

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

GRIEVANT,)	
)	
v.)	DOCKET No. 18-11-708
)	
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES,)	DECISION AND ORDER
)	<i>(PUBLIC DECISION- REDACTED)</i>
)	
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 April 4, 2019 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, Jacqueline Jenkins, EdD, 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 Stevens, Esq.
Fuqua, Willard, Stevens & Schab, P.A.
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 fifteen (15) exhibits, of which the Board admitted twelve (12) into evidence, marked for identification as Agency Exhibits A-I, L, M and O. DSCYF called one witness: David Clayton (“Clayton”), DSCYF Family Crisis Therapist Supervisor. DSCYF also intended to call the Assistant Principal of Howard T. Ennis School, but upon consideration of the agency’s proffer, the Board determined her testimony would not be relevant to its consideration of this grievance.

The employee/grievant (“Grievant”) offered ten (10) exhibits, of which the Board admitted seven (7) into evidence exhibits re-marked for identification as Grievant Exhibits 1 – 7. The Grievant testified on her own behalf.

FINDINGS OF FACT

The Grievant has worked for DSCYF for more than twenty (20) years. At all times relevant to this grievance she was employed as a Family Crisis Therapist (“FCT”) at Long Neck Elementary School in the Indian River School District. FCTs typically assist students and their families with crisis situations, academics, social skills, trauma, and both home-based and preventative services.

David Clayton is the Grievant’s direct supervisor. The Grievant’s 2018 Employee Performance Plan (which is uniform for all FCTs) states, “The Family Crisis Therapist will inform supervisor of all offsite activities including but not limited to trainings, field trips and meetings.” *Exhibit I*, Outcome 5.3. Clayton stated FCTs under his supervision typically call, text or email him to update their activities and after he responds, the FCTs update their calendars. The Performance Plan also states, “The Family Crisis Therapist will ensure that the workload is effectively managed as demonstrated by ... Outlook Calendar updated by Friday, 12 noon for the following week.” *Exhibit I*, Outcome 3.4. Clayton testified that while schedule changes sometimes occur after this deadline, FCT’s are expected to update their Outlook Calendars on a

daily basis.

FCTs typically work at their assigned school. However, FCTs report to a local State service center on Fridays when the schools are closed during the summer months. DSCYF requires FCTs to provide their location and a phone number should they need to be contacted. Clayton stated this practice has been in effect for six or seven years. Clayton noted the Grievant is inconsistent with notifying him of her work locations. On Friday, June 15, 2018, the Grievant's calendar stated she would be working from the Pyle State Service Center and she would be conducting five home visits. *Exhibit C.* The Grievant typically uses a State fleet vehicle to conduct her home visits. The parties stipulated the Grievant reserved a State fleet vehicle for June 15, 2018, but she failed to pick it up. DSCYF was charged for the fleet reservation. *Exhibit D.*

The Grievant testified she planned to visit five families on June 15. The children she was scheduled to visit would all be attending a summer camp she was conducting which would begin on June 26, 2018. Because the colleague with whom she was conducting the camp was out on maternity leave, the Grievant changed her plans on June 15 in order to finish camp preparations. She testified she bought bottles for a planned camp activity, picked up vouchers from Chick-fil-A and Hardees, distributed thank you notes¹, and visited the Millsboro Library. The Grievant testified she also attempted to locate emergency housing for one of her families that morning. *Exhibit 2.*

The Grievant notified two of the five families she was scheduled to visit that she was rescheduling, but because the other families did not have phones, they could not be notified. The Grievant knew she would be seeing the children she was scheduled to visit during the camp, which runs three days per week. Consequently, she did not reschedule the home visits for the following

¹ *Exhibit 4.*

Friday, June 22. *Exhibit 3.* Typically, during home visits the Grievant watches the children interact with their family and makes sure everything is status quo in the home.

The Grievant testified she did not document the June 15, 2018 schedule changes in her Outlook Calendar because she was doing errands to prepare for camp and the various errands she was doing were neither scheduled nor organized in a way that made sense to put into a calendar. *Exhibit 6.*

Clayton called the Grievant at approximately 1:30 p.m. on June 15, 2018, when (according to her calendar) she should have been completing her last scheduled home visit. Clayton wanted to deliver State park passes to the Grievant for the camp because he was in her area. The Grievant told Clayton she was on a home visit but did not identify the family by name. Clayton and the Grievant spoke about various matters, passes for the State parks and Grotto's Pizza as part of the summer camp program. Clayton asked to meet with the Grievant and she replied that she was not available to meet for about an hour. Clayton found it strange that the Grievant needed an hour before she could meet with him because all of the families on her case docket live close to the school and Pyle State Service Center. When Clayton called the Grievant, he was in Long Neck and she was in Georgetown so she asked for an hour to get to him due to traffic in that area on a Friday. Ultimately, they did not meet that afternoon.

Later that afternoon, Clayton sent the Grievant an email requesting she send him a list of times and families she had visited that day. *Exhibit E.* He requested the Grievant confirm her activities because she had failed to be consistent/honest in responding to inquiries about her whereabouts in the past.

On Monday, June 18, 2018, the Grievant responded to his email. *Exhibit E.* The Grievant stated she met with the District's Special Outreach Services (SOS) Coordinator² (a last-

² The Indian River School District's SOS Coordinator attempts to bring intensive counseling services from

minute request), worked to secure mobile home/housing for one of her families, met with vendors who donated to the summer camp, distributed thank you notes, went to the Millsboro Library and gathered supplies for summer camp. The Grievant stated she had to reschedule her home visits for the following Friday in order to finish the camp preparations. She informed Clayton if she had known he would be distributing the park passes on Friday afternoon, she would have rearranged her travels which encompassed Selbyville, Millsboro, Dagsboro, Long Neck and Georgetown. *Exhibit E.*

On the afternoon of Monday, June 18, the Grievant and Clayton met following a statewide meeting they both attended at the Delaware Fire School in Dover. Clayton again asked the Grievant about her activities on Friday, June 15.

On Friday, June 22, 2018, Clayton sent an email to the Grievant summarizing their June 18, 2018 meeting at the Delaware Fire School. *Exhibit F.* In the email, Clayton asked for clarification on the Grievant's schedule for June 15, her inability to meet at the time he requested to meet, the status of her home visits, rescheduling her home visits, and the name of the SOS Coordinator and the Grievant's purpose in meeting with her. According to the email, the Grievant stated she and the Coordinator discussed statistics, but not particular families.

Clayton confirmed that all of the activities the Grievant related were within the scope of her job duties. Clayton reviewed the Grievant's calendar for the following Friday, June 22, 2018, and found none of the names of the families that were rescheduled from June 15 were on her calendar. *Exhibit G.* Clayton contacted Hardees, the Millsboro Library and Chick-fil-A to check the Grievant's recantation of her June 15 errands. He was unable to confirm by telephone that the Grievant had visited any of these businesses.

the outside community agency to the school door. The Coordinator addresses the "emotional barriers" to learning for selected students whose needs cannot otherwise be met with existing district resources.

On July 7, 2018, the Grievant replied to Clayton's email, simply, "David, I respectfully disagree with your interpretation of our meeting, as this is not my recollection." *Exhibit F.* Clayton stated he did not know about the Grievant's meeting with the SOS Coordinator and he did not approve the Grievant meeting with her at the Coordinator's home. The Grievant did not report to the Pyle State Service Center, as she was scheduled to do on June 15, 2018.

On September 26, 2018, Clayton issued a letter to the Grievant recommending a three-day suspension without pay for violations of DSCYF Policy Number 305, Standards of Conduct. *Exhibit B.* Although provided the opportunity, the Grievant did not request a pre-disciplinary meeting. The three-day suspension was finalized by memorandum dated October 12, 2018. *Exhibit A.*

The Board finds as a matter of fact that the Grievant received both a written reprimand in 2017 and a one-day suspension in 2018 for prior violations of DSCYF policies.

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 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 #305 §III.C.12³ Standards of Conduct. The Grievant failed to inform her supervisor when she changed her daily

³ "Attendance reliability is an essential function of every job. Employees shall devote full time and attention to work-related activities." *Agency Exhibit L.*

schedule on June 15, 2018, specifically that she would not be working at the Pyle State Service Center or conducting home visits. While the Grievant was engaged in activities within her job duties (i.e., preparing for the summer camp she was conducting the following week), she had a duty to inform her supervisor about her whereabouts either by changing her Outlook Calendar for the day or by text or an email to him. The Board found no issue with the Grievant changing her schedule for June 15, 2018 or that she informed her supervisor she could not meet him for an hour when he called her and asked her to meet him at the last minute for an unscheduled rendezvous to exchange State park passes. It is troubling, however, that the Grievant cancelled home visits to children in her case load in order to meet with the District's SOS Coordinator (with whom she had no work related relationship) and that she could not verify her exact locations or a chronology of the time she purportedly spent on camp preparations. The meeting with the SOS Coordinator was not time-sensitive nor are camp preparations equivalent to client home visits. The Board holds the Grievant had a duty to account for her time and to keep her supervisor apprised in a timely manner of changes to her daily schedule.

The Board holds as a matter of law the Grievant did not violate DSCYF Policy #305, §III.D.1⁴ Standards of Conduct. The Board finds there was no testimony or evidence proffered that the Grievant conducted herself in a way that would violate the public trust or reflect unfavorably on DSCYF.

The Board holds as a matter of law the Grievant did violate DSCYF Policy #305, §III.C.7⁵ Standards of Conduct. The parties stipulated the Grievant reserved a State fleet vehicle to conduct her planned home visits for June 15, 2018, however the Grievant did not pick up the

⁴ "Each state employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such State employee is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government." *Agency Exhibit L*.

⁵ "Employees shall be good stewards of financial resources, including pay, time and leave, credit card use, purchasing and allocating resources." *Agency Exhibit L*.

vehicle nor cancelled the reservation. As a result, DSCYF was charged for the vehicle even though it was not used.

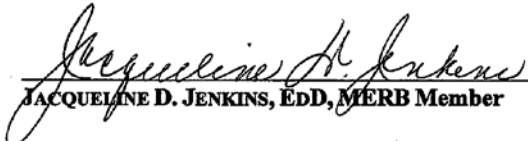
The Board finds that a three-day suspension is appropriate under the circumstances. The Grievant, a 20-year employee, should be able to verify her whereabouts and is responsible to keep her supervisor informed of her daily schedule and activities through her Outlook Calendar. The Grievant has received two prior disciplines for policy violations and for being less than forthcoming in response to questions from supervisors and management about her performance and/or behavior. The purpose of progressive discipline is to provide notice and the opportunity to an employee to conform her performance or behavior to acceptable workplace standards and expectations. This three-day suspension, again for policy violations, is consistent with the principles of progressive discipline.

ORDER

It is this **18th** day of **July, 2019**, by a vote of 3 -1, it is the Decision and Order of the Board to deny the Grievant's appeal. The Board finds the Grievant violated DSCYF policies and that a three-day suspension is appropriate under the circumstances.



W. MICHAEL TUPMAN, MERB CHAIR



JACQUELINE D. JENKINS, EDD, MERB Member



SHELDON N. SANDLER, ESQ., MEMBER

I respectfully dissent.



PAUL R. HOUCK, MERB Member