

EDU #146-02
C #365-02
SB # 47-02

IN THE MATTER OF THE TENURE HEARING :
OF GEORGE ZOFCHAK, SCHOOL DISTRICT :
OF THE CITY OF TRENTON, MERCER :
COUNTY. :

STATE BOARD OF EDUCATION
DECISION ON MOTION

Decided by the Commissioner of Education, October 15, 2002

Decided by the State Board of Education, February 5, 2003

For the Respondent-Appellant, Bergman & Barrett (Michael T. Barrett,
Esq., of Counsel)

For the Petitioner-Respondent, Sumners George (Thomas W. Sumners,
Jr., Esq., of Counsel)

On October 15, 2002, the Commissioner of Education dismissed the appellant from his tenured employment on the basis of tenure charges alleging unbecoming conduct. On November 12, 2002, the appellant filed a notice of appeal to the State Board of Education. In a decision rendered on February 5, 2003, we dismissed the appeal as the result of the appellant's failure to correct procedural deficiencies. In so doing, we observed that counsel for the appellant had failed to file copies of both his appeal brief and the Commissioner's decision packet, as required by N.J.A.C. 6A:4-1.10(b) and N.J.A.C. 6A:4-1.14(a), despite being notified of these defects on two separate occasions and given the opportunity to remedy the situation.

On February 13, 2003, counsel for the appellant filed the instant motion for reconsideration of our decision of February 5. N.J.A.C. 6A:4-2.7. Counsel indicates that he had mailed the required copies on January 7 but that the package was returned to him on February 3 since he had failed to include a post office box. He explains that his lack of response to the deficiency notices “resulted not from indifference but from internal administrative deficiencies that have now been remedied.” Brief in Support of Motion, at 5. He adds that “[o]ur internal errors and the then existing administrative deficiencies in our office should not inure to the ultimate detriment of Mr. Zofchak and Mr. Zofchak’s substantive claim.” Id.

The materials submitted by counsel for the appellant verify his assertion that the required copies had been mailed on or about January 7 but that they had been returned marked “not deliverable as addressed” as a result of his failure to include the Department’s post office box on the envelope. By letter dated February 3, he resubmitted the copies to the correct address. Given these circumstances, we grant the appellant’s motion and reinstate the appeal.

In light of our decision, we are reestablishing the briefing schedule. Both the brief submitted by the appellant in support of the appeal and the Trenton Board’s answer brief, which were previously filed, will be considered in our review of this matter. The appellant may file a reply brief which conforms to the regulatory requirements by April 15, 2003.

April 2, 2003

Date of mailing _____