

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 OSP 11968

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RICKY WARD,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY,

Respondent.

**FINAL DECISION**

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This contested case was heard before Chief Administrative Law Judge Julian Mann III, at the North Carolina State Bar Building in Raleigh, North Carolina, on October 28, 2013-October 31, 2013. Prior to hearing, by order of the undersigned, this contested case was referenced to an ALJ settlement conference but thereafter remained unresolved. After the conclusion of the contested case hearing, a second opportunity was offered by the undersigned for an ALJ settlement conference but Respondent declined, believing that “further mediation would be futile...”

**APPEARANCES**

For Petitioner: Gordon C. Woodruff  
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For Respondent: Tamika L. Henderson  
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**ISSUE**

Whether Respondent North Carolina Department of Public Safety (“NCDPS”) met its burden under N.C.G.S. § 126-35 to show “just cause” to demote the Petitioner from a Correctional Training Specialist II to a Correctional Officer for unacceptable personal conduct.

### **EXHIBITS**

Petitioner's exhibits ("P. Exs.") 1-3 & 5-7 were admitted into evidence. Respondent's exhibits ("R. Exs.") 1-24 were admitted into evidence.

### **WITNESSES**

For Respondent: Peggy Littleton, Patrick Berger, Nicole Drake, Ricky Ward, Teresa Alexander, Joseph Hall

For Petitioner: Ronald Perry, Marvin Biggs, Jr., Melanie Shelton, Curtis Hedgepeth, Sylvia Shaw, Eric Ray, Carla Jo Stone, Joseph Hall, Shelby Johnson, Greta Barnes, Patricia Moody, Ricky Ward

In making Findings of Fact, the undersigned has weighed all the evidence and assessed the credibility of the witnesses, taking into account factors for judging credibility of witnesses, including, but not limited to, the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified, the demeanor of the witness, the witness' interests, bias, candor, impartiality, and any prejudice the witness may have, as well as whether the testimony of the witness is reasonable and consistent with the testimony of other believable witnesses in the case. After careful consideration of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the undersigned makes the following:

### **FINDINGS OF FACT**

1. The parties are properly before the Office of Administrative Hearings on a Petition pursuant to Chapters 126 and 150B of the General Statutes. The North Carolina Office of Administrative Hearings has jurisdiction over both the parties and the subject matter of this contested case.

2. Petitioner Ricky Ward ("Petitioner") is an employee of Respondent North Carolina Department of Public Safety ("Respondent"). Petitioner began his employment with Respondent as a Correctional Officer in 1989. (Transcript("T") pp. 121). Prior to January 16, 2013, Petitioner was employed as a Correctional Training Specialist II at Johnston Correctional Institute.(R. Ex. 8).

3. By letter dated January 16, 2013, Petitioner was demoted from Correctional Training Specialist II to Correctional Officer for unacceptable personal conduct, resulting in a ten

percent (10%) salary reduction. (R. Ex. 8) Petitioner was also transferred from his facility in Johnston County to Wake County. (R. Ex. 8).

4. The demotion for unacceptable personal conduct was based on Petitioner's alleged conduct and interactions with Peggy Littleton ("Littleton"), an employee of Respondent, for a part of two work days on July 31, 2012 and August 1, 2012. (R. Ex. 8).

5. Littleton has been employed by Respondent since March 5, 2012 as a Correctional Officer. (T. pp. 18). After employment for less than four months as a new Correctional Officer, Littleton was required to complete Basic Training by NCDPS. (T. pp. 18).

6. Littleton attended a Basic Training course on July 31, 2012 in Apex, North Carolina. (T. pp. 19-20).

7. The Basic Training course on July 31, 2012 involved two components, a classroom session and a subsequent hands-on firearms training. (T. pp. 520-521).

8. Curtis Hedgepeth (Mr. Hedgepeth) was the lead instructor for the Basic Training course on July 31, 2012. (T. pp. 520). Mr. Hedgepeth, alone, taught the classroom component of the course. The hands-on firearms training component took place in a different room ("the training room") and was collectively taught by five instructors. The five instructors were Ronald Perry, Marvin Biggs, Jr., Melanie Shelton, Curtis Hedgepeth, and Petitioner, all employees of Respondent. (T. pp. 186).

9. At the conclusion of the classroom component of the Basic Training course, the students transitioned into the training room for the hands-on firearms training. (T. pp. 521). During the transition, Petitioner and Mr. Hedgepeth engaged in a conversation in the original classroom. (T. pp. 521).

10. Littleton approached Mr. Hedgepeth, while he was standing with Petitioner, and inquired about transfer policies. (T. pp. 190; T. pp. 521). Mr. Hedgepeth began to explain the transfer policies when Littleton indicated that she was specifically interested in transferring to Johnston Correctional Institute. (T. pp. 521-522). At that time, Petitioner, instead of Mr. Hedgepeth, continued to explain the transfer policies and procedures to be transferred to Johnston County. Petitioner was currently employed at Johnston Correctional Institute. (T. pp. 522). The undersigned finds Petitioner's testimony that Littleton initiated the conversation to be credible, as it was corroborated by Mr. Hedgepeth. Mr. Hedgepeth is a disinterested party with no motivation to be untruthful. Mr. Hedgepeth was not asked about this interaction when interviewed by the EEO investigator, Theresa Alexander. (T. pp. 523).

**Testimony of Littleton T. pp. 25, 26, 27 and 47:**

Q Now, Ms. Littleton, did you initiate the conversation with Mr. Ward regarding transferring?

A No.

Q So would you have any reason to want to relocate at that point?

A No. I've never asked for a transfer. I've never talked to any of my lieutenants or anybody on that camp at all for a transfer. That was never my intention, to transfer.

Q Okay. Did you ever ask Mr. Ward – what did you say to Mr. Ward about transferring to Johnston County?

A I didn't say anything to him about transferring. He asked me why I wasn't working at Johnston, why it is I was working at Harnett.

**Testimony of Hedgepeth T. pp. 521-523:**

Q And during that transition, do you recall having a conversation with Mr. Ward?

A Yes. He came over briefly to tell me that he was going to be helping for the rest of the day.

Q And where did this conversation take place?

A It took place in the front of the classroom where the podium was.

Q Do you recall if Officer Peggy Littleton approached during that conversation?

A Yes.

Q And what did she say?

A She approached and started asking, without specifying who she was directing the question to, so I presumed since I was the lead instructor, it was to myself—she started asking about transferring from one facility to another. I proceeded to start answering the question, and during that process she brought up the transfer to Johnston Correctional.

Q So it was after you began answering the question that she emphasized that she was referring specifically to Johnston Correctional?

A Yes.

Q And at that time what happened?

A At that time, Mr. Ward also entered the conversation and started answering, you know, the specifics with, you know, the transfer to the facility that he was then working at.

Q Did Mr. Ward motion for Ms. Littleton to come towards you and he to have that conversation?

A Not that I am aware of.

Q Did Ms. Littleton voluntarily come up to speak to the two of you?

A As far as I know, it was entirely voluntary on her part.

Q And did Mr. Ward make any comments other than those related to transfer procedures to Ms. Littleton?

A Not within my presence.

Q You were interviewed by the EEO officer; is that right?

A Correct.

Q Did you just have one interview?

A One interview by telephone.

Q And during that interview, did the EEO officer ever ask you if Ms. Littleton initiated any conversations with Mr. Ward?

A No.

Q Did she ask you about that conversation that you had between you, Mr. Ward, and Ms. Littleton regarding the transfer procedures?

A No.

Q If she had, would you have included that in your written statement?

A If I had been asked, yes.

In Respondent's Exhibit #6, the Petitioner states in Paragraph 5, in part, as follows:

...Officer Littleton states that I approached her and stated I could get her transferred to Johnston and she could be my assistant, but I would never get any work done. It also says that I stated Littleton approached me in the hall about this transfer. Both of these statements are inaccurate as indicated in the previous statements I submitted. My very first encounter with C/O Littleton came when the class was dismissed from the classroom and told to report to the big training room. I was standing at the front of the class talking to OSDT instructor, Mr. Curtis Hedgepeth. While talking to him, the students were filing out of the class and C/O Littleton walked up to me and right in front of Mr. Hedgepeth asked me how she could transfer to Johnston. I stated to her "good, I need an assistant." She replied, "I'm your girl." I laughed and said "no, I have been trying for years to get an assistant and they will not give me one." I told her several factors would play into whether or not she could transfer but I would talk to her about it later. At this time, we were trying to get all students into the big training room. She departed the classroom and I didn't speak to her again until we were in the big training room. My question is, did anyone ask Mr. Hedgepeth if this is where the question of transferring occurred?? As I said previously, she initiated this question in conversation with me. (R. Ex. 6).

From Respondent's Exhibit 8 (Demotion), Page 3, the following statement is attributed to the Petitioner:

You requested someone asked Mr. Hedgepeth who initiated the transfer discussion. This would be proof that this and other statements were

embellished. You stated you felt the investigators were not thorough in their questions. (R. Ex. #8)

11. At the conclusion of the conversation between Mr. Hedgepeth, Petitioner, and Littleton, they transitioned into the training room. (T. pp. 523).

12. There were approximately thirty (30) students in the training room and five (5) instructors. (T. pp. 500; t. pp. 518).

13. In the training room, the five instructors, including Petitioner, were positioned at the front of the room and the students were instructed to form lines behind each instructor in order to perform the hands-on firearms training. (T. pp. 453; T. pp. 488-489; T. pp. 523-524).

14. The students were not assigned a specific instructor but, rather, were allowed to choose any instructor's line for the training. (T. pp. 453-454; T. pp. 524, T. pp 197).

15. Littleton was not assigned to Petitioner's line but, nonetheless, chose Petitioner's line for her hands-on firearms training (T. pp. 545; T. pp. 197).

16. Patrick Berger ("Berger"), Correctional Officer at Harnett Correctional Institute, was one of the thirty (30) students in the training room. (T. pp. 85-86).

17. Berger was not assigned to Petitioner's line but, nonetheless, chose Petitioner's line for his hands-on firearms training. (T. pp. 198).

18. While in Petitioner's line, Littleton began having difficulty removing her gun from her holster. Petitioner assisted Littleton in adjusting her gun holster by adjusting it with an allen wrench. (T. pp. 458; T. pp. 460-462).

19. Littleton provided three (3) written statements during the EEO investigation. (R. Ex. 9, 11, & 12). The first was her EEO Complaint, filed on August 1, 2012. (R. Ex. 9). The second was a Supplemental EEO Statement written on September 21, 2012. (R. Ex. 11). The third was a Supplemental EEO Statement written on September 27, 2012. (R. Ex. 12).

20. Littleton testified at trial that Petitioner put his fingers in the waist band of her pants while adjusting her gun holster. (T.pp.29-30). Littleton included this allegation in the September 21, 2012 Supplemental Witness Statement. (R. Ex. 11). " When it was realized my holster was to (sic) tight Mr. Ward tried loosening it by putting his fingers in the waist band (sic) of my pants to loosen (sic) screw the allen wrench." This allegation was not included in Littleton's initial complaint filed with the EEO on August 1, 2012. (R. Ex. 9). None of the thirty plus individuals in the training room corroborated Littleton's allegation that Petitioner put his fingers in the waistband of Littleton's pants. The EEO officer's administrative findings concluded: "There is no evidence or witness to substantiate that Ward touched Lillington inappropriately." (R. Ex. 10)

### **Littleton's testimony T. pp. 29-30**

Q At some point, you were having difficulty with your holster?

A Yes, ma'am.

Q And please describe that difficulty to the Court.

A My holster was brand new, out of the package, and as I would try to pull my weapon from the holster, it would stick, almost like a suction cup effect. It did not want to pull out.

And when you shoot and have to qualify at the shooting range, some of the qualifications are under a timed sequence—you know, three seconds, five seconds. So I was having trouble being able to pull it up. And it was because the holster itself was too tight against the gun and it needed to be loosened.

I raised my hand. We were instructed if we had any problems with our weapons, or any problems in general, we were to raise our hand and sound off our number so that the instructor would know to stop and do what needed to be done.

So I did that, and Mr. Ward came up to me. I explained to him what was going on, and he went and got the little allen wrench to unloosen it. And when he did, he slipped his hand in between my shirt and my pants, through my waistband, that way, to grab ahold of the holster.

I did make a comment to him that this was getting inappropriate. And when I said that, he pulled his hand out and called for another instructor, who came over and just grabbed the holster itself, unlocked it and walked away.

21. On direct examination, Berger testified that he witnessed Petitioner “putting his hands like on her [Littleton's] belt loop and like his fingertips were going inside her-like her belt or like her pant.” (T. pp. 90). On cross examination, however, Berger contradicted his testimony by stating that he did not witness Petitioner touch Littleton's skin while adjusting Littleton's gun holster. (T. pp. 102). Berger made the following statement concerning this issue in Respondent's Exhibit #16. “What I saw instructor Ward do was (sic) his hands trying to fix Littleton's (sic) gun holster. his (sic) finger tips (sic) to fix Littleton's were possibly (sic) touching the inside of Littleton's (sic) pants (sic) were (sic) the holster was connected.”

22. Ronald Perry was standing near Petitioner as he adjusted Littleton's gun holster. (T. pp. 460). Mr. Perry recalled in detail how Petitioner positioned himself while adjusting Littleton's holster. (T. pp. 460-462). The adjustment of Littleton's holster was appropriate in all aspects. (T. pp. 462). Mr. Perry did not witness Littleton make any comment about the interaction with Petitioner being inappropriate. (T. pp. 461-462). The undersigned finds Mr. Perry's testimony to be credible. The adjustment of Littleton's gun holster by Petitioner was appropriate and Littleton did not indicate that she felt uncomfortable or that she perceived the interaction to be inappropriate.

### **Perry's testimony T. pp. 460-462**

Q Do you recall Mr. Ward adjusting Ms. Littleton's holster that day?

A I do.

Q How close were you to Mr. Ward when he was adjusting the holster?

A When I saw him down on his knee, I walked over and I looked down at him and I said, "Ricky Ward, what are you doing?" And he said, "I'm adjusting this holster." And I stood right over his shoulder while he adjusted that holster.

And once he got it adjusted, he kept saying "Try this," and he would hand her the unloaded weapon. She would stick it in there, and if it was still too tight, he would loosen it some more and until he got it where she liked it.

Q Now, about how close were you to him? I know you said you were standing over his shoulder. How close would you say you were---

A (interposing) I would ---

Q --- to him?

A I would say—he was down on his knee and I was right behind him.

Q And how close was Mr. Ward to Ms. Littleton as he was adjusting her holster?

A Arm's reach.

Q Did Mr. Ward ever touch Ms. Littleton while he was doing this adjustment?

A No, ma'am.

Q Did his fingertips ever go inside the waistband of her pants?

A No, ma'am.

Q While Mr. Ward was adjusting her holster, do you recall Ms. Littleton making any comment about this adjustment being inappropriate?

A No, ma'am.

Q Did she appear to be uncomfortable?

A No, ma'am, because like I said, we—Mr. Ward reached around behind the holster, grabbed the holster, and would make his adjustment, would let go of the holster. She would take the weapon, put it in the holster, and pull it straight out. And if she decided it was still too tight, he would do the same thing.

Q Was Mr. Ward able to adjust the holster and have it work properly?

A Yes, ma'am.

Q Did he follow the standard procedures in doing that adjustment?

A Yes, ma'am.

23. Although Mr. Perry was the only instructor, besides Petitioner, who witnessed the adjustment of Littleton's gun holster, he was the only instructor that the EEO investigator, Theresa Alexander, did not interview or request a written statement. (T. pp. 467; R. Ex. 10).

24. Mr. Perry was able to recall, with great detail, the interactions between Petitioner and Littleton. (T. pp. 456-462). Mr. Perry was also able to describe other students who had



selected Petitioner's line for completing their firearms training. (T. pp. 472-473). Mr. Perry is a disinterested party with no motivation to be untruthful. His ability to recall detail and as a neutral perspective make him a credible witness.

24. Littleton's stance was admittedly incorrect. An unidentified instructor, other than Petitioner, also identified a problem with Littleton's shooting stance. Littleton's testimony on direct examination was: "The instructor, the initial instructor that was teaching the class in front of the class, had made a comment that I needed to separate my feet more, so that my stance was sturdier. (T. p. 23)

Petitioner states in Respondent's Exhibit #6 at Paragraph #7, that Petitioner had to correct Littleton's stance four times. "When a student is pointing a gun down range, instructors have commented on student's stances and feet positioning numerous times from the back side of the student. If I said your stance looks good from where I am standing but you need to spread your feet and legs more, then all was correct except for the shoulder width placement of the feet and legs. After about four times of trying to get this right, I probably did say it like that to let her know all was correct except the width apart of her feet. When I told Ms. Alexander this, the other lady with her questioned why I would say this. Being a former employee of DCC, Ms. Alexander told her it made sense because she had even had instructors almost kick her feet out from under her to get her to spread her feet!!" (R. Ex. 6)

#### **Petitioner's testimony as to Littleton's stance (T. p. 210)**

Q Well, when you say at that moment, what do you—are you saying that she didn't at some other moment?

A Well, I had about four different incidents with her over her stance, and the last time it was real bad, where she—anybody that had been around with the department long enough knows the old T stance we used to do. It was where we were standing with our strong foot directly in a T shape behind our weak foot.

And she was standing in that again, after all the conversation about her stance throughout the day. And I had told her earlier, "If you get your stance right, you're doing everything else great." So—and this one happened in front of Ms. Shelton.

25. Eric Ray, Melanie Shelton, Marvin Biggs, Jr., Ronald Perry, and Curtis Hedgepeth, all firearms instructors with Respondent, testified that it is common for an instructor to instruct a student to spread their legs further in correcting a student's stance for firing a handgun. (T. pp. 457; T. pp. 503; T. pp. 548; T. pp. 556-557) These instructors are disinterested parties with no motivation to be untruthful. Rather, each has a strong interest in being honest and truthful, as "providing false or purposefully misleading information during the course of an internal investigation" is considered "unacceptable personal conduct and is representative of those causes considered for disciplinary action up to and including dismissal." (P.Ex.7)

26. Petitioner admits that he instructed Littleton to spread her legs further in correcting her stance for firing a handgun. (T. pp. 209).

27. Mr. Perry, who was standing approximately 10 feet from Petitioner while Littleton was completing her hands-on training, recalled details of the interaction between Petitioner and

Littleton. (T. pp. 453-457). Mr. Perry testified that he heard Petitioner correct Littleton's firing stance on several occasions but that he never heard Petitioner state that they could work on Littleton's stance in private. (T. pp. 456-458). Mr. Perry, however, was not interviewed by Ms. Alexander or requested to provide a written statement. (T. pp. 467; R. Ex. 10). Based on Mr. Perry's proximity to Petitioner and Littleton and detailed testimony, the Court finds his testimony to be credible with regard to Petitioner's statements to Littleton regarding her stance.

28. Littleton's EEO Complaint alleged that Petitioner stated "your stance is nice to look at from view but you need to spread your legs further. We could work on your stance privately". (R. Ex. 9). Littleton testified, however, that Petitioner referred to her stance as "perfect". (T. pp. 44-46). Littleton was the only witness among thirty plus individuals who were present who testified to hearing Petitioner's alleged comment about correcting her stance in private. Based on the inconsistencies in Littleton's written statements and testimony, the undersigned finds that she is not a credible witness in regards to this statement. No witnesses were presented to corroborate Littleton's allegations regarding these comments.

29. The undersigned finds that Petitioner did not tell Littleton that "we could work on your stance privately." The undersigned finds that Petitioner did tell Littleton to spread her legs further when correcting her stance for firing the handgun, but that this comment is not inappropriate in the context in which it was used.

30. As students completed their hands-on firearms training, they would sit in seats along the back wall of the training room. (T. pp. 212; T. pp. 225).

31. There were two chairs placed on the side wall of the training room, nearest to Petitioner. (T. pp. 212-213; T. pp. 225).

32. When Littleton completed her hands-on training, she chose to sit in the chair on the side wall of the training room, closest to Petitioner. (T. pp. 212-213; T. pp. 225-226). Littleton was not assigned to that particular seat but, rather, had the ability to choose any seat in the room. (T. pp. 213). Littleton's decision to sit in the chair closest to Petitioner discredits her testimony that Petitioner made her uncomfortable or acted inappropriately in their prior interactions that day.

33. When Berger completed his hand-on training, he sat in the chair beside of Littleton on the side wall of the training room. (T. pp. 212-213; T. pp. 225-226).

34. Petitioner approached Littleton and Berger and asked to borrow a pen. (T. pp. 227). Littleton handed Petitioner a pen with his the University of North Carolina logo on it. (T. pp. 227-228). Petitioner then stated "I knew there was something I half way liked about you." (T. pp. 228). Littleton responded "what's the other half that you like?" (T. pp. 228). Petitioner admits then stating "your eyes". (T. pp. 228). Petitioner testified in detail as to this issue. (T. pp. 226-231). Petitioner also testified consistently as to this issue. In Respondent's Exhibit #13, Employee Witness Statement, page 3, 9/24/12, Petitioner writes:

I completed the evaluation of these two students and as I was attempting to complete their paper work my pen stopped writing.

Officer Littleton pulled a pen from her pocket and said “here, you can use mine.” The pen had UNC on it and I stated to her “I knew I half way liked you for some reason Littleton.” This remark was just a play on words indicating that I was a Carolina fan. Officer Littleton looked at me and smiled and said “oh yeah, what’s the other half you like?” I was thrown a bit when she said this because my statement was referring to my favorite team and I hesitated a moment and said “I guess your kind eyes would be the other half.” I thought nothing of it and continued to complete the paper work, returned her pen and thanked her and she said you are welcome. (R. Ex. #13)

Again in Respondent’s Exhibit #6, Paragraph #2, first documented by Petitioner on 8/1/12, Petitioner offers three means to verify his assertion. One, “I am certain if the test papers were produced, that a difference in ink would indicate that I am telling the truth.” Second, Petitioner’s statement as to the incident was recorded the day after the event. Third, Petitioner offered to take a polygraph on the issue. Petitioner’s full statement:

2. The second bullet is not only inaccurate; it is a flat out lie. I believe I had just completed evaluating the second pair of students I had to evaluate, Both Littleton and Berger were sitting in the two chairs that were very close to me. I stood directly to Littleton’s right side and was writing on the score sheet, on the cork board, on the wall for these two students when the pen I was using ran out. I shook the pen and attempted to write again, and again it ran out. Almost simultaneously, Officer Berger and Littleton pulled a pen from their uniform breast pockets and offered them to me. I looked at his, then looked at hers and saw what I am certain was UNC in light blue on the pen. I borrowed the pen and completed my documentation. I am certain if the test papers were produced that a difference in ink would indicate that I am telling the truth; however, this investigator states that both of their testimonies concerning this matter with the pen is credible. I question to what length an investigator went to in determining this credibility? If two people conspire to lie about a matter such as a pen, I believe that much of their testimony is not credible, where I have tried my very best to be truthful to the extent my memory allows me. I documented the incident with the pen and the comments that followed on 08/01/12, when I first learned that a female officer from Harnett had filed a complaint against me. I did this so that I could try to recall as many details as possible. The incident with borrowing the pen was very fresh in my mind because it was a UNC pen and I am a UNC fan and the comments that little made to me. As I reached to borrow the pen from Littleton, I stated “I knew there was something that I half way liked about you Littleton.” She replied, “oh yea,

what's the other half you like?" She caught me completely off guard by replying to a rhetorical statement and the tone of her voice when she asked it (sic) sound as if she wanted a "personal" answer. I ran several answers quickly through my mind and then replied "your eyes." I do not to this day remember or believe I said anything about a song and her eyes. I do not know why Berger would corroborate this lie about them not having a pen or her giving me one but if they are willing to take a polygraph on this matter, I most certainly am.

35. Berger and Littleton deny that Petitioner asked to borrow a pen from them. In his witness statement provided to the EEO investigator, Berger stated that he "observed Ward making compliments to [Littleton]". (R. Ex. 15). When testifying, however, Berger contradicted his statement by testifying that "I didn't hear anything." (T. pp. 97-98; T. pp.100). Berger's contradicting statements discredit his testimony.

36. Berger described Littleton as a "mother-figure." (T.pp.104). Berger's father had a massive stroke about a week before graduating from basic training. "... and I mean my mom couldn't be there for me and Littleton is like 30, 35 years older than me." "And, you know, whenever I needed help, she could—she would help me out or talk to me or whatnot..." During the breaks, Littleton would relate to Berger what allegedly Petitioner had whispered to Littleton. (T. pp. 106). The interaction between Littleton and Berger raises questions about a relationship that could produce undue influence and potential bias. (T. pp.108).

37. A sequestration order was entered at the beginning of the hearing. Prior to and during the period of Littleton's testimony at the hearing, Berger remained in contact with Littleton. This continuing interaction raises issues of undue influence and potential bias.

38. Berger left his seat beside of Littleton and Officer Nicole Drake, a Correctional Officer employed by Respondent, took the same seat. (T. pp. 233).

39. While sitting next to one another near Petitioner, Littleton and Ms. Drake laughed at another female student who was struggling with proper firearms technique. (T. pp. 233). Petitioner admits confronting Littleton and Ms. Drake and instructing them to refrain from laughing at the student and stating "not everyone is as good as you." (T. pp. 233-235). Petitioner's comment was referring to Littleton's firearm technique and was not intended in any sexual or inappropriate manner.

40. At some point during a break from the hands-on training, the Petitioner and Littleton engaged in a conversation. This conversation took place in the hallway, outside of the training room. (T. pp. 235-236; T. pp. 238). When the break ended, Petitioner admits instructing Littleton to enter the training room ahead of him so that it would not appear that he was spending "too much personal time with any one student because that was frowned upon" (T. pp. 141-142).

41. Petitioner concedes that he may have referred to Littleton as "darling". (T. pp. 162). Based on Mr. Perry's testimony, it is common for Johnston County employees to refer to other

employees as “darling” and that he has heard numerous employees use the phrase “darling”. (T. pp. 467-468).

42. Petitioner’s statements in Respondent’s Exhibit #13, employs the words, “joke,” “joked” and “jokingly.” The root word permeates the document. Petitioner’s verbal exchanges constitutes unprofessional conduct in an environment and setting designed for firearm instruction and safety. “Joking” has no place in this type of training. (R. Ex. #13).

43. Littleton filed the complaint against Petitioner on August 1, 2012. (R. Ex. 9).

44. Petitioner became aware that a complaint had been filed against him on the morning of August 1, 2012 and immediately went to his office to make a record of every interaction he had with Littleton the day before. (T. pp. 249-251).

45. Petitioner took his record of interactions to Patricia Moody, his immediate supervisor, for her review and advice. (T. pp. 251; T. pp. 616).

46. Ms. Moody has been involved in numerous disciplinary conferences and is familiar with the Respondent’s disciplinary policies. (T. pp. 610-611; T. pp. 614). Ms. Moody did not believe that Petitioner’s actions warranted demotion. (T. pp. 617).

47. Petitioner did not intend for his communications and interactions with Littleton to be offensive or harassing.

48. Petitioner is a career state employee. Over a period of many years he had extensive experience training numerous students. He had an untarnished record. For the Petitioner to have pursued a course of action as alleged on July 31, 2012 involving a student trainee, in the presence of thirty plus witnesses, all of whom were in close proximity in the same room, is conduct inconsistent with Petitioner’s longstanding record.

49. Nicole Drake is a probation and parole offer with NCPDS. Drake in her statements and testimony indicated that on July 31, 2012 Petitioner commented to her on her appearance, describing her as being “pretty.” Although Drake sat close enough to Petitioner to have her conversation overheard and admonished, Drake elected to have instructors, other than Petitioner, provide her training. Petitioner admitted making a comment in the parking lot as to Drake’s appearance but testified that it was in the context of a lecture that Petitioner had just given on “undue familiarity.” Drake denied that topic was brought up in a conversation lasting less than a minute but failed to mention the conversation at all in her initial statement but did so in a later statement. When asked on cross-examination:

Q Okay. Did you ever report anything that Ward said and did to you or relative to you at the training session to anybody in the organization, in the department?

A As far as –

Q a complaint or –

A No.

Q ...or you didn’t file an harassment charge or anything like that?

A No, I didn't.  
Q Okay. It didn't rise to that level, did it?  
A No.

(T. pp. 114, 118, 242) (R. Ex. #6, #10, #20)

### **Petitioner Cooperates With Investigation; Requests Polygraph**

50. Petitioner fully complied with the EEO investigation, provided numerous written statements, completed all requested interviews, and attended two pre-disciplinary conferences. (R. Ex. 6, 7, 10, 13, & 14).

51. The first pre-disciplinary conference took place on November 15, 2012. (R. Ex. 2). Petitioner, Superintendent Joseph Hall, and Patricia Moody attended the conference. (T. pp. 610-611). Petitioner requested to take a polygraph to disprove the allegations against him. (T. pp. 401, 612-613).

52. Superintendent Hall never requested that Petitioner be provided a polygraph examination. (T. pp. 402; T. pp. 613).

53. Although requested, Respondent never provided Petitioner the opportunity to take a polygraph or any other type of lie detector test. (T. pp. 401; T. pp. 612-613). Failing to submit to a polygraph examination when directed to do so by a Department Official constitutes a violation of the department's "Failure to Cooperate or Hindering an Investigation" policy. (P. Ex. 7).

### **Treatment of Other Employees for Similar Offenses:**

54. Although two complaints were previously filed against an employee of Respondent, Raeford Mitchell, who was employed at Johnston Correctional Institute, this employee was issued only a written warning with no demotion or transfer. (T. pp. 394). Mr. Mitchell's acts included a physical act, pulling the hair of a female co-worker and sitting in her lap. (T. pp. 393; T. pp. 593-594). Mr. Mitchell's actions are more egregious than those alleged against Petitioner, particularly with perpetration of physical acts.

55. A complaint was filed against an employee of Respondent, Pablo Rose, who was working at Johnston Correctional Institute, for calling a co-worker "my love" in Spanish. (T. pp. 394-395). Mr. Rosa received a written warning with no demotion or transfer for his remark. (T. pp. 396).

56. Selective enforcement of agency policy should be considered under State Personnel Policy. See N.C. State Personnel Manual, Section 7, page 11: The employer "should examine a number of factors...[including]...The disciplinary actions received by other employees within the work agency/unit for comparable performance or behaviors." The Respondent's inconsistency in enforcement at Johnston Correctional Institute makes it questionable for Respondent to issue more than a written warning against this Petitioner amid questions as to the validity of Respondent's assertions.

### **Motivation of Complainant, Peggy Littleton:**

57. During Basic Training, Littleton complained of being overheated and left the firing range during handgun training. (R. Ex. 19). During CODT training, Littleton complained of an ankle injury, although she refused medical treatment.(R. Ex. 19). Following shotgun training, she complained of a shoulder injury and was transported by ambulance to the hospital. (R. Ex. 19; T. pp. 507; T. pp. 526-527; T. pp. 549).

58. Training Instructor II, Melanie Shelton, was asked to provide a written statement during the EEO investigation. (T. pp. 505). In her statement, Ms. Shelton indicated that she remembered Littleton “very well due to her being a ‘Drama Queen.’” (R. Ex. 19). Ms. Shelton described, in her written statement and in her testimony, several injuries that Littleton alleged to have suffered throughout her Basic Training courses and referred to her as being “needy”. (R. Ex. 19; T. pp. 505-510). In Respondent’s Exhibit #19, Ms. Shelton on September 24, 2012 made the following statement:

You asked if I knew/remembered an officer Littleton from a basic training school held July 2012 and I said that I did very well due to her being a “Drama Queen.” I went on to explain that every psychomotor skill case we held something would happen, you asked what and I told you what I remembered, that being: During the firearms training and the handgun M&P.40, she had to come off the range due to being hot. ( I did agree it was a very hot day), during CRDT she claimed to had sprained her ankle and remove(sic) her gym shoe before I could stop her. The ankle did not swell and an ice pack was given, she was asked numerous time as to if she needed to see a doctor and she refused. Stating something about not being quitter and after she proved that she could put her shoe back on and walk unaided Ms. Alston allowed her to continue with the class. During firearms training with the shotgun, I was her primary daytime instructor on the range. The shotgun is known to recoil to the shoulder and that some students who do not hold it correctly have been known to get a bruise. A great deal of emphasis is placed on the correct hold of the weapon. C/O Littleton shot the 3 practice rounds and then went to qualification round. After shooting the required rounds at the 50 and 40- yard lines, she complained about the recoil. When we got to the 25-yard line and the kneeling exercise, she said she had had enough and was going to quit. I spoke with her and told her that it was her choice but she only had 2 more rounds and that from what I could see of the target she was shooting well. She chose to complete the firing order and qualified first time. Due to having to wait for the range to get dark and not waste time after daytime qualifying, I was scheduled to teach the Cultural Awareness class in the classroom at JCI from 3-5pm. At that time, I left the range area. I was informed the next day that C/O Lillington had declared a medical issue and had left the

range via ambulance.

I was scheduled to teach the Friday morning and C/O Littleton was not in class and after checking had not called in. She arrived for class mid-morning when asked where she had been she said at her unit filling out paperwork for her injury. (All students are informed that OSDT is their supervisor not the unit and any paperwork/problems/issues must come directly to OSDT Management not the unit. This is explained at orientation). C/O Littleton was wearing a sling and claimed to me verbally that she had bruised the bone. Her paperwork from the doctor said return to work "contusion" that was all I saw. C/O Littleton then asked me for a copy of my notes, as she could not write. I informed her that I could not give her my notes and that she could get a copy from another student. Ms. A. Alston also informed me that C/O Littleton had complained that we were not empathetic to her situation told me. (R. Ex. #19)

### **Testimony of Shelton (T. pp. 505-508**

Q In that statement, you refer to Ms. Littleton as a drama queen. Can you explain to the Court why you perceived Ms. Littleton to be a drama queen?

A When dealing with students, maybe every other class or so there's going to be one student who's very needed. She—as I said later on in the statement, every time we did a psychomotor skill, there was an issue; there was a problem.

For example, with the sprained ankle, you know, when she was finally informed, "Okay, we're going to take you to medical and, you know, start filling out form 18s and 19s and send you back to your facility," "No, I'll walk it off. I'll be fine." It was just constant with her.

There was always—and as I said in my statement, towards the end she didn't even want to deal with myself or Ms. Alston. She only wanted to deal with—actually, she wanted to see Mr. Walston because she wanted somebody with more empathy. It was just she walked in and her she comes, you know, so we tried to maintain a little bit of professionalism with her but it was just constant.

When she asked me for my notes, you know, I was like "I cannot give you my instructor notes, my instructor lesson plans." And she was upset about that. I was like, you know, "That would be unethical for me to give you this information.

Q She asked you for your instructor notes?

A Yes, when she came in the last—the day after because she couldn't write anything. I told her she was more than willing—welcome to have one of the other student's photocopy their notes, but, you know, she wanted my notes.

Q And she got angry with you about that?

A I wouldn't say angry. I mean she sat there and—you know, I remember her glaring at me the whole class. You know, I can't do things that—for one student that can't happened for every student. And every student would like to have a copy of my all of my lesson



plans.

Q Would you say that she demanded more attention than other students?

A Yes.

Q Now, take me through a few more details about the injuries that you were describing that Ms. Littleton had. Did these happen during basic training class?

A Yes, ma'am.

Q What was the first injury?

A The first one that I'm—I was aware of was—I don't know if it was an injury per se that was on the range with the M&P 40, and she got dizzy. It was hot. I was horribly hot. It was July on the range. You know, you try and keep giving the students breaks and pushing water and Gatorade, water, Gatorade.

But, you know, we had to—Mr. Hedgepeth had to stop the line a couple of times, call in the line it seemed, to cool her off so that she could rest. And we encourage all of the students—you know, "If you get too hot," you know, "This is a live fire round," you know, "If we need to pull you off line, you need to let us know."

And then came the CODT with the sprained ankle. She never told us she had a sprained ankle until at the end of—we were on break and there she is sitting there taking her shoe off. And I was like, "What's wrong?" "I sprained my ankle." "Why didn't you tell us," you know, "We would have let you take your shoe off," you know. And then of course she walked it out. You know, by the end of it, it's like "Are you hurt or not hurt," you know, "What do you want here from us?"

Q So were you questioning her credibility by the end of it?

A By the end of it, yes, ma'am, I was.

Q Do you remember her ever having a shoulder injury?

A When we shoot the shotgun, I was the primary instructor that day for the day fire. But once they had qualified day shooting, I was the one who—I actually went home. I didn't need to stay for low or limited light.

And it was later on that evening that Ms. Alston called me and said there had been an injury out at the range and I needed to go back to the range. So I went—actually I had to get dressed, and then she called me about, you know, five minutes later and said no, it's okay, the weapons were all secured. But it was Ms. Littleton who had a shoulder injury. I didn't see that happen or anything.

Q And at the end of these training sessions, do you ask the students if there's any injuries?

A Oh, yes. During any psychomotor skills training they are asked.

Q And did she report that injury, that one?

A Not to knowledge. I was told for the shotgun injury---

59. Curtis Hedgepeth corroborated Shelton's description of Littleton as being a "drama

queen” and recalled that Littleton always wanted attention. (T. pp. 525-529).

60. Littleton embellished and exaggerated allegations of injuries. (T. pp. 507-508).

61. Based upon the independent, corroborated, and unbiased testimony of Shelton and Hedgepath, both experienced trainers, Littleton drew unfavorable attention to herself and made several exaggerated claims. This finding, in conjunction with other findings, raises serious questions as to whether Littleton exaggerated the comments and offensiveness of her interaction with Petitioner.

### **Petitioner’s Work History:**

62. Petitioner has been employed by Respondent for approximately twenty-four (24) years and has not received any type of disciplinary action, including written warnings. (T. pp. 631; P. Ex. 1).

63. Petitioner’s performance evaluations throughout his employment, including his evaluations following his demotion, reflect that he is an excellent employee. (P. Ex. 1 & 3).

64. Petitioner is viewed by his co-workers as being professional. Numerous witnesses, who are Petitioner’s co-workers, testified that they have never known Petitioner to make inappropriate comments or engage in inappropriate actions with co-workers. (T. pp. 469; T. pp. 489; T. pp. 510; T. pp. 529; T. pp. 553; T. pp. 557; T. pp. 595-596).

65. By letter of December 21, 1998 Robert Chavis, Regional Director, wrote a “Letter of Commendation,” to Petitioner; on December 9, 1998, Petitioner received the “Department of Corrections Special Award;” on May 5, 1999, Petitioner was awarded “The Correctional Officer of the Year;” and in October 1999, Petitioner was a nominee for the “Governor’s Award For Excellence” for bravery and valor. (P. Ex. #2).

66. Petitioner has instructed numerous students throughout his career and has not had a complaint filed against him. (P. Ex. 1). The complaint as alleged by Littleton is inconsistent with Petitioner’s extensive service record and years of behavior.

### **Handling of EEO Investigation:**

67. Numerous witnesses were interviewed and asked to provide written statements to Ms. Alexander, the EEO investigator. (R. Ex. 10). All of the instructors who taught the basic training course on July 31, 2012 were interviewed, except for Ronald Perry. (R. Ex. 10; T. pp. 334-335). Petitioner identified Mr. Perry as a witness with information relative to the investigation on his Witness Statement Form which was provided to Ms. Alexander. (R. Ex. 13; T. pp. 334-335). Mr. Perry was the only instructor who recalls witnessing the interactions between Petitioner and Littleton, as he stood only ten feet away from Petitioner throughout the most of the hands-on training. (T. pp. 334-335; T. pp. 453-457).

68. Ms. Alexander relied on written and oral admissions that Petitioner made in finding

“just cause” but, when questioned on cross-examination about specific admissions, Ms. Alexander was unable to identify any written or oral admissions that would constitute “just cause.” (T. pp. 327; T. pp. 331-333).

69. At the conclusion of the first pre-disciplinary conference, Petitioner requested a copy of the audio recording of the conference. Due to a malfunctioning recorder a copy could not be made available. (T. pp. 372-373). Notwithstanding that Petitioner desired a copy of the audio-recording, no recording was made of the second pre-disciplinary conference. (T. pp. 373).

### **CONCLUSIONS OF LAW**

1. The parties are properly before the Office of Administrative Hearings. The Office of Administrative Hearings has personal and subject matter jurisdiction of this contested cases pursuant to Chapters 126 and 150B of the North Carolina General Statutes.

2. At the time of his demotion, Petitioner was a career state employee subject to the provisions of North Carolina General Statutes Chapter 126, The State Personnel Act.

3. This contested case is governed by N.C.G.S. § 126-35. This contested case addresses whether Petitioner was disciplined by demotion for “just cause” and whether Respondent properly considered and applied the necessary factors and facts in its decision to demote Petitioner.

4. Officer Littleton was the principal complaining witness. After weighing her credible testimony and determining that much of her testimony was not credible, the undersigned concludes that there were trends in her testimony that lacked substantiation for the accusations she made. The biggest hurdle she had to overcome was her denial that she ever mentioned a transfer to Johnston County. Petitioner, corroborated by Officer Hedgepath, who had been sequestered and is a disinterested witness, testified in a convincing fashion that Littleton approached him in a crowded setting, in Petitioner’s presence, and plainly asked him about the procedures necessary to transfer. Littleton’s testimony is inapposite to the Hedgepath testimony. Petitioner in the disciplinary process indicated that Hedgepath was an eyewitness. Crediting the Hedgepath direct and detailed testimony as to this event taints Littleton’s entire and uncorroborated accusations. Littleton’s statements and testimony otherwise lacked many substantive details and independent corroboration. Petitioner’s statements and testimony were detailed and corroborated. Petitioner’s witnesses, who were in a position to see and hear Littleton’s accusations, provided no corroboration of Littleton’s account, and neither did other potential witnesses who numbered in excess of thirty. Her principal corroborating witnesses, Berger and Drake, did not verify key aspects of Littleton’s accusations. Finally, Officer Shelton, corroborated by Hedgepath, portrayed in numerous training situations, how Littleton’s conduct and accusations were strained, embellished, and exaggerated. Shelton vividly remembered and discredited Littleton as a “Drama Queen.”

5. Unacceptable personal conduct is misconduct of a serious nature. *N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation v. Clifton Carroll*, 358 N.C. 649, 599 S.E. 2d 888 (2004).

6. Respondent has the burden of proof by a preponderance of the evidence that it had just cause to demote Petitioner. Respondent failed to carry its burden of proof.

7. N.C.G.S. § 126-35 does not define “just cause.” “The fundamental question...is whether the disciplinary action taken was ‘just.’ Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations.” *N.C. Dept. of Environment and Natural Resources, Division of Parks and Recreation v. Clifton Carroll*, 358 N.C. 649, 599 S.E. 2d 888 (2004). “‘Just cause’, like justice itself, is not susceptible of precise definition...It is a flexible concept, embodying notions of equity and fairness, that can only be determined upon an examination of the facts and circumstances of each individual case.” *Id.*

8. In determining whether just cause exists, “all relevant factors and considerations” must be weighed, including factors of mitigation. Title 25 N.C.A.C. 1B.0413. Consistent with this, a broad review of a number of sub-factors including, but not limited to, an evaluation of the following is necessitated: (i) whether the conduct is isolated or part of a pattern; (ii) the motivation of the employer in taking adverse action and whether there were any improper considerations, (iii) whether the employee intentionally violated clear agency policy and whether the violation was substantial; (iv) whether the employee was acting under any duress or injury that may have contributed to his/her conduct, (v) whether the employee was acting consistently with departmental practice and custom; (vi) the employee’s performance history; and (vii) any other significant mitigating factors. *Hill v. NC Dept. of Crime Control & Highway Patrol*, 04 OSP 1538.

9. The evidence demonstrates that Respondent failed to consider and credit substantial and appropriate mitigation evidence in Petitioner’s favor.

10. Petitioner cooperated throughout the investigation by providing numerous interviews and written statements is a mitigating factor.

11. Petitioner’s candor in admitting that he may have referred to Littleton as “darling” and his admission that he referred to Littleton’s eyes in a response that stemmed from a conversation regarding a pen is a mitigating factor.

12. Respondent’s “Failure to Cooperate During or Hindering an Investigation” policy provides that “failure to submit to a polygraph examination when directed to do so by a Department Official” is considered “unacceptable personal conduct and is representative of those causes considered for disciplinary action up to and including dismissal”. (P. Ex. #7). Clearly Petitioner offered to take a polygraph examination. Respondent failed to follow the intent of its own policies when it refused to give Petitioner a polygraph examination. Petitioner’s willingness to take the polygraph examination is a mitigating factor.

13. Other employees at Johnston Correctional Institute engaged in conduct which was more serious than the conduct attributed to Petitioner, resulting in a written warning. Selective enforcement of agency policy should be considered under State Personnel policy. “...The

supervisor should consider a number of factors to decide the appropriate type of disciplinary action. Among the factors are...The disciplinary actions received by other employees within the agency/work unit for comparable performance or behaviors.” (P.Exh.5) The considerable disparate treatment in this case speaks against finding that Respondent had just cause to demote Petitioner. It would be unreasonable and unjust for Respondent to be able to strictly enforce rules, prohibited unacceptable personal conduct against this Petitioner, under the evidence in this case, in view of Respondent’s history of inconsistency in enforcement at this Correctional Center.

14. The totality of the statements and conduct of Petitioner as found herein were not sufficient to warrant Petitioner’s demotion. The incident was over a brief period of time and does not represent a pattern of behavior by the Petitioner. Clearly, Littleton charged Petitioner with sexual harassment. Based upon the findings herein, the undersigned cannot conclude that Petitioner engaged in any conduct that rose to the level of legally defined sexual harassment nor did the Respondent find sexual harassment nor was there proof of sexual harassment. Petitioner did not create a hostile work environment.

15. In light of the totality of the evidence-including, but not limited to: the refusal to allow Petitioner to take a polygraph examination as he requested; the disparate treatment of other employees for the same or similar misconduct; Petitioner’s cooperation during the preceding months of investigation; Petitioner’s candor regarding his admissions; the inconsistency in Littleton’s statements; the credibility of Littleton as a witness; and the failure to interview key witnesses, that there is not sufficient justifiable basis in law, fact, and reason for the demotion of Petitioner under these allegations.

16. Under the findings contained herein, Respondent’s demotion of Petitioner was neither just nor equitable. Respondent’s demotion of Petitioner did not fit the conduct found herein and was not necessary to uphold Respondent’s “Unlawful Workplace Harassment and Professional Conduct Policy.” (*Wetherington v. N.C. Dept. of Crime Control and Public Safety* \_\_NC App\_\_ 752 S.E. 2d 511 (2013))

17. The foregoing Findings of Fact and Conclusions of Law require Petitioner to be disciplined at a level of a written warning, in order to be consistent with Respondent’s practices at the time Petitioner was demoted. A written warning is justified as found herein. Petitioner engaged in flirtatious and unprofessional conduct admittedly towards Littleton. Firearms and safety instruction requires the highest degree of professionalism instruction which must be administered in a gender-neutral environment. This type of verbal exchange should never take place in this setting because of the danger and harm that can ensue. Management’s tolerance of this type of flirtatious and joking interaction, for whatever reason, in this setting is unacceptable and must now be corrected to avoid potential harm and injury to others.

### **DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent has not carried its burden of proof that Petitioner’s conduct rises to the level of “just cause” for demotion. Rather, the undersigned determines that Respondent should discipline Petitioner at a level other than by demotion, as it has done with other employees who

have engaged in similar conduct, and recommends that Petitioner receive a written warning. Accordingly, Respondent's demotion of Petitioner from Correctional Training Officer II to a Correctional Officer is vacated and Petitioner shall be afforded the following remedies:

1. Petitioner shall be reinstated to his former position, Correctional Training Officer II.
2. Petitioner shall be awarded, from the date of demotion until his reinstatement, back pay and benefits to which he would have been entitled to had he not been demoted.
3. Petitioner is awarded reasonable attorney's fees and costs under the provisions of N.C.G.S. § 150B-23.2(a) and §150B-33(b)(11).
4. Respondent should correct portions of the information in Petitioner's personnel file to contain only true and accurate information in compliance with N.C.G.S. § 126-25, as stated herein.

### **NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 14<sup>th</sup> day of May, 2014.

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Julian Mann III  
Chief Administrative Law Judge