A-2

STATE OF NEW JERSEY

In the Matter of Jianna Diggs Newark Public School District CSC DKT. NO. 2016-1806 OAL DKT. NO. CSV 20745-15	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**

ISSUED: MAR 10 2017 **BW**

The appeal of Jianna Diggs, Teachers Aide, Newark School District, removal effective May 26, 2015, on charges, was heard by Administrative Law Judge Thomas R. Betancourt, who rendered his initial decision on February 3, 2017. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on March 9, 2017, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

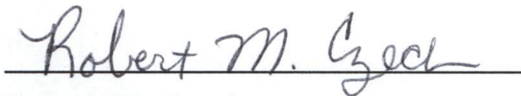
ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Jianna Diggs.

Re: Jianna Diggs

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
MARCH 9, 2017



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 20745-15

AGENCY DKT. NO. CSC 2016-1806

JIANNA DIGGS,

Appellant,

v.

NEWARK PUBLIC SCHOOL DISTRICT,

Respondent.

Joseph Fusella, Esq., appearing for appellant

Bernard Mercado, Esq., for respondent (Newark Public Schools)

Record Closed: January 13, 2017 Decided: February 3, 2017

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Jianna Diggs, appeals a Final Notice of Disciplinary Action, dated November 5, 2015, imposing a penalty of removal for Conduct Unbecoming a Public Employee, Neglect of Duty, Inability to Perform Duties and Other Sufficient Cause.

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 December 16, 2015.

A Prehearing Order, dated January 20, 2016, was entered by the undersigned. A hearing was held on December 2, 2016. The record was kept open for counsel to submit written summations. Both appellant's and respondent's written summations were filed with the OAL on January 13, 2017. The record was closed on January 13, 2017.

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 a removal is warranted.

STIPULATED FACTS

1. Appellant was employed by respondent, State-Operated School District of the City of Newark (District) as a Teacher Aide commencing on or about March 4, 2002.
2. At all material times, appellant was assigned to the South 17th Street School as a Teacher Aide.
3. On May 4, 2015, appellant was on duty as a Teacher Aide at the South 17th Street School.
4. Appellant's son, G.D., attended the same school that appellant worked in as a Teacher Aide.

SUMMARY OF RELEVANT TESTIMONY

Respondent's Case

Quadriyyah Williams testified as follows:

She is the Chief Innovation Officer for the South 17th Street School. She is responsible for the daily operation of the school.

Teacher Aide shifts start at 8:20 a.m. and end at 2:55 p.m. Teacher Aides are required to stay until the end of their shift. Teacher Aides require prior authorization from their supervisor to leave early. They are required to act appropriately in front of students. They are role models. Use of profanity, making threats, and being disruptive is not permitted.

Ms. Williams knows the appellant.

On May 4, 2015, she was advised that two male eighth-grade students were in a fight. She went upstairs to the eighth-grade classroom with a security guard. When she arrived the fight was over. One of the students, G.D. that engaged in the fight was the son of appellant. She spoke with both students. She advised them that fighting is an automatic suspension. She asked both if the matter was settled. While one of the students said the matter was settled, G.D. stated it was not.

After the conversation, she sent G.D. to the classroom where his mother was working as a Teacher Aide. Ms. Williams then went to the office to have a clerk type a report to give to the students' parents before school let out.

At this point, she heard appellant using profanity in the hallway. She was saying things like "Ain't going down this way," "Not my f***ing son," "I'm punching the f**k out." Appellant was with her son at this time. Ms. Williams asked them to go into the principal's office to talk about what happened. Appellant was screaming. She stated "You see my son's face," I am going to have him fight him until his f***ing face looks like that." Appellant was screaming when she made these statements. Ms. Williams perceived the statements by appellant as threats and thought them inappropriate.

Ms. Williams could hear appellant screaming from down the hallway. Everyone in the office heard her. There were children in the hallway at this time.

Assistant Principal Ramey then entered the office and tried to calm down appellant. At this point appellant stated "my people are going to come around and f**k him up," meaning the other student. Ms. Ramey was not able to calm appellant. Ms. Ramey walked appellant from the office. Appellant remained furious at this time. Ms. Ramey walked appellant and her son out of the school.

She then called the other student's parents to advise them of the threat by Appellant. She and security escorted the other student to the school bus.

Appellant had clocked out of work at 2:34 p.m. Her shift ends at 2:55 p.m. Appellant did not have authorization to leave early. Leaving early created a classroom disruption. Appellant needed to assist the students to get ready to leave upon dismissal.

She did notice that G.D. had a red mark on his face. She observed no other injuries to G.D. She did not observe any injury to the other student. She does not believe G.D. was sent to the school nurse. Generally, an injured student would be sent to the nurse. She is unsure why G.D. was not. G.D. was sent to his mother as he was still making threats. She thought it was more important to diffuse the situation then send G.D. to the nurse. Appellant never asked for her son to see the nurse.

Appellant works in the kindergarten class. School was still in session when she sent G.D. to appellant in her classroom. This was not the first time G.D. was sent to his mother's classroom when he was involved in something at school. In hindsight, she would not have sent G.D. to appellant on this occasion. Sending G.D. to appellant disrupted the kindergarten class.

She did not speak with the kindergarten teacher the day of the incident. She did speak with the teacher thereafter. She was not aware that the teacher permitted appellant to leave the classroom. The teacher told Ms. Williams that appellant was acting "crazy."

Ms. Williams agreed she is responsible to report violations of the law to the police. She did not report this incident to the police. If a fight can be resolved at the school level she does not contact the police.

Marie Ramey testified as follows:

She is the Vice Principal of the South 17th Street School. She is the supervisor for grades kindergarten through third grade. This includes teachers and support staff.

A teacher aide has much responsibility. They must assist the teacher when students arrive; prepare for lessons; assist with breakfast; make photocopies; assist with lessons; take students to the bathroom; monitor lunch; get students ready for dismissal; and, assist with other activities. The shift is from 8:20 a.m. to 2:55 p.m.

Should a teacher aide wish to leave early the protocol is to request the same from their immediate supervisor. The protocol is reviewed yearly with staff. Leaving early has a negative impact.

It is inappropriate to use profanity, yell, or scream. This is outside the standard of conduct. There is zero tolerance for threats, bullying, or violence. This is always reviewed with staff. This is disruptive to the instructional environment.

Standards are reviewed every year and staff sign off on them. They are also reviewed during the school year at staff meetings.

Students at the South 17th Street School come from a "tough environment."

Ms. Ramey is appellant's supervisor. She knows G.D. She authored the incident report regarding this matter.

She was summoned to the main office. As she was walking there, she heard loud talking in the principal's office. Appellant was out of control. She was screaming,

yelling, and cursing. Appellant was very upset with what happened with her son. She was irate and unstable. There were children in the hallway. Ms. Ramey tried to get appellant to calm down, but was not successful.

After appellant and her son left the school, she was going back to her office when she was summoned by security who advised that appellant and her son were still on school property. Ms. Ramey went outside and asked appellant why she was still there. Appellant replied that she was waiting for a ride. Thereafter appellant and G.D. walked down the street.

Ms. Ramey does not recall if appellant asked for her son to see the school nurse. Protocol is to send a student to the nurse if he or she is hurt in a fight.

Appellant punched out at 2:34 p.m. the day of the incident. She punched out early without authorization. Leaving early causes disruption in the classroom as teacher aides assist students for dismissal.

Appellant's actions were unprofessional, irresponsible, and inappropriate.

Ms. Ramey prepared performance evaluations of appellant, which were generally favorable. Evaluations do not have anything to do with appellant's conduct.

G.D. was sent to his mother's classroom in the past. Appellant had a calming effect on him.

Appellant's Case

Jianna Diggs, Appellant, testified as follows:

She is employed at the South 17th Street School as a teacher aide. She has been so employed for nineteen years. She is assigned to Ms. Cavalaro's kindergarten

class. She has no prior disciplinary history. She receives semi-annual evaluations, many of which were prepared by Ms. Ramey.

She saw her son come into her classroom with a black eye. She spoke with her son and then told the kindergarten teacher that she was leaving. She said, "I have to be a mother at this point." The teacher expressed no displeasure with her leaving.

She clocked out and was going to speak with someone in the office. She had just returned to work after a five-day bereavement period.

She works hard and diligently. She became irate when her son was sent to her classroom unescorted. Her son told her he walked there by himself. She was "fussing" at him, using vulgar language, and "cussing" him out. She confirms her shift ends at 2:55 p.m. and that she clocked out early. She then went to the main office as she wanted to speak with someone. She admits to using vulgar language. She states she was angry that her day was interrupted. She works very hard to get things accomplished. She was also upset that her son was not sent to the nurse.

She speaks with a strong voice. "When I speak, I speak with power." She admits to being very irate. She denied threatening the other student. She did say some things. She stated, "Yes, I am from the hood." She explained her comment was not meant as a threat, but something that could happen.

Ms. Diggs stated that Ms. Williams was upset with her that day, and "had every right to be upset with me."

She stated she had an agreement with Mr. Allen, the principal, when her son would go to see her. She stated everyone knew how to handle him, referring to her son.

Ms. Ramey had come into the office to try and calm her down. She confirms that she was cursing in the hallway, and stated she could not control herself at that time.

Ms. Diggs was upset that her son could not have been kept in the office. She was in her classroom working. She became irate. She felt as though she did not receive the proper respect. She was irate that day.

Ms. Diggs agreed that her actions were inappropriate. She lays blame on several factors: She had just returned from bereavement where she buried her grandmother; Ms. Williams should have kept her son in the office and waited for school to be over before summoning her to the office; and, she was interrupted during work.

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).

Ms. Williams testified in a straightforward, direct, and calm manner. She related the facts of the incident as she observed them. Nothing in her demeanor or manner

suggested that she was not merely relating what she observed. I deem her very credible.

Likewise, Ms. Ramey testified in a straightforward, direct, and calm manner. She too simply related the facts as she observed them. I deem her also very credible.

Ms. Diggs's testimony is problematic. While she does not dispute the basic facts regarding her behavior, the explanation she provides for why she acted as she did make little sense, and are not believable. She maintained that she was more upset that G.D. was sent to her classroom as it disrupted her job than the fact that he was in a fight. She further maintained that her comments regarding the threat were misinterpreted. Neither explanation makes sense. Both defy credulity. She blames Ms. Williams for causing the problem by not keeping G.D. in the office until after school. She admits to saying what she said, but maintains it was taken out of context. She was at times hostile. I deem her not credible. Her explanations for her actions are simply not believable.

FINDINGS OF FACT

I **FIND** the following **FACTS**:

On May 4, 2015, appellant's son, G.D. was engaged in a physical altercation with another student in the eighth-grade classroom. Ms. Williams responded to the classroom and removed the two students to her office where she spoke with them. G.D. informed Ms. Williams that the matter was not over. Ms. Williams then sent G.D. to appellant in the kindergarten classroom where appellant worked as a Teacher Aide. It was not uncommon for G.D. to go to his mother in the classroom.

Upon G.D.'s arrival at appellant's classroom appellant became irate and began to loudly use vulgar and profane language in the presence of students. Appellant continued to use vulgar and profane language while waking in the hallway towards the main office her son.

Appellant threatened the other student, in a vulgar and profane manner, with physical violence.

Appellant was requested to calm herself by Ms. Williams, and later by Ms. Ramey. Appellant did not calm herself, but continued to use vulgar and profane language in a loud manner.

Appellant's shift on May 4, 2015, was from 8:20 a.m. to 2:55 p.m. Appellant clocked out at 2:34 p.m. without permission. This is a violation of school protocol. Appellant neglected her duty by leaving early, and thereby rendered herself unable to perform her duties as a teacher aide.

Appellant's actions on May 4, 2015, were entirely of her own choosing. Her actions were wholly inappropriate and unprofessional.

Appellant's conduct on May 4, 2015, was not a single outburst when confronted with unpleasant information. It was, rather, a sustained tirade, wholly avoidable but for her actions, that lasted for some time, in the presence and earshot of students, faculty, and staff.

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).

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. 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).

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, supra, 26 N.J. at 275. The burden of proof falls on the appointing authority in enforcement proceedings to prove a violation of administrative regulations. Cumberland Farms, supra, 218 N.J. Super. at 341. The respondent must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings. Atkinson, supra, 37N.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 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)(7); inability to perform duties in violation of N.J.A.C. 4A:2-2.3(a)(3); and, other sufficient cause in violation of N.J.A.C. 4A:2-2.3(a)(11). It is not necessary to engage in an exhaustive analysis of what constitutes the above behavior. Clearly, appellant is guilty of the charges, as she readily admitted in her testimony. The question is what the appropriate discipline is.

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. W. 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 Herrmann, 192 N.J. 19, 33-34 (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. N. Princeton Developmental Center, 96 N.J.A.R.2d (CSV) 463, 465.

In Bock, supra, 38 N.J. at 522, 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." Herrmann, supra, 192 N.J. at 29 (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 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.
>
> [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." Id. 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.

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, Commission (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-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 individual's 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/>.

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.

In deciding what penalty is appropriate, the courts have looked toward the concept of progressive discipline. In Bock, supra, 38 N.J. at 523-24, 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 no prior disciplinary record. Further, appellant has received generally good evaluations during her eighteen years of employment. However, appellant's actions were egregious. This was not a simple outburst. This was a sustained act which included profanity in a school setting with children present, a threat against another student, and a refusal to control herself even though given ample opportunity and requests to do so. Further, appellant is unable to accept full responsibility for her actions.

Based upon the above authorities, I **CONCLUDE** that progressive discipline should not apply. Here, appellant's actions were so egregious, coupled with her inability to accept full responsibility for actions, that removal is warranted.

ORDER

It is hereby **ORDERED** that appellant's appeal is **DENIED**.

It is further **ORDERED** that the Final Notice of Disciplinary Action, dated November 5, 2015, providing for a penalty of removal, effective May 26, 2015, 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.

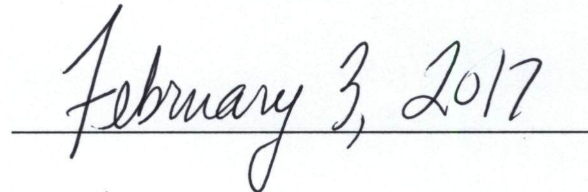
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, P.O. Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 3, 2017

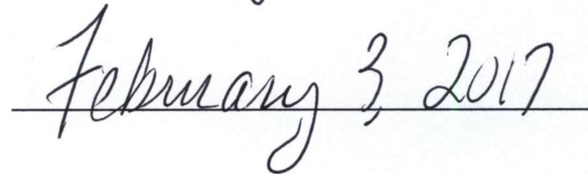
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:



Date Mailed to Parties:



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APPENDIX

List of Witnesses

For Appellant:

Jianna Diggs

For Respondent:

Quadriyyah Williams

Marie Ramey

List of Exhibits

Joint Exhibit:

Joint Stipulation of Facts

For Appellant:

A Appellant Evaluation (January 3, 2012 to June 25, 2012)

B Appellant Evaluation (January 3, 2011 to June 28, 2011)

C Appellant Evaluation (September 6, 2011 to December 23, 2011)

D Appellant Evaluation (January 2010 to June 2010)

E Appellant Evaluation (January 2009 to June 2009)

F Appellant Evaluation (January 2008 to June 2008)

G Appellant Evaluation (September 2007 to January 2008)

H Appellant Evaluation (January 2007 to June 2007)

I Appellant Evaluation (September 2006 to December 2006)

J Appellant Evaluation (January 2005 to June 2005)

K Appellant Evaluation (January 2005 to June 2005)

L Appellant Evaluation (January 2004 to June 2004)

M Appellant Evaluation (January 2003 to June 2003)

N Appellant Evaluation (December 2001)

O Appellant Evaluation (September 2000 to December 2000)

P Incident Report (V.P. Marie Ramey)

Q Incident Report (Teacher Trevor Scott)

R Time Detail Report (Jianna Diggs)

For Respondent:

A Preliminary Notice of Disciplinary Action with attached specifications dated June 19, 2015

B Final Notice of Disciplinary Action dated November 5, 2015

C Newark Public Schools File Code Policy 4119.22, Conduct and Dress Code

D District Incident Report by V.P. Marie Ramey, dated May 4, 2015 (identical to Appellant's Exhibit P)

E School Leadership Team Incident Report dated May 5, 2015 (identical to Appellant's Exhibit Q)

F Kronos Time Detail Report for Appellant (identical to Appellant's Exhibit R)