STATE OF NEW JERSEY

In the Matter of Latoya Sowell, Newark School District CSC Docket No. 2024-2125 OAL Docket No. CSV 09041-24	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: SEPTEMBER 10, 2025

The appeal of Latoya Sowell, Custodial Worker, Newark School District, removal, effective April 8, 2024, on charges, was heard by Administrative Law Judge Thomas R. Betancourt (ALJ), who rendered his initial decision on July 24, 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, much of which do not require extensive comment, 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 Commission makes the following comments. The ALJ's decision 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). Notably, regarding credibility, the ALJ found, in pertinent part:

> Both Mr. Badmus and Ms. Rufai testified in a straightforward and professional manner. Nothing about their appearance or demeanor suggested anything but veracity. I find them both credible.
>
> Appellant's testimony was problematic. She attempted to blame her tardiness in starting her shift on Mr. Valentine, who was responsible for opening the building. She claimed that he was late and therefore she could not clock in on time. This assertion was directly contradicted by a comparison of Mr. Valentine's and appellant's Kronos time records. On all days appellant is accused of being tardy Mr. Valentine punched in prior to her designated start time. Further, appellant's explanation regarding her failure to properly punch out and then in for lunch made little sense. I find her not credible.

Upon its review and notwithstanding the appellant's arguments in the exceptions, the Commission finds no persuasive evidence in the record or the exceptions to demonstrate that the ALJ's findings and conclusions based on predominantly of the above determinations were arbitrary, capricious or unreasonable.

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 Commission rejects the appellant's arguments in her exceptions that the penalty of removal was too harsh or should be mitigated. The appellant has an extensive record of prior discipline. Most notable is the 60 working day suspension that the appellant received in June 2023, which included similar misconduct as the subject matter. Accordingly, given the misconduct and the appellant's previous

disciplinary history, in accordance with the tenets of progressive discipline, it is clear that the removal is the appropriate penalty.

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 Latoya Sowell.

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
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 09041-24

AGENCY REF. NO.: 2024-2125

LATOYA SOWELL,

Appellant,

vs.

NEWARK PUBLIC SCHOOL DISTRICT,

Respondent.

_____

Vanesha Cadet, Esq., for appellant (Oxfeld Cohen, P.C., attorneys)

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

Record Close Date: July 15, 2025 Decided: July 24, 2025

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant appeals the following: Final Notice of Disciplinary Action (FNDA), dated March 25, 2024, providing for a penalty of removal, effective April 8, 2024.

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 June 28, 2024.

A prehearing conference was conducted on July 15, 2024, and a prehearing order entered on the same date by the undersigned.

A hearing was held on April 10, 2025, April 28, 2025, and May 27, 2025.

The record remained open to permit the partis to obtain a transcript of the hearing and to submit final written closing arguments.

Both petitioner and respondent submitted their post hearing submission on July 15, 2025. The record closed on July 15, 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).

Both Mr. Badmus and Ms. Rufai testified in a straightforward and professional manner. Nothing about their appearance or demeanor suggested anything but veracity. I find them both credible.

Appellant's testimony was problematic. She attempted to blame her tardiness in starting her shift on Mr. Valentine, who was responsible for opening the building. She claimed that he was late and therefore she could not clock in on time. This assertion was directly contradicted by a comparison of Mr. Valentine's and appellant's Kronos time records. On all days appellant is accused of being tardy Mr. Valentine punched in prior to her designated start time. Further, appellant's explanation regarding her failure to properly punch out and then in for lunch made little sense. I find her not credible.

Cameron Rhymes appeared to testify credibly. However, his testimony did not shed any light on what transpired between appellant and Mr. Badmus. It certainly did not support appellant's denial of using foul and profane language towards Mr. Badmus.

JOINT STIPULATION OF FACTS

1. Appellant was employed as a custodial worker for the Newark Board of Education (Board).

2. The Board served appellant a FNDA dated March 25, 2024. (J-1)

3. The Board served appellant with a Revised PNDA dated February 23, 2024. (J-2)

4. Appellant's prior disciplinary history includes the following:

   June 2, 2023 – 60 day suspension (FNDA dated Juen 2, 2023 – Exhibit J-3);
   December 9, 2021 – 90 day suspension (PeopleSoft Printout – J-4);
   October 9, 2013 – 30 day suspension (Exhibit J-5);
   October 12, 2011 – 11 day suspension (FNDA dated October 12, 2011- J-6);
   August 5, 2008 – 5 days suspension – (Exhibit J-7)

5. The Board and Local 617 are parties to a collective bargaining agreement dated July 1, 2020. (Exhibit J-8)

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**:

1. Tunde Badmus is employed by respondent as the senior night custodian at Peshine Avenue School and has been employed by respondent for fourteen years. (1T8:7-18)

2. On November 20, 2023, Mr. Badmus was working in his office. Also, in his office was another employee, Cameron Rhymes. (1T9:17-23)

3. On that date appellant entered the office and inquired as to the location of the 12th floor key. Mr. Badmus told her the key was in the main office. (1T9:22-25; 1T10:1-3)

4. Appellant's response was "No, no, no, no, no. I'm not listening to you. No., no, no, no. I'm not listening to you. You liar, motherfucking African, you bitch. I'm not going to listen to you." Mr. Badmus did not respond to this outburst. (1T10:3-8)

5. Based on this incident Mr. Badmus issued a memorandum to appellant regarding her behavior on November 20, 2023, and requested disciplinary action. (1T9:5-16 and R-5)

6. Ganiat Rufai is employed by respondent as the principal of Peshine Avenue School and has been for eleven years. (1T15:3-9)

7. She is responsible to oversee all employees, including custodial workers. 1T15:20-25; 1T16:1-3)

8. Appellant was employed as a custodial worker and worked the day shift from 7:00 a.m. to 3:00 p.m. (1T17:18-24)

9. Custodial workers are required to punch in at the start of their shift, punch out for lunch, punch in after returning for lunch, and punch out at the end of their shift using the Kronos machine. (1T18:2-7)

10. The building is opened in the morning by Mr. Valentine, who is the head custodian at approximately 6:00 a.m. (1T18:17-24)

11. Appellant punched in late on September 21, 2023, September 27, 2023, October 6, 2023, October 19, 2023, October 20, 2023, December 4, 2023, December 18, 2023, January 5, 2024, February 12, 2024, February 13, 2024 and February 22, 2024. (1T29:2-25; 1T30:1-22, R-7 and J-2)

12. Appellant had previous issues with proper punching in and out. (1T31:2-6)

13. On October 10, 2023, appellant punched out at 12:25 p.m. and did not return to finish her shift. On November 22, 2023, appellant punched out at 11:44 a.m. and did not return to finish her shift. On December 21, 2023, appellant punched out at 1:22 p.m. and did not return to finish her shift. (1T31:7-25; 1T32:1-14, R-7 and J-2)

14. Leaving work early causes a disruption as it creates a staff shortage. (1T32:17-25; 1T33:1)

15. Appellant took extended lunch breaks a total of 49 times between September 11, 2023, and February 22, 2024. (R-7)

16. Appellant received Attendance Improvement Plan memos on October 25, 2023, and met with Robin Williams, Vice Principal on October 26, 2023, to discuss her tardiness. (R-6)

17. Appellant received a Warning Letter – Tardiness from Vice Principal Williams on November 29, 2023, advising appellant continued tardiness will result in disciplinary action. (R-6)

18. On October 6, 2022, and again on February 8, 2024, appellant received letters advising her of a request for disciplinary action due to her tardiness. (R-6)

19. On May 22, 2023, appellant received a Letter of Warning/Conduct Unbecoming from Mr. Badmus for insubordination. (1T41:16-24 and R-10)

20. On May 10, 2023, Ms. Rufai issued a letter to appellant requesting disciplinary action for her continued wearing of a hat indoors against the school's dress code. (1T42:3-16, R-10).

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).

This forum has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, in accordance with a reasonable probability of truth. Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958). The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, supra, 37 N.J. 143. The evidence needed to satisfy the standard must be decided on a case-by-case basis.

Appellant is charged in the Final Notice of Disciplinary Action (FNDA) with 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)6; incompetency, inefficiency, or failure to perform duties in violation of N.J.A.C. 4A:2-2.3(a)1; and, other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)12.

"Conduct unbecoming a public employee" encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect for government employees and confidence in the operation of governmental services. Karins v. City of Atl. City, 152 N.J. 532, 554 (1998). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Id. at 555 (citation omitted). 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) (citation omitted).

In the instant matter appellant engaged in conduct that clearly is conduct unbecoming a public employee, as follows: her use of foul and profane language towards Mr. Badmus was inexcusable. Her habitual tardiness also was inexcusable. Both constitute conduct unbecoming.

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 instant matter appellant engaged in conduct that clearly is neglect of duty, as follows: Her continued tardiness caused her not to perform her duties when scheduled to do so. Further, it encumbered other staff members to perform that she would have otherwise done.

In general, incompetence, inefficiency, or failure to perform duties exists where the employee's conduct demonstrates an unwillingness or inability to meet, obtain or produce effects or results necessary for adequate performance. Clark v. New Jersey Dep't of Agric., 1 N.J.A.R. 315 (1980).

This charge was sustained in the FNDA. I sustain it herein. Appellant failed to perform her duties by failing to be at work in a timely manner. Her continued and habitual tardiness, and leaving work early resulted in inability to meet, obtain or produce effects or results necessary for adequate performance. See Clark, supra.

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.

Clearly Appellant's actions violate the implicit standard of good behavior, particularly her foul and profane outburst towards Mr. Badmus. The respondent has carried its burden as to this charge as well.

An appeal to the Merit System Board 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.
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> [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.

As the Supreme Court explained in In re Herrmann, supra, 192 N.J. at 30, "[s]ince Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct." According to the Court:

> . . . First, principles of progressive discipline can support the imposition of a more severe penalty for a public employee who engages in habitual misconduct. . . .
>
> The second use to which the principle of progressive discipline has been put is to mitigate the penalty for a current offense . . . for an employee who has a substantial record of employment that is largely or totally unblemished by significant disciplinary infractions. . . .
>
> . . . [T]hat 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 . . . 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 Hermann, supra, 192 N.J. at 30–33 (citations omitted).]

In the matter of In re Stallworth, 208 N.J. 182 (2011), a Camden County pump-station operator was charged with falsifying records and abusing work hours, and the ALJ imposed removal. The Commission modified the penalty to a four-month suspension and the appellate court reversed. The Court re-examined the principle of progressive discipline. Acknowledging that progressive discipline has been bypassed where the conduct is sufficiently egregious, the Court noted that "there must be fairness and generally proportionate discipline imposed for similar offenses." In re

Stallworth, supra, 208 N.J. at 193. Finding that the totality of an employee's work history, with emphasis on the "reasonably recent past," should be considered to assure proper progressive discipline, the Court modified and affirmed (as modified) the lower court and remanded the matter to the Commission for reconsideration.

In deciding what penalty is appropriate, the courts have looked toward the concept of progressive discipline. In Bock, supra, 38 N.J. at 523-524, The New Jersey Supreme Court held that evidence of a past disciplinary record, including the nature, number, and proximity of prior instances of misconduct, can be considered in determining the appropriate penalty. Also, where an employee's misconduct is sufficiently egregious, removal may be warranted and need not be preceded by progressive penalties. In re Hall, 335 N.J. Super. 45 (App. Div. 2000), certif. denied, 167 N.J. 629 (2001); Golaine v. Cardinale, 142 N.J. Super. 385, 397 (Law Div. 1976), aff'd, 163 N.J. Super. 453 (App. Div. 1978), certif. denied, 79 N.J. 497 (1979). The penalty imposed must not be so disproportionate to the offense and the mitigating circumstances that the decision is arbitrary and unreasonable.

In the instant matter, Appellant has a substantial disciplinary history. She was suspended for sixty days on June 2, 2023, for chronic or excessive absenteeism or lateness, neglect of duty, insubordination and other sufficient cause. She was suspended for ninety days on December 9, 2015, for conduct unbecoming a public employee. She was suspended for thirty days on October 9, 2013, for conduct unbecoming a public employee, neglect of duty, insubordination, chronic or excessive absenteeism or lateness, and other sufficient cause. She was suspended for ten days on October 12, 2011, for chronic or excessive absenteeism or lateness, neglect of duty and other sufficient cause. She was suspended for five days on August 5, 2009, for chronic or excessive absenteeism or lateness, insubordination, neglect of duty and other sufficient cause.

Based upon the above authorities, I **CONCLUDE** that progressive discipline should apply. The question remains whether removal is warranted, or that a lesser penalty be imposed.

Unless the penalty is unreasonable, arbitrary, or offensively excessive, it should be permitted to stand. Ducher v. Dep't of Civil Serv., 7 N.J. Super. 156 (App. Div. 1950). Appellant's entire record of performance must be considered when attempting to determine if the judgment of the appointing authority was unreasonable, arbitrary or capricious. See Bock,supra, 38 N.J. 500.

A court should overturn a final agency decision "in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence." In re Carter, 191 N.J. 474, 482 (2007) (quoting Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)). As the Court observed in Carter, a reviewing panel:

> must defer to an agency's expertise and superior knowledge of a particular field. Although an appellate court is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue," if substantial evidence supports the agency's decision, "a court may not substitute its own judgment for the agency's even though the court might have reached a different result."
>
> [Id. at 483 (citations omitted).]

Appellant's extensive prior disciplinary history and series of suspensions lead to the conclusion that she has failed to improve her work performance and behavior. Removal is the appropriate penalty in the instant matter.

I **CONCLUDE** that the respondent has proved by a preponderance of the credible evidence that appellant was guilty of the sustained charges in the FNDA.

I further **CONCLUDE** that the penalty of removal is the appropriate penalty.

ORDER

It is hereby **ORDERED** that Appellant's appeal is **DENIED**;

It is further **ORDERED** that the Final Notice of Disciplinary Action, dated March 25, 2024, providing for a penalty of removal, effective April 8, 2024, 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 24, 2025
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

APPENDIX

List of Witnesses

For Appellant:

Cameron Rhymes, school employee

Latoya Sowell, Appellant

For Respondent:

Tunde Badmus, senior night custodian

Ganiat Rufai, principal of Peshine Avenue School

List of Exhibits

For Appellant:

P-1 May 8, 2023 email from appellant to Principal Rufai Ganiat

P-2 May 10, 2023 email exchange between appellant and Principal Ganiat

P-6 March 21, 2024 email from Principal Ganiat attaching a letter of reprimand (included)

P-7 email exchange on March 25, 2024 and March 27, 2024, between appellant and Principal Ganiat regarding the March 21, 2024 letter of reprimand

For Respondent:

R-3 PNDA dated 2/23/24

R-5 memorandum of conduct unbecoming dated 11/20/23

R-6 correspondence with appellant regarding tardies and Request for Disciplinary Action dated 10/6/22

R-7 Appellant's time and attendance from 9/11/12 to 2/22/24

R-8 Job Specifications – Custodial Worker

R-9 FNDA dated 6/2/23 and Hearing Officer's recommended decision and order dated 5/24/23

R-10 memorandum of conduct unbecoming dated 5/22/23

R-13 Valentin – Sowell time sheet comparison

Joint Exhibits:

J-1 FNDA dated March 24, 2024

J-2 Revised PNDA dated February 23, 2024

J-3 June 2, 2023, sixty day suspension

J-4 December 9, 2015, ninety day suspension

J-5 October 9, 2013, thirty day suspension

J-6 October 12, 2011, 11 day suspension

J-7 August 5, 2009, five day suspension

J-8 Collective Bargaining Agreement

OAL Exhibits:

OAL-1 Attire Policy

OAL-2 Conduct and Dress Code