

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2011-082

MARIE KNEAR

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES
JOHN P. HAMM, APPOINTING AUTHORITY

APPELLEE

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This matter came on for an evidentiary hearing on February 15, April 4 and 5, and July 30 and 31, 2012, at 9:30 a.m. ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment pursuant to the authority found at KRS Chapter 18A.

Appellant Marie Knear was present and represented by the Hon. Kenneth McCardwell. Appellee Cabinet for Health and Family Services was present and represented by the Hon. Jennifer Wolsing. Also appearing as agency representative was Pam Tungate.

This matter involves the dismissal of the Appellant from her position as Social Service Clinician I with the Department for Community Based Services, by letter dated February 16, 2011. A copy of the dismissal letter is attached hereto and incorporated herein as **Recommended Order Attachment A**. In essence, Appellant was dismissed for lack of good behavior in that she allegedly falsified certain records and further failed to make the required contacts with children in her care and caseload. Specifically, pages one through four of the dismissal letter deal with the allegations of falsification of records; pages five through ten deal with failure to make the required visits per standard operating procedure.

The burden of proof was on the Appellee by a preponderance of the evidence to show the dismissal was neither excessive nor erroneous and was appropriate under all surrounding circumstances.

BACKGROUND

1. The Appellee's first witness was **Pam Tungate**. She has been employed for the past seven years with the Department of Community Based Services (DCBS) as

a Family Services Officer Supervisor (FSOS). She has 20 years experience with state government. She also holds a bachelor's, master's, and Ph.D. in social work.

2. She testified that her job involves supervising front line social workers. She is based in Washington County, but has previously assisted in Bullitt County, where the Appellant was a Social Services Clinician. From January through June 2010, the witness was the acting supervisor in Bullitt County and Appellant's first-line supervisor.

3. Tungate described the Appellant's caseload as primarily dealing with status offenders. She stated that Appellant's duties would involve responsibility for home visits to children and their guardians, providing educational services, attending court, and doing case assessments. The witness testified that after the department began receiving some complaints from service providers and parents charging that the children in Appellant's caseload were not receiving the necessary visits, she was directed to begin an audit of some of the Appellant's cases. She sent an e-mail to the Appellant in April 2010 notifying her that an audit would begin, and the audit actually began in August 2010. At first, the audit was intended to cover approximately three months of the Appellant's caseload, but as initial findings showed a pattern of non-visits, the audit was expanded to cover the period August 2009 through August 2010. The audit involved 20 of Appellant's cases.

4. Tungate further testified that in ten of the cases, there was found an issue of falsification of visits. The guardians, parents, or service providers were specifically asked "[A]re you receiving home visits from your social worker?" The audit finding was that some of the visits were improperly noted as home visits, whereas they actually occurred in a parking lot, at the court, or some other place other than the children's residence.

5. Tungate then explained that in conducting her audit, she reviewed Appellee's Exhibits 2, 3, and 4. Exhibit 2 is a cumulative record from the TWIST computer program. This program contains every call, contact with, payment to, and anything else done for clients. Exhibit 3 is a copy of the sign-in/out logs of the Bullitt County office during the audit period. Exhibit 4 is a copy of the Appellant's travel vouchers from June 2009 through July 30, 2010, which covers the audit period.

6. The witness explained that she reviewed the travel vouchers, sign-in/out logs, the TWIST information, and compared and cross-referenced them to determine dates on which there had been either a falsification of a home visit or a falsification of some record.

7. Depending on whether a child was living in a residence or a facility, caseworker visits were to have occurred monthly or every 90 days. The witness introduced Appellee's Exhibit 5, a cumulative record of letters and e-mails from parents, guardians, and service providers, documenting time periods in which Appellant had failed to make any visits. This exhibit also assisted the witness in her comparison of the TWIST records, travel vouchers, and sign-in/out logs.

8. Tungate also reviewed Appellee's Exhibit 6, a personal log prepared by Appellant. Her review of this log showed that several of the log entries, as to action taken, did not match the TWIST records.

9. The dismissal letter contains allegations involving 18 client cases. Of those 18 cases, the witness explained she found approximately 31 incidents which were documented as having made home visits, when these visits did not actually occur.

10. Tungate then introduced Appellee's Exhibit 7, information from a TWIST Training Manual on what and how to enter information in the computer system. She testified the Appellant had been given this material.

11. The witness was then asked to explain "home visits." She stated that a home visit must be face to face by the worker with the child (or their guardian), or in the placement residence. She explained home visits were important, because this gives the worker a chance to see how the child is actually living, as well as an opportunity to assess the living conditions. As a part of this, the worker would assess if the conditions were safe or nurturing and see if the child was attending school or had any signs of physical abuse. It also provided an opportunity for the worker to assess the interaction between the child and the care provider.

12. The witness then addressed the 18 individual client allegations. Regarding **Client 1** (page 2 of the dismissal letter), Tungate indicated the mother was TM, the aunt was TS, and Miller's child was placed in a private child care facility, Hope Hill (in Montgomery County, KY). The Appellant conducted visits with the aunt, but Tungate stated the visits should have been with the mother, although she was in a rehab facility. The witness indicated it would have been possible for the Appellant to request a "courtesy worker" (someone closer to the rehab facility) to visit the mother.

13. The Appellant was to have visited Client 1's child on a quarterly basis at the placement facility. The TWIST records show the Appellant made face to face home visits on December 11, 2009, December 23, 2009, January 4, 2010, January 20, 2010, February 3, 2010, February 4, 2010, March 9, 2010, April 20, 2010, May 1, 2010, and June 10, 2010. These were, however, visits to the aunt's home, a collateral contact, and did not qualify as home visits. In addition, Tungate stated that Appellant's travel vouchers and sign-in/out logs showed Appellant claiming the purpose of December 11 and 23, 2009, visits was for juvenile services—not home visits. These records further related Appellant did not sign out for any visits on December 23, 2009, and claimed travel mileage on June 10, 2010, for a meeting regarding Client 1's case—not a visit to the aunt's home. The travel vouchers further showed that on February 3 and May 5, 2010, Appellant failed to claim any travel mileage related to a home visit to Client 1's aunt's home. This witness then concluded that Appellant had falsified visits to the home of Client 1's aunt.

14. The witness was questioned as to use of state vehicles by social workers to make their state visits. She explained that only one car existed for use by the social workers, and it was not always available. In fact, she added that when the social workers were first employed, they were told to plan on using their own vehicles for most of the travel they would incur.

15. The case of **Client 2** involved client SM. Her child was placed at Foothills Academy, a private child care facility, from July 1, 2009, until April 9, 2010. Thereafter, the child was returned to home custody with his mother. Documents obtained from the mother and from Wendy Brewer at the facility indicate the Appellant made none of the required quarterly visits with the child. Documentation from the mother indicate that after the return to home custody, only one of the required monthly visits was made by the Appellant, that being on June 14, 2010.

16. Although the TWIST records showed that Appellant conducted a home visit with Client 2 and her child on May 13, 2010, the mother's records indicate otherwise. The witness concluded in her audit there had, therefore, been a falsification of records regarding the visit to Client 2's home.

17. The case of **Client 3** involved a child and his mother. TWIST records show Appellant claiming home visits with the grandmother on November 19, 2009; December 16, 2009; February 9, 2010; March 25, 2010; and May 21, 2010. A letter from the grandmother denies that Appellant was ever in her home; in fact, no one from Bullitt County was ever there.

18. Examination of Appellant's travel vouchers showed a claim for mileage on November 19, 2009, to "vicinity," but the Appellant did not name Client 3's case number on the voucher. The travel voucher for December 16, 2010, noted a court attendance on Client 3's case, which does not qualify as a face to face home visit. On March 25, 2010 and May 21, 2010, Appellant did not name Client 3's case number for mileage claimed. The witness, thus, concluded the Appellant had falsified visits to the mother's home.

19. The great-grandmother had custody of Client 3. She furnished a letter stating that no one from the Bullitt County office (including Appellant) had ever visited the child in her home. The mother was deceased. The father was incarcerated in the LaRue County Jail and was actually to have been visited by the Appellant. She did not visit him, even after he was transferred to the Bullitt County Jail.

20. The case of **Client 4** involved the child and his foster mother where the child had been placed through New Hope Homes. TWIST records show the Appellant claimed to have conducted home visits with the child on May 28 and June 10, 2010. Tungate received information from the child's mother and New Hope homes documenting that no visits by the Appellant had been made with the child at either place. Appellant's travel vouchers show she did not claim travel mileage for home visits on either date. She did claim travel to a meeting regarding Client 4's case on June 10—

which was not a home visit. Therefore, the witness concluded the Appellant had falsified the records regarding those visits.

21. The case of **Client 5** involved the placement of Client 5 in Brooklawn facility. Visits were supposed to have been made to her and to the parents. The parents provided information that Appellant had not made a visit since May 2010. Brooklawn furnished information that there had been no visits to the child by Appellant. Appellants' travel voucher showed she claimed travel mileage on June 18, 2010, for a meeting regarding Client 5's case—not a home visit. Appellant also admitted to supervisors that she did not speak to the client at home, but rather saw them in the office parking lot on June 18. Thus, Tungate concluded Appellant had falsified records regarding her visit to Client 5's home.

22. The case of **Client 6** involved the mother and child. TWIST records showed Appellant claiming home visits on five occasions, but information provided by the mother showed that only two such visits had occurred. Appellant's travel vouchers show she did not claim any travel mileage related to Client 6 on November 6, 2009; May 13, 2010; and June 2, 2010. Mileage was claimed on December 10, 2009 and February 25, 2010, noted as "court-related services," not as home visits. Thus, Tungate concluded Appellant had falsified records regarding Client 6.

23. The case of **Client 7** involved a grandmother and grandson who lived with her. TWIST records show Appellant claiming a home visit on May 6, 2010 (with the client and granddaughter). However, a letter dated July 30, 2010, indicates no one had made visits to the home. Appellant's travel voucher shows she did not claim travel mileage related to Client's 7 case on May 6, 2010; therefore, Tungate concluded Appellant had falsified a visit to Client 7's home.

24. The case of **Client 8** involves a child and his mother. The child was in a private child care facility. Appellant documented as having conducted a home visit on December 18, 2009. The mother replied on July 27, 2010, there had been no face to face home visits. Likewise, the Appellant's travel voucher showed mileage claimed on December 18, 2009, for "juvenile services," not a home visit. Tungate concluded that Appellant had falsified the records relating to the required visit.

25. The case of **Client 9** involves the child and his parents. TWIST records indicate the Appellant conducted face to face home visits on July 4, July 30, August 28, September 10, and October 16, 2009. The mother and father provided a statement in which they denied any home visits ever being made by Appellant. They indicated their only contact with the Appellant occurred by telephone. Appellant's travel voucher showed no claiming of mileage on July 30, August 28, September 10, or October 16, 2009. Travel mileage was claimed for June 4, 2009, noted as "court-related juvenile services." Thus, Tungate concluded Appellant had falsified the records relating to visits to Client 9's home.

UNSATISFACTORY PERFORMANCE OF DUTIES
(APPLICABLE POLICIES)

26. DCBS Standard of Practice (SOP) 7E 3.3 (Ongoing Contact with the Family) and SOP 7E 3.3(A) (Working with Incarcerated Parents) require you [Appellant] to make face to face contact every 30 calendar days with the family of a child in out-of-home care. This contact must occur in the family's home unless the family member is in a rehabilitation or correctional facility. Further, SOP 7E.3.4 (Ongoing Contact with the Child) requires you [Appellant] make face to face contact within ten days of placement for a child in out-of-home care and to then make quarterly face to face contact with the child while in a Private Child Care (PCC) facility or Private Care Provider (PCP) Foster care.

27. The case of **Client 10** involves DC. He is an 18-year old who extended his custody with the Cabinet for educational purposes, and resided in a dorm on a college campus until July 2010, wherein he then moved into an apartment near the college. Appellant was required to make monthly face to face home visits with the Client. On July 27, 2010, the Client verified that he had had no face to face visits with Appellant since August 2009. He did acknowledge having spoken with the Appellant once while visiting at his former high school coach's home. The witness testified this did not qualify as a face to face visit.

28. The case of **Client 11** involves child JF. He was placed in a boy's facility on July 10, 2009. The Appellant was required to visit him quarterly. TWIST show the Appellant visited him on August 21, 2009 and June 22, 2010. The facility confirmed Appellant had only made one visit to the facility on June 22, 2010. Tungate concluded the Appellant had failed to make the required quarterly face to face contact as required by SOP.

29. The case of **Client 12** involves child JH, who was placed in a foster home in May 2009. Appellant was required to make quarterly visits to his foster home. TWIST records reflected Appellant only visited this client on July 28, 2009 and April 5, 2010. Thus, Tungate concluded Appellant had failed to make all the required face to face visits.

30. The case of **Client 13** involves Client RK. He had twin daughters who were placed in an independent living program in Louisville. The Appellant was required to visit them quarterly (since September 2009). TWIST records show only visits on September 18, 2009 and April 6, 2010. The facility verified there had been no visits between those times. Thus, Tungate concluded the Appellant had failed to make the required face to face contacts.

31. The case of **Client 14** involves Client CM, whose son C*, was placed in a private facility on January 20, 2010. The Appellant was required to conduct quarterly visits. TWIST records show only a visit on April 27, 2010, but no subsequent visits. This was also verified by the facility. Thus, the witness concluded the Appellant had

failed to make all required face to face visits. (HEARING OFFICER NOTE – In her testimony, the Appellant stated she visited the child August 10, 2010, at the group home—a month after the required July visit.)

32. The case of **Client 15** involves Client PM, along with her son RH. The child was placed at the Bellwood Facility on an unknown date. The facility verified Appellant had visited this child only on the day of his placement and that she came to Bellwood on July 23, 2010, for a review meeting. TWIST records indicate that Appellant failed to make the required monthly home visits in June and July 2010. Thus, the witness concluded the Appellant had failed to make all required face to face visits.

33. The case of **Client 16** involves Client RP. He was placed in an independent living program in Jefferson County, and the Appellant was required to conduct face to face visits on a quarterly basis in order to observe him in his home setting. TWIST records indicate “face to face initiated by worker” on February 23 and April 29, 2010. The witness testified that both visits were held in the Bellwood offices rather than in Client 16’s actual home setting. Tungate felt these meetings qualified as contacts, but not face to face visits.

34. The case of **Client 17** involves Client SV, whose child was placed in a foster home. Appellant was required to conduct quarterly home visits to the Client’s foster home. TWIST records show Appellant conducted only one home visit (on June 8, 2009) and did not visit in September and December 2009. On April 28, 2010, the witness testified the Appellant documented she had made a face to face visit initiated by worker. However, the Director of Foster Care confirmed the actual visit on that day was made with the facility’s case manager at the high school of the child. Tungate then concluded this did not qualify as a face to face visit, and further that the Appellant failed to conduct the required monthly face to face home visits with the family (in June and July 2009). Tungate concluded Appellant failed to make all necessary face to face contacts, but there was no falsification.

35. The case of **Client 18** involves KY. In this case, the child was placed in a foster home. Appellant was required to make quarterly face to face visits. She visited the child on March 16, 2010. The next scheduled quarterly visit was in June 2010. Other visits made by Appellant were January 21, 2010 (when she dropped Client 18 off at the foster home), and March 18, 2010 (when she picked Client 18 up for a court hearing). The witness concluded that these actions failed to meet the “face to face contact” standard.

36. The witness was then directed to Appellee’s Exhibit 8. This is an agenda for the April 27, 2010 monthly meeting, which are held with all staff. The Appellant was in attendance, and the document shows the issues of use of sign-in/out sheets and dealing with incarcerated parents were discussed.

37. The witness next addressed Appellee’s Exhibit 9, the records of a staff meeting held on May 26, 2010, which the Appellant attended. During this meeting, the

issue of home visits and visits to foster homes were discussed. The witness further testified that any and all revisions to policy were transmitted to all staff, including the Appellant.

38. Tungate then addressed the caseload issue. She testified the Appellant's caseload in January 2010 was slightly larger than some other workers. At that time, there were also new workers coming on board, and Tungate told the Appellant to pick out up to five of her cases to be reassigned. She informed the Appellant she would not give her any more new cases for a while and felt with the other workers picking up the additional five cases, Knear's caseload would be reduced to a normal level through attrition.

39. The witness also testified she sometimes had difficulty in getting necessary information from the Appellant so as to be able to assist her. This was documented in Appellant's 2010 evaluation during the April interim meeting (page 6).

40. The witness then introduced Appellee's Exhibit 12, which is a collection of e-mails from February through July, 2010, generally reminding the Appellant to make the required home visits and turn in her court reports. The witness also testified that Appellant seemed to have trouble making home visits. For some reason, she apparently did not feel comfortable working with families and preferred to work more with status offender children only.

41. Lastly, the witness then referred to the first Performance Improvement Plan (PIP), which Appellant was placed on during April 2010. The points stressed in the PIP were to make all the required monthly visits, as well as all face to face visits, and to enter all her contacts into the TWIST system. The witness stated Knear was unable to meet all these goals as desired. It was also noted that this document was the first time the Appellant was ever given notice of her problems.

42. On **cross-examination**, Tungate confirmed that she began as Appellant's supervisor in January 2010 and this lasted until June 1, 2010. She stated that although she was based in Washington County, at the end of 2008 she had assisted some Bullitt County caseworkers who were doing investigations. Tungate was an "ongoing worker," which meant she handled both status and delinquent cases. She stated that during 2008-2009, she probably assisted the Appellant on 10-15 cases, and added that Appellant's background was primarily in status cases.

43. The witness testified that a child could be in a status, delinquency, or dependency category. As such, Appellant could have had to attend court on more than one occasion for each of her cases. She also added that prior to 2011, compensatory time was generally available for caseworkers upon request.

44. Tungate was then asked about how special investigations are handled. She related that if there is a conflict for staff in the same office, an outside worker may be assigned. She related the fact that Appellant had been assigned such a case in

2010 (from Jefferson County) concerning Client W*. This witness had discussed the case with coworker Dee Dee Sullivan as part of a consultation. She related that Appellant had been told by Sullivan that if another special investigation case came up, the Appellant would not get another such case. However, Appellant was required to keep the case. When Tungate became her supervisor in January 2010, Appellant asked her for help in that case. Tungate then added that she took over the case from Appellant in May 2010.

45. The witness described a Continuous Quality Assessment (CQA) written by the Appellant in the spring of 2010 on Client W's case. Apparently, the regional office sent this assessment back, citing improper documentation. As a result, the Appellant received a written reprimand (in July 2010) for her handling of this case.

46. Tungate then added that a complaint arising out of the "D" case—a complaint to the court—led to the request for an audit investigation of Appellant's cases. Tungate was assigned to audit Appellant's caseload after being directed by supervisor Karen Parson to do so. Initially, this audit was to cover the period April through June 2010, and involved issues of falsification. After some initial findings in July 2010, the witness felt that some patterns had begun to develop and reported this back to Parson, who then directed the audit be expanded to cover August 2009 through August 2010.

47. The Appellant was never given a copy of the results of the initial 3-month audit, and as of April 2010, the Appellant was placed on restricted duty because of personal issues. This is separate from desk duty. The witness admitted that even before getting her initial PIP in April 2010, Appellant had had no chance to improve her performance.

48. Tungate then testified that she regularly conducted monthly staff meetings where she emphasized it was important to make the required visits. She also described a situation where, at the end of each month, there was a serious rush by the caseworkers to get their reports entered into the TWIST system prior to the fifth of the following month.

49. The witness described her audit of Appellant as one involving a total sample of the caseload as of July 1, 2010. Tungate admitted she had taken no formal classes in auditing and was given no guidance in conducting this audit. She reviewed no court files or the 18 cases selected; however, she did review Cabinet files. She stated she was looking for "home visits," that had been documented.

50. Tungate stated that for every new case, information is entered into the TWIST system initially after a first court date or after a phone call reporting a problem. This input is usually done by an intake worker and done the same day. In examining records here, the witness stated she started with the TWIST program for relevant data and compared that data against the dates for the children who were in care somewhere. She went on to add that of the 20 cases included in the audit, the primary issue was

about home visits and documentation. She stated she merely did the audit, and the falsification issue began to appear as a pattern, thereby causing expansion of the audit.

51. Tungate noted that if a child is in care, the worker must deal with the parent, unless an exception is granted through the supervisor. In the audited cases herein, Appellant had requested exceptions on seven to nine cases. These exceptions were granted, and all involved out-of-home cases where the children were considered to be in the Cabinet's custody. Of the remaining cases, there were no exceptions. Of this latter number (12-13), at least two of the cases were in college or extended care. Thus, the witness concluded there were perhaps 8-9 cases left where services were to have been provided to either parents or custodians. In two of those cases, a parent was deceased.

52. In doing her audit, Tungate related she spoke with the designated caretaker or parent in order to verify the contacts which had been required. She completed her entire audit by August 1, 2010, and attached all responses received to her audit. She gave the results to supervisor Parson in August 2010 and was not involved any further with the disciplinary decision made regarding Appellant.

53. The witness then began explanation of the individual 18 cases. Regarding Client 1, she explained the child had been placed in a PCC facility. She was, therefore, a committed child having both status and dependency status. The focus of the audit in this case was whether visits were being made as per policy.

54. The issue in the case of Client 1 was whether the Appellant visited the proper contact person. The child had first been committed to Lincoln Village and was later moved to Hope Hill. The mother had given de facto custody to an aunt. Tungate explained the mother should have been the person contacted while she was in a rehab center in Henderson. In doing the audit, the witness inquired of the aunt about visits and received a letter stating there had been no home visits.

55. Again, the issue with regard to Client 1 was not falsification, but whether the required visits had been made to the proper person. The witness also added that her review of the case file showed on December 23, 2009, the Appellant had provided juvenile services to the child at Lincoln Village, but documented those as a "home visit."

56. On **cross-examination** concerning Client 1, Tungate stated the mother was the client and was to have been visited monthly. Although the mother was in a rehabilitation facility, neither Appellant nor the court had made a Request for Waiver so as not to visit the mother. The witness went on to state the TWIST records inspected showed there had been a meeting with the client's mother, when actually there were none made. This was a falsification.

57. Tungate further added there was no mandatory requirement for a social worker to have met with the aunt. Appellant's only contact in this case was with the mother's attorney, a man named Cook. Also, the witness added the Cabinet is the

liaison between the client and the court—not the rehabilitation facility. Also, this case was discussed with Appellant in quarterly meetings, which were held between January and July 2010.

58. Tungate was next questioned as to Client 2. The child had been in placement for one year and had not been visited by Appellant. The Appellant was required to visit him quarterly at the facility. Even after he returned home, the Appellant made no required visit. The witness testified the Appellant had a scheduled visit with the child in March 2010, but was told by “higher-ups” in the agency to be somewhere else on the day of the scheduled visit to attend a meeting dealing with her own personal issues. Although the child had been returned to home custody on April 9, 2010, one scheduled visit was made by the Appellant on June 14, 2010. The scheduled July visit was not conducted. The issue in this case was falsification of visits.

59. The witness was next questioned regarding Client 3. This case was assigned to the Bullitt County office from October 2009 through February 11, 2010. During this time, the great-grandmother had custody, but the agreed goal was not to return the child to the great-grandmother, but rather to the parent. In this case, the father was in jail. Although visits were required to be made with him, the Appellant made none. After a one week hiatus, the father returned to jail in May or June 2009, and there were no visits. The issue in this case was falsification of visits.

60. Regarding Client 4, the Appellant had previously worked with the child in question from April through July 2009 during the predisposition investigation (hereinafter “PDI”). She then became assigned to this child in March 2010 until she was reassigned in July 2010. During this period, Appellant was supposed to have visited the child monthly. The mother filed a letter of complaint in July 2010 alleging Appellant had not made any home visits since April. Thereafter, this case was reassigned. Tungate added that during the period March 30 and June 10, 2010, the child was in a foster home and making court appearances. Therefore, the Appellant should have been visiting him while in the foster home. The issue in this case was falsification of visits.

61. Regarding Client 5, the witness testified the child had been placed in Brookhaven from February 2010 through September 2010, after previously having been placed at Our Lady of Peace Hospital. In summary, the child was committed to the care of the Cabinet from April 2009 through July 2010. During this time, the Appellant was to have visited the child monthly at the psychiatric facility, and to have also visited the parents monthly. The parents supplied a letter dated July 16, 2010, in which they alleged the Appellant had failed to make home visits since meeting with the child after court in May 2010. Appellant failed to make either a June or July 2010 visit with the child. After the court date (in May 2010) where the Appellant met with the child, Tungate and the Appellant were scheduled to go visit the home afterward; however, the parents canceled the visitation several times. The issue in this case was falsification of visits.

62. Regarding Client 6, in this case the child was placed at home. TWIST records indicated there were five monthly visits made to the child; however, the mother informed the Cabinet that only two visits were made. This child had become AWOL for a period in 2009 and 2010; however, the Appellant was still required to make monthly visits to the parents. In addition, of the five documented visits in TWIST, the Appellant's travel vouchers show she did not claim travel mileage for three of the claimed visits. The issue in this matter was falsification of visits.

63. Regarding Client 7, the grandmother had permanent custody of the child. Appellant documented a visit with the child in TWIST on May 6, 2010. This visit was disputed by the grandmother. Tungate also testified that the Appellant had made a visit to the child in April 2010 at the facility, and added that she and the Appellant met with the grandmother in March or April 2010. However, the two of them together did not feel a placement with the grandmother was appropriate. The Appellant's excuse for failing to visit in the appropriate manner was she had trouble finding the grandmother, which the grandmother also disputed.

64. Regarding Client 8, this child was removed from the home and placed in a northern Kentucky facility in September 2009. Thereafter, the Appellant conducted a home visit on December 18, 2009. Although an April 27, 2010 visit was documented by Appellant, she also claimed on her travel voucher (on December 18, 2009) she had provided juvenile services to the Client. This is different than a home visit, which was required. The adoptive mother confirmed the Client did not make a face to face visit on December 18, 2009. The issue in this case was falsification of visits.

65. Regarding Client 9, Appellant claimed home visits with the child on five different occasions in 2009. The parents provided a written statement on July 27, 2010, stating these home visits did not occur. In that statement, they claim the only contacts with the Appellant and the child were by telephone. Furthermore, Appellant's travel voucher reflected no mileage claimed for four of these supposed visits, but travel mileage claimed on June 4, 2009; however, this was not for home visits, but rather juvenile services. These services did not qualify as a home visit. The issue in this case was falsification of visits.

66. (HEARING OFFICER NOTE - The following testimony deals with the charge of unsatisfactory performance of duties of Appellant by failing to make required face to face contact with the Clients, as required by standard operating practice.)

67. In regard to Client 10, this was a child previously committed who extended his custody with the Cabinet for educational purposes by attending college, where he resided in a dorm until July 2010. He then moved into an apartment. Appellant was required to make monthly visits with this child, but made no visits after August 2009. Since this child remained on the college campus year round, the witness testified that policy required Appellant to make monthly visits to him. There was no provision for a waiver in this case, and the only contact was when the Appellant spoke to the child

while he was visiting at a former coach's home. This did not qualify as a face to face home visit. The issue in this case was failure to make face to face contact.

68. Regarding Client 11, this child was committed to Boy's Haven on July 10, 2009. Thereafter, quarterly visits were required. The Appellant had a waiver from visiting the family, but was still required to visit the child. According to Therese House, Case Manager at Boy's Haven, the Appellant had one face to face visit on campus with the Appellant on June 22, 2010. In this case, two quarterly visits were not made. The Appellant failed to make the required face to face contacts with the Client.

69. Regarding Client 12, this child was placed in a foster home in May 2009. The Appellant received an exception in 2009 so as not to have to visit with the parents; however, she was required to visit with the child quarterly. The only quarterly visits made were on July 28, 2009 and April 5, 2010. Thus, two of the required quarterly visits were not made. The witness added this charge involved failure to make the required face to face contact with the Client.

70. Regarding Client 13, this involved twin girls placed in an independent living program in Louisville. The Appellant was required to make quarterly visits. TWIST records show visits only on September 18, 2009 and April 6, 2010. Boys Haven worker Erin Stone verified to the Cabinet there had been no visits made between those two dates; therefore, one or more required visits had not been made. This constituted the charges of failure to make the required face to face contacts.

71. Client 14 involved the case of a child placed in the Northern Kentucky Children's Home in January 2010. Quarterly visits with him were required. TWIST records show a visit on April 27, 2010, but no visit in July 2010. However, the Appellant did visit with this child in August 2010.

72. Regarding Client 15, the child was placed at the Bellwood Facility. Appellant was responsible for making monthly home visits. TWIST records show the Appellant failed to conduct the required visits (with the mother) in June and July 2010. There were no violations involving visits with the child. The fact the Appellant failed to make the two monthly visits with the mother constituted failure to make face to face contact.

73. The case of Client 16 involved a youth placed in an independent living program. This required the Appellant to conduct face to face visits in the placement setting on a quarterly basis. Appellant met with the child on February 3 and April 29, 2010; however, these meetings took place in the Bellwood Independent Living offices, and although they constituted contacts, neither qualified as a face to face visit. Charges resulted in failure to make face to face contact with the Client.

74. Regarding Client 17, the child had been placed in a foster home and originally monthly visits were required to the mother. However, an exception was granted and no visits were required after August 2009. Quarterly visits were required

with the child, and TWIST records show that only one home visit with the child was made on June 8, 2009. No visits were made in September or December 2009, nor March and June 2010. On April 28, 2010, Appellant documented in TWIST records that she had made a “face to face initiated by worker, private care child facility” visit. Tungate stated that the director of the foster care home stated the April 28 visit was actually a visit with the facility’s case manager. Thus, this visit did not qualify as a face to face visit as required by SOP. Also, there were no monthly visits made to the mother in April, June, or July 2009 before the exception was granted.

75. Client 18 involved a child placed in a foster home in January 2010. Thereafter, quarterly visits were required. The first quarterly visit was made on March 16, 2010; however, the scheduled June 2010 visit was not conducted by Appellant. In addition, three other contacts were made with the child on January 21, 2010 (when Appellant dropped off the child at the foster home), March 18, 2010, (when Appellant picked up the Client for a court hearing), and March 16, 2010, (during an interview with the State Police). These did not constitute face to face visits with the child.

76. On **redirect**, the witness was questioned regarding Client 18. Tungate replied there is a “zero tolerance” within the agency for falsification of records. This is considered very serious, as falsified records can lead to severe consequences regarding whether future actions are taken or not taken regarding a child. The witness also added that her audit was based on the TWIST records involved and the contacts listed with clients and families. She added the Appellant was given an opportunity to add any omitted information into the TWIST system prior to this disciplinary action being taken. Tungate also added that, as a general rule, even though some visits may involve long distances to where the child is located, these are not felt unduly burdensome since they are only required once quarterly. She also stated there is a policy on visiting parents in jail, as this is considered giving the required service.

77. The witness specifically testified regarding Client 5, and stated the falsification of home visits was based on the fact the Appellant only visited the parents in a parking lot—not in their home. Regarding questions about Client 6, Tungate stated the charges were based not only upon the client’s word that there had been no required visits, but also an examination of Appellant’s travel vouchers, which did not claim any mileage for the purported visits.

78. Tungate testified regarding Client 17 by stating the missed visit was not just a technical violation. The Cabinet was concerned because there had been reports of teens in the home, and the feeling was that because of past inappropriate sexual behavior on the part of the child, these visits needed to be made in the actual home.

79. Tungate concluded by stating that as the Appellant’s supervisor, she had held an interim evaluation meeting with Appellant in April 2010 to discuss the missed visits. Also, the issue of missed visits had been listed on a Performance Improvement Plan in 2009.

80. On **recross**, the witness stated the Appellant had been placed on desk duty from August 23, 2010, until the late fall of 2010.

81. Appellee's next witness was **Debbie Dever**. She has been a state employee for 21 years, and for the past 15 years has been the Curriculum Director for the Training Branch within the DCBS. Her primary duty is to approve the training plans for employees.

82. Dever introduced Appellee's Exhibit 14, the training records for the Appellant from October 4, 1999 through January 12, 2011. She stated the records are compiled from the sign-in sheets from the training sessions, showing whether the employee attended the training. These records can be used to show whether an employee met the required minimum training. She added that certain course updates are periodically offered, and the more important courses are given each year (or every two years).

83. Dever highlighted some of the more important training taken by Appellant. These included November 19, 1999, training in "Child Protection Services Competency Based," involving 22½ hours; December 8, 1999, involving "Family Services" training of 22½ hours; TWIST training on October 14, 1999, involving 15 hours. This training included instructions on how to input (made) contacts and visits. April 21, 2008, training involving "Continuing Case Planning and Use of TWIST."

84. The witness next introduced Appellee's Exhibit 15, a lesson plan for the April 21, 2008 training. The content here involved making sure employees understood the ethics for social workers and the importance of documentation. This training also stressed making the required contacts with family members.

85. Dever added that in her opinion falsified information inputted into TWIST violated ethical standards required of social workers.

86. The witness then introduced Appellee's Exhibit 16, a lesson plan for another training course the Appellant attended in February 2010. This course involved instruction on how to document visits into the TWIST system. Included in this course were procedures for how to navigate from field to field in TWIST, and to input the required information.

87. On **cross-examination**, the witness answered that she is the supervisor of 16 trainers. She added that for the November 14, 1999 TWIST training, this consisted of part lecture and part navigation through the TWIST screens done in a computer lab. Dever testified that although the TWIST system has evolved over the years, she does not feel it is outdated.

88. The witness concluded by stating there is a procedure by which a supervisor can request additional training for social workers on a particular subject, if they feel it would be helpful to the workers.

89. The Appellee's next witness was **Nicki Hall**. She has been employed for 12 years by the Cabinet, and has been a Field Services Office Supervisor (FSOS) since June 2010. She has a Master's in Social Work. Ms. Hall replaced Pam Tungate as Appellant's supervisor from June 2010 through January 2011.

90. Hall testified that in July 2010 during a meeting attended by her, supervisor Karen Parson, and Appellant, the Appellant admitted she did not make the required home visits in the case of Client 5.

91. Hall stated she conducted regular monthly staff meetings. She introduced Appellee's Exhibit 17, a copy of the August 23, 2010 Bullitt County staff notes. In this meeting, there was discussion of visits with children in out-of-home care. The emphasis was on making visits at the facility where the child was placed. Instructions on how to enter these visits into TWIST was also reviewed. This meeting was held the same day Appellant was placed on desk duty.

92. The witness testified that before Tungate left as supervisor, she had reduced the court dates assigned to the Appellant, which did not make her pleased. This witness attempted to assist the Appellant by decreasing the number of PDI cases the Appellant was required to handle in July 2010. She added the Appellant's caseload was basically the same as other workers.

93. Lastly, Hall introduced Appellee's Exhibit 18, a "Reporting Fraudulent Activities Agreement," dated January 18, 2011. This agreement was signed by the Appellant, and essentially is an agreement by the employee that they will conduct no fraudulent activities associated with timesheets, travel vouchers, and falsification of case documentation which would result in benefits being disbursed inappropriately.

94. On **cross-examination**, the witness admitted that Exhibit 18 had been signed by Appellant approximately five months after she had been placed on desk duty, and some 2-3 weeks before she received her intent to dismiss letter. The witness also admitted that after assigned desk duty on August 23, 2010, the Appellant had no chance to practice any of the methods that could have resulted in any improvement in her work. Hall stated that she performed the August 2010 interim evaluation and the 2010 year end evaluation for the Appellant. However, the Appellant was already on a PIP as of April 2010.

95. Regarding Client 9, Hall stated she was "somewhat" involved. She made out the case plans and met with the Client while Appellant was on vacation. Afterward, this witness recommended the child be returned to the home, while the Appellant opposed same.

96. Answering questions directed at the Appellant's caseload, the witness stated the Appellant's court duties in delinquency court had been removed by her (Hall) in June 2010. The amount of time spent in delinquency court by Appellant was

approximately 3 – 6 hours per week. The witness also added the workers are to make their entries into TWIST within five days of client contacts. All entries must be in by the fourth of each month, and the witness admitted this is a busy time for the caseworkers.

97. The witness also stated the Appellant was primarily involved with status cases. She did have a lot of children placed in out-of-county facilities, which were long distances away.

98. The Appellee's next witness was **Rob Weis**. Mr. Weis has been employed with the Cabinet since 1999 and has been an FSOS since June 2008. He possesses a bachelor's degree in psychology. He is in charge of an ongoing team in Bullitt County, where his primary duties are to ensure that policies and procedures are followed. He was a coworker with Appellant, and was also her supervisor from June 2008 through January 2010. During his tenure, he testified, the Appellant never expressed she was overwhelmed, but she was (at times) frustrated. He added the Appellant asked no questions of him regarding either SOP or TWIST.

99. The witness introduced Appellee's Exhibits 19 and 20. These were notes of staff meetings held January 21 and September 22, 2009, respectively. The Appellant was present during these meetings. Discussions were held in these meetings regarding the monthly visits to be held with children in foster care. Discussion was also held on putting the family team member meetings and visits into the TWIST system.

100. Weis also introduced Appellee's Exhibits 21, 22, and 23. These are notes of staff meetings held October 20, 2009; November 24, 2009; and December 15, 2009. The Appellant was present during these meetings. Discussions were held regarding inputting information into TWIST, making monthly visits with "out of home" children, and documenting same.

101. The witness next introduced Appellee's Exhibits 24 and 25. Exhibit 24 is an August 17, 2009 e-mail to staff with a form for "visit notes," which included an emphasis on naming the visit location. Exhibit 25 is an October 2, 2009 e-mail to staff encouraging them to promptly input notes on visits to foster children in placement homes by use of a "1294" form. This was designed to help decrease their workload; however, Weis stated the Appellant used this form sparingly.

102. The witness concluded by stating that while he was the Appellant's supervisor, her caseload was comparable to most other workers. She did appear resistant to moving some of her status caseload to another worker and this never occurred. He added that it was not likely that 30 case contacts would be entered in error into TWIST.

103. On **cross-examination**, the witness testified that while he was Appellant's supervisor, she had delinquency cases, as well as investigation cases. She also had some "on call" cases, which would require after-hours work (in the form of

investigations). These latter cases were kept by the caseworkers for longer periods of time.

104. Weis also stated the TWIST contact screens (used by all workers) had not changed since 1999. As her supervisor, Weis did not create a PIP for the Appellant.

105. Upon further questioning, Weis stated that after her return from maternity in August 2008, Appellant appeared aggravated because she had to do investigations, rather than concentrating primarily on status cases. He also added that Appellant was the “go-to” person for the newer workers to get answers.

106. Appellee’s next witness was **Jay Klein**. Mr. Klein has been the appointing authority for the Cabinet since 2001. His responsibilities include supervision over three branches, including disciplinary actions. He was previously engaged in the private practice of law for approximately nine years.

107. Referred to the termination letter (Exhibit 1), the witness stated the primary basis for his decision was the falsification of records committed by Appellant. He considered this egregious and cited as an example how the falsity of official records could have major consequences. He cited a previous case having falsified a visit to a child, and the child later being killed.

108. The witness testified that he did consider the Clients’ statements regarding the lack of visitation, and he did not take into account any previous disciplinary action (only a written reprimand) because of the egregiousness of what he felt was the intentional falsification (and the volume) to the Cabinet records.

109. On **cross-examination**, Klein stated that even an allegation of one or more falsification of records can trigger a casework audit. He confirmed the dismissal letter covered charges against the Appellant ranging from 2009 through 2010.

110. **The following 9 witnesses’ testimony were taken by deposition:**

(a) **Wendy Booher**. Ms. Booher has a B.S. from Lindsey Wilson College, and has been employed with CHFS for the past five years as a counselor at Foothills Academy. She testified that Client 2 was at the Academy from July 1, 2009 until April 9, 2010. During that time, three quarterly visits were required to be made by Appellant. This witness e-mailed Pam Tungate on July 28, 2010, (Exhibit 5, pg. 2) to inform her that no visits had been made during the time the child was at the Academy. She added that Appellant would sometimes schedule a meeting, but would then have to reschedule, and these rescheduled meetings never occurred. She concluded by saying that when she attempted to contact the Appellant, sometimes it would be a 1-2 week delay getting a return communication.

On **cross-examination**, the witness explained that sometimes children located long distances from their social workers could be visited by courtesy workers. Booher

does not know whether or not that occurred in this case. She further stated the Appellant had never been at the facility while she (Booher) was there. She also added she does not think the Appellant was there when the child first came to the facility in July 2009. Booher also added that on August 4, 2009, she attended a treatment planning meeting for the child, but the Appellant was not there, citing no availability of a car. She concluded by saying it was possible the Appellant could have called the child without her knowledge.

(b) **MC.** MC is the mother of Client 4, who was first placed in foster care on May 14, 2010, in Bullitt County. The Appellant was his social worker. MC authored a May 16, 2010 letter (two days after placement – Exhibit 5, pg. 5) to the Cabinet complaining she had not been kept informed by the Appellant, and further complained of a lack of monthly visits. MC also stated the Appellant had made a visit to her home in April 2010, while the child was still in her care.

On **cross-examination**, the witness admitted the date of her letter could be wrong, and it quite possibly should have been dated July 16, 2010. She further stated that the Appellant did make a visit on July 16, 2010, and also stated she may have met with Appellant in June 2010.

On **redirect**, the witness clarified the Appellant had visited her home once, presumably the April 2010 visit, and she does not know if the Appellant visited her son at the foster home. MC was told by the foster parents the Appellant had visited her son several times.

(c) **Henry Gilliam.** Mr. Gilliam is a therapist at Brooklawn, and has an M.A. in Experimental Therapy. His testimony concerned the case of Client 5. The witness explained he had e-mails with Pam Tungate on July 16, 2010, concerning visits by the Appellant (Exhibit 5 – page 7). The child was placed at Brooklawn on February 8, 2010, and Gilliam explained to Tungate that he had no record of Appellant having made a visit to the child between April 1, 2010 through July 16, 2010. Gilliam did add that it is possible a worker may have come to campus after hours, or may have come without making contact with a therapist—although this would be very unusual. He added that he had no issues with the Appellant in her performance as a social worker.

On **cross-examination**, Gilliam explained that the Appellant may have visited with the child on May 14, 2010, a day after his May 13 court date. He also added that he did have some phone calls with the Appellant concerning the child.

(d) **UG.** UG was a foster mother for the Cabinet, and her testimony concerned Client 18. She testified she had custody of the child from January through June 2010. The Appellant was the child's social worker before this witness gained custody. She detailed three visits to her home by the Appellant. The first was when Knear was accompanied by two policemen in March 2010. The second was March 18, 2010, with another social worker in order to coordinate for an upcoming court date. The

witness added the Appellant was hard to reach. The third meeting occurred with the child at the witness's house (date unknown).

On **cross-examination**, the witness added the child was first placed into her custody on January 21, 2010. The Appellant brought the child to UG's house that day, and stayed approximately 45 minutes. The child went AWOL for two weeks in April 2010, and the Appellant was so informed. The witness then explained that in June 2010, the child went to a Pikeville facility for respite care, while the witness went to Florida on family business. UG never reclaimed custody of the child.

(e) **DH.** She has been a foster mother for the Agency. Her testimony involved Client 8. The witness testified she knew the Appellant because she had adopted her son (the Client) after she had previously adopted a girl. The son had been placed in an unknown facility because of pending criminal charges. DH stated the Appellant made no monthly visits to her during this time. She also added the Appellant was scheduled to visit her on December 18, 2009, but was unable to because the witness's daughter had given birth only a few days earlier.

On **cross-examination**, DH clarified her son had been in a northern Kentucky facility since September 2009, and the Appellant was his caseworker until August 2010. She testified that she and the Appellant went to court a few times for matters involving her son. DH added she had no problems reaching the Appellant, and stated that because the son was placed in a northern Kentucky facility, the Appellant would have had to have visited him there. She does not know whether any such visits took place. Lastly, regarding the scheduled December 18, 2009 home visit, DH also stated that she may have been at the dentist.

On **redirect**, the witness testified the Appellant may have made as many as four home visits while the child was at the northern Kentucky facility—this being over an 11-month period. She also added that in the beginning of the relationship, Appellant visited about every six weeks.

(f) **Teresa House.** Ms. House has been employed at Boys Haven for approximately six years. That facility hosts troubled boys, and attempts to give them an educational setting and also provides life skills. House stated the child had enrolled at the facility sometime in 2009 and was there until September 2010. House informed Tungate by e-mail, dated July 19, 2010 (Exhibit 5, pg. 15), that the Appellant had a court visit with the client on June 10, 2010, and had one on-campus visit on June 22, 2010. She also detailed she had discussions with the Appellant regarding this child applying for the Job Corps.

On **cross-examination**, House stated this child had his own telephone, and could have called the Appellant without her knowledge.

On **redirect**, the witness stated that the child had been in the facility for approximately 16 months. During that time, she knew of only one home visit made by the Appellant.

At this point, counsel for the Appellant moved to strike the deposition of this witness as being non-responsive. The Hearing Officer reserved ruling at that point, but now **OVERRULES** the motion.

(g) **Jeff Meyer.** Mr. Meyer has been an Independent Case Manager at the Bellwood facility for approximately five years. His testimony concerned Client 16. The Appellant was the Client's caseworker for nine months while the Client was at Bellwood. The Client informed Meyer of three (3) visits with the Appellant. However, in a July 16, 2010 e-mail to Pam Tungate (Exhibit 5, pg. 20), the witness described the February 3, 2010 and April 29, 2010 meetings being Discharge Planning meetings held at the Bellwood office—and not the Client's apartment. He also added the March 3, 2010 meeting with the Client occurred at a permanency hearing in Shepherdsville. He ended by stating he had no knowledge of any other face to face contacts that took place between the Client and the Appellant during the Client's stay at Bellwood. He added he had no problems in getting in touch with the Appellant.

On **cross-examination**, the witness confirmed the Client resided at Bellwood from August 2009 until May 2010. He is not sure whether the Appellant was the Client's social worker during this entire time. He also added the Client had a cell phone, and it was possible he could have contacted the Appellant without his knowledge.

On **redirect**, the witness stated it would be rare for a Social Worker to see a client without his knowledge.

(h) **SM.** She is a Manager for Humana, and is the mother of Client 2. The witness detailed in an e-mail to Pam Tungate dated July 19, 2010 (Exhibit 5, pg. 3), that since her son was returned to home custody (on April 9, 2010), she had one home visit with the Appellant on June 14, 2010. On May 13, 2010, a home visit was scheduled; however, SM detailed on that date no visit occurred because the Appellant had to go to Seven County Services in order to enroll her son. A home visit was scheduled for July 30, 2010; however, this visit was not made. In general, SM had no problems with the Appellant.

On **cross-examination**, SM changed her testimony to say that on July 30, 2010, a visit to her home was made by the Appellant, and that she also saw the Appellant in court regarding her son sometime in July 2010. She summarized her testimony by stating that of the six days wherein the Appellant was to have made visits, four were made. SM also added that she was satisfied with the Appellant's work regarding her child.

On **redirect**, the witness stated her son told her that he had never received a visit from the Appellant at Foothills Academy—some five hours away.

(i) **TZ.** She is the aunt of Client 1. She confirmed that the Appellant never made home visits to her, but also admitted that she was not the custodial parent. She added the mother was in a rehab facility. (HEARING OFFICER NOTE – According to previous testimony, the required visits were to be made to the mother and not the aunt.)

FOURTH DAY

110. The **Appellant** testified that she received a B. S. in Psychology from Ball State University in 1994 and took further courses at I. U. Southeast. She began work at Central State Hospital (CSH) in Louisville in 1998, and 1999 began employment with the Cabinet in Bullitt County as a Juvenile Services Worker. This job involved working with juvenile status offenders (ages 12-18). The Appellant had done no dependency or abuse cases prior to that time, although she later took some training as a Social Worker. Her work with foster families involved mostly abused and neglected children.

111. She commented on the TWIST computer system wherein caseworkers' information is inputted. She commented she felt the system really did not have a juvenile component because several of the questions one is expected to answer did not really fit.

112. Commenting on earlier testimony which showed the various training courses she had attended, the witness stated that she did not attend the official TWIST training on October 14, 1999; rather, she was given a book and told to "play around on the computer." On July 26, 2000, she stated that incorrect information was given. She stated the training on April 29, 2004, involved Performance Improvement Plans and had nothing to do with data training. She stated she did attend TWIST training on June 27, 2000, but there was no follow-up training. She also added that other training she attended primarily dealt with case management and not TWIST data entry.

113. She further stated that in 2005 or 2006 the TWIST system was changed so that nothing could be changed or erased, but rather only additional entries could be made. All TWIST entries had to then be made in the office—preventing anyone from working at home or outside the office.

114. Knear then testified that further limiting her time to make visits was the amount of time she had to spend in court. When she first began her employment, she was told most of her duties would be attending court. All juvenile service referrals came through the courts, which initially involved having to attend one-half day every week. Later this was expanded so that she was almost spending 1½ days in court. She proffered that all her juvenile service caseload was handled through "on-the-job training."

115. Knear then went on to state that initially most of her cases were "kids in the home," they were not placements in foster homes or facilities. She then explained

that in 2007 a new County Attorney for Bullitt County was committed himself to having more children committed, thereby resulting in more “out-of-home” placements in residential facilities. These placements required more visits and paperwork on her part.

116. She explained that in the fall of 2008, she had to begin doing more Child Protective Service (CPS) Investigations as a part of her caseload because of the lack of CPS Investigators in the office. This also required more court appearances. She then related that in early 2009 her newborn infant began having medical issues which required many more doctor’s appointments. This carried over into 2010 and during this time impacted on the time she could spend in the office.

117. Sometime in 2009 she talked with supervisor Rob Weis about transferring some of her caseload. She stated that not many of her cases were transferred, but that for several months she got no new cases. She testified her performance reviews were generally positive, with many “4” and “5” ratings. She felt she was never given any reason to worry about her job performance. Knear then referenced Appellee’s Exhibit 11, her 2010 evaluation where she scored an overall rating of “Good.”

118. In or about January 2010, the Appellant was assigned to Pam Tungate’s team. She stated they met, and she received what she thought was a “negative impression.” The Appellant thinks there was some sort of personality conflict with Tungate in that she wanted to be told of things beforehand, as opposed to a more casual attitude expressed by previous supervisors. For instance, Tungate wanted to review and sign off on court reports before they were sent, and she felt she was required to appear in court for what she considered were trivial appearances. Tungate also wanted to be informed ahead of any placement of a child.

119. In early 2010, Knear was informed that she would have no further contact with a 2009 case she closed. Apparently the feeling was that Tungate thought the Appellant had been trying to go over her head to speak with supervisor Sullivan. She thinks this was part of the reason why on July 6, 2010, she received a written reprimand over the handling of this case and was told this would lead to an audit of her cases. As previously stated, this audit occurred on cases handled by the Appellant from August 2009 through August 2010. As a result of the audit, the Appellant was placed on desk duty in August 2010.

120. At this point, the Appellant’s counsel put in testimony by avowal. After the avowal testimony was completed, the witness, in preparation of her addressing the 18 cases with which she was charged, testified that for several years she had kept a notebook to record the status of her activities on cases. This notebook contained information on dates, contacts, court appearances, messages, and telephone calls.

121. Knear stated that when the audit first began, she was initially talked to about falsification of records. She thinks many of these were incorrect data entries, because she did not use the “drop boxes” correctly. In essence, when making multiple entries involving cases about making contacts or visits (and the dates on which they

were made), the system required that an individual date had to be put in each drop box. She explained that on several occasions she probably put one date in a drop box resulting in that date being entered for several different visits.

122. After she was told a request for disciplinary action would be sent to Frankfort, she gave her response to the issues concerning her performance to her supervisors (Appellant's Exhibit 2). In this response, Knear cited her increasingly heavy workload over a period of two or three years, her conflicting directions from different supervisors, and the time required away from her job to handle CPS investigations regarding her and her own child. The Appellant admitted she did not always make the required monthly or quarterly visits, but because of her workload tried to do the best she could. She also cited the problems she was having putting dates and contacts into the TWIST system. The Appellant also agreed that many of her contacts had occurred at court, at the office, and at other locations, which she admitted did not count as home visits and should not have been coded as such.

123. The Appellant then addressed the individual 18 cases where she was either charged with falsifying or failing to make required visits.

124. As to **Case 1**, the aunt presented as the child's guardian, but the mother—even though in a rehab facility—was actually the guardian. The Appellant stated she had trouble finding ways to contact the mother to schedule visits. She stated that on December 10 or 11, 2009, she did meet with aunt and child at court. She admitted this was not a home visit, but it was a face to face contact with the aunt and child. The Appellant feels the TWIST information showing this to be a "home visit" was probably an inputting error on her part. The Appellant stated that her personal diary shows that she was in delinquency court on December 17, 2009, involving this child, and on December 23, 2009, met with the aunt in court. As to the alleged falsification on January 4, 2010, the witness stated she met with the aunt at her office to pick up paperwork. On January 20, 2010, she met with the aunt in court. On February 3, 2010, she met with the aunt at the Appellant's office, and on February 4, dropped off paperwork to the aunt. It was only during a call to the aunt on March 9, 2010, that the Appellant discovered the aunt was not the actual guardian. On April 20, 2010, the aunt called her, and the Appellant stated she incorrectly coded this as a "face to face" visit. She added that on May 5, 2010, she spoke to the aunt (by phone), and saw her in court on May 12. The date of May 5 entered into TWIST was probably inputted by mistake. She stated that on June 10, she had a face to face meeting with the aunt after district court, and this was actually not a home visit as was entered into TWIST. Sometime in June 2010, she asked for a courtesy worker to visit the mother in rehab, but received no response. However, she states that she did communicate with the mother's attorney (a Mr. Cook) concerning the child's treatment plan. She also added that the mother's needs were being addressed through her treatment plan at the rehab facility.

125. Regarding **Case 2**, the Appellant stated the child had returned home on May 13, but that she made no home visit. She admitted she incorrectly coded it as such involving a meeting between the Appellant, the mother, and the child, which was held at

Seven Counties Service. Then in July 2009, the child was placed in a facility 3½ hours away, making it very difficult for her to make the required visits. The Appellant testified she did meet the child in court in December 2009, and also talked with him by phone several times. She added she had a January 2010 meeting scheduled with the child, but because of other office obligations, she was forced to cancel this meeting. She did have a courtesy worker visit the child in March 2010, but admitted that she did not see the child.

126. Regarding **Client 3**, this involved alleged falsification of visits. Appellant stated the great-grandmother had custody of the child, and the father was in jail (but did not have custody of the child). The mother was deceased. In summary, the Appellant stated that during the period October 2009 and March 2010, she was not required to visit the home because there was no one there to visit. She admitted that on November 19, 2009, she had a phone call with the grandmother, and this was incorrectly entered into TWIST as a visit. On December 16, 2009, she spoke with the client and grandmother in court, the child being AWOL. On February 9, 2009, the child had returned to the home, and the Appellant met with the Client in her office concerning the child. She further stated that on March 25 and May 21, 2010, she had phone calls with the Client's grandmother.

127. Regarding **Client 4**, this involved allegations of falsified visits. On May 28, 2010, the child was to appear in court (in the afternoon). The Appellant met with the mother that morning. However, Appellant entered this as "no contact." On June 10, 2010, the Appellant conducted a meeting between the mother, the child, and the foster mother at the private child care facility (hereinafter PCCF). This did not occur at the home, and was incorrectly coded as a "home" visit. She stated that in July 2010, the mother would no longer cooperate in helping set up visits.

128. Regarding **Client 5**, the father was in the home and the child was in a facility, but was returned to the home on June 18, 2010. Appellant stated she attempted to see the father where he worked. She also went to the home, but no one was there. She later saw the child and father in the office parking lot of the father. This should have been coded as a negative home visit, but was coded as a contact. She added she attempted to make home visits, but the client's mother would not cooperate. In February 2010, she visited the child in the facility. In July, she claimed she made a visit, but this was not recorded in the TWIST system.

129. Regarding **Client 6**, there were allegations of falsification. Appellant related that on November 10, 2009, she met with the parents in court for a delinquency problem; on December 10, she met with the parents in court; on February 25, 2010, the child had gone AWOL, but she met the parents in court. She also related she made visits in court with the father on May 13, and both parents (in court) on June 2, 2010, with the child being AWOL. She summarized that she had made two home visits and also several court visits.

130. Regarding **Client 7**, this also involved falsification of records. She stated the grandmother, who had custody of the child, moved several times leaving the Appellant without a home address. On May 6, 2010, she went to the home, but no one was there. She stated she left a note and later talked with the grandmother. She admits this should be coded a “negative home visit.” She did insist that on October 8, 2009, she made a quarterly visit with the child, as well as in April and July of 2010. She added she did not see the child in January 2009, as he was being transitioned, but she did see him February 12, 2010, and March 17, 2010. Both visits took place at the child’s facility.

131. Regarding **Client 8**, this also involved allegations of falsification of records. Appellant stated she made a phone call on December 18, 2009, to the client. On March 1, 2010, she also spoke to the child by phone. Regarding the required quarterly visits, she testified she met with the client in Kenton County in September 2009, and that a courtesy worker visited the child in December 2009 at the facility. The Appellant added that she saw the child in April 2010, and was supposed to see him for the next quarterly visit in July. However, because of scheduling problems with the facility, she was unable to see the child until August 10, 2010. Addressing the required home visits, the Appellant stated she had several scheduled, but these were always canceled by the mother, albeit for legitimate reasons. She stated she had regular phone contact with the mother.

132. Regarding **Client 9**, the involved falsification of records. From June 4 through October 16, 2009, the child was not in the home. However, the Appellant met the parents in court on June 4, 2009. She added the TWIST records show her having made home visits. She attributes this to her misuse of the “drag down” boxes. Appellant added that on August 28 and September 10, 2009, she met with the child’s father in her office. On October 16, 2009, she had a conference call with the parents and child; however, she admits she incorrectly coded this in the TWIST system. Regarding a June 24, 2010 date, this involved her failure to visit the child after return from AWOL. However, the Appellant stated that Pam Tungate told her she would get Nikki Hall to speak with the child. This occurred just before Appellant went on vacation.

133. At the outset of the **fifth day of** hearing, Counsel for the Appellant began by putting in additional avowal testimony, which ended at approximately 9:42 a.m.

134. **Marie Knear** was then **recalled**. She addressed the case of **Client 10**, which involved allegations of failure to make required face to face contact by SOP. This involved a client who was in college (through extended care), and was required to have monthly visits. There was no family to visit. Appellant stated she had a hard time scheduling visits with the client because he was playing football and was heavily involved on campus. She did state that he did receive monthly visits by other staff at the PCC . She also had requested courtesy workers make visits with the client, and understood this occurred although she received no documentation that it did. She testified she did have monthly contacts by phone with the client and through e-mails, although she did not keep a copy of the e-mails. Appellant did see the client at least

once at his coach's home for a face to face visit. She added the child's guardian ad litem never expressed any concerns to her.

135. Regarding **Client 11**, this also involved Appellant's failure to make face to face visits. Appellant testified this was a child committed to a facility in July 2009. She had previously worked with him for approximately six years, and was required to visit him quarterly. She stated she saw him at the facility on August 21, 2009. She saw the client again in the facility's yard on March 10, 2010, and again on June 22, 2010. Appellant also saw the client in court on March 25, 2010. She admitted she did not make the required quarterly visit in October or November 2009. She did see the client in November 2009; however, this was not entered into the TWIST system. Appellant also testified she missed the February 2010 quarterly visit.

136. Regarding **Client 12**, involved allegations of Appellant's failure to make required face to face contact. Appellant testified that she did make visits to the client, but she did not input those contacts into the TWIST system. She stated the child was placed at a facility on July 28, 2009, where she saw him. There is no record of an October 2009 visit, and she explained she attempted to see the client at the facility in October, but he was not there. Appellant added she saw the client on December 2, 2009, in court for a face to face visit. The next recorded visit in TWIST was on April 5, 2010.

137. **Client 13** involved allegations of failure to make face to face contact with the client's daughters. The Appellant testified she saw the daughters on September 28, 2009 and April 6, 2010, respectively. She also saw one of the daughters in December 2009. Appellant states the problem with this case was she had trouble with the facility so as to be able to visit. She added that on June 23, 2010, both girls had a court date where she saw them.

138. **Client 14** involved allegations of failure to make face to face contact. Appellant testified she visited the child on April 27, 2010, but did not make the required visit in July 2010. She added she did see the child on August 10, 2010, at the facility, which was one month later than the required July visit.

139. **Client 15** involved charges of failure to make face to face contact. The Appellant testified that she saw the child in person in May 2010. She did not see the child in the home in either June or July 2010, but spoke to the child by telephone several times during that same period. Appellant explained that the child's parents were going through a divorce, which made it difficult to schedule home visits. The Appellant had been in this home many times before to judge the living conditions.

140. **Client 16** involved charges of failure to make quarterly face to face visits in the client's home setting. The Appellant stated there were documented visits to the child on February 3 and April 29, 2010, respectively, although these occurred in the Bellwood Home Offices, and not at the client's apartment. Appellant felt this was a low

priority case, as the client was approaching her 21st birthday. The Cabinet charges that neither of these visits qualified as a face to face with the client.

141. **Client 17** involved allegations of failure to conduct quarterly home visits. Appellant stated she did not input the visits which she made in September 2009, December 2009, March 2010, and June 2010 into the TWIST system. She explained she saw the child in court in August and November 2009 at the Hope Hill Foster Home. Also, she met with the child's attorney in June and July 2009. She related she had made visits to the foster home on January 5, 2010, and at the foster home office on February 5, 2010. On April 5, 2010, she went to the foster home, but the child was not there. On April 28, 2010, she saw the client at school, where she had stayed late. The witness admitted this was not per policy.

142. **Client 18** involved allegations of failing to make quarterly face to face visits. The Appellant explained that she had a case conference scheduled for May 20, 2010; however, the child and mother failed to appear. Also, they failed to appear for a rescheduled May 27 conference because the child had moved to Pikeville. She also explained she did not make the required visit in June 2010 because of this move. Appellant attempted to make a visit to the foster mother's house in March, and stated that the deposition of the foster mother *UG* would support this.

143. Appellant then addressed Appellee's Exhibit 5, a series of e-mails and letters involving the Appellant, various parents, and foster homes.

144. She states as to Case 1, these show she coded the visit incorrectly into TWIST. As to Case 2, she did not see the child. As to Case 3, she incorrectly coded the visit as a "home" visit. As to Case 5, the parent and child repeatedly canceled scheduled meetings. She made a visit in April 2010, which was a few weeks late. Also, she saw both the parent and child on August 10, 2010, instead of July 27. Appellant also explained that Exhibit 5 proved that she did see the child while he was mowing a lawn. As to Client 16, the visit was made in the office and not the child's apartment.

145. In summary, the Appellant testified that most of the miscoding occurred during the period of May through June 2010. She attributed this to heavy pressures—both internal and external—which she was under. These included the personal problems she was having with her child and the failure to be able to receive any compensatory time in order to work her cases.

146. On **cross-examination**, the witness confirmed she had received initial TWIST training in 1999, and had used this system for 10-11 years. She also admitted that she did not enter the "contacts" information regularly on the screen; however, she admitted that at times she helped others with the case planning screens.

147. The Appellant also admitted that the TWIST scores are a component of the yearly evaluations. She confirmed that she did not receive any scores below "3," which is considered an "average" score. She also admitted that she generally does not

check over her work on the screen before entering into TWIST. She stated this has undoubtedly led to some dates and contacts remaining the same even though the contacts may have been made on a different date. Appellant also admitted that she generally attempts to enter all her contacts (for all her cases for the month) in one day by putting these into a "Word document" and then cutting and pasting into the TWIST system. She felt this had undoubtedly led to some of the errors she is charged with.

148. Knear also stated that no other caseworkers, to her knowledge, have been audited, so no one really knows whether other caseworkers may have been making these same mistakes.

149. Referred to Appellee's Exhibit 27 (regarding Client 1), the Appellant answered that it shows the last face to face home visit was with the aunt on February 4, 2010. One was also made on May 5, 2010 (with the aunt).

150. Appellant then addressed Appellee's Exhibit 28 dealing with Client 9. This shows the last face to face contact with the family was made on June 4, 2009. The Appellant stated this visit did not occur at the home, but rather was probably made during court. She also added that she had had 3 or 4 Performance Improvement Plans previously (in 2008 and 2009) dealing with her failure to insert the required "contacts" into TWIST.

151. Due to her heavy caseload, sometime in 2009 supervisor Weis had offered her "periods of protected time," i.e. one day per month where she did not have to work anything except her cases. She stated this experiment did not work very well. She also stated that in 2010 her caseload increased because she was required to do court reports for all status offenders. Appellant did not know whether this was a requirement by Pam Tungate or a Judge.

152. The Appellant also complained that she never had help with typing her paperwork, except for some unknown one month period. She did admit that Tungate helped her on some cases by asking a courtesy worker to make visits for her.

153. The witness was asked about her April 2010 first interim meeting regarding her evaluation (Appellee's Exhibit 11). Under the category "Job Task/Communication," this cited the Appellant for making placements without going through proper channels and without notifying Tungate beforehand. The Appellant answered that in at least one case, the placement needed to occur quickly and she could not reach the placement coordinator.

154. The Appellant was then asked about Clients 1 – 18.

155. Regarding **Client 1**, the Appellant explained that she tried at least twice over a 6-month period to get a courtesy worker to make a visit (which Tungate approved). She did admit that having contact with the mother's attorney was not contact with the mother.

156. Regarding **Client 2**, the witness explained that she had car troubles and trouble obtaining a state car in order to make the required visits.

157. Regarding **Client 3**, the Appellant stated the courtesy worker did not make the required visits for her in March or June. Once this was discovered, she claimed to have addressed the situation.

158. Regarding **Client 4**, she admits she should have made home visits, but rather saw the Client at the foster home, because the parents would not cooperate for home visits. She admitted that home visits are important when reunification of a child and parent is being considered.

159. Regarding **Client 5**, Appellant stated that she made some visits but did not enter them into TWIST. She was aware that entering the home visit data was important.

160. Regarding **Client 6**, the witness admitted she did not make visits as often as she should have. She thinks she made two visits beginning in October 2009, but stated the child in question went AWOL on several occasions. She does think she visited him once while in Juvenile Detention.

161. Regarding **Client 7**, the Appellant stated she had a hard time finding the grandmother in order to make visits to the child. The only visit that occurred took place at the private child care facility (with the grandmother).

162. Regarding **Client 8**, she explained that another worker in her office saw the child in this case while seeing their own Client. However, this was never documented in TWIST.

163. Regarding **Client 9**, the Appellant testified she knew there would be no reunification in this case; therefore, she assigned a low priority to making home visits to the parents.

164. Regarding **Client 11**, the witness stated she had made some visits, but these were not documented in the TWIST system. Appellant's testimony was the same as to **Client 12**.

164. Regarding **Client 13**, this involved two girls who had independent living quarters. When asked to explain why she did not make the quarterly visits there (and not at the PCC), the Appellant was unable to give an adequate answer.

165. Regarding **Client 15**, the Appellant admitted that she missed the January and July 2010 visits, but cited the ongoing divorce of the mother as her primary reason.

166. Regarding **Client 17**, the Appellant stated she did see the child, but did not enter the visit into TWIST.

167. Regarding **Client 18**, she stated the parent and child were no-shows for the scheduled May visit.

168. On **redirect**, the Appellant stated that as to **Client 8**, a worker named Andrew Webb did make a courtesy visit for her at the Northern Kentucky home, but never told her of the results. Therefore, this visit was not entered into TWIST. Appellant then offered Appellant's Exhibit 5, a May 29, 2012 letter to her attorney from Webb confirming the visit he had made.

169. **Appellant then CLOSED.**

170. The Appellee called as a **rebuttal** witness, Rob Weis. He was Appellant's supervisor in Bullitt County from June 2008 through December 2009. He confirmed he had advised the Appellant that he needed to sign all court reports prior to them being sent, and regarding any child placement, that he was to be advised beforehand.

171. Regarding the Appellant's complaint of long-term personal car troubles, Weis does not remember any such conference. Weis also stated that in late-2008 through early-2009, in order to assist the Appellant, Pam Tungate helped in writing up some of the quarterly assessments. He also stated that for a long period of time the secretaries did help the workers file cases and did assist in entering the court orders into TWIST. Also, compensatory time was allowed in 2009.

172. The next **rebuttal** witness was **Pam Tungate**. She offered no new additional information.

173. On **surrebuttal**, the Appellant recalled **herself**. She denied telling Vanessa Allen to taint a home study on a woman named Foster. She claims the deposition of Allen would prove that Mrs. Foster lied to her.

DEPOSITION TESTIMONY

174. The Appellant's next witness was **John Cook**. Mr. Cook is an attorney in private practice in Bullitt County. He has previously served as a Public Defender, where he dealt with status offenders. He also served as an assistant county attorney, where he handled status and delinquency cases. In private practice, Mr. Cook has acted as a guardian ad litem for children and sometimes as a court appointed attorney for parents.

175. The witness stated that in his various capacities, he has worked with the Appellant on dependency and abuse case, as well as on status offender cases. He primarily saw Knear in court in Bullitt County on Wednesdays and Thursdays. He testified that generally he found the Appellant to be both helpful and knowledgeable

about her cases. He specifically remembered that she was very responsive and good at returning his phone calls.

176. Regarding **Client 15**, the witness recalled that he was the mother's attorney, and remembers the Appellant was involved in the case, although he does not know the specifics of what she did.

177. Regarding **Client 13**, Mr. Cook recalled this involved two sisters whose mother and adopted father had apparently given up on the girls and let them remain in the custody of the Cabinet. He commented that the Bullitt County judges normally expected the social workers to be in court on their cases, and he recalled the Appellant was in court a lot following her cases. He stated she was able to competently cover different kinds of cases.

178. On **cross-examination**, the witness admitted he was not familiar with the Department of Community Based Services' policy on home visits or how those visits were recorded. Likewise, he is not familiar with the DCBS policy on entering data into TWIST.

179. Appellant's next witness was **Vanessa Allen**. Ms. Allen previously worked for the Cabinet in Bullitt County as a Social Worker, but for the past two years, has been the Regional Officer dealing with kinship care cases. At one time, she investigated abuse and neglect cases.

180. The witness recalled that regarding **Client 7**, in 2010 she conducted a home study to see if the home would be an appropriate place for placement of the child. This case involved a child who was frequently in court and had been in Cabinet custody. She testified that during the home visit, both the mother and the daughter became irate and angry with her, causing her to leave. She concluded this home would not be appropriate for placement of the child. She went on to say this study was conducted as an objective study at the request of the Appellant, and recalled the Appellant also did not feel this would be an appropriate placement. Apparently this placement was eventually approved, although she does not know whether the placement was by the Cabinet or by the court. She also testified that she worked sporadically with the Appellant and at times had heard her express some non-specific frustrations.

181. The witness also explained that during some unknown period while she was working with the Appellant, there were only two social workers who handled status and delinquency cases, with the Appellant being one of them. She stated the Appellant always seemed very busy with her cases.

182. On **cross-examination**, Ms. Allen admitted that she never accompanied the Appellant when she made home visits, and did not know anything about how or what the Appellant entered into TWIST regarding her visits and contacts.

FINDINGS OF FACT

1. The Hearing Officer finds mostly baseless the excuses offered by the Appellant that the required visits to clients and children were not made because she was overworked, had unhelpful supervisors, and had clients who resided in remote locations. Supervisors Weis and Tungate testified that Appellant's workload was approximately the same (or similar to) other senior workers on their teams. Weis and Tungate attempted to assist Appellant by having the secretaries input the Client 1294 forms and court calendars into TWIST and by writing the Continuous Quality Assessments. Weis and Tungate both attempted to transfer some of the Appellant's cases to other workers to allow her to reduce her caseload. In early 2010, Tungate began reducing the Appellant's time spent in court.

2. The Appellant failed to make some required visits to clients or children residing in remote locations. While she did make some contacts through e-mail or telephone, this was insufficient and against Cabinet policy. That policy requires the worker to make a home visit with a child, which means actually visiting—albeit in a family home, foster home, or residential placement facility. The purpose of this is to allow assessment of the physical location to determine who lives with the child in order to determine if the child's needs are being met.

3. The Hearing Officer finds the Appellant was proficient with the TWIST system. This system is one where all activity relating to clients is inputted. This includes the reason for the contact, the contact date, contact type, contact location, people contacted, and service activity. The Appellant worked for the Cabinet from September 1999 through February 16, 2011, as a Social Worker. She had received on-the-job training, and used TWIST regularly during her employment. She never asked for additional training and at times helped other workers with TWIST. Supervisor Weis also regularly provided refresher reminders to his team on how to properly input the location of a contact into TWIST.

INDIVIDUAL CASES

4. Regarding **Client 1**, according to Standard Operating Procedure (SOP) 7E.3.4 (Ongoing Contact with the Child), the Appellant was required to visit the Client in the home on a monthly basis, and visit Client 1's child on a quarterly basis at the private care provider facility. The mother was in a rehab facility, and the child was placed in a private child care facility. Appellant conducted visits with an aunt, but policy dictated the visit should have been with the mother, even though she was in a rehab facility. TWIST records showed the Appellant made face to face home visits 10 times, from December 11, 2009 through June 10, 2010. However, these were visits to the aunt's home and did not qualify as home visits. Appellant's travel vouchers and sign-out logs for December 11 and 23, 2009, visits indicated they were for juvenile services—not home visits.

In this case, Pam Tungate was informed by the aunt (by letter) that there had been no home visits. Also, there were no parent visits made to the mother while she was in the rehab facility even though TWIST records showed there had been at least one meeting with the Client's mother. In this case, neither the Appellant nor the court had made a request for waiver so as not to be required to visit the mother. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

The Appellant stated that on December 10 or 11, 2009, she did meet with the aunt and child in court. She also added the TWIST information showing this to be a "home visit" was an inputting error on her part. The Appellant claims the December 17, 2009, December 23, 2009; January 4, 2010, January 20, 2010, February 3, 2010, and February 4, 2010, were visits by the aunt and it was not until March 9, 2010, that the Appellant discovered the aunt was not the actual guardian. Giving the Appellant the benefit of a doubt, nevertheless, on May 5, 2010, the Appellant spoke to the aunt (by telephone) and entered this in TWIST as a home visit. The same is true of the June 10, 2010 meeting with the aunt (after district court) wherein the visit was erroneously coded as a home visit.

5. Regarding **Client 2**, the Client's son was placed at a residential facility some three hours away from Bullitt County. Records obtained from the mother and Wendy Brewer (at the facility) indicate the Appellant made none of the required quarterly visits with the child. The child was returned to the home in May 2010, but the Appellant made no monthly visits between April 2010 and August 2010. She does admit that she incorrectly coded a meeting held between the Appellant, the mother, and child, which was actually held at Seven Counties Service, as a home visit. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

6. **Client 3** involved alleged falsification of visits. These involved failure to make monthly face to face contact with the father of a child in cabinet placement. A courtesy worker visited the father in the Larue County jail in April 2009. Shortly thereafter, the father was returned to the Bullitt County jail. Had the Appellant used a computer program called "Jail Tracker," she would have known the father's new location and would have been able to visit him. TWIST records show the Appellant claiming home visits with the grandmother on November 19, 2009; December 16, 2009; March 21, 2010; and May 21, 2010. Actually, these were not home visits—only telephone calls. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

7. **Client 4** involves allegations of falsified visits. The Appellant was to make quarterly face to face contact with the child, and monthly home visits with his mother. The Appellant conducted a meeting on June 10, 2010, with the mother, child, and foster mother at a private child care facility. This meeting did not take place at the home and was incorrectly coded as a home visit by the Appellant. The Appellant admitted she did not make monthly home visits to the mother in either May, June, or July 2010. The

Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

8. **Client 5** involved charges of failure to make quarterly contact with the child and failure to make monthly home visits to the child's mother during June and July 2010. Although the Appellant claims to have made such visits with the child in February, May, and July 2010, those visits were not entered into TWIST. At some point after June 18, 2010, the child was returned to the home, and the Appellant made one contact with the child and father in the parking lot of the father's office. This contact should have been coded as a negative home visit; however, it was coded as a contact. Further, the testimony of Henry Gilliam, the child's therapist at Brooklawn, indicates that—at best—the Appellant made only one home visit to the child while he was at Brooklawn. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

9. **Client 6** involves failure to make face to face contact with both the child and mother. Appellant claimed she had made two home visits and several court visits with one (or both) of the parents. She testified she made several negative home visits to the mother, which she did not enter into TWIST. Although the Appellant may have met with the parents in court (on November 10, 2009; December 10, 2009; February 25, 2010, and May 13, 2010), these were not home visits and should not have been coded as such. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

10. **Client 7** involves falsification of records. This case involved a grandmother and adult grandson who lived with her. On May 6, 2010, the Appellant went to the home, but no one was there. TWIST records show the Appellant entered this as a home visit. Further, the Appellant's travel voucher shows she did not claim travel mileage relating to this date. Although the Appellant's personal records indicate she did visit the child on February 12 and March 17, 2010, respectively, neither of these contacts were entered into TWIST. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

11. **Client 8** involves charges of failure to make required face to face home visits with the child and mother. The Appellant did visit the child in September 2009 and another worker made a courtesy visit in December 2009. This was not recorded in TWIST. Appellant further saw the child on April 27, 2010, but because of scheduling difficulties was unable to see him in July 2010. Appellant was able to see the Client on August 10, 2010. Appellant claimed (regarding the home visits with the mother) she made telephone calls to the mother on December 18, 2009, and March 1, 2010. These contacts did not qualify as face to face home visits. Appellant also claimed that other attempted meetings with the mother were regularly canceled for legitimate reasons. However, the December 18, 2009 phone call to the Client was erroneously entered into TWIST as a home visit. The Hearing Officer finds that according to Cabinet policy and

the available records, the Appellant failed to make the required face to face visits with the Client.

12. **Client 9** involves falsification of records. Appellant failed to make monthly home visits to the parents of the child. Visits with the parents should have occurred during the months of June through October 2009. TWIST records show the Appellant as having made home visits during this time. Actually, on August 28 and September 10, 2009, the Appellant met with the child's father in her office; on October 16, 2009, Appellant had a conference call with the parents and child, all of which were incorrectly entered into TWIST. In addition, since the Appellant was informed the child should not be reunited with his family, she could have asked for an exemption letter freeing her from having to make visits; however, she did not do so.

13. **Client 10** involved failure to make face to face contact with the Client in his residence at a college dormitory. Appellant was required to make monthly face to face home visits with the Client. On July 27, 2010, the Client verified that he had had no face to face visits with the Appellant since August 2009. He did acknowledge having spoken once to the Appellant while visiting his former high school coach's home. This visit did not qualify as a face to face visit. Appellant did have monthly contacts by phone with the Client. These contacts also do not qualify as face to face visits.

14. **Client 11** involves Appellant's failure to make required contacts. The Client was admitted to a facility in July 2009. TWIST records show Appellant visiting him on August 21, 2009 and June 22, 2010. The facility confirmed the Appellant had made only once visit to the facility (on June 22, 2010). Although the Appellant claims she saw the Client in November 2009, this was not entered into TWIST. She also testified she missed the February 2010 quarterly visit.

15. **Client 12** involves charges of failure to make quarterly visits to the child at his placement. The Client was placed in a foster home in May 2009. TWIST records reflect the Appellant only visited this Client on July 28, 2009 and April 5, 2010. Appellant said she saw the Client in court on December 2, 2009. According to Cabinet policy, this does not constitute a face to face visit. The Hearing Officer finds that according to Cabinet policy and the available records, the Appellant failed to make the required face to face visits with the Client.

16. **Client 13** involves alleged failures to make face to face contact with twin daughters of the Client at their independent living residence. According to TWIST records, Appellant visited one of the daughters in December 2009 after a September 2009 placement. Only one of the daughters was seen, with the other being contacted by phone. The only other TWIST record showing a visit was for April 6, 2010. The Cabinet charges that there were no quarterly visits made between September and April 6, 2010. The Hearing Officer finds that in all likelihood only one quarterly visit was not made between the dates mentioned above.

17. **Client 14** involves failure to make required face to face contact. In this case, a Client's son was placed in a private facility on January 20, 2010. The Appellant was required to conduct quarterly visits. TWIST records show only a visit on April 27, 2010, but no subsequent visits. The Appellant testified she visited the child on August 10, 2010, at the facility—a month after the required July visit. The Hearing Officer finds this one month delay was “harmless error” in this case, although still a technical violation of Cabinet policy.

18. **Client 15** involves failure to make required visits. Here, the Appellant was required to make monthly home visits with the mother of a child who was placed in out of home care. Appellant admitted she did not make home visits to the mother in either June or July 2010.

19. **Client 16** involves charges of failure to make quarterly face to face visits in the Client's home setting. Documentation supports that the Appellant made visits to the child on February 3 and April 29, 2010, respectively, although these occurred in the Bellwood Home Offices and not at the Client's apartment. The Hearing Officer finds the visits not made in the apartment important since in earlier April 2010, the Bellwood officials had made a home visit and found an underage boy in the child's apartment. This was concerning because of the child's previous history of sexual offending. The Hearing Officer finds there was a failure to make the required quarterly visits at the Client's apartment.

20. **Client 17** involves failure to make monthly home visits to the mother and quarterly home visits with the Client's child. The child was in a foster home, and TWIST records show the Appellant conducted only one home visit, i.e. June 8, 2009. There is no documentation of visits in September or December 2009. On April 28, 2010, Appellant documented she had made a face to face visit with the child; however, the Director of Foster Care at the facility confirmed the actual visit was made with the facility's case manager at the child's high school. The Hearing Officer finds this did not qualify as a face to face visit, and the Appellant failed to conduct the required monthly face to face home visits with the family in June and July 2009.

21. **Client 18** involved failure to make required home visits with the Client. Appellant saw the Client several times in March, and had a case planning conference set for May 20, 2010; however, the child and mother failed to appear. Also, they failed to appear for a rescheduled May 27 conference because the child had moved to Pikeville. Appellant admitted she did not see the child in June 2010 because of the move to Pikeville. The Hearing Officer finds that the missed meeting of June 2010 was beyond Appellant's control.

22. The Hearing Officer finds the Appellee has proved by a preponderance of the evidence that the Appellant falsified records in Client cases 1, 3, 4, 5, 6, 7, and 9. These falsifications were violations of SOP 7E.3.3 and 7E.3.4, and constituted a lack of good behavior under 101 KAR 1:345.

23. The Hearing Officer finds the Appellee proved by a preponderance of the evidence that the Appellant failed to make the required visits in Client cases 2, 5, 10, 11, 12, 13, 15, 16, and 17. Such failures were violations of SOP 1A.1 (Ethical Practices), SOP 7E3.3 and 7E.3.4, and as such, constitute poor work performance under 101 KAR 1:345.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Appellee carried its burden of proof by a preponderance of the evidence to show the Appellant falsified records and failed to make required visits, as cited in Findings of Fact 22 and 23. These actions constituted a lack of good behavior and poor work performance under 101 KAR 1:345.

RECOMMENDED ORDER

Because of the seriousness and voluminous nature of the falsification of records and the number of required visits not made, the Hearing Officer recommends to the Personnel Board that the appeal of **Marie Knear v. Cabinet for Human Resources** (Appeal No. 2011-082) be **DISMISSED**.

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 _____ day of November, 2012.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Hon. Kenneth McCardwell