Sweeny, J.P., Manzanet-Daniels, Kapnick, Oing, Singh, JJ.

9647 In re Allen Patterson, Petitioner-Appellant, Index 100451/17

-against-

City of New York, et al., Respondents-Respondents.

Stewart Lee Karlin Law Group, P.C., New York (Daniel E. Dugan of counsel), for appellant.

Zachary W. Carter, Corporation Counsel, New York (Jane L. Gordon of counsel), for respondents.

(Filed Jul. 5, 2019)

Order and judgment (one paper), Supreme Court, New York County (Nancy M. Bannon, J.), entered August 23, 2018, which denied the petition to annul a determination of respondent City of New York Civil Service Commission, dated December 16, 2016, affirming a determination of the New York City Administration for Children's Services (ACS), dated September 22, 2016, terminating petitioner's employment for misconduct and incompetence, and to annul a determination of the Civil Service Commission, dated March 6, 2017, affirming a determination of the New York City Department of Citywide Administrative Services, dated October 6, 2016, disqualifying petitioner from employment with the New York City Taxi and

Limousine Commission based on ACS's findings, denied petitioner's motion to amend the petition, and dismissed the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs.

Petitioner failed to establish that respondents acted in excess of their jurisdiction (*see* Civil Service Law § 76[1], [3]; *Matter of Almanzar v City of N.Y. City Civ. Serv. Commn.*, 166 AD3d 522, 524 [1st Dept 2018]). Although petitioner submitted both a conditional resignation and a handwritten resignation letter while disciplinary charges were pending against him, ACS properly elected to disregard the resignation and continue to prosecute the charges against him (*see* 4 NYCRR 5.3[b]).

The proposed amended petition lacks merit (*see generally Garcia v New York-Presbyt. Hosp.*, 114 AD3d 615 [1st Dept 2014]). Petitioner, a probationary employee of the Department of Finance, who could be dismissed for almost any reason, or no reason at all, failed to allege facts that would establish that he was dismissed in bad faith or for an improper or impermissible reason (*see Matter of Castro v Schriro*, 140 AD3d 644, 647 [1st Dept 2016], *affd* 29 NY3d 1005 [2017]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 18, 2019

/s/ [Illegible]
CLERK

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Hon. Nancy Bannon *Justice*	**PART** 42
In the Matter of	**INDEX NO.** 100451/17
ALLEN PATTERSON	**MOTION DATE** 3/7/18
- v -	**MOTION SEQ. NO.**
CITY OF NEW YORK, et al.	✓001.002

(Filed Aug. 23, 2018)

The following papers were read on this proceeding pursuant to CPLR article 78 and cross motion to dismiss the petition (SEQ 001) and motion for leave to amend the petition (SEQ 002)

SEQ 001 Notice of Petition/ Order to Show Cause – Affirmation – Affidavit(s) Exhibits – Memorandum of Law----------	**No(s).** * 1
Notice of Cross Motion – Answering Affirmation(s) – Affidavit(s) – Exhibits - Replying Affirmation – Affidavit(s) – Exhibits ----------	**No(s).** 2 **No(s).** 3
SEQ 002 Notice of Motion/ Order to Show Cause – Affirmation – Affidavit(s) Exhibits – Memorandum of Law----------	**No(s).** 1
Answering Affirmation(s) – Affidavit(s) – Exhibits - Replying Affirmation – Affidavit(s) – Exhibits ----------	**No(s).** 2 **No(s).** 3

In this CPLR article 78 proceeding, the petitioner, Allen Patterson, seeks judicial review of (1) a determination of the respondent City of New York Civil Service Commission (CSC) dated December 16, 2016, which affirmed a decision of the New York City Administration for Children's Services (ACS) terminating his employment for misconduct and incompetence, and (2) a determination of the New York City Department of Citywide Administrative Services (DCAS) dated October 6, 2016, which disqualified him from employment with the New York City Taxi and Limousine Commission (TLC), based on ACS's findings. The respondents cross-move pursuant to CPLR 3211(a) and 7804(f) to dismiss the petition (SEQ 001) . The petitioner moves pursuant to CPLR 3025(b) for leave to amend the petition to add additional respondents and causes of action (SEQ 002). The cross motion is granted, the motion for leave to amend the petition is denied, and the proceeding is dismissed.

The petition fails to state a cause of action. After a penalty is imposed under Civil Service Law § 75 in connection with a charge of misconduct or incompetence, the aggrieved employee may appeal the underlying determination by either filing "an application to the state or municipal commission having jurisdiction, or by an application to the court in accordance with the provision of article seventy-eight of the civil practice law and rules." Civil Service Law § 76(1). If the aggrieved employee appeals the determination to the CSC, "[t]he decision of such civil service commission shall be final and conclusive, and not subject to further review in any

court." Civil Service Law § 76(3). Here, ACS terminated the petitioner's employment as a counselor at a juvenile detention facility after it found that he used unwarranted and excessive force upon several residents. DCAS terminated his later employment with TLC after being informed of ACS's determination. The petitioner appealed the adverse determinations of both ACS and DCAS to CSC, which affirmed ACS's determination on December 16, 2016, and DCAS's determination on March 6, 2017. Since the petitioner elected to appeal those determinations to CSC, any judicial challenge to the determinations of CSC or DCAS is foreclosed. See Matter of Dhar v Commissioner, New York City (NYC) Dept. of Transportation, 146 AD3d 573 (1st Dept. 2017); Matter of Uddin v NYC/Human Resources Admin., 81 AD3d 656 (2nd Dept. 2011). Contrary to the petitioner's contention, neither the arbitrary and capricious standard (CPLR 7803[3]) nor the substantial evidence standard (CPLR 7803[4]) may be applied by a court to assess the merits of a final CSC determination, nor may a court apply the abuse of discretion standard (CPLR 7803[3]) to review the appropriateness of the penalty imposed. See Matter of Griffin v New York City Dept. of Correction, 179 AD2d 585 (1st Dept 1992).

Nor is there merit to the petitioner's contention that this case presents a recognized exception to the general election-of-remedies rule, which permits a court to engage in an "extremely narrow scope of review" to determine whether an agency "acted illegally, unconstitutionally, or in excess of its jurisdiction."

Matter of Centeno v City of New York, 115 AD3d 537, 538 (1st Dept. 2014); see Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Commn., 78 NY2d 318 (1991). The petitioner contends that he had resigned from ACS before it terminated his employment, and that ACS's determination, CSC affirmance thereof, and DCAS's reliance thereon were in excess of those agencies' jurisdictions. However, where charges of misconduct or incompetence are preferred by a public agency against an employee, 4 NYCRR 5.3(b) permits the agency to "disregard a resignation filed by such employee and to prosecute such charges and, in the event that such employee is found guilty of such charges and dismissed from the service, his termination shall be recorded as a dismissal rather than as a resignation." Since ACS, CSC, and DCAS were lawfully entitled to disregard the petitioner's attempted resignation, the petition fails to allege facts supporting his contention that those agencies acted illegally, unconstitutionally, or in excess of jurisdiction. Hence, judicial review is foreclosed, and the petition fails to state a cause of action. See Matter of Blount v New York City Civ. Serv. Commn., 12 AD3d 304 (1st Dept. 2004).

Since the petition is being dismissed for failure to state a cause of action, the court need not address the respondents' request for dismissal under CPLR 3211(a)(10) for failure to join ACS, TLC, and DCAS as necessary parties. In any event, contrary to the respondents' contention, those agencies are not necessary parties. The CSC made the determination dated

December 16, 2016, which was binding upon the petitioner and ACS (see Matter of Harrell v New York City Housing Auth., 300 AD2d 54 [1st Dept. 2002]), and superseded any determination made by ACS. Therefore, ACS is not a proper party (see Matter of Rivera v Blass, 127 AD3d 759 [2nd Dept. 2015]; Jiggetts v Grinker, 148 AD2d 1 [1st Dept. 1989], revd other grounds 75 NY2d 411 [1990]), and no cause of action lies against it with respect to CSC's December 16, 2016, determination. See Matter of Armacida v Reitz, 141 AD3d 713 (2nd Dept. 2016); Matter of TAC Peek Equities, Ltd. v Town of Putnam Val. Zoning Bd. of Appeals, 127 AD3d 1216 (2nd Dept. 2015). TLC is not a necessary party since it made none of the challenged determinations. Although DCAS would have been a necessary party had the petitioner elected to pursue immediate judicial review of that agency's determination dated October 12, 2016, rather than appealing it to CSC, the petitioner elected the latter option. DCAS is thus not a necessary party for that reason as well. In addition, even if those agencies were necessary parties, and this matter were to proceed, the court would be obligated to direct their joinder, subject to any applicable defenses and affirmative defenses, rather than dismiss the petition. See Windy Ridge Farm v Assessor of Town of Shandaken, 11 NY3d 725 (2008); Friedland v Hickox, 60 AD3d 426 (1st Dept. 2009).

Although leave to amend pleadings shall be freely given absent prejudice or surprise resulting directly from the delay (see Murray v City of New York, 51 AD3d 502 [1st Dept. 2008]), leave should be denied

where the proposed claim is palpably insufficient or patently devoid of merit. See JPMorgan Chase Bank, N.A. v Low Cost Bearings NY, Inc., 107 AD3d 643 (1st Dept. 2013). Here, "the proposed amendment suffers from the same fatal deficiency as the original claims" (Carl, LLC v 415 Greenwich Fee Owner, LLC, 91 AD3d 583, 583 [1st Dept. 2012] [internal quotation marks and citation omitted]), since the proposed causes of action against CSC, ACS, TLC, and DCAS, referable to both CSC's December 16, 2016, and March 6, 2017, determinations, are barred by the election-of-remedies provisions of Civil Service Law § 76, and ACS, TLC, and DCAS are not proper parties in any event. The proposed causes of action against the New York City Department of Finance (DOF) and Office of the Sheriff are also patently devoid of merit. The petitioner asserts that, after the CSC completed its administrative proceedings in March 2017, the DOF hired him as a probationary deputy sheriff and trained him, but that, during the pendency of this proceeding, his employment was terminated when the DOF learned of the ACS's prior findings of misconduct and incompetence. "As a probationary employee, petitioner had no right to challenge the termination by way of a hearing or otherwise, absent a showing that he was dismissed in bad faith or for an improper or impermissible reason." Matter of Swinton v Safir, 93 NY2d 758, 763 (1999); see Matter of York v McGuire, 63 NY2d 760 (1984). Since the DOF was entitled to rely on the ACS's findings, the petitioner failed to allege facts supporting a claim of bad faith or impermissible reasons for termination of employment.

Accordingly, it is

ORDERED that the respondents' cross motion to dismiss the petition (001) is granted; and it is

ADJUDGED that the petition and proceeding are dismissed; and it is

ORDERED that the petitioner's motion for leave to amend the petition (002) is denied.

This constitutes the Decision, Order, and Judgment of the court.

Dated: July 24, 2018

/s/ Nancy M. Bannon , JSC
HON. NANCY M. BANNON

1. **Check one: .....■ CASE DISPOSED ☐ NON-FINAL-DISPOSITION**
2. **Check as appropriate: PETITION IS: ☐ GRANTED ■ DISMISSED ☐ GRANTED IN PART SEQ 001**
3. **Check as appropriate: CROSS MOTION IS: ■ GRANTED ☐ DENIED ☐ GRANTED IN PART SEQ 001**
4. **Check as appropriate: MOTION IS: ☐ GRANTED ■ DENIED ☐ GRANTED IN PART SEQ 002**

[SEAL]
CITY OF NEW YORK
CIVIL SERVICE COMMISSION

1 CENTRE STREET – ROOM 2300
NEW YORK, NY 10007

212-615-8915
www.nyc.gov/csc
appeals@nyccsc.nyc.gov

NOTICE OF CITY CIVIL SERVICE COMMISSION ACTION

Allen Patterson
216 Milford Street
Brooklyn, NY 11208

Date:	03/06/2017
Case No.:	2016-0898
Exam No.:	5046
Exam Name:	Taxi and Limousine Inspector
Expiration:	01/20/2020
Final Decision:	Affirm

The New York City Civil Service Commission has made a final decision in connection with your appeal. A copy of the decision is attached.

Please note that if you wish to appeal this decision you must do so by filing an Article 78 proceeding in

New York State Supreme Court within 4 months of the date of this decision.

NEW YORK CITY CIVIL SERVICE COMMISSION

c: **Lisa Jones**
Director of Operations
DCAS Office of the General Counsel
1 Centre Street, 19th Floor North
New York, NY 10007

[SEAL]
The City of New York
CIVIL SERVICE COMMISSION
1 Centre Street • 23rd Floor
New York • New York 10007

DECISION

Appeal No. 2016-0898

THE DISQUALIFICATION OF CANDIDATE **ALLEN PATTERSON** FROM EXAMINATION NUMBER 5046 IS HEREBY AFFIRMED.

(Filed Mar. 6, 2017)

ALLEN PATTERSON ("Appellant") appealed from a determination by the Department of Citywide Administrative Services ("DCAS") finding Appellant not qualified for the position of Taxi and Limousine

Inspector on Exam No. 5046, for failure to establish the requisite character for the position as outlined in the Notice of Examination.

Appellant applied for the position of Taxi and Limousine Inspector and placed number 44 on the list established for Exam No. 5046. The list for Exam No. 5046 expires on January 20, 2020.

Background

Prior to applying for the position of Taxi and Limousine Inspector, Appellant was employed by the New York City Administration for Children's Services ("ACS") as a Juvenile Counselor. He was appointed to this position on March 31, 2014. While employed in this capacity, Appellant was the subject of a disciplinary proceeding before the Office of Administrative Trials and Hearing ("OATH") where ACS sought termination of employment for Appellant's charged misconduct, which included: unauthorized or excessive force against four different juvenile residents, failing to use required de-escalation techniques, submitting false or misleading reports for each of those incidents, making false or misleading statements at an investigative interview, and using hostile and profane language towards a supervisor.

After the record had closed at OATH, but before the decision was issued, Appellant submitted a signed, handwritten letter of resignation to ACS on August 19, 2016. On the same day, Appellant also submitted a "Conditional Resignation and Request for Leave of

Absence Pursuant to PSB No. 200-10" form wherein he indicated that he had accepted a position with the Taxi and Limousine Commission ("TLC"). On August 22, 2016, Appellant was appointed to the position of Taxi and Limousine Inspector with TLC.

On September 2, 2016, OATH issued its decision recommending that Appellant be terminated from his employment at ACS. Further, the decision stated: "After the record closed, the parties informed me that [Appellant] has taken a one year leave of absence from ACS. The parties agreed that a report on the merits with a penalty recommendation should be issued." *Admin. for Children's Services v. Patterson,* OATH Index No. 0904/16 at 32 (Sept. 2, 2016) *aff'd,* NYC Civ. Serv. Comm'n, Case No. 2016-0856 (Dec. 16, 2016).

On September 22, 2016, ACS adopted OATH'S recommendation and terminated Appellant from his employment with ACS.[1]

On September 26, 2016, DCAS sent Appellant a Notice of Proposed Personnel Action ("NOPPA") wherein DCAS proposed to disqualify Appellant from his position with the TLC, stating that his character, prior public employment, and background were the basis for his disqualification.

---

[1] Appellant appealed his termination from ACS to the Civil Service Commission on October 3, 2016. Following a hearing held on December 1, 2016, the Civil Service Commission affirmed Appellant's termination from ACS on December 16, 2016. See, *Admin. for Children's Services v. Patterson,* NYC Civ. Serv. Comm'n, Case No. 2016-0856 (Dec. 16, 2016).

On September 29, 2016, Appellant responded to the NOPPA via letter indicating that he resigned from ACS and was not terminated.

On October 6, 2016, DCAS sent Appellant a Notice of Personnel Action ("NOPA") which notified the Appellant that he was found "Not Qualified" for the reasons of character, prior public employment, and background.

By letter dated October 12, 2016, TLC terminated Appellant's employment as a Taxi and Limousine Inspector based upon DCAS's determination that he was "not qualified" for the position.

On October 17, 2016, Appellant appealed DCAS's disqualification of him for failure to establish the requisite character for the position of Taxi and Limousine Inspector to the Civil Service Commission ("Commission").

Analysis

The Commission has carefully reviewed the entire record before it and finds that it supports a disqualification on character grounds under New York Civil Service Law ("CSL") Sec. 50(4)(a).

The Commission finds that Appellant was terminated from ACS pursuant to the procedures set for in CSL Sec. 75, and, subsequently, affirmed Appellant's termination upon appeal on December 16, 2016. Appellant's contention that he resigned prior to his termination is without merit and without consequence. First,

submitting both a signed resignation and a "Conditional Resignation and Request for Leave of Absence Pursuant to PSB No. 200-10" form are mutually exclusive. Appellant cannot simultaneously tender a resignation from one agency, while at the same time submitting a conditional resignation for the duration of his probation at another city agency, and then seek the protection of whichever option he chooses to be the more advantageous. Further, Appellant's request to have OATH issue a decision on the merits, including a penalty recommendation, is not consistent with his argument that he had already resigned his employment. In the event that Appellant had truly resigned his employment with ACS, the OATH determination would have been moot.

Furthermore, whether or not Appellant tendered an unconditional resignation is inconsequential as ACS could, and in this case, did prosecute the charges against Appellant, and upon a finding of guilt of the underlying charges, dismissed him from employment with the agency. As per the Compilation of Codes, Rules and Regulations of the State of New York:

> when charges of incompetency or misconduct have been or are about to be filed against an employee, the appointing authority may elect to disregard a resignation filed by such employee and to prosecute such charges and, in the event that such employee is found guilty of such charges and dismissed from the service, his termination shall be recorded as a dismissal rather than as a resignation. N.Y. Comp. Codes R. & Regs. tit. 4, § 5.3.

Finally, even if the Commission were to accept Appellant's contention that he tendered his unconditional resignation to ACS prior to his termination, which it does not, his resignation with disciplinary charges pending would still be sufficient to support his disqualification. CSL Sec. 50(4)(e) states:

> municipal commissions may refuse to examine an applicant or after examination certify an eligible . . . who has resigned from, or whose service has otherwise been terminated in, a permanent or temporary position in the public service, where it is found after appropriate investigation or inquiry that such resignation or termination resulted from his incompetency or misconduct. N.Y. Civ. Serv. Law § 50 (McKinney).

In this case, however, Appellant was, in fact, terminated from his position as a Juvenile Counselor at ACS for misconduct, and, therefore, DCAS properly considered Appellant's termination when it made the determination to disqualify Appellant for failure to establish the requisite character for the position of Taxi and Limousine Inspector with TLC.

Decision

For the reasons set forth above, we find that DCAS disqualification of Appellant, pursuant to CSL Sec. 50(4)(a), is supported by the record before us. Accordingly, we hereby affirm Appellant's disqualification.

SO ORDERED.

Dated: March 6, 2017

THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION

In the Matter of the Appeal of

ALLEN PATTERSON
Appellant

-against-

ADMINISTRATION FOR CHILDREN'S SERVICES
Respondent

Pursuant to Section 76 of the New York State Civil Service Law
CSC Index No: 2016-0856

(Filed Dec. 16, 2016)

DECISION

ALLEN PATTERSON ("Appellant") appealed from a determination of the Administration for Children's Services ("ACS") finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of Termination following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission ("Commission") heard arguments from the parties on December 1, 2016.

The Commission has considered the arguments presented on this appeal, and reviewed the record of the disciplinary proceeding. Based on this review, the Commission concludes that there is sufficient evidence

in the record to support the findings of fact and the conclusions of law, and that the penalty is appropriate.

Therefore, the final decision and penalty imposed are hereby affirmed.

SO ORDERED

Dated: 12/16/2016

Admin. for Children's Services v. Patterson
OATH Index No. 0904/16 (Sept. 2, 2016), *aff'd*,
NYC Civ. Serv. Comm'n Case No. 2016-085
(Dec. 16, 2016), **appended**

Juvenile counselor used unauthorized or excessive force on four juvenile residents, failed to use required de-escalation techniques, submitted false and misleading reports related to the use of force, made false statements at an interview, and used profane and threatening language towards a supervisor. Petitioner did not prove some instances of respondent failing to use proper de-escalation techniques, using excessive force or improper restraints, or making a false report. ALJ recommends termination of respondent's employment.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
ADMINISTRATION FOR CHILDREN'S SERVICES
Petitioner
- against -
ALLEN PATTERSON
Respondent

REPORT AND RECOMMENDATION

NOEL R. GARCIA, *Administrative Law Judge*

This disciplinary proceeding, containing five combined charges for a total of 23 specifications, was referred to this tribunal by the Administration for Children's Services ("ACS" or "Agency"). The respondent, Allen Patterson, is a juvenile counselor assigned to the Crossroads Juvenile Center ("Crossroads"). Under section 75 of the Civil Service Law, the Department charged respondent with unauthorized or excessive use of force against four different juvenile residents, failing to use required de-escalation techniques, submitting false or misleading reports for each of those incidents, one charge of making false or misleading statements at an investigative interview, and one charge of using hostile and profane language towards a supervisor (ALJ Ex. 1).

The seven-day trial was conducted before me on February 18, 19, 23, March 1, 7, 30, and April 8, 2016. At trial, petitioner presented the testimony of the following four witnesses: Louis Watts, Executive Director at Crossroads; Keith Peterson, ACS Director of Juvenile Justice Training; Michael Aikman, Juvenile Counselor at Crossroads; and Tracey Jordan, ACS Senior Investigator. Petitioner also relied on documentary evidence, as well as video and audio recordings. Respondent testified on his own behalf, and also offered documentary evidence.

For the reasons set forth below, I find that respondent used impermissible and unauthorized force

against four juvenile residents, submitted misleading reports for three of those incidents, failed to use required de-escalation techniques, made false or misleading statements at an investigative interview, and used hostile and profane language towards a supervisor. Petitioner did not prove some instances of respondent failing to use proper de-escalation techniques, using excessive force or improper restraints, or making a false report.

For the misconduct proved, termination of respondent's employment is recommended.

ANALYSIS

Agency procedures

The Division of Youth and Family Justice ("DYFJ") is a division of ACS. DYFJ operates juvenile detention facilities, including Crossroads, a 24-hour secure juvenile detention facility located in Brooklyn, New York (Tr. 23, 28). Respondent was a juvenile counselor ("JC") assigned to Crossroads (Tr. 35).

Juvenile counselors are direct childcare workers who supervise juvenile residents. One of their primary duties is to keep the residents safe and secure (Tr. 25-26, 161). Juvenile counselors are trained and required to use a behavioral management system known as Safe Crisis Management ("SCM") to interact with residents engaged in inappropriate behavior (Tr. 597).

As Director of Juvenile Justice Training, Keith Peterson is certified in Safe Crisis Management and he

supervises and trains the juvenile justice training staff in SCM and other techniques (Tr. 572-73). Director Peterson explained that SCM, a comprehensive approach to behavior management, is the only sanctioned "intervention you can use with the juveniles." SCM requires a staff member to use "the least restrictive alternative" to address any behavioral issues. As a result, when a conflict is developing between a resident and a staff member, the staff member should employ de-escalation techniques to diffuse the situation. Such techniques include counseling the resident, ignoring the behavior (Planned Ignoring), or allowing another staff member to intervene and take over the situation (Tap-Out) (Tr. 586-91).

After less intrusive alternatives have been attempted and failed, and physical intervention becomes necessary, staff members are instructed to use Emergency Safety Physical Interventions ("ESPIs"). These physical interventions are emergency techniques employed in response to "acute physical behavior" by the resident (Pet. Ex. 5, Attachment A at 2). The ESPI used should match the behavior displayed by the resident, and should be selected in accordance with the least restrictive alternative approach. Under SCM guidelines, only agency-sanctioned holds or restraints are allowed. Further, it "is preferred that ESPIs be applied using multiple staff," and that "single staff intervention may only be used in emergency circumstances where other staff members are not immediately available" (Pet. 5 at 6-7). The purpose of an ESPI is to assist the resident in regaining external (physical) and internal control,

and to prevent the resident from hurting himself or others (Tr. 593, 595-97, 671).

Director Peterson's testimony was consistent with ACS Policy No. 2014/10 on Safe Intervention Policy for Secure and Non-Secure Detention, which states that the agency "authorizes the use of a continuum of ESPIs ranging from least restrictive and least likely to cause harm to more restrictive," and that all ESPIs must be "appropriate to the level of risk presented by the youth" and "must utilize the least amount of force necessary to stabilize the youth or situation" (Pet. Ex. 5 at 6). It is uncontested that respondent was trained in the use of SCM and ESPIs (Tr. 645-50, 819-21).

Incident of April 3, 2015 (ACS No. 66054-465-000, Charge 1, Specifications 1-6)

The Video

The relevant portion of the time-stamped video (Pet. Ex. 16), which contains no audio, begins with respondent standing behind a desk, while juvenile residents and staff engage in various activities in a hall (18:40:25). Resident AA enters the hall with two balls, later described as "soft nerf type" sponge balls (Tr. 127). He plays with the balls with resident SJ, and they appear to talk with one another in a jovial manner. Respondent leans over the desk and writes in a logbook (18:40:48). After respondent is finished, he proceeds towards a door. As respondent is almost to the door, the two residents each throw a sponge ball at him, though not with much force (18:41:41). The balls appear to

land near respondent's legs. Respondent immediately turns around and proceeds towards AA at the center of the hall, walking past two juvenile counselors, JC Gueits and JC Bristow (Tr. 85-86).

AA moves towards the right side of the hall and away from respondent. Respondent goes around the two juvenile counselors, catches up to AA, and stands face to face with him. AA moves back and away from respondent, but respondent follows him and grabs his right arm (18:41:57). Respondent is now again face to face with AA. By this time, JC Gueits and JC Bristow have moved into close proximity to the resident and respondent. AA moves his right arm upwards, escaping from respondent's hold. JC Gueits extends his right arm between respondent and AA, but pulls it back when respondent moves into a position where he is again face to face with AA, pointing in AA's face with his left hand (18:42:03). AA seems to push respondent away and takes a step back (18:42:07). JC Gueits and JC Bristow step in between respondent and the resident (18:42:09). JC Bristow has his left arm extended in front of respondent while JC Gueits has both his arms extended in front of AA. Respondent, however, moves forward, positions himself behind AA, and applies an "upper torso" restraint (18:42:10). Respondent and AA move forward across the hall in tandem, with AA subsequently colliding into a wall while his arms are held back by respondent (18:42:14). Respondent continues to hold AA against the wall, and eventually guides him through a doorway, all while holding him in the upper torso restraint (18:43:06).

The Testimonial Evidence

Director Watts testified that respondent should have either counseled the resident or ignored the behavior when the sponge balls were thrown in his direction. Respondent's counseling options included verbally directing AA to come to him, or asking another staff member to assist him in talking with AA. Director Watts stated that respondent should not have aggressively pursued the resident (Tr. 245-49).

Director Peterson testified that during the interaction between respondent and AA, the other juvenile counselors attempted to "tap [respondent] out" by "putting their hand in between or on the resident and putting their hand on [respondent]" (Tr. 613-14). Respondent, however, continued to engage with AA. After applying an upper torso restraint, respondent moved AA forward, which resulted in AA "hitting the wall" (Tr. 614). Director Peterson explained that respondent caused the forward momentum by leaning forward, instead of leaning back, as required by SCM. Further, if the resident had initiated the forward movement, respondent should have immediately gone "down to a seated kneeling upper torso assist." Director Peterson added that causing AA to hit the wall while in the restraint made AA vulnerable to "severe damage or harm," and was not a proper SCM technique (Tr. 614).

Respondent testified that as he was leaving the hall, two sponge balls were thrown in his direction, and he believed that one of the balls hit him "on my right thigh or lower leg" (Tr. 952). Because he did not see who

threw the balls, he turned around and asked, "who did that?" (Tr. 868). JC Gueits and JC Bristow denied knowing who threw the balls, and resident SJ denied throwing a ball. Respondent approached AA, who had not answered but "had a smirk on his face" and was walking away from him (Tr. 869, 940). Respondent stated that he was "angry," but did not take it "personal." He pursued the resident to counsel him and address the situation (Tr. 875, 941). Respondent believed that if he did not approach AA, "everybody" was going to see him as "the weakest link" and as a "target." He further testified that the "kids inside there" would believe that they could make him into a "pussy" and that it was "alright" to throw things at him, and that "[t]his is what they do to staff members that don't address the situation, they're the punks" (Tr. 876). Respondent also wanted AA to apologize to him (Tr. 905). Thus, respondent believed that ignoring the behavior was not an option (Tr. 985).

Respondent admitted that he "stopped the resident from moving away from me by just holding on to his arm," but that he did not know if doing so was permissible under SCM guidelines (Tr. 941, 982). Respondent remembered that the resident told him "that he was going to punch me in my face," but could not recall if AA or the other juvenile counselors made any other statements to him as the encounter took place (Tr. 905). Respondent testified that AA pushed him, that one of the juvenile counselors "grabbed" AA from the front, and that he came from "behind and put the kid in an upper torso" (Tr. 906, 945). AA began

"dragging" him and "pulling" him forward, ultimately colliding with the wall (Tr. 945-46). Respondent then guided AA to his bedroom, and released him from the upper torso restraint. Respondent alleges that AA became combative again and tried to "swing at me." He attempted to again apply an upper torso restraint, but instead left the room, as per the instructions of JC Smith, who had entered the room (Tr. 978-80, 991-92).

Respondent admitted that he was familiar with the Tap-Out procedure, explaining the procedure as when a staff member either verbally or physically "tr[ies] to separate both staff and resident, basically interjecting themselves" in any developing conflict, and attempts to "take over" (Tr. 986). Despite viewing the video, respondent contended that his co-workers did not engage in any verbal or physical conduct that would constitute a Tap-Out during the incident in question (Tr. 986-87). Respondent wrote a report about the incident "probably ten minutes after . . . everything was done," while in an office (Pet. Ex. 20; Tr. 991-92).

To the extent the parties have presented conflicting testimony on relevant facts, a credibility determination is required. In making a credibility determination, this tribunal may consider such factors as witness demeanor; consistency of the witness's testimony; supporting or corroborating evidence; witness motivation, bias, or prejudice; and the degree to which a witness's testimony comports with common sense and human experience. *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd*,

NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

The Specifications

Specification 1 alleges that respondent used an unnecessary and/or impermissible restraint when he held the resident's "wrist/hand" after the resident had attempted to walk away from him.

Pursuant to OATH rule 1-25, the petition is amended to conform to the proof that respondent held the resident by the arm, and not the "wrist/hand," as pled. *Police Dep't v. Coll*, OATH Index Nos. 245/95, 252/95 at 7 (Feb. 16, 1995) (where petition alleged that respondent "did kick and/or strike [the complainant] with a nightstick," but trial evidence showed respondent punched the complainant, amending the petition post-trial to conform to the proof was not prejudicial to the respondent); *Health and Hospitals Corp. (North Central Bronx Hospital) v. Cross*, OATH Index No. 315/97 at 7-8 (Jan. 27, 1997) (in rendering a report and recommendation, ALJ amended pleading *sua sponte* where it was clear that the alleged misconduct occurred on September 3, 1995, not September 23, 1995, and where respondent was able to defend against the charge).

SCM policy prohibits any restraint that is not in response to acute physical behavior by a resident. Therefore, a juvenile counselor cannot restrain a resident simply because the resident chooses not speak to them and moves away (Tr. 672). Respondent admitted

holding AA in order to counsel him, a violation of SCM (Tr. 876, 941). Respondent's claim that he did not know if holding AA by the arm was permissible under SCM guidelines was not credible. Respondent acknowledged that he was trained in SCM techniques, and in using the least restrictive alternative (Tr. 820-21).

As the evidence establishes that respondent impermissibly restrained the resident by the arm, the charge should be sustained.

Specification 2 alleges that respondent used excessive force and/or an inappropriate restraint technique when he placed the resident in an upper torso restraint and shoved the resident up against the wall.

Throughout the incident, respondent displayed visibly aggressive behavior towards the resident by pursuing him around the hall, impermissibly restraining him by the arm, pointing to the resident's face, failing to step away when JC Gueits and JC Bristow attempted to intervene, and applying an upper torso restraint on the resident. I credit the testimony of Director Peterson, supported by the video evidence, that respondent moved AA forward because respondent was leaning forward while applying the upper torso restraint, instead of leaning back as required by SCM (Tr. 694; 18:42:12). As AA and respondent moved across the hall, there came a point where respondent appeared to have a strong hold of AA, and was standing firmly and almost perpendicular to the floor, but then he continued leaning and moving forward (18:42:13). There is no indication that respondent ever

attempted to lean back or go "down to a seated kneeling upper torso assist," as required (Tr. 614). Instead, the video depicts AA colliding into the wall, with respondent's full weight behind hi m. After the collision, AA is seen flush against the wall, while respondent is leaning into him (18:42:14).

Respondent's testimony that he was "dragged" by the resident was not credible, as it does not comport with the video evidence. Tellingly, during respondent's investigative interview held on May 26, 2015, respondent admitted that he "pushed" the resident onto the wall in order to better restrain him, even though he was never trained to use such a tactic (Pet Ex. 27, JC Patterson track: 23:45-24:51). Director Peterson added that they "tell staff to stay away from . . . planting residents up against the wall . . . because you could cause severe . . . harm to the resident" (Tr. 614).

Accordingly, the evidence establishes that respondent impermissibly placed the resident in an upper torso restraint and shoved him up against the wall, in violation of SCM guidelines. The charge should be sustained.

Specification 3 alleges that respondent failed to use the required de-escalation technique known as Planned Ignoring, in violation of SCM guidelines.

According to the specification, SCM requires staff to ignore nuisance and attention-seeking behavior, but that respondent failed to do so by not exiting the hall when the two sponge balls were thrown in his direction. However, Director Watts testified that while

respondent could have ignored the behavior, he could also have chosen to attempt to counsel the resident (Tr. 244-45). Since respondent was not required to ignore the behavior and leave the hall, the charge should be dismissed.

Specification 4 alleges that respondent failed to use the required de-escalation technique known as Tap-Out, in violation of SCM guidelines.

Respondent acknowledged that a Tap-Out is when a staff member, either verbally or physically, places themselves "in the middle of a situation and begins to try to take over" (Tr. 1197). Director Peterson explained that once a staff member safely intervenes during a Tap-Out, it is the responsibility of the initial staff member to "remove themselves from the situation" (Tr. 592). Upon review of the video, Director Peterson testified that staff members attempted to "tap [respondent] out" by "putting their hand in between or on the resident and putting their hand on [respondent]" (Tr. 612-13). The video supports Director Peterson's testimony, as JC Gueits is seen extending his right arm between respondent and AA (18:42:03). At another point, JC Gueits and JC Bristow stepped in between respondent and AA (18:42:09). Yet after each attempted Tap-Out, respondent never stepped away from the resident, as required, but instead continued escalating the incident by placing himself face to face with AA, and then placing AA in an upper torso restraint. The video evidence contradicts respondent's testimony that JC Gueits and JC Bristow did not engage in any conduct that would constitute a Tap-Out.

As the evidence establishes that JC Gueits and JC Bristow attempted to intervene by using the Tap-Out de-escalation technique, but respondent failed to step away as required, the charge should be sustained.

Specification 5 alleges that respondent submitted a false and/or misleading report with material omissions concerning the incident.

Public servants can be disciplined for making false or misleading reports or statements. *See Dep't of Correction v. Walker*, OATH Index No. 1394/08 at 14-15 (Oct. 17. 2008), *modified on penalty*, Comm'r Dec. (Dec. 4, 2008). To constitute a violation, a petitioner must show that the alleged false statements or omissions were made knowingly and with intent to prevent the truth from being uncovered, as opposed to inadvertent error. *Id.* at 14-15, 31. Here, respondent omitted several material facts in his incident report, including failing to disclose that he pursued the resident; that he initiated direct contact with the resident by holding his arm and preventing him from walking away; that two juvenile counselors attempted the Tap-Out procedure several times but that he did not move away from the resident; that while restraining the resident he leaned forward and caused the resident to collide with a wall; and that he again attempted to place the resident in a restraint once the resident was in his bedroom (Pet. Ex. 20). Pursuant to OATH rule 1-25, the petition is also amended to conform to the proof that respondent failed to disclose that he held the resident by the arm, and not the hand, as pled. *Coll*, OATH 245/95, 252/95 at 7.

Respondent's argument that he was not allowed to view video of the incident before writing the report, and that he "forgot" that he attempted an upper torso restraint on the resident while in the bedroom, was not credible (Tr. 991). Respondent wrote his report only a few minutes after the incident occurred, when it is reasonable to expect that the details of the event were still fresh in his mind. *See Taxi & Limousine Comm'n v. Ahmed*, OATH Index No. 1182/16 at 7 (Mar. 16, 2016) (stating that complainant's "report, prepared less than an hour after the incident, was made when the complainant's memory was fresher.").

In sum, the evidence establishes that respondent's omissions in his contemporaneous incident report were numerous, material, and meant to conceal or minimize his aggressive and inappropriate behavior. The charge should be sustained.

Specification 6 alleges that respondent made false, misleading or evasive statements during an investigative interview conducted on May 26, 2015.

To support the allegation, petitioner submitted an audio recording of respondent's investigative interview (Pet Ex. 27). A review of the audio recording supports a finding that respondent made false statements because he denied that JC Gueits and JC Bristow attempted to assist him or to perform a Tap-Out during the incident, and denied that the resident moved away from him before he applied the upper torso restraint—statements that are contradicted by the video evidence (Pet. Ex. 27, JC Patterson track: 18:43-22:23).

Petitioner did not prove that respondent made other misleading or false statements. Contrary to what petitioner alleged, respondent described in sufficient detail the events that took place once the resident was escorted to his bedroom. Also, respondent's testimony that he did not know if, specifically, the resident hit his head upon colliding with the wall was not proven false or misleading.

In all, the evidence establishes that respondent did make two false statements during the investigative interview, and the charge should be sustained.

Incident of January 20, 2015 (ACS No. 66054-465-001, Charge 1, Specifications 1-5)

The Video

The relevant portion of the time-stamped video (Pet. Ex. 17), which contains no audio, begins with respondent sitting by a desk, while juvenile residents and staff engage in various activities in a hall (17:33:09). Resident M approaches the desk, looks through the window of a nearby door, and speaks with respondent. Respondent stands up, briefly opens and closes the door, and continues the conversation with M (17:33:40). As respondent is standing by the door, M moves towards the desk, opens a drawer, and takes out a bottle of lotion (Tr. 424; 17:34:05). Respondent, who is now standing behind M, immediately begins repeated attempts to take away the bottle, but M keeps the bottle away by moving it back and forth between his hands (17:34:12). Respondent then positions

himself on M's right side, and leans forward across M's body in an attempt to take away the lotion bottle that M is holding with his left hand, but is unable to do so as M raises and flails his right arm (17:34:13).

Respondent then positions himself behind M and appears to be looking over M's shoulder (17:34:14). At this point, JC Aikman quickly approaches the area (Tr. 299, 423; 17:34:15). JC Aikman is directly in front of M when respondent again reaches around from behind M to grab the bottle, but M pushes him away with his right elbow (17:34:16). Respondent grabs M in a "bear-hug" type hold and pulls M down to the ground (17:34:18).

Once on the ground, respondent rolls over behind M. As they stand up, respondent has M in a "full-nelson" hold, where his arms are under M's arms and his hands behind M's neck (17:34:23). Respondent and M walk forward in tandem while JC Aikman places his arm between them (17:34:26). They take several steps forward in this fashion until respondent releases M from the full-nelson and walks away (17:34:32).

The Testimonial Evidence

JC Aikman testified that on the date in question, M was returning to the facility from the hospital when he requested some lotion. M then removed a bottle of lotion from the staff desk. Respondent instructed M not to take any items from the staff desk and to give him the lotion (Tr. 424). Concerned that the situation could escalate to a physical altercation, JC Aikman got

up and told respondent "no, let me handle it. I got it" (Tr. 425). As he walked towards respondent and M, he saw respondent "trying to snatch the bottle away from [M] and [M] is like, no, please, I just want some lotion. I just want some lotion" (Tr. 426). As he approached, JC Aikman testified that he saw respondent place M in a full-nelson. JC Aikman then repeatedly yelled and was "pretty much begging" respondent to "let him go, I got it" (Tr. 427-28). Respondent instead "goes to the floor" with M. JC Aikman eventually took M to his room and counseled him (Tr. 428). JC Aikman's testimony was credible, and generally corroborated by his written statement (Pet. Ex. 23). While the video depicts that respondent used a bear-hug type hold to pull M to the ground, and not a full-nelson, the rest of JC Aikman's testimony was consistent with the video evidence.

Director Peterson testified that pursuant to SCM, respondent should have used verbal techniques to address the situation, and that he did not see anything in the video to warrant restraining M and taking him down to the floor (Tr. 618-19, 801). He also stated that a full-nelson is not authorized by SCM and is potentially dangerous because the hold exerts pressure on the neck and exposes the face in case of a fall (Tr. 306-07, 617-18). Director Peterson noted that when respondent stood up, he should have changed the hold from a full-nelson to an upper torso restraint (Tr. 710-12). Lastly, when JC Aikman attempted a Tap-Out by placing his arm in between respondent and M, respondent did not cooperate with him, as required, because he delayed in releasing M (Tr. 714).

Respondent testified that on the date in question, M approached him and asked for a toothbrush. When respondent unlocked and opened the bathroom door to retrieve a toothbrush, he saw that M wanted to enter the room with him. When respondent informed M that he could not enter the room, M answered that he was "acting like a bitch" and that he was "the only staff member that acts like that" (Tr. 995). M went into the staff desk and pulled out a bottle of lotion. Respondent instructed M not to take any items from the staff desk. As respondent attempted to take the bottle from M, M pushed him. Respondent explained that he had to physically intervene because the lotion bottle could have been used as a weapon, and because it was contraband (Tr. 1002, 1006).

Respondent stated that as JC Aikman began approaching the area, he continued asking and reaching for the bottle from M, but that M pushed him again, this time with his elbow. At this point, respondent attempted to place M in a "cradle assist" restraint in order to turn him away from the desk, and to avoid any injuries (Tr. 996). Respondent testified that instead, "due to resistance, our momentum brought us to the ground" (Tr. 997).

As M was standing up, respondent admitted placing M in a full-nelson, which is an improper restraint (Tr. 999, 1004-005). When asked why he did not let M stand up and "not touch him again," respondent answered "[b]ecause the kid was already aggressive . . . the kid, these kids are unpredictable . . . they could punch you in your face. They could do anything."

Respondent added "these are not regular kids. . . . [t]hese are hardcore criminals. These are, are members of gangs. These are killers . . . " (Tr. 999).

Respondent claimed that JC Aikman did not say anything to him before he made physical contact with M and they fell to the ground (Tr. 1011). When respondent stood up with M, he heard JC Aikman state "I got him, I got him. Let him go. I'll take over." Respondent, however, waited until JC Aikman came between him and M, and until he felt that it was safe, to release M (Tr. 1001). Respondent testified that he wrote a report "within five minutes" after the incident (Pet. Ex. 22; Tr. 1008). The documents entered into evidence contain two reports by respondent regarding the incident, with one report slightly longer and more detailed than the other (Pet. Ex. 22). Both reports are dated January 20, 2015, the date of the incident.

The Specifications

Specification 1 alleges that respondent used an unnecessary and/or impermissible restraint in response to the resident removing a bottle of lotion from a desk drawer.

Director Petersen credibly testified that pursuant to SCM, physical restraints should not be used to address inconsequential behavior, such as a resident grabbing a lotion bottle from a drawer. Such behavior should be addressed with verbal techniques, such as directives, counseling, or reorienting the resident to a preferred behavior. Director Peterson added that M's

behavior during the incident did not warrant a physical restraint (Tr. 618-19, 801-05).

Respondent admitted that he restrained M because he believed M could have used the bottle as a weapon (Tr. 1002). However, SCM does not authorize a restraint based on mere speculation. The video shows that respondent spent no time employing only verbal techniques, but immediately attempted to grab the bottle from M as soon as M grabbed it from the drawer. Despite acknowledging that JC Aikman was approaching them, respondent did not wait for his assistance, but continued to attempt to grab the bottle. When he was unable to do so, respondent restrained M and pulled him to the ground. Respondent's testimony that after restraining M, "due to resistance, our momentum brought us to the ground," is contradicted by the video evidence (Tr. 997). The video depicts respondent forcefully pulling M to the ground, with no discernable resistance by M.

Respondent's other argument, that the lotion was "contraband" that needed to be immediately confiscated, was similarly unavailing (Tr. 1006). Indeed, that testimony contradicts respondent's previous statement that when a resident is holding an object, an ESPI is only justified if a resident displays some type of physical aggression, and not just verbal threats (Tr. 821-22). Respondent pointed to no policy or procedure that suspends the use of SCM, or of applying the least restrictive alternative, when directing a resident to return a common household item that he is holding without permission. Instead, respondent admitted he was

"angry" that M did not follow his directive to return the lotion (Tr. 1166). Respondent's restraint of M was likely the result of respondent's frustration that he was unable to take the lotion away and of his jaundiced belief that the juvenile residents under his care are "not regular kids," but "hardcore criminals" (Tr. 999). Respondent's vague and belated comment made during cross-examination that M verbally threatened him before he restrained M was also not credible (Tr. 1166). Such a claim was never made during respondent's extensive direct examination, and not mentioned in his two reports regarding the incident.

In sum, the evidence establishes that respondent improperly restrained the resident and pulled him to the ground, in violation of SCM guidelines. Accordingly, the charge should be sustained.

Specification 2 alleges that respondent used excessive force and/or an inappropriate restraint technique when he placed the resident in a full-nelson hold.

The video evidence establishes that M displayed no aggression or resistance after he is taken to the floor by respondent, or for the rest of the encounter. Yet without any legitimate reason for doing so, respondent applied a full-nelson restraint on M as they stood up. It is uncontested that a full-nelson is not authorized by SCM. Respondent's argument that he applied the restraint inadvertently was not credible. Respondent had the opportunity to not apply the hold or to quickly readjust the hold to a correct restraint, but did not do so. Respondent could have also released M from the

hold, as directed to do so by JC Aikman, but he failed to do so in a prompt fashion.

The evidence establishes that respondent applied an unauthorized full-nelson hold on the resident, and the charge should be sustained.

Specification 3 alleges that respondent failed to use non-verbal de-escalation techniques, such as Planned Ignoring, in violation of SCM guidelines. However, Director Watts testified that ignoring the behavior would not have been an appropriate response to M's action of taking the bottle from the drawer (Tr. 310). Director Peterson testified that respondent should have used verbal techniques to address the behavior. As respondent was not required to ignore the behavior, the charge should be dismissed.

Specification 4 alleges that respondent failed to use the Tap-Out technique, in violation of SCM guidelines, in that JC Aikman attempted to intervene before respondent commenced the restraint and during the restraint hold, but respondent failed to immediately release the resident.

JC Aikman credibly testified that before respondent applied the initial restraint on M, he attempted to intervene by telling respondent "no, let me handle it. I got it" (Tr. 425). The video, which does not contain audio, does depict JC Aikman quickly approaching the area, with one arm extended forward, apparently speaking in the direction of M and the respondent, before respondent pulled M to the ground. Therefore, respondent's self-serving testimony that JC Aikman did

not speak to him before he pulled M to the ground is unpersuasive. Indeed, respondent admitted he saw JC Aikman approaching, but continued attempting to grab the bottle, and then placed M in a restraint, even as JC Aikman was directly in front of M. Accordingly, respondent failed to Tap-Out and allow JC Aikman to intervene before using a restraint.

When respondent stood up, now holding M in a full-nelson, he heard JC Aikman state "I got him, I got him. Let him go. I'll take over," but respondent did not immediately do so. JC Aikman attempted to physically Tap-Out respondent by placing his arm in between respondent and M. I credit Director Peterson's testimony, supported by the video evidence, that respondent did not cooperate with JC Aikman, as required, because he delayed in releasing M.

Respondent's claim that he held M only until he felt it was safe to release him was not credible because M was not aggressive or resistant when he and respondent stood up. Instead, with JC Aikman's arm still in between them, respondent appears to move M forward for several steps, pressing down on M's neck, until he finally releases M.

The evidence establishes that JC Aikman attempted to perform a Tap-Out before respondent commenced the restraint on the resident and during the restraint hold, but respondent failed to step away as required. The charge should be sustained.

Specification 5 alleges that respondent submitted a false and/or misleading report with material

omissions concerning the incident by failing to disclose that he performed an unauthorized restraint technique, and that JC Aikman attempted a Tap-Out.

Respondent wrote two reports regarding the incident (Pet Ex. 22). The video evidence and JC Aikman's credible testimony establishes that JC Aikman attempted to intervene verbally and physically throughout the incident. Respondent admitted that he did not disclose JC Aikman's attempted Tap-Out in his reports (Tr. 1168). The material omission of JC Aikman's efforts to intervene is misleading, and an attempt by respondent to minimize his inappropriate behavior.

In one of the reports, respondent stated that he placed M in an "attempted upper torso." Respondent testified that at the time he wrote the report, he did not know that the restraint he applied on the resident was called a full-nelson, and that he was attempting to describe his intent as to what he tried to do (Tr. 1009). Petitioner failed to establish that respondent's description of the hold was false or misleading.

In all, as the evidence establishes respondent did submit a misleading report by omitting JC Aikman's attempted Tap-Out, the charge should be sustained.

Incident of February 17, 2015 (ACS No. 66054-465-002, Charge 1, Specifications 1-5)

The Video

The relevant portion of the time-stamped video (Pet. Ex. 18), which contains no audio, begins with

respondent sitting on a rolling staff chair near one end of a hall, writing in a logbook, while a group of juvenile residents are sitting around a table at the other end of the hall (Tr. 1017; 17:42:46). Resident JP enters the hall through an open doorway near where respondent is sitting. JP proceeds to stand very near respondent, looking down towards the open logbook in respondent's hands. Respondent moves slightly away while on the chair, but JP continues to hover over him. Respondent moves himself a further distance away and back towards the open doorway while still sitting on the chair, but JP follows him and continues to stand over him (17:43:09). Respondent repeatedly begins to gesture with his arms for JP to move away, but he does not (17:43:22).

JC Ogenrivito approaches the area and places his hand on JP's arm, in an apparent attempt to prompt JP to move away, but JP extends his arm and pushes JC Ogenrivito (17:43:45). JC Ogenrivito speaks to JP for a few moments, and then leaves the area through the doorway (17:44:11). JP continues to stand very close to respondent, and respondent resumes his repeated gestures to JP to move away. Eventually, JP moves away and walks out through the doorway (17:44:41).

A short time later, respondent is standing in front of the staff chair, and JP returns and walks back into the hall through the doorway. JP quickly sits down on the staff chair (17:45:29). Respondent walks out of the hall though the doorway, carrying the logbook. JP closes the door behind respondent and places his feet

on the door while still sitting on the chair (17:45:41). Respondent returns and opens the door, causing JP to roll back while on the chair (17:45:57). Respondent follows after the chair, grabs JP's arm and forcefully pulls him off the chair. As JP is pulled from the chair, he takes a swipe at respondent, but appears to miss (17:46:05).

JP moves away from respondent, going around a stationary chair that is near one end of the hall (the end where the open doorway is located), but respondent follows after him. JP almost reaches the other end of the hall (where other residents are still sitting around a table), when he stops and appears to push respondent and then they push each other (17:46:13). Respondent moves towards JP, but JP moves away towards a corner, while taking off his shirt (17:46:19). Respondent continues to move towards JP while extending one arm out. JP turns around and pushes respondent in a forceful manner (17:46:22). Respondent again approaches JP with an arm extended, but begins to backpedal as JP approaches him. JP pushes respondent's extended arm to the side and they begin to grapple with each other (17:46:27).

After a few moments, JP steps back and faces away from respondent, and respondent immediately steps up from behind and places his arms around JP's waist (17:46:31). Respondent plants both feet on the ground, lifts JP up so that his feet are barely touching the ground, if at all, and takes him to the ground (Tr. 17:46:33). As he goes to the ground, JP's shoulder and head make contact with a nearby wall. Respondent

remains on top of JP as JC Ogenrivito comes to the scene. Respondent stands up and moves away from JP (Tr. 17:46:43). JP stands up and moves aggressively towards respondent, but is blocked by JC Ogenrivito. JP is taken through a door by JC Ogenrivito and another juvenile counselor (17: 47:13).

The Testimonial Evidence

Director Watts testified that, consistent with SCM, a staff member should not pull a resident out of a chair simply because the resident refuses get up, and where there is no threat or any type of immediate danger (Tr. 369). Furthermore, respondent should not have pursued JP around the hall after pulling him from the chair because JP was not a threat to anyone else, and it was not the least restrictive alternative. Instead, respondent should have attempted to counsel the resident by directing the resident to him, or requested assistance from a staff member (Tr. 382-84).

Director Peterson testified that JP's action of sitting on the staff chair was inconsequential behavior that should have been addressed through verbal techniques, not physical intervention (Tr. 621-25). He also testified that pulling JP out of the chair, and holding JP in "some form of bear-hug and dump[ing]" him to the ground, are not SCM techniques (Tr. 625-27). Director Peterson added that a juvenile counselor who attempts to counsel a resident should not continue to do so if the resident walks away, unless the resident is displaying harmful behavior (Tr. 672).

Respondent testified that when JP was sitting on the chair, he approached JP and told him multiple times to get up from the chair before pulling him from the chair. JP then punched him. Respondent attempted to "go" to JP and counsel him, but JP walked away. Respondent told JP to calm down, but JP pushed him and then took off his shirt (Tr. 1045). Respondent began to step back, but testified that when JP swatted down his arm, he "decided to go in and try to implement an upper torso restraint." He tried to get JP "from behind," but they "[fell] to the ground" and JP inadvertently hit "his head" (Tr. 1045-46). JC Ogenrivito came to the area and performed a Tap-Out by stating to respondent, "move, I got him, I got him." Respondent stood up, walked away, and let JC Ogenrivito take over (Tr. 1047). Respondent wrote a report "probably 15-20 minutes" after the incident (Pet. Ex 24; Tr. 1057).

The Specifications

Specification 1 alleges that respondent used an unnecessary and/or impermissible restraint by pulling the resident out of a chair.

Director Watts and Director Peterson both credibly testified that, consistent with SCM, JP's refusal to get out of the chair did not require physical intervention, and pulling him out of the chair was not an SCM-authorized restraint.

Respondent admitted that SCM guidelines do not address removing a resident from a chair, and that a

restraint is not permissible unless a resident is a danger to himself or others (Tr. 1050). Nevertheless, respondent argued that he had to physically intervene because JP could have decided to throw the chair and use it as a weapon (Tr. 1050-51). There is no evidence that JP ever made such a threat, and the video does not depict JP attempting to pick up and throw the chair. SCM guidelines establish that a staff member may use a restraint in response to actual physical aggression, not speculation that it may occur.

Respondent also testified that he had a poor relationship with JP based on previous incidents (Tr. 1038). Respondent's counsel argued that any impermissible actions here by respondent towards the resident were, in fact, permissible because of respondent's previous history with JP, and in the exercise of his discretion (Tr. 1028). That argument is without merit. First, respondent testified that any prior incidents he had with JP had no bearing on his actions here (Tr. 1040). Second, respondent's counsel pointed to no policy or procedure that amends the use of SCM, or of applying the least restrictive alternative, if a juvenile counselor has been involved in previous incidents with a resident.

Accordingly, the evidence establishes that respondent violated SCM guidelines by pulling JP out of the chair, and the charge should be sustained.

Specification 2 alleges that respondent failed to use Planned Ignoring, in violation of SCM guidelines, but petitioner presented no evidence that respondent

was required to do so. Instead, Director Watts testified that respondent should have counseled JP, while Director Peterson testified that respondent should have used verbal techniques to address JP's behavior. The charge should be dismissed.

Specification 3 alleges that respondent violated SCM policy by pursuing the resident through the hall, escalating and/or reigniting the situation, and resulting in another physical intervention.

Director Peterson credibly testified that a juvenile counselor should not pursue counseling a resident who walks away and is not displaying harmful behavior. Director Watts credibly testified that respondent's pursuit of the resident through the hall was not the least restrictive alternative under the circumstances, and respondent should have instead directed the resident to come to him.

Respondent argued that SCM allowed him to counsel JP, and that SCM is silent as to whether he needs to leave a resident alone if the resident does not stand still for counseling (Tr. 1054). Respondent's argument is not consistent with SCM, or with the actions depicted on the video.

Before the physical altercation, it is apparent that JP was intentionally attempting to provoke respondent. For a while, respondent appropriately used Planned Ignoring, verbal techniques, and allowing JC Ogenrivito to intervene, in response to the provocation. JP again attempted to provoke respondent by sitting on the chair. Unfortunately, respondent used

unnecessary force to remove JP from the chair. At this point, it should have been clear to respondent that he was the focus of JP's antagonistic behavior, and that JP would likely not be open to counseling from him. Nevertheless, it was not inappropriate of respondent to initially attempt to counsel him. It was inappropriate, however, for respondent to pursue JP around a chair, and from one end of the hall to the other, in order to do so. Even as JP reached the end of the hall and took off his shirt, respondent did not back away, or call for assistance.

The evidence establishes that respondent violated SCM policy by pursuing the resident through the hall, and the charge should be sustained.

Specification 4 alleges that respondent used excessive force and/or an inappropriate restraint technique when he placed his arms around the resident's waist, and then lifted the resident and brought him down to the floor.

Respondent's testimony that he attempted to place JP in an upper torso restraint, but that JP's resistance did not permit him to do so, was not credible. The video depicts respondent's arms going directly around JP's waist, and not over JP's arms, as required by the upper torso restraint (Tr. 617). After applying the impermissible restraint, respondent made no effort to release or readjust his hold to a correct restraint.

The video evidence further contradicts respondent's testimony that he and JP fell because they lost

their balance (Tr. 1054-55). The video depicts respondent placing his arms around JP's waist, planting both feet on the ground, lifting JP up, and taking him down to the ground. As he fell to the ground, JP was exposed to grave injury when his head and shoulder made contact with a wall.

As the evidence establishes that respondent used an unauthorized restraint and excessive force by grabbing the resident around the waist and bringing him to the ground, the charge should be sustained.

Specification 5[1] alleges that respondent submitted a false and/or misleading report with material omissions concerning the incident by failing to disclose that he pursued the resident through the hall, that he attempted to place the resident in an upper torso restraint, and by falsely claiming that they accidently fell on the floor.

Respondent omitted from his incident report that, after pulling JP from the chair, he pursued JP around the hall (Pet. Ex. 24). Also, respondent falsely claimed in the report that he attempted an upper torso restraint, and that he and JP accidently fell on the floor, when the video evidence depicts otherwise. Such material omissions and false statements are misleading, and an attempt by respondent to minimize his inappropriate behavior.

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[1] This specification, originally mislabeled Specification 4, was amended at trial to Specification 5 (Tr. 9-10, 1060-61).

Respondent's testimony that, without watching a video of the incident, he could not accurately remember his own actions for a report he wrote 15 to 20 minutes after the incident concluded was not credible. As the evidence establishes that respondent submitted a false and misleading report, the charge should be sustained.

Incident of August 8, 2015 (ACS No. 66054-465-003, Charge 1, Specifications 1-6)[2]

The Video

The relevant portion of the time-stamped video (Pet. Ex. 19), which contains no audio, begins with a group of residents, including RH, sitting around a table in a hall, apparently playing a game (21:58:56). Other residents are engaged in other activities, such as standing around or dancing. Respondent sits on a rolling staff chair, moves near the table, and begins a dialogue with RH. The conversation between respondent and RH appears to become contentious, with RH displaying growing agitation. As respondent and RH continue to interact, another juvenile counselor, JC Francis, approaches RH at least five times, and pats him on the back along with other affirmative gestures, apparently in an attempt to keep RH calm.

After some time of engaging in conversation with respondent, RH quickly stands up and postures

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[2] Petitioner withdrew Specification 7 for this charge at the commencement of trial.

aggressively over respondent (22:02:33). Respondent also quickly stands up, and is face to face with RH (22:02:34). As JC Francis approaches again, respondent places his left hand on RH's right front shoulder, pushing RH's shoulder as respondent steps back and extends his left arm (22:02:37). RH immediately pushes respondent with two hands (22:02:38). As respondent moves towards RH, JC Francis steps in between them, placing his left arm around RH (22:02:39). JC Francis moves RH back several steps and away from respondent until they reach a wall, while positioning his body in between them. Respondent continues to move towards RH, who appears to speak to respondent in an agitated fashion (22:02:42). RH then swings his right arm, punching JC Francis in the face (22:02:43).

Respondent goes around JC Francis, even as JC Francis again positions his body in between RH and respondent. RH throws a punch towards respondent, and from this point on a violent struggle ensues (22:02:46). As JC Francis and respondent grapple with RH, JC Francis has his arms around RH's neck and shoulder area, and respondent has his arms around RH's waist (22:02:48). RH, who was against the wall when he threw the punch at respondent, is being carried by the momentum of the group towards the back of a row of cushioned chairs in the middle of the hall (22:02:49). All three collide with the chairs, with RH landing on top of a chair with his arms around respondent, respondent on top of RH while still holding him by the waist, and JC Francis on top of both of

them (22:02:50). As the momentum of flipping over the chairs takes respondent and RH to the ground, JC Francis manages to dislodge himself and not go over the chairs (22:02:52). Supervisor Carbon arrives on the scene.

The video depicts respondent and RH grappling on the ground for some time, but it is not possible to discern who was acting aggressively or in self-defense. At different points, JC Francis, Supervisor Carbon, and even three residents attempt to intervene and separate respondent and RH. After much effort, respondent and RH are separated, and RH is moved away (22:03:08).

The Testimonial Evidence

Upon review of the video, Director Watts testified that when RH stood up aggressively, respondent also stood up aggressively, but that a juvenile counselor should step back and then address the behavior (Tr. 391-92). Director Peterson testified that, according to SCM, when a resident is aggressive and advancing towards a staff member, the staff member should create a safe zone by stepping back and away from any potential punch or kick, and should give verbal directives, call for assistance, or use a restraint as needed (Tr. 639-42). He added that it is not recommended for a staff member to extend their arm and push a resident to create a safe zone, as such action may escalate the situation (641-42, 810).

Respondent testified, in relevant part, that he was playing cards with RH when he informed RH that it was time to go to bed. RH began to call respondent a "pussy," and threatening to punch him in the face. JC Francis kept encouraging RH to calm down (Tr. 1064-65). When RH stood up, respondent stood up and placed his hand on the resident, "giving us space," and pushing himself "backwards." RH then swatted his arm. Respondent testified, "I go in to go address the resident to go tell him that that's not allowed. [JC] Francis is right between us" (Tr. 1066).

When respondent saw RH punch JC Francis, he moved into position to apply a restraint. RH then tried to punch him, but missed. Respondent and JC Francis struggled to control RH and apply a "bicep assist" restraint, subsequently losing their balance and falling over the chairs. According to respondent, while on the floor, RH held respondent in a chokehold, and later tried to spit at him. Eventually, RH is taken away by JC Francis and placed in his room (Tr. 1066-70). Respondent wrote an incident report the same day (Pet. Ex. 25).

The Specifications

Specification 1 alleges that respondent used an unnecessary and/or impermissible physical intervention by pushing the resident after the resident abruptly stood up next to respondent. It is uncontested that respondent placed his hand on RH and exerted force as respondent extended his arm. The conduct was

not egregious, but impermissible, as SCM does not authorize a push in order to create a safety zone. To do so, respondent could have stepped back and away from RH, as explained by Director Watts.

The evidence establishes that respondent impermissibly pushed the resident, and the charge should be sustained.

Specification 2 alleges that respondent failed to use non-verbal de-escalation techniques, such as Planned Ignoring, in violation of SCM guidelines. As petitioner provided no evidence that respondent was required to employ only non-verbal techniques, such as ignoring RH's behavior, the charge should be dismissed.

Specification 3 alleges that respondent failed to use the Tap-Out technique, in violation of SCM guidelines, in that JC Francis intervened and backed the resident away from respondent, but that respondent interrupted the Tap-Out process by moving around JC Francis and making physical contact with the resident.

Directors Watts and Peterson testified that, under SCM, if a resident physically attacks a person, a juvenile counselor is allowed, as a matter of safety, to physically intervene and restrain the resident (Tr. 343-44, 372, 671-72). Here, respondent should have moved away when JC Francis stood between him and the resident. But once RH punched JC Francis, respondent did not violate SCM policy by attempting to restrain

the resident. Accordingly, the charge should be dismissed.

Specifications 4 and 5 concern the use of excessive force and an impermissible restraint during the altercation. Specification 4 alleges that respondent used excessive force and/or an impermissible restraint by applying a hold known as a bear-hug on the resident, and then propelling the resident over chairs and onto the floor. Specification 5 alleges that respondent used an inappropriate restraint technique when he placed his right arm up and over the resident's left shoulder and neck area.

Director Watts explained that it is impermissible for a staff member to intentionally apply a restraint not authorized by SCM. Director Watts acknowledged that at times, during a physical intervention with a resident, a staff member may inadvertently apply an unauthorized restraint (Tr. 402, 410).

Respondent testified that in attempting to assist JC Francis with a restraint, he and JC Francis struggled to control RH, as corroborated by the video. The video depicts a chaotic scene, with JC Francis, RH and respondent interlocked with one another, moving in an uncontrolled fashion across the hall, colliding and falling over some chairs, with RH and respondent wrestling to the ground. Once the physical altercation began, RH is continuously aggressive towards respondent, and grapples with respondent until they are separated by JC Francis, with the assistance of three other residents. Respondent testified that as he

wrestled with RH on the floor, RH had him in a chokehold and tried to spit at him.

Petitioner failed to prove the charges because the video and testimonial evidence does not establish that respondent intentionally used a bear-hug and then propelled RH over the chairs, or that he intentionally placed his right arm up and over the resident's left shoulder and neck area, or that he made no attempt to release or readjust these holds. Accordingly, the charges based on Specifications 4 and 5 should be dismissed.

Specification 6 alleges that respondent submitted a false and/or misleading report with material omissions concerning the incident by falsely stating that the resident's punch of JC Francis precipitated respondent's re-entry into the incident, and that respondent did not disclose that he pushed the resident over the chairs, or that after JC Francis intervened by backing the resident away, he rushed around JC Francis and reinserted himself into the incident, or that he placed the resident in a bear-hug.

Respondent's report does state that JC Francis separated RH from respondent, that RH punched JC Francis, and that respondent then attempted to assist JC Francis by placing RH in an upper torso restraint, but instead locked arms with RH during the struggle. The video evidence does not support petitioner's claim that respondent pushed RH over the chairs, but instead it appears that the momentum of the group, as they grappled with one another, caused the movement

towards the chairs and over them. In all, the report was reasonably descriptive. Petitioner failed to prove that the report was false or misleading and the charge should be dismissed.

Incident of September 29, 2015 (ACS No. 66054-465-005, Charge 1, Specification 1)

Petitioner charged respondent with conduct unbecoming a juvenile counselor by using hostile and profane language towards Director Watts. The incident apparently takes place after respondent was served with disciplinary charges (Tr. 183, 186).

Director Watts testified that on September 29, 2015, he was on Williams Street on his way to a meeting. While walking down the street, he observed respondent, and two union representatives, identified as Mr. Parker and Mr. Agaray, also on the street. Director Watts greeted M r. Parker and began to converse with him about an unrelated matter (Tr. 36).

Respondent then approached him "in an aggressive manner," and stated "Mr. Watts, can I ask you a fucking question?" Director Watts answered respondent by saying "first, that's not how you greet me, but secondly, you know you can't ask me." Respondent stated "no, fuck that, fuck that, I want to know why you allowed [a supervisor] to put those bullshit child abuse allegations on me." Director Watts told respondent that the discussion should not take place on the street, but respondent answered "Why not? We're not in the

facility now" and continued to posture aggressively (Tr. 38).

As Mr. Parker attempted to guide respondent away, respondent continued to make repeated statements that Director Watts had to answer his question, and kept asking why Director Watts had allowed child abuse charges to be alleged against him. As Mr. Parker instructed respondent to stop, Director Watts again told respondent that "we're not going to do this" in the street. Respondent then said "what the fuck? . . . we're not at [the] facility now . . . you want to square up?" (Tr. 38-39).

Director Watts testified that he saw respondent take off a crossover bag from his shoulder, and believed that respondent's question about "squaring up" was an invitation to fight. Mr. Parker then said to Director Watts, "just go, I got this." As Director Watts left the area, respondent was yelling down the street to him. As people on the street looked on, Director Watts heard respondent yell, "oh, fucking run away now, oh, fucking walk away now, you fucking pussy . . . don't be scared. Come back. Answer my fucking question," and other similar comments (Tr. 39). Director Watts testified that he felt threatened by respondent at the time of the encounter, and wrote two reports memorializing the incident (Pet. Exs. 7, 8; Tr. 44).

Respondent testified that on the date in question, he had just concluded his informal conference regarding the August 8, 2015 incident discussed above. As he walked out to the street with his union

representatives, they came upon Director Watts (Tr. 1097). Respondent's union representatives began to speak to Director Watts, and at some point Director Watts extended his arm out and shook hands with respondent. After shaking hands, respondent asked Director Watts, "can't you do something about these false child allegations." Director Watts replied, "what did you say to me?" Respondent repeated the question, making "sure I asked him that in front of my union reps, because I wanted to see what his response was going to be." Director Watts answered, "you don't ask me no shit like that" (Tr. 1098).

Mr. Parker told respondent to "come over here." Respondent complied and walked over to Mr. Parker, who was not far away. Mr. Parker then told Director Watts to "go, go, go," and the encounter ended (Tr. 1098-99).

Petitioner's evidence was credible. Director Watts testified in a consistent and detailed manner regarding his encounter with respondent on the date in question, which was corroborated by his two written statements memorializing the incident. Respondent's assertion that he filed complaints about Crossroads to other agencies, and that he had disagreements with other supervisors at the facilities did not cast doubt on Director Watts's credible of testimony (Tr. 922-32).

Respondent's testimony, however, was less credible. Respondent complained that Director Watts made two curt comments towards him and used profanity, but it did not comport with common sense that

respondent's union representative directed that he step away from Director Watts, or that respondent's union representative, in a seemingly urgent manner, asked Director Watts to "go, go, go"; or that respondent allegedly wanted his union representatives to witness the exchange, but that the representatives were not called to testify, with no explanation given.

Respondent's admission that he encountered Director Watts immediately after concluding an informal interview regarding charges lodged against him, but that he was not angry, was similarly unconvincing (Tr. 1097, 1130-31). Critically, respondent's testimony throughout the trial was rife with inconsistencies and often plainly contradicted by video evidence, severely compromising his credibility. *See Dep't of Education v. Brust*, OATH Index No. 2280/07 at 10 (Sept. 29, 2008), *adopted*, Chancellor's Dec. (Oct. 22, 2008) (if witness is found to have been false in one instance, trier-of-fact may reject all of the witness's testimony); *see also People v. Barrett*, 14 A.D.3d 369, 369 (1st Dep't 2005) (maxim *falsus in uno falsus in omnibus*, false in one thing, false in everything, may be applied to witness testimony). Respondent's testimony as to this incident is deemed unreliable.

Petitioner established that respondent committed misconduct by repeatedly using profanity, including calling Director Watts "a fucking pussy," and that he engaged in intimidating and threatening behavior by posturing aggressively, taking off his crossover bag from his shoulder, and challenging Director Watts to a fight by saying to him "we're not at [the] facility now

. . . you want to square up?" and that such behavior was witnessed by members of the public. *See Dep't of Environmental Protection v. Butcher*, OATH Index Nos. 297/15 & 299/15 at 6 (Feb. 9, 2015) (an employee has the right to disagree with a co-worker or supervisor, so long as any disagreement does not become profane or discourteous); *Dep't of Correction v. Peterson*, OATH Index No. 2095/12 at 7 (Jan. 11, 2013) (same); *See also Dep't of Transportation v. Ferstler*, OATH Index No. 593/07 (June 25, 2007) (intimidating and threatening actions towards a co-worker are misconduct).

Respondent's argument that ACS has no power to discipline him because the incident took place on a public street is without merit. *Admin. for Children's Services v. Berrios*, OATH Index No. 124/16 at 8 (Feb. 11, 2016), *aff'd*, NYC Civ. Serv. Comm'n Item 2016-0149 (June 29, 2016) (finding respondent committed misconduct by screaming at an agency attorney in a public area, and holding that one of the factors in assessing misconduct is whether a disagreement between co-workers occurs in front of members of the public).

The charge should be sustained as the evidence establishes that respondent acted in a manner unbecoming a juvenile counselor by using hostile and profane language towards Director Watts, in violation of the Agency's Standard of Conduct, Sections B.1.1-1.3, C.1.2, C.1.11, Directive #11/07, and the Workplace Violence Prevention and Incident Reporting Policy Statement (Pet. Exs. 1, 3, 4).

FINDINGS AND CONCLUSIONS

ACS No. 66054-465-000, Charge 1, Specifications 1-6

1. Petitioner established by a preponderance of the evidence that respondent used an unnecessary and/or impermissible restraint when respondent held the resident's arm, as alleged in Specification 1.

2. Petitioner established by a preponderance of the evidence that respondent used excessive force and/or an inappropriate restraint technique in that respondent placed the resident in an upper torso restraint and shoved the resident up against the wall, as alleged in Specification 2.

3. Petitioner did not establish by a preponderance of the evidence that respondent was required to use the de-escalation technique known as Planned Ignoring.

4. Petitioner established by a preponderance of the evidence that respondent failed to use the required de-escalation technique known as a Tap-Out, in that he did not step away from the resident when two juvenile counselors attempted to intervene, as alleged in Specification 4.

5. Petitioner established by a preponderance of the evidence that respondent submitted a false and/or misleading report with material omissions, as alleged in Specification 5.

6. Petitioner established by a preponderance of the evidence that respondent made false, misleading or evasive statements during an investigative interview, as alleged in Specification 6.

ACS No. 66054-465-001, Charge 1, Specifications 1-5

1. Petitioner established by a preponderance of the evidence that respondent used an unnecessary and/or impermissible restraint in response to the resident removing a bottle of lotion from a desk drawer, as alleged in Specification 1.

2. Petitioner established by a preponderance of the evidence that respondent used excessive force and/or an inappropriate restraint technique in that respondent placed the resident in a full-nelson hold, as alleged in Specification 2.

3. Petitioner did not establish by a preponderance of the evidence that respondent was required to use the de-escalation technique known as Planned Ignoring.

4. Petitioner established by a preponderance of the evidence that respondent failed to use the Tap-Out technique, in violation of SCM guidelines, in that a juvenile counselor attempted to intervene before and after respondent applied a restraint on a juvenile, but respondent did not step away or promptly release the resident, as alleged in Specification 4.

5. Petitioner established by a preponderance of the evidence that respondent submitted a false and/or misleading report with material omissions, as alleged in Specification 5.

ACS No. 66054-465-002, Charge 1, Specifications 1-5

1. Petitioner established by a preponderance of the evidence that respondent used an unnecessary and/or impermissible restraint in that he pulled a resident out of a chair, as alleged in Specification 1.
2. Petitioner did not establish by a preponderance of the evidence that respondent was required to use the de-escalation technique known as Planned Ignoring.
3. Petitioner established by a preponderance of the evidence that respondent pursued the resident through the hall, escalating the situation, in violation of SCM, as alleged in Specification 3.
4. Petitioner established by a preponderance of the evidence that respondent used excessive force and/or an inappropriate restraint technique by placing his arms around the resident's waist, lifting the resident and bringing him to the ground, as alleged in Specification 4.
5. Petitioner established by a preponderance of the evidence that respondent submitted a false and/or misleading report with material omissions, as alleged in Specification 5.

ACS No. 66054-465-003, Charge 1, Specifications 1-6

1. Petitioner established by a preponderance of the evidence that respondent used an unnecessary and/or impermissible physical intervention by pushing the resident, as alleged in Specification 1.

2. Petitioner did not establish by a preponderance of the evidence that respondent was required to use the de-escalation technique known as Planned Ignoring.

3. Petitioner did not establish by a preponderance of the evidence that respondent interrupted the Tap-Out process when he made physical contact with the resident after another juvenile counselor intervened. Respondent made contact with the resident in response to a punch by the resident to the other juvenile counselor, as allowed by SCM.

4. Petitioner did not establish by a preponderance of the evidence that respondent used excessive force and an inappropriate restraint technique by intentionally placing resident in a hold known as a bear-hug, and then propelling the resident over chairs and onto the floor.

5. Petitioner did not establish by a preponderance of the evidence that respondent used excessive and/or an inappropriate restraint technique by intentionally placing his right arm up and over the resident's left shoulder and neck area.

6. Petitioner did not establish by a preponderance of the evidence that respondent submitted a false and/or misleading report with material omissions.

ACS No. 66054-465-005, Charge 1, Specification 1

Petitioner established by a preponderance of the evidence that respondent repeatedly used profanity towards a supervisor, and engaged in intimidating and threatening behavior by posturing aggressively, taking off his bag from his shoulder, and challenging the supervisor to a fight, as alleged in Specification 1.

RECOMMENDATION

Upon making the above findings, I obtained and reviewed an abstract of respondent's disciplinary history for purposes of recommending an appropriate penalty.[3] Juvenile Counselor Patterson was appointed to his position on March 31, 2014. He has no prior

[3] Petitioner submitted for review respondent's quarterly evaluations covering his first year of employment. Via email and during a conference call held on August 30, 2016, respondent objected to the inclusion of the evaluations, stating that because the evaluations were not served on respondent in a timely fashion during his first year of employment, and because petitioner agreed not to consider the evaluations in determining respondent's passage of his initial probationary period, the evaluations should not now be considered for disciplinary purposes. Due to the scope of the misconduct here, I find the evaluations immaterial, and they were given no weight in formulating the penalty recommendation herein.

disciplinary history. For the combined charges here, he has served two 30-day pretrial suspensions.

The agency seeks his termination for the misconduct proved here. Because of the heightened responsibility given to those who care for juveniles in institutionalized settings, findings of abuse or excessive force must be forcefully punished. Such cases often result in termination. *See, e.g.*, *Admin. for Children's Services v Silva*, OATH Index No. 1275/15 at 18, (June 26, 2015), *adopted*, Comm'r Dec. (ALJ recommends termination of juvenile counselor who used unauthorized and excessive force on a juvenile resident and submitted a false and misleading report. Commissioner adopted ALJ's findings but respondent resigned before Commissioner's decision was issued); *Admin. for Children's Services v. Green*, OATH Index No. 2153/11 at 18 (June 6, 2011) ("Juvenile counselors are charged with the care and safety of the residents assigned to them. As authority figures, they are required to be in control.").

Respondent repeatedly and egregiously violated agency rules against unauthorized force against juveniles in the facility. Respondent's investigative interview and three incident reports contained material misstatements and omissions of fact, and he also violated the rules against workplace violence against coworkers. These are serious forms of misconduct, particularly for one entrusted with the care and custody of adolescents.

During the course of respondent's extensive testimony over three days of trial, it became evident that respondent did not perform his duty as a juvenile counselor under the same guiding principles that underpin the SCM policy. SCM requires juvenile counselors to take a supportive, pro-active approach to interacting with juvenile residents, and to employ de-escalation techniques and the least restrictive alternative when conflicts arise. Such techniques include building relationships with residents as a way of preventing conflicts or facilitating counseling; monitoring one's tone and volume when speaking to an agitated resident; not pursuing a resident who walks away; ignoring nuisance behavior; allowing other colleagues to intervene in conflicts; and using an ESPI on a resident only when absolutely necessary and in proportion to the behavior displayed (Tr. 383-84, 586-94, 672, 823).

Respondent, however, admitted that he believes SCM does not work (Tr. 1141). To him, the facility is "a jail" and like "an insane asylum," and the juvenile residents are "seasoned teenage[ ] criminals . . . [who will] test you to see how far they can go." Respondent also stated that "if you allow them to do as they please . . . [the residents] will never listen to you," and that failure to confront a resident would make him a "target" (Tr. 824-25, 831, 876).

With this mindset, it is not surprising that respondent consistently exhibited a pattern of behavior that included pursuing residents moving away from him, ignoring Tap-Outs by his colleagues, engaging in unnecessary physical confrontations with residents,

applying unauthorized restraints, and bringing residents down to the ground or pushing them against a wall, in violation of SCM policy. Respondent's actions placed juvenile residents, staff and himself in danger, and it is fortunate that no one was seriously injured during such encounters.

At trial, respondent took little responsibility for what happened and testified falsely and against the weight of the evidence. His failure to acknowledge fault or to show contrition demonstrates a lack of maturity and preparedness for the job, and an unwillingness to comply with SCM policy. Respondent's short tenure with the agency and appalling conduct weigh against mitigating the penalty, despite any lack of prior disciplinary history.

I find the severity of the violations here "presents an unacceptable risk" to the agency and juveniles in its care. *Dep't of Juvenile Justice v. McCovey*, OATH Index No. 412/05 at 7 (Mar. 22, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-50-SA (Apr. 24, 2006). I therefore recommend termination of respondent's employment.

After the record closed, the parties informed me that respondent has taken a one year leave of absence from ACS. The parties agreed that a report on the merits with a penalty recommendation should be issued. Accordingly, the record and findings thereon are

transmitted to the parties for such action as may be deemed appropriate.

Noel R. Garcia
Administrative Law Judge

September 2, 2016

SUBMITTED TO:

GLADYS CARRION
Commissioner

APPEARANCES:

ELVIN WILLIAMS, ESQ.
Attorney for Petitioner

KREISBERG & MAITLAND LLP
Attorneys for Respondent
BY: GARY MAITLAND, ESQ.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on October 22, 2019.

PRESENT: Justice Presiding,
Hon. John W. Sweeny, Jr.,
Sallie Manzanet-Daniels
Barbara R. Kapnick
Jeffrey K. Oing
Anil C. Singh, Justices.

In re Allen Patterson,
Petitioner-Appellant,

-against-

City of New York, et al.,
Respondents-Respondents.

M-3631
Index No. 100451/17

Petitioner-appellant having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on June 18, 2019 (Appeal No. 9647),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED:

/s/ [Illegible]
CLERK

State of New York
Court of Appeals

Decided and Entered on the eleventh day of June, 2020

Present, Hon. Janet DiFiore, *Chief Judge,* ***presiding.***

Mo. No. 2019-1183
In the Matter of Allen Patterson,
Appellant,
v.
City of New York, et al.,
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.

/s/ John P. Asiello
John P. Asiello
Clerk of the Court

State of New York
Court of Appeals

Decided and Entered on the twenty-second day of October, 2020

Present, Hon. Janet DiFiore, *Chief Judge,* ***presiding.***

Mo. No. 2020-509
In the Matter of Allen Patterson,
Appellant,
v.
City of New York, et al.,
Respondents.

Appellant having moved for reargument of a motion for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.

/s/ Heather Davis
Heather Davis
Deputy Clerk of the Court

[LOGO] **NEW YORK** STATE OF OPPORTUNITY. | **Department of Civil Service**

Summary

of

New York State

Civil Service Law

Andrew M. Cuomo
Governor

Lola W. Brabham
Acting Commissioner

* * *

[Statute 4NYCRR5.3(c)
Statute 4NYCRR5.3(b)]

A resignation may not be withdrawn, canceled or amended after its delivery to the appointing authority without the consent of the appointing authority.

Incompetency or Misconduct Charges

If charges of incompetency or misconduct have been or are about to be filed against an employee and the employee submits a resignation, the appointing authority may elect to disregard the resignation and pursue the charges.

* * *

NYC
Department of Finance

Administration and Planning Division
Office of Employer Services
66 John Street, 9th Floor
New York, NY 10038
Tel. 212.291.4749
Fax 212.361.1500

Corinne Dickey
Assistant Commissioner

October 11, 2017

Allen Patterson
216 Milford Street
Brooklyn, New York 11208

Dear Mr. Patterson:

Please be advised that effective immediately, Wednesday, October 11, 2017, your services as a probationary Deputy City Sheriff are terminated.

You may have the opportunity to purchase continued health coverage under COBRA. If so, you will receive information directly from NYCAPS Central about this program.

Department of Finance policy requires that you return any property such as a cell phone, laptop, official

identification card, access key card or any other city equipment prior to the release of your final paycheck.

Sincerely,

/s/ Corinne Dickey
Corinne Dickey
Assistant Commissioner,
Employee Services

c: Joseph Fucito
Personnel File

Taxi & Limousine Commission

Meera Joshi
Commissioner

Carmen Rojas
Assistant Commissioner
For Human Resources
carmen.rojas@tlc.nyc.gov

33 Beaver Street
22nd Floor
New York, NY 10004

+1 212 576 1095 tel
+1 212 676 1164 fax

October 12, 2016

Mr. Allen Patterson
216 Milford Street
Brooklyn, N.Y. 11208

Dear Mr. Patterson:

The Department of Citywide Administrative Services (DCAS) has made the determined that you are not qualified for consideration for the position of Taxi and Limousine Inspector (see attached copy of letter from DCAS).

Please be advised that your employment with the New York City Taxi and Limousine Commission will be terminated effective October 12, 2016.

Sincerely,

/s/ Carmen Rojas
Carmen Rojas
Assistant Commissioner

DP-5A (10/89)

CASE: 001024-16
SEQ.: 162791643486
DATE: 10/06/16

CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
HUMAN CAPITAL/INVESTIGATIONS UNIT
1 CENTRE STREET, NEW YORK, NY 10007

DAWN M. PINNOCK, DEPUTY COMMISSIONER

NOTICE OF PERSONNEL ACTION

SSN: XXX-XX-1625 EMPLOYEE: ALLEN PATTERSON

THE DECISION OF THE DEPUTY COMMISSIONER MAY BE APPEALED IN WRITING TO THE CITY CIVIL SERVICE COMMISSION, MUNICIPAL BUILDING, ONE CENTRE STREET. ROOM 2300 NORTH, NEW YORK. NY, 10007 WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS NOTICE. YOUR APPEAL MUST EXPLAIN WHY YOU BELIEVE THIS ACTION TO BE INCORRECT.

CC: MS CARMEN ROJAS

NYC
Administration for
Children's Services

Gladys Carrión, Esq.
Commissioner

150 William Street
18th' Floor
New York, NY 10038

+1 212 341-0903 tel
+1 212 341-0916 fax

September 22, 2016

Allen Patterson
[redacted]

Re: ***ACS File # 66054-465-005***
OATH Index# 0904/16
Employee ID# [redacted]

Dear Mr. Patterson:

In accordance with Section 75 of the Civil Service Law, a hearing was held at the Office of Administrative Trials and Hearings, regarding the disciplinary charges preferred against you in June, August and October 2015.

On August 21, 2016, ACS placed you on leave pending probation pursuant to PSB 200-10 and Appendix G of the Citywide Agreement. [ACS lied that I was on leave]

On September 2, 2016 Administrative Law Judge Noel R. Garcia substantiated the majority of the charges

against you and recommended that your employment be terminated.

I have adopted the findings and recommendation of Administrative Law Judge Garcia and you are hereby dismissed from employment, effective immediately

Sincerely,

/s/ Gladys Carrión
Gladys Carrión, Esq.
Commissioner

c:	J. Cardieri	W, Maye, Jr.	E. Williams
	F. Franco	P. Marin	Personnel File
	S. Prussack	S. Watson	G. Maitland
	G. Simon	A. Sharma	
	S. Starker	A. Brown	
	K. Alexander	R. Alford, Jr.	

From: Williams, Elvin V (ACS)
[mailto:Elvin.Williams@acs.nyc.gov]
Sent: Tuesday, August 23, 2016 10:18 AM
To: Garcia, Noel (OATH)
Cc: Rainbow, Martin (OATH); Gary Maitland
Subject: FW: ACS v. Patterson, OATH Index No. 0904/16

Your Honor,

I was informed that on August 19, 2016 the Respondent tendered his resignation from the Agency and that he has obtained employment with the Taxi and Limousine Commission. As result, a penalty recommendation may be moot. However, the resignation does not preclude OATH from rendering a decision on the merits (see HRA v. Emma Cornelius, OATH Index No. 2041/13; also see Fire Department v. Daneroy Gallimore, OATH Index No. 1782/14). Petitioner affirms its request for a determination on the merits of the charges. A copy the Respondent's resignation and the cited OATH decisions is annexed hereto.

I am still available for a conference call for the week of August 29th.

Elvin Williams, Agency Attorney
Employment Law Unit
Office of General Counsel
Administration for Children's Services
110 William St., 20th Floor
New York, NY 10038
Phone: 212-227-9165
Fax: 212-676-7070

New/JB
Ref 1443813

I Allen Patterson willfully resign effective 8/19/16 from NYCACS

/s/ Allen Patterson
DATE August 19, 2016

ACS/Personnel Service
[2016 AUG 19 PM 5:57]

The City of New York
Department of Citywide Administrative Services

CONDITIONAL RESIGNATION AND REQUEST FOR LEAVE OF ABSENCE PURSUANT TO PSB NO. 200-10

TO: Personnel Director

ACS
(Leave Agency)

I have accepted a position subject to a probationary period as follows:

Inspector	TLC	8/22/16
(Civil Service Title)	*(Agency)*	*(Proposed Start Date)*

I am requesting a leave of absence for the duration of the probationary period. If granted this leave, I will submit a letter of resignation at the end of my probationary period to the Personnel Director of the agency that granted me the leave (Leave Agency). If my probationary period is extended for any reason, I will notify the Leave Agency of such extension. I understand that even if I do not submit a letter of resignation at the end of my probationary period, my leave of absence and position will be terminated.

Prior to termination or resignation during my probationary period, I must notify my Leave Agency of my intention to return to work I understand that upon return, I must continue to meet the applicable qualification and/or residence requirements of my former title.

Allen Patterson	/s/ Allen Patterson	8/~~22~~ [19]/16
(Print Employee Name)	*(Employee Signature)*	*(Date)*

NOTICE TO EMPLOYEE

G Your request for a leave of absence pursuant to PSB No. 200-10 is approved effective_____.

G Your request for a leave of absence pursuant to PSB No. 200-10 is not approved because:

- G you are not a covered employee.
- G you have not accepted a position at an agency under the jurisdiction of the Personnel Rules and Regulations of the City of New York.
- G you have not accepted a position that requires serving a probationary period.

(Print Name)	*(Signature)*
(Title)	*(Agency)*
(Date)	

DP-2516 (4/00)

[*ACS couldn't even claim, if they wanted to, that I resigned in lieu of termination because they were given this document which they time stamped and discussed in the August 23, 2016 Email that I resigned from ACS & work for TLC and a penalty is moot.]

NYC
Taxi & Limousine
Commission

Meera Joshl
Commissioner
tlcommissioner@tlc.nyc.gov

33 Beaver Street
22nd Floor
New York, NY 10004

+1 212 676 1003 tel
+1 212 676 1100 fax

August 5, 2016

Congratulations! I am pleased to inform you that you have been selected for employment with the New York City Taxi and Limousine Commission as a probable permanent Taxi and Limousine Inspector. Please report to the following location to begin your first day of training:

HR Orientation Day 1:

Date:	Monday, August 22nd, 2016
Time:	9:00 a.m. (arrive promptly) until 5:00 pm
Location:	NYC Taxi and Limousine Commission 33 Beaver Street, 19th floor Commission Hearing Room New York, N.Y. 10004

As a newly selected Cadet, you are required to report on time in proper business attire. Men must wear dress slacks, dress shirt and tie and regular shoes (no sneakers). Women must wear slacks or skirts, sweater or blouse, regular shoes (no sneakers).

There will be two sessions – morning and afternoon. During your orientation, you will be provided your training session number, training schedule and TLC ID. Please note your training session will be rotated every two weeks.

You will be required to have the following items on the second day of class:

☐ Two (2) navy t-shirts
☐ 1 navy sweat pant

Day 2 of Training:

Date:
Session 1. Time:
Session 2 Time:

Location:

[redacted]

ACS/Personnel Service
[2016 AUG 19 PM 6:01]

[Dates of prosecution for all charges. Debunks NYS Court Ruling that I resigned while charges were pending for Misconduct.]

Admin. for Children's Services v. Patterson
OATH Index No. 0904/16 (Sept. 2, 2016), *aff'd*,
NYC Civ. Serv. Comm'n Case No. 2016-085
(Dec. 16, 2016), **appended**

Juvenile counselor used unauthorized or excessive force on four juvenile residents, failed to use required de-escalation techniques, submitted false and misleading reports related to the use of force, made false statements at an interview, and used profane and threatening language towards a supervisor. Petitioner did not prove some instances of respondent failing to use proper de-escalation techniques, using excessive force or improper restraints, or making a false report. ALJ recommends termination of respondent's employment.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
ADMINISTRATION FOR CHILDREN'S SERVICES
Petitioner
- against -
ALLEN PATTERSON
Respondent

REPORT AND RECOMMENDATION

NOEL R. GARCIA, *Administrative Law Judge*

This disciplinary proceeding, containing five combined charges for a total of 23 specifications, was referred to this tribunal by the Administration for Children's Services ("ACS" or "Agency"). The respondent, Allen Patterson, is a juvenile counselor assigned to the Crossroads Juvenile Center ("Crossroads"). Under section 75 of the Civil Service Law, the Department charged respondent with unauthorized or excessive use of force against four different juvenile residents, failing to use required de-escalation techniques, submitting false or misleading reports for each of those incidents, one charge of making false or misleading statements at an investigative interview, and one charge of using hostile and profane language towards a supervisor (ALJ Ex. 1).

The seven-day trial was conducted before me on February 18, 19, 23, March 1, 7, 30, and April 8, 2016. At trial, petitioner presented the testimony of the following four witnesses: Louis

* * *

[This is supposed to be the moot outcome for Patterson as mentioned by the NYC ACS in their August 23, 2016 email, but in bad faith and excess of their jurisdiction they lied that Patterson was on leave of absence.]

Admin. for Children's Services v. Silva
OATH Index No. 1275/15 (June 26, 2015),
adopted, Comm'r Dec., **appended**

Juvenile counselor used unauthorized and excessive force on a juvenile resident and submitted a false and misleading report related to the use of force. ALJ recommends termination of his employment. Commissioner adopts ALJ's fact finding but notes penalty is moot because respondent resigned before Commissioner issued decision.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
ADMINISTRATION FOR CHILDREN'S SERVICES
Petitioner
- against -
VICTOR SILVA
Respondent

Girard v. Board of Educ

Appellate Division of the Supreme Court of New York, Fourth Department

Jun 7, 1991

168 A.D.2d 183 (N.Y. App. Div. 1991)

June 7, 1991

Appeal from the Supreme Court, Erie County, Edward A. Rath, Jr., J.

Lipsitz, Green, Fahringer, Roll, Salisbury Cambria (John Collins of counsel), for appellant.

Hodgson, Russ, Andrews, Woods Goodyear (Randy Fahs, Karl W Kristoff and *Norman H. Gross* of counsel), for respondent.

LAWTON, J.

In this CPLR article 78 proceeding, petitioner seeks to annul the action taken by respondent which abolished her former position as Assistant Superintendent. Supreme Court properly dismissed the proceeding as moot by reason of petitioner's resignation and retirement. When petitioner's resignation was accepted by respondent, the employment relationship that existed between petitioner and respondent terminated *(see, Matter of Cedar v. Commissioner of Educ. of State of N.Y.*, 53 Misc.2d 702, *affd.* 30 A.D.2d 882, *lv. denied* 22 N.Y.2d 646; *Matter of Doering v. Hinrichs*, 177 Misc. 42,

revd 263 App. Div. 959, revd 289 N.Y. 29; Matter of Herbert, 15 Ed Dept Rep 60, petition to set.

* * *

Index No. 100451/2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
ALLEN PATTERSON

Petitioner,

For an Order pursuant to Article 78 of the
Civil Practice Law and Rules

-against-

CITY OF NEW YORK, CITY OF NEW YORK
CIVIL SERVICE COMMISSION and NANCY
G. CHAFFETZ, CHAIR,

Respondents.

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' CROSS-MOTION TO DISMISS THE VERIFIED PETITION

ZACHARY W. CARTER
Corporation Counsel of the City of New York
Attorney for Respondents
100 Church Street, Room 2-109(f)
New York, New York 10007
lperelma@law.nyc.gov

Of Counsel: Liliya Perelman
Tel: (212) 356-2387
Matter No. 2017-017850

Due and timely service is hereby admitted.

New York, N.Y. ....., *2017*

....., *Esq.*

Attorney for .....

* * *

Petitioner appealed this decision by DCAS to the CSC, and the CSC rendered a decision affirming DCAS' determination on March 6, 2017. See CSC Decision Dated March 6, 2017, Exhibit "3." CSC, after reviewing the record, found that Petitioner's contention that he had resigned from ACS prior to being terminated lacked merit. Id at 3. Specifically, CSC noted that Petitioner could not simultaneously resign from one agency, while also submitting a conditional resignation and then seeking whichever option would work best in his favor. * * * [(I never requested a decision. I'm no longer an employee @ ACS) Attorneys Need to Argue]

CSC also cited to N.Y. Comp. Codes R. & Regs. tit. 4, §5.3, which states that after charges of misconduct, an agency

* * *

Training Seminar from Administration for Children's Services