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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); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Anthony Akridge was a Juvenile Rehabilitation Residential Counselor (JRRC) and permanent employee of Respondent Department of Social and Health Services (DSHS) at the Echo Glen Children's Center. 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 on April 6, 2001.

2.2 Appellant began employment at Echo Glen Children's Center in December 1995. Appellant was aware of DSHS's policies and procedures and had a clear understanding of the duties and responsibilities of his position. In October 1999, Appellant received a three-day suspension as a result of his off-duty conduct of assault, threatening his roommate, eluding the police and leaving the scene of an accident.

2.3 By letter dated March 12, 2001, Nehemiah Mead, Superintendent of Echo Glen Children's Center, informed Appellant of his demotion from Juvenile Rehabilitation Residential Counselor to Juvenile Rehabilitation Counselor Assistant for neglect of duty, gross misconduct and willful violation of the published employing agency or department of personnel rules or regulations. Mr. Mead alleged that Appellant:

1. Inappropriately touched three female residents;
2. Went into a female resident's room and requested that she give him a hug;
3. Put his arm around a female resident and failed to comply with her request to remove his arm;
4. Made inappropriate comments to female residents;

5. Demonstrated favoritism and poor professional boundaries with a female resident; and
6. Changed a supervisory directive given to two female residents by a program manager.

2.4 At the time of the incidents giving rise to this appeal, Appellant worked in Kalama Cottage. Kalama Cottage is a drug and alcohol treatment facility for both male and female residents. The residents of Kalama Cottage generally have substance abuse, sexual abuse and mental health issues and spend approximately 12 weeks at the cottage while undergoing treatment for their substance abuse issues. Appellant was responsible for resident supervision, counseling and treatment interventions and ensuring that residents were safe and secure. In addition, Appellant acted as the cottage recreation leader, and he carried a caseload consisting of two Kalama Cottage residents, Holly R. and Alex L.

2.5 Respondent has no written policy regarding appropriate attire for residents. The staff member working with the residents is responsible for determining whether residents' attire is appropriate for the activity in which they are participating. Appellant was responsible for the residents he took to the gym and for ensuring that they wore appropriate attire while at the gym.

2.6 Most of the residents at Echo Glen Children's Center have not had good role models. Therefore, it is imperative for staff to model appropriate behavior, treat residents in a humane manner, respect their boundaries and act in a professional manner. It is also imperative for staff to create an environment where residents feel safe and trust staff.

2.7 Holly R. credibly testified that she was angry with Appellant when she brought forward her allegations of his inappropriate behavior. She also credibly testified that she thought Appellant was a "cool" counselor and that he was fun to talk to. In addition, she credibly testified that she felt that her allegations were taken out of proportion by the agency, that Appellant did not intend to cause

1 harm, that his actions were not sexual in nature, and that he was trying to be nice, comforting and
2 funny. In hindsight, Holly wishes that she had not said anything about Appellant's conduct toward
3 her. Holly does not recall Appellant touching her inappropriately while he was supervising her
4 weight training. However, on one occasion when she was upset, he put his arm around her shoulder
5 in an effort to calm her and did not remove it when she initially told him to. Holly also testified that
6 on one occasion when she was standing at the doorway to her room, Appellant gave her a side hug
7 and wished her "Merry Christmas;" that once when she lifted her shirt and complained about being
8 fat, Appellant poked her stomach; that when she complained about the small size of her breasts,
9 Appellant told her, "[t]hey're not small, they fit your body. They'll grow," and that on one occasion
10 he told her, "Girl, you better shut your mouth before I put something in it" and on another occasion,
11 he told her, "Girl, I can do anything I please" after she told him to leave her alone.

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13 2.8 Alex L. credibly testified that he saw Appellant touch Holly's and other female residents'
14 bodies when Appellant was assisting them during weight training. Alex also testified that while he
15 felt that Appellant sometimes favored female residents over male residents, he brought pop and
16 pizza for all the residents.

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18 2.9 Derek M. was a resident of Kalama Cottage. Derek credibly testified that he saw Appellant
19 touch Holly's and other female residents' bodies during weight training. He also testified that he felt
20 that Appellant favored female residents over male residents.

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22 2.10 Christina S. was a resident of Kalama Cottage. She credibly testified that Appellant would
23 allow residents to play Nintendo and have food when other staff members would not. Christina felt
24 uncomfortable when Appellant touched her chest, stomach and thighs during weight training. She
25 also credibly testified that Appellant told her that her breasts were too big for her to wear a form
26 fitting shirt; that she heard Appellant comment to resident Nancy S. about the use of body spray in

1 reference to her vagina area; that she saw Appellant inappropriately touch Holly R. and put his arm
2 around her; and that while in the gym, after another staff member told her and resident Nancy S. to
3 put a shirt on over their sports bras and tank tops, Appellant allowed them to remove their shirts.

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5 2.11 Neither Patricia R. nor Nancy S. testified at the hearing before the Board and we are unable
6 to determine their credibility. However, where the testimony of others was consistent with and
7 corroborated events discussed by Patricia and Nancy, we find their interview responses, contained
8 in the respective Conduct Investigation Reports (CIR), credible. Therefore we find that Appellant
9 touched Patricia's body when he was assisting her with weight training but that she felt that it was
10 "no big deal." In addition, we find that while in the gym, Appellant allowed Nancy S. to remove
11 her shirt after a program manager told her to put it on and that Appellant commented to Nancy
12 about the use of body spray in reference to her vagina area.

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14 2.12 In December 1999, Holly R. approached Phaleen Bailey, Juvenile Rehabilitation Supervisor,
15 with her concerns about Appellant. Ms. Bailey called Mark Walrath, Appellant's supervisor, and
16 suggested that he follow up on Holly's concern.

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18 2.13 The following day, resident Christina S. told Mr. Walrath about her concerns and discomfort
19 around Appellant. Christina mentioned that Patricia R. also had concerns about Appellant;
20 therefore Mr. Walrath also talked with Patricia. Mr. Walrath was troubled by these reports because
21 he had counseled Appellant and worked with him about maintaining appropriate boundaries with
22 residents. Mr. Walrath determined that the reports by Holly, Christina and Patricia represented a
23 repeated theme of misconduct by Appellant. Mr. Walrath reported the information to his
24 supervisor, Shana Hormann. Mr. Walrath and Ms. Hormann reported the information to personnel.

1 2.14 Superintendent Mead was advised of the allegations. He made referrals to DSHS's Child
2 Protective Services (CPS) and to the Washington State Patrol (WSP) for investigations. The
3 completed WSP report, which incorporated the CPS investigation, was forwarded to Mr. Mead on
4 September 28, 2000.

5
6 2.15 Mr. Walrath was assigned responsibility to initiate and investigate CIRs for each of the
7 incidents. On October 11, 2000, Mr. Walrath initiated eleven CIRs alleging that Appellant engaged
8 in misconduct when he inappropriately touching female residents, made inappropriate comments to
9 female residents, demonstrated favoritism toward female residents, and allowed two female
10 residents to remove their shirts after a program manager told them to put their shirts on. Mr.
11 Walrath forwarded the results of his CIR investigations to Michael Theissen, Associate
12 Superintendent.

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14 2.16 Although Appellant denied the allegations, Mr. Theissen found the residents credible,
15 determined the incidents alleged in the CIRs occurred, and concluded that Appellant engaged in
16 misconduct. The CIRs and investigative information were forwarded to Superintendent Mead.

17
18 2.17 Superintendent Mead considered all of the information from the CIRs and the WSP report
19 and concurred with Mr. Theissen's conclusion that misconduct had occurred. Before determining
20 the level of discipline, Mr. Mead met with Appellant on December 18, 2000. During the meeting,
21 Appellant denied the allegations and said that he wanted Mr. Mead to know that he was not a sex
22 offender.

23
24 2.18 After reviewing Appellant's employment and disciplinary history, Superintendent Mead
25 decided to demote Appellant to a Juvenile Rehabilitation Counselor Assistant position. Mr. Mead
26 concluded that Appellant neglected his duty to ensure the safety of residents, to provide residents

1 appropriate counseling, and to implement and comply with the policies and procedures of the
2 agency and the facility. Mr. Mead concluded, in part, that Appellant's misconduct included
3 inappropriately touching female residents and making inappropriate comments to female residents
4 both of which could be construed as sexual in nature. Mr. Mead concluded that Appellant's
5 misconduct rose to the level of gross misconduct because his behavior demonstrated a flagrant
6 disregard for the welfare and safety of residents and sent a message to them that he could not be
7 trusted. In addition, Mr. Mead determined that Appellant violated the trust placed in him by the
8 agency and the public as a caregiver, failed to act as an appropriate role model for the residents, and
9 created an intimidating environment for the residents.

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11 2.19 By letter dated March 12, 2001, Superintendent Mead informed Appellant of his demotion,
12 effective March 29, 2001. In addition, Appellant was assigned a new position number, shift and
13 supervisor.

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15 2.20 DSHS Administrative Policy 6.04 addresses ethical conduct and states, in part:

16 A. The Department of Social and Health Services requires employees to perform
17 duties and responsibilities in a manner that maintains standards of behavior that
promote public trust, faith and confidence. Specifically, employees shall:

- 18 1. Strengthen public confidence in the integrity of state government by
19 demonstrating the highest standards of personal integrity, fairness, honesty,
20 and compliance with laws, rules, regulations and departmental policies.
- 21 2. Create a work environment that is free from all forms of . . . sexual/workplace
22 harassment. This includes, but is not limited to:
 - 23 a. Following and abiding by departmental policies regarding. . . sexual
24 harassment, and client rights.
 - 25 b. Not using the employee's position for purposes of establishing or promoting
26 personal . . . relationships with clients.

27
28 5. Promote an environment of public trust free from . . . abuse of authority. . . .

29 2.21 The mission of the Juvenile Rehabilitation Administration provides, in relevant part:

1 The mission of the Juvenile Rehabilitation Administration (JRA) is to provide a
2 continuum of preventative, rehabilitation, residential, and supervisory programs for
3 juvenile offenders that hold offenders accountable, protect the public and eliminate
4 repetitive criminal behavior.

5 2.22 Echo Glen Children's Center Policy 4.3 addresses staff and resident relationships and states,
6 in relevant part:

7 200.1 Staff Relationships with residents shall be supportive, positive, and within
8 the context of their professional role. This includes respect, concern,
9 courtesy . . . Relationships shall have a treatment focus. . . .

10 200.4 Staff shall not use . . . remarks meant to debase, humiliate or intimidate
11 residents. Threatening or the use of physical abuse is also prohibited.

12 200.6 Staff shall not engage in sexual contact or make inappropriate sexually
13 suggestive comments. Discussions with a resident involving sexual content
14 must be related to treatment issues.

15 200.7 Staff shall not engage in physical contact with a resident that is not consistent
16 with the resident's approved treatment plan. Any physical contact must be
17 carefully considered, occur in the presence of others, and agreed to by the
18 resident. When contact is appropriate, it should be limited to the arms and
19 shoulders. Touching of other parts of the body is prohibited. Brief
20 therapeutic hugs are acceptable.

21 **III. ARGUMENTS OF THE PARTIES**

22 3.1 Respondent argues that the residents liked Appellant and all they wanted was for him to stop
23 engaging in behavior that made them uncomfortable, not to get him in trouble. Respondent asserts
24 that the residents were credible, that Appellant failed to maintain appropriate boundaries with the
25 residents, and that he touched Holly, Christina and Patricia without their permission. Respondent
26 contends that the residents felt uncomfortable when Appellant touched them. Respondent asserts
that Appellant went into Holly's room and asked her for a hug, that on another occasion, he put his
arm around her and would not remove it when she told him to, and that on several other occasions,
he made inappropriate comments with a sexual connotation to Holly and to other female residents.
Respondent contends that Appellant's actions created a barrier to the residents' therapy, violated
their rights, created security and safety issues, and were contrary to agency policies. Respondent

1 further argues that Appellant showed favoritism towards the residents on his caseload and
2 particularly toward Holly, and that he allowed Christina and Nancy to wear inappropriate attire
3 consisting of sports bras and tank tops without a shirt over the top, even after another staff member
4 told them to put their shirts on. Respondent contends that Appellant's behavior was willful, that he
5 violated agency policies, and that he failed to act consistent with his duty to provide a safe and
6 secure environment for residents. Respondent asserts that Appellant's misconduct was serious, and
7 given his history of counseling for boundary issues, serious action was needed to stop his behavior.
8 Respondent argues that demotion was necessary to stop his behavior and to send the message that
9 such behavior will not be tolerated at Echo Glen Children's Center.

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11 3.2 Appellant argues that the charges against him are based solely on uncorroborated hearsay
12 and asserts that Respondent failed to meet its burden of proof that the incidents occurred as alleged.
13 Appellant denies making inappropriate comments to residents and contends that whenever he
14 touched them, his actions were in compliance with policy, were not sexual or inappropriate, and
15 that the residents did not find his actions offensive. Appellant asserts that when he touched the
16 residents during weight training, it was intended to show them the proper muscles to use. Appellant
17 asserts that when he hugged Holly and wished her merry Christmas, they were not in her room, the
18 hug was consensual, and the hug was the kind of contact that staff engages in to nurture residents.
19 Appellant further asserts that when Holly told him to remove his arm from her shoulder, he
20 complied with her request and told her he could talk to her if he wanted to. Appellant argues that
21 Holly had self-esteem issues and contends that when interacting with Holly or the other residents,
22 counselors must be direct and talk to them straight using the residents' style of language. Appellant
23 denies favoring Holly or other female residents and asserts that he brought food and clothes for all
24 the residents. In summary, Appellant contends that the charges against him are unsubstantiated and
25 vicious. Appellant asserts that he was an excellent counselor, that there is no evidence that his
26 actions were for any type of sexual gratification, and that his demotion should be set aside.

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).

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 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.6 Respondent has met its burden of proof that Appellant inappropriately touched female residents' chests, stomachs and thighs; that he initially failed to comply with Holly's request to

1 remove his arm from her shoulder when she told him to; and that he made inappropriate comments
2 that could be perceived as sexual in nature by the female residents. By his actions, Appellant failed
3 to treat residents with respect, failed to maintain appropriate boundaries with the residents, and
4 created an uncomfortable and intimidating environment for the residents. Appellant's actions were
5 willful, contrary to the mission and policies of the agency and rose to the level of gross misconduct.

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7 4.7 Respondent failed to prove by a preponderance of the credible evidence that Appellant went
8 into Holly's room and asked her to give him a hug, that Appellant putting his arm around Holly's
9 shoulder to calm her down was contrary to policy, that Appellant demonstrated favoritism toward
10 female residents, or that it was inappropriate for him to change a supervisory directive given by a
11 program manager to residents who were under Appellant's supervision.

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13 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
14 the facts and circumstances including the seriousness and circumstances of the offense. The penalty
15 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
16 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
17 An action does not necessarily fail if one charge is not sustained unless the entire action depends on
18 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

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20 4.9 As a JRRC, Appellant had a fundamental responsibility to ensure that he engaged in
21 appropriate therapeutic interactions with residents and that he maintain professional boundaries at
22 all times with residents. Appellant repeatedly failed to fulfill these responsibilities. By his failure
23 to fulfill this fundamental responsibility, Appellant demonstrated that he should not be in a position
24 where he counsels troubled youth at Echo Glen Children's Center. Under the totality of the proven
25 facts and circumstances, demotion is appropriate and the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Anthony Akridge is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair

René Ewing, Member