[Cite as *Flower v. Brunswick City School Dist. Bd. of Edn.*, 2015-Ohio-2620.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

LAURA M. FLOWER Appellant v. BRUNSWICK CITY SCHOOL DISTRICT BOARD OF EDUCATION Appellee	C.A. No. 14CA0021-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 12CIV0587

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

WHITMORE, Judge.

{¶1} Appellant, Laura Flower, appeals from the order of the Medina County, Ohio Court of Common Pleas granting summary judgment to Appellee, Brunswick City School District Board of Education (the "Board"). We affirm.

I

{¶2} Ms. Flower was fired in 2012 from her job as a teacher in the Brunswick, Ohio City School District. She had been under a continuing contract since 2005.[1]

{¶3} Ms. Flower was fired under the teacher termination provisions of a collective bargaining agreement ("CBA") between the Brunswick Education Association ("BEA") and the Board.[2] The teacher termination provisions of the CBA are part of the Peer Assistance and

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[1] A continuing contract is one that remains in effect until the teacher resigns, retires, is retired pursuant to statute, or is terminated or suspended. R.C. 3319.08(D).

[2] Ms. Flower was a member of the BEA.

Review ("PAR") program terms contained in the CBA. Ms. Flower was placed in the PAR intervention program after receiving several unsatisfactory performance ratings during the 2010-2011 school year.[3] The PAR intervention program is for novice and experienced teachers having difficulty. Placement in the intervention program is automatic for a teacher who has received an unsatisfactory rating.

{¶4} The PAR program provisions set forth in CBA Section 16.013 are at the center of this appeal. They are summarized as follows:

- A consulting teacher will be assigned to the teacher participating in the PAR intervention program (the "intervention teacher").

- The consulting teacher will assume full responsibility for the evaluation of the intervention teacher and make recommendations to the PAR panel for employment decisions.[4]

- The consulting teacher will:

  (1) meet with the building principal prior to working with the intervention teacher to discuss problems and suggestions for improvement that the principal will identify;

  (2) meet with the intervention teacher to discuss the PAR intervention program and goal-setting process;

  (3) observe the intervention teacher and assess teaching performance for the purpose of determining performance goals;

  (4) meet with the building principal and intervention teacher to establish specific performance goals necessary to raise the intervention teacher's performance to an acceptable level, and include in the meeting program consultants and supervisors as necessary;

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[3] There are several PAR programs. The PAR intervention program is the only PAR program relevant here.

[4] The PAR panel is composed of three members appointed by the BEA (including the president or vice president and two other teachers representing elementary, middle, and high school), and three members appointed by the Board superintendent (including the personnel director and at least one principal).

(5) frequently observe the intervention teacher, having both pre-observation and post-observation conferences as often as practical to provide support, guidance, and formative assistance (subject area consultants and special program area supervisors may be included); and

(6) continuously update the building principal regarding the intervention teacher's progress.

- An intervention teacher may request to have a new consulting teacher assigned no later than six weeks after starting the PAR program.

- The PAR panel will monitor the progress of the intervention teacher by reviewing the status reports and evaluations regularly submitted by consulting teachers. Consulting teachers will share their recommendations with intervention teachers prior to making those recommendations to the PAR panel.

- When the panel receives a final status report from a consulting teacher stating that an intervention teacher needs no further assistance or that further assistance will not be productive, a written report of the participant's performance is completed and signed by all six panel members. Once this occurs, if it has been determined that further assistance will not be productive, the PAR chairperson, BEA president or vice president, and the personnel director will have a conference with the participant to review the report and receive her signature. The intervention teacher is required to sign the report. The intervention teacher's signature means that she has received a copy of the report. It does not signify agreement with the report.

- The PAR panel may make recommendations to the Board superintendent, including a recommendation for termination.

{¶5} Apart from the PAR program terms, the CBA spells out the substantive grounds for terminating a teacher. The CBA provides in Section 11.012 that "[n]o disciplinary action against a bargaining unit member will be taken without just cause."

{¶6} The CBA does not contain a grievance procedure applicable to a decision by the Board to terminate a PAR intervention teacher, when that decision is based upon the recommendation of the PAR panel. Although the CBA contains a grievance procedure in Section 16.019, this procedure explicitly does not apply to a decision by the Board to terminate a

PAR intervention teacher. The CBA also specifies that a teacher termination pursuant to the recommendation of the PAR panel is not subject to the grievance mechanism under R.C. 3319.11, 3319.111, or 3319.16. The CBA provides in Section 16.020 that the PAR provisions "are intended to expressly supersede Ohio Revised Code Sections 3319.11, 3319.111, and 3319.16," including the statutory provisions for teacher termination, and grievance procedures, contained therein. The CBA further states that "[i]t is understood that the extensive procedures afforded to PAR participants satisfy the participant's [sic] constitutional and statutory due process rights."

{¶7} Amy Moore was assigned to be Ms. Flower's PAR consulting teacher under the CBA. Ms. Moore met with Ms. Flower to set performance goals. She observed Ms. Flower frequently. Ms. Moore met with Ms. Flower on a weekly basis to discuss Ms. Flower's performance.[5]

{¶8} Ms. Moore prepared three PAR reports, including a final report, which documented Ms. Flower's participation in the PAR program. According to Ms. Moore, Ms. Flower failed to: (1) follow lesson plans as written; (2) write her own lesson plans;[6] (3) implement required reading and math programs correctly; (4) employ an adequate classroom management system; and (5) communicate her expectations to students. In addition, the PAR program coordinator, Katherine Collins, observed Ms. Flower's students not actually working on class assignments during a large portion of the class period due to Ms. Flower's lack of planning

[5] Ms. Flower claims that she was unhappy with Ms. Moore as her consulting teacher. Ms. Flower did not complain about Ms. Moore under the procedure provided in the CBA.

[6] Ms. Moore noted that Ms. Flower no more than replicated the plans of her grade-level teachers, and followed those plans less than one-third of the time.

and organization, as well as her inappropriate use of desk arrangements in a disorganized and chaotic classroom.

{¶9} According to Ms. Moore and Ms. Collins, Ms. Flower failed to keep an organized, disciplined, or safe classroom. Ms. Collins observed Ms. Flower yelling at students from across the room. Ms. Flower assumed that students were misbehaving without observing any misconduct. She targeted boys for discipline, failed to establish a rapport with students, and neglected to provide positive feedback. Ms. Flower allowed students to: (1) lie on tables; (2) rock on chairs; (3) sit under their desks; (4) run around the classroom; and (5) spin scissors on pencils. Ms. Flower failed to intervene when a student held up a desk lid with the student's head. One student fell off a chair during class after rocking it inappropriately, and Ms. Flower failed to notice the incident. Ms. Moore noted that students were unable to move safely about the classroom because Ms. Flower left items on the floor and the classroom was generally chaotic.

{¶10} Ms. Moore attempted to help Ms. Flower improve her performance. She provided Ms. Flower with: (1) model intervention lessons; (2) classroom management ideas and strategies; (3) lesson plan review and critique; (4) suggestions for lesson plan formats; (5) detailed feedback on classroom misbehaviors; (6) weekly meetings to provide feedback from observations; and (7) shadowing opportunities.

{¶11} Ms. Moore ultimately determined that Ms. Flower was unable to remedy her deficiencies. Her final PAR report to the PAR panel recommended Ms. Flower's termination.

{¶12} The parties' factual accounts diverge at this point. The Board contends that, once Ms. Moore recommended termination, Ms. Flower was given an opportunity to meet with the PAR chairperson, the BEA president/vice president, and the personnel director/superintendent

prior to the full panel making a decision. The Board further contends that a copy of Ms. Moore's final PAR report, a final report by the building principal, and a goal-setting agreement signed by Ms. Flower were provided to Ms. Flower on March 20, 2012. It is the Board's contention that Ms. Flower refused to sign the final PAR report and failed to appear for the meeting to discuss her final PAR report prior to Board action.

{¶13} Ms. Flower, on the other hand, claims that she never was given Ms. Moore's final PAR report, nor was it offered to her for signature. She claims that she did not receive the principal's report, or a goal-setting agreement signed by her. Further, Ms. Flower claims that she was never informed of a final meeting with PAR panel members.

{¶14} The PAR panel unanimously recommended Ms. Flower's termination to the Board on March 15, 2012.[7] The Board approved the termination on March 19, 2012.

{¶15} On March 24, 2012, Ms. Flower received a letter signed by the Board's treasurer notifying her of the Board's approval of her termination. Ms. Flower claims to have been unaware that the issue of her termination was on the Board's agenda.

{¶16} Ms. Flower faxed to the treasurer her request for a termination hearing in accordance with R.C. 3319.16. The treasurer responded by letter, informing Ms. Flower that, under the CBA, the PAR program satisfies the intervention teacher's constitutional and statutory due process rights, and therefore no further appeal would be provided.

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[7] The Board claims that a copy of Ms. Moore's final PAR report was provided to Ms. Flower on March 20, 2012, along with the principal's final report and Ms. Flower's goal-setting agreement as enclosures. However, the PAR panel provided its recommendation of termination to the Board on March 15, 2012. The Board approved Ms. Flower's termination on March 19, 2012, one day before Ms. Flower allegedly was sent the final PAR report and other documents. It is not clear on what date Ms. Flower purportedly was given notice of the meeting with PAR panel members.

{¶17} Ms. Flower initially filed a pro se petition for a writ of mandamus. With leave of court, counsel filed an amended complaint and petition for a writ of mandamus on her behalf. Her sole allegation was that the Board failed to follow the teacher termination requirements of R.C. 3319.11 and 3319.16. Ms. Flower requested the Board restore her to her teaching position at her regular salary, with back pay.

{¶18} The parties filed cross motions for summary judgment. The trial court granted summary judgment in favor of the Board and against Ms. Flower. Ms. Flower now raises five assignments of error for our review.

II

Assignment of Error Number One

> THE TRIAL COURT ERRED IN CONCLUDING THAT THE PAR PROGRAM DOES NOT ALTER THE STATUTORY GROUNDS FOR TERMINATING A TEACHER WITH A CONTINUING CONTRACT.

{¶19} In her first assignment of error, Ms. Flower argues two things. First, she contends that the PAR program procedures for teacher termination may not supersede the statutory procedures for teacher termination set forth in R.C. 3319.16. Second, she argues that the CBA impermissibly alters the statutory grounds for terminating a teacher with a continuing contract. We disagree on both counts.

{¶20} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). To prevail on motion for summary judgment, the moving party must show that there is no genuine issue of material fact, that the moving party is entitled to judgment as a matter of law, and, when evidence is viewed in a light most favorable to the non-moving party, reasonable minds can come to one conclusion that is in favor of the moving party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977).

{¶21} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). Once this burden is satisfied, the burden shifts to the non-moving party to offer specific facts to show a genuine issue for trial. *Id.* at 293. The non-moving party may not rest upon the mere allegations and denials in the pleadings, but instead must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact. *See Brannon v. Executive Properties, Inc.*, 9th Dist. Summit No. 26298, 2012-Ohio-5483, ¶ 6; Civ.R. 56(E).

{¶22} The only issue that Ms. Flower raised in her amended complaint for a writ of mandamus was whether the Board was required to comply with the statutory procedures for teacher evaluation and termination in R.C. Chapter 3319. She sought an order compelling the Board to furnish notice under the statute and to hold the hearings required under R.C. 3319.16. She pled that (1) the Board "had a legal duty and failed to comply with the statutory requirements of [R.C.] 3319.11" and (2) the Board "had a legal duty and failed to comply with the statutory requirements of [R.C.] 3319.16." The sole count of the amended complaint was for mandamus and alleged that: (1) "Respondent will continue to withhold Relator Flower's rightful position as a teacher and to refuse to acknowledge her status on a continuing contract of employment as required under [R.C.] 3319.11[] unless ordered not to do so by the Court[;]" (2) "Relator Flower has no plain and adequate remedy in the ordinary course of law[;]" and (3) "Relator Flower is entitled to the issuance of a writ of mandamus under [R.C.] 2731.01 et seq. by this court, directing that Relator Flower be restored to her rightful position as Teacher within Respondent's employ, at her regular salary * * * with back pay if applicable."

{¶23} Ms. Flower's first assignment of error relates to the Board's failure to adhere to the hearing procedures specified in R.C. 3319.16. We turn first to Ms. Flower's claim that the Board was required to adhere to the procedures for teacher termination in R.C. 3319.16, in lieu of the procedures set forth in the PAR program terms of the CBA.

{¶24} It is well-established that teacher employment terms in a collective bargaining agreement may supersede those established by statute. *See State ex rel. Rollins v. Cleveland Hts.-Univ. Hts. Bd. of Edn.*, 40 Ohio St.3d 123, 126 (1988). "R.C. 4117.10(A) has been consistently interpreted * * * to allow a collective bargaining agreement to prevail over a conflicting provision in R.C. Chapter 3319." *Id.* "Under R.C. 4117.10(A), on matters of wages, hours, or terms and conditions of employment, a collective bargaining agreement entered into pursuant to R.C. Chapter 4117 prevails over a conflicting law unless such law falls within one of the exceptions listed in R.C. 4117.10(A)." *Id.* at 124-125, citing *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 143 (1988).

{¶25} Thus, R.C. 4117.10(A) sets forth two criteria to determine whether the teacher termination provisions in the CBA may supersede those in R.C. Chapter 3319. First, we must determine whether an exception in R.C. 4117.10(A) applies. *See State ex rel. Rollins* at 124-125. If no exception applies, we consider whether the CBA provisions and R.C. Chapter 3319 conflict. *See id.* If they do conflict, the CBA provisions prevail. *See id.*

{¶26} The parties agree that none of the discrete exceptions in R.C. 4117.10(A) apply here. Because no exception applies, we examine whether a conflict exists between the PAR termination procedures and those set forth in R.C. 3319.16. As an initial matter, the CBA states specifically that the PAR provisions "are intended to expressly supersede Ohio Revised Code Sections 3319.11, 3319.111, and 3319.16." Moreover, R.C. 3319.16, and the PAR program

provisions of the CBA, set forth conflicting procedures on the specific matter of teacher termination. These statutory and contractual procedures are markedly different with respect to the specific pre-termination hearing required, with R.C. 3319.16 providing for a pre-termination hearing on the record, the ability to subpoena witnesses to testify under oath, and the right to representation by counsel.[8] R.C. 3319.16 and the CBA also differ significantly with respect to post-termination procedures. R.C. 3319.16 provides that "[a]ny teacher affected by an order of termination of contract may appeal to the court of common pleas of the county in which the school is located." As discussed, the CBA explicitly provides that there is no post-termination grievance mechanism available to a teacher terminated by the Board upon the recommendation of the PAR panel, either under the CBA or under R.C. Chapter 3319. Instead, the CBA states that "the extensive procedures afforded to PAR participants satisfy the participant's [sic] constitutional and statutory due process rights." Consequently, a conflict exists between the PAR termination procedures and those set forth in R.C. 3319.16. Under R.C. 4117.10(A), the PAR teacher termination provisions in the CBA prevail over the conflicting teacher termination provisions in R.C. 3319.16.

[8]R.C. 3319.16 provides for, among other things, notice with full specification of the grounds for termination, a hearing conducted by a referee or, if the teacher so chooses, a majority of the members of the board, a complete stenographic record of the proceedings, and a copy of the record to be furnished to the teacher. "Both parties may be present at such hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the treasurer of the board. * * * After a hearing by a referee, the referee shall file a report within ten days after the termination of the hearing. After consideration of the referee's report, the board, by a majority vote, may accept or reject the referee's recommendation on the termination of the teacher's contract. * * * Any order of termination of a contract shall state the grounds for termination. * * * Any teacher affected by an order of termination of contract may appeal to the court of common pleas of the county in which the school is located." R.C. 3319.16.

{¶27} Ms. Flower argues that there is no conflict between the CBA and R.C. Chapter 3319 because the PAR program is not explicitly applicable to teachers with a continuing contract. This argument is not persuasive. The PAR program expressly states that it applies to both novice teachers and experienced teachers. The CBA identifies "[e]xperienced [t]eachers" as including teachers "[w]ho have attained continuing contract status." Thus, the CBA does, in fact, address the PAR program's applicability to continuing contract teachers. Ms. Flower's argument that the PAR program procedures for teacher termination may not supersede the statutory procedures for teacher termination set forth in R.C. 3319.16 is not well-taken.

{¶28} Next, we turn to Ms. Flower's argument that the PAR provisions impermissibly alter the statutory grounds for teacher termination. R.C. 3319.16 specifies that the statutory grounds for termination prevail over the grounds for termination set forth in any collective bargaining agreement, notwithstanding R.C. Chapter 4117. R.C. 3319.16 states:

> Notwithstanding any provision to the contrary in Chapter 4117 of the Revised Code, the provisions of this section relating to the grounds for termination of the contract of a teacher prevail over any conflicting provisions of a collective bargaining agreement entered into after the effective date of this amendment.

The only permissible substantive basis for termination under R.C. 3319.16 is "good and just cause."

{¶29} The CBA does not alter the grounds of good and just cause as the substantive basis for teacher termination. The CBA specifically provides in Section 11.012 that "[n]o disciplinary action against a bargaining unit member will be taken without just cause." Thus, both the CBA and R.C. 3319.16 require just cause to terminate a teacher.

{¶30} Ms. Flower's argument that the "good and just cause" requirement in R.C. 3319.16 and the "just cause" requirement found in the CBA are two different standards based upon slightly different phrasing is unsupportable. Courts have used the phrases "good and just

cause" and "just cause" interchangeably. *See Chardon Local School Dist. Bd. of Edn. v. Chardon Edn. Assn.*, 11th Dist. Geauga No. 2012-G-3110, 2013-Ohio-4547, ¶ 26 (stating that "R.C. 3319.16 requires a 'just cause' analysis" after referencing in the same discussion that a teacher "may not be terminated except for *good and just cause*" (Emphasis sic.)). The different phrasing is a matter of semantics, not substance.

{¶31} For the reasons stated, we hold that: (1) under R.C. 4117.10(A), the PAR program procedures for teacher termination supersede the statutory procedures for teacher termination set forth in R.C. 3319.16 and (2) the CBA does not alter the statutory grounds of good and just cause as the substantive basis for teacher termination. Ms. Flower's first assignment of error is overruled.

Assignment of Error Number Two

> THE TRIAL COURT ERRED IN RULING THAT THE CBA OFFERS DUE PROCESS SAFEGUARDS COMPARABLE TO THOSE PROVIDED IN RC 3319.16.

{¶32} In her second assignment of error, Ms. Flower argues that the trial court erred in granting summary judgment to the Board because (1) the PAR termination provisions do not provide adequate due process and (2) to the extent that the PAR termination provisions do provide due process, Ms. Flower was not actually afforded that process. We hold that Ms. Flower's due process claims are not before us, because they were not pled in her amended complaint as a basis for mandamus relief.

{¶33} As discussed, Ms. Flower's amended complaint and petition for writ of mandamus is very narrowly-drafted. Her sole claim is that the Board was obligated to abide by the procedures in R.C. Chapter 3319. She did not plead, as a ground for mandamus relief, any constitutional deficiency in the teacher termination procedures found in the CBA. The Supreme

Court of Ohio has held that a court need not address the merits of a constitutional claim which a party failed to raise in a complaint or amended complaint for a writ of mandamus, unless the opposing party expressly or impliedly consented to litigation of those claims. *See State ex rel. Van Dyke v. Pub. Emps. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, ¶ 42; *State ex rel. Plain Dealer Publishing Co. v. Cleveland*, 106 Ohio St.3d 70, 2005-Ohio-3807, ¶ 64. We thus decline to consider Ms. Flower's due process arguments.

{¶34} We note that the trial court found that the PAR termination procedures contain due process "comparable" to that in R.C. Chapter 3319.[9] We question, however, whether "comparable" due process is indeed required, when the Supreme Court of the United States has held that the formality of a pre-termination hearing may vary depending on the post-termination procedures available, and something less than a full evidentiary hearing is required prior to adverse administrative action.[10] *Cleveland Bd. of Edn. v. Loudermill*, 470 U.S. 532, 545-546 (1985) (holding that a tenured public employee is entitled to: (1) oral or written notice of the charges against the employee; (2) an explanation of the employer's evidence; and (3) an opportunity to present the employee's side of the story). We also question whether the PAR program does in fact provide adequate due process for a terminated teacher, when it expressly disallows any post-termination grievance procedure for a teacher terminated pursuant to a

[9] The trial court noted that Ms. Flower claimed that the Board did not follow the required procedures under the PAR program for Ms. Flower's termination, but found that whether Ms. Flower actually received the process due under the PAR program "is not the issue before [the] [c]ourt." The trial court held that "the sole issue is whether or not a writ of mandamus is appropriate based on Flower's allegation that the Board had a legal duty and failed to comply with the statutory provisions of R.C. [Chapter] 3319."

[10] The trial court cited *Sturdivant v. Toledo Bd. of Edn.*, 157 Ohio App.3d 401, 2004-Ohio-2878, ¶ 24 (6th Dist.) (holding that "while a CBA may provide for alternative evaluation procedures, in our view, it must still offer comparable due process protections contemplated by the legislature which enacted the safeguards of R.C. Chapter 3319").

recommendation of the PAR panel.[11] *See id.* (finding that due process is provided by a pre-termination opportunity to respond coupled with post-termination procedures). However, we need not reach the merits of these issues, when Ms. Flower failed to plead a due process violation.

{¶35} This case is limited by the extremely narrow way in which Ms. Flower framed her amended complaint, and the limited basis asserted for mandamus relief. Ms. Flower's due process arguments were not pled. Her second assignment of error is overruled.

Assignment of Error Number Three

> THE TRIAL COURT ERRED IN CONCLUDING THAT MS. FLOWER COULD HAVE RAISED ISSUES UNDER THE CBA'S ARTICLE 4 GRIEVANCE PROCEDURE.

{¶36} In her third assignment of error, Ms. Flower argues that the trial court incorrectly held that she could have availed herself of the CBA's grievance process. Ms. Flower points out that a teacher terminated under the PAR program may not take advantage of the grievance procedure provided in the CBA to grieve her termination.

{¶37} The trial court did not hold that Ms. Flower could have grieved her termination under the CBA. Instead, the trial court reasoned that Ms. Flower could have grieved alleged pre-termination deprivations of due process that occurred during her participation in the PAR program under the CBA. However, the trial court ultimately held that the adequacy of the CBA grievance procedure was not before it. We agree.

{¶38} As discussed, Ms. Flower pled only that the Board was obligated to comply with the requirements of R.C. Chapter 3319. She did not raise claims related to the adequacy of the

[11] The trial court did not address how the lack of any post-termination grievance or appellate procedure would affect Ms. Flower's due process claim.

grievance procedure in the CBA. Thus, the sufficiency of the grievance procedure is not before this Court. Ms. Flower's third assignment of error is overruled.

Assignment of Error Number Four

THE TRIAL COURT ERRED IN DENYING MS. FLOWER'S REQUEST FOR A WRIT OF MANDAMUS UNDER R.C. 2723.01 ET SEQ.

{¶39} In her fourth assignment of error, Ms. Flower claims that the trial court erred in denying her motion for summary judgment, "as there is no question of fact or law that she was entitled to a writ of mandamus under R.C. 2723.01 et seq." We disagree.

{¶40} "Before a court will grant a writ of mandamus, the relator must show a clear legal right to the relief sought, that the respondent is under a legal duty to perform the requested act, and that no other plain and adequate remedy exists in the ordinary course of the law to vindicate that right." *State ex rel. Geib v. Triway Local Bd. of Edn.*, 139 Ohio App.3d 392, 394 (9th Dist.2000), citing *State ex rel. Williams v. Belpre City School Dist. Bd. of Edn.*, 41 Ohio App.3d 1, 4 (4th Dist.1987). The requesting party bears the burden of establishing entitlement to the extraordinary relief requested. *State ex rel. Sekermestrovich v. Akron*, 90 Ohio St.3d 536, 537 (2001).

{¶41} In this case, Ms. Flower requests relief based solely upon the Board's alleged violation of R.C. Chapter 3319, and, specifically, R.C. 3319.16. This Court has held that the Board had no duty to follow the teacher termination provisions in R.C. 3319.16, and did not violate the statute. Thus, Ms. Flower does not have a clear legal right to any of the relief that she has requested.

{¶42} A writ of mandamus was properly denied because Ms. Flower was not entitled to the relief she seeks. Her fourth assignment of error is overruled.

Assignment of Error Number Five

THE TRIAL COURT ERRED IN OVERRULING MS. FLOWER'S EVIDENTIARY OBJECTIONS AND DENYING MS. FLOWER'S MOTION TO STRIKE.

{¶43} In her fifth assignment of error, Ms. Flower claims that the trial court should have sustained evidentiary objections and a motion to strike based on: (1) the Board's alleged failure to authenticate documents accompanying the Board's motion for summary judgment and (2) the Board's alleged violation of Civ.R. 26(E). We disagree.

{¶44} This Court applies an abuse of discretion standard in reviewing a trial court's determination on a motion to strike. *See State ex rel. Ebbing v. Ricketts*, 133 Ohio St.3d 339, 2012-Ohio-4699, ¶ 13. This Court also applies an abuse of discretion standard in reviewing the admissibility of summary judgment evidence. *Nationwide Life Ins. Co. v. Kallberg*, 9th Dist. Lorain No. 06CA008968, 2007-Ohio-2041, ¶ 20. Under the abuse of discretion standard, "an appellate court may not substitute its judgment for that of the trial court." *Id.* at ¶ 21. Accordingly, an appellate court must not disturb a trial court's decision regarding the admission or exclusion of evidence absent an abuse of discretion that has materially prejudiced the appellant. *Id.* at ¶ 20.

{¶45} Any alleged technical noncompliance with the affidavit procedures of Civ.R. 56 is not prejudicial if the authenticity of the supporting documents is not called into question. *See Costoff v. Akron Gen. Med. Ctr.*, 9th Dist. Summit No. 22010, 2004-Ohio-5166, ¶ 13-15; *Internatl. Bhd. of Elec. Workers v. Smith*, 76 Ohio App.3d 652, 660 (6th Dist.1992). Ms. Flower does not argue that any of the documents accompanying the Board's motion for summary judgment actually lack authenticity. Thus, Ms. Flower has not shown that she was prejudiced by

the Board's use of any allegedly unauthenticated documents. The trial court did not abuse its discretion in admitting these documents.

{¶46} Moreover, Ms. Flower has failed to show that the Board violated Civ.R. 26(E) by not producing during discovery Exhibit E to the Board's motion for summary judgment, the PAR Intervention Procedures & Policies Manual. Generally, Civ.R. 26(E) requires a party to supplement discovery responses with responsive and relevant material to avoid unfair surprise. Exhibit E consists of blank forms. Ms. Flower has failed to explain how general, blank forms not related to any particular teacher must be provided when her discovery request was for documents related to any observation or evaluation "of Relator Laura Flower." Moreover, Ms. Flower does not contest that the Board provided in discovery any of the forms that were completed with information about Ms. Flower. As such, there was no unfair surprise, and no violation of Civ.R. 26(E).

{¶47} For the reasons stated, the trial court did not abuse its discretion in admitting purportedly unauthenticated documents or in refusing to strike the Board's Exhibit E. Ms. Flower's fifth assignment of error is overruled.

III

{¶48} Ms. Flower's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
CONCURS.

MOORE, J.
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

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