

EDU #3876-05
C # 362-06
SB # 44-06

IN THE MATTER OF THE TENURE HEARING :

OF ADELPHIA POSTON, SCHOOL : STATE BOARD OF EDUCATION
DISTRICT OF THE CITY OF ORANGE : DECISION
TOWNSHIP, ESSEX COUNTY. :

Decided by the Commissioner of Education, October 18, 2006

For the Petitioner-Appellant, Love & Randall (Marvin L. Comick, Esq., of
Counsel)

For the Respondent-Respondent, Adelpia Poston, pro se

The Board of Education of the City of Orange Township (hereinafter "Board") certified tenure charges of unbecoming conduct against Adelpia Poston (hereinafter "respondent"), a tenured teaching staff member. In a decision issued on October 18, 2006, the Commissioner of Education agreed with the Administrative Law Judge that the Board had only demonstrated the truthfulness of one incident involving poor judgment by the respondent in using derogatory language in class, and she directed that the respondent forfeit the 120 days' salary already withheld pursuant to N.J.S.A. 18A:6-14.

On November 16, 2006, the Board filed the instant appeal to the State Board.

Pursuant to N.J.A.C. 6A:4-1.11(a), the Board's brief in support of its appeal was due on December 6, 2006, 20 days after it filed its notice of appeal. The Board, however, failed to file a brief by that date. By letter dated December 11, 2006, the

Director of the State Board Appeals Office notified counsel for the Board of his failure to file a brief and informed him that this matter was being referred to the Legal Committee of the State Board for consideration of the Board's failure to perfect the appeal. Subsequently, counsel for the Board submitted a letter dated December 20, 2006, which was filed on December 26, 2006, N.J.A.C. 6A:4-1.10(c), indicating that the Board would be relying on its post-hearing brief filed with the Commissioner, and he enclosed 17 copies of that brief.

By letter dated December 28, 2006, the Director of the State Board Appeals Office acknowledged receipt of the Board's submission and notified counsel for the Board that, since the brief was not filed in a timely manner, he could submit an explanation setting forth the circumstances of his late filing by January 8, 2007. Counsel was further advised that his brief was deficient in that it did not include 17 copies of the decision being appealed, as required by N.J.A.C. 6A:4-1.14(a). He was given until January 8, 2007 to correct this deficiency. No submissions were received from counsel for the Board in response to that letter.

On February 22, 2007, the Legal Committee reviewed the matter and, by letter of the same date, informed counsel for the Board that it had determined to give him one last opportunity to correct the deficiencies and to submit an explanation for the late filing of the appeal brief. Counsel was informed "that if you choose not to take advantage of this opportunity and fail to submit the required documents to the State Board Appeals Office by March 2, 2007, your appeal will be dismissed."

On March 2, 2007, counsel for the Board filed 17 copies of the Commissioner's decision packet, relating that "[i]t was my sincere understanding that this information

was previously forwarded to the attention of your department. There may have been a miscommunication with a member of our staff on this important issue. As attorney of record, I must assume full responsibility.” Again, however, counsel did not provide any explanation for the late filing of the Board’s brief.

As previously stated, the Board’s brief in support of its appeal was due on December 6, 2006 but was not filed until December 26, 2006. In that the brief was filed 20 days after the due date, and counsel for the Board has failed to provide any explanation for the late filing despite being provided with several opportunities to do so, we dismiss the appeal in this matter for failure to perfect. N.J.A.C. 6A:4-1.12(a). See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board of Education, April 1, 1992, aff’d, Docket #A-4812-91-3 (App. Div. 1993).

Edithe Fulton abstained.

April 4, 2007

Date of mailing _____