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OFFICE OF ADMINISTRATIVE HEARINGS
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STATE OF NORTH CAROLINA

COUNTY OF CURRITUCK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 OSP 08518

Judith M Ayers Petitioner, v. Currituck County Department of Social Services Respondent.	**FINAL DECISION**

On April 19, 2018, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing, pursuant to Chapters 126 and 150B of the North Carolina General Statutes, of Petitioner's appeal of her termination from employment by Respondent. On April 30, 2018, the undersigned issued an Order ruling that Respondent lacked just cause to terminate Petitioner's employment and ordered Petitioner to file a proposed Final Decision.

APPEARANCES

For Petitioner: John D. Leidy, Hornthal, Riley, Ellis & Maland, LLP

For Respondent: John Morrison, The Twiford Law Firm

ISSUE

Did Respondent have just cause, pursuant to N.C. Gen. Stat. §126-35, to discharge Petitioner from employment for unacceptable personal conduct?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. § 126-35
25 NCAC 1I .02301, .2304, .2305

WITNESSES

For Petitioner: Judith Ayers, Kathy Romm

For Respondent: Samantha Hurd, Sam Taylor, Tyeshia Phelps, and Christal Berry

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 - 13

For Respondent: 1 - 16

FINDINGS OF FACTS

Petitioner's Employment History

1. On September 17, 2007, Petitioner began her employment with Respondent Currituck County Department of Social Services ("Currituck DSS") as a Social Worker III.

2. Respondent Currituck DSS is divided into five separate units, each of which is headed by a supervisor. The supervisors report to the Director of Currituck DSS.

3. Petitioner was promoted through the ranks and became Supervisor III over the Child Protective Services Unit on or about March 28, 2011.

4. Kathy Romm served as the Director of Currituck DSS for 19½ years. Ms. Romm hired Petitioner, supervised, and evaluated Petitioner until Ms. Romm's retirement on June 30, 2017. Ms. Romm also made the decision to promote Petitioner to Supervisor of the Child Protective Services Unit in March 2011.

5. In 2015, Ms. Romm began making plans to retire and asked Petitioner if she was interested in being promoted to the position of Director. Petitioner was highly respected by the Currituck DSS Board of Directors and was Ms. Romm's first choice as her successor. Initially, Petitioner indicated that she was interested in the position. Petitioner later decided she did not want to commit to spending the next ten years as the Director of Currituck DSS and informed Ms. Romm that she had decided against becoming Director.

6. Ms. Romm asked another DSS employee, Samantha Hurd, if she was interested in the position. Ms. Hurd confirmed that she was interested. Ms. Hurd had worked as a social worker for Respondent since April 2011. Ms. Hurd was eventually promoted to a supervisor position over the Foster Care Unit. On July 1, 2017, Ms. Hurd became the Director of Currituck DSS and has continued to serve in that capacity since that time.

7. Both the Foster Care Unit and Child Protective Service Unit provide child welfare services. There is often some friction between the two units' employees over the assignment and management of cases.

8. Ms. Hurd, Petitioner, and Ms. Romm all agreed at the hearing that there has been a history of friction between Petitioner and Ms. Hurd even before Ms. Hurd became Director of Currituck DSS. Petitioner and Ms. Hurd had a difficult but professional relationship as their personalities did not mesh. They had trouble talking to each other and often did not understand each other's messages. Petitioner and Ms. Hurd had significant philosophic differences regarding personnel issues. Petitioner thought Ms. Hurd criticized her work and her on a personal level. Petitioner and Ms. Hurd complained about each other to Ms. Romm. Petitioner asked Ms. Romm to meet with them, because Petitioner had used all her strategies in attempting to work with Ms. Hurd. Ms. Romm met with Ms. Hurd and Petitioner and discussed their difficulties. All three agreed they had to work together cooperatively.

9. Petitioner and Ms. Hurd are both white females.

10. Ms. Romm performed the annual evaluations of Petitioner for the years 2013, 2014, 2015, 2016 and 2017. (Pet. Exs. 9-13). These evaluations show that Petitioner exceeded her supervisor's expectations in all areas on a consistent basis. On these evaluations, Ms. Romm rated Petitioner as "Excellent" in all areas. An "Excellent" rating is the highest possible evaluation rating an employee can receive in a performance evaluation.

11. Petitioner had never received any disciplinary action of any sort throughout her employment with Respondent until her dismissal.

12. Ms. Romm never had any concerns about Petitioner's professionalism, adherence to policy, attitude, or her work performance.

The Work Environment at Currituck DSS

13. Respondent's staff works in a high-pressured environment. Staff working in child welfare services regularly experiences a particularly high degree of stress in their work. Staff in these units routinely deals with families in crisis and children who are subjected to abuse and neglect. Many of these situations are disturbing and grave.

14. It is common for staff in Respondent's Child Welfare Service units to have an unusual sense of humor. The supervisors allow their staff to use "gallows humor," off-color humor, off-color jokes, and slang on occasion to relieve stress and anxiety at work.

15. Staff at Currituck DSS also uses language and speech amongst themselves that is quite different than the way they would talk to clients or members of the public. For example, Ms. Hurd sometimes refers to parents of the children served by Currituck DSS as "worthless," "liars," "trifling," or dishonest. Ms. Hurd has used profanity in the workplace and said, "I'll cut him [insert an employee's name]," even though she didn't mean it.

16. Respondent's staff are careful not to use inappropriate language or unprofessional speech when dealing with clients or members of the public.

17. Throughout her term as Director of Currituck DSS, Ms. Romm dismissed three individuals for unacceptable personal conduct. Each one of these employees had engaged in a pattern of unacceptable personal conduct, or had repeatedly engaged in acts of dishonesty before their termination. Ms. Romm had given each of them warnings about their misconduct prior to terminating them. There is a tradition at Currituck DSS that individuals are not terminated for unacceptable personal conduct without first being given warnings and notice of their unacceptable conduct.

18. Neither Ms. Romm nor Ms. Hurd ever dismissed an employee of Currituck DSS for using inappropriate or unacceptable language, including using any racial terms.

November 3, 2017 Incident

19. In November 2017, Petitioner was a career status State employee who worked as a Supervisor III for Currituck DSS.

20. On the afternoon of November 3, 2017, Petitioner was working in a spare office on various client files. At approximately 4:45 p.m., Ms. Hurd entered the spare office where Petitioner was working to ask her for some missing demographic information from a few client intake forms, including one for the "F" family. Ms. Hurd needed the data for a report she was preparing.

21. As she and Ms. Hurd went through the forms, Petitioner could provide Ms. Hurd the race for most of the families listed on the forms, although she was not familiar with and did not know the race of the "F" family. The social worker who had recorded the information for the "F" family listed the race of the family member as "NR."

22. "NR" is not a recognized or standard code used by Respondent. Neither Petitioner nor Ms. Hurd knew what that term meant at the time.

23. During the conversation between Petitioner and Ms. Hurd, Ms. Hurd asked more than once "what does this ['NR'] mean?" Finally, Petitioner responded, "I think it means "Negra-Rican." Petitioner believes she used the word "Negra" as her grandmother used that word to refer to African-Americans. Ms. Hurd believes Petitioner said the word "nigger" (hereinafter "n" word).

24. Petitioner immediately regretted her statement, told Ms. Hurd that she could not believe she had said that, and apologized to Ms. Hurd.

25. Ms. Hurd's reaction was also one of surprise.

26. When Petitioner made the statement, she was sitting at the desk in the vacant office. Ms. Hurd was standing over the desk where she had been standing while reviewing forms that were missing information. The office was fully enclosed, although the door to the office was open. No one else was present in the spare office with Petitioner and Ms. Hurd. Ms. Hurd thought two African-American employees, Tyeshia Phelps and Tiffany Sutton, were in their offices nearby at the time. Ms. Hurd did not know whether anyone heard Petitioner's statement.

27. Shortly after Petitioner made the statement, Petitioner and Ms. Hurd left the vacant office to find the file for the "F" family. On the way to locate that file, Petitioner again apologized to Ms. Hurd and said, "I hope you do not tell anyone about what I said." Petitioner made this request because she was embarrassed and surprised by what she had said.

28. When Petitioner reviewed the "F" family file, she found that "F" family race was "white" and informed Ms. Hurd. Petitioner and Ms. Hurd had no further discussion that day about the November 3, 2017 Incident.

Disciplinary Process

29. During the weekend after the November 3, 2017 Incident, Ms. Hurd conferred briefly with the attorney for Respondent, Mr. Morrison, and the personnel consultant for Respondent, Drake Maynard. After conferring with them, Ms. Hurd decided to summon Petitioner to a pre-dismissal conference early on Monday morning, November 6, 2017.

30. On Monday, November 6, 2017, Ms. Hurd went to Petitioner's office as soon as Petitioner arrived to tell her that she needed to see her at 10:30 a.m. to attend a pre-dismissal conference regarding the inappropriate comment she had made. Petitioner was alarmed. Ms. Hurd did not provide Petitioner with any documentation at that time.

31. Petitioner attended the pre-dismissal conference at 10:30 a.m. that morning. Petitioner acknowledged that she made a statement on November 3, 2017 that was inappropriate and unacceptable. She acknowledged that she said it was "bad" directly after she had said it to Ms. Hurd. Petitioner reminded Ms. Hurd that she did not make this statement to a client or to any other employee. Petitioner pointed out that no one else heard the statement, and that she did not believe it warranted any disciplinary action.

32. Ms. Hurd asked Petitioner why she had used "that word." Petitioner explained that it was because they were discussing a "word problem," and that is what came to mind. Ms. Hurd asked again "why that word" and pointed out that it was not a code or anything used by Respondent to describe a client's race. Petitioner explained that she was shocked by her own statement, and that she did not use those words in her personal life or at work.

33. At the outset of the pre-dismissal conference, Petitioner gave Ms. Hurd a letter that she had written the morning of November 6, 2017. (Pet. Ex. 4). In the letter, Petitioner reminded Ms. Hurd that immediately after she made the comment on Friday afternoon, Petitioner told Ms. Hurd she could not believe she had just said that, and she apologized to Ms. Hurd. Petitioner also recognized that the comment was "unacceptable. It would be unacceptable in any setting, personal or professional." (Pet. Ex. 4).

34. After some discussion during the pre-dismissal conference, Ms. Hurd provided Petitioner with a letter dated November 6, 2017 and informed Petitioner that the letter placed Petitioner on investigatory leave. (Pet. Ex. 3). Ms. Hurd explained what "investigatory leave" meant. Petitioner did not read the entire letter from Ms. Hurd during the pre-dismissal conference.

35. At the end of the pre-dismissal conference, Ms. Hurd collected Petitioner's keycard and escorted her out of the building.

36. Following the pre-dismissal conference, Petitioner read Ms. Hurd's letter in its entirety and prepared another letter to Ms. Hurd, also dated November 6, 2017. (Pet. Ex. 5). Petitioner emailed this letter to Ms. Hurd who received it on November 7, 2017. In that letter, Petitioner pointed out that she had become aware of the pre-dismissal conference less than 2 hours before it began, and further explained that it was difficult to fully absorb "all that you said and offered in writing in our brief meeting." Ms. Hurd's "synopsis" is not exactly how Petitioner recalled the exchange on November 3, 2017. Petitioner did "not recall saying the words as they are spelled in your letter, though I do not deny that I did say two unrelated words in the tone of answering a non-sensible word problem." (Pet. Ex. 5).

37. On November 8, 2017, Ms. Hurd called Petitioner to inform her that she had decided to terminate her employment and that a letter would follow. Ms. Hurd sent a letter dated November 8, 2017 to Petitioner, setting forth the basis upon which Respondent was terminating Petitioner. (Pet. Ex. 6).

38. After the pre-dismissal conference, Ms. Hurd did not perform any further factual investigation before deciding to terminate Petitioner. Although Ms. Hurd believed two African-American employees might have been able to hear the comment during the November 3, 2017 Incident, she did not question those employees at that time. She made no effort to determine whether anyone else heard the comment until she questioned Ms. Phelps during preparations for the hearing that was conducted before the undersigned. During Ms. Hurd's preparations for the contested case hearing, Ms. Hurd learned that Respondent's employee, Ms. Phelps, did not hear Petitioner's statement to Ms. Hurd on November 3, 2017. Ms. Hurd has never tried to determine whether the other African-American employee, Tiffany Sutton, heard Petitioner's statement on November 3, 2017.

39. Petitioner followed all the steps of Respondent's internal appeals process. Respondent issued its Final Agency Decision on November 21, 2017, upholding the decision to dismiss. (Pet. Ex. 8).

40. No one heard Petitioner's statement on November 3, 2017 other than Ms. Hurd.

41. Petitioner had never used similar language at work before November 3, 2017 and had never used a racial slur at work until that day.

42. Petitioner does not deny, and there is no dispute, that the statement she made during the November 3, 2017 Incident was inappropriate and unacceptable. Such language is not allowed at Currituck DSS. While Petitioner believes she used the word "Negra-Rican," she agrees that even that word is not appropriate to use at work.

43. While Ms. Hurd claimed she was "shocked" by Petitioner's statement on November 3, 2017, she never claimed she found such statement hostile or abusive. Ms. Hurd never indicated that she was offended, insulted, or demeaned by Petitioner's statement. Further, Ms. Hurd did not claim that she found Petitioner's statement to interfere with her own performance or adversely affect anyone's employment opportunities.

44. Respondent provided no written policy that it had adopted that prohibits Petitioner from making the statement she made to Ms. Hurd in a private conversation that was not heard or witnessed by anyone who was offended or felt harassed by the statement.

45. Before Ms. Hurd dismissed Petitioner from employment, she had not dismissed or even disciplined any other employee in her capacity as Director.

46. Ms. Hurd felt Petitioner's statements in the pre-dismissal conference detailing her recollection of her conduct on November 3, 2017 were significantly different than Petitioner's recollection in her second letter of November 6, 2017. (Pet. Ex. 5). However, during the pre-dismissal conference, Ms. Hurd did not spell out the offensive phrase she thought she heard Petitioner say during the November 3, 2017 Incident, and therefore, Petitioner did not have any record to review before the pre-dismissal conference indicating whether Petitioner had used the "n" word" or the word "Negra."

47. Petitioner felt that she had used the word "Negra," and conceded that at the time of the November 3, 2017 Incident, and in all subsequent discussions about it. She also consistently conceded that using the word "Negra" was improper and unacceptable in a work setting. Ms. Hurd misunderstood Petitioner's apology as an acknowledgement that she had used the "n" word which Ms. Hurd believed Petitioner said. However, Petitioner's apology for saying "Negra" was not an acknowledgement by Petitioner that she had used the "n" word as Ms. Hurd alleged. Nonetheless, Ms. Hurd's confusion was not material to the November 3, 2017 Incident and did not cause Ms. Hurd to decide to dismiss or to discipline Petitioner.

48. Respondent produced no evidence at the hearing, and the undersigned does not find that the November 3, 2017 Incident affected Petitioner's ability to perform her job at a satisfactory level.

49. Respondent presented no evidence at the hearing, and the undersigned does not find that the November 3, 2017 Incident affected the reputation of Currituck DSS, at least not before Respondent began preparing for the contested case hearing and Ms. Hurd disclosed the statement to other staff at Currituck DSS.

50. Respondent produced no evidence at the hearing, and the undersigned does not find that the November 3, 2017 Incident affected the morale of any employee other than Petitioner, at least not before Respondent began preparing for the hearing held before the undersigned.

51. Respondent produced no evidence at the hearing, and the undersigned does not find that anyone outside of Currituck DSS was aware of the November 3, 2017 Incident before Respondent began preparing for the contested case hearing.

52. Petitioner's conduct regarding the November 3, 2017 Incident was a one-time event, was not committed maliciously or for gain, was not meant or said for any racially-motivated reason or with any racially-motivated intent.

53. Petitioner's statement during the November 3, 2017 Incident was, at best, a careless mistake and a "momentary lapse in judgment" by a highly effective and accomplished employee.

54. There is no reason to expect, and it is not reasonable to conclude, that Petitioner's comment from the November 3, 2017 Incident will be repeated.

55. There is no evidence that the statement made by Petitioner during the November 3, 2017 Incident, or any similar offensive statement, was made on more than on one occasion.

56. Petitioner's conduct in the November 3, 2017 Incident did not unreasonably interfere with anyone's performance or adversely affect anyone's employment opportunity.

CONCLUSIONS OF LAW

1. All parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper under N.C. Gen. Stat. §126-35(a). To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Petitioner was a career status employee at the time of her dismissal from employment and, as such, was vested with a constitutionally protected property interest in her job under the North Carolina Human Resources Act (N.C. Gen. Stat. § 126-1 *et seq*.); specifically, the just cause provision of N.C. Gen. Stat. §126-35.

3. N.C. Gen. Stat. §126-35(a) provides that, "No career State employee subject to the North Carolina Human Resources Act shall be discharged, suspended or demoted for disciplinary reasons, except for just cause."

4. "Just cause" for the dismissal, suspension, or demotion of a career State employee may be established only on a showing of "unsatisfactory job performance, including grossly inefficient job performance," or "unacceptable personal conduct." 25 NCAC 1I .2304 and .02305 (2016).

5. Respondent bears the burden of proving that Petitioner engaged in unacceptable personal conduct and that just cause existed to terminate Petitioner. N.C. Gen. Stat. § 126-34.02(d); *Granger v. University of North Carolina at Chapel Hill,* 197 N.C.App. 699, 705, 678 S.E.2d 715, 718 (2009).

6. "Just cause, like justice itself, is not susceptible of precise definition." *North Carolina Dept. of Environment and Natural Resources v. Carroll,* 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004). The term "just cause" has been interpreted by our Supreme Court as a "flexible concept, embodying notions of equity and fairness, that can only be determined upon an examination of the facts and circumstances of each individual case." *Id.* "Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations." *Id.*

7. In *Warren v. North Carolina Dept. of Crime Control & Public Safety, North Carolina Highway Patrol,* 221 N.C.App. 376, 726 S.E.2d 920 (2012), the Court of Appeals delineated a three-part inquiry to guide judges in determining whether just cause existed for an employee's dismissal for unacceptable personal conduct:

> We conclude that the best way to accommodate the Supreme Court's flexibility and fairness requirements for just cause is to balance the equities after the unacceptable personal conduct analysis. This avoids contorting the language of the Administrative Code defining unacceptable personal conduct. The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken.

Warren, 221 N.C.App. at 382-83, 726 S.E.2d at 925. (citations and footnote omitted). See *Harris v. North Carolina Department of Public Safety,* ____ N.C.App. ____, 798 S.E.2d 127, 138, *aff'd*, 370 N.C. 386, 808 S.E.2d 142 (2017).

8. Respondent alleged that Petitioner's statement on November 3, 2017 to Ms. Hurd constituted unacceptable personal conduct. 25 NCAC 01I .2304(b) defines the term "unacceptable personal conduct" as including:

> (1) conduct for which no reasonable person should expect to receive prior warning;
> . . .
> (4) the willful violation of known or written work rules; or
> (5) conduct unbecoming an employee that is detrimental to the agency's service; or

9. Appellate cases have made clear that just cause can only be determined from an examination of the facts and circumstances of each individual case. *Harris,* ____ N.C. App. ____, 798 S.E.2d 127, 134. For an act of unacceptable personal conduct to satisfy the just cause standard necessary to support a dismissal, the Court must consider various factors, including the severity, subject matter, harm, and work history of the Petitioner. *Wetherington v. North Carolina Dept. of Public Safety,* 368 N.C. 583, 593, 780 S.E.2d 543, 548 (2015).

10. Likewise, the Court of Appeals noted in *Brewington v. North Carolina Department of Public Safety, State Bureau of Investigation*, ___ N.C.App. ____, 802 S.E.2d 115 (2017) that the Court must analyze the circumstance surrounding unacceptable personal conduct and the severity thereof in deciding whether just cause exists to support a dismissal of a career State employee.

11. In *Granger v. University of North Carolina at Chapel Hill*, 197 N.C.App. 699, 678 S.E.2d 715 (2009), the Court of Appeals found that an employee's use of a racial slur in the workplace, where that employee was overheard by a subordinate, undermined the employee's [Granger] authority and exposed UNC to embarrassment and potential legal liability. The Court noted that:

> Respondent has policies prohibiting racial harassment or harassment in the workplace. Respondent has a duty to enforce these policies, and to further its stated goal of promoting an 'environment of tolerance and mutual respect that must prevail if the University is to fulfill its purposes.' As stated by the Fourth Circuit in *Spriggs v. Diamond Auto Glass,* 242 F.3d 179, 185 (4th Cir. Md. 2001):
>
> Far more than a 'mere offensive utterance,' the word '[-----]' ["n" word] is pure anathema to African-Americans. 'Perhaps no single act can more quickly alter the conditions of employment and create an abusive working

> environment than the use of an unambiguously racial epithet such as '[-----]' by a supervisor in the presence of his subordinates.'
>
> *Id.* We agree with the Fourth Circuit's analysis.
>
> By uttering this epithet in the workplace, where Petitioner was overheard by one of her subordinates, Petitioner undermined her authority and exposed Respondent to embarrassment and potential legal liability.

Id., 197 N.C. App. at 706.

12. The undersigned agrees with the Fourth Circuit's analysis in *Spriggs v. Diamond Auto Glass* that use of the "n" word is far more than just a mere offensive utterance, and is a "pure anathema to African-Americans*"* that creates an abusive working and personal environment. *Id.* at 185. In this case, unlike Pamela Granger in *Granger, supra*., Petitioner did not use the "n" word in referring to another coworker in the Currituck County DSS, but blurted out "Negra-Rican" while trying to interpret the "NR" abbreviation on a form during a private conversation with her supervisor. Unlike Pamela Granger, Petitioner did not say she "would not hire another black person," was not overheard by one of her subordinate employees or any other employee at work, and did not expose Respondent to embarrassment and potential legal liability. *Granger* at 197 N.C.App. at 705. Petitioner surprised herself by saying what she said, immediately regretted her statement, immediately told Ms. Hurd that she could not believe she had said that, and apologized to Ms. Hurd.

13. While Ms. Hurd believed Petitioner spoke the "n" word during their private conversation on November 3, 2017, the greater weight of evidence demonstrated that Petitioner involuntarily blurted out the phrase "Negro-Rican" during a momentary lapse in judgment. Petitioner's statement was not committed maliciously, was not meant or said for any racially-motivated reason, or with any racially motivated intent. Petitioner's explanation for making that statement was credible and believable. Therefore, Respondent failed to prove the first prong of *Warren* by failing to prove by a preponderance of the evidence that Petitioner engaged in the conduct alleged by Respondent.

14. By failing to prove the first prong of the *Warren* analysis, the undersigned need not apply any further analysis in this case. Nonetheless, the undersigned must point out that Ms. Hurd committed error in applying her own *Warren* analysis to the facts of this case:

> (a) Ms. Hurd admitted she did not think it was significant whether anyone heard the statement Petitioner made during the November 3, 2017 Incident. However, whether anyone else heard that statement was a necessary consideration in weighing the evidence to determine whether just cause existed to terminate Petitioner. Ms. Hurd erred by failing to consider that factor.

(b) Ms. Hurd failed to give proper weight to the fact that Petitioner had no prior disciplinary history, had been an outstanding and excellent employee throughout her nearly 11 years of service with Respondent, and had caused no harm to Respondent by the November 3, 2017 Incident.

15. The relevant facts and mitigating factors, including, but not limited to, Petitioner's disciplinary history, her years of service, prior job performance, and the lack of any harm sustained by Respondent, further supports a determination that Petitioner's conduct does not rise to the level of conduct that would justify the severest sanction of dismissal under the totality of facts and circumstances of this contested case.

16. Based upon the foregoing analysis, Respondent lacked just cause to dismiss Petitioner from employment in accordance with the provisions of the policy on disciplinary action, suspension, and dismissal in N.C. Gen. Stat. §126-35.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **REVERSES** Respondent's decision to terminate Petitioner from employment. Respondent shall retroactively reinstate Petitioner to the same or similar position she held prior to her dismissal with full back pay, and reimburse Petitioner for the cost of her reasonable attorney's fees incurred in the litigation of this contested case. Petitioner's attorney shall file a petition for attorney's fees with the Office of Administrative Hearings within 10 calendar days of entry and filing of this Order.

NOTICE

This Final Decision is issued under the authority of N.C. Gen. Stat. § 150B-34.

Pursuant to N.C. Gen. Stat. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C. Gen. Stat. § 7A-29(a).

The appeal must be filed within 30 days of receipt of this Final Decision. This Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision. The notice of appeal must also be filed with the Office of Administrative Hearings, and served on all parties to the contested case hearing.

This the 13th day of June, 2018.

Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 13th day of June, 2018.

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