STATE OF NEW JERSEY

In the Matter of Eric Geisler, Lodi, Board or Education	DECISION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2022-1325 OAL Docket No. CSV 00506-22	

ISSUED: AUGUST 2, 2023

The appeal of Eric Geisler, Custodial Worker, Low Pressure License, Lodi, Board or Education, removal, effective October 15, 2021, on charges, were heard by Administrative Law Judge Nanci G. Stokes (ALJ), who rendered her initial decision on June 23, 2023. Exceptions were filed on behalf of the appellant and a reply to exceptions was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions, the Civil Service Commission (Commission), at its meeting on August 2, 2023, adopted the ALJ's Findings of Facts and Conclusions of the ALJ but modified the penalty to a 90 working day suspension and mandatory anger management training.

Upon its *de novo* review of the ALJ's thorough initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the witnesses. In this regard, the ALJ found the appointing authority's witnesses credible. The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 *N.J.* 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 *N.J.* 644 (1999) (quoting *State v. Locurto*, 157 *N.J.* 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra).* The

Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A.* 52:14B-10(c); *Cavalieri u. Public Employees Retirement System,* 368 *N.J. Super.* 527 (App. Div. 2004). In this matter, the exceptions filed by the appellant are not persuasive in demonstrating that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable.

Similar to its assessment of the charges, the Commission's review of the penalty is also *de novo.* In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock,* 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center,* 96 *N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See In re Herrmann, 192 N.J.* 19 (2007); *Henry v. Rahway State Prison,* 81 *N.J.* 571 (1980). It is settled that the theory of progressive discipline is not a "fixed and immutable rule to be followed without question." Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. *See Carter v. Bordentown,* 191 *N.J.* 474 (2007). Even when an employee does not possess a prior disciplinary record after many unblemished years of employment, the seriousness of an offense may nevertheless warrant the penalty of removal where it is likely to undermine the public trust.

Clearly, the appellant's egregious misconduct in this matter warrants a serious sanction. As indicated by the ALJ:

> Here, Geisler has no prior disciplinary record . . . However, Geisler's behavior on October 12, 2021, was egregious and bizarre. Geisler's entry into two classrooms during instructional time without permission and addressing students and staff in a hostile and raised tone was improper. His demands for a volleyball that clearly belonged to the school were confusing. Geisler's pursuit of "his" ball throughout the school was similarly strange. While Geisler seeks to minimize, his carrying the grabber as "work-related," banging it in his hand was aggressive, even if he did not directly threaten a staff member or student. Indeed, I found that his actions posed a genuine safety concern to Lodi's staff and students . . . .

Based on the above, the ALJ upheld the removal. The Commission, however, while not minimizing the appellant's misconduct in any way, finds that a lesser penalty is appropriate. In this regard, a significant mitigating factor in this matter is that the appellant was a 27-year employee with a previously unblemished disciplinary record. While the Commission wholeheartedly agrees that the appellant's actions in this matter were "egregious and bizarre," it cannot find that his actions, given the appellant's prior history, are so egregious as to warrant removal. Accordingly, the Commission finds that a 90 working day suspension is sufficient to impress upon the appellant the seriousness of his misconduct and serve as a warning that any future misconduct will likely result in his removal from employment. However, the Commission also is concerned with the nature of the misconduct. As such, it further directs that the appellant, upon his reinstatement, be required to attend a mandatory anger management course selected by the appointing authority.

Since the removal has been modified, the appellant is entitled to be reinstated with mitigated back pay, benefits, and seniority pursuant to *N.J.A.C.* 4A:2-2.10 from 90 working days after the first date of separation until the date of actual reinstatement. However, he is not entitled to counsel fees. *N.J.A.C.* 4A:2-2.12(a) provides for the award of counsel fees only where an employee has prevailed on all or substantially all of the primary issues in an appeal of a major disciplinary action. The primary issue in the disciplinary appeal is the merits of the charges. See *Johnny Walcott v. City of Plainfield,* 282 *N.J. Super.* 121,128 (App. Div. 1995): *In the Matter of Robert Dean* (MSB, decided January 12, 1993); *In the Matter of Ralph Cozzino* (MSB, decided September 21, 1989). In the case at hand, although the penalty was modified by the Commission, charges were sustained, and major discipline was imposed. Consequently, as appellant has failed to meet the standard set forth at *N.J.A.C.* 4A:2-2.12, counsel fees must be denied.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his permanent position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore modifies that action to a 90 working day suspension. The Commission further orders that the appellant, upon his reinstatement, be required to attend a mandatory anger management course selected by the appointing authority.

The Commission orders that the appellant be granted back pay, benefits, and seniority from 90 working days after the first date of separation to the actual date of reinstatement. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C.* 4A:2-2.10. Proof of income earned, and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C.* 4A:2-2.10, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay dispute.

Counsel fees are denied pursuant to *N.J.A.C.* 4A:2-2.12.

The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

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
THE 2ND DAY OF AUGUST, 2023

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CSV 00506-22
AGENCY DKT. NO. 2022-1325

IN THE MATTER OF ERIC GEISLER, LODI BOARD OF EDUCATION

Sanford R. Oxfeld, Esq., appearing for appellant (Oxfeld Cohen, attorneys)

Danielle Panizzi, Esq, appearing for respondent (Cleary, Giacobbe, Alfieri, Jacobs, L.L.C., attorneys)

Record Closed: June 8, 2023 Decided: June 23, 2023

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

On October 12, 2021, Eric Geisler, a custodian, unexpectedly entered two classrooms aggressively seeking a school volleyball he found in the garbage, claiming it as his own and accusing a student of taking it from him. Is Geisler correctly terminated despite having no prior discipline? Yes. Progressive discipline may be bypassed where the misconduct is egregious or against the public interest, regardless of an individual's disciplinary history. In re Herrmann, 192 N.J. 19, 33–34 (2007).

PROCEDURAL HISTORY

On October 15, 2021, the Lodi Board of Education (Lodi) served Geisler with a Preliminary Notice of Disciplinary Action (PNDA). In its notice, Lodi charged appellant with incompetency in violation of N.J.A.C. 4A:2-2.3(a)(1); insubordination in violation of N.J.A.C. 4A:2-2.3(a)(2); inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3); conduct unbecoming a public employee in violation of N.J.A.C. 4A:2-2.3(a)(6); neglect of duty in violation of N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(12).

In that notice, Lodi specified that on October 13, 2021, Geisler verbally assaulted a teacher and student in the yearbook room and in room 134 of Lodi High School. During the incident, [Geisler] used inappropriate language, operated, threatened, and acted aggressively toward both individuals, making them fearful for safety. Therefore, Lodi maintains that Geisler jeopardized the public health, safety, and order of the Lodi High School. Lodi immediately terminated Geisler, and the PNDA sought Geisler's removal from employment effective October 15, 2021.

On November 10, 2021, Lodi conducted a departmental hearing.

A Final Notice of Disciplinary Action (FNDA) dated November 18, 2021, sustained the charges and removed Geisler effective October 15, 2021. Lodi served Geisler on November 22, 2021, with the FNDA.

On December 1, 2021, Geisler appealed the FNDA's determination, carrying a postmark of December 8, 2021.

On December 23, 2021, the Civil Service Commission transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23,

for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 21, 2022, the OAL filed the appeal.

On March 24, 2022, I held a prehearing conference and permitted additional time for discovery and resolution discussions. I scheduled hearings on October 13, 2022, and November 15, 2022. I adjourned those dates at the parties' request and conducted hearings on November 18, 2022, and March 10, 2023, instead. The parties also requested that I keep the record open for transcripts and written summations. On June 2, 2023, Geisler filed his post-hearing submission. On June 8, 2023, Lodi filed its submission, and I closed the record.

DISCUSSION AND FINDINGS OF FACT

Background

The parties do not dispute the following background facts, and I **FIND** them as **FACT**:

Geisler worked for Lodi as a custodian for twenty-seven years. Lodi imposed no prior discipline against Geisler in that position. In March 2021, Lodi mandated that Geisler attend a fitness for duty examination while working at the middle school. The mental health professional making that assessment found Geisler fit for duty.

After that evaluation, Lodi transferred Geisler from the middle school to its high school for the 2021-2022 school year. After his assignment, Geisler performed summer maintenance projects without students in the building. Before working at the high school, Paul D'Amico, the high school principal, had no supervisory powers over Geisler.

On October 12, 2021, Geisler entered two classrooms searching for a volleyball during instructional time; Melanie Panarese's and Lauren Sciarra's rooms. Panarese's room contained the students working on the yearbook, and Sciarra's room, "Room 134," also known as the "Ram Page" room, where students worked on the school newspaper, called "Ram Page."

Later that day, Geisler left the high school at D'Amico's request, and school officials advised Geisler not to return until further notice.

On October 13, 2021, D'Amico prepared a report after discussing the incident with Geisler, Panarese, Sciarra, the school safety official, a student, and the Supervisor of Curriculum and Instruction, Albert Tarleton, who was Panarese's supervisor.

On October 14, 2021, Lodi terminated Geisler, advising him that his last paycheck would be October 15, 2021. However, Lodi acknowledges that it owes Geisler's salary from the date of the PNDA through the date of the FNDA, regardless of the case's outcome.

Respondent's Case

Paul D'Amico

Since October 2022, D'Amico served as the acting School Superintendent and the Lodi high school principal. D'Amico was the high school principal for approximately nine years at the time of the October 12, 2021, incident involving Geisler.

D'Amico largely relies on the report he issued regarding the sequence of events that day. He first learned that Geisler entered two classrooms from Tarleton, who Panarese contacted after Geisler left her classroom. D'Amico did not see Geisler enter either room. Still, Geisler spoke with him about the incident in the presence of the vice-principal, despite being told he could wait until a union representative was present.

Geisler expressed being upset that someone touched his belongings and that the students should have known it was his volleyball because it was in a location the students should be aware was his area. Geisler explained that he found the volleyball with other garbage and took possession of the ball. Geisler told Mr. D'Amico that someone in the cafeteria said that one of the volleyball players had taken the ball to the yearbook room, so he went to find it.

Notably, the school's blue and orange colors were on the volleyball, which was the school's property. Although Geisler represented that he asked politely about his volleyball, D'Amico reminded Geisler that he could not enter a classroom to speak to a student during instructional time, regardless of his tone.

Both teachers reported being startled and upset by Geisler's interruption, angry tone, and threatening behavior in banging a stick he held in his hand. Upon entering Panarese's classroom, Geisler asked the students where "his damn volleyball" was, and a student advised Geisler that the student he was looking for was not there but in the Ram Page room. Geisler left Panarese's room and went to Sciarra's classroom with similarly reported requests and behaviors. One of Sciarra's students told Geisler that she saw the volleyball in the cafeteria and returned it to the gym, believing a volleyball player mistakenly left it there.

D'Amico felt Geisler's threats and combative tone created a safety concern, and he did not feel comfortable allowing Geisler to return to the building. Geisler's demands for his "damn volleyball" and banging the trash grabber stick-like device in his hand appeared to D'Amico as behavior intended to intimidate and scare the students and staff members. Still, Geisler did not touch or physically harm a student, teacher, or other staff member on October 12, 2021.

Melanie Panarese

Lodi employed Panarese since 2019 as an English teacher. She also serves as the yearbook production advisor for the 2021-2022 school year, with two classes of yearbook instruction usually taking place during lunch periods; one for eleventh graders

and one for twelfth graders. Panarese not only performs her regular teaching job duties, but she is also responsible for the safety of students in her classroom and maintaining safety protocols. In that regard, Panarese keeps the door to her classroom always closed per school policy. In addition, her door has a sign stating, "Please knock before entering."

All people entering her classroom are expected to knock, including custodians. The yearbook staff tried to keep the yearbook's contents a surprise to other students. No custodian ever entered her classroom without her permission before Geisler.

When Geisler entered the room unexpectedly, Panarese stood around the conference table at the center of the classroom. Geisler walked fully into the room, approximately ten feet in, and stood about two and one-half feet away from her and another student. She observed Geisler's manner as "very aggressive." Geisler raised his voice, repeatedly asking for his "damn volleyball" back and for a student by name. Geisler was banging a stick in his hand during this interaction, but he did not direct the stick in a threatening gesture toward Panarese or a student in the yearbook room.

Notably, Panarese was most concerned because Geisler named a particular student. Geisler kept asking for his "damn" volleyball, and a student in Panarese's classroom finally volunteered that the student he called out was in the Ram Page room. Panarese believed that Geisler was in her classroom for no more than five minutes, and she had not experienced anything like this before in a classroom. Panarese was familiar with Geisler as part of the custodial staff but had no prior interaction or incident with him.

When Geisler left, she quickly texted her supervisor, Tarleton, in a moment she described as confusing and where she and her students were nervous about Geisler's sudden appearance and outburst. She texted Tarleton that a custodian had come into her room and asked Tarleton to come to her class to discuss the incident. Her students remarked that Geisler looked ready to fight someone over a volleyball. Another student

left Panarese's room to get to the Ram Page room before Geisler did to warn the student. Panarese had the means to call the school's safety officer or text Sciarra by cellphone but did not. However, Panarese notes that staff typically report incidents to their supervisors, who would then contact other necessary individuals. In other words, the chain of command dictates that she first reaches her supervisor.

Appellant's Case

Eric Geisler

On October 12, 2021, Geisler was on cafeteria duty. However, at some point, a teacher told Geisler to go to the auxiliary gym to throw out a large pile of equipment and other storage items. The teacher told Geisler that some of the things were baseball helmets that he could give to his brother, a coach. Geisler was with another custodian, Juan, during the clean-up.

His role was to "cut up the boxes, get shopping carts, and make trips to the dumpster" to discard the items. In that process, Geisler testified that he "found" a "too nice" volleyball to throw out and kept it for himself. Later, he put the ball under "his" chair in the cafeteria.

At some point, he left "his" area to perform cafeteria duties. When he returned, the volleyball was missing, and he was concerned that a student had taken it from him while he turned his back, which "isn't allowed." Still, Geisler acknowledges that the volleyball was not a custodial tool or related to his job duties. He relayed that he searched for the volleyball because "nobody asked him if they could take it or what it was there for." Geisler feared someone would throw it away, which would be a "waste." Geisler also thought someone might get hurt if the ball was thrown during a class change.

Geisler asked a teacher in the cafeteria if he saw his ball, a ball taken out of the garbage. This teacher relayed that the volleyball was in the yearbook room, so he proceeded there. Once arriving at the yearbook room, Geisler asked for the volleyball and promptly left upon learning that the ball was elsewhere. Geisler maintains that he was only in the room for thirty seconds and that he was polite, not aggressive. Indeed, Geisler next went to Room 134 or the Ram Page room. Once learning that the ball was not with the student, he left.

Additional Findings

Based upon the testimony provided and my assessment of its credibility, together with the documents submitted and my evaluation of their sufficiency, I make the following additional **FINDINGS** of **FACT**:

I **FIND** that a preponderance of the evidence exists that Geisler entered two classrooms during instructional time for a strange and upsetting purpose without permission or notice, wholly unrelated to his custodial job duties and responsibilities. Undeniably, Geisler sought to retrieve a volleyball he found in the garbage, which he believed was his, and that a student improperly took from a public cafeteria area, which he thought was his. Yet, the volleyball was not his. Instead, I **FIND** that the volleyball was the school's property, recognizable as such with the school's known blue and orange colors.

I also **FIND** that Panarese's account of the events is credible because her description of Geisler's bizarre behavior, aggressive manner, and statements did not waver. Panarese had no personal interaction with Geisler before October 12, 2021, and demonstrated no apparent animosity toward him. While she and Geisler may disagree about the precise amount of time he was in her classroom, there remains no dispute that Geisler went searching for a volleyball he believed was his and entered her classroom without permission or warning. Even if no written policy existed about entering a classroom without permission during instructional time, this prohibition

seems obvious, especially to a person working in schools for decades. Further, Panarese's door had a sign asking anyone entering to knock first. Yet, Geisler did not knock. Instead, Geisler fully entered Panarese's classroom, repeatedly demanding "my damn volleyball" while holding a trash grabber in a hostile manner.

Geisler then went to another classroom looking for "his" ball that he falsely believed was "stolen" and addressed students and staff in an aggressive, raised voice. While Sciarra did not testify, Geisler admits to continuing the odd hunt for his volleyball in her classroom and leaving only when the student reported returning it to the gym. Geisler's account at the hearing does not diminish the extreme oddness of his behavior. His statements about his polite tone and manner in the classroom were not credible. Geisler also chose to explain "his side of the story" to D'Amico, and D'Amico observed Geisler as visibly upset, consistent with Panarese's description of Geisler's demeanor. Thus, I **FIND** that a preponderance of the evidence demonstrates that Geisler had little remorse and no appreciation that his behavior was inappropriate or could cause others concern. Instead, he downplayed the encounter as brief and not warranting any consequences, let alone his termination.

Although Panarese could have contacted the school's safety officer rather than her supervisor, I **FIND** that this does not diminish the fact that Geisler's sudden class interruption upset her and her students. Instead, Parnese followed the school's chain of command and immediately contacted a supervisor to report a confusing, startling incident in her class. Further, Panarese's conduct is not under the same scrutiny as Geisler's actions here.

Geisler also asserts that the school's failure to remove him from the premises immediately contradicts Lodi's position that he was dangerous or a safety risk. Yet, without a reported physical altercation, D'Amico spoke to witnesses about Geisler's strange outbursts and determined a course of action with the superintendent that included asking Geisler to leave at the day's end and not return to the school. Further, I **FIND** that D'Amico acted quickly on Tarleton's report from Panarese, requesting her to come to his office within minutes of the incident. I also **FIND** that Geisler's aggressive,

odd behavior in these circumstances posed a genuine safety concern to students and other staff members.

CONCLUSIONS OF LAW

Discipline

A civil service employee who commits a wrongful act related to their duties or for other just cause may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. Indeed, "[t]here is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

Under N.J.A.C. 4A:2-1.4(a), in appeals concerning major disciplinary action, the appointing authority bears the burden of proof. That burden of proof is by a preponderance of the evidence, Atkinson v. Parsekian, 37 N.J. 143, 149 (1962), and the hearing as to both guilt and the penalty is de novo, Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980); West New York v. Bock, 38 N.J. 500 (1962). 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 (1958). One can describe preponderance 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).

Lodi charged Geisler with conduct unbecoming a public employee, incompetency, neglect of duty, insubordination, and other sufficient cause in violation of the regulations governing public employees.

"Conduct unbecoming a public employee" is an elastic phrase encompassing conduct that adversely affects the morale or efficiency of a governmental unit or that

tends to destroy public respect for governmental employees and confidence in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). Further, misconduct does not require that the employee violates the criminal code, a written rule, or a policy. In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). The complained-of conduct and its attending circumstances need only "'be such as to offend publicly accepted standards of decency.'" Karins, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Public school employees, including custodians such as Geisler, are in a position of trust, given their regular contact with students. I found that his actions posed a safety concern to the staff and students. Thus, his conduct adversely affects the public interest. Therefore, I **CONCLUDE** that a preponderance of credible evidence exists to demonstrate that Lodi sustained its burden on its charge that Geisler conducted himself unbecoming and offensively.

Under N.J.A.C. 4A:2-2.3(a)(1), an incompetent employee unable to execute his job responsibility is subject to termination. See Klusaritz v. Cape May Cnty., 387 N.J. Super. (App. Div. 2006) (upholding removal of an accountant incapable of preparing a bank reconciliation and unsuitable for the job). Here, Geisler was not performing his job responsibilities when this incident occurred, and nothing in the record suggests that Geisler was incapable of performing his custodial duties. Thus, I **CONCLUDE** that a preponderance of the evidence does **NOT** exist to sustain Lodi's charge that Geisler was incompetent in his duties.

Generally, "neglect of duty" means that an employee has failed to perform and act as required by the description of their job title. Briggs v. Dept. of Civil Service, 64 N.J. Super. 351, 356 (1980); In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). "Duty" intends conformance to "the legal standard of reasonable conduct in the light of the apparent risk." Wytupeck v. Camden, 25 N.J. 450, 461 (1957) (internal citation omitted). Also, neglect of duty can arise from an omission or failure to perform a task imposed upon a public employee that indicates a deviation from usual standards of conduct. Rushin v. Bd. of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961). Neglect of duty does not require an intentional or willful act; however, there must be

some evidence that the employee somehow breached a duty owed to the performance of the job. A failure to perform duties required by one's public position is self-evident as a basis for imposing a penalty without good cause for that failure. Undeniably, Geisler opted to hunt for a volleyball he took possession of instead of performing his custodial responsibilities. Thus, I **CONCLUDE** that a preponderance of the evidence exists to sustain Lodi's charge that Geisler neglected his duties.

The Civil Service Act does not define insubordination; however, case law generally interprets the term as the refusal to obey an order of a supervisor. See e.g., Belleville v. Coppla, 187 N.J. Super. 147 (App. Div. 1982); Rivell v. Civil Service Comm'n, 115 N.J. Super. 64 (App. Div. 1971), certif. denied, 59 N.J. 269 (1971). The term "insubordination" refers to acts of non-compliance, non-cooperation, and 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). Here, Lodi does not sufficiently explain how Geisler refused to obey an order or failed to cooperate with a request. Instead, Geisler left the school when asked. Geisler's desire to explain his side of the story does not equate to insubordinate conduct. Thus, I **CONCLUDE** that a preponderance of credible evidence does **NOT** exist to support Lodi's charge of insubordination.

The Civil Service Act's regulations also do not define "other sufficient cause." Other sufficient cause generally encompasses conduct that violates the implicit standard of good behavior for an individual who stands in the public eye. Often, this charge addresses violations of policies and procedures established by the employer. While I found that Geisler should have known to knock and enter a classroom only with permission, Lodi cites no rule or policy that Geisler did not follow. Regardless, the regulations addressing "unbecoming conduct" and "neglect of duty" cover Geisler's actions in this case. Thus, I **CONCLUDE** that a preponderance of the credible evidence does **NOT** exist to support a separate violation of N.J.A.C. 4A:2-2.3(a)(12).

Penalty

Progressive discipline requires consideration once there is a determination that an employee violated a statute, regulation, or rule concerning his employment. W. New York v. Bock, 38 N.J. 500 (1962). Where the underlying conduct is egregious, however, imposing a penalty up to and including removal is appropriate, regardless of an individual's disciplinary record. In re Herrmann, 192 N.J. 19 (2007). In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances provide guidance. Bock, 38 N.J. 500.

Indeed, the Civil Service Commission may increase or decrease the penalty under progressive discipline. N.J.S.A. 11A:2-19; In re Carter, 191 N.J. 474, 483–86 (2007). Thus, an employee's prior disciplinary record is relevant to determining an appropriate penalty for a subsequent offense, and the question upon appellate review is whether such punishment is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." Ibid. at 483-84 (quoting In re Polk, 90 N.J. 550, 578, (1982) (internal quotes omitted)). Generally, [courts] "accord substantial deference to an agency head's choice of remedy or sanction, seeing it as a matter of broad discretion, . . . especially where considerations of public policy are implicated." Division of State Police v. Jiras, 305 N.J. Super. 476, 482 (App. Div. 1997).

Appellants often cite progressive discipline as mandating lesser penalties for first-time offenses. However, applying progressive discipline is not required "when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest." In re Herrmann, 192 N.J. at 33–34.

The concept of progressive discipline provides that "discipline based in part on the consideration of past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Hermann, 192 N.J. at 21 (citing Bock, 38 N.J. at 522 (1962)). An employee's record includes "an employee's

reasonably recent history of promotions, commendations, and the like on the one hand and, on the other, formally adjudicated disciplinary actions as well as instances of misconduct informally adjudicated, so to speak, by having been previously brought to the attention of and admitted by the employee." Bock, 38 N.J. 523-524. In cases in which progressive discipline is bypassed, "the question for the courts is 'whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." In re Carter, 191 N.J. 474, 484 (2007); Hermann, 192 N.J. at 28-29 (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). Absence of judgment alone can be sufficient to terminate an employee in a sensitive position requiring public trust in that judgment. See Hermann, 192 N.J. at 32 (DYFS worker without prior discipline removed for waving a lit cigarette in the face of a five-year-old).

Although the focus is generally on the seriousness of the current charge and the prior disciplinary history of the appellant, this tribunal must also consider the civil service laws' purpose. Civil service laws "are designed to promote efficient public service, not to benefit errant employees. The welfare of the people, not exclusively the welfare of the civil servant, is the basic policy underlying our statutory scheme." Gaines, 309 N.J. Super. at 334. Indeed, "[t]he overriding concern in assessing the propriety of [the] penalty is the public good.

Here, Geisler has no prior disciplinary record. While Lodi raised the earlier incident giving rise to a fitness for duty exam, this was not misconduct, and the physician deemed Geisler fit. Thus, I **CONCLUDE** considering this incident as a prior discipline is inappropriate. However, Geisler's behavior on October 12, 2021, was egregious and bizarre. Geisler's entry into two classrooms during instructional time without permission and addressing students and staff in a hostile and raised tone was improper. His demands for a volleyball that clearly belonged to the school were confusing. Geisler's pursuit of "his" ball throughout the school was similarly strange. While Geisler seeks to minimize, his carrying the grabber as "work-related," banging it in his hand was aggressive, even if he did not directly threaten a staff member or

student. Indeed, I found that his actions posed a genuine safety concern to Lodi's staff and students. Lodi cannot reasonably be obligated to continue the employment of an individual who conducts himself in this manner. Further, progressive discipline is inapplicable when doing so "would be contrary to the public interest." Herman, 192 N.J. at 33-34. Accordingly, I **CONCLUDE** that Geisler's removal is the appropriate penalty under the circumstances.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that Geisler be removed from his employment with Lodi.

I further **ORDER** that Lodi pay Geisler's salary from the date of the PNDA through the date of the FNDA.

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 Civil Service Commission 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, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO 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.

June 23, 2023

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: June 23, 2023

Date Mailed to Parties: June 23, 2023

ljb

APPENDIX

Witnesses

For Appellant:

Eric Geisler

For Respondent:

Paul D'Amico

Melanie Panarese

Exhibits

For Appellant:

A-1 Letter dated November 4, 2021, from Oxfeld to Garcia

A-2 Appeal dated December 1, 2021

A-3 Letter dated January 21, 2022, from Civil Service Commission to Oxfeld

A-4 Classroom diagram

For Respondent

R-1 Notice of paid leave pending exam

R-2 Rice Notice

R-3 Lodi's resolution regarding a fitness for duty exam

R-4 Evidence of exam

R-5 Incident report of October 12, 2021

R-6 Termination notice

R-7 Preliminary Notice of Disciplinary Action

R-8 Rice notice

R-9 Final Notice of Disciplinary Action