

DECISION

IN THE MATTER OF THE APPEAL OF:

MARIA BERNAL,
Appellant,

vs.

DENVER DEPARTMENT OF HUMAN SERVICES,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Maria Bernal, appeals her dismissal by the Denver Department of Human Services (the Agency), for violation of specified Career Service Rules. Prior to hearing, Bernal withdrew her discrimination claim. A hearing concerning the appeal was conducted by Bruce A. Plotkin, Hearing Officer, on October 21, 2010, and January 12 and 13, 2011. Bernal was represented by Michael O'Malley, Esq., while the Agency was represented by Assistant City Attorney Niels Loechell. An interpreter, provided by the Agency, assisted one Spanish-speaking witnesses. Due to confidentiality concerns, the names of the Agency clients who testified at hearing were redacted to initials only. The parties submitted written closing arguments.

The parties stipulated to the admission of Agency exhibits 1-9, 11, 13, 14, 16 - 33 and Appellant's exhibits A-F. Agency exhibits 10-3 through 10-13, 10-36 through 10-42, 12, and 15 were admitted over objection. Bernal testified on her own behalf, and also had Beatriz Adriana Villarreal testify on her behalf. The Agency called the following witnesses: C.M., Janice Cannon, L.C., M.M., A.M., Myrna Benoit, Jude Liguori-Oliver, and Toni Rozanski. For reasons which follow, the Agency's termination of Ms. Bernal's employment is AFFIRMED.

II. ISSUES

The issues presented for appeal were:

A. whether Bernal violated any of the Career Service Rules (CSR) cited by the Agency; and

B. if Bernal violated any of the specified Career Service Rules, whether her dismissal was reasonably related to the seriousness of the proven violation(s).

III. FINDINGS

Bernal was employed as a Social Case Worker with the Child Welfare Services Division, Denver Department of Human Services, since September 21, 2004. Her primary responsibilities were to provide protection for abused and at-risk children, and to re-unite children with their families whenever appropriate. Bernal was also responsible for upholding the Child Welfare Services program policies and complying with state and federal regulations while providing case management for child protection cases, including recording and maintaining cases accurately and timely in the Agency's TRAILS system and also in the hard copy file. Most of her caseload was, Spanish-only families, with most of them undocumented.

When Bernal began working for the Agency, she received training in TRAILS and policy-familiarization classes. Bernal was familiar with most of the information in Volume 7, the Agency's primary source of procedures and regulations. When she had a question regarding a procedure, she usually discussed it with other case workers or a supervisor in her unit.

C.M. Family:

On August 31, 2009, the Agency received a call on its hotline from someone alleging that, in 2007, Bernal abused and neglected a client family assigned to her. The Agency immediately placed Bernal on investigatory leave with pay and, to avoid a conflict of interest, referred the allegation to the Arapahoe County Department of Human Services for investigation. The investigation yielded an inconclusive result. The Agency then undertook its own investigation of Bernal's work with the client C.M. and her nine children.

While Bernal was under investigation, Laura Schaefer was assigned as the new case worker for the C.M. family. Ms. Schaefer told Child Protection Administrator Jude Liguori-Oliver that C.M. wanted to discuss her experience with Ms. Bernal. On October 5, 2009, Liguori-Oliver interviewed C.M., who made numerous allegations against Bernal. The next day, Myrna Benoit, Senior

Criminal Investigator for DDHS, interviewed C.M.'s mother, M.M., took her written statement, and wrote a report summarizing M.M.'s experience with Bernal from August 2006 through the time that Ms. Schaefer took over the case. Liguori-Oliver also requested Schaefer to gather other clients' feedback, both positive and negative, regarding Bernal's performance as their case worker. In November 2009, Liguori-Oliver also interviewed C.M.'s DDHS Human Services Advocate, C.M.'s representative from the Guadalupe Project, and C.M.'s therapist.

DDHS' investigation regarding the C.M. family yielded the following findings concerning Bernal. Bernal was assigned the case shortly after C.M.'s children were removed from her custody and placed in different homes on August 26, 2006. The oldest three children were placed in the home of family friends, the Villarreal family. Such an arrangement is known as a "kinship family" placement. Bernal was also a friend of the Villareal parents.

The placement process takes place during the first few days after the Agency becomes involved with a family. The oldest children of C.M. were initially placed with the Villarreals as an urgent accommodation. As the ongoing case worker, Bernal was responsible for reading through the intake and assessment documentation and for following up on the Agency's evaluation. The Agency's home study evaluation denied placement of the C.M. children with the Villareal family because the Villarreals did not have the financial means or the space to accommodate them. Bernal failed to read through the case file. Consequently, she was unaware the denial was filed there. She did not discover the rejection of placement until she tried to obtain money for them and discovered they were undocumented and could not be certified as a foster family.

On August 31, 2006, shortly after the children were removed from C.M.'s custody, the court ordered an evaluation of C.M.'s mother, M.M., who lived in Los Angeles, California, to see if the children could be temporarily placed with her. Bernal failed to initiate the process after the court order and after repeated requests to do so by the C.M. family.

When children are placed in a kinship home, the children must be registered for school by the next day. On September 18, 2006, three weeks after placement, Ms. Villarreal disclosed to Bernal that two of the children were not in school because she planned to move the following week. In addition, Bernal documented her observation that two of the C.M. children seemed scared when she visited them at the Villarreal's home, however, Bernal did not follow up on her observation.

C.M. reported to Bernal that her children said they were not being fed at the placement home of an uncle. One of the children confirmed to Bernal that

he and his brother were not fed all weekend. Bernal documented the neglect, but did not follow up, and did not report it to the child abuse hotline as required by the Colorado Children's Code and Volume 7. Bernal was aware of her obligation to report abuse and neglect through her case-worker training.

M.M. traveled to Denver to care for her grandchildren; however, Bernal told M.M. "you are no one." Visitation between C.M. and her children took place once per week. Most of the time, Bernal did not allow M.M. to participate. Bernal acknowledged M.M. was always "mad with me because I didn't allow her to visit the kids." When M.M. brought a group to the enrichment center to have a party for the children, Bernal would not allow the party, claiming Lujan told her "we don't have to deal with grandparents, only parents of the children." DDHS policy encourages the placement of children with grandparents, even for temporary occasions.

On more than one occasion, Bernal told C.M.'s family they would not be able to see each other. These incidents made family members cry. [Exhibits 12-2; 17-6].

Bernal required C.M. to attend drug and alcohol classes for four months, although there was no evidence C.M. used drugs, and her random tests were always negative. Bernal also required C.M. to take parenting classes, and prohibited C.M. from having a boyfriend without official cause.

When C.M. told Bernal she lost her dishwasher job but would find other work, Bernal told C.M. she was young, pretty, and "to go out on the street, put some make up on, dress up, and I know that more than one man would love to be with you." After Bernal advised M.M. to get a job, M.M. found work as a waitress in a night club. Bernal disapproved of the job by telling M.M. several times "only prostitutes work in nightclubs."

When M.M. told Bernal her husband planned to move to Denver to help care for their grandchildren, Bernal said M.M.'s husband was "probably just someone she picked up off of the street to try to get the children." Bernal then rejected M.M.'s offer to provide proof of their marriage and her husband's social security number.

Bernal requested and obtained "kinship money" from the Agency on behalf of the Villarreal family to help pay for necessary expenses for the C.M. children. The Villarreals used the Agency's \$1000 grant to pay for their own child's birthday party. One of the C.M. children told Bernal about the misuse of the money. Although Bernal was trained in the proper reporting protocol, she failed to report the incident as required.

On four or five occasions, one of the C.M. children stayed out beyond his legal curfew while Bernal visited with the Villarreal parents from 7:30 p.m. to 11:30 p.m. Agency regulations and local and state law require reporting curfew violations to the police. Bernal did not.

On January 22, 2007, the court ordered the removal of the C.M. children from the Villarreal family. All of the children were removed during January, except for M.B. Bernal did not act upon the January removal order regarding M.B. until May 23, 2007.

On March 13, 2007, Bernal directed M.B. to write a contract concerning his attendance at classes and completing his school work. The contract stated "Maria [Bernal] will check on me if i do wright or wrong. If I do good Maria will let me see my brothers." It is normal Agency practice to encourage good behavior by making an agreement with a child, but restricting visitation with siblings violates Agency standards.

C.M. was afraid if she complained about Bernal's treatment of her family to the Agency Bernal could place her children for adoption. C.M. also believed Bernal would have her deported for lodging a complaint. C.M. first complained about Bernal to Judy Gallegos, a DDHS employee who supervised her visitation with her children, only toward the end of Bernal's tenure as C.M.'s caseworker. After Ms. Schaefer became C.M.'s caseworker, her family told Schaefer about Bernal's treatment of the family and the manner in which she spoke to them.

When Bernal returned from Investigatory Leave on September 9, 2009, Liguori-Oliver and Toni Rozanski, the Division Director of Child Welfare Services, determined Bernal should not have direct client contact because of the risk her pattern of behavior and treatment posed for clients. They assigned Bernal a portion of other caseworkers' non-contact duties.

On February 4, 2010, the Agency served notice on Bernal that it was contemplating disciplinary action against her for violations of multiple Career Service Rules and DDHS policies and regulations. The Agency conducted a pre-disciplinary meeting on March 11, 2010. After the contemplation letter, more allegations surfaced regarding Bernal's conduct with other families. Those allegations were consistent with allegations of the C.M. family. Multiple families reported Bernal was abusive and had mistreated them while serving as their social case worker. The Agency then allowed the first disciplinary letter to lapse and continued its investigation into the additional allegations.

DDHS requested investigator Myrna Benoit to look into the new allegations against Bernal. Benoit summarized her findings in a memorandum to the Deputy Manager of DDHS, dated April 27, 2010. She compared her interviews with the

families to the information Bernal placed into the TRAILS system, and noted the following discrepancies.

L.G.C. Family:

Bernal was the social case worker for L.G.C. and her family for approximately six months beginning in March 2009. During that period, Bernal visited the safe house one time where L.G.C. was staying. They met once at the school L.G.C.'s children attended, and they met four times at DDHS. When L.G.C. asked Bernal what was required to close her case, Bernal would give her different tasks each time, such as taking parenting classes, obtaining housing, and finding a job.

There is no requirement for parents to maintain a job in order to retain custody of their children, but Bernal told L.G.C. if she did not find a job, Bernal would remove her children. L.G.C. did not have a green card, and told Bernal that she was applying for a VISA. L.G.C.'s immigration attorney advised her not to work during the application process. Bernal required L.G.C. to provide a letter from her attorney to explain why L.G.C. could not work while applying for a VISA.

Bernal accused L.G.C. of failing to report her daughter was sexually abused and blamed L.G.C. for allowing it to happen. Bernal also told L.G.C. if she did not find a safe home for her children, she would remove the children. L.G.C. did not know the abuse was occurring, and reported it as soon as she found out. Bernal admitted she had not read the case file and later apologized to L.G.C. for accusing her of failing to report the abuse.

A.O.M. Family:

Bernal was the social case worker in this case for about seven months beginning in October 2008. Bernal scheduled three appointments to meet with A.O.M., however, Bernal missed one appointment. Bernal was supposed to tell A.O.M. what her treatment plan was at that appointment. Only at a later court hearing did Bernal explain A.O.M.'s required treatment plan. The delay in explanation delayed A.O.M.'s treatment.

Bernal was rude to A.O.M. and did not answer A.O.M.'s telephone calls when A.O.M. called to check on her daughter. Bernal did not facilitate A.O.M.'s visitation with her daughter for three months after the daughter was removed. The court ordered A.O.M. take a parenting class and a psychological exam. Bernal did not assist her with meeting these requirements for two months after becoming her caseworker. By that time, A.O.M. had already researched and completed one of the classes on her own and had begun another.

Bernal's delay in taking A.O.M.'s daughter for a psychological evaluation slowed the process of reunification. When Schaefer became A.O.M.'s case worker, the process of reuniting A.O.M. with her daughter occurred quickly. Schaefer met with A.O.M. six times in the two months she was A.O.M.'s case worker.

Bernal did not allow A.O.M.'s daughter to return home after A.O.M. complied with the treatment plan and after A.O.M.'s daughter recanted her allegation of parental abuse. Guardian ad litem Bonnie Saltman and therapist Carmen Dominguez intervened to enable reunification.

With A.O.M., Bernal was often in a bad mood, failed to keep set appointments, and failed to provide A.O.M. with necessary information regarding a treatment plan. Bernal also failed to provide A.O.M. feedback about her daughter's progress.

M.A.M. Family:

M.A.M. had temporary custody of her grandchildren. In August 2009, Bernal appeared unannounced and sat in her car outside M.A.M.'s home from 1:00 p.m. to 9:00 p.m. M.A.M. went on a trip and left the children in her adult daughter's care. The daughter left the house and left the children in her adult brother's care, with their mother present. Bernal agreed it was not a good use of her time to sit in front of the house without taking any action.

Bernal took vaccination records for M.A.M.'s children and was supposed to return them by mail, but failed to do so. Bernal failed to send a letter to the father of M.A.M.'s children to inform him of an appointment for a urinalysis, causing him to miss the appointment.

M.A. Family:

Bernal required M.A. to provide her original birth certificate and social security card, telling her she would be in trouble if she didn't comply. Bernal never returned the documents. Bernal also threatened to take M.A.'s son if she did not do what she was told.

Bernal became angry and screamed at M.A. because she was not doing things the way Bernal wanted. When M.A. attempted to show Bernal documentation that she was attending treatment classes, Bernal threw the papers back at M.A., saying they were no good.

Bernal entered a "record of contact" (ROC) note in August noting her concern about M.A.'s untreated mental illness. After Schaefer reviewed the case, she found a letter written in August by the Mental Health Corporation of

Denver, confirming M.A. had completed treatment and required no further treatment.

On May 11, 2010, Janice Cannon, Bernal's supervisor, was in a meeting with another DDHS employee in her office with the door closed, when Bernal knocked on the door and entered the office. Bernal handed a form to Ms. Cannon, and requested Cannon to sign the form which would have increased Bernal's level of access to the TRAILS case-management system in order to complete audits of the Administrative review Division. Cannon had met previously with Bernal and two other team members in April to explain the process required to use in TRAILS to complete such audits. Cannon explained to Bernal that the audits did not require increased access to TRAILS, but asked to see the form anyway. Bernal refused, tore up the form, and threw it in the trash. Later that day, Bernal sent Cannon an email, stating "Janice: I just want to apologize by throwing the paper that you refused to sign for me to have access to trails. Before you even showed to me how to get into the files."

On May 26, 2010, the Agency served a second notice on Bernal that it was contemplating disciplinary action against her, for her treatment of the C.M. family and four other client families and also for her unprofessional conduct in the Agency office on May 11, 2010. Bernal did not attend the pre-disciplinary meeting, nor did she provide a statement or request another continuance, although her representative, Ed Bagwell, appeared by telephone, and requested 48 hours to provide a written statement from Bernal. No statement was subsequently provided.

Bernal was assessed three prior Performance Improvement Plans (PIPs), more than any other retained case worker.

Toni Rozanski, Director of Child Welfare Services at DDHS, was the final decision maker for Bernal's termination. She issued a letter dated July 21, 2010, notifying Bernal of her dismissal, effective that day. This appeal followed timely on August 3, 2010.

IV. JURISDICTION

The City Charter § C5.25(4) and Career Service Rule 2-104 b) require the Hearing Officer to determine the facts in an appeal de novo, meaning hearing the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

V. ANALYSIS

The Agency alleged Bernal violated the following eight Career Service Rules.

CSR § 16-60 A. Neglect of duty

To sustain a violation under CSR § 16-60 A., the Agency must establish that an employee neglected to perform a job duty which the employee knew she was supposed to perform. In re Campos, CSB 56-08 A, 2 (6/18/09).

The Agency established that social case workers must ensure children are registered for school the day after they are placed in a kinship home. More than two months after C.M.'s children were placed with the Villareals, two of the children were not in school. Bernal noted this fact in her ROC notes. Bernal did not dispute these allegations. Bernal neglected a known duty to ensure school registration under this rule when she failed to take timely action to ensure the children were enrolled in school.

Bernal knew she was obligated to report abuse and neglect because it was part of her required training. [Liguori-Oliver Testimony]. The obligation is also required by the Children's Code and Volume 7, both of which require Bernal, as a mandated reporter, to report every allegation of abuse or neglect. [Exhibit 23-8 – 23-9; Liguori-Oliver Testimony]. Volume 7 is available on the city's intranet system, which the Agency makes accessible to each case worker. Bernal neglected her duty to report the C.M. family's allegation of abuse by failing to forward the C.M. children's fear of the kinship adults. [Exhibit 23-1; Liguori-Oliver Testimony]. Bernal also neglected her duty to review the L.G.C. case file.

Similarly, Bernal failed to refer C.M.'s complaint that her children were not being fed in their temporary placement. Bernal confirmed the complaint in a ROC entry that the children said they were not fed during an entire weekend. Bernal conceded in an interview with Ms. Liguori-Oliver that she "was told that there wasn't food." [Exhibit 12-8 @ par. #1]. Bernal admission constitutes a neglect of a known duty in violation of this rule where she was a mandated reporter and failed to report this neglect.

CSR § 16-60 B. Carelessness in performance of duties and responsibilities

An employee is careless when she fails to exercise reasonable care in performing an assigned duty, resulting in potential or actual significant harm. See In re Mounjim, CSA 87-07, 5 (7/1/08), *rev'd on other grounds*. The Agency asserted Bernal's "file notes demonstrate extremely poor communication skills; there are so many grammar and spelling errors that the reader cannot follow what you are trying to say." [Exhibits 17-8; 17-10]. Bernal conceded she made grammatical and spelling errors. She replied she did not have an opportunity to edit and correct the mistakes because she had so many cases. [Bernal Testimony]. Although the Agency established that she composed her ROC

notes carelessly, with many entries laden with spelling and grammatical mistakes, the Agency failed to establish a violation of this rule where the Agency did not show that significant potential or actual harm resulted.

Next, the Agency claimed Bernal failed to check her email twice a day as required, failed to respond timely, or at all, to phone messages, failed to check in, and failed to open mail timely, resulting in delays to clients in receiving necessary information and data. [Liguori-Oliver Testimony]. Further, the Agency asserted Bernal was instructed to work on timeliness and follow through with services, as there were significant delays in setting up services for client families. [Liguori-Oliver Testimony]. The courts often follow Agency recommendations regarding the return of children to the parent, so that if there is no recommendation, generally the court does not act. [Rozanski Testimony]. Bernal delayed providing A.O.M. with information to enroll in her required classes until two months after becoming her caseworker. By then, A.O.M. had already researched and completed one of the classes on her own and had begun another. [A.O.M. Testimony]. Further, the Agency asserted Bernal was careless where the C.M., M.A.M., and M.A. families contended she required, then misplaced, their important original documents, including birth certificates, social security cards, and vaccination records. [Bernal Testimony].

Bernal denied these allegations, asserting delays were a result of the court's failure to act, as she was required to follow the court's orders regarding treatment plans and the return of children to their parents. She conceded she had some families' documents on her desk, and she could not remember which documents or to whom they belonged. However, she stated that she would have returned them timely if she had not been placed on investigatory leave. [Bernal Testimony].

Further, the Agency alleged Bernal went to the Villareal home on four or five occasions in the evenings and stayed from approximately 7:30 p.m. to 11:30 p.m., because one of the children stayed out late and Bernal wanted to make sure he returned. Bernal did not contact police to report the child out beyond curfew or missing, as required. Bernal admitted these allegations. [Exhibit 12-8; Bernal Testimony].

Bernal violated this rule because her delays impeded clients' receipt of essential services. Since her clients' children were removed from their parents, any delay in helping the parents receive treatment or other service ordered by the court, delayed the return of the children to their parents.

Bernal violated this rule for taking original official documents but failing to return them. The allegations of the families are more credible than those of Bernal because the families did not know each other and, therefore, had no

opportunity for collusion; and their allegations were consistent - that Bernal failed to return documents she requested.

Finally, Bernal was careless in violation of this rule, where she acknowledged she remained at the Villareal's house late into the night to wait for M.B. to return on several occasions, but failed to contact police to report that he was missing or out beyond curfew as required.

CSR § 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standards the employee has failed to meet.

An employee's failure to meet established standards of performance is proven by evidence of a prior established standard, clear communication of that standard to the employee, and the employee's failure to meet that standard. In re Mounjim, CSA 87-07, 8 (7/10/08), *rev'd on other grounds*.

PEP/STARS – Section II: Service

5. Take responsibility for creating and maintaining an environment in which all customers feel heard, valued, and respected.

8. Represent the Department in a positive and professional manner.

PEP/STARS – Section II: Accountability and Ethics

2. Follows the performance and conduct standards for the section, and ensures that the essential duties and responsibilities of your job are fulfilled in an acceptable manner.

4. Takes personal responsibility for performance, attitude, motivation and work products and outcomes.

8. Considers ethical implications of decisions

9. While being paid on company time, works productively and effectively.

The Agency also claimed that Bernal failed to meet her PEPR standard of Accountability and Ethics. Generalized standards and aspirational goals fail to provide notice to apprise employees what measures determine success or failure. See In re Jones, CSA 88-09, 5 (5/11/10); In re Catalina, CSA 35-08, 10 (8/22/08); and In re Mounjim, CSA 87-07, 11 (7/10/08) ("communication of work duties and of the standards by which those duties are judged, are fundamental tenets of the Career Service Rules.") These Agency standards fail to provide reasonable notice of what conduct is proscribed. In re Rodriguez, CSA 12-10, 10 (10/22/10).

PEP/STARS – Section II: Respect for Self and Others

3. Treat all people with whom you come in contact while at work in a professional and courteous manner including subordinates, peers, supervisors, and the public.

5. Interacts with others in a positive manner, engaging unique views and opinions and building on each individual's strengths.

The Agency's evidence for these violations duplicates evidence of Bernal's violation of more specific violations with more specific standards, including CSR §§16-60 M. and O. Consequently, no further consideration is due here.

CSR § 16-60 L. Failure to observe written departmental or agency regulations, policies, or rules.

A violation of this rule is established, regardless of the employee's intent, by an employee's failure to observe a regulation, policy, or rule after the agency provided clear, reasonable, and uniformly enforced notice to the employee. In re Mounjim, CSA 87-07 A., 6 (CSB 1/8/09).

Denver Human Services Employee Handbook – Our Values (p. 8)

- **Accountability: Being responsible, meeting expectations, which are clearly stated, actions can be explained**
- **Cutting edge: willing to look for creative and innovative solutions**
- **Community awareness: help our community understand and respond to issues of people in need**
- **Confidentiality: confidential, entrusted with private matters**
- **Customer centered: service focused on compassionate and non-judgmental assistance**
- **Inclusiveness: valuing all forms of diversity and differences**
- **Integrity: truthfulness and honesty in all our actions**
- **Respect: valuing our customers, colleagues and community**
- **Teamwork: working together with each other and the community**
- **Workforce: recognizing the value of employees, investing in the workforce to increase employee development and morale**

The evidence for and against these agency values formed the basis of more specific allegations, elsewhere.

Employee Handbook – Overview and Ethics (p.9)

• **As a DHS employee, you are expected to conduct yourself in a professional manner at all times. You must comply with the following DHS professional standards in a manner and process consistent with DHS and City policies and practices [in part]:**

- **Communication, Language, and Behavior:**

-Display professionalism by using appropriate and civil language, tone, and affect. Likewise, your attitude and non-verbal communication should be business-like, respectful and appropriate.

-Use accurate and respectful language in your written and verbal communications to or about clients, customers, and co-workers.

-Dress and conduct yourself in a manner that conveys competence and professionalism whenever conducting DHS business.

-Refuse to engage in gossip, speculation, or the dissemination of unverified information.

• Respect:

-Treat colleagues and clients/customers with respect.

-Represent colleagues in an appropriate and fair manner.

-Recognize the value of teamwork, cooperation, and collaboration as a means to provide excellent services to our clients/customers, our community, and each other.

Unlike the aspirational pronouncements of its other values, these Agency guidelines are sufficiently specific to provide employees with notice what conduct is proscribed. Gallegos observed Bernal tell the C.M. family "you're not coming together to see each other anymore," causing the mother and children to cry. Further, Gallegos stated Bernal "spoke very poorly of the family," said that C.M. "dressed poorly for her size; said C.M. dressed provocatively," and heard Bernal make rude comments to the C.M. family. [Exhibit 12-2]. Another professional stated that Bernal was very harsh and rigid. [Exhibit 12-5]. C.M.'s therapist noted Bernal "used her power inappropriately and re-traumatized these victims all over again. Clients are scared to go to [Bernal] because they don't get help or follow up." [Exhibit 12-7]. Further, C.M. and M.M. claimed Bernal repeatedly called them prostitutes. [C.M. Testimony; M.M. Testimony].

Bernal denied acting inappropriately, and asserted that the allegations are false. She also contended she did not know the five families who complained about mistreatment were unhappy with her. [Bernal Testimony]. In the interview with Liguori-Oliver, Bernal stated she never had any problems with C.M. and that she was very cooperative. [Exhibit 12-11]. Further, Bernal initially denied asking C.M. and M.M if they were prostitutes protesting she didn't "have the guts to ask/tell someone that." [Exhibit 12-11]. However, during hearing, Bernal admitted she asked them if they were prostitutes, claiming it was her duty to investigate the allegations. [Bernal Testimony].

Bernal's conduct and communication, with respect to the C.M. family, was inappropriate, unprofessional, and disrespectful in violation of Agency standards. Although Bernal denied most of the allegations of misconduct and mistreatment, the corroborating testimony of other professionals and of C.M. and M.M., in combination with Bernal's inconsistent accounts indicates that Bernal's credibility is questionable, whereas the families and the other

professionals had little or nothing to gain for reporting their experiences and observations of Bernal.

CSR § 16-60 M. Threatening, fighting with, intimidating, or abusing employees or officers of the City, or any other member of the public, for any reason.

The definition of “abuse,” as an element of this rule, includes “to treat harshly; to use insulting, coarse, or bad language about.” In re Owens, CSA 69-08, 6 (2.6.09), *citing* Webster’s Unabridged Dictionary 1979. A statement constitutes a threat, in violation of this rule, if a reasonable person would give that meaning to the words used. In re Katros, CSA 129-04, 8 (3/16/05), *citing Metz v. Dept. of Treasury*, 780 F.2d 1001, 1002-1003 (Fed. Cir. 1986).

Bernal told M.B. he could not see his brothers if he did not behave, and required him to sign a contract. The contract read “... Maria will check on me if I do wright (sic) or wrong. If i do good, Maria will let me see my brothers.” [Exhibit 4]. The Agency conceded it is acceptable practice to encourage good behavior by making an agreement with a child; however, the Agency qualified its endorsement, stating that making visitation with siblings a condition of an agreement is a significant deviation of the standard of child welfare practiced by the Agency. [Rozanski Testimony]. The Agency further claimed Bernal threatened the C.M. children with deporting C.M. if they misbehaved.

Bernal replied she asked M.B. to write a contract about attending classes and M.B. wrote the contract without her assistance. Bernal stated contracts are routinely used by case workers to reinforce good behavior for children, and her intention was to encourage M.B. to behave, and if he did not, he could not see one of his older brothers, S.B., who had run away and negatively influenced M.B. She conceded the Agency did not train case workers to deny contact with family as part of a contract with children. [Exhibit 4; Bernal Testimony].

Bernal’s ROC note states “the worker [Bernal]... stated M.B. couldn’t come to visits because he wasn’t going to school and when he did attend school he was acting up,” and “this worker explained to him that he has to start to do his work at school because if he does not he will not be able to see his brothers...” [Exhibits 23-45 – 23-46]. Villareal disclosed Bernal threatened M.B. “if he did not do his work at school, that mom could not visit him for the Holidays.” [Exhibit 30-6].

The Agency also alleged Bernal threatened to have C.M. deported if C.M.’s children did not behave, that she would have the children adopted, and they would never see C.M. again. [Exhibit 17]. Bernal denied these allegations. [Exhibit 10-43; Bernal Testimony].

During the Agency's investigation, the C.M. children gave credibly similar accounts of Bernal's threats to remain silent about mistreatment in their kinship home or Bernal would have C.M. deported and Bernal would adopt them out and they would never see C.M. again. [Exhibits 30-5; 30-7; 30-8; 30-9]. Bernal's threats, intimidation, and abuse of the C.M family violate this rule.

CSR § 16-60 O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.

An employee violates this rule where she exhibits conduct which would cause a reasonable person standing in the employee's place to know it would be harmful to another person or have a significant impact on his working relationship with that person. In re Schultz, CSA 70-08, 4 (3/2/09).

The Agency contended Bernal violated this rule after she knocked and entered, uninvited, the office of her supervisor, Cannon was in a meeting, but did not react to the uninvited entry. Bernal requested Cannon sign a form to increase Bernal's TRAILS access. Cannon explained that audits do not require increased access to TRAILS, but asked to see the form. Bernal refused, tore up the form, and threw it in the trash. Later that day, Bernal sent Cannon an email, stating "Janice: I just want to apologize by throwing the paper that you refused to sign for me to have access to trails. Before you even showed to me how to get into the files." [Cannon Testimony; Exhibit 17-11; Exhibit F].

Bernal agreed she requested a change to her TRAILS access and that she ripped up the form and threw it in the trash. However, she asserted she destroyed the form to avoid it being used against her for discipline. [Bernal Testimony]. Her response does not excuse her conduct under this rule.

Notably, at the time of this incident, Bernal had been removed from her client contact duties as a result of her misconduct with clients, and had already received notice that discipline was being contemplated against her for the incidents described above. Bernal's conduct with her supervisor was confrontational. A reasonable person standing in the her place would have known that her conduct would have a significant impact on her working relationship with Cannon. This violation is proven by a preponderance of the evidence.

CSR § 16-60 Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, or any other applicable legal authority.

A violation of this rule requires that an employee's conduct cause some actual or reasonably perceived harm that is not specifically otherwise provided.

In re Sawyer and Sproul, CSA 33-08, 14 (1/27/09); In re Abdi, CSA 63-07, 29 (2/19/08).

The Agency proved Bernal's misconduct of more specific rules elsewhere, and failed establish misconduct not otherwise proven under this rule.

CSR § 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

A violation of this rule requires a showing of actual harm to the department or agency in the first phrase, or a showing of actual harm to the City in the second phrase. In re Misty Jones, CSB 88-09A., 3 (9/29/10).

Bernal delayed the delivery of services to clients, threatened and mistreated clients, and was rude to co-workers and other child welfare professionals with whom she worked. Bernal's conduct hindered the agency's effectiveness in the delivery of services to its clients. Bernal's conduct was prejudicial to the good order of the agency since clients endured threats and intimidation from Bernal, which affected their ability to access services and to regain custody of their children. Because Bernal's conduct rendered the Agency's core functions less effective, her conduct was prejudicial to the good order and effectiveness of the Agency, in violation of this rule.

VI. DEGREE OF DISCIPLINE

In evaluating the appropriate degree of discipline, the Agency must consider the severity of the offense, an employee's past record, and the penalty most likely to achieve the employee's compliance with the rules. In re Norman-Curry, CSA 28-07 and 50-08, 23 (2/27/09). In order to modify or reverse an agency's selection of the degree of discipline, a hearing officer must determine the choice was clearly excessive, or based substantially upon considerations unsupported by a preponderance of the evidence. In re Owens, CSA 69-08, 8 (2/6/09), citing In re Mounjim, CSA 87-07, 18 (7/10/08), affirmed on other grounds, In re Mounjim, CSB 87-07 A (1/8/09).

A. Severity of the proven offenses.

Liguori-Oliver was unaware of any other DDHS social case worker engaging in misconduct of this severity. Bernal worked hard for some of her client families; however, the injury she caused five families was egregious.

B. Prior History.

The Agency disciplined Bernal on two prior occasions. The first was a verbal reprimand assessed August 19, 2005, for Bernal's failure to submit a required "Financial Disclosure Form" on time after repeated reminders. [Liguori-Oliver Testimony; Exhibit 1].

On October 16, 2006, Bernal received another verbal reprimand for her confrontational conduct, including yelling and waving her arms toward Liguori-Oliver in a public hallway, regarding a case decision that Liguori-Oliver issued. [Liguori-Oliver testimony; Exhibit 3]. When the conversation escalated, Liguori-Oliver moved the conversation into her office, where Bernal told Liguori-Oliver that she was acting like her mother, called her a bitch, and told Liguori-Oliver she could not tell her [Bernal] what to do. [Liguori-Oliver Testimony; Bernal Testimony; Exhibit 3]. Bernal disagreed that she was confrontational with Liguori-Oliver, and asserted Liguori-Oliver yelled, causing her to cry. [Bernal Testimony]. At that point, Liguori-Oliver had to leave for a meeting. She asked Bernal to keep the conversation confidential; however, she heard Bernal recounting the conversation to co-workers. Liguori-Oliver intervened to advise Bernal to go home if she wasn't working. Bernal left. [Liguori-Oliver Testimony]. This prior disciplinary action demonstrates behavior that is consistent with the allegations in the present case, where Bernal was confrontational and argumentative.

Bernal's annual work reviews (PEPRs) contain extensive commentary regarding areas for improvement, which the Agency more specifically addressed in three Performance Improvement Plans (PIP). Bernal's 2004-05 PEPR stated she needed to improve her communication with clients, with treating professionals, and with her supervisor, by maintaining a calm and professional manner, and adhering to her supervisor's directives, as well as those of her administrator and executive management. [Liguori-Oliver Testimony; Exhibit 2]. Although Bernal was capable of, and sometimes practiced, adequate communication with others, her compliance was inconsistent, often dysfunctional, and resulted in client complaints and aggressive confrontations with supervisors and staff. [Liguori-Oliver Testimony; Exhibit 2]. Bernal claimed her negative rating were due, in large measure, to having a substantially higher caseload than her co-workers. [Bernal Testimony]. The evidence did not sustain her claim.

The Agency issued Bernal a Performance Improvement Plan (PIP) on February 15, 2007 in order to address Bernal's conduct. Bernal refused to sign the PIP and disagreed she had behavioral issues. [Liguori-Oliver Testimony; Exhibit 5]. While Bernal was on the February 15th PIP, she met with her supervisor, Lujan, every week regarding her caseload. [Bernal Testimony]. Bernal's conduct improved for a few months, but on October 15, 2007, she received another PIP because the Agency began receiving complaints regarding Bernal's aggressive

and negative behavior from clients, providers, and supervisors. Bernal's behavior improved again, and her supervisors removed the PIP on April 4, 2008. [Liguori-Oliver Testimony; Exhibit 6].

On September 26, 2008, Bernal was placed on another PIP because the Agency continued to receive numerous complaints about Bernal's aggressive interactions and increasing confrontations with staff and clients. The Agency issued that PIP when it became aware of the contract Bernal required M.B. to write. Liguori-Oliver testified it was cruel, an abuse of authority, and contrary to the Agency regulations for Bernal to threaten that a child could not see his family based on his behavior. [Liguori-Oliver Testimony; Rozanski Testimony; Exhibits 4, 7]. Bernal completed this PIP in December 2008. [Exhibit 7].

Bernal felt she improved because her subsequent PEPRs did not note ongoing issues. Although Bernal showed that she could improve, she also showed he could not sustain the changes, as she was placed on repeated PIPs and Action Plans for the same issues. [Liguori-Oliver Testimony; Rozanski Testimony].

Bernal's overall PEPR ratings from October 2005 through October 2006, and from October 2006 through October 2007, were "successful." [Exhibit D; E]. Her overall PEPR rating from October 2007 through October 2008 was also "successful." [Exhibit C; Liguori-Oliver Testimony]. Liguori-Oliver did not agree the successful ratings indicated Bernal was successfully meeting her job duties. [Liguori-Oliver Testimony].

Bernal's 2007-2008 PEPR stated colleagues, customers, and clients found Bernal "struggles in how she interacts with her clients in her case management." They found her rude and condescending. Treating professionals indicated. Bernal did not communicate well in her sharing of information on crucial issues affecting clients." [Exhibit 9- 3 – 9-4]. Although Bernal was capable of positive interaction with clients, there were many complaints about Bernal's argumentative, demeaning, and "mean-spirited" conduct. Bernal was reported to be inflexible with her clients, failed to see things from her clients' perspectives, and was unwilling to try new ideas or seek different options for her clients to help them succeed. [Liguori-Oliver Testimony].

The Agency's allegations were significant because of the number of unconnected families making the allegations, and because the Agency is responsible for helping the most vulnerable population in Denver.

Bernal asserted the defense of laches, because many of the allegations that form the basis of her termination occurred almost three years ago. Laches is an equitable doctrine that may deny relief to a party who unconscionably delayed in enforcing his rights with prejudice to the party against who relief is

sought. The party asserting laches as an affirmative defense has the burden of demonstrating prejudice. Robbins v. People, 107 P.3d 384, 388 (Colo. 2005).

Rozanski and Liguori-Oliver both testified the Agency acted on the allegations as soon as the allegations became known to the Agency. [Liguori-Oliver Testimony; Rozanski Testimony]. Although the Agency was on notice in September 2008 that Bernal contracted with M.B. to go to school and behave or he would not be able to see his brothers, Human Resources advised the Agency that a PIP was the appropriate means to address Bernal's misconduct. [Exhibit 4; Liguori-Oliver Testimony]. It was not until August 2009, when the new case intake unit received a call reporting that Bernal mistreated the C.M. family, that the allegations became known, first through the investigation conducted by Arapahoe County and, then, the Agency's internal investigation. Only as the Agency investigated the allegations did it learn five families complained of similar conduct. Because Bernal failed to establish the Agency was not diligent in the face of actual knowledge of the conditions giving rise to the claims against her, the doctrine of laches is inapplicable.

Bernal also claimed the Agency did not allow her access to any files or any information regarding her contemplated discipline before the first disciplinary meeting. [Bernal Testimony]. During the two-hour interview with Bernal, Liguori-Oliver showed Bernal the behavior contract with M.B., but no other documents. [Liguori-Oliver Testimony]. However, the Agency made all of the records available to Bernal prior to the July 6, 2010 pre-disciplinary meeting, as noted in the second pre-disciplinary letter, and at the pre-disciplinary meetings, but Bernal did not request access to any of the records. [Exhibit 16-11; Liguori-Oliver Testimony; Bernal Testimony]. The Agency notified her representative that he could review and/or copy any of the records, but he did not.

Bernal also appears to claim a sort of civil "double jeopardy," that the Agency should not be permitted to base disciplinary action on the contract Bernal required M.B. to sign, since the contract formed the basis for the September 2008 PIP. A PIP is not a disciplinary action, and therefore, becomes a part of the employee's past record, which may be considered in later disciplinary actions. Since Bernal was not disciplined twice for the same conduct, Bernal's argument has no merit. Moreover, under the Career Service Rules, past misconduct may be considered as part of a pattern of misconduct. Finally, the contract with M.B. was only one violation among many which, independently, support Bernal's dismissal.

C. Likelihood of reform.

Liguori-Oliver tried extensively to modify Bernal's misbehaviors, including role-playing with the HR representative, computer classes, and other training

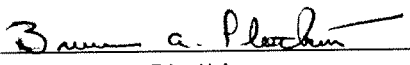
classes. However, Bernal continued her bullying behavior, and failed to report abuse and neglect . [Exhibit 7; Liguori-Oliver Testimony; Bernal Testimony].

The Agency considered the egregious nature of Bernal's conduct toward five client-families, Bernal's past record, which was marred by prior, similar discipline and three PIPs in less than two years, and Bernal's failure to maintain several temporary reforms of her bad behaviors. Her lapses were demonstrated by her unreasonably angry response to her supervisor while she was already subject to discipline for misbehavior. Consequently, the Agency established that a lesser discipline would be unlikely to achieve Bernal's compliance with the Career Service Rules.

VII. ORDER

For reasons stated above, the Agency's termination of Bernal is AFFIRMED.

DONE March 11, 2011.


Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board to review this DECISION, in accordance with the requirements of CSR 19-60 through 19-80, within fifteen calendar days after the date this order is delivered as stated in the attached certificate of delivery. Please note the 15-day deadline begins from the date sent from the Hearings Office, not the date you receive it. The Career Service Rules are available as a hyperlink at <http://www.denvergov.org/jobs/PublicNoticesandAnnouncements/CareerServiceAuthorityRuleRevisions/tabid/433593/Default.aspx>

All petitions for review must be filed with the:

**Career Service Board
c/o CSA Personnel Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
EMAIL: Leon.Duran@denvergov.org**

AND

**Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.**

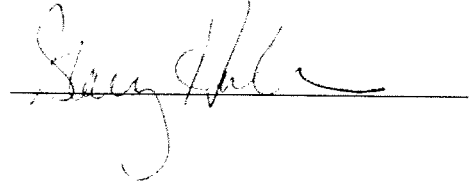
AND

Opposing parties or their representatives, if any.

CERTIFICATE OF DELIVERY

I certify that on March 11, 2011, I delivered a copy of this Order to the following in the manner indicated:

Ms. Maria Bernal, 19342 E. Buchanan Place, Aurora, CO 80011	(via U.S. mail);
Michael O'Malley, Esq., Michaelomalleylaw@hotmail.com	(via email);
Ms. Kathy Hand, Kathy@legalnavigators.net	(via email);
Niels Loechell, Assistant City Attorney, Niels.loechell@denvergov.org	(via email);
HR Services, HRServices@denvergov.org	(via email).

A handwritten signature in cursive script, appearing to read "Kathy Hand", is written over a horizontal line.

