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TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES, Petitioner v. RAYMOND HAL BRADY, Grievant.

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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES,** ***Petitioner,*** **v.** **RAYMOND HAL BRADY,** ***Grievant.***	**DOCKET NO: 26.43-109030J**

INITIAL ORDER

This matter was heard on July 14 and 15, 2011, before Margaret R. Robinson, Administrative Judge. The State was represented by Marjorie A. Bristol, Assistant General Counsel with the Department of Children's Services. Thomas Testerman, of the Newport, Tennessee, bar, represented the Grievant. Before the Initial Order was drafted and entered, Judge Robertson became unavailable. Pursuant to TENN. CODE ANN. §4-5-314(e), this matter was transferred to Judge Ann M. Johnson for review of the record and entry of the Initial Order.

The issue in this matter concerned the Grievant's appeal of his termination of employment with the Department of Children's Services (DCS). After consideration of the entire record, including the pleadings, transcript, exhibits, and post-hearing written argument of the parties, it is determined that the termination should be reversed and the Grievant's appeal granted. This decision is based upon the following.

SUMMARY OF THE EVIDENCE

Five witnesses were called by the Petitioner: Steven Harrison, Children's Services Manager of Security with DCS; Denise Shields, Children's Services Officer with DCS; Aaron McMahan, previously with the Internal Affairs Division of DCS; Melissa Collins Woodall, Children's Services Officer with DCS; and Tiffany Southerland, Children's Services Officer with DCS.

Raymond Hal Brady, the Grievant, testified on his own behalf.

Documents admitted into evidence include the following:

EXHIBIT 1	DCS Administrative Policies and Procedures, 25.5-DOE;
EXHIBIT 2	Confinement Log for D.P.;
EXHIBIT 3	Master List of Confinement Placements;
EXHIBIT 4	Diagrams of COC and Adjacent Rooms, Steven Harrison;
EXHIBIT 5	Written Statement, Denise Shields;
EXHIBIT 6	CD of IA Interview, Denise Shields;
EXHIBIT 7	Investigative Summary by Aaron McMahan;
EXHIBIT 8	CD of IA Interview, Melissa Collins Woodall;
EXHIBIT 9	Termination Memorandum;
EXHIBIT 10	Diagrams of COC and Adjacent Rooms, Tiffany Southerland; and
EXHIBIT 11	CD of IA Interview, Raymond Hal Brady.

FINDINGS OF FACT

1. The Grievant Raymond Hal Brady was an employee of the Tennessee Department of Children's Services (DCS) for approximately nine years, and had achieved the rank of corporal.

2. Prior to this case, the Grievant had received no disciplinary actions.

3. The Grievant was employed at the Mountain View Youth Development Center, a treatment/correctional facility for youths ages 13 through 17 who have committed serious crimes. About half the population are violent offenders.

4. When a youth requires segregation because of emotional or behavioral volatility, he may be placed by himself in a small confinement room until his behavior stabilizes.

5. The student in confinement must be observed by staff every fifteen minutes to ensure the safety of the student. This frequent observation is vitally important because students in confinement may attempt to harm themselves; they may also destroy property or attempt to fashion weapons from parts of their clothing.

6. A confinement log is an official record of the facility. The staff member who is ultimately responsible for ensuring that a confinement log was properly initiated and maintained is the employee who placed the student in confinement, although any staff member can perform the checks. All employees receive training with respect to this policy.

7. The observation log reflects the starting time of confinement, the staff person who initiated the confinement, and the staff member's observations at the time of the check. It is normal practice for staff members who checked on the student to initial the entry in the log.

8. At Mountain View, the observation log is usually kept directly outside the door of the segregation cell, although it may also be kept in a separate room to prevent tampering from students who may be passing in the hallway.

9. On the evening of December 28, 2009, the student D.P. was placed in confinement by Sergeant Galen Eilts. The locked segregation room was in the main administrative building of the facility commonly referenced as the Core Building.

10. In addition to the confinement room and other rooms necessary to the operation of the facility, the Core Building includes a Control Room, or Central Operations Center (COC). This space contains radio equipment, telephones, and other equipment used for maintaining central communications, both inside and outside of the facility. The COC is always manned by

an employee who must be present in the room to receive and transmit communications from staff. The employee assigned to the COC may not leave this room unless relieved by another staff member.

11. The confinement room in which D.P. was located was situated several yards from the COC, down a hallway in the Core Building.

12. After Sergeant Eilts placed the student D.P. in the confinement room, he radioed to the Control Room and spoke with Children's Services Officer (CSO) Tiffany Southerland, who was assigned to work the COC that evening. Sergeant Eilts informed CSO Southerland that he had placed D.P. in confinement, and asked her to begin an observation log. Ms. Southerland complied, entering the student's name, the initial time of placement (5:32 p.m.), the confinement room number, and the name of the officer, Sergeant Eilts, who had placed D.P. in the cell. After beginning the log, CSO Southerland placed it on a table in the Control Room.

13. About 45 minutes later, between 6:15 and 6:30 p.m., Sergeant Eilts came into the Control Room on other duties; CSO Southerland reminded him that the log was still lying on the table and none of the required checks had been made.

14. As the officer who placed D.P. in confinement, Sergeant Eilts was responsible for ensuring that the required observations were made and that they were properly noted in the log. Sergeant Eilts replied that they would get to the log in a minute, but he never followed through with the log.

15. Between 6:45 and 7:00 p.m., CSO Southerland left the COC for a break, which lasted a little over 30 minutes. She was relieved by either CSO Denise Shields or CSO Melissa Collins Woodall, who were both present in the COC at the time.

16. On the same evening of December 28, 2009, Aaron McMahan, Internal Affairs Investigator for DCS, visited the facility on routine business unrelated to events in this matter.

17. As Investigator McMahan was working, he was able to observe the confinement room containing the student D.P. Investigator McMahan noted that no confinement log was evident, and that the required visual observations of D.P. had not occurred.

18. Investigator McMahan spoke with D.P., who stated that observation checks had not been done for well over an hour.

19. Investigator McMahan also determined that another student had also been placed in another confinement room, and no log was evident in that case either.

20. Investigator McMahan began a search for the confinement logs, asking two staff members who were present in the COC, CSOs Woodall and Shields. These two CSOs advised him that the location of the log for D.P. was unknown.

21. Concerned and visibly upset, Investigator McMahan returned to the hallway outside the COC where he encountered the Grievant, Corporal Brady.

22. At this time the Grievant, who was assigned duties in another building of the facility, was on break and traveling through the Core Building on his way to the designated smoking area in a parking lot outside the secure area of the facility.

23. Investigator McMahan stopped the Grievant, inquiring about the confinement log and requesting assistance in locating it, even though the Grievant had no specific responsibilities for the log or for the student D.P. By chance, the Grievant was merely walking through the building on break to access the smoking area.

24. Prior to the questions by Investigator McMahan, the Grievant was unaware of D.P.'s confinement and had no knowledge of any confinement log since he had been assigned to another building on the evening in question.

25. The Grievant noted that Investigator McMahan was very agitated; the Grievant agreed to help in locating the confinement log.

26. Participating in the search, the Grievant entered the COC, where he encountered CSOs Woodall and Shields.

27. The Grievant asked the CSOs for the confinement log; when they informed him that they did not know its location, the Grievant instructed them to find the log and then left the room to continue the search.

28. At some point, when neither the Grievant nor Investigator McMahan was present in the Control Room, CSO Woodall located the log that was previously begun by CSO Southerland and concealed it underneath the Control Room logbook.

29. CSO Southerland was on her break for a little over 30 minutes and was absent from the Control Room during this period of time. When she returned from her break, she found CSOs Shields and Woodall, as well as the Grievant and Investigator McMahon, in the Control Room.

30. Ms. Southerland observed Investigator McMahan "ranting and raving" and realized he was upset about the missing log for D.P. She informed those present that it had been lying on the table in the COC when she left for her break.

31. The Grievant and Investigator McMahan left the COC. At this point, CSO Woodall retrieved the confinement log from beneath another document and began entering fabricated observation checks. She filled in the complete column for the required check times

and then began to enter false observation notes. Ms. Woodall made five entries; then she asked CSO Southerland for her help in completing the entries. CSO Southerland made three additional entries to complete the log. There were no initials on the log to indicate the staff person who performed the checks and noted the falsified observations.

32. CSO Shields made no false entries into the confinement log.

33. The entries made by Ms. Woodall appeared lighter than those made by Ms. Southerland, so Ms. Southerland traced over the time notations, written by Ms. Woodall, so that the tone of the ink would match that of the entries she had created.

34. The false confinement log was completed in less than five minutes.

35. The three CSOs realized that Investigator McMahan would require an explanation for where the missing confinement log was found, so they conspired together to concoct a story. They agreed to say that the log was found outside the Control Room in a hallway designated as the sally port.

36. One of the CSOs gave the fabricated log to Investigator McMahan; Ms. Shields told Investigator McMahan that the log was found in the sally port, a hallway outside the Control Room.

37. Investigator McMahan reviewed the log and realized almost at once that it was fraudulent.

38. Investigator McMahan immediately asked for the identity of the person who filled out the log. When none of the participants responded, he stated that he knew it was fraudulent and intended to investigate.

39. When Investigator McMahan confronted the three CSOs about the fraudulent log, none of them admitted their role; furthermore, no one stated they had acted at the Grievant's direction.

40. Ms. Woodall and Ms. Southerland admitted that they realized their actions, if discovered, would lead to serious repercussions, possibly dismissal or prosecution.

41. Investigator McMahan left the COC to speak with Sergeant Eilts and to make copies of the fabricated confinement log in the sally port, where the copier was located.

42. As Investigator McMahan was leaving the facility, CSO Southerland left the Control Room and caught up with him in the parking lot.

43. CSO Southerland confessed to Investigator McMahan that she had made false entries in the D.P. confinement log. She stated that she made these entries at the direction of the Grievant, Corporal Brady. This conversation is the first time that anyone suggested that the log was falsified upon orders from the Grievant, a superior officer.

44. The Grievant was not present when the fraudulent entries were made in the confinement log or when explanations of its location were fabricated.

45. Agent McMahan conducted an investigation on that same night, December 28, 2009, and was assisted by Investigator Bartley Jenkins, also with DCS Internal Affairs. During the course of the investigation that night, interviews were conducted with the relevant participants; these interviews were recorded. Several staff also signed written, notarized statements under oath.

46. In Ms. Woodall's recorded interview, she began by attempting to cover up her role, stating that she started the log upon Sergeant Eilts's direction, and then left it outside of the medical room. Then Investigator McMahan interrupted her and stated, "I know who come [sic]

in and told you to catch this up." When he asked her, she replied that the Grievant had instructed her to do it.

47. Again in Ms. Shield's recorded interview, Investigator McMahan asked the leading question, "Did Corporal Brady ask you to catch this up?"

48. CSOs Shields, Southerland, and Woodall all asserted in their statements to Investigator McMahan that the Grievant had instructed them to make fraudulent entries in the confinement log. Shields denied that she had any part in the scheme, while Southerland and Woodall explained that they fabricated the entries at the direction of a superior officer, the Grievant.

49. According to DCS policy, a CSO should follow a directive from a ranking officer. However, if asked to commit any rules violation, policy requires the CSO to request guidance from a superior officer. Violation of the rules or the law is never acceptable, even upon the direction of a superior officer.

50. Even though CSOs Shields, Woodall, and Southerland knew that Sergeant Eilts was the commanding officer at the facility that night, and was available if needed, none of them went to him about their claim that the Grievant instructed them to falsify an official state document.

51. Investigator McMahan concluded that false entries in D.P.'s confinement log were made by CSOs Woodall and Southerland at the direction of the Grievant, Corporal Brady, who was their superior officer.

52. Ultimately, DCS took disciplinary action against the participants: Sergeant Eilts was given a written warning; CSOs Woodall and Southerland were given suspensions of three

days; and CSO Shields received no discipline. The Grievant's employment with DCS was terminated.

RELEVANT LAW

1. The Department, as the party "seeking to change the present state of affairs," has the burden of proof under Rule 1360–4–1–.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360–4–1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the discipline imposed was appropriate under state law and regulations.

2. The Department charged that the Grievant violated the following rules of the Tennessee Department of Human Resources:[1]

> 1120-10-.06 **EXAMPLES OF DISCIPLINARY OFFENSES.** The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.
>
> (1) Inefficiency or incompetency in the performance of duties.
> (2) Negligence in the performance of duties.
>
> . . .
>
> (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
>
> . . .
>
> (8) . . . conduct unbecoming an employee in the State service.
>
> . . .
>
> (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage.
>
> . . .
>
> (15) Acts that would endanger the lives and property of others.

Emphasis in original.

[1] In May, 2011, the personnel rules were revised and are now referenced as the Rules of the Tennessee Department of Human Resources. Since the previous rules (Rules of the Tennessee Department of Personnel, ch. 1120-06 (May, 1999)) were in effect at the time this action arose and formed the basis for the charges against the Grievant, those rules will be referenced herein.

3. T.C.A. Section 8-30-330 contains the following relevant provisions:

> (a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.
>
> . . .
>
> (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

4. Progressive discipline steps are outlined and described in Department of Personnel Rule 1120-10-.07, which states, in relevant part:

> (1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.
>
> (2) Oral Warning.
>
> (3) Written Warning.
>
> (4) Suspension Without Pay.
>
> (5) Dismissal.

5. The Rules of the Tennessee Department of Personnel provide the overall policy for imposing disciplinary action in Rule 1120-10-.02:

> POLICY. A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. . . .

CONCLUSIONS OF LAW and ANALYSIS

Analysis of Credibility

The core issue in this case turns on credibility. In order for the Department to carry its burden of proof, it must show by a preponderance of the evidence that the Grievant instructed the Children's Services Officers, his subordinates, to falsify an official State record. The only evidence to support this contention lies in the testimony of those CSOs, Denise Shields, Melissa Collins Woodall, and Tiffany Southerland. These three witnesses claim that they received orders from the Grievant to create a fraudulent confinement observation log for the student D.P.

However, a complete review of the evidence plainly shows that these three witnesses were not credible. Each had a clear, self-serving motive to fabricate an untruth, attempting to place blame on someone else when their fraud was detected. They were obviously concerned for their jobs and even possible criminal prosecution. In addition to motive, they had the opportunity to conspire: after Investigator McMahan announced his knowledge of the deception, the three witnesses were alone in the Control Room for several minutes, all realizing the possible consequences. It is abundantly clear that their testimony is unreliable, showing a conspiracy to lie in an attempt to avoid discipline for their own misconduct.

The testimony of Ms. Shields, Ms. Woodall, and Ms. Southerland was contradictory: they contradicted each other and even, on multiple occasions, themselves. Their statements lead to the inescapable conclusion that, to one degree or another, they were witnesses attempting to conceal the truth. They each exhibited selective recollection when convenient to their own interests. They changed their testimony about substantial details of their story numerous times upon cross examination.

As a whole, the three CSOs are not credible. Ms. Shields' testimony is totally discredited as unreliable and mendacious. Ms. Woodall admitted that she and the other two CSOs lied in an attempt to cover up the falsification of the log. Ms. Southerland was the first person to admit to Investigator McMahan that the log was fraudulent, and ultimately admitted that the three CSOs fabricated the story regarding the discovery of the log in the sally port. Nevertheless, she, too, told so many lies during the course of these events that it is impossible to know when or if she is telling the truth. These three women devised a tale about discovering the log; the most probable scenario, given their lack of credibility, is that they also fabricated the story regarding the Grievant's involvement, particularly given their opportunity and their strong motivation to do so.

Credibility Findings

Among other examples, the three CSOs are found to be not credible in the following instances.

1. **Denise Shields.**

A. Ms. Shields also stated that the Grievant came into the COC and instructed all three CSOs to "get this log caught up," referencing the confinement log for D.P. (Ms. Southerland was not even present in the COC at that time, since she was away on break.) Ms. Shields stated that she thought the Grievant had the log in his hand at the time, and then handed it to the other two CSOs, but she could not accurately remember. These statements are another indication of the lack of credibility of Ms. Shields.

B. Ms. Shields further stated that after the Grievant handed the log to the other two CSOs, asking them to complete it, Ms. Shields left the room for other duties: "After [Brady] asked me to fill [the log] out and he gave them the paper, I left." She testified that she did not speak to Investigator McMahan until her recorded interview later

that night. However, it is clear that Ms. Shields was in the Control Room for most of the relevant events that evening and communicated with Investigator McMahan prior to her interview. According to the evidence, Ms. Shields was present during the time the fabricated entries took place. Furthermore, she was present when Investigator McMahan confronted the CSOs in the Control Room after detecting the falsification. Most significantly, Ms. Shields admitted, in her recorded interview, that she told Investigator McMahan that the log was "discovered" in the sally port. In this admission, she acknowledged that she was present when the log was presented to Investigator McMahan and lied to him regarding its whereabouts prior to that time. Plainly, the statement of Ms. Shields at the time of the hearing, that she was not present during these events, is untrue.

C. Ms. Shields also testified during the hearing that she did not know whether Investigator McMahan was ever provided with the log. Again, this statement is another prevarication, since she admitted in her interview that she was the one who told him that the log was located in the sally port.

D. Ms. Shields did not remember that Investigator McMahan came into the COC looking for D.P.'s log before the Grievant came into the room for the same purpose. Ms. Shields stated that she would remember McMahan's previous visit if it had occurred. Significantly, and in direct conflict with the testimony of Ms. Shields at the hearing, in her recorded interview she acknowledged that she was present in the Control Room when Investigator McMahan entered and asked for the confinement log. These multiple inconsistencies indicate that Ms. Shields was untruthful and therefore not credible.

E. Ms. Shields was an active participant in fabricating the lie regarding the location of the confinement log during the time it was "missing": after conspiring with

the other two CSOs, Ms. Shields told Investigator McMahan it was found in the sally port. Furthermore, during her recorded interview on the night in question, Ms. Shields told Investigator McMahan that the Grievant had instructed her to say it was found in the sally port, another untruth.

2. **Melissa Collins Woodall.**

A. Ms. Woodall first testified that she did not remember the explanation that the CSOs gave Investigator McMahan when they produced the falsified log. Later in the hearing, she admitted that the three CSOs conspired to tell the investigator that it was found it the sally port. She also admitted that the Grievant had not instructed them to give this explanation; rather, the three CSOs made up the story in attempt to cover themselves.

B. During Ms. Woodall's recorded interview, she told Investigator McMahan that she had left a confinement log on a table outside the medical room. She admitted at the hearing that this statement was not the truth.

C. Ms. Woodall stated that, at the time of these events, she was not aware that Sergeant Eilts was ultimately responsible for the confinement for D.P. First, she stated that she did not know who was responsible. Later, she stated that she believed that the Grievant was responsible for these duties. However, the falsified log itself, which she had helped to create, identified Sergeant Eilts as the responsible officer. More significantly, she later admitted under cross-examination that she knew the Grievant had no responsibilities for the confinement and that her previous statement "just doesn't hold water."

D. Ms. Woodall testified that she had no memory of several key events: she did not remember how she knew that Investigator McMahan was looking for the confinement log or, more significantly, that Investigator McMahan ever confronted the CSOs about the falsified entries in the log. This assertion, later recanted, is not credible.

E. Under cross-examination, Ms. Woodall admitted that she had told so many lies on the night in question that should could not keep up with them all and that, if she were the judge, "I wouldn't believe it." She also admitted to fear regarding her job and regarding prosecution, although she thought at first that she would not be caught. She admitted that, after the fraud was discovered, she wanted to "figure out how to explain it" to keep from losing her job.

3. **Tiffany Southerland.**

A. Although Ms. Southerland told Investigator McMahan that the Grievant had instructed her and the two other CSOs to fill out the log, Ms. Southerland later admitted that she was not present in the COC when the Grievant came in, since she was on break. Consequently, she had no direct knowledge of any conversations the Grievant may have had with the other two, and received no direct instructions from the Grievant. Her willingness to immediately implicate the Grievant, even though she had not originally spoken to him about the log, indicates lack of credibility.

B. Ms. Southerland first testified that, after she returned from her break and was handed the confinement log, Ms. Woodall had already made some false entries on the log. Later, she stated that when she returned from break and Ms. Woodall produced the log, there were no entries except the original information that she herself had entered

when she first began the log hours earlier. Once again, multiple inconsistencies indicate duplicity.

C. After Investigator McMahan confronted the CSOs in the Control Room about the fraudulent log, Ms. Southerland stated that there was no conversation among the three about these events. This assertion is not credible since the CSOs were alone in the room for several minutes, they had all participated in perpetrating the fraud in one way or another, and they all feared serious repercussions.

4. All three CSOs asserted during their testimony that they had some difficulty recalling the events of the night in question: the transcript shows over 100 instances during the testimony that one of these three indicated that they did not remember. Since the time of the relevant events, about a year and a half had passed. While some of these lapses concerned specific details and are understandable, others related to significant matters and indicated a selective and convenient recollection.

5. The Grievant testified that he knew nothing about a confinement log and happened to be passing through the area when he encountered Investigator McMahan, visibly upset and looking for the log. According to the Grievant, he assisted Agent McMahan by entering the COC and questioning the CSOs present there about the missing log. He stated that he merely asked them to produce the log, not to fabricate it or to "catch it up." The Grievant's testimony makes sense, given all the circumstances, and was consistent throughout. The Grievant is found to be credible.

Analysis of Other Factors

In addition to inconsistencies and obvious lies by the three CSOs called as witnesses, there are also logical inconsistencies. They all testified that the Grievant came into the Control

Room and instructed them to "get this log caught up." However, the Grievant had just come into the building and had no knowledge that the student D.P. had been placed in confinement, or that a log was started on him. Logically, the Grievant would not have instructed the CSOs to catch up a log when he did not know anything about the circumstances of the confinement or the existence or progress of any confinement log.

Furthermore, on the night in question, the Grievant had no specific job responsibilities for the student D.P., for his placement in a confinement room, or for the confinement log. By chance, the Grievant was merely passing though the area on his way to a break; that evening he was not even assigned to work in the Core Building and had no way to know the events that occurred there. It is not reasonable to think that he would have directed other employees to commit fraud when he was not accountable for the student or the log and would have faced no consequences had it not been produced.

The entire record in this case leads to the conclusion that the participants in this matter concocted a story to make the Grievant the scapegoat for their own wrongdoing. Additionally, when the Grievant was blamed, there is no indication that DCS conducted a thorough and impartial investigation before charging him. The recorded interviews of Denise Shields, Melissa Woodall, and the Grievant all indicate that Investigator McMahan did not objectively interview the participants, but had decided that the Grievant was guilty before the interviews began. In her interview Ms. Woodall began by telling the lie that D.P.'s confinement log was left outside the medical room. At that point Investigator McMahan interrupted her and stated "I know who come [sic] in and told you to catch this up," and "who told you to put that down?" It was then that Ms. Woodall stated that the Grievant had done so. The recorded interviews admitted into

evidence show no attempt by Internal Affairs to determine the true course of the events that night, only an effort to demonstrate that the Grievant was culpable.

Finally, even if the State were able to show that the Grievant instructed the CSOs to falsify the confinement log, a proposition that is totally unsupported by the evidence in this case, the discipline imposed would not be appropriate. The other actors in this matter were given only minor discipline. Even though Ms. Southerland and Ms. Woodall ultimately admitted to the falsification of an official document, they were disciplined with three-day suspensions. This light penalty was assessed even though the DCS policy requires an employee to request guidance from a superior officer if asked to commit an act against regulations; clearly, forging a State record was against regulations. The proof showed that the Grievant's superior officer, Sergeant Eilts, was down the hall and available for consultation, yet none of the CSOs requested help from him. Ms. Shields, who clearly lied multiple times during the course of these events, received no discipline. Sergeant Eilts, who placed the student in confinement and was ultimately responsible for him, received only a written warning. The Grievant has received no prior discipline in his years of employment. For all these reasons, termination is patently unfair.

Even though the blame for these events does not lie with the Grievant, there is no question that the lapse in care for the student D.P. raises serious issues and is cause for great concern. Frequent checks on a confined student are vital for the safety of the children under the care of DCS. The exoneration of the Grievant in no way excuses the underlying critical failure of a system that exists to protect the most endangered and precarious of society's young people.

A close review of the proof shows that there is no credible evidence upon which to base a termination of the Grievant's employment. As found above, the testimony of Ms. Shields, Ms. Woodall, and Ms. Southerland is found to be not credible; therefore, there is nothing to show that

the accusations against the Grievant are true or that the Grievant was guilty of the misconduct alleged in this action. The State failed to carry the burden of proof to show by a preponderance of the evidence that the Grievant committed the violations as charged and that the discipline was appropriate.

Decision

Based upon this analysis, it is **ordered** that the Grievant's appeal is hereby **granted**, and his termination by the Department of Children's Services is hereby **reversed**. The Grievant shall be reinstated to his previous position and made whole, with full back pay and benefits, and shall be awarded a reasonable attorney's fee in accordance with State law and policy.

This Initial Order entered and effective this 2 day of May, 2012

_____
Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 2 day of May, 2012

Thomas G. Stovall, Director
Administrative Procedures Division