

#49-07 (No OAL Decision)

IN THE MATTER OF THE TENURE :
HEARING OF DIANE ROTHACKER, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
THE CITY OF NEWARK, :
ESSEX COUNTY. :
_____ :

SYNOPSIS

The Board certified tenure charges of abandonment of position, chronic and excessive absenteeism, and insubordination against Diane Rothacker, a tenured special education teacher, after her failure to return to work following an unpaid personal leave of absence which expired on September 1, 2003. Respondent was directed via both certified and regular mail to file an Answer to the tenure charges against her, 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. Deeming such charges to be admitted, and noting that respondent has twice failed to respond to the allegations against her, the Commissioner finds that respondent's actions constitute excessive absenteeism and insubordination amply warranting dismissal from her tenured position. Summary judgment is granted to the District, and Diane Rothacker is dismissed from her tenured teaching position as of the filing 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.

February 1, 2007

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HEARING OF DIANE ROTHACKER, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
THE CITY OF NEWARK, :
ESSEX COUNTY. :
_____ :

For the District, Adam S. Herman, Esq., Office of the General Counsel,
Newark Public Schools

This matter was opened before the Commissioner of Education on November 30, 2006 through certification of tenure charges of abandonment of position, chronic and excessive absenteeism, insubordination and other just cause by the State-operated School District of the City of Newark (District) against Diane Rothacker (respondent), a tenured teacher. Respondent did not reply to the charges when they were initially filed with the District, and subsequently, the District determined to certify the charges. On November 29, 2006, the District served respondent – via regular mail and certified mail, return receipt requested – with the District’s resolution, Certification of Determination, and transmittal letter to the Commissioner, referencing the previously filed and served charges.

Upon receipt of the certified charges on November 30, 2006, the Commissioner directed respondent - via both certified and regular mail - to file an Answer to such charges. This communication clearly 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 by the charged employee.^{1 2}

No reply was received from either respondent or counsel on her behalf.

The Commissioner’s review of the certified tenure charges, and the statement of evidence in support of them, indicated that respondent was granted an unpaid personal leave of absence **which expired on September 1, 2003** and – despite numerous written inquires from the District – respondent has neither returned to work nor provided notice of her intent to return. Respondent’s protracted absence from the District has caused a substantial interruption in the continuity of educational instruction and a corresponding adverse impact upon the students of the District’s schools.

Deeming such charges to be admitted, and noting that respondent has twice failed to respond to the allegations against her, the Commissioner finds that respondent’s actions constitute abandonment of her position, chronic and excessive absenteeism, insubordination and other just cause amply warranting dismissal from her position.

Accordingly, summary decision is hereby granted to the District, and respondent Diane Rothacker is dismissed from her tenured teaching position in the District’s employ as of the filing date of this decision.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: February 1, 2007

Date of Mailing: February 1, 2007

¹ Although the certified mail copy of this notification was returned as “unclaimed,” the copy sent by regular mail was not returned and is, therefore, presumed delivered.

² It is noted that although the notice acknowledging filing of the charges before the Commissioner correctly stated that such charges were filed on November 30, 2006, the notice itself was dated November 15, 2006. When this incongruity was subsequently discovered on January 4, 2007, a corrected notice was sent to the parties. In the interest of fairness, this matter was held an additional 15 days to accord respondent an opportunity to submit an Answer.

³ 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.*