



COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-095

ELIZABETH MILLER

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 evidentiary hearing on April 16, 2021, at approximately 9:30 a.m., EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. By prior agreement of the parties, the proceedings were conducted by video teleconference using Amazon Chime. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, Elizabeth Miller, was present and was not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and was represented by the Hon. William Codell.

This matter involved the ten-day suspension of Appellant, effective June 24, 2020, for poor work performance and misconduct. Appellant timely filed her appeal of the suspension. By Interim Order dated October 16, 2020, the burden of proof was placed on Appellee to demonstrate that the disciplinary action taken against Appellant was neither excessive nor erroneous. An additional issue was Appellant's claim of race, color, and gender discrimination. The burdens of proof on these issues were placed on Appellant.

**BACKGROUND**

1. As Appellee bore the burden of proof on the disciplinary action, it went first in the presentation of evidence. Appellee called **Daniel Sparks** as its first witness. Sparks is a Special Investigative Agent III in the Justice and Public Safety Cabinet's Internal Investigations Branch (IIB). His job duties include the investigation of Department of Juvenile Justice (DJJ) staff alleged to have used excessive force.

2. On October 28, 2019, the IIB office received a call from the Fayette Regional Juvenile Detention Center (Fayette RJDC) Superintendent, Alichia Stanley. She advised that Appellant, a Youth Worker III, had kicked a juvenile during a restraint.

3. Sparks was directed to investigate the incident. He first reviewed all available documentation, including the Incident Report, three (3) pictures of injuries staff members suffered during the episode, and a video of the restraint.

4. Sparks traveled to Fayette RJDC and conducted interviews with the juvenile in question. Sparks then interviewed Appellant, and five staff witnesses. While testimony on this matter was not elicited at the evidentiary hearing, according to his investigative report, Sparks also interviewed a second staff member, Maurice Campbell, who was alleged to have used a "hand strike" on Youth\*<sup>1</sup> while he was attempting to restrain him.

5. In Sparks' summation of his interview with Youth\*, the juvenile stated that he had wrapped a sweater around his neck, which he did not want staff to remove as his wish was to "lay on the floor until he passed out and died." By his own admission, Youth\* had also fashioned a "shank" out of a broken toothbrush and had attempted to stab a Youth Worker with it. (Appellee's Exhibit 1.)

6. Sparks' interviews with staff workers are summarized as follows:

A. Allison Lindsey, a Youth Worker I, had been the staff member initially assigned to monitor Youth\*. She sat outside his room, where Youth\* had been placed after engaging in an altercation with other residents. Lindsey heard a thud and found Youth\* on the floor. She entered his room and attempted to unwrap a sweater he had tied around his neck. He then immediately stood up, leading Lindsey to surmise that Youth\* had "faked" passing out. Multiple youth workers arrived to assist in restraining Youth\*, who was extremely agitated. During the course of the incident, Youth\* kicked staff workers and attempted to bite and stab them.

B. Two of the staff members informed Sparks that they had attempted to employ the "AKIDO Control Techniques (ACT)" restraint techniques authorized by DJJ policy. Jeff Hedges used a "Control 1 T-stance," but Youth\* began kicking him, so he backed away. Kendra Rhinesmith placed Youth\* into an "ACT Control 3" stance to distract him, but he bit her arm during the restraint. Seeing that two other youth workers had better control of Youth\*, she also backed away.

C. Maurice Campbell, the Youth Worker I mentioned above, was identified in Sparks' report as an "Alleged Offender." Campbell related that Youth\* had "gouged" at his eyes and attempted to bite Campbell's ear." Youth\* then bit Campbell on the bicep. Campbell stated that "he had to hit [Youth\*] a couple of times to get him off." Campbell had to

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<sup>1</sup> To protect the identity of the juvenile, the Hearing Officer will simply refer to the juvenile as "Youth\*" along with the unavoidable disclosure of Youth\*'s gender.

seek medical attention after the restraint for the bite on his arm, and a scratched retina. (Appellee's Exhibit 1.)

D. Appellant told Sparks that Youth\* kicked her during the restraint, and, "in reaction," she kicked him back. "When she realized what she had done, [Appellant] stopped." Youth\* kicked her again, and she left the room. Appellant stated she did not intend to harm Youth\*. (Appellee's Exhibit 1.)

E. Of the five staff witnesses present, (Douglas Lawhorn, Allison Lindsey, Amanda Maloney, Jeff Hedges, and Kendra Rhinesmith), only one, Jeff Hedges, saw Appellant kick Youth\* during the incident. (The others stated they saw the kick only after reviewing video footage of the restraint). When asked if Appellant's kick actually made contact with the juvenile, Hedges answered that he was not sure, but "If it did, it would have been light." (Appellee's Exhibit 1.)

7. According to his report, Sparks determined that the allegation against Maurice Campbell, that he had used inappropriate or excessive force against Youth\*, was "Exonerated," meaning that the incident occurred, but Campbell's actions were justified. Sparks came to this conclusion because "Campbell used hand strikes to stop Youth\* from violently biting his arm and attempting to bite his face and ear. Although the hand strikes were not in the curriculum of ACT (AKIDO Control Techniques), his actions are deemed justified in this particular incident due to the violent and combative actions of [Youth\*]." (Appellee's Exhibit 1.)

8. As for the allegation against Appellant, that she had used "inappropriate or excessive force that could result in injury," Sparks testified that he found the allegation to be "Substantiated," meaning that there was a preponderance of evidence to substantiate that excessive force had been used." Sparks stated that kicking a juvenile during a restraint is not a technique taught at the Academy, and that it has the potential for physical harm. Sparks noted that Appellant "did have the opportunity to back away from the youth." He added that the juvenile was being "held down" at the time.

9. On cross-examination, Sparks acknowledged that Youth\* was "not completely held down," as he had, in fact, been able to kick Appellant.

10. **William Campbell** is currently Division Director of the Professional Development Division. He has worked for DJJ for the past eighteen (18) years. His job duties include the oversight of the Training Branch, the Academy, and in-service training for DJJ employees.

11. Campbell stated that youth workers are taught at the Academy to use a restraining technique called "AKIDO," which is based on the martial arts practice with a similar name "Aikido." Several different techniques can be employed, depending on the severity of the

situation. The least restrictive technique, a standing hold, is taught to be used first before resorting to floor techniques, which involve holding the juvenile down.

12. Campbell added that ACT restraints are only meant to be used when a youth is out of control and could potentially: (1) harm themselves, (2) harm others, or (3) inflict serious property destruction. Kicking is never used as a restraint technique, and such an action violates DJJ policy against excessive force, especially if the kick occurs when a youth is being held down.

13. Campbell stated that he was not present during the incident, nor had he seen the video recording of it.

14. **George Scott** is Deputy Commissioner of the Department of Juvenile Justice. He began his career with DJJ twenty-two (22) years ago as a Youth Worker and was promoted up the ranks to his current position. His job duties include the oversight of residential programs, including the Fayette RJDC where Appellant was employed at the time of the incident with Youth\*.

15. Scott stated that all residential communities have security cameras. They are installed to protect all stakeholders, including clients and staff. The videos can be archived by request if a noteworthy event occurs.

16. The incident involving Appellant's restraint of Youth\* occurred on October 27, 2019, and was captured on video, which Scott reviewed. Through Scott's testimony, this video was introduced into the record as Appellee's Exhibit 2 and placed UNDER SEAL.

17. In relevant part, the video shows Youth Worker Lindsey enter the cell and remove the sweater from Youth\*'s neck. Numerous staff members come into the cell and attempt to control Youth\*, who is clearly out of control. Youth\* is heard groaning. Later, the staff members have Youth\* on the ground, and they are trying to calm him down. Appellant is present in the room. Youth\* is on his back. Youth\* kicks at Appellant and says, "F\*\*\* you, bitch." Appellant kicks him. Youth\* kicks Appellant a second time. Appellant exits the room. Youth\* continues to kick at the youth workers in the room. He strikes Campbell's torso with a closed fist two times. Youth\* attempts to bite Campbell's face. Campbell uses a hand strike to stop Youth\* from biting his face. Youth\* strikes Campbell's face with his hand and bites Campbell's arm. Campbell uses four hand strikes to Youth\*'s head while Youth\* is biting his arm. Appellant has returned and places handcuffs on Youth\*'s wrists. Before the video ends, Youth\* stands up from the bed and runs to the door. (Appellee's Exhibits 1 and 2.)

18. When asked if any portion of the video concerned him, Scott answered "the kick." He stated that he thought Appellant's kicking Youth\* was "excessive because there had been no imminent threat to her." Scott added, "I have been a Youth Worker. We get a lot of abuse from youth, but we never hit back. Even if they are kicking us, we can never kick them back. When I saw the video, I was disappointed frankly. Those reactions have consequences. We do not want to lose the confidence of the public by our behavior. That is someone's child."

19. Through Scott's testimony, DJJ policies regarding staff code of conduct and use of restraints, DJJ 104 and 713, respectively, were introduced into the record. According to Scott, Appellant's actions violated the following directives:

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. (DJJ 104, IV., U.) (Appellee's Exhibit 3.)

In the management of an aggressive juvenile, who presents an imminent risk of physical harm to self or others, only those skills that are non-punitive in nature and are approved by DJJ shall be used. DJJ shall be responsible for delivering ongoing training to program staff to ensure staff has the skills necessary to de-escalate situations and to reduce the need for physical intervention.

Physical restraint shall not be used as punishment and shall be applied with the least amount of force possible. (DJJ 713, IV. A. 1, 3) (Appellee's Exhibit 4.)

20. Scott noted that kicking is not an approved restraint technique, but added, "Sometimes unauthorized techniques are used and no discipline is issued. We deal with the context." In Appellant's case, Scott added, she "could have stepped away."

21. Scott testified that he considered Appellant's prior discipline (a one-day suspension for use of excessive force), the IIB report, witness statements, and the video recording of the incident. He determined that a ten (10)-day suspension was warranted, which he put in a memorandum "to get the process started." The memo was sent up the chain of command, that is, to the legal department and then to the Commissioner. (Appellee's Exhibit 5.)

22. Scott stated that, when he was deciding the appropriate level of discipline, he had "gone back and forth as to the number of days." Because Appellant had a prior record of excessive force, he determined that "a pattern was starting to form—it had to be ten days."

23. Scott denied that his decision was based on race or gender. As for Appellant's claim that another employee had not received discipline for the infraction of using excessive force, Scott explained that the wrong name of the employee in question had inadvertently been submitted in that case. Initially, Carl Williams had been identified as the offending staff member, but Williams had not even been present during the restraint. In fact, it had been Julius Higgins who had punched a youth. Higgins resigned before the disciplinary process was begun. His resignation was accepted by DJJ "with prejudice."

24. **Cynthia Watson** is the Human Resource Branch Manager of DJJ's Personnel Branch. Her job duties include the oversight of family and medical leave, payroll, and disciplinary matters.

25. Watson stated that her goal is to always employ progressive discipline, meaning that the intention is to correct an employee's behavior by implementing the lowest level of discipline while also taking into account the severity of the incident, whether the employee holds a leadership position, and the employee's prior disciplinary history. She stated that DJJ also keeps a database of prior disciplinary actions to ensure conformity within DJJ on the kinds of punishment that is handed down.

26. In Appellant's case, Watson reviewed all supporting documents, including Scott's memorandum recommending a ten-day suspension. Watson drafted the suspension letter, which was signed by Commissioner LaShana M. Harris. Through Watson's testimony, the June 15, 2020 suspension letter was introduced into the record as Appellee's Exhibit 6 and is attached as **Recommended Order Attachment A**.

27. **Alichia Stanley** is the Superintendent of Fayette RJDC. She began work at DJJ sixteen (16) years ago as a Youth Worker III and was promoted up the ranks to her current position. Her job duties include the general oversight of the entire facility, which is a sixty (60)-bed maximum security facility for males and females, ages thirteen (13) to seventeen (17).

28. Stanley stated that she was acquainted with Appellant as she had worked for the Fayette RJDC as a Youth Worker II, then promoted to Youth Worker III, before her transfer to the Morehead Youth Development Center.

29. Stanley explained that Youth Workers I and II are in charge of daily management of the juvenile residents. They are tasked with "maintaining structure within their unit and managing behavior." Youth Worker IIIs can function as a back-up supervisor. They may also be asked to "run a shift."

30. Stanley was asked to recall the incident that occurred during the restraint of Youth\*. Stanley could not remember exactly when she first learned about what had happened, but Appellant had come to her shortly after the restraint to inform her that she had kicked Youth\*. Stanley then watched the video and archived it. In Stanley's estimation, Appellant's "reactive kick" was a policy violation. She reported the incident to IIB.

31. After IIB substantiated that Appellant had used "excessive force" against Youth\*, Stanley prepared a memorandum on February 3, 2020, requesting discipline. The memo was sent to LaShana M. Harris, Commissioner, "through" George Scott, Deputy Commissioner.

32. In the memorandum, Stanley noted, "[Appellant] admitted that she kicked resident...but it was "a reaction" to being kicked by him, and that she did not intend to harm him. When [Appellant] realized what she had done, she stopped. Furthermore, the investigation

shows that [Appellant] had the ability to immediately exit the room after being kicked... but remained and subsequently kicked him.” (Appellee’s Exhibit 7.)

33. When asked why she had requested disciplinary action against Appellant, Stanley responded that it was “standard operating procedure” to request discipline any time an act of misconduct is substantiated by IIB. She added, “It is a complete violation to kick a resident.”

34. Stanley denied that Appellant’s gender or ethnicity played a factor in her decision.

35. Appellant, **Elizabeth Miller**, testified on her own behalf. She began working at DJJ in October 2005, as a Youth Worker I in Breathitt County. She transferred to Fayette RJDC in 2017 as a Youth Worker II and was later promoted to Youth Worker III. In August 2020, she transferred to Morehead Youth Development Center as a Youth Worker Supervisor.

36. Appellant stated that Youth\* had been locked in his cell. He had been angry with some of the other residents and tied a T-shirt around his neck to hurt himself. Staff had to enter his room in order to remove the T-shirt. “We were trying to get it off. He was everywhere. First, he held on to the toilet seat. Then he went on the floor. There was no AKIDO movement at all. While we were trying to hold him down, his legs were flying. He kicked me. I kicked him, but not hard. He kicked me again, and I walked out.”

37. Appellant added that she felt her punishment was discriminatory because another employee, Julius Huggins, had punched a youth, and was placed “off work with pay.”

38. On cross-examination, Appellant acknowledged that Huggins had resigned.

39. Appellant was asked if it was DJJ policy to only use approved controlling techniques. Appellant answered in the affirmative and noted that she has been AKIDO-certified for the entire tenure of her career at DJJ. She added, “Working in detention is hard work. I know it was wrong, but it was an instant reaction. He was really strong.”

40. KRS 18A.095(1) states as follows:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

41. 101 KAR 1:345, Section 1 states:

Appointing authorities may discipline employees for lack of good behavior for the unsatisfactory performance of duties.

42. 101 KAR 1:345, Section 4(1) states:

A suspension shall not exceed thirty days.



**FINDINGS OF FACT**

1. Appellant, Elizabeth Miller, is a classified employee with status. She is employed by the Department of Juvenile Justice (DJJ). Appellant filed a timely appeal from a ten (10)-day suspension, which began on June 24, 2020.

2. Appellant was suspended from her position at as a Youth Worker III at Fayette Regional Juvenile Detention Center (Fayette RJDC) for poor work performance and misconduct.

3. Fayette RJDC is a maximum-security facility for youths between the ages of 13 and 17. (Testimony of Alichia Stanley.)

4. On October 27, 2019, Appellant was involved in an incident during the restraint of Youth\*. Appellant testified that Youth\* had gotten into an altercation with some other residents that precipitated his placement in his room. Youth\* then proceeded to tie a shirt around his neck in an attempt to injure himself. Staff entered the room in order to remove the shirt, but Youth\* resisted these attempts. According to Appellant, Youth\* "was everywhere. First, he held on to the toilet seat, then he went on the floor." Appellant stated that while staff tried to hold him down on the floor, "his legs were flying." He kicked Appellant. By her own admission, Appellant kicked him back "in reaction." Youth\* kicked her again, and she walked out of the room. (Testimony of Appellant; Appellee's Exhibit 1.)

5. Shortly after the incident, Appellant informed Alichia Stanley, Superintendent of Fayette RJDC, of what happened. Stanley watched the video of the restraint and archived it. In Stanley's estimation, Appellant's kick, even if it was "in reaction" to having been kicked first, was a violation of DJJ policy. She reported the incident to the Internal Investigations Branch (IIB). (Testimony of Alichia Stanley.)

6. Daniel Sparks, Special Investigative Agent with the IIB, conducted the investigation into the restraint of Youth\* on October 27, 2019. He reviewed the video of the incident and spoke to all staff members involved as well as Youth\*. In his report, Sparks concluded, "the allegation that [Appellant] used excessive force is SUBSTANTIATED. [Appellant] admitted that she kicked Youth\*, but it was "in a reaction" to being kicked by him and that she did not intend to harm him. When [Appellant] realized what she had done, she stopped. Furthermore, [Appellant] had the ability to immediately exit the room after being kicked by Youth\* but remained and subsequently kicked him. (Appellee's Exhibit 1.)

7. During this same restraint of Youth\*, Maurice Campbell, a Youth Worker I, was also alleged to have used excessive or inappropriate force. He used "hand strikes" to Youth\*'s face while Youth\* was restrained. However, Campbell was exonerated on this charge and received no discipline. According to Spark's report, "Campbell used hand strikes to stop Youth\* from violently biting his arm and attempting to bite his face and ear. Although the hand strikes were not in the curriculum of ACT, his actions are deemed justified in this particular incident due to the violent and combative actions by Youth\*." (Appellee's Exhibit 1.)

8. William Campbell, Division Director of Professional Development Division at DJJ, testified that Youth Workers are taught the fundamentals of AKIDO restraint techniques. Campbell testified that kicking is never used as a restraint method, but “especially not when a youth is being held down.” (Testimony of William Campbell.)

9. George Scott, Deputy Commissioner of DJJ, reviewed the video footage of the incident and deemed Appellant’s kick of Youth\* to be “excessive” because there was “no imminent threat” to Appellant’s physical safety. Scott conceded that occasionally a youth worker may have to employ an unauthorized restraint technique and, if justified, would receive no discipline. But in the case of Appellant’s kick, she could have easily just “stepped away.” (Testimony of George Scott.)

10. Scott recommended a ten (10)-day suspension for Appellant because she had used excessive force during the restraint, and because she had a prior one (1)-day suspension, also for excessive force. In Scott’s estimation, “a pattern was starting to form.” (Testimony of George Scott.)

11. At the evidentiary hearing, Appellant acknowledged that she had kicked Youth\* after he kicked her first. She stated, “Working in detention is hard work...it was an instant reaction.” (Testimony of Appellant.)

12. At the moment of the contact between Youth\* and Appellant, Appellant was not actively restraining Youth\*, and her involvement was in stark contrast to that of Youth Worker Maurice Campbell. Campbell was actively restraining Youth\* when Youth\* bit him and “gouged” his eyes. Campbell’s “hand strikes” to Youth\* were made in order to extract himself from further harm. Appellant, on the other hand, was in a position to simply exit the cell after Youth\* kicked her. While Appellant asserted at the evidentiary hearing that kicking Youth\* was done “in reaction” to his kicking her first, Youth Workers - especially an experienced Youth Worker III such as Appellant - are directed to use “the least amount of force possible” when involved in a restraint. Appellant’s physical contact with Youth\* was a dereliction of that duty, and could also be interpreted as “punitive,” which is forbidden by DJJ policy. (Appellee’s Exhibits 1, 2, and 4; Testimony of George Scott; Testimony of William Campbell.)

### **CONCLUSIONS OF LAW**

1. A classified employee with status shall not be suspended except for cause. [KRS 18A.095(1).] Appointing authorities may discipline employees for lack of good behavior for the unsatisfactory performance of duties. [101 KAR 1:345, Section 1.] A suspension shall not exceed thirty days. [101 KAR 1:345, Section 4(1).]

2. It is clear from the evidence that on October 27, 2019, a Fayette RJDC resident, Youth\*, was in a very agitated state in his room, and that multiple youth workers were attempting to restrain him. At one point, Youth\* was on the floor, held down by his arms. In this position, he kicked Appellant. Appellant was not actively involved in restraining Youth\* at

that time. It is clear from the video footage, and by Appellant's own admission, that she kicked him back, even though she could have easily extracted herself from the situation and exited the cell.

3. By her actions in responding to Youth\*, Appellant violated the following policies and procedures:

- Justice and Public Safety Cabinet, Department of Juvenile Justice, Policy and Procedures, Code of Conduct, Policy No. DJJ 104, Section IV., U.
- Justice and Public Safety Cabinet, Department of Juvenile Justice, Policy and Procedures, Restraints, Policy No. 713, IV., A., 1, 3.

4. Appellee has shown by a preponderance of the evidence that there was just cause for disciplinary action against the Appellant, based on the incident of her kicking Youth\*. Such discipline was neither excessive nor erroneous.

5. Appellee employs a policy of progressive disciplinary action against employees. Appellant had received a one (1)-day suspension on May 29, 2019, which was also for excessive force.

6. Appellant failed to meet her burden of proof to show that her suspension was the result of race, color, or gender discrimination. Appellant's claim that another Youth Worker, Julius Higgins, (who was also alleged to have used excessive force) received no discipline, was refuted by George Scott, who testified that Higgins resigned before the appropriate level of discipline for his misconduct could be determined.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **ELIZABETH MILLER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2020-095)** 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).

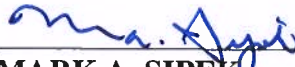
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 Colleen Beach** this 18<sup>th</sup> day of June, 2021.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Codell  
Elizabeth Miller  
Hon. Rosemary Holbrook (Personnel Cabinet)



**APPELLEE'S  
EXHIBIT**

6

**JUSTICE AND PUBLIC SAFETY CABINET**

**Andy Beshear**  
Governor

**Department of Juvenile Justice**  
1025 Capital Center Drive, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601-8205  
Phone (502) 573-2738  
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[www.kentucky.gov](http://www.kentucky.gov)

**Justice Mary C. Noble, Ret.**  
Secretary

**LaShana M. Harris**  
Commissioner

June 15, 2020

Elizabeth Miller

***Via Hand Delivery***

**PERNR.**

Based on the authority of KRS 18A.095 (1) and (8) and 101 KAR 1:345, Section 4, you are hereby notified that you are officially suspended from duty and pay for a period of ten (10) working days, effective beginning June 24<sup>th</sup>, 2020, and again on June 29<sup>th</sup>, and continuing June 30<sup>th</sup>, July 1<sup>st</sup>, July 2<sup>nd</sup>, and again on July 6<sup>th</sup>, and continuing on July 7<sup>th</sup>, July 8<sup>th</sup>, July 9<sup>th</sup> and July 10, 2020.

In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as Youth Worker III, at Fayette Regional Juvenile Detention Center, for the following reason:

**Poor Work Performance and Misconduct, i.e.,** as reported by Fayette Regional Juvenile Detention Center Juvenile Facility Superintendent II (JFS II) Alichia Stanley, you demonstrated poor work performance and misconduct by excessive use of force or inappropriate force that could have resulted in an injury. The Justice and Public Safety Cabinet, Internal Investigations Branch (IIB) conducted an investigation into the allegation of excessive or inappropriate force used. The allegations were substantiated. The findings are contained in the investigative report, IIB #2833-19, dated October 30, 2019.

On October 27, 2019, Youth\* was being held on the floor in a restraint at The Fayette Regional Juvenile Detention Center. Five people, including yourself, were involved in holding the youth on the floor. During this time the youth kicked at you, and you kicked the youth while the youth was being held on the ground by other people. The Department of Juvenile Justice Policy states that staff shall only use controlling techniques in which they have been certified by The Division of Professional Development. The Department of Juvenile Justice Policy further states that only approved methods of restraints may be used. Kicking a youth that

Elizabeth Miller  
10-Day Suspension  
June 15, 2020  
Page 2

is being held on the floor is not an approved method of restraint. This was substantiated by your own admission, video footage and interviews conducted. Furthermore, you had the ability to immediately exit the room after being kicked, but remained and subsequently kicked youth\*.

Your poor work performance and misconduct, demonstrated by excessive use of force or inappropriate force constitutes violations of Department of Juvenile Policy #104, "Employee Code of Conduct", I, IV(B)(U); Department of Juvenile Justice Policy 102, "Employee Code of Ethics", I; Department of Juvenile Justice Policy 713, "Restraints", I, IV(A)(1 and 3); and Fayette Regional Juvenile Detention Center Policy #3.16, "Employee code of Conduct", IV(T).

Furthermore, you received a one (1) day suspension May 29, 2019 for excessive use of force or inappropriate force.

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

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 1:365, Appeal and Hearing Procedures.

Sincerely,



LaShana M. Harris, J.D.  
Commissioner

LMH/ks

Attachments: Personnel Board Appeal Form

C: Hon. Mark A. Sipek, Executive Director, Personnel Board  
George Scott Alichia Stanley  
Michele Barnes Cynthia Watson  
Hillary Truesdell DJJ Legal  
Rodney Moore DJJ Personnel/Payroll  
Tim Conn DJJ Personnel File  
Rondesia Whitlow