**OCB AWARD NUMBER: 2096**

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| **SUBJECT:** | **ARB SUMMARY # 2096** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **KRISTEN RANKIN** |
| **OCB GRIEVANCE NUMBER:** | **24-06-20100421-0006-01-04** |
| **DEPARTMENT:** | Ohio Department of Developmental Disabilities |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Sarah Rudolph Cole |
| **GRIEVANT NAME:** | Bobbie Jo Whiteside |
| **MANAGEMENT ADVOCATE:** | Antoinette Wallace |
| **2ND CHAIR:** | Jessie Keyes |
| **UNION ADVOCATE:** | Barb Follmann |
| **ARBITRATION DATE:** | August 12, 2010 |
| **DECISION DATE:** | October 1, 2010 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 24 |
| **OCB RESEARCH CODES:** | 118.6516—Neglect of Duty; 118.301—Progressive  Discipline; 118.67—Disparate Treatment; 111.01—Training |
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**HOLDING: Grievance MODIFIED. The Arbitrator reduced the Grievant’s discipline to a five (5) day working suspension.**

The Grievant is a Therapeutic Program Worker (TPW) at the Columbus Developmental Center. The Grievant had six (6) years of service. On April 20, 2010, the Employer removed the Grievant for neglecting a client and for failing to protect a client from harm. Specifically, on March 19, 2010, the Employer assigned Client J to the Grievant and another TPW. Client J is a very difficult client who requires very close supervision from at least two (2) TPWs at all times. Frequently, Client J cuts her right arm with sharp objects that she finds within the facility. On March 19, 2010, Client J had at least three (3) “behaviors,” that required additional assistance to restrain her. Around 8:00 p.m., Client J composed herself, and the Grievant and the other TWP escorted Client J to the kitchen for a snack. While in the kitchen, Client J found a knife and hid the knife inside an arm restraint that she had to wear. Thereafter, the Grievant and the other TPW allowed Client J to watch television from her bed. The Grievant and the other TPW watched television with Client J. The Grievant and the other TWP saw Client J moving her arms underneath her blankets. Frequently, the Grievant and the TPW asked Client J to uncover her hands. Client J complied. Shortly thereafter, the Grievant removed Client J’s blanket and discovered that Client J had cut her arm with a knife. The Grievant immediately called for help.

The Employer argued that it had just cause to remove the Grievant because the Grievant did not prevent Client J from obtaining a knife and the Grievant did not prevent Client J from cutting herself with the knife. The Employer explained that the Grievant’s neglect enabled Client J to cut herself. Specifically, the Grievant neglected her duty because the Grievant did not: (1) search Client J’s body, bed, and room after Client J left the kitchen; (2) secure Client J’s hands with hand splints as required; (3) watch Client J closely. Additionally, the Employer alleged that the Grievant gave inconsistent statements during the investigation and grievance processes. Accordingly, the Employer urged the Arbitrator to deny the grievance because the Employer had just cause to remove the Grievant.

The Union argued that removal is too severe under the circumstances. The Union explained that the March 19, 2009 incident was the Grievant’s first offense. Further, the Union argued that removal was disparate because the Employer did not remove other TPWs who failed to prevent Client K from harming herself. Also, the Union explained that the Grievant could not prevent Client J from cutting herself because Client J is “unpredictable, quick, and devious.” According to the Union, most experienced TPWs refuse to work with Client J because they understand that the Employer will discipline them when Client J inevitably harms herself. Additionally, the Union argued that the Employer did not adequately train the Grievant. Further, the Union argued that the Grievant and the other TPW closely watched Client J on March 19, 2009. Accordingly, the Union urged the Arbitrator to grant the Grievance.

The Arbitrator reduced the Grievant’s discipline to a five (5) day working suspension. The Arbitrator determined that the Grievant did neglect Client J when the Grievant did not supervise Client J when Client J used the kitchen sink. However, the Arbitrator concluded that a five (5) day suspension was more appropriate under progressive discipline principles and necessary to avoid disparate treatment. Additionally, the Arbitrator reasoned that the Employer did not train the Grievant to handle a patient that suffered from both mental illness and mental retardation. Moreover, the Arbitrator reasoned that the Employer was partially responsible for the incident because the Employer did not remove sharp objects from Client J’s living area. As such, the Arbitrator reduced the Grievant’s discipline to a five (5) day working suspension.