

7. An investigation regarding inappropriate actions of the Appellant with students began with a complaint filed by student "JG" on June 1, 2015. The investigation was conducted primarily by Kimberly Tucker, the Assistant Director in the Department of Human Resources, with assistance from Priscilla McCowan, a Training Coordinator. An incident started May 28, 2015, with "JG" and another resident. As a result of the events of that night, "JG" was not allowed to go on a trip to Walmart, and ultimately was dismissed from the CPC. She filed the complaint with

Jim Recktenwald on June 1, 2015, when she came back to the facility to pick up her things. (Testimony of the Appellant, Jim Recktenwald, Rick Duty, Kimberly Tucker, Priscilla McCowan, Beth Steinle and Appellee's Exhibits 1 and 2.)

8. During the course of the investigation, the Appellant was interviewed by Kimberly Tucker and Carmen Maxson on June 12, 2015. During this interview, Appellant admitted he slapped "LS" and "ET" on the bottom. He could not explain why he did this and admitted that his actions were inappropriate. (Testimony of Kimberly Tucker and Appellee's Exhibit 5.)

9. Appellant was interviewed again on September 16, 2015, in Frankfort by Ms. Tucker and Ms. McCowan. At that time, Appellant denied slapping students on the bottom at any time, and stated that he tapped "ET" and "LS" on the side of their legs, not their bottoms, while trying to get them out of the office in the Recreation Department. Appellant testified that he tapped the side of students' legs during his testimony at this hearing. (Testimony of Appellant, Kimberly Tucker and Appellee's Exhibit 5.)

10. The Board finds that Appellant's initial admission of slapping students "ET" and "LS" on their bottoms credible. Appellant's explanation that he was nervous when confronted with an investigation where his job was in jeopardy and thus, testified inaccurately about inappropriate actions is simply not believable. The Board finds that Appellant's later denials of slapping these students on the bottom to be self-serving and contrived, once Appellant realized the trouble he was in regarding these allegations.

11. Based on the testimony at the hearing, the Personnel Board finds Appellant engaged in the following misconduct with students:

- a. Appellant lifted “JG” up like a sack of potatoes, acting like he was going to throw her in the pool. (Testimony of Appellant, Kimberly Tucker and Appellee’s Exhibit 5.)
- b. Appellant pulled his sweaty shirt over “JG’s” head at a basketball game, claiming he was just goofing around. (Testimony of Appellant, Kimberly Tucker and Appellee’s Exhibits 5 and 7.)
- c. Appellant slapped “LS” on the bottom. (Testimony of Kimberly Tucker, Rick Duty and Appellee’s Exhibit 5.)
- d. Appellant slapped “ET” on the bottom. (Testimony of “ET,” Kimberly Tucker and Appellee’s Exhibit 5.)
- e. Appellant allowed “ET” to put her legs on his legs while showing movies. (Testimony of “ET,” Kimberly Tucker, Greg Standifer, Rick Duty and Appellee’s Exhibit 7.)
- f. Appellant hugged students or allowed students to hug him before bed, including student “ET.” (Testimony of Kimberly Tucker, Greg Standifer and Appellee’s Exhibit 7.)
- g. Appellant picked up student “LS” and put her over his shoulder. (Testimony of Greg Standifer and “LS.”)
- h. Appellant allowed “LS” to put her legs over his lap. (Testimony of Rick Duty.)

i. Appellant wrestled with “LS” in the office, as if one of them was trying to get something from the other. (Testimony of Rick Duty.)

j. Appellant tickled student “ET.” (Testimony of Rick Duty.)

12. The Board rejects Appellant’s defense that he was goofing around and this is just the way he interacted with students in the Recreation Department in order to develop a better rapport with them. Regardless of his motivation, Appellant’s conducts were inappropriate in any workplace, and certainly inappropriate at the Carl D. Perkins Center when dealing with the vulnerable students he was with. Appellant’s conduct was disruptive to the workplace, disruptive and disturbing to the students and contrary to the mission of the Carl D. Perkins Center.

13. Appellant’s inappropriate actions constitute just cause for his dismissal and his dismissal was neither excessive nor erroneous as established by all of the surrounding circumstances. The Board finds staff witnesses Greg Standifer and Rick Duty credible in their descriptions of Appellant’s misconduct. The Board specifically finds Kimberly Tucker’s testimony credible, especially her description of Appellant’s admissions during her two interviews with him. The Board finds “ET’s” testimony credible describing Appellant’s misconduct. The Board finds “LS’s” denials of Appellant’s misconduct not credible, as she appeared as a very intimidated and frightened witness. The Board further finds “LS” less than credible in her testimony in that she denies the Appellant slapped her on the bottom when the Appellant admitted this conduct in his first interview with Kimberly Tucker.

14. The Board also finds that during the course of his employment, Appellant underwent training involving sexual harassment and proper staff relations

with students. Such training was a part of the Code of Professional Ethics for Rehabilitation Counselors, which included such topics as “Relationship Boundaries with Students and Supervisees,” “Sexual Intimacies with Clients” and “Non-Professional Relationships with Clients.” The Appellant was also on notice not to engage in these behaviors through the guidelines stated in “Staff Relations with Consumers.” (Appellee’s Exhibit 11.)

B. Delete Conclusions of Law and substitute the following:

1. The Board concludes that based on the Findings of Fact, the Agency carried its burden of proof to establish just cause for the dismissal of the Appellant, and his dismissal was neither excessive nor erroneous based on all of the surrounding circumstances. KRS 18A.095(1) and (22)(c).

2. The Board concludes that the Hearing Officer properly excluded evidence the Agency tried to introduce, which was not included in the charges of dismissal in this case. KRS 18A.095(7)(b) and *Cleveland Board of Education v. Loudermill*, 470 US 532 (1985). Allowing the Agency to proceed against the Appellant based on uncharged conduct would have been a fundamental violation of due process, which requires that Appellant be provided with notice and an opportunity to be heard. Notice of the charges against the Appellant after his dismissal would deprive him of both aspects of due process and violate KRS 18A.095(2) through (6).

3. The allegations against the Appellant that were contained in his dismissal letter (Appellee’s Exhibit 12) which were not proven at the evidentiary hearing played no part in the Board’s consideration of this appeal. KRS 13B.090(7).

C. Delete the Recommended Order, and substitute the following:


IT IS HEREBY ORDERED that the appeal of **MICHAEL L. BLACKBURN V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2015-279)** is **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13th day of September, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Patrick B. Shirley
Hon. Tess Russell
Hon. Paul Fauri

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-279

MICHAEL L. BLACKBURN

APPELLANT

V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

** ** *

This matter came on for an evidentiary hearing on March 30 and 31, 2016, and April 1, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Michael L. Blackburn, was present at the evidentiary hearing and was represented by the Hon. Paul Fauri. The Appellee, Education and Workforce Development Cabinet, was present and represented by the Hon. Patrick B. Shirley and the Hon. Tess Russell. Appearing as Agency Representative was Kimberly Tucker.

This matter involves the termination of the Appellant by letter dated October 2, 2015. A copy of the dismissal letter is attached hereto and incorporated herein as **Recommended Order Attachment A**. In essence, the Appellant was terminated for lack of good behavior, for demonstrating inappropriate actions that were disruptive to the workplace and were disruptive and disturbing to students, who are vulnerable adults with significant physical and/or mental impairments.

The burden of proof was placed upon the Appellee to show, by a preponderance of the evidence, that the action taken was appropriate, and was neither excessive nor erroneous under all surrounding circumstances.

The parties jointly moved to have the record sealed in order to protect the confidentiality of the students involved. The Hearing Officer **GRANTED** the motion, and **THE RECORDING OF THE EVIDENTIARY HEARING AND THE FOLLOWING EXHIBITS ARE HEREBY SEALED: Appellant's Exhibits 2 and 3; Appellee's Exhibits 1, 2, 3, 4, 5, 6, and 7.**

Following all testimony, the parties were given until May 4, 2016, to file closing memorandums. As a part of these, the Appellant filed a Renewed Motion to Strike allegations or conversations relating to Teresa Duncan, the Appellant's ex-wife. The motion is **GRANTED**, and all such references in the dismissal letter shall be stricken. The Hearing Officer had previously stricken other portions of the dismissal letter (see Motion in Limine Order issued March 21, 2016).

BACKGROUND

1. The Agency called the **Appellant, Michael Blackburn**, as its first witness. He testified that he has received a Bachelor Degree from Morehead State University in 1995 and a Master's Degree in Vocational Rehabilitation Counseling in 2001 from the University of Kentucky. He stated that from February through June 1995, he volunteered at the Morehead Treatment Center for Youth, where he shadowed staff. He also has a Teaching Certificate and has been a substitute teacher for special education students in the past. He has been employed at the Carl D. Perkins Vocational Training Center (hereinafter CPC) for approximately 17 years.

2. He further stated that although he is formally classified as a Vocational Rehabilitation Program Instructor III, he has never actually served as a counselor. Instead, he has functioned on a daily basis as the Recreation Leader at CPC. The witness explained that the CPC is a vocational training center located in Thelma, Kentucky (Johnson County). The Center serves both residential and day students, who have some form of disability. The purpose of the Center is to help the students gain independence and to become gainfully employed.

3. The Appellant was in charge of organizing and coordinating the recreational activity events. He worked the 3 p.m. to 11 p.m. shift. Some of the activities involve card games, basketball, ping pong, field trips, movies and other related activities.

4. The Appellant confirmed that, while at CPC, he received various training on matters such as sexual harassment, ethics, workplace violence and anti-harassment.

5. The witness admitted that sometime during the fall of 2014, he did receive a verbal counseling from Barb Pugh, the Director of CPC. This meeting was held to address rumors which had been started about the Appellant's relationship with a student, "ET". After being advised of this, he was told to distance himself from "ET" and testified that he followed Pugh's instructions. The witness then testified that he felt the entire matter, which led to his dismissal, happened because on May 28, 2015, he would not let two students go on a planned field trip to Walmart. He then explained that these two students, "JG" and "CS" were arguing with each other, and "JG" became particularly upset when she was not allowed to go. As a result, on June 1, 2015, "JG" filed a complaint against the Appellant, citing inappropriate actions by him toward her. The Appellant feels this was retaliatory on her part, because of the May 28, 2015 incident.

6. The Appellant stated that indeed he would “goof around” on field trips with the students in order to establish rapport and to make them comfortable in talking with him. He also admitted that once at a basketball game, he did wipe sweat on “JG,” and pulled his shirt over her head. He also allowed that he would sometimes “bump, poke or nudge” students to get their attention. He also stated that they reciprocated these actions.

7. The witness then described the offices of the recreation area. There was a front office which had desks and windows. There was also a back office, which had an open doorway but no windows. This back office contained two desks. Appellant stated that at one point during his tenure, students were allowed in the back office and at some point this was changed per the instructions of a Security Supervisor, Jeremy Lyons.

8. Appellant also confirmed that he was first interviewed regarding his actions on June 12, 2015, by Kimberly Tucker, a Human Resource person from Frankfort. During this interview, he admitted to her that he understood that some of his actions might have been considered inappropriate. He explained to her that he sometimes “tapped” these students to get their attention, but denied any slapping of students’ buttocks.

9. During a second interview on September 16, 2015, with Tucker and Priscilla McCowan, the Appellant again admitted that he did once put his shirt over “JG’s” head during a basketball game and wiped sweat on her. He told them that he had never thought of that as being inappropriate, as it was in front of everyone. He also stated that she told him to stop, but she was laughing.

10. Appellant also told the interviewers that he frequently went out to the “smoke shack” and so did “JG”. He added that “JG” had never voiced any frustration toward him about any of his actions, with the exception of the trip to Walmart. The witness also stated that during this interview, he admitted that he had, at one time, taken “JG’s” flip flops from her at the swimming pool and he feigned that he was going to throw them away, but he was just joking. The Appellant also admitted during the interview that once he did pick “JG” up and put her over his shoulder while walking to the pool. Again, he insisted this was playful, but he could later see that it might have been misconstrued.

11. The Appellant also advised Tucker and McCowan that at various times, especially when he was showing movies, that students would put their legs over his lap, citing “ET” as the worst one. He added that at one point he had told her that people were talking about them, and that she needed to stop it. He denied that any staff members had ever told him that having someone’s legs over his lap was inappropriate. Appellant also denied to the interviewers that he allowed any student to massage his back and further denied twisting anyone’s nipples. Appellant also stated that he had never been in the back office alone with a student, nor had he ever been there with a student with the lights off.

12. Lastly, the Appellant denied he had ever pinched students on their buttocks or thighs, and denied ever having had sex of any kind with any student.

13. During the hearing, the Appellant described "ET" as a student, probably in her 20s, who attended the CPC in 2014. He explained that sometimes he talked with her and others on a bench outside while smoking. He denied ever kissing her. The witness explained that, at times, "ET" and "CS" would sometimes try to drape their legs over his lap. However, he told them to stop.

14. The Appellant then denied any Facebook contact with any students while they were at the CPC. He also denied wrestling with any students.

15. The Appellee's next witness was **Jim Recktenwald**. He has a Philosophy Degree from Loyola University of Chicago. Prior to beginning work at the CPC in 2003, he served in various areas concerning mental health, substance abuse, and at a Methadone clinic. He is now an Alcohol and Drug Counselor at CPC.

16. Recktenwald explained that the CPC is one of eight training centers in the United States which helps people get into the workforce and helps them restructure their thinking about their lives. The Center trains people with different kinds of disabilities and problems, some having sensory or mental disabilities and others being intellectually challenged. He added that some of the students (consumers) have legally-appointed guardians.

17. The witness was familiar with "JG", who initiated the complaint against the Appellant. He described her as having ADHD and suffering from depression. He fears she is becoming like her schizophrenic mother, and described her as a tough student to be a counselor for, as she had many anger issues.

18. Recktenwald described the Appellant as doing a "good job" as the Recreation Leader, and stated that he has limited contact with Mr. Blackburn. He recalled a conversation held six or seven years ago with Appellant, and at that time, felt the relationship between the Appellant and students was okay. He now states he has changed his mind because of some "little things" which kept popping up that caused him concern.

19. He testified that one or two times he has noticed young women grouping around and talking with the Appellant, whereas, this witness feels he should have been having these discussions in group sessions. He also opined that Appellant seemed to favor the prettier females.

20. The witness then described that on June 1, 2015, "JG" came to him in an agitated state and wanted to talk. He stated he helped her to file an incident (complaint) form, which he wrote as she talked with him and, thereafter, she signed it. He stated he felt that "JG" was credible in that her story stayed the same over time.

21. Recktenwald then described two other females mentioned in the complaint. The first was "LS", whom he deemed mentally challenged and who had an appointed guardian. This witness did not work with her. The next person described was "ET," whom the witness stated had a Central Auditory Processing Disorder (CAPD). He felt that the Appellant's behavior around some of the young females might be described as "grooming." The witness explained this is a situation in which a person acts or does something to someone over time in order to set the other person up to accept behavior that might be inappropriate.

22. He added that the CPC has a policy of "no horseplay" between counselors and students. He also said he had observed a lot of "flirty talking."

23. On cross-examination, the witness added he has a Master's Degree in Social Work from the University of Kentucky, even though he is not licensed as such. He has been a certified Alcohol and Drug Counselor in Kentucky since 1996. He is actually an employee of Morehead State University based at CPC.

24. He testified that "JG" had been at the Center two times, first from January 2014 through August 2014, and from April 2015 through May 30, 2015. She was a part of his caseload during her latter stay.

25. He also testified that during her two stays at the Center, she had become pregnant one time, and had left and returned several times. He described her as having depression and ADHD, but does not think she was taking medication for either.

26. He added that "ET" was not on his counseling caseload. He described her as having a Processing Disorder and confirmed his knowledge of her came primarily from her counselor and his review of her records.

27. Recktenwald then referred back to behavior by the Appellant over a period of approximately six years which he considered "grooming." However, he did not report this to anyone formally.

28. He then identified Appellant's Exhibit 1, the Operations Manual at CPC. Among other things, this manual dictates the handling of conflict resolution involving staff members, the when and how to file incident reports, and how to deal with the resolution of ethical issues.

29. Section 2.4.1 (page 16) states that where there is a conflict not involving procedure the parties should first attempt to resolve it on a personal basis, and should that fail, it should be mediated by the lowest level of authority over all parties.

30. Section 6.8 (page 35) mandates that certain incident reports are to be completed on an incident-by-incident basis. These include Accident, Incident or Behavioral (AIB) Reports. Such reports should be submitted to the Director of Residential and Security Services.

31. Section 9.6 (page 42) dealing with ethical issues, requires a person who believes an action has occurred which may be unethical should contact the Center Director's office as soon as possible in order to have the matter investigated.

32. The witness admitted he did not file any incident reports or report any unethical issues. He added that on many days, he would see a group of young female students (whom he called "groupies") who appeared to be glad to see the Appellant upon his arrival.

33. Finally, Recktenwald added that he has dealt with students in the past who have been sexually abused or harassed, and has found they are usually not forthcoming. In this case, "JG" came to him and was forthcoming. He also admitted that "JG" had some substance abuse problems.

34. The Appellee's next witness was **Greg Standifer**. He has been a Facilities Security Officer at the Center since 2000. Part of his duties involved looking out for behavioral issues, as well as security duties. He also says there is a camera system which he monitors, which covers both inside and the outer areas.

35. He routinely sees the consumers and staff members during his rounds, and has stated he has known the Appellant since he came to work, and has had no issues with him.

36. The witness then corroborated the description of the recreation area given in earlier testimony, and stated that he generally observes the recreation area three to four times a day.

37. He stated that over a period of time, he has observed the Appellant in the outer office, approximately 8 to 10 times a week, with "ET". The lights were always on. He has also observed "LS" in the office with the Appellant, perhaps as much as five times per week.

38. The witness stated he has also observed the Appellant with "ET" in the gym while watching movies at various times, or outside smoking. He has observed "ET" with her legs draped over the Appellant's lap, although he does not know for how long. He did mention this incident to his supervisor, Jeremy Lyons. Standifer also noted he had observed "LS" sitting on the Appellant's lap at least once in the outer office.

39. Lastly, Standifer testified that sometimes at the 10:30 p.m. bed curfew, he has seen "CS" and two other girls who came and hugged the Appellant individually before going to bed. He has also seen, on one occasion, the Appellant pick up "LS" over his shoulder in the gym.

40. On cross-examination, the witness described the "hugging" testified to earlier as the students putting their arms around the Appellant and he patting them on the back. He did not report this. He observed that through his monitoring of the cameras. He seldom saw the Appellant and other students in the recreation room; however, he did observe the Appellant and some other students other than "LS" or "ET" in the front office.

41. The Appellee's next witness was **Rick Duty**. He has been a Facility Security Officer at the Center for seven years. He describes himself as a good friend of the Appellant. He explained that while on his rounds, he has no reason to go into the back office in the recreation area. He has observed the Appellant talking with "ET" and tickling her and grabbing her shoe. He has observed the Appellant strike "ET" on her buttocks. He has observed the Appellant in the office with "ET", and other students as well, perhaps three or four times.

42. Regarding "LS", the witness testified that he saw the Appellant spank her buttocks once or twice. He also observed them wrestling once in the office in the manner of "one trying to get something from the other." He has also seen "ET" and "CS" at least twice with their legs draped over the Appellant's lap. He emphasized they were not sitting on his lap, and these incidents occurred during the showing of movies in the dorm lobby.

43. The witness added that he had reported the incident where he observed the Appellant throwing "LS" over his shoulder and her with her legs over his lap to supervisor, Jeremy Lyons, because he thought those were inappropriate actions.

44. On cross-examination, the witness further explained the wrestling incident as the parties "goofing around." He also added that he never brought to the Appellant's attention any of these things which he observed.

45. On re-direct, Duty verified he had witnessed the van incident on May 28, 2015, between "JG" and another female student. He confirmed the Appellant had refused to let either of them go to Walmart. As a result, he stated that Security had to write up "JG" that night for her behavior. He explained that she was ranting and raving, and was also written-up for being out after curfew and at the smoke shack.

46. The Appellee's next witness was **Kimberly Tucker**. She testified she is employed by the Cabinet as an Assistant Director in the Division of Human Resources. She has been in state government for 21 years, all in HR positions. She has worked with the Cabinet since May 2015.

47. She testified that she received a telephone call from Barb Pugh, Director of CPC, on June 1, 2015. This involved a complaint filed by "JG" involving the Appellant.

48. After meeting with Personnel Director Beth Steinle and coworker Priscilla McCowan, she went to the Center on June 12, 2015, to speak with the Appellant. Next, she and McCowan met with "JG" for two to three hours on June 24, 2015. At that time, "JG" furnished her the names of other students and employees, whom she claimed were either witnesses or victims of the Appellant's actions. On July 10, 2015, Tucker had telephone conversations with two students, one of whom denied seeing any inappropriate action. From July 22, 2015, through the end of August 2015, she and McCowan both interviewed various staff and students, some by phone and some in person.

49. Then on September 16, 2015, Tucker and McCowan met with the Appellant in Frankfort. The Appellant admitted to them that at times "ET" had draped her legs over his lap, but he had told her to stop it and she did. He also told them he thought some girls had a crush on him, and admitted that staff members Branham and Howard had expressed to him some concern about he and a student being in the recreation office. He also admitted he had some students come and hug him before the bedtime curfew.

50. Tucker added that the only difference in his explanation from June 12, 2015, and September 16, 2015, was that in June the Appellant remembered lightly slapping two students on their buttocks.

51. The witness then introduced Appellee's Exhibit 8, a Training History of the Appellant. It shows that from 2000 through April 2015, the Appellant had attended sessions involving ethics, sexual harassment, workplace violence and anti-harassment, and abuse and neglect.

52. The witness then introduced Appellee's Exhibit 9, the "Code of Professional Ethics for Rehabilitation Counselors." Tucker then testified that at one point Appellant had been a certified Counselor, although he did not actually work as a Rehabilitation Counselor, but rather a Recreation Leader. The witness stated that this Code of Ethics was in effect during the time Appellant had been certified. She specifically referred to training in behavior with students.

53. Tucker then referred to the following, which she felt had not been followed: The Code of Ethics, Section A(a)(5) specifically prohibits counselors from having any type of sexual intimacies with clients; Section A(6), which banned non-professional relationships with clients, and Section G(1)(A), which requires counselors to clearly define and maintain ethical, professional, and social relationship boundaries with their students.

54. On cross-examination, Tucker was referred to the dismissal letter, page 6, wherein it was alleged that the Appellant had twisted the nipples of student "JZ" several times. However, the witness admitted upon interviewing "JZ," she denied this ever happened. Tucker did not put that denial into her report.

55. When questioned about Appellant's Exhibit 2 (Tucker's preparation notes for interviewing), the witness confirmed that she did not interview either "LS" or "ET" before the dismissal letter. She knows of no written reports ever filed regarding Appellant's alleged actions by either students or staff until the complaint from "JG" on June 1, 2015.

56. The witness then introduced Appellee's Exhibit 11 "Staff Relations With Consumers." This is the set of guidelines expected of staff at the Center. In pertinent part, it reads:

Interaction Guidelines

- Staff members or volunteers will maintain professional relationships with consumers that emphasize increased interaction between consumers and their peers in an effort to maximize consumer personal development. Staff members and volunteers should be friendly to consumers, but they will not develop friendships or close personal relationships with consumers...

Sexual/Physical Contact

- Staff members and volunteers should refrain or minimize personal physical contact with consumers. If the job duties of a staff member or volunteer require touching a consumer, the staff member and volunteer should ensure any touch is related to the task being performed, and when possible is observable by other staff members and volunteers and/or consumers. It is acceptable for staff members and volunteers to shake a consumer's hands or touch their shoulder in order to get their attention. Staff members and volunteers should refrain from hugging a consumer. Staff members and volunteers will not kiss consumers. Staff members and volunteers will not physically touch a consumer on any area of their body that could be construed as a sexual area unless it is a necessary part of a treatment protocol. Staff members and volunteers will not make sexual innuendoes or remarks directed toward consumers.

57. The Appellee's next witness was "ET". She is now 23 years old and testified that she suffers from Defiance Disorder, Cognitive Auditory Processing Disorder, and some form of ADD. She was a resident at the Center from January 2013 through December 2014. She stated she was introduced to the Appellant at her orientation. She stated that at first, he was someone to talk with. As time went on, she would sometimes sit with him in the recreation area office and would talk, put her legs over his lap occasionally, and would give him a hug. She referenced one day where she and he were standing at the back door, and it being a cold day, he opened his coat and she huddled with him to keep warm. She also added that sometimes in the dorm lobby she would jump into his arms and hug him. She initiated these contacts.

58. "ET" also stated that sometimes she would sit with her legs draped over the Appellant's lap, that he sometimes slapped her on the bottom, but he never twisted her nipples.

59. On cross-examination, "ET" added that at one point "JG" was her best friend at the Center and stated, "she told everything to 'JG.'"

60. On re-direct, the witness denied that Blackburn had ever pushed her legs off his lap, and further stated that she and the Appellant took care to avoid the security cameras. She added that there came a time she quit "hanging out" with him because he told her people had become suspicious. However, she also added that she worked with staff other than the Appellant in the recreation area.

61. The Appellee's next witness was **Priscilla McCowan**. She has been employed with the Cabinet as the Training Coordinator and has performed some Human Resources work for approximately 15 years. She gives the training related to sexual harassment, and has done so at the Center.

62. She confirmed she was involved with the investigation of the Appellant, along with Tucker. She stated that after meeting and interviewing "JG," she found her to be credible in that she told a consistent story and was not melodramatic about it.

63. On cross-examination, McCowan admitted that "JG" told her and Tucker about the van incident that occurred when preparing to leave for Walmart. She also told them the Appellant had stopped her from going on that trip.

64. Appellee's next witness was **Beth Steinle**. She has worked in the Human Resource field for 26 years with various Cabinets. She has been the Appointing Authority and the Director of Human Resources with the Cabinet since 2014. She testified that she had assigned McCowan and Tucker to investigate the situation involving the Appellant after Center Director Barb Pugh sent in a complaint from "JG." She added that she let McCowan and Tucker perform the investigation without oversight because of their personnel backgrounds.

65. She also confirmed that investigators were unable to find students "ET" and "LS," and were, therefore, unable to interview them.

66. The Appellee's next witness was **Barb Pugh**. She has worked with the Agency since 1998. She was Assistant Director, before becoming the Division Director in 2011 at the CPC. She possesses a Master's Degree in Speech Language Pathology and is a Certified Rehabilitation Technologist.

67. Pugh testified that she supervises a staff of approximately 120 employees, and the Center serves an average of 160 students. Some are residential and some come and leave daily. The average age of the students is approximately 23.

68. She testified that all staff are made aware of the Operations Manual (Appellant's Exhibit 1) in various ways. She emphasized this covers the policies on incident reports and ethical issues. She also advised that things are sometimes reported to her orally by staff.

69. Pugh explained that Appellant and Jeremy Lyons had much involvement in supervising the recreation area. Lyons was formally a Dorm Counselor and involved in Security. The witness testified she began supervising the Appellant in 2010, and also explained that although his job title was that of Vocational Rehabilitation Program Instructor, that Appellant actually served as the Recreation Leader.

70. His duties included transporting students on trips to places such as the mall, and honors trips, supervising swimming, volleyball, campfires, basketball, and the game room.

71. Pugh then testified that the Appellant would have daily interaction with students. She listed his "strength" as always being available; and listed his "weakness" as not liking to be tied to a schedule.

72. The witness stated that sometime in 2012 or 2013 she received an oral report from Jeremy Lyons, informing her that Appellant had picked up a student and put her over his shoulder and smacked her buttocks. This student was "LS." Pugh discussed this with the Appellant, who admitted it, but stated he was just playing around. At that point, the witness felt satisfied with his explanation.

73. Pugh continued by stating that since the complaint filed by "JG" regarding Appellant, they had made several changes at the CPC. These include:

1. There are no doors in the back office.
2. There is an improved camera security system.
3. The Consumer Ethics Policy has been re-emphasized to staff.

74. The witness added that, in light of the allegations regarding the Appellant, she would have a hard time taking him back.

75. On cross-examination, when directed to the Operations Manual (Appellant's Exhibit 1), the witness confirmed that no incident reports had ever been filed by Lyons, even though she had instructed him to do so, and no ethics issues were reported to her. She added that any inappropriate interaction with consumers witnessed by staff should have been in written form. She saw no written reports from either Ricky Duty or Greg Standifer.

76. Pugh identified Appellant's Exhibits 4, 5 and 6. These were year-end evaluations of the Appellant from 2012 through 2014. In each evaluation, the Appellant was rated as "Highly Effective."

77. The Appellee's next witness was "LS." She attended the CPC in 2012 through 2013. She testified that she and other students would play games in the recreation area and she helped the Appellant, as needed. She stated that at various times, she had been in both the front and back office in the recreation area alone with the Appellant. She also added that occasionally on a Sunday or Monday, the lights would be off in the back office, covering a period of afterschool through bedtime curfew.

78. "LS" then denied that she had ever sat on the Appellant's lap, denied having her buttocks slapped and denied any wrestling of any sort with the Appellant. She added that on probably two times he had picked her up and thrown her over his shoulder.

79. The witness concluded by stating that after she left the Center permanently, she would sometimes call back for the Appellant, just to see how he was doing and to tell him of her progress. She insisted there was nothing overly personal in these conversations.

80. The Cabinet then closed. The Appellant also announced closed at this point.

FINDINGS OF FACT

1. The Appellant was a 17-year employee of the Agency, who was dismissed by letter dated October 2, 2015. Although the Appellant's job title was that of Vocational Rehabilitation Program Instructor, testimony shows that he actually served as the Recreation Leader at the Carl D. Perkins Vocational Training Center (CPC).

2. The Appellant was terminated for lack of good behavior under 101 KAR 1:345, for demonstrating inappropriate actions that were disruptive to the workplace and were disruptive and disturbing to students, who are vulnerable adults with significant physical and/or mental impairments.

3. The CPC has a staff of approximately 120 employees, and serves an average of 160 students. Some are residential and some come and leave daily. The average age of the students is approximately 23.

4. The mission of the CPC is to help students who are generally disabled in one way or another gain independence and become gainfully employed.

5. As Recreation Leader, the Appellant was in charge of organizing and coordinating recreational activity events. He worked the 3 p.m. to 11 p.m. shift, where some of the activities included card games, basketball, ping pong, field trips, movies and other related activities.

6. During September 2014, the Appellant received a verbal counseling from Barb Pugh, the Director of CPC. This meeting was held to address rumors which had been started about the Appellant's relationship with a student, "ET." After being advised to distance himself from "ET," the Appellant felt that he did so, and felt the matter had been resolved.

7. Despite testimony during the hearing that attempted to point out other inappropriate actions of the Appellant with some students prior to May 28, 2015, the Hearing Officer finds unquestionably that the investigation and subsequent termination resulted from a complaint filed on or about May 28, 2015, by student "JG."

8. On the date in question, "JG" and another student were arguing with each other on a bus intended to take them on a trip to the local Walmart. As a result of this altercation, the Appellant would not let "JG" go on this trip.

9. Counselor Jim Recktenwald testified that "JG" suffered from ADHD and depression. He feared she was becoming like her schizophrenic mother, and described her as having many anger issues.

10. On June 1, 2015, "JG" filed a complaint against the Appellant, citing inappropriate actions by him toward her.

11. Following this complaint, an investigation was conducted by, among others, Kimberly Tucker and Priscilla McCowan, from the main office in Frankfort. During the course of interviews, the Appellant admitted that he had one time wiped sweat on "JG" and pulled his shirt over her head. He also admitted that one time, he had taken "JG's" flip flops from her at the swimming pool and feigned throwing them away. He also admitted that once he picked up "JG" and put her over shoulder while walking to the pool.

12. The Appellant admitted to the interviewers that he never thought of these actions as being inappropriate as they happened in front of others and "JG" was laughing during these actions. The Appellant defended his actions because his style was to "goof off" and joke with the consumers (students) so as to get them to open up and talk with him.

13. The Appellant also admitted that, at times while showing movies, occasionally students would put their legs over his lap, citing "ET." The Appellant also denied ever pinching students on their buttocks or thighs, or of twisting anyone's nipples, or of ever having sex of any kind with any student.

14. Of the approximate 14 names of consumers (students) referenced in the investigation and dismissal letter, only students "ET" and "LS" testified during the hearing. The Hearing Officer finds it particularly noteworthy that "JG," whose complaint initiated this entire record of events, did not testify. Therefore, the Hearing Officer finds the only direct evidence introduced as to the allegations relating to "JG" were the Appellant's own limited admissions.

15. Although the testimony of Jim Recktenwald was an attempt to give credibility to "JG's" statements, this was clearly double hearsay, and the Hearing Officer gives no credence to "JG's" complaints.

16. Likewise, there was no testimony offered by Jeremy Lyons, Jerrica Sluss or Karen Branham. Lyons' absence is not fatal to the extent that Barb Pugh corroborated a report which he supposedly made to her about the Appellant's behavior. However, any references made to "JS" or Karen Branham, who were all named as potential witnesses for the Appellee, are given no finding as to any allegations regarding student H; student C; and student J.

17. The Hearing Officer further finds that various allegations in the complaint letter by "JG" were not addressed by others referenced in her complaints, specifically student E and student D.

18. There is credible evidence and the Hearing Officer so finds, from the testimony of Appellant and others, that certain females made a habit of initiating hugs with the Appellant immediately prior to the nighttime bed curfew on a frequent basis. The Hearing Officer also finds that Kimberly Tucker was not able to interview either "LS" or "ET" prior to issuance of the dismissal letter, as they were not available. However, "LS" and "ET" did testify at the evidentiary hearing.

19. The Hearing Officer also finds that no written incident reports were filed, as required by policy, to the attention of Barb Pugh by Jeremy Lyons, Rick Duty or Greg Standifer. The Hearing Officer finds that Officer Duty did orally report to Supervisor Lyons one incident wherein the Appellant threw "LS" over his shoulders. The Hearing Officer also finds that Officer Greg Standifer made an oral report to Supervisor Lyons regarding the Appellant sitting next to "ET" with her legs draped over his lap. This report resulted in Barb Pugh oral counseling the Appellant in September 2014.

20. The Hearing Officer also finds that during the investigation, student "JZ" denied to investigator Tucker that Appellant had ever twisted her nipples, yet this denial was not placed in the investigative report.

21. The Hearing Officer also finds that during the course of his employment, the Appellant underwent training involving sexual harassment and the proper staff relations with consumers. Such training was a part of the Code of Professional Ethics for Rehabilitation Counselors, which included such topics as "Relationship Boundaries with Students and Supervisees," "Sexual Intimacies with Clients," and "Non-professional Relationships with Clients."

22. The Hearing Officer finds credible the testimony of "ET" that she gravitated toward the Appellant initially because he was someone to talk with. The Hearing Officer also finds credible her testimony that she would occasionally put her legs over his lap and give him a hug. It is also credible that she initiated these contacts.

23. The Hearing Officer finds credible the testimony of student "LS," who attended CPC from 2012 through 2013. It is credible that she and other students would play games in the recreation area and would occasionally be in both the front and back offices in that area with the Appellant. The Hearing Officer also finds credible her denials that she sat on the Appellant's lap, that he slapped her buttocks or that the two engaged in any sort of wrestling. Her testimony is also credible that the Appellant probably picked her up twice and threw her over his shoulder.

CONCLUSIONS OF LAW

1. The Agency carried its burden of proof to show the Appellant's actions as to "ET" (occasionally slapping her buttocks and allowing her to drape her legs over his lap) were inappropriate.
2. The Agency carried its burden of proof to show the Appellant's actions as to "LS" (picking her up and throwing her over his shoulder) were inappropriate.
3. The Agency carried its burden of proof to show the Appellant's actions as to "JG" (putting his shirt over her head and wiping sweat on her) were inappropriate. The Hearing Officer makes this conclusion because of the Appellant's own admission.
4. The Appellant's actions as to the three students named above constituted a lack of good behavior pursuant to 101 KAR 1:345.
5. The Agency failed to carry the burden of proof to show the dismissal of Appellant was not excessive.

RECOMMENDED ORDER

A majority of the allegations regarding the Appellant's conduct supposedly happened between 2012 and 2014. The only supposed misconduct involving "ET" was reportedly resolved during a counseling session with the Appellant and Division Director Barb Pugh in September 2014. There is no question the entire investigation resulted from a complaint initiated by "JG," who was described as angry, and whose complaint probably was retaliatory in nature against the Appellant because of his failure to allow her to go on a trip to Walmart in late May 2015. The Hearing Officer views the Appellant's style in conducting his Recreation Leader duties as more accurately described as "goofing off" and "carrying on" with his students. It is certainly plausible that the Appellant was attempting to relate to these students in such a manner so as to encourage their communication with him. The Hearing Officer finds no intent by the Appellant's actions to "groom" these students in order to encourage them to allow unwanted sexual misconduct. Although the Agency argues the students are vulnerable because of their intellectual disabilities, it can also be argued that the Appellant's method of relating to these students is a much more effective one than a strictly-structured disciplinary method. Apparently, the Appellant was effective in his approach, since he received three consecutive "Outstanding" evaluations. The Hearing Officer feels the proven allegations against the Appellant were not so grievous as to warrant his dismissal in light of all the surrounding circumstances.

Therefore, the Hearing Officer recommends to the Personnel Board that the appeal of **MICHAEL L. BLACKBURN V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET, (APPEAL NO. 2015-279)** be **SUSTAINED to the extent** that the dismissal be voided and that Appellant be given a 15-day suspension without pay. The Appellant should be reinstated to his previous position or a position of like pay and status with back pay and other benefits and otherwise be made whole. [KRS 18A.105 and 200 KAR 12:030.]

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer R. Hanson Williams** this 30th day of June, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Patrick Shirley
Hon. Tess Russell
Hon. Paul F. Fauri



**APPELLEE'S
EXHIBIT**

12

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
OFFICE OF THE SECRETARY**

Steven L. Beshsear
Governor

Capital Plaza Tower, 3rd Floor
500 Mero St.
Frankfort, Kentucky 40601
Phone (502) 564-0372
Fax (502) 564-5959

Thomas O. Zawacki
Secretary

October 2, 2015

Michael Blackburn

PERNR:

Eff. Date: October 3, 2015

Dear Mr. Blackburn:

Having considered all statements made by you on your behalf during your pre-termination hearing held on September 28, 2015, I have determined that the clear weight of the evidence establishes that you committed the charges as outlined in my letter to you dated September 18, 2015.

Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are and officially dismissed from duty and pay and your Administrative Leave will conclude effective October 3, 2015.

You are being dismissed from your position of Vocational Rehabilitation Program Instructor III with the Carl D. Perkins Vocational Training Center, Office for Vocational Rehabilitation, Education and Workforce Development Cabinet for lack of good behavior pursuant to 101 KAR 1:345 for the specific reasons outlined in my letter to you dated September 18, 2015, and these reasons are again indicated as follows:

Pursuant to 101 KAR 1:345, Section 1, I find probable cause to believe that your dismissal is justified based upon the following specific reason(s):

Lack of Good Behavior, i.e., you demonstrated inappropriate actions that were disruptive to the workplace and were disruptive and disturbing to students, who are vulnerable adults with significant physical and/or mental impairments. Further, you provided false information during the investigation regarding your actions.

The Carl D. Perkins Vocational Training Center serves students, who are adults with physical or mental impairments that result in a substantial impediment to employment. These students are considered "vulnerable adults." Some of these students have mental impairments that involve depression, anxiety, emotional dysregulation, mood instability, a fear of abandonment and

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rejection, an extreme need to compete for social acceptance, a damaged self-image, an inability to understand relationship boundaries, and romantic and sexual promiscuity.

You know or should know the complex issues surrounding the students of the Carl D. Perkins Vocational Training Center, including the above-listed issues, as you agreed during your interview with Cabinet's Division of Human Resources Assistant Director Kimberly Tucker and the Cabinet's Education and Training Coordinator Priscilla McCowan on September 16, 2015 that the center's student population is vulnerable, stating some are more vulnerable than others. In fact, you completed the necessary training to obtain certification as a certified rehabilitation counselor on August 12, 2003. This certification required ethical training which included you being advised that you were to be aware that your actions could potentially harm students. Specifically, the Code of Ethics for Rehabilitation Counselors that took effect on January 1, 2002 and was in effect at the time you earned your certification stated, "Rehabilitation counselors will be aware of their influential positions with respect to clients, and will avoid exploiting the trust and dependency of clients. Rehabilitation counselors will make every effort to avoid non-professional relationships with clients that could impair professional judgment or increase the risk of harm to clients. (Examples of such relationships include, but are not limited to, familial, social...close personal relationships with clients...)...." In this Code of Ethics, you were also advised that "Rehabilitation counselors will not engage in sexual harassment. Sexual harassment is defined as sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature that occurs in connection with professional activities or roles...." In this Code of Ethics you were also advised that you were to "take reasonable precautions to protect clients from physical or psychological trauma." While you allowed your certification to expire and you are not currently employed as a counselor, this does not negate the fact that you know or should know the seriousness of the behaviors outlined in this Code of Ethics and how those behaviors affect students.

You also received training regarding sexual harassment on November 21, 2000; June 20, 2006; June 17, 2009; June 17, 2014; and April 14, 2015. You also received training regarding abuse and neglect on December 1, 2014, at which time you were advised that a vulnerable adult is defined as a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out activities of daily living, or protect himself or herself from neglect, exploitation or hazardous or abusive situations without assistance from others, and who may be in need of protective services. You were advised that up to ninety percent (90%) of individuals with developmental disabilities are sexually abused at some time during their lifetime. You were advised that as an employee who works for an agency or facility licensed or certified by the state and who has contact with vulnerable adults as a result of your normal duties, you are a "professional reporter" and therefore, have the responsibility, by law, to recognize and report abuse and neglect. You were advised that sexual abuse includes sexual conduct that is harmful to a vulnerable adult's mental, emotional, or physical welfare. You were advised that emotional abuse is the subjecting an individual to behavior which results in intimidation, fear, humiliation, degradation, agitation, disorientation, or another form of emotional distress.

You were also advised in the facility-wide procedure, "Staff Relations with Consumers" that "staff members or volunteers will maintain professional relationships with consumers that emphasize

increased interaction between consumers and their peers in an effort to maximize consumer personal development. Staff members and volunteers should be friendly to consumers, but they will not develop friendships or close personal relationships with consumers." This includes, but is not limited to, relationships with a consumer in which staff members and volunteers share personal information with consumers. You were also advised in this procedure that staff members and volunteers should refrain or minimize personal physical contact with consumers and that it is acceptable for staff members and volunteers to shake a consumer's hands or touch their shoulder in order to get their attention, but that staff members and volunteers should refrain from hugging, kissing, or touching a consumer on any part of the consumer's body that could be construed as sexual. You were also advised in this procedure that staff members and volunteers will not make sexual innuendoes or remarks to consumers. This procedure was finalized and became a part of the facility-wide operation manual in March 2006. You were present during the center's Leadership Team meeting on October 2, 2013, when the team advised you that a copy of the procedure was to be distributed and reviewed for content and that any comments any member of the team had were to be submitted for review. You were present during the Leadership Team meeting on November 6, 2013, when the team verified that the procedure had been distributed and reviewed.

On June 1, 2015, Barbara Pugh, who is the Director of the Carl D. Perkins Vocational Training Center, forwarded a written complaint she received from Student A to the Cabinet's Division of Human Resources. Student A was a student at the center from January 13, 2014 to August 29, 2014 and again from April 20, 2015 to May 30, 2015. Student A's written complaint was submitted on a "Carl D. Perkins Vocational Training Center Incident Complaint Form" and outlined examples of your actions she believed were inappropriate. Although Student A was no longer a student at the center, she visited the center for the purpose of reporting your actions toward her and others while she was still a student at the center.

Substance Abuse Prevention Treatment Counselor Jim Recktenwald, who was Student A's therapist while she was a student at the center and was the staff person who met with her during her visit, asked her to report the issues in writing due to the serious nature and the volume of the issues involved in her complaint. During his July 22, 2015 interview with Ms. Tucker and the Ms. McCowan, Mr. Recktenwald stated that he became upset while talking with Student A about these issues because he believed everything she reported to him. He stated that he has counseled many, many students and is well aware of Student A's behaviors and personality and knows that she tends to get into trouble. However, when taking these facts into consideration, he stated the details she provided to him about you and your actions led him to believe that she was not making a report for the purpose of trying to get someone in trouble, but to report what had happened because the actions were inappropriate.

During this interview, Mr. Recktenwald also went on to state that he has witnessed many of your actions over the years that were questionable, such as hugs you shared with female students that went on "a little too long." Mr. Recktenwald also stated that he has witnessed you become too close with students and has witnessed you choose "favorite" students, who were always females. Mr. Recktenwald stated that by choosing "favorites" in the center's environment, you ended up

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"pinning the students against one another" for your attention. He stated this is detrimental to students because competing for attention is one of the concerns with the center's vulnerable student population. Mr. Recktenwald stated that he and his coworker, Licensed Clinical Social Worker Christy Hensley, have discussed your behavior and how you relate with students and that they agree that your behavior is predatory, inappropriate and disruptive to the center.

On June 22, 2015, Ms. Tucker and Ms. McCowan interviewed Student A about her concerns. During the interview, Ms. Tucker and Ms. McCowan talked with Student A about the information in her original complaint, as well as some additional behaviors she witnessed you demonstrate toward her and others that she believed were inappropriate.

Student A began the interview by stating that approximately three days after she returned to the center on April 20, 2015 you approached her, winked at her, and stated, "Good to have you back." She stated that from that point, you started "doing stuff again." Ms. Tucker and Ms. McCowan asked her to explain what she meant by "stuff." Student A then went on to provide the following specific examples of your actions:

- During a student/staff basketball game on or about the first Thursday following her return to the center on April 20, 2015, Student A and Student E were keeping score for the game. Student A stated that during a game break, she was seated and you came up behind her, stretched your "sweaty" shirt out from your stomach and put it over her head. She stated she told you to "stop" and told you that it was "gross." She stated you were laughing but did not say anything to her. She stated you then walked away to get a drink of water.

Student E stated during her July 22, 2015 interview with Ms. Tucker and Ms. McCowan that she did witness this incident, as did Facilities Security Officer I Charles 'Greg' Standifer, who verified the details of the incident during his August 4, 2015 interview with Ms. Tucker and Ms. McCowan. Others have also witnessed you wiping your sweat on female students including students and Voc Rehab Program Instructor I Cassandra 'Cassie' Burchett, who stated during her August 6, 2015 interview with Ms. Tucker and Ms. McCowan that she has witnessed you doing so on multiple occasions.

- Later on the night of the above basketball game, at around 9:30 p.m., Student A and Student E went to the "smoke shack." You were at the smoke shack when they arrived. You were seated on one side of the "smoke shack" and Student A purposely sat away from you. Student E took a seat near her. You then got up from your seat, walked over to Student A and pinched her arm. She got up from her seat and walked away, but you followed her to the corner of the "smoke shack." She talked with you briefly and privately told you that she had talked with her boyfriend about you [referring to your inappropriate actions toward her] and that her boyfriend told her to tell you that he "did not like the way you were acting toward her" and that if you did not stop, he was going to "come down there and beat [your] ass." You responded, "okay." Student A then told Student E she was going to bed and left. Student A stated that she never told anyone but her boyfriend about your flirtatious actions because she was only a few hours short of being able to graduate and did not want to "kicked out" of the center.

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Student E confirmed during her July 22, 2015 interview with Ms. Tucker and Ms. McCowan that she and Student A did go to the smoke shack on the night after the basketball game, and that you were also present at the smoke shack. Student E recalled Student A being upset, but does not recall overhearing any conversation between the two of you. Student E confirmed that you did pinch and poke students on a routine basis, but she took it to be something you did jokingly and to be friendly with the students.

- During a swimming trip at an indoor pool in Hazard in May 2015, Student A was wearing a black crop top over her bikini top and was wearing bikini bottoms. The only time she got into the swimming pool was when she and the group first arrived at the pool and she had to do a "swim test" to show she could swim. After passing the "swim test" she did not want to swim anymore. You kept encouraging her to take off her shirt and get into the water, but she kept telling you, "No." You took her flip flops and walked outside the emergency door and threatened to throw them if she did not get in the water. You eventually brought the flip flops back to her. Then, during break time, you took a twisted up towel and started flicking her with it while she was still sitting at the picnic table. She got up from the table in order to get away from you while telling you to stop, but you continued flicking her and laughing until she retreated to the girl's locker room, where she remained for approximately one and one-half hours, until the group left the pool to return to the center.

During his July 22, 2015 interview with Ms. Tucker and Ms. McCowan, Student F stated he went on the trip to the swimming pool in May 2015 and did witness you take Student A's flip flops and jokingly act as if you were doing to throw them if she did not get into the pool. Student F stated that he witnessed you tickle her in an attempt to help her have a good time.

During his July 17, 2015 interview with Ms. Tucker and Ms. McCowan, Student G stated he went on the trip to the swimming pool in May 2015 and did witness that Student A was upset. Student G witnessed you tickling Student A and witnessed her both laughing and telling you to stop tickling her at the same time. He also witnessed you flicking Student A with a twisted towel. According to Student G, Student A was frustrated and upset with you at that time.

- You held dances on Friday and Saturday nights for students at the center. During several of the dances in April and May 2015, Student A witnessed you sitting in a chair with your legs propped up on a boxed area where you kept your laptop and other equipment and witnessed Student D sitting next to you with her legs over your legs. Student A stated that she also witnessed one of your hands placed between Student D's legs near her crotch area while the two of you were seated.

During her July 22, 2015 interview with Ms. Tucker and Ms. McCowan, Student E stated that during the dances, she witnessed you sitting behind the area where your music equipment was stacked, with your legs propped up on the box that was holding the music equipment and witnessed Student D with her legs draped over your legs. Student E stated that you and Student D remained in the position for at least 20-30 minutes. Student E stated that Student D "always said" that she sat with her legs draped over your legs because she had injured her foot months earlier and that she needed to prop up her foot; however, Student E stated that

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once Student D removed her feet from your lap and got up from her seat, she proceeded to dance with the other students and did not seem to be in pain.

During her July 17, 2015 interview with Ms. Tucker and Ms. McCowan, Student D stated that she once sat next to you in the "smoke shack" with her legs draped over your lap because her foot hurt.

During his August 3, 2015 interview with Ms. Tucker and Ms. McCowan, Vocational Rehabilitation Administrator I Jeremy Lyons, stated that in the fall of 2014, he observed you sitting behind the desk area in the recreation room with Student B. He stated the two of you were sitting alone and how you were sitting could not be determined because most of your bodies below your necks were hidden behind a desk area. However, he stated when walked closer he could see that Student B's legs were draped over your lap. He stated that upon seeing how you were positioned, he asked the student to leave the area. He stated that you tried to "laugh it off like it was no big deal" but that he believed your actions were "very inappropriate."

During his August 4, 2015 interview with Ms. Tucker and Ms. McCowan, Mr. Standifer stated that he has witnessed you multiple times to be sitting with female students with their legs draped over your legs. He provided one example during which he witnessed Student B sitting next to you with her legs draped over your legs and both her hands and your hands in her lap while you both were watching a movie in the gym some time in 2014. Mr. Standiford stated he believed your actions were "very inappropriate."

- You told Student A that if she got too loud or cursed, you would give her "purple nuckles" [referring to the act of twisting someone's nipples]. You twisted her nipples approximately 5-8 times and she witnessed you twist Student B's nipples approximately 12-15 times. You also pinched Student C's nipples.

During the investigation, others described actions you exhibited frequently that they viewed as inappropriate, offensive and disruptive to students and the workplace. Examples of those actions that you exhibited follow:

- During her August 3, 2015 interview with Ms. Tucker and Ms. McCowan, Vocational Rehabilitation Program Instructor II Karen Branham stated it was obvious that you had your "favorites." She stated when the recreation department went on trips, there was a limit to how many could go and it would be limited to the first 30 students that signed up or "something of that nature." She stated students would get angry because there were always certain female students that they believed you favored that never had to sign up for anything but always got to go anyway. She witnessed that happen many times.

Ms. Branham stated that she has seen you in the corners of rooms with female students many times "counseling" them and that you were always "hovered over them" and "too close." She stated that one time in she went "crazy" on you because she could not "take it anymore." She stated that at the time she went "crazy" on you, you were in the corner with a female student

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named Student H. Ms. Branham stated you were hovered, but she could not see what was actually occurring because your back was to her and blocking a full view of the student. She repeatedly stated that you were always "hovering" and "counseling" your favorite female students. She stated after she went "crazy" on you to get away from Student H, you later apologized to her because you claimed you did not realize what you were doing "looked like that" but Ms. Branham stated that did not stop you from continuing to act in the same manner "again, again and again."

Ms. Branham stated that all of the students at the center are adults but they are all vulnerable and do not deserve to be exploited. She stated many of them have problems and do not understand boundaries. She stated that someone can make a simple statement to any of the girls and what one says and how they hear it or understand it can be very different and that is why the center has expectations in place for staff. She stated the students can be easily manipulated. Ms. Branham went on to state that none of these girls should be "pawed on" like she has witnessed you do.

Ms. Branham stated she has witnessed you sitting at your desk, facing your desk and girls being in your office, leaning up against your desk, facing you, with their legs up on your chair and/or in your lap. Most recently, she witnessed a student named Student C in this position. She stated it was a Sunday night and that the two of you were in the back office in the equipment room and that this office is private and has no windows. Ms. Branham stated that she went back into that office and was surprised to find the two of you in that office. She stated she was shocked, walked out and waited for Student C to leave. She stated that at the time she witnessed the two of you in the private office, it was past curfew and that Student C had no business being anywhere in that area at that time, much less in the private office with you, where students should never be. Ms. Branham stated most recently, she saw Student B in your office sitting on your desk with her legs up on your chair and/or in your lap while you were seated, facing your desk.

Ms. Branham stated she has seen "tons of girls" sitting in your lap over the years. She stated it was "not possible" for her to recall the names of all of the female students she has witnessed sitting in your lap, but she could recall instances in which she witnessed Student H, Student I, and Student J, all of whom are former students.

- During his August 3, 2015 interview with Ms. Tucker and Ms. McCowan, Voc Rehab Instructor II Greg Howard stated that Student B "hung out" with you "all of the time" in recreation. He stated Student B would come back there every day, several times a day and ask, "Where's Blackburn?" He stated Student B would sit in your office with you, sometimes alone and sometimes with other staff present. Mr. Howard stated that it didn't matter where you were, Student B was always with you.

Mr. Howard stated that within the last year and in years prior, he has witnessed you sitting in your office in your chair, facing your desk, with a female student sitting on your desk facing you. Mr. Howard stated he does not recall the students' legs being in your lap, but that the position was "questionable." Mr. Howard stated that you put yourself in precarious situations

"constantly" and that you do not "seem to care." Mr. Howard stated you are around female students a lot without other staff around, which he stated is "not necessary and not a good idea." He stated that he has witnessed you sit at tables in the recreation area with a female student for "hours at a time" talking to the student alone, which he also described as "not a good idea."

- Facilities Security Officer I Greg Standifer stated that in 2014, he has witnessed you tickle Student I and Student B.

Mr. Standifer stated that he has witnessed you pick up Student I and throw her over your shoulder "like a sack of potatoes" on at least two occasions in 2014, once while you and she were outside together smoking and another time at a dance in the gym. He stated you appeared to be "goofing off" but he believed the actions were inappropriate.

Mr. Standifer stated he has witnessed you hugging female students "all of the time." He stated that there were a few students (he remembers Student D, Student K and Student B in particular) that would make a point to come down to the recreation department at 10:30 p.m., which was at curfew and just before bed, to hug you nearly every night in 2014 and 2015.

Mr. Standifer stated that students were frequently, possibly daily, in your office when students were not supposed to be in your office. He stated he witnessed Student B sitting on your lap in your office and witnessed Student I sitting on your lap in your office in the fall of 2014. Mr. Standifer stated that you "did not even care" that he had witnessed this.

Mr. Standifer stated that in 2014, he watched you share a cigarette with Student B behind the recreation department, outside of the back door, where you used to smoke together.

Mr. Standifer stated you picked "favorites" and that he was not comfortable with you picking favorites. He stated that Student B was clearly one of your "favorites" and that was not appropriate. Mr. Standifer stated that your favorites tended to be smaller and/or petite. Mr. Standifer also stated that your "favorites" tended to be females that were "hard to deal with" and because you gave them so much attention and were lenient in addressing inappropriate actions, it was difficult for other staff to deal with their behaviors.

- Jerry Sluss, a former contract security guard who worked at the center from January 2014 to April 2015, stated during his August 21, 2015 and August 26, 2015 interviews with Ms. Tucker and Ms. McCowan that he entered the recreation office in January 2014 and witnessed Student B sitting in your lap. He stated you tried to laugh it off and stated, "She's our pet. She does this all of the time." He stated he found your actions to be inappropriate.

Mr. Sluss stated that in 2014, he also witnessed you and Student B walking in through the backdoor of the recreation area, where the two of you usually smoked. He stated that upon entering the building, you opened the coat you were wearing and Student B proceeded to

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cuddle up next to you, underneath your coat in a hugging manner. He stated he found your actions to be inappropriate.

Mr. Sluss stated that in January or February 2014 he witnessed you walk through the dorm lobby and witnessed Student B run up to you, jump up in your arms and the two of you hug one another.

Mr. Sluss stated that at approximately 10:30 a.m. on a Sunday in May or June 2014, he witnessed you to be outside with Student B smoking. He stated that you walked back to the building ahead of Student B and then turned to wait for her. He stated that when she caught up with you, you picked her up and swung her around before walking arm and arm back into the building.

- During his August 21, 2015 interview with Ms. Tucker and Ms. McCowan, Facilities Security Officer I Rick Duty stated he witnessed you take students' shoes and run with them during water fights, etc. Specifically, he saw you take Student B's shoes and Student L's shoes.

Mr. Duty stated he also witnessed you come through the back door of the recreation room with Student B some time in 2014 and witnessed the two of you stop once you entered the door, embrace in a hug that involved your stomachs touching.

Mr. Duty stated he witnessed you and Student I wrestling on the floor of the game room sometime in 2012 or 2013. He stated both of you were down on the floor and in inappropriate positions.

Mr. Duty stated he witnessed you and Student I exiting the back office of the recreation department, which has no windows. He stated that there were no lights on in the office prior to you coming out of the office. He stated he witnessed this at least three to four times while Student I was a student in 2012 and 2013. He stated that students are not permitted in that area and he was not able to provide any reason as to why the two of you would alone together in a dark, secluded office.

Mr. Duty stated that many times he witnessed you come up from behind female students and staff, grab them around their waists, tickle them, smack them on their bottoms, and pinch their inner thighs. Mr. Duty found your actions to be inappropriate.

On June 12, 2015, prior to meeting with Student A, Ms. Tucker interviewed you at the Carl D. Perkins Vocational Training Center. Human Resource Administrator Carmen Maxson was also present during the interview. During this interview, you denied demonstrating any behaviors that were inappropriate, behaviors that could be viewed as inappropriate or behaviors that were sexual in nature. However, you claimed that there is "horseplay" in the recreation department and that you have done some things that others may see as inappropriate but that you did not "mean them that way." You admitted there was "horseplay" even though students are forbidden from engaging in horseplay and are penalized and lose privileges if they engage in activities such as "horseplay."

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During the June 12, 2015 interview, you admitted that you have pinched students on the legs, but you stated you could not recall which students or whether anyone was present when you pinched the students. You stated you have never pinched students with the intention of hurting them. You also stated you have not pinched them "on the butt or near any private area." You stated that when you did pinch a student's leg, it was usually "more like a poking motion" and in response to something they had done "kind of joking around" and was probably "poor judgement" on your part. You attempted to justify your actions by again claiming that the recreation department was "very informal" and stated, "You kind of have to work back there to know what I mean. We just kind of horseplay." During your September 16, 2015 interview with Ms. Tucker and Ms. McCowan, you denied ever having pinched anyone on the bottom or the leg:

However, according to Student A, you pinched her inner thigh in the spring of 2015, leaving a bruise. She stated she did not show anyone the bruise because she did not want to get kicked out of the center for causing trouble. Student A stated your actions were not appropriate and were not welcomed by her.

In addition, Mr. Duty reported during his interview with Ms. Tucker and Ms. McCowan that another student, Student L reported to him that you had pinched her on her thigh and had left a bruise.

During your June 12, 2015 interview, you admitted that you slapped Student I, who was a student at the center from May 19, 2012 to June 18, 2013, on her bottom and admitted that you slapped Student B, who was a student at the center from January 28, 2013 to January 8, 2015, on her bottom. You claimed you could not recall why you slapped these students on their bottoms, nor could you recall if anyone else was present when you slapped these students on their bottoms. You stated your actions were inappropriate and that you "just weren't thinking." You again attempted to justify your actions by explaining that the atmosphere in the recreation department was very casual and again, described the atmosphere as full of "horseplay." Again, you admitted there was "horseplay" even though students are forbidden from engaging in horseplay and are penalized and lose privileges if they engage in activities such as "horseplay." Contrary to that statement, during your September 16, 2015 interview with Ms. Tucker and Ms. McCowan, you denied having slapped any student or staff member on the bottom at any time, but stated you remember tapping Student B and Student I on the sides of their legs, not their bottoms, while trying to get them out of the office in the recreation department.

While you denied slapping any other students or staff members on their bottoms, you have slapped at least three other females their bottoms. In her June 22, 2015 interview with Ms. Tucker and Ms. McCowan, Student A stated that you slapped her on her bottom in 2014, leaving a red mark on her buttock.

During her August 6, 2015 interview with Ms. Tucker and Ms. McCowan, Vocational Rehabilitation Program Instructor I Cassandra Burchett stated that you slapped her on her bottom in October 2012, while the two of you were setting up a haunted house for Halloween

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at the center. She stated that at the time of the incident, she was new to the center and was shocked at your actions.

During her August 5, 2015 interview with Ms. McCowan, Vocational Rehabilitation Program Instructor III Connie Shepherd stated that she witnessed you slap Student M on the bottom. Student M was a student at the center from January 27, 2014 to August 18, 2014. Ms. Shepherd did not think your actions were appropriate.

During his August 21, 2015 interview with Ms. Tucker and Ms. McCowan, Recreation Aide Brad Mullins stated he witnessed you slap Vocational Rehabilitation Program Instructor Ashley Harvey on the bottom sometime in 2015.

During his August 21, 2015 interview with Ms. Tucker and Ms. McCowan, Facilities Security Officer I Rick Duty stated he witnessed you pick Student I up and throw her over your shoulder and slap her on the bottom multiple times, including once in the recreation room and once in the gym.

During your June 12, 2015 interview with Ms. Tucker and Ms. Maxson, you admitted that you pulled your shirt over Student A's head while you were playing basketball. You stated that while standing behind Student A, you stretched the shirt you were wearing out from your stomach and put it over her head "briefly." You stated that Student A responded by stating, "That's gross." You stated it happened in a matter of a second and was not a big deal.

During your interview with Ms. Tucker and Ms. Maxson on June 4, 2015, you stated that during the swim trip in May 2015, you did interact with Student A. You stated that Student A was near the water and flicking water at you in an attempt to try to get you to get into the pool. You stated that you jokingly told her that if she did not stop, you were going to throw her in the pool. You stated that you then picked her up, threw her over your shoulder like a "sack of potatoes" and pretended as though you were going to throw her into the pool, but you did not. Contrary to that statement, during your September 16, 2015 interview with Ms. Tucker and Ms. McCowan, you stated that Student A was in a "very good" mood during the swim trip. You also stated that you were seated in your chair and that Student A was standing between your chair and the pool, at which time you proceeded to get up, without being prompted, picked Student A up for about 10-15 seconds, put her back down, and then returned to your chair.

Of note, during her June 22, 2015 interview with Ms. Tucker and Ms. McCowan, Student A stated that you never picked her up while you were at the pool in May 2015, nor did you threaten to throw her in the pool. She also denied ever splashing you with water. Student F also denied seeing you pick her up while at the pool and denied ever seeing her splash you with water. Student A stated she just wanted you to leave her alone while at the pool, but that you did not until she retreated to the girl's locker room.

Further, Ms. Tucker spoke with your ex-wife, Teresa Duncan, on August 28, 2015 after Ms. Duncan contacted the Office of Vocational Rehabilitation's Division of Program Services' Director, Jane Smith, regarding your personal relationships with students. During the conversation between Ms.

with" between 2007 and 2008. Ms. Duncan stated those students were Student N, Student O, and Student P. Ms. Duncan stated you admitted to her that you had sex with these students at different times during the 2007 and 2008 time period.

Ms. Duncan stated that in 2008, she found email messages between you and Student N. She stated the email messages were to and from your personal email account, but that they were sent and received during a time that you were at work, so she concluded that you were accessing your personal email account while at work to communicate with Student N. Ms. Duncan stated that she discovered an audio tape of the two of you engaged in sex in your nightstand at your home. She stated that she knew it was Student N because "after you were finished having sex" you and Student N engaged in conversation during which Student N was trying to persuade you to visit her aunt with her and during which you addressed Student N by name stating that you could not do that while trying to reassure her that you had feelings for her.

Ms. Duncan stated that in the fall of 2007, she went with you and other staff and students from the Carl D. Perkins Vocational Training Center on a trip to Kings Island. She stated that one of the students who went on the trip was Student O. She stated that when everyone was getting onto the vans to return home Student O "went off" on her. She stated that other staff asked her to step away from the van while you got on the van alone with Student O to persuade Student O to calm down enough to get back to the center. Ms. Duncan stated she began to believe that you were in a relationship with Student O, which she stated was confirmed when she discovered pictures you had sent to Student O on your phone of your penis.

Ms. Duncan stated that in February or March 2007, she discovered text messages between you and Student P. She stated that in the text messages, you and Student P talked about having had sex in her car and about when you would be meeting to have sex again.

Ms. Duncan stated you admitted to her that you had sex with the above students in 2007 and 2008, but claimed that it "didn't mean anything." She stated she had hoped that type of activity was over but that in February or March 2014, you and she were involved in a verbal altercation, during which you admitted to her that you had recently had sex with yet another student; however, she was not able to recall the name of that student.

Facility Director Barb Pugh spoke with you on September 22, 2014 regarding your actions with students; such as slapping a student on the bottom, and instructed you that such behavior was to stop. However, you proceeded to ignore that instruction and continued acting in a way that was inappropriate and disruptive for both staff and the students that the center exists to serve.

Your actions violate the Carl D. Perkins' Center's Policy, "Staff Relations with Consumers" and constitute lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

In accordance with 34 CFR 361.18 the identities of the students in this notice are confidential and shall not be published or disclosed without written authorization of the Education and Workforce Development Cabinet. A list of these students is attached and marked as confidential.

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Pursuant to KRS 18A.032, you will not be certified on future registers for employment within the Department for Workforce Investment unless the Department for Workforce Investment so requests.

Further, you will not be paid for annual leave in accordance with 101 KAR 2:102 Section 1. Annual Leave. (3)(d), which states in relevant part that an employee who has been dismissed for cause related to misconduct shall not be paid for accumulated annual leave"

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Elizabeth Steinle
Appointing Authority

Attachments: Appeal Form

cc: Secretary, Personnel Cabinet
Executive Director, Kentucky Personnel Board
Executive Director, Office of Legal and Legislative Services
Personnel File