

Admin. for Children's Services v. Villavicencio

OATH Index No. 189/25 (Dec. 22, 2025), *adopted*, Comm'r Dec. (Dec. 30, 2025), **appended**

Petitioner established that respondent sent emails on matters to which she was not assigned to work and emailed the agency commissioner and a deputy commissioner on routine work matters after being directed not to do so. In addition, petitioner proved that respondent submitted a request for information technology service desk assistance on behalf of the agency commissioner without his knowledge or approval and misrepresented that she sent the request on the commissioner's behalf. ALJ recommends that respondent be suspended without pay for 22 days.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
ADMINISTRATION FOR CHILDREN'S SERVICES
Petitioner
- against -
MICHELLE GALANG VILLAVICENCIO
Respondent

REPORT AND RECOMMENDATION

ASTRID B. GLOADE, *Administrative Law Judge*

Petitioner, the Administration for Children's Services ("ACS"), brought this disciplinary proceeding under section 75 of the Civil Service Law. Petitioner alleges in its first set of charges that in April 2024, respondent, City Research Scientist Michelle Galang Villavicencio, sent emails regarding issues not assigned to her and not part of her official duties after her supervisor directed her not to do so and that in March and April 2024, she copied individuals on routine work emails after having been directed not to do by her supervisor (ALJ Ex. 1A). In a second set of charges, petitioner alleges that on November 25, 2024, respondent created and submitted a service desk request with petitioner's Office of Information Technology ("OIT") seeking access to an electronic storage drive that she had been informed she no longer had access to and that she misrepresented that the request was on behalf of the ACS commissioner (ALJ Ex. 1B). The charges were consolidated for purposes of this proceeding (Tr. 6).

At a two-day trial, held via videoconference, petitioner appeared by counsel and respondent represented herself. Respondent had been represented by Jean O’Hearn, Esq., who was granted leave to withdraw on April 14, 2025, with respondent’s consent.¹ Respondent was afforded time to secure new representation, but advised this tribunal that she would be representing herself. Respondent was provided with links to this tribunal’s Rules of Practice and Notice of Rights of Self Represented Litigants before the trial (Tr. 5-8). In addition, at the start of the trial, in keeping with rule 103(A)(8) of Appendix A to title 48 of the Rules of the City of New York, the Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York, I reminded respondent of her right to have an attorney or non-attorney representative in this case and offered her time to consult with an attorney. Respondent reaffirmed that she would be representing herself at trial. I therefore explained the nature and procedural aspects of the trial and respondent proceeded to represent herself (Tr. 7-11, 153).

At the trial, petitioner presented three witnesses and documentary evidence. Respondent testified on her own behalf and presented documentary evidence. For the reasons below, I find that the charges are sustained and recommend that respondent be suspended without pay for 22 days.

ANALYSIS

Respondent, a City Research Scientist II, has been employed in the Office of Research and Analytics (“ORA”) in the Division of Policy, Planning, and Measurement (“PPM”), for six years (Tr. 18, 20). Petitioner alleges that after having been directed not to do so, respondent sent emails concerning matters to which she was not assigned to work and outside of her chain of command (ALJ Ex. 1A), and misrepresented that a request she submitted to petitioner’s OIT for help with accessing a database had been sent on behalf of the ACS commissioner (ALJ Ex. 1B).

Petitioner bears the burden of proving the charged misconduct by a preponderance of the credible evidence. *See Dep’t of Sanitation v. Figueroa*, OATH Index No. 940/10 at 11 (Apr. 26, 2010), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 11-47-A (July 12, 2011) (in a disciplinary proceeding, petitioner bears the burden of proving misconduct by a fair preponderance of the credible evidence); *Dep’t of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007),

¹ The transcript of the proceedings on April 14, 2025, during which Ms. O’Hearn was granted leave to withdraw is made part of the record as ALJ Exhibit 2.

adopted, Comm’r Dec. (Nov. 5, 2007), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 08-33-SA (May 30, 2008) (same). A preponderance has been defined as “the burden of persuading the triers of fact that the existence of [a] fact is more probable than its non-existence.” *Prince, Richardson on Evidence* § 3-206 (Lexis 2008) (citations omitted); *see also Bazemore v. Friday*, 478 U.S. 385, 400-01 (1986). Petitioner has met its burden.

The facts giving rise to the charges are largely undisputed. Instead, respondent contends that her conduct does not constitute misconduct for a variety of reasons. Respondent is mistaken.

***Emails regarding matters not assigned to respondent/not part of her duties
(Charge 1, Specifications 1(a)–1(c))***

Petitioner alleges that on April 10 and 11, 2024, respondent’s supervisor directed her to refrain from working on or sending emails regarding issues that were not assigned to her, but she sent emails after this directive on April 11, 2024, at about 11:24 a.m.; on April 15, 2024, at about 10:38 a.m.; and on April 15, 2024, at about 4:13 p.m. Petitioner contends that respondent failed to adhere to rules and directives contained in ACS’s Policies and Procedures, in violation of section 4(a) of its Code of Conduct (“Code”); failed to obey lawful orders, requests, and directives of her chain of command or other appropriate authority in violation of section 4(g)(i) of the Code; and engaged in conduct that threatens good order and discipline or that may reflect unfavorably on her fitness or could bring discredit upon petitioner or New York City, in violation of section 5(a) of the Code (ALJ Ex. 1A).

Sarah Workman, respondent’s supervisor, is Executive Director of Justice Analytics and Child Welfare Reporting at ORA, a position she has held for eight or nine years (Tr. 18, 20). ORA analyzes and reports data for all the agency’s operational functions, including child welfare, juvenile justice, and childcare vouchers. Workman supervises a team that analyzes and reports quality assurance data for the agency’s juvenile justice operations. She also oversees a team that is responsible for data on child welfare reporting. ORA produces the agency’s reports that are available to the public (Tr. 18-19). Workman reports to Associate Commissioner Eileen Johns, who reports to Deputy Commissioner Andrew White (Tr. 19, 38). Deputy Commissioner White reports to ACS Commissioner Jess Dannhauser (Tr. 19-20, 38-39).

Workman began supervising respondent in October 2023, during which time respondent’s civil service title has been City Research Scientist II and her functional title is Analyst (Tr. 20). As

respondent's supervisor, Workman is responsible for determining her assignments (*Id.*). Workman testified that about a month after she started supervising respondent issues arose, such as respondent not collaborating well with other team members and objecting to assignments (Tr. 23). Workman directed respondent to stay focused on work assigned to her, not do work that had not been assigned to her, and not loop in the deputy commissioner and commissioner on routine work matters (Tr. 24). It is ACS protocol for employees to work through their chain of command to address concerns, meaning they should raise concerns with their immediate supervisor (Tr. 50). If an employee's immediate supervisor cannot resolve an issue, the supervisor should raise the issue to the next supervisor up the chain of command (Workman: Tr. 50; Roseborough: Tr. 133-34).

Workman testified that respondent's work on matters that were not assigned to her and emails to multiple employees within the agency about matters to which she was not assigned caused ongoing disruptions because those employees had to deal with respondent's emails (Tr. 25).² Workman was concerned that because respondent was sending emails and doing tasks outside the scope of her duties instead of her assigned tasks, ORA was functioning with one less analyst (Tr. 26). Therefore, in an email sent on April 10, 2024, at 2:22 p.m., Workman instructed respondent to refrain from sending emails about matters to which she was not assigned. Workman wrote:

I am writing to remind you that when you are working you should not work on, and you should not send emails regarding, issues that are not assigned to you and/or are not part of your job duties. An example of work that you should not pursue or email about on the job is your analysis of NYC Open Data on salaries of ORA staff members.

(Pet. Ex. 2).

On April 11, 2024, at 11:24 a.m., a day after Workman's directive, respondent sent an email from her agency email address to Workman, copying Associate Commissioner Johns, Deputy Commissioner White, and another ACS employee (Pet. Ex. 3). The subject of the email is "EFCI study on ACS public website" (*Id.*). Respondent wrote:

² According to Workman, staff members complained about being disturbed, frightened, and confused by respondent's emails (Tr. 25-26). On cross-examination, petitioner's counsel asserted that Workman should not be compelled to identify the employees who voiced confusion, fear, or disturbance, contending that they did not want to participate in the trial and had expressed fear about confronting respondent and having her confront them. I declined to compel Workman to identify the employees, but reserved decision as to whether I would give any weight to Workman's testimony that unnamed staff members complained to her (Tr. 56-60). I now decline to give any weight to Workman's testimony that unidentified staff members complained to her about respondent's emails.

I did not work on the manuscript but did work on the dataset for this funded study. I just want to point out that the tables are not in the appropriate format and I feel that this is a reflection of everyone's affiliated university degrees. I believe ACS is supposed to follow APA style formatting? Also, cc-ing Katherine Haver who I know has a PhD and would know the format from her dissertation.

(*Id.*). Workman testified that the email concerned a report that had been posted on the ACS website five or six years earlier (Tr. 28). Respondent had worked on developing data for the report but had not been assigned to work on the final report (Tr. 28-29).

On April 11, after she received respondent's email, Workman reiterated her directive of April 10 in another email to respondent. Workman wrote:

Please recall that just yesterday you were directed not work [sic] on, or send emails regarding, issues that are not assigned to you and/or are not part of your job duties. This is another example of work that you should not pursue or email about on the job. Please stay focused on your assigned tasks.

(Pet. Ex. 3). In response to Workman's email, respondent requested a list of her assigned tasks, noting that she had copied the alumni office of University of Rochester, her alma mater, because she felt that ORA misused her title as a City Research Scientist II (*Id.*). Workman replied that respondent's current assignments were "Barbara Base maintenance, PAMS sample production, PA table maintenance" and "ad hoc requests as they arise" (*Id.*).

Respondent's assignments, Workman testified, predated respondent's assignment to Workman's supervision and did not reflect work in Workman's unit. When respondent joined the unit, Workman "just assumed responsibility for supervision" of those assignments (Tr. 61). Respondent was also expected to handle "ad hoc requests," under Workman's supervision, meaning requests for data, reports, or analyses as the need arose (Tr. 22-23, 61). Workman provided several examples of such data-related work, including "Barbara Base," "PAMS sample production," and "PA table maintenance." "Barbara Base," Workman explained, is a version of the Child Care Review Service data that creates longitudinal data on children and families in foster care (Tr. 62-63). "PAMS sample production" involves working with another department within PPM to pull samples for case or record reviews and "PA table maintenance" refers to maintaining data tables for parent advocates, which supports the work of a team in the foster care division (Tr. 65-66).

Workman is the chairperson of ACS's Research Review Committee (the "Committee"), which reviews requests for research and evaluation that involves the people that ACS serves, including children, families, provider agencies, and ACS staff. The Committee reviews the requests to make sure that ACS meets its ethical responsibilities, protects client and staff personal information, and provides research that is sound and benefits ACS (Tr. 31-32).

On April 15, 2024, respondent sent an email to the Committee's mailbox, the subject of which is "Predicting size of Barbara's base in the future" (Pet. Ex. 4).³ In that email she forwarded an email dated November 21, 2023, that she had sent to three ACS staff members, including Workman, in which respondent asked if there was a way to "estimate possible sizes of certain tables in the future," and wrote that she was "[I]ooping in Sara [Workman] . . . who I am working with on Barbara's Base" (*Id.*).

The next email in the chain is respondent's April 15, 2024, email to the Committee, sent at 10:38 a.m., forwarding her email from November 21, 2023. In the April 15, email, respondent asked for guidance on the process for her to create a research project "to estimate the size and analyze different variables in Base Barbara code files," noting that she had suggested the project earlier (*Id.*). Respondent wrote that she felt "work is being assigned to me and taken away on purpose to sabotage my career" and that she had over ten years of research experience (*Id.*). At 10:54 a.m. the same day, Workman replied to respondent's email from the Committee's email box, that the project was not one that should be submitted to the Committee and that if the Committee determined a further inquiry was required, it would reach out (*Id.*). Approximately 11 minutes later, respondent sent an email to the Committee's mailbox, Anil Sharma, Assistant Commissioner of Infrastructure and Support in OIT, and other ACS employees including Commissioner Dannhauser, writing that the research was geared towards the interaction between cognitive psychology and computer science (*Id.*).

Workman testified that respondent was asking for advice on how to submit a research proposal about Barbara Base in her April 15 emails. Respondent had never been assigned to create a research project and it was never part of her duties as a City Research Scientist II (Tr. 32-33). Workman testified that ORA has a "dedicated team that does predictive analytics" and respondent's research proposal was not consistent with how the research review process works (Tr. 33).

³ Respondent referred to "Barbara Base" as "Barbara's base," "Barbara's Base," and "Base Barbara" in her emails (Pet. Ex. 4).

Respondent also sent an email on April 15 at 11:12 a.m., to the Committee and several ACS employees, including Sharma and Commissioner Dannhauser, in which she forwarded her “Research Lab Mentor’s research” (Pet. Ex. 4). Workman responded by email at 12:05 p.m., reiterating that the project was not one that the PPM wanted to engage in or one that would need to go through the research review process if PPM decided to implement it (*Id.*).

In an email to Sharma sent at 4:13 p.m. on the same date, respondent wrote that since her Tasks and Standards directed her to “[p]articipate in ongoing dialogues with data scientists, IT and management” she planned to create the research proposal document (*Id.*). She copied multiple ACS employees on her email, including Workman, Commissioner Dannhauser, and Deputy Commissioner White (Tr. 49; Pet. Ex. 4). Workman understood respondent’s email, in which she indicated that she planned to proceed with creating the research proposal, to mean that she planned to continue despite Workman’s directive (Tr. 32-34; Pet. Ex. 4).

***Copying ACS Commissioner and Deputy Commissioner on routine work emails
(Charge 1, Specifications 2(a)–2(e))***

In addition to sending emails concerning matters to which she was not assigned, petitioner alleges that respondent sent emails to Commissioner Dannhauser and Deputy Commissioner White on routine work matters after having been instructed not to do so. Petitioner charges that on or about December 7, 2023, and January 25, 2024, Workman and Deputy Commissioner White directed respondent to refrain from copying White and Commissioner Dannhauser on routine work email conversations, but despite this directive, respondent included them on routine work emails on March 29, April 4, April 11, and twice on April 15, 2024 (ALJ Ex. 1A).

Workman testified that in an email exchange between December 6 and 7, 2023, members of the PPM staff were trying to figure out an aspect of a project on which respondent and other analysts were working (Tr. 35-36; Pet. Ex. 5). In an email sent on December 7, 2023, at 10:37 a.m., respondent complained that a member of the team was discounting all of her suggestions. She copied Commissioner Dannhauser, Deputy Commissioner White, and Associate Commissioner Johns on her email (Pet. Ex. 5; Tr. 38). A few minutes later, Workman replied to respondent’s email that “[i]t is not at all helpful to include Andrew and the Commissioner on this sort of email” and warned respondent that if she could not work collaboratively with other team members, Workman would have to consider changing her assignment (Pet. Ex. 5; Tr. 39).

According to Workman, respondent did not change her behavior after Workman's email and continued to copy Commissioner Dannhauser and Deputy Commissioner White on emails concerning routine work matters (Tr. 39).

Respondent copied Commissioner Dannhauser and Deputy Commissioner White in an email exchange between January 23 and 25, 2024, regarding her concern that the "chat" function of a training about sex trafficking had been hacked. In an email on January 24, 2024, at 4:48 p.m., respondent asked for more information about the issue of sex and labor trafficking in the Philippines, and copied Commissioner Dannhauser on that email. On January 25, in response to respondent's email, Workman instructed respondent to "[p]lease take the Commissioner off these emails. It's not helpful to keep looping him in at this point" (Pet. Ex. 6; Tr. 41).

On January 25, 2024, respondent sent an email to Deputy Commissioner White at 12:02 p.m. regarding a "Voucher question" that she had been discussing in emails with Workman and another employee. Respondent had initiated the inquiry, asking Workman if a single voucher could apply to multiple children (Pet. Ex. 7). It appears from the email chain that at 12:04 p.m., Workman removed the deputy commissioner from her response to respondent's email. Workman wrote "Please don't loop in Eileen [Johns] and Andrew [White] on this sort of thing" (*Id.*). However, in an email sent at 12:05 p.m., respondent sent the email chain to Commissioner Dannhauser, Deputy Commissioner White, and Associate Commissioner Johns (*Id.*). In an email sent at 12:17 p.m., Deputy Commissioner White instructed respondent "Please don't cc or bcc the Commissioner or myself on your routine work email conversations. Sara is correct on that" *Id.*). He also wrote that if there are questions, they can be brought to his attention through Workman (*Id.*).

Workman testified that she became "frustrated" after giving respondent "so many directives" not to include the commissioner and deputy commissioner on emails about routine work matters and about getting "pushback on assignments" from respondent (Tr. 45-46). She and Johns met with respondent and issued a supervisory conference memo to respondent on March 25, 2024, concerning respondent's emails to Commissioner Dannhauser and Deputy Commissioner White and her questioning the basis of assignments (Tr. 45-46; Pet. Ex. 8).

In the memorandum, Workman wrote that respondent had ignored directives from her direct supervisor and Deputy Commissioner White to refrain from including the commissioner and deputy commissioner on routine emails. She wrote that during their meeting on March 25, respondent was "cautioned about failure comply [sic] with direction to stop copying Deputy

Commissioner White and Commissioner Dannhauser on emails involving other staff and routine work matters” (Pet. Ex. 8). Respondent was also cautioned about instances where she pushed back on assignments, questioning the basis of the assignment and the approach she was asked to take on the task. Workman warned respondent that her misconduct could result in formal discipline (*Id.*).

Respondent copied Deputy Commissioner White and Commissioner Dannhauser on routine work emails that she sent four days after the date of the supervisory memorandum. In an email chain starting on March 14, 2024, respondent and Stephanie Oliviero, a Reasonable Accommodation Specialist in ACS’s Office of Equal Employment Opportunity (“EEO”), communicated about respondent’s reasonable accommodation (Pet. Ex. 16). The email chain ends with an email from respondent dated March 29, 2024, on which Commissioner Dannhauser and Deputy Commissioner White are copied. (Pet. Ex. 16).

Emails on March 14 between respondent and Oliviero concern respondent’s reasonable accommodation request to work remotely outside the country or for a leave of absence (*Id.*). On March 28, 2024, respondent copied Siheem Roseborough, Associate Commissioner for Human Resources Operations, on her email chain with Oliviero (Pet. Ex. 16; Tr. 131-32). Roseborough described her request as indicating that she was not properly compensated for her title and experience and that she should be permitted to get a waiver of the residency requirement (Tr. 139).

In an email dated March 28, 2024, at 1:18 p.m., respondent wrote that she had received a negative performance evaluation and believed that she was being retaliated against for having made two “EEO complaints” (Pet. Ex. 16). Respondent felt she should meet with Myra Garcia, an agency EEO investigator, before the evaluation (Pet. Ex. 16; Tr. 137-38). The email is addressed to Roseborough, his supervisor, Garcia, and Stephanie Oliviero. Respondent copied Deputy Commissioner White, Commissioner Dannhauser, Workman, and Johns on the email (Pet. Ex. 16). Workman removed Dannhauser as a recipient on her response to respondent’s email, which was sent on March 28, at 1:55 p.m. (*Id.*).

Roseborough and respondent exchanged emails on March 28, neither of which included Dannhauser. On March 29, 2024, at 10:28 a.m., respondent copied Deputy Commissioner White and Commissioner Dannhauser on an email sent to Roseborough and his supervisor regarding her

request for a reasonable accommodation, her performance evaluation, and personal matters, but Workman was not included in the email (*Id.*).⁴

On April 4, 2024, respondent copied Deputy Commissioner White and Commissioner Dannhauser on an email regarding her prior work experience and degrees (Pet. Ex. 17). The email chain, between March 14 and April 4, 2024, also concerns respondent's reasonable accommodation request (*Id.*). In that chain of emails, which like the prior chain starts with emails between respondent and Oliviero on March 14, 2024, respondent raises the issue of her compensation in connection with her effort to get a waiver of the city residency requirement (Pet. Exs. 16, 17). In an email to Oliviero dated April 3, 2024, on which Roseborough is copied, respondent wrote that she is underpaid and asks to "renegotiate with the appropriate individuals" about working remotely with a residency waiver. Roseborough responded, at 11:58 a.m. on April 4, that the agency could not justify seeking the waiver because respondent's position is not hard to recruit and the agency does not consider residency in place of compensation (Pet. Ex. 17). On April 4, at 4:32 p.m., respondent sent an email to Roseborough and Oliviero on which she copied Deputy Commissioner White and Commissioner Dannhauser, summarizing her experience and credentials, including screenshots of the curriculum from an educational program (*Id.*). She insisted that she was underpaid in her current title and was "slightly offended" by Roseborough's suggestion in his prior email that she apply for a role more suited to her credentials (*Id.*).

After Roseborough emailed respondent on April 4, 2024, she sent a separate email to Roseborough, Oliviero, and her "alma mater's alumni office" on April 11, at 11:02 a.m., copying Deputy Commissioner White and Commissioner Dannhauser (Pet. Ex. 9). In that email respondent wrote that she wanted "to remind everyone on this email thread" that alumni salaries are factored into college rankings (*Id.*).

As noted above, respondent copied Commissioner Dannhauser on her April 15, 2024, email to the Committee and ACS employees, sent at 11:12 a.m., in which she forwarded her "Research Lab Mentor's research" (Pet. Ex. 4). As part of the same email chain, respondent sent an email at

⁴ Although Specification 2(a) alleges that respondent sent the email on March 29, 2024, "at approximately 9:55 AM," the record indicates that the email was sent at 10:28 a.m. (ALJ Ex. 1A; Pet. Ex. 16). *I sua sponte* conform the specification to the evidence, finding no prejudice to respondent. See *Dep't of Finance v. Kateme*, OATH Index No. 728/17 at 12 (Feb. 2, 2017), *adopted*, Comm'r Dec. (Feb. 15, 2017) (specification conformed to the credible evidence at trial); *Law Dep't v. Lawrence*, OATH Index No. 1312/10 at 10 (March 30, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11- 36-A (May 11, 2011) (same).

4:13 p.m. in which she wrote that she planned to create a research proposal document and copied Commissioner Dannhauser and Deputy Commissioner White on her email (Tr. 49; Pet. Ex. 4).

Petitioner alleges that respondent failed to obey lawful orders, requests, and directives of her chain of command in violation of Code section 4(g)(i), by sending emails on April 11, and 15, 2024, after Workman instructed her to refrain from sending emails about matters to which she was not assigned and by copying the commissioner and deputy commissioner on routine work emails on March 29, April 4, April 11, and April 15, 2024, after having been instructed not to do so. Thus, petitioner charges that respondent was insubordinate.

To prove insubordination, petitioner must establish by a preponderance of the credible evidence that: (1) an order was communicated to the employee; (2) the contents of the order were clear and unambiguous; and (3) the employee willfully refused to obey. *See Transit Auth. v. M. K.*, OATH Index No. 1355/17 at 12 (Feb. 14, 2018), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2018-0275 (Oct. 2, 2018); *Human Resources Admin. v. Traylor*, OATH Index No. 2162/11 at 6 (July 1, 2011), *adopted*, Comm'r Dec. (Aug. 18, 2011).

Once a directive has been given, under the well-established principle of “obey now, grieve later,” employees must obey the order when given and, if they object, subsequently challenge that order through grievance procedures. *See Ferreri v. NYS Thruway Auth.*, 62 N.Y.2d 855, 856 (1984); *see also Strokes v. City of Albany*, 101 A.D.2d 944, 945 (3d Dep't 1984); *Health & Hospitals Corp. (Bellevue Hospital Ctr.) v. Tanvir*, OATH Index No. 797/10 at 6 (Dec. 17, 2009), *aff'd*, 112 A.D.3d 436 (1st Dep't 2013). Exceptions to “obey now, grieve later” are recognized where the orders clearly exceed the agency’s authority under the collective bargaining agreement, are unlawful, or would threaten the health and safety of any person if followed. *See Law Dep't v. Lawrence*, OATH Index No. 1312/10 at 10 (Mar. 30, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-36-A (May 11, 2011). These exceptions are “narrowly applied” and respondents bear the burden of proving that they are exempt from compliance with an agency order. *Health & Hospitals Corp. (Coler-Goldwater Hospital) v. Hinkson*, OATH Index No. 163/04 at 3-4 (Nov. 21, 2003); *see also Dep't of Sanitation v. Alston*, OATH Index No. 1512/15 at 5 (Sept. 21, 2015), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2016-0064 (Mar. 29, 2016).

Here, the credible testimonial evidence, supported by contemporaneous documentary evidence, establishes that in an email on April 10, 2024, Workman directed respondent to refrain from working on and sending emails regarding issues that are not assigned to her and are not part

of her job duties. The email was clear and unambiguous in its instruction to respondent. Yet, the next day, respondent sent an email to Workman, Associate Commissioner Johns, and Deputy Commissioner White about a study to which Workman credibly testified she had not been assigned. Respondent was reminded of the directive on April 11, yet sent another email on April 15 about a possible research project that Workman testified had not been assigned to her.

Similarly, the evidence establishes that on December 7, 2023, and January 25, 2024, respondent's supervisors instructed her to refrain from copying Commissioner Dannhauser and Deputy Commissioner White on routine work emails, but she persisted in doing so in emails on March 29, April 4, 11, and 15. The directives were clear and unambiguous in their prohibitions, yet respondent persisted in emailing outside her chain of command.

Respondent admitted that Workman directed her to not to send emails regarding issues that were not assigned to her and that she understood the directive (Tr. 206-08). In addition, she did not dispute that she was ordered to refrain from including the Commissioner and Deputy Commissioner in her emails, but continued to include them in emails (Tr. 201-02). However, she contends that her conduct is not sanctionable for a number of reasons, all of which are without merit.

Respondent testified that she has been employed as a City Research Scientist, Level II since September 2018. She holds a bachelor's degree in psychology from the University of Rochester and a master's degree in experimental psychology from the City University of New York, Brooklyn College (Tr. 154).⁵

With respect to the charge that she sent emails about the EFCI study to which she was not assigned, respondent maintained that she was assigned to work on the EFCI study (Tr. 193; Resp. Ex. M). She submitted an email dated January 24, 2019, to show that the EFCI study was part of her official duties before her transfer to Workman's supervision (Tr. 193). Respondent testified that the EFCI study that was the subject of her email on April 11, 2024, "is a psychology-based research manuscript that [respondent] had been trying to warn" the ACS Commissioner and Deputy Commissioner about because "it did not adhere to standard of formatting of the data tables" (Tr. 155-57). Respondent also argued that she is bound by the code of ethics of the American Psychological Association ("APA") and, "as someone who has worked with the data" she has a

⁵ Respondent was permitted to testify in narrative format to explain the evidence and facts in her defense (Tr. 10, 152-53, 190, 200, 205, 213).

duty to reveal anything that is suspect, even after publication, and to try to correct what she believes to be “data falsification” (Tr. 158). She asserted that the order to refrain from emailing “to warn about this possible data falsification and correct it in a timely manner would be unlawful” (Tr. 158-59; Resp. Ex. A2). According to respondent, as a member of the APA, she is obligated to try to correct any published rule and regulation violation and is subject to sanctions for failure to do so (Tr. 159-62; Resp. Ex. A2).

Respondent’s argument is without merit. First, although respondent worked on the EFCI study in 2019, Workman credibly testified that respondent was not assigned to duties relating to the study when Workman supervised her. Second, respondent’s reliance on a code of conduct applicable to psychologists to establish that Workman’s directives were unlawful is misplaced. Respondent contends that she sent the emails about the EFCI study to warn about possible data falsification because the APA code of conduct requires her to do so. However, respondent’s email did not allege data falsification, merely pointing out her belief that some tables in the study had not been properly formatted, which she deemed “a reflection of everyone’s affiliated university degrees” (Pet. Ex. 3). Thus, the APA Code of Conduct is inapposite and respondent’s purported reliance upon it does not constitute a defense to the charge of insubordination.

Respondent also contends that her supervisor’s directives came after she filed a grievance about her salary, suggesting that the directives to refrain from sending emails were retaliatory. Respondent testified that Workman’s email on April 10, 2024, was in response to a grievance respondent initiated about her salary compared to those of her coworkers (Tr. 214-15; Pet. Ex. 2). In that email, Workman told respondent to refrain from sending emails regarding issues that are not assigned to her or part of her job duties, such as “your analysis of NYC Open Data on salaries of ORA staff members” (Pet. Ex. 2). Respondent testified she sent an email to Workman, Johns, White, and Dannhauser about salaries of ORA staff based on data she obtained from New York City open data on salaries, under General Municipal Law sections 683 and 684⁶ (Tr. 214-15). In addition to the grievance about her salary, respondent asserted in her email of March 28, 2024, that she had made EEO complaints and felt her performance evaluation was in retaliation for those complaints (Pet. Ex. 16).

This tribunal has consistently held that a claim of retaliation is not a proper defense in an administrative proceeding. *Admin. for Children’s Services v. Ally*, OATH Index No. 782/23 at 2-3

⁶ Sections 683 and 684 of the General Municipal Law govern grievance procedures for municipal employees.

(May 30, 2025), *adopted*, Comm’r Dec. (June 20, 2025); *see also Dep’t of Correction v. LaSonde*, OATH Index No. 2526/11 at 21 (Aug. 18, 2011) (“it is well settled that a selective enforcement or retaliation claim is not a proper defense in an administrative proceeding.”); *Dep’t of Finance v. Rodriguez*, OATH Index No. 430/10 at 2 (Mar. 5, 2010), *aff’d*, 102 A.D.3d 594 (1st Dep’t 2013) (this tribunal does not have jurisdiction to hear claim that disciplinary charges were brought in retaliation for filing federal employment discrimination lawsuit); *Human Resources Admin. v. Ali*, OATH Index No. 2380/09 at 3 (July 20, 2009) (“a defense of retaliation is not available before this tribunal”). Thus, “an employee defending administrative charges may adduce evidence to show that no misconduct was committed but may not adduce evidence to show that any misconduct resulted in administrative charges only because of misconduct by the employer.” *Dep’t of Education v. Kielbasa*, OATH 658/05 at 5 (July 11, 2005).

However, a retaliation claim may be appropriate in a whistleblower defense under section 75 of the Civil Service Law. Section 75-b(2)(a) of the Civil Service Law prohibits a public employer from taking disciplinary or adverse personnel action against a public employee because the employee discloses information he reasonably believes to be true and reasonably believes constitutes improper governmental action. Civ. Serv. Law § 75-b (Lexis 2025). Nevertheless, “[i]t is well-settled that a whistleblower defense will not be established if the employer has a separate and independent basis for the disciplinary action taken.” *Human Resources Admin. v. Bao*, OATH Index No. 933/24 at 5 (June 28, 2024), *adopted*, Comm’r Dec. (Oct. 9, 2024); *see also* Civ. Serv. Law §75-b(3)(a) (an employee who is the subject of a disciplinary proceeding and who “reasonably believes dismissal or other disciplinary action would not have been taken but for the conduct protected under subdivision two of this section” may assert such as a defense in the disciplinary proceeding; but to establish a whistleblower defense, an employee must show that the disciplinary action is “based solely on a violation by the employer” of the employee’s rights as a whistleblower); *LaSonde*, OATH 2526/11 at 21 (a claim under the whistleblower defense of the Civil Service Law “does not apply if the employer has an independent basis for disciplinary action” (citing *Brey v. Bd. of Education*, 245 A.D.2d 613, 615 (3rd Dep’t 1997) (“A defense under Civil Service Law § 75-b cannot be sustained when a public employer has a separate and independent basis for the action taken.”))).

Here, the evidence establishes that petitioner had a separate and independent basis for issuing the directives and taking disciplinary action. On December 7, 2023, and January 25, 2024,

respondent was directed not to include Commissioner Dannhauser and Deputy Commissioner White in routine work emails, but she continued to do so. The evidence establishes that respondent complained about her salary after those directives; thus they were not in retaliation for her complaint. Although the directives to refrain from sending emails about matters to which she was not assigned came after respondent's salary-related complaint, respondent had been issued similar directives regarding her emails well before her complaint. In sum, respondent did not comply with her supervisors' directives, which were not retaliation, but efforts to address legitimate work issues. *See Dep't of Transportation v. Hung*, OATH Index No. 1515/06 at 5 (Aug. 30, 2006) (retaliation defense not established where there was a separate and independent basis for disciplinary action taken in light of employee's "repeated disregard of supervisory directives to refrain from seismic analysis [and] to refrain from making seismic-related comments" directly to others who worked on the project).

To the extent that respondent contends that the email directives violate her right to file grievances (Tr. 232), that argument is similarly meritless. Under the principle of "obey now, grieve later," respondent could comply with the directive and still challenge it through the grievance process. It is undisputed that instead, she elected to disobey the directive.

Respondent further argued that insubordination requires willful refusal to follow lawful directives and the directives not to send emails were unlawful because they violated her free speech rights under the United States and New York State Constitutions (Tr. 15, 163-66, 232). Respondent's argument is mistaken.

While individuals do not give up their First Amendment rights when they become public employees, there are limits to those rights. *Pickering v. Bd. of Education*, 391 U.S. 563, 568 (1968); *Olivieri v. Ward*, 801 F.2d 602, 605 (2d Cir. 1986) (First Amendment does "not guarantee an absolute right to anyone to express their views any place, at any time, and in any way they want;" such speech is "subject to reasonable time, place and manner restrictions to further significant government interests"). In determining whether a public employer can discipline an employee's speech, "the first question is whether the employee is speaking as a citizen on a matter of public concern. If the answer is no, there is no First Amendment issue; if the answer is yes, the burden shifts to the employer to demonstrate that potential workplace disruption outweighs the value of the speech." *Dep't of Environmental Protection v. Kanvin*, OATH Index No. 062/22 at 5 (Feb. 4, 2022), *adopted*, Comm'r Dec. (July 20, 2022).

Here, respondent was disciplined for her failure to comply with directives from her supervisors regarding her use of work email, not for her speech. *See Bao*, OATH 933/24 at 17-18 (an employee's First Amendment rights do not allow him to violate petitioner's Code of Conduct (citing *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (no First Amendment cause of action where employee is not speaking on a matter of public concern))); *Connick v. Myers*, 461 U.S. 138, 143 (1983) (“[G]overnment offices could not function if every employment decision became a constitutional matter.”). Respondent's emails about matters to which she was not assigned concerned a study that she believed was improperly formatted and her desire to conduct a research study. She included the commissioner and deputy commissioner on emails regarding her personnel issues, her research proposal, her salary dispute, and her personal issues. These are not matters of public concern.

Puzzlingly, respondent also asserted that she had to go over Workman's head and email people she was specifically instructed not to email to inform them of a situation involving an attempt to assassinate an Ecuadorian presidential candidate with respondent's last name (Tr. 202). According to respondent, she has been the victim of identity theft (*Id.*). She contends that there are exceptions to insubordination for safety concerns and she felt her life was in danger, therefore, the directive was unreasonable (Tr. 203). However, there is no evidence that respondent's emails to Commissioner Dannhauser and Deputy Commissioner White on the dates charged relate to her concerns that she was in danger relating to an assassination attempt. Moreover, there is no reasonable basis for her concern that her life might have been in danger that is evident on this record, but for a shared last name with the subject of an assassination attempt.

Respondent further argued that Workman's orders were not lawful because she was not qualified to serve as respondent's supervisor, contending that Workman lacked the skills and educational background, and is not a lawful civil service employee because she did not have an oath of office on file (Tr. 18, 69, 76-77, 80-81, 90-92). Respondent contended that Workman “may not have the education to know that her orders are unlawful” (Tr. 177).

These arguments are unpersuasive. I found Workman to be professional, detailed, and knowledgeable in her testimony about her duties and those of the employees under her supervision. Respondent, on the other hand, seemed inordinately concerned with challenging Workman's authority and qualifications to supervise respondent. Moreover, respondent could have obeyed the directives, which were not in themselves unlawful, and challenged Workman's supervisory

authority through the grievance process. I credit Workman's testimony that respondent's failure to adhere to her directives has been distracting to her unit and that it took "a little bit of time and effort to regroup so people can continue their work" (Tr. 49). She expressed concern that respondent's emails diverted the attention of OIT, stating that the agency's analytics and reporting functions rely on collaborating with OIT and respondent's emails reduced OIT's "bandwidth" and availability to do key work needed for policy planning and measurement (Tr. 49-50).

In sum, petitioner established that respondent failed to obey her supervisors' lawful orders, requests, and directives in violation of Code section 4(g)(i). Respondent's proven conduct also violates Code section 4(a), which broadly proscribes the failure to comply with petitioner's policies, procedures, rules, directives, and orders. In addition, the evidence establishes that respondent engaged in conduct that threatens good order and discipline in violation of Code section 5(a). Respondent disregarded her supervisor's directives, seemingly out of a belief that she was more knowledgeable and experienced than her supervisor, thus potentially undermined her supervisor's authority.

However, although petitioner established that respondent included the Commissioner and Deputy Commissioner on her email sent on April 15, 2024, at 4:13 p.m., sending this email was already the subject of a substantiated charge that respondent sent emails concerning work to which she was not assigned and is not a separate basis for penalty. Where charges are based on the identical facts, they are duplicative and will not be considered separately for purposes of penalty. *See Savello v. Frank*, 48 A.D.2d 699 (2d Dep't 1975); *Dep't of Health & Mental Hygiene v. Yee*, OATH Index No. 520/19 at 21 (Apr. 5, 2019), *aff'd*, NYC Civ. Serv. Comm'n Index No. 2019-0436 (Sept. 5, 2019) (declining to make additional penalty finding based on duplicative charge).

Creation of Service Desk Ticket on November 25, 2024 (Charge 1, Specification 1)

Petitioner alleges that on November 25, 2024, respondent created and submitted a service desk ticket with OIT requesting access to a work-related electronic storage drive to which she did not have access. Respondent's supervisor, it is alleged, had previously informed respondent that her access to the drive had been removed when respondent was placed on administrative duty and she was no longer required to access that drive as part of her job duties. Petitioner alleges that respondent misrepresented that she was submitting the request on behalf of Commissioner Dannhauser in the service desk ticket and created the false impression that Commissioner

Dannhauser approved her request when he did not (ALJ Ex. 1B). Petitioner contends that respondent's conduct violates Code section 13(b), which prohibits the making of false, deceptive, misleading, incomplete, or inaccurate entry or omission in an ACS record, document, or report, as well as Code sections 4(a), 4(g)(i), and 5(a) (ALJ Ex. 1B).

In October 2024, Workman placed respondent on administrative duty because respondent did not comply with directives regarding emails and engaging in tasks to which she was not assigned (Tr. 51, 53). Respondent's duties while on administrative leave entailed completing literature reviews as assigned by Workman (Tr. 51). Workman scheduled a meeting to notify respondent that she had been placed on administrative duty, but respondent did not appear for that meeting. Therefore, on October 22, 2024, Workman notified respondent by email that she had been placed on administrative duty effective immediately. In a memorandum attached to the email, also dated October 22, 2024, Workman informed respondent that she no longer had access to her remote desktop and ACS systems of record, and that she was "relieved of your reporting and databased [sic] management responsibilities, including Barbara Base refresh and Parent Advocates reports" (Pet. Ex. 10). Respondent was further notified that she could only use the "ACS ProQuest account" for her literature review duties (*Id.*). Workman Explained that "ProQuest" is a literature search tool to which petitioner has a subscription (Tr. 54).

After respondent was placed on administrative duty, she did not need access to the OMB drive, which is a virtual location, used almost exclusively by ORA, where data is stored and shared (Tr. 53-54). Respondent's administrative duties only required that she access Microsoft Office, ProQuest, and email (Tr. 54).

Judith Williams, Director of the Service Desk at the OIT, has worked for ACS for 28 years (Tr. 104-05). She reports to Anil Sharma, Assistant Commissioner of Infrastructure and Support. OIT provides computer-related support for staff, who are referred to as users (Tr. 105-06, 113). Williams's responsibilities are to provide support for agency staff and monitor service desk "tickets," which are used by ACS staff to request IT assistance and report IT issues (Tr. 106).

Staff can request help from OIT by submitting tickets to the service desk through OIT's self-service portal or by telephoning the service desk, which can submit the request on the employee's behalf (Tr. 106). Williams testified that staff can also access service desk ticket icon on the petitioner's homepage and submit a ticket through the icon (Tr. 112). The staff member who submits the service desk ticket enters information in the field called "Incident Catalog" and

inputs information in fields that include: “Requestor,” “on behalf of,” “Assets,” “No. of Users,” “Category,” “Subcategory,” “Subject,” and “Description” (Tr. 114-15; Pet. Ex. 12). After the staff member fills in the required fields and sends the help request, the service desk system automatically creates a service request ticket and sends an email to the employee who requested assistance, as well as to the person on whose behalf the service request was made (Tr. 115, 117-18).

The self-service ticket portal is “the single point of contact” between the OIT service desk and the user when the user is having a problem (Tr. 107). It is important for users to submit accurate tickets, Williams testified, because if tickets are inaccurate OIT resources may be allocated to handling a service request where not required, which could delay providing service (*Id.*).

Williams’s supervisor asked her to review a November 25, 2024, service desk ticket respondent submitted requesting that her access be restored to the “OMB Drive” (Tr. 108-09, 111, 115). Williams understood the OMB drive to be a drive that had been created “many years back” for PPM to share resources within the division (Tr. 111). Respondent previously had access to the drive, but it was removed in October 2024 (*Id.*).

The November 25, 2024, service desk ticket is captioned “#946464 Access to my personal folders on the omb drive” and indicates that the ticket was created by respondent “on behalf of Dannhauser, Jess” on November 25, 2024, at 10:47 a.m. (Pet. Ex. 11). Under “Description” it states:

Hi, I have lost access to my work and personal folders on the ombdrive [*sic*]. I have the ability to conduct research on past reports and do not need database access. I am a City Research Scientist II of Local 375 DC 37 and this type of work is included in my job description. All my tickets about this have been denied and I see this a professional [*sic*] sabotage which needs to be stopped immediately, especially by Sara Workman, an administrative staff analyst with OSA, who has no educational or professional experience to adequately supervise me or manage me and will only contribute to improper research standards and unethical processes of which she does not understand.

(*Id.*).

Immediately after the ticket was created, the service desk ticket system sent an email to Commissioner Dannhauser stating “Your ticket regarding Access to my personal folders on the

ombdrive has been created with Ticket ID Number 946464.” Respondent was listed as the employee who requested the ticket on Commissioner Dannhauser’s behalf (Pet. Ex. 13).

Commissioner Dannhauser emailed several people, including Usha Agarwalla, ACS’s Chief Information Officer, writing that he “didn’t request this” and asking Agarwalla to look into it (*Id.*). Agarwalla asked Williams to review the matter as a priority and whether respondent could be stopped from creating “on behalf of” tickets (*Id.*).

Williams knows the significance of the “on behalf of” field because she underwent training on the service ticket application before it was implemented in 2014 and created a user guide for users on how to submit service tickets for themselves and other staff (Tr. 118-19; Pet. Ex. 18). According to Williams, “on behalf of” means that the employee making the service request was doing so for somebody else. She explained that sometimes users cannot log into their computers and coworkers may put in a request on their behalf so the service desk can contact employees who cannot log in (Tr. 118).

Respondent’s request for access to the OMB drive required a supervisor’s approval because it entailed accessing shared information, but respondent’s supervisor had not granted the approval (Tr. 115). Williams testified that the ticket was closed because respondent’s access to the drive had been removed in October 2024 and had not been restored (Tr. 111, 121-22). On November 28, 2024, the Service Desk sent an email to respondent informing her that the ticket had been closed (Pet. Ex. 14).

In a sworn affidavit dated February 4, 2025, Commissioner Dannhauser stated that he is familiar with respondent because, beginning around December 2023, she “began frequently sending me emails regarding issues that did not require my attention or involvement” (Pet. Ex. 15). He stated that on November 25, 2024, he received an email from the ACS Service Desk about a service desk ticket that had been created and submitted on his behalf. Commissioner Dannhauser stated, “I did not request or authorize Respondent to submit this service desk ticket on my behalf, nor did I request or authorize Respondent to submit this service desk ticket for herself” (*Id.*).

Respondent testified that in an email dated October 22, 2024, she was notified that she would no longer have access to her remote desktop and petitioner’s system of records, and that she was being relieved of her reporting and database management responsibilities (Tr. 179). Respondent described these instructions as conflicting with the 2024 Tasks and Standards for her position (Tr. 179; Pet. Ex. 1).

Respondent admitted that she submitted the ticket through the service desk portal (Tr. 210; Pet. Ex. 11). Respondent testified that she submitted the request “for informational purposes,” as a way to get the commissioner’s attention (Tr. 211-13). She explained that she used the “on behalf of” field because it is “the only field where you can put someone else’s email address to send the description, which is phrased as an email to Commissioner Jess Dannhauser” (Tr. 211). She conceded that the commissioner did not ask her to submit the ticket on his behalf (*Id.*). However, respondent insisted that she was not requesting that the service desk provide her with access to the OMB drive. Maintaining that she already had access to the OMB drive, respondent said that she submitted the ticket to get the commissioner’s attention and “to allude to the fact” that she was asking for read/write permission for folders in the drive (Tr. 211-12). She testified that she did not require OIT assistance for the ticket, but “pressed a button on the web data entry form to push the data so that I would be paid attention to, even if the motivation was not to send an actual ticket for assistance” (Tr. 212-13).

While admitting that she sent the service desk request on behalf of Commissioner Dannhauser, respondent contends that the disciplinary charges were filed against her because she filed a complaint with the Department of Investigation (“DOI”) in October 2024. She submitted into evidence an email from Thomas Kapp, an Inspector General at DOI, dated October 18, 2024, stating that respondent’s complaint about ACS had been referred to petitioner’s inspector general. Respondent described her complaint as concerning an “extrajudicial paycheck deduction” (Tr. 191-92; Resp. Exs. K, L). Respondent testified that her complaint was filed over a month before she was charged relating to the OIT service desk request (Tr. 192). Asserting that the charges were dated and given to her after she told petitioner about her DOI complaint, respondent contends that she is protected from retaliation under the whistleblower provisions of section 75(b) of the Civil Service Law (Tr. 190-91).

However, as discussed above, a whistleblower defense is not established where the employer has a separate and independent grounds for the disciplinary action taken. That is the case here.

By respondent’s account, although she did not have Commissioner Dannhauser’s permission to do so, she submitted a request for assistance on his behalf to restore her access to a drive to which she did not have complete access. She did so to get the commissioner’s attention because she knew he would receive a copy of the request. Tellingly, respondent included in the

request her complaints that she was being professionally sabotaged and Workman lacked the education and experience to serve as respondent's supervisor (Tr. 211; Pet. Ex. 11). Thus, the evidence shows that respondent falsely represented that she was submitting the service desk ticket on behalf of the commissioner because she knew he would receive a copy. Respondent's creation of a false ticket is a separate and independent basis for discipline. Respondent having filed a DOI complaint about her salary does not insulate her from disciplinary action for having created a OIT service desk ticket and falsely claiming it was submitted on the commissioner's behalf.

Accordingly, petitioner established that respondent violated Code section 13(b) by making a false, deceptive, misleading, inaccurate entry into the ACS service desk ticket system when she submitted a request to restore her access to a database and misrepresented that she did so on behalf of the ACS commissioner. The evidence also establishes that respondent's conduct violates Code sections 4(a) and 5(a) as she failed to comply with petitioner's policies and procedures and her conduct disrupted operations by requiring other employees to devote time to dealing with the false ticket. Petitioner charges that respondent's conduct violates Code section 4(g)(i), which prohibits insubordination. However, petitioner failed to prove this charge, as it did not establish that respondent was issued an order that she failed to adhere to when she submitted the OIT ticket on the commissioner's behalf.

FINDINGS AND CONCLUSIONS

1. Petitioner established that after she was directed not to do so, respondent sent emails regarding matters that were not assigned to her and on which she did not work on April 11, 2024, and twice on April 15, 2024, as alleged in charge 1, specifications 1(a) through 1(c). Petitioner established that respondent violated sections 4(a), 4(g)(i), and 5(a) of its Code of Conduct.
2. Petitioner established that after her supervisors directed her to refrain from copying the ACS commissioner and a deputy commissioner on routine work emails, respondent included them on routine work emails on March 29, April 4, April 11, and twice on April 15, 2024, as alleged in charge 1, specifications 2(a) through 2(e). Petitioner established that respondent violated sections 4(a), 4(g)(i), and 5(a) of its Code of Conduct.
3. Petitioner established that respondent made a false, deceptive, misleading, entry into petitioner's records when she represented

that she was submitting an OIT service request ticket on behalf of the ACS commissioner, when she had not been authorized to do so, in violation of sections 13(b), 4(a), and 5(a) of its Code of Conduct, but failed to establish that respondent's conduct violated section 4(g)(i).

RECOMMENDATION

Upon making these findings, I requested and reviewed an abstract of respondent's personnel records for purposes of recommending a penalty. Respondent was appointed as a City Research Scientist II in September 2018 and has no record of formal discipline. Her overall performance evaluation for calendar years 2023 and 2024 was "Needs Improvement," while for October 10 to December 31, 2022, she received an overall rating of "Good." She was rated "Needs Improvement" for April 1, 2020, to December 31, 2020. Respondent was placed on a 15-day pre-hearing suspension without pay from November 27 to December 11, 2024.

Petitioner seeks a recommendation that respondent be suspended without pay for 22 days (Tr. 231). Petitioner established that on three occasions, respondent sent emails regarding matters to which she was not assigned to work and on five occasions, she sent emails to the ACS commissioner and deputy commissioner on routine matters after being instructed not to do so.⁷ Petitioner notes that penalties have ranged in area of five to ten days for each instance of insubordination, citing a number of cases that reflect this penalty (Tr. 228). *See, e.g., Dep't of Sanitation v. Patsakos*, OATH Index No. 272/24 at 29 (Apr. 11, 2024), *modified on penalty*, Comm'r Dec. (July 23, 2024), *aff'd*, NYC Civ. Serv. Comm'n Index No. 2024-0357 (Feb. 7, 2025) (seven-day suspension without pay recommended for each instance of insubordination); *Dep't of Sanitation v. Venning*, OATH Index No. 763/11 & 764/11 at 26-27 (Jan. 28, 2011) (five-day suspension for disobeying an order); *Dep't of Sanitation v. Pulliam*, OATH Index No. 1976/08 at 8-9 (Oct. 20, 2008) (10-day suspension for disobeying an order). Here, respondent is proven to have sent seven emails after having been directed not to do so.

Respondent's submission of a misleading OIT service request ticket in which she falsely claimed that it was submitted on behalf of the ACS commissioner is a serious form of misconduct for which serious penalties have been recommended. *See Human Resources Admin. v. Li*, OATH Index No. 1497/14 at 16-17 (July 17, 2014) (recommending 20-day suspension for submitting

⁷ As stated above, in one proven instance, the charge arises out of the same facts as a separate charge and will not be counted separately for purposes of penalty.

falsified daily case submission report by including work that had been completed earlier and by duplicating entries); *Office of the Comptroller v. Hogans*, OATH Index No. 203/21 at 24-25 (Jan. 5, 2022), *adopted*, Comptroller Dec. (Jan. 24, 2022), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2022-0113 (Aug. 12, 2022) (recommending 20-day suspension for false statement in DOI complaint); *Dep't of Sanitation v. Rojas*, OATH Index No. 1568/04 at 5-6 (Oct. 7, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-38-SA (Aug. 11, 2005) (20-day penalty imposed for enforcement agent who submitted false report).

Petitioner established the charged misconduct alleged here and a penalty of 22-day suspension is appropriate, when coupled with the 15-day pre-hearing suspension already served. Based on her belief that her supervisor is not qualified to give her directives and instructions, respondent repeatedly disregarded her supervisor's orders in a manner that adversely affected the agency's operations. Although respondent has had no formal discipline, the persistence of her belief that she is better equipped than her supervisor to make supervisory decisions is troubling, as is her misconduct based on that belief. In addition, respondent's submission of a misleading OIT service request ticket and her false claim that it was done on behalf of the ACS commissioner is a serious breach of trust. Respondent's poor insight into her behavior is of concern and indicates that significant penalty is appropriate. Petitioner has requested that respondent be suspended without pay for 22 days for the proven misconduct, which is appropriate.⁸

Accordingly, I recommend that respondent be suspended without pay for 22 days.

Astrid B. Gloade
Administrative Law Judge

December 22, 2025

⁸ Respondent requested that she be found not guilty, that "extra judicial deductions" from her paycheck and suspension funds be returned, and that she be transferred from Workman's supervision. Respondent was informed that the remedies available in this proceeding are dictated by the provisions of the Civil Service Law (Tr. 234).

SUBMITTED TO:

JESS DANNHAUSER
Commissioner

APPEARANCES:

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Attorney for Petitioner

MICHELLE GALANG VILLAVICENCIO
Self-represented Respondent



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Commissioner

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MELINA GESELL, Esq.
Director/Associate General Counsel

December 30, 2025

Michelle Galang Villavicencio



Re: ACS File No. 66055-942-001/002
Employee ID No. 1682507
OATH Index No. 25/0189

Dear Ms. Villavicencio:

In accordance with Section 75 of the Civil Service Law, on June 24, 2025 and June 25, 2025, a trial was held by the Office of Administrative Trials and Hearings ("OATH") regarding both sets of disciplinary charges referenced above. Administrative Law Judge Astrid B. Gloade sustained the charges and recommended the penalty of a twenty-two (22) day suspension without pay.

I have carefully reviewed the Report and Recommendation of the Administrative Law Judge, and the comments submitted by Respondent. I adopt the findings of fact and penalty recommendation of Administrative Law Judge Astrid B. Gloade.

Accordingly, you are hereby suspended, for twenty-two (22) days without pay from **Monday, January 5, 2026, through Monday, January 26, 2026**. On **Tuesday, January 27, 2026** you must report to your work location.

Under the provisions of Section 76 of the Civil Service Law, you are entitled to appeal this determination by application either to the Civil Service Commission, or to the New York State Supreme Court in accordance with Article 78 of the Civil Practice Laws and Rules. If you elect to appeal to the Commission, such appeal must be filed in writing within twenty (20) days from receipt of this notice of determination. The decision of the Commission is final and conclusive.

You are directed to surrender your Employee Identification and all Agency property and any keys to ACS facilities that may be in your possession. During your suspension, you are not to appear at any facility maintained by the Administration for Children's Services, except to attend

any disciplinary proceedings to which you are a party. Your unauthorized appearance at any Agency facility will be considered trespassing and will subject you to arrest.

You are expected to conform to Agency regulations and standards of conduct at all times so that further disciplinary action will not be necessary.

Sincerely,



Jess Dannhauser
Commissioner

Cc:	M. Gesell	T. Holloman	Personnel File
	N. Ferguson	A. Sharma	
	A. White	J. Guillaume	
	M. Hester	J. Perrino	
	S. Roseborough	T. Liu	