



Inquiries  
and  
Correspondence

Shannon L. Dalton  
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 10707-24

AGENCY REF. NO. 2024-1770

**IN THE MATTER OF DARVEL DAVIS,  
NEWARK PUBLIC SCHOOL DISTRICT.**

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**Raymond G. Heineman,<sup>1</sup> Esq.,** for appellant Darvel Davis (Kroll Heineman  
Ptasiewicz Parsons & Jameson, attorneys)

**Christina M. Michelson, Esq.,** for respondent Newark Public School District  
(Methfessel & Werbel, PC, attorneys)

Record Closed: January 12, 2026

Decided: May 7, 2026

BEFORE **KELLY J. KIRK, ALJ:**

**STATEMENT OF THE CASE**

The Newark Public School District terminated custodian Darvel Davis for conduct unbecoming a public employee, misuse of public property, neglect of duty, insubordination, and other sufficient cause.

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<sup>1</sup> Seth B. Kennedy, Esq. appeared for the April 30, 2025, June 4, 2025, and July 7, 2025, hearing dates.

## PROCEDURAL HISTORY

Darvel Davis was served with a Preliminary Notice of Disciplinary Action (PNDA) dated January 23, 2024, for conduct unbecoming a public employee, misuse of public property, neglect of duty, insubordination, and other sufficient cause. A departmental hearing was held on January 30, 2024, and the Newark Public School District (District) issued a Final Notice of Disciplinary Action (FNDA), dated February 26, 2024, sustaining the charges and removing Davis from his employment.

Davis appealed, and the Civil Service Commission transmitted the contested case to the Office of Administrative Law, where it was filed on August 2, 2024. The hearing was scheduled for January 6, 2025. The hearing was adjourned at the request of respondent, with consent, due to counsel's scheduling conflict. The hearing was rescheduled for February 20, 2025, February 24, 2025, and March 6, 2025. The February 20, 2025, and March 6, 2025, hearings were adjourned at the request of appellant, with consent, due to counsel's scheduling conflicts. The February 24, 2025, hearing was adjourned at the appellant's request, with the parties' consent, to allow time for the parties to discuss settlement. The hearing was rescheduled for April 8, 2025, April 30, 2025, and May 8, 2025. The April 8, 2025, and May 8, 2025, hearing dates were adjourned at appellant's request, with consent, due to appellant's medical treatment, and rescheduled for May 16, 2025, and June 4, 2025. The hearing commenced on April 30, 2025, but the May 16, 2025, hearing was adjourned at the joint request of the parties due to appellant's medical treatment and counsel's illness. The hearing continued on June 4, 2025. Additional hearings were scheduled for July 7, 2025, and July 9, 2025. The hearing continued on July 7, 2025, but the July 9, 2025, hearing was adjourned at the request of appellant due to appellant's hospitalization. The hearing was rescheduled for October 20, 2025, and October 22, 2025. The hearing concluded on October 20, 2025. In sum, the hearing was held on April 20, 2025, June 4, 2025, July 7, 2025, and October 20, 2025, and the record closed on January 12, 2026, upon receipt of the parties' post-hearing briefs.

## EVIDENCE AND FINDINGS OF FACT

### Background

Elvin Medina and Darvel Davis testified on behalf of appellant. Rose Inacio, Raymond Miller, Hasan Bullock, Jorge Camara, Carlos Edmundo, and Mamie Osei-Bonsu testified on behalf of respondent. Based upon a review of the evidence presented, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Darvel Davis was employed by the Newark Public School District as a custodian since 2000, and he was a head custodian (or headman) at the East Ward Elementary School (East Ward or "the building") in Newark, New Jersey for four or five years. The East Ward custodial staff consisted of a "day headman" custodian and one or two daytime custodians and a "night headman" custodian and three or four nighttime custodians. Davis was the day-headman. Jose Watley was the night headman. The headman is the supervisor of the custodial staff. Davis's hours were 6:30 a.m. to 3:00 p.m., Monday through Friday, and some overtime, if requested. Watley's hours were 2:30 p.m. to 11:00 p.m.

The "Custodian" job specification includes the following examples of work: "supervises and takes the lead in the cleaning, maintenance, and care of buildings and grounds"; "supervises and takes the lead in operation of heating and ventilating equipment"; "inspects buildings and grounds to note significant conditions and to ensure that needed work is done"; "obtains, stores, safeguards, distributes, and supervises the use of equipment, materials, and supplies, establishes and maintains records of personnel, equipment, materials, supplies, work completed and time spent"; and "reports needed repairs to the authorities." (R-3.) Custodians must have knowledge of problems, procedures, and operations involved in inspecting, analyzing, and planning building and ground maintenance and heating and ventilating work to be done and an "ability to analyze building, heating and ground maintenance problems." (R-3.) Custodians must possess a current, valid Black Seal boiler operator license of the appropriate type (high

or low pressure) issued by the New Jersey Department of Labor and Workforce Development. (R-3.) Davis has a Black Seal low-pressure boiler operator license.

East Ward is approximately half a city block in size, "capital I"-shaped, with one side on East Kinney Street and the other side on Oliver Street, and four floors. The main entrance to East Ward is on Oliver Street (main entrance or front door). Kronos is the attendance system, and employees "Kronos" or "punch" in and out for their shift with a fingerprint near the main entrance. By email dated October 10, 2023, Thomas advised all custodial staff of the "custodial standards and expectation," as follows:

Everyone must have (4) KRONOS punches, In at the start of the shift Out for Lunch In from Lunch and Out for the day. Day Sr./Custodians and Custodians must take their 1 hour lunch break before 1:30 pm and the day custodial worker must take their ½ hour lunch before 12:30 pm. Night Sr./Custodians and Custodians must take their 1 hour lunch break before 8:30 pm and the night custodial worker must take their ½ hour lunch before 7:30 pm.

Example: 6:30 am I kronos in I kronos out at 12 pm for lunch (duty free) I kronos back in 1 pm from lunch (back to work) I kronos out for the day(going home). Custodial workers receive a ½ hr. duty free lunch that must be taken before 12:00 pm. There should only be one custodial worker on lunch and break at a time.

Each custodial staff is allowed 2 ten minute breaks and a 10 minute wash up time (no standing by security desk or main entrance). All Day Custodian [sic] must take their duty free lunch before 1:30 pm.

[R-9.]

Davis was a recipient of the October 10, 2023, email. (R-9.) Davis is required to punch in for his shift, punch out for lunch, punch in after lunch, and punch out after his shift. Davis's Kronos records for July 1, 2023, through January 22, 2024, show no punches in or out for lunch on any day. (R-21.)

East Ward policy is that all staff enter and exit the main entrance throughout the school day. Security guards are stationed at the main entrance and on the different

building levels. Visitors must be buzzed into the building, show identification, sign an entry book, and then go to the main office, where the visitor is directed to the intended location.

During the 2023–2024 school year, East Ward housed approximately 650–700 students from pre-K to seventh grade and approximately 80–90 staff. Rosa Inacio was the principal of East Ward. The East Kinney side has a cafeteria on the first floor, classrooms on the second and third floors, and a gym on the fourth floor. The Oliver side has classrooms on the fourth floor. The building connects on the first, second and third floors via a walkway, but the two sides do not connect on the fourth floor. There are two parking lots. The East Ward parking lots do not face the main entrance. There are approximately three doors that face the main parking lot. There are other doors at various locations around the perimeter of the building.

Davis has an office—the custodial office—on the first floor near one of the side doors facing the main parking lot, near the “Kindergarten Entrance” door. Davis’s office is not near the main entrance. The boiler room is in the basement across from the main entrance. Three of the same sectional, low-pressure steam boilers were installed in the boiler room in 2019 or 2020. The boilers supply steam heat to the radiators throughout the building. The building is designed with a fifty percent redundancy. On a five-degree day, it would require two boilers to heat the building, and the third boiler is a backup in case another boiler is down. On a thirty-five-degree day, typically only one boiler would be required. The boilers should be alternated by the operating engineer, who is the head custodian.

The head custodian punches in and checks the boilers at the start of the day. This includes, among other things, checking the “sight glass” and “blowing down” the boilers. A clear sight glass on each boiler shows how much water is in the boiler. Cutoff switches on the boilers are a safety feature designed to shut the boiler off if there is not enough water in the boiler. Soot accumulates at the bottom of the boiler, so the soot must be blown down, and the water in the sight glass must be clear. There are valves underneath and on the side of the boilers that are opened for a minute to a minute and a half to push all the soot out. At a minimum, the head custodian is required to check the boilers at least

once every two hours. The head custodians are required to record all readings/findings in the boiler operator's logbook (boiler logbook)—which is a bound logbook with consecutively numbered pages. In addition to the daily boiler checks, there are more extensive weekly, monthly, semi-annual and annual boiler checks that are required. (R-16.) The boiler logbook is different than the custodian logbook, which was used for the daily routine.

On November 30, 2023, Davis punched in at East Ward at 6:22 a.m. He was inside East Ward for approximately ten minutes before the video shows him outside at 6:32 a.m. to open the gate to allow staff into the parking lot. A couple of hours later, Inacio received several calls from teachers on the fourth floor about a smell and "smoke" coming out of the heaters, making the classrooms and hallway very "smoky." Inacio contacted Davis to ask what was going on, and she walked upstairs to assess the situation. Two of the fourth-floor classrooms were very "smoky," and the teachers had the windows and doors open to air them out. Some teachers and students were complaining of headaches, and some were vomiting. Some students went to the nurse. Inacio moved those two classes to a different location. Davis also went upstairs, and he checked the second floor, third floor and fourth floor. On the fourth floor, he smelled a strong odor, and he went downstairs to check the boiler room. He shut down boiler #1 and boiler #3. (Boiler #2 had not been in operation.) The District's HVAC Department and Supervisor of Custodians Jorge Camara were contacted. HVAC technician Jean Beaucluche and Camara responded to the school. Boiler #3 was red-hot and charred, and the plastic and insulation were melted. The custodian logbook reflects that the boilers were shut down by Davis at 9:00 a.m. (R-13.)

Facilities Management Circular No. 1112021, revised October 4, 2022, regarding "Building/Boiler Heat Check Policy & Procedure" (Circular) states, in pertinent part, "Please note that as a Custodian/Senior Custodian you are responsible for all boilers at your location. There is no such thing as a day or night boiler insofar as operational responsibility. Your license covers the entire school location." (R-19.) The Circular is sent out each year at the beginning of heating season from the director to the head custodians and senior head custodians via email, and one is hand-delivered to each school and put in the custodian office.

The “GUIDELINES FOR LOGBOOKS COMPLIANCE TO BOILER REGULATIONS N.J.A.C. 12:90” (Guidelines) from the New Jersey Department of Labor and Workforce Development requires that “each low pressure boiler operator shall not jeopardize the safe operation of a low pressure heating boiler and shall remain on the premises”; “[a]t a minimum, the operator shall monitor the conditions of the low pressure boiler plant at least once every two hours, consistent with the requirements set forth in N.J.A.C. 12:90-3.5”; a “boiler operator’s log shall be maintained in each plant containing over 100 horsepower”; “every operator on the shift shall review the log and, at the end of each shift, shall sign the log;” “[a]ll logs shall include the date, name of operator(s) on duty, and time of relief”; and “[w]hen the operator of a low pressure plant is not in the boiler room . . . the operator shall indicate in the log periodic tours of the boiler plant as required.” (R-5.) Additionally, the Guidelines require that “low pressure boiler operator logs shall contain, at a minimum, the information as outlined in ASME Section VI, Recommended Guidelines for the Care and Operation of Heating Boilers, paragraph 6.09(b)(c)” and the “boiler operator’s logbook shall be kept in a hardbound book of the consecutively numbered type and none shall be removed under any circumstances.” (R-5.)

On December 4, 2023, Camara issued Davis a Letter of Neglect of Duty—Failure to Maintain Boiler Operator’s Log Book and Maintenance Log Book, relative to the November 30, 2023, boiler incident. (R-13.) The boiler logbook, on page 340, reflects entries by Watley on May 17, 2023, and next on October 3, 2023. (R-17.) The boiler logbook, on page 341, reflects entries by Watley on November 13, 2023, and next on December 5, 2023. (R-13.) No entries were made by any boiler operator between November 13, 2023, and December 5, 2023. (R-13.) The custodian logbook, which also contained consecutively numbered pages, reflects on page 197 entries by Watley and Davis for November 28, 2023, November 29, 2023, and November 30, 2023, and on page 199 entries by Davis, Camara, Collins and Watley for December 5, 2023, and December 6, 2023. (R-13.)

By email dated December 7, 2023, at 2:54 p.m., Inacio requested that Davis be disciplined and removed from East Ward. (R-4.)

On December 14, 2023, Camara issued Davis a Letter of Warning/Neglect of Duty stating that on December 3, 2023, he “failed to complete [his] assignment” as follows: Outside grounds on the Oliver street side: As part of your schedule you have to go outside every day, make the front of the building is clean. No weeds, bottles, cardboard, garbage etc. . . .” (R-12; R-15.)

On Saturday, December 16, 2023, Davis was working overtime because there were contractors inside East Ward. Davis punched in at 6:49 a.m. (R-21.) Clement Collins, the District’s facilities supervisor, conducted a site visit of East Ward at approximately 2:44 p.m. Davis and two unidentified men were in the custodian office. Davis was wearing a haircut cape. (R-6.) One of the unidentified men was cutting Davis’s hair, and Davis’s hair was on the floor. (R-6.) Collins contacted Camara and Wali Thomas, the District’s director of facilities. Thomas advised Collins to have the unidentified men exit through the front door and have Davis Kronos out and leave. Collins met Camara at the main entrance, and they walked to the custodian’s office, where Davis and two men were still in the custodian office, and Davis was getting a haircut. Collins instructed Davis to stop and instructed Davis that the men must immediately leave the building through the front door. The unidentified men exited instead through the door into the parking lot. Collins also instructed Davis to Kronos out and leave. Davis initially refused and asked several times to speak to Thomas, but he thereafter punched out at 2:53 p.m. (R-21.)

The District’s “USE OF SCHOOL FACILITIES” policy (Facilities Policy) reflects, in pertinent part, that “[a]pplications for facility use must be received fourteen (14) business days before the start of the activity with appropriate proof of insurance along with a hold harmless statement as a prerequisite to being considered” and that the “Board reserves the right to deny permits if they are not consistent with the above-mentioned goals and/or prohibit, rescind, modify, change or waive fees for the approved use of the facilities.” (R-11.) A permit request must be submitted to the building principal, and a permit is issued by the Office of Facilities Management after the request has been reviewed and approved. (R-11.) A request must detail the exact location in the building where the event is to occur (e.g., auditorium, cafeteria, gymnasium), the purpose of the event, names of celebrities (if applicable), and the estimated number of attendees and participants. (R-11.) When deemed appropriate by the superintendent, the requesting entity may be required to

undertake additional precautionary measures to secure the permit. (R-11.) The Board will permit the use of school facilities when such permission has been requested in writing and has been approved by the Superintendent for: A. Uses and groups directly related to the school and the operations of the school; B. Uses and organizations indirectly related to the school; C. Departments or agencies of the municipal government; D. Other governmental agencies; E. Community organizations formed for charitable, civic or educational purposes. (R-11.) The Facilities Policy reflects that the “use of school facilities shall not be granted for the advantage of any profit-making or commercial organization, private social functions, or any purpose that is prohibited by law.” For a school-based event, the school clerk requests the permit. For a facilities-related event, including renovations and repairs, Central Office Facilities requests the permit for the vendor. (R-11.) Additionally, the District’s “VISITORS” policy (Visitors Policy) reflects, in pertinent part, that “[s]tudents and staff members shall not open a door for anyone” and that “[a]ll persons seeking entry to the building shall be directed to the main entrance,” and “[a]ll parents/guardians and other visitors shall be required to present valid identification and required to report to the principal's office upon entering a district building.” (R-11.)

Davis did not submit an application for the use of school facilities. Davis did not direct the men to exit via the front door. On December 16, 2023, Thomas emailed Inacio and Osei-Bonsu and requested that Davis be placed on immediate suspension because of the November 30, 2023, boiler incident and the December 16, 2023, incident. (R-8; R-17.) On December 18, 2023, Collins issued Davis a memo regarding “Conduct Unbecoming/Insubordination” relative to the December 16, 2023, incident. (R-14.)

Per a December 18, 2023, memorandum from Scott Carbone, Director of the Office of Labor and Employee Relations, to Inacio, Davis was suspended without pay effective December 19, 2023, pending the outcome of the disciplinary charges. (R-20.)

On December 18, 2023, Inacio issued a “Violation of Protocol and Policy” memo to Davis,<sup>2</sup> stating:

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<sup>2</sup> There are two memos; one is dated December 13, 2023 (which was incorrect because the incident referred to occurred on December 18, 2023), addressed to “Mr. Darvel Davis,” and the other is dated December 18, 2023, addressed to Mr. Brian Davis.” Both refer to the same incident and appear identical

At around 10:03 AM on December 18th, as I was in the music room, I observed you entering the small lot in your vehicle. Aside from this, you entered the building via the side/back door and were carrying a bag with what appeared to be food. Upon reviewing the camera, it appears that you left the building around 9:48 AM and returned around 10:03 AM from the small lot using your vehicle. You did not notify the administration or the office that you were leaving the building during your break. This goes against District policy and protocol. During your break time, you are to notify the administration, office, and/or supervisors that you are leaving the building to run personal errands, such as picking up lunch/food. Furthermore, I have made it very clear to all staff that no one is to leave/enter via any door other than the main entrance on Oliver St. This directive is in place for everyone's safety. This also goes against District policy and protocol. These directives are in place to ensure security guards monitor who enters/leaves the building on a daily basis and to ensure everyone's safety.

Please ensure to follow proper protocol and procedure when needing to leave the building during your break to run personal errands. Furthermore, do endure [sic] you exit and enter the Main entrance only.

Your attention to this matter is expected and warranted.

[R-10.]

Davis's prior disciplinary history consists of a two-day suspension in 2006 and an eleven-day suspension in 2006. (R-23.)

### **Testimony**

The testimony of respondent's witnesses was credible and consistent with the documentary evidence and is generally reflected in the factual findings above. Accordingly, only the testimony of appellant's witnesses appears below.

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in content except that the December 18, 2023, memo states "do ensure you exit and enter via the Main entrance only," and the December 13, 2023, memo states "do endure [sic] you exit via the Main entrance only."

Elvin Medina

Medina has been employed by the Operating Engineers, Local 68, as a business agent for five years and prior thereto was employed as a building engineer. He is a licensed boiler operator, specifically a Black Seal high-pressure boiler license. He reviewed copies of the boiler logbook. Neither Watley nor Davis was maintaining a daily boiler logbook. To his knowledge, Watley was not disciplined for failure to maintain the logbook. The cutoff switch was not working because the boiler would have shut off, and it would not have become hot and burned up.

Darvel Davis

Davis's shifts consisted of arriving, turning off the alarm, punching in, checking the boiler room, opening gates for both parking lots, letting cafeteria workers in, going to his office, checking the custodian logbook for any emergencies to deal with, walking the building to verify no leaks and heat in the classrooms (in winter), assessing everything to make sure it is functional for children to come into the building, and then going outside to do the grounds work. His responsibilities in the boiler room were to check the boilers, including checking the sight glass at the front of the boilers to make sure the water is at operating level, blowing down the boilers to verify the pumps are operating correctly, and making sure the boilers start back up and are running properly. When water is taken out of the boilers, it hits the low water cutoff, which sounds an alarm. After the boiler is closed back up, the water comes back to operating level. Boilers are supposed to be checked every two hours, but it is an active building, and sometimes there are situations that arise, like spills, but he tries to get to the boiler room every two to two and one-half hours to assess the boilers. At the start of boiler operating season, there is supposed to be a new boiler logbook. There was no boiler logbook as of November 30, 2023, so he wrote everything in the custodian's logbook. The November 13, 2023, boiler logbook entry from Watley was "back-logged"—entered after the boiler incident.

On November 29, 2023, only boiler #1 was running. He checked the weather and called Watley and told Watley to run boiler #1 and boiler #3 because the temperature was supposed to drop. Watley said he would run both boilers. When he arrived on November

30, 2023, he checked the sight glass, and the water was at operating level for boiler #1 and boiler #3. He blew down both boilers, the alarm was working, the water refilled to operating level, and both boilers were operating properly. Then he left the boiler room. After he let staff into the building, he went to his office to check the custodian's logbook to see if there was anything that needed to be addressed, but there were no issues reported. He finished walking the grounds, returned to his office, and made entries in the custodian logbook. He did not make entries in the boiler logbook because there was no boiler logbook at that time. At the end of June, he had verbally asked Camara for a new boiler logbook for the next season. Later, when he went back to the boiler room and shut down the boilers, no alarm was ringing. The boiler malfunctioned. If the low water cutoff switch was operating properly, the boiler should have shut itself off.

They want him to punch in and out for lunch, but the contract does not require him to punch in and out, so he does not punch in and out for lunch. He was never disciplined for not punching in and out for lunch prior to December 13, 2023. He can leave the building for lunch without letting anybody know. He has keys for and access to every door in the building, so he can go in and out of any door. All doors are used for deliveries.

On December 16, 2023, he reported to East Ward for overtime because there were contractors in the building. He performs his same daily routine on overtime. The contractors used the main entrance. He could have taken lunch, but he tries not to leave the building when it is just him and contractors. His cousin agreed to cut his hair at lunchtime in the custodian office. He did not think it was going to be an issue. He would get the haircut in his office, and there is a door to the large parking lot just outside his office. His cousin and brother came to the large parking lot by his office at around 1:00–1:30 p.m. They came in the door near his office and did not go anywhere other than his office. They did not sign in. They exited through the front door because Collins said they had to, even though there was a door by his office to where their cars were parked. He was the only East Ward employee there that Saturday, but the contractors were part of Newark Public Schools. The chain of command goes principal, then vice principal, and then head custodian. If the principal and vice principal are not there, he makes the decisions for the day, and he did not need permission to have his cousin or brother there that day.

## LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 11A:1-1 through 12-6, the "Civil Service Act," established the Civil Service Commission in the Department of Labor and Workforce Development in the executive branch of the New Jersey State government. N.J.S.A. 11A:2-1. The Commission establishes the general causes that constitute grounds for disciplinary action and the kinds of disciplinary action that may be taken by appointing authorities against permanent career service employees. N.J.S.A. 11A:2-20. N.J.S.A. 11A:2-6 vests the Commission with the power, after a hearing, to render the final administrative decision on appeals concerning removal, suspension or fine, disciplinary demotion, and termination at the end of the working test period of permanent career service employees.

N.J.A.C. 4A:2-2.2(a) provides that major discipline shall include removal, disciplinary demotion, suspension or fine for more than five working days at any one time. An employee may be subject to discipline for reasons enumerated in N.J.A.C. 4A:2-2.3(a), including "insubordination," "conduct unbecoming a public employee," "neglect of duty," "misuse of public property," and "other sufficient cause." N.J.A.C. 4A:2-2.3(a)(2), (6), (7), (8), and (12).

The Notice of Disciplinary Action reflects that Davis was charged with conduct unbecoming a public employee, misuse of public property, neglect of duty, insubordination, and other sufficient cause. In appeals concerning such major disciplinary actions, the burden of proof is on the appointing authority to establish the truth of the charges by a preponderance of the believable evidence. N.J.A.C. 4A:2-1.4; N.J.S.A. 11A:2-21; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

N.J.A.C. 4A:2-2.3(a)(6) does not define conduct unbecoming, but courts have held that conduct unbecoming a public employee is "any conduct which adversely affects . . . morale or efficiency . . . [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (quoting In re Zeber, 156 A.2d 821, 825 (1959)); Karins v. Atl. City, 152 N.J. 532, 554 (1998). A finding of conduct unbecoming need not be predicated upon violation of any 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. In re Emmons, 63 N.J. Super. at 140. What constitutes conduct unbecoming a public employee is primarily a question of law. Karins v. Atl. City, 152 N.J. at 553.

Davis was charged with conduct unbecoming a public employee, neglect of duty, insubordination, and other sufficient cause related to the boiler incident. Raymond Miller, supervising HVAC mechanic for the District, credibly testified that he arrived at East Ward approximately two hours after the boiler issue was reported to him, and the boiler was still too hot to remove the panels, even with gloves, so he knew it had been operating dry for a long time, and testified that after another hour, when he was able to remove the panels, he observed the rope was burned out—which can result in a carbon monoxide issue—and the rubber gaskets were also burned out. Miller conceded that sensors do fail and that the primary and secondary low water cutoffs failed and did not shut the boilers down. However, he also credibly testified that the water line was filled with mud and sediment, and therefore the boiler could not have been blown down during Davis's shift. Miller further testified that the boiler would not have shut off during the blow down because the pipes were filled with mud, and it could not have become that clogged if it had been regularly blown down. In view of Miller's testimony and that Davis did not record any readings/findings in the boiler logbook, Davis's testimony that he performed the legally required boiler checks was not credible. It is implausible that a boiler, allegedly blown down, with no sediment and sufficient water, operating properly at 6:30 a.m., was completely clogged with sediment and without water, red-hot and melted, with fumes already affecting the fourth floor before 9:00 a.m. Further, since checks are required at a minimum of every two hours, if Davis had already completed the initial boiler check by 6:32 a.m., another check should have been performed by 8:32 a.m., and the malfunction would have been identified earlier, and the boiler could have been shut down earlier.

Davis's testimony that there was no boiler logbook at that time is not credible because the boiler logbook contains entries from May 2023 and October 2023. While it does appear that there were failures on the part of multiple individuals relative to the boilers—as it is evident that neither Davis nor Watley was complying with the regulations or District policies relative to checking the boilers and logging the readings/findings and it

appears that no director/supervisor was checking the boiler logbook given the significant gaps in time—this does not absolve Davis of his licensed boiler operator duties or custodian duties. His failure to blow down and monitor the boilers and log his readings/findings created a serious safety risk to the East Ward occupants, including hundreds of children, and resulted in significant property damage.

Regarding the boiler incident, I **CONCLUDE** that the respondent has proven, by a preponderance of the credible evidence, the charges of conduct unbecoming a public employee and neglect of duty.

Davis was charged with conduct unbecoming a public employee, misuse of public property, neglect of duty and insubordination relative to the haircut incident. There can be no dispute that Davis received a haircut while on duty or that Davis allowed two unauthorized, unidentified men into a public school. Although Davis testified that the haircut occurred during his lunch break, the timing of the haircut was well after his lunch was to have been taken, and he did not punch in or out for lunch. Thomas's October 10, 2023, email clearly stated that four Kronos punches per day are required, including "out for lunch" and "in from lunch," that "Day Sr./Custodians must take their 1 hour lunch break before 1:30 p.m.," and again, that "all Day Custodian [sic] must take their duty free lunch before 1:30 pm." (R-9.) Davis neglected to make any boiler logbook entries, and he was receiving a haircut instead of performing his job duties. Although Davis testified that the men exited through the front door, Camara credibly testified that they exited the back door to the parking lot. Collins was also present, and his December 18, 2023, memo to Davis reflects that the men exited through the back door to the parking lot. Thus, despite being instructed by his superiors to have the men exit through the front door, Davis did not comply, and Davis initially refused to comply when instructed to punch out via Kronos for the day. The neglect of duty and insubordination aside, allowing unauthorized, unidentified individuals into a school is an egregious violation of the District's Facilities Policy and Visitor Policy and an egregious safety threat.

Regarding the haircut incident, I **CONCLUDE** that the respondent has proven, by a preponderance of the credible evidence, the charges of conduct unbecoming a public employee, misuse of public property, neglect of duty and insubordination.

Davis was also charged with conduct unbecoming a public employee and insubordination for not utilizing the main entrance or punching in and out for lunch. Although Davis testified that he was not required to punch-in and out for lunch, and that he was allowed to use any door because he had keys, the testimony and documentary evidence reflect that Davis was required to utilize the main entrance and to punch out and in for lunch. Accordingly, I **CONCLUDE** that the respondent has proven, by a preponderance of the credible evidence, the charges of conduct unbecoming a public employee and insubordination. Finally, I **CONCLUDE** that the respondent has proven the charge of "other sufficient cause," as the record reflects that Davis's conduct was unprofessional and compromised the operational integrity of East Ward.

With respect to the penalty, the Civil Service Commission may increase or decrease the penalty imposed by the appointing authority, though removal cannot be substituted for a lesser penalty. N.J.S.A. 11A:2-19. When determining the appropriate penalty, the Commission must utilize the evaluation process set forth in West New York v. Bock, 38 N.J. 500 (1962), and consider the employee's reasonably recent history of promotions, commendations, and the like, as well as formally adjudicated disciplinary actions and instances of misconduct informally adjudicated. Since West New York v. Bock, the concept of progressive discipline has been utilized in two ways when determining the appropriate penalty for present misconduct: to support the imposition of a more severe penalty for a public employee who engages in habitual misconduct, and to mitigate the penalty for a current offense. In re Herrmann, 192 N.J. 19, 30-33 (2007). However, in an instance where an employee commits an act sufficiently egregious, removal may be appropriate notwithstanding the lack of a prior history of infractions. See, e.g., In re Herrmann, 192 N.J. 19. According to the Supreme Court, progressive discipline is a worthy principle, but it is not subject to universal application when determining a disciplined employee's quantum of discipline. Id. at 36.

Although progressive discipline is a recognized and accepted principle that has currency in the [Civil Service Commission's] sensitive task of meting out an appropriate penalty to classified employees in the public sector, 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.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580, 410 A.2d 686 (1980); Bowden v. Bayside State Prison, 268 N.J. Super. 301, 306, 633 A.2d 577 (App. Div. 1993), certif. denied, 135 N.J. 469, 640 A.2d 850 (1994).

[Id. at 33–34.]

The theory of progressive discipline is not a fixed and immutable rule to be followed without question, as some disciplinary infractions are so serious that removal is appropriate, notwithstanding a largely unblemished prior record. In re Carter, 191 N.J. 474, 484 (2007). The Supreme Court has noted that “the question for the courts is ‘whether such punishment is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one’s sense of fairness.’” Ibid. (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). The Supreme Court also noted that the Appellate Division has likewise acknowledged and adhered to this principle, upholding dismissal where the acts charged, regardless of prior discipline, warranted the imposition of the sanction. Id. at 485.

Davis has prior disciplinary history consisting of a two-day suspension in 2006 for neglect of duty and incompetency, inefficiency or failure to perform duties, and an eleven-day suspension in 2006 for neglect of duty and incompetency, inefficiency or failure to perform duties, insubordination and other sufficient cause. Despite no formal disciplinary history since 2006, of paramount concern are Davis’s job functions, which include the operation of potentially hazardous equipment, and his job location, which is inside an elementary school. State boiler operator regulations and District policies, including the Guidelines, required that Davis, a licensed boiler operator, check the boiler

and document those checks, and he failed to adhere to those regulations and policies—which are imperative due to the potentially hazardous nature of the equipment. In addition to his overall failure to perform required checks, including blowing down the boilers, on November 30, 2023, the boilers likewise had not been checked in more than two hours, and boiler #3 was red-hot and melted, resulting in fumes that caused adverse health effects in staff and students, and there was potential for carbon monoxide, fire or explosion. Accordingly, I **CONCLUDE** that these failures—regardless of whether Watley or others had also failed to properly maintain or check the boiler logbook—and Davis's complete disregard of safety requirements and protocols were sufficiently egregious to warrant termination.

The boiler incident aside, of utmost concern is that Davis allowed two unidentified, unauthorized individuals into a school. Davis's testimony that the haircut was during a break is not persuasive—he was not permitted to take a lunch break after 1:30 p.m., and he was not punched out for lunch. Further, even if the record established that it was before 1:30 p.m. and that he was punched out for lunch, this would in no way negate the egregious breach of safety and security policies and protocols. Allowing unidentified, unauthorized individuals into a school is inexcusable. While there is no allegation that the men were anywhere but the custodian's office or that anything beyond a haircut occurred, allowing any individuals inside a school without the knowledge or authorization of the District opens the school to safety and security breaches. That it was a Saturday and no children were present is of no moment, as any unidentified, unauthorized individuals could introduce drugs or weapons into the school or gain access to restricted areas. Davis's testimony that he was in charge and did not need authorization because the principal and assistant principal were not present is extremely concerning. Further, Davis's failure to recognize that he does not have the authority to circumvent District policies, even if he is the only employee on site, and Davis's failure to acknowledge the serious safety implications of his conduct are far more alarming. Davis has demonstrated a general lack of regard for directives from superiors and District policies, including those pertaining to safety and security. The potential future risk of harm renders Davis entirely unsuitable for continuation in his position in a school. Accordingly, I **CONCLUDE** that his termination by the District should be affirmed.

**ORDER**

I hereby **ORDER** that the charges of conduct unbecoming a public employee, misuse of public property, neglect of duty, insubordination, and other sufficient cause are **SUSTAINED** as set forth above, and the penalty of termination 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.



May 7, 2026  
DATE

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KELLY J. KIRK, ALJ

Date Received at Agency:

May 7, 2026

Date Mailed to Parties:

May 7, 2026

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**APPENDIX**

**List of Witnesses**

**For appellant:**

Rose Inacio  
Raymond Miller  
Hasan Bullock  
Jorge Camara  
Carlos Edmundo  
Mamie Osei-Bonsu

**For respondent:**

Elvin Medina  
Darvel Davis

**Exhibits in Evidence**

**For appellant:**

None

**For respondent:**

R-1 PNDA  
R-2 FNDA  
R-3 Job description  
R-4 Inacio email, dated January 10, 2024  
R-5 Guidelines for Logbook Compliance to Boiler Regulations N.J.A.C. 12:90  
R-6 Haircut photos  
R-7A Video #1 November 30, 2023  
R-7B Video #2 November 30, 2023  
R-7C Video #3 December 16, 2023

- R-8 Thomas email, dated December 16, 2023
- R-9 Thomas email, dated October 10, 2023
- R-10 Memos (2) to Davis, dated December 13/18, 2023
- R-11 Facilities Policy & Visitor Policy
- R-12 Memo (Camara) to Davis, dated December 14, 2023
- R-13 Memo (Camara) to Davis, dated December 4, 2023 & Logbook Entries
- R-14 Memo (Collins) to Davis, dated December 18, 2023
- R-15 Memo (Camara) to Davis, dated December 14, 2023
- R-16 Boiler Operator's Logbook Documentation
- R-17 Thomas, Inacio and Chavis emails, dated December 2023
- R-18 Boiler logbook entries
- R-19 Facilities Management Policy No. 1112021
- R-20 Memo (Carbone) to Inacio, dated December 18, 2023
- R-21 Kronos records, dated July 1, 2023, to January 22, 2024
- R-22 Boiler room photos
- R-23 PeopleSoft Data Prior Disciplinary History