

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law, and Recommended Order and Final Order in the case of **CHARLETTA MEDLEY V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2020-234)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 19th day of April, 2023.



**MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-234

CHARLETTA MEDLEY

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

*** **

This matter came on for an evidentiary hearing on August 25, 2021, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, 40601, before the Hon. Patrick Moores, Hearing Officer. The proceedings were recorded by audio/video teleconferencing equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Charletta Medley, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Jamhal Woolridge. Also present, as Agency representative for the Appellee, was Rondesia Whitlow.

Since the evidentiary hearing was held, Hearing Officer Patrick Moores has died. This matter is now reassigned to Hearing Officer Mark A. Sipek to issue Findings of Fact, Conclusions of Law, and Recommended Order.

BACKGROUND

1. The Appellant filed her appeal with the Personnel Board on December 2, 2020, appealing from her dismissal and alleging sex and race discrimination. In support of her appeal, the Appellant stated the following:

I followed all directives given to me from Supervisors and lead administrators during this time. I was given information previously of how diffuse (sic) situations without using physical force. I have followed all DJJ Guidelines, rules & expectations. I feel that my dismissal was in part because I am an African American female and there were not many male staff available at that time.

2. Following the initial pre-hearing conference, this matter was scheduled for an evidentiary hearing. The issues for the evidentiary hearing were stated as follows:

- a) At issue in the evidentiary hearing shall be whether or not there was just cause for the dismissal of the Appellant and whether that penalty was excessive or erroneous. The burden of proof on this issue shall be upon the Appellee.
- b) Additional issues shall be the Appellant's claims of race and sex discrimination. The burden of proof on these issues shall be upon the Appellant.
- c) All burdens of proof shall be by a preponderance of the evidence.

3. The Appellant was dismissed by letter dated September 10, 2020, and signed by Commissioner LaShana Harris, the designated appointing authority. A copy of this letter was entered into evidence as Appellee's Exhibit No. 11 and is attached to this order and incorporated herein as **Recommended Order Attachment A**.

4. The Appellee called its first witness, **Felicia Weatherspoon-Howe**. She was detailed into the position of Superintendent in October 2020. She explained that the function of the McCracken Regional Juvenile Detention Center (Detention Center) is to house juveniles who are accused of crimes and are presently going through the juvenile criminal court system. At the time of the riot, she was a Shift Supervisor. A Shift Supervisor oversees the Youth Workers during the shifts that they work together. She further explained that a Youth Worker's most important job is to oversee the movements of the juveniles that they supervise and to make sure that the juveniles follow the safety rules and regulations of the Detention Center. Weatherspoon-Howe explained that the most important task of a Youth Worker is listed as Task 1 on the Position Description Worksheet.

Task 1: Maintains custody and control of juveniles in custodial security setting. Supervises and monitors activities of DJJ juveniles; assists juveniles in interpersonal skill development; Acts as training mentor for beginning level youth workers. Escorts juveniles between various institutional areas. Takes appropriate action during emergencies to prevent escapes and suppress disorder.

(Appellee's Exhibit 1.)

5. In terms of accomplishing Task 1, Weatherspoon-Howe explained that the Youth Workers receive on-the-job training, and, when they are first employed, they also receive training from the Department of Juvenile Justice's Training Academy. Some of the Detention Center rules that Youth Workers enforce include ensuring juveniles are: (1) limiting conversations, (2) keeping their hands behind their back at all times, and (3) keeping their eyes and heads forward. It was noted during Weatherspoon-Howe's testimony that it is important to enforce these rules because situations can spiral out of control very quickly when there is no enforcement of the rules. Youth

Workers are trained to physically restrain out-of-control juveniles when there is a safety issue and the juvenile becomes a danger to himself or others, or if they are being non-compliant with staff instructions and they are trained to use the martial art technique called Aikido to physically restrain those out-of-control juveniles.

6. Youth Workers are made aware of Department of Juvenile Justice (DJJ) Policy and Procedures throughout their employment at the Detention Center and they sign policy acknowledgment forms attesting to this. The Appellant signed Department of Juvenile Justice Annual Policy Acknowledgement forms in 2018 and 2019. (Appellee's Exhibits 2 and 3.)

7. Weatherspoon-Howe testified that, on the day of the riot, June 13, 2020, there were approximately twenty-four (24) juveniles housed at the Detention Center. When she arrived for the start of her shift, she was advised that Youth Worker Supervisor James Maines, who was covering his respective shift, requested her assistance due to some issues occurring on the Unit. When she arrived, she was not able to see inside the Unit because the windows were covered with paper. She further testified that she attempted to get more information about what was going on with the Unit from Maines. This led her to view the surveillance video from the Control Room. She described what she saw as "pure chaos" occurring on the Unit. Most of the juveniles were destroying property and being non-compliant. She saw juveniles pouring liquids on the floor, and she described what she saw as being "a very unsafe environment." She could see there was one juvenile resident (herein referred to as Youth 2) who was not participating in the riot. The door was wide open, but Youth 2 did not come out of his room.

8. Weatherspoon-Howe testified that the Appellant was the only Detention Center staff member who was trying to address the juveniles and was trying to control the situation. She described the Appellant hand motioning Youth 2 to stay in his room. She stated that the Appellant removed items from the Unit and took them to the shower. A video of the incident was admitted into evidence during Weatherspoon-Howe's testimony as **Appellee's Exhibit 4**.

9. In her role as Shift Supervisor, Weatherspoon-Howe had an opportunity to supervise the Appellant. She testified that she has had previous concerns with the Appellant's supervision issues. Admitted into evidence without objection were a Verbal Warning/holding residents accountable (**Appellee's Exhibit 5**) and a Performance Improvement Plan (PIP) detailing the specific areas Appellant needed to improve (**Appellee's Exhibit 6**). Those documents establish that the Appellant was instructed to improve her performance through holding juvenile residents accountable and to write a "Loss of Privilege" whenever a juvenile broke a facility rule. Weatherspoon-Howe also testified to an event that occurred on February 11, 2019, when the Appellant left the facility without permission (**Appellee's Exhibit 7**). The Appellant did not conduct cross-examination of this witness after the conclusion of the direct examination.

10. The Appellee's next witness was **Daniel Sparks**. Sparks worked as an Investigator with the Justice and Public Safety Cabinet, Internal Investigation Branch. Sparks testified that his office received a hotline call from the DJJ Commissioner's office regarding the riot, and he was assigned to investigate if there had been inappropriate supervision on the part of the Appellant

during the riot. Spark's Internal Investigation Branch Case Report, with attachments, was admitted into evidence without objection as **Appellee's Exhibit 8**. When Sparks interviewed the Appellant, she acknowledged that she saw and knew the juvenile (herein referred to as Youth 1) who stole the keys to the Unit from another Youth Worker. Sparks also testified that the Appellant was the last to leave the Unit and she did not escort Youth 2, who was not participating in the riot, out of the Unit as she was leaving. Youth 1 had taken the keys and was able to unlock the cell of the Youth 2, who was not participating.

11. In her statement provided to Sparks, the Appellant said that she responded to a staff assistance call in Unit 200 on June 13, 2020. She stated the juveniles were out of control when she arrived. Youth 1 ripped the keys from Youth Worker Franklin. Youth 2 would not come out of his room, and he even pulled his own door closed. The Appellant stated that Youth 1 released two (2) other juveniles. The Appellant stated the Unit was too chaotic to attempt to restrain Youth 1. In her statement, the Appellant noted that Staff Supervisor Maines left the Unit and did not provide direction. She also observed that Leslie Holloway, who generally serves as a Shift Supervisor but was functioning as a Youth Worker that day, also did not provide any directions for the staff. She testified that staff removed the papers from windows, which were put into place to prevent juveniles from observing other Units due to gang activity. She also stated that Assistant Superintendent Dan Robinson had entered the Unit alone, and staff assisted with removing Youth 2 from the Unit.

12. After reviewing all of the material gathered during his investigation, including the statement of the Appellant, Sparks substantiated the allegation of inappropriate supervision on the part of the Appellant. In terms of the reasons for this decision, he explained that she and the others abandoned the Unit on June 13, 2020, and the juveniles were left with no adult supervision. He testified that, once the keys were stolen, there was a failure to act in terms of retrieving the keys. He stated that, once the keys were in Youth 1's possession, the juveniles had access to other parts of the facility. He noted that there was a potential for harm especially with respect to Youth 2, who was not participating in the riot. Youth 2 was a major concern to Sparks in terms of deciding whether or not to substantiate the allegation. The Appellant did not assist Robinson in going into the Unit to retrieve Youth 2.

13. Next to testify for the Appellee was **William Campbell**. Campbell serves as the Director for Professional Development for DJJ. He has been with DJJ for eighteen (18) years and started his DJJ career as a Youth Worker. The Division of Professional Development provides training to all DJJ employees including Youth Workers. Youth Workers, once hired, go through a pre-service, basic DJJ Training Academy. They also participate in on-the-job training for two (2) weeks prior to the entry into the academy. In terms of the use of physical restraint, Youth Workers are taught to use physical force when a juvenile is: 1) a threat to themselves, 2) a threat to others, or 3) if there is property damage.

14. Campbell reviewed the facility video of the June 13, 2020 incident during the hearing for the first time. He stated that it is appropriate for staff to exhaust all means of verbal

de-escalation. He testified that, because of the circumstances with the table turned upside down and a juvenile standing with a chair over his head, staff should have gained control of the situation quickly. Campbell testified he could not speak regarding the Appellant's actions. Campbell stated that the Appellant knew the situation better than he did and knew the facility and juveniles better than he did. He commented that she was attempting to de-escalate the situation. When asked specifically, "When is the time for verbal de-escalation over and physical restraint should be used?," Campbell testified that this was a "judgment call." Campbell testified that juveniles should never be left unsupervised, however, he stated that staff safety is also a concern. Commenting on the juveniles' behavior, Campbell stated that they will eventually get tired. Once the juveniles settle down, staff can then talk to them and coax them back into their rooms. He also emphasized that it is important that staff act as a unified force if they are going to use physical skills. In the situation he was watching on the video, Campbell stated he did not know why staff left the Unit.

15. Campbell further testified that Youth Workers are trained to not ever leave the Unit that they are supervising. They can only leave the Unit when someone is properly replacing them. He stated that, once a juvenile wrongfully obtains a worker's keys, every effort should be made to retrieve those keys. In terms of effort, he opined that physical restraints would be appropriate to use in terms of retrieving the keys. Campbell testified that, during a riot situation, a non-participating juvenile should be taken somewhere out of harm's way.

16. On cross-examination, Campbell acknowledged that Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Policy Number: DJJ 104 states that staff should obey lawful orders from supervisors. When asked, "What should staff do if there is not a supervisor on the scene?," Campbell stated, "Someone who has the next most tenure should take control of the situation."

17. The Appellee's next witness was **Rondesia Whitlow**. Whitlow was employed with DJJ as a Facilities Regional Administrator, overseeing all the operations of eight (8) Detention Centers in the Commonwealth, including the McCracken Regional Juvenile Detention Center. She testified that, after a substantiated investigation, a Request for Major Disciplinary Action is made for an employee. The Request for Major Disciplinary Action includes policies that were violated as well as any relevant witness statements. Whitlow then signs off on any Requests for Major Disciplinary Action from her facilities and forwards them to the DJJ Central Office.

18. The Request for Major Disciplinary Action lodged against the Appellant, dated August 12, 2020, was admitted into evidence as **Appellee's Exhibit 9**. Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Policy Number: DJJ 102 was included in the Request for Major Disciplinary Action due to the lack of safety and security of the juveniles.

Section I, Policy, states:

The Department of Juvenile Justice (DJJ) shall expect from staff honesty, integrity, respect for the dignity and individuality of human

beings, and a commitment to professional and compassionate service. The Department shall require a drug-free workplace.

Section IV(B)Procedures, states:

Staff shall serve each youth with appropriate concern for their welfare and with no purpose of personal gain.

Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Policy Number: DJJ 104 was also included in the Request for Major Disciplinary Action because of the Appellant's failure to intervene to retrieve the keys that were stolen.

Section I, Policy, states:

Staff, volunteers, interns, and contract personnel shall conduct themselves in a professional manner. All persons shall be aware that their personal conduct reflects upon the integrity of the agency and its ability to provide services to youth.

Section IV(B), Procedures, states:

Staff shall perform their work assignments competently and in a professional manner. It is the responsibility of each staff to know and act in accordance with department policy and procedures.

Whitlow testified that Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Policy Number: DJJ 110 was included in the Request for Major Disciplinary Action because the riot provided an unsafe environment.

Section I, Policy, states:

Staff supervision and security measures shall be provided to ensure a secure and safe environment.

19. Whitlow was contacted by the McCracken Regional Juvenile Detention Center on the day of the riot, June 13, 2020. She testified she had access to a live feed from her home and that she was able to watch the juveniles destroy the Unit. She was upset because the keys needed to be retrieved, and she was not impressed by the staff's efforts to regain control of the situation. She instructed the workers to regain control, but the workers did not follow her instruction. In terms of the Appellant's claim that she was told by her supervisors not to touch the juveniles, Whitlow testified that she expects her workers to go with what they learn and what they are taught at the academy, which is to intervene and not to just sit back and do nothing.

20. Whitlow testified that, even though she does not personally know the Appellant, she would not feel comfortable with the Appellant being awarded her job back based on what she saw on the video as well as the Appellant's history of not holding juveniles accountable. She further opined that, if the Appellant was brought back to the facility, the problem of her not holding juveniles accountable could be the "norm." In terms of addressing the Appellant's claims of discrimination, Whitlow testified that the Appellant was not the only worker who was disciplined in connection to this incident, and that the Commissioner at the time, who made the decision to dismiss the Appellant, was African-American.

21. The Intent to Dismiss letter issued to the Appellant (**Appellee's Exhibit 10**) and the Dismissal letter (**Appellee's Exhibit 11**) were admitted into evidence during Whitlow's testimony. At the conclusion of Whitlow's testimony, the Appellee rested its case.

22. The Appellant, **Charletta Medley**, testified on her own behalf. She began by testifying that she had been with DJJ for three (3) years and was employed as a Youth Worker II.

23. The Appellant testified that an incident happened a couple of months before the June 13, 2020 riot when Youth 1, who was described throughout the hearing as the ringleader of the riot, sent four (4) male staff members to the hospital. She testified that, following that incident, her Shift Supervisor and the Youth Services Program Supervisor (YSPS) Richard Ehling directed the staff that they were not to touch the juveniles and to only de-escalate. She stated they were told that, if there was a problem with the juveniles, they could talk for an hour or two (2) hours, but they were not to put their hands on the juveniles.

24. The Appellant further testified, as follows:

Furthermore, when all the residents, when the residents got ahold of those keys and went over to the 100 Unit, I held the door shut while they was in the 100 Unit, and let all the staff members out because they were leaving me, because that's what Ms. Weatherspoon was telling you, I was the last one out. I did everything I could in there, I talked to them, and because with that particular resident I have a rapport with him, and this is a resident who has severe emotional trauma, his parents were killed, his brother and sister were killed; it was, he is, you know, I would have had to get him by himself or something, but it was too many people in there that he was already mad at before I even got in there. Then, maybe 2 or 3 hours even before this incident, I told Mr. Maines, you need to secure these residents because they were getting out of hand. You know, it's, it's one of them that Mr. Robinson, that he came and got. The day before or whatever it was because he was disrupting the Unit. (sic)

25. The Appellant continued her testimony as follows:

Whenever they left out the Unit, it's a common area where we took the papers down, and we were out there watching them, we weren't physically in the Unit, but you could actually see what they were doing. The supervisor on shift, I don't know where he went. I don't know where he went, however, if you look on Exhibit 8, Ms. Holloway, she's a supervisor as well, and she was in the Unit 2, and even if you bring back that video, you can hear them telling me, calling me to "come on, get out of there, get out the Unit." So, I left the Unit, but I was right outside at the, in the common area in the window area so where you can still see them, you know, so it wasn't like, you know, they were just in there doing whatever and we didn't know. We're looking right at them, you know. But it was a situation that happened, and it shouldn't have happened, um, I don't know what else to say because I mean, the year before, I was Youth Worker of the Year, and then the next year I'm fired? The whole shift is fired? But...we're doing what our supervisors are telling us what to do. That's in 104, you know, so if you're going, you know, dismiss me and make me lose my job for doing something that I've been doing for years for, because I'm doing what the supervisor told me to do, that's not fair at all, you know. And regardless of what, whoever you are, or whatever you say, that resident, when you're a Youth Worker, you know the climate of your Unit and that, that resident, he took down the previous Superintendent, the Assistant Superintendent, the Counselor, and the YSPS, and they all went to a hospital and for the expectation for me to go take down that boy... that's crazy, you know because we've been taught to de-escalate and talk, and talk, and talk, and that's what we did. He refused to give those keys up.

26. In summary, the Appellant testified that, because of the directive she had previously received from YSPS Ehling not to touch the residents, she only tried to de-escalate the situation.

27. With respect to the Appellant's leaving the Unit, she stated that Holloway, who is a Staff Supervisor and had seventeen (17) or eighteen (18) years' tenure at the time of the incident, told her to get out of there. The Appellant was the last staff member to leave the Unit. The Appellant testified that, although she left the Unit, she continued to watch Youth 2, who was not participating in the riot. She testified that, at that time, it was the safest place for Youth 2. She stated that Youth 2 secured his door many times. The Appellant testified that they took the papers down that were covering windows.

28. The Appellant tried to get the keys from Youth 1, who took them from Youth Worker Franklin, but was unsuccessful. Here, the Hearing Officer would note that the June 13, 2020 riot ultimately ended when the Kentucky State Police and Paducah Police Department were called in to gain control of the situation.

29. The Appellant did not receive direction from Whitlow or any other supervisors during these events.

30. The Appellant felt discriminated against based on her gender and her race. The Appellant is African-American. Prior to the keys being taken and the riot that followed, she told her supervisor the juveniles were getting "wound up" and there was going to be a problem. She felt she was not listened to because of her race and gender.

31. The Appellant also felt discriminated against because she remained in a Youth Work II position. She stated she has been passed over when she applied for a Youth Worker III position in favor of less experienced employees, who she had trained.

32. The Appellant stated that the 2019 incident described in Appellee's Exhibit 7, where she was accused of abandoning her post, occurred when she felt disrespected and she quit her job. She stated she was asked to return and did so.

FINDINGS OF FACT

1. On June 13, 2020, an incident occurred at the McCracken Regional Juvenile Detention Center where five (5) juveniles were out-of-control and engaged in a riot. As a result, the Kentucky State Police and Paducah Police Department were called in to gain control of the situation. The Internal Investigations Branch of the Justice and Public Safety Cabinet conducted an investigation and substantiated an allegation against the Appellant for failure to provide appropriate supervision. The Appellee responded to the June 13, 2020 riot, in part, by firing the entire shift who were on duty at the McCracken Regional Juvenile Detention Center that day, including the Appellant. (Testimony of Witherspoon-Howe, Sparks, the Appellant, and Appellee's Exhibits 8 and 11).

2. Prior to the Appellant's termination, she was employed as a Youth Worker II at the McCracken Regional Juvenile Detention Center. She had been employed by the facility for approximately three (3) years. (Testimony of the Appellant and Appellee's Exhibit 8).

3. A couple of months prior to this June 13, 2020 incident, the juvenile described as the "ringleader" (Youth 1), was involved in another incident whereby his violent behavior caused four (4) male Detention Center staff members to be sent to the hospital. As a result, YSPS Ehling told Detention Center staff that they were not to touch the juveniles and were only to utilize de-escalation techniques. The Appellant also received similar instruction from her Shift Supervisor. (Testimony of the Appellant.)

4. On June 13, 2020, the McCracken Regional Juvenile Detention Center had twenty-four (24) residents. On the Appellant's shift, at least five (5) Youth Workers and two (2) Youth Worker Supervisors were working. (Testimony of Witherspoon-Howe and Appellee's Exhibit 8).

5. On June 13, 2020, the Appellant was assigned to a Unit other than Unit 200, the Unit which endured the riot. When she received a call for assistance in Unit 200, the Appellant was on break. By the time the Appellant arrived to Unit 200, three (3) juveniles were outside of their rooms and were not complying with staff instructions. Three (3) other juveniles were locked in their rooms. Five (5) Youth Workers and the two (2) Youth Worker Supervisors responded to the scene in Unit 200. (Testimony of the Appellant and Appellee's Exhibits 4, 8, and 9.)

6. Upon assessing the situation in Unit 200, the Appellant began to assist by talking to the ringleader of the riot (Youth 1) to attempt to defuse the situation. The residents were threatening and cursing staff, throwing cards, and pushing tables and chairs. The Appellant moved chairs and the TV console into the shower area. Shift Supervisor Maines left the Unit. Youth 1 took the keys from Youth Worker Franklin. The Appellant and others tried to get Youth 1 to return the keys by talking to him. Youth 1 did not return the keys and unlocked the doors of the other three (3) residents. Two (2) of those three (3) residents left their rooms and participated in the chaos. Youth 2 refused to leave his room. Youth 1 opened the door to Unit 100 that adjoins Unit 200 and was unoccupied at time of the riot. The five (5) juveniles who were outside of their rooms went into Unit 100. The Appellant held the door closed between the two (2) Units. The rest of the staff left the Unit. The Appellant was the last staff member left. The others, including Youth Worker Supervisor Holloway, were encouraging the Appellant to leave the Unit. The Appellant then left the Unit. Youth 2, who was not participating in the riot, remained inside his room. (Testimony of Whitlow, Weatherspoon-Howe, Campbell, and Appellee's Exhibits 4, 8, and 9.)

7. From 6:06:30 p.m. until 7:25:36 p.m., none of the Youth Workers or Youth Worker Supervisors returned to either Unit 100 or Unit 200. The Youth Workers took down the paper blocking the window. The Appellant monitored Unit 200 to make sure Youth 2 was safe. No supervisor ever ordered that the Youth Workers re-enter the Units. Meanwhile, the five (5) juveniles participating in the riot "threw mattresses, toilet paper, and miscellaneous supplies on the floor." They also dumped cleaning products on the floor that made it slippery. Shift Supervisor Maines did not return to the Unit until the Kentucky State Police and the Paducah Police Department had arrived. Youth Worker Supervisor Holloway did not return to the Unit until all Youth Workers and supervisors had left the Units. No supervisors present ordered the Youth Workers to return to the Units and restore order, with physical force, if necessary. (Testimony of the Appellant and Appellee's Exhibits 4, 8, 9, and 11.)

8. Felicia Weatherspoon-Howe was the Shift Supervisor for the evening shift at the McCracken Regional Juvenile Detention Center. She arrived early to the facility and was told to meet with Shift Supervisor Maines. When she viewed the Units on the monitor she saw chaos in the Unit. She did not enter the Unit or order any Youth Workers to enter the Unit to restore order. (Testimony of Witherspoon-Howe and Appellee's Exhibit 8).

9. Shift Supervisor Maines went to the office to call additional staff to respond to the incident. Assistant Superintendent Dan Robinson arrived at the facility while the disturbance was going on at 6:48:30 p.m. Robinson entered the Units alone in an effort to de-escalate the situation. He did not order or request any staff to enter with him. He attempted to obtain the keys, but the

juvenile residents played “keep away” with the keys. He attempted to escort Youth 2 out of Unit 200, however, Youth 2 ran to Unit 100. Youth 2 bumped into Youth 1 and ran to the door in Unit 100. Staff, including the Appellant, were able to convince the control operator to open the door so Youth 2 could leave Unit 100. (Testimony of the Appellant and Appellee’s Exhibits 4, 8, and 9.)

10. At 7:25:36 p.m., officers of the Kentucky State Police and the Paducah Police Department entered Unit 200 from Unit 100 and the five (5) juveniles returned to their rooms. The disturbance ended with significant property damage and no reported injuries. (Appellee’s Exhibits 4 and 8.)

11. During the disturbance, Facilities Regional Administrator Rondesia Whitlow was remotely watching the live feed video of the disturbance from her home and advising “staff” to intervene and restore order. She spoke with Shift Supervisor Maines and Assistant Superintendent Robinson. Her instructions were not relayed to the Appellant. (Testimony of Whitlow, the Appellant, and Appellee’s Exhibit 8.)

12. The Appellant was dismissed for inappropriate supervision during the incident on July 13, 2020. The Appellant was charged with six (6) actions or inactions that amounted to inappropriate supervision. These charges are listed here as a through f and the Hearing Officer’s findings follow:

- a) Abandoning a compliant resident behind inside unit 200 who did not participate in the hostilities.

The Hearing Officer finds the Appellee carried its burden of proof on this allegation. The Hearing Officer finds that the Appellant had an opportunity to remove Youth 2 from the chaos when the staff left Unit 200 and the other five (5) juveniles were in Unit 100. (Testimony of Witherspoon-Howe, Sparks, the Appellant, and Appellee’s Exhibits 4 and 8).

- b) After abandoning the unit, not reentering to escort the compliant resident out of the unit.

The Hearing Officer finds that, although the Appellee proved the Appellant failed to re-enter the Unit to retrieve Youth 2, this failure was primarily a failure of the supervisors. Four (4) supervisors were present and none of them directed the Appellant or any other Youth Worker to re-enter the Unit to retrieve Youth 2. Campbell testified that any effort to restore order should have been done as a team. If Shift Supervisor Maines was not on the scene, then Youth Worker Supervisor Holloway was in charge. Holloway never directed the Appellant to do anything other than to leave Unit 200. The Appellant had no supervisory authority over other Youth Workers or Youth Worker Supervisors present. (Testimony of the Appellant, Campbell, and Appellee’s Exhibits 4, 8, 9, and 16.)

- c) Failure to retrieve the keys that were taken by a resident which resulted in additional residents being released from their cells.

The Hearing Officer finds that the Appellee failed to prove this allegation. It is true that the Appellant did not retrieve the keys from Youth 1, however, she attempted to regain the keys by talking to him. More importantly, by action and inaction, supervisors broadly decided physical force would not be used with juvenile residents. The Appellant verbally received this instruction before the June 13, 2020 riot from YSPS Ehling and nonverbally during the June 13, 2020 riot through the inaction of Maines. Further, William Campbell, the Director of Professional Development for DJJ, testified it is a "judgment call" when to convert from de-escalation techniques to the use of physical force. He also testified that the Appellant knew the situation and the residents better than he did, and he would not second-guess her actions. Campbell stated that the Appellant was listening to her supervisor, which was appropriate. (Testimony of the Appellant, Campbell, and Appellee's Exhibits 4, 8, 9, and 16.)

- d) Allowing youth to remain out-of-control and trash the unit.

The Hearing Officer finds that the Appellee failed to prove this allegation. Although the Appellant did not prevent the juveniles from trashing the Unit, the Hearing Officer finds that she was following instructions - or the lack of instruction - from her supervisors. The same analysis applies as Finding of Fact 12(c). (Testimony of the Appellant, Campbell, and Appellee's Exhibits 4, 8, 9, and 11.)

- e) Placing items on the outside windows of the units which obstructed the view and prevented observations of the residents inside the unit.

The Hearing Officer finds that the Appellee failed to prove this allegation. No evidence was presented that the Appellant placed items on the windows. The Appellant and other Youth Workers removed papers from the windows. (Testimony of the Appellant.)

- f) Failure to stop youth from fighting and wrestling with each other.

The Hearing Officer finds that the Appellee failed to prove this allegation. Although the Appellant did not prevent the juveniles from wrestling with each other, she was following instructions - or lack of instructions - from her supervisors. Again, the same analysis applies as contained in Finding of Fact 12(c). (Testimony of the Appellant, Campbell, and Appellee's Exhibits 4, 8, 9 and 11.)

13. The Appellant is further accused of violating three (3) Justice Cabinet, Department of Juvenile Justice, Policies and Procedures. These charges are listed here as a through c and the Hearing Officer's findings follow:

- a) Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Code of Ethics, Policy Number: DJJ 102, IV(B):

Staff shall serve each youth with appropriate concern for their welfare and with no purpose of personal gain.

The Hearing Officer finds that the Appellee failed to prove the Appellant acted with any purpose of personal gain. The Appellee did prove, however, that the Appellant could have been more concerned for the welfare of Youth 2 by removing him from Unit 200.

- b) Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Code of Conduct, Policy Number: DJJ 104, I, and IV(B) and (U):
 - I. Staff, volunteers, interns, and contract personnel shall conduct themselves in a professional manner. All persons shall be aware that their personal conduct reflects upon the integrity of the agency and its ability to provide services to youth.
 - IV. B. Staff shall perform their work assignments competently and in a professional manner. It is the responsibility of each staff to know and act in accordance with department policy and procedures.
 - U. Staff shall protect the individual safety of youth and themselves through the use of approved controlling techniques utilizing no more than the absolute amount of force necessary to diffuse a confrontational situation. Staff shall only use controlling techniques in which they have been certified by the Division of Professional Development.

The Hearing Officer finds that the Appellee failed to prove the Appellant violated Justice Cabinet, Department of Juvenile Justice Policy and Procedures, Code of Conduct, Policy Number: DJJ 104. The Appellant acted in a professional manner by trying to de-escalate the situation with the rioting juveniles, including through attempting to retrieve the keys by talking to Youth 1. It is worth noting that the Appellee failed to cite IV(c) of this policy, which reads as follows:

- IV. C. Staff are required to obey the lawful order or directive of a supervisor. If the order or directive conflicts with an order or directive previously issued by another supervisor, the staff shall make the supervisor aware of the conflict. If the supervisor

does not alter the order or directive, the most recent order shall stand and the responsibility shall be assigned to the supervisor issuing the most recent order.

Here, importantly, the Appellant did not receive conflicting orders. She was specifically told not to use physical force before this incident, an order that remained in effect on June 13, 2020. She was not provided with any specific order or directive during the June 13, 2020 riot other than to leave the Unit. The Appellant's actions must be considered in light of the supervision - or lack thereof - she received before and during this incident. In addition, it is impossible for the Appellant to know how to have responded to this situation when two (2) members of DJJ leadership - Campbell and Whitlow - disagreed about her performance.

- c) Justice Cabinet, Department of Juvenile Justice Policy and Procedures, General Security Guidelines In Facilities and Programs, Policy Number: DJJ 110

Staff supervision and security measures shall be provided to ensure a secure and safe environment.

The Hearing Officer finds that the Appellee failed to prove the Appellant violated Justice Cabinet, Department of Juvenile Justice Policy and Procedures, General Security Guidelines in Facilities and Programs, Policy Number: DJJ 110. The Appellant's supervisors offered no instructions and no plan to provide a safe and secure environment. The evidence establishes the Appellant did more than all other Youth Workers present to restore order. Given the chaos and the prior history of violent behavior, it does not appear wise for one (1) Youth Worker, without support, to have attempted to use physical force to stop the events of June 13, 2020, on her own.

14. Accordingly, the Hearing Officer finds that the penalty of dismissal imposed by the Appellee against the Appellant was not supported by just cause and, therefore, is excessive and erroneous considering all the surrounding circumstances. The Appellee established the Appellant should have taken more affirmative steps to protect Youth 2. As a result, the Hearing Officer finds that the Appellant's unsatisfactory performance of duties is worthy of disciplinary action. The Hearing Officer finds the appropriate penalty is a ten (10) – day suspension.

15. The Hearing Officer also finds that the Appellant failed to carry her burden of proof that her dismissal was the result of race or sex discrimination. The Appellee fired the entire shift, which included males and females and different races and ethnicities. No evidence was introduced that the Appellant was fired for any reason other than her failure to prevent or respond to the riot of June 13, 2020.

16. In her testimony, the Appellant also states she was previously passed over for promotion to Youth Worker III as a result of race and sex discrimination. The Appellant never

made these claims on her appeal form or at a pre-hearing conference. The first time she made this statement was during her testimony at the evidentiary hearing. Accordingly, these claims of discrimination were not properly before the Personnel Board and are likely untimely; therefore, the Hearing Officer declines to make any findings on any such claims.

CONCLUSIONS OF LAW

1. The Appellee established the Appellant's unsatisfactory performance of duties on June 13, 2020, when she failed to protect Youth 2, who was not participating in the riot. The Appellant's actions and inactions violated 101 KAR 1:345 and justified disciplinary action.

2. The penalty of dismissal in this case is not supported by just cause and is excessive and erroneous. The appropriate penalty is a ten (10) - day suspension. KRS 18A.095(1) and (22)(b) and (c).

3. The Appellant failed to carry her burden on proof that her dismissal was the result of race or sex discrimination. KRS 13B.090(7) and KRS 18A.095(12).

4. The Appellant did not allege that she was denied a promotion because of race or sex discrimination on her appeal form or at a pre-hearing conference. KRS 18A.095(16). As a result, the issue of being denied a promotion was not included in the statement of issues for the evidentiary hearing. Thus, this issue is not before the Hearing Officer for a Recommended Order. Both parties are entitled to notice of issue for hearing "in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument." KRS 13B.050(3)(d). In addition, consideration of this issue without notice and opportunity to intervene to any individual who was promoted to Youth Worker III over the Appellant, could violate the rights of those possible third parties. KRS 13B.060(1)(b). Accordingly, these claims of discrimination were not properly before the Personnel Board and are likely untimely; therefore, the Hearing Officer declines to make any findings on any such claims.

5. Upon reinstatement, the Hearing Officer recommends the Appellee re-train the Appellant.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHARLETTA MEDLEY V. JUSTICE AND SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2020-234)** be **SUSTAINED TO THE EXTENT** that the dismissal of the Appellant is reduced to a ten (10) - day suspension. The Appellant shall be reinstated to her former position or a position of like pay and status with backpay and benefits, except for the period of suspension subject to the setoffs required by law, and she should otherwise be made whole. KRS. 18A.095(22)(b) and (c); KRS 18A.105 and 200 KAR 12:030.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

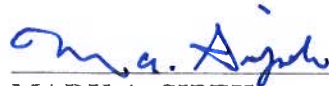
Any document filed with the Personnel Board shall be served on the opposing party.

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

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

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 24 day February, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Charletta Medley
Hon. Jamhal Wooldridge
Hon. Rosemary Holbrook (Personnel Cabinet)

Andy Beshear
Governor



KYDJJ

KENTUCKY DEPARTMENT OF JUVENILE JUSTICE

Justice Mary C. Noble, Ret.
Secretary

LaShana M. Harris, J.D.
Commissioner

October 13, 2020

Charletta Medley

Via Federal Express

Dear Ms. Medley:

After considering the comments made at your pre-termination hearing held on Tuesday, September 29, 2020, it has been determined that there is no sufficient reason to alter the notice of intent to dismiss, dated September 10, 2020.

Therefore, based on the authority of KRS 18A.095 (7), and 101 KAR 1:345, Section 2, you are hereby notified that you are officially dismissed from your position of Youth Worker II, with the Department of Juvenile Justice, at McCracken Regional Juvenile Detention Center, effective close of business on Tuesday, October 13, 2020.

In accordance with 101 KAR 1:345, Section 1, you are being dismissed from your position for the following specific reasons:

Misconduct and Poor Work Performance, i.e., as reported by McCracken Regional Juvenile Detention Center, Acting Juvenile Facility Superintendent II (JFS II), Richard Ehling, you demonstrated misconduct and poor work performance by not providing appropriate supervision.

June 13, 2020, an incident occurred at McCracken Regional Juvenile Detention Center that resulted in the Kentucky State Police and the Paducah Police Department being called to assist in gaining control of the situation. The Justice and Public Safety Cabinet, Internal Investigations branch (IIB) conducted an investigation into the allegation of failure to provide appropriate supervision. The allegation was substantiated. The findings are contained in the investigative report, DJJ-2864-20.

According to interviews and video surveillance, you failed to provide appropriate supervision. During a discussion with Youth* about loss of privileges, Youth* was allowed to threaten staff, and Youth* took the keys for the cell door in the unit. Youth* took the keys from a staff member, and Youth* unlocked other cells in the unit to release other youth, but Youth* still was not restrained. Multiple youth became out-of-control and recklessly threw papers and cards as you watched without taking action. Eventually, you

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EXHIBIT

11

Recommended Order Attachment A

Charletta Medley
Dismissal
October 13, 2020
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simply left the unit. The out-of-control youth trashed the unit. You did not take action as the out-of-control youth threw mattresses, toilet paper, and miscellaneous supplies on the floor. Likewise, no action was taken by staff as the youth dumped cleaning products on the floor to make it slippery. You did not intervene when out-of-control youth fought and wrestled with each other. In the video, the youth that you left behind on the unit that was not participating in the riot can be heard screaming for help, but you did not assist or help that youth. You allowed for him to remain locked in the unit with the out-of-control juveniles that were fighting and trashing the unit. Inappropriate supervision is corroborated by the following actions that occurred during the incident on June 13, 2020.

- Abandoning a compliant resident behind inside Unit 200 who did not participate in the hostilities;
- After abandoning the unit, not reentering to escort the compliant resident out of the unit;
- Failure to retrieve the keys that were taken by a resident which resulted in additional residents being released from their cells;
- Allowing youth to remain out-of-control and trash the unit;
- Placing items on the outside windows of the units which obstructed the view and prevented observation of the residents inside the unit;
- Failure to stop youth from fighting and wrestling with each other.

Your misconduct demonstrated by not providing appropriate supervision, constitutes violations of Department of Juvenile Justice (DJJ) policy #102 "Code Of Ethics" IV (B.), Department of Juvenile Justice (DJJ) policy #104 "Code of Conduct" I, IV(B., U.) and Department of Juvenile Justice (DJJ) Policy #110 "General Security Guidelines in Facilities and Programs" I.

A copy of this notice is being furnished to the Personnel Cabinet in accordance with personnel rules. As an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. Appeals must be made by completing the attached form and directing it to the address indicated on the form. (See KRS 18A.095 and 101 KAR 1:265, Appeal and Hearing Procedures).

Sincerely,



LaShana M. Harris, J.D.
Commissioner

LMH/ks

Charletta Medley
Dismissal
October 13, 2020
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Attachments: Personnel Board Appeal Form

C: Hon. Mark A. Sipek, Executive Director, Personnel Board
Michele Barnes
George Scott
Rodney Moore
Dave Kazee
Rondesha Whitlow
Felicia Witherspoon-Howe
Cynthia Watson
DJJ Legal
DJJ Personnel/Payroll
Personnel File