

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-094

STEVEN OWENS

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

*** **

The Board, at its regular February 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 6, 2020, and being duly advised,

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

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

SO ORDERED this 12th day of February, 2020.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jamhal Woolridge
Mr. Steven Owens
Ms. Cynthia Watson

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PERSONNEL BOARD
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DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

This matter came on for an evidentiary hearing on September 25, 2019, before Hearing Officer E. Patrick Moores, at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, Steven Owens, was present and not represented legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Jamhal Woolridge.

This appeal arises out of a three-day suspension of the Appellant issued on April 9, 2019, for Misconduct and Poor Work Performance. The suspension was the result of an incident that occurred on February 12, 2019, where he failed to report to his assigned classroom at the Louisville Day Treatment Center, leaving a student in the classroom without a staff member fully trained in Aikido Control Technique (ACT) and, when his supervisor tried to instruct him to return to his assigned area, Owens allegedly responded in a manner displaying disrespectful and insubordinate behavior. It was further noted in his disciplinary suspension that the next day when another supervisor attempted to discuss staff concerns regarding safety and security during a daily shift briefing, Owens responded in a disrespectful and insubordinate manner.

The Appellant filed an appeal on April 25, 2019, alleging that he had been in a meeting concerning his worker's compensation claim resulting from his recent work related injury, and that he had been subjected to discrimination, harassment, and false allegations from his supervisor.

I. STATEMENT OF THE CASE

1. The Appellant, Steve Owens, has been employed with the Commonwealth of Kentucky for twenty-two years, the last five years serving with the Department of Juvenile Justice (DJJ) as a Youth Worker II at the Louisville Day Treatment Center, a school for students who struggle with authority, economic issues, and school in general.

2. Owens was informed by letter dated April 9, 2019, from Raymond DeBolt, Commissioner of the Department of Juvenile Justice, that on February 12, 2019, at 12:00 p.m., that he had not reported to his assigned classroom to supervise arriving students, and that by 12:24 p.m., he had still not reported to the classroom leaving a student in the room without a supervisor fully trained in Aikido Control Technique (ACT), a Japanese form of martial arts. This caused Kelly Dunn, a Youth Services Program Supervisor (YSPS), to report Owens' absence to James Johnson, the Juvenile Facility Superintendent I (JFS I), who instructed her to go to the classroom and supervise the youths while he looked for Owens. It was noted that when Johnson found Owens and told him he was not supposed to leave any student unattended without ACT trained staff, Owens began accusing Johnson of harassing him and refused Johnson's directive to return to his assigned classroom, as he was going to take up the matter with Tim Corder, Division Director of the west region of DJJ. Commissioner DeBolt noted that when Owens finally returned to the classroom, it was reported by Dunn that Owens disrupted the class and would not stop talking about the incident. He further noted that the next day when Owens was attending a daily shift briefing being conducted by John Ellington, a Juvenile Facilities Superintendent II (JFS II), Owens repeatedly interrupted him with laughing and negative remarks in an insubordinate and disrespectful manner, as Ellington reviewed a directive from Division Director Corder concerning safety and security responsibilities.

3. The notice of suspension informed Owens that his blatant acts of disrespectful and subordinate behavior constituted violations of DJJ Policy #104: "Employee Code of Conduct," sections I and IV (C, F, and X) and Louisville Day Treatment Center Standard Operating Procedure #1.0: "Safety and Procedure," Section J.

4. Owens was notified that the suspension was effective for three days, from April 16 through 18, 2019. In his appeal, Owens stated that he had previously filed grievances in April and May 2018, claiming he had been disrespected, discriminated against, and harassed. Owens also alleged that Johnson made false allegations against him and slandered his name, and noted that this was his first alleged work violation in his 22 years as a state employee. He further alleged that DJJ had no policy governing corrective action.

5. A pre-hearing conference was held before the Kentucky Personnel Board on June 21, 2019, at which the Appellant was not represented by legal counsel and DJJ was represented by the Hon. Jamhal Woolridge. The parties were provided a period of time for discovery and a deadline for submitting their respective list of witnesses and exhibits, and the matter was assigned for a hearing date.

6. The evidentiary hearing was conducted on September 25, 2019. The Appellant proceeded without legal representation. The burden of proof was on the Appellee to prove by a preponderance of the evidence that DJJ had just cause to suspend the Appellant from work and pay for three (3) days, and that the disciplinary action was neither excessive nor erroneous. The Appellant carried the burden of proof concerning the allegations of discrimination and harassment. At the conclusion of the presentation of the evidence, the parties were provided an opportunity to submit their arguments on the facts and law through written memoranda, following which the matter stood submitted for this Findings of Fact, Conclusions of Law, and Recommended Order.

II. SUMMARY OF EVIDENTIARY TESTIMONY

1. The first witness for DJJ was **James Johnson**, an Assistant Superintendent at the Louisville Day Training Center since December 2015. He testified that he started with DJJ in 2012. He testified that he serves as an assistant to Mr. Ellington, supervising the operations staff in running the school, which he described as providing education to special needs youths as a stepping stone to return to regular school, and noted that 90% of the students are adjudicated into the system. He stated that the kids have to be searched every day for safety reasons, as they have a history of bringing weapons into the school, and that the teachers are often threatened by the students.

2. Johnson testified that Owens was employed at the school as a Youth Worker, trained in Aikido, and that his responsibility included overseeing the safety of the teachers and students. He said the teachers at the Louisville Day Training Center are not Aikido trained and are not DJJ employees.

3. Johnson testified that on February 18, 2019, he prepared and forwarded a memo to DJJ Commissioner DeBolt informing him of an incident that occurred. On February 12, 2019, Kelly Dunn, a DJJ Youth Services Program Supervisor (YSPS) at the Louisville Day Treatment Center, informed Johnson at 12:24 p.m. that Owens had left his assigned classroom where he was supposed to be awaiting the arrival of students and had not returned, leaving another student alone in the classroom. Johnson reported that Owens did not have permission to leave his assigned area, that he instructed Dunn to return and supervise the classroom, and Johnson would go find Owens and direct him to return to his assigned area. He reported that as he approached the administration office, he observed Owens coming out of the locker room. He asked Owens why he had left his assigned area without an Aikido trained staff member. Owens claimed that he never left the classroom alone as another staff member, Ms. Austin, was there and then started accusing Johnson of harassing him. Johnson reported that when he again instructed Owens to return to his assigned area, Owens refused his directive and said that he was going straight to Division Director Tim Corder, who was in the front lobby involved in a meeting with Deputy Commissioner Kris Mann.

4. Johnson reported that he had no knowledge of the conversation Owens had with Division Director Corder, but that when Owens returned to his assigned classroom he was again very belligerent. YSPS Dunn informed Johnson that, when Owens came into the classroom, he disrupted the class and would not stop talking about what had happened. Dunn had to tell Owens several times to stop talking about it in front of the student and teacher that was present in the classroom. Johnson further reported to Commissioner DeBolt that, when he viewed the classroom video, he discovered that, before Owens left the classroom, he was observed to be sitting at the teacher's desk talking on a phone. Johnson also reported that, the next day, Owens was attending a daily shift briefing by Mr. Ellington, the Juvenile Facilities Supervisor, and that Owens displayed disrespectful and insubordinate behavior by continuously interrupting Ellington, making negative remarks, and inappropriately laughing in front of the staff.

5. Johnson concluded in his report to Commissioner DeBolt that Owens "displayed very blatant acts of disrespect and insubordinate behavior towards facility leadership" in violation of DJJ Policy 104, "Code of Conduct." Specifically, Johnson testified, and noted in his report, that Owens' conduct violated Section I, which requires DJJ staff to conduct themselves in a professional manner; Section IV.(C), which requires staff to obey the lawful order or directive of a supervisor; Section IV.(F), which prohibits abusive and unprofessional conduct; and IV.(X), which requires all persons to act in a manner that provides youth with a positive role model. Johnson stated that Owens also violated Louisville Day Training Center Standard Operating Procedure 1.0 (J), regarding Safety and Security, specifically with regard to the policy that "Youths are to be under staff supervision at all times." Johnson additionally testified that Owens failed to follow the directive issued on January 17, 2019, by Director Corder, which Owens had signed acknowledging that he received and understood the directive that no Youth Worker supervising a classroom could leave the classroom until relieved by another staff member fully certified in ACT or engage in any activity that would distract from providing safety and security of the youths and observing their behavior.

6. Johnson said he reviewed Owens' personnel file, which revealed: 1) that Owens had received a request for disciplinary action in April 2018 for violations of DJJ Code of Conduct for failure to follow supervisor directives and unprofessional conduct, 2) that Owens was given a Performance Improvement Plan (PIP) in February 2018 for refusal to meet with supervisors, and 3) that Owens was given five verbal conferences over a three-year period from 2014 to 2016 for inappropriate conduct issues.

7. Johnson testified that also on February 18, 2019, he gave a written memo to Owens informing him of Johnson's intent to request a major corrective action (MCA) against him in response to his unprofessional and insubordinate behavior during the February 13, 2019 shift briefing and further advising him that he had the right to submit a statement detailing his side of what happened. However, Owens never submitted any statement.

8. **Kelly Dunn** is a DJJ Youth Services Program Supervisor at the Louisville Day Treatment Center and has been since 2015. She testified that, under DJJ Policy Code of Conduct, all staff personnel are to conduct themselves in a professional manner, that they are to remain in their assigned working area during work hours, and that they are not allowed to receive phone calls during their time on duty in the areas of programs occupied by youth. However, they are allowed two 15-minute breaks throughout their shift.

9. Dunn testified about a daily shift briefing given to the staff by Mr. Ellington on February 13, 2019. Ellington was explaining a directive that had been recently issued by the Division Director and Owens became disruptive during the meeting with laughing and talking back to Ellington. Dunn submitted a written statement concerning Owens' conduct in this meeting. She noted that Owens walked out of the meeting saying he had to go to the bathroom and when he returned he continued to interrupt Ellington "in a smart tone." Ellington finally asked him to leave for the day.

10. Dunn testified that policy is always discussed with staff to make sure they know and follow the policy and department procedures. She stated that she has to have a witness with her whenever she discusses policy with Owens, as he becomes argumentative, and once told her she could not tell him what policy to follow. She added that she did not request the disciplinary action against Owens, but that Johnson asked her to provide him with the written statement of what she observed and that the disciplinary action was requested by Johnson because he also witnessed Owens conduct.

11. Dunn testified that safety is the responsibility of every employee, and that since a student was in the classroom, she took over the supervision of the classroom because Owens was not there in his assigned duty area. She also said she did not observe Austin in the classroom.

12. **Beverly Calhoun** has served for the past eight years as a DJJ Youth Services Program Supervisor at the Louisville Day Treatment Center. She described her responsibilities as making sure the day-to-day operations at the Center are staffed and that the facility is safe and secure. She stated that Owens was a youth worker that she had supervised since 2016 and she described the chain of command with the youth workers reporting to her and that she reports to Johnson who reports to Ellington. She said that every year they review and evaluate staff and go over DJJ policies, their duties and work expectations. The staff then sign their acknowledgement of the review discussion. She produced an "Annual Policy Acknowledgement," signed by Owens, from a performance review she conducted with him on January 12, 2016.

13. Calhoun testified concerning the staff briefing on February 13, 2019, that was conducted by Ellington concerning a policy directive received a month earlier from the administration, as it was very important that all staff know what is going on within the Center and what they are supposed to be doing. She stated that Owens interfered with the meeting and objected to the directive.

14. Calhoun stated that Owens refused to meet with her on several occasions. She described the Performance Improvement Plan (PIP), as a coaching tool given to employees having work performance issues in areas where the employee needs help or needs to take corrective action. She produced two PIPs issued to Owens as examples of his work performance issues. The first PIP was for the period of February 9, 2018, concerning his need to improve his attitude, behavior, and following directives from a supervisor, which she tried to discuss with him on February 9, 2018, but that he refused to meet with her. Another PIP was issued for February 23 to May 9, 2018, covering the same issues, and putting him on notice that he was not following instructions on what he was supposed to do, which Owens refused to sign, saying he was not on a PIP.

15. Calhoun testified that a verbal conference with an employee is a form of taking corrective action with staff, but that Owens refused to participate in such efforts by his supervisors. She introduced a Verbal Address that was issued to Owens by memorandum dated February 2, 2018, when she attempted to discuss with Owens the issue of his unprofessional conduct during a conversation with his supervisor in the Center's dining room in front of students and other co-workers. Owens was informed that his conduct was in violation of DJJ Policy 194: Code of Conduct, Section IV.(C), requiring staff to obey lawful directives from a supervisor, and Section IV.(X), requiring all personnel to act in a manner that provides a positive role model to the youth. He was warned that any future failure to comply with DJJ policy when dealing with staff or youth may result in further disciplinary action against him. She noted on the memo that Owens refused to accept a copy of the Verbal Address and also refused to sign the verbal.

16. **John Ellington** is the Superintendent of the Louisville Day Training Center and is responsible for overseeing the school's daily operations. He described Owens as a Youth Worker responsible for supervising the activities of DJJ juveniles at the Center and maintaining the safety of the teachers and youths in the classroom to which he is assigned. He said that a Youth Worker is not supposed to leave a classroom at any time without being relieved and replaced by another ACT qualified staff, as Owens did on February 12, 2019. Additionally, at a shift briefing Ellington conducted the next day, that was again reviewing the safety and security responsibilities and the directive from Director Corder, Owens became disruptive and belligerent, and that Ellington eventually asked Owens to leave after he refused to stop being disruptive.

17. Ellington testified that, as emphasized by Corder's directive of January 17, 2019, security is a priority at the Center and that a staff Youth Worker qualified in Aikido cannot take a break or leave his assigned area without being relieved by another ACT qualified staff member. He said that because of safety and security concerns, a Youth Worker cannot take it upon themselves to take a break. Additionally, all staff members know that they are not supposed to make any calls while on duty in a class, and that if any outside calls come in for a staff member, a message is taken and later delivered to the worker.

18. Ellington testified that a major corrective action (MCA) is issued in response to a violation of DJJ policy and work guidelines set forth in the Kentucky statutes, administrative regulations, DJJ policies and procedures, general directives, and other management directives. He said when Owens was notified of the corrective action, he refused to respond or sign that he had received the notice. Ellington said that he considered Owens' response to be typical of him.

19. **Tim Corder** has been DJJ Western District Director since April 2017 and oversees eleven juvenile facilities, including the Louisville Day Treatment Center. He is responsible for the management and functions at each facility and he reports to the Deputy Commissioner, Steven Potts. Part of his duties includes reviewing and approving requests for a major corrective action.

20. Corder testified that he prepared the directive issued on January 17, 2019. The directive set out requirements that all Youth Workers must be relieved by another staff member certified in full ACT before they can go on a break, go to the restroom, or leave their assigned area. The directive also established that a Youth Worker should not engage in any other activity that distracts from their duty to provide for the safety and security of the youths and observe their behavior. Corder said that the directive was the result of his observation that security in the facilities was becoming inadequate, which raised his concerns for the safety and security of the teachers and juveniles. He felt the directive reemphasizing the security priority was necessary for coaching the workers and staff. He testified that the safety and security issues were so tantamount, that he believed the MCA against Owens was appropriate, particularly as his directive concerning classroom supervision had just been passed on to the Youth Workers a mere month prior to Owens' conduct leaving his assigned area without authority. Corder said the directive was signed by the staff and workers at the Louisville Day Treatment Center, including Owens, which he understood was done on the date it was written and sent. Regardless of the date Owens signed his acknowledgement of receiving the directive, Corder said that the disciplinary action was necessary because everyone was aware that an employee cannot leave their assigned area without a supervisor's approval and without being appropriately relieved. Furthermore, he said that the circumstances of Owens' reason for leaving his assigned area was not due to any emergency.

21. Concerning Owens' allegations he had been harassed, Corder said that allegations of harassment of a staff member or worker are generally referred to the EEO. He said he was made aware Owens responded that he was being harassed but never gave any details. He said that normally persons making such allegations give details concerning their charge, and that Owens was offered the opportunity to provide a statement, but left without providing a statement. He further said that there was no reference in any of the documentation concerning the disciplinary action of any grievance statement regarding Owens charging he was being harassed.

22. **Cynthia Watson** is the manager of the personnel branch of DJJ. Her duties involved in the branch's human resources operations includes overseeing disciplinary actions and requests for disciplinary action. She testified that her department was involved in the suspension action of Owens to assure that it complied with the Kentucky Administrative Regulations. She testified that the violations for which Owens was disciplined involved DJJ policy and procedures regarding safety and security issues.

III. FINDINGS OF FACT

1. The Appellant Owens is a classified employee with over 22 years' service with the Commonwealth of Kentucky. Pursuant to KRS 18A.095(1), a classified employee with status shall not be dismissed, demoted, or otherwise penalized except for just cause. The Kentucky Administrative Regulations provide that disciplinary actions may be imposed on a state worker for "lack of good behavior," at 101 KAR 1:345, which states: "Disciplinary Actions. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties."

2. All witnesses agreed that DJJ policies and procedures, alleged to have been violated by Owens, were designed to ensure that the safety and security of all staff members, workers, students, and juvenile facilities. Youth Workers, such as Owens, who are responsible for safety and security issues are trained in the proper method of performing safety procedures and in Aikido Control Technique (ACT) in the performance of their job responsibilities.

3. Tim Corder, the Western Region Division Director, testified that he had become concerned about the inadequacies in the security supervision in DJJ facilities and the potential impact on the safety of the teachers and students. A review of the juvenile facilities revealed to Corder that DJJ's policy regarding safety and security procedures was not followed by some Youth Workers in performing their required duties. Based on the information he obtained, he felt it necessary that some coaching be conducted on all staff and, on January 17, 2019, he issued a directive concerning classroom supervision, which stated:

Effective immediately, when there are youth in a classroom there is to be a Youth Worker inside the classroom to provide supervision. If the youth worker goes on break, needs to go to the restroom, etc., he or she is to be relieved by another staff certified in full ACT until they return. While providing supervision in the classrooms, staff are not to be engaged in any other activity such as reading newspapers, books, using cell phone, etc. that would distract from providing safety and security of youth and observing their behaviors. If you have questions regarding this directive please let me know.

4. During his term of service on behalf of the people of the Commonwealth, the Appellant Owens experienced apparent difficulty abiding by the policies of DJJ and following orders and directives from his supervisors, as demonstrated during the period from 2014 up to the occurrence of the incident of February 12-13, 2019, giving rise to the three day suspension issued against him. These included five verbal conferences over a three-year period from 2014 to 2016 for inappropriate conduct issues, a request for disciplinary action in April 2018 for violations of DJJ Code of Conduct for failure to follow supervisor directives and unprofessional conduct, and a Performance Improvement Plan (PIP) in February 2018, which he even refused to acknowledge and refused to meet with his supervisors.

5. Less than a month after Director Corder issued the foregoing directive to the Youth Workers of DJJ juvenile facilities, the Appellant Owens was discovered on February 12, 2019 to be absent from his assigned area, without appropriate approval. The very next day, while attending a shift briefing that was called to again review the directive from Director Corder, Owens demonstrated an attitude that was described as belligerent and insubordinate.

6. Appellant Owens alleged in his appeal that he was being harassed. However, the witnesses testified that after he was given notice that a disciplinary action would be brought against him, he was given an opportunity to make a written statement, which he never submitted. Furthermore, based on his raising the allegation of harassment in his appeal, he was instructed during the pre-hearing conference on June 21, 2019, as documented in the Interim Order issued therefrom and served on him on July 17, 2019, the burden of proof would be on him to present such evidence during the evidentiary hearing. He was allowed a period of time for any necessary discovery. Lastly, during the opening of the evidentiary hearing, Appellant Owens was told that he would have the burden of proof concerning his allegations. Not only did Appellant fail to testify, he did not present any witness or evidence to support his allegations.

IV. CONCLUSIONS OF LAW

1. Under the Kentucky Unified Juvenile Code, the Justice and Public Safety Cabinet, and its staff within the Department of Juvenile Justice, are under an obligation to the people of the Commonwealth of Kentucky. They are charged with the supervision, safety, and security not only of the juvenile center's youthful participants, but also the staff performing those responsibilities. The Kentucky Unified Juvenile Code, as amended at KRS 600.010(2)(d), imposes upon the state the duty to provide juveniles, admitted to its care, treatment reasonably calculated to bring about an improvement of his or her condition. The Act further provides that KRS Chapter 635 shall be interpreted to promote the best interests of the child through providing treatment and assist in making the child a productive citizen while maintaining public safety.

2. Under the foregoing legislative guidelines, and the trust imposed by the people of the Commonwealth of Kentucky, the function of the services provided at The Louisville Day Treatment Center is very serious, not only to the youthful students at this facility, but their families who have entrusted their loved one to the facility, even if it is judicially imposed, and to the people of the Commonwealth who provide for and pay for its implementation. In this position of trust the Appellant has certain responsibilities, which cannot be trifled with.

3. The Department of Juvenile Justice Policy and Procedure 104 establishes DJJ Code of Conduct. Under this Code of Conduct, Section I, provides:

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) provides:

Employees 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 departmental policy and procedures.

Section IV.(C) provides:

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.

Section IV.(D) provides:

Staff shall remain in their assigned working area during working hours. Staff shall not disturb or interrupt others at their working areas or prevent other staff from carrying out their duties.

Section IV.(F) provides in part:

Loud, abusive, or profane language and boisterous and unprofessional conduct shall not be tolerated.

Section IV.(X) provides:

All persons shall act in a manner that provides youth with a positive role model.

4. DJJ Standard Operating Procedure No. 1.0, at section J, pertaining to Safety and Security, provides in pertinent part:

Youth are to be under staff supervision at all times. The youth worker assigned to each team is responsible for supervision.

5. The function of the services provided by DJJ at the Louisville Day Treatment Center, where Owens was employed, is very serious, not only to the families of the youths whose loved ones are placed in the facility, most of whom by judicial direction, but also to the people of the Commonwealth who entrusted the youths to the staff of the facility to provide for the safety and welfare of the staff, teachers and youths, and provide their pay for its implementation. The duties and responsibilities given to the staff are reasonable and clearly documented by the legislature in the statutes and regulations, and by the Cabinet and DJJ in their policies, particularly

as to the safety and security of all concerned. The employees are trained and frequently reminded of these rules, which are not to be ignored.

6. The facts establish that the Appellant failed to comply with DJJ policies concerning safety and security in his capacity as a Youth Worker certified in Aikido Control Techniques, with the duty to provide supervision for safety and security, in that he abandoned his post in an assigned classroom in which a youth was present that was supposed to be supervised by Owens, without appropriate authority from a supervisor. This is a serious offense.

7. The evidence produced during the hearing demonstrated that DJJ and many of its juvenile facilities, including the Louisville Day Treatment Center, were experiencing major issues with enforcement of their policies, particularly the failure of the Youth Workers to comply with their duties and responsibilities concerning safety and security. This compelled the Division Director to issue a directive concerning safety and security requirements from Youth Workers just a mere month prior to Owens leaving his assigned area resulting in the suspension, which the documentation revealed was acknowledged by Owens.

8. Where it is shown that 1) such care has not been properly provided, in accordance with the Department's policies, 2) the decision for disciplinary action of the non-compliant staff member was supported by substantial evidence presented, and 3) the suspension was not in violation of the Department's policy or the laws of the Commonwealth of Kentucky, just cause is found to support the disciplinary action. The seriousness of the incidents alleged against the Appellant required not only consideration of the severity of the violations of Department policy, but also a review of the past incidents involving the Appellant, which reveals a concerning disrespect for authority and insubordinate behavior towards his supervisors.

9. This Hearing Officer concludes, under the authority of 101 KAR 1:345, Section 1, that DJJ determination to take appropriate actions in disciplinary proceedings against Appellant was supported by the evidence presented, and was not in violation of the Department's policy or the laws of the Commonwealth of Kentucky.

10. After extensively reviewing all the testimony and documentation, considering the arguments of counsel, and reviewing the laws of the Commonwealth of Kentucky, it is the conclusion of this Hearing Officer that the three-day suspension imposed on the Appellant was appropriate and reasonable and taken with just cause.

11. This Hearing Officer, having weighed all the evidence and considered the credibility of the witnesses, and the arguments presented by the parties, concludes that the conduct of the Appellant, Steven Owens, warranted the three-day suspension as proper and not excessive. Under the circumstances, there was sufficient evidence to support the decision of the Cabinet to discipline Owens, and the determination of DJJ to suspend him from employment and pay for three days should be upheld.

V. **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **STEVEN OWENS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2019-094)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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 E. Patrick Moores**, this 6th day of January, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jamhal Woolridge
Mr. Steven Owens