schedule, ensure that the students’ supplemental aids are in place and being used, follow through on the recommendations given by citywide and support staff, and reach out to Fleming and Watters if he needed assistance. *Id.*

On November 1, 2024, Fleming and Watters met with Whitmore about a possible voluntary move to another position at Franklin. Whitmore was not offered the opportunity to bring a representative to this meeting. *See* Transcript pgs. 101, 103, 264. Fleming raised concerns about Whitmore’s performance, and Whitmore stated that he had difficulty balancing a challenging student with the rest of his caseload. *See* Exhibit 6, pgs. 188 – 189. The position they offered Whitmore would have been more challenging than his existing caseload, working with fewer but more severely disabled students. *See* Transcript pg. 265. On November 5, 2024, Fleming sent Whitmore a letter about the November 1 meeting, which stated that Whitmore’s IEPs were out of compliance but did not mention discipline. *Id.*

On November 15, 2024, Fleming and Watters again met with Whitmore about his performance. *See* Exhibit 6, pgs. 190 – 192. Whitmore was not offered the opportunity to bring a representative to this meeting. *See* Transcript pgs. 101, 103, 264. On November 18, 2024, Fleming sent Whitmore a second supervisory letter of concern but issued no discipline.

This second supervisory letter of concern reiterated the expectation that Whitmore read and respond to emails daily, complete IEPs 24 – 48 hours before the scheduled meeting, complete IEP corrections within 24 hours, and follow and update his schedule. *See* Exhibit 6, pgs. 190 – 192. The letter also stated that Whitmore must schedule IEPs in a timely manner, complete all waivers for re-evaluation, and use the special education contact log to document all communication with parents. *Id.* The letter stated that if Whitmore failed to do so, it could lead to disciplinary action in the future. *Id.*

A disciplinary hearing was held on January 27, 2025. *See* Exhibit 33, pgs. 905, 906, 907. Whitmore testified that he was unable to attend because he was not provided with a substitute. *See* Transcript pgs. 100, 273. At no point prior to this meeting was Whitmore placed on a performance improvement plan (PIP). *See* Transcript, pg. 94 – 95. On February 25, 2025, Department of Employment Relations Director II Larry Cote, Jr., terminated Whitmore. *See* Exhibit 34. On February 26, 2025, Whitmore filed a grievance regarding his termination. *See* Exhibit 42. On April 11, 2025, Employment Relations Specialist Marshall Traster issued a written decision denying Whitmore’s grievance. *Id.* at 3. On April 28, 2025, Whitmore filed a grievance regarding Traster’s decision. *Id.* at 2.

## **DISCUSSION**

### **The Standard of Review**

I begin my discussion by first addressing the standard of review. Part II (B) of MPS’s Employee Handbook states that “non-probationary employees shall only be disciplined or discharged for just cause.” Thus, employee discipline will be reviewed under a just cause standard. Although the Handbook does not define just cause, a finding of just cause generally requires the employer to prove that (1) the employee committed conduct for which discipline is warranted and (2) the discipline issued is consistent with the seriousness of the misconduct.

Part II (B) of the Employee Handbook further states that MPS has a policy of progressive discipline, which depends “on the specific behavior and the frequency of occurrences.” In other words, serious behaviors may justify departure from progressive discipline, though the provision does not specify which behaviors may warrant departure from progression.

MPS bears the burden of proving that there was just cause for the discipline. *See* MPS Exhibit 1, pg. 37.

### **The Merits**

The first issue is whether Whitmore committed misconduct for which discipline is warranted. MPS alleges that Whitmore failed to read or respond to emails from his supervisors; failed to provide special education services to his students; failed to timely schedule and hold IEP meetings with his students’ parents; failed to write and complete IEPs; failed to submit required

documentation in compliance with state and federal deadlines. Struggling, not insubordinate. MPS argues that these actions violated MPS Handbook Admin Policy 6.07(a)(h)(k)(q); MPS Handbook Core Beliefs; Professional Conduct; Attendance; Discipline; Employee Rules of Conduct; Ben Franklin Schol Staff Manual 1.01 Core Beliefs; 3.01 Employee Rules of Conduct; and 3.03 Professional Conduct. The preponderance of the evidence shows that Whitmore failed to complete essential paperwork or reply to his supervisors in a timely manner. However, it is worth noting that this was Whitmore's first year as a full-fledged special education teacher, having previously worked as a paraprofessional. Fleming and Watters testified that paraprofessionals are not responsible for completing IEPs the way a special education teacher is responsible for doing so. *See* Transcript, pg. 90, 154. Whitmore testified that this new position was a big change from his previous role. *See* Transcript, pg. 254.

MPS failed to follow progressive discipline in addressing Whitmore's behavior. As mentioned previously, Part II (B) of the Employee Handbook further states that MPS has a policy of progressive discipline, which depends "on the specific behavior and the frequency of occurrences." Here, Whitmore was called to several meetings in which he was not told were regarding misconduct – in fact, he believed they were about a challenging student of his – and to which he was not offered the opportunity to bring a representative. He was issued two supervisory letters of concern, but these were not discipline. At no point during the 2024 – 2025 school year was Whitmore issued a letter of reprimand, a suspension, or placed on a performance improvement plan (PIP).

MPS argues that Whitmore signed a "last chance agreement" in 2020, and that therefore MPS did not need to issue intermediate discipline before terminating him. However, that agreement expired in 2022, two years before the events at issue here. *See* Exhibit 43. MPS further argues that the sheer number of emailed reminders and requests from Whitmore's supervisors prove that MPS was justified in skipping progressive discipline and terminating Whitmore. However, this goes against the spirit of progressive discipline, which is meant to give employees a chance to correct their performance before facing severe consequences, such as the loss of a job. Further, MTA representative Chris Perillo testified that MPS rarely escalates to termination unless the situation involves criminal behavior. *See* Transcript, pg. 164. Receiving two supervisory letters of concern did not provide Whitmore adequate notice that he could be terminated if he continued to struggle to complete essential paperwork or reply to his supervisors in a timely manner. MPS did not follow progressive discipline or give Whitmore adequate forewarning before terminating him. Whitmore's misconduct was not serious enough to justify the skip in progressive discipline to termination.

Lastly, Whitmore alleges that he was subject to disparate treatment, because similarly situated employees who committed similar misconduct were treated less harshly than he was. Whitmore argues that program support teacher Michelle Scott did not complete her IEP responsibilities in a timely manner or reply to emails in a timely manner, and was given a two-day suspension. *See* Exhibit A. Whitmore further argues that special education teacher Holly Iverson failed to complete her IEP responsibilities, despite significant support from staff, but was given a

one-day suspension. *See* Exhibit B. Lastly, Whitmore argues that school social worker Claire Johnson caused IEPs to be out of compliance and was given a one-day suspension. *See* Exhibit C. MPS argues that these were new teachers, unlike Whitmore, who had been working at MPS for many years. However, as previously discussed, this was Whitmore's first year as a full-fledged special education teacher, a role that had increased IEP responsibilities. MPS also argues that Whitmore's termination was preceded by a last-chance agreement, supervisory meetings, verbal reminders, and letters of concern. However, as discussed above, Whitmore's last-chance agreement had expired, and the other items did not constitute discipline. Further, Scott and Iverson were also issued supervisory letters of concern. In conclusion, MPS treated Whitmore more harshly than other employees who were disciplined for failing to complete IEPs in a timely manner.

In conclusion, the preponderance of the evidence establishes that MPS failed to follow progressive discipline regarding Whitmore's performance issues, and his misconduct was not serious enough to warrant a skip in progression to termination. Further, MPS treated Whitmore more harshly than other employees who failed to complete IEPs in a timely manner. Therefore, there was not just cause for MPS to terminate Whitmore.

For the reasons set forth above, I find that MPS did not have just cause to terminate Benjamin Whitmore. Accordingly, I issue the following:

#### **DECISION**

MPS did not have just cause to issue discipline to Benjamin Whitmore in the form of termination. Therefore, Whitmore shall be reinstated, have the discipline stricken from his record, and be made whole in all other respects.

Issued at Madison, Wisconsin, this 20<sup>th</sup> day of March 2026.

#### **WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

***Electronically signed by: Katherine Scott Lisiecki***

Katherine Scott Lisiecki, Impartial Hearing Officer