RICHARD FRISENDA,

Grievant,

v. **DOCKET NO. 97-CORR-373**

DIVISION OF CORRECTIONS/

INDUSTRIAL HOME FOR YOUTH,

Respondent.

DECISION

This grievance was filed at Level IV on August 12, 1997, by Grievant Richard Frisenda against Respondent, Division of Corrections ("Corrections"), following his thirty day suspension from employment at the Industrial Home for Youth, on August 11, 1997, pending the outcome of an investigation into charges against him. (See footnote 1) His thirty day suspension without pay was upheld on August 28, 1997, after review of the investigation results. He sought back wages plus interest, lost benefits, attorney fees (See footnote 2) , and that the suspension letter be removed from his personnel files. (See footnote 3) Grievant was charged with violations of Corrections' Policy Directive 400, Section 7, A4, A6, and B20, Corrections' Policy Directive 229.13, Staff Notice 101, Staff Notice 102, and W. Va. Code § 49-6A-2. The acts Grievant was alleged to have committed were placing a sign that read "Stupid" in resident D.M.'s (See footnote 4) shirt pocket and commenting "on his behavior in a critical manner in front of the other residents which humiliated this resident." Later in the letter it is also recounted that Grievant had D.M. obtain a rag to clean his room from a pile of soiled socks and female underwear.

Policy Directive 400, Section 7 provides examples of misconduct which are categorized as Class A, Class B or Class C violations, and the corresponding penalties imposed for first, second and third violations in each class, with Class A being the least serious type of offense, and Class C being the most serious. Section 7 A4 reads, "Disrespectful conduct, use of insulting, abusive or obscene language to or about others." A6 simply states, "Disruptive Behavior." B20 reads, "Unprofessional treatment of inmates contrary to department policy, staff notice, court order or philosophy." Policy Directive 229.13 is entitled, "Institutional Child Abuse and Neglect," and provides, as will be

discussed later, what is considered abuse or neglect of a child. It does not discuss mental abuse. W. Va. Code § 49-6A-2 relates to reporting child abuse and neglect. Staff Notice 101 provides employee rules and regulations for the Industrial Home for Youth taken from the Policy Directive 400 guidelines. Staff Notice 102 relates to communication and positive relations with residents at the Industrial Home for Youth. The following Findings of Fact are made based upon the evidence presented at the Level IV hearings held on October 6 and November 1, 1997.

Findings of Fact

1. Grievant is employed by Corrections as a Correctional Officer II at the Industrial Home for Youth, and has been a Corrections employee for eight years.

2. The Industrial Home for Youth is a maximum security, juvenile correctional facility, which houses male offenders ages 10 to 18, and female offenders ages 12 to 18.

3. Grievant is stationed on the Standard Unit, which temporarily houses residents being evaluated for sentencing.

4. D.M. is a 17 year old, developmentally disabled resident, who had been abused at home, and was at the facility for sentencing evaluation on a criminal charge. D.M. exhibited behavioral problems at the Industrial Home which were escalating.

5. On the evening of July 22, 1997, D.M. was locked down on Grievant's shift because of his behavior. He was kicking and screaming in his cell, and after being locked down less than five minutes, he defecated in his cell. Grievant was attending to another resident's injury, and called for assistance. D.M. was required to clean his cell under Case Manager Harbert's supervision.

6. The next morning, when the seven to ten residents in the unit were out in the hall during room inspection, Grievant approached D.M. and put an envelope attached to a pencil in D.M.'s pocket. The envelope had the word "stupid" in large letters written on it and underlined. Grievant left the envelope in D.M.'s pocket three or four minutes. Grievant talked to D.M. about his action of defecating in his cell, and talked to the unit for about ten minutes, until tears came to D.M.'s eyes. 7. D.M.'s cell still had an odor, and Grievant gave him some disinfectant and told him to clean the cell again with rags from a pile of materials on the floor of the office, as no other rags could be found. Grievant was not aware that the pile of rags contained soiled female underwear and dirty socks, and that D.M. used a dirty sock to clean his cell.

8. Grievant has had little supervision in running the Standard Unit. He has received no training or instruction in dealing with developmentally disabled children, or in counseling. Case Manager Jackie Valentine had told Grievant to treat D.M. like any other resident. Employee Bicey, who had cared for D.M. as a foster child for ten years in his home, told Grievant that D.M. was a problem, and the only way he understood was to illustrate the point to him.

9. Staff Notice 102 instructs, among other things, that "Positive relationships will be attempted with all residents by staff members no matter how difficult it may be;" "All staff members will behave in a manner that will set a good example with the residents;" "All staff members will be positive, concerned, persistent, and consistent in dealing with resident;" "Always try to reinforce appropriate behavior in resident by commenting on their efforts, complimenting, smiling, nodding, maintaining eye contact, etc.;" "Never use profanity or obscene language when dealing with residents, nor do you call them derogatory names;" and "Treat resident with the same respect you expect from them. Authoritarian actions and humiliation usually results in bitter feeling and negative reactions." Respondent's Exhibit 2.

10. Grievant's initial suspension letter, dated July 31, 1997, suspending him for fifteen days without pay pending the outcome of an investigation, did not advise him of the incident for which he was being investigated and suspended, but only that the allegations "include, but may not be limited to, the mental and physical abuse of a diagnostic resident." Joint Exhibit 1. 11. Grievant's second suspension letter, dated August 11, 1997, suspending him for an additional fifteen days without pay pending the outcome of an investigation, did not advise him of the incident for which he was being investigated and suspended. Joint Exhibit 2.

12. One of the allegations made against Grievant was that he had struck D.M. This allegation was not substantiated, and Grievant was not charged with physically abusing D.M. This allegation was sufficient to warrant Grievant's immediate suspension as a threat to the residents.

13. On February 19, 1996, Grievant received a written reprimand for verbally abusing a resident who was misbehaving by telling him he would "`remove his fat ass, even if you got into trouble and time off for controlling his behavior.'" Grievant was told at that time that this was a violation of Policy Directive 400, Section 7.00, paragraph A4, "Disrespectful Conduct, Use of Insulting, Abusive or Obscene Language to or about others," and that his conduct warranted suspension, but that the resident's response after being warned by Grievant, and his years of service

were considered in mitigating the punishment. Grievant was also reminded that employees are to maintain a professional demeanor with residents. Respondent's Exhibit 8.

14. Corrections' Policy Directive 400 recommends a six to fifteen day suspension for a second Class A offense, a five to fifteen day suspension for a first Class B offense, and a sixteen to thirty day suspension for a second Class B offense. Policy Directive 400 provides, however, at Section 4.02, that "[w]hen in the judgment of the Commissioner, and/or the appointing authority, aggravating circumstances exist, specified corrective action or sanctions may be increased."

15. Corrections relied upon Ann Murphy's report in determining the appropriate penalty for Grievant. Her report relied upon allegations against Grievant which were not proven and with which he was not charged, and contained other inaccuracies.

Discussion

The burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. W. Va. Code § 29-6A-6; Ramey v. W. Va. Dept. of Health, Docket No. H-88-005 (Dec. 6, 1988). "The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dept. of Health and Human Resources, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id.

The first issue to be addressed is Grievant's argument that Respondent violated Policy Directive 400 and Grievant's fundamental Constitutional rights by failing to notify him of the event forming the basis of the allegations against him, the evidence against him, or the specific violations, prior to placing him on suspension without pay. Grievant's counsel provided no further explanation as to how his fundamental Constitutional rights were violated, or any case cite to support this argument.

Policy Directive 400, Section 4.03, provides:

> Prior to any demotion or transfer in lieu of removal, suspension, or removal actions, an employee shall be given written notice of the offense, an explanation of the agency's evidence in support of the charge, and a reasonable opportunity to respond. EXCEPTION: An employee may be immediately sent away from the work area when the employee's continued presence may be a threat to the welfare of the agency or fellow employees. In such cases, the employee shall be given notice of the charges and an explanation of the agency's evidence as soon as possible thereafter and shall then be given a reasonable opportunity to respond prior to being placed on suspension without pay or being removed.

In this case, D.M. had also alleged that Grievant had struck him several times. This allegation was not substantiated in the investigation, and Grievant was not charged with this. Such an allegation,however, would raise an issue as to the safety of residents, so that the exception in Policy Directive 400 could be invoked. Respondent did not violate Policy Directive 400 by suspending Grievant prior to completion of its investigation of the allegations.

As to his right to due process of law, Grievant, as a tenured state employee, has a property interest in his employment. Perry v. Sindermann, 408 U.S. 593 (1972), cited in Jones v. Nicholas County Bd. of Educ., Docket No. 92-34-305 (July 28, 1993), aff'd, Nos. 93-AA-213, 94-AA-76 (Kanawha County Cir. Ct. Apr. 5, 1995). "When an individual is deprived of this interest, certain procedural safeguards are merited. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)." Jones, supra.

"Where an act of misconduct is asserted in a notice of dismissal, it should be identified by date, specific or approximate, unless the characteristics are so singular that there is no reasonable doubt when it occurred. If an act of misconduct involves persons or property, these must be identified to the extent that the accused employee will have no reasonable doubt as to their identity." Syl. Pt. 2, Clarke v. W. Va. Bd. of Regents, 279 S.E.2d 169 (W. Va. 1981), citing Syl. Pts. 4 and 5 of Snyder v. Civil Serv. Comm'n, 238 S.E.2d 842 (W. Va. 1977). This was not a dismissal, but even applying the dismissal standard to this case, the undersigned concludes that, considering all the facts, the event was sufficiently identified so that there was no reasonable doubt as to the identity of the accuser and the incident being investigated. Grievant was immediately told he was being investigated for mental and physical abuse of a resident of the Standard Unit. While he was not told the identity of the resident or the date of the incident, Grievant had filed an incident report on the afternoon of July 23, 1997, in which he recited what occurred that morning with D.M., and which stated at the end, "[a]t no time was I intentionally abusive to this resident." "The Supreme Court of Appeals [of West Virginia] has recognized that `a temporary deprivation of rights may not require as large a measure of procedural due process protection as a permanent deprivation.' Syl. pt. 2, North v. W. Va. Bd. of Rgts., 160 W. Va. 248, 248 (1977)." Jones, supra. Grievant was told the results of the investigation on August 27, 1997, prior to the decision to uphold the suspension, and given an opportunity to respond. The July 31, 1997 suspension letter states that if the allegations against Grievant are unfounded, he "will be compensated for the period of suspension and the record purged of any

documentation thereof." Thus, Grievant was suspended pending the results of an investigation, and would have suffered no loss in pay or benefits if the charges were not substantiated, and was given an opportunity to respond to the charges prior to the suspension being upheld. Further, the charges included a charge of physical abuse, so that the rights of the residents not to be subjected to further physical abuse, outweighed any right Grievant had to remain on the job pending the results of the investigation. Grievant was not denied his procedural due process rights. See Jones, supra.

James J. Ielapi, Superintendent of the Industrial Home for Youth testified that one of the grounds for Grievant's suspension was that he had breached the security of the institution by taunting a child, and this could have caused the entire unit to turn on him. This charge was not in the August 28, 1997 letter to Grievant and will not be considered by the undersigned as Grievant was never properly placed on notice that this was one of the charges against him. Yates v. Civil Service Comm'n, 154 W. Va. 696, 178 S.E.2d 778 (1971).

Grievant does not dispute that he placed the "stupid" sign in D.M.'s pocket. He argues that he was attempting to get through to D.M. that his act of defecating on the floor the night before was not acceptable, and he felt that by taking on the issue and putting an end to it in front of the unit, therest of the unit would take his lead and not tease D.M. about it. He stated he did not humiliate D.M., and was not trying to abuse him. He stated he was not calling D.M. stupid, but rather he was saying the act he had committed was stupid. The undersigned fails to see the difference, particularly given that D.M. was given a sign to wear which read "stupid." Grievant could not recall what he had said to D.M. in front of the other residents during the approximately ten minutes he had the residents stand in the hall, except that he had talked to him about cleaning his room, and he stopped the discussion when D.M. became teary eyed.

The investigation of the allegations against Grievant was conducted by Ann Murphy, Child Protective Service Worker, Department of Health and Human Resources, (See footnote 5) Superintendent Ielapi, and Matthew Biggie, Unit Manager of the Standard Unit. Statements were taken from some of the residents of the Unit, and the other officer on duty the morning of July 23, 1997, Eric Billiter. Ms. Murphy's report and the written statements were placed into evidence, but neither the residents nor Ms. Murphy were called to testify. Mr. Billiter was called by Grievant, but his testimony was limited. Superintendent Ielapi testified that he had sifted through the statements given by the residents to separate fact from fiction, as the statements could not be taken as entirely true.

> Hearsay evidence is admissible in the grievance procedures for state and education employees, but there is no requirement, statutory or otherwise, that it be afforded any particular weight. Generally, written statements, even affidavits, may be discounted or disregarded unless the offering party can provide a valid reason for not presenting the testimony of the persons making them. See, Seddon v. W.Va. Dept. of Health, Docket No. 90-H-115 (Dec. 14, 1997).

Cook v. W. Va. Division of Corrections, Docket No. 96-CORR-037 (Oct. 31, 1997), Conclusion of Law No. 2. Corrections presented no reason for its failure to call Ms. Murphy or any of thejuveniles, including D.M., as witnesses. The statements of the juveniles will be given no weight, nor will the conclusions drawn by Superintendent Ielapi from them, as he admitted the statements contained falsehoods. Even so, Respondent has proven it is more likely than not that Grievant commented on D.M.'s behavior in a critical manner as he gave him the stupid sign and left it in his pocket for awhile, and D.M. then became teary eyed.

Grievant's motives need not be examined. Grievant acted in violation of the guidelines set forth in Staff Notice 102. While Respondent should have provided Grievant with training in how to manage developmentally disabled residents, the guidelines of Staff Notice 102 alone advised Grievant that he was not to act as he did. Grievant's act was a violation of the Staff Notice and Policy Directive 400 regardless of D.M.'s mental condition.

Further, Grievant had previously been disciplined for the manner in which he had addressed a resident, thus it had been brought to his attention that the use of insulting or degrading language was not appropriate. Giving a resident a sign to carry which reads "stupid" falls within the category of insulting and degrading language, regardless of Grievant's intent. Respondent proved one Class A violation, A4, and the Class B violation, B20.

Grievant did not violate Policy Directive 229.13. That Directive defines child abuse and neglect at Section 2, as follows:

> Abuse may occur any time a staff member applies, attempts to apply, or knowingly allows to be applied, physical injury upon a resident.

> Abuse includes excessive or abusive work or exercise assignments as well as the striking of a resident with any part of the body or with any object.

> Neglect is considered to exist when a resident fails to receive necessary and adequate food, clothing, shelter, supervision, medical care or education.Regardless of how

> Grievant's act is viewed, he did not physically abuse D.M., or attempt to do so; he did not assign him excessive or abusive work or exercise; and he did not refuse him necessary food, clothing, shelter, supervision, medical care or education. Grievant did require D.M. to clean his cell with disinfectant. This work assignment was necessary due to the odor which persisted from improper cleaning the night before. No clean rags were available, however, and D.M. used a dirty sock from a pile of dirty female underwear and socks. Grievant was not aware of the contents of the pile, or that D.M. had used a dirty sock. This cannot fall within the category of abusive work.

The undersigned cannot determine how Grievant violated W. Va. Code § 49-6A-2 (failure to report child abuse or neglect), and Respondent did not explain the connection. Accordingly, this violation was not proven.

Finally, Grievant argued that even if Respondent's characterization is correct, the discipline imposed was too severe. Grievant specifically argued that by charging Grievant with multiple policy violations from a single act, Corrections has violated its own policy.

The undersigned may mitigate the discipline imposed if the penalty assessed is clearly excessive or clearly disproportionate to the offense. Factors to be considered in this analysis include the employee's past disciplinary record, the clarity of notice to the employee of the rule violated, whether the employee was warned about the conduct, and mitigating circumstances. Stewart v. W. Va. Alcohol Beverage Control Comm'n, Docket No. 91-ABCC-137 (Sept. 19, 1991).

In this case the undersigned must consider the Policy Directive 400 guidelines, and Superintendent Ielapi's rationale for a thirty day suspension. Policy Directive 400 recommends the penalty for a second Class A offense as a six to fifteen day suspension, for a first Class B offense as a five to fifteen day suspension, and a sixteen to thirty day suspension for a second Class B offense. Policy Directive 400 provides, however, at Section 4.02, that "[w]hen in the judgment of the Commissioner, and/or the appointing authority, aggravating circumstances exist, specified corrective action or sanctions may be increased."

Grievant committed one act of misconduct, which can be classified as either his second Class A offense, or his first Class B offense. (See footnote 6) The discipline imposed exceeds the Policy 400 recommendations.

Corrections did not argue it had stacked the offenses to justify increasing the penalty. Superintendent Ielapi explained that the recommendation from Ms. Murphy was that Grievant be dismissed. He stated he had decided on a suspension instead. (See footnote 7)

Ms. Murphy's report (Respondent's Exhibit 5) does not recommend that Grievant be dismissed, nor does it address disciplinary action against Grievant. Her report recommends training for Grievant

in stress management, anger control, patience, respect, and "the behaviors of children who are developmentally delayed." She concludes that Grievant's "work with children will need to be closely monitored, if he is to remain an employee of WH Industrial Home for Youth." Her report states, "[i]t is the responsibility of the Administration to assess the ability of this staff person to respond to a corrective plan . . .. If the staff is deemed unwilling or unable to participate in such a plan, then the Administration must carefully review any continued employment by this staff withdirect contact with the children." Superintendent Ielapi did not address his assessment of Grievant's ability to respond to a corrective plan.

Further, Ms. Murphy's recommendations cannot be relied upon by Respondent to support its actions as she was not called to explain them, and her report is based in part upon suspicions and inaccuracies. Her report states "[t]he allegation of physical abuse is suspected, but cannot be fully determined. It allegedly occurred out of camera range or view of a third person." Grievant, of course, was not charged with physical abuse, and the transcript of Superintendent Ielapi's interview with Mr. Billiter makes it clear that D.M. was lying when he stated Grievant had taken him in the office on the morning of July 23, 1997, and slapped him. Mr. Billiter was in the office, and was aware of everything which occurred that morning. Mr. Billiter stated Grievant did not hit D.M.

Ms. Murphy concluded that Grievant should have "heeded" D.M.'s request that he be let out of his cell to use the restroom. D.M., of course, was not a child in a home, but was housed in a maximum security facility, and had been locked down for his behavior less than five minutes. Even the undersigned can see that it would not be wise to release an inmate from his cell when his actions had created a lockdown situation. Again, Grievant was not charged with wrongdoing in failing to let D.M. out of his cell, and testified that he was not aware D.M. had asked to go to the restroom.

Ms. Murphy's report further refers to Grievant sending D.M. to bed without showering, and concludes that this incident is "somewhat unclear." Grievant was not charged with failure to allow D.M. to shower, and testified that he left the facility at 8:00 p.m., and it was not his responsibility to see that D.M. showered.

While Ms. Murphy concluded in her report that Grievant, "appears to be somewhat unpredictable under stress," Grievant presented testimony from two witnesses who had worked withhim for a long time, one of whom had supervised him, that this was inaccurate. Donald Vanscoy, a Correctional Officer V at the Industrial Home for Youth, had supervised Grievant at times, and worked at the

facility more than 11 years. He described Grievant as one of his more valuable and reliable employees and fairly compassionate toward the residents, and stated that he had not found him to act in an unpredictable fashion. He stated that every employee loses his temper on occasion.

Jay Harbert, a Case Manager at the Industrial Home for Youth, and formerly a Counselor at the Home, testified he had worked with Grievant two years. He stated he had observed that Grievant gets along well with residents, he cares about them, and interacts with them, and that the residents like Grievant. He stated he did not view Grievant as unpredictable under stress. He agreed that it was not appropriate to place the "stupid sign" in D.M.'s pocket, but he did not believe this was abusive. He did not believe Grievant would do anything to harm a child, but that Grievant was trying to teach the resident.

Ms. Murphy's report notes that "[t]he child involved in this allegation does not have the abilities that most of the general population has at Salem. The care and expectations for a child who is developmentally disabled require more compassion, understanding and willingness to cooperate on the part of the staff." While Ms. Murphy obviously had been trained in how to deal with this type of child, Grievant's employer had not bothered to see that Grievant had received such needed training. Respondent was not justified in its reliance on Ms. Murphy's report in assessing the appropriate penalty.

Grievant presented additional testimony from Mr. Vanscoy that he does some investigations for the Industrial Home, and has made recommendations for employee discipline. In his opinion,Grievant's action was an error in judgment, not a severe violation, and did not warrant a thirty day suspension.

Accordingly, the undersigned finds that Respondent should have followed its own policy in determining the appropriate discipline, and no aggravating circumstances existed to justify deviation from the policy recommendations. See Hammer v. Division of Corrections/Huttonsville Correctional Center, Docket No. 94-CORR-1084 (Nov. 30, 1995). The penalty imposed was clearly excessive in light of the charges proven, and the agency's own guidelines for discipline. The suspension should be reduced to fifteen days without pay.

The following Conclusions of Law support the Decision reached.

Conclusions of Law

1. Pursuant to W. Va. Code § 29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Ramey v. W. Va. Dept. of Health, Docket No. H-88- 005 (Dec. 6, 1988).

2. Respondent has proven Grievant violated Corrections' Policy Directive 400, Section 7, A4, and B20, Staff Notice 101, and Staff Notice 102.

3. Respondent failed to prove Grievant violated Corrections' Policy Directive 229.13 or W. Va. Code § 49-6A-2.

4. Grievant's procedural due process rights were not violated as he was provided sufficient notice of the charges against him prior to his suspension, and was given an opportunity to respond prior to the suspension being upheld. In addition, the rights of the residents not to be physically abused pending the results of the investigation supported the immediate suspension. 5. Respondent did not violate Policy Directive 400 by suspending Grievant in these circumstances prior to giving him written notice of the evidence against him and an opportunity to respond.

6. Corrections was not justified in relying upon Ann Murphy's conclusions in determining the appropriate punishment, as Ms. Murphy relied upon allegations against Grievant with which he was not charged and which were not proven, and her conclusions regarding Grievant's reaction to stress were proven incorrect. The penalty imposed exceeded the recommendations of Corrections' Policy Directive 400 which provides recommended penalties for misconduct, and no aggravating circumstances existed to justify deviation from the policy recommendations. The penalty imposed was clearly excessive.

Accordingly, this grievance is **GRANTED IN PART AND DENIED IN PART**. Grievant's suspension is reduced to fifteen days without pay, and Respondent is **ORDERED** to pay him backpay with interest for the additional fifteen days he was suspended, and to restore any benefits lost during the additional fifteen days of suspension, and to remove any reference in the suspension letter to violations of Corrections' Policy Directive 229.13 and W. Va. Code § 49-6A-2.

Any party may appeal this decision to the circuit court of the county in which the grievance occurred and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code

§29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Anyappealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: March 24, 1998

Footnote: 1

Grievant was initially suspended for 15 days without pay, on July 31, 1997, pending the results of an investigation.

Footnote: 2

The undersigned has no authority to award attorney fees. Chafin v. Boone County Health Dept., Docket No. 95-BCHD-362 (June 21, 1996). See e.g., Smarr v. Wood County Bd. of Educ., Docket No. 54-86-062 (June 16, 1986).

Footnote: 3

Two days of hearing were held at Level IV, on October 6 and November 24, 1997. This matter became mature for decision on February 6, 1998, the deadline for submission of written rebuttal.

Footnote: 4

At the request of the parties, and consistent with the Grievance Board's practice, the name of the resident will not be used as he is a juvenile. Several exhibits in this grievance were admitted under a protective order because they contained the name of this juvenile, as well as the names of other juveniles at the facility, including Ann Murphy's report (Respondent's Exhibit 5), and the statements given by the juveniles.

Footnote: 5

Ms. Murphy was called upon to investigate because of the role Health and Human Resources plays in the operation of a juvenile facility.

Footnote: 6

Due to this finding, it is of no moment whether Grievant also violated Policy Directive 400, Section 7, A6, "Disruptive Behavior," and Grievant's argument that this language is too broad need not be addressed.

Footnote: 7

Grievant raised the issue of discrimination at the hearing, asking one witness if Mr. Ielapi's decision was based in part upon Grievant's union affiliation. The witness could not comment on Mr. Ielapi's motives, and the issue was not further

pursued in testimony or in post-hearing written argument, and is considered abandoned.