STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 2005B054

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

FAYE WEISER,

Complainant,

VS.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF DEVELOPMENTAL DISABILITIES,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on February 14, 2005, and February 22, 2005, at the State Personnel Board, 1120 Lincoln, Suite 1420, Denver, Colorado. First Assistant Attorney General Jill M. M. Gallet represented Respondent. Respondent's advisory witness was Fred DeCrescentis, the appointing authority. Complainant appeared and was represented by Nora V. Kelly.

MATTER APPEALED

Complainant, Faye Weiser (Complainant or Weiser), appeals her disciplinary pay reduction of \$335.18 and requirement to take a class entitled "Cross-Cultural Communication" and a class entitled "Conflict Resolution at Work: Understanding Yourself and Others," actions taken by Respondent, Department of Human Services, Division of Developmental Disabilities (Respondent or DHS).

For the reasons set forth below, Respondent's action is **affirmed.**

ISSUES

- 1. Whether Complainant committed the acts for which she was disciplined;
- 2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;
- 3. Whether the discipline imposed was within the reasonable range of alternatives available to the appointing authority;
- 4. Whether attorney fees are warranted.

FINDINGS OF FACT

General Background

- 1. Complainant is the Director of the Pueblo Regional Center (PRC) for DHS. She has held that position since August of 2000.
- 2. Complainant has been a certified state employee for approximately 24 years.
- 3. Prior to receiving her disciplinary action in November of 2004, Complainant never received any corrective or disciplinary actions.
- 4. Fred DeCrescentis is the State Director for DHS's Division of Developmental Disabilities.
- 5. DeCrescentis has been Complainant's supervisor since July of 2004. Complainant's previous supervisor was John Daurio.
- 6. PRC Center houses residents and also oversees 11 group homes. The individuals for whom PRC has responsibility often have medically and behaviorally complex cases and are often vulnerable.

DeCrescentis' Actions Upon Assuming Responsibility of PRC

- 7. DeCrescentis learned that he was going to be assuming the supervision responsibilities of PRC and the other two regional centers in the state. When he learned that information, he visited each center prior to actually assuming responsibility for them in July of 2004. He visited PRC on May 27, 2004.
- 8. Following his May 27, 2004 visit, DeCrescentis wrote a memo to Complainant on June 2, 2004, giving an overview of his visit to PRC. In that memo, DeCrescentis expressed concerns regarding consumer safety and public perception of PRC.
- 9. DeCrescentis also wrote in his June 2, 2004 memo that because of concern relative to past management practices, he was going to explore: 1) a 360 degree evaluation of Complainant by her new Management Team to assist in developing Performance Management and Pay (PMAP) goals and priorities; 2) "the development of communication councils for staff, families and residents, where appropriate"; and 3) "an assessment of need among staff, families and self-advocates for the purposes of developing a Strategic Plan that reflects: Mission Statement, Vision Statement, Core Values, Annual Action Plan, Longer Term Strategic Plan."
- 10. DeCrescentis spoke with Complainant's previous supervisor, John Daurio, who told DeCrescentis that he was concerned about the leadership and management at PRC.

- 11. DeCrescentis met with Complainant and the PRC management team on August 24, 2004. Following that meeting, DeCrescentis provided a summary of the meeting to Complainant and asked Complainant to review the summary to see if it was accurate.
- 12. The memo summarizing the August 24, 2004 meeting included the need to define "Core Values" for PRC and its Management Team. The memo also included PRC Management Team Recommendations to strengthen Complainant's leadership and management practices.
- 13. Upon assuming supervision of PRC, DeCrescentis reviewed Complainant's PMAP for the time period covering May 1, 2003, through April 30, 2004. DeCrescentis used that PMAP to develop Complainant's PMAP for the time period ending April 2005.
- 14. DeCrescentis looked at all of the areas where Complainant had been rated as a "1" in her May 1, 2003, through April 30, 2004 PMAP because he wanted her to raise each of those areas to a "2" or higher by the time she was next evaluated. ¹
- 15. Complainant had a "1" rating in the "Equity" category under Strategy #3, which is "Respect, Dignity, Inclusion, and Accountability—CDHS holds people accountable for their actions so that we create a work environment that fosters respect, dignity, and inclusion." Equity addresses the fair and respectful treatment of staff members.
- 16. DeCrescentis developed a document, with Complainant's input, entitled, "Fay Weiser P-MAP Priorities July 2004 to April 2005." In that document, one of the priorities listed was: "To improve upon most recent P-MAP evaluation (May 1, 2003 through April 20, 2004) where performance was rated at a level 1 by raising performance evaluation to a rating of 2 or higher in the following areas: b. Individual Performance Measures: . . . (3) Equity."
- 17. Complainant was put on notice by her PMAP evaluation from May 1, 2003, through April 30, 2004, and DeCresentis' memo regarding Complainant's P-MAP priorities for July 2004 to April 2005 that she needed to improve her performance in the area of Equity, which included creating a work environment that fosters respect, dignity, and inclusion.
- 18. DHS has an Employee Code of Conduct, which applies to each and every one of its employees.
- 19. The Employee Code of Conduct provides, in part, the following:

All employees at the Colorado Department of Human Services are expected to:

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¹ A "1" rating indicates that the employee is not meeting expectations and standards and needs improvement. A "2" rating indicates that the employee successfully achieves his or her job expectations, is fully competent and meets the behavior/performance standards in the Colorado Department of Human Services Employee Code of Conduct.

- Be truthful, honest, and courteous to co-workers and to customers at all times.
- Listen actively and share information in open, honest, and appropriate ways.
- Demonstrate respect for all people and their ideas, and commit to resolve conflicts
- Be considerate of fellow workers when performing job tasks.
- Show support of departmental decisions through your actions.
- Be committed to your job and present yourself as a good role model.
- Treat others as they wish to be treated.
- 20. Complainant was aware of the Employee Code of Conduct and was aware that it applied to her. A copy of the Employee Code of Conduct was included in Complainant's May 1, 2003, through April 30, 2004 PMAP.
- 21. On August 6, 2004, Complainant forwarded a copy of the Employee Code of Conduct to DeCrescentis and told him that it was used as a 360-degree evaluation for the entire agency. Complainant and all of her managers and supervisors use the Employee Code of Conduct to measure staff performance. Complainant was aware that the Employee Code of Conduct would be used to evaluate her performance.

Workplace Equity Findings and DHS Equity Policy

- 22. In May of 2001, DHS conducted a Workplace Equity Survey, which indicated low staff morale. As a result of the Workplace Equity Survey findings, and the Employee Code of Conduct, DHS adopted Policy Number VI 4.4, which became effective on October 1, 2002.
- 23. DHS Policy VI 4.4 provides, in part, the following:

BACKGROUND/PURPOSE.

In May 2001, the Colorado Department of Human Services (CDHS) conducted a Workplace Equity Survey. The survey was a major part of the department's effort to develop greater knowledge and understanding of what needs to be done to make CDHS a workplace of choice that provides fairness, opportunity, dignity and respect.

One of the key recommendations from the survey was to "reduce incidents of harassment, discrimination and abuse of authority." While CDHS was in compliance with the law, the perception in the department indicated that CDHS was experiencing incidents on inappropriate behavior that ultimately consumes public resources. CDHS decided to implement a significant shift in philosophy by seeing equitable treatment as a business expectation for reducing these incidents.

. . . .

PROCEDURES

Each office is to develop and/or refine, on an annual basis, an implementation plan that supports the Workplace Equity philosophy and survey recommendations. At CDHS, Workplace Equity is the fair and equitable treatment of individuals. . . .

To implement this philosophy statement, there are four (4) distinct strategies that should be reflected in the annual implementation plan:

. . . .

3) To hold people accountable for their actions, regardless of their position in the organization: The business reason for doing this is that it relates directly to employee satisfaction and reduced litigation. This involves creating an harassment and discrimination free environment so when issues arise they are brought forward, taken seriously, investigated with confidentially [sic] and timeliness, and personnel action taken if appropriate. This strategy also involves creating an "inclusive" culture at CDHS so that all employees are welcomed, listened to, and treated with respect and dignity.

Every CDHS employee is to receive a copy of the Employee Code of Conduct. The employee shall be made aware of the CDHS Employee Code of Conduct at New Employee Orientation, through Performance Management, Planning and Evaluation, and as a tool to create and maintain a respectful workplace.

Every CDHS employee is to be evaluated annually on the Equity competency.

. . . .

DEFINITIONS

. . . .

Culturally Insensitivity:

Examples of culturally insensitive behavior include but are not limited to insult, disrespect, ridicule, racisms, sexism, ageism, denigration, heckling, and name calling. Culturally insensitive behavior can be exhibited verbally, physically, in unintentional or graphic form, or through body language. All incidents of cultural insensitivity involving employees, clients, or visitors shall be taken seriously and addressed appropriately.

Workplace Harassment:

A course of provocative comment or conduct (to irritate or annoy) that is known, or ought to reasonably know, to be unwelcome. Abuse of authority is a type of workplace harassment and is described as improperly taking advantage of a position of authority to endanger an employee's job, undermine an employee's job performance, threaten an employee's livelihood, or interfere with or influence his or her career. It may include but is not limited to behavior such as yelling, belittling, reprimanding in front of other staff, or withholding information that an employee needs to perform duties.

24. Complainant was aware of Policy VI 4.4 and its requirements prior to the incidents which led to her disciplinary action.

2003 Employee Survey

- 25. There was another employee survey conducted by an employees' union in July of 2003. That survey also indicated that there was low staff morale at PRC. The survey results indicated that PRC fell short in the areas of communication and accountability.
- 26. The survey results also indicated that Complainant had made derogatory comments about the Hispanic culture. When Complainant looked into this complaint, she could find nothing to substantiate it.
- 27. Complainant was aware of the results of this survey; they were common knowledge to PRC employees.

September 24, 2004 Incident

- 28. On Friday, September 24, 2004, Complainant arrived at work. At about 8:30 a.m., she went into the office of PRC's Management Team's program assistant, Marcella Bazanele. Complainant is Bazanele's supervisor.
- 29. Complainant and Bazanele are friends and sometimes socialize outside of the workplace.
- 30. When Complainant came into Bazanele's office, she closed the door and expressed that she was angry that DeCrescentis had denied her request to reduce an investigator FTE from 1.0 to .2.
- 31. Bazanele was sitting at her desk while Complainant stood or paced in front of the desk. Because of the configuration of the furniture and file cabinets and the small size of Bazanele's office, Bazanele felt trapped in her office.
- 32. While in Bazanele's office, Complainant appeared to be very angry and out of control. Complainant's face was red, her eyes were glazed over, and she repeatedly used profanity, including the "F" word, and was yelling. Complainant was also holding a water bottle which she kept squeezing in an angry manner.
- 33. Complainant's anger was not directed at Bazanele, but Bazanele felt afraid because Complainant was so angry that she seemed to be out of control. Bazanele's fear was exacerbated because a previous supervisor once pushed her.

- 34. Another employee, Lupie Solano, has an office across the hall and several feet down from Bazanele's office. Solano heard a loud voice which she recognized to be Complainant's voice. Solano could not understand Complainant's words, but could tell that Complainant's voice was escalated and agitated.
- 35. Solano went into the hall to see what was going on, and realized that Complainant's voice was coming from Bazanele's office. Solano felt embarrassed and left her office because she didn't feel like the conversation between Complainant and Bazanele was any of her business.
- 36. Bazanele asked Complainant to calm down, but Complainant did not. Finally, Bazanele told Complainant that she needed to take some papers to the state hospital. Complainant signed some of those papers, and left Bazanele's office.
- 37. Bazanele then left to take the papers to the state hospital. While she was driving there, she noticed that her hands were shaking.
- 38. When Bazanele got back to her own office, she heard Complainant's office door open. When Bazanele heard Complainant's door open, she felt fear that Complainant would come back to her office and display anger again. Bazanele felt a knot in her stomach, and felt like she needed to get out of the office and go home.
- 39. Before she left, Bazanele went by Solano's office and told her she was leaving. Bazanele was teary eyed and distraught while talking to Solano. Bazanele also saw another coworker, Manuel Montano, before she left. Montano did not notice that Bazanele seemed upset, but Bazanele did say to him something like, "Can you believe this lady? The language?"
- 40. Bazanele went home about 10:00 a.m. When she got home, she called Complainant and left her a voice message telling Complainant that she went home sick with an upset stomach. In that same voice message, Bazanele told Complainant that she got upset when Complainant was upset.
- 41. Once Bazanele was home, she still felt very emotionally upset about her encounter with Complainant. About 4:00 p.m., she called DeCrescentis to report what had happened. DeCrescentis asked Bazanele to put her account of the events in writing. Bazanele sent DeCrescentis an e-mail at about 5:00 p.m., giving him a written report of her meeting with Complainant.
- 42. DeCrescentis asked Bazanele if she knew of other employees who had like experiences with Complainant. Bazanele told him that he should talk to another member of the Management Team, Theresa Schoenmakers.
- 43. DeCrescentis did talk to Schoenmakers who told him of a meeting she had with Complainant on September 23, 2004. During that meeting, Schoenmakers asked

- Complainant if she made some remarks to employees supervised by Schoenmakers. Complainant became very angry, red-faced, raised her voice, and used the "F" word. Schoenmakers was surprised by Complainant's degree of hostility.
- 44. DeCrescentis asked Schoenmakers to provide him with a written report of her encounter with Complainant. Schoenmakers complied with that request.
- 45. On Monday, September 27, 2004, Bazanele still felt unable to return to work, and went to see a doctor. The doctor advised Bazanele to not go back to work and placed her on FMLA. Bazanele was out of work for two weeks.
- 46. Bazanele left a message for Complainant on Monday to tell Complainant that she would not be coming to work and again referenced their encounter of September 24, 2004. At that time, Complainant was alerted that she did something to upset Bazanele. Complainant contacted DeCrescentis and DHS's human resource office to report the situation.
- 47. Bazanele was diagnosed with situational anxiety, and she filed a worker's compensation claim, which was admitted by the workers' compensation carrier without a hearing.
- 48. Bazanele's testimony was credible regarding her September 24, 2004 meeting with Complainant and its effect on her.

Investigation

- 49. DeCrescentis was concerned about Bazanele's complaint and the information he received from Schoenmakers.
- 50. DeCrescentis called Complainant and told her about Bazanele's complaint and the information he received from Schoenmakers. He asked Complainant to prepare a written response to the allegations, which Complainant did.
- 51. After he received the three written documents (Complainant's, Bazanele's and Schoenmakers'), DeCrescentis showed them to employees in DHS's human resource office. The human resource office told DeCrescentis that the actions described did not fit into their definition of workplace violence or hostile work environment. However, they told DeCrescentis that he could conduct his own investigation into the allegations.
- 52. DeCrescentis interviewed a number of employees, including Complainant, while conducting his investigation.
- 53. During his investigation, DeCrescentis learned that a number of employees felt that morale at PRC was very low. He also learned that on more than one occasion, Complainant had used the term "K-Mart mentality."

- 54. At least one member of the PRC staff, Lupie Solano, was offended by the term "K-Mart mentality" because she felt that Complainant was making a derogatory remark towards the Hispanic culture.
- 55. Complainant did not intend to insult the Hispanic culture; when speaking of a "K-Mart mentality;" she meant that one size does not always fit all.
- 56. DeCrescentis also learned that Complainant once had her management team line up across from her while she chastised them. Complainant apologized for that action and said she would never do it again.
- 57. DeCrescentis prepared a summary of his investigation and his interviews. He had each person interviewed, including Complainant, read his summary to ensure that it was an accurate representation of the interview.

R-6-10 Meeting and Disciplinary Action

- 58. After DeCrescentis completed his interviews, he sent Complainant a letter on October 19, 2004, advising her that he was going to conduct a meeting pursuant to State Personnel Board Rule R-6-10. With that letter, DeCrescentis included a copy of his interview and investigation summary.
- 59. Complainant's R-6-10 meeting was held on October 28, 2004. During the R-6-10 meeting, Complainant was allowed to respond to the allegations and to provide additional information.
- 60. During the R-6-10 meeting, Complainant asked DeCrescentis to interview seven additional witnesses before making his decision regarding potential discipline. DeCrescentis did interview those individuals.
- 61. In interviewing those individuals, DeCrescentis found that some employees perceived Complainant as having an open management style and committed to building a management team at PRC.
- 62. After considering all of the information provided to him, including the information gathered during the R-6-10 meeting, DeCrescentis determined Complainant had violated the mandates of the Employee Code of Conduct.
- 63. DeCrescentis was concerned about the findings of his investigation because, amongst other things, it is important for employees at PRC to work together in an open environment to enhance a safe environment for vulnerable consumers and to reduce the frequency of employee turnover.
- 64. DeCrescentis reviewed all of the relevant information, including the findings of his investigation; Complainant's PMAP for the cycle period of May 1, 2003, through April 30, 2004; Complainant's PMAP priorities for the period of July 2004 to April 2005; the

summary of his meeting with PRC's management team dated August 24, 2004; the Employee Code of Conduct; DHS Policy VI 4.4; the information gathered in the R-6-10 meeting; and Complainant's personnel file; and Complainant's previous performance. DeCrescentis also considered the two employee surveys and Complainant's knowledge of those surveys' results. After reviewing the information, DeCrescentis decided to impose a disciplinary action of a one-day suspension and require Complainant to take two classes (one in cross-cultural communication and one in conflict resolution at work).

- 65. DeCrescentis communicated his decision to Complainant in a letter dated November 8, 2004.
- 66. After sending his November 8, 2004 letter, DeCrescentis learned from DHS's human resource's office that pursuant to Director's Procedure P-3-30 that he could not suspend Complainant for less than one week. DeCrescentis felt that a one-week suspension was excessive when applied to Complainant's situation and unfair to Complainant. Accordingly, DeCrescentis changed Complainant's discipline to a \$335.18 pay reduction for one month, which was equivalent to one day's pay, instead of the suspension. Complainant was still required to take the classes. DeCrescentis advised Complainant of the change in her discipline in a letter dated November 29, 2004.
- 67. DeCrescentis considered giving Complainant a corrective action instead of a disciplinary action, but decided that a corrective action was not appropriate given the number of years Complainant had been the Director at PRC and Complainant's responsibility for vulnerable people. He also did not think a corrective action was appropriate because Complainant was aware of the Employee Code of Conduct, DHS's policies, and the two employee surveys indicating that there was low staff morale. DeCrescentis felt that Complainant had prior knowledge of a need for improvement in her management practices given her awareness of the Employee Code of Conduct, DHS's policies and the surveys. DeCrescentis concluded that the behavior Complainant exhibited with Bazanele and Schoenmakers was unacceptable. This was especially true given her position and level of experience and responsibility. DeCrescentis further concluded that Complainant made culturally insensitive remarks.
- 68. Complainant timely appealed her disciplinary action to the Board.

DISCUSSION

I. GENERAL

Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; §§ 24-50-101, *et seq.*, C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rules R-6-9, 4 CCR 801 and generally includes:

- (1) failure to comply with standards of efficient service or competence;
- (2) willful misconduct including either a violation of the State Personnel Board's rules

- or of the rules of the agency of employment;
- (3) willful failure or inability to perform duties assigned; and
- (4) final conviction of a felony or any other offense involving moral turpitude.

A. Burden of Proof

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse Respondent's decision if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S.

II. HEARING ISSUES

A. Complainant committed the acts for which she was disciplined.

Respondent met its burden of proof. As the findings of fact above make clear, Complainant acted inappropriately during her September 23, 2004 meeting with Schoenmakers and her September 24, 2004 meeting with Bazanele. During both of those meetings, Complainant displayed inappropriate anger and used profanity. During the meeting with Bazanele, Complainant appeared to be out control, to the point that Bazanele felt threatened, and was unable to come to work for approximately two weeks, and filed a workers' compensation claim. Complainant also made remarks about a "K-mart mentality," which were culturally insensitive, and deemed by some as condescending to the Hispanic culture.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

In determining whether an agency's decision is arbitrary or capricious, a court must determine whether the agency has 1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; 2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; 3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Department of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).

DeCrescentis used reasonable care and diligence during his investigation regarding the allegations against Complainant. He interviewed those he thought had personal knowledge regarding the allegations, including Complainant. He prepared a summary of each person's interview. He then allowed each person to read the summary of her interview to ensure that the summary was accurate. After the R-6-10 meeting, DeCrescentis interviewed additional people at Complainant's request. He provided a copy of his interview summaries and his investigation summaries to Complainant. When making his decision to discipline Complainant, DeCrescentis considered the results of his investigation, the information he gathered in the R-6-10 meeting,

Complainant's prior PMAP, Complainant's PMAP priorities, the DHS Employee Code of Conduct, DHS Policy VI 4.4, Complainant's personnel file, Complainant's previous performance and the employee survey results. He also took into consideration the fact that Complainant had knowledge of those results. DeCrescentis carefully considered all of the relevant information in exercising his discretion to discipline Complainant.

Complainant is the Director at PRC, and has been for several years. She has made strides to improve the management team at PRC and to improve PRC's image. However, in her position as Director, Complainant has a responsibility to serve as a role model for the employees she supervises and adhere to all of the agency rules, including the Employee Code of Conduct. Complainant was aware of the mandates of the Employee Code of Conduct and was aware that those mandates applied to her. That Code of Conduct requires Complainant to be courteous to her co-workers at all times. It also requires her to "share information in open, honest and appropriate ways." Moreover, it requires her to "demonstrate respect for all people and their ideas and commit resolve conflicts." It requires her to "be considerate of fellow workers" when performing job tasks. The Code requires Complainant to present herself as a good role model and to show support for departmental decisions through her actions and to treat others as she wished to be treated. Complainant willfully violated the Employee Code of Conduct during her September 24, 2004 meeting with Bazanele and her September 23, 2004 meeting with Schoenmakers.

During both of those meetings, Complainant displayed inappropriate anger by escalating her voice and using profanity. At other times, Complainant also made comments which were culturally insensitive, even though she did not intend for the remarks to be offensive. These actions affected Complainant's ability to perform her job. Complainant was aware, because of her PMAP and her Performance Plan that she needed to improve her performance in the area of "Equity," which includes "Respect, Dignity, Inclusion and Accountability" and holding "people accountable for their actions" to "create a work environment that fosters respects, dignity, and inclusion." Complainant's actions in her September 23, 2004 meeting with Schoenmakers and her September 24, 2004 meeting with Bazanele, were clearly contrary to the Employee Code of Conduct and did not comply with the core competency of Equity. This is also true of her comments regarding a "K-mart mentality." Complainant's actions in her meetings with Bazanele and Schoenmakers were serious and flagrant. This is especially true given Complainant's position of authority and leadership. DeCrescentis' decision to discipline Complainant was reasonable.

C. The discipline imposed was within the range of reasonable alternatives.

The credible evidence demonstrates that DeCrescentis did pursue his decision thoughtfully with due regard for the circumstances of the situation, as well as Complainant's individual circumstances before making his decision to discipline Complainant. Board Rule R-6-6, 4 CCR 801. Complainant is in a leadership position that requires her to demonstrate appropriate behavior, and she was aware that there were problems with her ability to manage PRC. Her PMAP, her Performance Plan, and the employee surveys made her aware of these problems. In spite of her awareness of the problems, Complainant demonstrated inappropriate anger in front of those she supervised and used inappropriate language. By doing so,

Complainant contributed to the low staff morale problem that DHS was seeking to address. DeCrescentis considered giving Complainant a corrective action, instead of disciplinary action, but did not because Complainant was already on notice that there were problems with her leadership and management. DeCrescentis also decided against a one-week suspension because he deemed a suspension of that length to be too harsh when considering the circumstances. Because of Complainant's displays of anger and her culturally insensitive remarks, it was reasonable for DeCrescentis to require Complainant to take the class on cross-cultural communication and the class on conflict resolution at work. The discipline DeCrescentis imposed was reasonable.

D. Attorney fees are not warranted in this action.

Complainant requested an award of attorney fees and costs. Because she did not prevail in this matter, there is no basis for such an award.

CONCLUSIONS OF LAW

- 1. Complainant committed the acts for which she was disciplined.
- 2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.
- 3. The discipline imposed was within the range of reasonable alternatives.
- 4. Attorney's fees are not warranted.

ORDER

Respondent's action is **affirmed**. Complainant's appeal is dismissed with prejudice. Attorney fees and costs are not awarded.

Dated this	day of	, 2005	
			Hollyce Farrell
			Administrative Law Judge
			1120 Lincoln Street, Suite 1420

Denver, CO 80203 303-764-1472

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

- 1. To abide by the decision of the Administrative Law Judge ("ALJ").
- 2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is <u>\$50.00</u> (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 764-1472.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on 8 ½ inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF SERVICE

This is to certify that on the day	of, 2005, I placed true copies of the
foregoing INITIAL DECISION OF AD	MINISTRATIVE LAW JUDGE and NOTICE OF
APPEAL RIGHTS in the United States m	ail, postage prepaid, addressed as follows:
Nora V. Kelly	
1776 Lincoln Street, Suite 810	
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