BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

STACIE D. PORTER Petitioner, vs. INDIANA DEPARTMENT OF CHILD SERVICES Respondent.	))) SEAC NO. 06-13-045))))))

NOTICE OF FILING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NON-FINAL ORDER OF ADMINISTRATIVE LAW JUDGE

The attached "Findings of Fact, Conclusions of Law and Non-Final Order of Administrative Law Judge" granting judgment on the merits after evidentiary hearing to Respondent DCS has been entered as required by I.C. 4-21.5-3. To preserve an objection to the document, either the Petitioner or the Respondent must submit a written objection that:

1. Identifies the basis of the objection with reasonable particularity.
2. Is filed at the following address, with service to the other party, by **February 10, 2014**:

State Employees' Appeals Commission
Indiana Government Center North
100 N. Senate Avenue, Room N501
Indianapolis, IN 46204-2200

Since the Commission has designated the Administrative Law Judge as the "trier of fact" for this cause, objections will not include items of evidence. If evidence is included with the objections it will be returned to the filing party. The objections may include a brief addressing the applicable law being relied upon by the party.

If objections are filed within the time specified, the State Employees' Appeals Commission (SEAC) will hear the objections at a regularly scheduled meeting. Prior to that meeting any motions filed regarding the objections will be dealt with by the Administrative Law Judge.

During the time specified above any member of the SEAC may express the desire to review any specific issue addressed in the "Findings of Fact and Conclusions of Law" pursuant to I.C. 4-21.5-3-29(e). If such a review is ordered, it will be conducted at a regular scheduled meeting of the SEAC, and each party will be notified.

A party may move to strike any objections believed to be untimely. The Administrative Law Judge shall act upon a motion to strike. If the Administrative Law Judge grants the motion, the attached document will become final absent any desire to review an issue expressed by a member as discussed above. If the Administrative Law Judge denies the motion to strike, the findings and non-final order shall be reviewed by to the SEAC as outlined above.

DATED: January 22, 2014

Hon. Aaron R. Raff
Chief Administrative Law Judge
State Employees' Appeals Commission
Indiana Government Center North, Rm N501
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A copy of the foregoing was sent to the following:

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STACIE D. PORTER Petitioner, vs. INDIANA DEPARTMENT OF CHILD SERVICES Respondent.	))) SEAC NO. 06-13-045))))))

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NON-FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

Petitioner Stacie Porter timely filed two classified[1] Civil Service 2013 complaints with the State Employees' Appeals Commission ("SEAC" or the "Commission") against the Indiana Department of Child Services ("DCS"). This administrative review is thus conducted pursuant to the classified provisions of I.C. 4-15-2.2.[2] Petitioner Porter is a former classified employee, a Family Case Manager 2, for Respondent DCS. The issue before SEAC is whether Respondent DCS had just cause, by a preponderance of the credible evidence, to reprimand and discharge Petitioner Porter's state employment.

A full day evidentiary hearing in this matter was held on October 23, 2013, before the undersigned Chief Administrative Law Judge (the "ALJ") at SEAC's main conference room. Petitioner Porter appeared pro se. Respondent DCS appeared by counsel, Ms. Wilson. Having reviewed the arguments, witness testimony, admitted evidence, the applicable law and proposals[3], and being duly advised, the ALJ makes the following Findings of Fact, Conclusions of Law and Non-Final Order. Judgment for Respondent. Respondent DCS had just cause, by a preponderance of the credible evidence, to reprimand and discharge Petitioner Porter's state employment. Respondent DCS also respected Petitioner's procedural pre-deprivation rights in the discipline process.

[1] The reprimand and discharge Complaints were consolidated under this cause.
[2] The proceedings are also under the Administrative Orders and Procedures Act ("AOPA"). I.C. 4-21.5-3
[3] In December, 2013, both parties provided their respective closing briefs and/or proposals. The ALJ also takes official notice of the docket. The matter is ripe for decision.

I. Legal Standards and Just Cause Doctrine

This is a classified (just cause) case under the Civil Service System. A state agency may only discharge or take lesser adverse employment action against a classified state employee for just cause. I.C. 4-15-2.2-23. In a disciplinary case involving a classified employee, the state agency, here Respondent DCS, has the initial and ultimate burden of proving by a preponderance of the credible evidence that there was just cause for imposing the adverse employment action. I.C. 4-15-2.2-42(g); See *Non-Final and Final Orders in Miller v. FSSA*, SEAC No. 05-12-060, *Non-Final and Final Orders in Cole v DWD*, SEAC No. 02-12-019. Therefore, if just cause is not established by the state, the challenged adverse employment action is invalid.

To establish just cause, the respondent-agency may refer to the petitioner-employee's work performance. I.C. 4-15-2.2-36(e). An agency's service ratings and employee performance standards "must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or state institution, and time sensitive." *Id.* Therefore, in determining whether just cause was established, SEAC may consider the petitioner-employee's performance as compared to the respondent-agency's employee performance standards. I.C. 4-15-2.2-12, 36 and 42.

Additionally, the inquiry focuses on the reasonableness of the employer agency's workplace expectations. Employer expectations must be reasonably well communicated and consistently applied to similarly situated employees. See *Miller* and *Cole, supra.* The reasonable expectations of the respondent-agency may include its communicated employee performance standards and expected outcomes. *Id*; I.C. 4-15-2.2. The just cause standard requires the respondent-agency to act with reasonableness, not perfection. See *Conklin v. Review Bd. of DWD*, 966 N.E.2d 761, 764 (Ind. Ct. App. 2012); *Ghosh v. Ind. State Ethics Com'n*, 930 N.E.2d 23 (Ind. 2010); *Tacket v. Delco Remy*, 959 F.2d 650 (7th Cir. 1992) (just cause standards in other contexts in Indiana similarly looks to the reasonable expectations of the employer).

Furthermore, the federal employment just cause standard, as persuasive authority, concurs that the overarching inquiry is: whether the employer acted reasonably and consistently towards those similarly situated. The federal employment just cause standard is "such cause as will promote the efficiency of the service." 5 U.S.C. § 7513. See also *Free Enterprise Fund v. PCAOB*, 130 S. Ct. 3138 (US 2010) (federal system looks at factors such as inefficiency, neglect of duty, and reasons provided by the legislature);

Humphrey's Executor v. United States, 295 U.S. 602 (1935); and *Morrison v. Olson*, 487 U.S. 654 (1988).[4]

If an agency establishes just cause, "the [C]ommission shall defer to the appointing authority's choice as to the discipline imposed. . . ." I.C. 4-15-2.2-42(g). The ALJ is not authorized to substitute his own judgment after the agency proves it had just cause to impose adverse employment action.

II. Findings of Fact

1. At all relevant times, Petitioner Stacie Porter was a classified Family Case Manager 2 (FCM) working for state agency Respondent DCS at its Daviess County, Indiana office.

2. The controversy in this matter relates to Petitioner Porter's state employment discharge and reprimand by Respondent DCS. Petitioner Porter timely appealed both actions up to SEAC, and the actions were consolidated.

3. The reprimand for insubordination or disrespectful behavior was issued by senior supervisor Melinda Berry, DCS Daviess County Office Director, on April 15, 2013. The discharge was initiated by Ms. Berry and Briley Terrell[5], FCM Supervisor, whose witness testimony is discussed below. The discharge related to Petitioner's material falsification of a government report(s) following a family case assessment as discussed in detail below. Petitioner Porter was also afforded a pre-deprivation meeting on the discharge, and the final decision of discharge was effected June 13, 2013, by a pre-deprivation officer.

4. Exhibits are discussed below. Petitioner Porter was at all relevant times aware of or had personally seen her job description, duties, the DCS code of conduct and other applicable HR/SPD policies. This applies to Exhibits A-D et al. (Porter testimony.)

5. *The Reprimand.* The ALJ starts with the Reprimand because it occurred first in the order of events.

6. Indiana's written, standardized discipline policies for classified employees describe that just cause for discipline includes "insubordination" or "failure to perform assigned

[4] At will is the default in Indiana. I.C. 4-15-2.2-22, 24. The General Assembly also recognized some employees were to be classified given federal regulations and laws, but did not define "just cause" in the Civil Service System. The ALJ first looks to Indiana law, but it is also helpful to regard the federal standard.

[5] Ms. Terrell reports to Ms. Berry. Ms. Terrell was Petitioner's direct supervisor at the time of the discharge. At the time of the reprimand, Ms. Mattingly (an FCM Supervisor) was Petitioner's direct supervisor, also reporting to Ms. Berry.

duties" as stated in bullet points 3-4, 7. A Reprimand is the lowest form of progressive discipline in state service. (Ex. D and witness testimony.)

7. Petitioner Porter received a written reprimand on April 15, 2013 for "unacceptable, insubordinate and disrespectful behavior towards management" on April 11, 2013. The documented behavior went against SPD Policy and the DCS Code of Conduct. (Ex. E.)

8. On April 10, 2013, Petitioner wanted to leave for the day at about the normal time, 4:30 p.m.[6] One of Petitioner's served family clients, a female adult receiving drug screens, was often late to Petitioner's set meetings at the Daviess DCS office. Petitioner was understandably frustrated by this public client but incorrectly allowed that frustration to show. The client called the front desk attendant, witness Rita Barnett, who stated the client could come in a little late for the drug screen. Petitioner tried to lock the front door and was told not to by Barnett, and relented. The client came in. (Barnett and Porter testimony.)

9. Supervisor Bonita Mattingly directed Petitioner Porter to give the client the drug screen. Instead, Petitioner ignored Mattingly and left out a back door, driving for home. (Mattingly, Berry, Porter and Barnett testimony.) Petitioner testified she did not hear Mattingly's direct order, but that is not credible given the sum of events, witness demeanors and the character evidence willingly presented. Mattingly had to stay late and complete the drug screen assigned to Petitioner. (Id.)

10. Petitioner insisted she could not find a drug screen test kit due to co-workers hoarding them. While it is true that co-workers sometimes hoard drug screens at that DCS office, given the frequent usage, Mattingly had no trouble finding one, which goes against Petitioner's credibility. (Mattingly and Porter testimony.) Nevertheless, Petitioner was not disciplined for this event[7], but it was part of an ongoing pattern of periodic verbal confrontation or insubordination between Petitioner and supervisors. Mattingly fumed that evening over the slight, leading to the next day's events of April 11. (Id.)

11. On April 11, 2013, Mattingly wanted to talk with Petitioner when she came in. Petitioner Porter then had a follow-up verbal confrontation with direct supervisor Mattingly. Both became upset, and Berry (the senior supervisor) had to step into the room and separate them. Berry then directed Petitioner to return to work. Instead, Petitioner went to the front of the office to loudly discuss the matter with co-workers and stir up trouble. Berry overheard the ruckus and approached the front area and had to direct Petitioner three times in explicit language to go back to work. While Petitioner's body language was

[6] Times are approximate.
[7] The events of April 11 intervened and Ms. Berry decided just to focus on that incident.

heated or even aggressive at this time, Berry remained calm. Petitioner testified she only heard Berry's direct order twice before obeying. Regardless, Petitioner was insubordinate to at least Berry[8], and set a bad, combative tone for the office. Berry contacted Human Resources (HR/SPD) and issued the written reprimanded on April 15, 2013, with just cause to Petitioner. (Berry, Mattingly and Porter testimony.)

12. The ALJ expressly finds that Melinda Berry, Petitioner's senior supervisor, was a highly credible witness. Berry's demeanor commanded integrity. Berry explained with candor on the stand that she had tolerated Petitioner's cyclic aggressive style with herself and supervisor Mattingly far too long, allowing it to fester. Berry also had some strong performance related praise for Petitioner at other times, showing balance and fairness in discussing Petitioner's work record. Berry explained that she had contacted HR/SPD and the consensus was to start documenting with the April 11, 2013, incident to be fair to Petitioner. E.g. Petitioner got a 'pass' on pre-April 11 events because too much time had passed before formal notice. This is further found to be reasonable and progressive under state classified policy because a single reprimand is the lowest form of discipline, and gives an employee another chance to improve. (Berry testimony.)

13. Mattingly also had positive things to say about Petitioner's ability to perform. Mattingly liked Petitioner to a degree but also had friction with her from a difference in their work styles and personalities. Mattingly's testimony and demeanor corroborated the above account of events and was consistent with Berry's testimony. (Mattingly testimony.)

14. The parties introduced, without objection, a great volume of character and habit evidence about Petitioner Porter's workplace approach. Petitioner was a competent FCM in general. (Porter, Mattingly, Berry, Barnett and Terrell testimony.) Petitioner had long periods of good performance, but she also clashed with both supervisors and co-workers in episodic cycles. (Id.) These sometimes involved yelling matches or Petitioner accusing her supervisors or co-workers of calling her a liar. Petitioner was defensive, stubborn and did not like to be corrected or given a new approach. (Id.) Cooperation was not a strong suit. Petitioner prided herself on systematically using a tougher demeanor (rather than compromising) to work with served families. (Id.) In sum, this ALJ finds that this testimony helped reduce Petitioner's credibility relative to the government's witnesses.

15. *The Discharge*. The ALJ now turns to considering the discharge. For ease of the whole opinion, with respect to the discharge, Petitioner Porter had been assigned to assess a particular family under applicable DCS policies in May-June, 2013. This family is

[8] Petitioner was disrespectful to Mattingly too in their meeting, albeit Mattingly should ideally have remained calm like Berry did.

referred to as the "Assessed Family". Members of the Assessed Family are identified by role and in a manner consistent with redacting the juvenile members' full names.

16. The exhibits (and testimony) admitted into evidence, without objection[9], show the following facts relevant to the discharge:

17. A DCS Family Case Manager is to perform various duties in the best interest of Indiana children. For relevant instance, FCMs perform household assessments triggered by possible abuse or neglect reports. FCMs then create written records of such assessments, case plans and recommendations to DCS to pursue an appropriate outcome. (Exhibit A.)

18. DCS's written Code of Conduct, effective on or after January 1, 2013, requires integrity and accuracy in documented work by FCMs. (Ex. B, p. 4, 8.)

19. DCS's Child Welfare Manual, effective October 1, 2012, is applicable to family case assessments and FCM duties and states in pertinent part:

> "[DCS] will conduct or arrange an individual face-to-face interview with the alleged child victim, all other children living in the home [including part time], and any children not living in the home present...The [FCM] will always inquire about the household composition and if any other children live in the home part time or have visitation."... "The FCM will distinguish between making a "contact" with a child and when that child is "interviewed" by accurately documenting what occurred in the Management Gateway for Indiana's Kids (MaGik)."[10] (Ex. C, p.1.)

20. Testimony confirmed that a MaGik report had to be made after a family contact home visit. The report should contain a list of those present and a substantive description of the actual event or contact. (Porter and Terrell testimony.)

21. Indiana's written, standardized discipline policies for classified employees describe that just cause for discipline includes as bullet point 1: "falsification, misrepresentation, or intentional omission of required information" and "insubordination" or "failure to perform assigned duties" as bullet points 3-4, 7. Progressive discipline is the general rule

[9] The exception is Exhibit H. The ALJ overruled Petitioner's authenticity objection to Exhibit H under AOPA's wide latitude. The 17 year old who authored the exhibit did not testify, but there was no credible reason to doubt the exhibit's authenticity. Even given less weight, Exhibit H is consistent with and cumulative to Exhibits G, N and O and supervisor Terrell's credible testimony.

[10] MaGik is a computerized tracking and database entry system used by DCS and FCMs.

for classified employees, but immediate discharge is possible for severe acts of bad conduct.[11] (Ex. D.)

22. Petitioner Porter was discharged from classified employment with DCS on June 13, 2013. A pre-deprivation hearing was held that morning. Petitioner Porter was alleged and found by the pre-deprivation officer to have "falsified a government document" in a May 8, 2013 contact in MaGik (See Ex. I), in violation of enumerated DCS and Indiana policies. (Ex. F.)

23. The Mother T.J. of the Assessed Family stated in a signed writing on June 5, 2013 that "My [17 Year Old daughter, A.J.] was not interviewed by [Petitioner] Stacie Porter to my knowledge[.] I have not owned a computer during this time." (Ex. G.)

24. The 17 Year Old daughter of the Assessed Family stated in a signed writing that she "never spoke with [Petitioner] Stacey (sic) Porter from Child Protective Services." (Ex. H.)

25. Petitioner Porter created or otherwise completed the "Contact Log Report"[12] for the MaGik reports of May 7 and May 8, 2013[13] relating to the Assessed Family. This is Exhibit I and the May 7-8 entries are central to consideration of this case. Later, around June 3, 2013, Petitioner Porter went into the computer and amended the Contact Log Report after one or more conversations with her newer supervisor, witness Terrell. In particular, Petitioner told Terrell that she had simply forgotten to add the 17 Year Old into the Contact Log Report but that Petitioner had seen and spoken with the 17 Year Old on May 8, 2013, at the home. (Ex. I, Terrell and Porter testimony, and parties' arguments.)

26. It is the amended version of the Contact Log Report which exists in evidence. No witness disputed this occurred – Petitioner claims she amended the report to show she did see and speak with the 17 Year Old on May 8, 2013, at the Assessed Family's home. Meanwhile, DCS alleges that Petitioner never saw or spoke with the 17 Year Old and instead added the supposed contact dishonestly or fraudulently. (Id.)

27. On May 7, 2013, Petitioner filled out a MaGik contact log report that she had spoken with the 11 Year Old daughter, E.A. Petitioner met the 11 Year Old, not in the home, but at her elementary school that day. (Id.)

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[11] Here a recent Reprimand, albeit on other grounds, preceded discharge. This reinforces that progressive discipline was followed as to Petitioner's overall employment status.

[12] This Contact Log Report was also referred to as a form '310 Report' by witnesses.

[13] The report shows these dates as the contact dates and time. Some additional entries after May 8 are irrelevant to this case. The corner of the document lists June 5, 2013, which is the last date any person made a change in the MaGik computer system as to Exhibit I. As to substance, this was Petitioner.

28. The parties agreed that Petitioner did meet with the Mother on May 8, 2013, at the Assessed Family's home. The parties agreed that Petitioner did meet with the 11 Year Old on May 7, 2013. The parties agreed that no one could mistake the 11 Year Old for the 17 Year Old. (Id.)

29. On May 8, 2013, the mystery material to this case gets rolling. Petitioner entered data on Exhibit I, the MaGik Contact Log Report, indicating she had gone to the home in the morning and personally met with Mother and the 17 Year Old (they were marked "Present"). (Id.) Page 2 of the contact discusses in detail Petitioner's meeting with the Mother. The end of the narration states: "FCM [Porter] noted that [17 Year Old] daughter was present in the home at this time; [17 Year Old] was sitting at the computer looking online at books to read online." Petitioner testified that she wrote these words. There is no dispute about that. (Id.)

30. Thereafter, the next sentence(s) in the report states: "FCM noted that formal interview was completed with [17 Year Old]; [17 Year Old] did let FCM Porter know that things are good at home and that [11 Year Old] is whiny. FCM completed a walk through of the home; [with no safety concerns].

31. Petitioner testified that an unknown DCS person must have entered the document and wrote the words before the semi-colon: "*FCM noted that formal interview was completed with [17 Year Old];*" Petitioner Porter agreed that she wrote the remainder of the post-colon sentence and all other substantive sentences in Exhibit I. (Id.)

32. The ALJ, as the finder of fact, must resolve the handwriting and authenticity argument. It is found that Petitioner did write the entire disputed sentence pre and post colon, not some other unidentified person. Petitioner's credibility was low. She could not identify the mystery author or even offer a theory as to who that person was at trial. Moreover, the document itself just above the alleged doctored entry (from Petitioner's view) shows Petitioner admittedly using the exact same grammar and sentence structure to express thoughts she testified were hers. "FCM noted ...[substance of statement]; [next statement]" (Id.)

33. Following a family assessment and MaGik Contact logging, a 311 Report is created. Petitioner was the first author of the 311 Report (like the 310 Report), but both forms/reports require final DCS supervisor approval. This 311 Report is the official investigation of an alleged child abuse or neglect matter by DCS.

34. Petitioner's 311 Report for the Family incorrectly lists that the 17 Year Old daughter was "Present" or contacted by Petitioner on May 8, 2013.

35. The 311 Report found the neglect was "Unsubstantiated", which for all practical purposes ended that Assessed Family inquiry. (See Ex. J.)

36. In the 311 Report, Petitioner describes meeting with the Mother, and 11 Year Old, but, notably, not the 17 Year Old, despite marking her "Present". (See Ex. J.)

37. Petitioner Porter made additional handwritten notes of the Assessed Family contacts on May 7 and May 8, 2013. The notes claim that Petitioner met with the 17 Year Old on May 8, 2013, but lack any detail about that supposed meeting. Only Petitioner's conversation with the Mother is meaningfully recorded. (See Exhibits K and L.)

38. Supervisor Briley Terrell was formerly a co-worker of Petitioner Porter. By late May and early June, 2013 she was Petitioner's direct supervisor. On or about June 3, 2013, Terrell reviewed Petitioner's initial draft of the Contact Log/Exhibit I and asked Petitioner whether she had left out a contact report for the 17 Year Old. Terrell knew that a 17 Year Old lived in the family from other data. (Terrell and Porter testimony.)

39. Petitioner Porter responded that Petitioner had merely forgotten to record the 17 Year Old's presence at the home on May 8, 2013. Thereafter, Petitioner Porter went into the computer and amended the Contact Log/Exhibit I to show that contact. (See Exhibits I, M, N and O, testimony supra.)

40. On June 5, 2013, supervisor Terrell sent Petitioner an email related to the Family Assessment. Terrell noted that the 17 Year Old had been reported at home on a school day and asked if Petitioner had recorded the information wrong. (See Ex. M) A similar conversation happened June 6, 2013. Petitioner remained very firm that she had seen the 17 Year Old at the home on May 8, 2013. (See Exhibits I-O, testimony and legal argument supra.)

41. Suspicious, Terrell began investigating in earnest between June 5 and 13, 2013. Terrell spoke with the Mother and 17 Year Old more than once, including in person and by phone. She asked open ended questions about Petitioner's contacts with the Assessed Family, and pressed for answers, reconfirming out of due care they were certain that Petitioner had never spoken with the 17 Year Old on May 8, 2013, and that no computer was still in the home. (Id.)

42. Part of the investigation included Terrell personally going to the Assessed Family home. Terrell saw the front room without a computer or computer table (but did not enter or search the entire house). (Id.)

43. The Mother advised that on May 8, 2013, the 17 Year Old had either not been home at all or, at most, was sleeping upstairs. Mother vacillated on that. However, the Mother was consistently certain that Petitioner had never spoken to the 17 Year Old on May 8, 2013. The Mother also advised that an older pregnant cousin with a similar first 'A' name was home that day. (Id.)

44. However, this Older Cousin was obviously pregnant and looked physically different than the 17 Year Old. The Older Cousin could not be reasonably mistaken for the 17 Year Old. Terrell relayed Petitioner's description of the 17 Year Old from May 8, 2013 – nobody at the home had that description, then or prior. Mother and 17 Year Old were adamant that they did not own a computer, then or on May 8. The school had taken away the 17 Year Old's loaned computer at the previous winter break. No table or location fit the description that Petitioner had provided for the living room[14]; the nearest table was in the kitchen. (Id.)

45. Terrell contacted the 17 Year Old's school to learn that the 17 Year Old had dropped out of school about April 25, 2013. At one point, around June 6, 2013, and when questioned, Petitioner Porter told Terrell that the 17 Year Old was going to school for a half day on May 8, 2013. (Id.) This was not true and contrasts sharply with all other written exhibits and spoken testimony.

46. Lastly, the 17 Year Old's physical description Petitioner proffered during the pre-deprivation process did not match Terrell's investigational observations. Petitioner described the 17 Year Old as thin, and noted the teenager was wearing a white spaghetti strap tank top with a greenish blue bra and pajama pants. Terrell observed the teenager to be heavy set during her home visit. The Mother and 17 Year Old explained that no one present in the home would have been wearing the type of clothing Petitioner mentioned. (See Exhibit N and Terrell testimony.)

47. *The Discharge Further Considered.* The 17 Year Old was not home when Petitioner came to the Assessed Family's residence on May 8, 2013. Even if the 17 Year Old were home, she was asleep elsewhere, not in the living room and did not speak with Petitioner.

48. Petitioner Porter, more likely than not, saw the visibly pregnant Older Cousin somewhere in the home that day. The Older Cousin also has an 'A' first name, like the 17 Year Old, but could not be reasonably confused visually with the 17 Year Old.[15]

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[14] For example, Petitioner wrote in Exhibit I that the 17 Year Old was sitting at a computer implying a table in the living room, which is what she told Terrell. Petitioner's statement that the 17 Year Old was reading online books is not credible because the 17 Year Old had already dropped out of school.

[15] It should be understood that this is the ALJ giving Petitioner the benefit of the doubt that she actually saw another person (definitely not the 17 Year Old) there at all. It is also possible the Petitioner did not see even the Older Cousin on the May 8, 2013 visit.

49. Petitioner did not want to repeat the task of contacting the Assessed Family's 17 Year Old. She felt the assessment was finished. At one point in her testimony Petitioner admitted she should have originally completed the contact report with the 17 Year Old on May 8. She told supervisor Terrell that the she had simply forgotten to put the 17 Year Old in the Contact Log Report. Additionally, Petitioner repeatedly insisted on her precision that the 17 Year Old had been at the home on May 8, all as discussed. (Porter and Terrell testimony.)

50. Petitioner could be very competent at her work, but highly defensive too. Petitioner did not like being questioned by supervisor Terrell or the pre-deprivation officer about the 17 Year Old's status. See Reprimand section.

51. Once questioned, Petitioner Porter took a wrong turn that cost her job. Petitioner went back into the Contact Log/Exhibit I and materially falsified the record to reflect that she saw and spoke with the 17 Year Old on May 8, 2013. Petitioner had, at best, known that the Older Cousin was there and molded her memory and embellished the story.[16]

52. The evidence of deception is strong, and certainly supported by a preponderance of the credible evidence. The 17 Year Old was described by Petitioner as having a computer. Neither Mother nor the daughters had a computer. The 17 Year Old had already dropped out of school, making reading online books unlikely. There was no table to sit at in the front room, just the kitchen. (Terrell testimony.) The 17 Year Old's clothing description and body type provided by Petitioner were wrong. The not-pregnant 17 Year Old could not fairly be confused for either the visibly pregnant Older Cousin or the 11 Year Old.

53. Both the Mother and 17 Year Old denied speaking with Petitioner Porter on May 8, 2013, both in writing and while speaking to Terrell. The 17 Year Old was repeatedly asked by Terrell if she had spoken with Petitioner. The 17 Year Old said no every time. The 17 Year Old suggested to Terrell that Petitioner had only spoken to the 11 Year Old on May 7, 2013, and perhaps confused the two of them. Both the Mother and 17 Year Old denied owning a computer at that time and denied any other computer in the home after winter break, months before.

54. The Mother, and by extension the 17 Year Old, had little reason to lie to Terrell in a signed writing that could come back to bite them. No animosity between the specific Assessed Family and Petitioner appears in the record. DCS served families do sometimes

[16] If Petitioner mistook the pregnant Older Cousin for the 17 Year Old, such does not help Petitioner's position. Petitioner failed to interview the Older Cousin or compare the 'A' first names or the last names. Moreover, seeing 'a pregnant 17 Year Old' would have been cause for extra questions. Petitioner did not do that. Finally, if Petitioner initially had mistook the pregnant Older Cousin for the 17 Year Old it became an outright falsehood once she amended the report to include spurious details that never happened.

complain about the conduct of DCS case workers, but it usually happens after a 'Substantiation' report. E.g. an assessed person is more often going to hope they are off the hook before rocking the boat or making a DCS assessor like Petitioner mad. Here the claim of neglect was found 'Unsubstantiated'. Terrell was also credible. No animosity between Terrell and Petitioner appears in the record.[17]

55. Petitioner had written notice of a duty not to materially falsify the Contacts Log Report (Exhibit I). She had a duty not to record a 'Present' for the 17 Year Old on the 311 Report if not present. Petitioner also had duties to perform the case assessment accurately even if acting in good faith and simply being mistaken. The applicable written policies (see Exhibits A-D) were of uniform application to those in Petitioner's FCM position.

56. It is also notable that Petitioner's supervisors like Berry and Terrell initiated the discharge process and had factual input, but did not make the discharge decision. The final state decision maker before Step litigation was made, as required, by the pre-deprivation officer after a pre-deprivation meeting. The ALJ reviews the state's entire action de novo (no deference) but notes that there was no doubt in testimony among any of the state actors that a grave breach of trust had occurred by Petitioner.

57. Petitioner breached her material duties to the employer DCS providing just cause for the discharge.

58. *Summary of the Factual Evidence.* This case is a cautionary tale. In April, 2013, Petitioner Porter was defiant or insubordinate to supervisors leading to a Reprimand. Petitioner had a long cyclical history of confrontations with supervisors. A single Reprimand throughout that time was progressive and reasonable action by the state employer DCS.

59. A month or so later, around May 8, 2013, Petitioner did not fully complete an assessment when information about a 17 Year Old in the Assessed Family's home visited was left out. After being questioned by her new supervisor, Terrell, instead of contacting the 17 Year Old and/or correcting the incomplete information, Petitioner falsified the Contact Log (310) Report to attempt to show completion. Petitioner also inaccurately marked the 17 Year Old present on the 311 Report. The falsified report(s) made DCS suspicious, leading to an internal investigation.

[17] Terrell and Petitioner had been co-workers that got along, albeit with different work styles, before Terrell got promoted. Petitioner might have disliked answering to her former co-worker, but this is nothing more than speculation. Terrell was still the supervisor and Petitioner was required to give an honest answer about the Contact Log entries.

60. Petitioner's fiction was then caught by the employer DCS, and just cause supported the discharge by a preponderance of the credible evidence.

61. A materially falsified government report is the number one listed way to be terminated under DCS/SPD state written policies. (Ex. D.)

62. The ALJ was firmly convinced at the hearing by the state's witnesses that had Petitioner merely taken responsibility for completing the form incorrectly she might have been counseled or suffered mild discipline. Now the ALJ has no choice but to affirm the just cause inspired discharge for material violations of DCS and SPD written policies. I.C. 4-15-2.2-42(g)

63. At trial, Petitioner doubled down and persisted under oath that she interviewed the 17 Year Old on May 8, 2013, when that could not have been so. The most glaring fiction is the reported presence of a computer that did not exist in the home.

64. Furthermore, other evidence concerning the various descriptions of those involved, the missing table in the front room and the oddity of Petitioner reporting the 17 Year Old in a half day of school or looking up online books when the 17 Year Old had dropped out of school compounded the weight of the fiction.

65. At best, Petitioner substituted her possible glimpse of the family's Older Cousin (who was pregnant and looked different) in the house for the 17 Year Old in the altered Contact Log report. Or maybe, Petitioner knew the 17 Year Old was sleeping elsewhere (the Mother couldn't be sure). What is sure is that Petitioner never spoke to the 17 Year Old on May 8, 2013. No computer existed contrary to Petitioner's material statements on a written government report. (Ex. I.) Even the best case alternate factual scenarios for Petitioner support discharge. Respondent DCS has supported the just cause burdens to reprimand and discharge Petitioner by a preponderance of the credible evidence.

III. Conclusions of Law

1. By a preponderance of the credible evidence, Respondent DCS proved just cause for the termination and reprimand of Petitioner Porter. Respondent DCS thus established its burden of required proof to show just cause for the termination under the classified Civil Service provisions and AOPA. I.C. 4-15-2.2; and I.C. 4-21.5-3. Petitioner's pre-deprivation and procedural rights, under the classified provisions of the Civil Service System, were also respected in the discipline processes.

2. At the relevant times, Petitioner Porter did not satisfy the reasonable performance expectations or policies of Respondent DCS or Indiana. These expectations and

policies (discussed in the facts above) were in writing. Petitioner had reasonable notice of them, and there is no evidence to show any gap in consistency of their application to those similarly situated by DCS.

3. All prior sections are incorporated by reference as necessary. To the extent a conclusion of law stated herein is a finding of fact or the reverse, it shall be so deemed and remain effective.

IV. Non-Final Order

Judgment is entered in favor of Respondent DCS upon the merits following an evidentiary hearing, witness testimony and written exhibits in this matter. Respondent DCS's written reprimand and termination of Petitioner Porter's state employment are **UPHELD** as being with just cause. Petitioner Porter's consolidated complaints are all **DENIED** in their entirety. The parties shall bear their own fees and costs.

DATED: January 22, 2014

Hon. Aaron R. Raff
Chief Administrative Law Judge
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