BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DEBRA HARDING, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RED-00-0003 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the Fircrest School, Administration Building, Seattle, Washington, on June 5, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Debra Harding was present and was represented by Rick Polintan, Union Representative, Northwest Service Employees International Union, District 1199. Laura Wolf, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a five-month reduction in pay. Respondent alleges that Appellant neglected her duty and committed gross misconduct when she inappropriately restricted a client.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

II. FINDINGS OF FACT

2.1 Appellant Debra Harding is a Registered Nurse 2 and permanent employee for Respondent Department of Social and Health Services at the Fircrest School. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 31, 2000.

2.2 By letter dated December 6, 1999, Dr. Asha Signh, Superintendent of Fircrest School, informed Appellant of her reduction in pay, from range 45N, step P, to step J, effective January 1, 2000 through May 31, 2000. Dr. Singh charged Appellant with neglect of duty and gross misconduct, and she specifically alleged that Appellant inappropriately restricted a client by carrying him into an unoccupied room and holding the door shut for approximately two minutes while the client struggled to open the door.

2.3 Appellant has been employed with the Fircrest School for approximately five years. In July 1996, Appellant attended an employee orientation, however, she was absent and did not attend training sessions on Positive Behavioral Support and Understanding Challenging Behaviors.

2.4 Appellant has been the subject of one prior disciplinary action. By letter dated December 19, 1997, Appellant received a two-month reduction in pay for failing to take appropriate action to ensure the health and safety of a client.

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2.5 The primary mission of the Fircrest School is to provide a safe, therapeutic and respectful environment to residents, protect client rights and to provide specialized care and training to individuals with developmental disabilities. Respondent has adopted Policy IV.07, which addresses procedures to reduce challenging behaviors. The Policy indicates that behavioral interventions "are never to be used for disciplinary purposes," or "for the convenience of staff." The policy further warns employees that failure to follow the provisions of the policy could result in corrective or disciplinary action. Respondent's procedures also prohibit placing clients in their rooms against their will and it is considered an unauthorized form of restraint. Fircrest School no longer authorizes timeouts as a form of redirecting client behavior without an approved program.

2.6 Client JD, a 17-year old male, was a respite resident in the infirmary. JD was admitted into the infirmary because he suffered from seizures and required constant medical supervision. The respite care program was new at the school and in the process of being implemented. Respite policies and procedures were not yet in place on June 1999.

2.7 Karen Henderson, Habilitation Program Administrator, met with JD's mother and gathered information upon JD's temporary admission into the school in the latter part of June 1999. Ms. Henderson completed an "alert sheet" for JD and placed it in his chart. She noted that JD was an aggressive client with a short attention span and he required constant interaction. JD's alert sheet also indicated that he engaged in non-compliant behavior, however, it did not provide for placing JD on timeout as a way of redirecting his behavior.

2.8 On June 30, 1999, JD's behavior was extremely disruptive and he was shoving staff, running in and out of rooms, picking up desk items and picking up the emergency telephone located in the nurse's station. Roshelle Ottinger, Attendant Counselor 1, was assigned to give JD one-on-one care and she attempted to redirect his behavior.

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2.9 There is no evidence that Appellant or other staff attempted to ask for supervisory assistance or that they called the duty office to ask for assistance with JD's disruptive behavior.

2.10 Another client was extremely ill that day and nursing staff were attempting to care for her, however, JD continued to run in and out of her room and created a distraction for staff attempting to insert an IV. Staff was becoming extremely frustrated with JD's behavior and continued to experience difficulty redirecting him. Dr. Patricia Weber stated that JD should be removed from the area and should be placed in a timeout.

2.11 At approximately 2:30 p.m., JD had calmed down and was sitting on the floor in front of the nurse's desk. Appellant decided to remove JD from the area, and she approached Ms. Ottinger and asked her to help take JD into another room. Appellant and Ms. Ottinger approached JD where he was sitting. Appellant took a hold of JD around his torso and Ms. Ottinger held onto JD's legs. Appellant and Ms. Ottinger then carried JD into an empty room, placed him on the bed and left the room. JD became upset and attempted to kick at them. JD began to follow them out of the room and when he reached the door, he started to pull on it. Appellant, who was outside of the room, held onto the handle of the door to keep it closed while JD struggled to exit the room. Appellant then directed Ms. Ottinger to hold the door shut while she went to attend to the ill resident. Appellant returned after several minutes, relieved Ms. Ottinger and again took hold of the door handle to prevent JD from leaving the room. JD subsequently calmed down.

2.12 Appellant testified that she was unaware that placing a client on timeout was prohibited. However, credible testimony from other staff established that Fircrest School no longer allowed placing clients on a timeout without approval. In fact, none of the current resident at the school have timeouts as an approved form of intervention for disruptive or challenging behavior.

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Therefore, we do not find Appellant's testimony that she was unaware of the school's operating procedures regarding timeouts credible.

2.13 Appellant's supervisor, Ellie Draper, Registered Nurse 4, subsequently initiated a Personnel Conduct Report. After an investigation into the incident, Donna Patten, the Superintendent's designee, made a finding of misconduct and forwarded the result to the superintendent.

2.14 Dr. Asha Singh, Superintendent of Fircrest School, was Appellant's appointing authority. In determining the level of discipline, Dr. Singh reviewed the results of the Personnel Conduct Report, the finding of misconduct, and Appellant's personnel record and history with the school. Dr. Singh concluded that Appellant understood the school's policy and procedures regarding use of restraints. Dr. Singh concluded that as a registered nurse, Appellant had a responsibility to care for clients in a respectful manner and to ensure their safety. Dr. Singh further concluded that Appellant's use of an unapproved restrictive procedure violated the client's human rights and created an unsafe situation for Appellant, Ms. Ottinger and for the client. Dr. Singh testified that she ultimately determined that Appellant's actions neglected her duty and rose to the level of gross misconduct. To impress upon Appellant her duty to use better judgment, Dr. Singh imposed a reduction in pay, which would total two weeks of Appellant's salary.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that no dispute exists that Appellant picked up a resident and carried him into another room against his will and then prevented him from getting out. Respondent argues that Appellant's actions were inexcusable and violated the resident's human rights. Respondent argues that as a licensed professional, Appellant had a duty to show professional judgment to treat clients appropriately. Respondent contends that Appellant received adequate training on restrictive programs and restraints and agency policy. Respondent argues that there is no evidence that

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Appellant attempted to seek help from her supervisor or from the duty office to deal with the client's disruptive behavior. Respondent further argues that Dr. Weber's statements that the client should be placed on a timeout did not constitute authorization to use an unapproved timeout with the client.

3.2 Appellant argues that she was placed in an untenable situation of dealing with an extremely aggressive and disruptive client who was admitted into the infirmary with no respite care plan in place. Appellant asserts that she never finished her orientation and therefore, missed key elements of the orientation relevant to her ability to deal with the situation. Appellant further contends that the school's policies and procedures were outdated. Appellant contends that she believed it was appropriate to follow Dr. Weber's directive to place the client on timeout. Appellant argues that she did not understand the extent of the school's timeout procedure and therefore believed she could place the client on a timeout. Appellant argues that the discipline imposed is severely punitive, and was unrelated to her previous discipline. Appellant asserts that Respondent has failed to prove that she neglected her duty or engaged in flagrant misbehavior.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

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4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.5 Respondent has established by a preponderance of the credible evidence that Appellant neglected her duty when she physically picked up and moved a resident into an empty room. Furthermore, we find no compelling reason for Appellant to forcibly remove the client from the nursing station and then to hold the door closed to confine him in the room. Although it is undisputed that JD was an extremely difficult resident to manage, Appellant had a duty to comply with the school's practice against using exclusionary timeouts, which were prohibited unless authorized by the client's care plan. Appellant had a duty and responsibility to care for the safety and well being of JD, and Dr. Weber's earlier statement that JD should be placed on a timeout did not mitigate her actions, especially since there was no authorization or approved plan to place JD on a timeout. Respondent has also proven that Appellant's actions, which jeopardized the safety of staff and of the resident, rise to the level of gross misconduct. Furthermore, the lack of a respite plan or policy also does not mitigate Appellant's actions.

4.6 In assessing the sanction imposed, we have reviewed the testimony of the appointing authority. The appointing authority's intent was to impose a reduction in pay equivalent to two weeks of Appellant's pay. However, the reduction in pay imposed here, a reduction from Range 45N, step P to step J, amounts to more than two weeks of Appellant's pay. Therefore, we conclude that the disciplinary sanction is too severe and should be modified from a range 45N, step P to step

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L, effective January 1, 2000 through May 31, 2000, to more closely reflect the appointing authority's intent of imposing a two-week reduction in pay.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Debra Harding is granted in part, and her reduction in pay from range 45N, step P to step J, effective January 1, 2000 through May 31, 2000, is modified to a reduction in pay from range 45N, step P to step L, effective January 1, 2000 through May 31, 2000.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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