

**BEFORE THE
GOVERNING BOARD OF
POWAY UNIFIED SCHOOL DISTRICT**

In the Matter of the Appeal of the Termination of:

RAMIL PUNONGBAYAN, Appellant

POWAY UNIFIED SCHOOL DISTRICT, Respondent

Case No. 2019-01

OAH No. 2020010407

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 10, 2020, in San Diego, California.

Ricardo Ochoa, Attorney at Law, Ochoa Law, Attorney for Poway School Employee Association (PSEA or union), represented appellant Ramil Punongbayan.

Mark R. Bresee, Attorney at Law, Atkinson, Andelson, Loya, Rudd & Romo, represented respondent Poway Unified School District (district).

Oral and documentary evidence was received. At the close of the presentation of evidence, the parties' joint motion to keep the record open to file written arguments was granted. The record was held open until April 24, 2020, for submission of opening briefs, and until May 1, 2020, for submission of briefs in opposition. The briefs were marked and received into evidence as follows: appellant's opening brief

was marked as Exhibit D; district's opening brief was marked as Exhibit 13; appellant's brief in opposition was marked as Exhibit E; and district's brief in opposition was marked as Exhibit 14. The matter was submitted for decision on May 1, 2020.

PROTECTIVE ORDER

Appellant's personnel file, received as Exhibit C, is subject to a protective order sealing this file because it was not practical to redact information from it and simply redacting his name would not protect his privacy. The protective order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a governmental agency decision maker or designee under Government Code section 11517 may review the documents subject to the protective order.

FACTUAL FINDINGS

Background Information

1. Appellant is a member of, and represented at this hearing by, the PSEA. He was employed by the district as a Campus Security Specialist and was working at Rancho Bernardo High School (RBHS). On February 25, 2019, at 8:45 a.m. a student sitting in her car in the student parking lot, observed appellant urinating into bushes located at the edge of the parking lot. The student reported the incident to school administration who conducted an investigation. On March 14, 2019, school administration met with appellant and his union representative, and appellant admitted to the alleged conduct. On March 18, 2019, appellant was placed on paid administrative leave.

Stipulated Facts

2. Appellant and district agreed to the following stipulation of facts:
 - Appellant was employed by the district from August 26, 2002, until September 12, 2019, as a Campus Security Specialist.
 - As a classified employee of the district, appellant was subject to and protected by the Rules and Regulations for the Classified Service of the Personnel Commission of the District (PC Rules), including grounds for disciplinary action and the discipline procedures to be followed.
 - District Administrative Regulation 4.313.1 also enumerates grounds for disciplinary action.
 - On or about June 6, 2019, appellant was served with and received a Notice of Proposed Intent to Dismiss and Statement of Charges.
 - On August 9, 2019, appellant was provided an opportunity to respond to the Notice of Proposed Intent to Dismiss and Statement of Charges, in a pre-disciplinary *Skelly*¹ conference before the district's superintendent's

¹ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must afford the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a Skelly

designee, Carol A. Osborne, Assistant Superintendent, Learning Support Services. Appellant attended the conference with representation, and was provided an opportunity to be heard. Following the conference, the designee recommended that the disciplinary process move forward without modification.

- On or about September 12, 2019, the Board of Education (board) took action to terminate appellant's employment with the district. Prior to this meeting, appellant was notified that the board would hear the charges against him on that date, that the board would make a decision regarding his employment, and that he could attend the meeting to appeal the recommendation to terminate his employment. Appellant attended the board meeting with representation, and was provided an opportunity to be heard prior to the board's deliberations and decision.
- On September 13, 2019, appellant was notified of the board's action to terminate his employment, and his right to appeal the board's decision pursuant to PC Rules, Section 60.500.
- On October 1, 2019, appellant timely filed a Notice of Appeal to the PC, appealing the board's action on the grounds that the penalty invoked is excessive. (PC Rules, 60.500.2(A)(2).)

hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

- On October 4, 2019, the PC Interim Director transmitted notice of appellant's appeal to the district assistant superintendent.
- The PC subsequently exercised its discretion under the PC Rules, specifically Rule 60.500.3(B), to appoint a hearing officer to conduct the appeal hearing and report the findings and/or recommendations of the PC. Timely notice was provided to appellant that his appeal hearing would occur on February 10, 2020, and of the time and location of the hearing.

Appellant's Job Description

3. The district's job description for a Campus Security Specialist lists the following as the "Basic Function" of the position:

Under the direction of an Assistant Principal, patrol and supervise campus activities to assure the well-being and safety of students, staff and visitors in school-site activities; assure student compliance with school and district policies and regulations.

The duties of this position that are most relevant here include: patrol and supervise assigned areas of campus, assuring students are safe, orderly and within supervised areas; enforce school and district rules, regulations, and procedures; investigate and report unusual, suspicious or criminal activities; detain individuals suspected of illegal or prohibited activity according to established procedures; monitor student behavior and activity during passing periods and lunchtime; and assure compliance with school rules.

District's Evidence

STUDENT'S DECLARATION

4. In a declaration², signed under penalty of perjury, a student reported an incident that occurred on February 25, 2019, at 8:45 a.m. in the student parking lot. She wrote the following:

I was sitting in my car towards the back of the lot waiting for second period. I saw the security guy walk up towards the bushes and look around for people. He missed me, and then turned around and urinated on the fence facing the softball field area. I turned away and did not see any "skin." I didn't feel uncomfortable – just surprised. I just feel that he shouldn't be doing that in public / on a school campus. The security guard was short and had longer hair.

The declaration concluded with the statement that the student did not want to testify at hearing or trial, and she also wrote, "I want to be anonymous."

MONICA ROYAL, TEACHER

5. Ms. Royal is a photography teacher at RBHS, and testified that one morning a senior student, who Ms. Royal described as "a very happy person," came

² The parties stipulated to the admission of the student's declaration without any limitation.

into her class and approached her desk, "looking shaken." The student reported³ that as she was sitting in her car in the student parking lot, a security guard walked around in front of her car and then urinated. She did not believe the security guard saw her as she was in her car. Ms. Royal told the student to immediately report the incident to administration, and the student said she had already done so. The student appeared shocked and angry. After her conversation with the student, Ms. Royal prepared a written statement about this conversation, and her testimony was consistent with her statement.

TERESA SMALL, ATTENDANCE SUPERVISOR

6. Teresa Small works in the attendance office at RBHS, and testified that on February 27, 2019, a student came into the attendance office and asked if she could speak with Ms. Small and her coworker, Heidi Huisman. Both were familiar with the student as she had previously worked in the office as an intern. Ms. Small described the student as "outgoing," but on this day she seemed worried and uncomfortable. The student said she was sitting in her car in the parking lot on February 25, 2019, talking on her phone with her mother, when an individual she described as the campus security guard with the long hair in a ponytail, walked past her car and over to the fence facing the fields and urinated. The student drives her younger sister to school each day, and said she was glad her sister was not in the car with her at the time. Ms. Small asked the student if she felt comfortable talking with her Assistant Principal, Kellie Moore, and the student said, "yes." Ms. Small immediately contacted Ms. Moore to let her know the student would be coming to see her. Ms. Small provided a written

³ All testimony of what the student told other witnesses was received as administrative hearsay pursuant to Government Code section 11513.

statement about her interaction with the student, and her testimony was consistent with her statement.

KELLIE MOORE, ASSISTANT PRINCIPAL

7. Kellie Moore is in her fourth year as Assistant Principal at RBHS. Ms. Small advised her of the meeting with the student, and, as Ms. Moore was going to be out of the office, she worked with Assistant Principal Yael Bozzay to obtain the student's statement. Ms. Moore contacted the director of human resources who advised her to talk to the student and get her written statement, take photographs of the location of the incident, and gather as much evidence as possible, and then meet with appellant and his union representative to allow appellant to give his version of the events.

Ms. Moore explained that the student "has first period off-role," which meant that she, as well as many other students, had first period off so were either already in the parking lot or were arriving at this time in preparation for a second period class. Ms. Moore met with the student, who expressed her concern about her younger sister or anyone else who may have to witness a campus security guard relieving himself on the school campus. The student knew this conduct was inappropriate for a campus security guard, and she did not want appellant to know that she was the one who had reported the incident. Ms. Moore and the student went to the "scene," and Ms. Moore photographed the area where the student identified her car was parked and where appellant was standing. The student said appellant was not hidden behind the bushes and she knew he was urinating "because she saw the stream of urine." Ms. Moore estimated that it was about 10 feet from the student's car to where she identified that appellant was standing.

Ms. Moore reviewed an aerial photograph⁴ of the campus and explained that there were several ways for appellant to get to the student parking lot from the main part of the campus. The closest restrooms to the student parking lot were unlocked porta-potties located at the edge of the parking lot next to the softball field, which Ms. Moore estimated to be about 50 yards, and a 30 second walk, from the point where appellant urinated. Porta-potties are delivered to the campus each year when the softball and baseball teams start to practice, and they remain in place throughout the entire season. Ms. Moore provided documentation that the porta-potties were delivered to the campus on February 19, 2019. There were additional restrooms in the pool area and behind the press box on the far side of the football field, and both of these restrooms were accessible by foot or golf cart. Ms. Moore noted that as a campus security specialist, appellant "had a master key for everything."

On March 14, 2019, Ms. Moore interviewed appellant, who was accompanied by his union representative, Arthur Hall. She had already interviewed the student and the other individuals who provided written statements. The delay in scheduling the interview was due to working with schedules of both the appellant and his union representative. Ms. Moore summarized the meeting as follows: She told appellant that she had received a report from a student who witnessed appellant urinating in the student parking lot near the bushes, and she asked appellant if that had happened,

⁴ Photographs of the campus reflected that the student parking lot is in the "lower" or southern section of the campus, and the football field (stadium) is located to the north of that parking lot. From the student parking lot there is a path that connects to a traffic circle located to the left (or west) of the stadium, and another path that follows around the south side of the stadium to the pool area on the right.

and he immediately said, "Yes." Appellant's "tone was defensive." Both she and Mr. Hall asked appellant if he had his cart with him or if he could get to the pool or press box restrooms, "and the only thing he said was that he didn't want to leave the student parking lot." As he was being asked these questions, appellant's demeanor changed, "he got very agitated," was defensive, "his voice was getting very loud," he clinched his fists, and he kept saying that he just had to go and did not want to leave the parking lot. Appellant did not say that he was overcome with a sudden urge or that he was hidden behind a bush, and he never apologized or expressed remorse or "a lack of judgment" on his part. She asked appellant to provide a written statement, and he refused.

Ms. Moore recalled that the director of human resources advised they would need to ensure that the incident was not the result of a medical issue, and Ms. Moore did not believe she asked the question at this meeting, but appellant did not mention a medical issue. She did ask whether it was an emergency for him to urinate, and he responded, "No."

Ms. Moore began supervising security specialists in August 2018, and appellant was on leave from November through January, and then on March 18, 2019, he went out on paid administrative leave as a result of this incident. As his supervisor and assistant principal at RBHS, at this time Ms. Moore does not have confidence in appellant's judgment as a campus security specialist. She stated that "it was a profound lack of judgment to make a decision to urinate in public when anyone could see him." If a student had engaged in this same conduct, it is a "suspendable offense that can equate to sexual harassment." Ms. Moore doubts appellant's ability to make sound decisions.

DAVID LEMASTER, PRINCIPAL

8. David LeMaster is in his eighth year as principal at RBHS. RBHS has approximately 2,350 students and is located adjacent to Bernardo Heights Middle School. He was aware of the investigation conducted by Ms. Moore, and she kept him apprised of what was going on and the result of investigation. Mr. LeMaster does not have confidence in appellant's judgment when viewed with the campus security specialist job description, which states that one of the primary responsibilities is to provide a safe and secure campus, to monitor student behavior, and to report incidences of students doing things that they should not be doing. Urinating in public is a violation of Education Code section 4900, and it is "an illegal act." "The very act of urinating in public, in the presence of students, as witnessed by a student, where there were restrooms accessible," reflects a lack of ability to decipher what is the right thing to do. "You would expect students to do those kinds of things. But you don't expect people who are supervising and making sure the campus is safe to do those types of activities."

Appellant's Evidence

9. Appellant has worked for the district for 17 years, and has held the position of campus security specialist at RBHS during this entire time. He described the February 25, 2019, incident as follows: On that day he was assigned to patrol the student parking lot. The district issued golf carts and most security specialists used a cart while patrolling, but appellant preferred to walk around, and explained that he was less visible and it was easier to move about without a cart. It was first period, and he parked his cart near the entrance on the south side of the parking lot. As he walked around the parking lot, he said, "I felt like I needed to go to the restroom. And I couldn't contain myself. And I just had to go. So I went behind a bush and proceeded

to go." He acknowledged that this did not excuse what he did. He had never done this before. He was aware that this was a time of day when there was very heavy student traffic as many were arriving for their first class, and he was also aware that many students sat in their cars and wait until it is time for class. He did not deny that a student saw him urinating in public.

Appellant stated that it is "pretty far" from the student parking lot to other parts of the campus: It would have taken him four to five minutes to walk to the restrooms located by the pool, and eight to ten minutes to walk to the restrooms located behind the press box near the stadium. It would have taken three minutes to walk to his golf cart, and once in his cart he would need to unlock a gate regardless of which way he went. Appellant had a master key, but unlocking a gate would slow him down. Porta-potties are located next to the playing field during softball and baseball seasons, but he said they were not present on this day. If they had been present, he certainly would have used them.

Appellant acknowledged that he would be able to patrol more of the lot more quickly and more comprehensively if he rode in a cart rather than walking, but he explained that students "keep an eye on the cart, if you're walking around, you are able to not be seen." In addition to ensuring that students are safe, appellant considered it part of his job to try to catch students doing things they were not supposed to be doing.

During the March 14, 2019, meeting with Ms. Moore, appellant was not asked if he had a medical condition that may have led to his need to urinate, and he did not tell Ms. Moore that he had such a medical condition. Appellant provided a copy of an after-visit summary from an October 29, 2019, doctor visit, which reflected the reason for the visit was "urinary urgency" and that he was prescribed Tamsulosin (Flomax).

When asked why he waited for eight months to see a doctor, he explained that he thought "it was normal" for his age to have this condition, but when the problem progressed, he sought medical advice.

Appellant testified that he apologized "right away" during the March 14, 2019, meeting. He refused to write a statement as Ms. Moore requested "because I already admitted to what I needed to admit to." When asked if he offered the district an apology at the *Skeffy* meeting, he replied, "As I recall, yes, sir." Regarding an apology at the school board hearing, he responded, "My exact word was, 'I was contrite.' "

Appellant had been on what he referred to as a workers' compensation "stress leave" from mid-November 2018, through mid-January 2019, and testified that he was subsequently diagnosed with "anxiety and depression." He confirmed that his workers' compensation claim stated that he was suffering from anxiety and depression; and alleged neck, shoulder, back, and foot pain, lock jaw, and headaches, due to communications with his supervisors. The pressure was related to his work performance and his supervisor raising issues about his performance. He said, "I felt like I was being pressured to do things . . . so started talking to my union rep," and then went to the workers' compensation doctor. He returned to work in mid-January 2019 after he was released by his doctor.

Appellant provided eight performance evaluations, beginning with a probationary review in April 2003 to the most recent review dated December 3, 2013. The evaluations reflected that appellant met or exceeded standards or expectations, and the reviews reflected no deficiencies, letters of warning, or discipline.

Three of appellant's children attend school in the district, including one child who is a junior at RBHS. His job means a lot to him and he is "part of the community."

He said he "felt like I disappointed a lot of people when I did the action I did and also, you know, it was pretty embarrassing, not only for myself but also for my student that goes there now."

10. Arthur Hill has been the lead employee representative with the PSEA for two and one-half years, and one of his duties is representing employees in investigatory interviews. He attended the March 14, 2019, meeting with appellant, and said appellant admitted urinating on school grounds and also apologized. When asked on cross-examination about appellant's apology he responded, "I believe he said he was sorry for doing that, but he had to go to the bathroom." He agreed that appellant got agitated during the meeting but said appellant did not raise his voice; however, Mr. Hill later testified that appellant was calm during the entire meeting. Mr. Hill did not recall if appellant was asked to write a statement but he acknowledged that he had advised appellant not to do so. Mr. Hill's testimony was inconsistent and for that reason not very credible.

Parties' Arguments

11. Appellant contended that the penalty of termination is excessive and that he should be suspended and allowed to return to his job on a public high school campus. He agreed that the essential facts are undisputed, that some punishment is in order "for lack of judgment," and stated, "I have never denied nor minimized the wrongdoing." He argued that suspension is appropriate based on his long history of employment with the district and his clean employment record.

12. District argued that the undisputed facts alone are sufficient to uphold the board's termination, and noted that urinating in public is prosecutable as a crime under Penal Code section 370. In addition, appellant had a duty to assure the well-

being and safety of the students and to assure students were in compliance with policies and regulations; appellant acknowledged that restrooms were available; the incident had a clear impact on the student; and appellant never stated he had an "emergency" or acknowledged that he used poor judgment until after he was terminated and had filed his appeal of the board's decision. This reinforced the board's conclusion that they lack confidence in appellant's judgment and ability to serve as a role model for students.

LEGAL CONCLUSIONS

1. Education Code section 45113 provides in pertinent part:
 - (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the school district after serving a prescribed period of probation that shall not exceed one year.
 - (b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board of the school district, but the governing board's determination

of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board of a school district shall adopt rules of procedure for disciplinary proceedings that shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested that shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board of the school district, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose before the employee's becoming permanent, nor for any cause that arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing school district.

(e) Nothing in this section shall be construed to prohibit the governing board of a school district, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4

of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees . . . to an impartial third party hearing officer. However, the governing board of the school district shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f)(1) A governing board of a school district shall delegate its authority to a judge, as defined in Section 44990, to determine whether sufficient cause exists for disciplinary action against a classified employee involving allegations of egregious misconduct, as defined in Section 44932, and involving a minor, as defined in Section 44990. The judge's ruling shall be binding upon all parties.

(2) A judge authorized under this subdivision to conduct a hearing involving allegations as described in Section 44010 or 44011 of this code, or as described in Sections 11165.2 to 11165.6, inclusive, of the Penal Code, shall conduct that hearing in accordance with Article 3.3 (commencing with Section 44990) of Chapter 4 and Section 49077 of this code.

(3) The term "representative of the respondent," within the meaning of Article 3.3 (commencing with Section 44990) of Chapter 4, shall include, but not necessarily be limited to, an exclusive labor representative.

- (g) This section shall apply only to school districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.
2. Education Code section 45116 provides:
- A notice of disciplinary action shall contain a statement in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based, a statement of the cause for the action taken and, if it is claimed that an employee has violated a rule or regulation of the public school employer, such rule or regulation shall be set forth in said notice.
- A notice of disciplinary action stating one or more causes or grounds for disciplinary action established by any rule, regulation, or statute in the language of the rule, regulation, or statute, is insufficient for any purpose.
- A proceeding may be brought by, or on behalf of, the employee to restrain any further proceedings under any notice of disciplinary action violative of this provision.
- This section shall apply to proceedings conducted under the provisions of Article 6 (commencing with Section 45240) of this chapter.
3. Before the personnel commission may impose discipline upon an employee, the district has the burden of establishing by a preponderance of evidence

that the employee has committed the acts or omissions alleged in the Notice of Proposed Intent to Dismiss and Statement of Charges and that these acts or omissions violated district policies. The conduct of district employees is governed by the Education Code, Chapter 60 of the Rules of the Personnel Commission of the district (Personnel Commission Rules), and Administrative Procedure (AP) 4.313.1.

4. Pursuant to Education Code section 45312 and Personnel Commission Rule 60.500.3 (B), the commission appointed an Administrative Law Judge of the Office of Administrative Hearings, State of California, to conduct the hearing and report findings or recommendations to the commission. The commission may accept, reject or amend the findings or recommendations of the Administrative Law Judge.

5. Commission Rule 60.500.1 (E) and AP 4.313.1 provide causes for dismissal or disciplinary action of a permanent classified employee including, but are not limited to, the following:

- Incompetence or inefficiency in the performance of duties [AP 4.313.1(5)(a); Personnel Commission Rule 60.500.1(E)(1).]
- Insubordination [AP 4.313.1(5)(c); Personnel Commission Rule 60.500.1(E)(3).]
- Carelessness or negligence in the performance of duty or in the care or use of district property [AP 4.313.1(5)(d); Personnel Commission Rule 60.500.1(E)(16).]

- Discourteous, offensive, or abusive conduct or language toward other employees, pupils or the public [AP 4.313.1(5)(e); Personnel Commission Rule 60.500.1(E)(4).]
- Personnel conduct unbecoming of an employee of the district [AP 4.313.1(5)(i).]
- Willful or persistent violation of the Education Code or rules and regulations of the district [AP 4.313.1(5)(s).]
- Any willful conduct tending to injure the public services [AP 4.313.1(5)(f); Personnel Commission Rule 60.500.1(E)(18).]

6. It was not established that appellant is subject to disciplinary action for incompetence or inefficient performance of his duties in violation of Personnel Commission Rule 60.500.1(E)(1) and AP 4.313.1(5)(a). The term 'incompetency' generally indicates 'an absence of qualification, ability or fitness to perform a prescribed duty or function.' (*Pollack v. Kinder* (1978) 85 Cal.App.3d 833, 837.) Incompetency is distinguishable from negligence, in that one 'may be competent or capable of performing a given duty but negligent in performing that duty.' (*Id.* at p. 838.) He was negligent in performing.

7. It was not established that appellant violated Personnel Commission Rule 60.500.1(E)(3) and AP 4.313.1(5)(c) by being insubordinate. Insubordination is refusal to obey an order. Evidence reflected that appellant refused to provide a written

statement as requested by Ms. Moore, however, no evidence was presented that she ordered him to do so.

8. The district has established by a preponderance of the evidence that appellant violated Personnel Commission Rule 60.500.1(E)(16) and AP 4.313.1(5)(d) in that he was careless or negligent in the performance of duty or in the care or use of district property. Urinating in public, in the student parking and at a time that he knew the parking lot was very busy, and only feet from parked cars, showed a lack of common sense and decency. This violation constitutes a separate cause for dismissal from employment as a permanent classified employee.

9. The district has established by a preponderance of the evidence that appellant violated Personnel Commission Rule 60.500.1(E)(4) and AP 4.313.1(5)(e) in that he engaged in discourteous, offensive, or abusive conduct or language toward other employees, pupils or the public. Urinating in public, in a student parking lot, during a time when he knew students would be arriving or were already sitting in their cars, was offensive and uncivil behavior. These violations constitute a separate cause for dismissal from employment as a permanent classified employee.

10. The district has established by a preponderance of the evidence that appellant violated AP 4.313.1(5)(i) in that his personal conduct was unbecoming of an employee of the district. Appellant's behavior was contrary to the rules and regulations of the district and of the school where he worked, and his conduct that morning violated the very rules he was charged with enforcing. This violation constitutes a separate cause for dismissal from employment as a permanent classified employee.

11. The district has established by a preponderance of the evidence that appellant violated AP 4.313.1(5)(s) in that he engaged in willful or persistent violation

of the Education Code or rules and regulations of the district. Appellant's conduct was a violation of Education Code section 4900, and could also have resulted in a criminal charge under Penal Code section 370. This violation constitutes a separate cause for dismissal from employment as a permanent classified employee.

12. The district has established by a preponderance of the evidence that appellant violated Personnel Commission Rule 60.500.1(E)(18) and AP 4.313.1(5)(t) in that he engaged in willful conduct tending to injure the public services. A campus security specialist is expected to be law-abiding while performing his duties and to model positive behavior for students. Appellant admitted to urinating in public and acknowledged that his conduct was the result of a profound lapse in judgment. This violation constitutes a separate cause for dismissal from employment as a permanent classified employee.

Evaluation

13. Appellant's appeal is based solely on his assertion that termination of employment is excessive discipline. Appellant admitted to the conduct and agrees that some discipline is in order. However, he argues he has met or exceeded standards on all his evaluations, has had no prior discipline during his 17 years with the district, and a lengthy suspension is appropriate for his first offense. The district maintained that, regardless of appellant's length of employment and lack of prior discipline, his conduct on February 25, 2019, was egregious and demonstrated a profound lack of judgment, such that the board has lost confidence in appellant's ability to carry out the duties of his position of trust.

The "basic function" of a campus security specialist is to assure the well-being and safety of students and "assure student compliance" with school and district policies

and regulations; here, appellant violated those very policies and regulations. If appellant had observed a student urinating in the student parking lot, or if he had been advised that such an act had occurred, he would have the responsibility to report the student to administration and to possibly "detain" the student in accordance with school or district procedures, and the student would be subject to suspension. Urinating in public is also actionable as a crime under the Penal Code. Appellant's conduct was also unbecoming a district employee.

Appellant's conduct showed a lack of common sense. He was aware that at this time of the day students were entering the parking lot, or were already sitting in their cars, and he used extremely poor judgment in choosing to urinate at the edge of the parking lot just feet from cars—only 10 feet from the student's car. Urinating in public was discourteous and offensive to the student who witnessed the incident, and to students and staff who subsequently became aware of the incident.

Appellant contended at hearing that he suffers from a medical condition which causes urinary urgency. However, there was insufficient evidence that he suffered from this condition in February 2019. Appellant testified that he felt that at his age his urinary condition was normal, "but it continued to progress," and eight months later he sought medical attention. He did not advise Ms. Moore that he had a urinary urgency condition, and in fact, when she asked if he had urinated in the parking lot due to an "emergency," he said, "No." He only told Ms. Moore that he "had to go" and "did not want to leave the parking lot." On October 29, 2019, after he had been terminated and after he had filed his appeal, he sought medical advice. In addition, the medical visit summary did not list a diagnosis but provided that the reason for the visit was "urinary urgency," and that appellant had been prescribed Flomax.

Appellant testified that he was not aware that the porta-potties were in place on February 25, 2019. This testimony does not seem entirely credible for several reasons. Appellant was aware that porta-potties were delivered each year when the softball and baseball teams begin to practice, and were located between the outfield and the student parking lot. On the day of the incident, the porta-potties had already been in place for at least three to four "school days" and it does not seem reasonable that he would not have observed these while patrolling the student parking lot, or driving or walking to other parts of the campus. Further, as a person with a need to urinate "quickly," it would seem reasonable that he would routinely be aware of the location of the nearest restroom.

There was inconsistent testimony regarding the March 14, 2019, meeting. Appellant admitted to Ms. Moore that he urinated in the parking lot, and testified that he apologized to her. Ms. Moore confirmed that appellant admitted to the conduct but said his "tone was defensive" and he did not apologize. He became very agitated, his face became red, he was "getting angry" and became "very loud." Appellant never expressed to Ms. Moore that his urinating in public was a serious lack of judgment. Mr. Hall first testified that appellant apologized, and later said, "I believe he apologized." Mr. Hall first said appellant was agitated, then later said appellant was calm throughout the meeting and did not raise his voice.

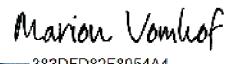
However, it did not appear that appellant understood the egregiousness of his conduct. There was no evidence that he attempted to reach any of the three available restrooms; he did not dispute Ms. Moore's testimony that he said he just had to go and said several times that he did not want to leave the parking lot. This is conduct that would not be tolerated if done by a student, yet appellant now states despite his "lack of judgment," he should be allowed to return to his position after a lengthy

suspension. Appellant has demonstrated that the district cannot trust him to perform his duties, and therefore the decision to terminate was reasonable and appropriate.

ORDER

The appeal of Ramil Punongbayan is denied. The Recommendation for Dismissal terminating Ramil Punongbayan from employment with the Poway Unified School District is affirmed.

DATE: June 1, 2020

DocuSigned by:

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MARION J. VOMHOF
Administrative Law Judge
Office of Administrative Hearings