



The Reporter

News from the Civil Service Commission

<https://nj.gov/csc>

December 2019

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Welcome!

During my confirmation interview with the State Senate's Judiciary Committee in April 2018, I vowed that, as Chair/Chief Executive Officer of the Civil Service Commission (Commission), I would enhance the efficiency, equity and fairness of the Civil Service system. With these objectives in mind, I told the Judiciary Committee that I would explore restoring a program that provided alternatives to disciplinary removal from employment for employees with disabilities who are unable to perform the essential functions of their position. I am proud to say that since my confirmation, we have made significant progress with our new program, which will officially launch in January 2020 as the Alternatives to Discipline Program (ADP).



Deirdre L. Webster Cobb, Esq.
Chair/Chief Executive Officer

ADP will encourage appointing authorities to utilize State services and programs, such as approved leave, ergonomic workstation evaluations, specialized training, ADA accommodations, disability retirements and many others, before pursuing the disciplinary removal of workers who are unable to perform the duties of their positions due to a disabling condition. I believe that ADP will provide compassionate treatment and greater security for employees with disabilities. I also anticipate that ADP will benefit the public by lessening the time and expenses spent on disciplinary removal actions and related litigation.

In this issue of The Reporter, you will find more information about ADP. You will also find summaries of notable Commission decisions relating to discipline, certification tips, Law Enforcement Examination (LEE) news, and an update on legislative enactments affecting the Civil Service system. We hope that this issue is informative and assists you in your employment needs.

Best regards,

Deirdre L. Webster Cobb, Esq.
Chair/Chief Executive Officer

CIVIL SERVICE COMMISSION DECISIONS

IMMEDIATE SUSPENSION

N.J.S.A. 11A:2-13 and *N.J.A.C.* 4A:2-2.5(a)1 provide that an employee may be suspended immediately without a hearing if the appointing authority determines that the employee is unfit for duty or is a hazard to any person if allowed to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. When an appointing authority suspends an employee prior to a hearing, a Preliminary Notice of Disciplinary Action (PNDA) with an opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension. See *N.J.A.C.* 4A:2-2.5(a).

Additionally, *N.J.A.C.* 4A:2-2.5(b) provides that, prior to the imposition of an immediate suspension, the employee must be apprised either orally or in writing of why an immediate suspension is sought, the charges, and general evidence in support of the charges and provided with a sufficient opportunity to review the charges and evidence in order to respond to the charges before a representative of the appointing authority.

N.J.A.C. 4A:2-2.5(b) also states that the employee's response may be either oral or in writing, at the discretion of the appointing authority. In the case that follows, the Commission found that the appointing authority had a valid basis to impose immediate suspensions. However, procedural violations occurred in violation of *N.J.A.C.* 4A:2-2.5(b), which warranted an award of back pay.

In the Matter of Wesley Peters, et al., Union County (CSC, decided April 24, 2019)

Wesley Peters, Jakari Lee, and Antonio Melendez, County Correction Officers, were assigned to an area of the Union County Jail where an inmate was found deceased on October 16, 2018. On October 19, 2018, the

petitioners were advised in writing that they were being placed on "administrative leave without pay" pending the outcome of multiple investigations.

The notices issued to the petitioners did not specify the charges and general evidence behind their "administrative leave without pay." Further, there was no record that the petitioners were verbally notified of the nature of the charges and evidence against them or provided with an opportunity to respond when the notices were presented. On December 1, 2018, the appointing authority issued a PNDA to each petitioner with disciplinary charges based upon allegations that they failed to make required half-hourly visual inspections in their assigned area and that they falsified a log book by indicating that they made multiple visual inspections, when video footage showed that only a single visual inspection occurred.

The petitioners contended that the "administrative leave" was an immediate suspension without pay and that the appointing authority failed to satisfy the requirements of *N.J.A.C.* 4A:2-2.5 and *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), as it did not provide them with PNDAs and/or an opportunity for a hearing with the October 19, 2018 notices. They also argued that their immediate suspensions were not warranted under *N.J.S.A.* 11A:2-13 and *N.J.A.C.* 4A:2-2.5.

The appointing authority asserted that its use of "administrative leave without pay" was distinguishable from a suspension, that its actions were in the public interest and that the December 1, 2018 PNDAs rendered the petitioners' requests moot. Upon review, the Commission found that the petitioners were immediately suspended without pay, effective October 19, 2018, and that the appointing authority had a valid basis for imposing immediate suspensions.

However, it also found that the appointing authority violated the requirements of *N.J.A.C.* 4A:2-2.5(b) and *Loudermill, supra*, because its October 19, 2018 notices failed to specify the charges and general evidence in support of the charges, there was no indication that the petitioners were verbally provided with that information, and there was no evidence that they

were given an opportunity to respond. The Commission determined that these procedural deficiencies did not warrant dismissal of the charges against the petitioners. Rather, the Commission concluded that the proper remedy was to award back pay for the period from October 19, 2018 to November 30, 2018. Based upon this award, if any of the petitioners were ultimately removed, the Commission noted that the effective date of the removal was to be recorded as December 1, 2018. To read the full text, [click here](#).

INDEFINITE SUSPENSION

N.J.A.C. 4A:2-2.5(a)2 states that an employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. Further, *N.J.A.C. 4A:2-2.7(a)2* provides that the appointing authority may impose an indefinite suspension to extend beyond six months where an employee is subject to criminal charges as set forth in *N.J.A.C. 4A:2-2.5(a)2*, but not beyond the disposition of the criminal complaint or indictment. Additionally, where an employee, other than a municipal Police Officer, has been suspended based on a pending criminal complaint or indictment, following disposition of the charges the employee shall receive back pay, benefits and seniority if the employee is found not guilty at trial, the complaint or indictment is dismissed, or the prosecution is terminated. See *N.J.A.C. 4A:2-2.10(c)*.

The following appeals illustrate that an employee cannot be indefinitely suspended without formal criminal charges or after the favorable disposition of criminal charges even if the matters are still being investigated for potential criminal or administrative charges. Additionally, even when an employee is ultimately removed on administrative disciplinary charges, the employee is entitled to an award of back pay for the period between dismissal of the criminal charges and service of a PNDA setting forth any remaining administrative charges.

In the Matter of Anthony Graves, Newark (CSC, decided April 17, 2019)

Anthony Graves, a Fire Captain, was charged with criminal offenses which led to the City of Newark indefinitely suspending him without pay, effective May 11, 2016, until the criminal charges were adjudicated. As of January 17, 2019, all criminal charges had been resolved in the petitioner's favor, and on January 22, 2019, he advised the appointing authority that this criminal matter had been resolved and requested that he be reinstated and be awarded back pay, benefits and seniority.

Instead, on January 29, 2019, the appointing authority indicated that the petitioner's suspension would continue until it conducted and completed an internal investigation and that it intended to issue new disciplinary charges after it completed its investigation. In his request for interim relief, the petitioner argued that pursuant to *N.J.A.C. 4A:2-2.10(c)*, which provides that an employee shall receive back pay following the favorable disposition of criminal charges that were the basis of a suspension, he was entitled to be immediately reinstated with back pay.

Upon its review, the Commission found that once the appointing authority received notice on January 22, 2019 that the petitioner was found not guilty of the criminal charges, he was entitled to immediate reinstatement or prompt service of any remaining administrative charges upon which the appointing authority wished to base disciplinary action. To determine otherwise would be contrary to *N.J.A.C. 4A:2-2.7(a)2*.

Concerning the appointing authority's argument that it needed additional time to conduct an internal investigation before it issued a new PNDA, the record indicated that the City of Newark had enough information to issue the initial PNDA in 2016, where it listed administrative charges. Thus, while it was not prohibited from further investigation, the appointing authority could not keep the petitioner out of work without pay absent issuing new charges. However, the Commission denied the petitioner's request for counsel fees as premature, since his not guilty verdict in a criminal proceeding did not mean that he

would ultimately prevail in an administrative proceeding, given that the standard for sustaining administrative charges is lower. To read the full text, [click here](#).

Subsequently, the petitioner requested enforcement of the Commission’s decision in *In the Matter of Anthony Graves* (CSC, decided September 10, 2019). The Commission granted the request and warned the appointing authority that if it failed to issue a new PNDA or reinstate the petitioner, it would be fined for noncompliance. To read the full text, [click here](#).

In the Matter of Rana Elsayed, Union County (CSC, decided April 24, 2019)

Union County immediately suspended Rana Elsayed, a Social Rehabilitation Specialist, Penal Institution, on February 7, 2019. On February 11, 2019, the appointing authority issued her a PNDA, alleging that she engaged in personal telephone calls with inmates without prior authorization from the Director of Corrections.

The petitioner waived her departmental hearing, and on February 26, 2019, the appointing authority issued a Final Notice of Disciplinary Action (FNDA) stating that the disciplinary action of an “[i]ndefinite suspension pending hearing effective . . . Feb. 07, 2019” had been taken against her. The petitioner appealed the FNDA to the Commission and requested that the matter be forwarded to the Office of Administrative Law (OAL).

The appeal was received as a request for interim relief since an indefinite suspension had apparently been imposed without any formal criminal charges. In response, the appointing authority stated that since the allegations against the petitioner set forth criminal conduct, the matter had been sent to the Hudson County Prosecutor (Prosecutor) for review. The appointing authority maintained that it could not move forward until the Prosecutor’s review was completed.

Initially, the Commission found that the immediate suspension was justified. However, at issue was whether the appointing authority could “indefinitely” suspend the petitioner, pending the Prosecutor’s review of this matter

and when no criminal charges had been brought.

The Commission found that it could not do so pursuant to Civil Service regulations, which only allow for an indefinite suspension when criminal charges are pending. The Commission was not persuaded by the appointing authority’s contention that it could not move forward until the Prosecutor had completed its review. In that regard, it noted that the standard of proof in administrative proceedings is guilt by a preponderance of the evidence, not the stricter criminal standard of proof beyond a reasonable doubt. Proof of criminal culpability was not required.

Nevertheless, the Commission took note that as the petitioner had been suspended since February 7, 2019 and waived her departmental hearing, she had already been subjected to major discipline. As such, the Commission ordered that the matter be referred to the OAL for a hearing on the administrative charges. The actual disciplinary penalty could be determined there. Further, if the petitioner was later criminally charged, the appointing authority could then bring those charges via a new PNDA. To read the full text, [click here](#).

2020 Commission Meetings	
In accordance with Chapter 231 of the Public Laws of 1975, the following is the schedule of the Commission board meetings. All meetings are open to the public and are held at 10:00 a.m. in the first floor boardroom, which is located at 44 South Clinton Avenue, Trenton, New Jersey 08609. Meetings are held on Wednesday unless otherwise noted.	
January 15, 2020	July 1, 2020
January 29, 2020	July 29, 2020
February 12, 2020	August 19, 2020
February 26, 2020	September 2, 2020
March 12, 2020 (Thurs.)	September 16, 2020
April 1, 2020	September 30, 2020
April 15, 2020	October 21, 2020
April 29, 2020	November 4, 2020
May 20, 2020	November 24, 2020 (Tues.)
June 17, 2020	December 16, 2020

ALTERNATIVES TO DISCIPLINE PROGRAM

Chair/Chief Executive Officer Deirdré L. Webster Cobb has authorized the creation of an alternate dispute resolution program for employees with disabilities who may be facing disciplinary removal. This initiative is named the “Alternatives to Discipline Program” (ADP), which will officially launch in January 2020. The goals of this program are to consider currently available State resources as possible cost-effective, yet compassionate, interventional alternatives prior to the disciplinary removal of disabled employees and to limit agency liability in areas such as workplace injuries and disability discrimination.

ADP will serve as an expansion of the former “Workers’ Disability Mediation Program” initiated by the prior Labor Advisory Board which had been administered by the Division of Appeals and Regulatory Affairs (formerly the Division of Merit System Practices and Labor Relations). Unlike the prior program which mediated cases following a removal action by the agency, the current initiative concentrates on actions appointing authorities need to consider and take prior to the removal and appeal of the employee. This is anticipated to better ensure employee rights and dignity, while proving less costly than litigation.

ADP – What is that?

ADP is designed to provide appointing authorities with a pathway to more alternatives to consider, thus, making disciplinary removal from employment the last resort when no reasonable accommodation under the Americans with Disabilities Act (ADA) is viable. Consideration of these modalities by an appointing authority will reduce lengthy and costly disciplinary removal appeals, hearings, and litigation processes for the agency. It will also provide an avenue of better future financial security for disabled employees separated from employment, whether the disability is considered work-

related or personal. Although current regulations authorize agencies to remove employees from service through the disciplinary process when such employees are considered unable to perform their job duties, agencies will be encouraged to consider and utilize the full spectrum of State services and programs readily available as alternatives prior to taking disciplinary action against these employees.

What are some possible considerations prior to disciplinary removal?

Supervisory/chain-of-command involvement is crucial as services and programs can be considered for the employee by management. For example, participation of the employee in the following programs or services ought to be considered prior to taking disciplinary action: leave under the Family and Medical Leave Act; ADA accommodations; Employee Advisory Service referrals; ergonomic workstation evaluations; acquisition of adaptive work station/office equipment; performance evaluation assessments; supervisor counseling sessions; donated leave; fitness-for-duty independent medical/psychological evaluations (IMEs); disability retirements (voluntary or involuntary, ordinary or accidental retirements); mediation efforts; specialized training; vocational rehabilitation assessments; and functional capacity evaluations (FCEs). With the assistance of ADP, these alternate considerations should result in not only providing equitable and compassionate treatment of disabled employees, but should also prove cost-effective for the appointing authority to resolve these matters prior to and/or in lieu of more costly disciplinary proceedings.

For more information concerning this initiative, please feel free to contact ADP Project Manager, Iris Mungin Bey at Iris.Munginbey@csc.nj.gov.

AVOID COMPLICATIONS: REMEMBER TO REQUEST CERTIFICATIONS

The Commission wishes to remind appointing authorities about the proper way to make permanent appointments to fill vacancies in competitive titles in the career service. Here are a few key points to keep in mind:

Permanent appointments to competitive titles in the career service require certifications. Pursuant to *N.J.S.A. 11A:4-8* and *N.J.A.C. 4A:4-4.1*, appointing authorities must request a certification from an eligible list in order to make a permanent appointment to a competitive title. To do so, the appointing authority should contact its designated staff member in the Division of Agency Services' Certifications Unit.

Be mindful of deadlines. A certification can only be requested prior to the expiration of an eligible list for a title. Eligible lists generally expire three years after their promulgation date. See *N.J.S.A. 11A:4-6* and *N.J.A.C. 4A:4-3.3*. However, the duration of some lists, such as those for titles tested through the entry-level LEE, may be shorter. Appointing authorities must notify the Certifications Unit of the disposition of the certification by the disposition due date. See *N.J.A.C. 4A:4-4.8(b)*. Failure to dispose of a certification by the due date may result in constructive appointment or other remedial action. See *N.J.A.C. 4A:4-4.8(c)* and *N.J.A.C. 4A:10-2*.

Making an appointment without a certification creates problems for employees. For example, employees may be deemed ineligible for a promotional examination if their Personnel Management Information System (PMIS) or County and Municipal Personnel System (CAMPS) record does not show that they possess the requisite permanent service in a title to which that examination is open. There may also be other issues with regard to examination scores and layoff and seniority rights determinations.

Employee records in PMIS and CAMPS will not be updated to reflect an employee's permanent appointment to a new title if the appointing authority does not make the appointment from a valid certification. In cases where the employee was not appointed to a title pursuant to a valid certification, the issue generally cannot be remedied without a decision by the Commission. See, e.g., *In the Matter of Gilbert Tavares (CSC, decided September 25, 2019)*.

The Commission may penalize appointing authorities for failing to comply with Civil Service law and rules. The Commission is empowered to assess costs, charges and fines of up to \$10,000 and to take other appropriate action when there is evidence of a violation or noncompliance with Title 11A, New Jersey Statutes or Title 4A, New Jersey Administrative Code. See *N.J.S.A. 11A:10-1, et seq.* and *N.J.A.C. 4A:10-1.1, et seq.*

Additional information about certifications is available through the Commission's website at <https://www.state.nj.us/csc/authorities/faq/seekers/certifications.html>.

If you have further questions, you may contact the Certifications Unit at (609) 292-4100.

LAW ENFORCEMENT EXAMINATION (LEE) NEWS

The Commission is actively working to enhance the eligible list issuance process for law enforcement titles that utilize the entry-level LEE. The eligible lists resulting from the LEE, such as those for Police Officer and Sheriff's Officer, are intended to expire two years after their promulgation dates. However, in practice, the Commission has extended the expiration of these lists beyond this two-year period in order to maintain active eligible pools until a new LEE is administered and new lists are generated.

Recently, we have been discussing the LEE and the appointment process with various stakeholders. These conversations have yielded valuable feedback about how the Commission

can improve this process for appointing authorities and eligibles. In particular, our discussions have highlighted how appointing authorities are required to expend greater resources to make appointments from older lists. In view of these concerns, the Commission wishes to emphasize that this agency is working to reduce the amount of time it takes to generate new eligible lists for titles that utilize the LEE. We anticipate that these improvements will reduce, if not eliminate, the need to extend the lifespan of future eligible lists for these titles beyond two years.

Appointing authorities are encouraged to contact the Commission with any other feedback that they may have to improve the LEE appointment process. Additional information on public safety testing may be found at www.nj.gov/csc/about/news/safety/index.html.

LEGISLATIVE UPDATE

In August 2019, a pair of bills dealing with the County Correction Officer title series became law. The first was approved on August 9, 2019, effective December 1, 2019, when Governor Murphy signed S1739 (P.L. 2019, c.219), which renamed the title series and directed the Commission to effectuate the title changes in the career service.

Specifically, County Correction Officer, County Correction Sergeant, County Correction Lieutenant, County Correction Captain were renamed to County Correctional Police Officer, County Correctional Police Sergeant, County Correctional Police Lieutenant, and County Correctional Police Captain, respectively. Additionally, Warden was retitled to County Correctional Police Warden, and Deputy Warden was retitled to County Correctional Deputy Police Warden. These alterations updated the title nomenclature.

This law did not alter the qualifications and duties associated with these titles. It is noted that prior law had already provided County Correction Officers with the power of arrest.

The intent of revising the names of the titles is to clearly convey the scope of duties associated with the title series. Similar legislation last year was enacted (P.L. 2017, c.293, approved January 16, 2018, and effective May 1, 2018) that changed the title nomenclature and duties of State correction officers in the Department of Corrections and the Juvenile Justice Commission. That law and S1739 were designed to support correction officers when they are assigned to duties outside their normal operations by making it clear that they have police powers, including the ability to make arrests.

The second bill impacting County Correctional Police Officers, S785 (P.L. 2019, c.247), was signed into law by Governor Murphy on August 23, 2019, effective immediately. This law requires the Police Training Commission (PTC) to develop a supplemental training course to provide County Correctional Police Officers with the skills necessary to qualify for a lateral title change to Sheriff's Officer. The act also requires the Commission to adopt rules and regulations to implement the provisions of the new law.

The law specifies that County Correctional Police Officers will be eligible to participate in the training course if they have previously completed a basic training course administered by the PTC; been designated as eligible by the County Sheriff to transition into the position of Sheriff's Officer based on the officer's law enforcement examination score and seniority; served in the County Correctional Police Officer title for a minimum of 36 months in the facility under the jurisdiction of the County Sheriff; and been cleared of any disqualifying criminal background. The PTC's training program will be facilitated by experienced instructors who will comprehensively and consistently impart law enforcement practices and concepts to trainees.

Training will be offered at an academy approved by the PTC, and all County Correctional Police Officers who successfully complete the modified basic training program will be eligible for a lateral title change to Sheriff's Officer in the county in which the officer serves. Any County Correctional Police Officer eligible for the title change cannot be denied an available county Sheriff's Officer position without cause.

HELPFUL LINKS

Accessing Commission Decisions

The Commission's website is located at <https://nj.gov/csc>, where you can find information regarding job announcements and examinations, employee programs, helpful links for employers, forms and publications, regulations and laws governing Civil Service, the Commission meeting agenda, and Commission decisions.

The full texts of decisions are available online for cases decided on or after July 16, 2014. To access the text of a decision, first use the search function for Search Minutes/Decisions (<https://nj.gov/csc/about/meetings/search>).

You can search by meeting date, appellant or appointing authority name, or keyword. When you retrieve the minutes for the meeting, look for the agenda item pertaining to your search. The decision can be accessed through a link in the item.

If you know the meeting date on which the appeal was decided, you can access the minutes directly through the Minutes of Previous Meetings page (<https://nj.gov/csc/about/meetings/minutes/>).

Click the meeting date and a list of agenda items will appear. Minutes of meetings and associated decisions are posted after approval of the minutes, usually at the next scheduled meeting of the Commission.

Web Pages

Mailing Address:

Civil Service Commission
44 South Clinton Avenue
Trenton, New Jersey 08625
<https://nj.gov/csc/about/about/>

Office of the Chair/Chief Executive Officer

<https://www.state.nj.us/csc/about/chair/>

Civil Service Regulations and Laws

www.nj.gov/csc/about/about/regulations/index.html

Filing Appeals with the Civil Service Commission

www.nj.gov/csc/authorities/faq/appeals

Division of Appeals and Regulatory Affairs

www.nj.gov/csc/about/divisions/merit/

Division of Agency Services

www.nj.gov/csc/about/divisions/slo/

Job Announcements and Testing

www.nj.gov/csc/seekers/jobs/announcements

Division of Test Development and Analytics

<https://nj.gov/csc/about/divisions/selection/>

Public Safety Testing News

www.nj.gov/csc/about/news/safety/index.html

Division of Equal Employment Opportunity/Affirmative Action

<https://www.state.nj.us/csc/about/divisions/eeo/index.html>

Employee Advisory Service

<https://www.state.nj.us/csc/employees/programs/advisory/eas.html>

Employee Advisory Service Publications

<https://www.nj.gov/csc/employees/programs/advisory/publications.html>

Employee Training

www.nj.gov/csc/employees/training/index.html

Training Post Newsletter

www.nj.gov/csc/employees/training/training_newsletter.html



Commission staff at the
New Jersey League of Municipalities
Annual Convention, November 2019.



If you have questions or comments please email us at: TheReporter@csc.nj.gov or if you wish to subscribe to The Reporter, please click the link: https://www.surveymonkey.com/r/The_Reporter.

If you wish to unsubscribe, please email us at: TheReporter@csc.nj.gov.

We welcome suggestions on topics or areas of interest you would like to see in upcoming issues of The Reporter.

Date: Wednesday, January 15, 2020
Time: 10:00 a.m. to 1:30 p.m.
Location: Lawrenceville National Guard Armory
 51 Eggert Crossing Road
 Lawrenceville, New Jersey 08648

Date: Thursday, April 9, 2020
Time: 10:00 a.m. to 1:30 p.m.
Location: Camden County College
 The Connector Building
 200 North Broadway
 Blackwood, New Jersey 08102

Date: Wednesday, June 17, 2020
Time: 10:00 a.m. to 1:30 p.m.
Location: Rowan College at Burlington
 Student Success Center
 1500 College Circle
 Mount Laurel, New Jersey 08054

Date: Friday September 18, 2020
Time: 10:00 a.m. to 1:30 p.m.
Location: Atlantic Cape Community College
 1535 Bacharach Boulevard
 Atlantic City, New Jersey 08104

For more information, please visit:
<https://www.state.nj.us/csc/CSC%20Public%20Employment%20Fairs.pdf>.

For inquiries, please email:
CSCCommunications@csc.nj.gov.



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Chair Webster Cobb (center) at our Morristown, New Jersey job fair on November 16, 2019.