

#479-07

IN THE MATTER OF THE TENURE HEARING :
OF JOSEPHINE SOWINSKI, BERGEN COUNTY : COMMISSIONER OF EDUCATION
SPECIAL SERVICES SCHOOL DISTRICT :
BERGEN COUNTY. :
_____ :
:

DECISION

SYNOPSIS

Petitioner filed tenure charges of excessive absenteeism and abandonment of position against respondent, a tenured custodian, and sought her removal from employment in the District. Respondent failed to file 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 the allegations – which respondent has chosen not to deny – may be deemed admitted and are sufficient to warrant removal of the respondent from her tenured position. Accordingly, the Commissioner granted summary decision to the Board and ordered respondent dismissed from her tenured position as of the date of this decision.

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.

December 14, 2007

AGENCY DKT. NO. 244-8/07

IN THE MATTER OF THE TENURE HEARING :
OF JOSEPHINE SOWINSKI, BERGEN COUNTY : COMMISSIONER OF EDUCATION
SPECIAL SERVICES SCHOOL DISTRICT :
BERGEN COUNTY. : DECISION
_____ :

For Petitioner, William C. Soukas, Esq. (Noel Amoroso Klein Bierman, attorneys)

No appearance by or on behalf of Respondent.

This matter was opened before the Commissioner of Education on August 31, 2007, through the certification of tenure charges of incapacity, excessive absenteeism and abandonment of position against Josephine Sowinski – a tenured custodian – by the Board of Education of the Bergen County Special Services School District.

By notice dated August 31, 2007, the Commissioner directed respondent – via both certified and regular mail, the certified copy having been signed for on September 6, 2007 – to file an Answer to the tenure charges against her. 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.

A second notice – containing the same advisements – was sent to respondent on September 25 by regular and certified mail. Respondent signed for the certified copy on September 29, 2007. Because no reply has been received from respondent – or any attorney on her

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, *inter alia*, that:

1. Respondent has not reported for work since September 2003;
2. Respondent was granted nine leaves of absence, but still has not committed to a return-to-work date;
3. Respondent has admitted incapacity to perform the duties of custodian; and
4. Respondent has failed to provide a doctor’s clearance to establish her physical ability to return to work..

Noting that respondent has chosen not to deny the allegations against her and, therefore, deeming the within charges to be admitted, the Commissioner concludes that the Board has supported its charges with a preponderance of competent evidence.¹

Summary decision is accordingly granted to the petitioner, and Josephine Sowinski is dismissed from her tenured position as a custodian in petitioner’s employ as of the date of this decision.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 14, 2007
Date of Mailing: December 14, 2007

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.*