



## STATE OF NEW JERSEY

In the Matter of Melvin Finley,  
Newark School District

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-2459  
OAL Docket No. CSV 10901-22

ISSUED: AUGUST 14, 2024

The appeal of Melvin Finley, Security Guard, Newark School District, removal, effective April 19, 2021, on charges, was heard by Administrative Law Judge Danielle Pasquale (ALJ), who rendered her initial decision on July 9, 2024. Exceptions were filed on behalf of the appellant and a reply was filed on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on August 14, 2024, adopted the ALJ's Findings of Facts and Conclusions and her recommendation to uphold the removal.

Upon its *de novo* review of the ALJ's initial decision as well as the entire record, including the exceptions filed by the appellant, the Commission agrees with the ALJ's determinations regarding the charges, which were substantially based on her assessment of the credibility of the testimony of the witnesses. In this regard, the Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient

credible evidence or was otherwise arbitrary. See *N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 *N.J. Super.* 527 (App. Div. 2004).

As to the credibility, the ALJ found:

Having had an opportunity to observe the demeanor of the witnesses and the corresponding consistent video testimony, it is my view that Mr. Stewart, Mr. Bullock, Executive Director Holmes as well as Ms. Alvarez were highly credible. Their testimony was clear, truthful and their investigation was not speculative, but rather completely thorough and fully documented before any charges were lodged against Finley. Their testimony regarding the March 20, 2021 abandonment was clear and concise and corroborated by the video evidence as reviewed in detail at the hearing during their testimony and as noted in their written documentation, and thus I **FIND** their versions as fact in this matter and gave them enormous weight.

In contrast, I **FIND** the testimony of Finley to be wholly incredible. He admits to leaving the post and not letting anyone but the custodian know of his departure. He knew this was not the protocol. First, he would not even concede that his supervisor was Mr. Stewart even though he admitted, and it is undisputed that he texted Stewart to obtain both overtime shifts that day. Next, his first mention of having Covid as a reason for leaving was during his testimony. In fact, he floundered about whether he had a COVID test or not, although he certainly did not follow the protocol regarding testing or exposure. He then recounted a wholly unbelievable story about not being able to contact his supervisor Stewart or dispatch because he was so sick, he "did not even know where he was". He testified that staying there in his altered state and exposing them (students) to him would be more dangerous for the students than his fully abandoning and not covering the post. In fact, he said he was too sick to text his supervisor but had no problem notifying the custodian. Finley knew from his recent history of similar infractions and subsequent suspensions and training that the only option was to approach a superior and get his shift covered. The version that is more believable is that he simply left the post and did not have it covered. In fact, my review of the video shows an unhampered and well man who is walking to his car without assistance with his belongings in hand. He was able to open his passenger door and get his things in and then get into the driver's seat without incident. He drove off the lot and was certainly ambulating with no problem and thus I so **FIND**. Again, the video evidence presented was comprehensive and the witnesses for the District were professional and dispassionate, and corroborative. They were clear on the Finley's job description, his abandonment and the training given and received in order to combat the known security issues at Barringer. None of the witnesses appeared to

dislike Finley, but rather they had to report what they observed and confirmed by their research and investigation as part of their supervisory responsibilities, and I thus I **FIND** them to be highly credible witnesses. Furthermore, I have no doubt that Finley knew the protocol for leaving a post due to his training and due to his recent prior discipline. Again, Finley was caught abandoning his post as we watched along on the video coverage. In addition, after he left, we watched the parts of the video proving that there were students still in the building for hours unattended by any security guard, and thus I so **FIND**.

Upon its review, the Commission finds nothing in the record or the appellant's exceptions to demonstrate that the ALJ's credibility determinations, or her findings and conclusions based on those determinations, were arbitrary, capricious or unreasonable. Accordingly, the Commission adopts those findings.

The only other issue in this matter is the proper penalty to be imposed. 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.

In the initial decision, the ALJ noted the appellant's disciplinary history, including prior major disciplines, including infractions similar to the misconduct at bar. Ultimately, the ALJ stated:

Under the circumstances, I **CONCLUDE** major discipline is the appropriate discipline, and I am persuaded that removal is required as there is recent and extensive progressive discipline history including repeat similar offenses listed in the instant matter. Furthermore, due to the fact that Finley was recruited by his employer to come to Barringer High School from Westside because of his special knowledge and training to help manage the well-known gang activity and dangerous events that were known to Finley by his own admission; he assumed the risk of abandoning his post without coverage and knew with students left in the building what could happen in accordance with the credible testimony, documentary and video evidence outlined above as well as his own admissions in court. Accordingly, I **FURTHER CONCLUDE** that the penalty of removal is the only one available to me or the District in this matter as the previous minor and major disciplines, respective recent suspensions and corresponding training and counseling did not rectify his behavior. In fact, the most-recent discipline occurred just prior to and included language that no further violations would be tolerated and may result in removal.

The Commission agrees that removal is the proper penalty in this matter. The appellant's infractions are of significant concern. Indeed, his actions posed a serious safety and security risk in a school setting. Moreover, the appellant's documented disciplinary history, including infractions similar to the case at hand, makes imposing a lesser penalty unlikely to impress upon the appellant the serious nature of his misconduct. Accordingly, the Commission finds the penalty of removal neither disproportionate to the offense nor shocking to the conscious.

ORDER

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

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 14<sup>TH</sup> DAY OF AUGUST, 2024



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Attachment



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

**INITIAL DECISION**

OAL DKT. NO. CSV 10901-22

AGENCY REF. NO. 2022-2459

**IN THE MATTER OF MELVIN FINLEY,  
NEWARK PUBLIC SCHOOL DISTRICT.**

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**Arnold Cohen, Esq.** for appellant Melvin Finley (Oxfeld and Cohen, attorneys)

**Christine Abreau Michelson, Esq.** for respondent Newark Public School District  
(Methfessel and Werbel, P.C., attorneys)

Record Closed: May 30, 2024

Decided: July 9, 2024

**BEFORE DANIELLE PASQUALE, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Melvin Finley ("appellant" or "Finley") appeals from the decision of the Newark Public School District ("the District" or "Board") to remove him from his position as a Security Guard at the Newark Public School District on charges of incompetence, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1); conduct unbecoming a public employee N.J.A.C. 4A:2-2.3(a)(6); Neglect of Duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause N.J.A.C. 4A:2-2.3(a)(7) for abandoning his post of Barringer High School ("Barringer" or "Barringer HS") on March 20, 2021, offenses for which were sustained several times, two (2) very recently in his progressive discipline history. Appellant asserts that either the charges are not proved, or rather that the punishment of

removal is unwarranted as his progressive discipline should not amount to a removal if the instant charges are upheld.

A Preliminary Notice of Disciplinary Action (PNDA) dated April 19, 2021 was issued to Finley concerning the alleged incidents of the incompetence, inefficiency, failing to perform duties, conduct unbecoming, neglect of duty and other sufficient cause for abandoning his post and leaving students in the school without getting or attempting to obtain coverage as outlined in detail below stemming from the March 20, 2021 incident. A Final Notice of Disciplinary Action (FNDA) dated August 4, 2021, was issued to Finley sustaining all charges and ordering his removal effective August 5, 2021.

The appellant requested a hearing and filed his appeal with the Office of Administrative Law (OAL), pursuant to N.J.S.A. 40A:14-202(d) on December 7, 2022.

The matter was originally assigned to me on December 12, 2022. After conferencing the case, I granted adjournments at the parties' request several times as the parties were engaged in settlement negotiations. Additional adjournments were granted as there was a substitution of attorney for the Newark Board of Education which took a while to materialize. I set the case down for hearing, which was heard on March 14 and March 20, 2024 respectively. The parties asked to submit post-hearing submissions which I ordered them to submit within 30 days of receipt of transcripts. After I granted an additional extension request, post-hearing submissions were received on May 30, 2024, whereupon I closed the record accordingly.

### **ISSUES PRESENTED**

Should the disciplinary charges outlined below against Finley be upheld and if so, is removal the appropriate penalty.

### **FACTUAL DISCUSSION**

#### **District's Witnesses**

**James Stewart- Lead Security Guard (now retired)**

James Stewart, now retired, was the lead security guard of Barringer High School and Finley's supervisor for the March 20, 2024 incident in question. He worked with Finley at Westside High School and Barringer for at least ten (10) years. He explained that on the date in question he had over twenty-six (26) years of experience with the District. As Senior Security Guard his responsibilities included scheduling shifts for security guards, overseeing their overtime and managing security guard coverage at Barringer High School. He noted that the primary responsibility of a security guard is to protect the students and staff inside the building. Those guards are assigned posts at the entrance and back doors as well as the hallways of the school. He added that security guards are also responsible for monitoring students when they walk through the metal detectors and bag scanners to check for weapons.

Stewart was clear that Finley was aware that Stewart was his supervisor because he worked with him previously, prepared his schedule, and would contact him if he needed to cover another area, sometimes over walkie-talkies if they were in the building together and contact him via text message if one of them was not in the building. All the security guards were aware of this procedure to contact Stewart regarding their coverage needs. Stewart was honest, soft spoken, direct and his testimony highly credible as it was corroborated by the District's other witnesses as well as documentary and video evidence; as such I **FIND** his testimony as **FACT** in this matter.

On March 20, 2024, Stewart noted, and it is largely undisputed, that Finley was a security guard assigned overtime at Barringer High School. He knew that because he scheduled him and Finley signed into the Kronos machine (akin to a punch clock and uses the employees' fingerprints). Finley was originally scheduled to work until 5:00 p.m. to cover the Food Pantry event at the high school (also overtime), when Finley texted Stewart to see who was covering the debate later that day. Stewart confirmed that no one was covering the debate and gave Finley the additional overtime shift as he requested. This exchange is supported by the confirming text found at J-5. This meant that Finley was required to remain at Barringer High School to work that additional overtime until the conclusion of the debate which was scheduled to end at approximately 7:00-7:30 p.m. Stewart never heard from Finley that night and thought he was still at the

school. Finley never called him, texted him or noted that he was ill at any time throughout that day.

In order to leave any shift early, Stewart confirmed that Finley would have to notify his superiors which included him, then Hasan Bullock and then Dispatch at the Security Department. Stewart expected Finley to be there until 7:00 p.m. or until the debate ended. If Finley needed to leave his post, he was to follow the chain of command. First, he should have notified Stewart. He was clear that Finley and the other guards were aware that he Stewart would have covered any shift personally if he could not quickly get coverage. After that, if Stewart was unable to be reached, Finley would have to call dispatchers at the Security Department at Harold Wilson school, and they could have sent a police car to Barringer until Stewart got there. Stewart continued that he could have also contacted dispatch via walkie talkie. Next, he could have called Mr. Hasan Bullock, the lead supervisor, to inform him that he was leaving early. Instead of doing any of the above, Finley left without notifying anyone other than the lead custodian Glen while there were students and other individuals in the school for over another two and a half hours. This is caught on the security video footage that Stewart pulled when he learned on Monday, March 22, 2024 that Finley abandoned his post at 5:00 p.m. on March 20, 2021. He observed, as we did at hearing, Finley gather his belongings, walk out the front door, and drive out of the parking lot at 5:00 p.m. Later in the footage, we observed that there were students in the lobby at the front of the high school at 7:42 p.m. without any security guards present. There was also footage of students in the hallways at approximately the same time. **See J-18** Once Stewart reviewed the footage and confirmed these facts, he wrote a memorandum to Finely regarding his abandonment of that post. After doing so, he submitted it to Mr. Bullock for his review in the normal course.

On cross examination, Stewart confirmed that after viewing the footage, he downloaded it onto a hard drive in keeping with his training and work experience. Security guards receive training at least three to four (3 to 4) times a year, at staff development days. He was clear that the chain of command was to go to him first for permission to leave a post, then to the regular guards (if anyone was on duty with him) and that he could not merely inform a custodian as they did not have the same training or duties and responsibilities.



He confirmed that he reported to his supervisor, Lead Supervisor Hasan Bullock on a weekly basis to submit reports regarding the school/security guards to him. In this case, he had to report Finley's abandonment of post and Mr. Bullock would recommend a penalty. He was unmoved by pressure on cross examination regarding whether he gave yearly evaluations of the security guards. He was steadfast that most times he just saw his own evaluations. He was also clear that he did not install or fix the security cameras or equipment. Due to some of the violence or incidents requiring additional investigation, many times the videos were downloaded by investigative teams. He was candid, that in those situations they did not usually involve Stewart. I noted throughout his testimony, that Stewart was very honest and highly credible. He testified voluntarily as a retiree and clearly had no axe to grind with Finley. All of this, coupled with the fact that these facts are largely uncontested and supported by documentary and video evidence as stipulated, I **FIND** them as **FACT** in this matter.

**Hasan Bullock-Lead Supervisor, Newark BOE Office of Safety**

Bullock also testified on behalf of the District as the Lead Supervisor of the Newark Board of Education Office of Safety. At the time of the hearing, he was employed by the District for twenty-seven (27) years and a lead supervisor for at least one (1) year at the time of the incident and a supervisor for thirteen (13) of those years. As Lead Supervisor his job was to oversee the security staff within the "high school network" which included guards' schedules and overtime. This network included his oversight of four-hundred (400) security guards for the School District in the City of Newark. Of those schools, he oversaw 144 security guards in his High School Network which included fifteen (15) high schools. He reports directly to Executive Director Levi Holmes as to whether the guards are following protocols, procedures, and is in regular contact with the Principals' administration and staff to achieve that end. He added that he is also responsible for submitting the disciplinary action requests to the Labor Relations Department. Most notably, he was responsible for the training of protocols and procedures for the security guards. They receive various annual training courses with the goal of protecting the students and staff at their respective schools namely ensuring that emergency standards are followed including that the guards are capable of utilizing the bag scanners and metal

detectors and that they are operating correctly. In addition, he makes sure the schools are in compliance with Alyssa's Law which is a notification system tied directly to the Newark Police Department in the event of an active shooter. He must confirm that it is functional; and noted that it is located in the main offices of the schools.

He emphasized that security guards receive training and know of the equipment and what to do when the emergency button is pressed. His personal training included NJDOE school safety specialized training that he completed at a police academy for an additional forty (40) hours to qualify him in the guidelines of how to "train the trainers".

Bullock was no nonsense in his description of his daily responsibilities and how they relate to the security guards he oversees. He receives a copy of their schedules from their respective senior guards via email or during a regular security visit to the school. That schedule is posted in the senior guard's office so everyone can see it. He confirmed the Kronos system is in almost every school and at Barringer it is in the entry way near the main entrance. He explained that all employees must use the Kronos (or finger scan in some schools) not just security guards. He also oversees all of their overtime assignments. As the Lead Supervisor of Security, the City of Newark and their Office of Labor Relations may ask for the overtime as well because everyone should be offered overtime based upon seniority, but it is not mandatory.

As for discipline, Bullock would speak with the Executive Director, and help to come to a decision if discipline should be sought out. He also included the Union via email and/or certified mail as most security guards would give him a copy of their grievances. In this case, he solidly testified that he was familiar with Finley as they had a work relationship. He recalled that Finley has "been around" a "good piece" of his twenty-seven (27) years.

He recalled that on March 20, 2024, the only Senior Security Guard at Barringer High School was James Stewart. He was confident and honest in his understanding of Stewart's job description which matched Stewart's testimony above. In addition, the guards all had Motorola Handheld units which was a two-way radio or walkie-talkie. He confirmed the chain of command as noted above as well. He had a polished

understanding of the CCTV (closed-circuit television) security footage and how that information is saved and accessible. Again, he confirmed Stewart's recollection of same indicating that the user would require a log in to get such footage. It does not bear repeating here as the footage is not contested. I mention it to demonstrate Mr. Bullock's intimate knowledge of the equipment, protocols, procedures and training.

**Security issues at Barringer High School-Bullock:**

Lead Supervisor Bullock's testimony regarding the dangers associated with Barringer High School are of the utmost importance in this case. He steadfastly explained that there are long-standing issues of violence between students and what he referred to as "challenging community issues", most notably gang violence. He said there were many "intruder threats" stemming from "vagrants and stragglers from Branch Brook Park." He utilizes the help of the Newark Police Department (Newark PD), the Essex County Sheriff's Office, the Essex County Prosecutor's Office and security from NJIT as well as the NJ Transit Police. He indicated that not only can they assist individually, but at times he required assistance from all these agencies at once to handle a security issue at Barringer.

As a result of these heightened security issues, he facilitated specialized training for the security guards. He repeated soberly that their purpose is to provide a "safe haven", observe and report and monitor visitors. The training included a "Handle With Care Program" which taught the best ways to deal with students with "issues" or students in general who might require help. They attended "Stop-the-Bleed" training which included how to treat bullet wounds including how to place tourniquets. He also facilitated training for cardiopulmonary resuscitation (CPR), ICS (homeland security), to enhance the guards' knowledge with what to do with the Office of Emergency Management ("OEM") and the parents if there was an active shooter or other emergency. He allotted four (4) staff development days during the school year to effectuate all of the training.

Bullock displayed his vast knowledge in these matters and how passionate he is about the training and management of the security guards necessary to implement it. He explained that on one of the Staff Development Days (See J-14) the Agenda covered an

address from Director Levi Holmes which included his extensive resume and broke down staff performance and expectations, the department's Mission and Goals, attendance, punctuality, customer service (communication with the students, parents and school staff, as well as Human Resources (HR) issues like employee evaluations, Kronos/ AIP (Attendance Improvement Program), overtime, etc.... The guards were also trained by the Essex County Prosecutor's Office on interactions between security and police as well as sharing information with law enforcement. The Newark PD discussed crime scene preservation, signs of human trafficking, de-escalation benefits and strategies and stationhouse adjustments for juveniles. Notably, the day ended with a presentation from Director Holmes about the chain of command, incident reporting, protocols for police notification, cooperation with law enforcement and NBOE dispatcher's role, responsibilities and notifications. **J-14.**

**Mr. Bullock** was calm and professional and appeared friendly to everyone in court including the union representative who was present at the hearing on Finley's behalf. In short, he had no animus with Finley; conversely, he had sincere concerns about the security of all of his schools but singled out Barringer HS. When asked why it was an issue that Finley left at 5:00 p.m. that day, Bullock emphasized that it is "very important that we maintain a high level of security when the building is open" even when it is not active. He explained that is why back-up coverage is so important. For example, if the building is open and unsecured/unmonitored someone can leave a weapon on a Friday/Saturday so that it can be used on Monday. He said this can be detrimental and damaging to the student population. He said there were "unsavories" at the school who stash things on the weekends. He repeated that there was an issue with vagrants as well when the property is unprotected. Bullock repeated that the guards are aware that they are required to walk the detail upon entry and upon leaving and they need to check every door and for any open windows. He explained that was important and gave an example of when it was not done, one example of the resulting damage was a flooding of the bathroom. Bullock continued that it is imperative that the guards observe students and know where they are located and to monitor that the doors are locked at all times. The fact that he observed students in the lobby for forty-five (45) minutes that night without guidance was something he would not condone or recommend as some of them could and did have "bad intentions". His examples include sexual relationships between

students, sexual assaults, gang activity, leaving weapons unattended and leaving the building unattended or unsecured is and has been a “recipe for disaster.”

When asked what if Finley was ill and told the custodian only; Bullock just wanted to know why he did not follow protocol. He said he needed to notify Stewart, or him, or the Security department. He seemed genuinely upset but remained professional when explaining that there were just so many ways Finley could have prevented the school from being unsecured and those students unsupervised for all that time. He noted that there was no grievance from Finley in this case and that he would have received that via email from the union or Labor Relations.

On cross examination, Bullock calmly answered counsel's questions regarding who makes decisions on discipline. He stated directly that he speaks to the Executive Director and the Director makes the final decision. He confirmed that there was an investigation done here for Finley's abandonment and that in addition to Stewart, investigator Anthony Jackson pulled the footage for Bullock to see before he made any recommendations on this case. Bullock confirmed on cross that he asked Stewart to put his findings in writing (J-2). He was not sure who asked Finley to draft a memo in this case; that it would be Finley's decision to do so. (J-3). He confirmed that Stewart is the Senior Security Guard and considered a supervisor to Finley whose job it was to provide a safe environment at the school. As for Finley's progressive discipline he told counsel candidly and respectfully that he was aware of it but does not dictate the final decision of penalty if a charge is sustained.

Bullock was a consummate professional. He was knowledgeable about his job, the job of those he supervises, and the specific security concerns Barringer High School was dealing with at the time of the incident. He was a solid witness, who was respectful, honest, and looking to make a difference. He also was somewhat familiar with Finley and clearly had no axe to grind with him. As a result, I gave Bullock's testimony enormous weight and **FIND** his entire testimony as **FACT** in this matter.

**Levi Andrew Holmes, II, Executive Director of Office Safety and Security**

Prior to becoming the Executive Director in 2019 he retired after twenty-five (25) years from the Newark Police Department attaining the rank of Lieutenant. He had many roles but started as a patrolman for Newark PD where he was a Detective handling robbery, homicide and the like. He was also involved in explorer programs focusing on Youth Services. As Executive Director he is responsible to manage approximate 350 employees to ensure the safety of students, faculty and staff as well as the property and grounds. His priorities include coming up with new techniques to improve and manage the District's safety and security. He confirmed that he oversees the security guards and that the chain of command is clearly him, then lead supervisor Bullock, then the senior security guard/supervisor at each of the schools and finally the security guards.

He stated that he is "a proud alum of Barringer H.S." for which he is now "responsible for". He was keenly aware of the gang violence that was occurring at the time of the incident in question. He explained that there were five (5) gangs and that there was a shooting involving one of his students only one block away from the school. He explained that there were individuals and students involved with these gangs and that non-students try and enter the schools to attack students. He unilaterally offered, at the time of the hearing, of an occurrence just the week prior where they would bang on the doors or call students to open the doors to get to them.

As a result, Executive Director Holmes assigned two (2) police officers daily with an additional two (2) security guards and one (1) senior guard to Barringer H.S., the only High School in Newark where he assigned this much security. He confirmed that the security guards make sure all the doors are closed and locked, they should manage the flow of foot traffic, break up fights, report those fights, man the bag scanners and metal detectors. He noted that on a daily basis the scanners and metal detectors are finding a lot of box cutters, knives and mace that would otherwise be circulating around the school.

Homles was solid, and compassionate as he explained how he is training the guards to perform CPR, operate automated external defibrillators (AEDs), deescalate matters, manage themselves to deal with students and to "take ownership" in their work with the students. He pointed to the Handle With Care Program as well as additional training for constructive ways to break up a fight. He noted the annual training which

includes the above as well as ICS (Incident Command Services) which has a priority in handling their security. He explained that when the ICS is deployed for a security concern it is akin to the fire department being in charge when called instead of the Principal.

Holmes clearly had enormous concern and care for this community and his alma mater. He identified J-14 and the agenda Bullock described above. Holmes created it to see all the security guards to come together and train so that they understand "how I need them to behave and respond." He impressed upon them his performance expectations of his staff and that they had a clear understanding of what he expected as the new Executive Director in 2019. He recalled the AIP, the ECPO and Essex County Sheriff and the input from the other law enforcement agencies Bullock outlined above. He confirmed that the chain of command was covered in detail. He was aware that Finley attended these training courses and noted that he signed as did all the attendees.

Holmes continued specifically regarding the on-duty protocols for leaving a shift. He said, "we expect you" to "never abandon a post" and the importance of their job so that the security guards "don't become complacent". It was clear to me upon hearing his testimony that it was "important they heard that from me." He explained to them and to me that as security guards "they are ambassadors" and "primary caregivers" to the students, staff and faculty. He conveyed to them their importance and critical role in doing that in order to do their job and ensure their safety.

He met Finley at the first staff development day and recalled that because Finley "had a lot of questions." When asked about J-1, (the FNDA in question) he stated convincingly and honestly that he recommended the disciplinary action of removal because "as a man born and raised in Newark" that he took his job "incredible seriously" and that the guards "need to understand; they are protecting the future of this city." He continued: "you're not going to be an employee of mine and fail the students." As Finley abandoned his post, he recommended a termination. In doing so, he considered that this was not his first time, as he had two (2) previous abandonments. As for Finley's explanation that notifying the custodian would be sufficient, he said that it would be "absolutely not acceptable" because the custodian cannot replace a security guard. He does not have the training, and the custodians do not report to Director Holmes in any

capacity. He emphasized that where students are left in the building, "there needs to be a trained person there always". He repeated that Barringer was a great example of the need for trained personnel because "at any given time" the door can be left open "and let a gang member in."

On cross-examination Director Holmes was just as direct and professional as he was on Direct. He explained calmly that an overtime shift would last until the end of a program. There were five (5) gangs causing trouble at Barringer and for the fifteen or sixteen (15 or 16) high schools he oversees, "none of them compare with Barringer HS." He was honest in that he did not know of Finley's job performance for the other years other than the progressive disciplines. However, he made clear that "egregious things like abandoning a post a second time?... that takes precedence over everything else." He stated we "cannot let children be exposed to injury". Executive Director Holmes was an excellent, honest, highly credible witness who clearly cares about the safety of Newark and the schools he oversees. As a result of his testimony being unrehearsed, airtight, his knowledge of the training that was given to Finley and the staff as a whole, his overall experience in law enforcement, his collaborative approach to safety, as well as the corroborating documentary, video and testimonial evidence; I gave his testimony enormous weight and I **FIND** his testimony as **FACT** in this matter.

### **Xiomara Alvarez- Labor Relations**

Ms. Alvarez was a calm, soft-spoken professional who serves as Associate Counsel of the Newark Board of Education. She was extremely knowledgeable and worked in that role since February of 2016. Prior to that she worked with labor and employee relations office liaison between the District and nine (9) unions to resolve grievances informally. She also handled arbitrations, FNDAs and held departmental hearings when necessary. She was familiar with the process of receiving requests for disciplinary action and how the department gathers evidence. Her practice was to speak to parties to see if there was a viable case before bringing any charges in the form of a PNDA.



She was given this task with Finley's most-recent charges, and also handled his two previous disciplinary actions. (See J-11 and J-12) She first learned of the March 20, 2021 incident when she received notification from her supervisor. Accordingly, she wrote it up with a recommendation of disciplinary action. The other suspensions were February 2, 2008 (7-day suspension), January 7, 2019 (14-day suspension) and October 16, 2019 a (24-day suspension) respectively. Even though the October 16, 2019 suspension asked for forty-five (45) days and resulted in a 24-day suspension, Mr. Finley was notified on the last page as follows:

Mr. Finley is placed on notice that continued insubordination toward supervisors and/or significant acts of neglect of duty involving, among other things, providing security coverages as directed will result in harsher disciplinary consequences including removal from employment.

**J-12.**

As for the instant matter, Ms. Alvarez confirmed the food pantry overtime shift he covered earlier that day and that he asked his supervisor Stewart for overtime to cover the debate via text message and he was given permission as outlined above. She noted that he clearly left before completing his shift. For the sake of completeness, I add that she was a detailed attorney who was forthright, knowledgeable and confirmed the chain of command and Finley's prior disciplines.<sup>1</sup>

Alvarez also confirmed that Finley, if he had COVID or thought he did, did not follow the COVID protocol which would have required that he submit documentation to the Office of Health Services. In her investigation, no such documentation was ever submitted. Again, Ms. Alvarez was familiar with Finley, familiar with the facts of this case, familiar with his prior disciplines and was forthright and highly credible. As such, I so **FIND.**

**Appellant's Case**

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<sup>1</sup> I emphasize exhibits J-11 and J-12 to be reviewed in detail as they reveal that Finley had notice, training and similar infractions to the instant case.

**Melvin Finley**

Mr. Finley testified that he was hired by the Newark Board of Education (“NBOE”) in 1997 and remained in that position as a security guard. He received satisfactory yearly evaluations for that period of time (with the exception of the progressive disciplinary matters) and noted that he attended the training explained by the District’s witnesses above. He explained that he was initially trained for eight (8) weeks by the NBOE about the proper procedures including de-escalation, how to break up fights, and how to communicate properly with the young people he oversaw. He was taught to recognize threats and any mental health issues. He gave an example of de-escalation which was not to yell or use loud tones in those circumstances. He said he enjoyed his job. He also noted he had the yearly trainings including the professional development outlined above including active shooter, shelter-in-place, gang activity, how to discern gang signs and communication as well as handle injuries and first aid. He confirmed he had training on abandoning his post.

He explained that it’s difficult to explain how to properly leave a post because he had to consider the officer’s safety as well. He admitted that if he had to leave that he knew the best avenue was to “contact dispatch” if you’re having a medical emergency if someone was “physically or mentally capable” of doing so. He denied that Stewart was a senior security guard or his supervisor. He appeared angry when asked even on direct about contacting dispatch and then floundered and said he “may” have contacted them that day, but he was not certain because he was “in a bad situation that day.” He claims he attempted to do the debate after he covered the food pantry earlier in the day. He admits he asked Stewart earlier in the day if he could have the debate as overtime. When he became ill, he texted the lead custodian Glen who he claimed was in charge of the building at all times and would be in charge of clearing out the building if the guard fell ill. He admitted he knew students were in the building, in fact Glen texted that to him when Finley said he wanted to leave. **See A-1**. Notably, that text exchange makes no mention of Finley not feeling well; it merely says “I’m out at 5:00 p.m.” and Glen asks if people are leftover in the building and Finley confirms “no they still here.”

Finley admitted he was aware of the gang situation at Barringer H.S. as he was transferred there to help handle the situation. In fact, he stated "it needed to be addressed by guards like him-highly trained". He said he left that day because he was very ill. He went as far as to say that he was "kinda delirious" and did not even know where he was or that he was even at work. He stated that he thought he may be putting others at risk with his illness. Then he claimed that he tried to contact Stewart and did not get an answer. Later, he did admit he should have contacted dispatch for coverage.

I noted throughout Finley's testimony that he was agitated, angry, evasive and defensive. At several times, as his story continued to change, I noted that he was simply lying, projecting guilt and cutting counsel off during questioning when his varied versions of what occurred were coming to light especially on cross examination.

In light of the circumstances above, the District brought the following charges and specifications.

### **CHARGES AND SPECIFICATIONS**

#### **Preliminary Notice of Disciplinary Action Dated April 13, 2021:**

**Charges:**

**N.J.A.C. 4A:202.3(2) Insubordination**

**N.J.A.C. 4A:2-2.3(a)(6) Conduct unbecoming a public employee;**

**N.J.A.C. 4A:2-2.3(a)(7) Neglect of duty;**

**N.J.A.C. 4A:2-2.3(a)(12) Other sufficient cause;**

**N.J.A.C. 4A:2-2.3(a)(1) Incompetence, inefficiency or failure to perform duties;**

**Specifications: (See J-8)**

On August 4, 2021, the Board issued a Final Notice of Disciplinary Action ("FNDA"). The FNDA sustained all of the charges within the PNDA and removed Finley from employment.

### **FACTUAL DISCUSSION**

Accordingly, and based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Mr. Finley was employed as a security guard for the District since 1997, twenty-four (24) years as of the time of the alleged incident. His post was at Barringer High School in Newark. His responsibilities included intake, checking bags for weapons, other paraphernalia and making sure all students pass through the metal detectors. His primary responsibility was to protect the students and the staff inside the building as well as monitoring students through the metal detectors and bag scanners in order to check for weapons. His direct supervisor was James Stewart, whose position is Senior Security Guard, and he has over 26 years of experience with the District. As a Senior Security Guard, Mr. Stewart was responsible for preparing the schedule of the security guards, overseeing overtime, and managing security coverage at the school.

On the night of March 20, 2021, it is undisputed that Mr. Finley asked to work overtime at Barringer High School in Newark by contacting his supervisor and Senior Security Guard Stewart to ask for the overtime that day, including the second overtime activity which was for the debate from 5:00 p.m. to & 7:00 p.m., or until the debate was over. Finley absolutely knew that in order to leave his post he had to contact Stewart or another superior or Security Dispatch Center if he had to leave his post.

Finley, as confirmed by his own testimony was aware of the security issues at Barringer High School and even testified that he was moved to that post because of his specialized training. Everyone involved within the District as well as all of the surrounding law enforcement agencies, knew of the heightened gang activity associated with Barringer High School as highlighted by all of the credible testimony above. Mr. Finley was assigned there as per his own testimony because of his training and ability to deal with the dangers of gang activity at Barringer.

Prior to the instant matter, Finley received progressive disciplines both major and minor, all of which include similar, or the exact violations sustained here. Finley's explanation for why he abandoned his post without telling a proper superior and waiting for coverage did not make sense, his testimony was inconsistent, and he never described being ill with COVID until he was caught abandoning his post, and I so **FIND**.

In short, Finley's testimony is not credible. Finley has worked there too long with too many recent prior disciplines of this nature to make his story plausible. In fact, abandoning his post without informing his senior security guard or another supervisor was exactly what he had been suspended for repeatedly and recently. The only time he said he was ill was after Stewart learned he abandoned his post and confronted Finley about it at work on Monday. At hearing was the first time he claimed that he should have tried to reach out to command center since he was ill. For all these reasons, I cannot give Finley's testimony much weight as to why he left his post without coverage on the date in question. I **FIND** that he asked for the overtime to cover the debate and was supposed to clear the school, lock up and not leave until the event was over sometime after 7:00 p.m. and the school properly cleared. Instead, he left without getting proper coverage and without telling a proper supervisor. I also **FIND** that the story about becoming ill with COVID was not believable as that story came to light after his supervisor learned he left his post hours early. Lastly, I **FIND** that if he were ill with COVID or had to leave for any reason, that the proper protocol, as supported by the credible documentary and testimonial evidence, would be to tell his senior security guard Stewart, and if he was unavailable to call Bullock, and if that was not working to call Security Dispatch for immediate relief in order to avoid violating the policy he was well aware of. I **FURTHER FIND** that as per Ms. Alvarez, he would have had to produce proof of COVID testing as outlined above, and no such proof was ever received by the District.

There has been disciplinary and corrective action taken by his employer several times and some quite recently and to no avail, and thus I so **FIND**. More to the point, I **FIND** that Finley knew better and chose to simply abandon his post knowing quite well what the protocol was for getting coverage with students in the school for the debate. Additionally, I **FIND** that this abandonment of post with students in the building of more than just Barringer High School students was fraught with potential for safety issues,

namely violence and gang activity that was detailed by all of the witnesses, specifically the types of gang activity, violence and sexual assaults that were occurring. Further, Finley himself admitted that he was not only aware of that violence and gang activity but that he was specifically transferred to Barringer High School because of his training/experience with dealing and deescalating these issues. He also knew from his recent disciplines for the same offenses, his initial training, his in-service training, and recent attempts at counseling/retraining as a result of his progressive discipline and thus I so **FIND**. His version of becoming ill with covid after he was caught on video and reported to have abandoned his post with students in the building was unsupported by a covid test or any other contemporaneous reporting of an illness to anyone and was not later supported by a COVID test (which was set up next to the school at that time and free of charge). Further, it was protocol to come back with a negative COVID test to return to work which he did on the following Monday. He did so without such a note, and thus his noted inability to get in touch with Security Dispatch/Command Center or that his illness was so bad that he could not attempt to reach out to anyone other than the lead custodian, was at best, a bad excuse and worse, disingenuous; and thus, I so **FIND**. In further support of my findings, it should be noted that the students were seen on camera at 7:45 p.m. in several locations and Finley was seen on camera at 5:00 p.m. leaving his post. It bears mentioning that when he left his post, he did not appear weak or slow at all. He routinely grabbed his belongings and adeptly walked to his car with enough energy to go to the passenger-side door and place his things in the front seat before walking around his car and heading into the driver's seat. He didn't once wipe his forehead or attempt to call anyone; he was clearly not ill, and thus I so **FIND**.

### **B. Factual Discussion-Credibility**

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

There is largely no dispute of any crucial facts here. Due to the contradictory testimony presented by the District's witnesses and Finley, the resolution of the charges against Finley requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witnesses' testimony rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A factfinder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses and the corresponding consistent video testimony, it is my view that Mr. Stewart, Mr. Bullock, Executive Director Holmes as well as Ms. Alvarez were highly credible. Their testimony was clear, truthful and their investigation was not speculative, but rather completely thorough and fully documented before any charges were lodged against Finley. Their testimony regarding the March 20, 2021 abandonment was clear and concise and corroborated by the video evidence as reviewed in detail at the hearing during their testimony and as noted in their written documentation, and thus I **FIND** their versions as fact in this matter and gave them enormous weight.

In contrast, I **FIND** the testimony of Finley to be wholly incredible. He admits to leaving the post and not letting anyone but the custodian know of his departure. He knew this was not the protocol. First, he would not even concede that his supervisor was Mr. Stewart even though he admitted, and it is undisputed that he texted Stewart to obtain both overtime shifts that day. Next, his first mention of having Covid as a reason for leaving was during his testimony. In fact, he floundered about whether he had a COVID test or not, although he certainly did not follow the protocol regarding testing or exposure.

He then recounted a wholly unbelievable story about not being able to contact his supervisor Stewart or dispatch because he was so sick, he “did not even know where he was”. He testified that staying there in his altered state and exposing them (students) to him would be more dangerous for the students than his fully abandoning and not covering the post. In fact, he said he was too sick to text his supervisor but had no problem notifying the custodian. Finley knew from his recent history of similar infractions and subsequent suspensions and training that the only option was to approach a superior and get his shift covered. The version that is more believable is that he simply left the post and did not have it covered. In fact, my review of the video shows an unhampered and well man who is walking to his car without assistance with his belongings in hand. He was able to open his passenger door and get his things in and then get into the driver's seat without incident. He drove off the lot and was certainly ambulating with no problem and thus I so **FIND**. Again, the video evidence presented was comprehensive and the witnesses for the District were professional and dispassionate, and corroborative. They were clear on the Finley's job description, his abandonment and the training given and received in order to combat the known security issues at Barringer. None of the witnesses appeared to dislike Finley, but rather they had to report what they observed and confirmed by their research and investigation as part of their supervisory responsibilities, and I thus I **FIND** them to be highly credible witnesses. Furthermore, I have no doubt that Finley knew the protocol for leaving a post due to his training and due to his recent prior discipline. Again, Finley was caught abandoning his post as we watched along on the video coverage. In addition, after he left, we watched the parts of the video proving that there were students still in the building for hours unattended by any security guard, and thus I so **FIND**.

I **FIND** that the March 20, 2021 offense itself in a vacuum may not be grounds for removal, but when coupled with the recent progressive discipline putting Finley on notice that such behavior could not happen again or it could result in removal, the known gang violence plaguing the school that Finley was transferred to cover, the specific training he and others received as outlined by Bullock and Holmes; shows a pattern of Finley flatly ignoring the policies and procedures of the District especially in its time of great need. Finley, if sick, could have called for coverage of his post and received a COVID test, but he did no such thing. Instead, I **FIND** as the video and corroborating credible testimony



show, that he was not impaired, not ill, and cavalierly left his desk as he left his post, going to his car and having plenty of energy to carry his bags and place them in the passenger seat before driving away.

### **LEGAL ANALYSIS AND CONCLUSIONS**

A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. In an appeal from such discipline, the appointing authority bears the burden of proving the charges upon which it relied 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 tribunal 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. Co., 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to “generate belief that the tendered hypothesis is in all human likelihood the fact.” Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959). 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 Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to public service and is liberally construed toward attainment of merit appointments and broad tenure protection. 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 Cnty. Park Comm'n., 46 N.J. 138, 147 (1965). The Act states that State policy is to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). To carry out this policy, the Act authorizes the discipline and termination of public employees.

N.J.A.C. 4A:2-2.3(a) provides that a public employee may be subject to major discipline for various offenses. The burden of proof is always on the appointing authority in disciplinary matters to show that the action taken was justified. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a). The employee's guilt of the charge(s) must be established by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk License Revocation, 90 N.J. 550 (1982). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958). Preponderance may also be described as the greater weight of the 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, 49 (1975). Credibility, or, more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well. Spagnuolo v. Bonnet, 16 N.J. 546, 554–55 (1954). Both guilt and penalty are redetermined on appeal from a determination by the appointing authority. Henry v. Rahway State Prison, 81 N.J. 571 (1980); West New York v. Bock, 38 N.J. 500 (1962).

I **CONCLUDE** that the District has proven by far more than a preponderance of the competent, relevant, and credible evidence that Finley abandoned his post on March 20, 2021 without reporting it to his supervisor and without getting coverage for same and lied about all of the above with a story he manufactured later on regarding his coming down with Covid for which he had no proof of testing and no proof of reporting in the normal course. In addition, I **CONCLUDE** that his remarkable and recent progressive discipline history included many of the current offenses in the past.

Chronic conduct is conduct that continues over a long time or recurs frequently. Good v. N. State Prison, 97 N.J.A.R.2d (CSV) 529, 531. "Excessive" is defined as "exceeding a normal, usual, reasonable, or proper limit." American Heritage Dictionary 638 (3d ed. 1992); see also Rios v. Paterson Hous. Auth., CSV 3009-02, Initial Decision (August 1, 2005), adopted, Comm'r (September 13, 2005), <<http://njlaw.rutgers.edu/collections/oal/search.shtml>>. "Just cause for dismissal can be found in habitual tardiness or similar chronic conduct." W. New York v. Bock, 38 N.J. 500,

522 (1962). While a single instance may not be sufficient, “numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to neglect of duty.” Ibid. “There is no constitutional or statutory right to a government job. Our laws, as they relate to discharges or removal, are designed to promote efficient public service, not to benefit errant employees.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998).

When determining the appropriate penalty to be imposed, the Board must consider an employee’s past record, including reasonably recent commendations and prior disciplinary actions. Bock, 38 N.J. 500 (1962). Depending on the conduct complained of and the employee’s disciplinary history, major discipline may be imposed. Id. at 522–24. Major discipline may include removal, disciplinary demotion, suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a); N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.4. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. The concept of progressive discipline is related to an employee’s past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions evaluated by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

Here, Finley argues that he did not need to contact a supervisor next. Next, that Stewart was not his supervisor, and lastly, that he was too sick to do any of the above, as for the penalty, Finley argues that even if the above were true that removal is not the appropriate penalty.

Under the circumstances, I **CONCLUDE** major discipline is the appropriate discipline, and I am persuaded that removal is required as there is recent and extensive progressive discipline history including repeat similar offenses listed in the instant matter. Furthermore, due to the fact that Finley was recruited by his employer to come to Barringer High School from Westside because of his special knowledge and training to

help manage the well-known gang activity and dangerous events that were known to Finley by his own admission; he assumed the risk of abandoning his post without coverage and knew with students left in the building what could happen in accordance with the credible testimony, documentary and video evidence outlined above as well as his own admissions in court. Accordingly, I **FURTHER CONCLUDE** that the penalty of removal is the only one available to me or the District in this matter as the previous minor and major disciplines, respective recent suspensions and corresponding training and counseling did not rectify his behavior. In fact, the most-recent discipline occurred just prior to and included language that no further violations would be tolerated and may result in removal.

### **ORDER**

For the reasons set forth above, it is **ORDERED** that all charges entered on the FNDA, dated August 4, 2021, by the respondent, Newark Public School District, against the appellant, Melvin Finley, are hereby **SUSTAINED**.

I further **ORDER** that the action of the appointing authority removing the appellant from his position as a Security Guard, effective March 14, 2019, due to the aforementioned upheld charges and recent and consistent progressive discipline is hereby **AFFIRMED**.

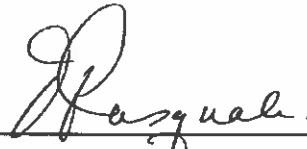
I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 9, 2024

DATE



DANIELLE PASQUALE, ALJ

Date Received at Agency:

July 9, 2024

E-Mailed to Parties:

July 9, 2024

lr

**APPENDIX**

**LIST OF WITNESSES**

**For Appellant:**

Melvin Finley, Appellant

**For Respondent:**

James Stewart, Senior Security Guard, Barringer High School

Hasan Bullock, Lead Supervisory, Newark BOE Office of Safety

Levi Holmes, II, Executive Director of Office Safety and Security, Newark BOE

Xiomara Alvarez, Labor Relations Assoc. Counsel, Newark BOE

**LIST OF EXHIBITS IN EVIDENCE**

**Joint Exhibits:**

- J-1 FNDA dated August 4, 2021
- J-2 March 22, 2021-Memo from James Stewart
- J-3 March 29, 2021- Memo from Melvin Finley to Dr. Aviles
- J-4 Job Specification for Security Guard
- J-5 Text Messages dated March 20, 2021 between James Stewart and Melvin Finley
- J-6 Attendance Printout
- J-7 Board File Code 4119.22/4219.22-Conduct and Dress Code
- J-8 PNDA dated April 19, 2021
- J-9 Memo dated August 4, 2021-memo to Director Holmes from Joanne Watson
- J-10 FNDA dated February 4, 2008
- J-11 FNDA dated January 7, 2019
- J-12 FNDA dated October 16, 2019
- J-13 Collective Bargaining Agreement

- J-14 Training Agenda dated January 15, 2020
- J-15 Facilities Reservation dated March 20, 2021 for Barringer High School
- J-16 Video from Barringer High School dated March 20, 2021-starting at 4:50p.m. and 5 seconds
- J-17 Video of Finley walking to his car on March 20, 2021, starting at 5:02 p.m. and 24 seconds and driving away after he gets to his car
- J-18 Video of Finley on March 20, 2021, starting at 7:42 p.m. and 41 seconds showing students still in the building.

**Appellant Finley's Exhibits:**

- A-1 Text between Finley and custodian received after discovery and right before hearing. It was admitted in evidence without objection.