

## **DECISION OF HEARING OFFICER**

**In the matter of**

**Case Number: 12006**

**Hearing Date: October 25, 2023, and November 3, 2023**

**Decision Issued: November 21, 2023**

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### **SUMMARY OF DECISION**

The Agency had found Grievant violated the rules of conduct due to failing to follow instructions and/or policy; unsatisfactory work performance; and failed to comply with standards of conduct. The Agency then issued Grievant a Group Two Written Notice. The Hearing Officer found the Agency failed to meet its burden. Accordingly, the Hearing Officer ordered the Agency to rescind the Group II Written Notice

### **HISTORY**

Grievant timely grieved her discipline and requested rescission of the Group II Written Notice. (G Exh. 2).

EDR appointed the undersigned as the Hearing Officer in this matter effective August 21, 2023. The Hearing Officer held a virtual prehearing conference (PHC) September 5, 2023.<sup>1</sup> Following the PHC, Hearing Officer issued a scheduling order. This order, among other things, scheduled a seven (7) hour grievance hearing for October 25, 2023.<sup>2</sup>

On the date of the hearing and prior to the witnesses testifying, the Hearing Officer granted the parties an opportunity to present matters of concern to the Hearing Officer. They presented none.

At the hearing both parties were given the opportunity to make opening and closing statements and to call witnesses. Each party was provided the opportunity to cross examine any witness presented by the opposing party. It was determined near the end of the time set aside for the hearing on October 25, 2023, that more time was needed for Grievant's counsel to present one or two additional witnesses. There was no objection to the hearing adjourning for the day and resuming on November 3, 2023, so the testimony of any additional witnesses could be taken. Hearing Officer determined good cause existed to grant an additional two hours to allow Grievant's counsel to present one or two additional witnesses. Accordingly, the Hearing Officer

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<sup>1</sup> The parties agreed to this scheduling.

<sup>2</sup> This was the first date available for the parties for the hearing. Moreover, Grievant/Grievant's Attorney requested the hearing be scheduled in October due to conflicts in Grievant/Grievant's Attorney schedule and to provide adequate time to prepare for the hearing. Agency's Advocate had no objection. Hearing Officer found good cause to scheduled the hearing beyond 30 days of her appointment. Hearing Officer also determined the first available date for the parties was October 25, 2023.

granted leave to reconvene the hearing on November 3, 2023, for the grievant to present an additional witness and for each party to making his/her/its closing argument. The parties agreed to this amended schedule for the hearing.

The Hearing Officer notes that there were no objections during the hearing to parties' respective exhibits. Accordingly, the Hearing Officer admitted the Agency's Exhibits 1 through 14, as well as Agency's witness list, timeline of events. Additionally, Hearing Officer admitted Grievant's Exhibits 1 through 40, as well as Grievant's timeline and list of witnesses.

During the proceeding, the Agency was represented by its advocate. Grievant was represent by her attorney.

### **APPEARANCES**

Advocate for Agency

Agency Representative

Witnesses for the Agency (2 witnesses, including the Agency's representative)

Grievant's Attorney

Grievant

Witness for Grievant (10 witnesses, including Grievant (2))<sup>3</sup>

### **ISSUE**

Was the written notice with removal warranted and appropriate under the circumstances?

Did Grievant engage in the conduct alleged? If so, was the behavior misconduct?

Further, was Agency's discipline consistent with law and policy?

### **BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against Grievant were warranted and appropriate under the circumstances. Grievance Procedure Manual ("GPM") § 5.8(2). A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

### **FINDINGS OF FACT**

After reviewing all the evidence, observing each witness's demeanor, and determining the credibility of the witnesses, the Hearing Officer makes the following findings of fact:

1. Grievant has been employed by the Agency for 27 years. Currently she serves as the Court Service Unit (CSU) Director for District 5. (Grievant's Testimony, G Exh. 38).
2. Grievant's immediate boss is Supervisor. He has been Grievant's supervisor for seven (7) years. All annual reviews of Grievant completed by Supervisor have rated Grievant as a

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<sup>3</sup> There was one joint witness who testified for Agency and Grievant.

contributor or “above contributor.” Grievant’s two most recent evaluations rated Grievant as “above contributor.” Further, Grievant has been promoted several times during her employment with Agency. During her 27 years with Agency, Grievant had never been disciplined until she received a Group II Written notice on May 26, 2023, for reasons stated here. (Grievant’s Testimony; A Exh. 4).

### **BACKGROUND INFORMATION:**

3. For at least 30 years and up until January 31, 2023, Detention Center 1 had always provided bed space in its facility for youths from District 5 and District 3 who required a placement in a detention facility. In December 2022, the Director of Human Services for the City 1 notified Grievant, among other CSU directors, that effective January 31, 2023, the Detention Center 1 would no longer accept youths outside City 1 into their detention center. Districts 3 and 5 are not located in City 1. Consequently, Detention City 1 ceased accepting youths from Districts 3 and 5, effective January 31, 2023. (G Exh. 5 Grievant’s Testimony).

4. District 5 includes City 2, City 3, County 1, and County 2. (Supervisor’s Testimony).

5. For several months immediately following the effective date of the decision by City 1 to not accept, among others, District 5 youths, finding a detention bed space for youths from District 5 became a conundrum. (Grievant’s Testimony; Supervisor’s Testimony).

6. When faced with such a problem, CSU directors are expected to use their best judgments. (Supervisor’s Testimony).

### **GUIDANCE OR LACK OF GUIDANCE FROM AGENCY**

7. Districts 5 and 3 were experiencing a novel situation resulting from City 1’s decision to not accept youths into City 1’s detention facility effective January 31, 2023. (Testimonies of On-call Supervisor and Retired Regional Manager).

8. This was the first time in over thirty (30) years or longer that Detention Center 1 declined to accept youths from District 5 into their detention facility. Accordingly, District 5 was practically left with no facility to house youth from its district in detention.

9. Grievant tried to find solutions to determine if other jurisdictions could accept juveniles from District 5. Grievant informed Supervisor of the dire situation in hopes of receiving guidance from him. Per Grievant’s testimony, prior to March 25, 2023, she never received guidance from her supervisor. Only thing Grievant was told at some point was the issue was one for the localities to address and the localities need to help Grievant. During the January 19, 2023 staff meeting, by Grievant’s testimony, Supervisor told Grievant that “the localities need to help you.” (Grievant’s Testimony).

10. Little guidance was provided to the CSU directors to address this unprecedented situation. (Testimonies of Grievant, CSU Directors of Circuits 3, 7, and VB).

11. Supervisor held monthly staff meetings with the CSU district directors he directly supervised. Those meetings occurred on the third Thursday of each month. This would have included monthly staff meetings in January and February 2023. (Supervisor's Testimony).

12. After becoming aware of City 1's decision to cease accepting youths in City 1's detention facility, during the January and February 2023 monthly meetings per his testimony, Supervisor informed his subordinates that the matter of obtaining bed space for youths in detention facility was a local issue; that is, a locality had the responsibility of entering into agreements with detention centers to provide spaces for juveniles who had been ordered to detention. It was not an Agency issue. (Testimony of CSU Director of 7<sup>th</sup> Circuit, Supervisor, CSU Director for VB, Acting CSU Director of 3<sup>rd</sup> Circuit).

13. Only additional guidance provided during the monthly meeting was to seek bed space from other jurisdictions. (CSU Director of 7<sup>th</sup> Circuit Testimony). Supervisor or his boss, provided no further guidance.

14. Agency provided no written policy or guidance on handling a situation when a court orders a youth to detention and no facility is available to detain the youth. (Testimonies of CSU Directors).

### **MARCH 25, 2023 INCIDENT**

15. On March 23, 2023, a father and his 13-year-old daughter were supposed to be in the juvenile and domestic court of City 2. Juvenile had been charged with a misdemeanor assault and battery on her mother. The case was scheduled to be adjudicated in court on March 23, 2023. When the case was called, it was determined that the custodial parent, the father, and juvenile had not appeared for court. Apparently some message was provided to the court that the father/juvenile was receiving medical services from a medical provider. When the court did not receive any paperwork from a doctor verifying medical services were being received, on March 23, 2023, the court ordered that a detention order and capias be for the child. Court ordered a failure to appear notice be provided to father. (A Exh. 8 at 1; Supervisor's Testimony).

16. Intake staff of the Agency prepared the Detention Order/Capias on March 23, 2023, as instructed by the court. The detention order indicated that the youth was to be taken into custody and brought before the court or intake officer. If court was not in session when the youth was taken into custody, youth was to be placed in the custody of Detention Center 2, per the order prepared by intake. The detention order was dated March 23, 2023, and signed by an intake officer. (A Exh. 8 at 2).

17. Pursuant to the order, police from City 2's Police Department took the juvenile in custody on March 25, 2023, at 8:49 a.m. March 25, 2023. This date was a Saturday and the court was not in session. Since court was not in session on that Saturday, under the order prepared by intake, the juvenile was to be placed in detention. Specifically under the order, the juvenile was to be placed at Detention Center 2. (A Exh. 8 at 2-3; Judicial Notice taken that March 25, 2023, was a Saturday).

18. However, after the police took the juvenile into custody, it was determined that she could not be placed in a detention facility. Specifically, a subordinate of Grievant, Senior Probation Officer (PO), attempted to have the juvenile detained at Detention Center 2. However, upon attempting to place the child at Detention Center 2, PO was informed that there was no space for the juvenile at the facility. Further, the Detention Center 2 spokesperson stated that juvenile was denied a bed at the facility because the juvenile had a catheter. PO also contacted another detention facility that in the past had taken juveniles from the 5<sup>th</sup> district on a case-by-case bases. That facility was Detention Center 3. Detention Center 3 also denied the juvenile admission to its facility. PO then contacted her supervisor (On-Call Supervisor)/Grievant informing On-Call Supervisor/Grievant that she had been unable to find a facility that would admit the juvenile. Grievant then attempted to get the juvenile admitted at Detention Center 2. Grievant contacted the superintendent of the facility inquiring if the juvenile could be admitted. The superintendent confirmed there was no space for the juvenile. (Grievant's Testimony). Grievant contacted other detention facilities and was not successful in finding a bed space for the juvenile. (Grievant's Testimony; On-call Supervisor's Testimony).

19. Prior to March 25, 2023, Grievant had already reached out to other jurisdictions to determine if those jurisdictions could accept District 5's youths in their detention facility. Although eventually, Merrimac and James River Detention centers agreed to accept juveniles from District 5 who required detaining, agreements with those two facilities for that purpose were not effective until July 1, 2023; that is, after the March 25, 2023 situation. (Grievant's Testimony; A Exh. 14).

20. Grievant determined there was no facility available for the juvenile to be admitted in.

Grievant then caused a risk assessment to be completed on the child to determine if there was a risk to the community if the child was released to her parent. The risk assessment indicated that the child was not a risk to the community. This was the case because the incident bringing the child before the court was an alleged assault and battery on her mother. Child was not living with her mother as she was living with her father. The incident had occurred six months before. Further, the child and father were instructed to appear in court on Monday, March 27, 2023, the next day the court was open.

She then informed her subordinate, On-call Supervisor, that juvenile would need to be released because there was no bed space for the child in a detention facility due to her medical condition. On-call Supervisor relayed Grievant's suggestion to his subordinate, PO. (G Exh. 26 at 3; Supervisor's Testimony).

21. Police Officer not under the authority of Agency or CSU Director. Police Officer was not required to follow the suggestion of a CSU director. (3<sup>rd</sup> District Acting CSU Director).

22. On-call Supervisor has been employed by the Agency for over 20 years. When the incident occurred on March 25, 2023 (not being able to place juvenile in a detention facility) it was the first time he had experienced their being no placement for a juvenile in a detention facility.

23. On-call Supervisor had no qualms with Grievant's decision. The situation was novel.

Never had they been faced with not being able to place juvenile in a detention facility. He did not view the actions of Grievant as a violation of the court's order. The order could not be complied with. (On-call Supervisor's Testimony).

24. Grievant had a plan. A risk assessment was completed and it was determined the juvenile was not a risk to the community if she was released. She was to report to court on the next business day, Monday. Electronic monitoring was not available because it was the weekend. (On-call Supervisor's Testimony).

25. Per Grievant's testimony, while the incident was taking place on March 25, 2023, Grievant texted her Supervisor to get assistance. (Grievant's Testimony).

Hearing Officer finds Grievant's testimony credible.

26. Grievant never received a response from Supervisor on the day of the text or the next day; that is Saturday and Sunday, March 25 and 26, 2023. (Supervisor' and Grievant's Testimonies). Supervisor saw the text on Sunday, March 26, 2023. Per Supervisor's testimony, the text was informing him of what had occurred. Supervisor responded on Monday, March 27, 2023, asking for more information about the incident on March 25, 2023. Grievant responded with details of the incident. (Testimonies of Grievant and Supervisor; G Exh.26).

In response to Supervisor requesting additional information, Grievant sent Supervisor an email on March 27, 2023. (G Exh. 26 at 3-4; Supervisor's Testimony).

27. Per testimony of Deputy Director of Community Program, she understood that Grievant's text was more of an "after the fact" email sent to inform Supervisor of what Grievant had done. (Testimony of Deputy Director of Community Program).

28. The text was not offered as evidence during the hearing. Hearing Officer had no opportunity therefore to review this communication. Accordingly, the Hearing Officer finds the evidence is insufficient to show Grievant was simply informing Supervisor of what action she took on March 25, 2023, regarding the incident. (Testimony of Deputy Director of Community Program).

29. On the next day court was in session. Grievant went to the judge's chambers and explained what had occurred. Judges had no problem with actions Grievant took. The child and father reported to court as instructed. Child was placed on electronic monitoring. Judges did not sanction Grievant.

30. Prior to the incident that occurred on March 25, 2023, Grievant had had conversations with her judges of the possibility of an incident occurring like the one that occurred on March 25, 2023. Grievant had established a relationship with the judges and understood they would not have a problem with a youth being released when placement in a detention facility was not possible. (Grievant's Testimony).

### **USUAL PRACTICE IN THE REGION**

31. Per her testimony, although CSU Director of 7<sup>th</sup> District was not impacted by City 1's decision, if she had faced the incident Grievant faced on March 25, 2023, she would have handled it as Grievant did. (Testimony of CSU Director of 7<sup>th</sup> District).

32. Judges in the 7<sup>th</sup> District have given intake staff including CSU Director of 7<sup>th</sup> District the authority to modify implementation of a judge's order in situations where it is impossible to comply with the judge's order as written. Per 7<sup>th</sup> District CSU Director, if faced with the same situation as Grievant, she would have done the next best thing and released the child on electronic monitoring. She would then inform the judge. 7<sup>th</sup> District CSU Director could not recall a time when a judge had sanctioned someone for doing the "next best thing." (Testimony of CSU Director of 7<sup>th</sup> District).

33. Electronic monitoring is unavailable in District 5 on the weekend. (Testimony of Grievant and On-call Supervisor).

34. CSU Director of 7<sup>th</sup> District has been employed by Agency for over 44 years. She is Grievant's counterpart in the 7<sup>th</sup> Circuit. She has also worked as a probation officer in the Agency. Her immediate and second level supervisors are the same as Grievant. (Testimony of CSU Director of 7<sup>th</sup> District).

35. Hearing Officer finds 7<sup>th</sup> District CSU Director's testimony credible.

36. Acting CSU Director of 3<sup>rd</sup> District has been employed by Agency for over 30 years. She is Grievant's counterpart in the 3<sup>rd</sup> circuit. Her supervisor and second level supervisor are the same as Grievant. Like District 5, District 3 was greatly adversely impacted by Detention Facility 1 being closed to the admission of youth from District 3.

37. Judges in District 3 have given 3<sup>rd</sup> District Acting CSU Director the authority to implement a judge's order in a modified way when circumstances are such that the court's order cannot be implemented as written. In such a situation acceptable practice is to speak to the judge after the fact about what action was taken.

3<sup>rd</sup> District Acting CSU Director experienced a situation similar to Grievant's. She was unable to find a detention bed for a youth in the 3<sup>rd</sup> District. However, at the last minute the superintendent agreed to accept the youth. In that case, per her testimony had the superintendent not agreed she her only option would have been to release the youth.

(Testimony of Acting CSU Director of 3<sup>rd</sup> District).

38. Hearing Officer finds 3<sup>rd</sup> District CSU Director's testimony credible.

39. Further, the Hearing Officer finds that the usual practice in the region in dealing with a situation such as the one on Grievant encountered on March 25, 2023 was to handle it similarly to the way Grievant handled the situation on March 25, 2023.

40. Inability to comply with a court order and violation of a court order are not the same. An

inability to comply with a court's order does not constitute violating a court order.

### **ISSUANCE OF GROUP NOTICE**

41. On May 26, 2023, Supervisor issued Grievant a Group II Written Notice. (A Exh. 4).

42. The notice indicated that Grievant had committed three Group II offenses.

First, Agency contends that Grievant's job performance on March 25, 2023, was unsatisfactory.

In addition, Agency contends Grievant failed to follow instructions and policy. Particularly, Agency mentions Agency Administrative Procedure Vol. 1-1.2-01 (Policy I-1.2-01): which states the following:

All [Agency] employees are expected to conduct themselves with integrity, in a professional manner, and to understand the requirements of and to comply with applicable state and federal laws, regulations, executive orders, all [Agency] administrative directives, policies, rules, and procedures and any performance criteria that apply to their jobs.

Finally, Agency contends in the group notice that Grievant violated DHRM Policy 1.60 Standards of Conduct (Policy 1.60) which states that all state employees are expected to:

(1) Comply with the letter and spirit of all state and agency policies and procedures, the Conflict of Interests Act, and Commonwealth laws and regulations;

(2) Perform assigned duties and responsibilities with the highest degree of public trust;

(3) Resolve work-related duties and responsibilities with the highest degree of public trust;

(4) Report circumstances or concerns that may affect satisfactory work performance to management;

(5) Meet or exceed established job performance expectations;

(6) Make work-related decisions and/or take actions that are in the best interest of the agency

(A Exhs. 4; 5 and 6 ).

43. Per testimony of Dep. Director of Community Program, should have utilized the chain of



command during the incident on March 25, 2023. (Testimony of Deputy Director of Community Program).

### DETERMINATIONS AND OPINION

The General Assembly enacted the *Virginia Personnel Act*, *VA. Code* §2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging, and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his/her rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in, and responsibility to, its employees and workplace. *Murray v. Stokes*, 237 VA. 653, 656 (1989).

*Va. Code* § 2.2-3000 (A) sets forth the Commonwealth's grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints... To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances.<sup>4</sup>

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (Policy 1.60). The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

Under the Standards of Conduct, Group I offenses are categorized as those that are less severe in nature, but warrant formal discipline; Group II offenses are more than minor in nature or repeat offenses. Further, Group III offenses are the most severe and normally a first occurrence warrants termination unless there are sufficient circumstances to mitigate the discipline. *See* Standards of Conduct Policy 1.60.

On May 26, 2023, Agency issued Grievant a Group II Written Notice. The Hearing Officer examines the evidence to determine if the Agency has met its burden.

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<sup>4</sup> Grievance Procedural Manual §5.8

**I. Analysis of Issue(s) before the Hearing Officer**

Issue: Whether the discipline was warranted and appropriate under the circumstances?

**A. Did the Grievant engage in the conduct? If so, was the behavior misconduct?**

Agency contends Grievant violated a court order and exposed Agency to potential liability and contempt of court.

Evidence is insufficient to demonstrate Grievant violated a court order. The evidence shows that on March 23, 2023, the juvenile and father did not appear in court for the adjudication of an assault and battery allegedly committed by the juvenile. The juvenile was at the hospital having a catheter inserted. This was not substantiated for the judge. Therefore, because the juvenile and her father did not appear before the judge on March 23, 2023, the judge gave instructions for the issuance of a detention and capias order for the juvenile.<sup>5</sup> (A Exh. 8 at 1).

The evidence shows that intake staff under Grievant prepared the detention order/capias as instructed by the judge. The relevant portions of this order required the juvenile to be taken into immediate custody and be brought before a judge or intake officer. If the court was not open at the time the juvenile was taken into custody, the juvenile was to be placed in the custody of Detention Facility 2 and brought before the judge on the next day court was in session. (A Exh. 8 at 2).

The evidence demonstrates that the juvenile was taken into custody on Saturday, March 25, 2023. However, due to Detention Facility 1 closing its doors to juveniles before the 5<sup>th</sup> Circuit as of January 31, 2023, a detention placement was very difficult to obtain. The probation intake officer tried to find a placement at a detention facility for the juvenile on March 25, 2023, but no juvenile detention facility would provide a bed space for the juvenile due to (i) lack of space and (ii) the juvenile's medical condition. The medical condition being the juvenile having had a catheter inserted in her two days before. The evidence shows that Grievant's subordinate (the probation officer's supervisor) brought the quandary to Grievant's attention on March 25, 2023. Grievant attempted to find placement for the juvenile contacting several detention facilities. Grievant even spoke to the superintendent of Detention Facility 2 after the juvenile was initially denied a bed in hopes of finding a placement for the juvenile. Her efforts were not successful. Grievant testified that during this incident on March 25, 2023, she also texted her supervisor to get assistance from him. The Hearing Officer finds Grievant's testimony credible. The evidence shows the supervisor did not respond. Accordingly, he provide no assistance.

When no bed space could be found, the evidence shows that Grievant made a suggestion by informing her subordinate that she needed to inform the police officer that the juvenile would need to be released because a bed space could not be located. The evidence shows that before making this suggestion, Grievant caused a risk assessment of the juvenile to be completed. The risk assessment noted that the juvenile had been charged with committing an assault and battery on her mother six months before. Additionally, the juvenile was now residing with her father. The

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<sup>5</sup> In addition, the court instructed that a failure to appear (FTA) summons be issued to the father.

risk assessment indicated releasement to the juvenile's father was appropriate. Further, the father and juvenile were instructed that they must appear in court on Monday, March 27, 2023, the next day the court was in session. Of note, the juvenile was not placed on electronic monitoring because in District 5 placement on electronic monitoring is not available on the weekend. March 25, 2023, was a weekend day.

Considering the above, the evidence demonstrates that more than minimal efforts were made to comply with the judge's order that instructed the juvenile to be held in a detention facility. But that order was impossible to implement due to the lack of bed space and the juvenile's medical condition. Because it was impossible to comply with the order, the Hearing Officer finds Grievant did not fail to comply with the order as alleged by the Agency. In fact, the evidence shows Grievant made exceptional efforts to assist in obtaining a detention bed for the juvenile.

Agency also contends that Grievant failed to seek guidance from her superior. The Hearing Officer finds the Agency has not met its burden and shown such. A review of the evidence demonstrates that when the incident was occurring on March 25, 2023, Grievant attempted to communicate with her supervisor. She sent him a text. Supervisor failed to respond to the text for two days. By then, the juvenile was in court and the matter was heard by a judge. Moreover, prior to the March 25, 2023, incident, the evidence shows Grievant had sought the guidance and assistance of Supervisor in finding detention beds for youths in the 5<sup>th</sup> Circuit. None was forthcoming other than Supervisor stating "finding beds for juvenile in the 5<sup>th</sup> Circuit is a local issue." In fact, by the testimony of CSU Director of 2<sup>nd</sup> District "what was meant by this statement was never explained."

Agency also avers that Grievant did not enjoy the relationship that CSU directors in Circuits 7 and 3 enjoy with their judges. That relationship is that the judges and intake or probation officers have an agreement that if a judge's order cannot be complied with, intake or the probation officers may alter the order to the "next best thing."

The evidence fails to support the Agency's claim. By Grievant's unrefuted testimony, before the incident on March 25, 2023, Grievant had informed the judges in the 5<sup>th</sup> Circuit of the dilemma caused by Detention Facility 1 refusing to provide bed space as of January 31, 2023, for 5<sup>th</sup> Circuit juveniles that required a placement in a detention facility. Grievant had ongoing dialogue with the judges. Grievant testified that she knew the judges and their position and that is why she knew the action she took on March 25, 2023, would not be problematic. Evidence also shows that neither of the judges in the 5<sup>th</sup> District held Grievant in contempt. There was no evidence that the judges complained to Grievant's supervisors about Grievant's actions on March 25, 2023.

Moreover, the Hearing Officer is cognizant of Agency's claim that the judges told Grievant to not take such action again without consulting them. The Hearing Officer finds this claim is unsupported by the evidence of record. Considering the evidence, the Hearing Officer finds that the usual practice in the region per the testimony of several CSU directors is that when a judge's order cannot be complied with, intake/probation officer may do the "next best thing." Then inform the judge of the action taken. Hearing Officer finds the evidence showed Grievant's actions were consistent with this usual practice in the region.

In addition, for reasons already discussed, the Hearing Officer finds the evidence is insufficient to show Grievant or the Agency was at risk of being held in contempt. First the juvenile was screened and deemed appropriate to release by to the community. Second, because of the relationship Grievant had with the judges they had agreed to the “next best thing” when a court’s order of detainment could not be implemented. The evidence shows that the “next best thing” on March 25, 2023, was to release the child to his father, instruct the father and juvenile to appear on Monday, March 27, 2023, when the court would reconvene. Child was not placed on electronic monitoring because in the 5<sup>th</sup> Circuit, electronic monitoring is unavailable on Saturday, the day the juvenile was taken into custody. Moreover, the child and father reported to court on the next day court was in session as they were instructed to do.

The Hearing Officer cannot find that the Agency has shown by a preponderance of the evidence that the Agency faced potential liability had the juvenile not appeared.

Agency also contends that Grievant directed someone of which she had no authority over to violate the court’s order. Evidence shows that the police officer was not a subordinate of Grievant. Further, the police officer had no obligation to follow anything the Grievant may have said. The Hearing Officer finds Grievant made a suggestion through her subordinate. That suggestion was that the child be released due to no space being available and the detention facility being unable to handle a juvenile with a catheter.

Furthermore, for reasons already discussed above, after considering all the evidence, the Hearing Officer finds the Agency has failed to demonstrate Grievant’s work performance on March 25, 2023, was not satisfactory.

Moreover, Hearing Officer cognizant of the Deputy Program Manager’s testimony that Grievant should have utilized the chain of command. Hearing Officer finds the evidence shows Grievant did so. For one, the evidence demonstrates that prior to the March 25, 2023 incident, Grievant was proactive as she had engaged in dialogue with the judges about the possibility of an incident occurring similar to the one unfolding on March 25, 2023. The evidence indicates the judges had indicated their acceptance of Grievant handling the situation as she did on March 25, 2023; that is, doing the “next best thing.” The next day court was in session, Grievant went to the judge and informed him of what had occurred. Further, the evidence shows that Grievant reached out to her supervisor for assistance before March 25, 2023, for guidance. Additionally, Grievant texted Supervisor for assistance as the incident was unfolding. However, he did not respond.

In summary, the Hearing Officer finds the Agency has failed to meet its burden and shown Grievant violated Policy 1.60, Policy Vol I-1.2-01, and performed unsatisfactory on March 25, 2023. Agency cannot demonstrate that Grievant engaged in misconduct.

## **B Was the Discipline Consistent with Policy and Law?**

Because the Hearing Officer has determined Grievant did not engage in misconduct, the Agency’s discipline is not consistent with policy or law.

## **II. Mitigation.**

The Hearing Officer has determined that the Agency has failed to meet its burden. That said, for the sake of argument, even if the Grievant engaged in misconduct (which this Hearing Officer finds is not the case) the Hearing Officer finds the conduct does not rise to the level of a Group II Offense. This is the case because, the judge's order could not be complied with. Grievant's superiors provided little to no guidance to address the situation that occurred on March 25, 2023, especially considering the juvenile's medical condition, and the fact that Detention Facility 1 was no longer accepting 5th Circuit juveniles. Moreover, the judges in the 5<sup>th</sup> Circuit did not object to the action Grievant took. Agency's discipline exceeds the limits of reasonableness considering all the unique circumstances, to include little to no guidance from Grievant's superiors.

The Hearing Officer has considered all evidence whether specifically mentioned or not. She sets forth her decision below.

### **DECISION**

Hence, for the reasons stated here, the Hearing Officer rescinds the discipline. The Agency is ordered to rescind the Group II. Moreover, if Grievant has been denied any benefits, raises, or the like due to the issuance of the Group II Written Notice, Agency is ordered to reinstate all appropriate benefits.

### **APPEAL RIGHTS**

You may request an administrative review by EDR within 15 calendar days from the date the decision was issued. Your request must be in writing and must be received by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment and Dispute Resolution  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov), or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's decision becomes final when the 15-calendar day period has expired, or when requests for administrative review have been decided.

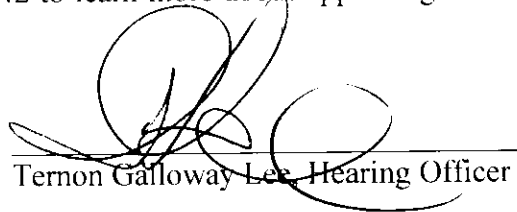
A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance

procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final.<sup>[1]</sup>

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

Entered this 21<sup>st</sup> day of November,



Ternon Galloway Lee, Hearing Officer

cc: Agency Advocate/Agency Representative  
Grievant's Attorney  
Grievant  
EDR's Director of Hearings

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<sup>[1]</sup> Agencies must request and receive prior approval from EEDR before filing a notice of appeal.

## **DECISION OF HEARING OFFICER**

**In the matter of**

**Case Number: 12006**

**Remand Hearing Date: May 6, 2024**

**Record Closed on May 6, 2024**

**Decision Issued: June 14, 2024**

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### **HISTORY**

Grievant timely grieved her discipline and requested rescission of a Group II Written Notice.

EDR appointed the undersigned as the Hearing Officer in this matter effective August 21, 2023. The Hearing Officer held an initial hearing in two sessions on October 25 and November 3, 2023, and issued her decision on November 21, 2023. In that decision, the Hearing Officer determined that the agency failed to meet its burden. The Hearing Officer then ordered the agency to rescind the group II Written Notice and restore all appropriate benefits. *See* Hearing Officer's November 21, 2023 Decision.

Thereafter, the agency timely requested a review of the Hearing Officer's decision. By EDR Ruling 2024-5648, EDR remanded the Hearing Officer's decision for further consideration. In its remand, EDR granted the Hearing Officer discretion to open the record to accept new evidence and or argument as to the matters remanded.

The Hearing Officer received additional arguments from the parties and exhibits. In addition, the Hearing Officer held a supplemental hearing on May 6, 2024, to receive addition evidence as to the matters remanded. During the hearing, the Hearing Officer accepted written arguments from the parties. Specifically, the Hearing Officer accepted (i) Agency's Response to Administrative Hearing Officer four (4) Questions to the parties on Remand; (ii) Grievant's Response to Administrative Hearing Officer 4 Questions to the parties on Remand; and (iii) Grievant's Attorney's argument dated April 9, 2024. The Hearing Officer also admitted the additional exhibits submitted by the parties. Specifically, the Hearing Officer admitted Agency's supplemental exhibits 15 through 24 and Grievant's supplemental exhibits 41 through 45.

During the supplemental hearing, the Hearing Officer provided each party the opportunity to present opening statements and additional witness testimony, cross examine any witness presented by the opposing party, and present closing arguments.

An advocate or attorney represented each party.

### **APPEARANCES**

Advocate for Agency

Agency Representative

Witnesses for the Agency (1 witnesses, the Agency's representative)

Grievant's Attorney

**Grievant**

**Witnesses for Grievant ( 4 witnesses, including Grievant)**

**Issues or Matters Considered on Remand**

- A. What is the Agency’s Responsibility Regarding Securing a Detention Center Placement for a Juvenile Prior to Pre-trial Disposition?**
- B. Did the Grievant Substantially Comply with the Court’s Order and Should Grievant have called the Judge?**
- C. Did Grievant have the court’s authority or permission, by her working relationship with the court, to release the juvenile without first contacting the court?**
- D. Did Grievant engage in a group notice offense when Grievant instructed the police officer through her subordinate to release the juvenile?**
- E. Did Grievant Fail to Utilize Her Chain of Command?**

**BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary actions against Grievant were warranted and appropriate under the circumstances. Grievance Procedure Manual (“GPM”) § 5.8(2). A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

**FINDINGS OF FACT**

Upon reconsideration on remand of the evidence presented and after reviewing all the evidence, observing each witness’s demeanor who testified during the initial and supplemental hearings, the Hearing Officer makes the following relevant findings of fact regarding the matters to be considered on remand. The Hearing Officer also incorporates the findings of facts set forth in her initial decision unless amended by this remand decision:

**Facts Related to the March 25, 2023 Incident Resulting In Grievant’s Discipline**

- 1. The juvenile involved in this case and her father had not appeared for a juvenile and domestic relations court hearing on March 23, 2023. The court is located in CSU District 5. Because the two failed to appear, on March 23, 2023, the juvenile and domestic relations judge (court/judge) ordered that a detention order be issued on the juvenile and a capias-failure to appear be issued on the father (A Exh. 8; G Exh. 25).**
- 2. Thereafter, on March 23, 2023, the CSU intake officer issued the Detention Order authorized by the judge. The prepared order directed that the juvenile be taken into**



immediate custody and brought before a judge or intake officer. Moreover, according to the issued order, if the court was not open, the juvenile was to be placed in the custody of Detention Center 2. (*Id.*)

3. Under the issued order, a police officer in the district 5 locality took the juvenile in custody on March 25, 2023, at 8:49 a.m. March 25, 2023 was a Saturday. This is a date the court is closed. (*Id.* at 3).

The Officer took the juvenile into custody under §16.1-246 of the Code of Virginia which provides in pertinent part the following:

No child may be taken into immediate custody except:

A. With a detention order issued by the judge, the intake officer or the clerk, when authorized by the judge, of the juvenile and domestic relations district court in accordance with the provisions of this law or with a warrant issued by a magistrate

(A Exh. 15; §16.1-246A of the Code of Virginia).

4. Detention Center 2 was at capacity on March 25, 2023. Hence, the facility did not have a bed space for the juvenile. In addition, the juvenile had a medical condition, the insertion of a catheter. Accordingly, as another reason for not accepting the juvenile, Detention Center 2 determined it was unable to meet the medical needs of the juvenile because of her catheter. (A Exh. 14).

5. On March 25, 2023, after the police officer detained the juvenile, Grievant's subordinates, the probation officer and the On-Call Probation Officer Supervisor called multiple detention facilities in an attempt to find a detention placement for the juvenile. None were available. (Testimony of On-Call Probation Supervisor during Initial and Supp. Hearing; A Exh. 14).

6. When Grievant's subordinates informed Grievant of the nonexistence of placements to detain the juvenile, Grievant also called detention facilities to locate a placement for the juvenile. Her efforts were futile as well. (Testimony of Grievant; A Exh. 14).

7. Electronic monitoring was unavailable because the juvenile was taken into custody on a Saturday and placing a juvenile on electronic monitoring on the weekend is not available in the district 5. (Testimonies of Grievant and On-call Probation Officer Supervisor).

8. Grievant then conducted a risk assessment using what Grievant described as an approved method utilized by CSU staff to determine if releasing a juvenile back into the community is a risk. In making the assessment, Grievant considered the detention order was because of the juvenile's failure to appear in court; the underlying charge against the juvenile was assault and battery against her mother; the juvenile was not residing with her

mother; the alleged offense occurred four months before; and if released, the juvenile would reside with her father. (Testimonies of Grievant and On-call Supervisor of Probation Officers; A Exh. 14).

9. The risk assessment indicated that releasing the juvenile back into the community was not a safety risk. Grievant then instructed her subordinate to inform the police officer that the juvenile could be released because there was no available bed in a detention facility for the juvenile and because of the juvenile was not a threat to the public. (Testimonies of Grievant and On-Call Probation Supervisor; A Exh. 14).

10. Further, Grievant instructed her subordinate that the juvenile was required to turn herself into the court on the following Monday, the next business day that the court would be open. (Grievant's Testimony; A Exh. 14; G Exh. 26 at 3).

11. On Monday, March 27, 2023, Grievant contacted the clerk's office and scheduled the juvenile to appear before the court on that day at 1:00 p.m. for a hearing. (A Exh. 14; Grievant's Testimony).

12. The juvenile and father did appear for court on Monday, March 27, 2023, and the court took evidence regarding the parent/juvenile's failure to appear. Court released the juvenile on electronic monitoring. *Id.*

13. The Hearing Officer finds the substantial evidence of record demonstrates that it was impossible for the juvenile to be placed in a detention center on the date the juvenile was picked up by the local police. This was due to the juvenile's medical condition and lack of available space at the detention facilities.

14. Grievant did not call the judge when she determined the juvenile could not be placed in a detention facility and electronic monitoring was unavailable.

The Hearing Officer finds that a reasonable person can conclude that Grievant had the "green light" from the court to handle the situation as she did. Grievant had established a working relationship with the judges in district 5. Grievant promptly informed court of the severe shortage of detention beds caused by Detention Center 1 refusing to continue to accept juveniles from district 1 as of January 31, 2023. Grievant dialoged with the court on multiple occasions about the detention, placement shortage issue and kept the court informed of the severe bed shortage in detention facilities for placement of juveniles from district 5. The court was aware of the situation. By her working relationship with the judges, Grievant was aware of how the court would respond to her handling of the situation on March 25, 2023, and that they would not have a problem with her action. Moreover, upon the court becoming aware of the situation on March 27, 2023, the court did not admonish Grievant or indicate to Grievant's supervisor that the court was bothered by the decision Grievant made on March 25, 2023.

(See e.g., Testimonies of Grievant and Director; G Exhs. 5; 6 at 1; 9 at 1; 10; 15 at 5; 18; and 23 at 5).

The Hearing Officer finds it is reasonable based on the working relationship Grievant had with the court to conclude that Grievant had permission from the court to take the steps she took when it was clear the juvenile could not be placed. Those steps include upon determining the juvenile is not a public safety risk, providing instructional guidance to release the juvenile without contacting the court first.

Retrospectively, Director and others may contend that Grievant should have contacted the court before informing the police officer that the juvenile could be released. Prior to or as the incident was unfolding on March 25, 2023, Grievant had no such guidance. Conversely, Grievant did have a working relationship with the judges that indicated they would understand her actions and accept them in light of the situation. Reasonable minds can differ as to what action Grievant should have taken under the situation. The Hearing Officer finds a reasonable person can conclude that Grievant's actions did not require that she call the judge first before taking the action she did as she reasonably believed she had the okay to take the action she did, that is, instruct the police officer to release the youth.

Hence, the Hearing Officer does not find Grievant was required to telephone the court.

#### **Responsibility of Agency Regarding Securing a Detention Facility for a Juvenile in a Pre-Trial Disposition Stage**

16. On-Call Supervisor has been employed by the agency since 1996, with one interruption in his employment with the agency. That interruption was from 2004 to 2006. During the March 25, 2023 incident (the incident) resulting in Grievant's discipline, he was the intake On-Call Supervisor.<sup>1</sup> (Testimony of On-Call Supervisor during initial and supplemental(Supp) hearing).

17. Per testimony of On-call Supervisor, the police of a locality have no idea where to place a juvenile they take into custody requiring placement in a detention facility. The police look to the CSU department of the Agency (CSU) for assistance. If the CSU receives a call from a locality or police officer indicating difficulty in securing a place for the juvenile's detention, the CSU will make phone calls to find a placement for the juvenile. In addition, the locality expects CSU to inform a police officer where the juvenile will be placed. From On-Call Supervisor's 26 years of experience with CSU, the assistance described here and provided by CSU has historically been the practice of CSUs. Further, assisting the localities in finding a placement for a juvenile requiring detention has been considered part of CSU's responsibility. (Testimony of On-Call Supervisor during Supp. Hearing).

18. The Hearing Officer found On-Call Supervisor a credible witness.

19. Acting CSU Director for 3<sup>rd</sup> District, has worked for the agency for 35 years. During the time of the incident, Acting CSU Director for 3<sup>rd</sup> District filled two roles. She acted as

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<sup>1</sup> The Agency promoted ON-Call Supervisor to CSU Director for the 3<sup>rd</sup> district in November, 2023.

the director for CSU's 3<sup>rd</sup> district, accordingly Grievant's counterpart in a neighboring CSU district. Also, she held then and currently the permanent position of Intake Supervisor for the District 3.<sup>2</sup>

20. Per testimony of Acting CSU Director of 3<sup>rd</sup> District, in practice, CSU staff call detention centers to locate and secure placements for juveniles. (Testimony of Acting CSU Director for 3<sup>rd</sup> District during Supp. Hearing).

21. CSU Director for the 3<sup>rd</sup> district also noted that her supervisor, the regional program manager who is also Grievant's supervisor, undertook calling around to find placements for juveniles as well. (Testimony of Acting CSU Director for 3<sup>rd</sup> District).

21. The Hearing Officer found Acting CSU Director for 3<sup>rd</sup> District a credible witness.

23. Grievant has worked for the Agency for over 26 years. She has been the CSU Director for District 5 for at least seven years. (Testimony of Grievant).

24. Per Grievant's testimony, the CSU staff have always assisted the police to make sure the juvenile is placed. In doing so, staff places telephone calls to find a placement for a juvenile. (Testimony of Grievant during Supp. Hearing; *see also*, G Exh. 26 at 1 where Grievant states that localities do not have the knowledge to address an on-call situation like the one occurring on March 25, 2034, where there is no bed space to place a juvenile).

25. The Hearing Officer found Grievant credible.

26. CSU Director for 7<sup>th</sup> District had been employed for the agency for 44.5 years before her retirement on December 1, 2023. Accordingly, she was a CSU director at the time of the incident which resulted in Grievant's discipline. (Testimony of CSU Director for 7<sup>th</sup> district during Supp. Hearing).

27. Per her testimony CSU's responsibility includes finding a bed space for the juvenile in a detention facility. Her understanding during the time she worked for the agency was that it was CSU's responsibility in concert with the police to find placement for a juvenile. Per this CSU's director's testimony, the CSU intake officer escorted the juvenile to the detention facility, not the police. (Testimony of CSU Director for 7<sup>th</sup> district during initial and Supp. Hearing).

28. The Hearing Officer found the CSU Director for 7<sup>th</sup> District's testimony credible.

29. The regional program manager is the immediate supervisor of the CSU directors in districts 7, 5, and 3. Staff in CSU districts 7, 5, and 3, as well as the regional program manager for the districts assisted in securing placements for juveniles ordered detained.

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<sup>2</sup> The agency filled the CSU Director position for District 3 in November 2023. Accordingly, currently the prior acting director for district 3 is employed only in her permanent position, intake supervisor with the CSU 3<sup>rd</sup> District. (Testimony of Acting Director of the CSU 3<sup>rd</sup> District during the Supp. Hearing).

Considering the findings detailed above, the Hearing Officer finds the Agency or CSU staff had the responsibility or assumed the responsibility of assisting and if necessary securing placement for juveniles in detention facilities at all times relevant to the matter before this Hearing Officer.

30. The Director of the Department of Juvenile Justice(DJJ) has been the director of the agency since January 2022. At the time of the incident which resulted in Grievant's discipline, the director had been employed with the agency for 14 months. Prior to her being employed as DJJ's director, she had worked in the commonwealth's attorney office, in the public defender's office, and in private practice. In these former jobs, DJJ's Director was involved in some matters concerning juveniles. (Testimony of DJJ's Director).

31. Per the testimony of DJJ's Director, the responsibility of placing a juvenile in a facility for detention prior to a juvenile being found guilty of an offense is the responsibility of the locality and not DJJ. Hence, DJJ's Director's understanding is CSU does not have the responsibility of securing placement for a juvenile whose matter is in a pre-trial disposition status. (Testimony of DJJ's Director).

32. Per testimony of DJJ's Director, in the matter before the Hearing Officer, Grievant's responsibility ended when the intake officer prepared and issued the detention order at the direction of the court. (Testimony of Director of DJJ).

33. The Hearing Officer finds unconvincing the director's interpretation that the CSUs have no responsibility in placing juveniles ordered detained prior to a pre-trial disposition. DJJ's Director's interpretation is inconsistent with the substantial evidence of record. (*See e.g.* Testimonies of CSU directors and other CSU staff).

34. The agency's regional program manager (supervisor) and the agency's director have stated that finding placement for juveniles "is a local issue." (*See e.g.*, A Exh. 13 at 1 (correspondence from regional program manager stating the issue of finding bed space for juveniles is a local matter). The Hearing Officer finds that this statement lacks clarity, is contrary to the practice in the region, and inconsistent with the regional program manager's own behavior of offering assistance to locate placements. Particularly, the evidence demonstrates that the regional program manager assisted in securing placements for juveniles. The evidence shows that prior to, during, and even after the incident, CSU districts assisted and in some cases secured placement for juveniles. (Testimonies of CSU District directors; *See e.g.*, Testimony of CSU Director for District 7 stating "the police was not even involved in placing the juvenile as CSU staff escorted the juvenile to the detention facility in that district;" Testimony of District Director for CSU District 3; *see also*, G Exh. 16 at 2, where regional program manager asks his subordinate – Grievant- where CSU district 5 director is currently placing juveniles).

#### **Grievant's Instructing the Police Officer thru Her Subordinate to Release the Juvenile Misconduct**

35. Returning to the incident that occurred on March 25, 2023, after determining there

was no available detention placement for the juvenile on March 25, 2023, Grievant gave instructional guidance to the police officer through her subordinate that the juvenile could be released. Police officer then released the juvenile. (G Exh. 26 at 3; A Exh. 14).

36. The Hearing Officer finds the instruction given was inconsistent with the applicable Virginia code section governing the release of juvenile when the court is not open. *See* §16.1-247(D)(1).

37. The arresting officer took the juvenile into immediate custody under §16.1-246(A) of the code of Virginia pursuant to a detention order issued by or at the direction of the court. *See* §16.1-246 A (A Exh. 15); *see also*, A Exh. 8; G Exh. 25).

38. §16.1-247(D)(1) addresses releasing a juvenile taken into custody under §16.1-246 of the Code of Virginia. Specifically, §16.1-247(D)(1) provides in pertinent the following:

A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

§16.1-247(D)(1) of the code of Virginia; (G Exh. 37 at 1).

39. On Grievant's guidance, the police officer released the juvenile

40. The evidence established and there is no dispute that Grievant was during the time of the incident and continues to be subject to the agency's Administrative Procedure: Vol. I – 1.2-01. *See e.g.*, Administrative Procedure: Vol. I – 1.2-01(I) (A Exh. 5 at 1).

41. Policy set forth in Administrative Procedure: Vol I – 1.2-01 §II provides the following:

All [Agency] employees are subject to this Administrative Procedure (Procedure) and are expected to conduct themselves with integrity, in a professional manner, and to understand the requirements of and to comply with (i) applicable state and federal laws, regulations, and executive orders (ii) the Commonwealth's Standards of Conduct (Policy 1.60 issued by the Department of Human Resource Management, available on their website), (iii) all Agency administrative directives, policies, rules, and procedures; and (iv) any performance criteria that apply to their jobs.

**Administrative Procedure: Vol. I – 1.2-01 II at 1. (A Exh. 5 at 1).**

**42. In addition, Administrative Procedure: Vol. I – 1.2-01 provides that individuals or employees subject to the procedure shall comply with all applicable statutes, regulations, executive orders, administrative directives, policies, rules, and procedures. *Id.* V(B)(2) at 3.**

**43. Administrative Procedure: Vol. I-1.2-01 references, Policy 1.60 Standards of Conduct (Policy 1.60) and requires the agency’s employees to comply with Policy 1.60. This policy states that employees are expected to, among other things, “comply with the letter and spirit of all state and agency policies and procedures, ..., and Commonwealth laws and regulations.” Policy 1.60 at 5. (A Exh. 6 at 5; G Exh. 40 at 5).**

**44. Police officer had the authority to release the child under 16.2-247D under the condition that a warrant of bail or recognizance was provided. Evidence fails to demonstrate the provision of a warrant on bail or recognizance upon the juvenile’s release.**

**45. On Grievant’s written disciplinary notice, the agency did not allege misconduct because grievant failed to utilize her chain of command. (Conceded by Agency)**

**46. On October 13, 2023, Grievant’s immediate supervisor and regional program manager sent an email to Grievant and other CSU directors in the region instructing them to “ensure that all CSU staff understand and comply with DJJ Directives and Judicial Court Orders.” (G Exh. 35; Testimony of Acting Director of CSU District 3).**

**47. Police Officer was not under the authority of Agency or CSU Director. Police Officer was not required to follow the instruction guidance from Grievant. (3<sup>rd</sup> District Acting CSU Director). That said, Grievant did give instructional guidance that was not complete.**

### **DETERMINATIONS AND OPINION**

**The General Assembly enacted the *Virginia Personnel Act*, VA. Code §2.2-2900 et seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee’s ability to protect his/her rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in, and responsibility to, its employees and workplace. *Murray v. Stokes*, 237 VA. 653, 656 (1989).**

**Va. Code § 2.2-3000 (A) sets forth the Commonwealth’s grievance procedure and provides, in pertinent part:**

**It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints... To the extent that such concerns cannot be resolved**

informally, the grievance procedure shall afford an immediate and fair method for resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

In disciplinary actions, the agency must show by a preponderance of evidence that the disciplinary action was warranted and appropriate under the circumstances.<sup>3</sup>

To establish procedures on Standards of Conduct and Performances for employees of the Commonwealth of Virginia and pursuant to § 2.2-1201 of the *Code of Virginia*, the Department of Human Resource Management promulgated Standards of Conduct Policy No. 1.60 (Policy 1.60). The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action.

Under the Standards of Conduct, Group I offenses are categorized as those that are less severe in nature, but warrant formal discipline; Group II offenses are more than minor in nature or repeat offenses. Further, Group III offenses are the most severe and normally a first occurrence warrants termination unless there are mitigating circumstances. *See* Standards of Conduct Policy 1.60.

Agency issued Grievant a group II Written Notice for the March 25, 2023 incident. The Hearing Officer previously determined the agency failed to meet its burden. The Agency requested an administrative review which resulted in the matter being remanded to the Hearing Officer. The Hearing Officer has received additional evidence since the remand and has carefully reconsidered her decision. In doing so, the Hearing Officer has considered all the evidence whether specifically mentioned or not. Below, the Hearing Officer issues her decision on matters remanded by EDR.

#### **I. Analysis of Matters before the Hearing Officer on Remand**

##### **A. What is the extent of the agency's responsibility, if any, to place juvenile?**

The agency has stated finding placement for juveniles “is a local issue. Further, the director of DJJ testified that Grievant had no responsibility to secure placement for the juvenile on March 25, 2023, as CSU’s responsibility ended with its issuance of the detention order.

The evidence shows that the regional program manager (Supervisor) supervises the CSU directors in districts 7, 5, and 3. Further, although Supervisor sent an email to the district managers prior to March 25, 2023, stating that finding placements for juveniles is a local matter, Supervisor engaged in acts to locate bed spaces for juveniles. Hence the Supervisor involved himself in activities or transmitted communications leading to

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<sup>3</sup> Grievance Procedural Manual §5.8



vagueness and or contradiction of his statement contending that “placement is a local issue.” What is more, three of Supervisor’s subordinates, CSU directors for districts 7, 5, and 3, as well as an On-Call Probation Supervisor, affirmed that prior to, during, and since the March 25, 2023 incident, CSU staff has assisted localities, and in some cases, secured placement for juveniles.

The Hearing Officer finds the evidence substantially supports the agency had a responsibility or assumed the responsibility of assisting in securing placement for a juvenile ordered detained by the court. Further, prior to the incident resulting in the Grievant’s discipline, the Agency had failed to give adequate direction to the contrary.

Having made this finding, the Hearing Officer is cognizant of the director of DJJ’s opinion to the contrary. Hearing Officer found the director’s testimony unconvincing for several reasons. The director does not have the extensive experience working in the agency as the CSU directors and on-call probation supervisor. These subordinates of the director presented credible testimony during the hearing contradicting the director’s assessment of the agency’s claimed “non-responsibility for placing juveniles.” Moreover, the Hearing Officer is aware of the director’s April 21, 2023 email from the director responding to the interim city manager of CSU district 3. It appears that this email is responding to an email the director received from the interim city manager. In her email, the director fails to clarify what is meant by the phrase “placement is a local issue.” In addition, the email from the interim manager which precipitated the director’s email supports the finding that the agency, at least prior to April 21, 2023, played a major role in the placement of juveniles. As indicated in the interim manager’s email, in the past the agency located detention facilities for the localities and negotiated terms and conditions of the placement arrangement between the locality and the facility.

The agency failed to meet its burden and show the agency has no responsibility to place juveniles or had none on March 25, 2023.

**B. Did the Grievant Substantially Comply with the Court’s Order?**

The Hearing Officer finds it was impossible for the juvenile to be placed at a detention center as ordered by the court. Hence, compliance with the court’s order as written was unattainable.

Accordingly, the Hearing Officer finds the grievant substantially complied with the order as it was prepared by the office she oversees. The juvenile was taken into custody. Then several employees including grievant earnestly attempted to find a placement for the juvenile or assist the police in finding one. Because of bed shortages and the juvenile’s medical condition, there was no placement for the juvenile. Moreover, electronic monitoring was not available on the weekend. A risk assessment was conducted. The assessment concluded the juvenile was not a public safety risk if released. Grievant arranged for the juvenile to report to court on the next day that court was open. Grievant’s efforts constitute substantial compliance with the order.

The Hearing Officer does note that the Agency presented as a supplemental exhibit §16.1-149 of the Code of Virginia. Presumably, the agency's argument is that, rather than releasing the juvenile, the juvenile could have been confined under this code section. The pertinent part of the law provides:

Any juvenile who has been ordered detained in a secure detention facility pursuant to §16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to exceed six hours, provided that the juvenile is entirely separate and removed from detained adults, or (ii) in a nonsecure area, provided that constant supervision is provided.

§16.1-149G1 of the Code of Virginia.

The evidence does not demonstrate that confining the juvenile under the provision would have been reasonable considering the child was taken into custody on Saturday morning and the next court date was not until Monday. Accordingly, the six hours would expire long before the next court day. In addition, and perhaps even more significant is confinement under the provision was unreasonable considering the juvenile's medical condition and there was no evidence presented to demonstrate that constant supervision could have been provided and the juvenile's medical needs could be met.

**Related Matter: Should the Grievant have called the Judge?**

Grievant did not call the judge when she determined the juvenile could not be placed in a detention facility and electronic monitoring was unavailable. The Agency contends she should have.

The evidence shows that Grievant did not call the judges because she had worked with the judges on the bed-space shortage issue. Further, they understood the situation. Grievant was aware that they would not have a problem with how she handled the matter.

Particularly, the judges already had been notified by Grievant on multiple occasions of the significant shortage of detention beds for district 5's juveniles due to Detention Center 1 ceasing to accept juveniles from District 5 as of January 31, 2023. Grievant had engaged in conversations with the judges of the court about the situation. Further, she had communicated with the judges by email about the bed shortage for placing youths in detention from district 5. As such, the affected judges were aware of the abrupt and significant lack of available bed space, the adverse impact on being able to find placements for juveniles ordered by the court in detention before the March 25, 2023 incident, and the likely imminent possibility of a juvenile ordered in detention but no bed space being available.

The Hearing Officer finds it is reasonable based on the working relationship Grievant had with the court for Grievant to conclude that Grievant had permission from the court to take the extensive steps she took when it was clear the juvenile could not be placed.

Moreover, the agency did not have in place any procedures for handling the novel situation Grievant faced on March 25, 2023. Of note, Grievant did text her immediate supervisor as the events were unfolding. Supervisor failed to respond for two days. Further, the evidence demonstrates that the court was not aggravated by Grievant's handling of the situation on March 25, 2023. When DJJ's Director was asked during the hearing if the court appeared bothered by Grievant's handling of the matter, DJJ's Director responded that the court was not bothered. When Grievant spoke to the court about the situation the next day of court, the court was not bothered that he had not been called.

In finding that Grievant was not required to call the judge, the Hearing Officer is cognizant that DJJ's Director did testify that the court did instruct that should a similar a scenario occur, he should be called. Hearing Officer interprets this instruction from the court as establishing a procedure in the future should a similar incident occur. This procedure was not established on March 25, 2023. Considering the totality of the circumstances as discussed previously (multiple notices to the court by Grievant, no procedure provided by the Agency, substantial compliance with the court's order, compliance with the spirit of the order, Grievant's working relationship with the court), the Hearing Officer finds that it is reasonable to conclude that grievant was not required to call the court.

Hearing Officer does acknowledge that reasonable persons may disagree on whether under the unique circumstances the grievant should have first called the court before giving instructional guidance that the juvenile could be released. However, considering the totality of the circumstances, the Hearing Officer finds the agency has failed to meet its burden and show that Grievant should have first called the court. Those unique circumstances include the closure of Detention Center 1 to District 5 juveniles after providing placement for those juveniles for over 25 years; unprecedented situation Grievant faced on March 25, 2023, regarding having no placement for a female juvenile with a catheter insertion; no practical guidance or procedures from Grievant's superiors or the Agency; no response from Grievant's immediate supervisor after Grievant attempted to contact him at the time of the incident; Grievant's working relationship with the court.

**C. Did Grievant have the court's authority or permission, by her working relationship with the court, to release the juvenile without first contacting the court?**

The agency has failed to meet its burden and show that Grievant's not calling the judge was misconduct for the reasons noted in the immediately preceding section.

**D. Was Grievant's Instructing the Police Officer thru Her Subordinate to Release the Juvenile Misconduct**

The evidence shows that Grievant provided instructional guidance to the police officer through Greivant's subordinate to release the juvenile. The Agency argues that Grievant failed to follow policy.

The evidence shows that the juvenile was taken into custody under an order authorized by the court. This action was consistent with and authorized by §16.1-246 of the Code of Virginia. Under §16.1-147, a juvenile taken into custody under §16.1-146 can be released if when detained the court is not in session and there is nowhere for juvenile to be placed. However, any release is conditioned upon the provision of a warrant on bail or recognizance.

Grievant's instructional guidance was to release child even though no provision for bail or bond was made. Accordingly, Grievant's instructional guidance to the police officer was contrary to state law.

Agency's Administrative Procedure: Vol. I – 1.2-01(I) policy requires its employees to follow agency policy. Agency policy states that employees are to comply with state and federal laws.

Moreover, Administrative Procedure: Vol. I-1.2-01 references, Policy 1.60 Standards of Conduct (Policy 1.60) and requires the agency's employees to comply with Policy 1.60. This policy states that employees are expected to, among other things, "comply with the letter and spirit of all state and agency policies and procedures, ..., and Commonwealth laws and regulations."

Grievant's instructional guidance was contrary to state law requiring release be conditioned on a warrant of bail or bond.

Grievant did not follow Agency policy when she provided instructional guidance to the police officer to release the juvenile when no provision for a warrant on bail or recognizance was provided.

## **II. Was the Discipline issued contrary to Law or policy?**

The Agency issued a Group II Written Notice.

Under Policy 1.60, Group II Level Offenses include acts of misconduct, violations of policy, or performance of a more serious nature that significantly impact the agency's services and operations. An example of a Group II Level Offense includes, among others, failure to comply with written policy or agency procedures. *See* Policy 1.60, Attachment A at 2.

As discussed above, Grievant violated agency policy when she provided instructional guidance through her subordinate to the police officer to release the juvenile when there was no provision for a warrant on bail or recognizance as required by §16.1-247(D)(1) of the Code of Virginia. This action by Grievant was inconsistent with agency policy which provides that employees of the agency are to comply with applicable state and federal laws. In this case, the juvenile had been taken into custody for detention under §16.1-246 of the Code of Virginia. §16.1-247(D)(1) of the Code of Virginia applied to the juveniles release. Instructing the release without their being a warrant on bail or recognizance was contrary

to the law. Accordingly, Grievant failed to comply with agency policy. Such a violation is a Level II offense.

Hence, the Hearing Officer finds the agency has met its burden and shown Grievant's discipline was consistent with law/policy.

### **III. Mitigation.**

Under statute, hearing officers have the power and duty to “[r]eceive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with the rules established by the Office of Employment Dispute Resolution [“EDR”].”<sup>4</sup> EDR's *Rules for Conducting Grievance Hearings* provides that “a hearing officer is not a super-personnel officer” therefore, “in providing any remedy, the hearing officer should give the appropriate level of deference to actions by agency management that are found to be consistent with law and policy.”<sup>5</sup> More specifically, the *Rules* provide that in disciplinary, grievances, if the hearing officer finds that;

- (i) the employee engaged in the behavior described in the Written Notice.
- (ii) the behavior constituted misconduct, and
- (iii) the agency's discipline was consistent with law and policy, the agency's discipline must be upheld and may not be mitigated, unless, under the record evidence, the discipline exceeds discipline if it is within the limits of reasonableness.

Thus, the issue of mitigation is only reached by a hearing officer if he or she first makes the three findings listed above. Further, if those findings are made, a hearing officer must uphold the discipline if it is within the limits of reasonableness.

The Hearing Officer has found that Grievant failed to follow policy or state law. Further, the Agency's discipline was consistent with policy and law.

Next, the Hearing Officer considers whether the Agency's discipline was unreasonably.

Hearing Officer has considered all the evidence whether specifically mentioned or not. This consideration also includes, but is not limited to, Grievant's 26 plus years of employment with the agency; prior to the issuance of the written notice, Grievant had no disciplinary record; Grievant's most recent evaluations which rate Grievant as a major contributor; and Grievant's effective working relationship with the community, other agencies, and the courts. In addition, the Hearing Officer finds that Grievant did not

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<sup>4</sup> Va. Code § 2.2-3005 and (c )(6)

<sup>5</sup> *Rules for Conducting Grievance Hearings* VI(A)

intentionally violate Agency policy. Her violation was a misstate. That said, the Hearing Officer also notes, although unintentionally, Grievant involved her subordinate in violating policy.

After careful consideration of all the evidence whether specifically mentioned or not, the Hearing Officer finds the Agency's discipline reasonable.

### **DECISION**

Hence, for the reasons stated here, the Hearing Officer upholds the agency's Issuance of a Group II Written Notice.

### **APPEAL RIGHTS**

You may request an administrative review by EDR within 15 calendar days from the date the decision was issued. Your request must be in writing and must be received by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment and Dispute Resolution  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov), or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's decision becomes final when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final.<sup>[1]</sup>

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal

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<sup>[1]</sup> Agencies must request and receive prior approval from EEDR before filing a notice of appeal.

rights from an EDR Consultant].

Entered this 14<sup>th</sup> day of June, 2024.

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**Ternon Galloway Lee, Hearing Officer**

**cc: Agency Advocate/Agency Representative  
Grievant/Grievant's Advocate or Attorney  
EDR's Director of Hearings**

## **DECISION OF HEARING OFFICER**

**In the matter of**

**Case Number: 12006**

**Remand Hearing Decision Issued: September 3, 2024**

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### **HISTORY**

Grievant requested the Office of Employment Dispute Resolution (EDR) review the Hearing Officer's decision issued on June 14, 2024. This decision resulted from EDR's Ruling 2024-5648. In that ruling, EDR remanded to the Hearing Officer, for reconsideration, her initial decision which was issued on November 21, 2023. After a second hearing, acceptance of additional exhibits, and reconsideration, the Hearing Officer issued on June 14, 2024, her second decision regarding the grievance. Grievant then timely requested reconsideration of the June 14, 2024 decision. By Ruling 2024-5732, EDR remanded the matter to the Hearing Officer for further consideration. In accordance with the remand ruling, those matters to be considered are noted immediately below.

### **MATTERS CONSIDERED ON REMAND**

Whether the agency has met its burden of proof to establish that Grievant's instruction to the officer through her subordinate was improper? If so, has Grievant met her burden to present a basis for the authority to do so, as an affirmative defense?

### **DISCUSSION**

The Hearing Officer finds the Agency has failed to meet its burden of proof for reasons stated here.

#### **A. Did the Agency Meet its burden of proof to establish that Grievant's Instruction to the Officer through her subordinate was improper?**

Hearing Officer begins with pertinent background information. The evidence shows that Grievant serves as the Court Service Unit (CSU) District 5 manager. For at least 30 years and up until January 2023, Detention Center 1 had provided bed space in its facility for youths in the district who required a placement in a detention facility. The ability to place District 5's youth in the Detention Center 1 changed on or about January 31, 2023. This was the case because Detention Center 1 stopped accepting youth from District 5. District 5 was then in a conundrum because it practically was left with no facility to house youth from its district in detention. (See Hearing Officer's Decision issued November 21, 2024, Findings of Fact ##1, 3, 5, 6, 8, and 10 through 14 incorporated by reference).

Evidence shows that in effect no guidance was provided to the district directors like Grievant from their superiors on how to handle this issue; placing minors in detention when, after search, no available, appropriate bed space is available. (See Hearing Officer's Decision issued November 21, 2024, Findings of Fact ##10 through 14 incorporated by reference).



The evidence demonstrates as the Hearing Officer found as conclusions of fact, that on March 23, 2023, a father and his 13-year-old daughter failed to appear for court as scheduled. Consequently, the court ordered intake to issue a detention order and capias for the minor. Under the order that intake staff prepared, if the court was not open at the time the minor was taken into custody by the police, the child was to be detained at Detention Center #2. Local Police took the child into custody on Saturday, March 25, 2023. Child had undergone catheterization at a hospital on the day she was supposed to be in court. Because of lack of bed space in detention facilities and the child's catheterization, there was no available bed space for the child in a detention facility on March 25, 2023. Moreover, because the child was picked up on the weekend, the child could not be placed on electronic monitoring. After multiple efforts were made to find a placement for the child in a detention facility by Grievant and her subordinates, Grievant determined no detention facility would or was able to admit the minor. Grievant did notify her superior during the incident, but heard nothing from him for two days. Grievant then conducted a risk assessment. This assessment indicated that if the child was released, she would not be a risk to the community. Accordingly, through her subordinate, Grievant instructed the police officer who had taken the child into custody, to release the child to her parent. Further, the child and father were instructed to appear in court on Monday, March 27, 2023, the next day the court was open. (See Hearing Officer's Decision issued November 21, 2023, Findings of Fact ## 15-20, 24, 25-26, 29 and Hearing Officer's Decision issued June 14, 2024, Findings of Fact 1 – 10 incorporated by reference).

**(i). Did the Agency meet its burden?**

Agency contends that Grievant's instruction was improper and misconduct.

The Hearing Officer finds the agency has failed to meet its burden and show misconduct.

First, the evidence fails to show that the agency had in place a policy to address the situation Grievant faced. What is more, no policy existed to indicate Grievant's instruction to the officer, through her subordinate, was improper. See Hearing Officer's Decision issued November 21, 2023, Findings of Fact ##10, 13, and 14; Hearing Officer's Decision issued June 14, 2024, Findings of Fact 14, para 4, incorporated by reference).

Moreover, in light of no existing written policy, the Agency also failed to show any usual practice in place. That is, a usual practice governing the situation Grievant faced that would have precluded Grievant from providing the instruction she gave to the officer through her subordinate.

Furthermore, the evidence demonstrates the situation was novel and involved exigent circumstances. Specifically, no detention beds were available, the minor ordered to be detained needed medical supervision which was a further impediment to the minor being placed in a detention facility, and electronic monitoring was unavailable due to the situation occurring on the weekend. See Hearing Officer's Decision issued November 21, 2023,

Findings of Fact ##15 through 20, 24, and 33, Hearing Officer's Decision issued June 14, 2024, Findings of Fact #7, incorporated by reference).

In addition, the evidence fails to show that Grievant had received any training on how to handle the situation Grievant faced.<sup>1</sup>

**(ii) Was the Discipline Appropriate?**

For these reasons, the Hearing Officer on this second remand and after much consideration cannot find the agency has met its burden and established by a preponderance of the evidence that Grievant's instruction was improper. Therefore, the agency cannot show its issuance of the Group II Written Notice was appropriate. *See* GPM §§5.8(2) and 9.

Hence, Grievant's instruction does not constitute misconduct.

**B. If the agency has met its burden, has Grievant met her burden to present a basis for the authority to give the instruction?**

Agency has not met its burden of proof. Consequently, the Hearing Officer does not undertake an analysis on whether Grievant has met her burden of proof.

**DECISION**

Hence, for the reasons stated here, the Hearing Officer rescinds the discipline. The Agency is ordered to rescind the Group II Written Notice. Moreover, if Grievant has been denied any benefits, raises, or the like due to the issuance of the Group II Written Notice, Agency is ordered to reinstate all appropriate benefits.

**APPEAL RIGHTS**

You may request an administrative review by EDR within 15 calendar days from the date the decision was issued. Your request must be in writing and must be received by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment and Dispute Resolution  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

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<sup>1</sup> Additionally, on reconsideration, the Hearing Officer rescinds her ruling that Grievant violated Va. Code § 16.1-247(D). This is the case because the agency failed to show that the written notice issued by the agency cited a violation of the named code section as a reason for Grievant's discipline. *See* Written Notice and EDR Ruling 2024-5732 at 2.

or, send by e-mail to [EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov), or by fax to (804) 786-1606.

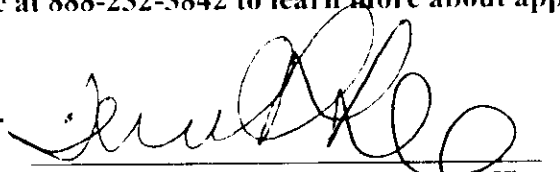
You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's decision becomes final when the 15-calendar day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final.<sup>[1]</sup>

[See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant].

Entered this 3<sup>rd</sup> day of September, 2024.

  
Ternon Galloway Lee, Hearing Officer

cc: Agency Advocate/Agency Representative  
Grievant's Attorney  
Grievant  
EDR's Director of Hearings

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<sup>[1]</sup> Agencies must request and receive prior approval from EEDR before filing a notice of appeal.