



Based upon the entirety of the record, and having reviewed and considered the parties' arguments, I find the DOC did not have just cause to terminate Miers' employment.

#### FINDINGS OF FACT

The sexual misconduct allegation that resulted in Miers' termination was first reported to the DOC in April 2017. Inmate PK, who was at the time incarcerated at the Iowa Medical and Classification Center (IMCC), claimed he had a sexual relationship with Miers during and after his incarcerations at CCF.<sup>1</sup> PK alleged he first had sex with Miers during his 1996-98 incarceration at CCF. He claimed they "rekindled" their relationship when he returned to CCF in 2015. PK further alleged he and Miers had sex numerous times over a three-month period after he was paroled in July 2016 on work release. The basis of Miers' termination is limited to the 2015-16 alleged interactions.<sup>2</sup>

#### **I. Miers' Employment History and Duties**

Miers began her employment at CCF as a correctional officer (CO) in April 1996. She was promoted in January 2005 to the position of a correctional counselor ("counselor"). During her 21-year tenure at CCF, the DOC disciplined

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<sup>1</sup> Due to the nature of the allegations, the inmate will only be identified as PK. Additionally, to the extent practicable, other persons named during the investigation and their identifying information will be omitted or abbreviated to protect their identify.

<sup>2</sup> Inmate PK refused to testify at the PERB hearing. In a statement dated August 15, 2018, PK indicated he is "unwilling to testify in court until [he is] released from incarceration." PK's scheduled release date is April 2026. PK informed the DOC that he is "uncomfortable" testifying. The DOC did not seek to compel PK's testimony. His refusal to testify prompted Miers to seek the exclusion of all evidence based on or referencing his allegations. In a ruling issued November 6, 2018, the undersigned denied Miers' motion and allowed the admission of the evidence in question. *Miers and State of Iowa (Dep't of Corr.)*, 2018 ALJ 102116 (Ruling, November 6, 2018). Miers maintained a standing objection during the evidentiary hearing, which was overruled for the purpose of the PERB hearing.

Miers three times; twice in 1997 for attendance-related violations and once in 1998 for failing to secure her parked vehicle on facility grounds. Miers had no other disciplinary issues. Prior to the April 2017 allegations, she had also never been the subject of any investigation into misconduct.

Miers was one of several counselors at CCF. Upon arrival to CCF, every inmate is assigned to a counselor. The assignments were made by the treatment manager. Miers had no control over inmate assignments and never asked for a specific inmate to be assigned to her. As a counselor, Miers generally had about 120 inmates on her caseload. However, from November 2015 to January 2017, Miers had between 140-150, and at times up to 160, inmates assigned to her. Her caseload was reduced to 120 inmates in January/February 2017.

Miers had numerous work goals as a counselor and consistently met or exceeded expectations for each goal. One of her goals was to assess, plan and provide treatment and case management services for assigned inmates. This required completing the inmate's intake, orientation and assessments, developing and reviewing case management plans, reviewing custody classifications, and responding to inmate inquiries. Miers was also required to participate in classification and pre-parole classification involving her assigned inmates. This goal involved developing a case management plan with the inmate prior to the initial classification review. Miers also had to be present for weekly classification meetings during which she would present information and make recommendations when required. Satisfactory performance of this goal encouraged counselors to engage offenders in the process of change and

evaluating their own behaviors. Finally, counselors assisted inmates in transition planning from the institution to the community. This goal involved Miers working with her assigned inmates to develop a release plan for transitioning back into the community.

In addition to the satisfactory performance of her work goals, Miers' supervisors recognized her professionalism and dedication to her role as a counselor. On numerous occasions, Miers' annual performance evaluations noted she also dressed professionally. Her supervisors commended her interactions with others in the workplace, noting Miers had a "good sense of humor" and a "bubbly personality." Testimony from Miers' long-time co-workers reiterated her professionalism in the workplace, specifically in her interactions with inmates. Early in her role as a counselor, Miers' supervisor encouraged her to leave behind the "bulldog" type approach she had as a CO and instead become more understanding when dealing with the inmates' failures and shortcomings.

Miers had an office at CCF, approximately 6 feet by 9 to 10 feet in size. Miers could close her office door, but the top half of the door was clear glass. Uncontroverted testimony received indicates the office had no blind spots that could be hidden from outside view. Miers' role as a counselor required her to hold in-person meetings with inmates in her office. The first required meeting was to meet with inmates within two weeks of their arrival at CCF to do the initial assessment. The timing and frequency of other in-person meetings varied. For instance, she met with inmates prior to their parole review meetings to discuss

recommended release plans. Miers also met with inmates when she received information from family members that needed to be communicated to the inmate, such as news of family members passing.

Miers' role as a counselor also required her to use ICON, the DOC's statewide inmate database. ICON maintains information on every inmate in DOC custody, including their personal information, background and criminal history.<sup>3</sup> ICON has different screens where staff can document information, such as generic notes, transfers, classification, and release planning. The generic notes section is frequently used to document any updates on the inmate, the inmate's messages to staff ("kiosk" messages) and the staff's response, and the inmates' o-mail (offender mail) messages. Miers was required to timely provide updates in ICON pertaining to her assigned inmates for case management, classification, intervention, and release planning, as a way to allow other staff to know the status of her assigned inmates.

## **II. Applicable/Pertinent DOC Policies and Work Rules**

Miers was in part terminated under the DOC departmental policies prohibiting sexual and otherwise inappropriate interactions with inmates. The policies are based on and incorporate parts of the federal Prison Rape

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<sup>3</sup> ICON is used by all correctional institutions, parole and probation officers, and work release sites; thus, the information documented in ICON is also accessible to staff within those institutions.

Elimination Act (PREA) and the PREA standards, which aim to eliminate and address prison rape, sexual abuse and harassment in confinement institutions.<sup>4</sup>

The DOC has four separate policies incorporating the PREA standards: PREA-01, Offender PREA Information; PREA-02, Staff, Contractor, or Volunteer Sexual Misconduct/Harassment/Retaliation with Offenders; PREA-03, Staff Response to Offender on Offender Sexual Violence and Retaliation; and PREA-04, PREA Data Collection, Reporting, and Audit Compliance (collectively “PREA policies”). The DOC’s PREA policies apply to all employees, contractors, vendors, volunteers, and agents of the DOC. All inmates are advised “of their right to be free of sexual misconduct, sexual harassment, and retaliation from staff.” Within three days of admission to a DOC facility, inmates go through a PREA orientation training on their rights and reporting procedures under the PREA policies.

The PREA policies define an allegation as “any event that is said to have happened, but which has not yet been verified” and “may include rumor and ‘offender talk.’” Staff is required to immediately report “any knowledge, suspicion, or information” regarding an incident of sexual abuse, sexual misconduct, or sexual harassment. The PREA-02 policy under which Miers was terminated pertains specifically to staff on offender sexual abuse, violence, misconduct, harassment, and retaliation.<sup>5</sup> It spans over 22 pages of definitions,

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<sup>4</sup> PREA was passed in 2003. The PREA Standards, 28 C.F.R. Part 115, took effect in 2012. All federal, state, and local confinements that receive federal funding, such as the Iowa DOC, are required to adopt and comply with the federal PREA standards. The Governor submits annual certification or assurance to the Department of Justice (DOJ) regarding the DOC’s compliance with the PREA standards.

<sup>5</sup> The PREA-02 policy has been in effect since November 2013. The copy admitted into the record was last revised in April 2018, which was about seven months after Miers’ termination. It is unknown on this record what sections of the PREA-02 were revised in April 2018.

procedures, rights and obligations pertaining to staff on offender interactions. The DOC concluded Miers committed staff on offender “sexual misconduct” as defined in PREA-02, which states, in pertinent part:

**III. DEFINITIONS**– As used in this document:

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N. Sexual Misconduct - Any behavior or act of a sexual nature directed toward an offender, whether it appears to be consensual or nonconsensual. This includes, but is not limited to, acts or attempted acts of:

1. Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire.
2. Completed, attempted, threatened, or requested sexual acts.
3. Occurrences of indecent exposure including display of uncovered genitalia, buttocks, or breasts, invasion of privacy.

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5. Requiring or allowing an offender to engage in sexual contact, sexual intercourse, or other sexual conduct for any reason.
6. Receiving any form or type of communication of a sexual or romantic nature from an offender and failing to report the communication immediately as designated by institution procedure and department policy.

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Miers was terminated for both allegedly engaging in sex acts with PK and failing to report “alleged PREA events,” which are not specifically identified in the termination letter. The PREA-02 policy does not outline the reporting procedure but instead refers to other “institution procedure and department policy,” none of which are specifically identified or contained in the record.

The DOC's Office of Inspector General (OIG) has broad responsibility over PREA policies and compliance.<sup>6</sup> The OIG is "responsible for the development, implementation, and oversight of IDOC's efforts to comply with the PREA standards and to manage all PREA investigations." Upon conclusion of OIG's administrative investigation, OIG determines when the evidence of staff sexual misconduct is "sufficient for referral for criminal prosecution." Under Iowa law and as outlined in PREA-02, staff "who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor."

The PREA-02 policy also outlines the procedures and standards that govern PREA investigations. The following provisions are particularly relevant.

G. Investigation

1. Sexual Violence Investigators shall:
  - a. Gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
  - b. Interview alleged victims, suspected perpetrators, and witnesses;
  - c. Review prior complaints and reports of sexual violence involving the suspected perpetrator.  
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2. Interviews shall be conducted in a thorough, professional, and non-threatening manner consistent with acceptable practices for potentially traumatized victims of sex crimes.  
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5. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as offender or staff. IDOC shall not require an offender who alleges

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<sup>6</sup> The Inspector General is appointed by the DOC director. The OIG is located in DOC's central office and its staff includes a statewide PREA coordinator and investigators specially trained in investigating PREA allegations.

sexual violence submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

6. The investigators shall prepare a final written report that includes a description of the physical, testimonial, and documentary evidence, the reasoning behind credibility assessments, and investigative facts and findings. The report shall be provided to the Inspector General, and Warden. The report shall be a confidential record.

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8. All actions taken shall be documented and the investigative file shall be retained by IGO in a secure location.

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13. IDOC shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual violence are substantiated. (PREA 115.72)

By policy, OIG sends its investigative findings to the employing institution and has no involvement in the decision regarding discipline. PREA-02 dictates a “zero” tolerance policy for any type of sexual violence or misconduct and directs that “termination is the presumptive disciplinary sanction” in such cases. The DOC presented six prior sexual misconduct reports to demonstrate termination has always been imposed as the discipline. The reports span from 2005 to 2017, and include:

- 2005 report - an inmate alleged to have had sexual relations with a staff person in the staff bathroom and the allegation was substantiated when the staff person admitted to the allegations during an interview.
- 2006 report - an allegation was substantiated when an inmate reported that he witnessed a staff person and another inmate in the utility closet with their hands on each other.
- 2007 report - an allegation was substantiated when the staff person’s cell phone bills revealed she communicated with an inmate at a residential facility.

- 2007 report - an allegation was substantiated when a staff person was stopped for a license check and a former CCF offender was in the car with her.
- 2012 report - a substantiated finding when the investigation revealed the staff person used a fake name to make phone calls to an inmate and deposit money to his inmate account; she resigned before she could be interviewed.
- 2017 report - a substantiated finding that staff person was involved in a sexual relationship with an inmate after finding of physical evidence (phone calls, letter, and videos) that support the relationship, and the staff person's admissions to her son that she was involved with the offender.

In all six instances, the staff person was terminated or resigned prior to termination. The reports presented demonstrate the DOC had obtained some direct evidence of the misconduct prior to substantiating the allegation, such as admission by the staff person, eyewitness or documentary evidence linking the staff person with the inmate.

### **III. Relevant Timeline and Events Leading Up to PK's Allegations**

When PK first reported his allegations against Miers in April 2017, he was incarcerated at IMCC. PK has been in and out of DOC custody since the early 1990's, serving his sentences at multiple DOC institutions, including CCF, IMCC, Ford Dodge Correctional Facility (FDFC), Newton Correctional Facility (NCF), and North Central Correctional Facility (NCCF). He has also been paroled multiple times to DOC work release facilities. Most relevant to this case are his three incarcerations at CCF: from 1996 to 1998; from 2001 to 2002; and most recently from September 29, 2015 to July 29, 2016. Miers was employed as a correctional officer during PK's first two incarcerations and as a counselor during

his last incarceration. Like all other inmate assignments, the unit manager assigned PK to Miers' caseload.

On Friday, July 29, 2016, PK was paroled to Fort Des Moines on work release. He arrived at Fort Des Moines the same day, but was over two hours late and admitted to using marijuana during his travel from Clarinda to Des Moines. PK's ICON documentation reveals he was on facility restriction the first week after arrival. He was approved to leave the facility for work starting Saturday, August 6. Other than work, he remained on facility restriction and was denied permission to leave for any other purpose. On Sunday, August 14, two weeks after his release, PK failed to report back to Fort Des Moines by 6:30 p.m. as required and was placed on escape status. He was captured and taken back into custody on November 4. While on escape status, PK suffered a stroke on October 22. He suffered a second stroke in jail within 24 hours of his arrest on November 4. He received medical treatment at a hospital and was eventually transferred to IMCC on November 16, 2016.

The multiple strokes partially incapacitated PK, causing paralysis on the left side of his body and slurred speech. Through physical therapy and treatment available at IMCC, he gained back some mobility and verbal skills. IMCC is the only correctional institution in Iowa that has such therapy. Having been classified as a non-violent offender, PK was paroled on medical release. On or about February 14, 2017, PK violated his parole and was taken back into custody, eventually getting transferred to IMCC on March 31. PK continued to receive physical therapy at IMCC upon his return. In April 2017, when he lodged

his allegations against Miers, PK was still in a wheelchair, used a cane, and had a brace on his left leg.

#### **IV. Inmate PK's Initial Report and Interview**

PK first reported his allegations through “kiosk” messages sent to his IMCC counselor.<sup>7</sup> The ICON communication between PK and DOC staff from January 9 to April 13, 2017, about five pages of communications, is not in evidence. Although not clear due to this gap in the record, it appears PK learned in mid-April that DOC was reviewing his placement. Inmates generally do not remain at IMCC as it is intended to be a short-term facility for inmates awaiting classification and those requiring more advanced medical treatment. When he learned that he may be transferred from IMCC, PK sent multiple “kiosk” messages to his IMCC counselor regarding this placement.

##### **No date, presumably on or prior to 4/13/2017**

Astay here but am game for whatever I have to do to [get] therapy asap

**4/13/2017**, subject “GP” [General Population]

I take it IM NOT staying here to do my time? Plz [let] me know if this is not an option cuz IMCC is the only place in IOWA that has therapy

His IMCC counselor informed PK the decision regarding placement is made by the medial team. PK placed a request the same day with the reception program director to stay at IMCC. He also sent a message to the Warden’s office with the subject “”GP/Therapy,” asking “Can I please stay here at IMCC and do my time

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<sup>7</sup> Kiosk messages are a way for offenders to communicate with DOC staff. The kiosk messages and the staff responses are then copied into the offender’s ICON record.

and physical therapy? Please.” The Warden’s office informed PK it will abide by the decision of offender services and the medical recommendations. On April 17, PK again messaged his counselor about his placement. He asked, “... any news about medical keeping me here? Hopefully I can stay here and move forward w/therapy!” The counselor informed PK that he had no updates.

In his next set of messages, over a week after his first message regarding placement, PK alleged a relationship with a CCF staff person who he later identified as Miers.

**4/21/2017**, subject “IMCC”

PLZ GET ME OFF CELL RECEPTION  
TEAM BLUE LAST NIGHT FELL OFF TOILET WITH PANTS AT  
ANKLES..  
CANT EVEN GET WATER CUZ ONE HAND TO CALL BUTTON ETC  
PLZ SEE ME ASAP

ALSO IN JULY 2016 I WAS SEEING EMPLOYEE IN CLARINDA HOT  
GIRL SO PROB SHOULDNT GO THERE I WILL XPLAIN IN PERSON

**4/21/2017**, subject “IMCC”

ANNUAL<sup>8</sup> IS SEPT? HOW ABOUT MT P<sup>9</sup> OR GP HERE? PLX SEE ME  
ASAP.

**4/22/2017**, subject “Clarinda”

Plz dont send me to clarinda  
I really dont want to get this chic fired or reveal her name ... ughhh  
but I was seeing her in july/august 2016 actually while I was on run  
from ft dsm we spent every weekend together in motels  
I will explain in person  
I WOULD LOVE TO STAY AT IMCC TOILETS TOO LOW ON C UNIT  
BUT LTA OR T/V WOULD BE AWESOME!!

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<sup>8</sup> Board of Parole date.

<sup>9</sup> Mount Pleasant Correctional Facility.

**4/22/2017**, subject "custody level"

Am I really minimum? Cuz if not imcc maybe mt p or some min camp?

Plz see me in person I know right...like u dont have 300 on ur case load whining ughh just anxious bout clarinda and everything with my health

4 real these pedal machines/therapy in kim alridges therapy room are doing wonders for me and imcc is ONLY place I will get therapy that is most important to me

The IMCC counselor informed PK he forwarded his concerns to medical but reminded him again that placement decisions were made by the medical team.

**4/24/2017**, subject "thanks"

Ok ty [thank you]!!!

JUST NO CLARINDA IM NOT MAKING THIS UP ... I USED TO BE WITH [AD] A C/O SHE PASSED AWAY THEN WHEN I WAS THERE IN 2016 REKINKLED A RELATIONSHIP WITH HER FRIEND AN EMPLOYEE..UGHH CRAZY....THEN she was coming to see me at work actually, the day I ran from ft dsm I was with her then motels in dsm or clarinda/red oak/shenandoah Sir I dont want to but will reveal just don't want to get her fired...but know if I go there her ex husband also works there and it will be problems plz see me in person PLZ

**4/24/2017**, subject "classification"

I should be done with reception...

Ive did the peer health..dear zeb letter nothing left xcept to see placement..Ughh

Hopefully a min camp or here

Therapy is most important and IMCC is only place I will get it

But no matter what plz no Clarinda

The IMCC counselor forwarded PK's claims about placement at CCF. IMCC conducted a preliminary interview with PK on April 25 regarding his allegations. The interview was recorded but the audio recording is not in evidence. Instead, the record only contains a summary of the interview, which states, in part:

PK stated he was in a relationship with a female Correctional Officer in Clarinda named [AD] years ago (1996, '97 & '98) and he claims it was "on record" but [AD] has since passed away. He stated when the relationship was discovered [AD] was asked to resign. He stated they kept in touch with each other throughout the years and would see each other occasionally. He stated [AD] committed suicide in 2009. He stated he was sent back to Clarinda last year (records in ICON show he was at Clarinda from 9-29-15 to 7-29-16.) he stated he didn't want to go back down there because one of [AD's] ex-boyfriends worked there ([staff person's name]) When he did go back he started talking to one of [AD's] "ex-best friends" and "one thing lead to another" when he left to go to work release (ICON shows he was at Fifth Judicial District, Fort Des Moines Bldg. 68 from 7-29-16 to 11-14-16)(placed on escape status 8-14-16) the girl was coming to Des Moines, see him they were meeting in motels and hotels, he stated after he ran he was going down to Clarinda, Shenandoah, Red Oak, Atlantic and staying in motels with her. He said he didn't think it would be a good idea if he went down there [CCF] because her (ex-best friend) husband or ex-husband still works there or did when he left.

He stated when he went to work release she (the ex-best friend) contacted him. He said he knows that if he goes back down there he will be instantly with a female employee or it will be very uncomfortable and he doesn't want to go there.

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He stated that on the day (8-14-16) he went on the run he was with her (ex-best friend in a hotel room) he called his cousin who he worked for and asked for him to call Ft. Des Moines and cover for him and his cousin stated no I'm not going to so he just didn't go back to the facility. He stated he then saw her 3 or 4 times in September. He said he was with her a lot in October, almost every weekend. He said [AD] and him had sex quite a bit inside the prison "but the other girl, no never," they would flirt and knew they were going to have sex.

He believes that if he is sent to Clarinda he will be sent immediately to the hole, and retaliated against by staff. He stated that if he knew without a doubt that he would not be sent to Clarinda he would tell me without hesitation the name of the female employee he claims to have been involved with.

Consistent with DOC's PREA policies, the allegations were forwarded to OIG to formally investigate. A copy of PK's kiosk messages and the April 25 interview summary were forwarded to OIG the same day.

## **V. OIG's Investigation**

OIG assigned two of its PREA investigators to conduct the investigation. The investigation lasted for approximately four months, concluding on August 31, 2017. OIG kept in communication with certain management staff at CCF during the course of the investigation by sending periodic updates, seeking assistance in gathering and verifying information collected, and discussing which witnesses to interview.

### A. Collecting Background Information

At the time PK's allegations were forwarded to OIG, PK had not yet identified the staff person as Miers. As such, the initial part of the investigation involved attempting to identify the employee. Based on information exchanged with CCF, it appears OIG narrowed the staff persons to Tory Miers and another employee, a female correctional officer.<sup>10</sup> PK later confirmed in his interview that his allegations were referring to Miers.

At the start of the investigation, OIG received information from CCF correctional supervisor (CS) Steve Slough about prior "whispers" regarding

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<sup>10</sup> It is unknown on this record why the OIG ever suspected PK could have been referring to this female correctional officer. PK made subsequent claims that this CO was involved with another inmate, but at the time they were gathering background information and inquiring about her, OIG had not yet interviewed PK.

Miers. He informed OIG that another CCF supervisor “recalls some whispers about a CC Tori Miers and [Inmate PK].” Slough further clarified a few days later:

... I did get confirmation today from CS Gary Jorgensen that CC Tori Miers is the employee we were watching last time offender [PK] was at CCF. [Unit Manager] Roxanne Phillips was even questioned as to why she allowed CC Miers to be his case manager.

OIG searched but did not find any documentation regarding this report because CCF did not report it to OIG at the time to investigate. When OIG inquired whether an investigation was conducted, Slough responded:

There was never any formal investigation into CC Miers during [PK’s] stay at CCF as it was merely the feeling of some of the supervisor’s that this was a potential problem. We kept an eye on it while [PK] was here and nothing raised to investigate. CS Jorgensen indicates he was present when UM Phillips was asked why CC Miers was assigned to offender [PK] and she indicated that it was her decision and again there was no evidence to prevent it.

OIG did not conduct any follow-up regarding the basis of Slough’s report. On this record, the DOC has not identified the supervisors involved, the basis of their concerns, or what exactly was entailed in observing Miers.<sup>11</sup>

OIG obtained comprehensive background reports through the Law Enforcement Intelligence Network (L.E.I.N) for Miers, PK, and the other female staff person identified during the initial part of the investigation. This report included, among other information, all prior and current driver’s license information, motor vehicle registrations, residences, and registered phone numbers. The OIG also collected information on Miers’ family, including her two children. The investigators found her Facebook page by searching her current

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<sup>11</sup> The record contains the investigators’ initial investigative plan which included gathering more information about these claims. For reasons not explained on this record, this was never done.

cell phone number within the Facebook application. The search retrieved Miers' profile picture of her with her two sons.

The background information revealed Miers has had four different phone numbers registered to her. She had two landline numbers, one of which she disconnected in February 2016 and the other in December 2013. She had a current cell phone number, which was on file with CCF. Miers had a different cell phone number before, but it was no longer registered to her as of October 2013. Her background information also revealed she has owned a gray 2012 Chevy Traverse since January 2015, which she used to commute to work.

#### B. PK's Allegations to OIG

OIG interviewed PK on May 16, 2017, for approximately an hour and a half. OIG had two follow-up interviews with PK over the phone, on August 8 and August 14. The follow-up interviews were not recorded. The precise contents of those interviews are not documented in the investigative file. OIG also interviewed two civilian witnesses, a former CCF inmate, and obtained two DOC staff statements. Miers was interviewed on August 9. For the purpose of clarity, I will separate PK's allegations by time period.

##### i. 1996-98 Allegations

PK indicated he has known Miers since his 1996-98 incarceration at CCF when she was a CO. He claimed another correctional officer, AD, and Miers were "best friends" but the friendship ended when AD's then-boyfriend Rich Miers, also a CCF employee, ended his relationship with AD and began dating Miers. After Rich ended his relationship with AD, PK and AD had a "full-fledged physical

relationship” and continued to have sex inside the prison while he was incarcerated. PK described the situation as “a big soap opera” and “kind of like a love triangle.” While still involved with AD, PK claimed he and Miers began “talking” sometime in 1997 and had sex inside the prison on two separate occasions, sometime in 1997 or possibly 1998. This assertion was a direct contradiction from his IMCC interview during which he stated he and Miers never had sex inside the prison. PK was never asked to address the inconsistency. PK now claimed they had sex inside inmate JH’s cell, on North 1, cell 16, which was at the end of the row of cells and “super secluded.” PK did not talk to inmate JH about using his cell but gave him a couple of McDonald’s hamburgers afterwards that Miers brought into the prison for PK.

PK also claimed Miers was “super jealous” of his relationship with AD. She purportedly “locked [him] up” one time and wrote a report after he told her “how are you doing Detective Miers, or Detective Guinn.” PK alleged this occurred in the presence of two other female CO’s. He claimed AD, Miers, and the two other CO’s were all “gossiping” and in “heated situations” over him because he was being obvious about his relationship with AD. PK claimed AD quit her job at CCF within a few days of the incident when Miers locked him up, but that he and AD continued a relationship on and off until AD’s death in 2009.

OIG confirmed with CCF that cell number 16 is in fact hidden from camera view and the officers’ desk. OIG also interviewed inmate JH as part of its investigation. JH indicated he has known PK for a long time “from the streets,” but has only interacted with him if they see each other in prison. He recalled

seeing PK at CCF in the 1996-97 timeframe but JH did not think they were housed on the same unit. JH was always housed in two or three-person cells, never an individual cell. When the investigators told JH an allegation was made that his cell was used by a female staff person and an inmate to engage in sex acts, JH stated he can “probably almost guarantee” it was not his cell. The investigators subsequently informed JH that PK is alleging he used his cell to have sex with AD or Miers. JH indicated PK “never used my cell.” JH again indicated his belief that he and PK were housed on separate living units.<sup>12</sup> JH also denied receiving food or other privileges from anyone.

JH recalled both Miers and AD from his time at CCF. JH said “what everybody talked about” is that AD and Miers did not get along because Miers “stole” AD’s boyfriend. He never witnessed them not getting along, but that was a common rumor among the offenders. When asked if he recalled any rumors of Miers being involved with anybody at CCF, JH stated, “never, nothing.” JH has not been at CCF since 1997. He heard from other offenders that AD and PK were living together at her residence after PK was released. JH also heard from other offenders that Miers ended up marrying AD’s ex-boyfriend and having a child with him.

Evidence obtained during the investigation confirmed AD and PK continued a relationship after his release. They resided together at AD’s

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<sup>12</sup> OIG’s investigative file contains no documentation that OIG confirmed whether PK and JH were housed on the same living unit as PK alleged and JH disputed. During JH’s interview, however, when JH responded that he did not think he and PK were on the same unit, the OIG investigator responded, “No, I don’t think you were either.” This statement implies some other inquiry was done but it is not documented in the investigative file.

residence for a period of time and AD also visited him at different work release sites. While PK was incarcerated at FDFC in 2004-05, PK sought to place AD on his visitor list. He identified FDFC staff person Don Harris as having knowledge about this. In Harris' statement to the OIG, he confirmed PK approached him with a request to add AD to his visitor list. Harris did not support his request or allow a special visit with AD. Harris further relayed his recollection regarding the 1996-98 time period at CCF. Both Harris and AD began employment at CCF in December 1995 as correctional officers. Several months after PK came to CCF, Harris stated it was noticed AD and PK "spent a lot of time together" and the interaction appeared to be "going down a questionable road." Harris stated that AD left CCF, but he did not know whether she was terminated or voluntarily left.

As part of its investigation, OIG did not verify the date or circumstances surrounding AD's departure from CCF. The investigative file contains no documentation regarding the "lock up" incident PK described involving Miers. Furthermore, OIG did not do any inquiry regarding the two other CO's PK identified during his interview or attempt to collect their statements. Although Harris had established himself as having knowledge about this time period, OIG did not specifically ask him about Miers and PK.

In her interview with OIG, Miers denied any sexual or otherwise inappropriate relationship with PK. She confirmed her employment as a CO from 1996 to 2005. Miers recalled PK was at CCF while she was a CO, but she could not identify specific dates of his incarceration. Miers also recalled AD being employed at CCF. Like Harris, Miers indicated there were suspicions that AD

and PK were involved but she had never observed anything at the time to confirm those suspicions. She knew AD left CCF but did not know the date or the reason for her departure. Miers acknowledged it was known inside the prison that AD and Rich Miers had a relationship prior to Miers dating Rich. For that reason, Miers indicated she and AD were never anything more than co-workers during her tenure at CCF.

*ii. Ice House Incident*

PK indicated he saw Miers at a Clarinda bar known as the Ice House sometime in 2000. PK alleged he “partied” and drank with Miers that night but no sex acts occurred.

Without having any indication OIG knew about this encounter, Miers described an incident years ago when she briefly saw PK at the Ice House. She could not recall the year, but gave a “real shot in the dark” guess that it was between 1996 and 1998 because she was dating but not yet married to Rich Miers. Miers indicated she was sitting at a table with her friend Robin Pirtle, another CO at the time, when PK approached them. He did not sit with them. Miers denied that she drank or “partied” with PK. She recalled PK “was trying to be cool,” asked what was there to do in this small town, asked what Rich was doing and then left. She described the encounter as uncomfortable and awkward for both her and Pirtle, who were fairly new CO’s and had never had a run-in with an inmate outside of prison. She did not recall if she reported the encounter to CCF at the time.

OIG did not contact or interview Robin Pirtle, the former CCF staff person, during its investigation. However, Pirtle testified at the hearing and corroborated Miers' version of the Ice House incident. She also described it as a short and awkward encounter. Pirtle stated she and Miers left the bar shortly after PK walked away from their table.

PK returned to CCF in 2001-2002. The only interaction he had with Miers during this incarceration was "hi and bye" in passing. After his release in 2002, PK indicated he did not see Miers again until 2015. Miers told OIG she did not recall whether PK had been at CCF two or three times. She recalled that he was at CCF when she was a CO and thought a long time had passed before he was back again in 2015 when she was assigned as his counselor. She did not have a recollection of him being at CCF between those two incarcerations.

*iii. 2015-2016 Allegations – PK's Incarceration*

PK's allegations regarding the 2015 to 2016 time period form the basis of Miers' termination.

The first set of PK's claims pertain to alleged acts that occurred in Miers' office at CCF. He claimed they first started talking about AD, with Miers purportedly saying she "never did like her." Miers then allegedly asked PK "don't you notice anything different about me?" PK responded, "the tit job," telling the investigators "obviously, she went from no tits to like double D's or whatever." PK claimed he asked to see Miers' breasts, after which she started exposing her breasts a little at a time and then completely exposed her breasts "several times." He alleged to have also touched her breasts once. PK claimed Miers moved her

desk “over to where no one could really see her” when she exposed her breasts. PK further alleged Miers asked to see his penis and that he exposed his penis “a couple of times.” PK claimed he would stand behind Miers by a bulletin board she had on her office wall and engage in fondling over clothing.

During her interview, Miers was asked to describe her office. She indicated she has a desk and a filing cabinet. The investigators specifically asked whether she had a bulletin board with a map attached to it, to which she responded, “yes, any inmate could tell you that.” During its investigation, OIG did not observe the layout of Miers’ office to determine the plausibility of PK’s assertions, particularly his assertion that she could not be seen from the outside when exposing herself.

During her interview, Miers vehemently denied exposing her breasts or engaging in any inappropriate physical contact or conversation with PK. Miers told the investigators PK had given her “a look” when she walked by him on the unit. Miers also told the investigators PK made comments several times that were inappropriate, but could not recall the specific comments he made. PK once said something like, “you look different from the last time I saw you.” Miers understood this comment to be about her breast augmentation because that was a physical change in her appearance. She told PK she does look different, but that she is not discussing it with him because it was inappropriate. PK made another comment about wishing he was not married or wishing he knew Miers before Rich. Once PK made a comment in a “roundabout way” like, “oh boy, the things I would like to do with you.” Miers directed him to stop and he never made

another inappropriate comment. Although she addressed the issue with PK directly, Miers acknowledged she did not document the comments in ICON.

*iv. 2016 Allegations – PK’s Work Release*

The majority of PK’s claims pertain to events that allegedly occurred after his release from CCF. PK was paroled on July 29, 2016, to Fort Des Moines on work release. He was on facility restriction the first week after arrival. PK was approved to leave Fort Des Moines starting Saturday, August 6, to begin work.

1) Alleged Method of Communication

PK claimed Miers reached out to him after his release. Over the course of the interview, he gave several different versions of how Miers purportedly reached him by phone. PK first claimed Miers used somebody else’s Facebook profile to contact him directly and ask for his number. When the investigators attempted to confirm his answer about this initial contact, PK changed his response. He then indicated that Miers or “one of her friends” contacted his nephew (“nephew J”) over Facebook to ask for PK’s number. As the interview progressed, PK added possibilities as to who Miers initially contacted to get his number, claiming it could have been nephew J, his brother (“brother J”), or his friend BD. At the end of the interview, he also claimed Miers might have contacted his now ex-girlfriend AE with whom he resided during his escape status. AE purportedly had the name “Tory Miers” written on a piece of paper and informed PK his “counselor needed his number.” PK provided contact numbers from memory for all four of the individuals identified.

During its investigation, OIG interviewed ex-girlfriend AE, BD, and exchanged some communication with brother J. The record shows no indication that OIG spoke to or attempted to speak with nephew J as part of its investigation. None of the information obtained from these individuals in any way corroborated PK's assertion that Miers, someone on Miers' behalf or PK's "counselor" contacted them to obtain PK's phone number.

OIG asked PK for his Facebook credentials. He provided his username but claimed not to know his password because AE changed it and now has control over his FB account. PK stated, however, that he and Miers were never Facebook friends, she never posted anything to his Facebook as herself or through another person, or anything referring to herself. PK did not provide, and OIG did not otherwise obtain, any documentary evidence showing this purported Facebook communication occurred. Although AE subsequently provided PK's Facebook login credentials during her interview, OIG did not access or attempt to access it during its investigation. After obtaining a protective order, Miers obtained and entered into evidence the contents of PK's Facebook page using the credentials AE provided. The contents of PK's Facebook page entered into evidence definitively prove PK and Miers were never Facebook friends. The admitted evidence also does not show or suggest any Facebook communication with or about Miers on PK's Facebook page.

PK claimed Miers called him from a "private number" once she obtained his phone number. She called him on a cell phone he had through StraightTalk. PK claimed he did not remember his phone number where Miers purportedly

called him. OIG obtained PK's number through the LEIN report and confirmed it as his number with AE and BD. As part of its investigation, OIG subpoenaed phone records of calls and text messages for phone numbers belonging to Miers, PK, AE, and PK's wife (wife J). The record indicates PK was in Waterloo at wife J's residence for some time in mid-October and was using her phone during that time. OIG received some of the subpoenaed phone records. However, it is unknown which records were received because the DOC did not admit any of them into evidence. The investigative file does not show that OIG found any evidence of communication between Miers' phone number and the numbers belonging to PK, AE, or wife J.

Although he was asked multiples times, PK indicated each time he did not know Miers' number over which they purportedly communicated. He only identified the 712 area code. However, PK claimed he and Miers knew where to meet because they called each other to arrange their get-togethers. After PK repeatedly stated he did not know or recall Miers' phone number, the investigators provided him with four phone numbers, all of which OIG knew through the LEIN report belonged to Miers at some point in time. Two of the provided phone numbers began with "542" and were Miers' former home landline numbers. The other two numbers were both cell phone numbers that began with "303," but only one was Miers' current cell phone while the other one was her prior cell phone number.

When asked whether he recognized the "542" numbers, PK responded, "542, yeah, that may be her." He then guessed that one was "maybe" the number

to her CCF office while the other was to her home, but asserted the “542” numbers were not cell phone numbers.<sup>13</sup> OIG’s background research revealed both 542 phone numbers were Miers’ prior home landline numbers, but one had been inactive since December 2013 and the other since February 2016, at least five months prior to Miers’ alleged relationship with PK. When asked whether he recognized the “303” numbers, PK generally stated the “303” numbers were cell numbers. He claimed one of the 303 numbers was “very familiar” to him and that it was “one of the numbers.” The “303” number PK focused on, however, is Miers’ prior cell phone number that she had not had since October 2013.

After going through this entire exchange about phone numbers, OIG attempted to confirm with PK that he and Miers would have communicated through one of the numbers they provided to him. At this point in the interview, PK told the investigators Miers was “adamant” that he download a phone application called “Sideline” and only communicate through the application. PK described himself as “computer illiterate,” but claimed Miers told him how to download Sideline from the Google Play store and how to use it. He now told the investigators Miers called him from a “private number” just the first time and told him to download Sideline, which they then used to communicate. PK indicated Sideline allowed the user to choose a “second number” or more than one phone number from a list of available “fake” numbers when making a phone call. PK claimed he chose the number, but Miers told him to get a “712” area

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<sup>13</sup> The record reveals that the main phone number to CCF also begins with “542,” area code 712.

code number. PK was not able to provide the “second number” or any of the other Sideline phone numbers he purportedly used to communicate with Miers.<sup>14</sup>

The investigatory file reveals OIG did a limited inquiry about the Sideline application. OIG learned Sideline is owned by a California-based company, Pinger, and allows users to make and receive phone calls through the user’s mobile network connection. However, nothing in the record suggests OIG attempted to verify the information PK provided, namely that it allows a user to pick a different “fake number” each time a call is placed. The record also does not indicate OIG requested from Pinger any available records during the relevant time period for PK’s Sideline number that friend BD provided.

During the hearing, Miers presented evidence pertaining to the Sideline application. The evidence received includes law enforcement guidelines provided directly by Pinger, the application developer who owns Sideline. This information reveals that Sideline can be used on Android or iOS devices and provides the user with a second phone line. Upon registration, a user may select a phone number from a list of valid phone numbers that Pinger owns based on the user’s location. The selected number becomes the user’s Sideline phone number. The calls are made through the user’s data plan or a Wi-Fi network. Pinger retains basic subscriber information for users, such as the name, assigned Pinger number, user’s registered phone number, if the user provided the information upon registration. The information automatically captured by Pinger upon

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<sup>14</sup> Friend BD provided OIG with one of PK’s Sideline phone numbers, which was a 515 area code. OIG did not obtain any evidence linking Miers’ phone number with this Sideline number.

registration is the user's IP address and date of registration for a Sideline number. Pinger retains this information and discloses the records pursuant to a proper request for records.

In her interview with OIG, Miers denied having any communication with PK or any of his acquaintances after he was released from CCF. OIG did not ask Miers whether she ever used the Sideline application. She was instead told PK's allegation is that they talked over an untraceable phone number through a "google app called straight talk." During the hearing, Miers provided as evidence the contents of her iPhone which she had during the relevant time period. Using MOBILedit Forensic, a cellular forensics program, the information on Miers' phone was extracted and admitted into evidence. The information admitted includes contacts, phone calls, photos, and phone applications, as well as the metadata associated with those items. The program used also extracted data about applications or information deleted from her phone. Based on the forensic information extracted from Miers' phone, there is no indication that she ever downloaded or used the Sideline application on her phone.

Following his May 16 interview with OIG, PK made multiple attempts to find out information about the phone numbers OIG provided during his interview. PK's Facebook search history reveals that three days after his OIG interview, during which he claimed not to know his password, PK searched the two "542" phone numbers within the Facebook application. Evidence in the record demonstrates that searching a phone number in the Facebook application will retrieve the user account associated with the searched phone number.

PK also wrote two o-mails to wife J specifically about phone numbers OIG provided to him during the interview.<sup>15</sup> About a week after his interview, PK wrote to wife J "... need to see what 712-542-\*\*\*\* goes to \*69 and call it maybe." The "542" number PK relayed in the o-mail was one number off from one of the "542" numbers OIG provided. The next day, PK sent another o-mail to wife J, telling her "plz see if I ever called ur cell from 712 303 \*\*\*\* OR SOMETHING LIKE THAT...number long story. DO NOT CALL IT THO!!! I will explain in person." The "303" number PK relayed in the o-mail is Miers' prior cell phone number which she has not had since October 2013. OIG obtained copies of these o-mails during its investigation. They had two phone follow-up interviews with PK in August. During one of the phone calls, OIG asked him to confirm he was one number off in the "542" number he provided in the first o-mail. Neither follow-up interview was recorded or otherwise documented for the investigative file. Thus, the precise contents of the follow-up interviews are unknown on this record.

During AE's interview, she informed OIG about an "old girlfriend" that PK communicated with while he was staying in her apartment. Evidence in the record shows PK resided with AE for about six weeks, approximately from the first week of September to October 15 or 16, 2016.

AE indicated PK told her he had known this woman for "quite a while" and that she used to be his girlfriend. They were in a relationship prior to PK going to prison for seven years. PK kept in touch with her during his incarceration and

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<sup>15</sup> During his OIG interview, the investigators presented PK with copies of recent o-mails he had written to his wife. As such, PK had notice that OIG was retrieving his o-mails.

she sent PK photos of herself to prison. AE indicated she saw multiple photos of this woman in a box of PK's belongings. AE could not recall where this woman lived, but knew that it was wherever PK had his work release prior to being sent to CCF in 2015. The record demonstrates PK was at a Newton release center prior to "getting in trouble" and getting sent back to prison. AE stated this woman either worked with PK or helped him get a job at that work release place. While he stayed at AE's apartment, PK called the woman about some phones they had hidden at the work location. PK also had AE her call this woman a few times from her phone to inquire about the phones. The woman called AE back at least once. During the hearing, Miers' admitted into evidence a copy of her phone records from September 16, 2016 to January 15, 2017.<sup>16</sup> The phone records confirm Miers never received or placed a call to AE's phone number.

AE found the "old girlfriend's" Facebook page. She retrieved it by searching the woman's phone number within the Facebook application from PK's Facebook account. AE indicated she was able to see her Facebook pictures, but had only viewed them that one time. She indicated this woman was Facebook friends with PK. AE described her as "young looking," "real pretty" with "dark brown hair" and a "tan." She could not recall the woman's name, but said it was "kinda like a boy's name." After a few other questions, OIG asked AE whether she had "ever heard the name Tory?" AE stated she had. OIG then asked if that was the woman's name, to which AE responded, "I believe so." Although she was asked,

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<sup>16</sup> Miers attempted to obtain earlier records but was informed by her phone company that it could not produce those records as more than a year had passed from the records being requested,

AE could not provide the woman's last name but asked for the first letter of the last name. OIG subsequently told her the last name started with "M" but she indicated it was "still not ringing a bell." They then provided her with three last names – Meredith, Morgan and Miers – to which AE indicated it was not any of those three last names.

OIG presented AE with a photo lineup of six different women without any other identifying information. It is not clear whether AE was shown a color photo line-up or the black and white copy that was admitted into the record. One of the photos was Miers' driver's license photo from 2013, a driver's license photo of another CCF female staff, and the remaining four were female inmate mug shots, although they were not identified as inmate photos to AE. Miers was marked as photo 4 and the other CCF staff person as photo 3. Upon presenting the photo lineup, OIG asked AE whether any of the photos looked familiar. AE responded, "I'm going to say either photo 3 or 4."

## 2) Dates and Locations of Alleged Encounters

PK alleged he and Miers met at various locations and engaged in sex acts during these encounters. PK only provided one specific date of the alleged meetings. For the rest, he first stated it was after his release from CCF on July 29 and prior to his arrest on November 4. As the interview progressed, however, PK claimed the last time he met Miers was around October 15, a week before his October 22 stroke.

Miers denied any interactions with PK after his release. During her interview, Miers repeatedly informed the investigators she is "more than willing"

to provide proof of her actual whereabouts on whatever dates PK claimed they were together to disprove his allegations. The investigators' response each time was that they did not know specific dates but that PK merely provided them with "an approximate time span," which they also did not provide to her. Miers additionally stated that her presence at work can establish she was at CCF if PK is claiming they were together during those times. OIG's response to Miers was that PK claimed the encounters occurred on the weekends. Prior to her termination, the DOC never informed Miers of the relevant time span at issue or asked her to provide evidence of her whereabouts during the relevant time period. As part of the evidentiary hearing, however, Miers provided available alibi evidence establishing her whereabouts by witness testimony and documentary evidence in the form of receipts, banking card transactions, dated email correspondence, and dated photos with locations. The alibi evidence provided accounts for most Fridays to Sundays beginning Friday, July 29, PK's release date from CCF, to Friday, November 4, 2016, PK's arrest date. Miers provided evidence of her whereabouts to some extent for 30 out of the 38 pertinent days during the relevant time span.

PK claimed the first physical encounter occurred when Miers purportedly came to see him during his work hours at a construction job site in West Des Moines. He did not provide a date or approximate time of the alleged meeting. PK indicated he worked for his cousin who owned a concrete company in Des Moines, whom he identified by name and provided his contact number. OIG did not contact PK's employer, to obtain PK's hours of work, which could establish

when the alleged encounter might have taken place. OIG did, however, obtain Miers' work timesheet for the month of August. Miers' regular work hours were Monday to Friday, 8 a.m. to 4:30 p.m. OIG did not include the timesheet in its investigative file or otherwise document any information gleaned from it.

PK claimed Miers picked him up but that they remained parked in her car at the jobsite where "just our crew" was still working finishing concrete. He claimed they engaged in a sex act inside the car. PK was asked several times whether his cousin or any of the crew members at the job site would have seen Miers. He initially stated they would not because they were finishing concrete, but subsequently added that "maybe" one of the crew members saw her and provided the investigators with a name of the crew member. The investigative file contains no indication that OIG attempted to locate the identified crew member who may have seen Miers at the job site.

As part of its investigation, OIG also did not attempt to verify with Fort Des Moines about PK's departures or times away from the facility. However, ICON documentation in evidence establishes PK was on complete facility restriction for a week after his arrival to Fort Des Moines and did not start work until Saturday, August 6, at the earliest. PK's escape date from Fort Des Moines was Sunday, August 14. Thus, the relevant time span of the alleged visit to PK's worksite is between August 6 and August 14, 2016. Although Miers' timesheet is not part of the record, the record also contains no indication that the timesheet revealed any suspect absences from her regular work hours during the month of August. Miers' alibi evidence provides evidence of her whereabouts on the weekends in

this time span, August 6, August 7 and August 13. The evidence demonstrates Miers was with her children for the weekend, establish her presence at her child's birthday party for at least a part of the day, or that she was in Lincoln, Nebraska for the day.

Without providing any specific date, PK claimed one of the times Miers "came to see me" was the same day he called the Newton City landfill, where he had previously worked. He stated this occurred in July or August 2016. PK indicated he spoke to an employee at the landfill, whom he identified by name to the investigators. The investigatory file provides no indication that OIG did any further inquiry to narrow down when the phone call could have occurred.

PK claimed he was with Miers on Sunday, August 14, when he failed to return to Fort Des Moines. PK indicated he was "90 percent sure" he was with Miers that day and they spent the night at a Motel 6 in Des Moines. He indicated the room was registered to his friend BD. OIG had a phone conversation with friend BD as part of its investigation. The investigative file noted BD confirmed she is friends with PK, knew he was on escape status, and that "she knew about local motels." However, BD did not provide any corroboration that PK was with Miers or that she had any knowledge he was seeing Miers. BD's testimony at hearing established she was with PK on August 14, when he failed to return to Fort Des Moines. Once PK decided not to return to Fort Des Moines, BD reserved a room at Motel 6 for him in her name. She stayed with him until 9 or 10 p.m. that night. BD recalled PK asked her to stay longer because he did not have anyone to hang out with that night.

During its investigation, the DOC did not inform Miers that PK claimed they were together on August 14 or ask her to provide evidence of her whereabouts on that date. Miers' alibi evidence admitted into the record demonstrates Miers was in Lincoln, Nebraska from Saturday, August 13 through Sunday, August 14. Documentary evidence presented demonstrates she made a purchase in Percival, Iowa at 8:39 p.m. on August 14, as she drove from Lincoln toward Clarinda.

PK claimed the rest of the encounters he had with Miers was after he escaped on August 14. Miers allegedly met him "several times" at Motel 6 in Des Moines, the same motel he was at the day of his escape. Miers would drive herself, park her car at the motel, and come to the room through a side door. PK claimed he paid cash for the rooms and never registered his name. OIG did not obtain any evidence during its investigation that placed Miers at this Motel 6.

PK also stated they were together "once" at a motel in Altoona close to Adventureland. He stated BD got him this motel and "Tory came there too." He guessed that Miers "might have taken her kids to Adventureland too or something, I don't know what was going on but she was real rushed about it." When the investigators asked whether BD knew about Miers since she got them the motel room, PK initially stated "I think so" but then added that he did not know. He claimed that he would tell BD he was meeting AE but he was actually meeting with Miers.

A review of Miers' alibi evidence, including her banking transactions, show no indication she visited Adventureland at any point from August to November

2016. Furthermore, BD's testimony directly contradicts PK's assertion or insinuation that BD knew he was seeing Miers. BD testified that she spent a lot of time together with PK during his work release and escape status up until he moved in with AE. BD got him motels in her name because she did not want a fugitive coming to her home. BD testified she had never seen Miers or witness PK communicating with Miers on the phone even though BD had a lot of access to PK's phone during this time. PK also never mentioned Miers' name or otherwise provide any indication he was seeing Miers or a "prison guard." BD indicated she has known PK her entire life and knew about every woman he was seeing, stating PK would have "bragged" about his relationship with Miers if it had really been going on. BD knew about PK's relationship with AE and that he was living with her for a period of time during his escape status.

PK alleged that "a lot of times" he and Miers met at AE's apartment in Pleasant Hill while AE was at work or out of town. PK further alleged that "a couple of times" Miers spent the night with him at AE's apartment. The rests of the alleged encounters at AE's apartment were "very short lived" and Miers would "be having to fly back to down there." None of the evidence collected during the investigation established that Miers was ever at AE's apartment as PK alleged. During AE's interview with OIG, AE indicated she had a suspicion PK brought women to her apartment when she was at work because she would find makeshift beds on the floor. However, she had never seen another woman at the apartment and, more importantly, had never identified that she saw Miers at the apartment. AE revealed she worked at a bowling alley located across the street

from her apartment. OIG never asked the hours she worked or if she had ever spent any nights away from her apartment during the six weeks PK resided with her.

PK claimed he and Miers also stayed at a Super 8 motel in Red Oak and a Super 8 motel in Clarinda. He did not provide approximate dates or the number of alleged encounters at these motels. Miers purportedly had the rooms reserved for them. PK stated he drove himself to the motels and Miers handed him a key to the room, letting him know she would return later to meet him. During one of these times, he claimed Miers came back for “like 20 minutes” and then left. PK doubted Miers used her name to reserve the rooms, and guessed that she had somebody get the rooms for them. As part of its investigation, OIG worked with CCF, specifically Slough, to determine if there was any documentation of the alleged encounters at the local motels PK identified. A total of nine motels were identified, located in Clarinda, Shenandoah, Red Oak and Atlantic. Slough visited these nine motels and did not find any indication that Miers had been at the motels PK identified.

PK alleged the last meeting he had with Miers was when she came to see him at his friend’s (“friend N”) house in Des Moines. He claimed the visit occurred “the week before my stroke” that he had on October 22. PK indicated friend N’s girlfriend (“friend V”) saw Miers because she answered the door when Miers arrived. He identified both the friend and his girlfriend by name, provided their phone numbers and the house address in Des Moines. PK said Miers was “dressed up” and had a mini-skirt on. After having sex in the house, PK claimed

they went out and sat in Miers' "truck in the driveway." Miers purportedly asked him "what are you going to do," asked if he had money, and gave him sixty dollars in 20-dollar bills when he told her he did not have any money. He claimed this was the last contact he had with Miers.

OIG spoke to friend V. She indicated a "girl" showed up at the house looking for PK. Friend V described her as "very cute" and a "very pretty girl with long blondish hair" who wore a short dark-colored dress with black high-heel shoes. Friend V left the house as soon as she let the "girl" inside. She did not provide any other information to indicate this "girl" was Miers. When asked, friend V said she would not be able to identify the woman in a photo line-up as she had only seen her for a few seconds. Friend V also indicated the "girl" parked her car at a gas station located directly behind the house. She could only recall the car was a "dark color" but provided no other identifying information about the car.

Miers denied meeting with PK at any location, including anyone's house. The investigators told her a civilian witness identified her, described how she came to the house, and that she was wearing a short black dress with high-heel shoes. Miers continued to deny ever being at this person's house. When the investigators asked whether she owns a black dress, Miers indicated she does not and she has only worn dresses to weddings. She told the investigators they can go to her home to check her wardrobe and see they will not find any dresses.

### 3) Personal Knowledge about Miers

During PK's interview, OIG asked him to provide knowledge of any personal or intimate details he learned through the alleged relationship.

PK claimed to know Miers has a "yin-yang" tattoo because he saw it on her during a sex act. He thought it was on her left shoulder blade, but was not certain if it was on the left side. One of the investigators asked what the tattoo was, "what is it, a circle?" PK responded, "it's like this and you know what I'm talking about." Based on the interview audio, it appears PK started to draw the tattoo but did not actually finishing drawing it. If PK had drawn anything, it is not included in the investigative file. Instead, the other investigator drew a yin-yang symbol, to which PK responded, "exactly." The investigator further commented that one side of the symbol is usually black and the other side is white, to which PK added, "I think it might have even been red." When they returned to the description of the tattoo later in the interview, the following exchange occurred:

**OIG:** And this would be the tattoo you're taking about on her back.  
It was red and another color.

PK: I think it is red or like he said one thing was one color, the other was another color.

**OIG:** The ones I have seen are usually black and white but they can be any color.

PK: That's two different colors.

The interview concluded without definitive confirmation from PK whether the tattoo was red and white or red and black. PK claimed that when he commented on the tattoo, Miers told him she and Rich Miers got the tattoos together and

that she would have hers “covered up because Rich has the same tattoo.” He identified no other details about the tattoo.

The investigators asked PK again whether Miers had any other marks on her body that he could identify. He initially stated nothing else that he remembered, but then added that she had “some stretch marks.” PK pointed to where the stretch marks were but his identification is not noted in the interview. However, from the investigator’s follow-up response “from kids?” implies he had pointed to the stomach area. PK did not identify any other tattoos or marks on Miers’ body that he had allegedly observed.

During Miers’ interview, she indicated she has two tattoos on her body. She described one of the tattoos and indicated it was located in the middle of her lower back. As PK did not provide any mention of this tattoo, it is unnecessary to describe it here. Miers described the other tattoo on her left shoulder as “a yin yang with a rose through it” and the name “Rich” underneath. She indicated the tattoo was black but the rose going through it had red in it. Miers admitted into evidence a picture her two tattoos. The yin-yang tattoo and the other tattoo on her back are roughly the same size.

Miers also informed the investigators she and Rich Miers have matching yin-yang tattoos except that his says “Tory” underneath the yin-yang symbol. They got the tattoos a few days after getting married in August 1998. Miers stated the tattoo is not visible while at work, but that she has shown it to some staff. Most staff know she and Rich Miers have these matching tattoos because they both shared it with them upon returning to work. Miers stated it has been a

joke in her family since getting divorced that she is no longer with Rich but still has “his name” on her.

When the investigators informed Miers that PK claimed to have seen the tattoo on her body, Miers denied it and said his assertion is “a total lie.” OIG repeatedly asked how PK would know about the tattoo and her wanting to get it removed. Miers responded she did not know, but that he had never personally seen it on her body. Miers asserted other staff could have told him because it was known among staff that she and Rich had these tattoos. She also indicated that former CO AD could have told PK because it turned out they were in a relationship. Miers could not recall if AD was still working at CCF when she and Rich got married. The investigators continued to question her how PK would know this information, including that she wanted to remove the tattoo now that she is no longer married to Rich. She continued to respond she did not know. Miers reasoned it is not hard to guess a person probably wants to remove the “name” of a former partner tattooed on their body after the relationship ends. OIG made no inquiry to determine whether other staff knew about the matching tattoo as Miers claimed or to determine whether AD was still employed at CCF when Rich and Tory Miers got the tattoos. The investigative file provides no indication OIG gave any consideration to the fact that PK’s description of the tattoo entirely omitted the rose and the name “Rich.”

PK further claimed Miers told him she divorced her ex-husband because he was physically abusive. PK claimed he “slapped her around and beat her up.” He asserted Miers never reported the abuse but she was “very livid” and “very

spiteful” toward her ex-husband. Miers categorically denied any physical abuse in her marriage or discussing her private life with PK. She told the investigators she knows a rumor has been going around in the prison for years that Rich physically abused her, telling the investigators they can “pull officers left and right” who thought Rich physically hurt her. Miers indicated there was verbal abuse while they were married, but never any physical abuse. She indicated they do not have an abusive relationship and have had a good co-parenting relationship since the separation. OIG made no further inquiry regarding Miers’ assertion about the rumor among CCF staff that Rich was physically abusive toward her.

PK indicated Miers has two children, “I think a boy and a girl.” He stated they were “elementary students for sure,” but provided no other information about their ages. He claimed to know about her children because Miers told him she had to take them to swimming lessons and the Omaha zoo. When OIG asked what Miers did with her children when she met with him, PK indicated he did not know. Even during the alleged overnight stays at AE’s apartment, PK indicated he did not know what she did with her children but they were never with her when they met. Although he was asked, PK indicated he did not know the children’s names. As the interview progressed, however, OIG asked PK “have you ever heard the names [C] or [J]?” PK stated:

**PK:** Yes.

OIG: Where would they relate to you on?

**PK:** The kids. That is their names dude. [C].

Later in the interview when OIG asked whether he can think of anything else to add, PK mentioned the children's names again, stating "damn that sounds like it too [C] and [J]. [C]."

Miers confirmed during her interview that she has two children, two boys by the name of C and J. During the alleged relationship in 2016, Miers' children were 5 and 10 years of age. As the interview turned to the topic of her children, Miers told the investigators, "if he knows my kids' names then that's really gonna start to upset me," to which OIG responded, "he does." This caused Miers to become visibly upset and start to cry. She cried throughout the remaining hour of her interview. Miers continued to respond she did not know how PK knew information about her children. She told OIG some offenders know she has two boys because she talked about it in the course of teaching a class at CCF.

PK told the investigators Miers was from a "little town" in Nebraska and she visited it "a lot." He did not identify the place except that it was a "little town." During her interview, Miers indicated she is from Omaha, Nebraska. In describing her office, she indicated she has "a lot of Nebraska stuff in it."

PK alleged he had been in Miers' personal vehicle at the West Des Moines jobsite and his friend's house in Des Moines. He initially stated Miers drove a "blue Chevy Traverse or something like that, it was like a little SUV" but later stated, "I remember it was a Traverse." He indicated the interior was grey, had bucket seats in the front (as opposed to straight seats), and the gear shift was on the floor (as opposed to column). PK claimed she had "a little sticker in the back window, white sticker" on the passenger side. He further described the

sticker as, “like a school sticker or something maybe, some little white thing.” PK also claimed Miers’ vehicle had “a bunch of beads” hanging from the mirror.

Miers confirmed during her interview that she owns a Chevy Traverse. It is a grey color. She has owned this vehicle since January 2015. She uses it to commute to work and parks it in the designated staff parking lot. The record reveals the staff parking lot is visible from the prison yard and is visible to inmates housed on the south living units. The investigators informed Miers that PK identified the vehicle she drives and the interior. When OIG asked how PK would know this information, Miers told OIG the staff parking lot can be seen from the prison. OIG claimed that a civilian witness in Des Moines identified her and her vehicle specifically when she came to visit PK at this person’s house. OIG told Miers this witness had no knowledge about their investigation, yet when OIG “asks the question, she brings up your particular vehicle, your color, and describes you as you come to the door.” The record reveals the investigators were referring to friend V. Friend V’s interview, as documented in the investigative file, only indicated the vehicle was a “dark color” but provided no other information about the vehicle she saw. OIG viewed the parking lot from the outside prison fence. Based on this observation, OIG concluded PK could see the exterior but not the interior of Miers’ vehicle. Slough observed Miers’ vehicle in the parking lot. He noted it was a “blue/gray” Chevy Traverse. Slough also indicated there were beads hanging from the mirror and a white sticker on the rear passenger side, which appeared to be a white “Huskers” sticker that may have had her son J’s name on it.

Evidence received at hearing reveals that inmates living on the south living units, where PK was housed, have windows looking toward the staff parking lot. The distance from those units to the staff parking lot is about 200 to 250 feet. Testimony received at hearing further establishes that offenders are released around the prison facility, including on the staff parking lot, for various maintenance type work. Staff testified offenders have commented to them on the specific vehicle they drive because they could see them coming and leaving work. Offenders have also been so close to the staff vehicles while working around the prison that they were able to observe a vehicle was unlocked.

#### 4) No Physical Evidence of the Alleged Relationship

During its investigation, OIG did not obtain any physical evidence corroborating PK's allegation of a sexual relationship with Miers. Although PK claimed to have a picture of Miers, he did not produce it during the investigation. Brother J searched a specific box of PK's belongings where PK claimed this picture was located. Brother J did not find this purported picture of Miers and reported to OIG that he did not find any pictures.

#### *v. Miers' ICON Access*

PK made multiple assertions during his OIG interview that Miers used ICON to obtain information about him after his release from CCF. ICON maintains a record of staff access to an inmate's ICON record. Miers' access to PK's ICON dating back to 2005 is documented and part of the record. The record confirms she did not access PK's record at any time prior to him getting assigned to her caseload in 2015. During PK's 10-month incarceration, Miers accessed

his ICON record 12 different times, the first access occurring on October 16, 2015, and the last access on July 26, 2016. She accessed different sections, including inmate release plans, generic notes, keep separates, and victims section.<sup>17</sup>

The entries Miers made into PK's ICON are also part of the record. PK claimed during his interview that Miers was "adamant" he go to Des Moines for work release, implying she manipulated his placement to make ensure he is in Des Moines. Miers' ICON entries demonstrate she had a conversation with PK regarding his release. When PK stated he wanted be paroled to his wife in Waterloo, Miers did not support this request and subsequently documented her recommendation in an ICON entry, which stated:

Offender has been committing crime since 1984. Some violence and Harassment charges. Registered victims. Does not have any extended period of time in the community. He is a D3 and his risk scores are High, High. Even though he has done pretty well in prison, there is no possible way to support a parole to his wife at this time. He needs to go to a WR and show once and for all that he can make it slowly back into society. All of this was explained to offender. Even though he was not happy about this, he understood.

As his counselor, Miers received responses from various work release sites whether they would accept PK into their program. Many of the sites PK applied to rejected his admission. Fort Des Moines ended up accepting him into their work release. The record demonstrates Miers merely copied these various responses from work release sites under PK's release planning part of ICON.

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<sup>17</sup> The record also contains Miers' ICON history for all assigned inmates she searched from August 1 through August 8, 2017. Her history shows she searched and accessed ICON records for over 30 different offenders. Similar to her ICON activity with Inmate PK during his incarceration, she also accessed different parts of ICON for these offenders.

During the alleged relationship from July to October 2016, Miers did not access PK's ICON at all. Following PK's release from CCF in July 2016, Miers accessed his ICON once on August 2, 2017, more than a year after his release. During her OIG interview, Miers informed the investigators that CO Thomas Walston came to her office a few weeks prior and told her he had seen her name in some of PK's kiosk messages at IMCC.<sup>18</sup> Walston told her PK was saying he did not want to come back to CCF because of some involvement with her. She and Walston accessed PK's ICON, scrolled through several generic notes, but they did not find the ones Walston said mentioned her name. She logged out and never thought of it again, telling Walston PK was making up allegations to avoid coming back to CCF. Miers' only access to PK's ICON record after his July 2016 release from CCF was the August 2, 2017 access with Walston present.

Following OIG's interview with Miers, OIG and CCF communicated about interviewing Walston to determine if Miers was being truthful about the August 2 ICON access. The record reveals CCF interviewed Walston on August 15. Walston corroborated Miers' account of the incident during which he approached her after seeing PK's kiosk messages in ICON. The investigative file does not indicate, however, that Walston's interview was forwarded to OIG or that OIG considered it as part of its investigation. Instead, on August 23, CCF requested

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<sup>18</sup> At this point in the interview, Miers had only been asked general questions if she can think of any inmates during her employment at CCF that caused problems for her that may lead to a PREA allegation. Once the investigators mentioned the instant allegation was first reported through kiosk messages, this prompted Miers to recall the incident with Walston.

that OIG interview Walston because “the information provided may have bearing on the totality of the investigation as a whole.”<sup>19</sup>

OIG interviewed Walston on September 12 as part of its investigation into Miers’ alleged misconduct. The interview occurred four days after Miers was terminated. OIG provided no explanation for failing to interview Walston prior to the conclusion of its investigation other than to generally state there were scheduling conflicts. In his interview with OIG, Walston again corroborated Miers’ description of the August 2 incident. As with his first interview, Walston described that he approached Miers in her office to tell her he had seen her name in some of PK’s kiosk messages. He overheard some offenders saying PK had a stroke and he read some of PK’s kiosk messages to see if it was true. In two of the older messages, he saw PK mention Miers and an investigation, asking if the investigation with Miers was holding him up. The record reveals the following messages were in PK’s ICON under generic notes:

**5/15/2017 – subject: “cap. rooks”**

see me about clarinda/tory meirs. thanks.

**5/23/2017 - subject: “clarinda”**

plz tell me if investigation is holing me up about tory...[let me know]  
plz I need out of celled reception.

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<sup>19</sup> Prior to questioning, CCF informed Walston he was being interviewed to determine if he had prior knowledge about the PREA investigation into Miers, if he and Miers interfered in that investigation, and whether he “failed to report an alleged PREA incident.” Walston informed CCF he was just browsing through PK’s ICON because he had heard PK had a stroke and he was curious whether it was true. He acknowledged he had no other reason for accessing PK’s ICON. Walston was not disciplined for his involvement in accessing PK’s ICON on August 2, 2017.

Walston indicated since the messages were way back, he figured it was something that was already concluded. Walston went to her office and asked her whether she was under investigation. Miers replied “no” and that she had no clue about an investigation or what the investigation could be about. Walston told her about the ICON messages, gave her PK’s ICON number and told her to look at it. Miers accessed PK’s ICON with Walston next to her. She briefly scrolled through some of the generic notes but did not find the ones Walston referenced. She told Walston PK was probably trying not to get transferred back here. Miers’ logged off PK’s ICON while Walston was present, returned to the task she was working on, and Walston left her office. During his OIG interview, Walston described Miers’ demeanor as nothing out of the ordinary. She did not seem concerned about this information at all and just commented that he was just trying not to get transferred back to CCF. He did not report the ICON information to his superiors, expressing confusion during the interview what exactly he was supposed to report when asked by the investigators.

When the investigators asked why Miers would say that PK probably does not want to come back to CCF, Walston indicated that a lot of inmates “hate coming to Clarinda.” He stated inmates “try not to get moved back here a lot” and “try to find ways to not come back, by saying enemy list or whatever.” He did not take Miers’ comment any other way but that way. Walston began employment at CCF around the same time as Miers. During his 21 years at CCF, Walston stated he has never even heard a rumor of Miers being involved with PK, including when she was placed on administrative leave during the

investigation. Walston indicated he is aware PK was involved with former CO AD because his wife delivered mail and saw PK was living with AD in Red Oak. He learned this after AD left her employment at CCF. OIG's final investigative report was not amended or supplemented in any manner to reflect Walston's corroboration of Miers' statements regarding the ICON access.

vi. PK's Allegations about Other CCF Staff

During OIG's interview with PK, he provided information about other CCF staff that is relevant when evaluating the totality of circumstances surrounding the investigation into Miers' alleged misconduct and PK's overall credibility.

First, PK identified one CCF staff person whom he described as a "friend." OIG did not inquire why he characterized or considered this correctional officer a "friend." During her interview, Miers repeatedly asserted PK could have learned that she and Rich Miers have matching yin-yang tattoos from other staff who knew about it, or overheard staff talking about it. Testimony received at hearing from CCF staff indicated the staff person PK identified as a "friend" has a "buddy-buddy style" with inmates and enjoys sharing staff information with them. The record further reveals this staff person knew about the matching yin-yang tattoo.

Next, PK alleged another female staff person, a correctional officer, was engaging in sexual misconduct. When OIG asked PK whether he had a sexual relationship with this CO, PK alleged she attempted to initiate a relationship with him, but he declined because he was not interested in her. PK further alleged this CO was having a sexual relationship with another inmate. Nothing

in the record suggests that PK's allegations regarding this female CO were ever investigated or otherwise corroborated.

Finally, PK made specific allegations that Rich Miers, Tory's ex-husband, knew or suspected that Miers had a sexual relationship with PK and that he feared retaliation from him because of this knowledge. During Miers' interview, OIG specifically asked whether she or Rich would have any issues with PK coming to CCF. Miers asserted neither she nor Rich would have any issues with him, further adding "I'm sure if you would talk to [Rich] today he would tell you the same thing." OIG did not interview Rich Miers during the course of its investigation. Testimony received at hearing reveals OIG planned to interview Rich Miers, but the investigator was directed by his OIG superiors not to interview him. OIG received information from CCF that "Rich has a temper, and there's no need to upset him about all of this." The record does not reveal who exactly communicated this information from CCF to OIG or the basis for the statement. Nothing in the record indicates that Rich Miers was separately investigated for failing to report his alleged knowledge of Miers' misconduct.

Rich Miers' testimony at hearing directly and unequivocally contradicted PK's assertions regarding his knowledge about an alleged relationship. Rich Miers has been employed at CCF since 1994 and was promoted in 2005 to security sergeant. He had a vague recollection of PK from his incarceration at CCF, but could not recall any specific interactions with him. Rich indicated there was no negative history between him and PK. Rich also asserted Miers has always kept a professional line between herself and the offenders, contending

that the allegations PK made against her are “absolutely not” in line with her as a person he has known both personally and professionally.

#### D. PK’s Communications Following the OIG Interview

At the conclusion of OIG’s interview with PK on May 16, the investigators asked him to write a written statement about the allegations. Specifically, the investigators asked him to include a timeline and locations of his encounters with Miers with as much detail and date proximity as he can recall. PK agreed to write the requested statement. He provided the first statement on May 22, six days after his interview with OIG. The statement said:

I was involved in personal and physical sexual relationship with Tory Meirs/Gwynn in 97-98 and then again in 2016 involving us having sex personal relations from the past rekindled [.] I’ll explain in detail in person or write another statement if asked.

Upon receipt of PK’s statement, OIG asked him to provide a “detailed written statement.” PK provided a second written statement on May 25, which stated:

I had sex w/ Tory Gwynn/Meirs in 97/98 in cell 16 on North 1 at CCF. Then again in 2016 after I ran from Ft Dsm. I’ve told truthful accounts of it to [OIG investigator] on tape. Will explain in person more in depth.

PK never provided a detailed written statement containing any specific dates, locations, or other specific information OIG requested multiple times.

A week after his interview with OIG, PK indicated his unwillingness to continue participation in the investigation. PK directed a message to OIG through his IMCC counselor that he was done participating in the PREA investigation because he believed it was keeping him in celled reception. The record reveals PK was already in celled reception awaiting classification before he even reported

his allegations. After IMCC informed PK that he had been classified and was no longer on hold, PK stated “I will keep being honest with prea dude then.”

PK wrote several o-mails to brother J after his OIG interview. About a week after his interview, PK told brother J that an investigator may call him and told him to “answer any question honestly” as well as direct the other witnesses he named during his interview to do the same. PK then informed brother J that he was not in trouble, but he was “just trying to prove” he had a relationship with “tori from sw iowa.” In August, PK wrote brother J and asked him to find purported pictures of Miers that PK had stashed away. The next day, when he believed he was being transferred to CCF, he directed brother J to refuse conversation with the investigator, and refuse to provide the pictures he claimed existed. He also directed brother J to inform all the other named witnesses to also refuse conversation with the investigator.

Through IMCC staff, OIG made contact with PK and assured him he was not being transferred to CCF. Afterward that conversation, PK again wrote to brother J to inform him he can let the investigator look through the pictures that he purportedly had of Miers from 20 years ago. He also told brother J that the investigators were on his time, if he “can spare any.” Brother J responded on August 28, telling PK the investigators showed up at his house, but he was not home. He only saw them on the house cameras. Brother J told PK that he could not find the pictures, and that he informed the investigators of the same. PK’s only response was that he was “pissed” the investigators just showed up at

brother J's house. PK gave no response to brother J about not being able to find the purported pictures of Miers.

#### E. PK's Prior PREA Reports

During its investigation, OIG obtained PK's prior PREA reports. One report specifically, a 2013 report regarding another inmate, was used by OIG to bolster PK's credibility. The information available about this report indicates that in January 2013 PK alleged another inmate [inmate TC] impregnated an employee of a state vendor. PK further alleged inmate TC was sending money to the employee for contraband and drugs. During the investigation, TC admitted to a sexual relationship with the employee and the employee quit employment before she could be interviewed. PK's allegations regarding the contraband, however, were not substantiated. OIG concluded PK's prior report of sexual misconduct, the part that was substantiated, bolstered his credibility.

The record also contains prior PREA reports PK made referencing his relationship with former CO AD. In January 2010, while incarcerated at IMCC and awaiting transfer, PK attempted to use his relationship with AD to avoid being transferred to CCF. The 2010 offender transfer sheet documented his allegations at that time:

Self report information only:

[PK] claims his past DOC employee girlfriend worked at Clarinda and her current boyfriend is an officer there and he still talks to her. This writer does not have confirmation on this report. Only the past reception reports where he self reported this incident and his current self report.

He could benefit from programming at CCF.

FDCF is the only other celled facility where he does not have a keep separate. However, this writer is not comfortable with [Inmate PK]

going to FDFC. He was involved in fights and threats in the past. His SVP is aggressor potential. It does not look like a good mix to place him among youthful offenders. This is his fourth prison sentence, a 35 year sentence. He has a girlfriend out of Black Hawk county and it appears that he may be attempting to manipulate his placement.

The record does not indicate any further inquiry was done concerning PK's allegations in 2010. It appears his transfer to CCF became a nonissue because PK was instead released in January 2010 on appeal bond. Unknown to PK at the time he made this report, AD was deceased. After his release in January 2010, PK found out AD passed away in November 2009.

OIG erroneously concluded the 2010 self-report about a "past DOC employee girlfriend" was regarding Miers. OIG also inaccurately told Miers during her interview that PK had previously made reports about their purported relationship. They subsequently included the 2010 report as evidence corroborating PK's allegation against Miers. All the evidence in the record, however, demonstrates PK's report was solely referring to AD. The report itself is referring to a past CCF employee, not a current employee as Miers was at the time. Furthermore, PK's own acknowledgments during the OIG interview confirm he was referring to AD. OIG still included this report as corroborating evidence of the alleged relationship between Miers and PK.

In June 2015, when PK was slated to be transferred from NCF to CCF, he again attempted to use his relationship with AD to avoid placement at CCF. He told OIG during his interview that he did not want to go back to CCF because AD's ex-boyfriend, a CO whom he identified by name to the investigators, still worked there and "he didn't wanna go back down there and get involved in this

circle.” He identified the staff person as a “keep separate.” The DOC spoke to the identified staff prior to the transfer and discovered the staff person did not know or have issues with PK. In May 2017, Slough also confirmed to OIG that PK’s reference in this report of an “ex-boyfriend” was referring to AD and PK’s inaccurate assertion that AD had a relationship with the staff person identified.

#### F. Miers’ PREA-Related History

During her 21-year tenure with the DOC, Miers was never investigated for or ever found to have violated the DOC’s PREA policies. In terms of Miers’ PREA-related history, the investigative file contains information about prior incidents where Miers encountered inappropriate inmate comments or conduct.

One item considered by the investigators concerned a September 2016 incident when Miers failed to immediately address an inappropriate comment with an offender. Miers identified this incident to the investigators during her interview and OIG also collected a statement from NCF staff Mike Robinson who witnessed the incident. Robinson was conducting an internal PREA audit at CCF when the incident occurred. A group of three or four inmates were standing in line in front of the barber shop. As Miers walked by the area, one of the offenders made a comment to her. A factual dispute exists between Miers and Robinson as to the inmate’s statement, with Miers contending the inmate stated, “I don’t get to see your toes today,” while Robinson reported the inmate said, “I don’t get to see your tummy today.” Miers responded, “no, not today” but continued walking without addressing the inmate’s comment. Robinson spoke to the inmate about the inappropriateness of his comment and let him know he could

be disciplined for such comments. Robinson then spoke to Miers, expressing his concern that she did not immediately address the inmate's comment. Miers told Robinson the inmate was on her caseload and she would speak to him later that day. Robinson reported the incident to Miers' supervisor Shawn Howard, in addition to other management staff. Howard spoke to the inmate and addressed the incident with Miers as well.

Miers acknowledged at the time of the incident and during her interview with OIG that she should have addressed the inmate immediately. However, Miers insisted the inmate's comment was about "toes," not "tummy," because she was not wearing open-toe shoes as she had previously worn. Thus, her response was, "no, not today," responding to the fact she was not wearing open-toe shoes that day. OIG did not interview Howard to determine whether this factual dispute existed at the time of the incident. OIG confirmed the inmate did not receive formal discipline for his comment from Miers or any other management staff to whom the incident was reported.

The record also contains five offender disciplinary reports Miers filed between 2004 and 2016. These reports were not part of OIG's investigative file, and it does not appear they were considered as part of OIG's investigation. Instead, the DOC presented these reports at hearing to demonstrate Miers knew inappropriate comments or behavior by offenders needed to be corrected with a disciplinary notice. The five notices are:

- A 2004 notice is for an offender looking at Tory while standing naked in the shower. Before the ALJ, the offender made statements that he was not looking at her.

- A 2005 notice that involved an inmate for writing “Tory baby” in a kite delivered to her mailbox. Before the ALJ, the inmate stated he was writing another letter to his girlfriend “Sherrie” and got confused between the letter to Miers and his girlfriend.
- A 2008 notice that involved an offender writing unsolicited letters to women he did not know, and one ended up going to a state employee who reported it to CCF. Miers had addressed this issue previously with the inmate, and he continued to write letter to women he did not know.
- A 2012 notice that involved an inmate repeatedly giving inappropriate looks that ultimately lead to Miers writing a disciplinary notice to him. The inmate first gave Miers a look and mouthed the words “you and me” while she and another counselor discussed with him what he did to his victims. The offender’s conduct insinuated he and Miers can covertly talk about it when the other counselor was not around. Miers addressed it with him the next day, telling him his conduct was inappropriate and to never do it again. The inmate made excuses and she reiterated that he is not to engage in such conduct again. As he apologized, the inmate winked at Miers. When she asked whether he winked at her, the inmate claimed his eye was twitching. Miers subsequently ran across another report on the same inmate that he had engaged in similar behavior with health services staff, and winked at them. She became concerned the inmate was engaging in predatory behavior and attempting to groom her for inappropriate acts. At that point, Miers wrote the inmate a disciplinary notice documenting the incidents leading up to the report.
- One report, a 2016 notice, involved one offender telling another that he know he’s in Tory’s office “sucking on her tit.” The offender claimed her was talking on the phone.

All reported offenders were found “guilty” following a hearing before a DOC administrative law judge. It is unknown how the 2016 notice was resolved.

#### G. OIG’s Interview with Miers

OIG interviewed Miers once during the course of the investigation. The interview lasted about two hours and 15 minutes. Based on her interview, OIG

concluded Miers was not consistent and thus did not find her credible. Although much of the information from Miers' interview has already been incorporated above, it is pertinent when assessing Miers' credibility to also understand how the interview unfolded, the substantive information Miers was provided, and the context of her responses.

OIG concluded Miers was not consistent regarding whether PK was assigned to her caseload, initially stating she did not know whether he was assigned to her but ultimately indicating he was on her caseload. Upon review of the interview, Miers' responses regarding PK's assignment are not inconsistent. Miers never asserted PK was not assigned to her or that she did not know him. She acknowledged having interactions with him during his last incarceration. She described an in-person meeting with PK and another counselor regarding substance abuse treatment. Miers' initial uncertainty whether PK was formally assigned to her is not inconsistent with her subsequent reasoning that he probably was because of the substance abuse meeting she recalled. As the record establishes, PK was one of up to a 160 other inmates she had on her caseload during this time period, which was over a year before the interview.

OIG also concluded Miers was not consistent regarding the comments he made to her because she did not tell the investigators about them until the end of the interview. This credibility conclusion must also be considered within the context of the entire interview. When OIG first began questioning Miers, she was generally told they were investigating a "PREA complaint." She was not informed

about the specific allegations or that she was the subject of the investigation. Miers was then broadly asked whether she can think of any inmates that were upset or created problems for her during her tenure at CCF. She advised OIG of a recent complaint where the inmate was upset she had not met with him yet, but otherwise indicated no other incidents were coming to mind. When the investigators asked if Miers can think of any inappropriate comments inmates made “that would lead to this thinking,” Miers stated, “anything they have said to me?” and described the PREA audit incident previously described. She was again broadly asked if he can think of any other inmate who created any issues dating back five or ten years. Miers indicated no specific incidents were coming to mind.

When OIG finally indicated the complaint being investigated was first reported through kiosk messages, Miers visibly recalled another incident and told the investigators about the information Walston told her a few weeks prior regarding PK’s kiosk messages. OIG asked whether she recalled any issues with PK when she was a CO, to which Miers she responded, “I don’t know, he was just another inmate.” She recalled PK was at CCF when she was a CO and there was a rumor that AD and PK were looking “suspicious.” Miers also told the investigators about the Ice House encounter, indicating this was the only time she had seen PK outside of prison. Almost 25 minutes into the interview, OIG first gave Miers an indication they were investigating allegations PK made against her. One of the investigators remarked, “I am sure you are understanding why we are asking questions about [PK].” Miers stated she can only imagine what

stories he is making up, subsequently expressing disbelief that PK is claiming they “got together on the outside.” OIG responded, “it’s a PREA allegation.”

As the interview progressed, OIG revealed more about PK’s allegations and that he was claiming they got together at multiple locations once he was released from prison. OIG told her PK “knew” or “provided” them with personal information about her. Miers indicated she did not know how he obtained such information. As the record reveals, some of the information OIG told her PK knew, such as her phone numbers and names of her children, was not provided by PK during the interview. OIG further told her multiple civilian witnesses specifically described her, identified her vehicle, knew her name, that she was PK’s counselor, and that she was identified meeting PK at a house in Des Moines. Based on these representations, Miers understood the allegation was that she had sexual encounters with PK outside of prison. She categorically denied any encounters with PK once he was released from CCF.

Throughout the interview and in response to PK’s purported knowledge about her, Miers asserted she did not know how he knew or obtained the personal information about her. She offered possibilities how he could know some of the information, like having seen her car in the staff parking lot. Although she did not provide concrete evidence at the time to rebut PK’s allegations, Miers repeatedly offered to do anything to disprove his allegations. She suggested that she could provide evidence of where she actually was on the dates PK claimed they were together. OIG did not ask her for whereabouts on any particular day or time span.

Miers asserted PK's allegations were completely false. OIG repeatedly asked her what motive PK would have to lodge false accusations against her specifically. Miers did not know. OIG told Miers that PK knew or provided a litany of personal information about her. Miers asserted she did not have any connection to PK, but she did not know where he was getting this information OIG claimed he knew. OIG asked Miers why PK would specifically choose her, inquiring whether anything happened during his incarceration, if he tried to flirt with her or if she had to "shut him down." Miers indicated she did not have to shut him down. OIG subsequently led Miers to believe that multiple civilian witnesses specifically identified her as either communicating with PK or coming to meet PK at a house in Des Moines. The amount of information OIG claimed PK provided along with the purported corroborating witnesses caused Miers to become visibly upset. She told the investigators she did not know why he was doing this to her.

OIG kept telling her that PK would have to have a strong motive to lie about everything and they did not see what motive he had to lie against Miers. At this point, almost two hours into the interview, Miers stated he might be making it up because he is obsessed with her. The investigators then specifically asked what Miers noticed during his incarceration that would make her think he was obsessed with her. Miers repeated, "what have I noticed?" before responding, "just the way he looked at me." Miers then stated PK had made inappropriate comments but she did not recall specifics. OIG specifically asked what he said to her. Miers took a long pause before recalling PK's "you look different" comment

that she understood was about her breasts. Miers further stated PK had made indirect comments about wishing he was not married and saying something like “the things I would like to do with you.” Miers asserted she addressed the inappropriate comments with PK and directed him to stop. She did not document them in ICON. After describing the comments PK made, Miers reiterated she does not recall the exact comments PK made or the number of times. She indicated she gets these type of comments and looks from inmates almost daily. Miers stated if she wrote down every time an inmate looked at or addressed her inappropriately, she would spend half of her time writing.

After her OIG interview, Miers was placed on administrative leave. About two weeks after the OIG interview, Miers’ attorney at the time made contact with the DOC regarding the investigation. He spoke to Miers’ supervisor, Howard. He requested a copy of Miers’ suspension notice and informed him Miers has been advised to fully cooperate in the investigation. Howard informed the attorney he had no information about the investigation. Miers’ attorney also reached out to OIG directly regarding the investigation. He initially spoke to the investigator, who directed him to speak to the Inspector General. The attorney requested a copy of the recorded interview and a summary of the allegations against Miers. The Inspector General refused to provide him with that information. Instead, she recommended the attorney remain in contact with the investigator to make sure he had all the information he needed.

After speaking with the Inspector General, the attorney wrote a follow-up note to the investigator. He shared the Inspector General's recommendation to remain in contact with the investigators. The attorney further stated, in part:

... If there is anything Ms. Miers and I can do to cooperate with the investigation please do not hesitate to reach out to me.

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I am not in a good position to know what specific information you may need from Ms. Miers to help your investigation, however, because I was not present during the interview and do not have any written summary of the allegations. As a result, please let me know if there are any specific questions that you have.

Neither Miers nor her attorney were contacted or asked to provide any additional information during the investigation. After not receiving any further communication from the DOC, Miers' attorney made another contact with both CCF and OIG. CCF notified OIG that Miers' attorney "continues to hound" with his communications. The DOC informed the attorney it would not discuss the investigation with him and did not respond to his request for more specific information regarding the allegations against Miers. Based on the internal communications at the time and the testimony received at hearing, the DOC has provided no legal or other basis for refusing to provide Miers with more specific information about the allegations PK lodged against her.

#### H. Items Collected from Miers' Office

OIG's investigative file contains numerous items found in Miers' office after she was placed on administrative leave. OIG included them under a tab section described as items "that may suggest suspicion of offender involvement." The items include several pages out of Miers' personal address book, Miers' login information for her cell phone provider and Iowa College Savings, several hand-

written notes, and some information that appears to have been retrieved online. Only one of the notes was signed, but the record does not reveal whether the signatory is an inmate. Miers was never asked about the retrieved items and the DOC has not otherwise shown any possible connection these items have to Miers' potential involvement with PK or any other offender.

One item retrieved was an undated and unsigned CCF "institutional kite" that appears to have been written by an inmate. The kite was found in Miers' desk drawer. The text said:

How can [anyone] ever get in Mrs. Miers office when inmate [T] and [M] are in there for hrs everyday! Can they be moved off unit or someone please break up their affairs! What does she have them in her office everyday for hrs for!

Miers was never asked about this kite during the investigation. During her interview, while being generally asked if she can think of what the PREA allegation could concern, Miers informed the investigators about a complaint an inmate made about her a few weeks prior. The inmate filed a complaint with the deputy warden and her supervisor, Howard. She indicated the complaint was "written down" but she could not recall specifically what the inmate said except that he was upset she had not met with him yet. OIG did not do any follow-up inquiry with the deputy warden or Howard to determine the precise nature of this complaint, or whether it was related to the note they found in her office.

#### I. Conclusion of OIG's Investigation

OIG concluded its investigation on August 31, 2017, and sent its final investigative report to the CCF Warden. OIG substantiated PK's allegation of sexual misconduct. The final report included select information learned from

witness interviews, some of PK's kiosk and o-mails, the 2010 offender transfer sheet, and AE's photo line-up identification. It also included the information from Slough about "whispers" about PK and Miers, and Robinson's original report about the "tummy" comment during the PREA audit.

OIG's final report contained several inaccuracies and incomplete information in light of the supporting evidence that was actually obtained. The first set of information pertains to PK's interview. The report implied PK identified two of Miers' phone numbers, but gave no indication that PK never independently provided any of Miers' phone numbers and the numbers he claimed to remember were inactive during the time of the alleged relationship. The report also inaccurately stated PK indicated Miers talked to him about verbal and physical abuse in her marriage; PK only ever mentioned physical abuse. Finally, the report indicated PK "remembered" the names of Miers' children, while failing to also indicate that PK did not independently provide the names and incorrectly stated that Miers had a boy and a girl.

The report also contained incomplete and inaccurate information purportedly collected from other witnesses. The summary of AE's interview indicates that she knew the name "Tory," that she had written the name "Tory" on a piece of paper and knew her to be PK's "counselor." This was PK's allegation but AE did not corroborate this. Other than to state "I believe so" when the investigators asked if the "boyish" name of the old girlfriend was "Tory," the rest of the information attributed to AE is inaccurate. Furthermore, the final report indicates AE "immediately circled" Miers' photo when presented with the photo

line-up and then hesitated before she circled the other correctional staff photo. AE's interview reveals this is inaccurate, as AE circled the other staff person first during the line-up. The report also indicated inmate JH stated Miers and AD did not get along because Miers "stole" her boyfriend, but failed to also indicate that JH made it clear this was widely rumored among the offenders but he never actually witnessed them not getting along.

Certain documentary evidence obtained during the investigation was not completely or accurately relayed in the final report. First, the inclusion of the 2010 offender transfer report is included as evidence of a prior relationship between Miers and PK is inaccurate and misleading. All the evidence in the record unequivocally indicates this report of involvement with a former staff person was solely about AD. PK had never made a report about Miers prior to the instant complaint. Furthermore, OIG included Slough's email that stated some supervisors recalled "whispers" about PK and Miers during his last incarceration. The final report does not, however, contain any of the follow-up information from Slough which informed OIG that CCF "kept an eye" on their interactions and did not see any evidence of impropriety, thus finding no reason for formally investigate. Finally, OIG included information that Miers accessed PK's ICON a year after his release, but failed to include any information obtained from Miers that she accessed it because of her interaction with Walston.

## **VI. Miers' Termination and Requests for Information**

The CCF Warden made the decision to terminate Miers. In reaching his decision, the Warden entirely relied upon OIG's investigative conclusion

substantiating the sexual misconduct. He reviewed some of the investigative materials forwarded to him and listened to parts of witness interviews, but did not review all the interviews or all the other items in the investigative file. Although the Warden consulted with DOC central office prior to making his decision to terminate, the consultation was limited to determining whether termination is the appropriate level of discipline for substantiated sexual misconduct. The discussion had nothing to do with the thoroughness or the sufficiency of the evidence collected. The DOC continues to assert the investigation was sufficient and the evidence obtained proved Miers engaged in sexual misconduct.

Miers was terminated on September 8, 2017. The State asserts she was given a *Loudermill* on the same day, immediately prior to delivering the written notice of termination. Miers' written notice of termination stated, in pertinent part:<sup>20</sup>

This letter is to inform you that effective September 8, 2017, that you are being discharged from employment with the Iowa Department of Corrections. An investigation conducted by the Office of the IDOC Inspector General concerning alleged rule violations of AD-PR-11 (Iowa Department of Corrections General Rules of Employee Conduct) and IDOC Policy PREA-02 (Prison Rape Elimination Act (PREA) Staff, Contractors, or Volunteers Sexual Misconduct/Harassment/Retaliation) has substantiated findings for staff on offender sexual misconduct. Rule/Policy infractions are as follows:

C. Code of Conduct

1. Employees are charged with the responsibility of complying with IDOC's, Institution, and Judicial District Department's work

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<sup>20</sup> Several of the citations in the termination letter are incorrect. Language contained in the letter under C.1. is actually under C.2. in the policy, and the language cited as E.5 in the letter is actually contained in F.5 of the AD-PR-11 policy.

rules, orders, policies and procedures, along with municipal, county, state and federal laws, and the applicable rules of regulatory agencies that apply to them.

#### E. Personal Ethics

Employees Shall:

2. Avoid any action that might adversely affect the public confidence in the state criminal justice system.

5. Not have any unauthorized association or unofficial communication with offenders or former offenders and their families or any other person acting on behalf of the offenders or former offenders. When such contacts or communication occurs, employees are required to submit a written report to their supervisor on the first workday following the contact. When regular contacts with a former offender or the family of a current or former offender are unavoidable, one report to the Warden detailing the contact shall be sufficient unless the situation changes.

6. Report any violation of law or policy that could affect the security or operation of the IDOC to the Warden, Judicial District Director (depending on your work location), or the Director of Corrections within 24 hours of occurrence.

#### F. Information and Communication

Employees Shall:

6. Not carry on unofficial communication with an offender or with an outside party on behalf of an offender nor assist or be a medium of unofficial communication between offenders or other persons.

#### H. Professional Demeanor

Employees Shall:

9. Not engage in discussions or actions that may lead to sexual contact between employees and offenders under Departmental supervision.

#### I. Computer Security

5. Use IDOC computer system(s) and programs only for Department of Corrections business.

IDOC Policy PREA-02 Prison Rape Elimination Act (PREA), Staff, Contractors, or Volunteers Sexual Misconduct/ Harassment/ Retaliation.

Specifically, during 2015 and through the conclusion of 2016, you were involved in an inappropriate relationship with an offender of a sexual nature. Additionally, you failed to report alleged PREA events

as per policy. The egregiousness and totality of these infractions have resulted in the aforementioned decision.

Miers signed the termination notice acknowledging she received a copy of it, but hand-wrote a note at the bottom that she does not agree with the findings. She further documented that CCF did not allow her attorney to be present during the termination meeting.

The same day of her termination, on September 8, Miers' attorney requested specific information about the alleged sexual misconduct underlying the termination. He requested all relevant information to be produced, including any reports, witness statements, recordings, and documentation reviewed or relied upon in making the termination decision. Miers' attorney requested the documents within seven days, noting that Miers only had seven days to appeal her termination. He further asked the DOC to inform him if it will not produce the requested documents and the basis for such withholding. The attorney's request prompted internal communications between CCF, OIG and DAS, but they did not respond to the attorney's request or produce the requested documents.

On September 15, without having provided any of the requested information to Miers, CCF and OIG communicated about gathering information for a criminal referral to the county attorney. The DOC subsequently provided the county attorney with a packet of information. The county attorney ultimately declined to file any criminal charges against Miers based on the information OIG provided.

Miers appealed her termination to DAS on September 15, 2017, without having any of the information from the investigation. DAS did not answer Miers'

appeal at step 3 of the grievance procedure within 30 calendar days from the date of the appeal as required by DAS rule 11—61.2(6). Miers subsequently filed the instant appeal with PERB on November 1, 2017.

At the time she filed her appeal with PERB, the DOC still had not provided Miers with the information relied upon in her termination. She made subsequent attempts for the information after filing the PERB appeal but the DOC still refused to provide her with the evidence used in terminating her employment. Having no response from the DOC, Miers resorted to writing letters to the Governor, her state legislator, and the Attorney's General office regarding her inability to obtain the investigative file. After a state legislator met with the DOC, the DOC provided her with the 400-plus page investigative file. The State has provided no explanation on this record for withholding the investigative file from Miers.

## CONCLUSIONS OF LAW

Miers filed the instant state employee disciplinary action appeal pursuant to Iowa Code subsection 8A.415(2). The relevant language states, in part:

### *2. Discipline Resolution*

*a.* A merit system employee . . . who is discharged, suspended, demoted, or otherwise receives a reduction in pay . . . may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the [DAS] director within seven calendar days following the effective date of the action. The [DAS] director shall respond within thirty calendar days following receipt of the appeal.

*b.* If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. . . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits

for the elapsed period, or the public employment relations board may provide other appropriate remedies.

DAS rule 11—60.2 sets forth specific discipline measures and procedures for disciplining employees.

**11—60.2(8A) Disciplinary actions.** . . . Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee’s job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

. . .

**60.2(4) Discharge.** An appointing authority may discharge an employee. Prior to the employee’s being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

The State bears the burden of establishing that just cause supports the discipline imposed. *E.g., Phillips and State of Iowa (Dep’t of Human Res.)*, 12-MA-05 at App. 11. The term “just cause” as employed in subsection 8A.415(2) and administrative rule 11—60.2 is not defined by statute or rule. *Stockbridge and State of Iowa (Dep’t of Corr.)*, 06-MA-06 at 21 (internal citations omitted). The determination of whether an employer has just cause to discipline an employee is made on a case-by-case basis. *Id.* at 20.

When determining the existence of just cause, PERB examines the totality of the circumstances. *Cooper and State of Iowa (Dep't of Human Rights)*, 97-MA-12 at 29. As previously stated by the Board,

. . . a [§ 8A.415(2)] just cause determination requires an analysis of all the relevant circumstances concerning the conduct which precipitated the disciplinary action, and need not depend upon a mechanical, inflexible application of fixed “elements” which may or may not have any real applicability to the case under consideration.

*Hunsaker and State of Iowa (Dep't of Emp't Servs.)*, 90-MA-13 at 40. The Board has further instructed that an analysis of the following factors may be relevant:

While there is no fixed test to be applied, examples of some of the types of factors which may be relevant to a just cause determination, depending on the circumstances, include, but are not limited to: whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether sufficient evidence or proof of the employee's guilt of the offense is established; whether progressive discipline was followed, or not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty.

*Hoffmann and State of Iowa (Dep't of Transp.)*, 93-MA-21 at 23. PERB also considers how other similarly situated employees have been treated. *E.g. Kuhn and State of Iowa (Comm'n of Veterans Affairs)*, 04-MA-04 at 42.

The presence or absence of just cause rests on the reasons stated in the disciplinary letter provided to the employee. *Eaves and State of Iowa (Dep't of Corr.)*, 03-MA-04 at 14. To establish just cause, the State must demonstrate the employee is guilty of violating the work rule, policy, or agreement cited in the disciplinary

letter. *Gleiser and State of Iowa (Dep't of Transp.)*, 09-MA-01 at 17-18, 21. Miers' notice of termination states she was terminated for engaging "in an inappropriate relationship with an offender of a sexual nature" and failing to report alleged PREA events in violation of both the DOC PREA-02 policy and AD-PR-11 work rules.

Miers denies any inappropriate involvement with PK. She acknowledges PK insinuated or made inappropriate comments on several occasions but asserts that she told him to stop and redirected his behavior. Although she did not formally report or reprimand PK for those comments, Miers argues she was acting within the discretion staff is generally given in handling certain inmate comments that may be inappropriate but not over the line.

Upon examination of the evidence OIG obtained during its investigation, I find the DOC did not have sufficient proof that Miers engaged in a sexual or otherwise inappropriate relationship with PK, the most serious of the offenses alleged, and thus cannot rely upon it as a basis for her termination. The record further demonstrates numerous instances of OIG's failure to fairly and sufficiently investigate PK's allegations, even after it became apparent during the course of the investigation that material witnesses and other sources of information could discredit PK's allegations and bolster Miers' credibility.

#### **I. Binding Effect of OIG's Investigative Conclusions**

The State generally asserts that Miers' termination is supported by just cause. However, for the alleged violations of the PREA-02 policy, the State posits that PERB is bound by OIG's sexual misconduct finding and thus must conclude the DOC has met the proof element of just cause. The State claims OIG's

conclusions “cannot be disturbed” by PERB because those conclusions were made in accordance with the federal PREA standards. As such, PERB is required to adopt the DOC’s ultimate conclusion that sexual misconduct occurred, but can evaluate the rest of the just cause considerations.

The State’s position that PERB is bound by OIG’s investigative conclusions lacks legal authority and its assertion that Miers was terminated under federal law is misplaced. Miers was terminated under a DOC policy prohibiting staff sexual misconduct. The evidentiary standard contained in the PREA-02 policy provides that the “IDOC shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual violence are substantiated.” Although the DOC was required to incorporate this standard into its department policies to obtain federal funding, it does not change the fact that Miers was disciplined under a department policy no different than any other DOC policy or work rule, even if the contents of that policy were derived from and incorporated federal law.

Under the just cause analysis, PERB has consistently required the employer to provide sufficient evidence to support the alleged rule violation. *Krieger and State of Iowa (Dep’t of Transp.)*, 2020 PERB 102243 at App. 11-12 (internal citations omitted). In some instances when the violation could separately constitute a criminal act, such as in this case, PERB has indicated the evidence relied upon must be “clear and convincing” in order to meet just cause. *Eaves*, 03-MA-04 at 16. PERB is required to, not only evaluate the quantum of proof presented, but review the sufficiency and fairness of the

investigation conducted. The State's position, if adopted, would deprive Miers of this critical review of potential investigative deficiencies. The State has shown no binding legal authority that deprives Miers of her merit system rights, which requires the employer to demonstrate the existence of just cause, *i.e.* sufficient proof of misconduct, prior to terminating her employment.

The State's position also fails to consider the practical considerations presented by this appeal. Miers was terminated under both the PREA-02 policy and AD-PR-11 work rules. Yet, the State's argument only seems to pertain to the PREA-02 violations. Furthermore, the evidence before me in this appeal is not identical to the evidence the OIG obtained as part of its investigation. The just cause standard requires consideration of all the evidence received, including the additional witness and documentary evidence presented at hearing.

## **II. PREA-02 Policy Prohibiting Sexual Misconduct**

Miers was terminated under the PREA-02 Policy for allegedly engaging in sexual acts with PK during the 2015-2016 time period and failing to report "alleged PREA events as per policy."

The State's evidence reveals that during the investigation the DOC did not obtain any direct evidence that definitively established Miers engaged in a sexual or otherwise inappropriate relationship with PK. Instead, the DOC relied on the conclusion reached by the OIG investigation. OIG determined PK's allegations that he engaged in an inappropriate relationship with Miers was more credible than Miers' denial of the allegations. OIG reached this determination after it corroborated some aspects of PK's assertions, such as his relationship with AD,

independent and purported knowledge about Miers' personal information, and Miers' acknowledgement that PK had made inappropriate comments to her during his incarceration.

As discussed below, I cannot reach the same credibility determinations. During the investigation, OIG failed to corroborate PK's allegations against Miers, while denying Miers the opportunity to present corroboration of her denial of the allegations. Because credibility determinations were critical in the DOC's ultimate conclusion, my analysis will delve into those determinations and the supporting evidence.

Credibility determinations must be supported by such relevant evidence that reasonable minds would accept as adequate to support a conclusion. Credibility determinations also require an analysis of all relevant evidence collected. When evaluating Miers' and PK's credibility, I credit such evidence which is most reasonable and consistent with the record as a whole, giving consideration to established criteria for making credibility determinations, such as corroboration or contradiction by witnesses or other established facts and the plausibility of the allegations when all other evidence is considered. *Cole and State of Iowa (Dep't of Human Servs.)*, 2020 PERB 102113 at App. 4; *Barnard and State of Iowa (Dep't of Human Servs.)*, 2017 ALJ 100758 at 5.

#### A. Background Allegations and Evidence

The OIG's determination substantiating sexual misconduct heavily relied upon PK's claim that his first sexual encounter with Miers occurred during his 1996-98 incarceration at CCF. Although Miers was not terminated for any

alleged events preceding 2015, the DOC relied upon PK's claims regarding these earlier years to find him credible. However, the record reveals that OIG did not obtain any evidence to corroborate PK's claims about Miers during this time period. Furthermore, the evidence submitted upon appeal discredits OIG's credibility determination.

During the investigation, PK described a "love triangle" and "soap opera" type relationship with Miers and AD during the 1996-1998 incarceration. He claimed Miers exhibited fits of jealousy in front of other staff, which included one incident when she locked him up. AD purportedly left her employment shortly after this alleged "lock up" incident. The investigation revealed no evidence that would verify PK's allegations about Miers' alleged impropriety during this time period.

The DOC's investigation indisputably corroborated that AD had a relationship with PK after his release and possibly during his incarceration. The witness statements collected during the investigation included both suspicions that AD was involved with PK while he was incarcerated at CCF and confirmations after PK's release that PK and AD were residing together at AD's home. However, glaringly absent from the State's evidence is any sign that Miers had any inappropriate involvement with PK during this time period. Not one witness interviewed, including former inmate JH, gave any indication of even a rumor that PK and Miers were involved. The investigator's conclusions in this case heavily relied on the corroborated relationship between PK and AD to find PK credible in his allegations against Miers. However, under the record

presented, the State obtained no evidence to demonstrate or even suggest PK's claims about Miers were truthful.

Furthermore, the State ignored evidence contradictory to PK's claim that he had a sexual relationship with Miers during the 1996-98 time period. One inconsistency in the record is PK's own initial assertion that no sex acts occurred with Miers during his incarceration. He entirely changed his story when OIG interviewed him, now claiming he and Miers had sex twice inside the prison, even specifying the cell number they purportedly used. PK was never asked to address this blatant inconsistency and the investigative conclusions did not consider it in making credibility determinations. The State also did not consider inmate JH's assertions that contradicted PK's claims. JH stated PK did not and could not have used his cell because they were on different living units and he never received any outside food from anyone, which PK claimed he gave JH as some type of gratitude for using his cell.

During the investigation, the State failed to obtain witness and documentary evidence material to the issue of whether Miers had a relationship with PK during this time period, as he alleged. PK identified two other correctional officers by name that purportedly were in "heated situations" over him, and had actual knowledge of his relationships with AD and Miers. The investigation did not attempt to verify any of this information. The DOC's failure to corroborate PK's claims with witnesses he identified as having direct knowledge of the alleged inappropriate relationship is an investigative inadequacy. The investigation did not even confirm whether and when these CO's were employed at CCF.

Current staff Harris and Walston also established themselves as witnesses who were employed at CCF during the relevant time period. However, Harris was only specifically asked about AD, and Walston was not even interviewed by OIG until after Miers was terminated. As evident from his post-termination interview and testimony, Walston confirmed there has never even been a rumor of Miers' involvement with any inmate, including PK, during the entirety of her tenure at CCF. This information should have been obtained and considered during the investigation.

Although the DOC heavily relied on PK's claims regarding the 1996-98 time period to find him credible, a review of its investigative file reveals the DOC did not obtain any evidence that Miers had a sexual or otherwise inappropriate relationship with PK during his 1996-98 incarceration at CCF as he alleged.

PK's claim that he "partied" and drank with Miers during an encounter at the Ice House was also uncorroborated during DOC's investigation. While Miers acknowledged she saw PK once at the Ice House 20 years ago, her description of the encounter was vastly different than PK's claim. While PK claimed they "partied" and drank together at the Ice House, Miers described it as a short awkward encounter with a former inmate who approached her table. Without obtaining other evidence to resolve this direct contradiction, the DOC still seems to have credited PK's version in its overall conclusion. Although Miers identified Pirtle, a CCF staff member, was with her during this encounter, OIG made no attempt to interview Pirtle as part of its investigation. The testimony Pirtle provided during the hearing corroborated Miers' description of the Ice House

encounter they had with PK. Pirtle's direct contradiction of PK's description of joint partying and drinking demonstrates PK was untruthful and diminishes his credibility. The DOC's failure to interview this identified witness is another investigative deficiency.

Although PK's allegation of an inappropriate relationship in this time period was not the basis for the DOC's discipline of Miers, it formed the basis for OIG's credibility determinations. The record reveals the investigation was flawed in failing to seek corroborating evidence of Miers' denial. OIG's failure to follow-up on provided statements demonstrates that it accepted the credibility of PK's assertions without proper evidence or corroboration.

#### B. 2015-2016 Allegations of an Inappropriate Sexual Relationship

The DOC contends, based on OIG's findings during the investigation, that Miers violated PREA-02 and AD-PR-11 by engaging in an inappropriate sexual relationship with PK. OIG's investigation in which it reached this conclusion is flawed, and the DOC has not shown, under the record presented, that Miers engaged in this inappropriate sexual relationship.

##### *i. Alleged Sexual Acts inside the Prison*

The State argues the record supports a conclusion that Miers engaged in an inappropriate sexual relationship with PK during the time he was incarcerated at CCF in 2015-2016. The State bases this claim on the findings of the OIG investigation. I find the investigation making such a conclusion was flawed and the record does not contain the evidence necessary to conclude Miers

engaged in this inappropriate relationship with PK while he was incarcerated in 2015-2016.

PK alleged that he and Miers engaged in sexual acts inside her office including fondling over clothing and Miers exposing her breasts to him inside her office. Upon review of the investigative file, the DOC did not obtain any evidence to demonstrate any sexual or otherwise inappropriate acts occurred in Miers' office as alleged. OIG's conclusion, again, solely relied on its ultimate determination that PK was more credible than Miers.

One item OIG specifically relied up as "corroborating evidence" of the allegations were Slough's emails that an unidentified supervisor recalled hearing "some whispers" about PK and Miers during PK's 2015-16 incarceration. Slough further stated that CCF never did a formal investigation at the time because "it was merely a feeling of some supervisors" that "this was a potential problem." Instead, after UM Phillips assigned PK to Miers because "no evidence" existed to prevent the assignment, Slough stated "we kept an eye on it" but ultimately did not observe anything, which would suggest that Miers needed to be formally investigated. OIG never sought to learn the basis of these "whispers" and "feelings" or even identify the supervisors involved. For that reason, these claims provide no credible evidence because they are entirely void of any foundation or basis on this record. As such, OIG's inclusion of this baseless information as "corroborating evidence" is in direct contradiction to a fair and thorough investigation the DOC was required to conduct prior to imposing discipline.

The record contains Miers' observed and documented interactions with PK during his incarceration, none of which reveal or suggest any potential impropriety between PK and Miers. First, Miers' ICON documentation contradicts PK's claim that she attempted to manipulate his work release location. PK stated Miers was adamant he go to Des Moines. Miers' entries into ICON demonstrate other work release locations did not accept PK into their work release programs because of his behavior while in DOC custody; Miers merely documented their rejections into PK's ICON history. It does not show any indication that Miers misrepresented information, showed any favoritism in her assessments, or otherwise attempted to manipulate his release placement. Furthermore, Miers' parole board recommendation indicated that his DOC history does not lend support for parole to his wife, but instead to a work release location to demonstrate he can acclimate back into society. If Miers was engaging in and planned to continue a sexual relationship with an inmate, her recommendation to keep him within DOC supervision is logically inconsistent with that goal.

The number of times Miers accessed PK's ICON record is similar to the number of times Miers accessed the ICON records of other inmates assigned to her caseload. OIG retrieved the number of times Miers accessed PK's ICON profile, but failed to consider how this compared to other inmates on her caseload. It is undisputed that Miers' role as a counselor required her to update and input information in different screens of ICON. The record does not

demonstrate her access to PK's ICON record varied from her use of ICON for other inmates in her caseload.

Additionally, OIG failed to observe or consider the physical layout of Miers' office during the investigation when evaluating the plausibility of PK's claims. PK specifically asserted that Miers placed her desk in a manner where she could not be seen when exposing her breasts. Uncontroverted evidence in the record demonstrates that Miers' office door has a clear-glass top through which one can see through when passing by her office. This fact alone creates doubt that, even though one can see through her office door, Miers still exposed her breasts and engaged in fondling on multiple occasions. Furthermore, the record establishes that several unidentified supervisors, as Slough reported, "kept an eye" specifically on Miers' interactions with PK. This further creates doubt over PK's claim that they engaged in such inappropriate physical acts over a 10-month period without anyone observing anything suspicious.

During the investigation, OIG failed to interview any witness who had observed Miers' in-person interactions with PK during his incarceration. Miers identified two other supervisors who were present during a meeting she had with PK about substance abuse treatment. Those individuals' observations about their interactions and demeanor are relevant to determining the veracity of PK's claims, particularly when the DOC had not obtained any direct evidence to support his allegations. The identified staff had worked with Miers in her role as a counselor and would provide relevant information whether Miers' interactions

with PK were any different than with other inmates on her caseload. None of this pertinent information was collected during the investigation.

OIG also focused on evidence found in Miers' office that "may suggest suspicion of offender involvement." OIG's determination is entirely baseless. In searching Miers' office after she was placed on administrative leave, CCF discovered in her desk drawers various printed and hand-written notes, innocuous information seemingly retrieved from the internet, and her own personal address book. OIG did not conduct any follow-up inquiry on any of the items retrieved, including asking Miers to explain them as part of the investigation. On this record, the items collected, with the exception of one discussed below, do not on their face reveal or suggest that Miers had any type of inappropriate involvement with an offender.

One note was an institutional kite written by an unidentified offender that alleged Miers was having an "affair" with two offenders because they were purportedly in her office a lot. As with the other retrieved items, OIG conducted no follow-up inquiry and failed to ask Miers about the note. The limited information available on this record, which was unavailable to DOC and OIG during the investigation because of OIG's failure to inquire about the item, persuasively suggests the institutional kite was written by the offender Miers discussed in her OIG interview who had filed a complaint against her a few weeks before the interview because she had not met with him. Without follow-up inquiries, OIG's determination that the physical evidence in Miers' office demonstrates that Miers engaged in inappropriate relationships with offenders

is baseless. The DOC's inclusion of these items in its investigation as "suggesting suspicion of offender involvement" without obtaining any evidence to support that conclusion is not in line with a fair and thorough investigation required by just cause. The DOC has not shown how these items demonstrate that Miers had an inappropriate relationship with PK.

The State relied on OIG's errant investigation to conclude that Miers had an inappropriate relationship with PK while he was incarcerated. Based on the facts in the record, I can make no such finding. The DOC has failed to demonstrate Miers had an inappropriate relationship with PK while he was incarcerated and has failed to demonstrate that Miers violated DOC's PREA policies or its work rules.

*ii. Alleged Sexual Acts after PK's Release from CCF*

Upon conclusion of the investigation, OIG determined Miers engaged in an inappropriate relationship with PK during his incarceration and for a three-month period after his release from CCF in July 2016. The DOC relied upon this conclusion when making the determination to terminate Miers' employment. I find the investigatory findings flawed. Based on the evidence in the record, the DOC cannot demonstrate that Miers engaged in a relationship with PK, met with PK, or even communicated with PK following his release from CCF, and thus cannot demonstrate that Miers violated PREA-02 or the DOC work rules.

1) No evidence of phone communication between Miers and PK

The DOC did not collect any evidence to corroborate PK's claim that Miers contacted him or one of his acquaintances to obtain his number. Throughout his

interview, PK identified four different individuals that Miers possibly contacted to obtain his phone number after his release. OIG spoke to three of these witnesses, AE, BD, and brother J, and none of them confirmed ever receiving any communication from Miers or PK's "counselor" asking for PK's number. The record does not show OIG contacted or attempted to contact nephew J, whom PK also identified during his interview. OIG also did not obtain any documentary evidence that shows the purported Facebook communication Miers made inquiring about PK's number. Thus, OIG failed to substantiate PK's claim about this initial contact.

During the investigation, and in the record before me, both OIG and the DOC similarly failed to provide any corroboration for PK's claim that he and Miers subsequently communicated over the phone to arrange liaisons over the three-month period. Despite having access to Miers' phone records during its investigation, OIG failed to find any link of communication between Miers and PK's known phone numbers. OIG also obtained access to the phone records of PK's acquaintances, and still did not find a link of communication between Miers and PK's acquaintances.

OIG's conclusion that PK knew Miers' phone numbers is also unfounded. PK's claim to "remember" Miers' phone numbers lacks credibility and is in direct contradiction with other evidence in the record. Although PK was asked multiple times during the investigation, he did not know or provide OIG with Miers' phone numbers. OIG's characterization that PK knew or provided Miers' numbers is a misstatement of PK's interview. Instead, OIG provided PK with four phone

numbers during his interview, all four of which OIG knew had been registered to Miers at some point in time. After being provided with Miers' phone numbers, PK claimed the phone numbers belonged to Miers. Three of the numbers provided to PK were inactive. Miers did not have them during the relevant time period. PK, by his own claims, stated he did not have any contact with Miers from his 2002 incarceration at CCF until 2015 when he returned to CCF during the times the phone numbers would have been active. Thus, PK's purported claim to know these inactive number because of the alleged relationship that occurred between July to October 2016 is inconsistent with other established evidence. The State has not shown that PK knew Miers' phone numbers that existed at the time he claimed to be in communication with her.

Further, the evidence in the record discredits OIG's finding that PK knew and communicated with Miers by phone. PK sent an o-mail to his wife to search two of the phone numbers. The numbers he asked his wife to search were not registered to Miers during the relevant time period and PK could not have used to contact her during the three-month relationship PK alleged took place. PK's Facebook search history following the OIG interview further discredits his assertions that he knew Miers' phone numbers provided during the interview. After his interview with OIG, PK searched for two of the numbers OIG had provided to him in the Facebook application to determine the Facebook account user associated with that number. PK did not need to perform this search if he actually recognized the phone numbers. When the totality of evidence concerning the phone numbers is considered, OIG's determinations regarding the

communication between PK and Miers were flawed. On this record, the DOC has not established that Miers and PK had any communication between July and October 2016. The State relied on the investigation's unfounded conclusions of this communication when determining that Miers violated PREA-02 and the DOC work rules. I cannot find evidence exists to support these findings.

OIG also agreed with PK's claim that Miers communicated with him through the Sideline application even though it was not corroborated during the investigation. Upon review of the investigative file, the DOC obtained some information about Sideline but did not gather sufficient independent verification about the Sideline application. Instead, the final report merely accepted PK's assertions the application provides a user with a "fake number" that cannot be traced. This assertion was contradicted by evidence received at hearing. By failing to independently verify how this application worked, OIG and subsequently DOC, failed to determine if phone records actually could be available, as asserted by Miers at the hearing. The DOC's failure to properly investigate led to an improper finding that PK and Miers communicated via this Sideline application without proper corroboration, which the investigation could have obtained.

Further, OIG failed to provide Miers the opportunity to respond to the allegation that she communicated with PK through this Sideline application. The investigators did not even ask her whether she has ever used the Sideline application. Instead, Miers was told her communication with PK happened over a "google app called straight talk" and that the phone number is untraceable.

This did not provide Miers with any useful information that she could rebut. Miers' phone activity and data provided at hearing indisputably demonstrates she has never downloaded the Sideline application on her phone, which she would have to do in order to communicate with PK over an "untraceable" Sideline application phone number.

The DOC now claims Miers' phone data does not prove they did not communicate because PK said she was adamant that he download the Sideline application, not that she was using the application. Under this theory, Miers was using her "real" phone number to call PK at a Sideline application. While this is a possibility, it is unpersuasive based on PK's statements during the interview which strongly suggest they were both using the Sideline application. Additionally, under the DOC's claims, Miers' phone records would demonstrate communication between her number and PK's Sideline number. Despite having access to Miers' phone records, the DOC has not established this link of communication.

The DOC also asserts that AE's identification of Miers during the photo line-up provides proof of communication. The DOC's argument is based on AE's assertion that she retrieved PK's "old girlfriend's" Facebook profile by searching a phone number that repeatedly called PK. The DOC's conclusion is untenable as AE's identification is unreliable and contradicted by other evidence in the record.

As an initial matter, the method OIG used during its investigation to have AE identify who PK was communicating with is problematic. OIG interviewed and

asked AE to identify PK's "old girlfriend" at least 7 months after she viewed PK's "old girlfriend's" Facebook photos. Thus, AE's capacity to identify a woman she only saw in pictures is highly questionable. Furthermore, OIG presented AE with photos of four inmate mug shots, a corrections staff person's driver's license photo, and Miers' driver's license photo from almost four years prior. Unsurprisingly, AE picked the only two women whose photographs were not just taken as part of getting processed into custody as the possible "old girlfriend" she described as young, tan, and "real pretty." Not only did AE not definitely choose Miers as the only possibility, the method used did not allow for a reliable identification in this case.

The other information AE provided about this "old girlfriend" further establishes that the woman she saw on Facebook is not Miers. AE did not independently provide that the name on the profile was "Tory," but said it was a "boyish name." While reasonable minds can differ as to what constitutes a "boyish" name, the fact established is AE did not provide that name. Instead, after the investigators asked her whether the "boyish" name was "Tory," she replied "I believe so." AE then affirmatively denied that the woman's last name was "Miers." AE also stated she was using PK's Facebook page to view this woman's profile and that PK and this woman were Facebook friends, explaining why she was able to view her information and photos. This fact also demonstrates the woman in the Facebook photo that AE viewed was not Miers. PK stated she and Miers were not Facebook friends. Miers' and PK's Facebook

history received at hearing further demonstrate Miers has never been Facebook friends with PK.

Finally, OIG's determination that AE was able to identify Miers from a Facebook profile linked to the phone number that repeatedly appeared on PK's phone is in contradiction to OIG's finding that Miers phone records did not reveal a link of communication because Miers and PK because they used the Sideline application. OIG's investigative methods in attempting to obtain AE's identification of Miers as PK's "old girlfriend" fails for all of these reasons. The DOC's reliance on this identification as proof that Miers and PK maintained an inappropriate relationship between July and October 2016 is unsustainable. Despite all the other information in the record which contradicted the conclusion that AE had retrieved Miers' profile and that she was talking about Miers' as the "old girlfriend," the DOC still concluded it was Miers.

When all the evidence is considered about the alleged line of communication between PK and Miers, it is apparent the DOC's conclusion substantiating the communication occurred is without evidentiary support.

## 2) No evidence of meetings

The DOC did not obtain any witness, documentary or other evidence to prove or even credibly suggest Miers had ever met with PK after he was released from CCF.

In the investigation, PK identified some of the locations and dates in which he claimed he and Miers met during the time period between July and October 2016. The DOC did not obtain any evidence to prove Miers' presence at any of the

motels PK identified as the location of their liaisons. The DOC also did not obtain evidence that placed Miers at any of the other locations PK identified, *i.e.* West Des Moines job site, AE's apartment, or friend N's house. OIG did not attempt to locate some named witnesses that "maybe" saw Miers with PK at the jobsite. The only witness PK claimed to have seen Miers visiting PK when he was at friend V's house failed to adequately identify Miers as the woman.

The DOC also did not obtain any evidence to demonstrate Miers was with PK on the specific or approximate dates he provided. The one specific date PK provided is August 14 – the day he failed to report back to Fort Des Moines – and claimed he was with Miers on that date. The DOC obtained no evidence to verify his assertion regarding this specific date. Furthermore, OIG failed to inform or even ask Miers about her whereabouts on this specific date even though she had repeatedly volunteered to provide this evidence if she knew what dates he claimed they were together. Miers' attempt to assist the investigation was prevented by the DOC's refusal to provide her with any specificity regarding the dates of the alleged get-togethers. The evidence presented at hearing contradicts the findings of the investigation that PK and Miers were together on the dates provided by PK. Miers' alibi chart provided at hearing indisputably shows she was not even in the same state as PK during the weekend of August 13 and 14. Furthermore, BD's testimony also directly contradicts PK's assertion because she was with PK the day of August 14, rented the motel for him, and stayed with him until about 9 p.m. or 10 p.m. that night. She also recalled PK asking her to stay longer because he had nobody to keep him company. When all the evidence

is considered, it is without question PK's claim that he was with Miers on this day is entirely uncorroborated and shown to be untruthful.

Although he did not provide a specific date, PK claimed Miers was with him one day in July or August when he spoke to an employee at the Newton Landfill. There is no indication the DOC attempted to narrow down the day and time when this call could have taken place based on the facility's hours of operation or the subpoenaed phone records. However, the DOC did obtain Miers' hours worked during the month of August and did not discover any suspicious absences that may indicate she could have been with PK during her work hours. PK alleged that he and Miers met "three or four times" in September. OIG obtained no evidence suggesting Miers was with PK on any day in September. PK claimed he and Miers also met "a lot in October, almost every weekend" but did not specify any of the dates. Based on his own assertions, PK's last encounter with Miers was about a week before his October 22 stroke. Thus, based on this date, the last time he allegedly saw Miers was on the weekend of October 15-16. The only weekends that are relevant to PK's allegations are October 1-2, October 8-9, and October 15-16. AE's interview establishes she and PK were together on October 16 at a motel. At the time of OIG's investigation, Miers was never provided with any of the dates that would have allowed her to gather exculpatory evidence in response to his allegations. Instead, she was merely told it was after his release without specifying the span and that it was on "weekends." Based on this very vague information, Miers was in no position to know what relevant evidence would assist the investigation.

Miers' alibi evidence provided at hearing accounts for most Fridays through Sundays from July 29, 2016, PK's release date, to November 4, 2016, PK's arrest date. Of the 38 possible dates during this relevant time period, Miers provided evidence of her whereabouts to some extent for 30 of those dates. The DOC argues that Miers' alibi evidence is insufficient to show no relationship occurred because it does not show her whereabouts 24/7 during the relevant time period. The DOC is correct, Miers has not shown evidence of her whereabouts for every hour of every day from July 29 to November 4, 2016. However, I find the argument unavailing because no reasonable person can account for every minute of their whereabouts, particularly not when they have to gather this information about a year after the alleged events. Miers does not have to meet this standard to show herself as more credible. The information she has provided is overwhelmingly sufficient to show that the majority of dates or times PK claimed they were together is contradicted by this documentary evidence.

In many instances, the DOC failed to attempt to corroborate PK's allegations about these meeting times and dates. To the extent DOC attempted to corroborate PK's allegations about the meetings between PK and Miers from July to October 2016, OIG was unable to do so. Additionally, the record reveals evidence, which contradicts PK's assertions that he met with Miers during this time period.

### 3) PK's Knowledge of "Personal Information"

OIG's conclusion substantiating sexual misconduct was based in part on PK's knowledge or claimed knowledge of "personal information" about Miers. PK claimed he learned this information through their intimate relationship. Upon review of the entire record on this issue, the information PK independently provided does not credibly indicate it was learned through an intimate relationship. I cannot conclude the DOC has established Miers engaged in an inappropriate with PK based on these facts.

The DOC claims that PK learned about a "yin-yang" tattoo Miers has due to their relationship. Evidence received credibly demonstrates PK could have learned about Miers' tattoo from other sources. As Miers indicated during her interview, it was widely known by staff that she and Rich Miers got matching tattoos after marrying in 1998 because they had told staff and Miers also showed the tattoo to some staff. These conversations occurred inside the prison. The record suggests AD, who had an intimate relationship with PK and dated Rich Miers, was still employed at CCF when Miers and Rich Miers got these matching tattoos. Thus, while the source of PK's knowledge is not known for certain on this record, the evidence as a whole persuasively indicates he may have learned it from other CCF staff, most likely through his confirmed years-long intimate relationship with AD. There is no evidence the DOC ever considered this as a possibility.

PK's inability to accurately and completely describe the tattoo is a strong indication that he did learn of the tattoo from other sources and never personally saw it on Miers' body. First, PK never independently described the tattoo.

Secondly, PK entirely failed to identify the red rose going through the yin-yang symbol and the name “Rich” underneath. Additionally, PK’s inability to identify the other tattoo on Miers’ body is indicative that no personal relationship occurred. Based on the number of sexual liaisons PK claimed, it is highly improbable he would not have seen the tattoo located on her lower back. But unlike the “yin-yang” tattoo that PK identified, CCF staff do not know about this tattoo. Thus, when I consider that PK identified only the tattoo that is well known inside the prison but not the other tattoo, the conclusion supported by the totality of evidence on this issue is that his knowledge of the yin-yang tattoo does not indicate a personal relationship, it merely indicates he was privy to information from staff who had knowledge about the tattoo.

Despite the DOC’s claims, PK’s vague, inaccurate, or uncorroborated information about Miers’ family and personal life is also not indicative of an intimate relationship. For example, PK claimed Miers was from a small town in Nebraska. The record establishes she was actually from a city, Omaha, and an offender in Miers’ office may be able to surmise that she was from Nebraska as she had multiple items in her office bearing a Nebraska sign. PK also claimed that because of their relationship he knew Miers had two children. However, PK claimed, incorrectly, that Miers had a boy and a girl and was not able to provide the children’s names. The record indicates the information PK provided to investigators was known to staff and some offenders in the facility, and not a fact that would only have been provided to PK in the context of an intimate relationship. For instance, inmate JH, who had not been at CCF since 1997 still

knew that Miers ended up marrying and having “a kid” with AD’s former boyfriend. This shows that offenders, even those that do not repeatedly return to CCF like PK did three times, still continue to discuss the personal lives of staff members.

PK’s claim of physical abuse in Miers’ marriage is also uncorroborated on this record. Although this claim may be the type of information known only in the confines of an intimate relationship, the OIG in its investigation was unable to confirm its accuracy. Miers asserted this statement was widely rumored inside the prison, but the DOC did not inquire any further on Miers’ assertion. Rich Miers was not interviewed during the investigation, purportedly because he had a “temper” and there was no need to upset him with the accusations against his ex-wife. Without any evidence to corroborate PK’s assertion, the DOC still appears to have concluded PK was accurate about the physical abuse.

The State also has not shown the existence of an intimate relationship due to PK’s knowledge about the vehicle Miers had during the relevant time period. This fact was widely known and available to offenders. Miers had this same vehicle since January 2015. PK was incarcerated at CCF for more than 300 days during 2015-2016. Miers’ drove this same vehicle to work every Monday to Friday, and parked it in the staff parking lot. OIG’s own conclusion was that an offender could make out a vehicle’s exterior from the prison yard. Furthermore, evidence in the record demonstrates offenders housed on the south living unit of the facility, which is where PK was housed, have windows that look to the staff parking lot. Offenders also work around the prison fence cleaning, plowing snow,

etc., which includes the staff parking lot. Testimony revealed that other staff have experienced instances when offenders have been close enough to their vehicle to see it was left unlocked, or have commented to staff about the type of vehicle they drive. When all of this is considered and the plain opportunity he had to observe Miers' vehicle in the staff parking lot during his over 300 days at CCF, his knowledge of her car is not credible evidence of an intimate relationship.

In reviewing and considering each piece of "personal information" PK knew, I do not lightly dismiss the potential that an inmate's independent knowledge of some of this information could be indicative of a personal relationship. However, the information provided must be considered within the context of all the evidence obtained and that should have been considered during the investigation. The DOC did not weigh the possibility, or probability, that PK learned this information through sources that are completely unrelated or removed from a relationship he claims to have had with Miers. I find the DOC relied on an inadequate investigation in determining that PK's knowledge of personal facts about Miers indicated an intimate relationship.

Under the record presented, I cannot find the State has made a sufficient showing that Miers engaged in an inappropriate relationship with PK. As such, the DOC has not shown that Miers acted in violation of PREA-02 or applicable DOC work rules.

### C. General Credibility Findings

As discussed above, the DOC and OIG generally found and the DOC maintains that PK's allegations of a sexual relationship with Miers are credible

despite a lack of corroborating, and in some instances directly contradictory, evidence. In its investigation, OIG reached this credibility determination not only based on PK's assertions against Miers, but also for other various reasons. OIG's determination that PK's assertions were credible based on these other considerations was also flawed. I cannot conclude that PK's assertions are credible.

i. Consideration of prior PREA-related reports history

As part of its investigation, OIG reviewed and considered prior PREA reports filed by PK. OIG concluded PK's allegations were credible, in part, because of a half-substantiated PREA report he made in 2013 against a state vendor employee. The DOC reasoned this showed a past instance when PK made a truthful PREA allegation, thus generally bolstering his credibility during the investigation against Miers. While I agree the report may be generally relevant, the report's weight in establishing credibility is limited. Although the sexual misconduct was substantiated, after TC admitted to the relationship and the employee quit prior to questioning, PK's contraband allegations were not substantiated. Thus, if the theory is to equate "substantiated" reports with truthfulness, then the fact the rest of his allegations were not substantiated tends to indicate he was being untruthful about the remainder of his allegations.

PK also made a report in 2010 and 2015 claiming a prior relationship with a CCF staff member as a way to avoid a slated transfer to CCF. OIG erroneously concluded these prior reports were about Miers. However, the evidence in the record, including PK's own admissions, confirm the "girlfriend" he was referring

to in these prior reports was AD. Prior to the report that prompted this investigation, PK had never mentioned or reported any purported sexual relationship with Miers. OIG's flawed conclusion regarding the subject of these prior reports led to an improper determination that PK was more credible because he had lodged previous complaints against Miers.

During its investigation, OIG did not fairly or fully consider Miers' PREA history during her 21-year tenure at CCF. The investigators had available Miers' entire personnel file, offender disciplinary reports and ICON history that documented her interactions with offenders, including PK. Of the array of information available, the only piece of Miers' history that was considered as part of the investigation is the 2016 PREA audit incident when Miers did not immediately correct an offender's inappropriate comment. Despite the factual inconsistency about the comment itself, this incident showed nothing more than a coaching incident during which Miers was informed she should have immediately addressed with the inmate his inappropriate comment, not at a later time as she had intended. Miers acknowledged it at the time and acknowledged such during her interview. This one report does not, as the DOC seems to suggest, establish that Miers had a history of allowing inappropriate offender behavior to continue uncorrected.

Miers' history is more fairly assessed when one considers the other incidents in the record when she corrected inmates' behavior. The DOC had these documented incidents, yet they only considered it in terms of showing Miers knew how to "write up" inmates for inappropriate comments. These prior

reports show that she did correct offender behavior. In her 21 years at CCF, Miers was never even investigated for potential PREA violations. OIG's failure to fully and fairly consider Miers' history in this respect is not in line with a fair and sufficient investigation required by just cause.

*ii. Willingness to Aid OIG's Investigation*

Another item relevant in determining Miers' and PK's credibility is their respective willingness to assist the investigation. PK's failure to willingly aid OIG's investigation further undermines the credibility of PK's allegations.

After filing a PREA complaint against Miers, PK had multiple instances when he claimed a complete refusal to aid the investigation, and directed his acquaintances to refuse conversation with the investigators. PK also failed to provide or obtain for the investigators any information he claimed would establish this purported relationship with Miers, including the Sideline numbers he claimed were used to communicate. PK also claimed to have physical evidence of this relationship, such as a picture, but failed to provide that evidence to OIG. PK also failed to provide any witness who could corroborate this relationship, even to just confirm that they ever heard about involvement with Miers or his "counselor." Some of his o-mails reference Miers by name and claim a relationship existed, but when read in its context, they are nothing more than PK having a one-sided conversation. The recipients of his messages containing Miers' name or her old phone number do not in any manner corroborate having any knowledge about her, her phone number, or any information that this was happening. It is implausible on this record that PK had not ever mentioned

Miers' name to any of his acquaintances, including BD who was providing him with motel rooms and was with him for a lot of time during his escape status when he saw allegedly seeing Miers.

Finally, PK's intentional refusal to recite any details in his written statements after the interview is highly suspect. When asked to provide written statements, PK knew and understood that OIG was asking for dates, locations, and any other evidence that would help them corroborate his allegations. In response, PK wrote a general statement that stated he had a sexual relationship with Miers in 1997-98 and 2016. OIG again attempted to get more detail, but PK once again responded with a general statement claiming a sexual relationship with Miers, having added only the cell number where they purportedly had sex in 1997-98. The repeated refusals to provide specific information about his allegations after the OIG interview indicate purposeful evasiveness in providing details that could potentially discredit his allegations through contradiction by other evidence. Despite the lack of cooperation and lack of corroboration for PK's allegations, OIG and the DOC still determined PK's allegations of the alleged inappropriate relationship was more credible than Miers' denial.

Contrary to PK's actions during the investigation, Miers showed a consistent willingness to provide any information relevant to showing she did not have any inappropriate interactions with PK. During her interview, Miers identified witnesses that could corroborate her assertions. She repeatedly volunteered to show evidence of her whereabouts during those times when PK claimed they were together, if she knew the pertinent dates. The investigators

were dismissive of her suggestion, commenting that if she cannot even remember if PK was on her caseload, she would not be able to remember where she was over a year ago.

Even after the interview when she tried to obtain more specific information about the allegation, the DOC repeatedly ignored and refused her requests. Miers' repeated attempts to provide evidence relevant to disproving PK's allegations was made impossible because she was never provided any dates or even a range of dates that were relevant to PK's allegations. The DOC had information on one specific date, several approximate dates, and the entire time span of PK's allegations. Miers did not have access to any of this information. Despite the limited information Miers was given, the DOC continues to maintain that Miers had an opportunity to bring forth any evidence to assist the investigation. That "opportunity" was not a meaningful one as Miers had no idea what evidence would be relevant to provide. Once she understood the relevant time span and dates, Miers collected and provided as much information as she had available that show her actual whereabouts during times PK alleged they may have been together. In terms of assessing credibility, I find Miers' repeated attempts and presentation of alibi evidence to disprove PK's allegations is an indication of truthfulness.

OIG highly regarded PK's statements despite his recalcitrant behavior and his inability to produce corroborating evidence of the allegations. Contrarily, OIG dismissed Miers' denial of the allegations despite her willingness to produce corroborating evidence if the DOC would simply provide her with the requisite

information to be able to adequately respond to the allegation. Ultimately, in the investigation OIG accepted the credibility of PK's allegations without corroboration while denying Miers the chance to corroborate her denial of the allegations. OIG's misplaced belief in PK's credibility demonstrates another flaw in OIG's investigation.

iii. PK's Potential Motives

The DOC had information that PK had potential motives for lodging false accusations, yet the record is devoid of any evidence the DOC ever considered those in making its credibility assessments.

Prior to his incarceration at CCF in 2015-2016, PK attempted to avoid incarceration there by referring to his relationship with AD. That situation demonstrates that PK believed that if he demonstrated a problem, such as a relationship with staff at the facility, he may avoid incarceration at that facility. The record shows that many offenders generally dislike being transferred to CCF for various reasons, such as its location, lack of activities, or not wanting to come back to the same facility. The record also demonstrates that PK in particular did not want to be transferred to CCF. In this instance, PK did not want to be transferred to CCF because he desired to remain at IMCC to continue receiving the therapy available only at that institution. PK's desire to remain at IMCC is heavily documented. The medical issues following the multiple strokes he suffered provided a strong motive for attempting to remain at IMCC. His mobility was severely limited after the strokes he suffered. PK's own admissions establish that the medical and physical treatment therapy he was receiving at IMCC was

important and critical for him in regaining his mobility. He repeatedly commented the physical therapy was most important to him, it was doing wonders for his recovery, and his knowledge that IMCC is the only facility he will get that treatment. The multitude of kiosk messages he sent his IMCC counselor about the physical struggles he had after his strokes show a strong motive to lie to remain at a facility where he can get better.

The investigation appears to overlook this potential motivation that PK may have had to invent a story to avoid transfer to CCF. The DOC dismissed this as a motive because PK said he did not care where he was transferred as long as it was not CCF. While that is accurate, the majority of his pleas about his placement were trying to remain at IMCC. Furthermore, based on PK's incarceration history, it seems the number of celled facilities he could be transferred to was limited. In 2010, on his offender transfer sheet, IMCC noted that PK had "keep separates" at every celled facility except CCF and FDFC. He was not considered a good fit for FDFC among youthful offenders because he was serving his fourth prison sentence, a 35-year sentence, and was previously involved in prison fights and threats. The record does not reveal the "keep separates" PK had as of 2017, but these priors reports suggest he did not qualify for transfers to many other celled facilities other than CCF.

Related to PK's potential motives is the question why he would chose Miers as the target of his accusations. Answering this question also involves considering all the evidence presented in the record. PK had to choose someone and, unfortunately for Miers, she was an easy target for a couple of reasons.

One, her role as a counselor placed her in a position where she had to meet with offenders one-on-one in her office. This presented an opportunity for an offender to allege sexually inappropriate actions occurred in her office, just like PK had alleged. Furthermore, it is apparent from the record that Miers has been the subject of numerous rumors inside the prison about her personal life and she has also shared personal information with other staff during her 21-years of employment. Some of these rumors, particularly about Miers “stealing” AD’s boyfriend, were known and commonly talked about among offenders. PK has been intermittently incarcerated at CCF for over six years and also had a long relationship with AD, someone who both worked at CCF and had dated Miers’ husband. PK knew information about Miers, not through an intimate relationship with her, but through his years of incarceration at CCF and likely from his relationship with AD. PK used this information to lodge a complaint specifically against Miers and make it seem credible.

Absent an admission from PK, a “true” motive cannot be determined. However, even though I cannot definitely say one motive was his “true” motive, enough information exists in the record to persuasively suggest PK had motives for being deceptive in order to avoid the slated transfer to CCF. The investigation appears to overlook those considerations in reaching its conclusion that PK’s allegations were credible.

Based on the entirety of the record, I find the investigation relied upon by DOC in making its determination to terminate Miers’ employment was flawed. The OIG and the DOC relied heavily on unsubstantiated and uncorroborated

evidence presented by PK without attempting to resolve denials and contradictory evidence. Under the record presented, the State has not shown that Miers engaged in an inappropriate relationship with PK, and as such, the State has failed to prove Miers violated PREA-02 or the DOC work rules.

*iv. PK's allegations against other CCF Staff*

OIG failed to consider the veracity of PK's allegations against other current CCF staff as part of its credibility determination. During the course of his interview, PK made serious PREA allegations against both Rich Miers, for purportedly knowing and failing to report Miers' sexual misconduct, and against another female correctional officer, who was purportedly engaging in sexual acts with an offender. OIG did not investigate either one of these claims. However, despite this lack of corroboration, OIG still concluded PK was credible enough in his allegations against Miers to terminate her employment, but seemingly not credible enough to even initiate an investigation into his other serious PREA reports against other staff. Under this record, I am unable to logically reconcile OIG's different treatment of these PREA allegations from the same "credible" source.

Additionally, OIG's failure to obtain any verification of PK's claim against Rich Miers specifically deprived Miers of a fair and sufficient investigation. PK's claim that Rich Miers knew of his sexual relationship with Miers is directly relevant to the specific allegation OIG was investigating. The DOC fully knew the presumptive discipline for substituted sexual misconduct was termination. But even with that ultimate consequence on the line, the DOC still did not obtain

Rich Miers' witness statement to determine whether he had any knowledge of this sexual misconduct as PK alleged. This failure is a material investigative inadequacy. The DOC's failure to obtain, and thus consider, Rich Miers' direct contradiction of PK's claim deprived Miers of a fair and thorough investigation.

#### D. Failure to Report Alleged PREA Events

Miers' termination notice generally states she failed to report alleged "PREA events," but it does not identify those events. Based on the evidence and testimony received, it appears the DOC disciplined Miers for her failure to report the comments PK made to her during his incarceration in 2015-2016 and her interaction with Walston during which he told her about PK's ICON messages about her.

In terms of the incident with Walston, the DOC has not shown that Miers was required to report this information. The DOC relies on the language in PREA-02 that directs staff to immediately report "any knowledge, suspicion, or information" regarding an incident of sexual abuse, sexual misconduct, or sexual harassment. However, the record establishes that Miers did not have any knowledge, suspicion or information about an incident of sexual misconduct. She only had knowledge and information that PK was possibly alleging such incidents. Thus, under a plain reading of the policy language, Miers was not obligated to report her conversation with Walston.

Even if Miers had an obligation to report this incident but failed, the DOC's failure to discipline Walston reveals disparate treatment for the same policy violation. Walston was privy to the same information as Miers and similarly did

not report it. The DOC was fully aware of this as he told them as such during his interview. Walston received no discipline for his failure to report the ICON information he had read to his superiors. Just cause requires the employer to treat similarly situated employees the same. As such, even assuming Miers had some sort of obligation to report the information from Walston, the DOC has not established that its discipline of Miers is in line with equal treatment considerations required by just cause.

The DOC also asserts that Miers' failure to report the inappropriate comments PK made is in violation of the PREA-02 policy. Under PREA-02, the sexual misconduct definition includes:

6. Receiving any form or type of communication of a sexual or romantic nature from an offender and failing to report the communication immediately as designated by institution procedure and department policy.

The PREA-02 policy does not contain the reporting procedure. Under the record as a whole, a dispute exists whether staff is required to report every inappropriate comment inmates make.

The DOC argues inappropriate offender comments must be reported to the staff person's supervisor and also suggests the offender should be issued a disciplinary report. Miers, to the contrary, asserts no such broad reporting duty exists for every inappropriate comment. Instead, staff is expected to address inappropriate comments directly with the offender and redirect their behavior for those comments that may be inappropriate but not over the line.

While Miers acknowledged PK made inappropriate comments on several occasions, she denied they were as sexually explicit as PK claimed, such as

asking her to expose her breasts. Instead, Miers stated PK made one indirect “you look different” comment to her, which she understood to be about the physical change plainly noticeable following her breast augmentation. She also recalled several comments that he wished he was not married and wishing he had known her before Rich Miers. In those instance when he made these inappropriate comments, Miers asserted she directed him to stop and never engaged in these conversations.

The DOC did not have any direct evidence corroborating either Miers’ or PK’s assertions, but instead made its conclusion based entirely on credibility determinations. OIG determined Miers was not credible because she withheld information about the inappropriate comments for the majority of the interview, and also claimed not to know if PK was assigned to her caseload.

Upon evaluating Miers’ OIG interview in its entirety, I do not find Miers’ actions or statements during the interview to be deceptive. Miers did not deny PK was on her caseload or claim that she did not have any interactions with him. Miers merely expressed uncertainty whether PK was formally assigned to her caseload while acknowledging she recalled having an interaction with him about substance abuse. If Miers’ attempt was to mislead the investigators about a connection with PK by claiming not to remember whether he was assigned to her, it seems counterintuitive to also simultaneously admit having an in-person meeting with him. PK was assigned to her more than a year prior to her interview, at a time when she had more than 140 other inmates on her caseload. When considered within this context, Miers’ initial uncertainty about formal

assignment appears genuine and not indicative of an intent to deceive or mislead that she interacted with PK during his incarceration.

Miers' failure to immediately provide information about PK's inappropriate comments is similarly understandable after considering the contents of the interview in its entirety. My conclusion is based on several considerations under a totality of the record.

First, the majority of the interview was focused on alleged physical acts and events after PK's release. OIG told Miers that PK was alleging he was involved with her and met her at multiple motels, houses, and a Des Moines area jobsite. Miers' responses, such as expressing disbelief about PK's allegations that they got together on the outside and repeatedly denying that she has ever interacted with him outside of prison, leads me to conclude Miers was entirely focused on alleged physical interactions, to which she responded with blanket denials.

Next, Miers told investigators that PK had given her inappropriate looks and made comments while she was attempting to understand why he would lodge false accusations against her. She was inaccurately told PK "knew" or "provided" every phone number ever registered to her, that he knew her children's names, that multiple civilian witnesses had identified her by physical description, name and her role as a "counselor." Based on all this information, Miers reasoned out loud during the interview that PK must be obsessed with her to go out of his way to set her up in this manner. It was in response to this thinking and the investigators' directed questions to think about what she had noticed about PK's behavior that would lead her to think he was obsessed with

her. Miers' repeated the question, "what have I noticed?" as she tried to think of information that may explain PK's motives for lodging false allegations.

Furthermore, even after she stated PK had given her a look or said inappropriate comments, Miers still could not recall specific comments or the number of times he gave her a "look." She repeatedly stated she could not recall specifics. When the investigators finally asked whether PK ever said anything about her breasts, Miers stated she believed he had said something like "you look different." As she attempted to recall any other specific instances, Miers took long pauses prior to answering. When I consider this in its entirety, it leads me to conclude that Miers did not purposely try to conceal PK's inappropriate comments to her.

Finally, Miers explained that PK's comments and looks are not out of the ordinary behavior she handles with other offenders on a daily basis. She indicated inmates give her the inappropriate "look" or indirect inappropriate comment frequently. Unless the offender made an "over the line" inappropriate comment, staff is expected to address it with the offender but is not required by policy to report those comments and write the offender a disciplinary report. The PREA audit incident supports Miers' assertion. The PREA auditor's concern was that Miers did not immediately address the offender after he made the comment and tell him the comment was inappropriate. In PK's case, she immediately told him his comments were inappropriate and told him to stop. If the expectation under PREA-02 is to report to a supervisor and/or write a disciplinary report for every inappropriate comment inmates make, as the DOC now appears to assert,

then it was CCF's obligation to communicate that expectation to Miers. During the discussion following the PREA audit incident, Miers was coached on addressing the inmate immediately and correcting their behavior. Like with other inmates, Miers' addressed PK's comments immediately and in the same manner as with other offenders by directing him to stop. The DOC has failed to show Miers was required to report PK's inappropriate comments, and has thus failed to demonstrate Miers' failure to formally report the comments was in violation of PREA-02 or DOC's work rules.

### **III. AD-PR-11 General Employee Handbook**

In addition to the PREA-02 policy, Miers was also terminated for violating multiple parts of AD-PR-11. The same factual basis, engaging in an inappropriate relationship of a sexual nature and failing to report alleged PREA events, form the basis of Miers' discipline under AD-PR-11.

Having found the DOC did not obtain sufficient evidence to show Miers engaged in staff sexual misconduct, many of the cited work rules under AD-PR-11 can be dismissed without additional discussion. Part C (Code of Conduct) and E (Personal Ethics) generally state that employees are expected to abide by DOC policies and avoid actions that "adversely affect" the public's confidence in the criminal justice system. On this record, the DOC has not shown Miers' conduct violated either one of these cited work rules.

Additionally, Miers was disciplined under Part F (information and communication), section 5 and 6, that prohibit "unauthorized association or unofficial communication" with current and former offenders and "carry[ing] on

unofficial communication” with offenders. Under the record presented, the DOC has not shown that Miers carried on any communication with PK other than in her role as his assigned counselor while he was incarcerated at CCF.

Part H, section 9, under which Miers was disciplined, directs that employees shall “not engage in discussions or actions that may lead to sexual contact between employees and offenders” in DOC custody. Under this record, no evidence was obtained to show Miers “engaged” in discussion or actions with PK that may lead to sexual contact between them. PK made inappropriate comments and gave her a “look,” as Miers acknowledged, but she did not “engage” in or carry on those conversation. Instead, Miers directed PK to stop the behavior. The DOC has failed to show that Miers engaged in discussions or actions that may lead to sexual contact between employees and offenders.

Miers was also disciplined under part I, section 5 (Computer Security), which directs that DOC computer systems and programs are to be used “only for Department of Corrections business.” The record reveals several problems with DOC’s discipline of Miers under this work rule. Miers’ termination letter provides no factual basis for how she purportedly violated this provision of the handbook. As previously stated, DAS rule requires the employer to provide the employee with reasons for the discharge and the existence of just cause can only be established on the reasons contained in the discipline notice. Thus, the DOC cannot establish the existence of just cause because the discipline notice provides no factual basis for the alleged violation under this section.

Even assuming the termination letter could be read broadly enough to include a reason for violating the computer security section of AD-PR-11, the DOC still cannot meet just cause. The DOC's argument appears to be that Miers had no work-related purpose for accessing PK's ICON on August 2, 2017, because she was no longer his assigned counselor once he was released from CCF. However, under this record, it is undisputed that Walston also accessed PK's ICON without a job-related reason. Walston acknowledged during his interviewed he accessed PK's ICON because he was just curious whether he actually had a stroke like he had overheard. After accessing the system once for non-work related purposes, Walston again participated in accessing PK's ICON along with Miers. Although Walston was not disciplined for his use of ICON for non-work related matters, the DOC did discipline Miers for the same conduct. Therefore, the DOC's discipline of Miers under the computer security section of AD-PR-11 is not consistent with its treatment of similarly situated employee and thus fails to meet just cause.

#### **IV. Summary**

Upon review of all the evidence received, the record demonstrates the DOC did not obtain sufficient evidence to prove Miers had a sexual relationship with PK during his incarcerations at CCF or following his release to Fort Des Moines. The record also shows multiple instances during the investigation of the DOC's intentional failure to interview material witness, failure to collect available documentary evidence, and failure to consider the totality of the evidence it had obtained prior to concluding its investigation. While the DOC's investigation was

lengthy and yielded a voluminous amount of documents, this is not synonymous with a fair and thorough investigation as required by just cause. The investigative deficiencies highlighted throughout the analysis, when considered in totality, reveal a pattern of failing to consider available information that was clearly identified as exculpatory evidence for Miers.

For these reasons, I conclude the Department of Corrections – Clarinda Correctional Facility did not have just cause for terminating Miers’ employment on September 8, 2017. Consequently, I propose the following:

#### ORDER

The State of Iowa, Department of Corrections, shall reinstate Tory Miers to her former position as a Correctional Counselor at the Clarinda Correctional Facility (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings; restore her benefit accounts to reflect accumulations she would have received but for the discharge; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to the position she would have been in had she not been terminated on September 8, 2017.

The cost of reporting and of the agency-requested transcript in the amount of \$2,719.75 are assessed against the State of Iowa, Department of Corrections, pursuant to Iowa Code subsection 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the State of Iowa in accordance with PERB subrule 621—11.9(3).

This proposed decision and order will become PERB’s final agency action on the merits of Miers’ appeal pursuant to PERB subrule 621—11.7(2) unless, within

20 days of the date below, a party files a petition for review with the Public Employment Relations Board or the Board determines to review the proposed decision on its own motion.

The ALJ retains jurisdiction of this matter in order to address any remedy-related matters which might arise and to specify the precise terms of the remedy. In order to prevent further delay in the resolution of this matter, a hearing to receive evidence and arguments on the precise terms of the remedy, should the parties fail to reach agreement, will be scheduled and held within 45 days of the date this proposed decision becomes PERB's final action on the merits of Miers' appeal.

DATED at Des Moines, Iowa this 29th day of July, 2020.

/s/ Jasmina Sarajlija  
Administrative Law Judge

Electronically filed.  
Parties served via eFlex.