



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

WINNIFRED CARTER

Employee,

vs.

DEPARTMENT OF EDUCATION,

Management.

ADVERSE ACTION APPEAL
CASE NO. 14-AA07S

DECISION AND JUDGMENT

I. INTRODUCTION

On Thursday, February 11, 2016, the above referenced adverse action appeal commenced before the Civil Service Commission of Guam, for the hearing on the merits. Attorney Daniel Somerfleck, appeared with the Employee Winnifred Carter and Mr. Robert E. Koss, Lay Representative of the Department of Education, and Mr. Joe Sanchez, Deputy Superintendent of C&II appeared on behalf of Management.

II. JURISDICTION

The Civil Service Commission has jurisdiction over this matter pursuant to the Organic Act of Guam, Title 4 of the Guam Code Annotated §§4401, *et seq.*, and the Department of Education's Personnel Rules and Regulations

III. FACTUAL BACKGROUND

June 18, 2013 Employee was reprimanded for the discourteous treatment of a student when she squeezed a student's cheeks to see if the student was chewing gum.



1 **Feb. 25, 2014**

Principal of Jose Rios Middle School received an official complaint from a parent present in the main office whom heard the employee tell a student, *“If you had done that to me, I would have broken your jaw,”* or some similar words to this effect. Parent complained that the Employee was unprofessional because her statement was inappropriate coming from a teacher or professional educator.

7 **April 7, 2014**

Winnifred Carter was issued a Final Notice of Adverse Action for the discourteous and disrespectful treatment of a student on Feb. 25, 2014 and subsequently suffered a two (2) day suspension without pay on April 14, and 15, 2014.

11 **April 8, 2014**

Winnifred Carter timely filed an Adverse Action Appeal with the Civil Service Commission. No motions were filed and the matter proceeded to merit hearing, commencing February 11, 2016.

14 **IV. FINDINGS**

- 15 1. After a careful consideration of the evidence exhibits and hearing the testimony of
16 Employee, the finds that there is clear and convincing evidence that the Employee made
17 the statement to a student, *“If you had done that to me, I would have broken your jaw”* or
18 words to that effect.
- 19 2. The Commission further finds that the employee’s comment to the student could promote
20 violence as means of conflict resolution and is inconsistent with DOE’s standards for
21 teacher conduct and its policies.
- 22 3. The Commission finds that the Employee was discourteous and disrespectful to the
23 student involved.
- 24 4. The Commission finds that employee was served a reprimand for the discourteous
25 treatment of a student eight months before the incident at hand and that DOE’s action to

1 suspend the employee was appropriate and consistent with its policy for progressive
2 discipline of classified employees.

- 3 5. The Commission finds that threats against a student by an educator betrays public trust
4 because the student may become fearful of attending school and therefore interferes with
5 the child's right to receive a free and appropriate public education.

6 V. DISCUSSION

7 Employee made several arguments regarding the sufficiency of the evidence. In
8 particular were the introduction of documents into evidence that were not supported by the
9 testimony of those who wrote the documents, not signed in a particular place on the document,
10 and so on. Employee appears, roughly, to argue that the documents submitted by Management
11 do not conform to the Guam Rules of Evidence and that really only the Employee's testimony
12 should be considered, as she was the only one to testify.

13 We note that 4 GCA § 4409 states: "The rules of the [Civil Service] Commission are
14 subject to the Administrative Adjudication Law." Chapter 9 of Title 5 of the GCA is the
15 Administrative Adjudication Law. We observe that 5 GCA § 9226 states:

16 The hearing need not be conducted according to technical rules relating to
17 evidence and witnesses. Any relevant evidence shall be admitted if it is the
18 sort of evidence on which responsible persons are accustomed to rely in
19 the conduct of serious affairs, regardless of the existence of any common
20 law or statutory rule which might make improper the admission of such
21 evidence over objection in civil actions. Hearsay evidence may be used for
the purpose of supplementing or explaining any direct evidence but shall
not be sufficient in itself to support a finding unless it would be admissible
over objection in civil actions. The rules of privilege shall be effective to
the same extent that they are now or hereafter may be recognized in civil
actions, and irrelevant and unduly repetitious evidence shall be excluded.

22 In other words, this body does not follow the Guam Rules of Evidence; rather, we have a
23 more informal, streamlined process that is more inclusive. While Employee's objections would
24 apply in a civil action in Superior Court, they have no basis under the Administrative
25 Adjudication Law that we apply. Applying strict rules of evidence might necessitate several

1 days of hearing, as the author of each document is called to testify to establish foundation,
2 authenticity, and overcome hearsay objections. Here, we were able to conduct the hearing in one
3 evening through more inclusive rules that allow, for example, hearsay evidence. This appears to
4 be what the Legislature intended.

5 The evidence of statements given to Management of the incident appears to be the kind
6 of evidence a responsible person would rely upon. We have no reason whatsoever to believe that
7 Management perfidiously submitted forged documents to frame the Employee in an effort to
8 uphold a two day suspension. Furthermore, Employee had the opportunity to rebut the
9 documents through the defense of her case; for example, she could have called as a witness one
10 of the authors of the document to state that he did not actually author that document or that it had
11 been altered. Employee declined to do so.

12 Furthermore, through Employee's own testimony it is uncontested that: 1) she signed a
13 statement indicating that she made a statement to a student relating to breaking his jaw; 2) a
14 parent (not of the child being spoken to) who happened to be in the office at the time overheard
15 the statement, found it wildly inappropriate, and made a complaint to Employee's supervisor;
16 and, 3) Employee had months earlier received a reprimand for squeezing a student's cheeks.
17 Under the circumstances, we find Management's adverse action to be appropriate.

18 VI. CONCLUSION

19 The Civil Service Commission, by a vote of 4-2 rule that management has met its burden of proof
20 and sustains the final notice of adverse action that suspended the employee for two days.

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22 So Adjudged this ^{29th} 27 of March 2016

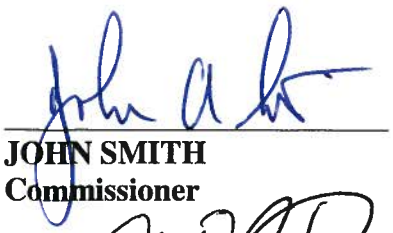
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EDITH PANGELINAN
Chairperson

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DANIEL D. LEON GUERRERO
Vice-Chairperson



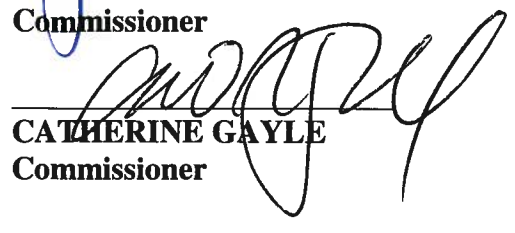
PRISCILLA T. TUNCAP
Commissioner



JOHN SMITH
Commissioner



LOURDES HONGYEE
Commissioner



CATHERINE GAYLE
Commissioner

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