

#158-08

IN THE MATTER OF THE TENURE :
HEARING OF MICHAEL BATTAGLIA, : COMMISSIONER OF EDUCATION
BERGEN COUNTY SPECIAL : DECISION
SERVICES SCHOOL DISTRICT, :
BERGEN COUNTY. :

SYNOPSIS

Petitioning Board filed tenure charges of excessive absenteeism, incapacity, and other just cause (abandonment of position) against respondent – a tenured custodian – and sought his removal from employment in the Bergen County Special Services School 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 his tenured position. Accordingly, the Commissioner granted summary decision to the Board and ordered respondent dismissed from his tenured position.

<p>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.</p>

April 2, 2008

AGENCY DKT. NO. 67-3/08

IN THE MATTER OF THE TENURE :
HEARING OF MICHAEL BATTAGLIA, : COMMISSIONER OF EDUCATION
BERGEN COUNTY SPECIAL : DECISION
SERVICES SCHOOL DISTRICT, :
BERGEN COUNTY. :

For the Board, Yana Chechelnitsky, Esq. (Nowell, Amoroso, Klein, Bierman, P.A.)

No appearance by or on behalf of Respondent, Michael Battaglia

This matter was opened before the Commissioner of Education on February 29, 2008, through certification of tenure charges of excessive absenteeism, incapacity and other just cause (abandonment of position) by the Board of Education of the Bergen County Special Services School District (Board) against Michael Battaglia (respondent), a tenured custodian in the Board's employ. The respondent did not reply to the charges after they were initially filed with the Board on February 1, 2008, and, on February 28, 2008, the Board served the respondent – via regular and certified mail, return receipt requested – with the Board's February 27, 2008 resolution determining to certify the charges to the Commissioner.

Upon receipt of the certified charges on February 29, 2008, the Commissioner directed respondent – via both certified and regular mail – to file an answer. 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. However, although neither the regular nor the certified notices from the Commissioner were returned as undeliverable, no reply was received from the respondent.

The certified tenure charges and statement of supporting evidence filed by the Board in this matter indicate that: 1) the respondent failed to return to duty on September 11, 2006 despite being cleared to do so by a workers' compensation physician; 2) following a brief return to work on October 30, 2006, he engaged in an ongoing pattern of requesting leaves of absence, failing to return as scheduled, and ignoring district attempts to resolve his health and employment status; and 3) he has not communicated with the district regarding his employment since May 25, 2007.

Deeming these allegations to be admitted and noting that respondent has twice failed to respond to the charges against him, the Commissioner finds that the Board's charges have been proven and that they amply warrant the respondent's dismissal from tenured employment.

Accordingly, summary decision is hereby granted to the Board, and respondent Michael Battaglia is dismissed from his tenured custodial position as of the filing date of this decision.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: April 2, 2008

Date of Mailing: April 2, 2008

* 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.*