



CLOSED CASE SUMMARY

ISSUED DATE: MAY 6, 2019

CASE NUMBER: 2018OPA-1066

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee violated that law when he did not comply with an order of protection.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant is the ex-wife of Named Employee #1 (NE#1). The Complainant sought and was granted an order of protection against NE#1 (he also sought an order of protection against her, but she filed first and hers was granted). The order prohibited NE#1 from being in the same location as the Complainant. The order further stated that, if they were in the same location, NE#1 was required to leave and the Complainant could remain. The Complainant and NE#1 are co-parents to their daughter.

On the date in question, NE#1 was invited by a teacher to take part in an assembly at his daughter’s school. The assembly was purposed to recognize military veterans and it was planned that NE#1’s daughter would read a letter to him. NE#1, who served in the military, was seated with other veterans when he saw his wife walk in to the auditorium. NE#1 spoke with the teacher and informed her of the order. The teacher then spoke to the Complainant and the Complainant ultimately left the assembly. The parties’ accounts of what occurred during at this time are somewhat different. They are detailed below.

NE#1 stated that he did not know that the Complainant was also invited to the assembly. He contended that, when he saw the Complainant arrive, he contacted the teacher and told her that there was an order that prevented him from being in the same room as the Complainant and that he would have to leave. He said that he told the teacher that, given his employment as a police officer, he needed to be careful to comply with the order. He told OPA that he proposed to the teacher that she ask the Complainant “what she wants to do” and that, if she wanted to stay, he would leave. The teacher came back and said that the Complainant indicated that it was fine. He said that the teacher then told the Complainant that, if she did not leave, NE#1 would not stay at the assembly. The Complainant



then left. NE#1 was later contacted by the Kent Police Department (KPD) and he was informed that the Complainant made a criminal complaint against him. He worked with his attorney to obtain a statement from the school to ensure that he was not found to have committed a violation of the order.

The Complainant stated that she came to the school because she was also invited to the assembly. She said that, when she arrived, she saw the Complainant. She stated that he saw her too, but that he did not speak with the teacher until one or two minutes later. She told OPA that she did not know what they discussed. She recalled that the teacher came over to her and asked her to watch from outside of the auditorium. She did so. She contended that this was not the first time that NE#1 had violated the order. She believed that he was not arrested or charged due to his status as a police officer.

The teacher wrote a statement in the aftermath of the incident. Her statement was largely consistent with NE#1's account. Notably, she asserted that she informed the Complainant that NE#1 stated that he had to leave the auditorium if the Complainant was present. She wrote that the Complainant stated that it was fine, but recounted that she again told the Complainant that, if she stayed, NE#1 would leave. She indicated that the Complainant then offered to leave and did so. OPA also conducted an interview of the teacher. The teacher repeated the content of her written statement. She added, however, that she asked the Complainant: "would you mind not staying?" She told OPA that, after she said that to the Complainant, the Complainant agreed to leave.

As discussed above, the Complainant made a complaint to the KPD. OPA interviewed the KPD investigator. He stated that he determined that both NE#1 and the Complainant had been invited to the assembly and that neither knew that the other was going to be there. He stated that NE#1 spoke with the teacher and told her that he needed to leave if the Complainant was there. He recounted that the teacher then asked the Complainant whether she would leave, and the Complainant did so. The KPD investigator told OPA that he informed the Complainant that he would not arrest NE#1, but that he would write a report and forward the report to the prosecutor. The KPD investigator did so, and the prosecutor declined to file criminal charges against NE#1.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

It is undisputed that there was an order of protection in place at the time of the incident. It is further undisputed that the order prohibited NE#1 from being in the same location as the Complainant and instructed that, if they were in the same location, NE#1 was required to leave. Here, NE#1 and the Complainant were in the same location; however, the Complainant left, not NE#1. When this occurred and NE#1 remained in the auditorium, he technically acted contrary to the plain language of the order. Notably, the order contains no exceptions or language that permits NE#1 to negotiate, whether by himself or through a proxy, the Complainant leaving a shared space and he remaining.

The above being said and even though I conclude that NE#1 technically acted contrary to the order, I do not believe that he violated policy. I reach this conclusion for three main reasons. First, the weight of the evidence supports NE#1's assertion that he did not ask the Complainant to leave or request that the teacher ask the Complainant to leave. It further supports the finding that the teacher asked the Complainant whether she would consider leaving and the Complainant agreed to do so. Second, NE#1 was put in a very difficult place. He was invited to an assembly at which he was going to be honored by his daughter and was not informed that his wife was also invited. He was, thus, faced with the following options: leave the assembly and prevent his daughter from reading him the letter that



she wrote or stay and commit a criminal act. I do not think it was unreasonable for NE#1 to have agreed to stay when he was informed that a compromise had been reached. Third, I find it persuasive that the KPD investigator did not arrest NE#1 and that the prosecutor, who was faced with the same evidence that is available to OPA, declined to charge NE#1 with a crime.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**