

#219-05 (No OAL Decision)

IN THE MATTER OF THE TENURE :
HEARING OF CARLOS D. MATA, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE BOROUGH : DECISION
OF FORT LEE, BERGEN COUNTY :
_____ :

SYNOPSIS

The Board certified tenure charges of unbecoming conduct against Carlos D. Mata, a tenured custodian in the Fort Lee School District, resulting from, *inter alia*, his arrest for possession of cocaine, a controlled dangerous substance. Respondent was directed via both certified and regular mail to file an Answer to the tenure charges against him, but failed to do so. Because no reply was received in response to the Board's charges, each count of the charges against respondent is deemed to be admitted. *N.J.A.C.* 6A:5-3(c).

The Commissioner reviewed the tenure charges certified against the respondent, and the evidence in support of those charges. Noting that the respondent has chosen not to deny the allegations against him and, therefore, deeming the within charges to be admitted, the Commissioner concludes that the Board has demonstrated that respondent is guilty of unbecoming conduct warranting termination from his position. Summary judgment is granted to the District, and Carlos D. Mata is dismissed from his tenured position as custodian as of the date of this order.

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.

AGENCY DKT NO. 124-5/05

IN THE MATTER OF THE TENURE :
HEARING OF CARLOS D. MATA, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE BOROUGH : DECISION
OF FORT LEE, BERGEN COUNTY:

_____ :

For the Board, Robert T. Tessaro, Esq.

Carlos D. Mata, *Pro Se*

This matter was opened before the Commissioner of Education on May 20, 2005, through the certification of tenure charges of unbecoming conduct against Carlos D. Mata, a tenured custodian, by the Board of Education of the Borough of Fort Lee.

By notice dated May 24, 2005, the Commissioner directed respondent, via both certified and regular mail -- the certified copy having been signed for on May 26, 2005 -- to file an Answer to the tenure charges against him. This communication from the Bureau of Controversies and Disputes clearly provided respondent notice 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, and that failure to answer within the prescribed period, where no extension has been applied for and granted, will result in the charges being deemed admitted by the charged employee. Because no reply has been received from respondent, or any attorney on his behalf, in response to the District's charges, each count of the charges against respondent is deemed to be admitted. *N.J.A.C. 6A:5-3(c)*.

The Commissioner has reviewed the tenure charges certified against respondent by the Board, and the evidence in support of those charges, which specify:

1. By letter dated February 17, 2005, pursuant to P.L. 2002, c. 119, the Criminal History Review Unit of the New Jersey Department of Education advised the Fort Lee Board of Education that the State Bureau of Identification had notified the Commissioner of Education that Carlos Mata had been charged with a disqualifying crime or offense.

2. Subsequent to the receipt of this communication, a conference was held with Carlos D. Mata, regarding the communication from the Criminal History Unit. Mr. Mata confirmed that he had been charged with a criminal offense in the Borough of Leonia in July, 2004. Specifically, Mr. Mata indicated that he had been charged with possession of marijuana that belonged to another individual.

3. On March 7, 2005, the Municipal Court Administrator for the Leonia Municipal Court confirmed that Carlos D. Mata had been charged with a violation of 2C:35-10a(1), possession of a controlled dangerous substance, classified as a Schedule I, II, or III substance: cocaine, on Warrant Number W-2004-61. This correspondence further indicated that the original charge had been downgraded to 2C:36-2 possession of a Non-Scheduled controlled dangerous substance, a Disorderly Persons Offense. The correspondence also indicated that Carlos D. Mata was granted a conditional discharge of the downgraded offense based on his admission into a diversion program pursuant to 2C:36A-1 and that the charge is still pending and will not be dismissed until the balance of \$240.00 is paid by Mr. Mata.

4. By letter dated March 14, 2005, copies of all reports regarding the arrest of Mr. Mata were requested and subsequently provided from the Leonia Police Department. The investigation report filed with the Leonia Police Department indicates that Mr. Mata was observed to have a blue plastic baggie containing a white powdery substance sticking out of his sock. A subsequent analysis of this substance tested positive as cocaine, a Schedule II controlled dangerous substance.

5. The possession of a controlled dangerous substance constitutes unbecoming conduct warranting the dismissal of Carlos D. Mata as a custodial employee of the Fort Lee Board of Education.
(Board's Statement of Charges, signed by Dr. Alan W. Sugarman, Acting Superintendent of Schools)

Noting that respondent has chosen not to deny the allegations against him and, therefore, deeming the within charges to be admitted, the Commissioner concludes that the Board has demonstrated that respondent is guilty of unbecoming conduct warranting termination from his position.¹

IT IS THEREFORE ORDERED this 23rd day of June 2005 that summary decision shall be granted to the District, and Carlos D. Mata shall be dismissed from his tenured position as a custodian in the Board's employ as of the date of this order.²

COMMISSIONER OF EDUCATION

Date of Decision: June 23, 2005

Date of Mailing: June 23, 2005

¹ Pursuant to *N.J.S.A.* 18A:17-3, public school janitors, or custodians, shall, unless appointed for a fixed term, hold office or employment under tenure of good behavior and efficiency and shall not be dismissed or suspended or reduced in compensation, ***except for neglect, misbehavior or other offense.

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*