

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

ELIZABETH TORRES

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0100

Case Type: IHO

DECISION NO. 41236

Appearances:

Will Kramer and Elizabeth Pierson, Pines Bach, LLP, 122 W. Washington Ave., Suite 900, Madison, Wisconsin, appearing on behalf of Elizabeth Torres.

Gary Johnson, 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 February 3, 2025, the Wisconsin Employment Relations Commission received a joint request from the Milwaukee Public Schools and Elizabeth Torres to appoint Katherine Scott Lisiecki, a member of the Commission's staff, to serve as the Impartial Hearing Officer (IHO) in a proceeding concerning Torres's ten-day suspension. A hearing was held on May 29, 2025, by video conference. The hearing was transcribed, and the parties submitted written closing arguments on July 14 and 28, 2025. Having considered the evidence, the arguments of the parties, and the record as a whole, I issue the following decision.

ISSUE

Did the Milwaukee Public Schools have just cause to suspend Torres for ten days?

FACTS

Elizabeth Torres (herein, Torres) works as a Food Service Assistant at Hayes Bilingual School, part of the Milwaukee Public Schools (herein, MPS). She was hired on March 21, 2023. *See* Transcript, pg. 6. She was not eligible for Wisconsin FMLA until after March 15, 2024. *Id.*

The Department of Nutrition Services (herein, DNS) has an attendance policy that differs from that of most MPS employees. *See* Transcript, pgs. 42 – 43. The policy states, in relevant part, that “Excessive and/or patterned absences, tardiness and failure to follow proper notification of absences may lead to disciplinary action up to and including termination. It is the expectation that all employees report to work on time.” *See* MPS Exhibit 2, pg. 20. The policy delineates some examples of absences that will be counted against an employee’s attendance, such as personal illness, family illness, doctor’s appointments, and tardiness, and some that will not, such as FMLA, bereavement leave, pre-approved miscellaneous leave, jury duty, worker’s compensation or injury pay, and military duty. *Id.*

The policy contains a chart, explaining that at four instances, an employee receives a tardy warning or an improper absence letter. *Id.* at 21. At six instances, an employee receives an Out of Standards/ Sick Leave Certification Requirement Disciplinary Letter, has a formal disciplinary meeting, and receives a one-day unpaid suspension. *Id.* At eight instances, the employee receives a formal disciplinary meeting and a five-day unpaid suspension. *Id.* At ten instances, the employee receives a formal disciplinary meeting and is referred to the Human Resources office for termination. *Id.* The policy states that the number of absence instances restarts at the beginning of the school year, but progressive discipline may continue from year to year and may be used to enhance penalties for six or more instances. *Id.* If an employee is sick for more than three consecutive days, or family illness extends beyond two consecutive days, the employee must provide a doctor’s note. *Id.*

DNS Director Renee Slotten-Beauchamp testified that an “instance” of absence could be being absent for one day, or for ten consecutive days. *See* Transcript, pgs. 30 – 31. Likewise, Slotten-Beauchamp testified that being one minute late to work also counts as one “instance” of tardiness. *Id.* at 75 - 76.

DNS also requires employees to sign a policy stating that they will not come to work if they are feeling sick. *See* Transcript, pgs. 16, 111 - 113; Torres Exhibit 1. Employees are prohibited from failing “to comply with health, safety, and sanitation requirements, rules, and regulations.” *See* MPS Exhibit 2, pg. 27.

On her “Department of Nutrition Services Mandatory Acknowledgment and Disclaimer of Employee Handbook,” signed on March 3, 2023, Torres did not initial next to “Absenteeism/ Tardiness” to show that she acknowledged, understood, and was required to adhere to that policy. *See* MPS Exhibit 3. Slotten-Beauchamp testified that she believes Torres meant to sign this acknowledgment: “Many of them don’t always put their initials on all of them.... Many of them think that when they just do it in the first column, that means that they’re attesting to it.” *See* Transcript, pg. 85.

During the 2024 – 2025 school year, Torres accrued nine absences and fifteen tardies. *See* MPS Exhibit 4, pgs. 3 – 4. Of these 15 tardies, nine were instances in which Torres was no more than six minutes late. *Id.*

On September 28, 2023, Torres accumulated her fourth tardy instance. *Id.* She received a tardy warning letter on November 10, 2023, over a month later. *Id.* at 6. The letter stated that Torres had been tardy four or more times but did not specify exactly how many times Torres had

been tardy. *Id.* By this time, she had been tardy six times. *Id.* at 3 – 4. The letter stated that further attendance issues could result in disciplinary action up to and including termination. *Id.* at 6.

On November 27, 2023, Torres accumulated her fourth absence instance. *Id.* She received an absence warning letter on December 20, 2023, nearly a month later. *Id.* at 5. The letter said that Torres had four or more instances, but did not specify exactly how many she had at that point in time. *Id.* By this time, she had been absent five times. *Id.* at 3 – 4. The letter said that future instances may lead to disciplinary action up to and including termination. *Id.*

Torres credibly testified that she has three children, ages 8, 12, and 15. *See* Transcript, pg. 96. One of her children is autistic and requires extra care in the morning. *Id.* at 105. Another child has asthma and attendant health difficulties. *Id.* at 105 – 106. Torres lives in a suburb far from her job and occasionally faces traffic delays on her commute to work due to construction. *Id.* at 105. She testified that she always brought a doctor’s note to explain her absences. *Id.* at 109.

On February 2, 2024, Torres accumulated seven absence instances. *See* MPS Exhibit 4, pgs. 3 – 4. On February 9, 2024, Torres received a “condition of employment” letter stating that further instances required a certified, signed, doctor’s note. *Id.* at 7. On February 21, 2024, a disciplinary meeting was held to inform Torres that she had excessive absences and tardies. *See* MPS Exhibit 4, pg. 13. Torres’s first language is Spanish, and MPS provided an interpreter at the meeting. *See* Transcript, pg. 111. On March 14, 2024, MPS issued Torres two one-day suspensions: one day for absenteeism, and one day for tardiness. *See* MPS Exhibit 4, pg. 13.

On May 14, 2024, another disciplinary meeting was held. On May 16, 2024, MPS issued Torres a ten-day, unpaid suspension: five days for “excessive absenteeism,” and five days for “excessive tardiness.” *See* MPS Exhibit 5. The letter stated that Torres had accrued three additional absences and two additional tardies since the February disciplinary meeting. *Id.* The letter said that similar acts may result in further disciplinary action, up to and including termination. *Id.*

On May 24, 2024, Torres filed a grievance regarding her suspension. *See* MPS Exhibit 6, pg. 3. On October 31, 2024, Employment Relations Specialist Sandra Cohen issued a written decision denying Torres’s grievance. *Id.*, pg. 2. On November 6, 2024, Torres filed an appeal regarding Cohen’s decision. *Id.* at 1.

DISCUSSION

The Standard of Review

I begin my discussion by first addressing the standard of review. Part II (B) of the MPS’s 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.

MPS bears the burden of proving that there was just cause for the discipline. *See* MPS Exhibit 1, pg. 37.

A. Notice

MPS did not give Torres adequate notice about the DNS attendance policy or adequate forewarning of the consequences of being absent or tardy. First, Torres is a Spanish-speaker and has limited English proficiency. The MPS Employee Handbook, the DNS Employee Handbook, and the disciplinary letters she received were all written in English. She testified that these documents were never provided to her in Spanish. *See* Transcript, pg. 111. MPS provided Torres with an interpreter at her disciplinary meetings, so MPS was aware that she did not have English proficiency. *Id.*

Second, Torres did not initial the “Absenteeism/ Tardiness” box on her “Department of Nutrition Services Mandatory Acknowledgment and Disclaimer of Employee Handbook.” *See* MPS Exhibit 3. Slotten-Beauchamp testified that she believes Torres signed this acknowledgment: “Many of them don’t always put their initials on all of them.... Many of them think that when they just do it in the first column, that means that they’re attesting to it.” *See* Transcript, pg. 85. However, the failure to properly secure Torres’s acknowledgments suggests that her onboarding was cursory and did not adequately explain the attendance policy. MPS employee Latasha Pryor testified that she signed her acknowledgment of the attendance policies before she understood the policies. *See* Transcript, pg. 21. MPS argues that management read Torres the policies at the February 21, 2024, disciplinary meeting. However, this was more than halfway through the school year.

Third, Torres was not timely notified of her absences and tardies, because letters were not timely sent out when she hit milestones in the DNS disciplinary progression. Torres received four tardies by September 28, 2023, but didn’t receive a warning letter until November 10, 2023, by which time she had accrued six tardies. *See* MPS Exhibit 4, pgs. 3 – 4, 6. Over a month passed before Torres was notified that she was in breach of the policy. Likewise, Torres accrued four absences by November 27, 2023, but didn’t receive a warning letter until December 20, at which time she had accrued five absences. *See* MPS Exhibit 4, pgs. 3 – 4, 5. Again, nearly a month elapsed before Torres was made aware that she was in breach of the policy.

Fourth, the “condition of employment” letter that Torres received on February 9, 2024, was unclear. The letter stated that, due to her attendance record, Torres must provide a doctor’s note for any absence due to personal or family illness, even if the absence was one day or less. *See* MPS Exhibit 4, pg. 7. The letter did not say that these excused absences would still result in discipline. *Id.* Torres testified that she thought the letter meant that if she brought a doctor’s note, her absences would be excused. *See* Transcript, pg. 100.

Fifth, MPS did not keep accurate records of Torres’s absences and tardies. The March 14, 2024, letter told Torres that she had accrued nine instances of absenteeism, but according to MPS records, she had only accrued seven absences at that time (at the hearing, Slotten-Beauchamp

calculated that the correct number was actually eight). *See* MPS Exhibit 4, pgs. 3 – 4, 13; Transcript pg. 66. Similarly, the May 16, 2024, letter informed Torres that she had accrued three more instances of absenteeism. *See* MPS Exhibit 5. However, Slotten-Beauchamp testified that she (Slotten-Beauchamp) made an error: at that time, Torres actually had two more instances of absenteeism, not three. *See* Transcript, pgs. 70 – 71. If MPS could not keep accurate records of Torres’s absences, Torres cannot be expected to do so.

B. The DNS Attendance Policy Violates Just Cause

The DNS Absenteeism and Tardiness Policy violates just cause because it is not reasonably related to the orderly, efficient, safe operation of the business, and because is not a performance that MPS can reasonably expect of food service employees.

First, the DNS attendance policy conflicts with another DNS policy, which forbids employees from coming to work if they are feeling ill. *See* Transcript, pgs. 16, 111 - 113; Torres Exhibit 1. It is contradictory for DNS to require employees to stay home while sick, while penalizing them for doing so (indeed, testimony shows that this attendance policy encourages employees to go to work even if they are sick). *See* Transcript, pg. 111. Medically excused absences should not be treated the same, for disciplinary purposes, as skipping work.

Second, the attendance policy is “no-fault”: employees are penalized for unplanned absences and tardies regardless of the reason. Arbitrators have previously found that employers’ “no-fault” attendance policies are unreasonable if the “no-fault” attendance policy conflicts with other policies. *In the Matter of the Arbitration of a Dispute Between MANITOWOC COUNTY HEALTH CARE CENTER EMPLOYEES LOCAL # 1288, AFSCME, AFL-CIO and MANITOWOC COUNTY*, WERC MA-11495 (Emery, Arb., 2002). Here, DNS’s “no-fault” attendance policy conflicts with DNS’s requirement that employees stay home if they are sick. Food service workers must choose between violating the attendance policy or violating the sick leave policy.

Third, the DNS attendance policy’s use of “instances” is unreasonable. One “instance” could be one day or several, consecutive days of absence. *See* Transcript, pgs. 30 – 31. An employee receives the same disciplinary consequences for missing one day of work as they do for missing a week of work. Likewise, an employee receives the same disciplinary consequences for being one minute late as they do for being one hour late. MPS argues that, although the magnitude of the absence may differ, the breach of policy is what matters. *See* MPS Reply Brief, pg. 10. However, this belies the argument that this policy is due to operational need: the disruption caused by an employee missing one day of work cannot reasonably be compared to an employee missing a week of work, just as the disruption caused by an employee arriving one minute late cannot reasonably be compared to an employee arriving one hour late. This demonstrates that the penalties are not reasonably related to the seriousness of misconduct.

Fourth, the DNS attendance policy differs from that of other MPS employees. Progressive discipline for DNS employees can also escalate more quickly than progressive discipline for other MPS employees. *See* MPS Post-Hearing Brief, pg. 5. For other MPS employees, progressive discipline starts with a warning letter, then proceeds to a one-day suspension, a three-day suspension, a five-day suspension and, finally, termination. *See* Transcript, pgs. 42 – 43. For DNS

employees, progressive discipline starts with a warning or letter, then proceeds to a one-day suspension, a five-day suspension and, finally, termination. *See* MPS Exhibit 2, pg. 21. A third violation in another MPS department would result in a three-day suspension, but for DNS employees, it results in a five-day suspension. *See* Transcript, pgs. 43 - 45. MPS argues that these departmental differences are justified by operational needs, because tardiness by food service workers disrupts breakfast preparation. *See* Transcript, pg. 27. However, attendance and timeliness are not more important for Food Services employees than for teachers or paraprofessionals; if anything, the opposite is true. Supervising and teaching children is far more central to the MPS mission.

C. The Discipline Was Not Reasonably Related to the Seriousness of the Offenses or Torres's Record of Service

Lastly, the discipline administered to Torres was not reasonably related to the seriousness of her offenses or her record of service with MPS. The majority of Torres's tardies were negligible: out of 15 tardies, nine were instances in which Torres was no more than six minutes late. *See* MPS Exhibit 4, pgs. 3 – 4. These tardies were due to extenuating circumstances: the necessities of caring for three children, two of whom have medical or developmental issues, which can overwhelm even the most punctual parent and hinder even the best-planned morning. MPS did not provide any evidence that any of these tardies – particularly, the instances in which Torres was less than six minutes late – affected Torres's job performance or food service operations. Similarly, Torres credibly testified that her absences were due to personal or family illness. *See* Transcript, pg. 108 – 109. She testified that she always called into the office to notify them that she would be absent. *Id.* at 109. Torres testified that she always provided a doctor's note for these absences. *Id.*

MPS did not provide any evidence that these absences affected her job performance or food service operations, and Torres has no documented performance issues aside from attendance. Therefore, Torres's ten-day suspension was not reasonably related to the seriousness of her attendance record and did not take into account her record of service.

The Merits

A May 16, 2024, letter informed Torres that she was suspended for violating the Department of Nutrition Services Absenteeism and Tardiness Policy. The preponderance of the evidence establishes that, because MPS failed to provide Torres with appropriate notice, because the Department of Nutrition Services Absenteeism and Tardiness Policy violates just cause, and because the discipline wasn't reasonably related to the seriousness of Torres's attendance record or her record of service, MPS did not have just cause to issue Torres two five-day suspensions.

For the reasons set forth above, I find that MPS did not have just cause to suspend Elizabeth Torres for ten days. Accordingly, I issue the following:

DECISION

MPS did not have just cause to suspend Elizabeth Torres for ten days. Therefore, her grievance stands. Torres shall have the discipline stricken from her record and be made whole in all other respects.

Issued at Madison, Wisconsin, this 28th day of October 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Katherine Scott Lisiecki, Impartial Hearing Officer