STATE OF NEW JERSEY

In the Matter of M.B., Department of Children and Families	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2025-2414	:	Discrimination Appeal

ISSUED: August 13, 2025 **(SLK)**

M.B., a Senior Executive Service (SES) with the Department of Children and Families, appeals the determination of a Deputy Commissioner, which substantiated that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the determination letter indicated that it was alleged that M.B., who is Caucasian, favored Caucasian workers in the Cumberland West Local Office (CWLO) by tending to reassign African American and Hispanic workers to other units while allowing Caucasian workers to stay in their unit. Further, it was alleged that the Complainant, who is Hispanic, was not allowed to return to the CWLO, but a Caucasian worker was allowed to return.[1] Moreover, it was alleged that there was a disparity of treatment between African American and Caucasian families. Finally, an Anonymous Complainant alleged that M.B. asked a Spanish speaking worker to translate and ask a client to move from the lobby while breastfeeding because it was "inappropriate."

The investigation revealed that M.B. denied the allegations. M.B. acknowledged that she initially announced that all Family Service Specialist 1 (FSS1)

[1] A second Complainant also alleged that she was not allowed to return to the CWLO while a Caucasian was allowed. The investigation found that there was insufficient evidence to find that this Complainant's reassignment to a different unit and/or office space was made for discriminatory reasons.

promotions would be reassigned to the Intake Unit. However, M.B. indicated that this changed after the interviews were completed. M.B. stated that the Caucasian worker had a good interview and scored well and was allowed to remain in the Adoption Unit. Additionally, M.B. confirmed that she did not approve the Complainant returning to the CWLO because the Complainant made a negative comment stating that the families that they serve are "stupid." Moreover, M.B. denied that she made decisions about the removal of children based on race and explained that the decision to place the children in an unrelated resource home was because she needed approval from the Office of Family Resource Licensing (OFRL) and the Area Director (AD) to place children with undocumented family members before placement.

The investigation identified witnesses who corroborated that the Complainant's request to return to the CWLO was denied and that a Caucasian colleague's request to return was approved. Further, there was also corroboration that the decision was based on nondiscriminatory legitimate business reasons.

The investigation found that there was witness corroboration that M.B. removed children and did not want to place them with an undocumented family. Additionally, there was witness corroboration that the undocumented family obtained the proper identification and documentation, and the home was eventually licensed, resulting in the children being placed with the uncle and aunt.

The investigation indicated that there was witness corroboration that a Caucasian worker was permitted to remain in the Adoption Unit, but African American and Hispanic workers were reassigned after being promoted to FSS1. There was also corroboration that the Caucasian worker was initially designated for the Intake Unit and the Hispanic worker was not designated for the Intake Unit. Further, there was witness corroboration that a Spanish speaking mother was breastfeeding in the lobby and was asked to move to a visiting room because it was inappropriate for the mother to breastfeed in public. Based on these results, the investigation determined that M.B. violated the State Policy.[2]

On appeal, regarding the breastfeeding incident, M.B. states that she never spoke to the mother and never asked her to move to a visiting room. She presents that her administrative assistant was notified about the mother breastfeeding and went to the lobby with a Spanish speaking worker to have a conversation with the mother. M.B. notes that the Spanish speaking coworker never spoke to her about the incident. Further, she submits an email that explains that she never went to the

[2] The appellant received an official written reprimand for these violations. It is noted that as a SES employee, she is permitted to appeal this action under the State Policy. *Compare,* N.J.A.C. 4A:7-3.2(n)3 stating that disciplinary action is taken pursuant to State Policy violation, any appeal must follow that process.

lobby nor spoke to the mother. Therefore, M.B. asserts that the determination incorrectly stated that she spoke with the mother.

Regarding the favoritism allegation, M.B. provides that the office had two FSS1 positions, and only one was designated for Intake. She explains that after the selections for the two FSS1 positions were made, the adoption supervisor and casework supervisor both asked if the Caucasian worker could remain in adoption as there were only three adoption workers at that time. Further, M.B. highlights that the Caucasian worker had made strong connections with two children who had many issues and there was concern that the children would regress if they were reassigned to another worker. Thereafter, M.B. reached out to the regional Personnel Coordinator who stated that only one position was for Intake and this worker could remain in the Adoption Unit. She emphasizes that neither the supervisor, casework supervisor nor the regional Personnel Coordinator were interviewed during the investigation. Moreover, M.B. notes that this allegation was previously investigated by another Equal Employment Officer investigator and there was not enough evidence to support that she violated the State Policy in this regard. She states that it appears that two different workers made the same allegation against her because she would not allow one to return to the local office after she left to go to Institutional Abuse Investigation Unit, which was a decision made based on comments she made during a meeting in the local office. M.B. provides that some of these allegations were from years ago and were not made until this worker was not selected to return to the local office.

In response, the appointing authority presents that the Complainant requested a demotion to return to the CWLO after she was promoted to the Institutional Abuse Investigation Unit. The Complainant stated that M.B. denied her request because of race but allowed a Caucasian colleague who was promoted to return to the CWLO. The Complainant noted that M.B. announced that FSS1 promotions would be reassigned to the Intake Unit but M.B. only reassigned the African American and Hispanic workers to the Intake Unit and allowed a Caucasian worker to remain in the Adoption Unit. The appointing authority notes that Intake Unit work is considered more challenging than Adoption Unit work as intake work involves investigations of serious child abuse or neglect while adoption work involves moving cases through the legal system to terminate parental rights, achieve kinship legal guardianship, or finalize adoptions. The Complainant also alleged that there was a disparity as to how families were treated as M.B. removed African American and Hispanic children from their families but worked hard to keep Caucasian children with their families. The Complainant spoke specifically about a matter where M.B. removed a child because the uncle was undocumented.

The appointing authority indicates that M.B. denied the race-based allegations. While she acknowledged that she did not permit the Complainant to return to the CWLO, she stated that her decision was based on the Complainant's

comment made to the Commissioner stating that families they serve are "stupid." Further, M.B. explained that she decided to place the children identified by the Complainant in an unrelated resource home because she needed approval from the OFRL and AD to place children with undocumented family members. Additionally, M.B. indicated that after interviews were completed, she changed her mind and allowed the Caucasian worker to stay in the Adoption Unit based on her good interview and score. Further, the Personnel Coordinator explained during the investigation that the two FSS1 positions were originally designated to go to the Intake Unit, but later this was changed that only one position was designated for Intake. Additionally, the Personnel Coordinator provided that originally the Caucasian worker was supposed to go to Intake and the Hispanic worker's position was not designated for Intake. The Personnel Coordinator also confirmed that the Caucasian worker scored a 28 on her interview while the Hispanic worker scored a 27. Further, the Personnel Coordinator noted that M.B. did not inform her that the Caucasian worker remained in the Adoption Unit.

The investigation determined based on the interviews conducted and the witness corroboration, there was sufficient evidence to suggest discrimination based on race after M.B. initially informed workers that all FSS1s would be reassigned to the Intake Unit, and then she reassigned a worker of color to the Intake Unit but permitted a Caucasian worker to remain in her unit.

The appointing authority notes that during the appeal, M.B. shared an email about the Caucasian worker in the Adoption Unit that was not shared during the investigation. The email provides that the Personnel Coordinator informed M.B. that only one position needed to be in Intake. Further, on appeal, M.B. now states that the reason that she allowed the Caucasian worker to remain in the Adoption Unit was based on concerns for two children that the Caucasian worker had connections with. The appointing authority highlights that all employees with caseloads make connections, and it is preferential treatment to allow one worker to remain due to this reason. It asserts that the decision to make an exception for one worker is not treating all workers similarly especially after there was a mandate that all caseworkers promoted to the FSS1 title "had to be reassigned to the Intake Unit." Therefore, the appointing authority contends that this email does not change the outcome. However, the investigation found that there was insufficient evidence to determine the Complainant's denial to return was based on race or that families of color were treated differently than Caucasian families.

Regarding the breastfeeding allegation, the appointing authority indicates that under the Public Breastfeeding Law, *N.J.S.A.* 26:4B-4, a mother is entitled to breastfeed her baby in any location of a place of public accommodation, resort or amusement wherein the mother is otherwise permitted. It presents that multiple witnesses corroborated that M.B. asked a worker to translate and ask the client to move from the lobby to a visiting room while breastfeeding because it was

inappropriate. It indicates that M.B. acknowledged that she observed the mother breastfeeding in the lobby and explained that she thought that the mother might want privacy so she offered the mother to breastfeed in private in a visiting room, which is the same privacy that workers are permitted, which is why she offered it. The appointing authority emphasizes that there was witness corroboration that M.B. stated that breastfeeding in the lobby was inappropriate because there are children and others that walk through, and she cannot expose her breast. Therefore, the investigation found that based on multiple witness corroboration, M.B. violated the State Policy based on pregnancy.

The appointing authority presents that although M.B. states that many individuals were not interviewed, the investigation found that many witnesses were reluctant to meet with the investigator due to fear of retaliation from M.B. It notes that the investigative process is confidential. Therefore, it believes that it appears M.B. violated that State Policy's confidentiality requirements by asking individuals if they were interviewed regarding the investigation.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon race and pregnancy will not be tolerated.

N.J.A.C. 4A:7-3.2(n)1 provides that the burden of proof shall be on the appellant.

In this matter, concerning the pregnancy allegation, under State law, a mother is entitled to breastfeed her baby in any location of a place of public accommodation, resort or amusement wherein the mother is otherwise permitted. During the investigation, M.B. stated to the investigator that she observed the mother breastfeeding in the lobby, and she thought that the mother might like privacy, so she offered the mother to breastfeed in a private area. On appeal, M.B. states that she never spoke to the mother. Regardless, the appointing authority presents that multiple witnesses corroborated that M.B. asked a worker to translate and ask a client to move from the lobby to a visiting room while breastfeeding because it was "inappropriate" and not to offer her a room in case the mother wanted privacy Therefore, the Commission finds that M.B. subjected the client to pregnancy discrimination in violation of the State Policy.

Regarding the alleged favoritism of a Caucasian worker, the record indicates that when the announcement for FSS1 was initially presented, M.B. advised that the promoted FSS1s would be reassigned to the Intake Unit. However, on appeal, M.B.

explains that after the selections for the two FSS1 positions were made, the adoption supervisor and casework supervisor both asked if the Caucasian worker could remain in Adoption as there were only three adoption workers at that time. Further, M.B. highlights that the Caucasian worker had made strong connections with two children who had many issues and there was concern that the children would regress if they were reassigned to another worker. Thereafter, M.B. reached out to the regional Personnel Coordinator who stated that only one position was for Intake and the Caucasian worker could remain in the Adoption Unit. Additionally, M.B. indicated that the Caucasian worker's higher interview score factored in the decision. Moreover, M.B. stated that her decision to not allow the Complainant to return to the CWLO was based on the Complainant's comment made to the Commissioner stating that the families they serve are "stupid."

In response, the appointing authority states that the interviews conducted, and witness corroboration "suggest" discrimination based on race after M.B. informed workers that all FSS1s would be reassigned to the Intake Unit but permitted a Caucasian worker to remain in the unit. However, the appointing authority has not presented any evidence to refute M.B.'s legitimate business reasons that have been presented for her decision. Instead, it appears that the appointing authority and/or the witnesses made their determinations based on interpretation of circumstances: (1) M.B. advised that no promoted FSS1s could remain in the Adoption Unit; (2) When it was learned that one worker could remain in the Adoption Unit, the Complainant, and not the Caucasian worker was the original scheduled worker to remain; (3) One of M.B.'s proffered reasons to allow the Caucasian worker to remain in the Adoption Unit was due to the needs of two children, who are also Caucasian, while all caseworkers have connections with their clients; and (4) A Caucasian was allowed to return to the Adoption Unit while Hispanic and African Americans were not allowed. However, mere circumstances that "suggest" discrimination, without confirming evidence, are insufficient to find a violation of the State Policy, especially when M.B. has provided legitimate business reasons for her decision. Particularly, M.B. indicates that it was the adoption supervisor and casework supervisor who asked if the Caucasian employee could remain in adoption, it was the Personnel Coordinator who indicated that one employee could remain in Intake, and the appointing authority has not refuted these statements. Moreover, the investigation also determined that there was insufficient evidence to find that M.B. denied the Complainant's return to the CWLO based on race or that families of color were treated differently than Caucasian families. It is also noted that having one employee, who happens to be Caucasian, being allowed to stay in the Adoption Unit, while other Hispanic and/or African American promoted FSS1s could not return to the unit, is insufficient to find a pattern of disparate or preferential treatment based on race.

One final issue needs to be addressed. The appointing authority indicates that it "appears" that M.B. violated the State Policy because she asked individuals if they

were interviewed. Therefore, it believes that she violated the confidentiality requirements under the State Policy. However, the record is unclear as to whether M.B. spoke with potential witnesses or if she is merely assuming that the investigation did not speak with all the potential witnesses because, if the investigator did, she believes that the witnesses would confirm her version of events. Regardless, the New Jersey Supreme Court has recently struck down the confidentiality provision found in the State Policy. Specifically, in *In the Matter of Viktoriya Usachenok v. Department of the Treasury*, 257 *N.J.* 184 (2024), the Court struck down the last sentence of *N.J.A.C.* 4A:7-3.1(j) as it was overly broad under the free speech clause of the New Jersey Constitution.[3] That sentence stated, in pertinent part that "the EEO Officer/investigator shall request that all persons interviewed, including witnesses, not discuss any aspect of the investigation with other witnesses, unless there is a legitimate business reason to disclose such information." As such, the Commission cannot find a violation under that section.

ORDER

Therefore, it is ordered that this appeal be granted regarding the favoritism allegation and that finding shall be removed from the appellant's record but denied concerning the breastfeeding allegation.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 13TH DAY OF AUGUST, 2025

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[3] The Commission is in the process of preparing a rule amendment to *N.J.A.C.* 4A:7-3.1(j) to reflect the Court's determination.

c: M.B.
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