

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

GRIEVANT,)	
)	
v.)	DOCKET No. 18-07-691
)	DECISION AND ORDER
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES,)	[Public - redacted]
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on September 20, 2018 at the Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was closed to the public, pursuant to 29 *Del.C.* §10004(b)(8).

BEFORE W. Michael Tupman, Chair, Paul Houck, and Sheldon Sandler, Esq., Members, a quorum of the Board under 29 *Del.C.* §5908(a).

APPEARANCES

Rae M. Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Tasha Marie Stevens, Esq.
Fuqua, Willard, Stevens & Schab, PA
on behalf of the Grievant

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of
Services for Children, Youth & Their
Families

BRIEF SUMMARY OF THE EVIDENCE

The Department of Services for Children, Youth and Their Families (“DSCYF”) offered and the Board admitted into evidence without objection nine (9) exhibits marked for identification as A - I. DSCYF called two witnesses: David Clayton (“Clayton”), Family Crisis Therapist Supervisor, DSCYF; and Amanda Wroten (“Wroten”), Assistant Principal, Howard T. Ennis School.

The employee/grievant (“Grievant”), offered thirteen (13) exhibits and the Board admitted into evidence, without objection, twelve (12) exhibits marked for identification as 1 – 12 (excluding number six). The Grievant testified on her own behalf.

FINDINGS OF FACT

The Grievant has served as a Family Crisis Therapist (“FCT”) at Long Neck Elementary School in the Indian River School District for nineteen (19) years. FCTs typically assist students and their families with crisis situations, academics, social skills, and trauma in order to identify and support the student’s functional improvement within the family and at school. The Grievant is employed by and serves under DSCYF supervision, as well as receiving secondary on-site direction from the administration of Long Neck Elementary School, including the principal and assistant principal. During the 2017-2018 school year, Clayton served as the Grievant’s DSCYF supervisor and Wroten, the then-assistant principal at Long Neck Elementary School, served as her site supervisor.

On November 6, 2017, Clayton placed the Grievant on a Performance Improvement Plan (“PIP”) from November 6, 2017 through February 6, 2018. The plan stated, “The Grievant will update her notes and be current by November 10, 2017. Once current, she will remain up to date

by entering her notes into FACTS¹ within 5 days of the interventions. Case conferencing will occur on a two-week basis to ensure notes are being documented correctly.” The plan also stated, “The Grievant will remain in compliance with departmental code of ethic policies and avoid comments that demean or offend.” Under DSCYF Policy No. 305, Section III (C)(9), “All employees shall treat others with respect, dignity and professionalism.” The Grievant declined to sign the PIP document.

On December 11, 2017, Clayton issued the Grievant a written reprimand citing violation of DSCYF Policy No. 305, Section III (C)(16)2, “Employees are expected to cooperate with Department investigations including providing forthright, accurate, complete and timely statements, information, evidence, etc. and to maintain confidentiality of what is discussed as directed.” Specifically, the written reprimand stated, “During the month of August 2017, you failed to properly enter notes into FACTS and failed to provide honest and accurate information when questioned. When questioned on October 10, 2017, about missing FACTS documentation, you stated that your missing documentation was a result of a FACTS issue and stated that you made a phone call to the MIS Help Desk.” The reprimand also stated the Grievant sent an email on November 6, 2017 in which she (the Grievant) stated that she had spoken with FACT Liaison Christel Davis concerning her missing case work. Clayton stated FACT Liaison Davis notified him in an email dated November 7, 2017, that she had never been in contact with the Grievant, noting, however, that she had received telephone voicemails from one of the Grievant’s friends. The Grievant accepted the written reprimand and did not grieve it.

¹ The Family and Child Tracking System (“FACTS”) is an integrated information system for DSCYF’s divisions. The system automates all aspects of management for juvenile corrections from screening and bail assessment through aftercare, including a variety of secure and non-secure placements.

² The disciplinary notice incorrectly cites B16, but includes the language of (C)(16). The correction is made in this decision. *Agency Exhibit G*.

On January 8, 2018, Clayton issued the Grievant's annual performance plan for the period covering January 2018 through December 2018. The plan enumerates six outcomes against which the Grievant's performance would be evaluated. Outcome 4 states, "The Family Crisis Therapist will collaborate with families, agency staff, schools and interested parties as needed to coordinate services for the child and family. Under Outcome 4, subsection 4.1, directs the FCT to "facilitate the development of a team approach with school personnel, family, student and others to address the student's behavior, academic and social needs." Subsection 4.2 states, "The Family Crisis Therapist will develop and maintain good working relationships with other agencies and the public in carrying out assigned tasks as a Division and School District Representative."

On March 14, 2018, Clayton issued an interim PIP review for the period of February 21, 2018. The review stated the Grievant was able to stay on task and keep all notes documented in FACTS within DSCYF's policy standards and stated the Grievant had successfully caught up her case notes entries in FACTS. The interim review also, however, documents a December 2017 incident where the Grievant "... commented the principal and school were not doing well." It notes that when the Grievant was confronted by the assistant principal, she initially denied she was the person who made the comment. The Grievant later apologized for not being forthright and for her actions. The review further states that since that incident, the relationship appeared to have improved, according to the assistant principal. It also notes that the assistant principal had come to the Grievant's defense because the Grievant is a valuable asset to the school. The assistant principal further stated there may have been some miscommunication on behalf of the principal which may have caused some inaccurate concern about the Grievant's work ethics. Overall, the review concludes that the Grievant met expectations during the review period and it was signed by Clayton, her DSCYF supervisor.

On March 20, 2018, Clayton received a letter from Long Neck Elementary School Principal Clara Conn and then Assistant Principal Amanda Wroten informing him the administrative team at the school had concerns regarding the Grievant. “As we discussed in our trio meeting on March 14, 2018 we have had a few instances where [the Grievant] has not followed protocol and procedures expected for staff within our building:

- On 2/22/18, [the Grievant] left school without notifying administration of the adjustment to her schedule. After calling her office, sending requests on the radio, and asking several staff members about her whereabouts, it was discovered that she left early for an appointment.
- On Wednesday, March 7, 2018, [the Grievant] was working with a family on her caseload that was experiencing a period of truancy in not attending school. The student arrived to Long Neck and met with [the Grievant] before being allowed by her to go home for the remainder of the day. This was particularly concerning since issues with truancy continued for several days following.
- In discussing the above-bulleted infraction to school procedures, [the Grievant] was addressed by Amanda Wroten, Assistant Principal, regarding the proper way to handle such an instance. It was later brought to the attention of administration that she was discussing with other school employees her dissatisfaction for the manner the situation was handled.

According to Wroten, school administration could not find the Grievant because she failed to sign in to school each day. The Grievant stated she felt it was best for the student to go home on March 7, 2018, because the child’s father was becoming irate and the situation would not go well if the child stayed in school. Wroten advised the Grievant she had failed to follow protocol, that the attendance policy requires a code be entered into the system, and that a FCT does not have authority to release a student from school. Wroten learned about the release at the end of the day when the secretary asked her for an attendance/absence code. Wroten believed the child had returned to class after the Grievant’s meeting with the family. During the meeting with the parent, the Grievant and the student that morning, Wroten left to attend another meeting. When she returned to her office, Wroten did not see anyone and therefore assumed all went well.

Wroten heard similar comments from the media center specialist and the reading specialist about the Grievant's statements concerning the incident. Wroten stated the Grievant could have contacted her, the principal or the safety monitor if she was concerned that the confrontation with the student's father was escalating.

The Grievant met the family at the school and the child was adamant he did not want to be in school. The Grievant sat down with the family. The child was new to her caseload and had experienced a lot of trauma. The Grievant never told the family they could or could not leave. The child cried and was inconsolable, the 83-year-old grandmother was beside herself and the father was angry because he had an appointment and had to leave. When the child got up to leave, the father was cursing and they left. The Grievant failed to notify anyone because the administrators were in meetings and she became busy during the course of the day. Wroten pulled the Grievant aside the next day when dealing with the child and stated she should not have let him go home. The Grievant did not recall whether she spoke to Amanda Cordrey about Wroten while working on the crisis team. The Grievant provided the father's criminal history records to support her safety concern and stated she felt the incident was escalating to a crisis situation. The family calmed down when they were leaving. The Grievant failed to require the parents to sign out as required by policy. The Grievant admitted she could have emailed the principal/assistant principal about the incident the day it occurred.

Wroten stated the next day the grandmother brought the child to school and the child barricaded himself in the family's car. The crisis team, including the Grievant, went to the car to attempt to get the child to come into school. Wroten pulled the Grievant aside and explained that she was upset that the Grievant sent the child home the previous day because it reinforced the student's negative behavior. The child had never had an issue in the past staying in school once

his grandmother got him into the school. A clinical social worker told Wroten she heard Wroten and the Grievant did not have a good conversation and the Grievant said Wroten was mean to her.

On April 10, 2018, Clayton informed the Grievant he would be recommending a three-day suspension without pay for violation of DSCYF Policy No. 305 (C)(9) and (C)(14)³ that states, “Employees will safeguard confidential, private and personal information and refrain from gossip.” The recommendation stated the Grievant violated DSCYF policies when she sent a student home without the permission of the administrative staff of the school – of which only three individuals in the building have authority to dismiss a student. The Grievant failed to communicate her decision to administrative staff or Clayton. Additionally, the Grievant’s discussion of her dissatisfaction with the manner in which the situation was handled and how the Assistant Principal spoke to the Grievant and her initial denial of making statements then later apologizing about making the statements were also noted.

DSCYF held a pre-decision hearing on June 14, 2018. According to the decision, issued on June 26, 2018, the Grievant failed to give a compelling reason to reduce or remove the recommendation. Clayton issued a three-day suspension to the Grievant on July 12, 2018 to be served on August 1, August 8 and August 15, 2018. In addition, the suspension letter notified the Grievant she could not attend any training or work any overtime during the time of suspension.

CONCLUSIONS OF LAW

Merit Rule 12.1 provides:

Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. “Just

³ The letter recommending a three-day suspension incorrectly cites B9 and B14, but includes the language of (C)(9) and (C)(14). The correction is made in this decision. *Agency Exhibit C*.

cause” means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

The Grievant does not claim DSCYF denied her specified due process rights.

The Board holds as a matter of law the Grievant violated DSCYF Policy No. 305, Standards of Conduct, Section III (C)(9), which states, “All employees will treat others with respect, dignity and professionalism.” The Grievant failed to inform either school administrators or her supervisor that a student battling truancy issues and his family left the school after a very contentious meeting. While the Grievant could do very little about the father deciding to take his son out of the school, she did have an obligation to inform the school administration contemporaneously as to what had occurred. The Grievant had no authority to allow a student to leave school under the attendance policy.

The Board holds as a matter of law the Grievant violated DSCYF Policy 305, Standards of Conduct, Section III, (C)(14), which states, “Employees will safeguard confidential, private, and personal information and will refrain from gossip.” While the testimony reflects different recollections of who said what and to whom, it is clear the Grievant made less than positive statements to school staff about how the school handled the situation with the truant student and how she was treated by Wroten the next day during a crisis team intervention with the same student. Clayton had counseled the Grievant about her relationship with school administrators and statements she made about the situation at the school, during her PIP review. The Grievant may vent to Clayton about her frustrations with the school, however, she may not do so with staff at the school because her comments may percolate up to the principal and assistant principal and foster a difficult working environment.

However, the Board finds the penalty is not appropriate to the circumstances. The Board has recognized the usefulness of progressive discipline to conform an employee's performance or behavior to acceptable workplace standards. *Grievant v. DHSS/DPH*, MERB 12-06-546 (March 6, 2013, p. 6). DSCYF issued a written reprimand to the Grievant on December 11, 2017 concerning her failure to enter reports/data in a timely fashion. Because this was a performance issue, it was included in her Performance Improvement Plan and was addressed during the requisite PIP interim reviews. At the conclusion of the PIP period, her supervisor concluded she had successfully met the performance expectations.

The Board notes that the prior written reprimand was not referenced in either the intent to discipline or the actual suspension notification in this case. The Board finds the two charges upon which the three-day suspension is based are substantively differentiable and the prior written reprimand is not for a similar infraction; consequently, the performance issues may not be designated as predicate discipline. The Board notes that the Grievant had been employed for 18 years in her current position, without discipline, prior to December, 2017. The Board considered her tenure and service in assessing the appropriateness of the discipline issued.

ORDER

It is this 18th day of October, 2018, by a unanimous vote, the Decision and Order of the Board to deny the Grievant's appeal in part and grant in part. The Board finds DSCYF had a sufficient reason to impose accountability and that the Grievant was offered and received the due process protections provided in the merit statute. The Board finds, however, the penalty imposed was not appropriate, considering all the circumstances in this case.

The Board orders the Agency to modify the penalty by reducing it from a three-day

suspension to a one-day suspension, and to reimburse the Grievant and make her whole for the second and third days of the suspension she served. The Agency is also directed to remove all references to a three-day suspension in the Grievant's personnel records, replacing such references with the one-day suspension ordered herein.



W. MICHAEL TUPMAN, MERB CHAIR



PAUL R. HOUCK, MERB Member



SHELDON N. SANDLER, ESQ., MEMBER