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

OATH Index No. 601/25 (May 29, 2026)

Petitioner established that respondent, the Executive Director of Operations at the Crossroads Juvenile Center, engaged in multiple unprofessional communications and one inappropriate workplace interaction with a subordinate employee. Petitioner did not establish the remaining charges of misconduct. The Administrative Law Judge recommends 30 suspension days.

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**New York City Office of**
**Administrative Trials and Hearings**

*In the Matter of*
**Administration For Children's Services**
*Petitioner*
*- against -*
**Jamel Nedderman**
*Respondent*

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**Orlando Rodriguez,** *Administrative Law Judge*

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Petitioner, the New York City Administration for Children's Services ("ACS"), brought this disciplinary proceeding pursuant to section 75 of the Civil Service Law. Petitioner alleges that respondent, Jamel Nedderman, while serving as Executive Director of Operations at the Crossroads Juvenile Center ("Crossroads"), engaged in a course of unprofessional and inappropriate conduct toward complainant, a subordinate employee assigned to the administrative suite at the facility.

Petitioner alleges that from June 2020 through June 2021, respondent, who during the relevant time period served as Executive Director of Operations at Crossroads, engaged in a course of unprofessional and inappropriate conduct toward complainant, a subordinate employee (ALJ Ex. 1). The charges allege that respondent used his supervisory position to initiate non-work-related communications with complainant, pursued personal interactions unrelated to agency business, and ultimately engaged in conduct that petitioner asserts is sexually inappropriate and physically intimidating, in violation of agency policies, Citywide EEO standards, and ACS's Code of Conduct (*Id.*).

Petitioner further alleges that between February and May 2021, respondent intensified this conduct, responding to complainant's refusals with profane, sexually charged, and disparaging remarks (ALJ Ex. 1, Specification 2). Most seriously, the charges allege that in April 2021, respondent directly solicited physical contact from complainant, and that on or about June 3, 2021, respondent engaged in inappropriate physical contact (ALJ Ex. 1, Specifications 1, 3).

Taken together, the specifications allege a continuous pattern of behavior in which respondent failed to act courteously and professionally, sexually harassed the complainant, used offensive and inappropriate language, and engaged in conduct that threatened good order, discipline, and the integrity of the workplace, thereby bringing discredit upon ACS and the City of New York. Respondent denies engaging in any misconduct, asserting that the complainant's account is not truthful and that the alleged conduct did not occur.

Petitioner, bearing the burden of proof, presented testimonial and documentary evidence in support of the charges. Respondent testified on his own behalf and called colleagues who worked at Crossroads during the relevant period.

For the reasons below, petitioner proved that respondent failed to be courteous and considerate towards others and failed to maintain the highest levels of professionalism while performing his duties and acted in a manner that would bring negative criticism upon the employee in violation of NYC Children's Code of Conduct section 4(c). Petitioner also proved that respondent committed or engaged in conduct which threatens good order and discipline or conduct of a nature that may reflect unfavorably on the fitness of the employee or conduct which could bring discredit upon ACS or the City of New York and failed to act responsibly and courteously in all contacts with any colleague (including a supervisor or subordinate) in violation of NYC ACS Code of Conduct section 5(a). Petitioner did not prove that respondent sexually harassed a fellow employee. Respondent should serve a 30-day suspension without pay.

# Analysis

## I. Background

### a Complainant's Assignment and the Administrative Suite

From approximately November 2018 to November 2021, complainant was employed by ACS as a Youth Development Specialist ("YDS") and assigned to Crossroads Juvenile Center (Tr. 51-52). Respondent served as Executive Director of Operations at Crossroads beginning in February 2019 (Tr. 473-74; Pet. Ex. 12 at 12). According to Trishena Copeland, a former Executive Director of Operations, respondent "directly oversees supervisor operation managers. They are responsible for the flow of the facility, the safety of the youth, the safety of the staff and making sure all programs are taken care of, medical, mental health, school. They . . . oversee the whole facility" (Tr. 18). Ms. Copeland further testified that executive leadership regularly interacted with YDSs as part of routine oversight and operational management (Tr. 25).

Complainant joined ACS in 2018. In July 2019, she sustained a work-related injury and was placed on workers' compensation leave (Tr. 52-53). She returned to work in or about July 2020 (Tr. 53). Approximately one month after her return, complainant was involved in a motor

vehicle accident and was again placed on medical leave (*Id.*). She returned to Crossroads in February 2021 (Tr. 54).

Upon her return to Crossroads in February 2021, complainant was assigned to a search team, which is responsible for conducting searches for contraband throughout the facility and documenting and reporting contraband findings through the chain of command (Tr. 54-55, 151-52). Members of the search team had no interaction with the youth in custody. According to her doctor at the time, the role required too much physical activity, so she requested to be transferred to clerical work in admissions (Tr. 55). Complainant requested to be assigned to work in the administrative suite as a reasonable accommodation (Tr. 152-54). The request was granted by the agency's central administration, and complainant began working in the administrative suite in April 2021 (Tr.154).

The administrative suite functioned as the central operational and administrative space of the facility, a hive of administrative work and social interaction where supervisory staff and line employees worked in close proximity and routinely crossed paths. Staff worked in a shared common area that includes workstations, file cabinets, a copier, a refrigerator, and a microwave (Tr. 413). The space also included offices for executive-level staff, including the adjacent offices of the Executive Director of Operations and the Executive Director of Administration (Tr. 413, 475, 479). Respondent testified that his office was located at the end of a central walkway, opposite the entrance and visible from the doorway (Tr. 474–79). During the spring of 2021, Mirabelle Thevenin, who served as Executive Director of Administration, worked in an office that shared a wall with respondent's office (Tr. 412-13, 475-79). During his testimony, respondent produced a diagram depicting the layout of the suite (Resp. Ex. B; Tr. 476-79).

The suite was described as "always busy" (Tr. 442). According to Marcey Brooks, a YDS assigned to the administrative suite during this period, employees ending their tours frequently entered the suite to drop off paperwork, ask questions, or request supplies (*Id.*). Lunch breaks were staggered "so that there's always staff available in the office to do whatever needed to be done" (Tr. 424). Managerial staff were required to keep their office doors open except during

meetings (Tr. 419). According to Ms. Brooks, the staff in the suite was "like a big family," celebrating birthdays, holding potlucks, and generally doing "a lot of things together" (Tr. 441).

Crossroads is a 24-hour facility, and during 2020 and 2021, the administrative suite was staffed across multiple, overlapping tours, with personnel present throughout the day and into the evening hours (Tr. 417-18, 442). Respondent testified that he typically worked daytime hours, beginning in the morning (Tr. 499). During the day, he was accompanied by Kwame Jupiter, another YDS assigned to the suite under an accommodation, and Ms. Brooks (Tr. 439-41, 489; Pet. Ex. 11 at 12). During the spring of 2021, the daytime group also included Ms. Thevenin, who worked in the suite from 6:30 a.m. to 5:00 p.m., Monday through Friday (Tr. 412-13, 417-18). When complainant was assigned to the suite, respondent placed her on a later tour from approximately 1:00 p.m. to 9:00 p.m. (Tr. 489-90).

The surveillance camera system at Crossroads includes more than one hundred cameras positioned throughout the facility, with coverage focused on hallways and common areas. There are no cameras inside of the suite and the hallway cameras immediately outside the administrative suite capture the hallway but do not provide a clear view into the suite. Cammi Cager, Director of Incident Review, explained that one camera's view is obstructed by the door jamb and another by a magnetometer. Those cameras show only the hallway, recording the staff entering and exiting the administrative suite (Tr. 366-67).

**b DOI's Investigation**

Deputy Inspector General Harlyn Griffenberg, an investigator for the New York City Department of Investigation ("DOI"), was the lead investigator for this case. She has been employed by the DOI for approximately seven years and has served as deputy inspector general for approximately two and a half years (Tr. 271-72). Ms. Griffenberg is assigned to the team that oversees ACS, and DOI's role is to investigate "fraud, waste, corruption, misconduct, and criminal activity within the agency" (Tr. 272). Prior to becoming a deputy inspector general, Ms. Griffenberg served as a confidential investigator, during which time she investigated between "50 and 100" cases (Tr. 273).

Ms. Griffenberg described DOI's investigative intake process, explaining that cases may be initiated through complaints from members of the public, ACS employees, referrals from

other offices, or proactive investigations opened by DOI (Tr. 272). When a complaint is received, an investigator prepares a summary that is reviewed by supervisors, who determine whether to open an investigation and assign it to an investigator (*Id.*). In this case, complainant's claims were referred to DOI by the Mayor's Office (Tr. 274).

As part of her investigation, Ms. Griffenberg interviewed complainant, Linata Brown, Kwame Jupiter, and respondent (Tr. 274). She explained that when interviewing city employees, DOI advises witnesses of their rights under Executive Order 16 (Tr. 274-75). She then administers an oath and conducts either in-person or virtual interviews, depending on the circumstances (Tr. 275). Ms. Griffenberg testified that complainants are often not placed under oath during an initial interview to "facilitate [a] kind of openness" while DOI is still assessing the allegations (Tr. 276-77).

Complainant was interviewed by telephone on July 29, 2021 (Tr. 276). Ms. Griffenberg also subpoenaed complainant's certified phone records from her phone carrier and reviewed respondent's work emails and personnel file (Tr. 276-77, 284). DOI created an internal spreadsheet analyzing the phone records[1] (Pet. Ex. Tr. 285-86). Ms. Griffenberg also reviewed screenshots of text message exchanges between complainant and respondent spanning from June 2020 through April 2021 (Pet. Exs. 1, 2, 14, 15, 16). She interviewed Ms. Brown in September 2021, Mr. Jupiter in March 2022, and respondent in March 2023 before she drafted a referral letter, dated August 8, 2023, summarizing her investigative findings and transmitted it to ACS (Tr. 300-01, 307, 310-11; Pet. Exs. 10, 11, 12, 13).

As part of her investigation, Ms. Griffenberg requested video footage of the lobby at Crossroads as well as the two cameras in the hall outside of the administrative suite (Tr. 365). She did not review the video footage taken by the cameras outside the administrative suite on any of the dates relevant to complainant's claims (Tr. 343).

[1] The times noted on the spreadsheet are in Coordinated Universal Time ("UTC"), which is five hours ahead of Eastern Standard Time ("EST") and four hours ahead of Eastern Daylight Time ("EDT").

## II. Electronic Communications Between Complainant and Respondent

While assigned to administrative duties, complainant communicated with respondent using her personal cell phone (Tr. 207). She saved respondent's phone number under the name "Nedderman Work" (Tr. 64). She also had a second number she used to contact respondent, which she labeled "Nedderman Other" (*Id.*). Respondent explained that he maintained both a work phone and personal phone, and the staff was permitted to reach him on both (Tr. 500–01). He responded to complainant from whichever number she used to contact him (Tr. 501).

Complainant regularly spoke with Ms. Brown and Mr. Jupiter about her interactions with respondent. During her interview with Ms. Griffenberg, Ms. Brown said that complainant told her that "he used to make [complainant] very uncomfortable, and he would leave her text messages, like when [are] we going out, or when [are] you gonna cook me dinner?" (Pet. Ex. 13 at 28). Consistent with her statements to Ms. Griffenberg, Ms. Brown testified at trial that complainant told her that respondent would "text her . . . on her personal phone like, we need [to go] to dinner. Why don't you cook me a meal? When are we go[ing] on a date? He would do things to make her feel uncomfortable and we would discuss" (Tr. 373). Mr. Jupiter echoed Ms. Brown's statements during his interview with Ms. Griffenberg, stating that complainant told him that she would receive "constant phone calls" from respondent, sometimes late at night, and that respondent would make comments and send text messages (Pet. Ex. 11 at 26).

According to complainant, in June 2020, she contacted respondent regarding a work-related issue and respondent asked in response, "what's in it for me" (Tr.76-77, 83). A screenshot of the text exchange shows that respondent and complainant had the following exchange on June 18, 2020:

> [Complainant]: Hi [N]edderman . . . please give me
> a call when you have a chance
>
> [Respondent]: What's in it for me[?] Lol
> I'll call you after my meeting if it's not [an]
> emergency

(Pet. Ex. 1). Complainant testified that she understood respondent's message to mean "[she] was supposed to give him something back for doing his job," so she replied, "lol I'll send you lunch you pick a day" (*Id.*; Tr. 85). Respondent replied, "Aww that's sweet" (Pet. Ex. 1). The exhibit shows that the following morning, respondent sent complainant the message, "R you up" (*Id.*). Later that afternoon, respondent sent complainant the following message: "Still waiting for my lunch" (Pet. Ex. 15 at 10). Complainant responded, "What's crazy is I was going to text you that I still got you on tht lol[.] What do you want and what day?" (*Id.*). Respondent replied, "You cooking?," to which complainant responded, "Lol no imma order you food" (*Id.*). Complainant testified that although respondent did not directly state "cook for me," she felt that "he want[ed] [her] to cook for him" because "he [kept] asking [her] to cook, although [she was] offering to send him lunch" (Tr. 209).

Respondent testified that his response "What's in it for me?" was intended as a joke and pointed to the next message, stating that he would call complainant after his meeting if the matter was not an emergency (Tr. 494-95). He denied expecting complainant to provide him with anything and refuted the claim that he demanded she cook or buy him food (Tr. 496-97). Respondent testified that he suggested complainant bring food from home to help ease her anxiety about returning to the facility following the earlier assault incident (Tr. 497).

On July 13, 2020, complainant reached out to respondent by text and asked him to give her a phone call (Pet. Ex.15 at 13). She testified that she sent the text because she needed to send an e-mail to human resources related to her schedule prior to her return to work (Tr. 88). Respondent later replied to complainant with the human resources e-mail address (Pet. Exs. 2, 15 at 13). When complainant did not reply immediately, respondent followed up,"??????" (Pet. Ex. 2). Complainant replied that she had sent human resources the e-mail (*Id.*). Respondent then asked, "What's your Facebook" (*Id.*). Complainant interpreted the question as respondent wanting to "get into [her] personal life" (Tr. 89). According to complainant, she did not have a Facebook account at that time and informed respondent (*Id.*; Pet. Ex. 2). Respondent replied, "You[?] No sir" (Pet. Ex. 2).

According to respondent, he asked for complainant's Facebook information because professional development programming and mental health seminars were sometimes

conducted through Facebook Live (Tr. 495). His reply "No sir" was intended to convey surprise that complainant did not have Facebook (Tr. 560-61). On cross-examination, respondent testified that in 2021, he was Facebook friends with colleagues he knew "prior to ACS," and he acknowledged that he was not Facebook friends with Ms. Thevenin, Ms. Brooks, or Mr. Jupiter (Tr. 554).

Sometime between the text exchanges above and complainant's car accident in September 2020, she reached out to respondent by text and shared personal thoughts that were contributing to her emotional and physical distress. She wrote:

> I really don't trust nobody that's [why] I wanted to talk to you[.] I wasn't quite finish[ed] but yesterday was my first time driving my car to work [and] when I left . . . some body wet like several pieces of paper towel with brown stuff on it and threw it all on my windshield. So, I'm starting to feel set up in a way. So with this added[,] my migraine just got more intense

(Pet. Ex. 16 at 2). Respondent replied days later. His message reads, "Hey you. How are you feeling today" (*Id.* at 3). Complainant responded by sending a photo of a traffic accident and wrote, "I think this sums it up (I wasn't at fault).....I will still be coming to work" (*Id.*). Approximately one hour later, respondent replied, "Dam... R u ok" (*Id.*).

On September 8, 2020, complainant sent another text message to respondent. She wrote, "Morning Mr. Nedderman it's YDS Legrand. You forgot about me already. I just wanted to update you," and she proceeded to inform him that she provided her supervisor two copies of a note from her doctor that excused her absence from work (Pet. Ex. 16 at 4). She also advised respondent that she was unable to get in touch with her tour commander (*Id.*). Additionally, complainant sought clarity regarding her obligations while out on leave and asked, "do I still have to call out every day?" (*Id.*). During cross-examination, complainant acknowledged that during this period, her time and leave issues were addressed by Supervisor Holland and Tour Commander Chance (Tr. 224-25). Regarding her use of the statement, "you forgot about me already" complainant testified that it was based on a prior conversation she "probably" had with respondent about his getting back in contact with her while she was out of work, explaining that she had been calling and asking him to "please call me back" or "please

respond," and that the message was intended to remind him of that prior discussion (Tr. 224). The record does not include any other evidence of that prior conversation.

The next text message exchange between complainant and respondent took place in January 2021, when complainant was preparing for her return to work from medical leave. On January 21, 2021, at 2:25 p.m., she sent the following message, "Morning Nedderman, It's Yds Legrand please give me a call back. Thank you" (Pet. Exs. 14, 16 at 5). According to complainant, she sent the message to respondent because she was unable to reach her tour commander and supervisor (Tr. 93). She testified, "I spoke to him about something with paperwork or emails because they needed certain paperwork from my doctors . . . it was about my car accident" (*Id.*). Two and a half hours later, respondent sent the following reply, "Hey you. I missed you" (Pet. Ex. 16 at 6). At 4:10 a.m. the following morning, respondent sent complainant a text that read "hello" (*Id.*). Complainant wrote back at 7:47 a.m., "Good morning. I never received a call. I don't get notifications for text" (*Id.*). She continued, "You almost missed me for good because nobody told me I only have 12 [weeks] for medical" *(Id*.). One week later, complainant sent respondent a text informing him that she had called earlier in the day and left a voice message on a previous day (*Id.* at 7). She requested a call back (*Id.*).

Respondent testified that around January 21, 2021, complainant had asked him to call her and that he received no reply after responding to complainant in the afternoon (Tr. 498-99). He testified that he sent the 4:10 a.m. "hello" message while commuting to work as a courtesy reminder because complainant had asked him to return her call (Tr. 498). Respondent further explained that he routinely left home around 3:30 a.m. to arrive at the facility before the shift transition (Tr. 499).

Complainant testified that she received a text from respondent on April 24, 2021 (Tr. 105-06). It was a Saturday, her day off (Tr. 109). Respondent's message read, "Hey you" (Pet. Ex. 15 at 22). At this time, she had begun working in the administrative suite as a reasonable accommodation, and as far as she knew, there were no work-related issues she and respondent needed to discuss (Tr. 109). Complainant decided not to respond (Tr. 107). Several hours later, respondent sent another message, "Hello again" (Pet. Ex. 15 at 22). Complainant replied, "Hey... again? I didn't get any other[] messages today." (*Id.*). Respondent replied to

complainant with "I [s]houted you out earlier" and "You good?" (*Id.*). Complainant responded, "Probably because I was in [New Jersey] Idk hmmm. Yes thank you for asking, how are you?" (*Id.*). Respondent texted in response, "Im good." (*Id.* at 23). Soon after sending the message, respondent called complainant (Pet. Ex. 5). Complainant did not answer the call (Tr. 109; Pet. Ex. 5). The missed phone call was followed up by the following message from respondent: "Thanks for sending me to [voicemail]" (Pet. Ex. 15 at 23).

Complainant testified that when she returned to work the following day, respondent approached her and chastised her for failing to answer his phone call the previous day. She stated, "I remember when I came into work, I was speaking to one of my coworkers about a conversation I had with him, and when [respondent] heard me talking to that coworker when nobody was around, he said to me, oh, so you answering n[...]s phone calls, but you can't answer mine. And then told me, don't send him to voicemail again" (Tr. 114-15). According to complainant, respondent's behavior around this time continued to escalate (Tr. 127).

Respondent testified that he was joking when he sent the "[t]hanks for sending me to [voicemail]" message and explained that he attempted to call complainant rather than continue texting while driving (Tr. 496). He denied making any comments accusing complainant of answering other men's phone calls while ignoring his or instructing her not to send him to voicemail (*Id.*).

According to complainant, after April 2021, respondent asked her to go out on dates with him (Tr. 116). She testified that he also asked her to cook for him and raised his desire to have more children, including asking when they would have a child together (Tr. 116, 123-24). On cross-examination, complainant testified that these requests were made in-person, not by text (Tr. 214). She further testified that she rejected respondent's advances, explaining that when he asked whether they would have children or when she would go on a date with him, she would respond with remarks such as "after I finish mopping the ocean," "after I count sand," or "in never-uary" (Tr. 118). She testified that she made similar remarks when respondent asked her to cook for him (*Id.*). She further testified that she never cooked a meal for respondent and never spent time with respondent outside of work (Tr. 244).

According to complainant, respondent reacted negatively to her retorts. She testified that he would say, "You have a slick ass mouth, Legrand," and that on one occasion, respondent told her that he "should have never traded Kwame [Jupiter] for[her]" (Tr. 119).

## III. Alleged Verbal and Physical Interactions

Complainant testified to three additional incidents that she stated occurred between April 2021 and June 2021 while she was assigned to the administrative suite at Crossroads (Tr. 121, 127-34, 239).

### a Incident No. 1 - A Request for a Kiss (May 2021)

According to complainant, the first incident occurred sometime around May 2021 while she was in respondent's office completing an assigned administrative task (Tr. 121, 239). She testified that respondent, who had been alone in his office and was wearing a surgical mask, asked her to give him a kiss on the cheek (Tr. 121). When she declined the request, respondent pulled down his mask and again directed her to "come over here and give [his] a kiss on [his] cheek" (*Id.*). Complainant testified that she felt obligated to comply with the second request. She stated:

> I said no the first time. I couldn't . . . I literally couldn't believe what was happening and I'm there by myself and then I did it. And then I did it. And then I didn't want to. I didn't want to. I said no.

(*Id.*). No one else was present inside respondent's office at the time, but, according to complainant, there were other staff members present elsewhere in the administrative suite (Tr. 129, 244).

Respondent denied asking complainant to kiss him and that complainant ever kissed him on the cheek or mouth (Tr. 502).

### b Incident No. 2 – The neck-grabbing incident (June 3, 2021)

According to complainant, a second incident occurred on the afternoon of June 3, 2021 (Tr. 126, 230). She testified that respondent pinned her against a file cabinet and wrapped his hand around her neck while reprimanding her for having a "slick ass mouth" (Tr. 127-28). Complainant could not recall what led up to the alleged incident (*Id.*). She testified that the

administrative suite was empty when the incident took place, and the encounter was brief, lasting "less than 10 seconds" (Tr. 129, 233).

Respondent denied grabbing or touching complainant's neck at any time (Tr. 502).

**c Incident No. 3 - The Lobby Incident (June 8, 2021)**

Complainant testified that less than a week after the alleged neck-grabbing incident, another incident occurred in the Crossroads lobby while she was clocking in for work (Tr. 132). She testified:

> I was clocking into work and I just felt . . . the hand go inside my pants, and when I seen it was him, he had my phone in his hand and I grabbed it out and I said, do not put your hand in my pants . . . and I rolled my eyes and he said, I don't like your attitude . . . .

(*Id.*).

At some point afterward, complainant told Ms. Brown and Mr. Jupiter about the incident (*Id.* at 134-35). During their DOI interviews, Mr. Jupiter and Ms. Brown both stated that complainant told them respondent placed his hand in her pants pocket and removed her phone, with Mr. Jupiter specifying that complainant described it as her back pocket (Pet. Ex. 11 at 20; Pet. Ex. 13 at 32-33). Ms. Brown told Ms. Griffenberg that after complainant reported the incident to her, she attempted to clarify the extent of the contact by physically demonstrating the motion and asking complainant whether respondent had touched her upper thigh or genital area. Ms. Brown described the exchange as follows:

> So I brought my whole leg — my whole hand over her. I was like, so he touched all your upper thigh and part of your kooka. She said, yeah, like this.

(Pet. Ex. 13 at 33).

Respondent testified that he observed complainant's phone "hanging out" of the pocket of her agency-issued tactical pants and removed it by grabbing "the top of the phone" that was protruding before handing it back to her (Tr. 503-06). He testified that he was "joking around" when he did so and described his relationship with complainant as "[a] friendship at work," explaining that they "laughed with each other upstairs with the rest of everybody that was in

the office" (Tr. 503-04). Respondent denied placing his hand inside complainant's pocket or touching her thigh or genital area (Tr. 503).

Petitioner introduced surveillance video depicting the incident (Pet. Ex. 17). The video lacks audio and shows a high angle view of the security checkpoint where employees enter the Crossroads building. At the beginning of the video, respondent is standing in the foreground speaking with security staff at the magnetometer, while complainant is visible in the background standing at a kiosk. The video shows respondent walking toward complainant, who has her back turned, slowing as he approaches. He then reaches toward the phone protruding from complainant's left side pocket and removes it before returning it to her. Complainant immediately reaches toward her pocket and extends her arm toward respondent as he hands the phone back.

The recording then shows respondent proceeding toward a door behind the kiosk, opening it while appearing to speak and continuing to speak to complainant as the door closes. Complainant looks up toward respondent and then walks away from the kiosk in the opposite direction of respondent. Although the camera does not capture the area into which she enters, a window provides a partial view of her continuing in the same direction. Respondent reopens the door, steps out, and then returns to the threshold. Standing there, he appears to be speaking to someone out of view of the camera. He then walks back into the room, out of view.

Referring to the surveillance footage, respondent testified that the video shows him grabbing only the portion of the phone that was protruding from complainant's pocket (Tr. 504-06).

## IV. Findings

Petitioner has the burden of proving the charges by a preponderance of the credible evidence. *See Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *adopted*, Comm'r Dec. (Nov. 5, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). Preponderance has been defined as "the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence." *Prince, Richardson on Evidence* §

3-206 (Lexis 2008). "If the evidence is equally balanced, or if it leaves the [trier of fact] in such doubt as to be unable to decide the controversy either way, judgment must be given against the party upon whom the burden of proof rests." *Id.*; *see also Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 N.Y.2d 191, 196 (1976).

Complainant and respondent's credibility are central to the resolution of this case. Many of the most serious allegations, including the alleged neck-grabbing incident and the alleged kiss incident, depend largely on complainant's testimony. The resolution of disputed facts is often determined by the trier of fact's assessment of witness credibility. In making that determination, the trier of fact may consider factors such as witness demeanor, the internal consistency of a witness's testimony, corroborating or supporting evidence, witness motivation, bias or prejudice, and the degree to which the testimony comports with common sense and human experience. *Taxi & Limousine Comm'n v. El Boutari*, OATH Index No. 2729/18 at 9 (July 9, 2018) (citing *Dep't of Correction v. Hansley*, OATH Index No. 575/88 at 19 (Aug. 29, 1989), *aff'd*, 169 A.D.2d 545 (1st Dep't 1991)); *see also Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

Complainant and respondent both have incentives to shape their testimony in a manner favorable to their interests. Respondent wants to retain his position and protect his reputation. At the time of trial, complainant had a pending civil lawsuit against petitioner based on the same allegations and is seeking $6 million in damages (Tr. 252-53). That substantial financial stake provides a clear motive to portray the events in a manner that supports her claims.

Applying the *Menzies* principles here, several aspects of the record bear directly on the reliability of complainant's testimony. In particular, objective evidence in the record, including surveillance video and certified phone records, provides an independent basis for evaluating certain allegations and statements attributed to complainant. In several instances, that evidence differs from complainant's description of events or the characterizations of those events that she later shared with coworkers. These discrepancies undermine complainant's credibility, especially with respect to the most egregious accusations here.

Regarding the lobby incident, complainant testified that while she was clocking in for work, she felt respondent's "hand go inside [her] pants" before he removed her phone from

her pocket (Tr. 132). That account is inconsistent with the surveillance recording of the incident. Consistent with respondent's description, the video shows respondent reaching toward the phone protruding from complainant's side pocket and pulling the exposed portion of the phone with his fingertips. At no point does the recording show respondent's hand entering complainant's pocket.

The video also differs from the descriptions complainant provided to other witnesses. Complainant told Mr. Jupiter that respondent reached into her back pocket, a more intimate area. According to Ms. Brown, complainant told her that respondent's hand touched her genital area. The surveillance recording does not depict either description.

The phone records also bear on the reliability of complainant's account of her communications with respondent. Petitioner introduced a spreadsheet summarizing communications between complainant and respondent from August 6, 2020, through April 9, 2021 (Pet. Ex. 9). The spreadsheet reflects 41 communications during that period, consisting of 13 phone calls and 28 text messages. The records show that all 13 calls were placed from complainant's phone number to respondent. They further show that complainant initiated the majority of the text communications, sending 17 of the 28 messages reflected in the log.

The phone records also reveal patterns that undermine complainant's account. For example, the entries for January 23, 2021, in the DOI spreadsheet show that complainant called respondent at 4:32 p.m. (Pet. Ex. 9). When respondent did not answer, she called back immediately. Again, respondent did not answer. There are no entries indicating any calls from respondent to complainant following the two calls. The next entry shows that complainant called respondent thirteen minutes later at 4:45 p.m. (*Id.*). Again, respondent did not answer. Complainant called back immediately. According to the spreadsheet entry, the call lasted 41 seconds, suggesting that no substantive conversation between complainant and respondent took place. The call log therefore shows that complainant sometimes attempted to reach respondent repeatedly in quick succession when a call was not answered. Such rapid, successive calls are inconsistent with complainant's characterization of her relationship and communications with respondent as professional and strictly limited to work-related matters. That characterization is further undermined by complainant's own casual and informal

messages to respondent, which included discussions of personal matters unrelated to workplace operations (Pet. Exs. 14, 15, 16 at 2).

These records also bear on the reliability of statements attributed to complainant by other witnesses. During his DOI interview, Mr. Jupiter stated that complainant told him respondent made "constant phone calls" to her late at night (Pet. Ex. 11 at 26). Ms. Brown testified that complainant told her that respondent would text requests for the two of them to go out romantically (Tr. 373). However, the certified phone records introduced at trial do not reflect outgoing calls from respondent to complainant during the relevant period, nor is there evidence in the record of repeated late-night calls initiated by respondent (Pet. Ex. 9). Rather, every call reflected in the records was placed by complainant to respondent.

Petitioner relies on statements attributed to complainant by Ms. Brown and Mr. Jupiter as corroborative evidence of complainant's descriptions of the lobby incident and her claim that respondent persistently contacted her outside of work hours. Those statements provide only limited corroboration of complainant's allegations. Since complainant testified at trial and was subject to cross-examination regarding the events she allegedly described to these witnesses, their testimony primarily reflects the substance of complainant's statements to them about the alleged incidents occurred. To the extent those statements are consistent with complainant's testimony, they may provide some corroborative value. *See People v. McDaniel*, 81 N.Y.2d 10, 16-18 (1993). However, their corroborative value is diminished where they differ from the objective evidence in the record. As discussed above, the descriptions attributed to complainant regarding the lobby incident differ from the interaction depicted in the surveillance video, and the claim that respondent made "constant phone calls" is not supported by the certified phone records. These discrepancies reduce the weight that can be afforded to the statements attributed to complainant by these two witnesses.

The record contains significant inconsistencies between complainant's testimony, the accounts attributed to her by other witnesses, and the objective evidence concerning the alleged incidents. The surveillance video of the lobby interaction clearly depicts conduct that differs from complainant's description that respondent placed his "hand inside [her] pants," and the certified phone records do not reflect the pattern of "constant phone calls" attributed

to respondent in statements relayed by other witnesses. The record likewise reflects varying descriptions of the lobby incident in statements complainant made to Ms. Brown and Mr. Jupiter, both of whom complainant acknowledged confiding in regarding her interactions with respondent. Neither witness personally observed the incident nor appeared to have any apparent personal interest in the outcome of this proceeding. To the extent the differing accounts resulted from misunderstanding, misrecollection, embellishment, or inaccurate repetition by the witnesses, they diminish the reliability of those statements as corroboration of complainant's testimony. To the extent Ms. Brown and Mr. Jupiter accurately recounted complainant's descriptions of the incident, the differing versions further undermine the reliability of complainant's account itself. In either event, the inconsistencies make it difficult to determine with confidence what complainant reported and what, if anything, occurred in the manner alleged. Taken together, these inconsistencies and contradictions lead me to discredit complainant's account of those events.

At the same time, the documentary evidence, including the text messages, the surveillance video of the lobby incident, and respondent's testimony, establishes conduct by respondent that was inconsistent with appropriate professional boundaries. The text messages show that respondent communicated with complainant outside of normal work hours and used informal and personal language such as "hey you" and "I missed you" (Pet. Exs. 14, 15, 16 at 6). The messages also reflect respondent's request for complainant's Facebook information despite the absence of any apparent work-related purpose and his acceptance of complainant's offer to send him lunch (Pet. Exs. 1, 2). In addition, the surveillance video confirms that respondent removed complainant's phone from her pocket before returning it to her (Pet. Ex. 17). These interactions reflect a level of personal familiarity that is inappropriate in a professional workplace relationship, particularly given the supervisory dynamic between respondent and complainant.

However, the existence of these communications and interactions does not establish, by a preponderance of the credible evidence, that the more serious physical misconduct alleged in the charges occurred as described. The alleged neck-grabbing incident was not witnessed by others and is not corroborated by independent evidence, and its resolution therefore depends

largely on the reliability of complainant's testimony. After considering the entirety of the testimonial and documentary evidence presented at trial, including complainant's willingness to embellish, if not entirely fabricate, the nature of her interactions with respondent as discussed above, I do not credit complainant's testimony regarding these alleged incidents. Accordingly, I find that petitioner has not established by a preponderance of the credible evidence that respondent requested a kiss from complainant while in his office in April 2021, engaged in the alleged physical misconduct toward complainant on June 3, 2021, or made the comments alleged in Specifications 2, 3, and 4(d).

Although the evidence does not establish the more serious physical misconduct alleged by petitioner, the record does establish that respondent, a senior manager, engaged in inappropriate personal communications with a subordinate and participated in a workplace interaction that overstepped professional boundaries. The ACS Code of Conduct requires employees to be "courteous and considerate towards others" and to "act responsibly and courteously in all contacts with any . . . colleague," including subordinates (ALJ Ex. 2 at 8, 11). Employees are further prohibited from engaging in conduct that may reflect unfavorably on their fitness or bring discredit upon the agency (*Id.* at 11). These obligations carry particular significance where the conduct involves interactions between a senior manager and a subordinate employee, as supervisors are expected to exercise sound professional judgment and maintain clear workplace boundaries.

Respondent, as a supervisory City employee, was also required to comply with the Citywide Equal Employment Opportunity Policy ("EEO Policy"), which prohibits sexual harassment, including unwelcome physical contact and repeated requests for personal or romantic interaction. EEO Policy § IV(B)(3) (June 2024).

The EEO Policy also imposes standards and duties on supervisors and managers beyond the gender discrimination and sexual harassment context. The policy provides that "[m]anagers and supervisors are responsible for maintaining a work environment that fosters sensitivity and respect of all individuals." EEO Policy § III(F). These obligations require supervisors to exercise sound professional judgment and maintain appropriate workplace boundaries with subordinates, even where conduct does not rise to the level of sexual

harassment. Thus, conduct that may not meet the definition of sexual harassment may nevertheless constitute a violation of the citywide EEO policy interest around maintaining a respectful workplace.

Most sexual harassment cases before this tribunal involve conduct that is overtly sexual or physical in nature, such as unwanted touching, sexually explicit comments, or persistent romantic advances after clear rejection. *See, e.g*, *Dep't of Education v. Vereen*, OATH Index No. 1643/24 (May 31, 2024), *adopted*, Chancellor Dec. (July 2, 2024); *Health & Hospitals Corp. (Segundo Belvis Diagnostic & Treatment Ctr.) v. Rivera*, OATH Index No. 414/14 (Dec. 4, 2013); *Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. Polepalle*, OATH Index No. 142/13 (Nov. 20, 2012); *Dep't of Education v. Brust*, OATH Index No. 2280/07 (Sept. 29, 2008), *adopted*, Chancellor Dec. (Oct. 22, 2008). There are, however, cases where sexual harassment has been found where the conduct is not explicitly sexual. *See Holmes*, OATH 1979/25; *Singh*, OATH 2456/24. Such cases typically involve persistent unwanted interactions, clear rejection by the complainant, or evidence that the conduct interfered with the employee's ability to perform their work.

The analysis for this case falls into the latter category, as most of the conduct alleged by petitioner involves personal communications and workplace interactions that were not overtly sexual in nature. The determinative issue therefore is whether respondent's conduct, as established by the credible evidence, rises to the level of sexual harassment under the EEO Policy or whether it reflects lapses in professional judgment and supervisory boundary maintenance that, while inappropriate, do not meet the threshold required to establish sexual harassment.

I find that petitioner did not establish by a preponderance of the credible evidence that respondent engaged in sexual harassment within the meaning of the EEO Policy. As noted above, the phone records show that complainant consistently initiated communication with respondent. The weight of any testimony to the contrary is significantly undermined for the reasons stated above. There is also no evidence that the few messages respondent sent to complainant while she was assigned to the administrative suite had any effect on complainant's ability to perform the tasks she was assigned.

However, the credible evidence establishes that respondent's conduct did exceed appropriate supervisory boundaries and fell short of the standards of professionalism required by the ACS Code of Conduct and the EEO Policy. Respondent engaged in communications with complainant that reflected an inappropriate degree of familiarity given the supervisory relationship. These include informal text exchanges of a personal nature, communications outside normal work channels, respondent's acceptance of food from complainant, an attempted social media contact, and the physical interaction depicted in the lobby recording. While each of these actions viewed in isolation may appear minor, taken together they reflect a failure by respondent to maintain the professional distance expected of a senior manager when interacting with a subordinate employee.

Accordingly, while I do not find that petitioner has not established sexual harassment within the meaning of the EEO Policy, I do find that respondent exercised poor professional judgment and failed to maintain appropriate supervisory boundaries in his interactions with a subordinate. I further find that respondent's conduct is inconsistent with the professionalism and courtesy requirements of the ACS Code of Conduct and the EEO Policy and that respondent failed to maintain appropriate professional standards and engaged in conduct reflecting unfavorably on his fitness as a supervisor.

## Findings and Conclusions

1. To the extent Charge 1 alleges violations of the EEO Policy and sexual harassment, petitioner has not established by a preponderance of the credible evidence that respondent engaged in conduct rising to the level of sexual harassment within the meaning of that policy.

2. Petitioner has not established by a preponderance of the credible evidence that respondent requested that complainant kiss him in or about April 2021, as alleged in Specification 1.

3. Petitioner has not established by a preponderance of the credible evidence that respondent engaged in repeated

demands that complainant go on dates with him or cook for him, as alleged in Specification 2.

4. Petitioner has not established by a preponderance of the credible evidence that respondent engaged in the alleged neck-grabbing incident on or about June 3, 2021, as set forth in Specification 3.

5. Petitioner has not established by a preponderance of the credible evidence that respondent made the statements alleged in Specification 2(a), (b), (c), and (d).

6. Petitioner has established by a preponderance of the credible evidence that respondent engaged in non-work-related and informal communications with complainant, a subordinate employee, as set forth in Specification 4(a), (b), (c), and (d), and that respondent's interactions with complainant included conduct reflecting an inappropriate level of personal familiarity inconsistent with a professional supervisory relationship. This includes the physical interaction depicted in the surveillance video, in which respondent removed complainant's phone from her pocket and returned it to her.

7. Petitioner has established that respondent failed to maintain appropriate professional boundaries with a subordinate employee and engaged in conduct inconsistent with the standards of professionalism required by the NYC Children's Code of Conduct.

## Recommendation

Upon making these findings, I requested respondent's personnel record to arrive at an appropriate penalty recommendation. In response, petitioner submitted records reflecting that respondent has been employed by ACS and its predecessor agencies for more than two decades and has advanced through increasingly senior supervisory and managerial positions during that time. The record does not reflect any prior formal disciplinary history. Petitioner also submitted performance evaluations reflecting ratings ranging from "Very Good" to "Outstanding," while respondent submitted multiple commendations and leadership awards

recognizing his work with detained youth, emergency response efforts, and leadership, and his contributions to juvenile justice programming. These records depict a lengthy career marked by significant responsibility and sustained positive service to the agency and the youth in its care.

For the misconduct charged here, petitioner seeks the penalty of termination. That request, however, necessarily assumes that petitioner established the most serious allegations in this proceeding, including sexual harassment and the alleged physical misconduct. As discussed above, petitioner did not establish by a preponderance of the credible evidence that respondent engaged in the alleged neck-grabbing incident, requested that complainant kiss him, or otherwise committed the more serious acts of sexual misconduct alleged in the charges. Nor did petitioner establish that respondent engaged in repeated romantic pursuit or persistent unwanted communications of the nature described by complainant and attributed to her by other witnesses.

At the same time, the sustained misconduct is serious and warrants meaningful discipline. Respondent occupies a senior managerial role at Crossroads and is responsible for maintaining professionalism, exercising sound judgment, and modeling appropriate workplace conduct for subordinate staff. Rather than maintaining those boundaries, respondent engaged in informal and personal communications with a subordinate employee outside normal workplace channels, fostered an inappropriate degree of familiarity, and participated in the physical interaction depicted in the lobby surveillance video. Although these actions do not rise to the level of sexual harassment established in many cases before this tribunal, they nevertheless reflect poor professional judgment and conduct inconsistent with the standards expected of a supervisory employee.

This tribunal has frequently recommended substantial suspensions, rather than termination, in cases involving isolated acts of inappropriate workplace conduct or harassment where mitigating circumstances are present, including long service and the absence of prior disciplinary history. See *Dep't of Housing Preservation & Development v. Brannon*, OATH Index No. 1723/08 at 5-6 (May 23, 2008), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 09-09-SA (Mar. 18, 2009) (recommending a 30-day suspension where attorney placed hand on another

attorney's arm and requested a kiss); *Rivera*, OATH 414/14 at 10-11 (recommending a 30-day suspension for inappropriate sexual comments toward volunteer); *Dep't of Correction v. Lee*, OATH Index No. 1264/96 at 6 (Aug. 8, 1996), *aff'd*, NYC Civ. Serv. Comm'n Item No. 97-80-SA (Sept. 11, 1997) (recommending a 30-day suspension for sexually suggestive remark and gesture).

Balancing the seriousness of respondent's lapse in professional judgment against the substantial mitigating evidence in the record, including respondent's lengthy tenure, positive employment history, absence of prior discipline, and petitioner's failure to prove the most serious allegations charged, I find that termination would be disproportionate to the misconduct sustained here. A substantial suspension without pay appropriately recognizes the seriousness of respondent's misconduct while accounting for the limited scope of the sustained charges and respondent's otherwise distinguished record of public service.

Accordingly, I recommend that respondent serve a 30-day suspension without pay.

Orlando Rodriguez
Administrative Law Judge

May 29, 2026

Submitted To:

**Rebecca Jones Gaston, MSW**
*Commissioner*

Appearances:

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