

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

Cynthia Brinkman,

Appellant,

v.

Case No. 2015-REM-12-0235

Williams County Department of Job & Family Services,

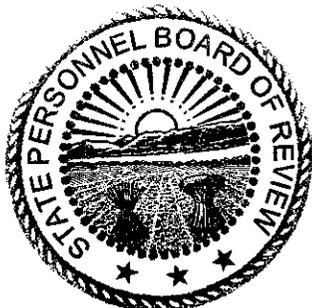
Appellee,

ORDER

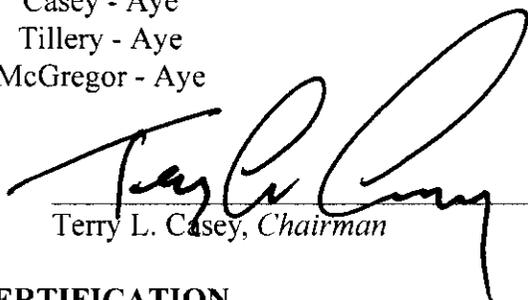
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge (ALJ) in the above-captioned appeal.

This Board has carefully and thoroughly examined the entirety of the instant record. That examination included a review of the Report and Recommendation of the ALJ, a review of any objections to that report and responses thereto that were timely and properly filed, and a review of the presentations of the parties at Oral Argument. Pursuant to that review, this Board hereby modifies the recommendation of the ALJ for the reasons set forth in the Board Opinion attached, hereto.

Wherefore, it is hereby **ORDERED** that Appellant's **REMOVAL** is **MODIFIED** to a demotion from Social Worker 2, Pay Range 7, to Child Support Case Manager, Pay Range 5, with no back pay, for the reasons set forth in this Board's Opinion, pursuant to R.C. 124.03 and R.C. 124.34.



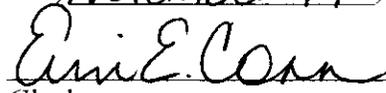
Casey - Aye
Tillery - Aye
McGregor - Aye


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, November 17, 2016.


Erin E. Coan
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 November 25, 2016. 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: 2015-REM-12-0235

Transcript Costs: \$526.50 Administrative Costs: \$25.00

Total Deposit Required: * \$551.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: December 2, 2016

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

Cynthia Brinkman,

Appellant,

v.

Case No. 2015-REM-12-0235

Williams Co. Dept. of Job
and Family Services,

Appellee.

OPINION

This opinion comes after oral argument before this Board on October 26, 2016. We the Board affirm in substantial part and overrule in part the recommendation of the ALJ. Our jurisdiction is expressly vested via the parties' collective bargaining agreement ("CBA") which contains a *Just Cause* standard for discipline. Our reasoning is explained below.

Background

This case involves a situation about a teacher, teenage girls, sex toys, and political infighting between local officials about how to handle the situation.

In 2012 a female middle school art teacher took two juvenile girls to her home to help with some chores. The teacher was a friend of one of the girl's parents. During the visit, the girls saw the teacher's dildo and other sex toys that she kept in her bedroom drawer.

The teacher purportedly showed and discussed her sex toys with the girls, who both became uncomfortable. There is some evidence to suggest one girl was later made to handle a 10 inch dildo, though the evidence is not conclusive. There was reportedly **no** allegation of sexual contact, and **no** allegation that the ensuing conversation was designed or intended to arouse.

One of the girl's parents heard about the incident from her daughter and the friend. This parent, understandably very upset, complained to the school superintendent. There are conflicting reports that the teacher was either mildly reprimanded or faced no consequences.

Three years later, a school board official told the local sheriff about the incident. This prompted the sheriff to call the Appellant, a Social Worker 2 for Appellee, Williams Co. Dept. of Job and Family Services ("JFS"). In response to his inquiry, Appellant told the sheriff that no official report was ever made to JFS by the school.

Hearing this, the sheriff launched a criminal investigation into whether the school and its superintendent failed to fulfill their mandatory reporting duty to JFS. The sheriff arranged to meet with Appellant and her JFS supervisor. The JFS supervisor told the sheriff more or less that JFS would not conduct their own investigation into the incident since the residual matter related to a failure to report and not directly to a present child protection matter.

What happens next is subject to some debate. Appellant states she was instructed to assist law enforcement with their investigation. JFS and the supervisor contend that Appellant was specifically limited by oral instruction to only participate in the interview of the one remaining juvenile girl-- and that was all. A county-wide Memorandum of Understanding requires cooperation between the two agencies in cases of suspected child abuse or neglect.

In any event, Appellant did more than interview the one remaining juvenile. All her help was sanctioned by the sheriff's office but was not approved by JFS or the supervisor.

In fact, JFS decided to screen out the case, i.e., dismiss it. Appellant was responsible for entering this decision into the database. Instead she left it as pending, hoping a higher up would realize the case was worth pursuing, and perhaps reverse the decision of her supervisor.

When JFS and the supervisor found this out, they ordered Appellant to cease and desist, turn over all her investigation materials, and to stay off county grounds. This was pending their investigation of Appellant for exceeding her scope of authority.

Next, JFS fired Appellant for what can mostly be described as several counts of insubordination. This included her attempt to keep the case alive in the database against instructions, doing more than interviewing the one juvenile without approval, not turning over all of her materials, and for going to visit the sheriff with her union representative while on administrative leave.

JFS also terminated Appellant for her speech to the investigator concerning her opinion that kids were being placed at risk. Appellant felt certain cases weren't being screened in correctly, and that social workers were spending too much time assisting with the execution of warrants instead of focusing on kids.

The investigator Fred Lord ("Lord"), who was also Appellee's *Loudermill* pre-discipline hearing officer found Appellant guilty of this charge and others which Lord apparently formulated, investigated and decided. Lord held that Appellant's opinion about "kids being at risk" was false and malicious even though it was made to Lord in the context of defending herself during an investigatory interview.

Lord worked as a contract HR consultant for JFS at the time. The 4th test of *Just Cause* requires that an investigation be conducted objectively and fairly. It was not a best practice, to say the least, for Lord to function as investigator and pre-termination hearing officer. This is because the hearing is in part designed to be a check against bias and errors with the HR disciplinary investigation.

Analysis

We agree with the ALJ that Appellant committed serious misconduct. The record substantiates that Appellant was disloyal to her supervisor and her appointing authority when she defied their decision to dismiss the case and then failed to notify her continued involvement with the case or keep her supervisor informed in an ongoing manner per policy.

We understand Appellant's view that she was assisting law enforcement. We sense she felt very strongly that JFS and the school were sweeping important matters under the rug. Appellant is entitled to her opinion regarding case screening.

However, Appellant's opinion does NOT entitle her to defy her employer. The sex toys incident was completely over. Three years had passed. There was no present potential for additional harm to the girls. If Appellant thought the supervisor's decision to dismiss the case went beyond the bounds of prosecutorial discretion, Appellant should have filed a written whistleblower report asking JFS to correct the matter or even filed a report with the sheriff. Appellant was simply **not** entitled to substitute her own judgment for that of JFS by taking affirmative acts in her official capacity to keep the case open.

For this reason, we find that discipline is in order, but shall it be termination? To decide, we consider the factors below:

Appellant's testimony regarding her intentions at hearing was misleading.

According to the ALJ, Appellant "obfuscated" in her testimony with regard to her "unauthorized conduct" with the sheriff's criminal investigation. The ALJ concludes that Appellant was "well aware" that her activities did not comport with her supervisor's wishes.

If anything, Appellant's conduct was purposefully calculated to thwart JFS' lack of action which Appellant thought risky. Lack of complete candor to this Board is an aggravating factor which we must weigh in favor of Appellee.

Management Also At Fault

The record establishes that Appellant was disciplined in part for protected activity under her CBA. JFS exceeded its authority by banning Appellant from all county buildings at all times, unless for "routine personal business". Evidently, union business was excluded from the definition of personal.

The JFS is not the appointing authority for the county commissioners. It is undisputed that JFS disciplined Appellant for visiting the sheriff's office with her union staff representative. JFS does not have authority over the office of the sheriff. We surmise that the sheriff may not oblige JFS controlling who may visit him.

In any event, JFS' actions violate Appellant's rights in two ways. First, JFS as a public employer cannot exceed its powers by banning Appellant from other *public* buildings which are not

under its control. Second, once JFS knew that Appellant was with her union representative, it was on notice that the matter likely involved the conduct of union business, a right guaranteed under the collective bargaining agreement.

JFS could have forbade union business during regular work hours under Article 3 of the CBA. It did not. Instead, it merely required Appellant to be in a work ready status during regular work hours. (Appellee's Ex. 2) But then it attempted to restrict her access to public buildings outside its control including and beyond hours of work.

If JFS did not want to subsidize Appellant with pay by giving her time visit the sheriff on union business, it should have changed the terms of her administrative leave. Instead, JFS summarily disciplined her for an act it was not entitled to prohibit under the existing terms.

This discipline violates the first and seventh tests of *Just Cause* which require proper forewarning or notice that particular non-obvious conduct is prohibited, and that the ensuing penalty for such conduct is commensurate with the offense.

To the extent noted above, we disagree with the ALJ's finding on the matter of whether Appellant should be disciplined for violating the terms of her administrative leave. We do note that the ALJ considered all of the other mitigating factors such as long service (18+ years), no active prior discipline, et cetera. We incorporate the remainder of her overall excellent analysis herein by reference to the extent that it is not in contradiction with our determination below.

Jurisdiction of this Board and Application of the *Just Cause* Standard

We take administrative notice that the CBA retains jurisdiction for this Board to consider disciplinary appeals for bargaining unit employees. (JE 1 at p. 20; Art. 25.8).

Moreover, we take administrative notice that the CBA specifically supersedes and replaces R.C. 124.34 in favor of the *Just Cause* standard. (JE 1 at p. 18; Art. 18)

This Board is entitled to apply the *Just Cause* standard via the CBA while using its own procedural rules. Inherent to this, is the ability to modify Appellant's discipline, and to decide whether any back pay is appropriate.

"Management also at fault"¹ is a recognized partial defense to discipline under the *Just Cause* standard. We carefully weigh Appellant's admitted misconduct and her less than perfect veracity at hearing against JFS's violation of Appellant's contractual rights, her lengthy service and lack of active prior discipline.

We also take into consideration JFS' lamentations that Appellant will not be able to testify credibly in child abuse cases in court due to the nature of her misconduct in tampering with records.

¹ Elkouri & Elkouri, *How Arbitration Works*, Ch. 15.3.F.xiv at 1000 (6th Ed. 2003).

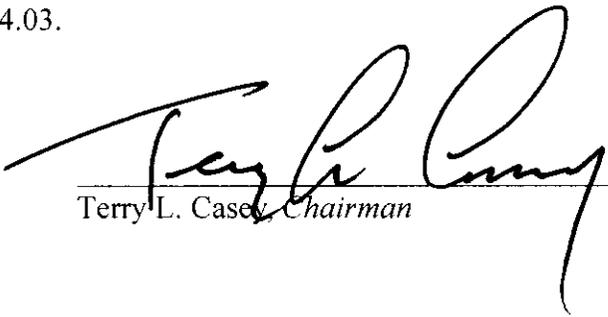
Taking this all into consideration we give Appellant the most severe discipline short of termination by denying her back pay and demoting her to a position where we think it is unlikely that she will have to testify in court.

DECISION

The removal order is disaffirmed. Appellant is hereby demoted from Social Worker 2, Pay Range 07 to Child Support Case Manager, Pay Range 5. There shall be NO award of back pay.

This Board will accept a motion for reconsideration on the demotion portion of this order, if the moving party demonstrates legal impracticability, in which case we will consider demotion to another classification or step reduction as an alternative.

This Board finds that it has jurisdiction under the Parties CBA. Alternatively, this Board exercises its jurisdiction under R.C. 124.03.



Terry L. Casey, Chairman

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

Cynthia Brinkman,

Case No. 2015-REM-12-0235

Appellant

v.

July 20, 2016

Williams County
Department of Job and Family Services,

Appellee

Elaine K. Stevenson
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration due to Appellant, Cynthia Brinkman's ("Appellant") December 18, 2015 filing of an appeal of her removal from her position as a Social Worker 2 with Appellee, Williams County Department of Job and Family Services ("Appellee" or "WCJFS").

JURISDICTION

Appellee removed Appellant from her bargaining-unit position of Social Worker 2 for disciplinary reasons, effective December 14, 2015. As a member of the covered bargaining unit, Appellant filed a grievance of her removal in accordance with the parties' collective bargaining agreement. Appellant's grievance progressed to Step 2 but was not resolved. Article 25, Section 25.8 of the collective bargaining agreement provides that if a bargaining unit member's grievance involves discipline and is not satisfactorily settled at Step 2, the Union may request that the grievance be submitted to the State Personnel Board of Review (SPBR) for review utilizing the appeal procedures in accordance with SPBR's rules. On December 18, 2015, Appellant filed a notice of appeal of her removal from employment with Appellee pursuant to Ohio Revised Code ("O.R.C.") §§ 124.03(A) and 124.34 and O.R.C. § 4117.10(A).

Appellant's O.R.C. § 124.34 Order of Removal states as follows:

SPECIFICALLY: Inefficiency, neglect of duty, failure of good behavior, misfeasance, malfeasance, insubordination, nonfeasance, dishonesty, and violation of employer rules. On or about April 15, 2015, you were insubordinate in that you conducted an unauthorized investigation in violation of

directives given to you by your supervisor; On or about April 15, 2015, you entered false, inaccurate, or misleading information into a state database; On or about October 16, 2015, you were insubordinate by failing to turn over materials as directed by the employer; On or about October 22, 2015, you were dishonest in an investigatory interview in stating you had kept your supervisor up to date and also violated the employer's policy by failing to keep the supervisor up to date; On or about October 22, 2015, you made false, vicious, or malicious statements about the employer when you stated they were leaving children at risk without substantiation; On or about November 7, 2015, it was discovered that you entered false, misleading or inaccurate information into a state database; On or about November 10, 2015, it was discovered you failed to send required letters to mandated reporters; and On or about November 20, 2015, you violated a directive given to you by the employer.

STATEMENT OF THE CASE

On March 23, 2016, a record hearing was held in this matter. Appellant was present at the hearing and was represented by Michael D. Batchelder, Attorney at Law. Appellee was present at the hearing through its designee, Supervisor Anna Meyers, and was represented by Eugene P. Nevada, Attorney at Law.

At hearing, Appellee called the following witnesses: **(1)** Cynthia Brinkman, Appellant; **(2)** Anna Meyers, Supervisor of the Child Protective Services unit at WCJFS; **(3)** Fred Lord, Account Manager with Clemans and Nelson, Inc.; **(4)** Pamela Johnson, Director of WCJFS; **(5)** Tracy Valentine, WCJFS Social Worker; **(6)** Billie Ma'arouf, WCJFS Social Worker; **(7)** Lyle Wheeler; and **(8)** Barbara Wheeler. Appellant called the following witnesses: **(1)** Steven Towns, Williams County Sheriff; **(2)** Lt. Clifton Vandemark, Defiance County Sheriff's Office Investigator; and **(3)** Appellant.

The record demonstrates that Appellant was removed from her position for failing to follow her supervisor's directives regarding a Williams County Sheriff's Office criminal investigation that took place in the spring and summer of 2015. Specifically: In April 2015, a Bryan City School Board member notified Williams County Sheriff Steven Towns of an incident of alleged child sexual abuse involving two juvenile females and a school teacher that occurred in May 2012. Sheriff Towns contacted Appellant to determine whether WCJFS had a case regarding this incident. Appellant informed Sheriff Towns that the incident had not been reported to WCJFS. Sheriff Towns opened an official criminal investigation through the Williams County Sheriff's

Office. Appellant informed her supervisor, Anna Meyers, of the Sheriff's report, and the two met with Sheriff Towns to discuss the matter. Ms. Meyers advised Sheriff Towns that she did not believe the report was a WCJFS issue but Appellant would be available to assist the Sheriff's Office with its criminal investigation by conducting "courtesy interviews" of the alleged juvenile victims. The next day, Ms. Meyers and a group of WCJFS social workers that included Appellant screened the Sheriff's report in accordance with the agency's screening process. When the group could not reach a consensus on the report, Ms. Meyers, as Supervisor of the CPS unit, determined that the report did not meet the ODJFS criteria for child sexual abuse and screened out the report. Appellant did not agree with Ms. Meyers' decision.

On or about April 15, 2015, Appellant entered information regarding the Sheriff's report in the Statewide Automated Child Welfare Information System ("SACWIS") but did not press the "complete" button, which left the report in "pending" rather than in the screening page for Ms. Meyers to designate the report as screened out. Appellant notified Sheriff Towns that the report had been screened out by WCJFS; however, she remained available to assist in the criminal investigation by interviewing the alleged victims. Since there was no WCJFS investigation, no joint investigation was conducted between the Williams County Sheriff's Office and WCJFS and the limit of WCJFS' involvement was to conduct "courtesy interviews" of the alleged victims. This was the directive given to Appellant by her supervisor.

FINDINGS OF FACT

Based upon a thorough review of the record evidence as a whole and, where relevant, witnesses' credibility determinations, I make the following Findings of Fact:

1. WCJFS is a combined agency that assists families with a variety of programs, including but not limited to, Child Support and Children Protective Services.
2. Appellant was employed by WCJFS from 1997 until her removal on December 18, 2015. Appellant held the position of Social Worker 2 in the Children Protective Services Unit (CPS unit). Appellant investigated reports of child abuse and neglect. Appellant received Appellee's Employee Handbook and she had access to the Appellee's Policies and Procedures Manual.
3. Anna Meyers is employed by Appellee as a Social Services Supervisor. Ms. Meyers oversees the CPS unit and was Appellant's immediate supervisor. As supervisor of the CPS unit, Ms. Meyers assigns cases and provides guidance to her staff. Ms. Meyers meets informally with staff to review cases and to handle situations where she needs to provide assistance or guidance on a particular case.

4. WCJFS receives reports of child abuse and/or neglect. Each of these reports is entered in the Ohio Department of Job and Family Services' ("ODJFS") information system, the Statewide Automated Child Welfare Information System ("SACWIS"). Security and confidentiality are of primary concern in using this system. Each person that is given authorized access to SACWIS must sign a Code of Responsibility form that contains fourteen directives, including: "I will not knowingly include or cause to be included in any record or report false, inaccurate or misleading information." Appellant received continuing education training regarding social service work and specialized training to become a "Super User" in SACWIS. As a "Super User," Appellant assisted others with problem and issues involving SACWIS.
5. When a report of child abuse and/or neglect is received by WCJFS' CPS unit, Supervisor Meyers forms a screening group of social workers to evaluate the report to determine whether it meets the guidelines to conduct a WCJFS investigation under O.A.C. 5101:2-36 *et seq.* If the screening group cannot reach a consensus on a report of alleged abuse or neglect, Ms. Meyers makes the determination.
6. If the CPS unit determines that a report of child abuse and/or neglect does not meet the guidelines for abuse or neglect, the report is "screened out" and does not become a case under investigation by WCJFS. This information is entered in SACWIS but no case is created in the system and no investigation is conducted under WCJFS' rules and regulations.
7. If WCJFS determines that a report of child abuse and/or neglect meets the state's criteria for neglect or abuse, the report is "screened in" and becomes a case for the CPS unit to initiate a WCJFS investigation in compliance with the procedures set forth O.A.C. 5101:2-36-01. A WCJFS investigation involves interviewing the alleged child victims, principals of the case, and any other witnesses deemed necessary during the investigation. Each WCJFS case is assigned to a social worker/investigator. The time period to conduct an investigation is forty-five days. The children's services agency may extend the time frame by a maximum of fifteen days if additional information is needed to make the report disposition in accordance with O.A.C. 5101:2-36-11.
8. Law enforcement entities are responsible for conducting criminal investigations and prosecutions of crimes that may have occurred against a child. In a criminal investigation involving alleged child sexual abuse, WCJFS is primarily responsible for interviewing alleged child victim or victims.
9. WCJFS may conduct joint investigations with law enforcement entities in Williams County relative to allegations of child abuse and neglect. WCJFS and

the Williams County Sheriff's Office, along with other law enforcement and judicial entities in Williams County, have a Memorandum of Understanding that delineates the roles and responsibilities of each official or agency in investigating child abuse or neglect in Williams County. Joint investigations between the Williams County Sheriff's Office and WCJFS are performed in accordance with the parties' Memorandum of Understanding and the agencies' respective statutory responsibilities and procedures as set forth in the Ohio Revised Code and Ohio Administrative Code.

10. In April 2015, a member of the Bryan City School Board notified Williams County Sheriff Steven Towns of an incident of possible sexual abuse involving a Bryan City School teacher and two female juveniles that occurred in May 2012.
11. On April 15, 2015, Sheriff Towns contacted WCJFS and spoke with Appellant to determine whether the incident was ever reported to WCJFS. Appellant found no report in SACWIS. Since the May 2012 incident was not reported to WCJFS, Sheriff Towns opened an official criminal investigation through the Sheriff's Office. That same day, Appellant informed Ms. Meyers of the Sheriff's call and the two met with Sheriff Towns at his office to discuss the matter. Ms. Meyers advised the Sheriff that she did not believe it was a WCJFS matter, but Appellant could assist in the Sheriff's Office criminal investigation by conducting "courtesy interviews" of the alleged victims.
12. Upon returning to the office from the meeting with Sheriff Towns, Appellant entered information in SACWIS regarding the May 2012 incident. The next day, Ms. Meyers and a group of social workers met to screen the Sheriff's report in accordance with the agency's screening process. Ms. Meyers, Appellant, and at least two other social workers, Tracy Valentine and Billie Ma'arouf, screened the report but could not reach a consensus. Ms. Meyers, as supervisor of the CPS unit, determined that the report did not meet the requirements of a child sexual abuse case under O.A.C. 5101:2-36 *et seq.* The report was screened out.
13. Appellant testified that she did not agree with Ms. Meyers' decision. Appellant further testified that she entered the in SACWIS for the May 2012 incident but did not press the complete button, which left the incident in "pending" rather than in the screening page for Ms. Meyers to designate the incident as screened out. Appellant admitted that she left the matter in pending in hopes that it would be discovered and some sort of action would be taken. Ms. Meyers testified that Appellant's data entry omission in SACWIS was a serious violation of the Code of Responsibility and called into question Appellant's trustworthiness. Ms. Meyers further testified that by failing to complete the data entry, Appellant left information in a place not routinely reviewed during daily data entry activities in SACWIS.

14. After the report of May 2012 incident had been screened out, Ms. Meyers again indicated that Appellant would be available to assist the Sheriff's Office with "courtesy interviews" of the alleged victims. Appellant relayed this information to Sheriff Towns.
15. There was never a WCJFS investigation of the May 2012 incident.
16. Since there was no WCJFS investigation, the only investigation regarding the May 2012 incident was the Williams County Sheriff's Office criminal investigation into the alleged incident of sexual abuse. Appellant's involvement with the criminal investigation was limited to conducting "courtesy interviews" of the alleged victims.
17. A "courtesy interview" involves a situation where a WCJFS social worker/ investigator assists law enforcement or another agency in their investigation of alleged child sexual abuse by interviewing the juvenile victim of the alleged abuse. WCJFS has an established course of conduct within the CPS unit that limits the social worker's role in "courtesy interviews" to interviewing the child of the alleged abuse. There are several ways a "courtesy interview" of the child victim may be conducted depending on the circumstances. A "courtesy interview" that is requested by law enforcement may occur as follows: A CPS social worker acts as a witness to the interview of the alleged child victim or the social worker participates in the interview with the law enforcement officer. Typically, a law enforcement agency requests that a CPS social worker conduct the interview of the child and send a transcript of the interview to the law enforcement agency. Once the social worker gives the transcript of the interview to the law enforcement agency that requested the interview, CPS' involvement ends. There are no written procedures that regulate the conduct of "courtesy interviews."
18. Appellant did acknowledge that the social worker's role in conducting courtesy interviews is limited. Appellant testified that when an allegation of child abuse is under a criminal investigation, law enforcement may request that a social worker from the CPS unit assist in the investigation by interviewing the alleged child victim.
19. None of the law enforcement personnel involved in the criminal investigation regarding the May 2012 incident had knowledge of the specific directives given to Appellant by her Supervisor or the limits of "courtesy interviews." Appellant did not apprise either Lieutenant Gregory Ruskey or Lieutenant Clifton Vandemark of the limits placed on her participation in the criminal investigation.
20. Sheriff Towns initially assigned Lt. Ruskey to conduct the criminal investigation of the matter. Lt. Ruskey and Appellant worked together to contact the families and arrange interviews. Appellant conducted an interview with the juvenile female

victim "M" but was unable to arrange an interview with the other alleged victim, who was now eighteen years of age.

21. Appellant turned over her interview materials and transcript to Lt. Ruskey. A couple of weeks later, Lt. Ruskey, contacted Appellant and requested personal contact information for School Psychologist, "P.E." He told Appellant that he did not want to go through the school to obtain the information. Appellant contacted School Psychologist P.E. to ask her permission to give her personal contact information to Lt. Ruskey. Appellant then provided the information to Lt. Ruskey.
22. Lt. Ruskey scheduled an interview with School Psychologist P.E. and called Appellant to attend the interview. Lt. Ruskey and Appellant interviewed the Bryan City School Psychologist P.E. related to an "anonymous" attempt to report the May 2012 incident.
23. In summer 2015, Sheriff Towns transferred the criminal investigation of the May 2012 incident to Lt. Clifton Vandemark of the Defiance County Sheriff's Office.
24. Appellant accompanied Lt. Vandemark to the Bryan City Schools Superintendent's office to interview or schedule an interview with the Superintendent. The Superintendent was in her office. She declined to be interviewed as she had hired an attorney to represent her.
25. Appellant and Lt. Vandemark met with the parents of the two alleged victims.
26. Appellant also accompanied Lt. Vandemark to a meeting with the Special Prosecutor regarding the criminal investigation of the alleged child abuse that occurred in May 2012.
27. In September 2015, the criminal investigation was closed when Lt. Vandemark presented his investigation results to the Bryan School Board. The Special Prosecutor reviewed the matter and issued a decision that the May 2012 incident was not a criminal matter subject to prosecution by the Williams County Prosecutor.
28. During the criminal investigation Appellant notified Ms. Meyers when she left the office with Lt. Vandemark for an interview, but did not provide details. Appellant marked herself out on the attendance board and provided limited information. Lt. Vandemark did not provide Ms. Meyers with any specific information regarding Appellant's participation in interviews beyond the two alleged victims and their families. Ms. Meyers first received specific information regarding Appellant's activities on October 15, 2015, when Appellant mentioned a newspaper article about to be published regarding the May 2012 incident.

29. On October 15, 2015, Appellant received emails from her immediate supervisor, Anna Meyers, and WCJFS, Director Pamela Johnson. Appellant was ordered to provide a comprehensive written statement of her activities and all the materials in her possession regarding the criminal investigation of the May 2012 incident. Appellant failed to fully comply with these orders. Appellant did not provide all the materials related to the investigation and Appellant did not provide a detailed explanation regarding her activities.
30. On October 20, 2015, Appellant received a letter from WCJFS Director Johnson regarding "Notice of Investigatory Interview and Directives." The letter states, in part, that Appellant is to cease any activity and refrain from having any contact with children, family, law enforcement personnel, school personnel on any matter not expressly assigned to Appellant.
31. On October 22, 2015, Appellant attended an investigatory interview regarding allegations of misconduct. Appellant had a Union Representative present during the interview.
32. On November 12, 2015, Appellant received a letter from WCJFS Director Pamela Johnson regarding "Administrative Leave with Pay." The letter sets forth details and directives regarding Appellant's conduct while on paid administrative leave pending the completion of Appellee's investigation into allegations of misconduct by Appellant.
33. On November 20, 2015, Appellant attended a second investigatory interview. Appellant's Union Representative was present. After the second investigatory interview on November 20, 2015, Appellant entered the Williams County Sheriff's Office to show her Union Representative, Dawn Bailey, the location of the office.
34. Appellee issued Appellant two Notices of Predisciplinary Conference, served on Appellant on November 16, 2015 and November 30, 2015. The second notice contained additional allegations of misconduct discovered after the initial notice had been served.
35. On December 4, 2015, Appellant attended a Predisciplinary Conference with her Union Representative, Dawn Bailey. On December 8, 2015, the hearing officer issued a report finding cause for discipline.
36. On December 11, 2015, Appellee served Appellant with her O.R.C. § 124.34 Order of Removal, effective December 14, 2015.

CONCLUSIONS OF LAW

O.R.C. § 124.34(A) provides that the tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts of the state, holding a position under this chapter, shall be during good behavior and efficient service. In an appeal from a disciplinary action taken under O.R.C § 124.34, the Appellee bears the burden to prove by a preponderance of the evidence that Appellant's committed one or more of the enumerated infractions listed in the O.R.C. § 124.34 Order.

Appellee must prove for each infraction alleged, that Appellee had an established standard of conduct, that the standard was communicated to Appellant, and that Appellant violated the standard. In weighing the appropriateness of discipline imposed upon Appellant, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Appellee has proven five of the eight allegations contained in Appellant's O.R.C. § 124.34 Order of Removal. The order of the allegations has been changed for clarity of presentation. For the reasons set forth below, Appellee has met its burden of proof with respect to allegations 1 through 5.

- (1) On or about April 15, 2015, Appellant entered false, inaccurate, or misleading information into the state's SACWIS database.
- (2) On or about April 15, 2015, Appellant conducted an unauthorized investigation in violation of her Supervisor's directive.
- (3) Appellant violated Employer policy by failing to keep her Supervisor apprised of her activities involving a criminal investigation.

As noted above, in April 2015, Williams County Sheriff Steven Towns opened a criminal investigation of an alleged incident of child sexual abuse that occurred in May 2012. Sheriff Towns contacted Appellant to determine whether WCJFS had a case regarding this incident. After Appellant informed Sheriff Towns that the incident had not been not been reported to WCJFS, CPS Supervisor Anna Meyers and Appellant met with Sheriff Towns to discuss the matter. Ms. Meyers advised the Sheriff that she did not believe the report was a WCJFS issue but Appellant would be available to assist the Sheriff's Office with its criminal investigation by conducting "courtesy interviews" of the alleged victims. The next day, Ms. Meyers and a group of WCJFS social workers that included Appellant screened the Sheriff's report in accordance with the agency's screening process. When the group could not reach a consensus on the report, Ms. Meyers, as Supervisor of the CPS unit, determined that the report did not meet the

ODJFS criteria for child sexual abuse and screened out the report. Appellant did not agree with Ms. Meyers' decision.

On or about April 15, 2015, Appellant entered information regarding the Sheriff's report of the May 2012 incident in SACWIS but did not press the "complete" button, which left the report in "pending" rather than in the screening page for Ms. Meyers to designate the report as screened out. Appellant then notified Sheriff Towns that the report had been screened out by WCJFS; however, she remained available to assist in the criminal investigation by interviewing the alleged victims.

At hearing, Appellant acknowledged that she did not agree with Ms. Meyers' decision to screen out the report regarding the May 2012 incident. Appellant also admitted that she failed to properly complete data entry regarding the May 2012 incident in SACWIS. Specifically, Appellant purposely did not press the "complete" key to dispatch the information she had entered to a screen for Ms. Meyers to enter the report as screened out. The omission of this critical data entry step placed the information in "pending" rather than moving the item to the appropriate screen for further action. Appellant reluctantly admitted that she left the matter in pending in hopes that it would be discovered and some sort of action would be taken. Ms. Meyers testified that Appellant's data entry omission in SACWIS was a serious violation of the Code of Responsibility and called into question Appellant's trustworthiness. Ms. Meyers further testified that by failing to complete the data entry, Appellant left information in a place not routinely reviewed during daily data entry activities in SACWIS.

With regard to Appellant's conduct during the criminal investigation, the evidence establishes that Appellant did not limit her activities to interviewing the two alleged victims as directed by her supervisor. Instead, Appellant exceeded her authority by participating in the interview of a School Psychologist; accompanying Lt. Vandemark to the Bryan City Schools in an attempt to interview or schedule an interview with the School Superintendent; and accompanying Lt. Vandemark to a meeting with a Special Prosecutor regarding the criminal investigation. Appellant argues that she had no clear guidance regarding how to conduct "courtesy interviews" since there are no written procedures. Appellant further argues that she merely followed her supervisor's directive to "assist" the Sheriff's Office with its criminal investigation.

Appellant's arguments are not persuasive. The weight of the evidence demonstrates that Appellant was well aware that Ms. Meyer's directive to assist the Sheriff's Office in its criminal investigation by conducting courtesy interviews did not mean that Appellant had authority to participate in interviews with a School Psychologist or School Superintendent or to meet with the Special Prosecutor regarding the criminal investigation. At hearing, Appellant attempted to obfuscate the issue of her unauthorized conduct during the criminal investigation by referring to processes followed in other types of investigations not relevant to this case and by repeatedly insisting that Ms. Meyers initially instructed her to conduct a WCJFS investigation but

changed her mind. Appellant also presented conflicting testimony regarding the scope and nature of "courtesy interviews."

Despite Appellant's conflicting testimony regarding "courtesy interviews," Appellant did acknowledge that the social worker's role in conducting courtesy interviews is limited. Appellant testified that when an allegation of child abuse is under a criminal investigation, law enforcement may request that a social worker from the CPS unit assist in the investigation by interviewing the alleged child victim. Ms. Meyers testified that while a "courtesy interview" may be conducted in various ways depending on the situation, this type of interview is limited to interviewing the child who was the victim of the alleged abuse. The parties' Memorandum of Understanding also reflects the limited scope of this type of interview when it is conducted at the request of law enforcement for a criminal investigation. Therefore, while it is true that there are no written policies and procedures with regard to conducting a "courtesy interview," the weight of the evidence is sufficient to support the conclusion that WCJFS had an established standard of conduct that was communicated to Appellant. Appellant understood the parameters she was expected to operate within; however, she chose to ignore them.

With regard to Appellant's communications with her Supervisor during the criminal investigation, the weight of the testimony presented reveals that Appellant was not forthcoming with Ms. Meyers. The testimony reveals that Appellant notified Ms. Meyers when she left the office with Lt. Vandemark for an interview, but did not provide details. Appellant marked herself out on the attendance board and provided limited information. Lt. Vandemark did not provide Ms. Meyers with any specific information regarding Appellant's participation in interviews beyond the two alleged victims and their families. The evidence indicates that Ms. Meyers first received specific information regarding Appellant's activities on October 15, 2015, when Appellant mentioned a newspaper article about to be published regarding the May 2012 incident.

Ms. Meyers testified that she trusted Appellant and relied upon her judgment and eighteen years of experience to act appropriately and in accordance with the directives she was given. The evidence reflects that Appellant took advantage of Ms. Meyers' trust and the fact that neither Sheriff Towns nor the two law enforcement investigators Appellant assisted (Lt. Ruskey and Lt. Vandemark) knew the specific directives Appellant had been given regarding her participation in the criminal investigation. While it is true that Ms. Meyers could have monitored Appellant's activities more closely, that fact does not excuse Appellant's conduct. Moreover, it is important to note that Appellant's lack of forthrightness regarding her role in the criminal investigation occurred over a three to four month time period. It was not until she was faced with the impending newspaper article regarding the Sheriff's Office investigation did Appellant attempt to let her supervisor know the extent of her involvement in the criminal investigation.

- (4) On or about October 16, 2015, Appellant was insubordinate when she failed to turn over all the materials to a Williams County Sheriff's Office criminal investigation as directed by her supervisor and by the WCJFS Director.

Appellee also charged Appellant with insubordination for failing to hand over materials related to the May 2012 incident. Based on the reasons set forth below, Appellee has proven this allegation. On October 15, 2015, Appellant received emails from her immediate supervisor, Anna Meyers, and WCJFS Director Pamela Johnson directing her to provide a statement and turn over all materials related to the investigation:

Meyers: "Just got off of the phone with Pam. She needs a Statement from you ASAP on Everything that you have done with this issued between The school and The Sheriff. She needs it by the end of the day. Today 10/15/2015."

Brinkman: "Well that probably won't happen. I have a meeting in 20 minutes."

Meyers: "That is a direct order from Pam. If you need overtime let us know."

Brinkman: "I am not involved the situation between the Sheriff and the school. I handled the sex abuse issue between the students and the teacher."

Johnson: "From your e-mail below am I to assume that once you conducted the interview(s) with the students and the teacher and submitted your interview notes to the Defiance Sheriff Department (since they are the agency that asked us to conduct a courtesy interview) that there has not been any communication since that time with the Williams County Sheriff, Defiance County Sheriff or the two student regarding this issue. If there has been communication with Steve, Cliff (Vandemark) or the students I am unclear what follow-up would have needed to take place since our only commitment as an agency was to a courtesy interview as we do not have a case as nothing has ever been screened in. Thanks."

Brinkman: "I have received a few phone calls as an update on what is coming in the paper as I did yesterday but no nothing else. I do see the family as they attend some of the same school events I do with my child."

The testimony revealed that Appellant did not turn over all of the materials she had in her possession as ordered. Ms. Meyers discovered materials from the investigation in Appellant's desk drawer while Appellant was on vacation. Appellant also failed to provide a statement that fully described her actions. At hearing, Appellant testified that she inadvertently forgot the materials in her desk drawer because it was late in the day and she was due in a meeting in twenty minutes. In considering the urgent tone of Ms. Meyers' and Director Johnson's emails and the fact that Appellant was permitted to request overtime to comply with the Director's order, I find that Appellant's email responses are insubordinate in that Appellant shows little to no

concern in providing a detailed statement of her activities and all the materials related to the investigation.

- (5) On or about November 20, 2015, Appellant violated a directive from the WCJFS Director.

The testimony and documentary evidence established that, on November 12, 2015, WCJFS hand delivered a letter, dated November 12, 2015, to Appellant from WCJFS Director Pamela Johnson. The letter notified Appellant that she was being placed on administrative leave with pay effective November 12, 2015, pending the completion of an investigation of Appellant's work-related conduct. The letter states, in part:

During this time of administrative leave with pay and investigation, you are not to discuss the investigation or any work related issues with any Department of Job and Family Services employees or its clients, any other employees of Williams County, or the public, unless otherwise specifically instructed by me. You are also not to enter any facilities of the Department of Job and Family Services or any other Williams County owned facilities, unless you have routine personal business to conduct such as any member of the public may have, unless otherwise specifically instructed by myself.

Failure to fully comply with this investigation and/or all directives contained in this letter will be considered insubordination for which you will be terminated from employment.

Upon completion of the investigation, a predisciplinary conference will be scheduled. It is my intention to complete this investigation as soon as practicable.

If you have any questions regarding this action, please contact me.

The evidence established that Appellant entered the Williams County Sheriff's Office on November 20, 2015, after she had attended a second investigatory interview at WCJFS. Appellant was accompanied by a Union Representative. At hearing, Appellant testified that her visit to the Williams County Sheriff's Office did not violate Director Johnson's directive because she went with her Union Representative, Dawn Bailey, on personal business to defend against her termination. Appellant explained that she needed to show Ms. Bailey where the Sheriff's Office was located so that Ms. Bailey could speak with the Sheriff regarding Appellant's employment situation.

I find Appellant's argument unpersuasive. Appellant could have made an effort to comply with Ms Johnson's directive, but she chose to ignore the directive. If Appellant believed that she needed to escort Ms. Bailey to the Sheriff's Office, she could have contacted Ms. Johnson for clarification to ensure that she did not violate any directives while the investigation was pending. However, at no time while Appellant was on paid

administrative leave and the investigation was ongoing did she seek clarification regarding the restrictions placed on her. Further, it is worth noting that Appellant's decision to violate Director Johnson's directive by appearing at the Sheriff's Office during the investigation is particularly troublesome, since the Sheriff was a potential witness to events that were under investigation by Appellee.

- (6) Appellant did not make false, vicious, or malicious statements regarding Appellee during an October 2015 investigatory interview when Appellant stated that the agency was leaving children at risk and when Appellant posted information on the Union's secret group page on Facebook.

The testimony and documentary evidence establishes that: Appellant expressed her opinion regarding the agency's overall performance during questioning in an investigatory interview; Appellant created a secret group page on Facebook for Union members to express their opinions and communicate; and Appellant encouraged Union members to complete a survey regarding the agency's performance. Appellant testified that access to the secret group page is limited to Union members who are added and invited by Union officers. Appellant described other Union activities communicated through the Union's secret group Facebook page, including notice of a Union "no confidence" vote with regard to the WCJFS Director and notice of a link to "SurveyMonkey" for Union members to complete a survey regarding whether WCJFS was leaving children at risk. Appellant stated that the survey was created by a Union officer. Appellant stated that she did not know who gave Appellee information regarding the Union's secret group page on Facebook. Appellee's witness, Fred Lord, testified that he was given the link to click on the survey but he did not indicate who provided the information or how it was accessed.

Although Appellee may disagree with Appellant's opinion regarding the agency's performance, I find that the nature of Appellant's statement, which was made in a private setting and prompted by questions from the investigator, and her activities on the Union's secret group page on Facebook do not rise to the level of false, vicious, or malicious statements.

- (7) Appellant did not enter false, misleading, or inaccurate information into the SACWIS database regarding an assigned WCJFS case in October 2015.

This allegation concerns a WCJFS case assigned to Appellant involving the "Wheeler" family. Appellee alleges that Appellant entered false information in SACWIS related to the Wheeler family in October 2015. The evidence indicates that there were several dates in October 2015 where Appellant worked on the Wheeler case. At hearing, Appellee focused on the dates of October 8 and 9, 2015. Mr. Wheeler testified that Appellant visited the home on October 8, 2015; whereas, Ms. Wheeler testified that Appellant visited the home on October 14, 2015. The documentary evidence indicates

that Appellant took some type of action in the Wheeler case on the 2nd, 4th, 8th, 9th, 14th, and 23rd of October 2015. It appears that Appellant's activities included calls to the Wheelers, at least one attempted home visit, a home visit, possibly with law enforcement, and meetings with either or both parents and with the Wheeler's daughter. Appellant testified that it is not uncommon for a social worker to make several attempts to conduct a home visit. Appellant also testified that not all information may be entered in SACWIS until a case is completed and closed. Appellee did not provide a witness to clarify the documentary evidence or establish that this case was completed. For these reasons, I find that the evidence is insufficient to support the conclusion that Appellant entered false, misleading, or inaccurate information into a SACWIS regarding her activities involving the Wheeler case.

(8) Appellant did not fail to send two required letters to mandated reporters.

Appellee alleges that Appellant failed to send two required letters to mandated reporters in October 2015. The letters were dated October 15, 2015 and October 22, 2015. At hearing, Appellant testified that she was on vacation from October 30, 2015 to November 12, 2015, and planned to finish these cases when she returned to work on November 12, 2015. Appellant stated that she could not complete the cases because she was walked out of the facility within a few minutes of her return to work on November 12, 2015. Appellee did not present any testimonial or documentary evidence to establish specific deadlines for mailing the letters in question. I find that the evidence is insufficient to support the conclusion that Appellant failed to send the two required letters dated October 15, 2015 and October 22, 2015.

SUMMARY AND RECOMMENDATION

In summary, Appellant entered misleading information in the state's SACWIS database; Appellant conducted an unauthorized investigation in violation of her supervisor's directive; Appellant failed to keep her supervisor apprised of her work with law enforcement on a criminal investigation; Appellant failed to comply with her supervisor's and the WCFJS Director's directives to provide information related to the criminal investigation; and Appellant failed to comply with the WCJFS Director's November 20, 2015 directive. I find that Appellant's conduct constitutes "insubordination," "dishonesty," "misfeasance," and "failure of good behavior" as contemplated by O.R.C. § 124.34.

In considering the appropriateness of the discipline imposed in this case, it is noted that Appellant is a long-term employee of Appellee with no previous discipline in her record. At first glance, removal may seem harsh discipline. However, the evidence shows that Appellant's disagreement with the handling of a particular matter clouded her judgment to the extent that she purposely entered misleading information in the state's SACWIS database and chose to ignore directives she was given with respect to her assistance with a criminal investigation and her conduct during the pending

investigation into her conduct. Moreover, Appellant's misconduct involved dishonesty and insubordination that occurred over an extended period of time, beginning in April 15, 2015 when Appellant purposely "misplaced" information in SACWIS, continuing with her investigation activities during the summer of 2015, and ending with her failure to follow directives issued in October and November 2015.

Based on the foregoing, I respectfully **RECOMMEND** that Appellant's removal be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.


Elaine K. Stevenson
Administrative Law Judge