

# ***Admin. for Children's Services v. Miles***

OATH Index No. 911/13 (Feb. 11, 2013)

Petitioner's undisputed evidence established that respondent, a juvenile counselor supervisor, failed to: investigate and report an incident of child abuse; timely file an incident report; report it to his Tour Commander; have it documented in the logbook; and supervise staff involved in the incident. Respondent was also evasive in his responses to an investigator about the incident. ALJ recommends 45 days suspension without pay.

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## **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**ADMINISTRATION FOR CHILDREN'S SERVICES**  
*Petitioner*  
*-against-*  
**KEITH MILES**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**INGRID M. ADDISON**, *Administrative Law Judge*

The Administration for Children's Services ("ACS" or "petitioner") brought this employee disciplinary proceeding pursuant to section 75 of the Civil Service Law, against respondent Keith Miles, a juvenile counselor ("JC") in petitioner's Movement Control and Communications Unit ("MCCU") at its Crossroads Juvenile Center ("Crossroads"). Petitioner alleged that respondent failed to: immediately investigate and report an incident of child abuse to the Statewide Central Register ("SCR"); report the incident to his tour commander; timely submit an incident report; enter the incident in the school floor logbook; and supervise and/or direct staff involved in the incident. Petitioner further alleged that respondent was deliberately evasive and/or misleading in his responses during an investigation of the incident, in violation of various sections of the agency's Department of Juvenile Justice ("DJJ")<sup>1</sup> Standard of Conduct,

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<sup>1</sup> DJJ became part of ACS in 2010. *See* Admin. For Children's Services, Youth and Family Justice (2013), [http://www.nyc.gov/html/acs/html/yfj/youth\\_family\\_justice.shtml](http://www.nyc.gov/html/acs/html/yfj/youth_family_justice.shtml).

Administrative Order No. 02/04 (issued Nov. 3, 2004), and Agency Directive 01/09 (eff. Jan. 23, 2009) (ALJ Ex. 1).

At a hearing before me on January 25, 2013, respondent failed to appear. Jean O’Hearn, of Kreisberg & Maitland LLP, counsel for respondent’s union, appeared and stated that she had made numerous attempts to contact respondent by mail and by telephone, but was unsuccessful. She provided proof that she notified respondent of the hearing date by Federal Express on December 7, 2012. In her letter, she notified respondent that she might withdraw representation if she did not hear from him (ALJ Ex. 2). She followed that up with a reminder on January 7, 2013, by regular mail (ALJ Ex. 3). Based on respondent’s failure to communicate with her, Ms. O’Hearn moved to be relieved as counsel, pursuant to section 1-12(a) of OATH’s Rules of Practice. *See* 48 RCNY § 1-12(a) (Lexis 2012). I granted counsel’s motion because respondent’s failure to communicate with her rendered representation unreasonably difficult; she had not previously represented him before this tribunal, and I could foresee no “material adverse effect on the interest of [respondent].”<sup>2</sup>

The matter proceeded as an inquest, after petitioner presented proof of service of notice of the hearing by certified and regular mail, at respondent’s Brooklyn address on file with petitioner (Pet. Ex. 1). The certified mailing to respondent was returned to petitioner by the United States Postal Service, unclaimed. The record closed on January 28, 2013, after petitioner submitted supplemental information for one of its exhibits at this tribunal’s request.

For the following reasons, specifications 1 through 5 and 7 through 8 are sustained. Specification 6, which alleged that respondent failed to supervise and/or instruct JC Dixon as to her required course of action when she learned of child abuse is not sustained because there was no testimony regarding JC Dixon.

I recommend that respondent be suspended without pay for 45 days.

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<sup>2</sup> *See* Rules of Professional Conduct [22 NYCRR 1200.0], Rule 1.16(c):

“[A] lawyer may withdraw from representing a client when:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client; . . .
- (7) the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively.”

### ANALYSIS

#### *Failure to Investigate, Document & Report Incident of Child Abuse & Supervise Staff*

Under sections II, V(A)(1), (2), and E(1) of DJJ Administrative Order 02/04, MCCU staff are required to immediately report all incidents involving DJJ residents, staff or facilities, as soon as they become aware of the incident. Incidents shall also be documented and recorded on DJJ incident reporting forms and appropriate logs. Such incident reports must be submitted to the supervisor on duty.

In addition, Directive 01/09 provides that, as mandated reporters, agency staff who know or suspect, directly or indirectly, that a juvenile has been abused are mandated to report such abuse to the SCR, as well as to the designated agent as indicated in Administrative Order 02/04. See DJJ Agency Directive 01/09 §§ III(C), IV(A)(2), (3) (eff. Jan. 23, 2009).

Petitioner alleged that respondent failed to immediately investigate and report an incident of child abuse to the SCR; did not report the incident to his tour commander, timely submit an incident report, or enter the incident in the school floor logbook; and failed to supervise and/or direct staff involved in the incident. These allegations stem from an incident that occurred at Crossroads on February 13, 2012.

Crossroads is a juvenile detention center located in East New York, Brooklyn. It houses juveniles who have been arrested and whose criminal cases are pending. Louis Watts, its Executive Director, oversees the entire facility. On February 13, 2012, upon his return to Crossroads at around 3:00 p.m. from an off-site meeting, Mr. Watts received a telephone call from JC Charles Harvey, who notified him that an incident had occurred in the facility's cafeteria that morning involving juvenile KW, and suggested that Mr. Watts look into it. The facility had no camera surveillance, so Mr. Watts contacted Tour Commander ("TC") Frederick Ojeaga, and inquired into the matter. TC Ojeaga told him that a resident had been restrained earlier but had sustained no injuries. Mr. Watts directed TC Ojeaga to investigate further and soon after received word from him that KW had sustained injuries to his back, and that the incident was being characterized as child abuse. Mr. Watts instructed TC Ojeaga to send KW for medical treatment and then have him brought to Watts' office (Tr. 40-44).

When brought to Mr. Watts' office, KW recounted how he had sustained his injuries. Mr. Watts asked to see the injuries which he photographed. He apprised his supervisors of the abuse, and directed caseworkers to notify KW's mother that her son had been injured. Mr. Watts

then met with JC Harvey and JC Marsalis, who had allegedly inflicted the injuries upon KW, and collected incident reports. JC Harvey's report indicated that the incident occurred at or around 11:50 a.m. (Tr. 43-44; Pet. Ex. 3).

The following day, however, JC Harvey submitted a second report which revealed that after the assault, JC Marsalis approached him in the school floor liaison office and expressed amusement that KW mistakenly thought that he had been stabbed by JC Harvey, not JC Marsalis (Pet. Ex. 4). JC Harvey further reported that respondent was seated at his desk in the same office when JC Marsalis uttered his remarks, but he did not react. According to Mr. Watts, respondent disclaimed knowledge of the incident and submitted no incident report on the day in question. After reading JC Harvey's second report, Mr. Watts called respondent into his office, informed him that he knew about JC Marsalis' discussion in respondent's presence the previous day, and demanded an incident report from respondent. Respondent conceded that he had heard something about a stabbing but did not pursue it because he was not in the cafeteria at the time, and thought that it meant "someone on the outside." He then submitted a report admitting that, at around 1:20 p.m. on the day of the incident, he had overheard JC Marsalis say, "I stabbed the kid." His report noted that JC Marsalis ceased talking when he realized that respondent was in the office with JC Harvey (Tr. 44-46; Pet. Ex. 6).

Mr. Watts completed a detailed, contemporaneous manager's report of his investigation which uncovered that KW was being disruptive in the cafeteria on the morning of the incident, and had to be physically subdued by JCs Marsalis and Harvey. KW became physically aggressive and was eventually handcuffed by Officer Mullings and TC Ojeaga (Tr. 46; Pet. Ex. 2). Mr. Watt's report indicated that JC Marsalis had repeatedly stabbed KW in his back with metal facility keys that caused puncture wounds and broken skin, while JC Harvey had slapped KW in the face.

TC Ojeaga is a level II Associate Juvenile Counselor ("AJC"). He supervises level I AJCs, who supervise the JCs (Tr. 52). At the time of the incident involving KW, respondent was a provisional AJC (ALJ Ex. 1). Thus, in terms of chain of command, TC Ojeaga supervised respondent, who supervised JCs Marsalis and Harvey. The TC testified that he is a designated agent, which means that in cases of abuse, alleged or otherwise, he must: ensure that the child abuse victim gets prompt medical attention; immediately investigate and complete a critical incident report ("CIR"); report the incident to the SCR, and submit to Mr. Watts, the New York

State Office of Children and Family Services (“OCFS”), MCCU’s central office, and the Department of Investigation (“DOI”), a package containing his CIR, incident reports from workers, a medical report, the resident’s statement and an OCFS form (Tr. 53-55).

TC Ojeaga testified that after KW had been restrained in the cafeteria, he complained that his hands were hurting, and TC Ojeaga sent him for medical attention (Tr. 56). TC Ojeaga’s version of how he came to learn of KW’s injuries differed from Mr. Watts.’ He testified that a caseworker, Mr. Quinones, called him towards the end of the day, inquired whether he had spoken with KW, and suggested that he speak with the resident again (Tr. 57). He went to KW and that was when he learned that the young man had been subjected to abuse during the attempt to restrain him in the cafeteria. Respondent never apprised him of the incident or filed an incident report on the day that it occurred (Tr. 56-57).

Upon learning of the abuse, TC Ojeaga immediately completed a CIR which showed that he spoke with KW at around 4:15 p.m., called in the abuse allegation to the SCR, and then escorted KW to the medical unit where KW was evaluated (Pet. Ex. 8). According to the TC’s CIR, the physician’s assistant who evaluated KW reported, “multiple scratch marks on both sides of back, on [left] upper neck, circular superficial pressure wounds to back, red marks on wrist consist[ent] with handcuffs.” TC Ojeaga also completed a “Child Abuse and Maltreatment Report” (Pet. Ex. 5). Neither report mentioned Mr. Quinones.

A certified copy of the relevant page of the school floor area log book for February 13, 2012, was devoid of any entry regarding the incident of abuse (Tr. 28; Pet. Ex. 7).

It was apparent that TC Ojeaga’s recollection was not as acute as that of Mr. Watts, whom I found to be credible, and who expressed genuine outrage that respondent, as supervisor, had overheard discussion about the abuse of a minor and had opted not to investigate or report the matter. He noted that all the workers at Crossroads are mandated reporters and are required to immediately report incidents of abuse or suspected abuse, whether or not they are actually present during the abuse. Moreover, he appeared to be personally affronted because it had happened on his watch, and KW’s mother had reported the matter to the press (Tr. 47-49).

The witness testimony that respondent failed to investigate or report the abuse of KW, failed to promptly file an incident report, or have the incident documented in the log book, and failed to supervise the staff involved in the abuse, in violation of sections II, V(A)(1), (2) and E(1) of Administrative Order 02/04, and sections III(C), IV(A)(2), (3) and (4) of Directive 01/09,

was therefore undisputed. Thus, specifications 2, 3, 4, 5, 7 and 8, are sustained. No testimony was advanced regarding the allegation in specification 6, that respondent failed to supervise JC Sandra Dixon. That specification should be dismissed.

*Providing Evasive, False or Misleading Answers during an Investigative Interview*

Directive 01/09 provides that staff shall cooperate in all investigations and inquiries, whether conducted internally or by other governmental agencies. See DJJ Agency Directive 01/09 § IV(A)(4) (eff. Jan. 23, 2009). Petitioner alleged that respondent provided evasive, false and/or misleading representations during an investigative interview regarding what he knew about the abuse of KW on February 13, 2012.

Tracey Jordan is petitioner's supervising investigator, whose job entails investigating misconduct (Tr. 19). Ms. Jordan was assigned to investigate the allegation that KW had been repeatedly stabbed by JC Marsalis and slapped by JC Harvey (Tr. 20). During the course of her investigation, she reviewed incident reports, KW's medical report, the school floor area log book, the DOI report and child abuse reports on the incident. She met with JC Harvey who affirmed the statements contained in his reports. Ms. Jordan testified that she knew that incident reports should be prepared by the end of the tour, but when she got to respondent's report, she noticed that it had been prepared the day following the incident. She interviewed respondent for an explanation of the delay in submission. However, respondent did not indicate that he knew of the stabbing (Tr. 22-25).

Petitioner submitted a recording of Ms. Jordan's interview of respondent which was conducted on July 16, 2012 (Pet. Ex. 9). Respondent was asked on multiple occasions about the statement that JC Marsalis made to JC Harvey in respondent's presence on the day of the incident. He consistently replied that he heard JC Marsalis say, "I got the kid." Respondent identified the incident report that he completed and affirmed that its contents had not been altered. He read aloud his admission to hearing JC Marsalis say he "stabbed the kid," but insisted that he did not remember because it had occurred such a long while before. He claimed that he was extremely busy on the day, he was doing so many things, he had other issues to solve, and he had a headache. But after leaving the building, he recalled what JC Marsalis had said and "put everything together." He intimated that he submitted his incident report the

following day because he had 24 hours to do so, but then acknowledged that Mr. Watts had directed him to submit one.

The recording of Ms. Jordan's interview of respondent supports the allegation that respondent was evasive. Even though he tried to dance around the issue, it was clear that he had heard JC Marsalis admit to stabbing a resident because he had written it in his incident report. Moreover, even though five months had elapsed between his issuance of the incident report and Ms. Jordan's interview of respondent, it seemed unlikely that he would have forgotten such an unusual occurrence. Thus, his claim that he could not remember was clearly an attempt to evade a response that would be more damning.

Accordingly, specification 1 should be sustained.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was properly served with the charges and notice of hearing.
2. Petitioner established that respondent failed to investigate or report the abuse of a minor resident in petitioner's custody, failed to promptly file an incident report, and failed to have the incident documented in the log book, in violation of sections II, V(A)(1), (2) and E(1) of Administrative Order 02/04, and sections III(C), IV(A)(2), (3) and (4) of Directive 01/09.
3. Petitioner also established that respondent's conduct was in violation of the following sections of DJJ's Standard of Conduct:
  - a. B.1.1 - employees shall adhere to the rules and directives contained in the Agency's Policies and Procedure, Administrative Orders, Operations Orders, and Facility-Level Memoranda, among others;
  - b. B.1.2 – employees shall not perform their duties in a manner to bring negative criticism upon the Agency;
  - c. B.1.3 – employees shall exercise care and diligence in their work assignment, and perform their duties in a manner that contributes to the efficient and professional operation of the Agency;

- d. C.1.11 – employees are prohibited from engaging in conduct which could bring discredit upon the Agency;
  - e. C.1.14 – employees shall not engage in conduct which impedes the ordinary and necessary activities of the Agency or which induces improper decisions by Agency employees;
  - f. J.1.3 – employees shall immediately report all incidents, as required by policy, including child abuse allegations, to their superiors, and the MCCU where required, as well as record same on designated Agency forms;
  - g. K.1.1 & K.1.2 – supervisors and managers shall be responsible for requiring strict compliance with, and shall themselves be subject to and comply with DJJ’s Standard of Conduct and all other City and Agency promulgated policies, orders and directives; and
  - h. K.1.3 – supervisors and managers shall promptly investigate and report all breaches of DJJ’s Standard of Conduct and all other City and Agency promulgated policies, procedures, rules and directives of their subordinates.
4. Petitioner did not establish that respondent disobeyed a lawful order, request or directive of his supervisor; failed to comply with directives issued in the course of an official investigation; or falsified documents, in violation of sections B.1.5, B.1.6 and J.1.2, respectively, of DJJ’s Standard of Conduct.

### **RECOMMENDATION**

Upon making my findings, I requested and received a summary of respondent’s personnel record. It lists respondent’s start date with the City of New York as June 8, 1998, and his Agency start date as July 4, 2011, after DJJ merged with ACS. Respondent has no prior discipline. He received a “very good” overall rating on his performance evaluation for the year July 1, 2007 through June 30, 2008. He was also given a “very good” rating for the following areas of evaluation: maintaining security of the property storage room, following procedures for feeding new admissions and court returnees, adhering to time and leave requirements, conducting security checks, conducting resident count and preventing destruction of property. It is unclear whether evaluations were performed after that date, because no further data was provided.



Respondent's misconduct in failing to investigate and report an incident of child abuse to the State, report the incident to the Tour Commander, timely submit an incident report, have the incident documented in the juvenile detention center's logbook, and failing to supervise staff involved in the incident is unprecedented before this tribunal. However, the failure to report the use of force in adult detention centers have garnered penalty recommendations in the range of 10 to 60 days suspension without pay, with more severe penalties being imposed where the reporting failure is followed by a cover-up. *See, e.g., Dep't of Correction v. Ford*, OATH Index Nos. 691/12, 692/12, 693/12, 694/12 & 702/12 at 15 (Mar. 30, 2012) (15, 15, 20 and 30-day suspensions imposed on four correction officers for the impermissible use of force against an inmate; failing to report the incident and obtain prompt medical attention for the inmate, filing false reports, making false statements during MEO 16 interviews, and conspiring to conceal the use of force); *Dep't of Correction v. Dyce*, NYC Civ. Serv. Comm'n Item No. CD 09-23-M (Apr. 6, 2009), *modifying on penalty*, OATH Index Nos. 1456/08, 1459/08, & 1542/08 (three correction officers who violated use of force directive and reporting requirements, suspended for 10 days for one officer who was an 18-year veteran with an unblemished record, and 15 days for two less experienced officers with good work records, where the force used was non-excessive and resulted in no injuries); *Dep't of Correction v. Council*, OATH Index Nos. 770/02, 772/02 & 773/02 at 13 (Sept. 26, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 04-19-SA (May 19, 2004) (10-day suspensions imposed on three correction officers who submitted untimely use of force reports); *Dep't of Correction v. Butler*, OATH Index Nos. 876/92, 877/92 & 878/92 at 17 (Dec. 2, 1992) (20-day suspensions for two officers with minor or no disciplinary records found guilty of filing false reports in use of force incident); *Dep't of Correction v. Lopez*, OATH Index Nos. 493/90, 494/90, 495/90 & 496/90 at 20-21 (Oct. 10, 1990) (15 to 45 day suspensions imposed against four officers found guilty of failing to notify superiors of use of force incident, failing to seek medical attention for inmate, failing to assist in investigation, and filing false reports in use of force incident); *Dep't of Correction v. Davis*, OATH Index Nos. 299/88, 300/88 & 301/88 at 30-31 (Nov. 7, 1988) (sixty-day suspensions for officers with no prior records who filed false reports omitting their observations of serious use of force by colleague).

Here, the Agency requested a 45-day suspension without pay.

Agency employees are charged not only with the supervision, guidance and counseling, of juveniles in the Agency's custody, but with their security. Therefore, it is incumbent on staff,

supervisors and managers to follow the course of action delineated in the Agency's Policies and Procedures, Facility-Level Memoranda and Administrative Orders, when a juvenile is harmed or suspected of being harmed. Notably, as a mandated reporter, respondent's duty to report incidents of abuse of juveniles extends beyond the gates of Crossroads Detention Center. Thus, his representation to Mr. Watts that when he overheard the conversation, he perceived that the subject was "someone on the outside" was disturbing because he is also obligated to report the abuse of a juvenile "on the outside."

Respondent's detachment from what he overheard and his failure to act in accordance with Agency's rules violated his responsibilities as a supervisor and mandated reporter. Further, he compounded his behavior by attempting to hide behind the smoke screen of paper work that had to be completed. That is simply unacceptable.

Even though he appears to be otherwise a very good worker, I find no mitigation for respondent's misconduct. Moreover, he failed to appear and defend the charges against him. Accordingly, I find that a 45-day suspension without pay is appropriate and I so recommend.

Ingrid M. Addison  
Administrative Law Judge

February 11, 2013

SUBMITTED TO:

**RONALD E. RICHTER**  
*Commissioner*

APPEARANCES:

**ELVIN WILLIAMS, ESQ.**  
*Attorney for Petitioner*

*No appearance by or for Respondent*