B[redacted] D[redacted] v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Appeal from Dismissal	Case No. 25-0559 **BOARD RESOLUTION AND ORDER DESIGNATING ADOPTED DECISION AS A PRECEDENTIAL DECISION**

BEFORE: Kathy Baldree, President; Kimiko Burton, Vice President; Dr. Gail Willis, Ana Matosantos, and Shawnda Westly, Members[1]

On March 9, 2026, the State Personnel Board (Board) adopted the Proposed Decision filed by the Administrative Law Judge in the appeal by B[redacted] D[redacted] (Appellant), from dismissal imposed by California Department of Corrections and Rehabilitation.

The Proposed Decision provided a thoughtful and well-reasoned analysis of the application of Government Code section 19572, subdivision (r) to findings of fact at evidentiary hearing. While previously designated precedential decisions discuss Government Code section 19572, subdivision (r), this decision provides clarity regarding the need for facts that generally relate to using an employee's position for some private benefit, for themselves or others, or in a manner resulting in a conflict of interest.

The Board finds it appropriate to designate the adopted Proposed Decision issued on March 9, 2026, as precedential under Government Code section 19582.5.

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[1] Member Westly was not in attendance and did not participate in this matter.

IT IS RESOLVED AND ORDERED THAT:

1. The Board designates the attached adopted Proposed Decision as a precedential decision under Government Code section 19582.5;

3. The precedential decision shall be designated as SPB Dec. No. 26-02 in the Board's precedential decision numbering system; and

4. The precedential decision shall be uploaded and maintained in the Board's records, website, and other legal online publications as may be available or applicable.

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STATE PERSONNEL BOARD

The foregoing Board Resolution and Order was made and adopted by the State Personnel Board during its meeting on March 9, 2026, as reflected in the record of the meeting and Board minutes.

Suzanne M. Ambrose
SUZANNE M. AMBROSE
Executive Officer

B[redacted] D[redacted] v. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION Appeal from Dismissal	Case No. 25-0559 Proposed Decision

STATEMENT OF THE CASE

This matter came on regularly for an evidentiary hearing before Jean M. Hobler, Administrative Law Judge (ALJ), State Personnel Board (SPB or Board), on November 4 and 5, 2025, via Webex videoconference. The matter was submitted following closing arguments on November 5, 2025.

Appellant B[redacted] D[redacted] (Appellant) was present and represented by John Chung, Attorney, John Chung Law.

Respondent California Department of Corrections and Rehabilitation (Respondent or CDCR) was present and represented by Jamie Adams, Attorney III, CDCR. Erick Rhoan, Special Assistant Inspector General, Office of the Inspector General, was also present.

Respondent served Appellant, a Correctional Officer, with a Notice of Adverse Action (NOAA) dismissing him effective at the close of business on April 14, 2025. Respondent alleged that Appellant's fellow Correctional Officer encouraged two inmates to initiate an assault on other inmates in Appellant's presence, that he failed to intervene to prevent the assault, that he failed to report the misconduct, and that Appellant omitted material facts of that misconduct from his own report of the event.

Appellant contends that he did not hear or understand his fellow Correctional Officer's statements and therefore did not violate any CDCR policies or regulations by

failing to report the misconduct and omitting the statements from his own report.[1]

ISSUES

The issues to be resolved are:

1. Did Respondent prove any or all of the NOAA's factual allegations by a preponderance of the evidence?
2. If Respondent proved any or all of the allegations by a preponderance of the evidence, does Appellant's conduct constitute legal cause for discipline under Government Code section 19572, subdivisions (d) Inexcusable neglect of duty; (f) Dishonesty; (m) Discourteous treatment of the public or other employees; (o) Willful disobedience; (r) Violation of the prohibitions set forth in Government Code section 19990; and/or (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment?
3. If Appellant's conduct constitutes legal cause for discipline, what is the appropriate penalty?

FINDINGS OF FACT

A preponderance of the evidence proves the following facts:

Appellant's Work History

1. Appellant began his state service on February 4, 2020, as a Correctional Officer.

[1] In his Prehearing and Settlement Conference Statement and at the outset of the hearing Appellant alleged a violation of *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. He withdrew this allegation on the record prior to closing argument.

2. At all relevant times, Appellant worked at Pleasant Valley State Prison (Pleasant Valley). He was assigned to Pleasant Valley's D facility as a Floor Officer.

3. As a Floor Officer, Appellant was responsible for maintaining order, discipline, and security in all areas of the D facility housing units. He was required to constantly observe his area of responsibility, remaining alert and observant, and responding to incidents in the D facility as they arose.

4. Appellant has no history of prior discipline.

Policies and Regulations[2]

5. By regulation, "[t]he requirement of custodial security and of staff, inmate and public safety must take precedence over all other considerations in the operation of all programs and activities of the institutions of the department." (Cal. Code Regs, tit. 15, § 3270.) Every CDCR employee "is responsible for the safe custody of the inmates confined in" CDCR institutions. (Cal. Code Regs, tit. 15, § 3271.)

6. Correctional staff, i.e., peace officers, specifically were responsible for enforcing the laws, regulations, and procedures governing the actions of

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[2] Respondent did not introduce into evidence a number of the regulations and policies cited in the NOAA; related allegations are therefore dismissed, as follows: California Code of Regulations, title 11, section 1013, *Code of Ethics*; California Code of Regulations, title 15, section 3413, *Incompatible Activity*; and CDCR's *Mission Statement*. California Code of Regulations, title 2, section 172 does not form a basis for discipline, and the allegation of a violation thereof is therefore dismissed. (*R.B.* (1993) SPB Case No. 93-12.) Department Operations Manual (DOM) sections 31040.3.4 and 31040.3.4.1 regarding workplace violence do not facially apply to inmate-on-inmate violence, and Respondent did not address their application under the facts of this appeal. Allegations relating to those DOM sections are therefore dismissed.

inmates, and to respond lawfully in emergencies. (Cal. Code Regs, tit. 15, § 3291.)

7. All CDCR employees were required to: comply with laws, CDCR regulations, department policy, local procedures, duty statements, post orders, and applicable professional standards; be alert, courteous, respectful, and professional when interacting with inmates; refrain from conduct that discredits an employee or the department; respect others; report misconduct, and unethical or illegal activity; and, for peace officers, comply with the Peace Officer Code of Ethics. (Cal. Code Regs, tit. 15, § 3391.) CDCR's Department Operations Manual (DOM) sections 33030.3.1, *Code of Conduct*, and 33030.3.2, *General Qualifications*, reiterated these expectations and requirements. DOM section 31040.3.4, *Employee Responsibility*, required, in relevant part, employees to comply with the *Employee Code of Conduct* and general qualification mandates found in DOM sections 33030.3.1. and 33030.3.2, and to act professionally and courteously.

8. DOM section 31140.5, *Employee Expectations & Reporting*, required CDCR employees to adhere to performance standards set forth in DOM subsection 33030.3, report misconduct in a timely manner, and to be honest when questioned or interviewed, and in submitted reports.

9. CDCR employees had a duty to cooperate in any official internal investigation by, among other things: making, full, complete, and truthful statements; abstaining from interfering with, delaying, or distorting an investigation; and

by cooperating with investigators by providing full, complete, and truthful statements. (DOM § 31140.5.1, *Employee Duty to Cooperate*.)

10. DOM Section 33030.3.3, *Law Enforcement Code of Ethics*, established that peace officers, e.g., Correctional Officers, were held to a higher standard of conduct as reflected in the Code of Ethics, which stated, in relevant part:

> As a law enforcement officer, my fundamental duty is to serve the community;… to protect … the weak against oppression or intimidation …; and to respect the constitutional rights of all people to liberty, equality and justice.
>
> … I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department.

11. Every CDCR employee had a duty to "do everything possible to prevent disorders." (Cal. Code Regs, tit. 15, § 3300, *Prevention of Disorders.)*

12. CDCR employees who observed a fight were required to "prepare a written report stating clearly everything they observed." Employees were required to include, "the reason for the fight if it can be ascertained [and] action taken if any." (Cal. Code Regs, tit. 15, § 3285, *Controlling and Reporting Fights.*)

13. Employees who observed a use of force of any kind were required to report the event to a supervisor "as soon as practical" and complete necessary documentation prior to being relieved of duty, to include identifying any witnesses, describing the "circumstances giving rise to the use of force," and describing any de-escalation strategies attempted prior to the use of force. (DOM § 51020.17, *Uses of Force-Reporting Requirements*.) When drafting

a report regarding a use of force, employees were required to include, among other things, the identity of any staff member observing or participating in the use of force, and a description of the actions of the inmate(s) and circumstances leading to the use of force. (DOM § 51020.17.1, *Involved Staff-Reporting Requirements*.)

14. The post orders for Appellant's post on August 13, 2024, identified Appellant's primary function to be maintaining order, discipline, and security, and providing constant observation and coverage of activities. He was required to remain alert and observant at all times, to enforce all CDCR rules, regulations, and policies, to give orders and instructions to inmates, as required, and to take appropriate action during emergencies, specifically including using verbal persuasion to avoid uses of force.

15. Appellant was familiar with and trained in all the above policies and regulations and was aware that they applied to him when executing his duties as an Officer.

Events of August 13, 2024

16. Historically, Pleasant Valley's D facility, in which Appellant worked, was a special needs yard. In August 2024, it was in the process of being integrated with general population inmates.[3] For various reasons of prison politics, general population inmates did not wish to be housed with special needs yard inmates. This led to substantial disruption in the D facility, as inmates

[3] The record does not reflect the differences between general population inmates and special needs yard inmates, but the distinction is not material to the resolution of the issues in this appeal.

engaged in disorder and violence as a mechanism of being transferred out of the D facility.

17. On August 13, 2024, Appellant worked his regular shift as a Floor Officer second watch, beginning at 6:00 a.m. and ending at 2:00 p.m.

18. By 7:30 a.m., Appellant had responded to three separate incidents involving inmate violence in the D facility. The third of these incidents took place in the D facility dining hall.

19. Two doors to the exterior permitted ingress and egress for the dining hall. One door was generally separated from the dining tables by a railing. The other provided direct access to the outside from the seating area.

20. The dining hall was a large open room with 50 tables that could seat up to 4 diners each. Twelve rows of tables started closest to the exit doors and filled the space to the back of the dining hall, with a small walkway limned by a railing beyond the tables.

21. For roughly the length of the first four rows of tables there was a walled-off room with a passthrough area (the "Wash Room"). Inside that room was an industrial dishwashing machine that, when running, produced substantial noise.

22. When Appellant responded to the dining hall, the incident to which he was responding was resolving. The inmates involved in the incident were in the process of being removed, and two distinct groups of inmates and one solo inmate remained in the dining hall.

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23. One inmate sat on the floor by himself in the first row of tables, nearest the doors. Five of the inmates were seated in a group either at tables or on the floor in the third and fourth rows of tables, across from the Wash Room. Officer [redacted] (Officer [redacted]) stood in the area, close to the Wash Room.

24. The remaining four inmates were seated on the floor in the eleventh and twelfth rows of tables in the back of the room. Appellant stood between the tenth and eleventh rows of tables, monitoring these inmates.

25. Appellant spoke with the inmates in the back for a little over two minutes. The inmates told him that they did not want to stay in the D facility. Appellant told them they were "still down," meaning on restricted movement, so they could not "do anything about it."

26. Appellant turned and walked to the front of the dining hall, speaking to Officer [redacted] as he approached, then stopping and talking with him.[4] After approximately 10 seconds of conversation during his approach and while he and Officer [redacted] stood still, Officer [redacted] pointed at the inmates at the back of the room, and he and Appellant began moving toward those inmates.

27. Stopping at approximately the fourth row of tables, at the end of the Wash Room, Officer [redacted] yelled to the inmates at the back of the hall,

[4] The record does not reflect the content of this conversation.

> Hey, you guys, you guys want to get out of here right now? You want to be on C or B Yard in the next hour? Now's your chance. Just do it now. Do it now!

28. Appellant turned his head toward Officer [redacted] during his speech, heard and understood it, and, at the end of it, smiled at Officer [redacted]

29. Within one second of Officer [redacted] speech, three of the four inmates at the back of the room began getting up and moving toward the inmates at the front of the room and the inmates at the front of the room began looking at the inmates in the back of the room.

30. Appellant and Officer [redacted] swiveled backward so their backs were facing the Wash Room. As the inmates from the back approached, Appellant grabbed his radio, and looked over at Officer [redacted], who was already on his radio to raise an alarm. Appellant released his radio and then pulled out and readied his pepper spray in his right hand, as he and Officer [redacted] stepped backward toward the Wash Room, moving further away from the inmates seated at the front of the room as the inmates approached from the back of the room.

31. Two of the inmates from the back of the room approached two of the inmates in the front of the room and engaged them in fights.[5] Within a few seconds, Appellant stepped forward, yelled "get down, get down" and deployed his pepper spray twice, hitting two inmates. One of the two sprayed inmates was a member of the group at the front of the room, i.e., those who did not

[5] The third inmate who walked from the back of the room stopped before he reached the other group.

initiate the hostilities. Two of the four combatants disengaged and assumed down positions.

32. Just after Appellant deployed the second pepper spray burst, multiple Correctional Officers[6] responded to the alarm and the remaining inmates disengaged and assumed down positions.

33. Slightly less than one minute elapsed from the time Appellant turned away from his conversation with the inmates at the back of the room until other Correctional Officers responded and the incident resolved.

Appellant's Report of the Incident

34. At 6:25 p.m. on August 13, 2024, Appellant drafted a report of the event. He began with his observation of two one-on-one fights in the dining hall. His report did not mention his conversation with the group of inmates at the back of the hall, Officer [redacted] direction to that group of inmates, or his observation of the inmates moving from the back of the hall to the front to engage the other inmates. At this point, Appellant had not reviewed any video of the incident.

35. On August 17, 2024, and again on August 23, 2024, Appellant was asked to supplement his report of the incident. He reviewed at least one Audio Video Surveillance System (AVSS) recording of the event before drafting his supplemental reports.[7] Appellant did not include information about Officer

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[6] The identities of these officers is not in the record.

[7] There are four different angles of the dining hall captured by the AVSS system. Only one of those angles included sound, on which Officer [redacted] speech can be clearly heard. The record does not reflect which of the AVSS recordings Appellant reviewed before supplementing his report.

[redacted] statements to the inmates initiating the fight in either of his supplemental narratives, nor did he describe the inmates' movement from the back of the room to the front in order to engage the front group.

Appellant's Interview with OIA.

36. On December 20, 2024, Appellant was interviewed by an agent from CDCR's Office of Internal Affairs (OIA) in the Hanford Parole Office in Hanford, California. At the time, Appellant was on leave due to a work-related bout of Valley fever, for which he had been hospitalized for approximately three weeks in late October and November 2024.

37. During the interview, Appellant described the following:

    a. The integration of special needs yard inmates and general population inmates had created significant disruption as general population inmates wanted to be removed from the yard and, in order to do that, they would "have to" commit an act of violence.

    b. Inmates were not targeting anyone in particular, but "just whoever they can get … their hands onto."

    c. The inmates at the back of the dining hall told Appellant that they did not want to stay on the facility.

    d. In response, Appellant told the inmates at the back of the dining hall that "we're still down," meaning movement was still restricted as a result of the prior incident to which Appellant had responded, so "you guys, like, you can't do anything about it. You guys can't get up, I'm sorry."

e. Appellant then walked over to Officer [redacted] to get away from the inmates at the back of the room because "it seemed like they were wanting to get up and fight…."

f. Appellant heard Officer [redacted] "yelling out if those guys [in the back of the room] were staying."

g. Appellant denied hearing Officer [redacted] say, "Hey, you want to get out of here now? You want to get onto C or B Yard within the next hour? Now is your chance. Do it now. Do it now."

h. As of the date of his interview, hearing Officer [redacted] words, Appellant understood Officer [redacted]r to be inviting the inmates in the back of the room to fight the other inmates in the dining hall.

i. Appellant understood the inmates from the back of the room intended violence when they began moving to the front of the room because they were "still down" and had not been told to get up.

j. The inmates from the back of the room were not walking to the exit but were walking toward the other group of inmates.

38. During the interview, Appellant knew Officer [redacted] words and their meaning. Specifically, Appellant knew that Officer [redacted] had incited the fight.

CREDIBILITY DETERMINATION

Appellant testified that while he was standing directly next to Officer [redacted] when Officer [redacted] invited the inmates to initiate violence, he did not understand Officer [redacted] words in the moment, due to being overwhelmed by the number of incidents

that morning, the loud sound of the industrial dishwasher, and being fatigued as a result of having Valley fever. If Appellant's testimony is credited, then Appellant was not an active participant in encouraging inmates to fight and was not dishonest in failing to include information about Officer [redacted] statements in his report of events and during his interview with OIA. A credibility determination is therefore appropriate.

As the trier of fact, the ALJ has a "duty to assess witness credibility."[8] (*Moran v. Foster Wheeler Energy Corporation* (2016) 246 Cal.App.4th 500, 518.) A witness's credibility may be determined based on "any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony." (Evid. Code, § 780.) The trier of fact may disregard all of the testimony of a party, whether contradicted or uncontradicted, if it determines that the party testified falsely as to some matters covered by their testimony. (*Bruno v. Hopkins* (2022) 79 Cal.App.5th 801, 824.)

Appellant generally testified in a calm manner and directly responded to questions. When asked questions about the central issue in the case, i.e., what Officer [redacted] said and whether Appellant understood it, Appellant tended to the verbose or skimmed over the events. For example, when asked what happened when he walked back to Officer [redacted], Appellant said nothing about Officer [redacted] addressing the inmates in the back of the dining hall and proceeded straight to seeing the inmates begin walking to the front. When shown the video of Officer [redacted] standing next to Appellant, addressing the

[8] The ALJ assessed the credibility of all witnesses during the course of the hearing. Only those assessments impacting material, disputed issues are specifically addressed herein. Specifically, Correctional Captain Stephanie Gee and OIA Special Agent Mark Nicholson testified regarding their own actions, but neither had personal knowledge of the events in the dining hall on August 13, 2024. Their primary contribution to the evidentiary record is the introduction of documents such as Appellant's transcript from his OIA interview.

inmates in the back of the room (without audio) and asked what happened, Appellant responded that they were just waiting around for the dining process to resume. Then pressed to describe specifically what Officer [redacted] said in the video clip he was just shown, Appellant said three times he did not recall the specifics. When asked to then generally describe what Officer [redacted] said, Appellant engaged in a meandering response:

> You know, as we're, as we're, you know, over in that area, the general area where we're at right now, you know, I, he was, you know, saying something to the other inmates over there. I just didn't pick up the exact the exact words that he was saying, it might have been something if these guys, if you know if you were gonna, if you were gonna stay in here, you know, but due to, you know, every, a lot of, a lot of everything going on and, and me not just exactly paying hundred, a hundred percent to what he's, what he's saying or, or telling them and, and keeping an eye on the, the other group, you know, over to the right of us, and, and also, you know, possible incoming radio traffic. I just didn't pick up the, the exact words that he said.

More, Appellant's statements regarding the events of August 13, 2024, changed over time. When asked at the hearing what conversation Appellant had with the inmates at the back of the dining hall, he testified that it was basically questions about whether they would be able to have yard time that day. But during his OIA interview, Appellant made clear that the inmates told him they did not want to stay on the facility, and that he left their general area because he felt they wanted to get up and fight, so he thought he would be safer if he were not in their vicinity.

Appellant also testified at the hearing that he did not think anything was wrong when the inmates at the back of the room got up to move to the front, because the prior incident had been cleared and the inmates were free to move about again. But during his OIA interview, Appellant told the investigator that he told the inmates they could not

"do anything" about their desire to get transferred out, meaning they could not engage in a fight, because they were "still down." Appellant further told the OIA agent that he understood the inmates from the back of the room intended violence when they started walking to the front of the room because they were "still down" and had not been told to get up. Appellant's statements to OIA, just four months after the incident, strongly conflict with his testimony at the hearing.

Appellant also testified at the hearing that he had a hard time hearing and comprehending Officer [redacted] because there was a loud dishwasher running in the Wash Room and because Appellant had then-undiagnosed Valley fever, which was causing him fatigue and difficulty in processing information. Appellant did not mention either of these issues during his OIA interview as causes for him to not hear or understand Officer [redacted] statements. At the hearing, Appellant offered no expert testimony regarding Valley fever, its incubation period prior to diagnosis, or its effects on a person's ability to hear or understand information. Appellant's testimony that he believes he had Valley fever over two months before he was hospitalized and diagnosed is not within the common experience and is deemed speculative. As to the sound from the dishwasher, Officer [redacted] was standing right next to Appellant and, if the washer was running, projected his voice to be heard over the ambient noise. That both sets of inmates, each further from Officer [redacted] than Appellant was, heard Officer [redacted] provides a strong inference that any ambient noise was insufficient to muffle Officer [redacted] words.

Additionally, a review of the video makes Appellant's version of events highly implausible. Appellant speaks to the inmates for a couple of minutes, walks over to Officer [redacted] speaking to him during the walk and when he comes to a stop. While looking at

Appellant, Officer [redacted] points at the inmates at the back of the room. He and Appellant immediately walk back toward those inmates. Appellant stood two feet or less from Officer [redacted]r when that officer shouted to the inmates at the back of the room. Those inmates had no trouble understanding Officer [redacted] and the inmates at the front of the room, close to Appellant, took note as well, indicating that they understood that officer's words. As Officer [redacted] finished his provocation, the inmates at the back got up and started walking to the front. Observing this, Appellant turned to look at Officer [redacted] and smiled. He and Officer [redacted] then turned in unison to put their backs to the Wash Room, such that they faced the front group of inmates. Appellant pulled his pepper spray out, then took two steps backward, apparently clearing out of the way of the approaching inmates. All of this, plus the actual fight and resolution of the fight, occurred in less than one minute from the time Appellant left the group of inmates at the back of the room. Even without Appellant's contradictory statements over time and his attempts at hearing to either gloss over or over-explain what he heard of Officer [redacted] statements, the chronology of the sequence of events standing alone leaves little doubt that Appellant heard and understood what Officer [redacted] said when Officer [redacted] said it.

For all of these reasons, Appellant's testimony that he either did not hear or did not comprehend Officer [redacted] statement is not credited.

PRINCIPLES OF LAW AND ANALYSIS

In a disciplinary appeal, the appointing power must prove the charges against the employee by a preponderance of the evidence. (Evid. Code, § 115; *Lyle Q. Guidry* (1995) SPB Dec. No. 95-09.) A preponderance of the evidence is "evidence that has more convincing force than that opposed to it." (*Glage v. Hawes Firearms Co.* (1990) 226

Cal.App.3d 314, 324.) "'Preponderance of the evidence' is usually defined in terms of 'probability of truth.'" (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483.) In other words, the evidence must, "'when weighed with that opposed to it, ha[ve] more convincing force and the greater probability of truth." (*Id*. at p. 483; *Lyle Guidry, supra,* SPB Dec. No. 95-09.)

Inexcusable Neglect of Duty

Finding inexcusable neglect of duty requires finding that an employee intentionally or with gross negligence failed to exercise due diligence in the performance of a known official duty. (*U.W*. (1993) SPB Dec. No. 93-10.)

Appellant had a known duty to prioritize inmate safety, prevent fights, disclose all initiating factors of fights, report misconduct, submit complete and accurate reports, and provide truthful information when questioned. Instead, Appellant heard his partner provoke a fight, took no action to avert that fight, submitted reports that omitted his partner's incitement, failed to affirmatively report the misconduct, and was dishonest with an OIA agent who questioned him about his actions. Appellant intentionally acted contrary to his known duties in these regards.

The charge of inexcusable neglect of duty is sustained.

Dishonesty

Dishonesty under Government Code section 19572, subdivision (f), requires a showing of intentional misrepresentation of known facts, or a willful omission of pertinent facts, or a disposition to lie, cheat, or defraud. *(Nhut Minh Nguyen* (1999) SPB Dec. No. 99-01; *Eliette Sandoval* (1995) SPB Dec. No. 95-15.)

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Appellant heard and understood his partner to incite a fight among inmates. He failed to include that pertinent detail in his reports of the event, although he was required to report the known reason for the fight and the circumstances leading to the use of force. When asked what Officer [redacted] said to the inmates, Appellant was dishonest when he told an OIA agent that Officer [redacted] asked whether they were staying.

The charge of dishonesty is sustained.

Discourteous Treatment of the Public or Other Employees

Discourteous treatment of the public or other employees generally involves conduct where a person displays hostility towards others, uses vulgar language when speaking to a superior, speaks in an abrasive tone of voice, and has a brusque demeanor. (See *Walker v. State Personnel Bd*. (1971) 16 Cal.App.3d 550, 553; *G.M.* (2003) SPB Dec. No. 03-06, p. 17.) Discourteous treatment can include a flippant attitude, as well as rude, demeaning, and sarcastic comments. (*Michael Prudell* (1993) SPB Dec. No. 93-30.) Discourteous treatment is more than "unprofessional" or "immoral" conduct. (*Blake v. State Personnel Bd.* (1972) 25 Cal. App. 3d 541, 550.)

Respondent argues Appellant's conduct constitutes discourtesy because Appellant used his pepper spray on one of the inmates from the front of the room who was minding his own business before one of the inmates from the back of the room engaged him in a fight. While Appellant failed in his obligation to de-escalate, he had and complied with an obligation to intervene to stop the fight once it started. Using pepper spray to stop inmate-on-inmate violence, regardless of the reason that violence started, does not constitute discourteous treatment.

The charge of discourteous treatment is dismissed.

Willful Disobedience

Willful disobedience under Government Code section 19572, subdivision (o), is established where the employee knowingly and intentionally violates a direct command, prohibition, or policy. (*R.H.* (1993) SPB Dec. No. 93-22, p. 6, citing *Coomes v. State Personnel Board* (1963) 215 Cal.App.2d 770, 775; *Nhut Minh Nguyen, supra,* SPB Dec. No. 99-01 at p. 9.) If the employer has a policy setting forth standards of conduct for the workplace, and the policy has been properly enacted and disseminated to its employees, conduct that violates the policy is chargeable as willful disobedience. (*Jose L. Flores* (1994) SPB Dec. No. 94-24, p. 8.)

As noted above, Appellant was aware of policies, regulations, and statutes that required him to prevent violence, to report misconduct, to be truthful in reporting and investigations, and he chose instead to allow violence, conceal misconduct, and omit material facts in his reports and during his interview.

The charge of willful disobedience is sustained.

Violation of the Prohibitions Set Forth in Accordance with Section 19990

Government Code section 19572, subdivision (r) authorizes discipline for violation of the prohibitions set forth in Government Code section 19990 (Section 19990), which provides in part that "[a] state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties." Section 19990 then sets forth a non-exclusive list of specific activities and enterprises that fall into the categories of inimical, inconsistent, incompatible, or in conflict with an employee's duties, all of which generally relate to using their state position

for some private benefit, for themselves or others, or in a manner resulting in a conflict of interest.

While any misconduct in the work environment if egregious enough could be characterized as "inconsistent with" or "inimical to" an employee's duties, looking only to those words diminishes the significance of the remainder the statute, and is not consistent with precepts of statutory construction. (See *Maddox v. City of Costa Mesa* (2011) 193 Cal.App.4th 1098, 1103–1104 ["The statutory language must be construed in the context of the statute as a whole and the overall statutory scheme, giving significance to every word, phrase, sentence, and part of the statute."].) Thus, as one court has noted, Section 19990 focuses on "*private* activities outside of the course and scope of state employment, such as using state facilities for private gain, which are inconsistent with state employment." (*Negrete v. State Personnel Bd.* (1989) 213 Cal.App.3d 1160, 1170.)

Appellant's proven misconduct can absolutely be characterized as inimical to and in conflict with his duties, but there is nothing of the proven misconduct that bears the hallmark of a violation of Section 19990, use of his public position for some kind of private gain or advantage.[9]

While the NOAA alleged that Appellant's conduct violated Section 19990 and cited its incompatible activities regulation (Cal. Code Reg., tit. 15, § 3413 ("Section 3413")), it did not introduce or cite that regulation at hearing and did not attempt to show that

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[9] The SPB's precedential decisions generally sustain Section 19572, subdivision (r) violations where there is private gain. (See, e.g., *Fisher v. State Personnel Board* (2018) 25 Cal.App.5th 1, 22 [section 19990 violation where an employee "was taking advantage of his position" for pecuniary gain]; *Eliette Sandoval* (1995) SPB Dec. No. 95-15 [section 19990 violation where employee was "using DMV's computer to generate information for a transaction in which a client of her personal business was involved."].)

Appellant was familiar with its terms.[10] Nor did Respondent present argument or any other authority regarding how the alleged misconduct constituted incompatible activities under the scope of Government Code section 19990 or Section 3413. When legal argument with citation to authority is not furnished on a particular point, the point may be deemed forfeited. (See *Okasaki v. City of Elk Grove* (2012) 203 Cal.App.4th 1043, 1045, fn. 1, 137 Cal.Rptr.3d 873; *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656, 117 Cal.Rptr.3d 207; see also, e.g., *Center for Biological Diversity v. California Department of Conservation* (2019) 36 Cal.App.5th 210, 226. [It is not a tribunal's role to develop the parties' arguments for them].)

Here, the proven misconduct is not within the scope of Section 19990 on its face, Respondent did not pursue its enacting regulations as a basis for discipline at the hearing, and Respondent did not present argument or evidence regarding why the proven conduct might fall within Section 19990's dictates. The charge under Government Code section 19572, subdivision (r) is therefore dismissed.

Other Failure of Good Behavior

Other failure of good behavior is conduct that causes discredit to the appointing authority or the appellant's employment, so long as there is a rational relationship between the conduct and the appellant's employment. (*D.M.* (1995) SPB Dec. No. 95-10.)

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[10] As Section 3413 was not introduced in any fashion, this Proposed Decision does not purport to consider whether any of that regulation's provisions would support discipline under Section 19572, subdivision (r).

Failing to report observations or allegations of misconduct by other officers can easily result in the impairment or disruption of the public service. Indeed, such behavior "has for too long thwarted the full and fair investigation of misconduct within our state prison system." (*E.A.* (2009) SPB Dec. No. 09-01.) Dishonesty in reporting by omitting pertinent facts and affirmatively misstating events when responding to investigator's questions also discredits Appellant and CDCR.

The charge of other failure of good behavior is sustained.

Penalty

To determine a just and proper penalty, the SPB must consider the degree to which the conduct harmed the public service or could potentially harm the public service if repeated. (*Skelly v. State Personnel Bd*. (1975) 15 Cal.3d 194, 217–218.) Additional considerations include the circumstances surrounding the misconduct and the likelihood of its recurrence. (*Ibid*.) "[T]he overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[h]arm to the public service.'" (*Ibid*. [Citation]; see also *Cate v. State Personnel Bd*. (2012) 204 Cal.App.4th 270, 284–285.)

There is an obvious and regular risk that in correctional environments inmates will engage in violence. Here, however, the violence was provoked and permitted by staff. Once the fight started, Appellant and Officer [redacted] risked it getting out of control and injury resulting to themselves, inmates, and other correctional staff. Appellant and Officer [redacted] were outnumbered and, while they may have understood other officers were readily available to respond, they could not have known if some other urgent situation was calling for other staff's attention. Certainly the potential harm if this conduct recurred

includes physical injury to anyone present. Such unnecessary risk to all involved constitutes a harm to the public service.

More, Appellant's conduct required medical and correctional staff response on a morning that had already seen three incidents within a very short time frame. Staff was already overburdened by fights the inmates picked amongst themselves. Unnecessarily adding to colleagues' workloads, and stress levels, harms the public service.

Appellant compounded the harm to the public service via deception. He omitted misconduct from official reports, and was dishonest when questioned about the events. Dishonesty by a peace officer is itself a harm to the public service. (*Talmo v. Civil Service Com*. (1991) 231 Cal.App.3d 210, 231 ["Honesty, credibility and temperament are crucial to the proper performance of an officer's duties. Dishonesty is incompatible with the public trust."].) Here, Appellant perpetuated the stereotype of peace officers closing ranks to protect themselves and others from repercussions of their misconduct. He failed to report Officer [redacted] misconduct, and failed to report his own failure to intervene to stop the fight by conveniently beginning his report with his observation of the seconds before the inmates engaged other inmates. With CDCR's mission to ensure the safety and security of inmates in its custody, Correctional Officers permitting fights, failing to report their own and their colleagues' true roles in initiating and permitting the fights, then covering up their roles can only diminish the public's trust in the institution as a whole.

While Appellant has no prior history of discipline, dismissal of a peace officer is often justified even for a one-time lapse in judgment. (See, e.g., *Anderson v. State Personnel Bd*. (1987) 194 Cal.App.3d 761, 772 [employer "under no obligation to risk a recurrence of his inappropriate behavior."].) Appellant's lapse in judgment in the moment

was substantial. He permitted an inmate-on-inmate assault, provoked by a fellow officer, to proceed, readying his pepper spray before the inmate groups converged, but taking no action, not even telling them to stop, until after they connected. His lapse in judgment, however, is not a one-time event. He protected his unsupportable choice by failing to report his co-worker and omitting his co-worker's role in inciting the fight and his own role in permitting it to occur from his reports. He continued this protection by responding dishonestly to an investigator's questions. Dishonesty by a peace officer warrants severe discipline. (*D.G.* (1992) SPB Dec. No. 92-08.) That Appellant's misconduct is likely to recur is demonstrated by his continued denial of responsibility through the hearing of this matter. (See *Robert T. Watson* (1994) SPB Dec. No. 94-10, pp. 32–33 [failure to acknowledge and accept responsibility for misconduct shows high risk of recurrence].) A substantial penalty is warranted. Dismissal is the just and proper penalty for Appellant's proven misconduct.

CONCLUSIONS OF LAW

1. Respondent proved the factual allegations of the NOAA by a preponderance of the evidence.
2. Appellant's proven conduct does not constitute cause for discipline under Government Code section 19572, subdivision (m) Discourteous treatment of the public or other employees; or (r) Violation of the prohibitions of Government Code section 19990.
3. Appellant's proven conduct constitutes cause for discipline under Government Code section 19572, subdivisions: (d) Inexcusable neglect of duty; (f) Dishonesty; (o) Willful disobedience; and (t) Other failure of good behavior

either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.

4. Dismissal is a just and proper penalty for the proven misconduct.

ORDER

The dismissal imposed by the California Department of Corrections and Rehabilitation on Appellant B[redacted] D[redacted] is **SUSTAINED**.

DATED: December 3, 2025

Jean M. Hobler
Administrative Law Judge
State Personnel Board

PROOF OF SERVICE BY FIRST-CLASS MAIL

B[redacted] D[redacted]
[redacted]

Re: B[redacted] D[redacted]
SPB Case No.: 25-0559
Appeal from Dismissal

I, Natalie Bradburn, declare:

I am over the age of 18 years and not a party to this action. I declare that I am employed by the California State Personnel Board, 801 Capitol Mall, Sacramento, California 95814.

- **BOARD RESOLUTION AND ORDER DESIGNATING ADOPTED DECISION AS A PRECEDENTIAL DECISION/PROPOSED DECISION**

On March 25, 2026, I served the above documents on the addressee by placing the same for collection and mailing following our ordinary business practices. I am readily familiar with the State Personnel Board's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business, in the United States Postal Service in a sealed envelope with postage fully prepaid.

Appellant: B[redacted] D[redacted] [redacted]	**Respondent:** Corrections and Rehabilitation Pleasant Valley State Prison Attn: ERO P. O. Box 8500 Coalinga, CA 93210-1135
Appellant's Representative: John Chung Law Attn: John Chung 2030 Main Street, Suite 1300 Irvine, CA 92614	**Respondent's Representative:** Corrections/EAPT Attn: Jamie Adams Office of Legal Affairs 10111 Old Placerville Road, Suite. 100 Sacramento, CA 95827

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 25, 2026, at Sacramento, California.

Natalie Bradburn
Appeals Resolution Team

PROOF OF SERVICE BY FIRST-CLASS MAIL

John Chung Law
Attn: John Chung
2030 Main Street, Suite 1300
Irvine, CA 92614

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