

EDU #3454-01
C # 244-03
SB # 24-03

IN THE MATTER OF THE TENURE :
HEARING OF FRANCES R. METALLO, : STATE BOARD OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION ON MOTION
UNION CITY, HUDSON COUNTY. :

Decided by the Commissioner of Education, May 12, 2003

Decided by the State Board of Education, January 7, 2004

For the Petitioner-Respondent, Chasan, Leyner, Bariso & Lamparello
(Mitzy Galis-Menendez, Esq., of Counsel)

For the Respondent-Appellant, Frances R. Metallo, pro se

On May 12, 2003, the Commissioner of Education, adopting the recommendation of an administrative law judge (“ALJ”), dismissed the respondent, Frances R. Metallo, a tenured teaching staff member, from her tenured employment for chronic and excessive absenteeism. In so doing, the Commissioner emphasized that the respondent did not dispute the fact that she had been absent approximately 650 school days during a six-year period.

On June 16, 2003, the respondent filed an appeal to the State Board of Education. However, she failed to file a brief in support of her appeal as required by N.J.A.C. 6A:4-1.11(a). As a result, after notifying the respondent of such failure, the State Board dismissed the appeal on January 7, 2004 for failure to perfect. N.J.A.C. 6A:4-1.12(a). As we related in that decision:

On July 15, 2003, the briefing schedule was placed into abeyance at the request of Douglas Ortelere, Esq., counsel for the respondent, who indicated that he had left the private practice of law and requested that the respondent be given the opportunity to secure the services of another attorney to represent her in this matter. By letter dated October 13, 2003, Mr. Ortelere submitted a certification in support of a request to be relieved as counsel. In his certification, Mr. Ortelere averred that the respondent had refused to accept a certified letter advising her that he had left the private practice of law and that she had not responded to that letter when he subsequently resent it to her.

By letter dated October 20, 2003, the Director of the State Board Appeals Office notified Mr. Ortelere that his request to withdraw as counsel had been granted. By letter of the same date, the Director advised the respondent that the briefing schedule was being reestablished and that a brief in support of her appeal was due on November 10, 2003.

The respondent, however, failed to file a brief by that date. By letter dated November 13, 2003, the Director of the State Board Appeals Office notified the respondent of her failure to file a brief in support of the appeal and informed her that this matter was being referred to the Legal Committee of the State Board for consideration of her failure to perfect the appeal.

The respondent has still failed to file a brief in support of her appeal, nearly two months after the deadline for such filing. Nor has she offered any explanation for her failure to file or requested an extension of time. As a result, we dismiss the appeal in this matter for failure to perfect.

State Board's Decision, slip op. at 1-2.

On February 6, 2004, the respondent filed a motion for reconsideration of our decision. We grant the respondent's motion. However, reconsideration of the record and review of the respondent's moving papers reinforces our decision to dismiss her appeal, and we reaffirm our decision of January 7.

An administrative agency has the inherent power, in the absence of legislative restriction, to reopen or modify a previous determination. Duvin v. State, 76 N.J. 203, 207 (1978). Such power, however, must be exercised reasonably and invoked only for good cause shown. Id.

In a letter brief submitted in support of her motion for reconsideration, the respondent explained that she had been “in the hospital and now I am in a home for recuperation [sic] for a few months.” Brief in Support of Motion, at 1. In support of that assertion, she attached a copy of a letter dated January 13, 2003 [sic], purportedly written by the administrator of the Harbor View Health Care Center, certifying that the respondent had been a patient at that facility since May 15, 2003. We observe, however, that the letter is unsigned and typed on plain white paper.

The respondent seeks to have her appeal reinstated. However, she requests that the appeal be placed once again on inactive status and provides no indication as to when she might be prepared to proceed.

Although the respondent claims that she never received any correspondence from Mr. Ortelere, she does acknowledge that she received the October 20, 2003 letter from the Director of the State Board Appeals Office, which was mailed to the same address. That letter stated:

Enclosed is my letter notifying Mr. Ortelere that his request to withdraw as counsel in the above-titled matter has been granted. Please be advised that our records have been adjusted to reflect that he is no longer involved in this matter and that you are now representing yourself. Accordingly, all correspondence will now be directed to you.

At this time the briefing schedule is being re-established and an original and 17 copies of your brief in support of appeal are due in this office on November 10, 2003. A copy of the regulations governing appeals to the State Board of Education is enclosed.

If you have any questions, please contact the State Board Appeals Office at (609) 292-8361.

The respondent related that, upon receipt of that letter, she, her father and her uncle attempted to call Mr. Ortelere but were unable to reach him since he had relocated to another office. At no time, however, did the respondent or anyone on her behalf call, write or otherwise attempt to contact the State Board Appeals Office, despite the fact that the letter gave her a specific deadline for filing a brief and informed her that she could call if she had any questions. We emphasize in that regard that the letter included a copy of the rules governing appeals to the State Board and provided the respondent with the telephone number for the State Board Appeals Office. Nor did the respondent or anyone on her behalf contact that office after she was reminded by letter dated November 13, 2003 that she had failed to file a brief.

Thus, while we are mindful of the respondent's status as a pro se litigant, and while we have resolved all doubts in her favor, Mancini v. EDS, 132 N.J. 330, 334 (1993), our review of her motion reinforces our earlier determination. Our conclusion in that regard is bolstered by the fact that the respondent has not shown the presence of a meritorious defense. See O'Connor v. Abraham Altus, 67 N.J. 106, 128-129 (1975). Rather, her moving papers consist primarily of a series of unproven allegations. Accordingly, we reaffirm our decision of January 7, 2004 to dismiss the appeal in this matter for failure to perfect.

John A. Griffith abstained.

April 7, 2004

Date of mailing _____