

**DECISION AND ORDER**

---

**STEVEN CREWS**, Appellant,

v.

**DENVER SHERIFF'S DEPARTMENT**,  
and the City and County of Denver, a municipal corporation, Agency.

---

**I. INTRODUCTION**

Appellant, Steven Crews (Appellant) appeals his November 26, 2018 suspension from the Denver Sheriff's Department (Agency), for an alleged violation of Career Service Rule (CSR) 16-29 R.<sup>1</sup> On April 16, 2019, Hearing Officer Federico C. Alvarez conducted a hearing to determine the propriety of the discipline. Reid J. Elkus, Esq. and Steven T. Mandelaris, Esq., represented the Appellant; and Richard A. Stubbs, Assistant City Attorney, represented the Agency. Appellant's exhibit O and the Agency's exhibits 1-6<sup>2</sup> were admitted into evidence. The Appellant and former Deputies Cameron Colbert and Joshua Kuchta testified for the Appellant; and Civilian Review Administrator Alfredo Hernandez (CRA Hernandez)<sup>3</sup> testified for the Agency.

**II. ISSUES**

The issues were presented for appeal were whether:

- A. Appellant violated CSR 16-29 R. as it pertains to Agency Rules and Regulations (RR) 300.19.1; and
- B. the Agency's decision to suspend Appellant, if he violated CSR 16-29 R., conformed to the purposes of discipline under CSR 16-41.

**III. FINDINGS**

On June 11, 2001, the City and County of Denver (City) hired Appellant, and he has been a deputy sheriff since. Appellant has worked in special management for most of his career, the management of inmates requiring more attention due to issues such as mental health or behavioral misconduct. On January 4, 2018, Appellant and former Deputy Joshua Kuchta were assigned to work in the Denver Detention Center (DDC), in pod 3D, a special management pod. Appellant began his shift at 4:00 p.m., which would end at 2:00 a.m. Inmate KH was among the inmates then being detained in pod 3D. He was designated Separation From All (Sep All), meaning that he was to be kept separate from all other inmates, as he had fought another inmate that day, before Appellant arrived. Inmate MM was a tier porter<sup>4</sup> in pod 3D.

---

<sup>1</sup> CSR 16-29 has since been renumbered 16-28 but its substance remained identical.

<sup>2</sup> The Hearing Officer received Ex. 1ccc under a Protective Order, and Sealed, per the Parties' agreement.

<sup>3</sup> CRA Hernandez acted as the Executive Director of Safety's delegate in this proceeding.

<sup>4</sup> A tier porter is an inmate who is selected, based on his good behavior, to perform duties in the pod.

The deputies locked down the inmates in the DDC, including pod 3D, into their cells at 9:00 p.m., but for inmates with a specific reason to be out of their cell. Appellant testified that he and Mr. Kuchta subsequently arranged for the transfer of inmate KH to the medical station, also on DDC's third floor. Pursuant to Agency policy, it needed to have inmate KH cleared by the nurse due to his earlier incident. Appellant or Mr. Kuchta notified the corridor deputies that inmate KH needed transfer to the medical station and that he had a Sep All designation. Appellant also testified that Mr. Kuchta staffed the officer's desk in pod 3D to unlock the necessary doors while he retrieved inmate KH from his cell for escort to the corridor. The corridor was clear of other inmates and inmate KH's transfer to the medical station was uneventful. After the nurse cleared inmate KH, Deputies Williams and Colbert escorted him back to pod 3D, with Mr. Colbert in his immediate proximity. Deputy Williams stayed back at an officer's desk in the corridor. Inmate KH was still the only inmate present in this corridor at this time. Deputy Williams was serving as Field Training Officer for Mr. Colbert, who was then a recent Academy graduate. At 9:41:41 p.m., inmate KH entered the corridor from the medical station and at 9:42:08, he arrived at and waited outside the door to pod 3D, while Mr. Colbert stood behind him against the corridor wall. At 9:42:34, Mr. Colbert radioed Appellant and Mr. Kuchta that inmate KH was ready to enter pod 3D. One of them responded that "everything was okay and [the inmate] could come in." (Ex. 1z, P. 6, ln. 103-4). Mr. Colbert did not reiterate that inmate KH was a Sep All as he was unaware of it. Inmate KH appeared agitated as he waited in the corridor, pacing back and forth before the door. At 9:43:16, the corridor door to pod 3D began to open and at 9:43:18 inmate KH entered the sally port entry into it. Mr. Colbert then joined Deputy Williams at the officer's desk in the corridor.

The video, Ex. 1nnn, as viewed from the corridor door, shows the officer's desk in pod 3D is about 20 steps from the door, measured by inmate KH's stride. Mr. Kuchta sat at the officer's desk at its far side, working at its computer as he faced the door. Appellant was facing the desk from its left side, leaning on it with his left arm, in a relaxed posture. Inmate MM stood at the desk, between it and the corridor door, as he cleaned the desk and talked to the deputies. Inmate KH was to return to his cell, which he would have reached by entering a doorway on his right, about 6 steps short of the officer's desk. Inmate KH had walked about 9 steps into the sally port when inmate MM turned to retrieve a broom, leaning against the right wall behind him, between the officer's desk and the door to inmate KH's cell. Still turned away from the desk, Inmate MM asked inmate KH if he was okay. Inmate KH replied that he was fine. Inmate KH had by then taken about 14 steps into the sally port but did not enter the doorway on his right toward his cell. Inmate MM turned away from Inmate KH and began to walk toward Appellant on the left side of the desk.

Other videos, Ex. 1ooo, viewed from behind the officer's desk, and Ex. 1ppp, viewed from a hallway at a 45-degree angle from behind the officer's desk on the side at which Appellant leaned, recorded the incident. Inmate KH answered inmate MM and lingered behind him momentarily, taking two more steps more slowly, to allow inmate MM to turn fully away from him. During this movement, inmate MM mostly blocked Appellant's view of inmate KH, who then lunged three steps toward and at 9:43:27 p.m. hit Inmate MM in back of the head with his right fist. Inmate KH's first blow knocked inmate MM forward and off balance, and inmate MM also took more sideways steps forward past Appellant, along the hallway wall behind the desk. Inmate KH followed inmate MM, swinging at him seven times total, and likely hit inmate MM a second time. Appellant stopped inmate KH's assault when Appellant quickly stood up and intercepted him in a hug and pushed him back against the far wall of the sally port. Mr. Kuchta went around the other side of the desk to help Appellant control inmate KH, while requesting backup on his radio.

The video, Ex. 1nnn, also shows that Mr. Colbert, who heard yelling while in the corridor, and Deputy Williams arrived at the sally port first, and nine more deputies and supervisors then arrived to also help. The fourth deputy to arrive checked on inmate MM, who stood by the desk rubbing the back of his neck. After six deputies had arrived, Deputy Williams, Mr. Colbert, and a third deputy escorted inmate KH to his cell without further incident. Other deputies escorted inmate MM, who was still rubbing his neck, through the sally port to go to the medical area to be cleared for injuries. Later, the Agency moved inmate KH to another pod. The staff offered to Inmate MM to file criminal charges against Inmate KH, but Inmate MM declined to do so.

Upon review of the January 4 incident, Major J. Blair filed a complaint with the Internal Affairs Bureau (IAB), which investigated the incident. On February 1, 2018, Sergeant Anthony Mazzei of the IAB interviewed Appellant, who appeared with counsel. Appellant first stated that he believed inmate KH had been designated Sep All for an earlier incident. He then claimed confusion regarding the Sep All classification for inmates. He stated that the Housing Policy requires Sep All inmates to be separated from other inmates at all times, while the Housing/Classification policy requires Sep All inmates to be separated from other inmates if feasible. He explained it was not "feasible" to secure inmate MM elsewhere as he would leave Mr. Kuchta alone with inmate KH, so he exercised his judgment to not secure inmate MM. (Ex. 10, p. 6-7, In. 117-135). Sergeant Mazzei confirmed Appellant's explanation:

144 SERGEANT MAZZEI: Okay. All right. So  
145 Inmate [KH] being a sep all, you stated -- and I want to make  
146 sure I understand this correctly. Based on yourself and  
147 Deputy Kuchta being there and -- and in the area --  
148 DEPUTY CREWS: Right.  
149 SERGEANT MAZZEI: -- that -- and only having  
150 the tier porter out --  
151 DEPUTY CREWS: Right.  
152 SERGEANT MAZZEI: -- that you used judgment  
153 that that was -- that that was adequate?  
154 DEPUTY CREWS: Right. I -- because at the  
155 time this -- I look at it -- is how much time do I have to  
156 run him -- this guy's already coming in, or whatever he  
157 is -- his position from my report. He's coming in. How much  
158 time do I have to run and put the inmate somewhere? Where?  
159 You know -- I mean, I have to open doors, and I got an officer  
160 here. You know, [KH] was fine. Usually, I use judgment on,  
161 like, you know, how somebody is. ...

Transcript, Ex. 10, pp. 6-7.

On September 6, 2018, the Agency notified Appellant of a Contemplation of Disciplinary Action. On September 24, Appellant and Mr. Mandelaris met with Sheriff Patrick Furman, Chief Elias Diggins, Major Stephen Koch, Shayne Allen, Gregg Crittenden, Assistant City Attorney Jennifer Jacobson, and CRA Hernandez for a contemplation of discipline meeting. Appellant made a statement. In discussing his application of the Sep All policy to the January 4 incident, he stated that he made a judgment call, based on perception that inmate KH was not a threat, to get between inmates KH and MM as inmate KH came into the sally port. (Ex. 1ss, pp.11-12, In. 246-259). Appellant also stated it was difficult to work under conflicting Sep All policies.

On October 15, 2018, the Agency notified Appellant of a second Contemplation of Disciplinary Action. On November 5, it and Appellant and his counsel met again for a second contemplation of discipline meeting at which Appellant did not make a statement.

The Agency determined Appellant's conduct constituted a violation of CSR 16-29 R., as it pertained to RR-300.19.1, as it pertained to Agency Van Cise-Simonet Detention Center Housing Post Order X. SEPARATION FROM ALL (SEP ALL). Under the Agency Disciplinary Matrix (Matrix), a violation of RR 300.19.1 is a Conduct Category A through F violation.

In determining the applicable Conduct Category violation, the Agency considered that Appellant allegedly violated its mission, "...to provide safe and secure custody for those placed in our care and to perform all of our duties in a manner that is responsive to the needs of our diverse community." It also considered that he allegedly violated its guiding principle of Safety, "We continually maintain and improve core competencies and specialized skills so as to enable us to fulfill our obligation to protect department personnel, ... detainees, and the public from harm." It concluded that Appellant: (1) did not fulfill its mission, (2) did not protect the attacked inmate, Agency personnel and the public, and (3) impacted its operations and image by allowing potential serious injury to the attacked inmate and responding deputies. The Agency thereby deemed Appellant's alleged misconduct a Conduct Category D violation.

Under the Matrix, for a deputy with a prior, equivalent violation in seven years, a RR-300.19.1 violation assigned a Conduct Category D has a Penalty Level 6. The mitigated, presumptive, and aggravated penalties for it are an 18-22 day suspension, a 30 day suspension, and a 38-42 day suspension, respectively. As mitigating factors, the Agency considered Appellant's satisfactory reviews and his lack of disciplinary history<sup>5</sup>. As aggravating factors, it considered the legal or financial risk to the Agency or the City for potential harm from the offending inmate or to a responding deputy, jeopardizing the Agency's mission, and Appellant's failure to acknowledge wrongdoing. It concluded that the facts of Appellant's alleged violation warranted a presumptive penalty and on November 26, 2018, it suspended him for 30 days.

On December 6, 2018, Appellant filed this timely appeal.

## IV. ANALYSIS

### A. Jurisdiction and Review

The Career Service Hearing Office has jurisdiction over this appeal pursuant to CSR 20-20 A.2. as it is a direct appeal of a suspension. The Hearing Officer is not to conduct a *de novo* review. CSR 20-56 A.

### B. Burden and Standard of Proof

The Appellant retains the burden of proof throughout the case to prove that the decision of the Agency was clearly erroneous and/or that the application of the disciplinary matrix was clearly erroneous. CSR 20-56 A.

### C. Career Service Rule Violations

#### 1. Authority

CSR 16-29 R. authorizes discipline for:

Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies

---

<sup>5</sup> The Agency used Appellant's September 26, 2016 ten-day suspension to increase the Penalty Level but not to foreclose the possibility of mitigation.

or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.

The Agency alleged that Appellant violated CSR 16-29 R. as it pertains to: RR-300.19.1:

Deputy Sheriffs and employees shall not fail to perform the required duties of their assignments.

As it pertains to:

**Denver Sheriff Department Van Cise-Simonet Detention Center  
Housing Post Order  
X. SEPARATION FROM ALL (SEP ALL) (Ex 1hh)**

Inmates designated [as] Separation from All (Sep All) shall not have contact with other inmates at any time. All other inmates shall be secured and separated prior to the Sep All inmate being removed from their cell for designated out of cell time or other activities.

When attending functions (court, etc.) outside of the Special Management Unit, the Sep All inmate will be escorted by an Officer(s) ensuring the inmate's safety.

Post Order 4142.1A-Classification/Housing (Ex. 1gg) ...

**6. Restrictive/Special Housing ...**

3. Separation from all – SEP FROM ALL

- a. Separated from all other inmates whenever feasible

Conduct Category D, subsection 13.1.4 of the Agency Discipline Handbook is (Ex. 2):

Conduct that is substantially contrary to the guiding principles of the Department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to deputy sheriff, employee or public safety.

CSR 20-55 D.<sup>6</sup> states:

Matrix: If discipline has been imposed pursuant to a disciplinary matrix, the matrix in effect at the time the misconduct occurred and any writings adopted by the EDOS in explanation of that matrix shall be given deference by the Hearing Officer. If the Hearing Officer modifies the disciplinary penalty imposed by the EDOS, the modified penalty must be consistent with the principles of the matrix.

## 2. Discussion

Appellant defended against the Agency's allegations with several defenses. First, Appellant argued that he was not liable for any CSR violation because the Agency had not clearly instructed him on the policy for Sep All inmates, since two iterations state different terms. At hearing, Appellant also argued the defense that he did not know that inmate KH was designated Sep All, so he could not have known to segregate inmate MM from inmate KH. He also argued that the Agency improperly singled him out for discipline since other deputies violated the Agency rules with impunity during the January 4 incident.

---

<sup>6</sup> This version of CSR 20-55 D., effective October 20, 2017, was in effect on January 4, 2018.

The Agency responded to Appellant's defenses by arguing that the evidence showed he violated the Sep All policy, under either Post Order, his claim of not knowing that inmate KH was designated Sep All is new and not credible, and that it did not discipline certain other deputies as it was unwarranted, but if it had been warranted, it still provided Appellant no defense.

To prove a violation of this Rule, the Agency must show that it established a policy, it clearly communicated the policy to the employee, and the employee failed to follow the policy. [In re Rock](#), CSA 09-10, 5 (10/5/10), citing [In re Mounjim](#), CSA 87-07, 17 (7/10/08); *aff'd in part on other grounds* [In re Mounjim](#), CSB 87-07 (1/8/09). The Agency can advise its deputies of its "written departmental or agency regulations, policies or rules" through its Rules and Regulations and Post Orders. It did so here through its Housing Post Order and its Housing/Classification Post Order. They differ. The Housing Policy states a strict prohibition of inmates designated Sep All from contacting other inmates while the Classification Policy requires such prohibition from contact if feasible. The issue then became which Post Order governed Appellant's conduct. Appellant acknowledged familiarity with both Post Orders but claimed to not know which governed his conduct. The Agency argued that the Housing Post Order governed his conduct as he was performing a housing function and not a classification function. The Hearing Officer agrees. Appellant should have adhered to the Housing Post Order, which governed his function and clearly mandated that Sep All inmates "shall not have contact with other inmates at any time."

Appellant invoked the Housing/Classification Post Order because he believed it gave him discretion to not secure other inmates when a Sep All inmate was to come into their proximity. The January 4 assault was a prime example. Appellant had expected no misconduct from inmate KH, so he deemed it was not feasible to secure inmate MM. However, he conflated preferable with feasible, defined as "capable of being done or carried out." "Feasible." MERRIAM-WEBSTER ONLINE DICTIONARY. <https://www.merriam-webster.com/dictionary/feasible> last visited April 19, 2019). He preferred not to secure inmate MM and did not do so. In fact, he would not have had to move from his relaxed posture at the desk to do so. Appellant merely needed to have had inmate MM to move behind him, a few steps. Appellant could then also have had an unobstructed view of inmate KH as he walked toward his cell, or not. 44 seconds elapsed from when Mr. Colbert first radioed the deputies in pod 3D of the return of inmate KH to when inmate KH entered the sally port. So, Appellant had plenty of time to secure inmate MM, an eminently feasible action. Thus, Appellant's argument that the Housing/Classification Post Order could have governed his conduct was no defense.

Appellant also claimed that he did not know at the time of the assault that inmate KH was designated Sep All, and blamed the corridor officers for not advising him of it upon inmate KH's return. The Hearing Officer finds this claim incredible. First, Appellant had over 16 years of experience at the time of the assault, mostly in special management of inmates. Next, Appellant knew that inmate KH was involved in an incident earlier for which he had to be cleared by the nurse. So, Appellant could readily infer that inmate KH could have had a physical accident, or had been involved in an altercation, either as a participant, perpetrator, or victim. Therefore, Appellant and Mr. Kuchta had transferred inmate KH to the corridor Deputies for escort to the medical area and alerted them of his Sep All classification. But they had waited over five hours, from some point before 4:00 p.m. until after the 9:00 p.m. lockdown, when the corridor would be clear of other inmates. Inmate KH was the only inmate moved out of pod 3D at that time, and as it was for a medical clearance, he was expected back. Further, Appellant had known inmate KH from his prior confinement in special management and recognized inmate KH when he returned.

As reference, Appellant testified that Deputy Williams had a duty to find out inmate KH's designation for the escort of inmate KH, which began after the 9:00 p.m. lockdown and ended at 9:43 p.m. By contrast, inmate KH had been in pod 3D, under Appellant's supervision for over

five hours, including a meal and the lockdown process. The housing deputies also have access to the computer summary of such information regarding the inmates. Even if this was Appellant's first day of contact with inmate KH, he would have known by the assault that inmate KH was a Sep All. He could not follow the Post Orders unless he informed himself of it and any other designations for inmate KH and the other inmates in pod 3D.

Also, Appellant described at his pre-disciplinary meetings his judgment call to not secure inmate MM in reliance on the Housing/Classification Post Order. Appellant's call would have been activated only if he had known of inmate KH's Sep All designation. Only then would he have conducted his "feasibility" analysis to decide whether to secure inmate MM. Thus, his actions regarding inmates KH and MM showed that he knew of the Sep All designation.

Appellant also argued that he should not be found to have violated CSR 16-29 because the Agency ignored the same violations by other deputies. This argument is incorrect. First, the Agency need not engage in a comparative negligence analysis. See [In re Leyba](#), CSB 25-16A, 2 (8/3/17). Nevertheless, The Agency disciplined Mr. Kuchta, similarly situated to Appellant, for his violation, also at a Conduct Category D. He had no prior, similar level violation to increase the Penalty Level of 5. He earned mitigation by taking responsibility for his violation and elected to manage Sep All inmates more conservatively in the future. Appellant, by contrast, still claims safe harbor in the Housing/Classification Post Order for his judgment calls to not secure other inmates when a Sep All inmate is arriving, and may still be disregarding the Housing Post Order.

Appellant argued that Deputies Colbert and Williams were exonerated for the same conduct. However, they did not have other inmates in the corridor when they escorted inmate KH. So, the SEP ALL policy did not apply to them. Appellant argued that he should not be disciplined because the Agency did not discipline Deputy Williams for not repeating to the pod 3D housing officers that inmate KH was designated Sep All. While this redundant communication would have been ideal, Deputy Williams received the information from the pod 3D officers in the first place. So, Deputy Williams did not keep the pod 3D deputies ignorant of inmate KH's designation. Appellant would also make Deputies Colbert and Williams responsible for the pod 3D sally port in addition to the corridor. However, the evidence showed that corridor officers are responsible for inmates in the corridor. It also showed that they could have been responsible to escort inmate KH even to his cell if the pod 3D officers requested such help. However, Appellant was merely relaxing at the desk and had no basis to and did not ask for such help. As such, the door to pod 3D delineated the duties of the corridor and housing officers when the corridor officers returned inmate KH to pod 3D.

Therefore, Appellant failed to prove by a preponderance of the evidence that the Agency's decision that he violated CSR 16-29 R. was clearly erroneous. See 20-56 A.

## **V. DEGREE OF DISCIPLINE**

### **16-41 Purpose of Discipline:**

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

Appellant argued in the alternative that the Agency's discipline of him was excessive for his violation, which he mitigated through his immediate intervention in the assault by inmate KH of inmate MM; and when compared to its discipline of other deputies for comparable violations.

The Agency responds that its discipline is appropriate, given Appellant's violation of RR-300.19.1, and its application of the Matrix thereto.

### **1. Seriousness of the proven offense**

Appellant's misconduct is serious. He tolerated the easily preventable contact by a Sep All inmate with the tier porter inmate in violation of the clear prohibition of the Separation From All Policy. His misconduct allowed the Sep All inmate to assault the tier porter, fortunately only briefly. The tier porter was pushed toward and also scurried past Appellant to get away. Appellant had only to straighten up and step sideways one step to intercept the Sep All inmate as he pursued the tier porter to continue the assault. Had the tier porter not moved behind Appellant, the Sep All inmate could have assaulted the tier porter more seriously. Appellant knew that the Sep All inmate recently left pod 3D without incident, assumed he would return to his cell without incident, and therefore did not secure inmate MM. However, the Policy prohibits all such contact. Appellant claimed confusion over the Policy but never asked for its clarification. Appellant at times acted as a Field Training Officer and taught at the Academy, presumably on the special management of inmates. As such, he was dutybound to clarify his confusion, if any, on the Policy, to teach it properly. 11 other deputies and supervisors interrupted their duties to respond to the call for backup on the assault. Two deputies escorted inmate MM to the medical station. And, of course, inmate MM did not finish his cleanup duties, at least not on schedule. This activity interrupted the Agency's management of the DDC and exposed the tier porter and deputies to potential injury.

### **2. Prior Record**

On September 26, 2016, the Agency suspended Appellant for 10 days for being Absent from Duty. On April 6, 2012, it suspended him for Non-Payment of Fair Share. On October 12, 2005, it issued him a Verbal Reprimand for Improper Conduct. Appellant acts as liaison for the Agency on mental health and corrections meetings, received an award and a letter of recommendation for his excellence in pod 3D.

### **3. Likelihood of Reform**

The Hearing Officer cannot determine whether Appellant will reform. Appellant argues he did not violate a clear Policy, yet he admits doing so in his testimony, albeit with purported defenses. He did not testify that, having received discipline for his distortion of the Policy, he will follow the Agency's interpretation of it at least during his appeal. Yet Appellant seemed invested in and proud of his work with the Agency and in the profession. So, he may be resolute in his arguments for purposes of the litigation. Therefore, the Hearing Officer accords Appellant the benefit of the doubt and not does declare that he is incapable of or unwilling to reform.

Appellant argued that his discipline should be similar to [In re Swarr](#), CSA 56-15 (6/12/17). Appellant Swarr allowed a Sep All inmate to assault another inmate but received a mitigated penalty. The Agency deemed the misconduct to be a Conduct Category D in both cases. However, Appellant Swarr had no prior, equivalent violation in seven years, so his Penalty Level was 5 instead of 6, the Level herein. Appellant Swarr warranted a mitigated penalty. Appellant Swarr accepted responsibility for his actions, whereas Appellant Crews did not do so. Appellant Swarr had a minor prior record in 25 years of service, whereas Appellant Crews had a minimally worse record in 16 years of service. Appellant Swarr also had two "outstanding," numerous "exceptional," and all other "exceeds expectations" performance reviews; while Appellant

Crews's performance reviews were "successful." Thus, the penalties for Appellant Crews and Appellant Swarr, and Mr. Kuchta as described above, are justifiably different based on their individual facts.

Considering the record, the Hearing Officer concludes that Appellant failed to show by a preponderance of the evidence that the Agency's 30-day suspension of him, or its application of the Matrix in determining his suspension, was clearly erroneous. See CSR 20-56 A. As such, the Hearing Officer gives deference to the Matrix and CRA Hernandez's explanation of it, discussed above, which the Hearing Officer found to be sound for the most part.<sup>7</sup> See CSR 20-55 D.

## VI. CONCLUSION AND ORDER

The Hearing Officer concludes that the Agency's 30-day suspension of Appellant comported with CSR 16-41, as it was properly fashioned to address inappropriate behavior and was reasonably related to the seriousness of Appellant's conduct; and the record reflected a sufficient, reasonable, and articulated justification for it, it was within the range of alternatives available to a reasonable and prudent administrator, and was not clearly excessive. See [In re Economakos](#), CSB 28-13A, 2 (3/24/14), *citing Adkins v. Division of Youth Services, Dept. of Institutions*, 720 P.2d 626 (Colo.App. 1986); *Colorado Dept. of Human Services v. Maggard*, 248 P.3d 708 (Colo. 2011).

Accordingly, the Hearing Officer AFFIRMS the Agency's 30-day suspension of Appellant.

DONE April 22, 2019.



---

Federico C. Alvarez  
Career Service Hearing Officer

### NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this final order, in accordance with the requirements and limitations of CSR § 21-20 et seq., within fourteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery, below. See Career Service Rules at [www.denvergov.org/csa](http://www.denvergov.org/csa). All petitions for review must be filed with the:

#### **Career Service Board**

c/o OHR Executive Director's Office  
201 W. Colfax Avenue, Dept. 412, 4th Floor Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [CareerServiceBoardAppeals@denvergov.org](mailto:CareerServiceBoardAppeals@denvergov.org)

#### **Career Service Hearing Office**

201 W. Colfax, Dept. 412, 1st Floor Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

**AND** opposing parties or their representatives, if any.

---

<sup>7</sup> The evidence supported the Agency's analysis and discipline under the Matrix but it did not show that Appellant failed to protect the public or that he impacted the image of the Agency.