

#316-15

IN THE MATTER OF THE TENURE HEARING :
OF JANET SAITO, SCHOOL DISTRICT OF : COMMISSIONER OF EDUCATION
THE TOWN OF WEST NEW YORK, : DECISION
HUDSON COUNTY. :

SYNOPSIS

Petitioning Board filed tenure charges of unbecoming conduct and incapacity against respondent, a tenured teacher, and sought to terminate her employment with the district. Neither respondent nor any attorney acting on her behalf filed an answer to the petition following notice pursuant to *N.J.A.C. 6A:3-5.3* and *6A:3-5.4*.

The Commissioner concluded that, pursuant to *N.J.A.C. 6A:3-5.4(h)*, the allegations – which respondent has chosen not to deny – may be deemed admitted and are sufficient to warrant termination of the respondent from her tenured position. Accordingly, the Commissioner granted summary decision to the petitioner, dismissed the respondent from her tenured position in petitioner’s school district, and forwarded a copy of this decision to the State Board of Examiners for review and action as that body deems appropriate.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

October 2, 2015

IN THE MATTER OF THE TENURE HEARING :
OF JANET SAITO, SCHOOL DISTRICT OF : COMMISSIONER OF EDUCATION
THE TOWN OF WEST NEW YORK, : DECISION
HUDSON COUNTY. :

For the Petitioner, John G. Geppert, Jr., Esq.

No Answer filed by or on behalf of Respondent, Janet Saito

This matter was opened before the Commissioner of Education on August 17, 2015 through tenure charges of conduct unbecoming and incapacity certified by Clara Brito Herrera, Assistant Superintendent of the West New York School District, together with supporting evidence against respondent Janet Saito, a teaching staff member in the petitioner's employ. The petitioner provided respondent with written notice of such certification at her last known address, via Federal Express and U.S. Mail on August 14, 2015.

On August 18, 2015, the Commissioner directed respondent – via both certified and regular mail – to file an answer to the charges. This communication provided notice to respondent that, pursuant to *N.J.A.C. 6A:3-5.3* and *6A:3-5.4*, an individual against whom tenure charges are certified “*shall have 15 days from the day such charges are filed with the Commissioner to file a written response to the charges with the Commissioner,*” and that failure to answer within the prescribed period would – absent granting of an extension for good cause shown – result in the charges being deemed admitted.

Thereafter, on September 2, 2015, the Bureau of Controversies and Disputes (“Bureau”) received a letter from respondent dated August 29, 2015, with no evidence of service

upon petitioner, indicating that she was “responding to the tenure charges” against herself and tried to reach her attorney “to no avail” but would keep trying. Via correspondence dated September 3, 2015, the Bureau informed respondent that her letter was an insufficient answer to the tenure charges as she failed to admit or deny any of the allegations contained in the petition. Further, respondent was advised that if she needed additional time to file an answer that comports with *N.J.A.C. 6A:3-5.3(a)* and *N.J.A.C. 6A:3-1.5(a)* through (d), she must request an extension of time in writing from the Bureau. Respondent was also reminded that, before making her request for an extension, she should contact counsel for petitioner to ask him whether he consents. The Bureau informed respondent that she could fax in her written extension request.

Additionally, the Bureau’s September 3, 2015 correspondence to respondent stated: “If you choose not to submit a written request for an extension of time to this office by September 10, 2015, and we do not receive an answer to the tenure charges from you or your attorney that comports with the requirements set forth in *N.J.A.C. 6A:3-5.3(a)* and *N.J.A.C. 6A:3-1.5(a)* through (d) by September 10, 2015, the charges brought against you will be deemed admitted and the Commissioner may decide the matter on a summary basis.” Respondent was reminded that she was required to serve a copy of any documents submitted upon counsel for petitioner. She was further advised to call the Bureau with any questions.

As of today’s date, respondent has not replied to the Bureau’s September 3, 2015 correspondence. No answer has been received on her behalf, and no request for an extension of time has been made.

The certified tenure charges and statement of supporting evidence filed by the petitioner in this matter indicate that respondent returned to work following a Workers’

Compensation leave in the Spring of 2013 and – despite the District’s efforts to provide reasonable accommodations – her incapacity is directly affecting the educational and/or instructional program of the District and has implicated serious concerns about the safety and hygiene of the school. On or about August 18, 2014, an orthopedic surgeon concluded that respondent is not fit for return to duty as a Special Education teacher. As a result, respondent has not reported to work since on or about September 16, 2014. Her inability to return to work has had and continues to have a negative impact on the school district. Furthermore, the certified charges and evidence also indicate that respondent’s chronic and excessive absenteeism within the last three years (not including her Workers’ Compensation leave) has adversely affected the proper operation of the school, and that respondent failed twice to appear for a psychological evaluation requested by petitioner, despite having been offered transportation.

The charges and supporting evidence also indicate that respondent engaged in unbecoming conduct, including inappropriate classroom behavior, unprofessional comments to students, insensitivity toward students, lack of responsiveness to students, failure to follow school fire drill procedures, repeated failure to report her absences by telephone (which thwarted the District’s ability to obtain a substitute teacher and resulted in cancellation of classes on multiple occasions), and failure to file lesson plans, student assignments, student objectives, and grades in a timely manner.

Deeming the allegations to be admitted and noting that respondent has failed to file an answer that comports with *N.J.A.C. 6A:3-5.3(a)* and *N.J.A.C. 6A:3-1.5(a)* through (d), the Commissioner finds that the charges of incapacity and conduct unbecoming a teaching staff member have been proven and warrant respondent’s dismissal from employment.

Accordingly, summary decision is hereby granted to the petitioner, and respondent is dismissed from her tenured position with the District. This matter will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: October 2, 2015

Date of Mailing: October 5, 2015

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)