

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

CHERYL MORGAN

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0078

Case Type: IHO

DECISION NO. 40373

Appearances:

Nicholas E. Fairweather and Forrest C. Stewart, Attorneys, Hawks Quindel, S.C., 409 East Main Street, Madison, Wisconsin, appearing on behalf of Cheryl Morgan.

Debra Rash, Department of Employment Relations, 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 August 15, 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 Cheryl Morgan's one-day suspension.

A hearing was held on December 18, 2023, at the Milwaukee Public School Administration Building. The hearing was transcribed. Ms. Morgan submitted written closing argument on February 2, 2024. MPS submitted a written response brief on February 5, 2024. On February 13, 2024, MPS submitted two video exhibits. Ms. Morgan submitted a written reply brief to MPS' response on March 1, 2024. 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 one-day suspension and letter of reprimand to Cheryl Morgan?

FACTS

Cheryl Morgan (Morgan) has worked for MPS since 1989. She started her career as a School Safety Assistant, then became a Paraprofessional in 1993 for elementary special education students. In 2010, she moved to a Paraprofessional role for high school students. Finally, in 2019, Morgan began her current role as an eighth-grade teacher at Sherman Multicultural Arts Elementary School. Morgan's job duties include: instructing students in all subjects, excluding math, according to the regular curriculum; preparing weekly lesson plans; managing student grades and attendance; and communicating with parents regarding behavioral, academic, or attendance concerns, among other duties. During her more than 34-year career with MPS, Morgan has never received any discipline. Relevant to the grievance, Morgan uses a mobility scooter because of a failed hip surgery.

On April 18, 2023, Morgan was preparing her eighth-grade class for a planned tornado drill by having her students practice the drill in the hallway just outside her classroom. After the practice session, Morgan drove her mobility scooter to her classroom door. Student A was sitting in front of the door, and when Morgan came near the door, Student A jumped up, yelling that Morgan had bumped her with her scooter. Morgan did not engage with the student, and instead tried to open her classroom door. Student A began slapping Morgan's hand away from the door. Morgan then backed up her scooter, away from Student A. Next however, Student A lunged forward at Morgan and tried to punch her. Student A then grabbed Morgan, nearly pulling her out of her scooter. Morgan held on to Student A to prevent any further escalation. Student A continued holding on to Morgan until another teacher, Ms. Mabon, arrived on scene and pried Student A's hands off Ms. Morgan's shirt.

In the video footage of the April 18, 2023, incident, presented by MPS, none of the interactions between Morgan and Student A are visible, due to the angle of the camera. The video footage shows the hallway and the crowd of students who rushed and gathered around the classroom door alcove, presumably after hearing the commotion.

MPS initiated an investigation and took statements from 25 students, including Student A. The student statements were inconsistent and sometimes conflicting. MPS did not obtain a statement from Ms. Mabon, who was the only other adult present during the incident. No students testified at the hearing.

On April 21, 2023, MPS held a disciplinary hearing via virtual conference. On May 9, 2023, James L. Dunn (Hearing Officer) and Dr. Carletta Noland (Administrative Reviewer) found that the credible evidence established that Morgan failed to allow Student A enough time to clear space for Morgan to safely approach the classroom door; that Morgan may have accidentally struck Student A with her scooter; that Morgan's actions during the confrontation with Student A was not following proper Crisis Intervention and Prevention (CPI) technique; that Morgan was negligent in her assigned duties because she failed to comply with district policies; and that

Morgan's use of physical force was not appropriate for the situation. Accordingly, MPS issued Morgan a one-day unpaid suspension and letter of reprimand.

Morgan filed a grievance regarding her discipline. Employment Relations Specialist Gary Johnson issued a written decision denying Morgan's grievance on June 22, 2023, because the totality of the evidence supported a conclusion that MPS had just cause to issue a letter of reprimand and a one-day unpaid suspension.

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.

Morgan 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 one-day unpaid suspension and letter of reprimand. 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 Morgan committed the conduct of which she is accused. *In the Matter of the Grievance of Lorenzo Fountain* (Decision No. 38822, WERC 3/21). Therefore, the evidence presented at the hearing will be reviewed under a preponderance of the evidence standard.

April 18, 2023, Incident

MPS contends that the evidence at hearing establishes that there was a clear violation of its Administrative Policies and the District's core belief that "children come first." Children must be treated with courtesy, respect and dignity throughout all forms of communication and interaction. MPS argues that Morgan failed to model professional behavior and that her conduct during the interaction with Student A was not reasonable or sensible, given Morgan's training in CPI techniques.

Morgan asserts that the weight of the credible evidence in the record does not support the conclusion that she violated any district policies, failed to allow Student A enough time to clear space, escalated the situation by grabbing Student A, failed to model professional behavior, or that she did not place students first. I agree. Morgan credibly testified that Student A was the aggressor during the April 18 incident, and that she only grabbed onto the student for her own safety. MPS did not present any evidence to rebut Morgan's credible testimony.

The preponderance of the evidence established that Morgan may have accidentally bumped Student A with her scooter, then tried to deescalate the situation by backing up her scooter while remaining calm, and prevented further violence by Student A by holding onto them until help could arrive. Contrary to MPS' argument, Morgan modeled professional behavior amid the chaos during Student A's outburst of violence and subsequent gathering of the crowd of students around her. Clearly, Morgan placed her students first in her interactions that day, as evidenced by preventing any further widespread conflict among the students. To the extent that Morgan used physical force when she held on to Student A, I find that she did so to prevent harm to herself, and thus, was justified in her actions.

For the reasons set forth above, I conclude that MPS did not have just cause to suspend Morgan for one day or issue a letter of reprimand. Accordingly, I issue the following:

DECISION

Cheryl Morgan's one-day suspension and letter of reprimand was not for just cause. Therefore, her one-day suspension and letter of reprimand are rejected, and Morgan shall be made whole in all other respects consistent with this decision.

Issued at Madison, Wisconsin, this 22nd day of May 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Anfin Jaw, Impartial Hearing Officer