

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

One Ashburton Place – Room 503
Boston, MA 02108
(617)727-2293

STACEY DOTTIN,
Appellant

v.

D1-16-066

CAMBRIDGE PUBLIC SCHOOLS,
Respondent

Appearance for Appellant:

Winston Kendall, Esq.
Law Office of Winston Kendall
136 Warren Street
Roxbury, MA 02119

Appearance for Respondent:

Maureen A. MacFarlane, Esq.
Special Assistant City Solicitor
Cambridge Public Schools
Office of Legal Counsel
159 Thorndike Street
Cambridge, MA 02141

Commissioner:

Cynthia Ittleman¹

DECISION

Pursuant to G.L. c. 31, §§ 42 and 43, Stacey Dottin (“Ms. Dottin” or “Appellant”) filed a timely appeal with the Civil Service Commission (“Commission”) on April 4, 2016, contesting the decision of the Cambridge Public Schools (“CPS” or “Appointing Authority”) to terminate her employment from the position of Head of Kitchen at the Kennedy Longfellow School (“KLS”). A pre-hearing conference was held on April 19, 2016 and a full hearing was held on June 8, 2016; both were held at the offices of the Commission.² On June 1, 2016, the Appellant filed a Motion for an Investigation and for Stay or in the Alternative. The Commission denied

¹ The Commission acknowledges the assistance of Law Clerk Brendan Rimetz in the drafting of this decision.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

that motion on June 1, 2016. On June 8, 2016, CPS filed a Motion to Dismiss for Lack of Jurisdiction to Hear Claims Asserted Under M.G.L.c. 31, § 42 Retaliation Claim and Any Claim Associated with Massachusetts Transitional Assistance Form that is Attached to Appeal. That motion was denied before the full hearing on June 8, 2016. Also on June 8, 2016, the Appellant filed an Opposition to the CPS Motion to Dismiss Retaliation Claim and Motion for Summary Decision and the Respondent filed an opposition to the Appellant's Motion for Summary Decision. The Commission denied the Motion for Summary Decision on June 8, 2016. Prior to the full hearing on June 8, 2016, the Appellant filed a Motion to Bar Proffer of Certain Proposed Exhibits of the Respondent and the Respondent filed an opposition thereto. That motion was also denied on June 8, 2016. At the hearing, witnesses were sequestered, with the exception of the Appellant. The hearing was digitally recorded, with copies provided to the parties.³ For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Based on the thirty-six (36) exhibits entered into evidence, of which fifteen (15) were submitted jointly by the parties, eighteen (18) were exhibits entered by CPS, and three (3) were entered by Ms. Dottin, and the testimony of:

Called by CPS:

- Barbara Allen, Executive Director of Human Resources, CPS ("Ms. Allen")
- Mellissa Honeywood, Food Service Director, CPS ("Ms. Honeywood")
- Anthony Grein, Assistant Food Service Director, CPS ("Mr. Grein")
- Dave Gardner, Base Kitchen Supervisor, CPS ("Mr. Gardner")
- James Maloney, Chief Operating Officer, CPS ("Mr. Maloney")

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

- Ian Lavallee, Head of Kitchen at the Peabody School, CPS (“Mr. Lavallee”)

Called by the Appellant:

- Stacey Dottin, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, including, without limitation, the Munciclass Manual, issued by the state’s Human Resources Division (“HRD”) in 1974; and reasonable inferences from the credible evidence, a preponderance of evidence establishes the following findings of fact:

1. Prior to her termination of employment on March 18, 2016, Ms. Dottin worked for CPS as the Head of Kitchen at KLS. Ms. Dottin served as Head of Kitchen for CPS at various schools for thirteen (13) years prior to her dismissal. She supervised kitchen staff, prepared meals, cleaned the kitchen, and sometimes served meals to the students when short-handed.⁴ (Testimony of Ms. Dottin)
2. KLS is a school for grades Kindergarten to eight (8) with between 320 and 380 students receiving meals daily until approximately January, 2016. Thereafter, the middle school-aged students were moved to another building and the number of students served meals daily dropped to between 180 and 250. (Testimony of Ms. Honeywood)
3. Ms. Dottin’s duties as Head of Kitchen overall involved making sure that the kitchen work gets done. The Head of Kitchen is a Cook, the go-to person in the kitchen, the administration liaison with kitchen employees, ensures that food on the menu is prepared pursuant to US Department of Agriculture guidelines, ensures that part-time employees do whatever is needed so that the kitchen is in compliance with local health ordinances and applicable state standards, evaluates part-time employees’ performance once or twice per year, and maintains

⁴ Prior to becoming a Head of Kitchen, Ms. Dottin worked for CPS as a cafeteria helper. (Testimony of Ms. Dottin and Ms. Allen)

a daily Food Production Record & Temperature Log (“Food Production Log”). (Testimony of Ms. Honeywood)

4. The purposes of the Food Production Log are to ensure that food is being prepared at the proper cooking temperature, documenting the number of meals served as well as food waste and leftovers and to helping to prepare for the next day’s food service. (Testimony of Ms. Honeywood)
5. Food Production Logs are spread sheet forms to be filled in for breakfast and lunch with information such as quantities prepared, total servings prepared, the temperature at which food was cooked and for how long for multiple food lines, the total number of meals served, the total number of unusable portions, the total number of leftovers, no charge meals and employee meals. (Joint Exhibit 11, Testimony of Honeywood)
6. The Head of Kitchen is supposed to report to work one-half hour or so before breakfast is served in order to check that the equipment is ready for use and that the breakfast food is prepared. While the whole kitchen staff is responsible for the food service, the Head of Kitchen is in charge of making sure that it is done as required. A Head of Kitchen is also expected to delegate kitchen work and address any employee conflicts. (Testimony of Ms. Honeywood)
7. School food safety is important because food-borne illness can occur and spread quickly and the children’s immunity is not yet fully developed. (Testimony of Ms. Honeywood)
8. There is no Head of Kitchen title in the Munciclass Manual. However, the Munciclass Manual has a Food Preparation and Service Group, which includes a Cooking Series providing,

This series includes all positions the duties of which are to perform and/or supervise work involved in the planning and supervision of the preparation and cooking of meats, vegetables, salads, and other foods, as well as the supervision of

other kitchen operations including cleaning and other routine manual duties related to food preparation.

The following job titles are authorized for use in the Cooking Series. The title definitions include illustrative duties and are not all inclusive.

Cook

Performs large scale quantity cooking in a school, hospital, or other institution. Plans food preparation and cooking schedules based on menu requirements. Performs or supervises a variety of cooking tasks. Prepares and cooks meats, vegetables, fish, salads, desserts, soups, sauces, and gravies. Using a variety of preparation and cooking methods. May also perform some baking duties and other related duties such as trimming meat. Supervises assigned kitchen personnel in routine food preparation, food service, and cleaning tasks. Supervises and participates in duties of less skilled nature related to cooking. May also keep records and requisition supplies.

Assistant Cook

Assists in duties described for Cook; performs semi-skilled cooking and routine kitchen duties.

Senior Cook

Performs duties described for Cook; supervises a group of cooks; performs other duties such as scheduling and inspecting.

(Administrative Notice: Munciclass Manual)(emphasis in original)

9. Ms. Dottin holds a ServSafe certification. ServSafe is a program that teaches food service employees proper food sanitation standards for safe food handling and food service. This training includes, for example, time and temperature control, preventing cross-contamination, cleaning and sanitizing, and receiving and storing food. (Appointing Authority Exhibit 13, Testimony of Ms. Honeywood)
10. When Ms. Dottin returned to work for CPS in April 2014 following a two (2)-year suspension, she underwent CPS policy and food standard review and training on April 28, 2014. During that training and review, Ms. Dottin was reminded in great detail how to produce and serve meals; how to keep food production records, including notation of food production temperatures and refrigerator and/or freezer temperatures; and how to provide proper sanitation in the kitchen. (Joint Exhibit 12)
11. The CPS Employee Handbook provides, in part,

... The policies in this manual are to be considered as guidelines and not all-inclusive. The Employee Handbook is not a contract. ...
(Appellant Exhibit 2, p. 6)

The Employee Handbook further provides, in part,

Disciplinary Actions for Unacceptable Activities

Generally speaking, we expect each person to act in a mature and responsible way at all times. However, to avoid any possible confusion, some of the more obvious unacceptable activities are noted below. ... If you have any questions concerning any work or safety rule, or any of the unacceptable activities listed, please see your supervisor for an explanation.

We list these standards for the guidance of all employees and supervisors. ...

Violations Which May Result in Dismissal

Occurrences of any of the following violations, because of their seriousness, may result in dismissal **without prior disciplinary action**:

1. Willful violation of any Cambridge Public Schools rule; any deliberate action that is extreme in nature and is obviously detrimental to the School Department's efforts to provide services effectively and efficiently.
2. Negligence or any careless action which endangers the life or safety of another person or student.
3. Willful violation of security or safety rules or failure to observe safety rules or School Department safety practices; failure to wear required safety equipment; tampering with School Department equipment or safety equipment.

(Id., p. 8)(***emphasis*** in original)(***emphasis*** added)

Reasonable Accommodations for Ms. Dottin

12. On April 17, 2014, when Ms. Dottin returned to CPS following her nearly two (2)-year

suspension, Ms. Dottin obtained a note from Geraldine Koppenaal, RNCS, ARPN, stating,

I am Ms. Dottin's Behavioral Health Clinician and I am seeing her for anxiety and stress due to a chronic neck pain condition. She needs a few accommodations at the work site. She cannot lift more than 15 lbs. She may need a few times a day to take a 10-minute break if very stressed. Some days this may not happen at all.

(Appointing Authority Exhibit 17)

13. On April 18, 2014, Ms. Dottin obtained a note from Rashika S. Mathews, M.D., at Harvard

Vanguard Medical Associates, stating,

Stacey Dottin is a patient under my care. Due to her low back pain and neck pain, she should not do any overhead reaching or lifting. Also, she should not be lifting anything greater than 15 lbs.

(Appointing Authority Exhibit 16)

14. Both of these medical notes were submitted to CPS Human Resources. On April 26, 2014, Ms. Allen, CPS Director of Human Resources, sent an email message to Ms. Honeywood, Food Service Director, and Mr. Grein, Assistant Food Service Director, stating that Human Resources had received medical documentation requesting accommodations for Ms. Dottin. Ms. Allen's message stated, in full,

Please be advised that HR has received medical documentation noting the following work restrictions for Stacey Dottin:

- No lifting over 15 lbs.
- No overhead reaching or lifting.
- May on occasion need to take a 10-minute break if stressed.

(Appointing Authority Exhibit 15)⁵

Termination of Ms. Dottin's Employment in 2016

15. On February 1, 2016, Ms. Honeywood was informed by Mr. Grein and a part-time employee at KLS that Ms. Dottin was getting ready to leave at the end of her shift, approximately forty-five minutes after lunch had been served, and that the kitchen was not cleaned to the proper standards. (Testimony of Ms. Honeywood, Mr. Grein and Mr. Gardner)
16. On February 1, 2016, in addition to Ms. Dottin, at various times during the day, a part-time employee, cashiers and a food server were working in the kitchen at KLS. (Testimony of Ms. Honeywood)

⁵ Ms. Dottin sustained a broken wrist at work in 2015 and took medical leave for a few months. There is nothing in the record indicating that Ms. Dottin requested a reasonable accommodation in this regard when she returned to work thereafter.

17. After viewing the unclean conditions in the KLS kitchen, Ms. Honeywood confronted Ms. Dottin about the state of the kitchen. Following this confrontation, it took Ms. Honeywood, Ms. Dottin, and three (3) other administrators between thirty (30) and forty (40) minutes to clean the kitchen in compliance with safety health and safety standards. (Testimony of Ms. Honeywood and Mr. Grein)⁶
18. The offices of Ms. Honeywood, Mr. Grein and Mr. Gardner are next to the KLS kitchen and they see the kitchen daily. Mr. Grein and Mr. Gardner had previously told Ms. Dottin on multiple occasions that the kitchen was not cleaned as needed and food was incorrectly left out in the kitchen. (Testimony of Mr. Grein and Mr. Gardner)
19. Ms. Dottin did not report to work on February 2, 2016. The reason she provided for failing to work on February 2 was that she had to stay late on February 1, 2016 to bring the kitchen into conformance with cleanliness standards. (Joint Exhibit 9) Thereafter, Ms. Dottin obtained a note from Dr. Emily Mukherji stating that Ms. Dottin “was seen by me today 2/2/16 for a medical condition. She will need to be out of work today ...”, providing no further details.⁷ (Appellant’s Exhibit 3). Ms. Dottin also did not work on February 3, 2016 but the reason was that she had jury duty that day. (Joint Exhibit 9)
20. On February 3, 2016, several pans of food were discovered in the blast chiller in the kitchen at KLS. The foods included 33 breakfast burritos, 40 servings of meat sauce, and 60 servings of three cheese pasta bake. The cost of this food was approximately \$130 and the potential revenue to the sale of the leftover food could have totaled almost \$375. (Joint Exhibit 9⁸)

⁶ Ms. Dottin alleged that she planned to leave at that time because she had a doctor’s appointment. There is no evidence that Ms. Dottin informed her superiors of such an appointment at that time or previously.

⁷ There is no indication when and to whom Ms. Dottin provided this medical note at CPS.

⁸ The photographs in Appointing Authority Exhibit 9 were taken by Mr. Grein on or about February 3, 2016. (Testimony of Ms. Honeywood)

21. None of the food in the blast chiller was labeled or dated and thus was thrown in the trash as it was unclear whether it had been prepared at a date beyond which it was safe to serve it to children. (Joint Exhibit 9, Testimony of Ms. Honeywood)
22. Upon seeing the food in the blast chiller on February 3, 2016, Ms. Honeywood reviewed Ms. Dottin's food documentation forms for school days between January 4 and 29, 2016 and found that Ms. Dottin did not, on various days, provide documentation, such as the temperatures at which the food was prepared, certain food quantities, the number of meals served, the amount of leftovers, and the unusable food portions. Specifically, on the nineteen (19) school days that meals were served at KLS from January 4 through 29, 2016, Ms. Dottin completed the Food Production Logs on only four school (4) days; on the remaining school days, Ms. Dottin provided only some of the required information. (Joint Exhibit 11; Testimony of Honeywood)
23. By letter dated February 4, 2016 from Mr. Maloney, Ms. Dottin was assigned to her home, with pay, pending the outcome of an investigation into her actions. The February 4, 2016 letter read, in full,
- In follow up to the conversation you had with Anthony Grein this morning regarding your being assigned to home, please be advised that this is to confirm that you are being assigned to home, with pay, effective Thursday, February 4, 2016 pending the outcome of an investigation. The reason for this investigation is your alleged failure to perform your duties in your position, including not following proper sanitation procedures and food storage protocols.
- During the period of your administrative assignment to home, you should not report to work at the [KLS] or any other school building. Additionally, you are not to enter any facility of [CPS] during the period of your administrative reassignment to home unless you are appearing to attend a previously scheduled conference with school administration.
- (Joint Exhibit 7)

24. At the request of Mr. Maloney, the CPS Chief Operating Officer, Ms. Honeywood conducted the investigation referenced in Mr. Maloney's February 4, 2016 letter to Ms. Dottin. Ms. Honeywood did not prepare a written report of her investigation. (Testimony of Mr. Maloney)

25. In a letter dated March 4, 2016, Superintendent Young informed Ms. Dottin that a disciplinary hearing was going to be held regarding her recent conduct. The letter read, in part,

...Pursuant to the provisions of M.G.L. c.31 §41, this letter is to notify [Ms. Dottin] that based upon information that has come to my attention[,] disciplinary action is being contemplated against you in excess of five (5) days of suspension, up to [and] including termination. A disciplinary hearing is scheduled for Tuesday, March 15, 2016 at 9:00 a.m. at 159 Thorndike Street, Office of the Chief Operating Officer to discuss the following matters:

- Your alleged failure on December 23, 2015 and February 1, 2016 to comply with sanitation standards.
- Your alleged failure to complete production record documentation throughout the month of January 2016.
- Your alleged failure to minimize food waste on numerous days throughout the month of January.

The hearing will be conducted by [Mr. Maloney], who is designated to serve as the hearing officer in this matter.

At the hearing[,] you may be represented by counsel or your representative and will be given an opportunity to call and cross-examine witnesses and to produce other relevant evidence. The formal rules of evidence will not apply to this proceeding.

(Joint Exhibit 8)

26. Prior to the CPS hearing, Ms. Dottin met with union representatives Mr. Lavallee and Ms. Walsh, and union attorney Hall. At the meeting, Ms. Dottin was informed that if CPS terminated her employment as a result of the hearing, she

would need to find her own attorney to pursue an appeal. (Testimony of Mr. Lavallee)

27. Present at the March 15, 2016 hearing were Ms. Dottin; union counsel, James Hall; union representatives Ian Lavallee, Peabody School Head of Kitchen, and Michelle Walsh; Maureen McFarlane, legal counsel for CPS; and Melissa Honeywood, CPS Director of Food Services. (Joint Exhibit 9) The CPS hearing was not recorded and witnesses were not sworn. Ms. Dottin testified at the March 15, 2016 hearing. (Testimony of Mr. Maloney)
28. On March 17, 2016, Superintendent Young received a memorandum from Mr. Maloney in which Mr. Maloney presented his findings from the March 15, 2016 disciplinary hearing. Mr. Maloney's findings read, in part,

...I find that on February 1, 2016, Ms. Dottin was planning to leave work towards the end of her shift time without ensuring that the kitchen was clean, which is her responsibility as a Head of Kitchen. More specifically, I find that Ms. Dottin admitted that she was intending to leave one part-time employee to clean the entire kitchen until she was stopped from doing so by Ms. Honeywood who voiced her concerns about Ms. Dottin's intent to leave work with the kitchen in complete disarray. I further find that Ms. Dottin's explanation that she had told the non-supervisory part-time food service employee that she had to leave and that this employee had told her that it was all right for her to leave without helping to clean the kitchen to be an unacceptable explanation for why Ms. Dottin failed to fulfill her responsibility as a Head of Kitchen to ensure that the standards of cleanliness are maintained at all times and that the kitchen was clean before she left work. I also find her subsidiary explanation that [Mr. Grein] had on another occasion told her she could not work overtime, also to be an unacceptable explanation for her not fulfilling her responsibility as a Head of Kitchen to ensure that the standards of cleanliness are maintained at all times. I find Ms. Honeywood's testimony that in the event of an unforeseen circumstance, Heads of Kitchen are able to contact either her or Mr. Grein to seek either additional assistance or overtime to ensure that all required responsibilities are completed and that Ms. Dottin, despite having direct access to both the Director and Assistant Director of Food Services[,] as their offices are located in the [KLS] immediately adjacent to the kitchen areas, never sought to ask for their support and assistance on this day to be credible. I further find credible Ms. Honeywood's testimony that there was sufficient staff within the [KLS] kitchen to keep the kitchen clean during the course of the day if Ms. Dottin, in her capacity as Head of Kitchen, fulfilled her responsibilities to oversee that kitchen staff were working

to maintain the kitchen in accordance with cleanliness standards throughout the course of their shifts along with cleaning up the kitchen as required at the end of the day after all meals had been prepared and served. I further find that among the issues of concern with respect to the kitchen on that date were the following: (i) frozen corn and diced red peppers were left out on a prep table, (ii) the steamer had not been cleaned and held a pan full of soiled water, (iii) the tilt-skillet used to prepare the quesadillas had not been cleaned, (iv) a stack of unwrapped tortillas sat openly on a prep table, (v) the serving line area had not been cleaned, (vi) the steam wells clearly had not been drained in weeks as evidenced by the spaghetti particles found floating in the murky water (spaghetti having been served two weeks prior to this date), (vii) the oven and warmer were left on, (viii) none of the prep tables had been washed or sanitized, (ix) the stack of serving pans had not been cleaned, (x) the floor had not been swept or mopped, and (xi) the trash had not been taken out. I further find that Ms. Dottin did not dispute that these issues were present in the kitchen on February 1, 2016, and that she also did not dispute that the fact that these issues were a violation of cleanliness standards. I further find Ms. Dottin's explanations that (a) she cannot remove items from hot water and/or put her hands into areas where there may be hot water due to neuropathy in her hands, and (b) that it is another staff member's responsibility to mop the kitchen floor due to her having problems with her back, is not credible explanation as to why she failed to fulfill her supervisory responsibilities as Head of Kitchen. There was no evidence presented that Ms. Dottin has ever requested any reasonable accommodations for these issues.⁹ However, even if Ms. Dottin is not able to perform specific cleaning tasks herself due to physical limitations, she is responsible, as a Head of Kitchen, of overseeing that these tasks not only are completed but also are completed in a manner consistent with the required cleanliness standards for kitchen maintenance. Ms. Dottin's claim that the broom that kitchen has [is] too small to sweep the floor and that the kitchen staff have asked the custodian for a larger broom but not received one also lacks credibility. Again, if there was a concern with any kitchen equipment or items needed for maintaining cleanliness standards in the kitchen, Ms. Dottin should have brought this to the attention of either Ms. Honeywood and/or Mr. Grein, and there is no evidence of that having ever occurred.

This was not the first time that kitchen cleanliness had been discussed with Ms. Dottin. The first discussion having only occurred one month prior when the issue of kitchen cleanliness had been discussed with both Ms. Dottin and [Ms. E]. Moreover, as Head of Kitchen, Ms. Dottin holds a ServSafe certification. Thus, she is well aware of the fact that the state requires certain procedures, including, but not limited to, maintaining the cleanliness of the kitchen, in order to ensure food safety. I find that it took almost forty minutes to clean the kitchen with additional assistance being provided by Ms. Honeywood, [Mr. Grein], and [Mr. Gardner]. Ms. Dottin's blatant failure to fulfill her responsibilities as Head of

⁹ I understand this sentence to mean that Ms. Dottin had not requested a reasonable accommodation for her hands since Ms. Dottin had requested, and CPS had provided reasonable accommodations for her neck, back and related anxiety pursuant to medical notes.

Kitchen is unconscionable. Her failure to ensure adherences to cleanliness standards within the [KLS] kitchen potentially jeopardizes the health and safety of [CPS] students and staff who consume food that is prepared in the kitchen of that school.

With respect to the allegation that Ms. Dottin failed to minimize food waste on numerous days throughout the month of January 2016, I find that Ms. Dottin did not report to work on February 2, 2016, citing the fact that she had to stay and help bring the kitchen into conformance with cleanliness standards on February 1, 2016 as the reason for her absence. I also find that Ms. Dottin was not in work on February 3, 2016 due to the fact that she had jury duty. I find that on February 3, 2016, several pans of food were discovered within the blast chiller at the [KLS] kitchen, including 33 breakfast burritos, 40 servings of meat sauce and 60 servings of three cheese pasta bake. The last time these food items had been served was over a week prior to their discovery in the blast chiller. I find Ms. Honeywood's testimony that these items easily could have been frozen or served the [day following] their original date of being served as a meal alternate to prevent food waste to be credible. I find Ms. Dottin's explanation that it was the responsibility of [Ms. E] to take care of these items not to be credible. [Ms. E] had been reassigned from the [KLS] kitchen on or about January 5, 2016 and was not working in the [KLS] kitchen during the last two weeks of January (which is the time frame when the breakfast burritos, meat sauce, and three cheese pasta bake were last served). To the extent that Ms. Dottin was suggesting that [Ms. E], who was covering for Ms. Dottin's absence on February 3, 2016, should have taken care of these items on February 3, 2016, is a suggestion that I also find not to be credible. Long before February 3, 2016, the food should have been removed from the blast chiller and either properly labeled and re-frozen or re-served the day after the original date of service. Leaving food with no label and date of production is poor practice and by not cooling, re-freezing or re-serving there is a loss of revenue on top of lost food cost. The blast chiller is not meant to be a long-term storage unit and the use of the blast chiller in this way is inappropriate and presents a potential health hazard to students if there had been any improper attempt to re-use this food at a later date. I also find that the quality of preparation of the breakfast burritos was not up to the standard of Food Service as the burritos were burned; a fact which Ms. Dottin admitted during the course of the disciplinary hearing...I find that Ms. Dottin's failure to properly label and store food is a continued failure of her ability to fulfill her responsibilities as a Head of Kitchen. These requirements are in place in order to ensure the health and safety of students who are consuming food prepared within CPS. Ms. Dottin's failure to adhere to these standards and to ensure that the kitchen staff she supervises also adhere to these standards as well as her assertions, which I did not find credible, during the disciplinary hearing that [it] was permissible to use the blast chiller for long term storage, all indicate her continual disregard for food safety standards.

With respect to the allegation that Ms. Dottin failed to complete production record documentation throughout the month of January 2016, I find that the production

records for the month of January 2016 had not been thoroughly completed for the month of January 2016. I find Ms. Honeywood's testimony that it is the responsibility of the Head of Kitchen to ensure that production records must be completed every day to be credible. Previously, on January 5, 2016, Ms. Dottin had been verbally warned about the need to thoroughly complete production records. Production records are required by the state as a way of ensuring the proper preparation, storage and usage of food and also are used by the Food Service Office as a tool to document leftover quantities of food in an effort to reduce food waste. It is the responsibility of the Head of Kitchen to reduce food waste and maintain the required documentation. I further find that the food that was found in the blast chiller translated into approximately [125] servings of food which had an approximate cost of [\$130] and that the potential revenue from the sale of this food...was approximately [\$375]. I further find that all of the food that was found in the blast chiller of February 3, 2016 had to be thrown out as the improper storage and labeling of the food raised serious questions as to whether it would be safe to serve to children. Again, Ms. Dottin's failure to fulfill her responsibilities as a Head of Kitchen by taking the necessary steps to ensure that all required food safety standards are followed shows her blatant disregard not only for the well-established need for food safety standards but also for the health of the [CPS] children who are consuming meals that are prepared in the kitchen of the [KLS]. I do not find Ms. Dottin's assertion that [Ms. E] was responsible for completion of the production record documentation during the month of January 2016 and [Ms. E] was not assigned to the KLS kitchen for the time period in January 2016 when the production records were not completed. Ms. Dottin was the only head of kitchen in the [KLS] during this time period.

(Joint Exhibit 9)

29. By letter dated March 18, 2016, Superintendent Young informed Ms. Dottin that her employment was terminated. The letter stated, in full,

Please be advised that based on the evidence presented at the hearing held on March 15, 2016 and consistent with the findings of the hearing officer, which I fully accept and hereby include and incorporate as part of this notice, I am terminating your employment as a Head of Kitchen with [CPS] effective immediately. A copy of the findings of [Mr. Maloney], who served as the hearing officer, is enclosed with this letter.

On February 1, 2016, you failed to comply with sanitation standards with respect to the cleanliness and maintenance of the [KLS] kitchen, you also failed to minimize food waste on numerous days throughout the month of January 2016, and failed to complete production record documentation throughout the month of January 2016. These requirements are part of the responsibilities of a Head of Kitchen and are requirements that are in place in order to ensure the health and safety of students who are consuming food prepared within the [CPS] and to

minimize food waste within the schools. You also have been disciplined on a number of occasions during the course of your employment in [CPS] and have a poor disciplinary history [while employed at CPS]. Such conduct, as detailed in the hearing officer's findings, is unbecoming of an employee of [CPS] and just cause exists warranting your termination as an employee of [CPS].

(Joint Exhibit 10)

30. Following her termination, Ms. Dottin filed this appeal with the Commission on April 4, 2016. (Administrative Notice) Ms. Dottin did not file a grievance to contest her termination. (Testimony of Ms. Dottin, Mr. Maloney and Mr. Lavallee)

Prior Discipline

31. On or about November 10, 2009, Ms. Dottin received a memorandum from Mr. Jack Mingle, then-Food Service Director at CPS. The memorandum followed a conversation they had that took place on November 9, 2009 and served as a written warning regarding Ms. Dottin's poor attendance record at that time. (Joint Exhibit 1)
32. On or about January 21, 2010, Ms. Dottin was informed in writing that, following a hearing that took place on January 12, 2010, she was to be suspended for ten (10) days without pay. The underlying cause of the suspension was an incident that occurred between Ms. Dottin and a student at the Morse School, where Ms. Dottin was Head of Kitchen at the time. During the incident, Ms. Dottin took the student's hat, put it in a trash bin and poured cereal on it. The letter stated, in part, that "[a]ny further substantiated instances of inappropriate and unprofessional conduct may result in further disciplinary action, up to and including termination." After serving the suspension, Ms. Dottin was reassigned from the Morse School to serve as Head of Kitchen at the Fletcher Maynard Academy (FMA). (Joint Exhibit 2)

33. On or about January 9, 2012, Ms. Dottin received written notice that, following a hearing that took place on or about December 21, 2011, she would be suspended for two (2) days without pay for her unfair and harsh treatment of her coworkers. The letter also stated, “[a]ny further substantiated instances of inappropriate and unprofessional conduct may result in further disciplinary action, up to and including termination.” (Appointing Authority Exhibit 3)
34. On May 18, 2012, Ms. Dottin was terminated from her position as Head of Kitchen at FMA after an incident in which she fell and school administrators had reason to believe that she may have been under the influence of controlled substances/alcohol while at work. Employees who helped Ms. Dottin immediately after she fell recalled that she was argumentative, had trouble standing on her own, and had inconsistent speech. She refused to take a drug/alcohol test after two administrators who were helping her suspected that she may be under the influence of drugs or alcohol. On May 2, 2012, a hearing was held at which Mr. Maloney, CPS Chief Operating Officer, served as the hearing officer. After the hearing, Mr. Maloney recommended that Ms. Dottin be terminated. His findings were accepted by Superintendent Jeffrey M. Young (“Superintendent Young”). (Appointing Authority Exhibit 5)
35. Ms. Dottin appealed the May 18, 2012 termination decision to the Commission, which modified the discipline from termination to a suspension that lasted from May 18, 2012 to April 17, 2014. (Dottin v. Cambridge Public Schools, 27 MCSR 194 (2014))¹⁰
36. Upon Ms. Dottin’s return to work after the two (2)-year suspension, CPS sent her a letter dated April 15, 2014 stating, in part,

¹⁰ In the 2012 appeal, Ms. Dottin averred that the Commission’s decision should be tempered by her allegations that the Respondent failed she had been harassed at work. Ms. Dottin reiterates her allegation in the instant appeal. This issue was addressed in the Commission’s 2014 decision and need not be addressed further here.

... If you engage in any future misconduct, you will be subject to dismissal for any of the following reasons:

- The school district determines there is reasonable suspicion to request a drug and alcohol test and you refused to take the test.
- The school district determines there is reasonable suspicion to request a drug and alcohol test and you test positive.
- You engage in any misconduct warranting a suspension of any length.

...

(Appointing Authority Exhibit 6)

37. On October 28, 2014, Ms. Dottin was suspended three (3) days for repeated tardiness and absenteeism without approval from her supervisor. (Joint Exhibit 2)

38. On March 17, 2015, Ms. Dottin was suspended for four (4) days for failing to notify her supervisor that she would not be at work on two (2) different days until an hour after her shift began. (Joint Exhibit 4)

39. On January 5, 2016, CPS issued a verbal warning to Ms. Dottin for conduct on or about December 23, 2015. Specifically, on December 23, 2015 students and staff at the KLS went on winter break. On or about December 23, 2015, Ms. Honeywood entered the school kitchen and discovered it had not been properly cleaned by kitchen staff prior to going on the winter break. Ms. Honeywood's office is located adjacent to the kitchen at KLS and she sometimes enters the kitchen when she is at work and during the winter break to make sure it is in order. (Joint Exhibit 5; Testimony of Ms. Honeywood) The conditions found by Ms. Honeywood were documented in photographs.¹¹ (Joint Exhibit 6)

40. Ms. Dottin shared Head of Kitchen duties with Ms. E until on or prior to the end of the first week of January 2016, when Ms. E transferred to another CPS school where a Head of Kitchen was needed. (Testimony of Ms. Honeywood)

¹¹ Ms. Dottin avers that churches in the area use the KLS kitchen on school breaks, suggesting that church members were the cause of the condition that Ms. Honeywood found in the kitchen. However, since Ms. Honeywood found the kitchen in poor condition at or near the beginning of the school break, it is unlikely that the church members were at fault, especially since some of the conditions Ms. Honeywood found appear to have occurred prior to December 23, 2015.

41. On January 5, 2016, Ms. Honeywood spoke with Ms. E and Ms. Dottin regarding the state of the kitchen as she found it during the winter break. Ms. Honeywood issued a verbal reprimand to both Ms. Dottin and Ms. E. The verbal reprimand to Ms. Dottin, which was memorialized in writing, was not signed by the parties even though the writing provided lines on which Ms. Dottin, Mr. Grein and Ms. Honeywood were to sign it.¹² (Joint Exhibit 5)

42. In this verbal reprimand, reduced to writing, Ms. Honeywood reported finding, in part,

- Nearly 2 dozen bananas were left out on a table, knowing that it would be 11 days before staff/students return.
- The steam kettle [was] not cleaned with visible stains and debris[.]
- Brown water was found sitting in the tilt skillet.
- Food debris was found in every sink in the dish room attracting pests, as evidenced by the droppings, and the dead mouse that had to be removed over the break.
- The production records had not been kept completely filled out for several days.
- There was mustard and ketchup clearly spilled on the floor of the walk-in refrigerator.
- A moldy container of applesauce from October was also discovered in the walk-in.
- Draws [sic] meant to hold clean serving utensils were sticky and full of food debris.
- The can opener had multiple food stains and debris on the blade which would cause cross[-]contamination.

It is the responsibility of the Heads of Kitchen to ensure that the standards of cleanliness are maintained at all times. The condition of kitchen (as photo documented on December 31st) indicates prolonged negligence towards cleaning maintenance. Working in an unsanitary kitchen compromises the integrity of our health permit, and puts the health of the students we serve at risk.

Future disregard for the established cleanliness standards will be met with disciplinary action including suspension or termination. ...

(Joint Exhibit 5)

DISCUSSION

Legal Standards

G.L. c. 31, § 1 provides that “basic merit principles”,

¹² I asked CPS to provide a copy of the signed version but CPS was unable to do so.

shall mean (a) recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) **retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;** (e) assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

(Id.)(emphasis added)

An employee aggrieved by a disciplinary decision by an appointing authority may appeal to the Commission under G.L. c. 31, § 43, which provides,

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

(Id.)

G.L. c. 31, § 42, regarding alleged procedural shortcomings involving disciplinary matters, provides in pertinent part,

Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such 5 complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission

finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

(Id.)

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, *rev. den.*, 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct.486, 488, *rev. den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

For the Commission to uphold an appointing authority's decision, it must find, based on the facts, that "there was reasonable justification for the actions taken by the appointing authority in the circumstances found by the Commission to have existed when the appointing authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1984); *see* Commissioners of Civil Service v. Municipal Court of Boston, 369 Mass. 84, 86 (1975); Leominster v. Stratton, 58

Mass.App.Ct. 726, 727-728 (2003); *see* McCarthy v. Brookline School Department, 21 MCSR 13, 16 (2008).

As indicated in G.L. c. 31, § 1, basic merit principles provide that in matters of discipline that appointing authorities are to retain employees based on the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected. It has been established that appointing authorities are to follow progressive discipline in support of the articulated basic merit principles pertaining to discipline. *See, e.g.,* Oliveira v. Fall River School Committee, 23 MCSR 644 (2010); Pano v. Boston Housing Authority, 22 MCSR 222 (2009); and Floyd v. Department of Correction, 26 MCSR 474 (2013).

As noted above, G.L. c. 31, § 43 provides for modification of discipline issued by an appointing authority to a civil service employee. The Commission has been delegated “considerable discretion” albeit “not without bounds” to modify a penalty imposed by the appointing authority, as long as the Commission provides a rational explanation for how it has arrived at its decision to do so. *See, e.g.,* Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996) and cases cited. Specifically,

The power to modify penalties permits the furtherance of uniformity and equitable treatment of similarly situated individuals. It must be used to further and not to frustrate, the purpose of civil service legislation, i.e., ‘to protect efficient public employees from partisan political control’ ... and ‘the removal of those who have proved to be incompetent or unworthy to continue in the public service.’
(Id.)

The authority accorded to the Commission to modify penalties “must not be confused with the power to impose penalties ab initio, which a power is accorded to the appointing authority.” Falmouth v. Civil Service Comm’n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996).

Thus, when it comes to review of the penalty, unless the Commission's findings of fact differ materially and significantly from those of the appointing authority or interpret the relevant law in a substantially different way, the Commission is not free to "substitute its judgment" and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited (minor, immaterial differences in facts found by Commission and appointing authority did not justify modification). *See, e.g., Falmouth v. Civil Service Commission*, 61, Mass.App.Ct. 796 (2004)(suspension improperly modified); Commissioner of MDC v. Civil Service Comm'n, 13 Mass.App.Ct. 20 (1982)(discharge improperly modified).

Analysis

CPS has established by a preponderance of the evidence that it had just cause to discipline Ms. Dottin as Head of Kitchen at KLS for her failure to comply with sanitation standards February 1, 2016,¹³ for her failure to complete production record documentation the last three weeks of January 2016, and for her failure to minimize food waste on multiple days throughout January 2016.

Failure to Comply with Sanitation Standards 2/1/16

Ms. Dottin had been a Head of Kitchen at various CPS schools for over thirteen (13) years at the time that she was terminated in 2016. She was well aware of the standards for ensuring that the food CPS produces and serves to its students and staff is made in a sanitary environment and is safe to eat. By not following performing as required, Ms. Dottin exposed students to the risk of illness from eating contaminated or spoiled food. (Testimony of Ms.

¹³ CPS terminated Ms. Dottin's employment based on her conduct in December 2015, for which she was given a verbal reprimand on January 5, 2016 that was reduced to writing. An appointing authority may not discipline a civil service employee twice for the same conduct. Goulet v. Department of Correction, 7 MCSR 297 (1994). However, I consider the January 5, 2015 reprimand as part of Ms. Dottin's history of discipline at CPS.

Honeywood Joint Exhibit 9, Appointing Authority Exhibit 9) Furthermore, Ms. Dottin should have been well aware of the applicable standards in the kitchen since she was ServSafe certified and had undergone training and policy review when she returned to work in April 2014 from her two (2)-year suspension. (Appointing Authority Exhibit 13; Joint Exhibit 12)

Ms. Dottin admitted during the CPS disciplinary hearing that her plan was to leave a part-time employee in-charge of cleaning on February 1, 2016. (Joint Exhibit 9) This shows poor leadership skills and lack of responsibility with regard to cleanliness and sanitation. Based on the fact that a part-time employee informed CPS Food Service administrators (Testimony of Mr. Gardner, Base Kitchen Supervisor) that Ms. Dottin was leaving for the day and that the kitchen was not clean, it's not even clear that Ms. Dottin assigned the employee to clean the kitchen. Regardless, Ms. Dottin was still responsible for making sure that the kitchen was clean before leaving.

During her hearing testimony, Ms. Dottin repeatedly attempted to deflect blame on others for her failures, including staff under her supervision. She refused to take responsibility for her lack of leadership as Head of Kitchen and instead tried to focus on what others were not doing. As the Head of Kitchen, Ms. Dottin had the responsibility to make sure that all those under her supervision were doing their jobs and were also following the proper standards.

Along with arguing that others were responsible for cleaning the kitchen on February, 1, 2016, Ms. Dottin also stated that she was physically limited in her ability to clean. Ms. Dottin stated that she has had two back surgeries over the past ten (10) years, including spinal cord fusion surgery.¹⁴ (Testimony of Ms. Dottin) She also fractured her wrist in 2015 while working at KLS while taking out the trash. Ms. Dottin was on medical leave for four months and received

¹⁴ At the Commission hearing, I asked the Appellant to produce documentation of the surgeries but the documents were not produced.

worker's compensation for the injury. (Testimony of Ms. Dottin) She suffers from chronic neck pain and has submitted medical documentation stating that she cannot lift more than 15 lbs., that she cannot lift objects over her head, and that she may occasionally have to take 10-minute breaks. (Appointing Authority Exhibits 15-17) While testifying at the Commission hearing, Ms. Dottin also mentioned that she has neuropathy in her hands and that she cannot use the mop in the kitchen because it is too heavy. These last two issues, the neuropathy and being unable to use the mop, were not mentioned in the doctor's notes given to CPS. Those notes only covered lifting above her head, lifting more than fifteen (15) pounds, and potential break periods. There is no indication that Ms. Dottin provided a medical note to request a reasonable accommodation.

Ms. Dottin stated that there is actually very little that she can do when it comes to cleaning because she cannot lift the pans and cannot use the mop. She has been resourceful in the past and recruited either Mr. Gardner or Mr. Grein to help her move heavy objects when needed but she asserted that if they are unavailable she has very limited options. (Testimony of Ms. Dottin) However, much of the responsibilities Ms. Dottin failed to fulfill did not involve lifting items above her head and items that weigh more than fifteen (15) pounds. For example, completing food production records, labelling and dating food stored in refrigerators so that staff knows whether it can re-use leftovers, cleaning kitchen surfaces, removing food from the blast chiller to the refrigerator, and cleaning and putting away many kitchen tools do not require lifting over your head or lifting more than fifteen (15) pounds. Therefore, Ms. Dottin's allegations that her physical condition precludes her from performing such tasks are unfounded. Moreover, Ms. Dottin is able, and is expected as Head of Kitchen, to delegate various assignments. Moreover, by February 1, 2016 Ms. Dottin had been the sole Head of Kitchen at KLS for weeks after Ms. E had transferred to another school; within that time, surely Ms. Dottin could have worked with the

administrators to have in place a plan to ensure that she had the resources to accomplish her assigned tasks. Instead, she left an employee with the kitchen in unsatisfactory condition. Further, kitchen employees need not wait until the end of the day to begin their cleaning duties.

Failure to Complete Production Record Documentation in January 2016

Food production records allow kitchens to track inventory and ensure that the food produced in the CPS kitchen is handled as required. (Testimony of Ms. Honeywood) By keeping incomplete food production records, the administration is unable to know how and when certain foods were prepared, how much was sold, how much was leftover, and whether leftover portions can be resold. (Testimony of Ms. Honeywood) In addition, the foods found in the blast chiller on February 3, 2016 could have been resold the day after they were produced. However, since they were not properly labelled or recorded, those leftovers had to be thrown out since the school did not know whether the food was still good to serve. (Testimony of Ms. Honeywood; Joint Exhibit 9) According to kitchen records, the meat sauce found in the blast chiller on February 3, 2016 was served on January 21, 2016; the three cheese pasta bake was first on January 25, 2016; and the breakfast burritos were served on January 28, 2016. The foods were scheduled to be served only on those dates. Since these foods were produced multiple days before February 3, 2016 and the blast chiller is not the proper place to store these foods, CPS made the decision not to risk serving food that was not safe to serve. Not only was this a waste of CPS food, it also cost CPS about \$375 in sales, which would have turned a profit of about \$245. Further, the foods discovered in the blast chiller on February 3, 2016 were actually produced weeks before they were discovered in the chiller. (Testimony of Ms. Honeywood; Joint Exhibits 9 and 11)

The information required to complete the Food Production Logs is straightforward. There is a sheet provided for each day with the foods being served already printed on the sheet. As

Head of Kitchen, Ms. Dottin is required to note how many servings are prepared, the temperatures of the food being served, the total number of meals actually served, the total number of portions actually served, the number of unusable portions, and the number of leftovers. (Joint Exhibit 11) These are numbers that should be filled in by Ms. Dottin as she prepared and served breakfast and lunch each day. However, Ms. Dottin completed the Food Log forms on only four (4) school days between January 4 and January 29, 2016. These Logs are necessary for important health, planning and financial reasons. There is no excuse for Ms. Dottin's failure to complete the Logs on a daily basis.

Ms. Dottin had also been warned at the beginning of January 2016 of the importance of filling out the production records. In the verbal reprimand she received on January 5, 2016, which was reduced to writing, it specifically states, "The production records had not been completely filled out for several days." (Joint Exhibit 5) Ms. Dottin knew what her duties were and had been reminded about them at least once in the previous month yet she still did not perform her Head of Kitchen duties in this regard. A preponderance of the evidence establishes that Ms. Dottin failed to complete food production documentation for January is therefore justified by a preponderance of the evidence.

Failure to Minimize Food Waste on Multiple Days in January 2016

All of the food discovered in the blast chiller on February 3, 2016 was discarded because it was unknown whether the food was safe for consumption since Ms. Dottin had failed to have the food labeled and stored as required. The blast chiller is not the proper place for long-term food storage. (Testimony of Ms. Honeywood) Of the food discovered on February 3, 2016 in the blast chiller, there were 33 breakfast burritos, 40 servings of meat sauce, and 60 servings of three cheese pasta bake, which totaled 133 servings of food, with the food itself costing CPS

\$130 and potential sales of \$375. (Testimony of Ms. Honeywood and Joint Exhibit 9) One of Ms. Dottin's duties as Head of Kitchen is to reduce food waste (Joint Exhibit 9), which she clearly did not do. Production records allow administrators to track when food is originally served and how much is left over. As Mr. Maloney noted in his disciplinary hearing report,

Again, Ms. Dottin's failure to fulfill her responsibilities as a Head of Kitchen by taking the necessary steps to ensure that all required food safety standards are followed shows her blatant disregard not only for the well[-]established need for food safety standards but also for the health of the [CPS] children who are consuming meals that are prepared in the kitchen of [KLS].

(Joint Exhibit 9)

Based on the events found here to have occurred in January and on February 1, 2016, I find that Ms. Dottin's conduct relative to those events constitutes substantial misconduct which adversely affects the public interest by impairing the efficiency of public service. Upon return from her two-year suspension, Ms. Dottin underwent retraining and was, therefore, reminded of the standards of food preparation, cleaning and storage. (Joint Exhibit 12) There is no valid reason for her to disregard the procedures that have been put in place to provide for the safe and sanitary production and storage of food in CPS. While Ms. Dottin had some physical limitations, CPS provided her reasonable accommodations in response to the medical notes she provided. However, it was also her job to supervise others to make sure that the work was done whether or not she could not do it. Ms. Dottin failed to perform many of the functions of her job, despite warnings. In so doing, Ms. Dottin undermined the school's ability to safely and effectively deliver food to the children at the KLS, which adversely affects the public interest.

Modification of Discipline

As noted above, when it comes to review of the penalty issued by the appointing authority, unless the Commission's findings of fact differ materially and significantly from those

of the appointing authority or interpret the relevant law in a substantially different way, the Commission is not free to “substitute its judgment” and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. Minor, immaterial differences in facts found by Commission and appointing authority do not justify modification. The findings here do not differ materially and significantly from those found by CPS. Ms. Dottin received multiple warnings for failing to perform her duties and incurred many prior disciplinary actions. Even after she was previously terminated but returned to CPS by a previous Commission decision modifying her termination to a two (2)-year suspension, she continued to incur disciplinary action. Although each discipline issued to Ms. Dottin by the Respondent did not necessarily exceed the type and duration of discipline issued previously so as to qualify as progressive discipline, Ms. Dottin incurred a number of disciplinary actions, reminding her of her responsibilities as Head of Kitchen. When, as here, an appellant receives multiple disciplinary actions and the appellant’s performance does not improve, termination of employment is appropriate. Further, I find no bias or other inappropriate motive warranting modification of the CPS decision to terminate Ms. Dottin’s employment.

Appellant’s Procedural Claim

Along with her substantive appeal under G.L. c. 31, § 43, Ms. Dottin appealed the appointing authority’s action under G.L. c. 31, § 42 alleging that the appointing authority did not follow the procedural requirements in disciplining her. Specifically, Ms. Dottin avers that the February 4, 2016 letter it sent her assigning her to home with pay was a suspension and, since the letter did not refer to, and provide a copy of section 41 through 44 as required for a suspension, she should be returned to her employment without loss of benefits. It is not disputed that Ms. Dottin was paid when she was assigned to home. G.L. c. 31, § 41 defines “suspension” as “a temporary,

involuntary separation of a person from his civil service employment by the appointing authority.” *Id.* The remedies available under G.L. c. 31, § 43 suggest that an appeal under section 42 must challenge a civil service employee’s actual separation from his position in order to seek available relief. *See Burgo v. City of Taunton*, 22 MCSR 618 (2009). In fact, the Commission has determined that it has no jurisdiction when a civil service employee is assigned to paid administrative leave pending an appointing authority’s investigation. (*Barnes v. Town of Webster*, 18 MCSR 372 (2005)). Since CPS placed Ms. Dottin on paid administrative leave pending its investigation, it was not required to provide her with notice pursuant to section 42. Therefore, Ms. Dottin’s section 42 appeal fails. *See Zeiroff v. Department of Correction*, 27 MSCR 262 (2014)(citations of cases defining reassignments not considered suspensions).

Appellant’s Further Claims

Ms. Dottin asserts additional claims which are either irrelevant or inapposite. She asserts that she is entitled to a “name-clearing” hearing when such hearings are for provisional employees, unlike Ms. Dottin, and she has been provided both an appointing authority hearing and a hearing at the Commission as a tenured civil service employee. *See Costa et al v. Board of Selectmen of Billerica*, 377 Mass. 853, 860 (1979). Ms. Dottin further avers that she was entitled to have the CPS investigation conducted someone other than Ms. Honeywood, one of her superiors. However, G.L. c. 31, § 41 contains no such requirement; similarly, it does not require the appointing authority’s hearing officer to be impartial. That said, the definition of basic merit principles in G.L. c. 31, § 1 includes “fair treatment” of all applicants and employees, enabling the Commission to address allegations of bias or other improper motive. Having carefully reviewed the matters entered into the record by the parties, I find no evidence of unfair treatment of Ms. Dottin.

Ms. Dottin also alleges that CPS harassed her and/or retaliated or discriminated against her for not performing her job functions when she was unable to do so based on her disabilities. Although the Commission does not have jurisdiction for harassment, retaliation or discrimination, basic merit principles is defined in G.L. c. 31, § 1 to include fair treatment for all applicants and employees, as noted above. CPS approved the requests for reasonable accommodation that Ms. Dottin submitted. However, most of the functions Ms. Dottin failed to perform or performed poorly, as found here, involved no activities for which Ms. Dottin requested reasonable accommodations - such as completing the food production sheets every day, cleaning kitchen surfaces, labelling food in cold storage to minimize waste and allowing resale of appropriate foods, and removing moldy food. Ms. Dottin also failed to supervise kitchen staff to ensure that all kitchen duties were performed. The task of supervising kitchen staff throughout the day does not involve activities for which Ms. Dottin was provided reasonable accommodations. Moreover, Ms. Dottin herself testified that one or another of her superiors have assisted her in performing certain functions in the kitchen which may involve activities for which CPS has provided Ms. Dottin reasonable accommodations. For these reasons, I find no evidence of unfair treatment by CPS of Ms. Dottin that is inconsistent with the definition of basic merit principles.

Finally, Ms. Dottin alleges that her union representatives erred because they failed to initiate a grievance in regard to CPS's decision to terminate her employment, or to take other actions on her behalf, in violation of its duty of fair representation. Apparently, Ms. Dottin did not ask the union to file a grievance in her behalf. However, the Commission has no jurisdiction over collective bargaining matters such as a union's duty of fair representation. She also asserts that CPS was required to issue a "final written warning" to her prior to her termination. To this

end, the Appellant relies on Ayash v. Dana-Farber Cancer Institute, 443 Mass. 367, 386-88 (2005). Since Ayash involves a private sector employee and not a tenured civil service employee, it is inapposite. All remaining issues raised by the Appellant not otherwise discussed in this decision are without merit.

Conclusion

For all of the above stated reasons, the appeal of Ms. Stacey Dottin, under Docket No. D-16-066 is *denied*.

Civil Service Commission

/s/ Cynthia A. Ittleman
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Tivnan, and Stein) on July 21, 2016.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:

W. Kendall, Esq. (for Appellant)
Maureen A. MacFarlane, Esq. (for Respondent)