

#140-11+ (See Decision #140-11: <http://www.nj.gov/education/legal/commissioner/2011/apr/140-11.pdf>.)

IN THE MATTER OF THE TENURE : AMENDED DECISION
HEARING OF SALVATORE PICCOLI, :
NEW JERSEY STATE DEPARTMENT OF : COMMISSIONER OF EDUCATION
CORRECTIONS, ALBERT C. WAGNER : DECISION
YOUTH CORRECTIONAL FACILITY. :

SYNOPSIS

The New Jersey State Department of Corrections filed tenure charges of conduct unbecoming a public employee against respondent, a tenured teacher, and sought to terminate his employment at the Albert C. Wagner Youth Correctional Facility. Neither respondent nor any attorney acting on his behalf filed an answer to the petition following notice pursuant to *N.J.A.C. 6A:3-5.3* and *6A:3-5.4*. Because no reply was received, the Commissioner deemed each count of the charges against respondent admitted and, by decision dated April 1, 2011, terminated respondent from his tenured position. However, on April 11, 2011 counsel for respondent filed a Motion for Reconsideration stating that respondent had mistakenly sent his written response to tenure charges to the Deputy Attorney General assigned to the case at the OAL rather than to the Commissioner. A copy was also sent to the Director of Educational Services at the Department of Corrections.

In light of counsel for respondent's explanation – submitted with appended exhibits supporting such explanation – the Acting Deputy Commissioner, to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-33*, determined to grant counsel's Motion for Reconsideration. Accordingly, the Commissioner's April 1, 2011 decision terminating respondent from his tenured employment was vacated and the matter was forwarded to the OAL for a hearing on its merits.

<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>

May 6, 2011

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This matter was opened before the Commissioner of Education on February 4, 2011 through the certification of tenure charges of conduct unbecoming a public employee by the New Jersey State Department of Corrections (hereinafter “Department”) against Salvatore Piccoli, a tenured teacher assigned to the Albert C. Wagner Youth Correctional Facility. The Commission seeks Mr. Piccoli’s dismissal from his position.

By notice dated February 4, 2011, the Commissioner directed respondent, via both certified and regular mail – the certified green card having been returned to the Department on February 9, 2011 signifying delivery – to file an Answer to the tenure charges against him. 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. Because no reply was received from respondent, or any attorney on his behalf, in response to the Department’s charges, by decision dated April 1, 2011 (#140-11), the Commissioner deemed each count of the charges against respondent admitted and terminated respondent from his tenured position.

On April 11, 2011, counsel for respondent submitted a Motion for Reconsideration of the Commissioner’s decision pursuant to *N.J.A.C. 6A:3-1.15(b)(2)i*. This provision specifies that a motion

for reconsideration shall be considered in cases where there is a “claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute ‘mistake’ for purposes of this section[.]” In support of her Reconsideration motion, counsel provided the following explanation for respondent’s failure to file an Answer to the tenure charges against him with the Commissioner:

On February 4, 2011 the above referenced tenure charges were filed with the Commissioner. Exhibit A. While the notification of charges states that the respondent shall have 15 days to file a written response with the Commissioner, the notice also prominently lists Dianne Moratti, Section Chief as the attorney. Mr. Piccoli mistakenly sent a written response to the tenure charges via certified mail to Ms. Moratti. Exhibit B. He also sent a copy of his written response to Patty Friend, Director of Educational Services at the Department of Corrections. Both letters were delivered on February 17, 2011 – within the time limit required on the February 4, 2011 notice. Exhibit C. Clearly, Mr. Piccoli intended on filing a written response within the 15 day time frame. However, he mistakenly sent his response to the attorney listed on the notice rather than the Commissioner. Mr. Piccoli’s mistake falls within the rule allowing reconsideration. Therefore, we respectfully request that the Commissioner vacate the April 1, 2011 Final Decision and process the tenure charges for hearing.

In light of counsel’s explanation, along with the appended exhibits supporting such explanation, the Acting Deputy Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A.* 18A:4-33 – has determined to grant counsel’s Motion for Reconsideration.

Accordingly, the Commissioner’s April 1, 2011 decision terminating respondent from his tenured position is hereby VACATED, and this matter shall proceed to the Office of Administrative Law for a hearing on its merits.

IT IS SO ORDERED.¹

ACTING DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: May 6, 2011

Date of Mailing: May 9, 2011

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1).