

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the cases of **TIFFANY DAVIS (APPEAL NO. 2019-201)** and **LATAWNYA GRAY (APPEAL NO. 2019-204) V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of October, 2021.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

TIFFANY DAVIS (APPEAL NO. 2019-201) AND
LATAWNYA GRAY (APPEAL NO. 2019-204)

APPELLANTS

VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular October 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 30, 2021, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are approved, adopted, and incorporated herein by reference as a part of this Order, and the Appellants' appeals are therefore **SUSTAINED to the extent** therein.

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 14th day of October, 2021.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amy Barker
Tiffany Davis
LaTawnya Gray
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD**

**TIFFANY DAVIS (APPEAL NO. 2019-201) AND
LATAWNYA GRAY (APPEAL NO. 2019-204)**

APPELLANTS

V.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

This matter came on for evidentiary hearing on November 9, 2020, at 9:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky before the Hon. Mark Sipek, Hearing Officer. The proceedings were recorded by audio-video equipment and were authorized by virtue of KRS Chapter 18A. By prior agreement of the parties, the proceedings were conducted via Amazon Chime video teleconferencing in accordance with COVID-19 guidelines.

The Appellants, Tiffany Davis and LaTawnya Gray, were present and were not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Eric Carlsen-Landy. Appearing as Agency representative was Warden Sara Ferguson.

BACKGROUND

1. The Appellant Tiffany Davis filed Appeal No. 2019-201 on September 16, 2019, from a one-day suspension she received from the Department of Corrections. The Appellant LaTawnya Gray filed Appeal No. 2019-204, also on September 16, 2019, from a three-day suspension she received from the Department of Corrections. Both Appellants were suspended regarding the same incident. At a pre-hearing conference, all parties agreed to consolidate these appeals.

2. These consolidated appeals were scheduled for an evidentiary hearing. At the evidentiary hearing, the issue was whether there was just cause for the suspensions of the Appellants and whether the penalties were excessive or erroneous.

3. At the evidentiary hearing, the Appellee called its first witness, **Captain Durrell St. Clair**. Captain St. Clair is in charge of Internal Affairs at the Roederer Correctional Complex. Part of his duties involve investigating employee misconduct. Captain St. Clair was involved in investigating an incident that occurred with the staff and inmates in the Substance Abuse Program. Captain St. Clair described the incident as “a PREA had occurred” (PREA refers to the Prison Rape Elimination Act). He was asked to investigate allegations that the Substance Abuse Staff had failed to protect the inmates and report the incident. Captain St. Clair’s investigation consisted of reviewing security camera video and conducting witness interviews.

4. The incident Captain St. Clair investigated occurred on May 1, 2019, during a Town Hall Meeting for Substance Abuse Program (SAP). During a Town Hall Meeting the inmates in the program perform a skit in front of the other inmates in the program and the staff. Captain St. Clair began his investigation when he interviewed an inmate who stated he was traumatized by the skit and was made to feel uncomfortable.

5. Captain St. Clair reviewed the video footage of the May 1, 2019 incident and summarized the video as follows in his Internal Affairs Investigation Report, entered into evidence as Appellee’s Exhibit 21:

At the beginning of the video an inmate is standing near the microphones, there are 3 other sitting in chairs in front of the entire audience and the SAP counselors are sitting to the right of the room. Four inmates enter the Gym, two in a fake car and two following behind. The two following behind the car then pull the inmate from the microphone to the hallway. The two inmates re-enter the Gym dancing and the inmate from the microphone puts a wig on and sits in one of the front chairs. The inmates in the car throw fake money at the inmates sitting down. All four inmates then approach the microphones. During the course of the routine the four inmates at the microphone take off their scrub tops and throw them into the air. The inmates are left with sleeveless shirts and sleeveless vest on overtop. One of the inmates in the middle had a clown wig on. The inmates then slide across the floor towards the other four inmates sitting down. The inmates crawl around their chair and lift their legs acting as if they pee’d on the other inmates. The SAP counselors are clapping and laughing. The inmates begin dancing around and in front of the inmates in the chairs, while the inmates in the chairs throw money at them. This goes on for approximately 1 minute. The inmates then walk back to the microphones. The write on a piece of paper, conduct a “trust fall.” Then begin to act like they are begging to the counselors. The inmates then dance for approximately

another minute. At the end of the performance the SAP counselors clap and give a standing ovation for the performance.

6. Captain St. Clair interviewed nine (9) inmates and six (6) staff members as a part of his investigation. The investigation included interviews of the two (2) Appellants.

7. In his report, Captain St. Clair summarized Appellant Davis's interview as follows:

Townhall is a SAP community meeting that occurs on Fridays. At the end of townhall there is an entertainment portion. Every wing rotates to present entertainment each week. Two weeks prior to townhall the wing is supposed to submit to their SSC any activities they want to perform for approval. On April 26, 2019 was the day that wing B3 performed girls just wanna have fun. SSC Davis had approved the inmates to make wigs and to do the performance. Ms. Geisler received old mop heads from Officer Tilford and used them to make wigs. The inmate also used trash bags to make wigs. They danced to girls just wanna have fun and sang the song. There was an inmate that shook his butt towards the audience but the counselors stopped him. On the week of May 1, 2019 SSC Gray was going on vacation on Thursday and Friday and requested that townhall be moved to Wednesday so she could see her wings perform. Inmate Wayson approached her (SSC Davis) a couple days prior to the performance on May 1. Inmate Wayson let her listen to a song and she couldn't remember if it was Pony or not. She informed inmate Wayson he would have to submit it to SSC Gray she would not approve that. SSC Davis did approve inmate Foster to be involved and fake perform his song break the chains. On May 1, 2019 during the town hall performance inmate Foster began his song. A couple inmates from wing B4 got up and drug him off stage. Inmate Wayson and another inmate came on stage in the fake car. The inmates got out of the car and the four inmates performed no scrubs. After that the performance transitioned. The song Pony began playing. The inmates slid across the floor towards the inmates sitting in the chairs and began dancing around them. SSC Gray told the inmates it wasn't ok and they backed away but kept dancing. The SSC's did not stop the performance they redirected it. When questioned on why it wasn't stopped because the inmates kept dancing around the other men while money was thrown

at them SSC Davis replied with there is no answer. SSC Davis stated there was no good answer on why she didn't report the incident other than she and the other SSC's talked about it later and found it to be inappropriate. The SSC's decide to handle it in house. The staff did clap at the end of the performance but she was concerned on what just happened.

8. Captain St. Clair summarized Appellant Gray's interview as follows:

On April 26, 2019 there was a townhall skit where inmates wore wigs and danced to girls just wanna have fun. The inmates were dancing by moving their buttocks around but not twerking. The skit was not appropriate for townhall. No one ever expressed they were offended by the town hall skit on this date. SSC Gray is over wing B4 and is directly involved in there approval process for townhall skits. The inmates from B4 had informed her that they were going to be making a fake car, a poem and a joke. Later the inmates informed her that they would be doing scrubs but that was the only song she knew. SSC Gray informed inmate McDaniel that she needed a list of things they would be performing. Later that week she came to B4 and informed them she wasn't going to be there on Friday and asked if they could be ready on Wednesday. The inmates informed her they would be ready by Wednesday. SSC Gray asked inmate McDaniel the day prior to the skit to being performed for more clarification of what they would be doing but never received it. SSC Gray denied having knowledge of any of any of the performances during the skit other than the no scrubs segment. SSC Davis informed her that the inmates would be performing Pony right before townhall. SSC Gray stated the performance should have been stopped but didn't. The inmates come into the gym and take another inmate out of the gym. The inmates then start singing to Scrubs. The inmates took their khaki tops off. The Pony song started playing and the inmates got on the ground and went over to the guys sitting in chairs. The crawled around them and started humping their backs back and forth. The inmates then got up and started dancing on the other inmates. SSC Gray did not stop the performance. The inmates slid over to the counselors during the next segment of the performance. SSC Gray told them to stop at that time. The inmates then left out on Drake-Energy. The SSC's gave the standing ovation just

to encourage a good performance from the inmates. The SSC's met in the office after and decided that the performance was inappropriate but was a treatment issue so, it did not need to be reported.

9. At the conclusion of his report, Captain St. Clair made findings. These findings read as follows:

Based on all of the information that was provided during this investigation the Internal Affairs Office at the Roederer Correctional Complex finds in the case of Sexual Harassment to be substantiated. Based on the video footage that shows inmates giving other inmates a fake "striptease." Based on the statements from the inmate witnesses that witnessed inmates dressed as female inmates and danced to girls just wanna have fun. Based on the song that played during the fake striptease; Pony by Ginuwine. The songs chorus is "If you're horny, let do it. Ride, my pony. My saddle's waiting. Come and Jump on it." Based on the staff that witnessed these events occur. Based on the two inmates that made statements that they were uncomfortable with those skits.

Based on all of the information that was provided during this investigation the Internal Affairs Office at the Roederer Correctional Complex finds in the case of Failure to Protect and Ethic Violation to be substantiated. Based on the inmate witness statements that the SAP counselors did not prevent or stop the performance of the fake striptease. Based on the inmates stating the SAP staff just laughed and clapped to the performance. Based on the SAP staff admitting to not reporting, preventing or stopping the performance. Based on the video footage which shows the SAP staff laughing and clapping to the music while watching the fake striptease. Based on CPP 14.7 which states; subsection B. "Any sexual act, sexual contact or sexual offense between an offender and a staff member, visitor or other offender shall be prohibited. No offender either incarcerated or under the supervision of the Department of Corrections, can give consent to any sexual relationship with a staff member. Any acts as defined in this policy that are conducted outside of the staff member's normal duties shall be considered a violation of this policy. The Department of Corrections has zero tolerance toward all forms of sexual abuse and sexual harassment." Subsection C. "Training," paragraph 1.

“Training shall be tailored to be gender specific to the facility of each staff member. As required by 28 C.F.R. § 115.31, all employees shall receive training annually in the following:” subparagraph b. “Their responsibilities of sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures,” and subsection G. “Initial Reporting and Staff First Responder Duties,” paragraph 2. “Staff members shall immediately report all knowledge, suspicions or information of an incident of a sexual offense within a Kentucky or other correctional facility. They shall report any retaliation against someone who has reported such an incident. They shall also report any knowledge of staff who neglect to report the above incidents.

10. Captain St. Clair also admitted into evidence the video of the town hall incident on May 1, 2019, as Appellee’s Exhibit 7.

11. Captain St. Clair’s investigation file included an email from Nicole Lowry-Hall, the Supervisor of the Social Service Clinicians, including the two Appellants, who verifies that the Counselor assigned to the Dorm is responsible for reviewing the activities to be presented at the town hall meeting prior to the event. The Counselor is supposed to review and approve the activity (see page 24 of Appellee’s Exhibit 21).

12. Captain St. Clair’s file also included written statements from the Appellants. Davis made it clear in her statement that it was Gray’s responsibility to approve the performance. It is also clear from both statements that Gray only approved the song, No Scrubs, and did not know about the remainder of the performance (Appellee’s Exhibit 21, pages 30-34).

13. Also included in Appellee’s Exhibit 21 was Kentucky Corrections Policies and Procedures 14.7, Sexual Abuse Prevention and Intervention Programs. This Policy was referred to by some witnesses as Corrections PREA Policy. Captain St. Clair testified that the Appellants had an obligation to prevent, stop, and report this incident. He stated they are obligated to report this incident as a potential PREA incident. No inmates were charged with a PREA offense against other inmates. Captain St. Clair specifically stated he could not determine that Gray approved this skit in advance.

14. Captain St. Clair also recorded his interviews with witnesses which were admitted into evidence as Appellee’s Exhibits 8 through 20.

15. The Appellee’s next witnesses was **Warden Sara Ferguson**. She has been the Warden at Roederer Correctional Complex since February 2019. Part of her duties include taking disciplinary actions against employees. She made the decision to suspend the Appellants.

16. Although Warden Ferguson was not present at the skit, she reviewed the video tape and described it as sexual in nature. She stated that it was embarrassing for the Department. She believed that the inmates conduct during the performance violated Kentucky Corrections Policies and Procedures. She specifically mentioned that, during the dance, the inmates touched each other, including one inmate who appeared to have his head in the private area of another inmate. She stated that neither Gray nor Davis prevented, stopped, or reported the incident. She believed their conduct violated CPP 14.7.

17. Warden Ferguson originally issued an intent to suspend for a ten (10) -day period to Tiffany Davis, (Appellee's Exhibit 1), and LaTawnya Gray, (Appellee's Exhibit 2). Based on written statements from the two Appellants, reviewing the report, and their disciplinary histories, Warden Ferguson reduced the suspensions to one (1) -day for Davis and three (3) -days for Gray. She stated that Gray received a higher punishment because she was in charge of the skit on that date. Attached to this Order is the suspension letter given to Davis as **Recommend Order Attachment A** and the suspension letter given to Gray as **Recommended Order Attachment B**.

18. In summary, Warden Ferguson testified that she suspended the two Appellants because they failed to stop, prevent, or report this inmate misconduct. She discussed at length Appellee's Exhibit 27, CPP 14.7. She believed there was an obligation to stop this conduct and to report it. The Warden testified that what she observed on the tape constituted a sexual offense or sexual contact and required action according to Kentucky Corrections Policies and Procedures 14.7. She stated the reporting was supposed to be to the Shift Supervisor, who she described as the Captain over security. She stated that reporting this to the Appellants' immediate supervisor would not constitute a correct report under the policy.

19. The Appellee called **Rodney Moore** as its last witness. He was the Division Director for Human Resource Management for the Department of Corrections when these events occurred. He currently holds the same position for the Justice and Public Safety Cabinet. Part of his job is to review disciplinary actions for consistency. Reviewing the two disciplinary actions in this case, he felt that they were consistent and, in fact, a little bit less than normal punishments for a Failure to Report based on the severity of the PREA violations.

20. The Appellee announced closed.

21. The Appellant, **LaTawnya Gray**, testified that she was employed as a Social Service Clinician at the Roederer Correctional Complex (RCC) until August 23, 2019. She served two years at RCC. Her job duties included working with inmates in the Substance Abuse Program through individual and group therapy.

22. Gray is currently employed at the Landmark Treatment Center, Apple Patch, Senior Helpers and Interim Healthcare of Louisville.

23. Gray stated that she has always been a good employee. She stated they had issues in the Substance Abuse Program. She said there were problems with leadership and described the program as being in chaos.

24. Gray stated that Town Hall Meetings have not been approved for some time and stated the inmates have not been putting a lot of effort into Town Halls.

25. With respect to the Town Hall Meeting that resulted in her suspension, Gray stated she did not know what the inmates were going to perform. She acknowledged that she should have known, since she was in charge of the group of inmates who were performing that day. Gray stated some jokes and songs were approved but not through her. She stated that April Geisler, the Administrative Assistant, approved some of the inmate programs and worked with them on props, such as the car and wigs they used in the performance.

26. Gray stated she thought the performance by the inmates was inappropriate, however, she did not believe it was sexually inappropriate. She did not believe that it was a PREA. She stated that the staff discussed the Town Hall immediately. All decided that it was inappropriate. Gray stated that she spoke with the inmates shortly thereafter telling them that it was inappropriate and that there would be consequences.

27. Gray stated that she reported this matter to her supervisor, Nicole Lowry-Hall, about an hour after it happened. She did not report this incident as a PREA violation because she did not believe it was a PREA violation. She stated that the members of the Substance Abuse Program have been told by Internal Affairs that they were over-reporting in the past. Specifically, they were reporting things as PREA which Internal Affairs did not believe constituted PREA.

28. Gray stated she did not see anything that constituted a sexual offense. She did not witness any touching in the performance. She acknowledged that it is not part of her job responsibilities to determine what constitutes a PREA. Gray stated that they should have stopped the performance.

29. Appellant **Tiffany Davis** was the last witness to testify. Davis was employed for eight (8) years with the Commonwealth of Kentucky. She served four (4) years as a Social Service Clinician in the Substance Abuse Program at the Roederer Correctional Complex. Her last day of work was August 23, 2019. Since that time, she performed some therapy work at Landmark Treatment Center but is currently a stay-at-home mom.

30. Davis testified that the Town Hall was inappropriate but did not constitute a PREA violation. She stated it was not a sexual offense and she did not witness any sexual harassment. She stated she saw inmates touching; however, she did not see anything sexual, such as the inmate touching the inner thigh. She also did not witness touching involving an inmate's head in another inmate's groin. Davis did not agree with Captain St. Clair's characterization as some of the inmates as victims. She stated that as far as she could tell, all the inmates who participated in the skit did so with consent.

31. Davis stated that they should have stopped the Town Hall. She stated that they discussed it as a group and that Gray made the call to their supervisor regarding the incident. She stated that the inmates were placed on what they referred to as a "unity". She stated that they took it seriously and one of the consequences was that future Town Halls would be cancelled.

FINDINGS OF FACT

1. The Appellants, LaTawnya Gray and Tiffany Davis, were employed as Social Service Clinician in the Substance Abuse Program at the Roederer Correctional Complex. Their duties included providing treatment to inmates in the Substance Abuse Program, including individual and group therapy.

2. One feature of the Substance Abuse Program was to periodically hold events referred to as Town Halls. At these events, the inmates in the program would meet and one particular group would be called on to perform. The idea behind the Town Halls was to demonstrate to the inmates in the program that they could have a good time without using the substances they were addicted to. One of the Social Service Clinicians would be particularly responsible for each group.

3. On May 1, 2019, inmates who were supervised by Gray performed at a Town Hall Meeting. Gray did not know the details of the performance of the inmates on that date. The Social Service Clinicians had not been approving Town Halls for some time. The program had problems between the Social Service Clinicians and their supervisors. In addition, on May 1, 2019, supervisor Nicole Lowry-Hall was not present, and Gray was the supervisor of the program in her absence.

4. The Town Hall performed by the inmates could be summarized as follows:

During the town hall, 4 male inmates put on wigs provided by the SAP department and sat in chairs while 4 other male inmates, without wigs, conducted the skit. During the skit, the 4 male inmates without wigs drove in the Unit 5 gym in a fake car. They began singing the song, "No Scrubs". During the song, the 4 male inmates took their scrub tops off and threw them into the air. Next, the song "Pony" came on and the 4 male inmates slide across the floor to the inmates sitting in the chairs with the wigs on. The male inmates began dancing around other male inmates and thrusting their pelvis towards them while the inmates in the chairs threw fake money at them. (Appellee's Exhibit 5).

5. Neither Gray nor Davis knew what the inmates were going to do during their performance. They did not stop the performance. When the performance was over Gray and Davis, along with the other Social Service Clinicians, met and discussed this matter. They decided to handle it internally by telling the inmates their actions were inappropriate and that there would be consequences. They also agreed Gray would contact their supervisor regarding the incident. Gray contacted Nicole Lowry-Hall approximately an hour later.

6. The consequences that the Social Service Clinicians applied was referred to as a "unity". They stated that the discipline would be registered against the group of inmates and they would not have any future Town Halls until this issue was resolved.

7. Thereafter, an inmate who observed the Town Hall filed a complaint regarding the performance which was deemed to be a potential PREA violation. This allegation was investigated by Internal Affairs Captain Durrell St. Clair.

8. Captain St. Clair's investigation consisted of interviewing nine (9) inmates and six (6) staff members including the two (2) Appellants. He also reviewed a videotape of the Town Hall, which was introduced into evidence. Based on his investigation, Captain St. Clair found that a case of sexual harassment was substantiated. He referred to the performance by the inmates at the Town Hall as a fake striptease. He found that the Substance Abuse Program Clinicians did not prevent or stop the performance of the fake striptease. He specifically found there was a violation of CPP 14.7. He also alleged that Davis and Gray failed to report this matter as a potential PREA violation.

9. Relying on the Internal Affairs investigation, Warden Sarah Ferguson issued letters of intent to suspend to Davis and Gray for ten (10) days. After reviewing Davis and Gray's employment records and their responses to the intent to suspend, Warden Ferguson reduced these suspensions to one (1) day for Davis and three (3) days for Gray. Warden Ferguson found both Davis and Gray failed to prevent, stop, or report the inappropriate conduct at the Town Hall by the inmates. The Warden determined that Davis and Gray violated CPP 14.7. This policy is referred to as the Department of Corrections PREA policy. The Warden issued a longer suspension to Gray because she was the Social Service Clinician in charge of the inmates who performed the skit.

10. Gray and Davis admit that the conduct of the inmates was inappropriate and that they should have either prevented or stopped this conduct. They contend they complied or at least partially complied, with the requirement to report this conduct when Gray contacted her supervisor, Nicole Lowry-Hall.

11. Both Gray and Davis contend they did not violate CPP 14.7 as neither of them perceived this event as a potential PREA violation. Gray and Davis did not witness sexual touching which would have constituted sexual abuse under CPP 14.7. In addition, neither believed the conduct was a PREA violation and believed that their report to Nicole Lowry-Hall was sufficient.

12. The Hearing Officer finds that the Appellants were reasonable in their belief that no sexual abuse, sexual harassment, or sexual offense had occurred. The Hearing Officer finds the Appellants did not violate CPP 14.7.

13. Both of the Appellants acknowledge that they failed to prevent or report inappropriate conduct by the inmates at the Town Hall on May 1, 2019. This constitutes misconduct pursuant to 101 KAR 1:345.

14. The Hearing Officer finds the testimonies of Gray and Davis credible.

15. Gray acknowledges that she should have reviewed and approved any activities planned by the inmates. The Hearing Officer finds just cause for Gray's three-day suspension. The penalty was neither excessive nor erroneous.

16. The Hearing Officer finds just cause for Davis's one-day suspension. This penalty was neither excessive nor erroneous.

CONCLUSION OF LAW

1. Based on the Findings of Fact, the Appellee carried its burden of proof to establish there was just cause for the one-day suspension of Davis and the three-day suspension of Gray and those penalties were neither excessive nor erroneous. KRS 18A.095(1)(22).

2. The Appellee failed to prove that the Appellants violated CPP 14.7. The conduct which occurred on May 1, 2019, did not constitute sexual abuse, sexual harassment, nor a sexual offense as those terms are defined in CPP 14.7.

3. Because the conduct in question does not constitute sexual abuse as the term is defined in CPP 14.7, the Appellants' report to their supervisor Nicole Lowry-Hall did not violate the policy. They were not under an obligation to report this matter to the shift supervisor because the conduct did not constitute sexual abuse.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board the appeals of **TIFFANY DAVIS VS. JUSTICE AND PUBLIC SAFETY CABINET (APPEAL NO. 2019-201) AND LATAWNIA GRAY VS. JUSTICE AND PUBLIC SAFETY CABINET (APPEAL NO. 2019-204)** be **SUSTAINED** to the extent that the suspensions be amended to reflect that they did not violate CPP 14.7, and that their suspensions otherwise should stand.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this 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 Mark A. Sipek** this 30 day of August 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amy Barker
Tiffany Davis
LaTawnya Gray
Rosemary Holbrook (Personnel Cabinet)



Davis
3011-6-11
[Redacted]
7-22-19

DEPARTMENT OF CORRECTIONS

Kathleen M Kenney
Commissioner

Roederer Correctional Complex
P.O. Box 69
LaGrange, Kentucky 40031
Telephone: (502) 222-0173
Fax: (502) 225-0084

Jessie Ferguson
Warden

July 18, 2019

Tiffany Davis
[Redacted]

Perner: [Redacted]

Dear Mrs. Davis

On July 8, 2019, you were issued an Intent to suspend letter. You requested to make a written statement and have an interview. After careful consideration of the statements made on your behalf at your Intent to suspend hearing held in my office on July 9, 2019 in the presence of Maryann Strickland Administrative Branch Manager, and based on your written statement, I have determined that the clear weight of the evidence establishes that you did commit the charges contained in the notice. I have decided to reduce the suspension from a ten (10) day suspension to a one (1) day suspension.

Pursuant to 18A.095, you are notified that you are suspended from duty and pay for a period of one (1) working day, effective July 22, 2019. You are to return to work at your regularly scheduled time the following business day.

Based on a review of your performance and based on the authority of KAR 1:345, Sections 1 and 4, there is reason to believe this suspension is justified based on the following specific reason:

Poor Work Performance Violation of CPP 14.7, section II A., C.G, Violation of RCC IPP 03-01-01 4r., i.e., as reported by Internal Affairs Captain Durrell St. Clair. On May 1 at approximately 9AM. You, Social Service Clinician I LaTawnya Gray, Social Service Clinician I Robin Parks, Social Service Clinician I Jennifer Merkle, and Administrative Secretary April Geisler were present during the Substance Abuse Program Town Hall meeting held in Unit 5 gym. During the Town Hall meeting, a skit was performed by eight inmates from Wing B4. Ms. Gray is the Social Service Clinician I over this wing. During the town hall, four male inmates put on wigs, provided by the SAP department, and sat in chairs. While four, other male inmates without wigs conducted the skit. During the skit, the 4 male inmates without wigs drove in the Unit 5 gym in a fake car. They began singing the song "No Scrubs." During the song, the four male inmates took their scrub tops off and threw them into the air. Next, the song, "Pony" came on and the four male inmates slide across the floor to the inmates sitting in the chairs with the wigs on. The male inmates began dancing around other male inmates and thrusting their pelvis towards them while the inmates in the chairs threw fake money at them. Based on witness statements, it was like a "Magic Mike" show. During the entire performance Ms. Gray, Ms. Parks, Ms. Merkle, Ms. Geisler and yourself were all singing along, laughing, and clapping.

On May 16, 2019, you provided a written statement to the facts above. In your statement, you state that you were present in the town hall meeting during the skit and did not stop the behaviors.

Your actions are in violation of CPP 14.7 section II A. This policy applies to all offenders, full time employees, part-time employees, interim employees, inters, students, volunteers, and contractors doing business with corrections. B. Any sexual act, sexual contact or sexual offense between an offender and a staff member, visitor or other offender shall be prohibited. No offender either incarcerated or under the supervision of the Department of Corrections, can give consent to any sexual relationship with a staff member. Any acts as defined in this policy that are conducted outside of the staff member's normal duties shall be considered a violation of this policy. The Department of Corrections has zero tolerance toward all forms of sexual abuse and sexual harassment.

Your actions are also in Violation of CPP 14.7 Section II. G. 2. Staff members shall immediately report all knowledge, suspicions or information of an incident of a sexual offense within a Kentucky or other correctional facility. They shall report any retaliation against someone who has reported such an incident. They shall also report any knowledge of staff who neglect to report the above incidents.

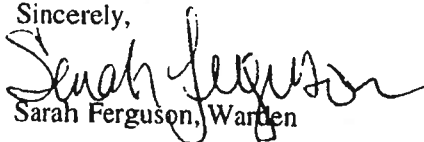
Your actions are also in violation of RCC IPP 03-01-01 4 R. Engaging in any activity of any nature that is in conflict with the proper discharge of the employee's duties or which comes into conflict with attainment of the goals and mission of the Department of Corrections or the Roederer Correctional Complex.

Failure to improve your performance may lead to further disciplinary action taken against you, up to and including dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at (800) 445-5327 or (502) 564-5788.

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,


Sarah Ferguson, Warden

Attachment: Appeal Form



Gray, LaTawnya
30041621
[Redacted]
8511

DEPARTMENT OF CORRECTIONS

Kathleen M Kenney
Commissioner

Roederer Correctional Complex
P.O. Box 69
LaGrange, Kentucky 40031
Telephone: (502) 222-0173
Fax: (502) 225-0084

Jessie Ferguson
Warden

July 18, 2019

LaTawnya Gray
[Redacted]

Permer: [Redacted]

Dear Ms. Gray,

On July 8, 2019, you were issued an Intent to suspend letter. You requested to make a written statement and have an interview. After careful consideration of the statements made on your behalf at your Intent to suspend hearing held in my office on July 9, 2019 in the presence of Maryann Strickland Administrative Branch Manager, and based on your written statement, I have determined that the clear weight of the evidence establishes that you did commit the charges contained in the notice. I have decided to reduce the suspension from a ten (10) day suspension to a three (3) day suspension.

Pursuant to 18A.095, you are notified that you are suspended from duty and pay for a period of three (3) working day, effective August 5, 2019 through August 7, 2019. You are to return to work at your regularly scheduled time the following business day.

Based on a review of your performance and based on the authority of KAR 1:345, Sections 1 and 4, there is reason to believe this suspension is justified based on the following specific reason:

Poor Work Performance, Violation of CPP 14.7, section II A., C.,G. Violation of RCC IPP 03-01-01 4r. i.e., as reported by Internal Affairs Captain Durrell St. Clair. On May 1 at approximately 9AM, You, Social Service Clinician I Tiffany Davis, Social Service Clinician I Robin Parks, Social Service Clinician I Jennifer Merkle, and Administrative Secretary April Geisler were present during the Substance Abuse Program Town Hall meeting held in Unit 5 gym. During the Town Hall meeting, a skit was performed by eight inmates from Wing B4. You are the Social Service Clinician I over this wing and would have to directly approved the skit being performed. During the town hall, four male inmates put on wigs, provided by the SAP department, and sat in chairs. While four, other male inmates without wigs conducted the skit. During the skit, the 4 male inmates without wigs drove in the Unit 5 gym in a fake car. They began singing the song "No Scrubs." During the song, the four male inmates took their khaki tops off and threw them into the air. Next, the song, "Pony" came on and the four male inmates slide across the floor to the inmates sitting in the chairs with the wigs on. The male inmates began dancing around other male inmates and thrusting their pelvis towards them while the inmates in the chairs threw fake money at them. Based on witness statements, it was like a "Magic Mike" show. During the entire performance the Ms. Davis, Ms. Parks, Ms. Merkle, Ms. Geisler and yourself were all singing along, laughing, and clapping.

On May 16, 2019, you provided a written statement to the facts above. In your statement, you state that you were present in the town hall meeting during the skit and did not stop the behaviors.

Your actions are in violation of CPP 14.7 section II A. This policy applies to all offenders, full time employees, part-time employees, interim employees, inters, students, volunteers, and contractors doing business with corrections. B. Any sexual act, sexual contact or sexual offense between an offender and a staff member, visitor or other offender shall be prohibited. No offender either incarcerated or under the supervision of the Department of Corrections, can give consent to any sexual relationship with a staff member. Any acts as defined in this policy that are conducted outside of the staff member's normal duties shall be considered a violation of this policy. The Department of Corrections has zero tolerance toward all forms of sexual abuse and sexual harassment.

Your actions are also in violation of CPP 14.7 Section II C. Training 1. Training shall be tailored to be gender specific to the facility of each staff member. As required by 28 C.F.R. § 115.31, all employees shall receive training annually in the following:

b. Their responsibilities of sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures.

Your actions are also in Violation of CPP 14.7 Section II. G. 2. Staff members shall immediately report all knowledge, suspicions or information of an incident of a sexual offense within a Kentucky or other correctional facility. They shall report any retaliation against someone who has reported such an incident. They shall also report any knowledge of staff who neglect to report the above incidents.

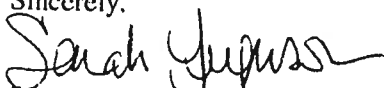
Your actions are also in violation of RCC IPP 03-01-01 4 R. Engaging in any activity of any nature that is in conflict with the proper discharge of the employee's duties or which comes into conflict with attainment of the goals and mission of the Department of Corrections or the Roederer Correctional Complex.

Failure to improve your performance may lead to further disciplinary action taken against you, up to and including dismissal.

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Sincerely,


Sarah Ferguson, Warden

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