

A-7



STATE OF NEW JERSEY

In the Matter of Vanessa Shavers-
Johnson
Newark Public School District

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2014-149
OAL DKT. NO. CSV 10838-13

ISSUED: SEPTEMBER 3, 2014

The appeal of Vanessa Shavers-Johnson, Teachers Aide, Newark School District, removal effective June 28, 2013, on charges, was heard by Administrative Law Judge Sandra Ann Robinson, who rendered her initial decision on July 30, 2014. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on September 3, 2014, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

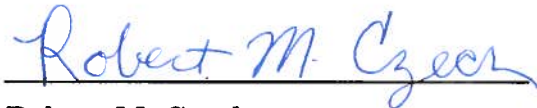
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Vanessa Shavers-Johnson.

Re: Vanessa Shavers-Johnson

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
SEPTEMBER 3, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Merit System Practices
and Labor Relations
Civil Service Commission
Unit H
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 10838-13

2014-149

**IN THE MATTER OF
VANESSA SHAVERS-JOHNSON,
NEWARK PUBLIC SCHOOL DISTRICT.**

Vanessa Shavers-Johnson, appellant, pro se

Bernard Mercado, Esq., representing respondent, Office of the General Counsel
of the Newark Public Schools

Record Closed: June 30, 2014

Decided: July 30, 2014

BEFORE **SANDRA ANN ROBINSON**, ALJ:

STATEMENT OF THE CASE

Vanessa Shavers-Johnson, appellant, a teacher's aide at The Early Childhood School-South (534 Clinton Avenue, Newark, New Jersey) appeals the decision by the State-Operated School District, City of Newark (District) to remove her from its employment, effective June 28, 2013. By Preliminary Notice of Disciplinary Action, dated April 17, 2013, the District alleged that appellant engaged in conduct unbecoming of a public employee, insubordination, neglect of duty, and other sufficient cause for discipline.

PROCEDURAL HISTORY

The New Jersey Civil Services Commission Division of Appeals and Regulatory Affairs transferred this matter to the Office of Administrative Law (OAL) on July 26, 2013, for a hearing pursuant to N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. The undersigned was assigned responsibility for the case on August 9, 2013. A prehearing conference was scheduled for August 22, 2013, when it was learned Eugene G. Liss, Esq. would not be representing appellant. On August 22, 2013, Attorney Liss wrote to respondent's counsel and the undersigned to advise that appellant had placed his name on her Notice of Appeal in error. On August 22, 2013, appellant's hand-written letter was received at OAL and indicated that she (appellant) would be handling her matter as a pro se litigant. A prehearing with appellant was scheduled for September 10, 2013, and at that time discovery demands were discussed. On September 23, 2013, respondent provided appellant with a list of witnesses with their scope of testimony and a Request for Admissions. A hearing date was set for January 24, 2014, and testimony commenced on that date and continued on April 24, 2014. The parties agreed to finalize the acceptance or objection to the entry of exhibits via telephone conference. Appellant's voluminous package of exhibits and respondent's exhibits were reviewed and on April 28, 2014, respondent submitted a document to appellant and the undersigned pertaining to "Institutional Staff" that was referenced during testimony. On May 1, 2014, the undersigned provided the parties with a copy of the draft Appendix. The parties engaged in two telephone conferences to finalize the documents to be marked into evidence or labeled ID. On June 2, 2014, it was agreed that appellant would add Exhibits 8, 9 and 10. On June 30, 2014, all the exhibits were received and reviewed and the hearing record was closed.

ISSUES

Has the respondent established a preponderance of credible evidence to substantiate the charges against the appellant? And, if the charges are substantiated, is the penalty of removal from employment, as a teacher's aide in the Newark Public School District warranted?

DISCIPLINARY CHARGES

By way of Preliminary Notice of Disciplinary Action, dated April 17, 2013, the District issued the following disciplinary Charges/Specifications against Vanessa Shavers-Johnson, a teacher's aide assigned to The Early Childhood School-South:

1. Violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee
2. Violation of N.J.A.C. 4A:2-2.3(a)(7), neglect of duty
3. Violation of N.J.A.C. 4A:2-2.3(a)(2), insubordination
4. Violation of N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause¹

Specifically, the District set forth the following specifications both in the Preliminary and Final Notices of Disciplinary Action:

A. As to the charge of violation of N.J.A.C. 4A:2-2.3(a)(6), - **conduct unbecoming a public employee**, you are hereby charged with committing the following offense(s):

1. On February 8, 2013, New Jersey experienced moderate to heavy snow fall but all Newark Public Schools remained open. There was no early dismissal. You were clearly notified by colleagues that staff and students at The Early Childhood School were not being dismissed early. However, with full knowledge of the fact that there was no early dismissal, at or about 1:00 p.m., you left your assigned classroom. Prior to leaving, you stated that you were making your own 1:00 p.m. dismissal, or words to that effect, and then left the building. Your actions are/were in total opposition to the overall goals and objectives of The Early Childhood School. You have engaged in conduct unbecoming a public employee.

2. On February 11, 2013, Vice Principal Jeanne Ramirez spoke to you about your conduct and advised that you must receive permission from the administrator prior to

¹ Other sufficient cause is now found at N.J.A.C. 4A:2-2.3(a)(12).

leaving the building. Approximately fifteen minutes after having the conversation with Ms. Ramirez you approached the main office and from the doorway announced to the secretary that you were leaving and going to "the board" meaning that you were going to the NPS Administrative Building, located at 2 Cedar Street. At or about 8:41 a.m., you used the Kronos time-keeping system to punch-out. As a result of your actions, your assigned class was not in compliance with the required 15 to 2 student/teacher ratio, which is mandated by the state of New Jersey for pre-schools.² At or about 9:38 a.m., you returned to The Early Childhood School and punched-in using the Kronos time-keeping system (refer to the attached Kronos Timecard). Your behavior constitutes conduct unbecoming a public employee.

3. You were previously warned counseled and disciplined regarding the need for you to improve your conduct. In 2001, you were charged with conduct unbecoming a public employee and other sufficient cause. The charges were sustained. As a result, a 31-day suspension without pay was imposed. In 2003, you were charged with insubordination, conduct unbecoming a public employee, neglect of duty and other sufficient cause. The charges were sustained. As a result, a 20-day suspension without pay was imposed. In 2008, you were charged with conduct unbecoming a public employee, insubordination, and other sufficient cause. The charges were sustained. Effective January 31, 2008, you were terminated from employment with the District. However, as a result of your appeal of the termination, you were reinstated. On September 25, 2008, a Settlement Agreement and Last Chance Agreement was executed, which states the following:

"This is a last chance agreement. Appellant fully understands that she has received numerous reprimands over the years and [has] now been suspended on three (3) separate occasions for her insubordination towards supervisors and unbecoming conduct in disrupting school operations. Appellant also fully understands and acknowledges that she is on notice and aware that she will be terminated by the District if, subsequent to the execution of this agreement, she is found to have committed offenses of the same or similar nature as those set forth in the Preliminary Notice of Disciplinary Action dated January 31, 2008, October 27, 2003, and October 30, 2001. Appellant also understands that her disciplinary record may subject her to termination if she is found to have committed

² NPS – Newark Public Schools.

any of the offenses set forth in N.J.A.C.4A:2-2.3."

With full knowledge of the foregoing, on numerous occasions since being assigned to The Early Childhood School you have acted inappropriately and disrespectfully and have repeatedly disrupted the normal operation of the school (see attached chronology of events dated February 8, 2013). Your conduct constitutes conduct unbecoming a public employee.

B. As to the charge of violation of N.J.A.C. 4A:2-2.3(a)(7), - **neglect of duty**, you are hereby charged with committing the following offense(s):

1. Each of the offenses enumerated above in A. 1. through A. 3., inclusive, is repeated and realleged as though fully set forth herein.

2. As a teacher's aide, you are expected and required to provide direct assistance to teachers or other certified staff members, assist in the classroom activities of school children and perform other related duties (refer to attached Job Specification). However, as memorialized in writing by Vice Principal Ramirez, from December 3, 2012 through February 11, 2013, on numerous occasions you neglected to perform the duties of teacher's aide to the required standard of the District. Additionally, on February 8 and 11, 2013 when you left The Early Childhood School without authorization to do so, you neglected the duties associated with your title. Your actions indicate that you lack sound judgment and have no respect for authority. Your conduct constitutes a gross neglect of duty.

C. As to the charge of violation of N.J.A.C. 4A:2-2.3(a)(2), - **insubordination**, you are hereby charged with committing the following offense(s):

1. Each of the offenses enumerated above in A. 1. through B.2., inclusive, is repeated and realleged as though fully set forth herein.

2. On all of the dates outlined in the attached memorandum dated February 8, 2013, prepared by Jeanne Ramirez (Vice Principal of The Early Childhood School), you acted insubordinately when you blatantly refused the work related directive given by the administrator at your assigned location.³ Additionally, on February 8 and 11, 2013, when you

³ (See Exhibit R-8 in the Exhibit Book.)

left the school after being notified that you were required to remain in your assigned classroom unless you receive permission to leave is insubordinate in nature. Furthermore, your bold outburst on February 8, 2013 that you were making your own 1:00 p.m. dismissal, or words to that effect, is demonstrative of your total lack of respect and self-control. Your repeated willful defiance of work rules and regulations constitutes insubordination.

D. As to the charge of violation of N.J.A.C. 4A:2-2.3(a)(11), - **other sufficient cause**, you are hereby charged with committing the following offense(s):

1. Each of the offenses enumerated above in A.1. through C.2., inclusive, is repeated and realleged as though fully set forth herein.
2. By committing the offenses enumerated above, you have demonstrated unprofessional conduct. You have compromised the operational integrity of The Early Childhood School-South within the State Operated School District of the City of Newark.

SUMMARY OF TESTIMONY

Jeanne Ramirez is the vice principal of the Early Childhood School-South, Newark Public Schools. She has a Bachelor of Arts in education, a Master of Arts in elementary education, a Master of Arts in administration, and is a certified bi-lingual. Ms. Ramirez's responsibilities include monitoring and observing the treatment of children and the duties of teachers, teacher-assistants, teacher-aides, secretaries, and food operators. She also checks attendance and tardiness. Appellant reported to Ms. Ramirez. Ms. Ramirez testified as follows,

Appellant is a teacher's aide and is responsible for up to fifteen children in a classroom. There is always a teacher and a teacher's aide in each classroom. Teacher's aides assist the children with toileting, walking to the nurse's office, covering the teacher when the teacher must leave the classroom, serving breakfast or lunch, cleaning or clearing mishaps, reading stories and doing activities with the children, etc.

Everyone is given a ten minute break and lunchtime each day. If a member of the teaching staff wants to leave school to go to the administrative office, they are required to ask

permission and provide an explanation on why they need to leave during the school day. If an employee leaves the building without permission they are marked Away Without Leave (AWOL). There needs to be two persons in a classroom. The departure of one person presents a safety issue and disrupts the learning environment. Sometimes when one teaching staff has to leave the room, the class is divided to go with another teacher.

On December 7, 2012, Homere W. Breton, Interim Executive Director of Newark Public Schools Human Resource Services, authored a letter to appellant that included similar conduct by appellant as that on February 8, 2013.⁴ On February 8, 2013, at 1:00pm, appellant left teacher Thompson in the room with the children without coverage and left the school building. The remainder of the staff stayed the full school day. February 8, 2013, was the same day appellant placed a child over her shoulder to go to the nurse's office because the child had a bead stuck in her nose. On February 8, 2013, she (appellant) punched in at 8:07am and punched-out at 1:04pm. I am the only one who can authorize early departures and arrange for coverage. On February 8, 2013, I attended a disciplinary hearing away from the school from 9:00am to 10:00am. On February 8, 2013, I never said there would be a 1:00pm closing.

On February 11, 2013, I discussed with appellant the February 8, 2013 leave without permission. When I told her she could not leave without permission, appellant said to me: "You can't tell me when to leave. I come and go whenever I want." Approximately fifteen minutes after we spoke, appellant put her head in my secretary's office and said, "I am stepping out." It was a regular school day with student staying until 3:00pm. On February 11, 2013, appellant punched-in at 7:00am and punched out at 8:41am. She returned to the school and punched in again at 9:38am and punched out for the day at 2:58pm. Appellant's time detail sheet shows the exact punch-in and punch-out times. I went to appellant's classroom, but I never screamed that I was going to AWOL her. Around 2:00pm on February 11, 2013, I gave appellant a letter regarding her leave without permission.

Jacqueline Chavis is the labor relations specialist for Newark Public Schools. Her duties include disciplinary and grievance actions. Ms. Chavis testified as follows,

⁴ (See Exhibit P-8.)

Prior to determining that appellant should be terminated a careful review was conducted of the Teacher Aide Job Description, the PNDA and FNDA and the Last Chance Settlement Agreement. In accordance with the Last Chance Agreement, if appellant is charged and found guilty of the charges referenced in the Last Chance Settlement Agreement, then termination can be effectuated.

Kumar Bowman is a parent of a child that appellant provide teacher-aide services to. Ms. Bowman testified as follows,

On the morning of February 8, 2013, I came in the school with my child and I heard Ms. Ramirez saying it would be a 1:00 pm dismissal today. I prepared a notarized statement about what I heard Ms. Ramirez say on February 8, 2013.

On February 11, 2103, after school, I saw appellant sitting outside talking to a lady. I don't recall what time I picked my daughter up, but there was a 2:30 pm dismissal on that day.

On cross-examination, Ms. Bowman responded,

I take my child out of school anytime, as it is needed. Appellant asked me to write a statement and have it notarized. Ms. Ramirez was telling everyone in the hallway that school would close at 1:00pm on February 8, 2013.

Kaseem Johnson is appellant's son. Mr. Johnson testified as follows,

On February 8, 2013, the phone rang and it was my niece's school calling to say school was closing early. I called Clinton Avenue School and asked to speak with my mother. I told her she had to pick up her grandchild by 1:00 pm.

On cross-examination Mr. Johnson responded,

Appellant is my mother. The house phone rang around 11:30am, but my mother was not there. My niece was located at a school in East Orange. I took the school phone call about an early closing.

I do not drive or I would have picked my niece up. I did not know where my sister was, but my mother, the child's

grandmother, is the emergency contact the school has on file.

Malika Patterson is appellant's daughter. Ms. Patterson testified as follows,

On February 8, 2013, my daughter was picked up at school by my mother because I was sick with pneumonia. My daughter's school reached my brother and my brother phoned appellant, my mother, to pick up her grandchild by 1:00 pm. My mother is the emergency contact for my daughter's school.

Kimberly Thompson is the teacher whom appellant was working with on February 8, 2013. Ms. Thompson testified as follows,

On February 8, 2013, when appellant told the secretary she was leaving the building, there were six children in my classroom. During inclement weather parents sometimes sign their children out early. February 8, 2013, was the same day a child had a bead in her nose The bead came out of her hair. Vice Principal Ramirez asked for an incident report about the bead.

On February 11, 2013, appellant left the building around 11:00am. I know that she left the classroom to inform the office that she was leaving the building.

On cross-examination, Ms. Thompson responded,

Parents can sign-out students regardless of the weather. February 8, 2013, was a Friday, it was not a snow day and school did not close early; the staff stayed all day.

On February 11, 2013, appellant left me alone with students starting around 11:00am. Appellant returned later. It is a violation of the rules to not have one teacher and one teacher's aide in a classroom at all times. Ms. Ramirez was in school on February 11, 2013.

Vanessa Shavers-Johnson, appellant, testified as follows,

On February 8, 2013, I heard Ms. Ramirez tell parents and children there was going to be a 1:00pm closing. Ms. Ramirez told me to phone two parents. On February 8,

2013, my son called me at school to go to my grandchild's school to pick her up because my grandchild's school was closing early.

On February 11, 2013, at 7:15am, Ms. Ramirez yelled out, "You were marked AWOL for February 8, 2013." Later, Ms. Ramirez was talking to teacher Thompson in the classroom while students were having breakfast. I heard Thompson say "The child was cared for by [appellant], not me (Thompson), so appellant should have the report." I was instructed by Ms. Ramirez to do an incident report. It was an informal report, so I wrote it on a piece of paper.

On February 11, 2013, I went to the Labor Relations office at 2 Cedar Street to meet with my union representative and report what was happening with me at the school, and I filed a complaint. During my last internal hearing, I was instructed that if someone gets in my face do not confront them back, but ask to leave and file a complaint with the Board Labor Relations personnel.

When I returned to the school on February 11, 2013 the children told me that the principal put my chair in the hallway. I asked the principal why that was done. The principal informed me that the chair belonged to the Orthopedic Clinical Specialist (OCS.)

On February 11, 2013, Ms. Ramirez asked me if I wanted to review the letter that she handed me. I said, "no," it was late in the day and let's do it at another time.

On cross-examination, appellant responded,

I do have a Last Chance Settlement Agreement and I was represented by an attorney at that time. I am not on payroll so the Union cannot represent me here at OAL.

I do know of times when Ms. Thompson was left alone with the children in the class. There was an occasion. I was called downtown to do finger-printing and it was okay.

During February 2013, I was under the supervision of Vice Principal Ramirez. I am a teacher's aide and I agree I must keep the children safe.

I fed the kids lunch at 11:00am on February 8 because school closed at 1:00pm. Ms. Ramirez told parents about the closing in the morning, as they dropped children at the

school. At noon on February 8, I was still in the building with a nose bleed. I phoned the doctor before leaving the building. I have a doctor's excuse slip. I cleared the snow and ice off my car and returned to the building to look for Ms. Ramirez and I could not find her. I asked Ms. Ramirez's clerk to text her and the clerk said she would give Ms. Ramirez a note. I had told the clerk already, around 10:30am when I got the emergency contact that I would be leaving the building before 1:00pm. I then went for my granddaughter.

My work history includes sixteen years at Morton Street School as a teacher's aide for grades six through eighth. Morton Street closed and became a Charter School. I was then at Barringer High School in the math department teaching algebra for four years, before Barringer closed for good. I was at McKinley Public School for three years, before having to leave because the school was over-staffed and the budget was cut. I then received a letter to report to The Early Childhood School-South, located on Clinton Avenue.

Commencing February 12, 2013 through May 9, 2013 I had no interaction with Ms. Ramirez. On May 9, 2013 I was removed from my position.

FINDINGS OF FACT

Based on the applicable law and the testimonial and documentary evidence presented, I make the following **FINDINGS OF FACT**:

1. Appellant worked for the Newark Public School District as a teacher's aide for twenty-five years;
2. Appellant initially worked for sixteen years at Morton Street School as a teacher's aide for grades six through eight. Morton Street closed and became a Charter School;
3. Appellant next worked at Barringer High School in the math department teaching Algebra for four years, before Barringer closed for good;

4. Appellant then worked at McKinley Public School for three years as a teacher's aide before leaving because the school was over-staffed and the budget was cut;
5. Appellant was then assigned to The Early Childhood School-South, located on Clinton Avenue, in Newark, New Jersey, as a teacher's aide;
6. At The Early Childhood School-South, the charges of conduct unbecoming of a public employee, insubordination, neglect of duty, and other sufficient cause, were brought against appellant by respondent, the State-Operated School District, City of Newark (District);
7. On April 17, 2013, respondent issued to appellant a Preliminary Notice of Disciplinary Action;
8. On June 17, 2013, respondent issued to appellant a Final Notice of Disciplinary Action that sustained all the charges in the Preliminary Notice and established that the penalty was a removal, effective June 28, 2013;
9. Appellant challenged the penalty of removal and appealed to OAL for a de novo hearing;
10. Vice Principal Jeanne Ramirez was appellant's supervisor and is the only person who can authorize early departures and arrange for coverage;
11. Ramirez's testimony about the State requirement for a certified teacher and a teacher's aide (teacher assistant) to be in each classroom preschool class of fifteen children is supported by N.J.A.C. 6A:13A-4.3 – Institutional Staff;
12. Appellant's testimony that a school is only required to have a teacher and teacher aide in the classroom if the class size exceeds fifteen students, is false and not supported by N.J.A.C. 6A:13A-4.3;

13. Ramirez's testimony that two persons are needed in a classroom for safety reasons and to maintain the learning environment without disruptions, is alluded to in the language of N.J.A.C. 6A:13A-4.3 and is credible;
14. Ramirez's testimony that on occasion when one teaching staff has to leave the room, the class is divided to go with another teacher is credible;
15. Ramirez's testimony about appellant's job duties that include: covering the teacher when the teacher must leave the classroom, serving breakfast and lunch, and doing activities with the children, is not disputed;
16. Ramirez's testimony that all school personnel are given a ten-minute break and lunch time each day is not disputed.
17. Ramirez's testimony that if a member of the teaching staff wants to leave school to go to the administrative office, they are required to ask permission and provide an explanation on why they need to leave during the school day, is not disputed;
18. Ramirez's testimony that if an employee leaves the building without permission they are marked AWOL, is not disputed;
19. Ramirez's testimony that on Friday February 8, 2013, appellant punched in at 8:07 a.m. and punched-out at 1:04 p.m. is not disputed;
20. Ramirez's testimony that February 8, 2013, was not an inclement weather day for her school, but was a full day until 3:00 p.m., is credible;
21. Ramirez's testimony that on February 8, 2013, appellant left school at 1:00 p.m. and left teacher Thompson in the room with the children without coverage, is not disputed;
22. Ramirez's testimony that on Monday February 11, 2013, during a discussion with appellant, about leaving the building without permission on Friday February 8,

2013, appellant said to her, "You can't tell me when to leave. I come and go whenever I want," is credible;

23. Ramirez's testimony that fifteen minutes after their discussion on February 11, 2013, appellant told Ramirez's secretary that she (appellant) was stepping out, is credible;
24. Ramirez's testimony that on February 11, 2013, appellant first punched-in at 7:00 a.m. and punched out at 8:41 a.m.; then she punched-in again at 9:38 a.m. and punched-out for the day at 2:58 p.m., is not disputed and is supported by appellant's time detail sheets;
25. Ramirez's testimony that on February 11, 2013, at 2:00 p.m. appellant was handed a letter regarding her February 8 leave without permission and asked by Ramirez if she wanted to review and discuss the letter, and appellant responded "no, it is late, let's do it later," is credible;
26. Qumar Bowman is a parent of a child to whom appellant provides teacher-aide services;
27. Bowman's testimony that appellant asked her to prepare a notarized statement regarding what Bowman heard when she brought her child inside the school on the morning of February 8, 2013, is not disputed;
28. Bowman's testimony that she heard Ms. Ramirez say there would be a 1:00 p.m. dismissal on February 8, 2013, was not proven;
29. Kaseem Johnson is appellant's son;
30. Johnson's testimony that on February 8, 2013, someone from his niece's school in East Orange, phoned his home around 11:30 a.m. to inform the family that school would close early, is not disputed;

31. Johnson's testimony that he phoned appellant, who was working at The Early Childhood School-South, to tell her to pick up her grandchild by 1:00 p.m., is not disputed;
32. Johnson's testimony that he did not know where his sister was (his niece's mother), but knew his mother is the emergency contact person in his niece's school file, is credible;
33. Johnson's testimony that he would have picked up his niece if he drove is believable;
34. Malika Patterson is appellant's daughter;
35. Patterson's testimony that on February 8, 2013, her daughter was picked up by her mother, appellant, because Patterson was sick with pneumonia, was not proven;
36. Kimberly Thompson is the certified teacher who appellant works with as a classroom teacher's aide;
37. Thompson's testimony that on February 8, 2013, when appellant told Thompson's secretary that she (appellant) was leaving the building that there were six children in the classroom is not disputed;
38. Thompson's testimony that February 8, 2013, was a Friday; it was not a snow day; school did not close early; and staff stayed all day, is credible;
39. Thompson's testimony that on February 11, 2013, appellant left Thompson and the children in the classroom and informed the office that she was leaving the building and then left the building around 11:00 a.m., is not disputed;
40. Thompson's testimony that on February 11, 2013, appellant returned to school later is not disputed;

41. Thompson's testimony that it is a violation of the rules to not have one teacher and one teacher's aide in a classroom at all times is supported by Ramirez's testimony and by State statute;
42. Appellant Vanessa Shavers-Johnson's testimony that on February 8, 2013, she heard Ramirez tell parents and children there was going to be a 1:00 p.m. closing, was not proven by the weight of the evidence and is incredible;
43. Appellant's testimony that on February 8, 2013, Ramirez asked her to phone two parents was not proven by any evidence and is incredible;
44. Appellant's testimony that on February 8, 2013, her son telephoned her at school to inform her that her grandchild's school was closing early is not disputed;
45. Appellant's testimony that at 7:15 a.m. on February 8, 2013, Ramirez yelled out, "You were marked AWOL for February 8, 2013" is contradictory to Ramirez's testimony that on Friday February 8, 2013, appellant punched-in at 8:07 a.m. Appellant's testimony about Ramirez yelling AWOL is incredible;
46. Appellant's testimony that she punched-out at 1:04 p.m. is not disputed;
47. Appellant's testimony that on February 11, 2013, she went to the Labor Relations office at 2 Cedar Street to meet with a union representative, to report what was happening to her at The Early Childhood School and to file a complaint, was not disputed;
48. Appellant's testimony that during her last internal hearing, she was instructed that if someone gets in her face to not confront them, but ask to leave the school and file a complaint with the Board of Labor Relations, was not proven and was not disputed;

49. Appellant acknowledged during her own testimony that on February 11, 2013, when Ms. Ramirez asked her (appellant) if she wanted to review the letter Ramirez handed her that she (appellant) responded, "no, it is late in the day and let's do it at another time";
50. Appellant acknowledged during her own testimony that she does have a Last Chance Settlement Agreement and was represented by an attorney when it was prepared;
51. Appellant's testimony that she knows of times when Thompson was left alone with the children in the class when she (appellant) was called downtown to do finger-printing and in that instance there was no violation of State regulations, is credible;
52. Appellant's testimony that as a teacher's aide she must keep the children safe is not disputed;
53. Appellant's testimony that on February 8 she fed the children lunch at 11:00 a.m. because school closed at 1:00 p.m. was not proven;
54. Appellant's testimony that on February 8 Ramirez told parents about the closing in the morning, as they dropped children at the school was not proven;
55. Appellant's testimony that on February 8 around 10:30 a.m. when she got the emergency contact call, she told the school clerk she would be leaving the building before 1:00 p.m., is inconsistent with her son's testimony and is incredible;
56. Appellant's testimony that on February 8 she cleared the snow and ice off the car and returned to the building to look for Ramirez, but could not find her, is incredible;

57. Appellant's testimony that on February 8 before finally leaving the school she asked Ramirez's clerk to text Ramirez and that the clerk responded "I will give Ramirez a note," was not proven and is incredible;
58. Appellant's testimony that she left the building around 1:00 p.m. to pick up her granddaughter was not disputed;
59. Appellant's testimony that on February 8 she phoned the doctor before leaving the building because she had a nose bleed, is not relevant evidence to support the within argument of neglect of duty;
60. Appellant's testimony that from February 12, 2013, through May 9, 2013, she had no interaction with Ramirez is credible;
61. On May 9, 2013, respondent removed appellant from her position as a teacher's aide at The Early Childhood School-South for conduct unbecoming of a public employee, insubordination, neglect of duty, and other sufficient cause;
62. Appellant has a history of previous disciplinary actions during her employment with the Early Childhood School-South;
63. Appellant received a thirty-one-day suspension on December 13, 2001, effective November 1, 2001, for conduct unbecoming a public employee and other sufficient cause;
64. Appellant received a twenty-day suspension on April 22, 2004, effective May 10, 2004, for conduct unbecoming a public employee, neglect of duty and other sufficient cause;
65. Appellant received a six-month suspension on January 31, 2008, that was settled with a Last Chance Agreement on November 6, 2008, for conduct unbecoming a public employee, insubordination and other sufficient cause, effective January 31, 2008, to June 30, 2008, September 1, 2008, to September 30, 2008, and an

unpaid leave of absence from October 1, 2008, to December 12, 2008. Appellant voluntarily agreed to the terms and conditions and signed the Last Chance Agreement for prior disciplinary matter that included the condition that if she was disciplined again for the same conduct exhibited in 2001, 2003, and 2008 that termination/removal would be implemented;

66. Appellant was charged with conduct unbecoming a public employee, neglect of duty, and other sufficient cause, on April 5, 2012, and the charges were dismissed on May, 15, 2012;
67. Appellant's disciplinary history charges of conduct unbecoming a public employee, neglect of duty, and insubordinations are chronic issues;
68. In the instant matter, appellant violated N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, when on Friday February 8, 2013, she left school at 1:00 p.m., without permission and before the end of the 3 p.m. school day;
69. In the instant matter, appellant violated N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, when on February 11, 2013, Vice Principal Ramirez spoke with appellant about requesting permission from the administrator to leave the building and in the same day, fifteen minutes after the discussion, announcing, instead of requesting permission, that she was leaving the building. Also on February 11 appellant demonstrated conduct unbecoming a public employee when punched out on the Kronos at 8:41 a.m. and left students in the classroom with only a teacher in violation of the State mandate requiring a 15 to 2 student/teacher ratio, at all times;
70. In the instant matter, the weight of the evidence establishes that appellant has repeatedly disrupted the normal operation of the school because of her actions that result in conduct unbecoming a public employee;

71. In this matter, appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(7), neglect of duty, when she failed to perform the duties under her job specification, especially to provide direct assistance to teachers or other certified staff members and assist in the classroom activities of school children;
72. Appellant neglected her duties on February 8 and 11, 2013, when she left The Early Childhood School without authorization to do so;
73. In this matter appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(2), insubordination, when she refused the work related directive given by her supervisor. On February 8 and 11, 2013, appellant left the school after being notified that she was required to remain in the classroom unless permission was received to leave, thereby constituting insubordination. On February 11, 2013, appellant's confrontation to her supervisor regarding her (appellant's) coming and going from the school building was disrespectful and defiant and constitutes insubordination;
74. In the instant matter, appellant is charged with violating N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause, when compounding all charges and learning that the school children's safety and welfare were compromised when appellant did not adhere to her job specification, school rules, and mandated State regulations. Appellant's non-adherence to policy and unprofessional conduct compromised the operational integrity of The Early Childhood School-South and constitutes other sufficient cause for discipline;
75. The testimony of Labor Relations Specialist Jacqueline Chavis for Newark Public Schools that prior to determining whether appellant should be terminated a careful review was conducted of the Teacher Aide Job Description, the PNDA, the FNDA, and the Last Chance Settlement Agreement, is not disputed;
76. Chavis's testimony that the Last Chance Agreement requires that if appellant is charged and found guilty of the charges referenced in the Last Chance Settlement Agreement, that termination can be effectuated, is not disputed;

77. Chavis's testimony that appellant's acts of leaving the classroom and leaving the school during the work day without prior approval constitutes neglect of duty, insubordination, and conduct unbecoming of a public employee, is not disputed;
78. Chavis's testimony that appellant's acts of leaving the classroom during the work day while students are in the classroom with only one teacher constitutes neglect of duty, is not disputed.

LEGAL DISCUSSION AND ANALYSIS

The New Jersey Civil Service Law protects classified employees from arbitrary dismissal and other onerous sanctions. Prosecutor's Detectives and Investigators Ass'n v. Hudson County Bd. of Freeholders, 130 N.J. Super. 30, 41 (App. Div. 1974); Scancarella v. Dep't of Civil Serv., 24 N.J. Super. 65, 70 (App. Div. 1952). The law provides relief to civil service employees from public employers who may attempt to deprive them of their rights. To this end, the law is liberally construed. Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). Consistent with this policy of civil service law, there is a requirement that in order for a public employee to be fined, suspended or removed, the employer must show just cause for its proposed action. The Merit System Board is charged with the duty of ensuring that the reasons supporting disciplinary action are sufficient and not arbitrary, frivolous, or "likely to subvert the basic aim of the civil service program." Prosecutor's, supra, 130 N.J. Super. at 42 (quoting Kennedy v. Newark, 178 N.J. 190 (1959)).

Public employees' rights and duties are governed and protected by the provisions of the Civil Service Act, N.J.S.A. 11A:1-1 to 12-6, and the regulations promulgated pursuant thereto, N.J.A.C. 4A:1-1.1 to 4A:2-6.2. However, public employees may be disciplined for a variety of offenses involving their employment, including the general causes for discipline as set forth in N.J.A.C. 4A:2-2.3(a). An appointing authority may discipline an employee for sufficient cause, including failure to obey laws, rules and regulations of the appointing authority. N.J.A.C. 4A:2-2.3(a)(11). If sufficient cause is established, then a determination must be made on what is a

reasonable penalty. In attempting to determine if a penalty is reasonable, the employee's past record may be reviewed for guidance in determining the appropriate penalty for the current specific offense. The concept of progressive disciplinary action is described in West New York v. Bock, 38 N.J. 500, 519 (1962). In Bock, the officer had received a thirty-day suspension and seventeen minor-disciplinary actions during eight years of service. The prior disciplinary actions and the suspension of thirty days were strongly considered in determining if the thirty-day suspension was warranted. A civil service employee who commits a wrongful act related to his duties may be subject to major discipline. N.J.S.A. 11A:1-2(b), 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2, -2.3(a). Depending upon the incident complained of and the employee's past record, major discipline may include suspension, removal, etc. Bock, *supra*, 38 N.J. at 522-24.

In disciplinary cases the appointing authority has both the burden of persuasion and production and must demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to discipline the officer and lodge the charges. See Coleman v. E. Jersey State Prison, CSV 1571-03, Initial Decision (February 25, 2004), <http://njlaw.rutgers.edu/collections/oal/> (citations omitted); see also N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550, 560 (1982); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971); N.J.S.A. 11A:2-6(a)(2), -21; N.J.A.C. 1:1-2.1, "burden of proof"; N.J.A.C. 4A:2-1.4. A preponderance of evidence has been defined as that which "generates belief that the tendered hypothesis is in all human likelihood the fact." Martinez v. Jersey City Police Dep't, CSV 7553-02, Initial Decision (October 27, 2003), <http://njlaw.rutgers.edu/collections/oal/> (quoting Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)).

(Conduct Unbecoming a Public Employee)

There is no precise definition for "conduct unbecoming a public employee," and the question of whether conduct is unbecoming is made on a case-by-case basis. King v. County of Mercer, CSV 2768-02, Initial Decision (February 24, 2003), *adopted*, Merit Sys. Bd. (April 9, 2003), <http://njlaw.rutgers.edu/collections/oal/>. In Jones v. Essex County, CSV 3552-98, Initial Decision (May 16, 2001), *adopted*, Merit Sys. Bd. (June

26, 2001), <http://njlaw.rutgers.edu/collections/oal/>, it was observed that conduct unbecoming a public employee is conduct that adversely affects morale or efficiency or has a tendency to destroy public respect for governmental employees and confidence in the operation of public services. Unbecoming conduct is not precisely defined in N.J.S.A. 11A or N.J.A.C. 4A; see, e.g., In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). The New Jersey Department of Personnel's Administrative Code does not specifically define unbecoming conduct, but the term unbecoming conduct has been applied in case law to cover a broad range of conduct, including "misconduct." The court in Pfizinger v. Board of Trustees, PERS, 62 N.J. Super. 589 (Law Div. 1960), in attempting to define conduct unbecoming or misconduct, stated, "[T]here is no specified definition for what conduct falls into these categories. Each case must be decided on its own merits in the light of the public position held by the individual involved." Id. at 602. The New Jersey courts have dealt with unbecoming conduct on a case-by-case basis. Karins v. City of Atlantic City, 152 N.J. 532 (1998), involved an off-duty firefighter who directed a racial epithet at an on-duty police officer during a traffic stop. The Court noted that the phrase "unbecoming conduct" is an "elastic one that includes any conduct that adversely affects morale or efficiency by destroying public respect for municipal employees and confidence in the operation of municipal services." Id. at 554. In Hartmann v. Police Department of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992), it was stated that a finding of misconduct need not "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior, which devolves upon one who stands in the public eye as an upholder of that, which is morally and legally correct." Unbecoming conduct may include behavior, which is improper under the circumstances; it may be less serious than a violation of the law, but which is inappropriate on the part of a public employee because it is disruptive of governmental operations. In the instant case, respondent determined appellant's conduct was unbecoming when she acted inappropriately and disrespectfully and repeatedly disrupted the normal operation of the school.

(Insubordination)

The New Jersey Administrative Code definitions, N.J.A.C. 4A:1-1.3, does not provide a definition for insubordination; however, case law generally interprets the term to mean the refusal to obey an order of a supervisor. See e.g. Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982); Millan v. Morris View, 177 N.J. Super. 620 (App. Div. 1981); Rivell v. Civil Service Comm'n, 115 N.J. Super. 64 (App. Div. 1971), certif. denied, 59 N.J. 269 (1971). According to Webster's II New College Dictionary (1995) ""insubordination" refers to acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Stanziale v. County of Monmouth Bd. of Health and Merit Sys. Bd., 350 N.J. Super. 414 (App. Div. 2002), certif. denied, 174 N.J. 361 (2002). In In re Rudolph, CSV 5083-99 (consolidated), Initial Decision (October 23, 2000), adopted, Merit System Board (December 18, 2000), <http://njlaw.rutgers.edu/collections/oal/>, the Merit System Board upheld the removal of a public works repairer for refusing to respond to the reasonable orders of his supervisor to complete an assignment. The Administrative Law Judge found that appellant's employment history evidenced a pattern of refusal to accept supervision and disrespect for those who attempted to supervise him and upheld appellant's removal. In the instant case, respondent determined that appellant was insubordinate on the occasions when she blatantly refused the work related directives given by the administrator, especially when she left the school on February 8 and 11, 2013, after being notified she was required to remain in the classroom unless permission was given; her outburst on February 8, 2014, when she was making her own 1:00 p.m. dismissal that demonstrated lack of respect and self control and her repeated willful defiance of work rules and regulations.

(Neglect of Duty)

There is no definition in the New Jersey Administrative Code for neglect of duty, but the charge has been interpreted to mean that an employee has failed to perform and act as required by the description of their job title. Neglect of duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977), neglect of duty implies nonperformance of some official duty imposed upon a public

employee, not merely commission of an imprudent act. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). In the instant case, respondent determined appellant neglected her duty when on February 8 and 11, 2013, she left the school without authorization to do so, she neglected the duties associated with her teacher's aide title and job responsibilities.

(Other Sufficient Cause)

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against respondent as all other offense caused and derived as a result of all other charges against appellant. There have been cases when the charge of other sufficient cause has been dismissed when "respondent has not given any substance to the allegation." Simmons v. City of Newark, CSV 9122-99, Initial Decision (February 22, 2006), adopted, Comm'r (April 26, 2006), <<http://njlaw.rutgers.edu/collections/oal/final/csv9122-99.pdf>>. In the instant matter, respondent determined that sufficient cause charges are attributable to appellant since she constantly disrupted school operations by not adhering to protocol and Newark Public School policies.

CREDIBILITY

This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The respondent must prove its case by a preponderance of the credible evidence, which is the standard in

administrative proceedings. Atkinson, supra, 37 N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

When witnesses present conflicting testimonies, it is the duty of the trier of fact to weigh each witness's credibility and make a factual finding. In other words, credibility is the value a fact finder assigns to the testimony of a witness, and it incorporates the overall assessment of the witness's story in light of its rationality, consistency, and how it comports with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963); see Polk, supra, 90 N.J. 550. Credibility findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463 (1999). A fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973).

The finder of fact is not bound to believe the testimony of any witness, and credibility does not automatically rest astride the party with more witnesses. In re Perrone, 5 N.J. 514 (1950). Testimony may be disbelieved, but may not be disregarded at an administrative proceeding. Middletown Twp. v. Murdoch, 73 N.J. Super. 511 (App. Div. 1962). Credible testimony must not only proceed from the mouth of credible witnesses but must be credible in itself. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The evidence presented and the credibility of the witnesses will assist in resolving whether the charges and discipline imposed should be sustained; or whether there are mitigating circumstances, which should impact the charges and the penalty. Mitigating circumstances must be taken into consideration when determining whether there is just cause for the penalty imposed.

DISCIPLINARY HISTORY

An employee's past disciplinary record may be reviewed to determine the appropriate penalty for the current specific offense. Bock, supra, 38 N.J. 500. The concept of "progressive discipline," the imposition of penalties of increasing severity, is an appropriate consideration in determining the reasonableness of the penalty. Id. at

523-24. In addition to considering an employee's prior disciplinary history when imposing a disciplinary penalty, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid.

The appellant's history of previous disciplinary actions during her employment with the Early Childhood School-South include: (1). A thirty-one-day suspension on December 13, 2001 (effective November 1, 2001), for conduct unbecoming a public employee and other sufficient cause; (2). A twenty-day suspension on April 22, 2004 (effective May 10, 2004), for conduct unbecoming a public employee, neglect of duty and other sufficient cause; (3). A six-month suspension on January 31, 2008, settled with a Last Chance Agreement on November 6, 2008, for conduct unbecoming a public employee, insubordination and other sufficient cause, (effective January 31, 2008 to June 30, 2008, September 1, 2008, to September 30, 2008, and an unpaid leave of absence from October 1, 2008, to December 12, 2008; and, (4). Charges of conduct unbecoming a public employee, neglect of duty, and other sufficient cause, on April 5, 2012 - all April 5, 2012, charges were dismissed on May, 15, 2012. Appellant's disciplinary history demonstrates her chronic issues with the current charges against her: conduct unbecoming a public employee, neglect of duty, and insubordination.

LAST CHANCE AGREEMENT

In the instant matter, the respondent alleges that appellant violated the terms and conditions of her Last Chance Agreement. The Last Chance Agreement is explicitly clear and unambiguous that violation of the terms would result in termination. The use of the Last Chance Agreement is solely for the purpose of determining the appropriate penalty. The parties voluntarily agreed in the Last Chance Agreement that the penalty would be removal for any subsequent violation. Consequently, a Last Chance Agreement can be used as a significant factor to be considered, along with the appellant's prior disciplinary history, when determining the appropriate penalty in an appeal. Additionally, Last Chance Agreements are construed in favor of appointing authorities because to do otherwise would discourage their use by making their terms meaningless. See Watson v. City of E. Orange, 175 N.J. 442, 445. The New Jersey

Supreme Court found an employee's termination was warranted when that employee did not perform in compliance with a Last Chance Agreement as contemplated by the parties. The Court added that a contrary conclusion would likely chill employers from entering into such agreements to the detriment of future employees.

In the instant matter, appellant voluntarily agreed to the terms and conditions of her Last Chance Agreement, therefore, if the appellant was found in violation of her Last Chance Agreement then her removal from the position of teacher's aide is appropriate. Usually the Last Chance Agreement incorporates an employee's extensive history of infractions, the seriousness of the underlying incident, and the concept of progressive discipline. Bock, supra, 36 N.J. 500.

MITIGATION

The actuality that appellant worked for the Newark Public School District as a teacher's aide for twenty-five years has been taken into consideration in determining whether there is just cause for the penalty of removal.

PENALTY

Unless the penalty is unreasonable, arbitrary or offensively excessive under all of the circumstances, it should be permitted to stand. Ducher v. Dep't of Civil Serv., 7 N.J. Super. 156 (App. Div. 1950). The appellant's record of performance must be considered when attempting to determine if the judgment of the appointing authority was unreasonable, arbitrary or capricious. See Bock, supra, 38 N.J. 500. In the instant case, appellant has worked for the school district for twenty-five years and has incurred disciplinary charges for actions or non-actions, that are the same or similar to the charges in this matter. The appellant's act of leaving during work time without prior approval constitutes both insubordination and conduct unbecoming of a public employee. The inappropriateness of appellant's behavior was compounded by her disrespectful and defiant comment to the Vice Principal Ramirez, "You can't tell me when to leave. I come and go whenever I want," after the vice principal told appellant she could not leave without permission. The appellant neglected her duty as a

teacher's aide when she left without permission. Such an act has a negative effect to the normal efficiency of the school and is clearly a violation of school policy. Appellant signed a Last Chance Agreement on a prior disciplinary matter that included the condition that if she was disciplined again for the same conduct exhibited 2001, 2003 and 2008 that termination/removal will be implemented.

CONCLUSION

After careful consideration of all of the foregoing and pursuant to applicable law, I **CONCLUDE** that respondent has established by a preponderance of credible evidence that there were instances when appellant engaged in conduct unbecoming of a public employee, insubordination, neglect of duty, and demonstrated other sufficient cause for discipline;

I **CONCLUDE** that respondent's charges against appellant for conduct unbecoming of a public employee, insubordination, neglect of duty, and other sufficient cause is supported by the evidence and has been proven;

I **CONCLUDE** that respondent's contentions that appellant's actions violated Newark Public School Policies and the Civil Services Commission's Teacher's Aide Job Specifications is supported by the evidence and has been proven;

I **CONCLUDE** that based on an assessment of the type, nature, extent of the current infractions, prior disciplinary history and existing Last Chance Agreement that the penalty imposed by respondent is in proportion to the violations and/or omissions alleged and proven;

I **CONCLUDE** that the penalty imposed on appellant of removal from employment with respondent as a teacher's aide is not unreasonable, arbitrary or offensively excessive under all of the circumstances of the case and notwithstanding the actuality that appellant has been disciplined for the same or similar offenses many times;

I **CONCLUDE** that respondent has proven by the preponderance of the competent, relevant, and credible evidence that appellant is guilty of violating N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause.

ORDER

Based on all of the foregoing, it is **ORDERED** that the charges against appellant for violating N.J.A.C. 4A:2-2.3(a)(2), insubordination; N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee; N.J.A.C. 4A:2-2.3(a)(7), neglect of duty; and, N.J.A.C. 4A:2-2.3(a)(11), other sufficient cause, are **AFFIRMED**.

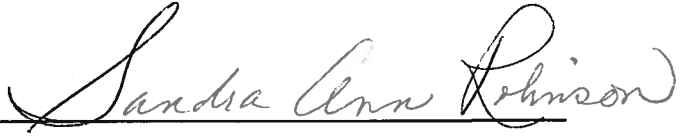
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Merit System Board does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 30, 2014

DATE


SANDRA ANN ROBINSON, ALJ

Date Received at Agency:

July 30, 2014

Date Mailed to Parties:

JUL 31 2014

lr


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

WITNESSES

For Appellant:

Qumar Bowman

Kaseem Johnson

Malika Patterson

Kimberly Thompson

Vanessa Shavers-Johnson

For Respondent:

Jacqueline Chavis

Jeanne Ramirez

EXHIBITS

For Appellant:

- P-1 Winter Storm Watch New Jersey School Closings, Delays, and Early Dismissal for February 8, 2013, www.nj.com/news/index
- P-2 Memorandum to appellant from vice principal, dated February 11, 2013
- P-3 Doctor's Excuse Slip, dated February 8, 2013 ID ONLY
- P-4 Labor Relations FAQs ID ONLY
- P-5 Appellant's Handwritten Note, dated February 11, 2013 ID ONLY
- P-6 In-take Form from Newark Public Schools Office of Labor and Employee Relations, dated February 11, 2013 ID ONLY
- P-8 Letter to appellant from Homere W. Breton, Interim Executive Director Newark Public Schools Human Resource Services, dated December 7, 2012
- P-9 Respondent's compensation data sheet and transfer information for appellant, dated December 17, 2012
- P-10 Respondent's pay statements for appellant for November 17, 2012, December 1, 2012, and December 18, 2012

For Respondent:

- R-1 Final Notice of Disciplinary Action dated December 13, 2001, suspending Vanessa Shavers-Johnson for 30 days for conduct unbecoming and other sufficient cause
- R-2 Final Notice of Disciplinary Action dated April 22, 2004, suspending Shavers-Johnson for 20 days for insubordination, conduct unbecoming, neglect of duty and other sufficient cause
- R-3 Final Notice of Disciplinary Action dated December 9, 2008, suspending Shavers-Johnson for 6 months for conduct unbecoming, insubordination and other sufficient cause
- R-4 Civil Service Commission Decision dated November 6, 2008, with Last Chance Agreement
- R-5 Final Notice of Disciplinary Action dated May 15, 2012, recommending that Shavers-Johnson undergo an independent medical/fitness for duty examination
- R-6 Final Notice of Disciplinary Action dated June 17, 2013, terminating Shavers-Johnson from employment with the District for conduct unbecoming, neglect of duty, insubordination and other sufficient cause
- R-7 Civil Service Commission Teacher's Aide Job Specification
- R-8 Memorandum from Early Childhood School-South Vice Principal Jeanne Ramirez dated February 8, 2013, regarding incidents at the Early Childhood School involving Shavers-Johnson since her first day of work
- R-9 Kronos Punch Origin Report for Shavers-Johnson from December 3, 2012, until May 16, 2013, showing all time-keeping scans
- R-10 Kronos Time Detail Report for Shavers-Johnson from September 4, 2012, until April 10, 2013 showing all timekeeping scans
- R-11 Memorandum from Vice Principal Ramirez to Shavers-Johnson dated February 11, 2013, regarding request for disciplinary hearing due to AWOL
- R-12 Preliminary Notices of Disciplinary Action for Shavers-Johnson, January 31, 2008, October 27, 2003, and October 30, 2001
- R-13 Newark Public Schools Request for Admissions completed by Shavers-Johnson dated October 21, 2013