

COMMONWEALTH OF VIRGINIA

DHRM

Office of Employment Dispute Resolution

Re: Grievance of (Case No. 12277)

Decision

Grievant:

[REDACTED]

Administrative Hearing Officer:

Polly Chong, Esq.

[REDACTED]

Grievant Attorney:

Pro Se

[REDACTED]

[REDACTED]

[REDACTED]

Advocate for Agency:

[REDACTED]

I. BACKGROUND

Grievant is an employee of the Department of Juvenile Justice (“DJJ” “Agency”) with a job title of Probation Officer I. Grievant timely filed a grievance to challenge the Agency’s disciplinary action by submitting the Grievance Form A on October 22, 2024, from the date of the discipline. The Agency Written Notice, issued on October 22, 2024, stated a Group II offense of # 13 – Failure to follow instructions or policy with an offense date of August 20, 2024, and a Group II Notice issued October 22, 2024, #51 - Unauthorized use of State Property and Records with an offense date of August 20, 2024.

EDR appointed this Hearing Officer on April 28, 2025.

The Grievant, the Agency’s attorney and the Hearing Officer participated in the first Prehearing Teleconference Conference call at 9 a.m. on May 2, 2025. The Grievant advised that she would need a brief continuance as she has a pending matter and Grievant advised that the Senior Employees Relations Consultant did not object to a continuance. In addition, Grievant advised that her pending matter is relevant to this particular case; arising out of the same time frame. Agency attorney objected as she did not believe the pending matter would affect the outcome of this particular case. After hearing from each side, the Hearing Officer granted the continuance as it is for good cause.

The parties consented to written communication by email alone.

On July 11, 2025, a hearing was conducted at 2408 Courthouse Drive, Building 21- Room 110, Virginia Beach, Virginia.

II. APPEARANCES

Grievant

Agency Attorney Representative

Witnesses: 2 for the Agency and 2 for the Grievant. All witnesses were sworn in at the outset and separated until called to testify.

III. ISSUES PRESENTED

This Hearing Officer considered the following issues as presented.

1. Whether Grievant engaged in the behavior described in the Written Notice.
2. Whether the behavior constituted misconduct.
3. Whether the agency's discipline was consistent with law and policy; that is, properly characterized as a Group I, II, or III offense.
4. Whether there are mitigating circumstances justifying a reduction or removal of the disciplinary action and if so whether aggravating circumstances existed that would overcome the mitigating circumstance.

IV. BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstance. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigation circumstances related to the discipline Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows what is sought to be proved is more probable than not. (GPM § 9)

V. CONCLUSION OF LAW AND DISCUSSION OF FINDINGS OF FACT

All proposed exhibits submitted by the agency were admitted without objection as relevant and material. The Grievant did not submit exhibits by the Scheduling Order deadline. Instead, the Grievant used the agency exhibits for the hearing along with testimony of witnesses. After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following Findings:

1. Grievant has been employed at the Department of Juvenile Justice with the role title of Probation Officer I with a length of employment for about three years with the Agency and about three years with the Commonwealth of Virginia.
2. The Written Notice dated October 22, 2024, with offense date of August 20, 2024: Group II Written Notice Offenses/Violations states in part:
 - a. Failure to Follow and/or comply with supervisory directives, written policy and/or agency procedures.
 - b. Unauthorized Use and Misuse of State Property/Equipment
 - On August 20, 2024, the CSU Director, [REDACTED] reviewed the social history for a youth ([REDACTED]) and signed it for approval. In the social history, the writer, [REDACTED], noted that the youth was attending the GED program at Net Academy, based in the Norfolk Detention Home (NDH).
 - On August 21, 2024, [REDACTED] reached out to the Assistant Superintendent at NDH to inquire as to how non-detention residents could enroll in the GED program despite never residing in the detention facility.

- It was disclosed that the client in question was neither enrolled in Net Academy nor a current/prior resident of NDH.
- In a follow-up conversation with [REDACTED] on this same date, the CSU Director inquired as to how she obtained the school information which included identifiable client information and testing dates. [REDACTED] stated the client's parent was an employee working at NDH who supplied her [REDACTED] with their parent-log-in information for the secure Norfolk Public Schools Net Academy secure database.
- [REDACTED] indicated that she did not feel comfortable logging into the account; however, she called her immediate supervisor, Diagnostic/ Probation Supervisor [REDACTED] and received verbal approval.
- On September 6, 2024, the CSU Director and Deputy Director held an in person meeting with [REDACTED] and [REDACTED] regarding the previous admission from [REDACTED]. [REDACTED] recanted her previous admission.

3. Opening statements were heard. The agency's first witness was [REDACTED] – 2nd District Court Services Unit (CSU) Director with the City of Virginia Beach. By way of background, he had approximately 25 years of experience serving in Norfolk. On direct examination, he testified that on or about August 2024, he reviewed a social history report due to Deputy Director [REDACTED] being on vacation. He testified that in reviewing the report, he saw that it was noted that the Juvenile was in the Norfolk Detention Home (NDH) – Net Academy. This struck him as odd since the Juvenile was not a resident of NDH. He communicated with the Superintendent [REDACTED] who advised him that it was not possible as the Juvenile must be a resident of Detention to go to a Detention School, the Juvenile was not enrolled in the program, Juvenile has never been a resident of the NDH, and that mother's login credentials were not authorized as the mother asked a favor from a colleague to get into the system. He reiterated that Superintendent [REDACTED] made it clear that the only way a Juvenile can be enrolled in Net Academy, is that the Juvenile must be in the NDH. In addition, the school Principal had advised that the mother had unauthorized access which is how the Juvenile obtained access to the program. At that point, "things began to unravel." The agency attorney directed him to Exhibit 3 page 31 which reflects the social history of the Juvenile (cited in part) as "enrolled in school full time in Net Academy's GED program.....He has been attending the Net Academy through the Norfolk Detention Home for over a year now and is one test away from completing the certificate." The name and location of the school is cited in the exhibit. On August 21, 2024, Director [REDACTED] and [REDACTED] had a meeting with Grievant where Grievant stated that she was instructed by her supervisor [REDACTED] to get parent's school portal information to access the records. In normal circumstances, [REDACTED] would review the social history, but [REDACTED] believed she had a conflict because she knew the mother. Director [REDACTED] then testified that her [REDACTED] knowing the mother is not what the Conflict of Interest Policy is about. Because [REDACTED] was on vacation, he [REDACTED] reviewed the social history report. He had a one on one conversation with Grievant but once Grievant told him that her supervisor gave permission, it was "a flag". Initially, this would have prompted an investigation of supervisor [REDACTED] and the concern was that a parent may have had unauthorized access to the BADGE system – a DJJ documentation system. Then on September 6, 2024, they [REDACTED] met

with [REDACTED] without disclosing who the probation officer was regarding staff use of a parent login information. In an email from [REDACTED] advised she spoke to the Grievant and [REDACTED] advised that she [REDACTED] gave no permission. He testified that they [REDACTED] met with the Grievant and [REDACTED] where Grievant told them that [REDACTED] had “nothing to do with it”, and that Grievant accessed the information on her own. Director [REDACTED] testified that he advised Grievant that this was “outside procedural norms.” The annual trainings do not allow for the use of another’s login information. Thereafter, they [REDACTED] were instructed to make a referral to Human Resources (HR) for disciplinary action. HR determined that it was a Group II offense. He testified that the prescribed protocol and best practice is to get the signed release of information to the school or go to the school to obtain the records. Had Grievant used the proper protocol, Grievant would have known mother gave unauthorized login. He testified that the school record information can be provided by a parent, but it is not considered best practices. He was then questioned about Exhibit 3 page 1 referencing a Consent for Information Disclosure dated August 29, 2025, executed by [REDACTED] which is signed by the Juvenile, parent and [REDACTED]. The top portion with client’s name and date of birth is in the Grievant’s handwriting. He did not see the release for Norfolk but only the release for Virginia Beach. That releases are specific as to the jurisdiction. [REDACTED] testified “plus, it’s Virginia Beach Public Schools when it was stated Juvenile was in the Norfolk program. Even if the release was authorized by a parent and Juvenile, it would still be inappropriate to use another’s login credentials”. He further testified that their department is required to attend standardized training (two times a year) regarding records, fishing, confidentiality as well as logins and personal information (PI). He was aware that Grievant attended two separate trainings. Although the training is self-paced, he would be notified if the Grievant had not attended the trainings. The agency attorney directed him to look at Exhibit 5 page 23 citing DHRM Policy 1.75 regarding use of electronic equipment where users must disclose their accurate identities. He was concerned that the Grievant did not follow procedures and accessed the system “as the mother”, not as the probation officer. Director [REDACTED] supported the Group II Notice. On cross examination, he acknowledged that Delaine [REDACTED] was initially assigned to the Juvenile. He was asked about Exhibit 3 page 1 as to other releases executed and he responded that he was only aware of the one provided by the attorney [REDACTED]. When cross examined as to whether he-himself has ever made a mistake or misinterpreted anything, he acknowledged that he has made mistakes and has misinterpreted things. The agency’s second witness was [REDACTED] – Deputy Director. On direct examination, she testified to conducting fact finding with Director [REDACTED] in August 2024. They [REDACTED] met with the Grievant two times and they met with the Grievant and [REDACTED]. On September 6, 2024, [REDACTED] “documented a meeting with [REDACTED]” She was directed to look at Exhibit 4 page 1 which states in part:
09/06/24 Meet with [REDACTED] this morning to follow up on statement [REDACTED] made to [REDACTED] and I when we met with her on 08/21/24 in relation to the [REDACTED] SH.
Met with [REDACTED] and advised it came to our attention via a worker that [REDACTED] gave worker permission for her to log into Parents log in account for school to get student records. (never said which case or which worker) and advised moving forward that staff should not log into other accounts of any form per the DJJ IT training.
Then later the same day I received the following email from [REDACTED]:

Good morning again,

I just wanted to follow up and provide clarification from our discussion this morning regarding the school records for the [REDACTED] case. After speaking with [REDACTED] she informed me that she did not receive my permission prior to obtaining the school records as I was on leave during this time. I knew I was confused when you initially stated this to me and that is why. [REDACTED] informed me of what took place when I returned from leave which is why I was familiar with what you were talking about but I just want to be clear that I did not give her permission to log into the parent portal to access school records.

Respectfully,

[REDACTED]

Probation Supervisor

Diagnostic Unit

2nd District CSU

2425 Nimmo Parkway, Bldg. 10A

Virginia Beach, Virginia 23456

She testified that Grievant stated that [REDACTED] had “nothing to do with the matter” when initially Grievant said [REDACTED] was involved. After concluding the fact finding, the matter was sent to HR and she [REDACTED] also met with HR to provide documentation of this matter. HR made the determination for the Written Notice of October 22, 2024. On cross examination, when asked if she was aware of prior staff reporting that the Juvenile was attending Net Academy, [REDACTED] responded that she was not aware. [REDACTED] was asked if she herself has ever made mistakes and misinterpreted anything and [REDACTED] acknowledged, after asking for clarification of the question, she has made mistakes and has misinterpreted statements. [REDACTED] was released as a witness after her testimony. The agency rested and moved for admission of the exhibits which were not objected to. The exhibits were admitted.

The Grievant’s first witness was [REDACTED]. On direct examination she testified she has been with CSU for about 9 years and was familiar with the Juvenile and his family. She described the Juvenile’s mother as abrupt, difficult, “calling a lot” and not happy with the recommendations as prepared by [REDACTED] citing one occasion after a hearing, the mother followed [REDACTED] and [REDACTED] told the mother she could go to her supervisor to address her displeasure about the recommendations. She testified that the Juvenile has tried to do GED at least one time before and no one in CSU had questioned her about the Juvenile’s enrollment in the program through Norfolk. It was then assigned to the Grievant to do the social history stating, “the procedure is to get the documentation and get the parties to sign the release of information”. When asked if she executed the releases, she stated in part, “I would have hoped that I would have signed the social history releases.” On cross examination, she testified that the mother was difficult and that parents are regularly difficult but “I’ve never used a parent’s login credentialsI email the school directly.” That during the time period she was on the case, she did not contact Net Academy. On re-direct, she testified that Net Academy is virtual and connected to NDH. To her knowledge this was the first time she dealt with Norfolk. That she dealt mostly with the Virginia Beach Detention Center. On re-cross, she testified that the Virginia Beach Detention Center will provide records and, at times, the parent will take a snapshot of the records. [REDACTED] was released as a witness after her testimony. The Grievant’s second witness was [REDACTED] who was the former diagnostic supervisor for 2nd District CSU. On direct examination, she was asked to explain the process. [REDACTED] testified that the judge orders a social history or pre or

post dispositional report. The worker is responsible for getting all the release forms signed by the parent/child, conduct a home visit, and interview the youth to include obtaining collateral contacts with the school and any medical records to help with the case. Once the report is completed, she-supervisor would review the reports for accuracy and to make sure YASI was completed with fidelity. Then sign the report and submit it to the court. In this case, she did not review the report as she was on vacation and her supervisor was on vacation so Director [REDACTED] reviewed the report. [REDACTED] further testified that she had a conflict with being involved with this case and advised the agency of her conflict back in April 2024 when she told her supervisor stating in part, "I've known the family for years...I could not take the case so the Juvenile was re-assigned to [REDACTED] supervisor while the Juvenile was in pre-dispositional phase, but my unit would be responsible for the report...I said that's no problem but I did not want to review the report or have my name tied to the case". When she came back from training on July 16, 2024, [REDACTED] saw the file in her chair so she sent an email regarding her conflict with the case. That management was willing to meet with her about the conflict and instructed her to review the Policy attached to the email to let them know which category the conflict fell under. [REDACTED] responded that the Policy cited was not applicable. She testified (in part) that "my situation is my personal relationship with the mother causes a conflict as to any issues that may arise and it has everything to do with my integrity. [REDACTED] said, 'this is not applicable as [REDACTED] is the independent assessor of the case in which she would not be aware of your relationship with the mother...as a professional I do not believe you would allow bias to shape your view of the caseI am sure we have evidence based tools to guide and assess. [REDACTED] will review the report, but I ended up keeping the case. I was supposed to review the report but I was out of the office. Then on September 6, 2024, there was an impromptu meeting with [REDACTED] (she was looking down at her notes) where it was said that no parent should give access to their portal." The agency then objected and was concerned that if the witness was relying on her own notes then the agency should be able to review the notes. [REDACTED] handed the notes to the attorney to review. [REDACTED] then continued to answer questions on direct examination. [REDACTED] stated no verbal warning was given as a result of the incident and that she [REDACTED] never gave a directive to the Grievant regarding the login. [REDACTED] stated, "you told me what happened with the mom and mom said if you want them (records), you get them yourself." [REDACTED] testified there was no training regarding this policy but there is training about accessing collateral contacts. That the statements in Exhibit 4 page 1 are not true and there have been prior incidents where [REDACTED] were not truthful. On cross examination, [REDACTED] testified that she had been a supervisor since September 2023 and has been employed by DJJ before. If the employee had information in the case, "everyone can log into BADGE for information sharing.... the social history report was turned in while I was on vacation so a supervisor or higher up would review it like [REDACTED] or another designee. There was nothing unusual with Director [REDACTED] reviewing the report" [REDACTED] testified she was unaware of when the records were obtained. Then [REDACTED] clarified that the standard protocol is to send the release to the school and the school sends the records back, but parents sometimes will send the records. If she [REDACTED] were preparing the report she would request the records directly from the Detention Center. Lastly, [REDACTED] stated, "that it would be a lie if someone said the statement that permission was given."

██████████ was released as a witness after her testimony. The Grievant then testified on her own behalf. She gave testimony reading from her notes, her response to the Notice (Exhibit 2 pages 8-15), citing Policy and the exhibits. She explained that she wanted to cite the policy and then focus on the “grey areas” of the incident. First, Grievant cited Exhibit 5 pages 1-2 citing Policy 1.60: “Agencies are encouraged to follow a course of progressive and situationally appropriate discipline that objectively and consistently addresses employee behavior, conduct, or performance that is incompatible with the state’s Standards of Conduct, agency expectations for employees, and/or related agency policies.” Grievant then focused on Exhibit 1 page 2 citing Policy 1.75: “Agency provided electronic communications tools and Agency social media accounts and related applications are the property of the Commonwealth provided to conduct State business in an effective and efficient manner. *Employees are required to conduct themselves in a professional and responsible manner that supports their agency’s operational business activities and credibility. *Accessing prohibited or sensitive/secured information without agency authorization. *Agency provided electronic communications tools and agency social media accounts and related applications are the property of the Commonwealth provided to conduct State Business in an effective and efficient manner.” Grievant then testified reading portions of her response from Exhibit 1 pages 4-5 and Exhibit 2 pages 8-15 stating that the policy was not violated as she was assigned to the case; it was her duty to request school records to complete the report. The release forms were signed and that the mother, when asked, informed her that it was Net Academy, which is an online school “so there was no way” for her to physically request the records as “there is no school officer to call” and when she asked the mother to provide the records, mother told her to get the records herself. That the site does not hold prohibited or sensitive/secured information, nor is it affiliated with or created by the Commonwealth or DJJ. As it was not an agency site, or an access-restricted application, prior authorization from the agency head was not required. That the account that was accessed was the mother’s personal account, which was not sensitive or secured, as mother gave her verbal permission and provided her with the necessary credentials to access her account; therefore, the agency approval was not warranted. The Director reviewed the report, signed it and the report was submitted. The information was for business purposes, during business hours, risking no outside exposure of the Juvenile’s school information. The signed releases gave her permission to access the information in the performance of her duties. Grievant also focused on Exhibit 2 page 19 which is Vol III 9232 regarding social history reports citing the highlighted portions of the exhibit. Grievant testified that she is tasked with getting background information but noticed that the releases from her time on this case were missing from the exhibits. (Exhibit 3). She cited Virginia Code Section 16.1-305, and DJJ CSU procedures citing Exhibit 2 page 9 regarding the specific allegations and her responses to the allegations (Exhibit 2 pages 8-15). Grievant cited the allegations from August 20 and 21, 2024. She pointed out that there was documentation that the Juvenile was enrolled in the program, that the mother of the Juvenile was terminated from her job due to this incident, that the mother insisted that her son was enrolled at Net Academy, that the Juvenile said he was in the program, and that the information she provided was correct. Grievant described the facts surrounding the Failure to Follow allegations as a “grey area.” That Grievant had asked for constructive feedback, that the Director did not make any adjustments to the report, no directives or instruction was given to her, and

Director [REDACTED] responded with an outstanding review of her work. She readily admitted that [REDACTED] was out of the office. Grievant told supervisor [REDACTED] but denied that the supervisor gave her permission to use login credentials. Grievant denies that she ever said "she [REDACTED] gave me permission to do so", that this action alone is not a violation as no directive was ignored or that there was no pattern established to show she failed to follow instructions. The BADGE documentation, during her time on the case supported that the client was in the program as [REDACTED] and [REDACTED] notes reflected that the Juvenile was in the program as far back as April 2023 and Grievant spoke to the Superintendent via speaker phone giving the name of the mother. Once the Superintendent found out the name of the mother, the Superintendent was not surprised that it was the mother. Grievant explained she was uncomfortable using mother's login. Further at the September 6, 2024, meeting, where it was described that she "recanted" her statement, Grievant testified in part, "this is untrue, but even if it was accurate, how could I be written up for doing something my supervisor told me was approved? If my action was a violation of policy, and my supervisor told me to take this action, why has she had zero disciplinary action...? [REDACTED] misinterpreted my words as people do and accused me of saying something I did not.....my words were misconstrued....no one asked for clarification....no directive was given....if this was a concern, why was this issue not readdressed?....I stand by my facts that I did not ask permission of my supervisor....looking back on my calendar.....it is clear that I was confused on if [REDACTED] was in the office or not....I have a fluid caseload....it is easy to get confused or have cases mixed up in my head.....I was confused and did not recall her presence...I would not intentionally say something that was untrue....no directive was given....no directives were provided, there are none that I could have failed to follow in the first place..." In regard to Circumstances Considered, Grievant testified that "the youth's transcripts were retrieved solely for a business purpose, for a court ordered report, during business hours, on a network secured by the agency, risking no outside exposure....the report is confidential.....the parent and child both reviewed and signed numerous DJJ approved releases.....I spoke to the parent on my agency-issued cell phone, for a business purpose....giving me permission to access the information within the scope of my role as a probation officer....no information was disseminated.....the parent gave me express permission to execute this action for the correct purpose." On cross examination, Grievant reiterated that the mother reported to her that the Juvenile was attending the program, that she-herself did not contact the Detention Center at any point, she was unfamiliar with Norfolk Public Schools, and that she did not ask any colleagues about retrieving information from Norfolk. Grievant was asked if it was standard practice to get the login from the parent and the Grievant responded that this was her first time dealing with Norfolk. When asked how she would handle this if it was another jurisdiction and why she did not directly ask for the records, the Grievant testified that if it were Virginia Beach, there is a person she would reach out to. Grievant testified that she did access the portal through her state issued computer, that she called the mother who advised she-mother was at work, the login was some version of the mother's name (not NDH name) and mother directed her on how to log into the account via speaker phone. Grievant was asked if she tried to google the information for Norfolk to get a person on the phone. Grievant testified that the search led to a company site but not to the individual school. She relied on the mother as it was the last piece of information she needed to complete

the report. On redirect, Grievant testified that she knew the agency would use IT training “as a defense”. However, she looked through the training and she could not find anything that referenced the actions she is accused of. She believes she was compliant with her training. In Exhibit 2 page 15, the Grievant requested the relief of having the discipline permanently removed from her record. On re-cross, the Grievant admitted that in the required training, instruction is given that employees are not allowed to let anyone use/share their login or coworker’s login. Grievant did not go back and review all the training but did review the course titles and summaries.

Grievant rested.

Agency offered Director [REDACTED] as a rebuttal witness. Prior to his employment in Virginia Beach, he had worked in Norfolk for approximately 26 years. He described Norfolk as having a structure to include a Principal, teachers, and classrooms. He testified that he did not call NDH because he thought the Grievant had done anything wrong. Rather, he thought, given his experience, Norfolk was offering a new program to non-residents as another resource - a “gold mine” as they could use this for some of their clients in Virginia Beach. However, after his conversation with Superintendent [REDACTED] it “fell apart quickly.” He was concerned that the Grievant’s story had changed to say [REDACTED] was not involved because her original statement would have led to an investigation of [REDACTED]. He stated he did not “mis-hear” the statement that she got approval from her supervisor. When they spoke to [REDACTED] without telling her who the PO was or the case name, [REDACTED] already knew citing the name of the case which presented a “red flag.” At the meeting with Grievant and [REDACTED] where Grievant denied that [REDACTED] was involved, the focus shifted to Grievant, but they continued their fact finding mission and referred the matter to HR. The “gravity of the situation” was that it was a Group II as defined by HR and what “elevated things was the use of credentials that a parent had and used those credentials that go against our training....like not sharing passwords. I did not mis-hear [REDACTED].” He was trying to discern if Grievant was being untruthful the first time or the second time. There were consequences for the parent as a result. He was asked what damage this had on DJJ and NDH and he responded that “DJJ limited their access to the BADGE system and it affected different agencies to each other’s system without permission.” As a result, he has put in place instructions to staff as to the procedure for retrieving information. “Staff has never been approved to use another’s login. If you follow that logic then you can just go to a parent’s house and break in to verify they live there....we have a set procedure and best practices. We reach out to the school system as this is the most effective way...what stands out is she was assigned to the case on July 16, 2024, and had 30 days to get the information... everyone knows that I have over 2 decades in Norfolk and she could have asked me. If a parent sent an email or screenshot, it would be referenced in the report as provided by the parent...that would be fine...we prefer official transcripts...a screenshot is not best practices.....we want the most accurate information.... but you cannot login using someone’ else’s credentials. The best practice is to reach out the school directly.” There was no cross examination of the rebuttal witness. The undersigned asked questions regarding earlier reference to an on-going investigation where the credibility of the agency witnesses was in doubt. Notably, this was also mentioned at the first Prehearing Teleconference on May 2, 2025, when Grievant asked for a continuance. Grievant explained that this case is a facet of the investigation, that the credibility of [REDACTED] and

██████ is part of that investigation and there are complaints filed after the termination of ██████ "other parties" and ██████ husband who still works at CSU. The undersigned asked if the investigation put into question the Grievant's credibility and she said no. That it involved another grievance that did not go forward, but "cracked open" and prompted them to contact others in the CSU. That the subsequent investigation is stalled for a few months due to the investigator having medical issues.

The closing argument of the agency was narrowed to specifics as to the facts, procedures, protocols and instructions that the Grievant "glossed over" and violated. First, Grievant "logged into a system and held herself out as the parent". Agency argued in part, "at this point, permission is irrelevant", a portion of the username was the mother's name, and ██████ got the releases all signed because the Grievant did not. It did not matter that the mother was difficult as ██████ testified that "a difficult parent is part of the job. She chose to go online pretending to be the mother which is tantamount to a crime being committed. It is one level below fraudulent- a criminal charge. School records are private and sensitive. Expediency or deadline is not an excuse. Second, the Grievant went in furtherance by logging into the account and held herself out as the mother, which is a serious breach that does not warrant progressive discipline, or lesser punishment." Grievant committed misconduct yet Grievant "did not see anything wrong with what she did". Grievant does not recognize that the act was inappropriate, she "does not grasp" that she "logged into a secure system, holding herself out to be the mother and violated policy. That is the problem." Annual trainings clearly address the use of login, usernames and best practices regarding school records. Grievant's actions violated state and DJJ policy which warranted a Group II offense. The Grievant acted alone. The relief the agency requested is that there is a finding that the Grievant actions were a violation of policy, that it was misconduct, and that it was a Group II violation.

The Grievant's closing argument was that there had been insight as to each party's interpretation of the events and policy. Grievant argued in part, "I never stated it was right...I will never do this again, I take accountability for my actions but I do not think it warrants a level II.... I have had no other discipline, and I have learned something from this. Because of this incident, I am fearful of job security, have lost bonuses, and my mental health has been impacted. No precedent as to what happened. I acted in the best interest of the family and tasked to present an accurate picture and I did that. After the fact, I realized I should not have done it. There was no training or directive, it was a mistake that was not addressed with instruction, the situation is filled with secrecy, there is division, it is toxic, it has been incredibly hurtful, and I hope the parties can move forward."

4. DHRM: Employee offenses: Unacceptable behavior is divided into three types of offenses according to their severity, as per DHRM Policy 1.60 Employee Standards of Conduct: "Perform assigned duties and responsibilities with the highest degree of public trust. Devote full effort to job responsibilities during work hours, use safe equipment, time and resources judiciously and as authorized. Support efforts that ensure a safe and healthy work environment...demonstrate respect for the agency and towards the agency coworkers, supervisors, managers, subordinates...."
- Group I offenses – "include acts of minor misconduct that require formal disciplinary action...For repeated violations of the same offenses, an agency may issue a Group II Notice if the employee has an active Group I Written Notice for the same offense in

his/her personnel file...”

Group II offenses – “include acts of misconduct, violation of policy, or performance of a more serious and or repeated nature that significantly impact the agency’s services and operations...Examples may include...failure to comply with written policy or agency procedures.....Second offense; discharge or in lieu of discharge the agency may suspend....demote....or transfer...absent mitigating circumstances, discharge may occur for accumulations as follows...two Group II level offenses....”

Group III – “includes acts of misconduct of such a severe nature that a first occurrence normally should warrant a termination.” If the employee is not discharged upon the issuance of the Group III Level offense, the employee should be advised that any subsequent Written Notice occurring during the active life of the Group III may result in discharge...”

DHRM 1.75 Which states in part:

“The purpose of this policy is to ensure the appropriate, responsible, and safe use of electronic communications, Internet, and social media by employees. Agencies may supplement this policy as necessary provided such supplement is consistent with this policy.....Users must communicate their accurate identities and state their affiliation when using electronic communications ...for business purposes. (Exhibit 5 page 23)

Department of Juvenile Justice -Administrative Procedure- VOL I - 1.2 – 01 states in part:

All Department of Juvenile Justice 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 Department of Juvenile Justice administrative directives, policies, rules, and procedures; and (iv) any performance criteria that apply to their jobs. All employees shall be required to read this Procedure and sign an acknowledgement of understanding statement. Employees who do not fulfill the expectations in this Procedure shall be subject to disciplinary action, up to and including dismissal from employment. Other individuals subject to this Procedure, through a memorandum of understanding or contract (e.g., medical professionals employed through a contract), who do not fulfill the expectations of this Procedure may be removed from their positions either temporarily or permanently or assigned to other work sites.

All individuals subject to this Procedure shall practice honesty and integrity in every aspect of dealing with supervisors, fellow employees, juveniles, juveniles' immediate and extended family members, the public, vendors, and other government authorities.

Employees shall never engage in any form of impropriety, placement of self-interest above public interest, partiality, prejudice, threats, favoritism, or undue influence or the appearance of such. (Exhibit 6 pages 1-3)

Department of Juvenile Justice -Administrative Procedure- VOL I-1.2-08 states in part:

All employees must subscribe to the Department's Code of Ethics (Attachment # 1).

The Code of Ethics shall be included in the Department's orientation for new employees and presented and explained in appropriate training sessions.

All employees must review the Code of Ethics at least annually.

The Code of Ethics shall be made available to all employees in the Department's

programs and facilities.

Employees who violate this procedure may be subject to timely disciplinary action, in accordance with the applicable Department of Human Resources (DHRM) policies and Department procedures, including but not limited to VOL I-1.2-0 1 (Staff Code of Conduct). Other individuals subject to this procedure through a memorandum of understanding or contract. (Exhibit 6 pages 14-15)

Here, the first question is whether Grievant engaged in the behavior described in the Written Notice. The answer is Grievant did engage in the behavior as described. Grievant used the mother's login credentials to access information that was unauthorized. This is a clear violation of the policy and use of state equipment as noted in # 13 and #51. The agency witnesses and the Grievant's witnesses testified as to the credibility of the other's witnesses. There was a reference to an ongoing investigation where the investigator is out on medical leave. Based upon the brief reference in the hearing, this investigation would presumably call into question the credibility of [REDACTED]. Also, the Grievant's witness, [REDACTED] testified that she has known the Director and Deputy Director to not be truthful. None of these statements were objected to or challenged. Also, the credibility of the Grievant was referenced in the Written Notice and the testimony. Director Smith testified that he did not "mis-hear" what the Grievant said. Director [REDACTED] testified that "If a parent sent an email or screenshot, it would be referenced in the report as provided by the parent...that would be fine...we prefer official transcripts...a screenshot is not best practices....we want the most accurate information.... but you cannot log in using someone else's credentials. The best practice is to reach out the school directly." In addition, [REDACTED] notes from Exhibit 4 page 2 states in part:

"I forwarded email to [REDACTED].

Met with [REDACTED] to discuss why [REDACTED] told us on 08/21/24 that she asked her supervisor if it was okay and her supervisor gave her permission to log into Net Academy. [REDACTED] stated that she does not remember saying that as [REDACTED] was on vacation. She stated that she told [REDACTED] after she met with us to report to her that she did that.

Then we meet with [REDACTED]

[REDACTED] stated that she spoke with [REDACTED] and she was not there then and [REDACTED] must of told her after she got back from vacation. [REDACTED] stated she knows she messed up. [REDACTED] was then excused from meeting.

Meet with [REDACTED]

About why [REDACTED] was in file after 08/20/24 and as Social History was signed by [REDACTED] on that date. [REDACTED] said she does not know why but that she is the assigned supervisor and that she should be allowed in files she is assigned to. In addition, she stated that she told us that it was a conflict of interest for her. In addition, she stated that she contacted PSP/COP on case which is documented on 08/27/24 which is [REDACTED] last contact in BADGE for this case.

Met with [REDACTED] after this meeting

[REDACTED] is to send [REDACTED] a verbal warning email about logging on to other people's accounts as it is against IT DJJ."

The undersigned does give some weight to the testimony of [REDACTED] and the references made regarding the ongoing investigation. However, [REDACTED] testified that the standard protocol is to send the release to the school and the school sends the records back. If she [REDACTED] were preparing the report she would request the records directly from the Detention Center. [REDACTED] testified "I've never used a parent's login credentialsI email the school directly." Grievant testified that she was confused as to [REDACTED] being out of the office....has a fluid caseload....her words being misinterpreted, that no one asked for clarification, and that she denied she "recanted" her statement. On recross and closing, Grievant testified she made a mistake in using parent's login information. The second question is whether the behavior constituted misconduct.

Clearly, the use of the mother's login credentials is misconduct. A reasonable person would know that using another's credentials would be inappropriate. Exhibit 3 page 31 which reflects the social history of the Juvenile (cited in part) as "enrolled in school full time in Net Academy's GED program.....He has been attending the Net Academy through the Norfolk Detention Home for over a year now and is one test away from completing the certificate. He passed 3 out of 4 required tests and upon passing his Math retake, will complete the program. Although he has done well on the GED track and it ended up working out smoothly". Based upon the testimony this information is not accurate. There was no evidentiary documentation to compare to this report; for instance, [REDACTED] prior report. Grievant testified there were notes in the BADGE system. Yet, [REDACTED] testified that to obtain the records, one should go directly to the school and [REDACTED] herself would never use another's login credentials. The third question is whether the agency's discipline was consistent with law and policy. Director [REDACTED] and Deputy Director [REDACTED] made a referral to HR who made that determination of a Group II violation. There was no evidence to challenge the decision of HR. The fourth question is whether there are mitigating circumstances justifying a reduction or removal of the disciplinary action and if so whether aggravating circumstances existed that would overcome the mitigating circumstance. The undersigned does not find any aggravating circumstance. Mitigating factors were provided and considered. The Grievant provided a detailed written response to the Notice, testified often reading directly from the exhibits, and explained the circumstances. Grievant's testimony focused on the lack of directives or instructions rather than focusing on whether using another's credentials was a violation of policy. Grievant did testify that she "never said it was a right thing to do and would never do it again" as she has learned her lesson. In re-cross, Grievant testified that training includes instruction to not use another's login or share login information. In her closing, Grievant admitted she made a mistake.

VI. MITIGATION

The Grievant requests mitigation of the discipline of Group II violation based upon no prior history, "2+" years, that she is well liked at the agency and that the discipline was not warranted.

The EDR Administrative Review Ruling Number 2024-5620 dated November 15, 2023, states as follows:

"By statute, Hearing Officers have the power and duty to receive and consider evidence in mitigation or aggravation of any offenses charged by an agency in accordance with rules established by EDR. The Rules for Conducting Grievance Hearing ("Rules") provide 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 action by agency management that are found to be consistent with law and policy." More specifically, in disciplinary grievances, if the Hearing Officer finds that (1) employees engaged in the behavior described on the Written Notice, (2) the behavior constituted misconduct, (3) the agency's discipline was consistent with law and policy, then the agency's discipline does not exceed the limits of reasonableness. (§VI 13). Because reasonable persons may disagree over whether and to what extent discipline should be mitigated, **a Hearing Officer may not simply substitute his or her judgement for that of agency management.** Indeed, the "exceeds the

limits of reasonableness” standard is high. EDR, in turn will review a Hearing Officer’s mitigation decision for abuse of discretion, and will reverse the determination only for clear error...” The Rules state that “In making such mitigation decision, **the Hearing Officer must give due weight to the agency’s discretion in managing and maintaining employee discipline and efficiently, recognizing that the Hearing Officer’s function is not to displace management’s responsibility but to assure that managerial judgment has been properly exercised within the tolerable limits of reasonableness.**” (Rules VI (B)(2)) EDR Administrative Review Ruling Number 2023-5432 states “the useful model of the federal Merit System Protection Board for EDR Hearing Officers that **‘prohibits interference with management’s judgement unless, under the particular facts, the discipline imposed is ‘so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion...but may mitigate here the agency failed to weigh the relevant factors or the agency’s judgment clearly exceeds the limits of reasonableness.’**” A hearing officer must give deference to the agency’s consideration and assessment of any mitigating and aggravating circumstances.

Here, Grievant’s “2+” work history is impressive with letter, accolades and praises. For example, Exhibit 1 page 11 is a letter of recommendation describing Grievant as having a “positive attitude....honesty...a great asset.” Exhibit 1 page 13 states in the subject line “Great job [REDACTED].” Exhibit 1 page 14 describes her preparation of a social history as “beautifully written.” Exhibit 1 page 15 notes the compliments from a judge for a well written social history. Exhibit 1 page 16 is a “shout out to [REDACTED] for a PERFECT commitment packet!!!” Exhibit 1 pages 32-33 which is a work performance evaluation [REDACTED] noted next to her signature “Thank you.” Grievant is well liked in her office. For the last couple of years Grievant has demonstrated a good performance. During the hearing, there were credibility issues on both sides. It is clear that the issue is narrowed down to the Grievant utilizing the credentials of the parent to login into a parent’s account without accurately identifying herself which is a clear violation of policy. Grievant testified the releases from her time on this case were missing from the exhibits. (Exhibit 3). In Exhibit 3, there are various releases going back to 2022 that were not referenced in the hearing. Grievant did not object to the admission of these exhibits.

The agency focused on the use of the login information where the Grievant held herself out as the parent arguing that such conduct was criminal in nature and that Grievant could have been criminally charged for these actions. Furthermore, the agency noted that progressive discipline would not have been appropriate in this case. The decision for the Group II findings was determined by HR and there was no evidence to show that this finding was inappropriate. Grievant did not establish mitigating circumstances justifying a reduction or removal of the disciplinary action at issue and the Grievant did not meet the burden of establishing that the agency abused its discretion.

Order

After reviewing the evidence presented, observing the demeanor of each witness, and based upon the above Findings of Fact and Conclusions of Law, the Hearing Officer makes the following Order:

1. That DJJ employs Grievant as a Probation Officer 1.
2. There is no evidence of prior discipline.
3. The Agency Written Notice, issued on October 22, 2024, stated a Group II offense of # 13 – Failure to follow instructions or policy, with an offense date of October 22, 2024, and a Group II Notice issued October 22, 2024, with an offense date of October 22, 2024 is appropriate.
4. Va. Code Section 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including “mitigation or reduction of the agency disciplinary action.” Mitigation must be “in accordance with rules established by the Department of Human Resources Management.” Va Code § 3005. Thus, the Hearing Officer may mitigate the agency’s discipline only if, under the record evidence, the agency’s discipline exceeds the limits of reasonableness. If the Hearing Officer mitigates the agency’s discipline, the Hearing Officer shall state in the hearing decision the basis for the mitigation.” A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating; (2) the agency has consistently applied disciplinary action among similarly situated employees and (3) the disciplinary action was free of improper motives. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce or remove the disciplinary action.

The Grievant had adequate notice of the existence of the rules that she is accused of violating as shown by the documents in Exhibit 1 pages 17-30, Exhibit 5 pages 1-29, and Exhibit 6 pages 1-16. Grievant often cited these policies in her responses, notes, and testimony. Secondly, there is no evidence that the agency has inconsistently applied disciplinary action among similarly situated employees. Thirdly, there is no evidence that the disciplinary action had improper motives as the exhibits illustrate that the Grievant was a well like employee. HR made the determination of the Group II finding and there was no testimony challenging the finding except what appeared to be dynamics within the office that are not ideal.

For this reason, stated herein, the Agency’s issuance to the Grievant of a Group II Written Notice is upheld.

So Ordered.

Dated July 19, 2025.

Polly Cheng/s/
Hearing Officer

NOTICE OF APPEAL

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 Dispute Resolutions
Department of Human Resource Management

101 North 14th Street, 12 Floor

Richmond, Virginia, 23219

Or send email to:

EDR@dhrm.virginia.gov

Or via fax to 1-804-786-1606

You must 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 days period has expired or then the request for administrative review have been decided.

A challenge to the Hearing Officer's Decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the Hearing Officer's Decision is not in compliance.

You may request a judicial review if you believe the Hearing Officer's Decision is contrary to the 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 Hearing Officer's Decision becomes final. Agencies must request and receive prior approval from EDR before filing a Notice of Appeal. (See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation or call EDR's toll free Line at 888-232-3842 to learn more about appeal rights from an EDR consultant,