

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 **CHRISTINE WELKER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2012-005)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of August, 2013.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-005

CHRISTINE WELKER

APPELLANT

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

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

APPELLEE

** **

The Board at its regular August 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 10, 2013, having considered Appellee's exceptions, Appellant's response, oral arguments, and being duly advised,

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

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

SO ORDERED this 14th day of August, 2013.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy mailed this day to:

Hon. Tim Salansky
Hon. Michael Boylan
J.P. Hamm

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-005**

CHRISTINE WELKER

APPELLANT

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

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

APPELLEE

** ** *

This matter came on for an evidentiary hearing on March 15 and 21, 2013, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Christine Welker, was present and was represented by the Hon. Michael Boylan. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Tim Salansky. Also present as agency representative was Ron Cooper.

BACKGROUND

1. The Appellant, Christine Welker, filed an appeal with the Personnel Board on January 9, 2012. The Appellant appealed a 5-day suspension, which was dated November 9, 2011. A copy of the suspension letter, which was introduced as Appellee's Exhibit 1, is attached hereto as **Recommended Order Attachment A**. On her appeal form, the Appellant also alleged she was appealing from an involuntary transfer and her 2011 employee evaluation. She also made claims of gender and disability discrimination. At some point in the proceedings she added a claim of religious discrimination.

2. After a series of pre-hearing conferences, this matter was scheduled for an evidentiary hearing. The burden of proof was assigned to the Appellee on the issue of the suspension. The burden of proof on the discrimination and other issues was assigned to the Appellant.

3. At the evidentiary hearing, before any witnesses were called it was established that the only relief the Appellant was looking for was to have the 5-day suspension set aside and taken off her record. Both parties waived opening statements and the Appellee presented its witnesses first.

4. **Ron Cooper** was called as the first witness. He is the Director of Human Resources at Bingham Gardens. He has held this position for 13 years, starting at Central State and moving to Bingham Gardens when the facility transferred as a whole on September 28, 2011.

5. Cooper described Bingham Gardens as an intermediate care facility for individuals with intellectual disabilities.

6. The mission of the facility is to provide treatment and services for the residents. The staff includes a medical director, licensed psychologists, psychiatrists, social workers, and speech therapists, as well as other professionals. Cooper testified that the Qualified Mental Retardation Professional (QMRP) is the central figure to orchestrate these services according to each resident's Individual Life Plan (ILP). This plan is developed upon admission to the facility, and includes medication, learning of rudimentary skills, social skills, dining plans, adaptive equipment and occupational therapy.

7. Introduced as Appellee's Exhibit 1 during Cooper's testimony was the November 9, 2011 letter to Welker, notifying her of her five-day suspension. The letter was signed by Howard J. Klein, Appointing Authority. Welker was disciplined for unsatisfactory performance of duties for failing to complete and timely submit required monthly interdisciplinary team individual living plans or ILP-III. The Appellee outlined the charges with more specificity in the eight-page letter sent to the Appellant.

8. Cooper testified he participated in this process by submitting a request for major disciplinary action on behalf of the facility and its director, Bret Ryan. Cooper stated he provided a written narrative, as well as a list of the policy violations which were found at the facility level. This matter was forwarded to the Office of Human Resource Management, who did further investigation and review, which resulted in Appellee's Exhibit 1.

9. The events described in the suspension letter occurred at Central State ICF/MR. The entire staff and function of the facility has moved to Bingham Gardens, where these individuals are now employed. At the time of the Appellant's suspension, she was classified as a Mental Health Education Evaluator, and served as the Qualified Mental Retardation Professional for the B-2 unit.

10. Introduced as Appellee's Exhibit 2 was a position description for the Appellant's position as a Mental Health Education Evaluator. Her first duty was listed as follows: develop learning objectives and training methodology; train staff to implement designated learning objectives in the ILP-III, and monitor for competency; observes individuals, monitors active treatment, reviews data and progress, and revises programs based on individual need and performance. It was estimated that this duty took up 30 percent of the Appellant's time. She also had supervisory duties over one Case Manager and six team supervisors. The position description was signed by the Appellant and her supervisor, Stephanie Mayes, the Program Services Director, on April 28, 2011.

11. Cooper also testified that all employees go through general orientation training of ten days. This covers topics such as personnel policies and risk management. The duties of various positions are also discussed. The employees are educated regarding abuse, neglect and exploitation, and how documentation is kept in the facility.

12. Cooper testified the Appellant was officially classified as a Mental Health Education Evaluator (MHEE), however her working title was a QMRP. Introduced during his testimony was Appellee's Exhibit 3, the QMRP responsibilities. This was a Central State policy.

13. Cooper testified that one of the primary functions of a QMRP was to hold monthly meetings regarding each resident and to update the ILP in accordance with the meeting. Cooper stated the Appellant had 14 clients or residents on her case load and she would chair the meeting. The meeting would have input either in person or in report form from medical, nursing, occupational therapy, etc. The QMRP is responsible for working on a plan so that the resident can transition into some other living arrangement in the community. The Appellee introduced into evidence Appellee's Exhibit 4 during Cooper's testimony, which established that the monthly review document should be filed within five working days of the meeting.

14. Cooper testified he filed a request for major disciplinary action with the Cabinet's Office of Human Resource Management (OHRM) as a result of a visit from the Office of Inspector General in March 2011. The OIG issued a statement of deficiency, noting that the ILPs for several residents were not completed. Many of the residents on the sample were assigned to Welker. The facility had to prepare a plan of correction, including specific timeframes to resolve these deficiencies. The facility was subject to significant monetary penalties if it did not properly correct the deficiencies.

15. Prior to the MDA request, the Appellant had received a verbal warning in March 2011 and a written reprimand in May 2011 for failure to timely complete ILPs.

16. In May 2011, the Appellant was relieved of her duties as a QMRP. She continued to function as a Mental Health Education Evaluator. This action was taken based on the findings from the OIG, and it was deemed that her job performance was unsatisfactory. The Appellant was reassigned other duties in another part of the facility. There was no change in her pay or the number of hours she worked.

17. On cross-examination, Cooper stated he has known the Appellant since June 2010. He did not learn the Appellant was disabled until she filed a response to the Request for Major Disciplinary Action.

18. Cooper testified there is a different job description between QMRP and a Case Manager. He testified that training for QMRPs is given by the Office of Staff Development and Training during orientation and thereafter. He identified that the Appellant was trained on various items in June 2010, July 2010 and October 2010. These records were maintained by

Staff Development and Training. He also noted that the Appellant attended Personnel Management Training through the Governmental Services Center on September 28, 2010.

19. The requirements for being assigned as a QMRP are developed through federal regulations.

20. Cooper stated that the OHRM made the decision to issue a 5-day suspension in this case. Cooper testified he had no input into the amount of discipline.

21. With respect to the OIG's report, Cooper stated that the facility director is responsible for coming up with a plan of correction. Cooper also stated that he could not state without reviewing the report of deficiencies whether any other QMRPs had deficiencies listed. He was not aware of any monetary penalties being assessed against the facility.

22. When the Appellant's job duties were changed, she reported to another supervisor and no longer performed the job duties on her job description, which was introduced as Appellee's Exhibit 2. Specifically, she was no longer functioning as a QMRP.

23. On re-direct, Cooper stated he was not aware of the Appellant having ever requested an accommodation. Through his position as Human Resource Manager, he stated he would expect that type of request to be brought to him.

24. The Appellee called **Stephanie Mayes** as its next witness. Mayes has worked at Central State and Bingham Gardens for six and a half years. In 2011, she served as the Mental Health/Mental Retardation Program Services Supervisor. She has been the Appellant's supervisor since November 1, 2010. Mayes testified she is currently a QMRP.

25. The witness identified Appellee's Exhibit 5 as a sample ILP. She stated she has prepared ILPs. She noted that on the exhibit it is signed by the Appellant as the QMRP, and she could not identify the Clinical Specialist signature.

26. Mayes also identified Appellee's Exhibit 2 as the Appellant's job description. Mayes stated that she reviewed this document with the Appellant as her supervisor. As far as Mayes could tell, the Appellant was qualified to perform work as a MHEE and a QMRP. She was not aware of any additional training that the Appellant needed to perform either of these functions.

27. On May 26, 2011, Mayes testified the Appellant was assigned to desk duties and reassigned to modules. She stated that on this job she was involved with developing learning objectives for residents. She stated they came to this decision to accommodate the Appellant and make things easier for her. The Appellant was having problems getting her ILPs done on time. The Appellant was unable to complete them in the required time, which was five working days after a meeting.

28. Mayes testified that when she started supervising the Appellant, the Appellant did fine on her ILPs for the first two months. Starting in January and February 2011, the Appellant began having difficulty meeting deadlines.

29. Appellee's Exhibit 8 was a Performance Improvement Plan that Mayes presented to the Appellant on February 21, 2011. The goal of the plan was to improve the Appellant on timely completion of ILP duties. Mayes indicated she would develop a document to track the progression of completion and submission of annual ILPs and monthly meeting updates on a timely basis. She also stated she would train the Appellant regarding this document. She stated the Appellant's performance would be re-evaluated at the April and August interim meetings. Mayes stated she would meet with the Appellant on the third Thursday of every month to go over progress regarding this plan. The Appellant refused to sign the plan.

30. Introduced as Appellee's Exhibit 9 was a record of an employee conference Mayes had with the Appellant on the same date. On this document, Mayes noted that the Appellant, in refusing to sign the Performance Improvement Plan, stated that she did not have enough time in the day to get her work done without overtime. David Corbett, as Acting Director, also attended the meeting and asked what could be done to free up some time for the Appellant. The Appellant states she spends two to three hours a day dealing with incident review and incident reporting. Mr. Corbett recommended that she not go to incident review and have her Case Manager take over those duties in order that she could work on ILPs. The Appellant stated she was about 50 percent done with January's ILPs and indicated she could complete them by February 23, 2011. The Appellant also indicated she could get February's ILPs done by March 2, 2011.

31. Mayes testified that either at the meetings on February 21, 2011, or the following day, she offered to assist the Appellant with completing her ILPs. Introduced into the record as Appellee's Exhibit 10 was an e-mail response from the Appellant to Mayes on March 2, 2011, which read as follows: "Actually, the more I thought of it, the more I decided I would feel more comfortable inputting my own information." Mayes testified she could not think of any reason the Appellant would not feel comfortable allowing her to input this information.

32. Mayes introduced into evidence Appellee's Exhibit 11, a verbal warning based on the fact that the January ILPs were not completed by February 23, 2011, and were not completed as of 4:25 p.m. on February 25, 2011. The verbal warning was dated December 29, 2010, although the witness agreed that date was incorrect. Mayes was not sure of the correct date of the verbal warning.

33. Introduced as Appellee's Exhibit 13 was a written reprimand dated May 12, 2011. This reprimand was issued because the Appellant was supposed to complete her ILPs for April 2011 by April 22, 2011. She was given an extension until April 26, 2011. She did not complete the plans by that date, and was issued the written reprimand. The reprimand noted that she received coaching in January for failure to meet designated deadlines, a Performance Improvement Plan in February, and a verbal warning in March. The reprimand was actually

issued on May 13, 2011, and signed by Stephanie Mayes and Ronald Cooper, as witness. The Appellant did not sign the reprimand which was presented to her.

34. Introduced as Appellee's Exhibit 14 was the Appellant's annual evaluation for 2011. Mayes testified that she met with the Appellant on April 28, 2011, and discussed her performance during the first interim. She reviewed each of the Appellant's job duties, and she and the Appellant initialed them during their review. The witness noted in her comments regarding the Appellant's performance that she was having difficulty meeting deadlines on ILPs. Mayes noted a complaint had been received from an individual's guardian regarding data not being available in the ILP during the monthly review meeting. There were several comments throughout the document stating that the Appellant needed to improve in this area.

35. Introduced as Appellee's Exhibit 15 were timesheets from the Appellant for the period from January 1, 2011, through May 15, 2011. These timesheets demonstrated that the Appellant received a number of hours where she was allowed to work and accrue comp time. Mayes testified she does not recall denying the Appellant to work extra hours in order to get her work done.

36. Mayes never received any type of a request for accommodation from the Appellant. She stated she has known the Appellant since they were children. She is aware the Appellant has Noonan Syndrome, and that sometimes this can result in a delay in processing. The Appellant never requested any specific accommodation. Nonetheless, Mayes offered assistance in helping the Appellant complete ILPs. She stated the Appellant never accepted her assistance.

37. Mayes testified she also supervised Matt Barnes, who was another QMRP. She did not believe she treated the Appellant any differently than she treated Mr. Barnes. Mayes notes that Mr. Barnes was male and the Appellant was female. Mayes explained that she appointed Mr. Barnes to act in her place when she was absent because he had more experience as a QMRP, and he was caught up in his work. Mayes was aware that the Appellant had complained when she had to cover meetings which led her to be late on ILPs. Mayes testified she did not treat the Appellant differently because of her disability.

38. Mayes believed the Appellant had difficulty in completing ILPs on time because she input the information for each discipline on all her residents rather than completing one resident's plan at a time. Mayes suggested the Appellant try doing it the other way. During the period of time in question, Mayes noted the QMRP was required to input the data themselves. They sometimes received the information by e-mail from other staff members, and sometimes they received a hard copy.

39. Mayes reviewed the Appellee's Exhibit 5, a sample ILP. She described the information which the Appellant would have to input each month, which was an update on each of the disciplines involving the individual. The last item was a note from the monthly meeting. Mayes testified that it was decided that QMRPs would input all the information in this document because when each individual was inputting their own information, they were deleting too much

information. This problem was solved by limiting access to the ILP solely to the QMRP. Mayes testified she has done ILPs and has not had difficulty meeting the five-day requirement.

40. On cross-examination, introduced as Appellant's Exhibit 1, was a copy of a verbal warning dated March 2, 2011, with a signature by Stephanie Mayes dated March 31, 2011. The content of the verbal warning was the same as Appellee's Exhibit 11, except for a different date, different font and format, and Appellee's Exhibit 11 lacked signatures. The witness explained that Appellee's Exhibit 11 was probably an earlier draft of the document which contained an incorrect date. Mayes stated she probably sent this to HR for Mr. Cooper's approval before she issued the verbal warning. She stated she prepared the document on March 2, 2011, however, she believed it was not given until the end of the month because the Appellant was absent for a good part of the month of March. Mayes could not explain why the verbal warning was dated March 11, 2011, in the Appellant's disciplinary letter, as she was not involved in the creation of that document.

41. The witness described that she used seven calendar days and five working days interchangeably. She stated the policy actually used five working days.

42. The Cabinet called **Regina Young** as its next witness. Young is a Licensed Clinical Social Worker employed at Bingham Gardens. She started at Central State in 1994. She is currently the Director of Social Services. Her duties include supervising QMRPs, Case Managers, and the Transition Team. She stated the current QMRPs are Christine Welker and Stephanie Mayes. She has served as the Appellant's first-line supervisor since August 2012. Prior to that date, she served as Risk Manager and Compliance Director from July 29, 2011, until August 2012. Young served as the Acting Compliance Director from March 2010 until June 2010 while the regular Compliance Director was on medical leave. Thereafter she assumed the position of Compliance Director.

43. During that period of time, Young sent an e-mail to Mayes regarding the Appellant's ILP reviews for April 2011. In the e-mail, Young stated that the May 2011 ILP reviews are due on May 13, 2011, and the Appellant had not yet completed her ILP reviews for April.

44. Young discussed the fact that the Appellant could not turn in any of her ILPs because she completed them all at the same time, due to the fact that she does all of them by discipline. In addition, she discussed the fact that Mayes had done the May reviews for a QMRP named Matt Barnes because of his resignation. Young testified that Mayes did the Appellant's ILPs for February when the Appellant went on extended medical leave, starting on March 2, 2011.

45. The witness identified Appellee's Exhibit 17, which was an ILP completion filing audit. This audit reviewed the Appellant's ILPs from January through May 2011. This document showed the number of days her ILPs were late. This audit included monthly ILPs, special team meetings and annual ILPs.

46. Introduced as Appellee's Exhibit 18 during Young's testimony was a document called a Strategic Action Plan Monitoring Form for ILPs. Young stated that this review showed the Appellant was having problems with the needs list on her ILPs, not reviewing and updating, and also the objectives were missing. She stated there were also problems with Clinical Case Formulation (CCF), which she referred to as the ILP-II. Young reviewed Appellee's Exhibit 1, the 5-day suspension letter given to the Appellant. She stated that the charges beginning on the bottom of page 3 match the findings from her review of the Appellant's work.

47. Young testified that in May 2011, the Appellant was reassigned to work in the Modules. She described this as the classroom portion of the treatment for individuals at Central State and Bingham Gardens. She stated the Appellant was assigned to writing objectives for the individuals.

48. Young was not sure how long the Appellant stayed in that assignment, however, she does know that the Appellant was next assigned to work in Compliance and Medical Records. Young stated the Appellant assisted in audits in that position.

49. The Appellant was later assigned to Social Services, where she attended some treatment team meetings. Eventually she was reassigned back as a QMRP.

50. Young testified that in May 2011, when the Appellant was initially reassigned, it was due to an investigation. During that time, the Appellant had to be removed from direct care of residents.

51. Young testified that since the Appellant has returned to the QMRP duties under her supervision, she has had some struggles; however, she has not had problems with timeliness of ILPs. The only problems she has had with timeliness are resource problems which have affected all QMRPs, such as lack of paper to complete ILPs.

52. Young testified currently she is looking at some training opportunities for the Appellant, including time management and leadership skills. She stated that the Appellant had discussed her medical condition with Young and has asked off for doctors' appointments and other meetings. Young has had an opportunity to observe the Appellant's work, and is not seeing any indication that any disability prevents her from performing her duties.

53. On cross-examination, Young stated there are three working days to complete a review after a special meeting, five working days after a monthly meeting and fourteen days after an annual meeting. She did not know if the three-day requirement for special meeting was in any policy.

54. Young testified that Matt Barnes and other QMRP also had some deficiencies, although not to the degree that the Appellant had. Young testified that Barnes was male and she was not aware of any disability. She stated that he received verbal coaching. She recalls that Barnes' ILPs were approximately five to seven days late. Young did not recall the exact deficiency that Barnes was counseled over.

55. At the conclusion of Young's testimony, the Hearing Officer informed both counsel that something additional would need to be placed into the record in order for the Hearing Officer to determine if the charges in Appellee's Exhibit 1 were proven or not proven. After conferring off the record, both counsel agreed that Young would prepare a document so that the information on Exhibit 17 would match the information in the letter. Counsel stated that they would not know if they needed to question Young further until that document had been prepared. These matters were to be handled during the second day of the evidentiary hearing.

56. The Appellee called **Jay Klein** as its next witness. Klein is the Director of the Division of Employee Management in the Office of Human Resource Management for the Cabinet for Health and Family Services. In this instance, Klein testified he received a Request for Major Disciplinary Action from Central State and he assigned it to the branch of his division which writes disciplinary letters. This matter was assigned to Jenny Young to do a draft of a disciplinary letter. He testified that Jenny Young did not do her own investigation, but reviewed the information supplied by Central State and followed up with any necessary questions. He said that she prepared a draft disciplinary letter. In performing this function, his staff usually reviews Cabinet records to see how similar situations have been handled in the past.

57. Jenny Young's draft was reviewed by her supervisor, Shawn Estep, and the EEO branch within the Cabinet. At that point, it is brought to Klein for his review and signature. In this case, Klein signed the five-day suspension letter introduced as Appellee's Exhibit 1.

58. Klein testified he believed a five-day suspension was justified in this case. He stated that the issues in this case involved the care for clients and following federal regulations. He found that the Appellant's work contained errors as well as issues regarding timeliness. Klein felt that five days was appropriate, in order that it get the Appellant's attention, so that she performed her work duties better.

59. Klein noted that previous attempts had been made to correct the Appellant's job performance, including a Performance Improvement Plan, a verbal warning and a written reprimand.

60. On cross-examination, Klein admitted he had no independent knowledge of the facts underlying the suspension, but relied on his staff as well as Central State staff. Klein also testified that the Appellant had filed two EEO complaints with the Cabinet. He believed that one of these complaints involved disability discrimination, and the other involved religious discrimination.

61. At the start of the second day of hearing, the Appellee recalled **Ron Cooper** to the stand. Over an objection from the Appellant, the Appellee introduced into evidence Appellee Substitute Exhibit 6, which consisted of training records for the Appellant.

62. The Appellee recalled **Regina Young** to the stand. During her testimony, she introduced Appellee's Exhibit 17a, which was a reconfiguration of the last page on Appellee's Exhibit 17, which client numbers which correspond to the Appellant's suspension letter.

63. Introduced as Appellee's Substitute Exhibit 18 was a new version of the Strategic Action Plan.

64. At the conclusion of Young's testimony, the Appellee rested.

65. The **Appellant, Christine Welker**, testified first for her own case. Welker is employed as a QMRP at Bingham Gardens ICF/MR, and has done so since the transfer from Central State. She was hired at Central State on June 8, 2010.

66. The Appellant testified that from June 28, 2011, through September 2012, she did not serve as a QMRP. For about a month and a half, she served as a Module Instructor or a Module Monitor. She was involved in reorganization and cleaning, preparing lesson plans for residents, and assisting fellow workers with writing objectives for clients.

67. Thereafter, because of a staff resignation, the Appellant was assigned to Medical Records, where she worked until December 2011 or January 2012, and she worked with Regina Young.

68. The Appellant was transferred to Mary Fant's department, where she was involved in the monitoring of QMRPs and served as a substitute QMRP. She stated she went to meetings and was involved in database entries.

69. All told, the Appellant stated that roughly for one year she did not serve as a QMRP. At first she had been pulled for an investigation and was required to have no resident contact. During this period of time, which lasted for about three and a half months, she had to be escorted throughout the facility. Thereafter, it was her understanding that she was not allowed to work as a QMRP because of allegations that her work performance, specifically her ILPs, were not up to par. From January through September 2012, she described her duties as helping the QMRPs.

70. Prior to her employment at Central State, the Appellant was employed at Bluegrass Oakwood, in direct care for two years, and as a Case Manager for two and a half years. She testified that the duties of a QMRP are significantly different from a Case Manager. She stated that a QMRP is the key holder of the life of a client. She stated that a Case Manager works at a small part, because they are involved in activities and spend more time with the clients.

71. The Appellant learned that Central State was in desperate need of help, and she was interested in moving to Louisville. After meeting with the Facility Director, Bret Ryan, she applied for a position as a Case Manager and a position as a QMRP. She was hired as a QMRP to work at Central State.

72. When she initially reported to the facility, she was supervised by Nan Benally, who quit after about two weeks. The Appellant stated nobody talked to her, because they were not interested in Central State and were not interested in the Appellant because she was hired by Bret Ryan. After Ms. Benally left, she had no supervisor from late July until mid-November, when Stephanie Mayes returned from maternity leave and became her supervisor. Mayes served as her supervisor from mid-November 2010 through June 2011, when the Appellant was moved out of QMRP duties.

73. When Mayes was her supervisor, Mayes reported directly to Bret Ryan, the Director of the facility.

74. When the Appellant started as QMRP at Central State, she expected guidance and direction, because that is what she had seen for QMRPs at Oakwood. She stated she was aware there were monthly meetings and significant paperwork to be done, however, she was used to QMRPs being assisted every step of the way. When she had worked at Bluegrass Oakwood, the Appellant stated she was named the Rookie of the Year and never had any problems meeting any deadlines with her work.

75. When she came to Central State, she was given no direction, training, or assistance. She stated she was expected to supervise Case Managers, supervisors and DSPs, which she described as the direct patient care workers. She was expected to do things like give out reprimands and respond to fights in the parking lot in the middle of the night. She stated she would have to fill in and replace DSPs and supervisors when they weren't there. She stated a lot of her time was taken up performing these duties, which did not allow her to direct her attention to the important work of ILPs regarding her clients. She knew there were monthly meetings and annual meetings, and that it was important to keep the lines of communication open with the other disciplines such as Occupational and Speech Therapy.

76. The Appellant stated that her experience was that her job duties changed every day. After Nan Benally left, she had no one to report to. She stated she did not receive any training on how to prepare an ILP. She knew how to write objectives based on her previous experience as a Case Manager.

77. The Appellant stated that finally in the last couple of months she has received training on how to perform ILPs. She stated there was a training session regarding ILPs given at Hazelwood, but she was not allowed to go.

78. The Appellant stated that she has Noonan Syndrome, which she described as a genetic mutation. She stated that her symptoms include a heart murmur, developmental delays, eye problems and general heart problems. She stated she has had a total of 30 operations, including open heart surgery.

79. The Appellant stated she also suffers from PVNS, which is a condition with an unknown cause. She stated this condition destroys her joints. She has problems and has had an

operation on her right knee, and operations on both ankles twice. She stated there is no cure for this condition. She also suffers from anxiety.

80. The Appellant stated she tries to block these issues out as much as she can, and doesn't like to complain. She stated she tries to be as independent as possible. She stated she lives by herself, drives and cooks.

81. The Appellant stated she has difficulties grasping information. She does not always pick things up after reading it one time. Sometimes she has to read it and hear it for the information to register. She also stated there are occasions where she has to be shown how to do something.

82. The Appellant stated she is 4'7" and weighs 82 pounds. She stated she does the best she can with her condition, but recognizes there is a lot she cannot do.

83. The Appellant stated that Stephanie Mayes has been aware of her medical problems. She stated they have known each other their entire life, and both grew up in the Lake Cumberland area. She stated that Mayes' cousin is her best friend.

84. The Appellant stated she told Mayes that they were asking too much when they were ordered to enter everything into the ILP. She stated she felt there were ethical issues in the Appellant inputting information which was produced by someone who had a Ph.D. or had to maintain a license in their particular discipline. She stated there was too much to do all this in five days. She told Stephanie Mayes that she needed overtime in order to be able to finish this work.

85. The Appellant stated there were distractions which kept her from doing this work such as incident reports in the morning, which sometimes took as long as two hours. The Appellant stated when she has been allowed to have overtime, she has not had a problem. She stated that currently she does not have a problem and is allowed to work overtime.

86. The Appellant stated, during the time she has worked at Central State and Bingham Gardens, there have been a lot of changes. The Appellant stated she had problems with ILPs when she was required to put in the information from the other disciplines. She stated that initially Bret Ryan indicated they would clean up ILPs for about a month. She stated this one month turned into six months. The Appellant stated that she had similar problems as Matt Barnes, a co-worker who was also a QMRP. She stated she had an occasion to review his ILPs, and noticed that many things were missing.

87. The Appellant stated that she discussed her medical issues with Bret Ryan before she was ever hired to work at Central State. She stated when she worked at Oakwood they were able to accumulate comp time as needed in order to get the work done. After a period of time working at Central State, her need for working overtime or comp time could not be accommodated because Mr. Ryan said the budget was out of control. She stated this information came directly from Frankfort that overtime needed to be cut out.

88. The Appellant stated she needed overtime because of the workload, but also because of medical issues.

89. The Appellant stated that shortly after she was taken out of her duties as a QMRP, the QMRPs did not have to input the information in the ILPs.

90. The Appellant stated that in December 2010 and January 2011, when she had input information in the ILPs, she started to have problems with Mayes and Bret Ryan. She stated she did not trust Mayes, although she respected her.

91. The Appellant stated she had run-ins with Bret Ryan when he disagreed with her assessment that the living conditions for a couple of clients were not the best and she did not believe they should be transitioned out into those conditions. She said Mr. Ryan disagreed with her, and said that everything would be fine. Thereafter, she stated she started having problems with Mr. Ryan. He told her that another resident was going to hurt her because she was too small. Mr. Ryan assigned all her behavior clients to Matt Barnes. She stated that Mr. Ryan stated that she thought with her heart and not with her brain.

92. The Appellant described a Safe Management Training which occurred on December 21, 2010. She stated she had a discussion with Mr. Ryan. He discussed the fact that she had successfully completed probation and had merit status. He told her he did not think she was a very good QMRP. He had her recite the 23rd Psalm and told her she needed to push evil rumors out of her office. Mr. Ryan instructed her that she was not allowed to go to lunch with members of the opposite sex; that this was not something that a Christian lady should do. He told her that she should pray three times a day. The Appellant stated this made her uncomfortable, and she told Mr. Ryan. She said there was a Chaplain at the facility, if she needed any religious help, and her father was a minister. She did not think it was appropriate to be subjected to religious comments from Mr. Ryan during work time.

93. The Appellant stated that Bret Ryan would rant and rave throughout the facility. He told her that another employee named Abby wanted her job.

94. The Appellant described another incident where she was in Bret Ryan's office, sitting in a chair. Ron Cooper came in. Bret Ryan instructed the Appellant to get up, saying that was Ron Cooper's chair.

95. Thereafter, the Appellant filed an EEO complaint, alleging discrimination based on sex, religion and disability. The Appellant stated that's when the retaliation started. She received her first write-up of any kind on January 27, 2011.

96. The Appellant described her co-worker and fellow QMRP Matt Barnes as a male with no disability.

97. The Appellant stated that she asked Bret Ryan and Stephanie Mayes for overtime, which she needed to complete her work because of her Noonan Syndrome. She stated that they did not allow her to work overtime.

98. The Appellant reviewed Appellee's Exhibit 1, the five-day suspension letter she received. She stated she did have a meeting with Mayes and David Corbett on February 21, 2011, when a Performance Improvement Plan was discussed. She stated there was a tracking document which was discussed at that meeting, which she never received. Mayes was also supposed to meet with her on the third Thursday of each month, which the Appellant stated she did not know if that happened. The Appellant stated she did follow the advice of allowing Abby to attend to the incident reports, which allowed her to complete ILPs. She denied the allegation that she refused an offer of assistance.

99. The Appellant stated she is charged with not completing the Comprehensive Case Formulations (CCFs). She stated some of these had not been done since 2008. The Appellant stated that had not been done for two and a half years before she arrived. When the Appellant arrived, she was told they would not be doing the CCFs because they were coming up with a new format. This is the reason she did not complete CCFs. The Appellant stated that she and Abby Shepherd were shown how to do CCFs, and did them for about a week. She stated that Bret Ryan found out and told them to stop doing the CCFs. He insisted they were not to do them until the new format was introduced.

100. On page 6 of the suspension letter, the Appellant is accused of not sending a letter to the guardian of Client 8. The Appellant stated that this is the job duty of the Case Manager.

101. The Appellant stated that the learning objectives on page 7, with respect to Client 13, are the job responsibility of the nursing staff. She stated there are a number of things she is alleged to not have placed in the ILPs. She stated she did not receive these until after she had completed the ILPs.

102. The Appellant stated that when she received Appellee's Exhibit 1, the five-day suspension, she was at home with injuries following a car accident.

103. Reviewing page 7 of the suspension letter, the Appellant read that she was placed on desk duty on May 26, 2011. She stated that might have been the date that she was taken off her QMRP duties, as opposed to the June date she stated earlier. She stated she was pulled from QMRP duties due to an incident which occurred on Derby Day. The Appellant was investigated for alleged abuse of a resident, because a resident in a wheelchair was not properly secured while on a field trip. The Appellant stated that this incident was initially reviewed and dismissed. She stated that Bret Ryan thereafter became involved, asked who the supervisor was, and when he learned it was the Appellant, she became the subject of the investigation. The Appellant stated there was a finding of substantiated abuse against her. She stated that three and a half months later in September this matter was cleared up when it determined that the Appellant was back at the facility the entire time and was not on the field trip.

104. The Appellant stated that the verbal warning referenced in the suspension letter was given to her right after she was out after receiving treatment from her psychiatrist and cardiologist. She stated that they had informed her that she was suffering from too much stress. She was very uncomfortable receiving the verbal warning, which was given by Stephanie Mayes, but given in Bret Ryan's office in his presence.

105. The Appellant stated that she also received a written reprimand for the same reasons. She stated that all of these could have been prevented if she was allowed to have overtime, which she needed because of her medical conditions. She stated that Stephanie Mayes and Bret Ryan were aware of this.

106. The Appellant testified that her gender is female. She stated she felt that she was subjected to sex discrimination because Abby was a QMRP who, when she came back from maternity leave, was assigned as the Appellant's Case Worker. While she was on maternity leave, Matt Barnes was assigned to Abby's QMRP job. The Appellant stated that she and Abby had to relieve staff for breaks and substitute when they were absent. She stated they also had to substitute for supervisors and other positions. She stated that Matt was never asked to do this. She and Abby had to run all over the unit. She stated this affected her ability to timely complete her ILPs.

107. The Appellant stated she was subjected to a retaliatory transfer when the surveyors came and her ILPs were not completed. Instead of being offered help to complete the ILPs, she was sent upstairs to work in the Modules. She stated she did a lot of cleaning and other work, which was not consistent with her job responsibilities. She stated she even had to share a computer.

108. The Appellant stated that she was not familiar with Appellee's Exhibit 3, and was not aware there was a QMRP policy. She would not have known to look for this policy. She stated that, contrary to the policy, she was taught that Case Workers prepare the activity schedule. Paragraph 12 of the policy says this should be done by the QMRP.

109. The Appellant stated she was not familiar with Appellee's Exhibit 4, the ILP policy. She stated she had not seen these policies before the first day of the hearing in this matter.

110. The Appellant stated she had seen Appellee's Exhibit 2, which was her position description. She stated she did not perform the duty listed at 7(b) because she was told not to do CCFs. She stated she also did not create the 24-hour daily activity, as was listed in 7(e).

111. The Appellant reviewed Appellee's Exhibit 8, the Performance Improvement Plan dated February 21, 2011. She stated she refused to sign the plan because she thought there was a better way to improve her performance than merely coming up with a tracking document.

112. The Appellant stated she did not accept Stephanie Mayes' help when it was offered. She stated the ILP is a legal document, which required her signature. She did not

believe she could sign off on work that someone else performed. The Appellant also stated again that she did not trust Mayes.

113. The Appellant reviewed Appellee's Exhibit 14, which was her employee evaluation. She stated she disagreed with some of the duties; that it was not accurate that she was asked to perform them.

114. The Appellant reviewed Appellee's Exhibit 15, which consisted of her time sheets from January 1, 2011, through May 15, 2011. She stated that some pay periods she worked some overtime, however, this was often performing other functions, such as relieving supervisors or staff in the housing units. She testified that several of the overtime entries are hand-written and they are not in her hand writing. She said they are also not initialed. The Appellant stated the correct practice is to put initials next to any hand-written entries on an otherwise typed timesheet. The Appellant stated that because she received overtime does not mean she received overtime in order to work on her plans. She stated there is back-up supporting documentation to establish the need for all overtime worked. This information was not included with Appellee's Exhibit 15.

115. The Appellant cited the example of Saturday, May 7, 2011, which was Derby Day. She stated that the timesheet reflects she worked sixteen hours that day. She stated that she did not work on ILPs; she was assigned to substitute for a supervisor on first and second shift that day. On other occasions, the Appellant stated she had to work overtime in order to attend mandatory training. This overtime was not for the purpose of working on ILPs.

116. The Appellant testified Appellee's Exhibit 6, which showed her training records, demonstrated she received a lot of training regarding clients. She stated this would be training which would be something very specific with respect to the treatment for a particular client. The Appellant stated that the training she never received was how to perform her duties as a QMRP at Central State. She was never told specifically what was expected of her, and most importantly, she was not told or shown how to prepare the ILPs. The Appellant stated she received general training at orientation, and additional training regarding clients, including Crisis Intervention Plans.

117. On cross-examination, the Appellant stated she has been classified as a Mental Health Education Evaluator the entire time she has worked at Central State and Bingham Gardens. Her pay has not changed, except she received an increment when she came off probation.

118. The Appellant agreed that performing ILPs is listed under Category D as 15 percent of her job duties on Appellee's Exhibit 2, her position description. She stated that the duties in Category A and other sections are also a part of completing the ILPs.

119. In December 2011 and January 2012, when she worked as a substitute QMRP, she attended meetings, but she did not prepare ILPs. She stated she usually took over for only a day or two at a time.

120. The Appellant stated that on May 26, 2011, she was pulled from duties as a QMRP after the May 7, 2011 incident on the field trip. She stated that she should have been pulled shortly after the incident if she was going to be. She stated there had already been an investigation where the employee had been found negligent. She stated that Bret Ryan was the one who asked who the supervisor was, which led to her being pulled.

121. The Appellant stated that in her two and a half years as a Case Manager at Oakwood, she was required to create and implement objectives, work on activity schedules and write letters to guardians. She also arranged trips and these were things which were incorporated into ILPs. She stated however, that this did not teach her how to perform the duties of a QMRP, especially as things were done at Central State.

122. The Appellant stated that it was Bret Ryan who described Central State as "falling apart" and "needing her." She stated that Ryan acted like she would be a superstar or "the next Michael Jordan." She stated she started with orientation, two or three weeks of supervision by Nan Benally, and thereafter she had no supervision from approximately July through November, 2011. She stated she was trying to figure out what to do, and worked with Abby, the other QMRP. Neither of them had a supervisor. She occasionally went to Bret Ryan, who told her they were working on getting a supervisor.

123. The Appellant stated it was Bret Ryan's idea that all other disciplines would be locked out of ILPs for a month to clean things up. She stated this went on for much longer than a month. She stated she sent an e-mail to Bret Ryan stating that she took pride in her work and was requesting overtime in order to complete ILPs. She stated he denied the request and did not respond to the e-mail.

124. The Appellant was asked to review Appellee's Exhibit 6, the record of her training. She recalled attending some training sessions and not others. She stated she would need to see more documentation in order to know if she attended the specific training sessions or not. She specifically stated that she did not remember attending charting training; however she did remember attending training regarding the levels of supervision at Central State.

125. The Appellant acknowledged that she received her five-day suspension for not timely completing ILPs. She stated the three main reasons were insufficient training, lack of overtime, and the requirement to input all the information from other disciplines.

126. The Appellant acknowledged she received overtime, but stated the overtime was to perform other functions rather than complete ILPs.

127. The Appellant reviewed Appellee's Exhibit 10, which was the e-mail she sent to Stephanie Mayes stating she had changed her mind and did not wish to have Mayes assist her in completing the ILPs. She acknowledged she sent this e-mail to Mayes. She stated she did not trust Mayes after she heard Bret Ryan say that the Appellant was not a good QMRP and

shouldn't have made it to merit status. She felt that Mayes worked for Bret Ryan and would follow his instructions.

128. The Appellant stated that Stephanie Mayes denied her overtime. She specifically stated that the testimony Mayes offered – that she never denied overtime – was a lie.

129. The Appellant agreed that Mayes' performance as a supervisor would be reflected by the work that the Appellant and Matt Barnes did as QMRPs. The Appellant stated that Mayes was demoted from her position as a supervisor and now serves as a QMRP.

130. The Appellant stated that some disciplines e-mailed information to her so that she could complete ILPs. She stated there were concerns about HIPAA violations in putting this information on the e-mail server.

131. The Appellant stated that when she was hired by Bret Ryan as a QMRP, she thought she could do the work as long as she was given extra time. She stated that when she worked at Oakwood she was allowed to come in early or stay late in order to complete her work. She stated that after she was taken out of QMRP duties and moved to the modules, the QMRPs no longer had to input all the information into the ILPs, and were not required to substitute for supervisors when they were not available.

132. The Appellant stated she was on time and a half overtime pay after 40 hours. She stated she learned later that she could have simply accrued compensatory time. The Appellant stated it did not matter to her and she would have even been willing to work without pay in order to get her work done.

133. With respect to discrimination, the Appellant admitted that Bret Ryan subjected other employees to religious statements in addition to herself. She stated he also told other female employees they should not go to lunch with members of the opposite sex.

134. The Appellant's next witness was **Todd McGuire**, who was a Floor Supervisor at Bingham Gardens and formerly at Central State. He testified the Appellant was assigned as the QMRP in his area. He stated she worked with a care plan with his staff, and she has had to work on the floor when lunch breaks were given to staff.

135. McGuire described an incident in March, April or May of 2011, when he was in Bret Ryan's office and McGuire overheard him tell Stephanie Mayes and others that the Appellant had three strikes and you have got to get her out of here. McGuire testified he thought they were discussing ILPs which had been prepared by the Appellant.

136. McGuire testified they used to be able to look at the Operations Manual online, however it is no longer available. He believes one was kept in Bret Ryan's office under lock and key.

137. McGuire also testified overhearing an employee named Vickie Akridge who worked in HR, and who worked on the response to the Appellant's EEO complaint. McGuire heard Akridge say Bret Ryan had said that the Appellant was on his "shit list."

138. **William Danny Pollard** testified next for the Appellant. He has worked for the state for 11 years and is currently a Training Development Specialist II at Bingham Gardens. Pollard testified the training records are generally accurate at the facility. Reviewing Appellee's Exhibit 6, he stated there could be some mistakes on this type of document due to human error inputting the information, and he would rely on the sign-in logs from the actual training as the best evidence as to whether or not a particular training was attended by an employee.

139. In Pollard's opinion, the Appellant was treated unfairly following the incident on the field trip when she was pulled from care of residents for investigation. He stated he never saw restrictions so strong against an employee. He stated the Appellant had to be escorted throughout the facility where any residents were involved. He stated when other employees were pulled from care, they have freely interacted with residents.

140. Pollard was not aware of any occasions when Bret Ryan made any comments regarding religion. However, he has heard Ryan make comments about women. Pollard testified he had heard Ryan say women should be at home, especially when they are pregnant.

141. **Abigail "Abby" Shepherd** testified next for the Appellant. She is employed by Seven Counties Services, currently at Central State Hospital. She has previously worked at Central State ICF/MR and Bingham Gardens. Shepherd worked as a QMRP alongside the Appellant. Prior to leaving for maternity leave, she stated Bret Ryan hired Matt Barnes to take her place. When Shepherd returned from maternity leave, she was employed as a Case Manager. She stated that because she is not a state employee and is employed by Seven Counties, her job assignment allows her to be placed in either position.

142. Shepherd stated the Appellant had a difficult time when she started as a QMRP. She stated that the supervisor left after a few weeks, leaving the Appellant and the witness without supervision. Before the supervisor, Nan Benally, left, she warned Shepherd to be wary of the Appellant.

143. Shepherd testified that she and the Appellant were given a lot of job duties that took away from their ability to do ILPs. She stated they were asked to relieve staff on the floor and perform other duties not usually done by QMRPs. She stated that she and the Appellant were also on call 24/7.

144. Shepherd stated the change which required QMRPs to input information onto the ILPs added greatly to the workload. She stated that they were also instructed there was no more overtime, which made it very difficult to get ILPs done on time.

145. Shepherd described a number of things the Appellant was criticized for, which she believed were actually Shepherd's responsibility. She pointed to interim reviews of

employees which were not done, which was actually Shepherd's responsibility. She also stated there was a reference to letters which should have been sent to guardians, which was also Shepherd's responsibility when she was a Case Manager.

146. Shepherd testified Bret Ryan made both religious comments as well as comments regarding employees' gender. Shepherd stated Ryan made a comment to her and the Appellant that they shouldn't eat lunch with members of the opposite sex, and that it was not appropriate for Christian women to do so.

147. Shepherd testified they were instructed not to prepare CCFs. These had not been updated for some time, and they were told that a new format would be used.

148. Shepherd testified she was not familiar with the Operations Manual.

149. On cross-examination, Shepherd discussed how difficult it was for the Appellant to learn the job of QMRP. She stated that two people in the Appellant's chain-of-command, Stephanie Mayes and Bret Ryan, had never done an ILP. She stated they were not much help. She also stated she was told by her supervisor, Nan Benally, to keep her pregnancy a secret until she was taking off on maternity leave. She was told to do this because Bret Ryan would not be happy.

150. Shepherd stated there were different expectations for the Appellant and her than there were for Matt Barnes and a male Case Worker named Dan.

151. The Appellee recalled **Regina Young** as a rebuttal witness. Young testified she was never told that QMRPs were not to do CCFs. She stated this would have been nice to know, however during this timeframe Bret Ryan was not communicating with her. She acknowledged some of the CCFs, which were in her review of the Appellant's case files, had not been updated since 2008. She stated that clearly they had not been updated for quite some time by QMRPs prior to the Appellant's arrival.

152. Young testified that during the period of time she was a Compliance Director, she was isolated in an office away from the other staff.

FINDINGS OF FACT

1. The Appellant, Christine Welker, was hired as a Mental Health Education Evaluator at Central State ICF/MR on June 8, 2010. She functioned as the Qualified Mental Retardation Professional (QMRP) for the B-2 Unit. (Testimony of the Appellant and Appellee's Exhibit 1.)

2. The Appellant was previously employed at Bluegrass Oakwood in direct care for two years and as a Case Manager for two and a half years. She was hired by the Facility

Director at Central State, Bret Ryan, to bring her experience from Oakwood to Central State. (Testimony of the Appellant and William Pollard.)

3. Central State ICF/MR was an intermediate care facility for individuals with intellectual disabilities. The mission of the facility is to provide treatment and services for its residents. The QMRP is the central figure to orchestrate the various services to each resident, according to their individual life plan (ILP). Preparing and updating the ILP is a major function of a QMRP. (Testimony of Ron Cooper, Stephanie Mayes, Regina Young, the Appellant, Abigail Shepherd, and Appellee's Exhibits 1, 2, 3, and 4.)

4. The Appellant is a female who suffers from a disability. She has Noonan Syndrome as well as PVNS. Her symptoms include a heart murmur, developmental delays, eye problems and general heart problems. She also has problems with her joints, specifically her right knee and both ankles. The Appellant is 4' 7" and weighs 82 lbs. She tries to be as independent as possible with her condition, and is able to live by herself, drive and cook. The Facility Director, Bret Ryan, and Stephanie Mayes were aware of the Appellant's condition. (Testimony of the Appellant and Stephanie Mayes.)

5. From June 16, 2010, through June 24, 2010, the Appellant attended orientation. This primarily involved learning basic information which applied to Central State for all employees; it was not specific to QMRPs, and did not directly address how to prepare ILPs. (Testimony of Ron Cooper, the Appellant and Appellee's Exhibit 6.)

6. Once she completed orientation, the Appellant was assigned to perform her QMRP duties with Nan Benally as her supervisor. Ms. Benally left the facility after a couple of weeks and did not provide the Appellant with any supervision or guidance on how to prepare ILPs or perform other duties as a QMRP. Several employees avoided the Appellant because she came from Oakwood, and they were not interested in what she had to say. Abigail Shepherd, who was a QMRP at the time the Appellant was hired, was told by Nan Benally to be wary of the Appellant. (Testimony of the Appellant and Abigail Shepherd.)

7. After Nan Benally left the facility, the Appellant was not assigned to another supervisor until the middle of November 2010. The Appellant did not receive instruction or guidance from anyone on how to prepare ILPs, other than the request she made to her co-worker, Abigail Shepherd. The Appellee introduced ten pages of training records which show extensive training received by the Appellant during her time at Central State and Bingham Gardens. There is no indication from these records, however, that she received any specific training regarding the duties of a QMRP or the preparation of ILPs. The only exception is client-specific information regarding ILPs was discussed with the Appellant and all necessary staff. (Testimony of the Appellant, Abigail Shepherd and Appellee's Exhibit 6.)

8. In the middle of November 2010, Stephanie Mayes returned from maternity leave and was assigned as the Appellant's first-line supervisor. She was classified as a Mental Health/Mental Retardation Program Services Supervisor. The Appellant and Mayes had known

each other for years, having grown up together. (Testimony of Stephanie Mayes and the Appellant.)

9. According to Mayes, in November and December, 2010, the Appellant did fine on her ILPs. Starting in January and February, 2011, the Appellant began having difficulty meeting deadlines. (Testimony of Stephanie Mayes and the Appellant.)

10. The Appellant began having trouble meeting deadlines with respect to her ILPs, when Bret Ryan instituted changes in the way these were prepared. Ryan mandated that QMRPs input all of the information for all disciplines to complete the ILP. This procedure was initiated so that only one person would have access to the report and important information would not be deleted. Initially this was supposed to be a short-term fix to clean up ILPs; however, it continued for several months. (Testimony of the Appellant and Abigail Shepherd.)

11. The Appellant was resistant to this change, not liking the idea of being responsible for inputting information from a professional in another discipline. Nonetheless, the Appellant performed this function, although it greatly slowed down her completing her ILPs. The Appellant also chose an unorthodox way of compiling her ILPs by completing the ILPs for all of her residents discipline by discipline. Thus, they would all be completed around the same time. (Testimony of the Appellant, Stephanie Mayes and Regina Young.)

12. The Appellant and Shepherd were told not to complete the Clinical Case Formulation (CCF) on the ILP by Facility Director Bret Ryan. He instructed them not to complete this because a new format was being developed. The Appellant and Shepherd worked on CCFs about a week, and were instructed to stop until the new format was completed. (Testimony of the Appellant.)

13. This information about not completing CCFs was not shared with Compliance Director, Regina Young. During this timeframe, Facility Director Bret Ryan was not speaking with Young. He had her in an office which was isolated from other staff. Not having this information was crucial, because Young prepared the Strategic Action Plan Monitoring Form, which judged the Appellant's work in May 2011, and formed the basis for her disciplinary action. (Testimony of Regina Young and Appellee's Exhibits 1 and 18.)

14. Around December 2010, Ryan told the Appellant that she was not a good QMRP and probably should not have gained status and made it off probation. As described by the witnesses at this hearing, Ryan's behavior can only be described as bizarre. He tried to impose his religious beliefs on employees at the facility. In addition, he told the Appellant and Shepherd they should not go to lunch with members of the opposite sex. He also stated that pregnant women and mothers should stay at home and take care of their babies. While Shepherd was off work on maternity leave, Ryan filled her QMRP job with a male, Matt Barnes, who had been hired as an Investigator. When Shepherd returned from maternity leave, she was reassigned duties as a Case Manager, and not returned to her duties as a QMRP. Ryan also told Stephanie Mayes and others that they needed to get rid of the Appellant. Ryan told the Appellant that

Shepherd wanted her job. (Testimony of the Appellant, Abigail Shepherd, Regina Young, William Pollard and Todd McGuire.)

15. The Appellant filed two Equal Employment Opportunity (EEO) complaints with the Cabinet, alleging discrimination based on gender, religion and disability. (Testimony of the Appellant, Regina Young, Jay Klein and Todd McGuire.)

16. On February 21, 2011, Stephanie Mayes and Acting Director David Corbett met with the Appellant to give her a Performance Improvement Plan (PIP). The goal of the plan was so that the Appellant could complete her ILPs in a timely fashion. The plan was to create and develop a tracking document so that the Appellant could inform Mayes of her progress regarding completion of the ILPs. Mayes was to meet with the Appellant and train her regarding this document. The Appellant did not sign the PIP, and stated she did not think it was fair she should have to type the information from all the disciplines into the ILPs. She stated she would need overtime in order to get all her work done. Corbett suggested freeing up some time during the day by having her Case Manager, Abigail Shepherd, do her incident review and incident reporting. New deadlines were set for January and February ILP completion. (Testimony of Stephanie Mayes, the Appellant and Appellee's Exhibits 8 and 9.)

17. The Appellant clearly stated at the time and during the hearing that one of the reasons she could not complete ILPs on time was that she was not granted overtime in order to complete ILPs. She stated she needed this because of the workload obligations, as well as her medical conditions. Both the Appellant and Mayes agreed the Appellant's condition sometimes made it difficult for her to process information. Mayes testified the Appellant was never denied overtime she requested. The Appellant acknowledged she worked overtime, but stated it was to perform other duties, such as substituting for supervisors or line staff in the units, and to be on call 24/7 when incidents happened at the facility. (Testimony of the Appellant, Stephanie Mayes and Abigail Shepherd.)

18. The Hearing Officer resolves this factual dispute in favor of the Appellant. He believes her testimony was more credible. The Appellee introduced timesheets into the record which showed the Appellant accrued overtime. Nonetheless, none of the supporting documentation was introduced, which the Appellant stated would have shown the reason for the overtime. The Appellant testified credibly that she was only allowed to work overtime to perform other duties and not completing ILPs. This finding is further supported by Appellee's Exhibit 9, showing that when the Appellant requested overtime, Corbett instead reduced her duties during the day to allow her more time to prepare ILPs. (Testimony of the Appellant and Appellee's Exhibit 9.)

19. The Appellant and Shepherd were required to perform duties that Matt Barnes and his male Case Manager were not required to do. These included substituting for unit supervisors and unit staff, as well as being on call 24/7. These duties took time away from the Appellant's ability to prepare ILPs. (Testimony of the Appellant and Abigail Shepherd.)

20. After the meeting where the Appellant was given her PIP, Mayes offered to assist the Appellant input information in the ILPs, so they could be completed sooner. The Appellant sent Mayes an e-mail declining this assistance. The Appellant testified she was not comfortable allowing someone else to input information which she would then have to sign. She also stated she did not trust Mayes. (Testimony of the Appellant, Stephanie Mayes and Appellee's Exhibit 10.)

21. A verbal warning was prepared for the Appellant on March 2, 2011, for not completing monthly ILPs on time. This warning was for failure to complete the January ILPs. Though prepared on March 2, 2011, it was not given to the Appellant until March 31, 2011, because she was out on medical leave. (Testimony of the Appellant, Stephanie Mayes, Appellant's Exhibit 1 and Appellee's Exhibit 11.)

22. On April 28, 2011, the Appellant was issued her interim review from her evaluation. The document, which was issued by Mayes, highlighted the fact that the Appellant was late in completing ILPs. It also documented problems and concerns with other job responsibilities and pointed out some things the Appellant was doing well. (Testimony of Stephanie Mayes and Appellee's Exhibit 14.)

23. On May 13, 2011, the Appellant was issued a written reprimand for not completing her April 2011 ILPs by close of business on April 26, 2011. (Testimony of Stephanie Mayes and Appellee's Exhibit 13.)

24. In late May of 2011, the Appellant was placed on desk duty or pulled from direct patient care. This decision was made by Bret Ryan regarding an incident which happened on Derby Day 2011. The Appellant worked 16 hours that day, substituting for the first and second shift supervisors. The residents in her unit went on a field trip, wherein one of the residents fell from a wheelchair. It was determined that the employee watching the resident allowed the resident to fall out of the chair. The Appellant was investigated because she was the supervisor over the unit on that date. The question was whether or not the employee had been trained on how to take care of that particular resident. The Appellant remained under investigation for three and a half months, during which time she did not perform any QMRP duties, and did not have any direct contact with residents. The Appellant was escorted whenever she went through the facility. This was a more severe restriction than was placed on other employees who previously had been under investigation and placed on desk duty or pulled from direct care. (Testimony of the Appellant and William Pollard.)

25. From May of 2011 through September 2012, the Appellant did not serve as a QMRP. Since that time she has returned to work as a QMRP with Regina Young as her supervisor, and does a good job preparing ILPs. Shortly after she was taken off of QMRP duties, the QMRPs no longer had to input the information from the other disciplines into the ILPs. Since returning to QMRP duties, the Appellant is now able to use overtime to complete her ILPs and has received training on completing ILPs. (Testimony of the Appellant and Regina Young.)

26. Regina Young prepared a Strategic Action Plan Monitoring Form in June and July, 2011. She reviewed the Appellant's ILPs regarding 13 clients. She found the Appellant was late in completing her ILPs and that there were omissions in the ILPs, especially relating to CCFs. There was also a problem with respect to notifying guardians regarding the treatment plans. Young's review formed the basis for Bret Ryan's request for disciplinary action to the Office of Human Resource Management (OHRM) within the Cabinet for Health and Family Services. (Testimony of the Appellant, Regina Young, Ron Cooper and Appellee's Exhibits 1 and 18.)

27. OHRM received the Request for Major Disciplinary Action, conducted its review and Appointing Authority Jay Klein issued a 5-day suspension against the Appellant. He based his decision largely on Young's review and noted the fact that the Appellant was both untimely in submitting ILPs and they also contained errors and omissions. He noted these failures dealt directly with patient care and compliance with federal regulations. (Testimony of Jay Klein and Appellee's Exhibit 1.)

28. The Appellant contends the disciplinary action was unfair for three basic reasons: she testified she did not receive proper training on how to prepare ILPs; was not allowed to work overtime to complete her ILPs; and, the requirement to input information from other disciplines was time-consuming and caused her to be late when preparing ILPs. The Hearing Officer finds that the Appellant proved all three of her contentions. Although the Appellant received a great deal of training, there was no evidence she received direct training regarding how to prepare ILPs at Central State, and during an important part of her early employment she either had a disinterested supervisor or no supervisor at all. Although there was a dispute regarding whether overtime to complete ILPs was allowed, the Hearing Officer finds the Appellant's evidence more credible that she was not allowed to work overtime for this purpose. It is unquestioned that the input of information from other disciplines took up a considerable amount of time preparing ILPs, and the requirement was lifted shortly after the Appellant stopped serving as a QMRP. For these reasons, the Hearing Officer finds there was not just cause for the 5-day suspension of the Appellant, and the penalty was excessive and erroneous.

29. In addition, the Hearing Officer finds that the disciplinary action in this case was unfair due to the additional requirements placed on the Appellant to perform duties which took away from her ability to timely finish ILPs.

30. Lastly, the overall management of Central State during this period of time created a very difficult environment for the Appellant to learn these important and difficult duties as a QMRP. Bret Ryan's management of the facility was certainly counterproductive to the care of the residents, and most importantly for this case, to the work performance of the Appellant. The Hearing Officer does not find that the Appellant proved that the disciplinary action in this case was based on sex discrimination, religious discrimination or disability discrimination. Ryan's management of the facility was certainly counterproductive to the Appellant's work performance and created an environment which made it difficult for her adequately perform her job responsibilities. Ryan's lack of communication with Young led to the Appellant being charged with failure to complete CCFs, which the Appellant was instructed directly not to prepare. The

Hearing Officer also notes that several of these CCFs had not been updated since 2008, thus Appellant's predecessors did not complete these documents either.

31. The Hearing Officer notes that all of the allegations against Ryan went unchallenged by the Appellee. Ryan did not testify, nor did any other witnesses offer any defense to the allegations put forth by the Appellant and other witnesses. Young's testimony at the end of the hearing (that Ryan did not communicate with her) probably illustrated most dramatically how dysfunctional this facility was under Ryan's management.

32. The Hearing Officer would have recommended that the Appellant receive a written reprimand for refusing the assistance of Stephanie Mayes to complete her January ILPs, however, the Appellant already received a verbal warning for her January ILPs being late. The suspension which was the subject of this appeal was for April and May ILPs being late.

CONCLUSIONS OF LAW

1. The Appellee, having failed to demonstrate just cause for the 5-day suspension of the Appellant, the Hearing Officer recommends that the Personnel Board set aside her suspension. In addition, the Hearing Officer finds that the suspension was excessive and erroneous. KRS 18A.095(1)(22)(c).

2. While the Appellant presented evidence that Bret Ryan, the Facility Director, engaged in conduct which was discriminatory based on gender, there was no proof that these actions led to the 5-day suspension in this case.

3. The Appellant produced evidence that Bret Ryan tried to impose his religious beliefs on the Appellant, as well as other employees at the facility. Nonetheless, there was no evidence that the disciplinary action in this case was the result of any religious discrimination.

4. There was no evidence that the 5-day suspension in this case was motivated by disability discrimination.

5. The parties introduced evidence regarding statements made by Bret Ryan at the time he was Facility Director at Central State ICF/MR. These statements were not objected to. Although they were not objected to, the Hearing Officer finds these statements were not hearsay statements, and that witnesses testifying as to what Ryan stated constitute admissions of a party. Bret Ryan, as the Facility Director, had the ability to speak for the Appellee in this case. The disciplinary action itself in this case was based on a report from Ryan. (See Appellee's Exhibit 1.) As admissions and not being hearsay, the Hearing Officer relied on this testimony extensively in forming his findings of fact. KRS 13B.090(1).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTINE WELKER V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2012-005)** be **SUSTAINED**. The Hearing Officer further recommends that references to the 5-day suspension be expunged from the Appellant's personnel records, that she be awarded back pay and other benefits to which she is entitled for the five-days' suspension which are being restored to her, that she be reimbursed for any leave time used to attend the hearing and any pre-hearing conferences at the Board, and that she otherwise be made whole. **KRS 18A.105, 18A.095(25), 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 five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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

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

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

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 10th day of July, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Tim Salansky
~~Ms. Christine Welker~~
Hon. Michael Boylan



**CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF HUMAN RESOURCE MANAGEMENT**

Steven L. Beshear
Governor

275 East Main Street, 5C-D
Frankfort, Kentucky 40621
(502)564-7770
Fax: (502)564-3129
www.chfs.ky.gov

Janie Miller
Secretary

November 9, 2011

Christine Welker

Re: Five-Day Suspension

Dear Ms. Welker:

Based on the authority of KRS 18A.095, and 101 KAR 1:345, you are hereby notified that you are officially suspended from duty and pay for a period of five (5) working days, November 14 through the 18, 2011.

In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as a Mental Health Mental Retardation Education Evaluator, with the Department for Behavioral Health, Developmental and Intellectual Disabilities, Central State ICF/MR, for the following specific reason:

Unsatisfactory Performance of Duties. As reported by Facility Director Bret Ryan, despite repeated efforts to improve your work performance, you continued to fail to complete and timely submit the required monthly Interdisciplinary Team (IDT), Individual Living Plans (ILP-III).

As part of your Mental Health Education Evaluator position at Central State ICF/MR, you served as the Qualified Mental Retardation Professional (QMRP) for B-2 Unit. Your caseload has fluctuated, but as of May 31, 2011, you had fourteen (14) clients on your caseload.

As the QMRP for these fourteen (14) clients, you are responsible to lead IDT meetings on each client monthly, quarterly, and annually. These IDT meetings are to be held and chaired by you prior to the 15th of each month, unless meetings must be scheduled later at the request of a client's guardian.

Each IDT meeting focuses on one (1) client on your caseload. The client's plan of care is examined, discussed, and updated as it relates to the client's needs, risk management plan, service objectives, and learning objectives. Following the IDT meeting, you are responsible to update the ILP-III on the client discussed during the IDT meeting, which would include all of the specific updates, needs, risk management changes, and service and/or learning objectives discussed. You are then required to submit the completed ILP-III to your supervisor, MHMR Facilities Services Supervisor Stephanie Mayes, within five (5) days of the meeting.

Recommended Order
Attachment A

Further, you are required to send a portion of the client's ILP-III to staff development within five (5) days of the IDT meeting for their use in training direct care staff on the updated risk management plan and learning and/or service objectives, along with any procedural changes you have written regarding the client. The ILP-III's are then filed in the client's chart and a portion of the ILP-III is also placed in the client's Resident Aide's data book. This book accompanies the client everywhere, and is used as a reference for those providing the client with direct care.

In addition to the monthly, quarterly, and annual reviews that require an ILP-III, on occasion, should there be an emergent issue, such as a return from the hospital, restraint usage, etc., an IDT meeting is held and the ILP-III may also require revision, meaning that a revised ILP-III must be completed and submitted within the 5-day time period as explained above.

The ILP-III is not only used in providing quality services in a safe environment, but is a requirement for the Department for Behavioral Health, Developmental and Intellectual Disabilities, as well as Central State ICF/MR to comply with Center for Medicare and Medicaid Services (CMS) regulations and the Strategic Action Plan as submitted to the court monitor for the Department of Justice. It is critical to note, the audits for compliance begin on the 15th of each month, and if the ILP-III's are late or not completed, the client's chart is out of compliance, which may subject the facility to citations due to deficiencies in complying with CMS regulations. Additionally, facility Strategic Action Plan monthly audits are submitted to the Department of Justice and any type of noncompliance, such as your failure to timely submit ILP-III's, would be duly noted by the court monitor.

On February 21, 2011, during a meeting with Ms. Mayes and Acting Director David Corbett, you were issued a Performance Improvement Plan (PIP) in an effort to assist you in completing past due ILP-III's. You mentioned that attending morning Incident Review meetings took time away from completing ILP-III's. Acting Director David Corbett suggested that temporarily you should send client Case Managers to these meetings in order to allow you additional time to complete the past due ILP-III's. Mr. Corbett stated that you only took advantage of this for several weeks and then stated that you thought you needed to attend these meetings. Further, Ms. Mayes and Mr. Corbett offered you assistance in entering information into the ILP-III's. However, in a March 2, 2011 email to Ms. Mayes, you stated, "Actually the more I thought of it the more I decided I would feel more comfortable inputting my own information." Therefore, you failed to accept this assistance.

On February 22, 2011, Ms. Mayes met with you and showed you the tracking progress tool she had developed, per the PIP. The tool outlined what client ILP-III's were due, the last IDT meeting date, and the date the ILP-III was due (5 days following the IDT meeting). It also outlined the extended due dates that you had been provided. Ms. Mayes explained that as you submit the past due ILP-III's, she would enter the date of submission. With the tool, Ms. Mayes was able to quickly determine and advise you regarding what ILP-III's were still incomplete, and therefore due.

Ms. Mayes also met with you on February 23, 2011, regarding your PIP and progress with completion of past due ILP-III's, and on April 20, 2011, you and Ms. Mayes discussed your progress and any barriers you encounter in completing ILP-III's.

Of note, due to your extended absences in March 2011, Ms. Mayes was unable to meet with you regarding your PIP. Also, due to your absences in March 2011, Ms. Mayes completed the ILP-III's, on your behalf, for the clients who were covered in March's IDT meetings.

Ms. Mayes had met with you on May 11, 2011, and you had agreed that you would have all of your April 2011, ILP-III's turned in by close of business that day. You further agreed that all of May's

ILP-III's would be turned in by close of business on May 18, 2011. Additionally, Ms. Mayes advised you, "If there is anything you need me to do to help ensuring these are complete please let me know."

In an email dated May 13, 2011, from Compliance Coordinator Regina Young to Ms. Mayes, Director of Risk Management Charles Stevenson, and Mr. Ryan, she stated your May ILP-III's were due that day, and also noted that you still had failed to submit April ILP-III's. She further advised that on May 11, 2011, you told her you would have all of April ILP-III's completed on that date, but as of May 13, 2011, she had not received them. She stated she asked you if you could at least turn in some ILP-III's that were due, rather than waiting and turning them all in at once. However, you advised her that you enter each discipline across the board in all ILP-III's at one time, rather than entering all necessary information into each individual ILP-III, so that you might submit individual ILP-III's as they were completed. Ms. Young also reminded Ms. Mayes that the facility had recently been issued a deficiency by the Office of Inspector General (OIG), due to your failure to complete and submit current ILP-III's on Client *6 and Client *8.

Despite multiple reminders, meetings, and your knowledge of the requirements, you failed to timely submit ILP-III's in May 2011, as follows:

<u>Client</u>	<u>Meeting Date</u>	<u>Due Date</u>	<u>Submission Date</u>
Client *1	April 14, 2011	April 21, 2011	May 16, 2011
Client *1	May 6, 2011	May 13, 2011	May 23, 2011
Client *2	April 14, 2011	April 21, 2011	May 16, 2011
Client *2	May 6, 2011	May 13, 2011	May 18, 2011
Client *3	April 21, 2011	April 28, 2011	May 2, 2011
Client *3	May 4, 2011	May 11, 2011	May 12, 2011
Client *4	April 14, 2011	April 21, 2011	May 16, 2011
Client *5	April 14, 2011	April 21, 2011	May 16, 2011
Client *6	April 14, 2011	April 21, 2011	May 16, 2011
Client *6	May 6, 2011	May 13, 2011	May 24, 2011
Client *7	April 14, 2011	April 21, 2011	May 16, 2011
Client *8	April 14, 2011	April 21, 2011	May 16, 2011
Client *8	May 6, 2011	May 13, 2011	May 24, 2011
Client *9	April 14, 2011	April 21, 2011	May 16, 2011
Client *10	April 21, 2011	April 28, 2011	May 17, 2011
Client *10	April 21, 2011	April 24, 2011	May 17, 2011
Client *11	May 6, 2011	May 13, 2011	May 18, 2011
Client *12	April 14, 2011	April 21, 2011	May 16, 2011
Client *13	April 14, 2011	April 21, 2011	May 16, 2011
Client *13	May 6, 2011	May 13, 2011	May 19, 2011
Client *14	May 6, 2011	May 13, 2011	May 31, 2011

Please note, many of the above ILP-III's were actually due in April 2011, but you failed to timely submit those ILP-III's. Further, according to the IDT Completion/Filing Audit report, from April 7, 2011 to May 6, 2011, on average you submitted ILP-III's 13 days late. Year-to-date, January 1, 2011 to May 6, 2011, you have averaged submitting ILP-III's 18.02 days late.

On June 15, 2011, Compliance Coordinator Regina Young conducted a Strategic Action Plan (SAP) monitoring sample of April ILP-III documents; and on July 22, 2011, she conducted a monitoring sample of May 2011 ILP-III documents. Of the twenty-one (21) ILP-III's you submitted, she discovered that only six (6) were correct. Fifteen (15) of the ILP-III's had the following information missing:

- In Client *1's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, you failed to review or update Client *1's needs list. This is done to ensure needs and learning objectives remain appropriate. Further, no monthly data/analysis update was provided for objective 1A2 [Client *1 will improve the ability to navigate his wheelchair] and 4C5 [Client *1 will learn to develop/improve socialization skills]. As QMRP, you were responsible to ensure that all portions of the monthly ILP-III review were updated from each discipline in preparation for the monthly review meeting.

Further, the Clinical Case Formulation (CCF) had not been updated on Client *1 since 2008. Therefore, it did not include information from the current year's assessments, and did not document any analysis of the diagnosis or differential diagnosis. Additionally, the CCF did not include consideration of bio-medical, psychosocial or psycho-educational factors in the review of pertinent history, predisposing factors, precipitating factors, perpetuating factors, previous treatment history or present status; nor did it include consideration of mediating and/or moderating factors in the review of the above factors. It also did not include hypotheses on status, course, treatment or habilitation needs. It should be formulated for the annual IDT and updated monthly by the QMRP, as needed.

The IDT minutes did not document any input or involvement of Client *1's guardian during the meeting, or preparation of Client *1 for the meeting. Further, there was no letter in Client *1's chart to indicate that the guardian was invited to the meeting.

- In Client *1's IDT meeting on May 6, 2011, for which you submitted the ILP-III on May 23, 2011, you failed to review or update Client *1's needs list. Further, no monthly data/analysis update was provided for objective 1B7 [Client *1 will learn to ask for his medication]; 1A2 [Client *1 will improve his ability to navigate his wheelchair]; 4A4 [Client *1 will learn a step of hand washing]; or 4C5 [Client *1 will learn to develop/improve socialization skills].

Again, the CCF had not been updated since 2008. Therefore, information and considerations explained above were missing.

- In Client *2's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, you failed to review or update Client *3's needs list. Further, no monthly analysis update was provided for objectives 5A [facility will continue providing education and information about Supports for Community Living (SCL) to guardian]; 4C5 [Client *2 will learn to develop/improve socialization skills]; or 4A4 [Client *2 will slow rate of intake and overstuffing the oral cavity (mouth)].

Additionally, the CCF had not been updated since April 2008. Therefore, it too was missing information and considerations explained above.

- In Client *4's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, the CCF failed to include moderating factors in the review of predisposing or precipitating factors, or previous treatment history. It also failed to include mediating factors in the review of predisposing, precipitating or perpetuating factors. Additionally, it failed to include hypotheses on status, course, treatment or habilitation needs.

The IDT minutes did not indicate any input or involvement of Client *4's guardian during the meeting. Further, Client *4's level of participation in the meeting was not documented.

- In Client *5's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, you failed to review or update Client *5's needs list. The SAP requires that at least 50% of objectives change over a three (3) month period. However, less than 50% of Client *5's learning objectives had been revised in the past three (3) months. Further, no monthly data/analysis update was provided for objective 4C2 [Client *5 will learn to develop/improve socialization skills].

The CCF had not been updated since May 2010. Therefore, it did not include any information from the current year's assessments, and did not document any analysis of the diagnosis or differential diagnosis. Further, it did not include mediating and/or moderating factors in the review of pertinent history, predisposing/precipitating/perpetuating factors, previous treatment history or present status. It also failed to include hypotheses on habilitation needs.

Additionally, the IDT minutes failed to document any input or involvement of Client *5's guardian or family during the meeting.

- In Client *6's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, you failed to review or update Client *6's needs list. Further, no monthly data/analysis update was provided for objective 5A [Client *6 will increase awareness of safety in his environment].

The CCF had not been updated since 2008. Therefore, it did not include information from the current year's assessments, and failed to document any analysis of the diagnosis or differential diagnosis. It also did not include mediating and/or moderating factors in the review of perpetuating factors, previous treatment history or present status. It did not include hypotheses on status, course, treatment or habilitation needs.

The IDT meeting minutes failed to indicate any input or involvement of Client *6's guardian during the meeting.

- In Client *7's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, you failed to review or update Client *7's needs list. Further, no monthly data/analysis updated was provided for service plan 4A [Client *7 will be given dignity and respect by wearing briefs], or for learning objectives 4B1b [Client *7 will remain on task]; 4B21.a [Client *7 will increase Fine Motor Skills]; or 5A [Client *7 will ready for discharge into an alternative medical setting (other than nursing home)]. Present data was not used to revise objectives 4C3c [Client *7 will increase socialization/communication skills]; or 4D3b [Client *7 will increase money management skills]; as was clinically indicated.

The CCF had not been updated since 2008. Therefore, it did not include information from the current year's assessments, and failed to document any analysis of the diagnosis or differential diagnosis. Further, it did not include a review of previous treatment history, and did not included consideration of bio-medical, psychosocial or psycho-educational factors in the review of pertinent history, predisposing factors, precipitating factors, perpetuating factors, previous treatment history and present status. The CCF also did not include consideration of mediating and/or moderating factors in the review of the above factors. It failed to include hypotheses on status, course, treatment, or habilitation of needs.

The IDT meeting minutes failed to document any input or involvement of Client *7's guardian during the meeting, and failed to indicate any preparation of Client *7 for the meeting.

- In Client *8's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, the IDT minutes fail to document any input or involvement from Client *8's guardian during the meeting. Client *8 was present at the meeting, but was not assisted to sign in as having attended. Further, there was no letter in Client *8's chart to show that the guardian was invited to the IDT meeting.
- In Client *8's IDT meeting on May 6, 2011, for which you submitted the ILP-III on May 24, 2011, you failed to review or update the individual's needs list. Further, no monthly data/analysis update was provided for learning objective 4C5 [Client *8 will learn to develop/improve socialization skills].

The CCF was not updated and failed to include a review of present status or analysis of diagnosis and differential diagnosis. Further, the CCF failed to include moderating factors in the review of pertinent history, precipitating factors, predisposing factors, perpetuating factors, previous treatment history or present status. It also failed to include hypotheses on status, course, treatment or habilitation needs.

Upon review of Client *8's chart, there was no letter to indicate that Client *8's guardian was invited to the IDT meeting, and the minutes failed to document any input or involvement of Client *8's guardian or mother.

- In Client *9's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, Client *9's CCF was not updated and failed to include a review of present status. It also failed to include mediating or moderating factors in the review of pertinent history, precipitating factors, predisposing factors, perpetuating factors, previous treatment history or present status. Further, it failed to include hypotheses on status, course, treatment or habilitation needs.
- In Client *10's IDT meeting on April 21, 2011, for which you submitted the ILP-III on May 17, 2011, the entire needs list in the annual ILP-III was blank. The needs list should have been derived from the annual therapeutic assessments, and is the source from which all learning objectives and service plans are to be created.

Further, Client *10's CCF was not updated and failed to include a review of present status. It also failed to include moderating factors in the review of pertinent history, precipitating factors, predisposing factors, perpetuating factors, previous treatment history or present status. Further, it failed to include hypotheses on status, course, treatment or habilitation needs.

- In Client *11's IDT meeting on May 6, 2011, for which you submitted the ILP-III on May 18, 2011, you failed to review or update Client *11's needs list.

The CCF failed to include information from the current year's assessments, and did not document analysis of the diagnosis or differential diagnosis. It also did not include mediating and/or moderating factors in the review of pertinent history, previous treatment history, or present status. Further, the CCF failed to include hypotheses on status, course, treatment or habilitation needs.

There was no documentation in the IDT meeting minutes to indicate whether Client *11 or Client *11's guardian participated in any way during the meeting. Upon review of Client *11's chart, there is no letter to show that Client *11's guardian was invited to the IDT meeting. Further, the IDT meeting minutes failed to indicate preparation of Client *11 for the meeting.

- In Client *12's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, the meeting minutes fail to document any input or involvement of Client *12's guardian during the IDT meeting.
- In Client *13's IDT meeting on April 14, 2011, for which you submitted the ILP-III on May 16, 2011, you failed to document in the meeting minutes that Client *13's guardian had any input or involvement during the meeting. Further, there is no documentation that Client *13 was prepared for the meeting, nor is there any documentation pertaining to the level of participation by Client *13 during the meeting.
- In Client *13's IDT meeting on May 6, 2011, for which you submitted the ILP-III on May 19, 2011, you failed to review or update Client *13's needs list. Further, no monthly data/analysis update was provided for learning objectives 1B6 [Client *13 will learn to clean hands before taking P.M. medications]; 4A5 [Client *13 will learn a step in hand washing]; or 4C2 [Client *13 will learn to develop/improve socialization skills].

Additionally, the CCF was not updated and failed to provide any of the required information.

The IDT meeting minutes failed to document any input or involvement of Client *13 or Client *13's guardian during the meeting. Further, the minutes failed to indicate preparation or level of participation of Client *13 during the meeting.

Additionally, there was no letter in Client *13's chart to indicate that Client *13's guardian was invited to the IDT meeting.

No monitoring sample was conducted on Client *14's ILP-III.

Of note, according to Ms. Young, in all fourteen (14) clients above, she discovered ages or dated information in the CCF for at least the past two (2) years, and usually for the past three (3) years, had never been updated.

You knew or should have known that you were responsible for thoroughly completing and timely submitting accurate ILP-III's on each client on your caseload no more than five (5) days following each client's IDT meeting. This job requirement was addressed as part of your Central State ICF/MR job description. Further, on January 27, 2011, you were verbally counseled, and on February 21, 2011, you were issued a Performance Improvement Plan. Due to your continued failure to meet deadlines, on March 21, 2011, you received a verbal reprimand. Additionally, your poor work performance was addressed on your first interim review dated, April 28, 2011. Then, on May 13, 2011, you were issued a written reprimand. Of note, due to you being placed on desk duty on or around May 26, 2011, as a result of your failure to timely complete ILP-III's, your August interim did not address any duties related to ILP-III's.

Your actions violate Central State ICF/MR Operational Practice IV. Active Care and Treatment, A. Case Management Functions, 6. Monthly Individual Program Plan Review; Operational Practice IV

Active Care and Treatment, A. Case Management Functions, 4. OMRP Responsibilities and, 6. Monthly Individual Program Plan Review; Operational Practice VII. Human Resources, A. Personnel, 6. Employee Conduct; and the Cabinet for Health and Family Services' Personnel Procedure 2.1, Employee Conduct. Further, your actions constitute unsatisfactory performance of duties for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

You previously received the following corrective actions:

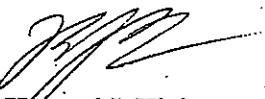
<u>DATE</u>	<u>ACTION</u>	<u>REASON</u>
May 12, 2011	Written Reprimand	Unsatisfactory Performance of Duties
March 11, 2011	Verbal Warning	Unsatisfactory Performance of Duties

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 1-800-445-5327 or (502) 564-5788.

To keep confidential the identity of clients as required by law, the names of the clients referred to are transmitted by the attached list marked "CONFIDENTIAL" which is not to be disclosed without proper authorization. Further, you are not authorized to disclose the following client name to anyone, including any attorney who may be representing you as counsel.

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, not including the date the notice is received. 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,



Howard J. Klein
Appointing Authority

HJK:jty

c: Secretary Timothy Longmeyer, Personnel Cabinet
Executive Director Mark A. Sipek, Personnel Board
Facility Director Bret Ryan, Central State ICF/MR
Cabinet Personnel File