

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

James A. Bryant,

*Appellant,*

v.

Case No. 2014-REM-07-0163

Stark County Multi County Juvenile Attention System,

*Appellee,*

**ORDER**

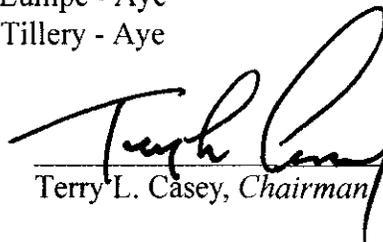
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant **REMOVAL** of Appellant from his Youth Leader III position with the Stark County Multi County Juvenile Attention System is **AFFIRMED**, pursuant to R.C. § 124.03 and R.C. § 124.34.

Casey - Aye  
Lumpe - Aye  
Tillery - Aye



  
Terry L. Casey, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, February 25, 2015.

  
Clerk

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

## NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

**IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD.** Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

**METHOD OF PAYMENT:** for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

**IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE March 4, 2015.** You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

**If you have any questions regarding this notice, please contact the Board at 614/466-7046.**

Case Number: 2014-REM-07-0163

Transcript Costs: \$384.00 Administrative Costs: \$25.00

Total Deposit Required: \* \$409.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: March 12, 2015

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

James A. Bryant

Case No. 2014-REM-07-0163

*Appellant*

v.

December 19, 2014

Stark County Multi County  
Juvenile Attention System

*Appellee*

James R. Sprague  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This case came to be heard on December 11, 2014. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Stark County Multi County Juvenile Attention System (MCJAS), was present through its designee, David C. Riker, MCJAS Superintendent, and was represented by Michael P. Zirpolo, Attorney at Law.

This cause comes on due to Appellant's July 7, 2014 timely filing of an appeal of his removal from the position of Youth Leader III with Appellee. Appellant's pertinent R.C. 124.34 Order of Removal was served on Appellant on July 2, 2014 and was effective on July 2, 2014.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.34.

**CONSOLIDATED STATEMENT OF CASE AND FINDINGS OF FACT**

The pertinent language in Appellant's R.C. 124.34 Order of Removal states:

You are being removed due to using unnecessary and excessive physical force on a youth on January 23, 2014. You also failed to report this incident. These actions are in violation of System Directive Y-2.

Eight witnesses testified at hearing.

First to be called by Appellee was **David C. Riker**, Superintendent of MCJAS and its appointing authority. Superintendent Riker also served as Appellee's designee at hearing.

Next to be called was **Rebecca Feters**, the Administrator at MCJAS' Residential Treatment Center (RTC), the center where Appellant worked at the time of the alleged infractions cited in the instant R.C. 124.34 Order of Removal. Ms. Feters supervises all staff at the RTC. (Ms. Feters was also called by Appellant during Appellant's case-in-chief).

Next to be called was **Percy McGhee**, who serves as Unit Manager of A. and B. Wings of the RTC and who was Appellant's supervisor on January 23, 2014.

Next to be called was **James McKenzie**, MCJAS' Chief Operations Officer, who served as the hearing officer for Appellant's pre-disciplinary conference.

First to be called by Appellant was **Theresa Kesik**, who, at the time in question, was serving at RTC as a volunteer for credit toward an anticipated Bachelor's Degree in Social Work.

Next to be called was **Mike Williams**, a Youth Leader II who had served at RTC for the time period pertinent to this appeal.

Next to testify was **Edwin Baylock**, who served as an Assistant Unit Manager at RTC for the time period pertinent to this appeal.

Next to testify was **Rebecca Feters**, the RTC Administrator, as noted, above.

Last to testify was **James Bryant, Appellant**, who testified as if on cross examination and on direct examination.

Appellee has essentially alleged that Appellant committed two serious breaches of Appellee's System Directive Y-2.

Appellee alleges that, without justification or provocation, Appellant crossed the cafeteria area at RTC, grabbed a 15-year old youth of moderate size by the youth's arm and neck, and then threw the youth into a wall with sufficient force to noticeably dent the durable plasterboard in the wall area where the youth hit the wall.

Appellee further alleges that Appellant then failed to report this use of force.

At hearing, Appellee introduced Appellee's Exhibit 1, which is a CR-ROM of video camera shots taken from a security camera placed in the cafeteria of the RTC facility. The camera shots at issue show the cafeteria as the meal period is ending. The shots show Appellant, another MCJAS employee, and two youths who reside at RTC.

One of those youths appears to begin to wipe down tables on which the meal had recently been served. A second youth (who will be identified as "D.T." for youth identification protection) appears to be in the far corner of the room.

The record appears to reflect that D.T. may have been kicking a chair fairly shortly before the events in question but, if so, had stopped kicking the chair before the interaction between Appellant and D.T. that is described, below.

In the video, Appellant appears to have attempted to escort or restrain D.T., who appears to be passively or minimally resisting the escort technique. At some point during Appellant's and D.T.'s interaction, Appellant also appears to lean into or on D.T.; when D.T. was either very near or in contact with one of the walls in the cafeteria. Appellant then walks back across the room, then turns and returns to D.T.'s location.

At some point shortly thereafter, Appellant appears to grab D.T.'s arm and neck, to pull D.T. back from a nearby wall, and then to forcibly shove or propel D.T. into the wall.

(Testimonial and documentary evidence presented at the hearing demonstrated that D.T. impacted the wall with sufficient force to dent the durable plasterboard at that location of the wall.)

Appellant then walked away, apparently directing the other youth in the room to get back to wiping down the tables. Then, Appellant again walked over to D.T., who was slumped down in the corner of the room.

Testimony reflects that, shortly thereafter, D.T. began banging his head against the pertinent wall for perhaps seven to eight times. D.T.'s unforced banging of his head was also thoroughly investigated by MCJAS management. Appellant was not charged with any discipline as a result of D.T.'s own actions.

Appellant did not report the incident where he appears to throw or propel D.T. into the wall. MCJAS only discovered same due to the reporting of another of its employees.

Upon confirming Appellant's afore-mentioned actions, MCJAS management initiated an investigation and also reported Appellant's actions to the Columbiana County Department of Job and Family Services (CCDJFS) (D.T.'s placement agency); since MCJAS is a mandatory reporter of potential child abuse. Ultimately, the CCDJFS determined that allegations of child abuse in this case were "unsubstantiated" and Appellant was not charged with any criminal offense.

At hearing, Appellee also introduced Appellee's Exhibit 18, which is **MCJAS System Directive Y-2, ("PHYSICAL RESPONSE TO RESISTANCE/DISCIPLINE 'HANDLE WITH CARE'")**.

**System Directive Y-2 Section I (Policy)** reads, in pertinent part:

The purpose of this policy is to provide guidelines and establish uniform procedures when physical response to resistance is necessary. When physical response to youth resistance is necessary, the staff's response must be reasonable and consistent with the degree of resistance being demonstrated by the youth. ... (System Directive at page Y-2-1)

**Section II, subsection A. 5. of the System Directive** requires that a staff member using a physical response to resistance shall immediately file a written Incident Report and Restraint Form (Incident Report) with the Supervisor, who forwards reports to Administrators. The Incident Report is to include the circumstances of the act, as well as the degree of force used and the reason for the use of force. (System Directive at page Y-2-3)

**Section II, subsection A. 7. of the System Directive** states:

These reports are to be [ ] completed on the shift in which the incident occurred. A copy of the report will be sent to the Administrator and Central Office for review and one placed in the resident[']s file. (System Directive at page Y-2-4)

**Section II, subsection C. 1. of the System Directive** states:

Handle with Care is only to be used when necessary under the following circumstances.

As necessary in self-defense or to prevent imminent injury to the youth or others.

To prevent substantial property damage. (*not to be used for ODJFS Facilities*)

To prevent or terminate an escape (in an apprehension or take into custody situation). (*not to be used for ODJFS Facilities*)

To maintain or regain control of the facility (*not to be used for ODJFS Facilities*)

To preserve the security and order of the facility. (*not to be used for ODJFS Facilities*)

(bullet points omitted) (System Directive at page Y-2-5)

Testimonial and documentary evidence established that Appellant had been sufficiently and repeatedly trained on System Directive Y-2.

Fairly extensive testimony was offered regarding the behavior of and challenges presented by D.T. The record reflects that D.T. had difficulty getting along with the other youths, had few friends, was picked on frequently, sought out and frequently got into fights, and could quickly become angry and difficult to control.

Testimony also indicated that D.T. would often respond favorably to oral redirection/coaching and that D.T. also responded fairly well to an incentive system that had been worked out for him.

The record also appears to reflect that Appellant and D.T. may have generally had a positive relationship and that Appellant may have purchased some special *de minimus* gifts for D.T.

Additionally, testimony provided by Theresa Kesic, a volunteer at RTC, indicates that D.T. told her that D.T. made the dents in the wall when he was banging his own head against the wall. The record appears to reflect that D.T. was slumped or sitting when D.T. banged his own head against the wall. Thus, the dents that might have been caused by D.T.'s own actions would have been located below the dents that were caused by Appellant's actions.

The testimony presented and evidence admitted at hearing demonstrated that not a single one of the physical response justifications found in Section 11, subsection C. 1. was present when Appellant grabbed and propelled, shoved, or threw D.T. into the wall of the cafeteria on January 23, 2014.

Appellant did offer that he felt that D.T. was about to be beaten up by other youths at the time and that the situation was escalating out of control. He also offered that an Ohio Department of Youth Services' audit was being conducted at that time, that there were only two staff immediately present on the scene, and that Appellant was also busy trying to get the youths to finish their clean-up chores, since they had just finished a meal in the cafeteria.

Appellant also agreed that he never filed an Incident Report concerning the incident (as required by Section II subsection A. 7.) but offered that an Incident Report was initiated by another staff member.

As demonstrated in the record, another staff member's filing of an Incident Report well after the fact did not absolve Appellant of his clear duty to file the report by the end of his own shift. (Please see Appellee's Exhibit 2, MCJAS Youth Incident Report) Among other consequences, Appellant's failure to file his Incident Report in a timely manner prevented Appellee from having D.T. medically examined for injuries immediately following Appellant's use of force on D.T.

In order to build a full and fair record, at the hearing the undersigned permitted both parties to offer into the record a number of documents and testimony regarding the activities that transpired between January 23, 2014 (the date of the incident with D.T. and Appellant) and July 2, 2014 (the effective date of Appellant's removal). While useful for the record, the bulk of that evidence does not directly impact the core questions of this appeal.

Yet, for our purposes, that exercise did demonstrate that Appellee complied with its pertinent procedural due process obligations.

Specifically, Appellee offered sufficient notice to Appellant of his pre-disciplinary conference in this matter. Appellee also offered Appellant an opportunity to view the evidence being considered by Appellee, as well as an opportunity to offer evidence on his own behalf. Appellant's pre-disciplinary conference was presided over by a neutral who was not Appellant's supervisor, namely, James McKenzie, MCJAS' Chief Operating Officer. Appellee also timely and properly provided Appellant with his pertinent R.C. 124.34 Order of Removal. Finally, Appellant was offered and accepted an opportunity for an avenue of post-deprivation review through his timely filing of an appeal with this Board.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth above, whether express or implied.

Next, I note that Appellee has complied with all pertinent procedural due process prerequisites.

Further, I find that the record in this matter strongly demonstrates that Appellant failed to follow the mandates of System Directive Y-2 when he employed a physical response to resistance.

In this instance, it would be incredibly difficult to justify the violent physical response to resistance that Appellant exhibited. Moreover, it is essentially un rebutted that D.T.'s actions (*i.e.* previously kicking a chair, slow compliance with instructions, and passive resistance) were clearly insufficient to invoke any of System Directive Y-2's grounds permitting the physical response employed by Appellant.

As well, Appellant's stated reasons for never filling out an Incident Report concerning this incident are insufficient to override the mandate to do so by the end of the shift, found in Section 11 subsection A. 7.

Unquestionably, then, Appellant has committed at least two violations of System Directive Y-2; by using physical force under non-permitted circumstances and by failing to file an Incident Report by the end of his shift (or at all).

In mitigation, we may consider that Appellant was a long-term employee of MCJAS at the time of Appellant's removal. Appellant's prior discipline included several written reprimands but no discipline of a serious nature.

Further, while the criminal threshold for child abuse is higher than is the threshold for excessive use of force on a youth, it is noted that the Columbiana County Department of Job and Family Services did issue an "unsubstantiated" finding in this matter.

Finally, it appears that Appellant did care about what happened to D.T., who was, by all accounts, an extremely challenging youth who may have utilized a disproportionate amount of RTC's staff time and effort.

### **CONCLUSIONS OF LAW**

This case presents the Board with the question of whether a long-term employee with little prior discipline should be removed for expressly violating two separate requirements of an agency directive regarding a physical response to a

resistant youth? Based on the findings set forth, above, and for the reasons set forth, below, the Board should answer that Appellant's removal should be affirmed.

R.C. 124.34 (A) sets forth the disciplinable offenses that this Board may consider when reviewing a properly filed appeal from discipline. Among those grounds is any " ... **violation of any policy or work rule of the officer's or employee's appointing authority** ...". (emphasis added)

In this case, it is clear, and I have found, above, that Appellant committed at least two violations of System Directive Y-2. Obviously, these violations are also sufficient to qualify under the above-stated R.C. 124.34 disciplinable offense.

Further, these violations did not occur in the abstract but involved Appellant basically slamming a youth's head/shoulders into a wall and creating a dent. Further, Appellant's failure to report the incident prevented Appellee from immediately examining the youth and rendering any medical care the youth might have needed.

Appellant's longevity with his agency, his relatively clean disciplinary record, the fact that Appellant was not prosecuted, and his previous expressions of care for D.T. are insufficient to override the severity of Appellant's offenses. Accordingly, Appellant's removal, while unfortunate, is without a doubt legally justified and appropriate. Thus, it should be affirmed.

### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the instant **REMOVAL** of Appellant from his Youth Leader III position with the Stark County Multi County Juvenile Attention System, pursuant to R.C. 124.03 and R.C. 124.34.

  
James R. Sprague  
Administrative Law Judge