

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of the Grievance of

CAROL SHAW

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0077

Case Type: IHO

DECISION NO. 40358

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**Appearances:**

Nicholas E. Fairweather, Hawks Quindel, S.C., 409 East Main Street, Madison, Wisconsin, appearing on behalf of Carol Shaw.

Debra Rash, 5225 West Vliet Street, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Board of School Directors and Milwaukee Public Schools.

**DECISION OF THE IMPARTIAL HEARING OFFICER**

On June 30, 2023, Nicholas Fairweather and the Milwaukee Public Schools (MPS) requested that the Wisconsin Employment Relations Commission appoint Anfin Jaw, a member of the Commission's staff, to serve as the Impartial Hearing Officer (IHO) in a proceeding concerning Carol Shaw's five-day suspension.

A hearing was held on November 14, 2023, at the Milwaukee Public Schools' Administration Building. The hearing was transcribed. Ms. Shaw submitted written closing argument on January 12, 2024. MPS submitted a written closing argument on January 17, 2024. Neither party filed a response by the given deadline of February 7, 2024. On February 13, 2024, MPS submitted three video exhibits. Having considered the evidence, the arguments of the parties, and the record, I issue the following decision.

**ISSUE**

Did the MPS have just cause to issue a five-day suspension to Carol Shaw?

## FACTS

Carol Shaw (Shaw) was hired as a paraprofessional in 2009 at Westside Academy School, part of the Milwaukee Public Schools (MPS). As a paraprofessional, Shaw's duties included supporting teachers through lessons and helping address student behaviors.

Shaw first met her colleague, A.A., an art and music teacher, in the 2021-2022 school year. Shaw worked in A.A.'s classroom and helped with student discipline and general classroom instruction. A.A. described her working relationship with Shaw as "neutral." On February 1, 2023, Shaw approached A.A. in the Westside Academy cafeteria where they were both on lunch duty that day. A.A. was sitting and talking with the children when she felt a pair of hands placed on her shoulders, which she identified as Shaw's. Shaw then began to whisper in her ear, stating that A.A. should be on her side and have her back if Shaw decided to sue the school on the grounds of discrimination. Shaw raised these concerns to A.A. because Shaw believed she was being targeted and discriminated against by Principal Renee Drane (Drane). In response to Shaw's request, A.A. stated that she could only speak to what she had seen and did not have enough information or evidence, but that each person should advocate for themselves if they need to. Shaw then told A.A. that other paraprofessionals talked badly about her and did not like her. Shaw reminded A.A. that she was the only one who was nice to A.A., so A.A. should be on her side. After Shaw removed her hands off A.A.'s shoulder, A.A. got up and excused herself from the cafeteria.

A.A. was shaken up by the interaction and proceeded to cry. A.A. felt uncomfortable, upset, and cornered by the encounter with Shaw. She then went up to the Westside Academy social worker's room and confided in her coworker about the incident between her and Shaw. Later, A.A. invited Paula Diggins (Diggins), a long-term paraprofessional, into her classroom to discuss the incident. Diggins had also witnessed the incident in the cafeteria between Shaw and A.A. earlier. Diggins saw Shaw approach A.A. and whisper something in her ear and A.A.'s demeanor and facial expression immediately changed. While Diggins and A.A. were in A.A.'s classroom, Shaw came to the door and pointed her finger at them and said "traitor" and "backstabber".

A.A. reported the incident to Drane that day, who initiated an investigation. A review of security camera footage showed Shaw and A.A. physically interacting with each other in the cafeteria after Shaw approached A.A. at the cafeteria table. The video footage contains no audio.

On February 16, 2023, MPS held a disciplinary hearing via virtual conference. On April 18, 2023, Drane and Dr. Carletta Noland (Administrative Reviewer) found that Shaw violated Administrative Policy 6.03: Anti-Harassment/Anti-Bullying: Staff; Administrative Policy 6.07: Employee Rules of Conduct (2)(n) & (q); Administrative Policy 8.52: Bullying; Employee Handbook: Customer Service, Professional Conduct, Employee Rules of Conduct, Harassment/Bullying Free Workplace, and Workplace Violence Prevention; School Staff Manual: Sec. 3.01: Employee Rules of Conduct and 3.03 Professional Conduct.

MPS further found that the credible evidence established that Shaw threatened, intimidated, and bullied A.A. when she placed her hands on A.A.'s shoulders and attempted to coerce her to "have her back" and speak on her behalf. Additionally, Shaw continued to bully A.A. by following her up to her classroom and calling her a traitor and a backstabber. Accordingly, MPS issued Shaw a five-day unpaid suspension and required her to complete a Workplace Harassment Soft Skills Course.

Shaw filed a grievance regarding her five-day unpaid suspension. Employment Relations Specialist, Jamie Bergener, issued a written decision denying Shaw's grievance on June 1, 2023, because the weight of the credible evidence supported a conclusion that MPS had just cause to issue a five-day unpaid suspension.

Shaw had previously been disciplined for similar incidents and interactions with other staff members. Shaw was alleged to have been in several confrontations with other teachers, one of which she yelled at another teacher and put her finger in the teacher's face during the lunch hour in front of other students.

## **DISCUSSION**

### **The Standard of Review**

I begin my discussion by first addressing the standard of review. Part II (B) of the MPS' Employee Handbook states that "non-probationary employees shall only be disciplined or discharged for just cause." Thus, employee discipline will be reviewed under a just cause standard. Although the Handbook does not define just cause, a finding of just cause generally requires the employer to prove that (1) the employee committed conduct for which discipline is warranted and (2) the discipline issued is consistent with the seriousness of the misconduct.

Part II (B) of the Employee Handbook further states that the MPS has a policy of progressive discipline, which depends "on the specific behavior and the frequency of occurrences." In other words, serious behaviors may justify departure from progressive discipline, though the provision does not specify which behaviors may warrant departure from progression.

Shaw asserts that just cause requires MPS to prove there is just cause for discipline and has failed in meeting its burden of proof in issuing a five-day unpaid suspension. The Grievance Procedure laid out in the MPS Employee Handbook is silent on the standard used in IHO hearings. However, IHO hearings for cases arising from the MPS have used a "preponderance of the evidence" standard, which only requires that the evidence shows that it is more likely than not that Shaw committed the conduct of which she is accused. *In the Matter of the Grievance of Lorenzo Fountain* (Dec. No. 38822, WERC 3/21). Therefore, the evidence presented at the hearing will be reviewed under a preponderance of the evidence standard.

### **Harassment and Bullying Free Workplace**

Administrative Policy 8.52 and 6.02 forbids workplace harassment and bullying in any form and takes appropriate actions, up to and including discipline of offenders. The MPS Employee Handbook states their policy on harassment as follows: “[t]he district is committed to maintaining and ensuring a workplace that is free from all other types of workplace harassment... Harassment for non-discriminatory reasons is inappropriate.” Furthermore, the MPS Employee Handbook defines bullying in their policy as follows: “[b]ullying is deliberate or intentional behavior using words or actions intended to cause fear, humiliation, harm, or social exclusion. Bullying may be repeated behavior and involves an imbalance of power.”

Here, A.A. provided credible and consistent testimony on the events of February 1, 2023, and it was clear that she was afraid and distraught both during and after the confrontations with Shaw in the cafeteria and outside her classroom. Not only did Shaw physically intimidate A.A. by placing her hands on her shoulders and invading her personal space, but Shaw also emotionally intimidated A.A. by saying she was disliked and disrespected by her coworkers. There is no question that Shaw engaged in bullying in the cafeteria and outside A.A.’s classroom when Shaw called A.A. a traitor and a backstabber.

Shaw admitted to approaching A.A. in the cafeteria but denied any physical contact with her. However, the video evidence clearly shows Shaw interacting with A.A. in the cafeteria. Therefore, Shaw’s testimony is not credible.

Shaw claims that she only asked for A.A.’s support if Shaw decided to pursue a discrimination claim. Shaw alleges that A.A. agreed to assist her. However, the issue here is not with the request that Shaw made, but the manner in which she made it. Further, A.A.’s supposed agreement was made under duress and does not change the fact that Shaw pressured A.A. into agreeing.

Shaw also argues that she did not know that A.A. has an anxiety disorder or that this interaction would trigger A.A.’s symptoms. Knowledge of A.A.’s diagnosis is irrelevant. Shaw’s behavior was inappropriate regardless of the mental wellbeing of her victim.

The preponderance of the evidence established that Shaw engaged in harassment and bullying toward A.A. through several unwelcome encounters meant to pressure and intimidate A.A.

For the reasons set forth above, I find MPS’ five-day suspension of Shaw was for just cause. Accordingly, I issue the following:

### **DECISION**

Carol Shaw’s five-day suspension was for just cause. Therefore, her five-day suspension is affirmed, and her grievance is denied.

Issued at Madison, Wisconsin, this 5<sup>th</sup> day of April 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Anfin Jaw, Impartial Hearing Officer