

Defendant Laura Henderson became employed as a teacher by the Benton County School System in 1993. During all times relevant to this appeal, Ms. Henderson taught fifth through eighth grade students at Holladay School. In a letter dated June 23, 1998, Superintendent Jerry Dinwiddie suspended Ms. Henderson from her teaching duties pending the resolution of certain allegations of misconduct made against her.¹ Additionally, Superintendent Dinwiddie notified Ms. Henderson that he was charging her with “unprofessional conduct/conduct unbecoming a member of the teaching profession”² and that he would be recommending to the Benton County Board of Education (“Board”) that she be dismissed. A hearing on the matter was held before the Board on August 20, 1998, resulting in the Board’s termination of Ms. Henderson’s employment. Ms. Henderson subsequently filed a “Petition for Writ of Certiorari” with the Benton County Chancery Court seeking judicial review of the Board’s ruling. After hearing the matter *de novo* on April 21, 1999, the Chancery Court issued written findings of fact providing in pertinent part as follows:

1. Petitioner [Henderson] purchased a compact disk, which was known by her or should have been known by her to contain sexually explicit, vulgar, and profane lyrics. Petitioner [Henderson] delivered said compact disk to a fifteen (15) year old student knowing that he was forbidden by his guardian to be in possession of said disk.
2. Petitioner [Henderson] transported a minor student to a basketball game after this student had been

¹Specifically, it was alleged that Ms. Henderson (1) purchased a Marilyn Manson compact disk for a student in violation of school policy and against the wishes of the student’s legal guardian, (2) allowed a student to drive her car after Ms. Henderson and the student had been drinking alcohol, (3) drove a student to a school basketball game after the student had been barred from attending the game, (4) sought information from a student regarding where she might purchase marijuana, (5) provided alcohol to students at her home and in her car, (6) provided marijuana to students at her home and in her car, and (7) allowed students to engage in sexual activity in her home.

²Section 49-5-501 of the Tennessee Code Annotated states that “[c]onduct unbecoming to a member of the teaching profession” may include, but is not limited to, one or more of the following:

- (A) Immorality;
- (B) Conviction of a felony or a crime involving moral turpitude;
- (C) Dishonesty, unreliability, continued willful failure or refusal to pay one’s just and honest debts;
- (D) Disregard of the code of ethics of the Tennessee Education Association in such a manner as to make one obnoxious as a member of the profession; or
- (E) Improper use of narcotics or intoxicants;

suspended from said [basketball] game with full knowledge of said suspension.

3. The remaining allegations deal with the Petitioner [Henderson] purchasing alcohol for minor students, drinking alcohol with students and smoking marijuana with students. The record is replete with instances of these actions.

The Petitioner [Henderson] admits virtually all surrounding facts involving these allegations but denies the use and purchase of alcohol and drugs. The Court finds the petitioner [Henderson] purchased alcohol for minor students on more than one occasion, drank alcohol with minor students on more than one occasion, and smoked marijuana with minor students on more than one occasion. The Court does not believe the explanations given by petitioner contradicting the testimony and admissions of certain students. Particularly disturbing to the Court was the Petitioner's handling of the New Year's incident involving minor student, Kelly Wallace. This child became intoxicated and was taken by petitioner and other students to the home of Chris Inman and left there unattended. The child vomited on herself. Petitioner's response once again admitted all of the surrounding facts and circumstances except she denied alcohol was involved. It is beyond the Court's comprehension that any adult and particularly a college educated teacher would leave an unconscious child unattended. The results fortunately were not fatal, however this child's survival of the incident certainly cannot be credited to the actions of the Petitioner [Henderson].

Further, the Court has reviewed certain notes and letters introduced as collective Exhibit #3 which the Petitioner [Henderson] admitted writing. While not attempting to reach any conclusions regarding the psychiatric condition of the Petitioner, the Court finds the style, content, and subject matter to be extremely alarming.

The Chancery Court then entered an order incorporating these findings of fact and affirming the Board's termination of Ms. Henderson's employment. This appeal by Ms. Henderson followed.

The action of a school board in dismissing a teacher is an administrative decision for the purpose of determining the appropriate standard of judicial review. *See Cooper v. Williamson County Bd. of Educ.*, 746 S.W.2d 176, 178 (Tenn. 1987). When an appeal of an administrative decision is by common law writ of certiorari, judicial review is very narrow, as the inquiry of the reviewing court is limited to whether the decision of the administrative body is in violation of a constitution or statute, whether the administrative body has acted illegally, fraudulently, arbitrarily, or without any material evidence to support its decision, and whether the administrative body has exceeded its jurisdiction or followed unlawful procedure. *See Hall v. Shelby County Retirement Bd.*, 922 S.W.2d 543, 545 (Tenn. Ct. App. 1995); *Brooks v. Fisher*, 705 S.W.2d 135, 136 (Tenn.

Ct. App. 1985). With respect to the findings of fact made in such cases, the reviewing court may not substitute its judgment for that of the administrative body unless the administrative decision is unsupported by substantial and material evidence. *See McClellan v. Board of Regents of State University*, 921 S.W.2d 684, 693 (Tenn. 1996); *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995). In the instant case, however, Ms. Henderson's appeal of the Board's decision to terminate her employment was not by common law writ of certiorari but, rather, was by statutory writ of certiorari pursuant to section 49-5-513 of the Tennessee Code Annotated.³ When an appeal is sought under section 49-5-513, the chancery court must review the matter *de novo* with no presumption of correctness attaching to the school board's findings of fact and the chancellor is required to redetermine all issues as if no prior determination had been made, substituting his or her judgment for that of the school board. *See Van Hooser v. Warren County Bd. of Educ.*, 807 S.W.2d 230, 236 (Tenn. 1991); *Cooper*, 746 S.W.2d at 179; *Morris v. Clarksville-Montgomery County Consol. Bd. of Educ.*, 867 S.W.2d 324, 327 (Tenn. Ct. App. 1993). Once the matter is further appealed to this Court, however, our review of the ruling of the chancery court is *de novo* on the record, accompanied by a presumption of correctness of the findings below. *See Potts v. Gibson*, 469 S.W.2d 130, 132 (Tenn. 1971); *Morris*, 867 S.W.2d at 327; T.R.A.P. 13(d). Accordingly, we may not reverse the chancellor's findings of fact unless they are contrary to the preponderance of the evidence. *See id.*

³Section 49-5-513 provides in pertinent part as follows:

(a) A teacher under "permanent tenure" or "limited tenure" status who is dismissed or suspended by action of the board may petition for a writ of certiorari from the chancery court of the county where the teacher is employed.

....

(g) The cause shall stand for trial and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue. The review of the court shall be limited to the written record of the hearing before the board and any evidence or exhibits submitted at such hearing. Additional evidence or testimony shall not be admitted except as to establish arbitrary or capricious action or violation of statutory or constitutional rights by the board.

(h) The chancellor shall reduce the chancellor's findings of fact and conclusions of law to writing and make them parts of the record.

(i) Any party dissatisfied with the decree of the court may appeal as provided by the Tennessee Rules of Appellate Procedure, where the cause shall be heard on the transcript of the record from the chancery court.

In the instant case, it is alleged that Ms. Henderson engaged in no less than seven categories of misconduct that, either individually or in combination, serve as a basis for her termination. The evidence in the record with regard to these allegations is discussed in detail below.

1. Marilyn Manson Compact Disk

Mike Rowlette (age fifteen) testified that he went down to Ms. Henderson's classroom, gave her some money, and asked her to purchase for him a Marilyn Manson compact disk entitled "Smells Like Children." On the front of this compact disk are labels stating "Parental Advisory" and "Explicit Lyrics." Barbara Rowlette, Mike's grandmother and legal guardian, testified that Mike was aware that she did not like Marilyn Manson and that he was not allowed to have Marilyn Manson compact disks in her home. According to Ms. Henderson, Mike told her that he had other Marilyn Manson compact disks at home but that he had to hide them from his grandmother because she did not like that kind of music. Ms. Henderson subsequently purchased the compact disk for Mike. According to Mike, when Ms. Henderson handed him the compact disk, she told him not to get caught with it and not to let anyone see it. Ms. Henderson testified that she did not think it was wrong to purchase the compact disk because she once observed Mike looking at some Marilyn Manson lyrics on the internet while in the school library under the supervision of Principal Betty Jo Douglas. She further testified that she was unaware of any rule or school policy against buying compact disks for students. Principal Douglas testified, however, that there was a policy against having inappropriate music at school and that, during the previous year, she had confiscated compact disks from students after receiving reports from Ms. Henderson that the students were in possession of inappropriate music.

2. Student Driving Ms. Henderson's Car

Diedre Schopf (age fourteen) and Jessica Hastings (age fourteen) both testified that they and Brian Johnson (then age fourteen or fifteen) were at Ms. Henderson's house one night drinking beer. According to Diedre and Jessica, they ran out of beer and, because she was too drunk

to drive, Ms. Henderson asked Brian to drive her to the store to get some more beer. Ms. Henderson and Brian then left but returned at approximately 11:30 or 12:00, asking Diedre and Jessica to help them get Ms. Henderson's car out of a ditch. Ms. Henderson admitted that there were students at her house on the night that her car got stuck in a ditch but denied that Brian was in her car or driving her car when the incident occurred. According to Ms. Henderson, she was driving to the store to get something to eat at approximately midnight and ran over some glass in the road. She then tried to turn the car around in a grassy spot but the grass was wet, causing her car to become stuck.

3. Driving Student to Basketball Game

Principal Douglas testified that Brian Johnson had stolen some basketball shoes from a locker room and that, consequently, she had suspended him from attending a subsequent basketball game. During the night of that basketball game, she discovered Brian hiding in the back of Ms. Henderson's car in the school parking lot. Ms. Henderson later approached Principal Douglas, apologized for driving Brian to the basketball game, and explained that Brian had told her that he had permission to be in the parking lot but was not allowed to go inside the gymnasium. Ms. Henderson testified that she was unaware that Brian had been in trouble at school and that Brian had lied to her, telling her that he could go to the basketball game. Ms. Henderson further testified that she did not think it was odd that Brian wanted to sit in her car rather than go inside the gymnasium because Brian had told her that he was supposed to meet someone in the parking lot.

4. Information Regarding Purchase of Marijuana

Christa Bourque (age fourteen) testified that, on one occasion, she and Ms. Henderson were discussing the topic of drugs and Ms. Henderson asked her if she could "hook her up with some." Christa responded that she probably could get Ms. Henderson some marijuana. Christa later discussed this conversation with Principal Douglas, who instructed her to give Ms. Henderson the pager number of a female police officer. Christa then gave the number to Ms. Henderson but Ms. Henderson apparently never attempted to call it. Ms. Henderson testified that Christa had asked her whether she had done drugs with students and that she responded in the negative. According to Ms. Henderson, Christa then handed her a telephone number and stated that, if she ever decided that she

wanted any kind of drugs, she should call the number. Ms. Henderson further testified that Christa approached her on another occasion, handed her a different telephone number, and encouraged her to call it, prompting Ms. Henderson to turn the number into Principal Douglas. Principal Douglas explained, however, that Ms. Henderson turned the number into her only after she was called to the office regarding an argument that had occurred between Ms. Henderson and Christa.

5. Providing Alcohol to Students

Diedre Schopf, Jessica Hastings, and Kelly Wallace (age thirteen) each testified regarding occasions on which Ms. Henderson allegedly provided them with alcoholic beverages. Diedre and Jessica testified that they were drinking beer with Ms. Henderson and Brian Johnson on the night that Ms. Henderson's car got stuck in a ditch. Jessica and Kelly testified that they and Brian Johnson rode to Jackson with Ms. Henderson to get her cellular telephone repaired and that they were drinking beer. Jessica and Kelly further testified that they rode to Jackson with Ms. Henderson and Brian Johnson on New Year's Eve. During this trip, they stopped at the liquor store and Ms. Henderson purchased champagne and Jack Daniels. They then proceeded to pick up Joey Ahl and Chris Inman but, because they didn't have enough room in the car, Kelly was left unattended at Chris's house. At that time, Kelly was intoxicated and unable to walk. When they later returned to get Kelly at Chris' house, Kelly was barely able to walk and had vomited on herself. Jessica also testified that, on another occasion, she spent the night with Ms. Henderson and they consumed two or three Bud Lights and five Zimas. Finally, Kelly testified that Ms. Henderson once picked up her and Jessica, took them to the store, and purchased a six-pack of Zimas for them. According to Kelly, Jessica drank one of the Zimas on the way home and left the remaining Zimas in the driveway with the intent to sneak out and retrieve them later. They fell asleep, however, and did not retrieve the Zimas. Linda Osburn, Kelly's mother, testified that she found five Zimas on the following morning in a bag directly across from her driveway. Ms. Henderson admitted that Jessica, Brian, Kelly, and Diedre had been at her house. She denied, however, that she had ever provided alcohol to these students or allowed them to consume alcohol in her presence. Ms. Henderson further admitted that she had once purchased a six-pack of Zimas while in the presence of Jessica and Kelly. She explained, however, that the Zimas were for her own consumption and that the purpose for taking Jessica and Kelly to the store was so that Jessica could purchase a Sprite and a pack of gum to ease

her upset stomach. According to Ms. Henderson, she later discovered that the Zimas were gone but assumed that someone had stolen them because she had previously left her car unlocked while stopping to get something at Wal-Mart. Finally, Ms. Henderson admitted that she was with students on New Year's Eve but denied that any alcohol was present on that occasion.

6. Providing Marijuana to Students

Nikki Waggoner (age fourteen), Jessica Hastings, and Kelly Wallace each testified regarding occasions on which Ms. Henderson allegedly provided them with marijuana. Nikki and Kelly testified that they smoked marijuana one night at Ms. Henderson's house with Ms. Henderson, Chris Inman, and Brian Johnson. Kelly and Jessica testified that they smoked marijuana with Brian and Ms. Henderson when they went to Jackson to get Ms. Henderson's cellular telephone repaired. Kelly and Jessica also smoked marijuana with Brian, Chris, and Ms. Henderson on New Year's Eve. According to Jessica, she smoked marijuana just about every time that she visited Ms. Henderson's house. Ms. Henderson denied that she had ever provided students with marijuana or had ever allowed them to smoke marijuana in her house or car.

7. Sexual Activity

Nikki Waggoner testified that, one night that she was supposed to be spending the night with a friend, she snuck out of the house, walked to Ms. Henderson's house, and had sex with Chris Inman. Jessica Hastings also testified that she had sex with Chris Inman at Ms. Henderson's house and added that Ms. Henderson provided them with condoms. Finally, Jessica testified that Ms. Henderson has had sex with Brian Johnson on five or six occasions. Ms. Henderson denied that she ever had sex or tried to have sex with Brian. Additionally, Ms. Henderson stated that she would never allow students to engage in sexual activity in her house and that she never provided any students with condoms.

On appeal, Ms. Henderson questions the credibility of Nikki, Christa, Kelly, Diedre, and Jessica, characterizing these students as "self-confessed liars." Although we acknowledge that these students have admitted being dishonest on various occasions, we must agree with the

comments of one Board member made at the conclusion of the hearing in this matter, as follows:

I cannot believe, even with a script, that so many witnesses so young could be so on target with their testimony. I don't even think you could school them to do what they done, without hardly any contradiction of any kind. And there's various, various opportunities, yet they corroborated each one's story. And to get six, I think it is, twelve, thirteen, fourteen year olds to plan something like that, you couldn't even – to me, you couldn't even sit them down and give them a script and let them follow it.

Additionally, we do not think that these students had a motive for testifying falsely against Ms. Henderson, as their testimony was largely self-incriminating. Questions involving witness credibility are left largely within the determination of the trier of fact. *See Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999). In the instant case the trier of fact, the Board, believed the testimony of Nikki, Christa, Kelley, Diedre, and Jessica and disbelieved the conflicting testimony of Ms. Henderson. We agree with this determination of credibility. Additionally, after reviewing all of the evidence presented in the case at bar, we conclude that the evidence does not preponderate against the Chancellor's findings of fact.

Based on the foregoing, the order of the Chancery Court upholding the Board's decision to terminate Ms. Henderson's employment is affirmed. The costs of this appeal are charged to Ms. Henderson, for which execution may issue if necessary.

FARMER, J.

CRAWFORD, P.J., W.S.

LILLARD, J.