

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of an Impartial Hearing Between

CONNIE PHILLIPS

and

MILWAUKEE PUBLIC SCHOOLS

Case 496  
No. 72873  
MA-15285

AWARD NO. 7897

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**Appearances:**

Ms. Barbara Zack Quindel. Hawks Quindel S.C., 222 E. Erie Street, Suite 210, P.O. Box 442, Milwaukee, Wisconsin, appeared on behalf of Ms. Phillips.

Ms. E. Leia Sceptur, Milwaukee Public Schools, 5225 W. Vliet Street, P.O. Box 2181, Milwaukee, Wisconsin, appeared on behalf of the District.

**IMPARTIAL HEARING DECISION**

On February 8, 2014, Connie Phillips and the Milwaukee Public Schools filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, as the Impartial Hearing Officer to hear and decide a grievance pending between the parties. Following appointment, a hearing was conducted on March 21, 2014, in Milwaukee, Wisconsin. A transcript of the proceedings was taken and distributed by April 7, 2014. The parties made closing arguments at the conclusion of the evidentiary hearing.

**ISSUE**

The parties stipulated to the issue:

Was there just cause for a 30-day suspension? If not, what is the appropriate remedy?

**BACKGROUND AND FACTS**

Connie Phillips, the grievant, is a Registered Nurse employed by Milwaukee Public Schools. She was given a 30-day suspension for her conduct occurring on September 23, 2013.

On September 23, 2013, a four-year-old male student was brought to the school office by his classroom teacher. This occurred immediately following lunch and post lunch recess. The child had red spots and blotches on his face, was drooling, and complained of a sore throat. Phillips administered an EpiPen® due to a concern that the child was experiencing an anaphylactic reaction.

Firefighters and paramedics were called consistent with District protocol relative to the delivery of an EpiPen® injection. The paramedics transported the child to the hospital where he recovered.

The basic outline of events is not in dispute. There is a significant dispute of fact as to the level of professionalism and the role played by Phillips.

Phillips has been a registered nurse for 30 years. She has been employed by the Milwaukee Public Schools since 1998. She was initially employed as a middle school teacher, but transferred to a nursing assignment in 2006. She has no prior discipline.

Mary Ellen Lederer was the teacher who brought the child to the office. It was her testimony that as she picked up her class after lunch / recess she noticed that the child had blotches and spots around his mouth and under his chin. Lederer asked if his throat was hurting and he said yes. She took him to the office to see Principal Tiffany Fisher. Lederer then obtained the child's emergency card which showed an allergy to plants.

Lederer testified that Phillips came into the outer office where the child was being attended to and took the child into the nurse's office which is located off the main office. Lederer testified that she made an attempt to call the parents and left a message. Lederer testified that the child was crying and that she went into the nurse's office to comfort the child. When the mom called back, she left the nurse's office to take the call.

Lederer testified that Phillips had made a decision to administer the EpiPen® and began to do so. She testified that Fisher cautioned Phillips to hold on while the staff attempted to talk with the parents. Phillips nonetheless administered the EpiPen® injection. It was Lederer's testimony that when the fire department arrived she provided background information to one firefighter, while a second firefighter checked out the child. She further testified that "[t]he only time Ms. Phillips came out of her office was to say to the firefighter I gave him an EpiPen, Jr. dosage and she went back into her office."

Lederer indicated that she returned to the nurse's office after another adult had taken the child there. She testified that she did not see Phillips check the child's breathing or provide comfort to the child. Lederer indicated "... all she was doing was eating her lunch."

Lederer was upset because she expected Phillips to take over the medical care of the child and to comfort the child and in her view that did not happen.

Fisher was in the office when Lederer arrived with the child. She observed the child with a blotchy chin and drooling. Fisher testified that she saw Phillips come into the office and directed Lederer to have the nurse look at the child. Fisher indicated that Lederer took the child into the nurse's office as those in the outer office attempted to contact the mom. Fisher testified that she saw Phillips prepare to administer the EpiPen® and called to her to hold on. The EpiPen® was nevertheless administered, and the child's mother subsequently indicated that the child had no allergies.

Fisher indicated that she entered the nurse's office to find the child standing in the middle of the floor crying. She indicated that Phillips was back behind her desk. Fisher then took the child out of the nurse's office to the outer office and began to comfort him.

Fisher indicated that the EMS personnel arrived and took over. She indicated that she witnessed an EMS person go to the nurse's office door and ask Phillips what she had done with the child. Fisher indicated that Phillips responded that she administered an EpiPen® and clarified that it was a junior.

After the child was taken to the hospital, Fisher indicated that she went into the nurse's office and asked if Phillips had gotten a school lunch or brought her own. She was prompted to ask because she indicated she could detect the still strong smell of pasta. Fisher concluded that Phillips had eaten her lunch.

Fisher was concerned about how quickly the EpiPen® was administered. She was concerned that she did not witness Phillips look into the child's allergy history. Fisher was upset that Phillips did not comfort the child.

Traci McKean, who is an educator in the building, came upon the scene in the outer office. McKean testified as to the events that unfolded. She testified that she held the child for a while. McKean indicated that she witnessed Phillips come out of her office to inform the firefighters that she had administered an EpiPen®. She indicated that she took the child into the nurse's office to allow him to go to the bathroom and help him wash his hands. McKean testified that a firefighter came into the office to take the child's blood pressure. McKean indicated that while this was going on Phillips was sitting at her desk eating her lunch.

Lieutenant Steven Schwendtner was the head of the paramedic team that responded to the school. He described arriving at the scene, taking statements from the staff in the outer office, and described the care administered to the child. Upon his departure from the scene, a coworker indicated that there was a nurse onsite which came as news to Schwendtner. He asked where the nurse was and was told she was in her office eating lunch. Schwendtner believed the behavior to be inappropriate and that there should have been a face-to-face transfer of care between Phillips and himself. He subsequently called the school, spoke with Fisher, and was asked to reduce his concerns to writing. He submitted the following;

Dear Mrs. Wollmer:

I am writing to inform you that I have some concern about an EMS run to River Trail School earlier today. (1230 hrs. Incident # 80015)

As we spoke of earlier on the phone, I was very impressed by the caring, loving concern that all of the staff we met in the office showed to the child we had the honor of helping. It was a pleasure being there, everything went very well and we got all the information we needed from the staff personnel.

However, as we returned to the firehouse, one of my members, FF S.F. asked me if I was aware that the Epi pen Jr. was given by an on site Registered Nurse. I was not aware that she was there as she never came out of her office to exchange any information with myself or any member of either Truck 3 nor Med Unit 14 who arrived to transport the child. FF S.F felt compelled to ask the question after seeing the Nurse in the office adjacent to us when he and a staff member assisted the child to the washroom there. The child washed up in the nurses office as well as having his blood pressure taken by FF S.F. and FF T.H. They did this in her presence and she simply continued to eat her lunch and did not engage our staff in any way.

While I have no reason to believe that the care given to the child suffered in any way, I am very concerned with the lack of continuity of care that occurred between the on site school RN and us the EMS responders, especially when a specific treatment is performed or a medication is given prior to our arrival.

As the officer in charge, it is my responsibility to see that everything is done according to our standards of EMS care. As a Milwaukee County Paramedic for 23 years I am especially responsible for the emergency care of this child. I believe the child and his parents deserve the best an MPS RN can give as well; including a face to face transfer of care to the EMS providers and Paramedics.

If you have any additional questions please feel free to contact me.

Respectfully,

Fire Lieutenant / Paramedic Steven Schwendtner

Phillips testified. It was Phillips' testimony that she arrived at the school at about 12:15 from her assignment at another school. The beginning of her lunch period is 12:15. She saw a child with Fisher in the outer office. At that point, she was unaware of the medical circumstance surrounding the child. She went into her office, heated and began to eat her lunch. Phillips overheard the people in the office discussing an allergic reaction they thought the child was having and walked over to see what was happening.

Phillips observed that the child appeared to have hives around his mouth and was crying. Phillips determined to take the child to her room when someone said the emergency card indicated an allergy to plants. She understood that there were efforts to contact the parents. She saw that the child was scared, was complaining of his throat hurting, and was drooling secretions out of his mouth.

Phillips placed him on a chair and asked him questions to check his alertness. She concluded that he was having an anaphylactic reaction to something. Phillips believed there to be too many unknown factors and believed that 30 minutes must have passed, so she determined to administer an EpiPen®.

Phillips called out to those in the outer room, and Lederer came in to help her calm the child.

Phillips heard Fisher say wait a minute, but felt that the injection had to be administered regardless of the source of the reaction. Lederer was called back into the outer office to talk with the parent who had been reached. Phillips then administered the EpiPen®. The child began to cry and Phillips testified that she sat on the cot with the child and patted his back to comfort him. She believed the child began to calm down, so she reached for her phone to call 911. Phillips indicated that no one had indicated they called 911 and it had to be done. Phillips further testified that she could reach the phone from her place on the cot next to the child. As Phillips was on the phone, the emergency medical operator indicated that there was another call coming in and directed her to hold and not to hang up. Simultaneously, Fisher entered the room and took the child out. Phillips indicated that she told Fisher to leave the child but had to finish her call.

When the call finished, Phillips went to the outer office and saw the child on the lap of a teacher and the child appeared calmer. She did a visual assessment of the child and felt the child was responding. There were a number of people in the office with the child and four or five paramedics entered the room. As they entered, people began providing information. Phillips testified she indicated that she administered the EpiPen®. Phillips testified that she did not try to take the child back into her room because she did not want to play tug-of-war with the child, the child seemed calmer and quieter, and she could observe the child and intervene if needed.

Phillips indicated that the paramedics had assumed care of the child and that her diabetic student showed up for a blood sugar check before lunch. She took the diabetic student into her office for a check. Phillips indicated that the firefighters subsequently brought the child into her

office to check the child's blood pressure and that she had a conversation with one of the firefighters who confirmed that Phillips had given the shot and that she was a nurse.

Phillips indicated that she did not take the child's vital signs because the child was removed from her office. She otherwise would have taken the vitals after the shot to measure the child's reaction to the shot. She testified that she subsequently filed the appropriate reports.

Phillips testified that she ate her lunch before and after the event had unfolded, but not during the period of treatment of the child.

Phillips was suspended and directed to attend a conference by the following letter:

September 23, 2013

Connie Phillips

Dear Ms. Phillips:

Certain facts have come to my attention which might possibly lead to disciplinary action against you. Due to the serious nature of the allegations, I am placing you on immediate suspension and directing you to absent yourself from your duties and activities effective immediately, September 23, 2013. The first three work days of your suspension will be paid suspension. The allegations are as follows:

- Failure, refusal or negligence in the performance of assigned duties
- Failure to comply with health and safety requirements
- Engaging in activity that significantly detracts from the school district's image or reputation
- Failure to comply with departmental work rules, policies, or procedures

Additionally, I am directing you to not enter any MPS schools or come onto school grounds as of September 23, 2013. You are also directed not to have any contact with school staff, students, or parents until further notice.

It will be necessary to confer regarding this matter at a conference on Thursday, September 26th ....

Sincerely,

Gregory E. Thornton, Ed.D.

## Superintendent of Schools

The alleged failures are drawn from the District's Administrative Policy, Rules of Employee Conduct.

Phillips had a hearing on September 26, 2013, before a hearing officer from the District's Department of Employment Relations. The recommendation from the hearing officer was termination. Phillips was terminated on or about September 27, 2013. Phillips grieved her termination and her grievance led to the discipline being reduced to a 30-day suspension. That discipline was further grieved, leading to this hearing and award.

### **RELEVANT PROVISIONS OF THE HANDBOOK**

#### **PART II**

#### **PROFESSIONAL RESPONSIBILITIES AND EXPECTATIONS**

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#### **B. DISCIPLINE**

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Generally, discipline is progressive in nature. Disciplinary action may be in any of the following methods: written warning, suspension, demotion, or termination of employment. Specific disciplinary actions will depend on the behavior and frequency of occurrences. Non-probationary employees shall only be disciplined or discharged for just cause, except those employees who otherwise serve at the pleasure of the Board or Superintendent.

The District may discipline an employee when the employee violates a policy or rule. Any particular concern related to an employee's conduct may be settled by informal discussion with the immediate supervisor. The employee may have a representative of his / her own choosing present for the discussion which may lead to discipline. The District may initiate an administrative investigation when an allegation(s) of misconduct is made. Upon completion of the investigation, if evidence substantiates the allegation(s), the District shall specify the

allegation(s) against the employee. The District shall then hold a conference at which the District presents evidence substantiating the allegation(s). The employee and / or his or her representative may respond to the allegations at the conference. If the District finds just cause, the District may assess and implement appropriate discipline. All disciplinary actions will undergo administrative review before implementation occurs.

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## **B. EMPLOYEE RULES OF CONDUCT**

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The primary objectives for each employee are to protect and further the public's trust and confidence and to perform at a high quality level so that our students, parents, citizens, businesses, representatives of other entities, coworkers, and visitors receive high quality services from each employee. In furtherance of those objectives, the Milwaukee Board of School Directors has enacted Administrative Policy 6.07: Employee Rules of Conduct, which sets forth the Board's expectations of conduct for each District employee.

Any employee who violates any District policy, procedure, rule, or regulation, whether written or unwritten, may be subject to disciplinary action, up to and including termination. The following list of prohibited conduct does not, and is not intended to, constitute the entire list of conduct for which discipline may be imposed.

\* \* \*

- Failure, refusal, or negligence in the performance of assigned duties

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- Failure to comply with health, safety, and sanitation requirements, rules, and regulations

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- Engaging in activity that significantly detracts from the school District's image or reputation
- Failure or refusal to comply with school / departmental work rules, policies, or procedures

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## **PART VI**

### **GRIEVANCE PROCEDURE**

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#### **4. PROCEDURE FOR EMPLOYEE GROUPS A, B, C, G, H, AND I**

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**FIRST STEP** – Upon receipt of a written grievance, the Chief Human Capital Services Officer will designate an appropriate administrator to hear the grievance. ... The designated administrator shall review documentation provided by both parties in support of the employee's position, may allow the parties to present brief overviews of their positions if this is deemed helpful, and may direct pertinent questions to the parties. ... If the matter is not resolved, the administrator shall advise the parties in writing of his / her disposition of the grievance within ten workdays after the meeting.

**SECOND STEP** – Either the employee or the Administration may file an appeal of the designated administrator's disposition to an impartial hearing officer in a matter involving termination, disciplinary demotion, discipline resulting in a suspension in excess of one workday without pay, or workplace safety issues. The appeal must be filed with the Office of Human Capital Services, Employment Relations Department, within ten workdays after the receipt of the designated administrator's disposition.

- a. **SELECTION OF AN IMPARTIAL HEARING OFFICER (IHO):** The Office of Accountability and Efficiency shall maintain a list of qualified IHO's following consultation with labor unions, which may not include present or former District or union employees. ...

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- c. **HEARING BEFORE THE IHO:** The IHO shall take testimony and evidence, and be responsible for the fair and orderly conduct of the hearing and preservation of the record. All testimony shall be taken and recorded under the supervision of the IHO.

The parties shall provide all exhibits to each other at least ten workdays in advance of the hearing.

For disciplinary or termination hearings, the Administration shall have the burden of proof to show just cause for the action taken.

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The IHO shall sustain, modify, or overturn the determination of the designated administrator based upon his or her review of the facts as presented.

The IHO shall submit a written decision to the Office of Human Capital Services, Employment Relations Department, within ten workdays of the close of the hearing, including the reasons for the decision.<sup>1</sup> ...

**THIRD STEP** – The employee may appeal the decision of the IHO to the Board. The Administration may appeal the decision of the IHO to the Board only with the concurrence of the appropriate executive officer.

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<sup>1</sup> At hearing, the parties waived the ten-workday timetable.

## DISCUSSION

Phillips was disciplined because the employer concluded that she did not behave professionally in addressing the health needs of the distressed child.

There are a number of elements to this concern which are addressed by this award. Phillips initially took the child into her office, examined the child and determined that the child needed an EpiPen® injection. There was testimony that she should have provided a more thorough exam of the child's lungs, blood pressure, pulse and heart rate. There were references to the District's standing protocols. Fisher was critical of the lack of a more formal medical examination and the fact that she called to Phillips to wait while Fisher and others attempted to contact and speak with the mom. I found no fault with Phillips' decision to administer the EpiPen® as she did.

The Milwaukee Public Schools' Anaphylaxis Policy and Procedure directs the nurse to do an "[a]ssessment to indicate the student is undergoing an anaphylactic reaction." It then goes on to describe the administrative procedure that follows. The District also maintains "Standing Orders for Anaphylaxis," which lists a series of signs of anaphylaxis, all of which are visually observable, and then directs the staff / nurse to "[c]onfirm signs of serious anaphylaxis" and, if present, to "[a]dminister Epi-Pen® or Epi-Pen Jr.®" The symptoms are visually observable. The orders do not direct the use of a stethoscope, blood pressure monitor or the like. Phillips testified that she regarded it as an emergency, that she believed there had already been a 30 minute wait, and that time was of the essence. I read the policies to give the nurse some discretion as to how to evaluate the symptoms. The circumstance presented was an emergency. The protocols anticipate the exercise of judgment in the assessment of symptoms. All testimony indicates that the safe course of action is to administer the EpiPen® and monitor for reaction as opposed to wait and risk a seizure or worse. I do not believe the delivery of the shot is a basis for discipline.

After the shot was administered Fisher came into the nurse's office and removed the child. Fisher testified that Phillips was back behind her desk and the child was alone and crying. Phillips indicated she was on the cot next to the child, attempting to make the required 911 call. I don't think this distinction is critical to this award.

Once the child was in the outer office, there was little or no nursing attention. According to Phillips, she returned to the outer office after completing the 911 call to find Fisher and Lederer comforting the child and the paramedics present with a number of people providing them with information and concluded that she did not want to engage in a tug-of-war with the child. Phillips indicated that she provided the EpiPen® information and simply observed the demeanor and reaction of the child which she believed was improving. The testimony of other witnesses was significantly at odds with her account.

Two witnesses testified that while the post-injection care was being provided and the EMS personnel were being briefed Phillips sat in her office and ate her lunch. Schwendtner testified that his colleague observed the same. I recognize that Schwendtner's comments in this regard are hearsay. Fisher's observations that she concluded that Phillips ate her lunch during the

transition period can be reconciled with Phillips testimony. Phillips' testimony cannot be reconciled with either Lederer's or McKeon's. Taking all of the testimony into consideration, I believe that Phillips essentially removed herself from the situation following the administration of the shot.

I believe that Phillips had an obligation to monitor the child following the shot and that did not occur. I further believe that she had a responsibility to transfer the medical-related information to the EMS personnel and to transition the patient care to the EMS personnel. That didn't occur. Both of these are fundamental to the practice of nursing. I believe this behavior supports the imposition of discipline.

The District complains that Phillips did not comfort the four-year-old child. There appears to have been a number of adults who responded to comfort the child. This may provide an explanation as to why Phillips was not positioned to provide such care. Fisher complained that the post-incident reports were not completed appropriately and required Fisher to follow up to see that they were completed. I would not diminish the need for appropriate recordkeeping surrounding an incident such as this. However, given Phillips long tenure with the District and discipline-free history, I do not believe that either the absence of compassion or the report writing shortcomings warrant time-off discipline.

The District determined to issue a 30 day suspension. That is a lot of discipline for a long-term employee who has otherwise been discipline free. However, withdrawing from the monitoring and transfer of care of the child is a significant lapse in professional judgment. I think there was just cause for discipline. Thirty days represents the outside limit as to the justifiable discipline. It is not clear what remedial goal is served that could not be accomplished with a shorter suspension. However, given the magnitude of the lapse in professional judgment, I will not second guess the District's judgment in that regard.

### **AWARD**

The grievance is denied.

Signed at Madison, Wisconsin, this 31st day of October 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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William C. Houlihan, Impartial Hearing Officer