

# State of New Hampshire



## PERSONNEL APPEALS BOARD

25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### Appeal of George Kalampalikis – Docket #2011-T-008

#### Department of Health and Human Services/Division of Juvenile Justice Services

February 6, 2012

The New Hampshire Personnel Appeals Board (Wood and Bonafide)<sup>1</sup> met in closed session<sup>2</sup> on Wednesday, October 12, 2011, and Wednesday, October 26, 2011, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of George Kalampalikis, a former employee of the Sununu Youth Services Center. Mr. Kalampalikis, who was represented at the hearing by Michael C. Reynolds, SEA General Counsel, was appealing his November 3, 2010, termination from employment as an Assistant House Leader/Unit Manager for the following alleged violations: Per 1002.08(b)(9) and Per 1002.08(b)(7) for excessive and unreasonable use of force in restraining a resident (N.M.) on September 15, 2010 thereby endangering the resident's health and safety; Per 1002.08(b)(7), violation of a posted or published policy, the text of which warns of dismissal; and Per 1002.08(b)(23) for violation of RSA 126-U, and DJJS Policy RS-1465 Residential Use of Force. Attorney Lynne S. Mitchell appeared on behalf of the agency.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing on the merits of the appeal, notices and orders issued by the Board, the audio-tape recording of the hearing on the merits of the appeal, an agreed upon statement of facts, and documents entered into evidence as follows:

---

<sup>1</sup> Commissioner Johnson participated in the October 12, 2011, hearing, but was unavailable for the October 26, 2011, session. The parties agreed that a quorum of the Board could complete the hearing and render the decision if Commissioner Johnson continued to be unavailable when the Board was ready to render its decision.

<sup>2</sup> Although Per-A 205.02 of the Board's rules indicates that hearings are open to the public and the Board's records are available for inspection, RSA 91-A:5, IV, specifically exempts "...confidential, commercial, or financial information..." from disclosure under the Right-To-Know law. In this instance, evidence to be discussed at the prehearing conference and likely to be presented at the hearing and entered into the record of the hearing included information from juvenile case records, which are considered confidential and protected from disclosure under the provisions of RSA 170-G:8 A. As a result, the Board agreed to close the hearing to the public and seal the record of the prehearing conference and hearing to preclude disclosure of confidential juvenile records or records from juvenile case files to any unauthorized third party.

## State's Exhibits

1. Witness statements (2) of Robert Stephen (9/15/10)
2. Witness statement of Keith King (9/15/10)
3. Witness statement of George Kalampalikis (9/15/10)
4. Statement of John Duffy (9/16/10)
5. Witness statement of Brenda Wouters (9/16/10)
6. Witness statement of George Kalampalikis (9/17/10)
7. Investigatory interview notes – Brenda Wouters (9/20/10)
8. Witness statement resident A.S. (9/15/10)
9. Witness statement resident S.H. (9/15/10)
10. Witness statement resident B.S. (9/22/10)
11. Investigatory interview notes – resident B.S. by Jeff Nelson (9/24/10)
12. Investigatory interview meeting notes by John Duffy (9/27/10)
13. Investigatory interview notes of resident N.M. by Jeff Nelson (10/19/10)
14. Intent to Dismiss Letter (10/15/10)
15. Intent to Dismiss Meeting Notes by John Duffy (10/19/10)
16. Appellant's response to allegations (10/19/10)
17. Letter to Dismiss (10/22/10)
18. SYSC 3-A-15 Policy Receipt signed by Appellant (2/13/07, 9/7/10)
19. SYSC RS-900 Policy Receipt signed by Appellant (3/5/09)
20. SYSC Preamble Policy Receipt signed by Appellant (7/21/09)
21. SYSC Use of Force Training Memo Receipt signed by Appellant (2/19/10)
22. SYSC C-002 Policy Receipt signed by Appellant (4/21/10)
23. SYSC RS-1465 Policy Receipt signed by Appellant (4/17/10)
24. NH RSA 126-U
25. a and b CDs – Time Lapse Photography of incident on 9/15/10
26. Affidavit of Jeffrey Nelson
27. Resume of John Duffy
28. Administrator IV – Human Resources Job Description
29. Policy Review and Chronological Record – RS-1465 and C-003
30. Affidavit of Virgil Bossom (not admitted)
31. Drawing by Robert Stephen of employee placement during 9/15/10 incident
32. Drawing by Keith King of employee placement during 9/15/10 incident
33. SYSC Video/Audio Consent signed by Keith King (10/5/10)
34. Hand-drawn organizational chart of SYSC by John Duffy

Appellant's Exhibits

- A. February 1999, Commendation to Appellant from Asst. Director Robert Decker
- B. October 21, 1999, Commendation to Appellant from Asst. Director Robert Decker
- C. April 15, 2010, email regarding "Response Team"
- D. December 7, 2010, Commendation/Email from Jeffrey Nelson
- E. Nursing Progress Notes for resident N.M. (9/1/10 – 9/15/10)
- F. January 28, 2010, Performance Summary for George Kalampalikis
- G. December 30, 2008, Performance Summary for George Kalampalikis
- H. Affidavit of Donna Bourbeau
- I. Affidavit of Paul Kefegelis
- J. Affidavit of Eric Leitner
- K. Keith King Letter of Warning Documents, including Mary Schwartzer Response
- L. October 5, 2010, Handwritten notes of John Duffy meeting with Keith King
- M. SYSC Policy C-003 (expired)
- N. Transcript of October 5, 2010, meeting between John Duffy and Keith King
- O. September 28, 2011, Deposition of James Peace
- P. September 1, 2011, Deposition of William Fenniman (excerpts admitted into evidence, over the State's objection, as follows):
  - a. page 4 lines 6-13
  - b. page 4 lines 19-23 and page 5 line 1
  - c. page 5 lines 9-12 and lines 18-23
  - d. page 7 lines 18-23
  - e. page 8 lines 11-16
  - f. page 11 lines 2-15
  - g. page 14 lines 9-13 and lines 15-20
  - h. page 15 lines 2-9 and lines 12-23
  - i. page 19 lines 10-15
  - j. page 26 lines 13-23
  - k. page 28 lines 22-23 and page 29 lines 1-4
  - l. page 29 lines 14-23
  - m. page 30 lines 1-3
  - n. page 34 lines 15-23 and page 35 lines 1-16
  - o. page 36 lines 4-19
  - p. page 38 lines 20-23 and page 39 lines 1-2
  - q. page 40 lines 1-5
  - r. page 42 lines 6-17
  - s. page 45 lines 14-23
  - t. page 46 lines 3-13
  - u. page 53 line 21
  - v. page 56 lines 5-23 and page 57 lines 1-3

The following persons gave sworn testimony:<sup>3</sup>

John Duffy, SYSC Bureau Chief  
Brenda Wouters, SYSC Teacher  
Keith King, SYSC Assistant House Leader  
Robert Stephen, SYSC Teacher (retired)  
George Kalampalikis, Appellant

At the hearing on the merits of the appeal, the parties offered the following stipulations of fact:

1. On October 22, 2010, William Fenniman was serving as Director of the Sununu Youth Services Center (SYSC), Division for Juvenile Justice Services (DJJS), of the Department of Health and Human Services (DHHS), for the State of New Hampshire. He retired from State service on March 9, 2011.
2. John Duffy was Bureau Chief at SYSC. He has been Bureau Chief at SYSC since 2004. He has a Master's Degree in Education from the University of New Hampshire. He has worked for the State of New Hampshire and Massachusetts since 1978 (DHHS exhibit #27)
3. The Appellant, who had been employed by the State of New Hampshire since February 4, 1994, was serving in the capacity of a Unit Manager before he was dismissed from State Service. He was responsible for supervising other staff and monitoring the behavior of youth placed at SYSC. (DHHS exhibit #17).
4. On September 15, 2010, the Appellant restrained a resident (NM.) at SYSC. Other staff and residents were in the vicinity at the time. (DHHS exhibit #17)
5. Between September 15, 2010, and October 22, 2010, Mr. Duffy investigated allegations that the Appellant had violated policies and procedures regarding the restraint with N.M. In addition to Mr. Duffy's own written investigative narrative (Exhibit #4), Mr. Duffy received written narratives from the following residents and staff members who were either present during the incident or who conducted interviews with residents:
  - a. Robert Stephen (Exhibit #1)
  - b. Keith King (Exhibit #2)
  - c. George Kalampalikis (Exhibits #3 and #6)
  - d. Brenda Wouters (Exhibit #5)
  - e. Jeff Nelson (Exhibits #7, #11, and #13)
  - f. Resident A.S. (Exhibit #8)
  - g. Resident S.H. (Exhibit #9)
  - h. Resident B.S. (Exhibit #10)

---

<sup>3</sup> At the request of the Appellant, the Board agreed to sequester the witnesses.

6. On September 27, 2010, Mr. Duffy met with the Appellant in an effort to further investigate the incident. SEIU representatives accompanied the Appellant. Mr. Duffy took hand-written notes of the meeting. (DHHS Exhibit #12)
7. On October 15, 2010, Mr. Duffy presented the Appellant with a letter of the "intent to dismiss" him from State Service with attachments and an opportunity to review the video at a later time. (DHHS Exhibit #14)
8. On October 19, 2010, Mr. Duffy met with the Appellant. Mr. Duffy took hand-written notes of the meeting with the Appellant. SEIU representatives attended the meeting with the Appellant. (DHHS Exhibit #15)
9. On October 19, 2010, the Appellant gave Mr. Duffy a written, "Response to Allegations." (DHHS Exhibit #16)
10. After the intent to dismiss meeting, Mr. Duffy met with Director Fenniman. They discussed Mr. Duffy's impressions and recommendations to dismiss the Appellant from State service.
11. On October 22, 2010, Mr. Duffy issued the Appellant a "Letter to Dismiss." (DHHS Exhibit #17)
12. On November 3, 2010, the Appellant timely filed his appeal within 15 calendar days of his dismissal, consistent with Personnel Rule Per-A 206.01(b).
13. On June 15, 2011, the parties agreed, and the board ordered, the hearing closed to protect the identity of a resident involved with this matter.
14. It is common knowledge to staff members that cameras are stationed in various locations in the SYSC, which provide time-lapsed photos (TLP) recordings of youth and staff at SYSC as they engage in their day-to-day activities. The cameras do not audio-record. There were two TLPs of the incident involving the Appellant on September 15, 2010. (DHHS Exhibit #25 a and b)
15. Staff at SYSC undergo mandatory trainings to remain current with statutes, administrative rules, and SYSC policies and procedures.
16. The Appellant and other SYSC employees received training and copies of the policies, as evidenced by Exhibits #18-23.
17. There are 10 steps between the multi-purpose room and the landing below; this landing below the multi-purpose room is the location of the restraint.
18. Mr. James Peace, Residential Supervisor, left his office at some point after he heard a commotion. He observed the Appellant performing a restraint on N.M. on the landing. Mr. Peace spoke to the resident, who appeared to be struggling, and inquired as to whether the resident was willing to act safely.
19. Donna Bourbeau, RNC, examined N.M. at 12:15 p.m. and 4:30 p.m. on September 15, 2010. N.M. denied any injuries. Nurse Bourbeau did not observe any marks or bruises. N.M. did not complain to her about injuries at either time that Nurse Bourbeau assessed him.
20. On November 19, 2010, Mr. Duffy issued Mr. King, who was involved in the incident, a letter of warning. (Appellant's Exhibit K)

21. On June 17, 2011, Mary Schwartz, the DHHS Commissioner's designee, upheld Mr. King's letter of warning pursuant to a Step III informal settlement of dispute meeting (Appellant's Exhibit K)

At the close of the hearing, at the request of the parties, the Board agreed to hold open the record of the hearing until November 23, 2011, to allow the parties an opportunity to submit written closing arguments and/or proposed findings of fact and rulings of law. The parties' closing arguments were sent to the Board via email on November 23, 2011. Hard copies were received by the Board on November 28, 2011.

#### Personnel Appeals Board's Process for Review of the Evidence

Per-A 207.12(b) of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) provides that, "In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves by a preponderance of the evidence that: (1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence."

Black's Law Dictionary (6th Edition) defines "preponderance of the evidence" as meaning "...evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

Per-A 207.01 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board), imposes upon the employer the burden of production, requiring the Division for Juvenile Justice Services in this case to produce sufficient evidence to persuade the Board that the underlying facts asserted in the letter of termination are true.

Having reviewed both parties' submissions, the Board voted to grant the State's Procedural Facts, A-1 through A-6.

In accordance with the provisions of Per-A 207.11, Requests for Findings of Fact and Rulings of Law.

"(a) By the close of a hearing, either party may submit requests for findings of fact and rulings of law.

(b) Submission by either party of requests for findings of fact or rulings of law shall not preclude the board from making findings independent of those requests."

In this case, the Board has chosen to make its own findings independent of the requests submitted by the parties. To the extent that those requests are consistent with the findings of fact, rulings of law, and decision and order below, they are granted. Otherwise, they are denied.

### Findings of Fact

1. Between 1994, when the Appellant was hired as a Youth Counselor, and the date of his dismissal, the Appellant's work record was free of discipline, and he received regular salary increments and promotions, eventually being promoted to serve as a House Leader or Unit Manager. The Appellant estimates that he participated in as many as 500 restraints during that period of time, and was never accused of improperly restraining a resident or using undue or excessive force.
2. On September 15, 2010, the Appellant, George Kalampalikis was working as the Unit Manager on G unit at the Sununu Youth Services Center in Manchester, New Hampshire. By all accounts, the unit was understaffed that day and certain staff, including members of the teaching staff, were assisting the House Leader and Youth Counselors in managing the movement of residents from that unit while the residents prepared to return to classes following their lunch break. The Appellant was working on the second floor of G-unit while resident N.M. and other male residents were lining up in the multi-purpose room one floor below.
3. Resident N.M., who was standing toward the front of the line, was angry about an incident that had occurred between him and another resident out in "the pen" earlier that day. N.M. was yelling and swearing at the other resident, ignoring directions given by Robert Stephen, a member of the teaching staff, to settle down and stop swearing. Youth Counselor Keith King and Brenda Wouters, another member of the teaching staff, were present but did not engage in any discussion with Mr. Stephen nor did any of them attempt to verbally de-escalate the conduct being exhibited by N.M.
4. Hearing loud voices, the Appellant came out of G-200, the second floor residential unit, and stood on the second floor landing, observing the exchange between Mr. Stephen and the resident. Mr. Stephen continued telling the resident to stop shouting, swearing, and ignoring staff directives. Mr. Stephen called up to the Appellant, saying that the resident was not doing what he was being told to do, and that he was not ready to go back to school. He asked what he was supposed to do. The Appellant admitted, in what he characterized as an attempt to deflate the situation with an attempt at humor, that he responded to Mr. Stephen by repeating that the resident had said, "he doesn't give a f\*\*k. What do you want me to do?"
5. The resident continued to yell and swear, so the Appellant told the resident to go to his room to cool off. The Appellant then came down the stairs to the multi-purpose room, where he separated the resident from the rest of the residents and directed the resident to go to his room. The Appellant followed the resident as the resident walked toward the stairs that lead down to the residential unit G-0. The resident continued to direct foul language toward Mr. Stephen, and ultimately turned toward Mr. Stephen, shouting "f - - k you!" making an

aggressive movement that Mr. Stephen described as “threatening.” Mr. Stephen testified that he feared the resident would assault him, or that a riot would ensue, so he took a “defensive stance.”

6. The Appellant continued to direct the resident to his room, and continued to follow him toward the stairs. The Appellant and Keith King, a senior Youth Counselor, remained between the youth and Mr. Stephen. As the resident began walking down the stairs, Mr. Stephen told the resident that the resident was going to get a disciplinary hearing as a result of his conduct. The resident reacted angrily, turned to start back up the stairs toward Mr. Stephen, bumped into the Appellant and stumbled back a few steps at the top of the stairs. The resident lurched forward again, attempting to head back up the stairs toward the multi-purpose room, but the Appellant blocked his forward motion and the resident stumbled to the bottom of the stairs. At the bottom of the stairs, the Appellant physically took the resident to the ground and restrained him. Youth Counselor Keith King assisted, holding the resident’s legs.
7. According to Ms. Wouters’ written statement, “Mr. K. than [sic] came down the stairs telling [resident N.M.] to go to his room. [Resident N.M.] stated “no”. Mr. K. then grabbed [the resident] and shoved him toward the stairs, causing [the resident] to begin to stumble backwards down the stairs and fall against the railing. I was concerned that [resident N.M.] was going to fall over the railing or down the stairs backward. [Resident N.M.] kept saying “get your f - - king hands off me, don’t touch me...” During the hearing, Ms. Wouters testified that she had to turn away because she just couldn’t watch, fearing that the resident would crack his head open. The Board, upon reviewing the video, did not believe the evidence supported the conclusions drawn by Ms. Wouters.
8. The resident’s account of the incident, as reported in Mr. Duffy’s written statement (State’s Exhibit 4), was that “...George told him to go to his room and he headed to the stairs leading to G-0. He took one step down and heard something said (he doesn’t remember what it was) and he turned around. He reported that George hit him with his belly and he feel [sic] two steps backwards. He said he became heated and attempted to go back up the stairs and George pushed him down the stairs. He stated that if he didn’t grab the rail he most likely would have been seriously injured.”
9. Mr. Duffy, who had been monitoring female residents on G-100, entered the multi-purpose room approximately 6 seconds after resident N.M. had been restrained. Mr. Duffy wrote in his statement (DHHS Exhibit 4) that he felt that the Appellant and Mr. King had the situation under control, so he left the multi-purpose room to assist in transporting the other residents to class.
10. Although the resident claimed that the Appellant “hit him with his belly” and later “pushed him down the stairs,” the Appellant’s testimony, the testimony of Keith King, and the videos (also referred to as time-lapse photography and marked DHHS Exhibits 25A and 25B), are more consistent with the Appellant’s report that the resident was walking down the stairs but turned and bumped into the Appellant’s stomach, stumbling back a step or two. The video also shows that the resident attempted a second time to move up the stairs toward the multi-purpose room, but the Appellant moved from the center of the stairway to the left and put his hand on the railing in order to block the resident’s way. While it is unclear from the testimony or video evidence exactly how the

resident reached the bottom of the stairs, whether walking forward, sideways or stumbling backwards, the evidence does not support the State's assertion that the Appellant pushed the resident down the stairs or forced him backwards down the stairs.

11. According to Mr. Duffy's report (DHHS Exhibit 4), resident N.M. claimed that, "George does dirty restraints and said that being pushed down the stairs, being elbowed on the side of his face and being hit in the stomach area were all 'dirty.'"
12. The video clips (DHHS Exhibits 25A and 25B) show at least six residents watching what happened on the stairs and during the restraint; however, Mr. Duffy interviewed only two. Those two residents were interviewed together by Mr. Duffy after having been left unattended for a period of time shortly after the incident (DHHS Exhibit 25B). They also submitted written statements (DHHS Exhibits 8 and 9), that were dated five days after the incident, describing what they characterized as a "dirty restraint."
13. Less than an hour after the restraint, the resident was checked by RNC Donna Bourbeau who wrote in the nursing progress notes (SEA Exhibit E), "Called to check [resident N.M.] by Supervisor Peace. [Resident N.M.] sitting on bed in room on E unit. Denies any injuries @ this time. 0 marks or injuries noted." Reporting a further check on the resident at 4:30 p.m., Ms. Bourbeau wrote, "Re-check [resident N.M.] by request from John Duffy after he reports staff injured him during earlier restraint. 0 marks or bruises on face or abd [sic]. Asked why he did not tell me he was injured earlier states he didn't know that why I was there. Will re-ck [sic] tomorrow for bruising."
14. In her Affidavit (SEA Exhibit H), Ms. Bourbeau reiterated what she had written in her nursing progress notes, and further reported checking on the resident the following day. Ms. Bourbeau stated that the resident had no signs of injury at any time following the restraint, he reported no pain or discomfort, and he made no complaint at any time about the Appellant or any other member of the staff, even though she had told the resident each time, specifically, that she was there to check him because of reports that he was restrained and may have been injured.
15. Robert Stephen, Brenda Wouters and Keith King all witnessed the incident on the stairs. If, as the State alleged, the incident was a clear case of Class I or Class II abuse, Mr. King, Mr. Stephen, and Ms. Wouters were each individually responsible for reporting such alleged abuse to DCYF, as required by SYSC Policy R.S.900, C, which states, in part: "If any staff member has a reason to believe that a resident has been abused or neglected, as these terms are defined in RSA 169-:3U, that staff is required to report the suspected abuse or neglect to the Division for Children Youth and Families Intake.... 1. The responsibility to report under RSA 169-C is an individual statutory responsibility and is not fulfilled by reporting the suspected abuse or neglect to a DJJS supervisor or administrator..." (DHHS Exhibit 19) None of those employee made a report of suspected abuse to DCYF, and none of those staff members were disciplined for failing to report suspected abuse.
16. Mr. King was the only other person to be disciplined as a result of the incident involving resident N.M. He received a written warning for failure to meet the work standard because he "failed to appropriately de-escalate

Resident N.M. and kept N.M. in a prone position during a restraint contrary to the work standards and in violation of DJJS Policy #C-002 Professional Conduct (revised May 11, 2010), Policy #RS-1465 Residential Use of Force (Revised August 1, 2010) and NH RSA 126-U." (SEA Exhibit K) Mr. King has since been promoted to Assistant House Leader.

### Rulings of Law

- A. Per 1002.08(b)(7) provides for immediate dismissal without prior warning for, "Violation of a posted or published agency policy or procedure, the text of which warns that violation of same may result in dismissal." The State argued that the Appellant violated four specific policies: The Residential Use of Force Policy, RS 1465 (effective 9/1/10), the Abuse and/or Neglect Reporting and Investigation Policy, RS-900 (effective 2/1/09); the Professional Conduct Policy, C-002 (effective 5/1/09); and the DJJS Preamble. In order to find that the Appellant should have been dismissed, the State needed to produce sufficient evidence to persuade the Board that the Appellant exhibited excessive and unreasonable use of force for existing conditions in physically restraining resident N.M. on September 15, 2010, that he engaged in behavior that endangered the resident's health and safety, and that this single alleged offense should warrant his immediate dismissal without prior warning.
- B. The State asserted that, "Preventing a resident from walking up or down a flight of stairs is a restriction of the resident's freedom of movement," in violation of the Residential Use of Force Policy #RS-1465, Paragraph III (C)." The Appellant was not merely "preventing a resident from walking up or down a flight of stairs." The evidence reflects that the Appellant had directed the resident to go to his room to "cool off." The resident moved toward the stairs and began walking down the stairs toward his room, with the Appellant following closely behind. The evidence reflects that the resident then turned and tried to re-enter the multi-purpose room as he engaged in a verbal altercation with another member of the staff. Mr. Stephen, the staff member, testified that he had assumed a defensive posture when that occurred, believing that he was about to be assaulted and that a riot might ensue. The Board found that the Appellant's decision to restrict the resident's motion under those circumstances was the correct step to take. The evidence further reflects that the resident made a second attempt to turn on the stairs and re-enter the multi-purpose room. In this instance, preventing the resident from re-entering the multi-purpose room was the appropriate action to take in light of the resident's behavior.
- C. RS-900, Section III A(1)(e) describes as Class I Abuse, "Any deliberate act, which results or could result in serious physical or psychological injury to a resident. Class I Abuse includes, but is not limited to: . . . c. Striking a resident with a closed fist; kicking, shoving, biting, spanking, or jumping on a resident; or using any type of implement in a way that could cause serious injury except as a means of self protection or the protection of others." RS-900, Section III A (2)(d) defines Class II Abuse as, "Any deliberate act, which results or could result in potentially serious physical or psychological injury to a resident. Class II Abuse includes but is not limited to: . . . d. Confinement or restraint of a resident that is not consistent with SYSC policies on seclusion and restraint."

Directing the resident to go to his room, preventing the resident from re-entering the multi-purpose room or continuing to engage in a verbal altercation with other staff, and ultimately restraining the resident at the bottom of the stairs did not represent deliberate acts which could, or did, result in serious physical or psychological injury to the resident, nor were those actions contrary to a reasonable reading of SYSC policies on seclusion and restraint.

### Decision and Order

The record reflects that the Appellant worked for the State for more than sixteen years, that he was not disciplined during that time for failure to meet work standards or violation of posted or published agency policies, and that he was promoted over time from Youth Counselor to Unit Manager. The evidence indicates that the Appellant had a reputation for being firm but fair with residents and staff, and that he was asked to work as the Unit Manager in G-unit because of his approach to dealing with difficult residents. Although there is sufficient evidence to suggest that the Appellant might have used other techniques in an attempt to de-escalate resident N.M.'s angry, aggressive behavior, the Board noted that in a mere 24 seconds, the Appellant descended the stairway from G-200 into the multi-purpose room, separated the resident from the remaining residents, and had the resident cooperating and going to his room until Robert Stephen's threats of a disciplinary hearing re-ignited the conflict. Initially, given the level of staffing, there would have been no reason to remove Mr. Stephen from the area as the State suggested, as the Appellant would have had no way of knowing that Mr. Stephen would exacerbate a situation that was largely under control before he threatened the student with a disciplinary hearing.

The confrontation on the stairway and the resulting restraint at the bottom of the stairs occurred within the next 20 seconds. Under the circumstances, it was appropriate for the Appellant to keep the resident from coming back up the stairs and entering the multi-purpose room in order to ensure that the resident did not assault or threaten a staff member. The Board believes that the Appellant took immediate and reasonable steps to prevent that from happening.

The Board also did not find that the restraint was an undue or excessive use of force. Mr. Duffy himself entered the multi-purpose room approximately 6 seconds after the restraint began. According to his statement, he thought it looked like the Appellant and Mr. King had the situation "under control." If he actually believed that the resident was being restrained in a prone position, or that the restraint represented excessive or undue force, agency policies would have required him to intervene.

Although the Board found that the Appellant did not use excessive or undue force, and did not violate Per 1002.08 (b), the Board found that the Appellant failed to meet work standards by engaging in extremely unprofessional

behavior when he used "the F word" in front of residents and staff while making what he himself characterized as a sarcastic response. As the senior staff person in charge, the Appellant was responsible for upholding the agency's policies and procedures, managing staff, and serving as a role model for staff and residents. The Board found that the Appellant violated work standards and professional conduct standards when he employed sarcasm and foul language during a volatile and potentially dangerous exchange between staff and residents. While that conduct was not sufficiently egregious to warrant dismissal without prior warning, it certainly should have resulted in some form of disciplinary action.

In accordance with Per 1002.03, Determining the Appropriate Form of Discipline, "In determining the appropriate form of discipline under Per 1002.04 through 1002.08, an appointing authority may consider factors including, but not limited to: (a) The nature and severity of the conduct or offense in relation to the employee's position classification, responsibilities, and accountabilities, and the functions of the agency; and (b) The employee's past record of performance and discipline, including whether or not the employee has been disciplined in the past for the same or a similar offense."

After carefully considering the evidence and argument offered by the parties, the Board found that the disciplinary action was unjust in light of the facts in evidence. In reaching that conclusion, the Board found that the Appellant's use of force in restraining resident N.M. on September 15, 2010, was not excessive or unreasonable for the conditions that existed. The Board further found that the Appellant did not endanger the health or safety of the resident, but instead responded to a potentially dangerous situation as reasonably as he might have under the circumstances, although the Appellant's use of foul language, his failure to provide suitable role modeling for residents and staff, and his failure to take additional steps to de-escalate the verbal altercation between resident N.M., resident A.V. and staff member Robert Stephen constituted a failure to meet work standards sufficient to warrant some form of disciplinary action.

RSA 21-I:58, I, provides, in pertinent part, that, "...In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." Accordingly, the Board voted unanimously to direct the Department of Health and Human Services to reinstate the Appellant following a 10-day suspension without pay, as described by Per 1002.06 (a)(1) which permits an appointing authority to suspend an employee without pay for, "Failure to meet work standards or other conduct for which a written warning may be issued pursuant to Per 1002.04, when, under the particular circumstances, the appointing authority considers the conduct or offense to warrant the imposition of discipline more severe than a written warning." Such reinstatement shall occur within 30 calendar days of the date of this order. The agency may assign the Appellant to any work location, schedule or shift that best meets the agency's staffing needs. Any compensation due to the appellant shall be reduced by interim earnings as set forth in the provisions of RSA 21-I:58,

I; specifically, the award "...shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. 'Any other source' shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period." The appellant's award shall be further reduced to reflect a suspension without pay of 10 working days.

The appeal of George Kalampalikis is therefore GRANTED IN PART as set forth above.

THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair



Philip Bonafide, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol Street, Concord, NH 03301  
Michael Reynolds, SEA General Counsel, State Employees Association, 207 North Main Street, Concord,  
NH 03301  
Attorney Lynne Mitchell, Department of Health and Human Services, 129 Pleasant Street, Concord, NH  
03301