

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
FRANCES METALLO : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 0405-123

At its meeting of September 23, 2004, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Frances Metallo from her tenured position with the Union City Board of Education for charges of unbecoming conduct. *In the Matter of the Tenure Hearing of Frances Metallo*, Docket No. EDU 3454-01 (Commissioner's Decision, May 12, 2003). Metallo currently holds a Teacher of Mathematics certificate, issued in February 1986 and a Teacher of English As A Second Language certificate, issued in October 1992.

This case originated on March 29, 2001 when the Union City Board of Education certified tenure charges against respondent, Frances Metallo. Metallo was employed as a Teacher of Mathematics. The district charged her with unbecoming conduct for encouraging students to cheat on a national mathematics examination administered in 1996. The district also charged Metallo with excessive absenteeism because she had missed approximately 650 school days during a six-year period.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). On March 24, 2003, Administrative Law Judge (ALJ) Diana Sukovich decided the case on the district's motion for partial summary decision. After reviewing the motion papers and supporting documents, ALJ Sukovich concluded that although some were medically excused, the length and number of Metallo's absences constituted excessive absenteeism. (Initial Decision, slip op. at 14.) The ALJ further concluded that the sheer number of Metallo's absences "constitutes such a detrimental

impact on students in the District to warrant dismissal.” (Initial Decision, slip op. at 14.) Accordingly, ALJ Sukovich granted the district’s motion for partial summary decision and ordered Metallo terminated from her tenured position. (Initial Decision, slip. op. at 15.)

In a decision dated May 12, 2003, the Commissioner of Education affirmed the ALJ’s Initial Decision as to the charges of chronic and excessive absenteeism against Metallo. The Commissioner agreed with the ALJ that the local board had proven its case against Metallo with regard to her absenteeism and that the charges warranted Metallo’s removal from her tenured position. (Commissioner’s Decision, slip op. at 18.) Accordingly, the Commissioner affirmed Metallo’s removal from her tenured employment with the Union City Board of Education and transmitted the matter to the State Board of Examiners pursuant to *N.J.A.C.* 6A:9-17.6 for appropriate action regarding Metallo’s certificates. (Commissioner’s Decision, slip op. at 19.) On January 7, 2004, the State Board of Education dismissed Metallo’s appeal because she failed to file a timely brief in support of her appeal. (State Board of Education Decision, slip op. at 2.) Metallo moved for reconsideration of the Board’s decision, which was granted. (State Board of Education Decision on Motion, slip op. at 2.) On April 7, 2004, after reconsidering the record, the State Board of Education reaffirmed its decision dismissing Metallo’s appeal for failure to perfect. (State Board of Education Decision on Motion, slip op. at 4.)

Thereafter, on September 23, 2004, the State Board of Examiners issued Metallo an Order to Show Cause as to why her certificates should not be suspended or revoked.

The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Metallo the Order to Show Cause by regular and certified mail on January 13, 2005. The Order provided that Metallo's Answer was due within 30 days. Metallo signed and returned the certified mail receipt. The regular mail copy was not returned. On January 24, 2005, Metallo's attorney notified the Board that he would be filing an Answer on her behalf. No Answer was forthcoming. Thereafter, on February 28, 2005, the Board sent Metallo's attorney a second notice. The certified mail receipt was signed for and returned and the regular mail copy was not returned. Both notices advised that, in the absence of a response, the Board of Examiners would proceed with the matter based upon the information it already possessed. Once again, no response was forthcoming.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Metallo's conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of May 5, 2005, the State Board of Examiners reviewed the charges in the Order to Show Cause. Since there was no response, the Board of Examiners determined that no material facts related to Metallo's conduct were in dispute as she did not deny the charges in the Order to Show Cause. It is therefore ORDERED that the charges in the Order to Show Cause are deemed admitted for the purpose of this proceeding.

The State Board of Examiners must now determine whether Metallo's conduct as set forth in the Order to Show Cause, represents just cause to act against her certificates pursuant to *N.J.A.C. 6A:9-17.5*. The Board finds that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. *N.J.A.C.* 6A:9-17.5. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. *Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943), *aff'd*, 131 *N.J.L.* 326 (E & A 1944). In this instance, Metallo's continued absences had a detrimental impact on her students and the continuity of instruction to which they were entitled. These chronic absences coupled with Metallo's lack of responsiveness to the proceedings at hand, convince this Board that action against her teaching certificates is warranted. The Board is mindful, however, that many of Metallo's absences likely stemmed from her medical and psychiatric conditions. Therefore, the Board believes that a suspension of Metallo's certificates is the appropriate penalty here.

Accordingly, it is therefore ORDERED that Frances Metallo's Teacher of Mathematics and Teacher of English As A Second Language certificates be suspended for a period of three years beginning on this 5th day of May 2005. It is further ORDERED that Metallo return her certificates to the Secretary of the State Board of Examiners, Office of Licensure, PO Box 500, Trenton, NJ 08625-0500 within 20 days of the mailing date of this decision.

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Michael K. Klavon, Acting Secretary  
State Board of Examiners

Date of Mailing: MAY 18, 2005

Appeals may be made to the State Board of Education pursuant to the provisions of *N.J.S.A.* 18A:6-28.