STATE OF NEW JERSEY

In the Matter of Abdur-Rahim Ali, Newark School District CSC DKT. NO. 2024-418 OAL DKT. NO. CSV 08341-23	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: SEPTEMBER 10, 2025

The appeal of Abdur-Rahim Ali, Custodial Worker, Newark School District, removal, effective July 28, 2023, on charges, was heard by Administrative Law Judge Thomas R. Betancourt (ALJ), who rendered his initial decision on July 22, 2025. Exceptions were filed on behalf of the appellant and a reply 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 and reply, the Civil Service Commission (Commission), at its meeting on September 10, 2025, adopted the ALJ's Findings of Facts and Conclusions of Law and his recommendation to uphold the removal.

The ALJ's decision in this matter is based significantly on his assessment of the witnesses' testimony. 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 u. Public Employees Retirement System,* 368 *N.J. Super.* 527 (App. Div. 2004).

In this matter, the ALJ made such determinations, albeit in some cases in a conclusory manner without extensive justification. Regardless, the Commission does not have significant concern with most of those credibility determination. However, the appellant's exceptions contend that the ALJ made credibility determinations regarding the appellant's testimony in reliance on improper factual findings. Even if true, it is clear that the ALJ otherwise found the appointing authority's witnesses' testimony credibility as to the appellant's actions and statements. Moreover, the appellant does not refute that he made most of the statements attributed to him. Rather, he attempts to explain or justify them, As such, the Commission finds that the credible testimony of the appointing authority's witnesses as well as the appellant's admissions more than establishes that the appellant committed the misconduct alleged.

Regarding the penalty, similar to its assessment of the 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).

The appellant's conduct and statements in this matter are significantly egregious and warrant removal regardless of his prior insignificant disciplinary history. Clearly, the appellant's actions are inimical to what is expected of a public employee and the removal in neither disproportionate to the offense nor shocking to the conscious.

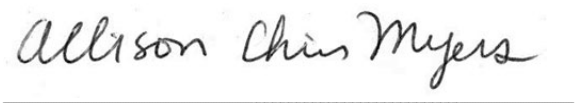
ORDER

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 Abdur-Rahim Ali.

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 10TH DAY OF SEPTEMBER, 2025



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 08341-23
AGENCY REF. NO.: 2024-418

ABDUR-RAHIM ALI,
Appellant,
vs.
NEWARK PUBLIC SCHOOL DISTRICT,
Respondent.

Samuel Wenocur, Esq., for Appellant (Oxfeld Cohen, P.C., attorneys)

Christina Michelson, Esq. for Respondent (Methfessel & Werbel, attorneys)

Record Close Date: June 2, 2025 Decided: July 22, 2025

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Abdur-Rahim Ali, appeals a Final Notice of Disciplinary Action (FNDA), dated July 27, 2023, imposing a penalty of removal, effective July 28, 2023.

The Civil Service Commission transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on August 29, 2023.

A prehearing conference was conducted on September 12, 2023, and a prehearing order entered by the undersigned on the same date.

A hearing was held on October 24, 2024, October 25, 2024, January 6, 2025 and February 18, 2025. The record remained open for counsel to submit written summations. Written summations were received on May 29, 2025 from both parties. Thereafter, respondent requested permission to file a reply brief. Appellant objected to the request. On June 2, 2025, the undersigned determined that no further submissions would be permitted. Accordingly, the record closed on June 2, 2025.

ISSUES

Whether there is sufficient credible evidence to sustain the charges set forth in the Final Notice of Disciplinary Action; and, if sustained, whether a penalty of removal is warranted.

CREDIBILITY

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).

When facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings. Credibility is the value that a finder of fact gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, its internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (8th Cir. 1963).

The following individuals were called as witnesses by the Respondent: Jacqueline Chavis, Employee Relations Officer for the Office of Labor and Employee Relations; Da-Shawn Dwight, Head Custodian at Sir Isaac Newton School; Maryann McClain, Head Custodia at Harold Wilson building; Michele Johnson, District Recycling Coordinator; Dr. Tiffany Wicks, Principal at Sir Isaac Newton Elementary School; Hassan Bullock, Lead Supervisor for the Office of Safety; Carlos Edmundo, Executive Director of Facility Management; and, Levi Homes, Executive Director of Safety and Security.

I found all respondent's witnesses credible. All testified in a straightforward and direct manner. Nothing about any of their respective demeanors implied anything other than truthfulness.

The following individuals were called by Appellant: Kyle Alleyne, Police Detective for the Township of Irvington; Lorenzo Hall, President of Local 617; Tanisha Lane, Appellant's girlfriend; and, Appellant.

Both Mr. Alleyene and Mr. Hall were credible. I saw no indication that they were less than honest. Mr. Hall's memory was somewhat thin regarding the April 4, 2023 Webex hearing.

I had a considerable problem with the testimony of Ms. Lane. She seemed completely rehearsed in her responses. She was at times robotic in her answers, seemingly trying to remember her lines. I do not find her credible.

I also found Appellant's testimony problematic. He seems to blame all his troubles on others. His explained away the statement that he would blow the "mother f…cing" building up by saying he said his lawyers would blow the place up is farcical. He maintained this is what he said regarding an EEOC complaint. At the time he made the statement about blowing up the building there was no EEOC complaint or lawyer named. That EEOC complaint was actually filed after the comment. I find him not credible. Further, the contemporaneous writings about the incident confirm what Ms. McClain heard and reported, and not appellant's spin.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Appellant was employed by the Newark Public Schools as a custodial worker, having commenced his employment around 2007 or 2008. (T4 5:1-12)

Appellant worked at Sir Isaac Newton School until February 28, 2023, when he was reassigned to Harold Wilson building, which is a facility building. (R-16; T1 129:14-25)

On March 24, 2023, appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) alleging four charges: conduct unbecoming a public employee; neglect of duty; incompetency, inefficiency, or failure to perform duties; and, other sufficient cause. The incident that led to the PNDA occurred on February 16, 2023. The PNDA provided for a ten-day suspension. A disciplinary hearing was scheduled for April 4, 2023. (R-11, R-14, R-18, R-19, R-20)

This PNDA resulted from an incident which occurred on February 16, 2023, when Lorenzo Hall, President of Local 617, arrived at Sir Isaac Newton Elementary School to meet with appellant. Appellant was not in the building. Mr. Hall and Da-Shawn Dwight, appellant's supervisor searched for appellant but could not locate him. A review of Kronos time record for appellant determined that appellant was scheduled to be absent for one-half of the workday on exhausted sick time. Appellant also punched in this day at 9:48 a.m., did so again at 11:15 a.m., then punched out at 3:01 p.m. He also did not report this to his supervisor as is required. (T2 43:17-25; 44:1-14)

Appellant received a write-up from Mr. Dwight regarding this incident. (R-11; R-12; T1 – 89:17-25; 90:16-18; 92:11-17, T2 37:19-25; 38:1-20)

This PNDA also included incidents on February 21, 2023, and February 22, 2023, where appellant failed to punch in correctly. (T2 45:11-25; 46:1)

On February 17, 2023, appellant went to see Tiffany Wicks, Principal at Sir Isaac Newton School, where appellant stated "I understand why people run at schools and shoot it." Ms. Wicks advised appellant that the language was inappropriate. She also recorded that matter in a note to the Facility's team and spoke to the Assistant Superintendent (T2 46:13-25; 47:10-17, R-14)

Another incident occurred with appellant on February 17, 2023, after he received write-ups from his supervisor Mr. Dwight. Appellant came to her office and was irate. He stormed out of her office into the hallway and using profanity with students, teachers and parents present. (T2 50:23-25; 51:1-24)

This incident did not result in any disciplinary charges. It did result in appellant being transferred to Harold Wilson. (R-15)

That hearing of April 4, 2024, was conducted via Webex. (T1 27:4-6) Present were appellant, Mr. Hall, Jacqueline Chavis, Employee Relations Officer for the Office of Labor and Employee Relations, Devona Warren standing in for the Director of Custodial Services. (T-1 28:22-25; 29:1-2)

At the Webex hearing appellant became aggressive and did not want to participate in the hearing. The hearing was ended by Mr. Hall, who requested a departmental hearing before a hearing officer. (T1 31:11-25; 32:1-8)

On April 5, 2023, appellant returned from his lunch break. Maryann McClain, appellant's supervisor, was in the boiler room when appellant returned. Appellant was agitated and making statements such as "I'm not going to hurt you." Ms. McClain inquired as to the matter. Appellant advised Ms. McClain he was getting suspended for stealing time (this in reference to the April 4, 2023, Webex hearing). Appellant was using foul language and cursing Ms. Chavis. Ms. McClain attempted to calm him down. Appellant then stated "I feel like blowing this mother fucking building up." This occurred at approximately 11:15 a.m. Ms. McClain, after seeking advice from co-workers and her husband, reported the incident to Carlos Edmundo, Executive Director of Facilities Management, who told her to put it in writing. She did via email to Wali Thomas. She also spoke with Ms. Chavis, who called her at her home. (T1 133:16-25; 134:1-25; 135:1-25; 136:1-25; 137:1-25; 138:1-23; R-3)

Also on April 5, 2023, appellant came into the office of Michele Johnson, District Recycling Coordinator, at the Harold Wilson building. Ms. Johnson and appellant spoke. At one point appellant stated "you know they shooting up?" Ms. Johnson admonished appellant not speak like that. Appellant then left. (T-2 11:9-15)

Shortly thereafter Ms. McCain entered Ms. Johnson's office and they spoke about their respective interactions with appellant. (T1 12:2-24)

Ms. Johnson and Ms. McClain then spoke with Hasan Bullock, a supervising security officer. Ms. Johnson also prepared a report of her interaction with appellant. (T2 13:2-18, R-4)

On April 6, 2023, Appellant was served with a PNDA alleging four charges: conduct unbecoming a public employee; inability to perform duties; neglect of duty; incompetency, inefficiency, or failure to perform duties; and, other sufficient cause. (R-2)

On the same date Appellant was served with a Superintendent's suspension without pay. (R-5 and R-6))

A departmental hearing was held on June 16 and 22, 2023, where the following charges were sustained; conduct unbecoming a public employee; neglect of duty; incompetency, inefficiency or failure to perform duties; and, other sufficient cause. A Final Notice of Disciplinary Action (FNDA) was issued, dated July 7, 2023, providing for a penalty of removal, effective July 28, 2023. (R-1)

The sustained charges are the result of two separate incidents. The first incident occurred on February 17, 21, and 22, 2023. Appellant had been served with three separate write ups for failure to perform his duty and failure to punch in and out in accordance with policy, and failure to notify his supervisor regarding being late or leaving early.

The other incident, the far more serious one, occurred on April 5, 2023, where appellant stated he want to blow up the mother fucking building to Ms. McCain, and stated something about shooting the school to Ms. Johnson.

I find as fact that the incident alleged in the PNDA, and sustained in the FNDA, occurred, notwithstanding appellant's attempt to explain them. I find his testimony, and that of Ms. Lane as not credible.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a civil service employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointments and broad tenure protection. See Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this state is to provide appropriate appointment, supervisory and other personnel authority to public

officials in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). In order to carry out this policy, the Act also includes provisions authorizing the discipline of public employees.

A public employee who is protected by the provisions of the Civil Service Act may be subject to major discipline for a wide variety of offenses connected to his or her employment. The general causes for such discipline are set forth in N.J.A.C. 4A:2 2.3(a). In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relies by a preponderance of the competent, relevant and credible evidence. 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 (1982). 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). Therefore, the judge must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E. & A. 1933). This burden of proof falls on the agency in enforcement proceedings to prove violations of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987).

In the instant matter, disciplinary hearing on June 16 and June 22, 2023, the following charges set forth in the FNDA were sustained:

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;
N.J.A.C. 4A:2-2.3(a)1 – Incompetency, inefficiency or failure to perform duties; and,
N.J.A.C. 4A:2-2.3(a)(12) - Other sufficient cause.

"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 Civil Serv., 17 N.J. 419, 429 (1955)).

As to this charge, respondent has carried its burden of proof. It is certainly unbecoming conduct for a public employee to make comments about school shooting and blowing up the building. It is also conduct unbecoming to curse and yell in a hallway when students are present.

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). Neglect of duty is predicated on an employee's omission to perform, or failure to perform or discharge, a duty required by the employee's position and includes official misconduct or misdoing as well as negligence. Clyburn v. Twp. of Irvington, CSV 7597-97, Initial Decision (September 10, 2001), adopted, Merit System Board (December 27, 2001), <http://njlaw.rutgers.edu/collections/oal/>; see Steinel v. Jersey City, 193 N.J. Super. 629 (App. Div.), certif. granted, 97 N.J. 588 (1984), aff'd on other grounds, 99 N.J. 1 (1985).

In the present matter respondent has carried its burden of proof as to this charge. Appellant at times arrived late to work, left his assigned location without permission, and was absent after exhausting his sick time. This amounts to neglect of duty.

The charge of incompetency, inefficiency, and failure to perform duties applies to instances involving a lack of execution of job responsibilities and inadequate job performance. Klusaritz v. Cape May County, 387 N.J. Super. 305 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007).

Appellant had been warned that he needs to do his job better, specifically regarding the failure to adequately clean his detail on a daily basis. The Respondent has carried its burden as to this charge.

There is no definition in the New Jersey Administrative Code for other sufficient cause. Other sufficient cause is generally defined in the charges against petitioner. 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/. 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.

Cleary Appellant's actions violate the implicit standard of good behavior. The respondent has carried its burden as to this charge as well.

This forum has the duty to decide in favor of the party on whose side 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.

Here it is clear that the evidence preponderates in favor of Respondent that Appellant is guilty of the charge of Conduct Unbecoming a Public Employee, N.J.A.C. 4A:2-2.3(a)6, Neglect of Duty, N.J.A.C. 4A:2-2.3(a)7, N.J.A.C. 4A:2-2.3(a)1, Incompetency, inefficiency or failure to perform duties; and Other Sufficient Cause, N.J.A.C. 4A:2-2.3(a)(12), in the FNDA, as set forth above.

What now must be determined is whether a termination from employment is the appropriate penalty.

An appeal to the Merit System Board[1] requires the Office of Administrative Law to conduct a de novo hearing and to determine appellant's guilt or innocence as well as the appropriate penalty. In the Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). In determining the reasonableness of a sanction, the employee's past record and any mitigating circumstances should be reviewed for guidance. West New York v. Bock, 38 N.J. 500 (1962). Although the concept of progressive discipline is often cited by appellants as a mandate for lesser penalties for first time offences,

> that is not to say that incremental discipline is a principle that must be applied in every disciplinary setting. To the contrary, judicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty 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 Hernmann, 192 N.J. 19, 33-4 (2007) (citing Henry, supra, 81 N.J. 571).]

Although the focus is generally on the seriousness of the current charge as well as the prior disciplinary history of the appellant, consideration must also be given to the purpose of the civil service laws. Civil service laws "are designed to promote efficient public service, not to benefit errant employees . . . The welfare of the people as a whole, and not exclusively the welfare of the civil servant, is the basic policy underlining the statutory scheme." State Operated School District v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). "The overriding concern in assessing the propriety of the penalty is the public good. Of the various considerations which bear upon that issue, several factors may be considered, including the nature of the 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, 465.

In West New York v. Bock, 38 N.J. 500, 522 (1962), which was decided more than fifty years ago, our Supreme Court first recognized the concept of progressive discipline, under which "past misconduct can be a factor in the determination of the appropriate penalty for present misconduct." In re Herrmann, 192 N.J. 19, 29 (2007) (citing Bock, supra, 38 N.J. at 522). The Court therein concluded that "consideration of past record is inherently relevant" in a disciplinary proceeding, and held that an employee's "past 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, supra, 38 N.J. 523–24.

The concept of progressive discipline has been used to reduce the penalty of removal in other cases involving a law-enforcement officer who used racist language in public but who otherwise had a largely unblemished employment record. In In re Roberts, CSR 4388-13, Initial Decision (December 10, 2013) adopted, Comm'n (February 12, 2014), <http://njlaw.rutgers.edu/collections/oal/>, for example, an on-duty police officer who, while arresting an uncooperative black suspect, shouted to his K-9 police dog, "Zero, bite that nigger," had his penalty modified from removal to a six-

[1] Now the Civil Service Commission, N.J.S.A. 11A:11-1

month suspension. The ALJ had found that his misconduct was "plainly aberrational," as his past record only included an oral reprimand for a motor-vehicle accident over the course of seven years of service and several of his minority co-workers credibly testified that he had otherwise treated citizens in an impartial and respectful manner. While the ALJ found that, due to mitigating circumstances, "termination is too severe a penalty," he nonetheless concluded that, despite a past record that included only an oral reprimand, the "fitting" penalty "is the longest suspension which the law allows: six months."

While concept of progressive discipline in determining the level and propriety of penalties imposed requires a review of an individuals prior disciplinary history a "clean" record may be out-weighed if the infraction had issued a serious in nature. Henry v. Rahway State Prison, 81 N.J. 571 (1980); Carter v. Bordentown, 191 N.J. 474 (2007). Further some disciplinary infractions are so serious that removal is appropriate. Destruction of public property is such an infraction. Kindervatter v. Dep't of Envt'l Protection, CSV 3380-98, Initial Decision (June 7, 1999), http://lawlibrary.rutgers.edu/collections/oal/search.html.

In determining the penalty to be imposed, the court noted that none of the factors justifying mitigation of removal were present. Namely mistake, negligence, or remorse. The Court was compelled to hold that whatever the employee's motive, and regardless of the worth of the computer, she had to be subject to major discipline. While the goal of discipline is to either remove an employee unsuitable for public service or to impose some lesser sanction when the employee may be rehabilitated, the Court held that the extraordinary serious offense in this case could not be mitigated by a prior good-service record as that mitigation is reserved only for lesser offenses.

Appellant does not appear to have any significant prior discipline. However, in the instant matter removal is the appropriate penalty. Despite Appellant's arguments to the contrary, his behavior caused major disruption to the school. He has no remorse. Indeed, he feels that he is the victim. He is not the victim. His continued presence as a custodial worker is detrimental to the District. Removal is the appropriate penalty.

Based upon the above, I **CONCLUDE** that Respondent has demonstrated by a preponderance of the credible evidence that Appellant is guilty of the charges in the FNDA, of Conduct Unbecoming a Public Employee, Neglect of Duty, Incompetency, Inefficiency or failure to perform duties, and Other Sufficient Cause. Accordingly, I **CONCLUDE** that those charges are **SUSTAINED**.

ORDER

It is **ORDERED** that the charges set forth in the FNDA are **SUSTAINED**, and that the penalty of removal is **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 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.

July 22, 2025
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db

APPENDIX

List of Witnesses

For Appellant:

Kyle Alleyene
Lorenzo Hall
Tanisha Lane
Abdur-Rahim Ali, Appellant

For Respondent:

Jacqueline Chavis
Da-Shawn Dwight
Maryann McClain
Michele Johnson
Tiffany Wicks
Hasan Bullock
Carlos Edmundo
Levi Holmes

List of Exhibits

For Appellant:

A-1 emails between Appellant and Jorge Camara, 1/5-6/23
A-2 BOE letter confirming appointment with AA office, 2/27/23
A-3 Appellant treatment appointment history
A-4 appointment slip for Appellant with Dr. Ogunruku, 8/25/22
A-5 appointment slip for Appellant with Dr. Sierra, 84/4/22
A-6 Appellant treatment records with case manager, 4/5/23
A-7 Screenshot of Appellant's emails re: EEOC
A-8 email notice from EEOC for phone interview, 4/5/23
A-9 FNLA leave form

For Respondent:

R-1 FNDA dated 7/28/23
R-2 PNDA date 4/6/23
R-3 email from Maryann McClain to Thomas Wall, 4/5/23
R-4 Report from Michele Johnson, 6/3/23
R-5 Superintendent suspension, 5/25/23
R-6 letter to Appellant from Dr. Yolanda Mendez, 4/5/23
R-7 email from Valerie Wilson to Carlos Edmundo, 4/5/23
R-8 memo from Carlos Edmundo to Scott Carbone, 4/5/23
R-9 Custodial Worker job specification
R-10 File Code 4119.22, Conduct and Dress Code
R-11 letter to Appellant from Jacqueline Chavis with PNDA, 3/24/23
R-12 Memo, 2//17/23, and Kronos printout
R-13 letter to Appellant from Jacqueline Chavis, 4/4/23
R-14 email from Dr. Tiffany Wicks to Wali Thomas, 2/17/23
R-15 transfer memo from Wali Thomas to Appellant, 2/28/23
R-16 email from Jacqueline Chavis to Valerie Wilson, 4/5/23
R-17 email from Valerie Wilson to Scott Carbone, 4/5/23
R-18 email from DaShawn Dwight to HR, 2/20/23
R-19 email from DaShawn Dwight to Jorge Camara, 2/21/23
R-20 memos from DaShawn Dwight to Appellant, 2/17/23
R-21 letter from Wali Thomas to Appellant, 4/5/23
R-22 CBA
R-23 email from Jorge Camara to Jacqueline Chavis, 6/1/23
R-24 Newark BOE letter to Appellant advising AA complaint closed, 3/22/23