

#179-16

IN THE MATTER OF THE TENURE HEARING :  
OF KIMBERLY BERRY, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION  
OF THE BOROUGH OF GLASSBORO, : DECISION  
GLOUCESTER COUNTY. :

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SYNOPSIS

Petitioning Board certified tenure charges of abandonment against respondent – a tenured teacher under the Board’s employ – and sought to terminate her employment with the district. Neither respondent nor any attorney acting on her behalf filed an answer to the tenure charges 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:3-5.3(c), the allegations – which respondent has chosen not to deny – may be deemed admitted and warrant the 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.

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.
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May 11, 2016

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For the Petitioner, Andrew W. Li, Esq.

No appearance by or on behalf of Respondent, Kimberly Berry

This matter was opened before the Commissioner of Education on March 14, 2016 through tenure charges of abandonment certified by Mark J. Silverstein, Superintendent of the School District of the Borough of Glassboro, together with supporting evidence against respondent, Kimberly Berry, a tenured teacher in the petitioner’s employ. The petitioner provided respondent with written notice of such certification at her last known address – via certified mail, return receipt requested – on February 25, 2016.

On March 15, 2016, 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 date 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. The certified mail return receipt card indicates that the March 15, 2016 notice was delivered on March 18, 2016. No reply to the tenure charges was received from or on behalf of respondent.

The certified tenure charges and statement of supporting evidence filed by the petitioner in this matter indicate that respondent has engaged in a prolonged absence from her teaching position in the District and has been absent from work since November 30, 2015. During the 2014-2015 school year, respondent took a leave of absence from January 20, 2015 through June 30, 2015. Thereafter, respondent returned to work for the beginning of the 2015-2016 school year, but was sent home for medical reasons on November 16, 2015. She then used her remaining sick and personal leave through November 20, 2015. Respondent did not return to work on November 30, 2015, following the Thanksgiving break, and subsequently requested leave under the Family Medical Leave Act (FMLA) – which was denied because she was ineligible for FMLA leave. Respondent then requested an unpaid leave of absence, which was also denied. To date, respondent remains absent without leave.

Deeming the allegations to be admitted and noting that respondent has failed to respond to the charges certified against her, the Commissioner finds that petitioner’s charges of abandonment of her teaching position have been proven and warrant the respondent’s dismissal from employment.

Accordingly, summary decision is hereby granted to the petitioner, and the 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.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 11, 2016

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<sup>1</sup> 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*)