



## STATE OF NEW JERSEY

In the Matter of Joseph Fusco,  
Camden County, Department of  
Public Works

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

2022  
CSC Docket No. ~~2021~~-386  
OAL Docket No. CSV 07354-21

ISSUED: OCTOBER 16, 2024

The appeal of Joseph Fusco, Custodial Worker, Brick Township School District, removal, effective June 16, 2021, on charges, was heard by Administrative Law Judge Joan M. Burke (ALJ), who rendered her initial decision on September 18, 2024. No exceptions were filed.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on October 16, 2024 adopted the ALJ's Findings of Facts and Conclusions of Law and her recommendation to uphold the removal.

The Commission makes the following comment. The Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses. In this regard, 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 v. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). The Commission finds no persuasive evidence in the record to demonstrate that the ALJ's

credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

Regarding the penalty, similar to its review of the underlying charges, the Commission's review of the penalty is *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 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).

In this matter, the Commission agrees with the ALJ that removal is the only appropriate penalty. Initially, the Commission notes that the appellant was a short term employee at the time of his removal. Moreover, his misconduct is clearly egregious and inimical to what the public expects, and indeed, should demand from public employees. As such, the Commission finds the penalty of removal for the appellant's actions neither disproportionate to the offense nor shocking to the conscious.

### ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore upholds that action and dismisses the appeal of Joseph Fusco.

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 16<sup>TH</sup> DAY OF OCTOBER, 2024

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
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Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 07354-21

AGENCY DKT. NO. 2021-386

**IN THE MATTER OF JOSEPH FUSCO,  
BRICK TOWNSHIP SCHOOL DISTRICT.**

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**Robert K. Chewning, Esq.**, appearing for appellant, Joseph Fusco (McLaughlin & Nardi, LLC, attorneys)

**Ryan M. Amberger, Esq.**, appearing for respondent, Brick Township School District (Montenegro, Thompson, Montenegro & Genz, P.C., attorneys)

Record Closed: June 24, 2024

Decided: September 18, 2024

BEFORE **JOAN M. BURKE, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Appellant, Joseph Fusco (appellant, Fusco), filed with the Civil Service Commission an Appeal from his termination as a custodial worker with respondent, Brick Township School District (respondent), based on criminal charges against him. This matter was transmitted to the Office of Administrative Law (OAL) on August 30, 2021, for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

Respondent argues that the major disciplinary action of termination of appellant's employment under N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee) and N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause) is proper in light of the egregious allegations of physical and sexual abuse made against appellant by the victim and the criminal charges and arrest that followed.

A Settlement conference was held on July 6, 2022, before the Honorable Susan Scarola, ALJ. On August 24, 2022, the respondent requested that the matter be placed on the inactive list pending final decision of appellant's underlying criminal charges. Subsequently, an Order, dated September 6, 2022, was entered for placement of this matter on the inactive list for six months.

On July 6, 2023, the tribunal received respondent's Motion for Summary Decision. The appellant was notified on July 26, 2023, that the matter was now removed from the inactive list and that a response to the Motion for Summary Decision was due by October 2, 2023. A decision was made, and an Order denying Summary Decision was entered on January 9, 2024. A hearing was held on March 7, 2024. The parties requested time to obtain transcripts and submit summation briefs. All the briefs were received by June 24, 2024, and the record closed then. An extension was granted on August 7, 2024, for the filing of the initial decision.

### **FACTUAL DISCUSSION AND LEGAL ARGUMENTS**

The parties to this action stipulated to the following **FACTS** identified below as points 1–16 and same were read into the record:

1. Appellant was hired as a substitute custodial worker on April 12, 2019, and then hired as a permanent, twelve-month custodial worker with respondent as of July 8, 2019. Joint Stipulation of Facts, ¶ 1.
2. Appellant's position was as Civil Service job title.

3. During his employment, appellant worked at Emma Havens Young Elementary School, Brick Memorial High School, and Warren H. Wolf Elementary School. Id. at ¶ 3.
4. On November 10, 2020, appellant and his wife were arrested in Pemberton Township. Id. at ¶ 4.
5. Appellant was charged with Second Degree Sexual Assault (N.J.S.A. 2C:14-2(c)), Third Degree Aggravated Assault (N.J.S.A. 2C:12-1(b)(12)), Third Degree Criminal Restraint (N.J.S.A. 2C:13-2(a)), Third Degree Criminal Restraint (N.J.S.A. 2C:13-2(b)), and Fourth Degree Criminal Sexual Conduct (N.J.S.A. 2C:14-3(b)). Id. at ¶ 5.
6. On November 20, 2020, respondent issued a Preliminary Notice of Disciplinary Action (PNDA) for his immediate suspension without pay pending the criminal charges. Id. at ¶ 6.
7. A hearing was held for appellant on December 2, 2020, with respondent's agent, the director of human resources. Id. at ¶ 7.
8. On December 21, 2020, respondent delivered a Final Notice of Disciplinary Action (FNDA) to appellant, imposing an indefinite suspension pending resolution of the criminal charges. Id. at ¶ 8.
9. On June 16, 2021, appellant pleaded guilty to Simple Assault, a disorderly person offense (N.J.S.A. 2C:12-1(a)(1)). The original charges were dismissed. Id. at ¶ 9.
10. The Court accepted the plea and entered a Judgment of Conviction. Id. at ¶ 10.

11. On June 22, 2021, respondent issued to appellant a PNDA maintaining appellant's suspension and advising appellant that respondent was seeking his removal pending a hearing. Id. at ¶ 11.
12. The charges in the PNDA included N.J.A.C. 4A:2-2.3(a)(6) (conduct unbecoming a public employee) and N.J.A.C. 4A:2-2.3(a)(12) (other sufficient cause). Id. at ¶ 12.
13. A departmental hearing was held for the appellant on July 7, 2021. Id. at ¶ 13.
14. On July 26, 2021, respondent issued a final notice of disciplinary action (FNDA) sustaining the charges and removing appellant from employment. Id. at ¶ 14.
15. On August 10, 2021, appellant filed a Major Disciplinary Appeal with the Civil Service Commission. Id. at ¶ 15.
16. The matter was subsequently transmitted to the OAL. Id. at ¶ 16.

### **TESTIMONY**

**William Kleissler** (Kleissler) is the director of human resources for Brick Township Public Schools. He has held this position since 2021. Mr. Kleissler came to be familiar with this matter because he prepared the agenda "for the month of August." He was informed that there was a termination and civil service paperwork for the 31A and 31B by the outgoing director of human resources. 1T 16:12–21. The PNDA is also called 31A. The PNDA identified the charges as "N.J.A.C. 4A:2-2.7 Actions involving criminal matters." P-1. It was noted in the PNDA that forfeiture of public employment may apply. Ibid. The incident that gave rise to the charge was listed on the PNDA as follows: "Arrest on 11/10/20 for the following charges:

1) N.J.S.A. 2C:12-1(b)(12)-3<sup>rd</sup>; 2) N.J.S.A. 2C:13-2(a)-3<sup>rd</sup> degree  
3) N.J.S.A. 2C:13-2(a)-3<sup>rd</sup> Degree; 4) N.J.S.A. 2C:14-2(c)- 2<sup>nd</sup> Degree; 5) N.J.S.A. 2C:14-3(b)-4<sup>th</sup> Degree."

[P-1.]

After a departmental hearing on December 2, 2020, the charges on the PNDA were sustained. The appellant was issued an FNDA on December 21, 2020. P-3. The disciplinary action that was taken and detailed in the FNDA was "indefinite suspension pending criminal charges effective 11/11/2020." Ibid. On June 22, 2021, a PNDA was issued. The charge listed thereon was "conduct unbecoming a public employee and other sufficient cause." P-4. Kleissler testified that the guilty plea and conviction in Burlington County Superior Court, on July 26, 2021, led to the sustained charges of conduct unbecoming of a public employee and other sufficient cause. This resulted in a notice of removal effective June 16, 2021. 1T 21:12–21.

According to Kleissler, Fusco started to work for the district in 2019. He started off as a part-time custodian, and after three months he was given a full-time position. Progressive discipline is not mandated and is followed on a case-by-case basis. Kleissler concluded that the discipline imposed was appropriate.

On cross examination, Kleissler testified that he was a principal before he was hired as the human resources director. When Kleissler came aboard he was told of the termination of one of their employees, and it was to be placed on the agenda. He was informed of the basic details, civil service process, and due process that had already taken place. Kleissler testified that he met with their attorney and discussed what warranted the process of a 31A and 31B, which led to the termination of Fusco, all of which was done prior to Kleissler coming on board. 1 T 27:19–24. Kleissler testified that the ultimate decision to terminate Fusco was made by a recommendation from the superintendent to the Board of Education. 1T 28:12–14. Although he was not involved in this matter, usually as the human resources director he would be tasked with conducting an investigation, following up with the proper paperwork, and then presenting it to the superintendent to place on the agenda for the board's approval. 1T 28:18–23.



Kleissler was not sure what documents were reviewed prior to terminating Fusco. This is so because he was not involved in the process. 1T 31, 32. He testified that the totality of circumstances are considered when issuing discipline. Kleissler testified that the 31A, 31B, the complaint, warrants, affidavit, and the court appearances and the outcomes were taken into consideration in the termination of Fusco. Kleissler admitted that he did not know whether the judgment of conviction, the transcript associated with the guilty plea, or appellant's employment history were taken into consideration, as he was not involved in the decision-making process. 1T:32, 33. He was not sure if there were any consideration of mitigating or aggravating factors.

On redirect, Kleissler reiterated that the charges giving rise to the termination of the appellant were "four third degrees, a second degree and another fourth degree and ultimately the guilty plea and conviction in Burlington City, . . . simple assault." 1T 38:1–4.

**Sergeant Joshua Danka** works for the Pemberton Township Police Department (PD). He has been a sergeant for one year and three months. Prior to this, he worked as a detective. Sergeant Danka prepared the complaint, warrant, and affidavit of probable cause in this matter. P-18. This was presented to a judge, who found that probable cause existed, and that resulted in the issuance of a warrant. *Id.* at 8, 9. Sergeant Danka also prepared a police report on November 10, 2020. P-20. He conducted the investigation into the arrest on or about November 10, 2020. He was contacted by the detective sergeant of his office, who told him that the road sergeant and several other patrol officers were responding to a call at a residence in Pemberton Township. When they got there, they spoke with the victim, who alleged there was physical assault as well as sexual assault taking place. The road sergeant then requested a detective and the sergeant who took the call to respond to the scene. 1T 43:4–11.

Sergeant Danka went to the residence, where he was met by the road sergeant outside of the home, who escorted him into the home. When he walked into the home, there were several juveniles; no parent was there at the time. He was directed upstairs

by the road sergeant, as that was where the victim was located. He met the victim<sup>1</sup> in what the victim said was her bedroom. She took him across a hallway into another bedroom, where the incident occurred. In the room, there was a wooden paddle on the floor. 1 T 44:13–20. He asked the victim what was going on. The victim relayed that she and Fusco had lived together at a point in time. He subsequently moved away, and they lost contact. Thereafter, she met him and his wife, and the relationship was rekindled. 1 T 45:7–13. Based on domestic violence that was occurring at her home, Fusco and his wife allowed her to move in with them. She was assigned responsibilities in the home, primarily childcare, cleaning, and some other chores. 1 T 46:7–11.

The victim was brought to the station, where an interview was conducted. The victim stated in graphic detail what occurred. There were multiple times when she was disciplined if she did not complete the tasks in accordance with Mr. and Mrs. Fusco's standards. Her clothing would be removed; she would be tied to the bed; and she was assaulted with various weapons in the home, specifically a wooden paddle, whips made out of phone jack cords, and a household cleaning brush. 1 T 47:15–25; 48:1–3. Injuries were noted; she had scabs on her knees. The victim alleged that on multiple occasions she had to perform sexual acts on the appellant and his wife. 1 T 48:8–11.

Mrs. Fusco granted consent to search the residence. Among the things they found were a wooden paddle, black braided cords, a Bible bookmarked to a chapter on discipline, a knotted cord, and a wrapped metal pipe. P-20. The victim stated that these items were used to assault her in the residence. Sergeant Danka also interviewed Mrs. Fusco, who confirmed how they met and rekindled their relationship with the victim. Mrs. Fusco said that the victim told them that her current boyfriend was trying to "kill her" and that the victim was having issues with spending money and needed control. 1 T 60:4–12. Mrs. Fusco confirmed that "domestic discipline" is what took place in the home. *Ibid.* at 16–18. Mrs. Fusco noted that there were times when she was also disciplined, which included being sent into a corner to stand. Mrs. Fusco termed the discipline as a "fetish" for her husband. *Ibid.* at 24–25. According to Sergeant Danka, Mrs. Fusco admitted that the victim was "fully unclothed during these incidents and then also proceeded to tell me

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<sup>1</sup> "Victim" and "alleged victim" are used interchangeably and refer to the same individual.

that there were several instances where sexual intercourse took place between the victim and Mr. Fusco.” 1T 61:5–9. Mrs. Fusco confirmed that the wooden paddle was used but indicated that the cords were never used. Sergeant Danka felt that the victim and Mrs. Fusco were being truthful with him. He testified that Mr. Fusco declined to be interviewed without his attorney present. 1T 62:2–17.

On cross examination, Sergeant Danka testified that his report was dated November 10, 2020, but that the victim was not assaulted on that specific date. 1T 65:11–13. Although his report said there were scabs on the victim’s knees, he admitted that there was no bleeding or bruising noted while he was questioning or interviewing the victim. Sergeant Danka was asked how he determined in the complaint that “the alleged victim was struck numerous times by striking the victim’s buttocks and back with a wooden paddle and a phone cord causing bruising, bleeding and complaint of pain.” 1T 67:3–6. He admitted that “basic medical practice that if there’s a scab that there is one point and time an open wound which would cause some type of bleeding.” Ibid. at 11–14. He did not witness any assault. He drafted his complaint based on questioning the witness and any evidence located at the scene. 1 T 67:24–25, 68:1–2. Sergeant Danka did not observe the victim’s buttocks or back based on the alleged whipping. Sergeant Danka testified that he did not see the reference to the discipline chapter that the Bible was opened to, but the officer that seized it was the one who read it; however, he did not recall the officer’s name. 1 T 72:10–25, 73:1–3. Sergeant Danka was questioned as to why a metal pipe wrapped in plastic electrical tape, a paintable gun, and a pink collar were seized, as the victim did not complain about any of these items. 1 T 73:9–25, 74:1–24.

On redirect, Sergeant Danka testified that the victim alleged that the assaults occurred throughout 2020 over 100 times. P-18 at 9. In discussing a dog collar, Sergeant Danka read that in Patrolman D. Charlaro’s narrative, the victim “stated that she is restrained on her arms and that a dog collar had also been used.” 1 T 78:1–6.

**Joseph Fusco** (appellant, Fusco) testified that he graduated high school but never attended college. He has no prior arrests or convictions. He was a substitute custodian for Brick Township School District. He obtained a permanent position as a custodial employee in July 2019. He was assigned to the Emma Havens Young Elementary

School. His role as a custodian was being assigned a section of the school to clean and sanitize and set up for the children to return the next day. Prior to COVID he worked 3:30 p.m. to 11:30 p.m. During COVID, he worked during the day when the school was closed. When the school re-opened, he worked from 2 p.m. to 10 p.m. There is no interaction with the students. His salary for his position was \$23,558 annually. P-11. There was opportunity for overtime pay. He worked with a building supervisor and a night custodian for the district. There was no prior discipline from the respondent.

Fusco testified that he knows the alleged victim and has known her since he was fourteen or fifteen years old. She is a very good friend. He started having consensual sex with her when he was fourteen or fifteen and she was thirty years old. 1T 88:12. He lived near her at the time. He also lived with the victim in the same apartment complex when he was eighteen years old. Ibid. at 18–19. They engaged in role play using sex toys. 1T 89: 4–11.

The victim is much older than he is. She took care of the rent and phone. During the time he was living with the alleged victim, she helped him with reading and writing, both of which he has difficulty with. They did everything together at the time. He then moved to California, and when he returned home to visit, he would stay with her. They always went to holiday family gatherings together. He then moved back to New Jersey. 1T 91:3–25. He met back up with her while she was living with her then boyfriend, who she said was beating her up. She was fired from her job and had no finances to pay for her own place. 1T 92:15–22. Mr. Fusco spoke with his then girlfriend, who has since become his wife, and asked if the alleged victim could live with them. At the time, he lived in Berkeley Heights with his (now) wife and four children. They had a two-bedroom house, and one of the bedrooms was used for him and his wife. He was having financial problems, and he would have to move back to live with his dad, and his wife would move in with her parents. The victim discussed the possibility of getting a bigger place where they all could live, and she would contribute. Thus, they moved to their current house at the Pemberton location in 2017. He had a consensual sexual relationship with the victim and his wife while they lived at the Berkeley Heights residence and the Pemberton residence. The victim asked to participate in a sexual relationship with him and his wife. If she was not included, she would be very upset. 1T 97:12–25. Fusco testified that his

wife and the alleged victim are very good friends. He got married while the alleged victim was living with them. The alleged victim asked if she could participate in the wedding. She would have participated, but she had a stroke and was in rehab at the time of the wedding. Fusco testified that he and his wife helped the victim with climbing the stairs and showering. The victim asked if she could stay at the residence instead of going to an assisted living facility.

The appellant testified that he was born with cerebral palsy and that has had an impact on his reading and writing. He could work and was able to do his job despite having cerebral palsy. According to Fusco, the alleged victim has consumed alcohol her whole life, but her alcohol use became more problematic after her stroke. She also has Parkinson's disease and is shaky. His wife reported the alcohol use to her doctor, and the alleged victim did not take it well.

The alleged victim was responsible for paying the electric and gas bills while at the house. She fell behind on the bills. On November 10, 2020, the alleged victim owed \$3800. Fusco confronted her prior to the arrest and complaint about why she was not paying the bills. 1T 104:13–24. Fusco testified that he was receiving shut-off notices. The day before the arrest she was planning to move out and was looking for shelter. Fusco testified that one of the requirements for moving into a shelter was being “a victim of domestic violence.” 1T 106:15–19. Fusco testified that that was the reason why the victim called the police. Ibid. at 22–25. Fusco denied all the charges against him as noted in P-18. He denied tying the alleged victim to a wooden dresser and denied striking her buttocks and back with a wooden paddle and phone cord. 1T 107:1–25. He denied holding the alleged victim in a condition of involuntary servitude, “by assigning the alleged victim numerous tasks to complete around the house and then proceed[ing] to tie her to a wooden dresser and physically assault her when she failed tasks.” 1 T 108:6–10.

Fusco testified that he had a consensual sexual relationship with the alleged victim, which included role play. He said that the role play was also consensual. 1T 108:16–24. On the day of the incident, Fusco testified that he and his wife had been out of the home since 11 a.m. He went to work; his wife took his motorcycle and went to his father's house to wait until he left work so that she could pick him up. 1 T 109:9–23. Fusco testified that

he was at work when the Pemberton Township patrol officers went to his residence. 1T 110:3–14. According to Fusco, the alleged victim rented one room from him; everyone uses the common areas of the home. There were no locks on the doors in the home because of his autistic child, who at times locked himself in a room.

Fusco was asked about the scabs on the alleged victim's knees as identified in the alleged criminal acts. P-20. Fusco testified that the scabs were the result of the alleged victim being drunk and falling down four or five days before. 1T 112:1–9. On November 10, 2020, a temporary restraining order (TRO) was entered against the appellant. See P-19. The TRO was later dismissed. See P-22. The TRO was dismissed because the alleged victim's allegations of domestic violence "had not been substantiated." 1T 114:1–14. In the TRO hearing, the alleged victim admitted that the incident did not occur on November 10, 2020, but the day prior. See P-23. The alleged victim had filed a restraining order against the appellant and his wife. The final restraining order was denied by Judge Craig Ambrose at the Superior Court, Chancery Division, Burlington County on March 5, 2021. Judge Ambrose "denied the final restraining orders, dismissed the complaints and vacate[d] the temporary restraining orders in both matters." P-23, at 24.

Fusco admitted that he entered a guilty plea to a disorderly person offense/simple assault, and the original charges against him were dismissed. He testified that he pled guilty for a few reasons: he was able to return to work; he could not afford a criminal lawyer; it was taxing on his family and his father; and his children were scared that they would be in foster care. 1T 119:18–25, 120:1–12. Fusco testified that despite pleading to the disorderly person offense, he did not assault the alleged victim. 1T 121:8–11. The appellant accepted the guilty plea and accepted a one-year probationary term and a psychological evaluation. The appellant was suspended without pay on November 11, 2020, and was terminated on June 16, 2021. He has applied to several places for a job, but to no avail.

On cross examination, Fusco was asked if the alleged victim was made to stand in the corner if she spent too much money or didn't do her chores, as stated by his wife. P-20. He admitted that this was done in role play. He was asked whether the alleged victim and/or his wife were disciplined by standing in the corner for one hour. He testified,

"in role play minus the standing in the corner for an hour." 1T 127:13–24. There was no discipline but role play. The alleged victim never stood in a corner for long, and did so only in role play. He testified that many of the things his wife told the officer in her interview were wrong. 1T 128:1–9. Fusco's wife said she received spanking with the wooden paddle. Fusco said that his wife is hard of hearing and was just confused. 1T 130:1–17. According to Fusco, the paddle used in the role play was a small plastic paddle and was not the paddle found in the bedroom. Ibid. at 18–20. Based on the interview given by Mrs. Fusco, during the punishment the alleged victim would be clothed or unclothed. Fusco's wife informed the detective that the alleged "victim had performed oral sexual intercourse, which she said was consensual, but then stated that she felt these incidents were strict discipline." 1T 131:5–11. Fusco's wife further indicated that the victim "agreed to these punishments before moving into their residence." Ibid. at 18–21. To which Fusco responded, "yeah, we've done role play since I was 17, 18. We've done the exact same role play." Ibid. at 22–23.

Fusco said there was nothing done out of discipline. 1T 134:20–22. At most, she would spend five minutes in the corner. Discipline was done out of love. He said that his wife confused role play with strict discipline. Fusco testified that his wife was in with the detective for seventeen hours, so she was confused. According to Fusco, none of the items recovered from his bedroom were used in the role play. 1T 129:1–6. Fusco said that no wooden paddle was found—only a bread board. Ibid. at 14–16. His wife said that she was struck with items recovered from the room but said "this was a fetish for Joseph." Ibid. at 20–24. Fusco admitted that this was done as "fetish play." Ibid. at 25. Fusco testified that he never struck the victim with the toy paddle; the paddle is used for tapping the body, not striking. The only other item used was a straw with a feather. 1T 135:1–16. Fusco reiterated that the victim made up the allegations and called the police to get into a shelter. 1T 136:9–12.

In the transcript for the TRO, the victim described the events that took place as "I had to go into the room, get naked. I get whipped. I get tied up . . . . I get told to stand in the corner, put my hands on my head. I have to give him oral sex." 1 T 137:22–25. Fusco said that none of this is correct. The victim was never whipped, nor tied up, but was told to stand in the corner. 1T 138:17–25. The victim reported "I'm not sure if that

was the night I had a dog collar on and I had to walk up the stairs on my hands and knees with dog collar on, I get told to . . . crawl from the bedroom . . . to the bathroom on my hands and knees. I get tied to the dresser. It's just a nightmare." 1T 139:16–22. Fusco said this never happened. The victim said there were no types of bondage techniques used to have sexual relations. However, Fusco said they have "done it for years." 1T 141:2-7.

Fusco, was asked at the time of sentencing, "Did you have an encounter with her, the victim, sometime around that date, which is November 10, 2020, where you recklessly caused bodily injury and caused some bruises on her body?" To which he answered "yes." P-27 at 12. Fusco said that he did what his lawyer told him to do. When asked if he ever caused bruises to the victim, he responded, "Tiny ones." 1T 144:1. Fusco admitted that he had three hearings, but he did not want to go into the "criminal complaint with his job because it was still in court. 1T 147:6–13. Fusco testified that he was "under the understanding that if I pleaded to the plea, I'd get my job back." 1T 150:22–23. Fusco admitted that he was arrested, and that arrest ultimately led to his conviction for simple assault. 1T 152:21–22. As part of his plea, there was a referral by the Burlington County Adult Probation to Dr. Hunt, which states, "To gain insight into . . . emotional and behavioral issues to explore for deviant sexual interest to determine Mr. Fusco's level of risk for re-offense and to make appropriate treatment recommendations." 1T 154:9–22. Dr. Hunt stated, "Mr. Fusco appears to be a reasonable candidate for participation in outpatient sexual offender treatment." Fusco never participated in any outpatient sexual offender treatment. 1T 155:1–10.

Because of the conflict between appellant's testimony and that of the narrative entered into evidence by the officer when he interviewed the appellant's wife, a determination of credibility is required. It is my obligation and responsibility to weigh the credibility of witnesses in order to make factual findings.

Credibility is the value that a fact finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). The term has been defined as testimony



that must proceed from the mouth of a credible witness and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955) (quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)). In assessing credibility, the interests, motives or bias of a witness are relevant, and 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 (1973). Credibility does not depend on the number of witnesses, and the finder of fact is not bound to believe the testimony of any witness. In re Perrone's Estate, 5 N.J. 514.

After carefully considering the testimonial and documentary evidence presented and having had the opportunity to listen to the testimony, I consider the testimony of Sergeant Danka credible and the manner in which he conducted the interview with the appellant's wife and the alleged victim. I did not find the testimony of the appellant credible when he described that discipline was given in love, while at the same time saying there was no discipline. I also did not find his testimony credible when he said that he used a plastic paddle to tap the victim as opposed to "striking" the victim, and that he plead guilty to the charge of simple assault because he was promised that he would get his job back.

Accordingly, based upon my consideration of the testimony and documentary evidence presented at the hearing, I further **FIND** as follows:

1. The appellant pled guilty to simple assault, wherein he recklessly caused bodily injury and caused some bruises to the victim's body.
2. This behavior satisfies conduct unbecoming a public employee pursuant to N.J.A.C. 4A:2-2.3(a)(6).

### **LEGAL DISCUSSION AND CONCLUSIONS**

Appellant's rights and duties are governed by laws including the Civil Service Act and accompanying regulations. A civil service employee who commits a wrongful act

related to his or her employment may be subject to discipline, and that discipline, depending upon the incident complained of, may include a suspension or removal. N.J.S.A. 11A:1-2, 11A:2-6, 11A:2-20; N.J.A.C. 4A:2-2.2.

The appointing authority shoulders the burden of establishing the truth of the allegations by preponderance of the credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). Stated differently, 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); see also Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959).

As to the charge of "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6), the law is well established. "Conduct unbecoming a public employee" is an elastic phrase that encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "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)). Such misconduct need not necessarily "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." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civ. Serv., 17 N.J. 419, 429 (1955)).

Here, appellant was charged with Second Degree Sexual Assault (N.J.S.A. 2C:14-2(c)), Third Degree Aggravated Assault (N.J.S.A. 2C:12-1(b)(12)), Third Degree Criminal Restraint (N.J.S.A. 2C:13-2(a)), Third Degree Criminal Restraint (N.J.S.A. 2C:13-2(b)), and Fourth Degree Criminal Sexual Conduct (N.J.S.A. 2C:14-3(b)), on November 10, 2020. He pled guilty to simple assault, a disorderly person's offense on June 16, 2021.

In his plea, he admitted that he "recklessly caused bodily injury and caused some bruises" to the alleged victim in this case. While appellant argues that he pled guilty to this offense because he believed he would get his job back, there is no evidence in the record to corroborate this. The Hon. John J. Burke, J.S.C., of the Burlington Superior Court found that Fusco's plea was made "knowingly, intelligently and voluntarily. Defendant is aware of the nature of the charges to which the Defendant plead guilty and the consequences of that guilty plea . . . . The plea was made with assistance of competent counsel who Defendant had adequate time to discuss the plea, the nature and consequences of the plea . . . ." P-27 at 13.)

I **CONCLUDE** that appellant's behavior did rise to a level of conduct unbecoming a public employee. Appellant's conduct was such that it could adversely affect the morale or efficiency of a governmental unit or destroy public respect in the delivery of governmental services. Appellant's conduct in recklessly causing harm to the victim in this case is unacceptable and would serve to destroy public respect and trust in the delivery of governmental services at the school. I **CONCLUDE** that the appellant's behavior does fit this charge.

Appellant has been charged with violating N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Other sufficient cause is an offense for conduct that violates the implicit standard of good behavior that devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. I have found that appellant committed an act that violated this standard of good behavior. As such, I **CONCLUDE** that appellant's behavior does fit this charge.

### **PENALTY**

In determining the appropriateness of a penalty, several factors must be considered, including the nature of the employee's offense, the concept of progressive discipline, and the employee's prior record. George v. N. Princeton Developmental Ctr., 96 N.J.A.R.2d (CSV) 463. Pursuant to West New York v. Bock, 38 N.J. 500, 523-24 (1962), concepts of progressive discipline involving penalties of increasing severity are used where appropriate. See also In re Parlow, 192 N.J. Super. 247 (App. Div. 1983).

However, where the charged dereliction is an act which, in view of the duties and obligations of the position, substantially disadvantages the public, good cause exists for removal. See Golaine v. Cardinale, 142 N.J. Super. 385 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978); In re Herrmann, 192 N.J. 19 (2007). The question to be resolved is whether the discipline imposed in this case is appropriate.

For his actions arising out of the incident occurring on or about November 10, 2020, appellant has been found to have violated "Conduct unbecoming a public employee," N.J.A.C. 4A:2-2.3(a)(6), and N.J.A.C. 4A:2-2.3(a)(12), "Other sufficient cause." Appellant was removed for his actions on July 26, 2021. Appellant has no prior disciplinary action.

The appellant argues that there are several mitigating factors that should be taken into account: He was never arrested, charged, or convicted of a crime prior to this incident; none of the alleged acts that formed the basis of the criminal complaint; the original charges in the criminal complaint were dismissed; appellant had a good relationship with his supervisors; as a custodial worker, he had little to no interaction with respondent's students; and as a custodial worker, his job does not require interaction with respondent's students or the public. The appellant further argues that based on these mitigating factors and progressive discipline, respondent's decision to remove the appellant should be reversed.

Respondent argues that "progressive discipline should not apply here in order to impose a lesser penalty contrary to the Board's discretion." Under the concept of progressive discipline, more severe penalties can be imposed on account of habitual misconduct. In re Herrmann, 192 N.J. 19 (2007). Alternatively, progressive discipline may be applied to lessen the severity of the penalty on an employee whose record is "largely or totally unblemished by significant disciplinary infractions." Id. at 33. Respondent further argues that progressive discipline does not apply due to the amount of time appellant was employed by respondent. Respondent argues that its decision to take major disciplinary action against appellant pursuant to N.J.A.C. 4A:2-2.2(a) is proper due to the egregious nature of the allegations and charges against appellant.

I am satisfied that the appellant's actions herein were egregious. I **CONCLUDE** that the action by the appointing authority of removing Joseph Fusco for his conduct on or about November 10, 2020, should be affirmed.

**ORDER**

I **ORDER** that the charges against the appellant for violations of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee and N.J.A.C. 4A:2-2.3(a)(12), other sufficient cause are **AFFIRMED**. The appellant's appeal is hereby **DISMISSED**.

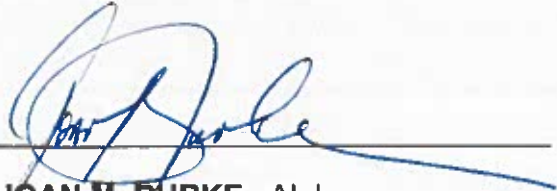
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, 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.

September 18, 2024

DATE

  
JOAN M. BURKE., ALJ

Date Received at Agency:

September 18, 2024

Date Mailed to Parties:  
JMB/sw/jm

September 18, 2024

**APPENDIX**

**Witnesses**

**For Appellant:**

Joseph Fusco

**For Respondent:**

William Kleissler

Sergeant Joshua Danka

**Exhibits**

**Joint Stipulation of Facts**

- P-1 Preliminary Notice of Disciplinary Action ("PNDA") November 20, 2020
- P-2 Not in Evidence
- P-3 Final Notice of Disciplinary Action ("FNDA") December 21, 2020
- P-4 PNDA 6-22-21
- P-5 Not in Evidence
- P-6 FNDA 7-26-21
- P-7 Not in Evidence
- P-8 Not in Evidence
- P-9 Not in Evidence
- P-10 Not in Evidence
- P-11 Respondent's confirmation – Joseph Fusco status as an active Custodial Worker for the Brick Township Board of Education, July 18, 2019
- P-12 Not in Evidence
- P-13 Not in Evidence
- P-14 Not in Evidence
- P-15 Not in Evidence
- P-16 Not in Evidence
- P-17 Not in Evidence

- P-18 Complaint – Warrant, Commitment, Affidavit of Probable Cause, and Preliminary Law Enforcement Incident Report 11-10-20
- P-19 NJ DV Civil Complaint and TRO 11-10-20
- P-20 Pemberton Township Police Department Case Report 11-12-20
- P-21 Pretrial Release Order 11-17-20
- P-22 Order of Dismissal (McGill v Fusco) 1-14-21
- P-23 Transcript of Final Restraining Order Hearing (McGill v Fusco) 1-14-21
- P-24 Criminal Division Event Sheet 6-16-21
- P-25 Not in Evidence
- P-26 Judgment of Conviction & Order for Commitment
- P-27 Transcript of Plea/Sentencing (State of NJ v. Fusco) 6-16-21
- P-28 Not in Evidence
- P-29 Not in Evidence
- P-30 Not in Evidence
- P-31 Not in Evidence
- P-32 Not in Evidence
- P-33 Not in Evidence
- P-34 Not in Evidence
- P-35 Not in Evidence
- P-36 Not in Evidence
- P-37 Not in Evidence
- P-38 Not in Evidence
- P-39 Not in Evidence
- P-40 Not in Evidence
- P-41 BHAR Sexuality Evaluation