

#335-09 (OAL Decision: Not available online)

IN THE MATTER OF THE TENURE :  
HEARING OF MARCELINO BASULTO, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE TOWN OF : DECISION  
WEST NEW YORK, HUDSON COUNTY :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning school district certified tenure charges against respondent – a tenured custodian – alleging unbecoming conduct, misbehavior, insubordination, inability to complete duties and other just cause. These charges stem from the Board’s contentions that respondent was on many occasions absent from his post during his assigned shift, including an incident when respondent was found sleeping in his car, and these absences resulted in unclean conditions in the building to which respondent was assigned.

The ALJ found that: on August 5, 2008, respondent was in his car for over an hour during his regularly scheduled shift without permission; video surveillance tapes additionally revealed that respondent was away from his post without permission on July 28, July 30, and August 4, 2008; respondent’s conduct clearly impacted the cleanliness of his assigned area in the school building; the school administration did express repeated informal concerns about the cleanliness of respondent’s assigned work area; and respondent was previously warned about leaving his post without permission, and about unclean conditions in his work area. The ALJ concluded that petitioner’s tenure charges are well supported, and that respondent should be terminated from his tenured employment with the District.

Upon careful review and consideration, the Commissioner adopted the Initial Decision of the OAL as the final decision for the reasons well expressed therein. Respondent is dismissed from his tenured employment as of the date of this decision.

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.

October 15, 2009

OAL DKT. NO. EDU 3190-09  
AGENCY DKT NO. 29-2/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge that the District has sustained its burden of establishing – by a preponderance of the credible evidence – that respondent is guilty of unbecoming conduct, insubordination, and other just cause, and that removal from his tenured custodial position is warranted.

Accordingly, the Initial Decision of the OAL is adopted for the reasons well expressed therein. Respondent is hereby dismissed from his tenured position in the West New York School District as of the date of this decision.<sup>1</sup>

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: October 15, 2009

Date of Mailing: October 15, 2009

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<sup>1</sup> It is hereby clarified, however, that respondent's removal from his position is as of the date of this decision – **not the date of his suspension** – as stated on Page 14 of the Initial Decision.

<sup>2</sup> 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*)