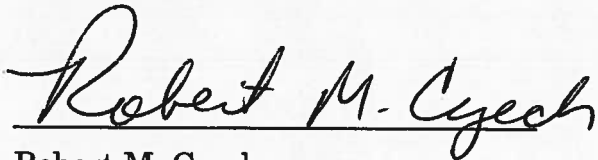




Re: Dawn Giddens

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
DECEMBER 3, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Unit H  
P. O. Box 312  
Trenton, New Jersey 08625-0312

attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 12815-13

AGENCY DKT. NO. 2014-479

**IN THE MATTER OF DAWN GIDDENS,  
MERCER COUNTY DEPARTMENT OF  
PUBLIC SAFETY.**

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**David Beckett, Esq.**, for appellant Dawn Giddens (Mets Schiro & McGovern, LLP, attorneys)

**Kristina E. Chubenko**, Assistant County Counsel, for respondent Mercer County Department of Public Safety (Arthur R. Sypek, Jr., County Counsel, attorney)

Record Closed: July 22, 2014

Decided: October 20, 2014

BEFORE **JOSEPH A. ASCIONE**, ALJ:

**STATEMENT OF THE CASE**

On August 22, 2013, appellant, correction officer (CO) Dawn Giddens (Giddens), timely appealed her August 13, 2013,<sup>1</sup> ten-day suspension by the Mercer County Department of Public Safety Correction Center on charges of violation of N.J.A.C. 4A:2-

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<sup>1</sup> The dates identified are those dates submitted with transmittal from the Civil Service Commission. The dates on the notices of disciplinary action are the dates appearing on those documents.

2.3(a)(6), conduct unbecoming a public employee, and N.J.A.C. 4A:2-2.3(a)(12),<sup>2</sup> other sufficient cause: violation of a rule, regulation, policy, procedure, order or administrative decision (D-15), SOP 005, B-1, Familiarity with Inmates, Former Inmates and Family, Step 2, specifically, not reporting a previous or existing relationship with an inmate, on August 31, 2010. Appellant acknowledges that she failed to report the "previous" relationship with the father of her twenty-year-old daughter. Appellant argues that the relationship ended approximately seventeen years before the incident. Appellant argues that the policy is vague, as the word "relationship" is not defined. She did not perceive an obligation to report the previous relationship. Appellant contends that to apply this policy under the present circumstance has nothing to do with a safety issue. Appellant contends that to apply this policy to African Americans in an inner-city jail facility would be unduly burdensome to the operation of the jail. Finally, appellant contends that to apply this policy to African American correction officers in an inner-city jail facility allows for disparate treatment of the African American correction officers who grew up in the inner city.

### PROCEDURAL HISTORY

On October 8, 2010, a Preliminary Notice of Disciplinary Action (PNDA) (R-2) was issued against Giddens, with the specifications identified above. On September 12, 2012, Giddens received her disciplinary hearing on the PNDA. The charges were sustained, and on August 13, 2013, a Final Notice of Disciplinary Action (FNDA) (R-1) was issued notifying appellant of her suspension for ten working days beginning October 14, 2013. After issuance of the FNDA and notice of appeal, this matter was transmitted to and filed with the Office of Administrative Law on September 9, 2013, by the Civil Service Commission for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was held on May 19, 2014. At that time, the parties requested time to submit written closing statements and legal memorandums. The record closed on July 22, 2014, upon the receipt of the post-

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<sup>2</sup> Amended by R.2012 d. 056, effective March 5, 2012; recodified former (a)11 as (a)(12).

hearing submissions. An extension of time within which to issue the Initial Decision was requested and granted for good cause.<sup>3</sup>

## TESTIMONY

### James Chianese (Chianese)

Chianese is an employee of the Correction Center. His duties include serving as an investigator for Internal Affairs. On August 31, 2010, he investigated an incident report submitted by Giddens involving inmate M.G. (M.G.) (R-8). The incident report related that on August 31, 2010, at 1:20 a.m., M.G. refused to honor multiple orders given by Giddens to depart the bathroom; M.G. eventually made abusive sexual remarks to Giddens. On August 31, 2010, Chianese interviewed M.G. M.G. informed Chianese that he had not had contact with Giddens on the street since 1994. M.G. attributes his discipline for the events on August 31, 2010, to Giddens's bad feelings towards him. He stated that other incidents had happened in the past.

On September 20, 2010, Chianese interviewed Giddens. Giddens, after first denying any dealings with M.G., acknowledged that M.G. had fathered her twenty-year-old daughter. Giddens related that she had not had contact with him in seventeen years. Giddens acknowledged her initials on the receipt of SOP 005—Familiarity with Inmates, Ex-Inmates and Family. She also acknowledged that she never filed a report of the relationship with M.G. Chianese directed Giddens to complete an incident report. Giddens filed an incident report on September 20, 2010, (R-9).

M.G. and Giddens were the only two individuals that Chianese interviewed in connection with the investigation. He confirmed Giddens's hire date as October 1, 2010, (R-5). He confirmed that M.G. had stayed at the Correction Center on six

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<sup>3</sup> Counsel for appellant advised the undersigned, after informing appellant, that his firm had rejected the representation of a witness in this case on an unrelated matter because of the existing representation of appellant. The circumstances have been explained to the appellant. Appellant has agreed to voluntarily waive any conflict that arguably could have been created and seeks David Beckett, Esq., to continue his representation of her. The undersigned voir dire the appellant and accepted that her waiver of the potential conflict was voluntary.

occasions since 2001 (R-7). He identified the Giddens's initialed receipt acknowledgment of SOP 005 (R-6). The version of SOP 005 that Giddens acknowledged receiving dates back to 1998. Updates occurred in July 2002 and June 2009 (R-4).

Chianese testified that he had no knowledge of whether Giddens had previously known of M.G.'s prior incarcerations; he did not further investigate the prior incarcerations. Chianese found nothing wrong in Giddens's writing up the August 31, 2010, incident report.

**Capt. Richard Bearden** (Bearden)

Bearden commenced employment with the Correction Center in 1990, and in November 2004 became captain. His duties include working with the warden and institution of disciplinary action. He identified the reasons for SOP 005 as safety, security, jail management, and fairness to inmates. He stated that familiarity with an inmate may put the officer at risk or subject to abuse by another inmate. If a familiarity report had been filed, it is likely that Giddens would have been reassigned to avoid contact with M.G.

**Ronald Ryland** (Ryland)

Ryland works at the Correction Center as a correction officer. He has also served for the last five years as president of Policeman's Benevolent Association Local 167. He testified to general observations about assignments and training at the facility. There is no follow-up training unless there is a change in policy. He testified that there is no continuing training on SOP 005, and that the term "relationship" has not been defined. He testified that an officer can ask a training officer or the union if there is a question about the interpretation of an SOP. Giddens did not ask him about SOP 005, nor is he aware whether she asked the training officer about that SOP.

Ryland identified P-1 as the collective bargaining agreement for the period from January 2009 to December 2014. He noted that section five provides for equal

treatment of employees, and section six provides for work rules. Work rules must be equitably applied and enforced.

Ryland testified that it is common practice that notification of familiarity with an inmate is provided when the relationship has been in the last five years and involves a family member. He testified he has filled out reports for his father and uncle. He was not aware of any officer who did not fill out a report when an inmate was the parent of the officer's child. He testified that he interprets SOP 005 to cover ongoing and continuous relationships, not ones that ended seventeen years before. He acknowledged that the language of SOP 005 covers previous relationships.

Ryland testified that he does not fill out a report as to his familiarity with kids he coaches. He testified that it would be difficult to reassign all of the officers that are familiar with inmates. He is aware of officer reassignments because of familiarity. He recognized that the determination of each case is up to the administration, and he is not a part of the administration.

### **Giddens**

Giddens testified that she has worked for the Correction Center for thirteen years. Other than receipt of SOP 005, she testified to no other training regarding that SOP. She understood SOP 005 to apply to ongoing relationships. She testified that her relationship with M.G. was not ongoing. She did not see M.G. M.G. had not been a co-parent, and did not provide support for their daughter. Giddens had not had any dealings with him since 1994. She did not recognize him at the Correction Center until he came out of the bathroom. She treated him the same as other inmates. She wrote him up for language.

The Internal Affairs investigation is the first time Chianese directed her to write a report. She testified that the report of the August 31, 2010, incident with M.G. did not present anything out of the normal. She testified that she did not recognize M.G. until he spoke. She filled out the incident report, but did not put the fact that M.G. fathered

her daughter in the report. She denies seeing M.G. in the jail prior to the August 31, 2010, incident. She acknowledged that her work location changed after the incident.

### **FACTUAL DISCUSSION**

The substance of the changes to SOP 005 in 2002 and 2009 did not affect, Giddens's responsibility to advise of her relationship with M.G.

Equal treatment of employees in the collective bargaining agreement is related to discrimination against an employee for his or her membership in the union. Appellant provided neither evidence of any discrimination practiced against her based upon her union membership, nor evidence of unequal treatment enforced against her for the violation of SOP 005.

Appellant argues that the policy is vague, as the word "relationship" is not defined. She did not perceive an obligation to report the previous relationship. There is no support to this factual position. The policy by its terms in the first paragraph applies to previous relationships. Appellant contends that to apply this policy under the present circumstance has nothing to do with a safety issue. However, it is not Giddens who is authorized to make that decision, it is the Correction Center's management that has that prerogative. Management may determine that Giddens should not have contact with M.G., as she is more likely to allow an inmate with whom she has or had a personal relationship to irritate her in the course of her duties, which could impact her job performance.

Appellant contends that to apply this policy to African Americans in an inner-city jail facility would be unduly burdensome to the operation of the jail. Again, this is not a determination that Giddens is authorized to make. Management of the Correction Center is entrusted to its supervisory staff. It is their determination what action, if any, to take with the information that is provided. The burden of reporting falls equally on any correction officer that has grown up in an inner city, and is not limited to the African American community. Finally, appellant contends that to apply this policy to African American correction officers in an inner-city jail facility allows for disparate treatment of



the African American correction officers who grew up in the inner city. Appellant has not provided any factual basis to determine that such obligation will fall inequitably on the African American correction officers. Nor has it been shown, if such an obligation falls inequitably, that the concerns of the management of the facility do not outweigh the inequitable obligation that may fall on certain correction officers.

The fact remains that Giddens chose not to report the previous relationship. SOP 005 is clear: previous relationships are to be reported. It is not for Giddens, but for management, to make a determination regarding whether any action is required based on an information report. Giddens's failure to report deprived management from making any determination prior to becoming aware of the situation through the August 31, 2010, incident report.

### FINDINGS OF FACT

As a result of the testimony and documentary evidence, I **FIND** the following **FACTS**:

1. Giddens has been employed with the County of Mercer since October 1, 2001, in the position of correction officer.
2. On August 31, 2010, she issued an incident report regarding an incident with inmate M.G.
3. Giddens knew that M.G. fathered her daughter.
4. Neither prior to August 31, 2010, nor in the incident report of August 31, 2010, did Giddens complete an information report regarding her previous relationship with M.G.
5. An Internal Affairs investigation of Giddens's August 31, 2010, incident report regarding M.G. reflected the relationship between Giddens and M.G.

6. Giddens acknowledged receipt of SOP 005 on or about October 4, 2001, (R-6).
7. The Internal Affairs investigator required Giddens to complete an incident report regarding her relationship with M.G. Giddens completed that report on September 20, 2010. The report reflects that M.G., a current inmate, is the father of her daughter.
8. Giddens's failure to report that previous relationship concurrently with learning of M.G.'s incarceration on August 31, 2010, violates SOP 005, dealing with reporting of existing and previous relationships with an inmate.
9. Giddens had an obligation to report her previous relationship with M.G. as soon as she became aware of M.G.'s status as an inmate, and she provided no authority to fail to report that previous relationship.
10. Giddens's actions in failing to disclose the previous relationship with M.G. is inconsistent with the conduct expected of a correction officer, upon which management should be able to rely in order to make personnel-assignment determinations.
11. Giddens's actions in failing to disclose the previous relationship with M.G. prevented the Correction Center from making security determinations regarding the placement of Giddens at the facility.

### **LEGAL ANALYSIS AND CONCLUSION**

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil service law, a public entity should not be burdened

with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). Such an employee may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a).

An appeal to the Civil Service Commission requires the OAL to conduct a de novo hearing to determine the employee's guilt or innocence, as well as the appropriate penalty if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987).

The burden of persuasion falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The appointing authority must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

The failure to report a prior relationship is a serious offense which involves both safety issues and liability issues. Giddens's representations that she did not believe that the rule regarding reporting familiarity with inmates applied to her circumstances is disingenuous at best. The language of SOP 005 is clear. The relationship in question is a previous relationship. Management should be aware of such relationships no matter how attenuated, so they can make a reasonable determination of what, if any, action to take in the placement of the correction officer. Giddens's actions deprived management of that consideration and determination.

I **CONCLUDE** that respondent has met its burden of proof by a preponderance of the evidence that Giddens's failure to report her previous relationship with inmate M.G.

upon learning of his incarceration constitutes a violation of N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause: violation of a rule, regulation, policy, procedure, order or administrative decision (D-15), SOP 005, B-1, Familiarity with Inmates, Former Inmates and Family, specifically, not reporting a previous or existing relationship with an inmate.

I further **CONCLUDE** that respondent has met its burden of proof by a preponderance of the evidence that Giddens's failure to report her previous relationship with M.G. upon learning of his incarceration constitutes a violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee. This is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. Because I have concluded that respondent proved that Giddens violated SOP 005, I must also conclude that her actions violated this standard of good behavior.

### PENALTY

When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the proofs and penalty on appeal based on the charges presented must be evaluated. N.J.S.A. 11A:2-19; Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. West New York v. Bock, supra, 38 N.J. at 522-24. Major discipline may include removal, disciplinary demotion, and suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

Turning to Giddens's prior disciplinary history (R-12), it reflects R-11, a settlement of three prior disciplinary matters in 2007, 2008, and 2009, for a total penalty of six days. The agreement does not reflect the offenses that were settled. The prior disciplinary history reflects approximately ten prior violations, at least one each year from 2003 through the time of the incident. The violations were resolved by penalties ranging from official written reprimands to suspension or fine of five days or less. From the settlement agreement and the prior disciplinary actions, it is difficult to ascertain whether a Step 2 violation of section D-15 of the Mercer County Table of Offenses and Penalties has occurred. A Step 1 violation of section D-15 of the Mercer County Table of Offenses and Penalties provides for a penalty ranging from official written reprimand to removal; a Step 2 violation of section D-15 provides for a penalty ranging from ten days' suspension to removal. No discipline guideline appears for the violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming.

While the respondent's disciplinary action appears to be based on a Step 2 violation of D-15, I see no reason to disturb the discipline respondent determined appropriate in the FNDA. The failure to report a prior relationship is a serious offense which involves both safety issues and liability issues. Management should be aware of such relationships no matter how attenuated, so they can make a reasonable determination of what if any action to take in the placement of the correction officer. A reasonable calculation of progressive discipline in the presence of the prior disciplinary actions, the conduct of the appellant, and the current violation is a ten-day suspension.

Accordingly, I **CONCLUDE** that the respondent's imposition of a ten-day suspension is appropriate.

### **ORDER**

I **ORDER** that Giddens's appeal is **DENIED** in all respects.

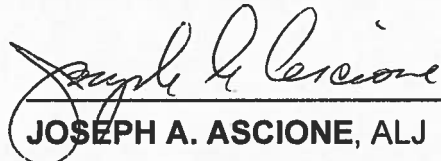
I further **ORDER** that the ten-day suspension against Giddens is **AFFIRMED**.

I hereby FILE my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 20, 2014  
DATE

  
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**JOSEPH A. ASCIONE, ALJ**

Date Received at Agency:

10/20/14

Date Mailed to Parties:

10/20/14

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**APPENDIX**

**LIST OF WITNESSES**

**For Appellant:**

Dawn Giddens  
Ronald Ryland

**For Respondent:**

James Chianese  
Captain Richard Bearden

**LIST OF EXHIBITS**

**For Appellant:**

P-1 Agreement between County of Mercer and PBA Local 167 Mercer County  
Correctional Officers, 1/1/2009 to 12/31/2014, dated January 18, 2013

**For Respondent:**

R-1 August 13, 2013, FNDA  
R-2 October 8, 2010, PNDA  
R-3 Mercer County Internal Affairs Report dated September 24, 2010  
R-4 SOP 005 Familiarity with Inmates  
R-5 MCCC Officer Seniority List effective April 6, 2009  
R-6 Giddens SOP Acknowledgement Form  
R-7 NJ County Correction Info. System Inmate Lookup List for M.G.  
R-8 Giddens Incident Report dated August 31, 2010  
R-9 Giddens Incident Report dated September 20, 2010  
R-10 Mercer County Public Safety Table of Offenses and Penalties  
R-11 FNDA dated October 24, 2007, and Stipulation dated October 11, 2007  
R-12 Giddens's Prior Disciplinary History