

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF :
MAXIMILIAN CAPSHAW, : COMMISSIONER OF EDUCATION
UPPER FREEHOLD REGIONAL SCHOOL :
DISTRICT, MONMOUTH COUNTY. :
DECISION

SYNOPSIS

Petitioning school district sought to suspend the certificate of respondent pursuant to *N.J.S.A. 18A:26-10* and *N.J.S.A. 18A:28-8* for not providing adequate notice of resignation from his position as a school psychologist in Upper Freehold Regional Schools. Respondent resigned to accept employment with another district out of state, offering 30 days notice, but subsequently left employment in petitioner's district with only 18 days notice of his departure.

The ALJ found that: the facts in this matter are undisputed; respondent violated the statutory sixty day notice requirement; respondent was under pressure from his new employer to begin before the expiration of 60 days and sought to compromise with petitioner by offering 30 days notice; and a one year suspension under the circumstances presented in the record is harsh. The ALJ concluded that respondent should be suspended for a period of three months.

Upon a thorough and independent review, the Commissioner adopts the conclusion of the ALJ that respondent is guilty of unprofessional conduct for failure to give proper notice before resigning. The Commissioner, however, rejects the ALJ's recommendation that respondent's teaching certificate be suspended for only three months, finding that: the facts in this matter are neither unique nor do they warrant the exercise of the Commissioner's discretion; and respondent's desire for early release from his professional obligations was based on personal motives and convenience. Accordingly, the Commissioner ordered suspension of respondent's teaching certificate for a period of one year, and forwarded a copy of the decision to the State Board of Examiners.

<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>

June 12, 2007

OAL DKT. NO. EDU 12318-06
AGENCY DKT. NO. 432-11/06

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF :
MAXIMILIAN CAPSHAW, : COMMISSIONER OF EDUCATION
UPPER FREEHOLD REGIONAL SCHOOL : DECISION
DISTRICT, MONMOUTH COUNTY. :

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon a full and independent review of the record, the Commissioner adopts the conclusion of the Administrative Law Judge (ALJ) that respondent, Maximilian Capshaw, is guilty of unprofessional conduct for failure to give proper notice before resigning from his position as a school psychologist. The Commissioner, however, rejects the ALJ's recommendation that - as a consequence of such conduct - respondent's teaching certificate be suspended for only three months.

As recognized by the ALJ, the facts in this matter are undisputed. The record establishes that respondent, a tenured psychologist in the Board's employ, submitted his letter of resignation on August 28, 2006; respondent offered to stay for 30-days but indicated he would like to leave earlier, if possible, in order to begin work in a new position he had accepted in New York City; the Acting Superintendent advised respondent on August 31, 2006 that he was obligated to provide the Board with sixty days notice, that is, until October 26, 2006 - but should the Board be able to find a replacement who could begin working prior to the end of this sixty-

day period – it would release him early; respondent subsequently agreed to work only through September 15, 2006 – a mere 18 days after he notified the Board of his resignation – and he left his position on that date; the Board – despite advertising respondent’s position on August 29, October 18 and November 15, 2006, and conducting several interviews – was unable to find a suitable replacement for respondent’s position until January 2, 2007.

N.J.S.A. 18A:28-8 establishes the notice requirement necessary when a *tenured* teaching staff member wishes to resign his position and authorizes the Commissioner to suspend the teaching staff member’s certificate for a period of up to one year for failure to comply with its provisions.¹ Specifically,

[a]ny teaching staff member, under tenure of service, desiring to relinquish his position shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve of a release on shorter notice and if he fails to give such notice he shall be deemed guilty of unprofessional conduct and the commissioner may suspend his certificate for not more than one year.

It is well recognized that “[t]he obvious purpose of *N.J.S.A.* 18A:26-10 [and *N.J.S.A.* 18A:28-8] is to provide notice to the school so that a suitable replacement can be hired without adversely impacting students.” (citations omitted) (*Penns Grove-Carneys Point Board of Education v. Regina Leinen*, 94 *N.J.A.R.* 2d (EDU) 405, 407) In the instant matter, it is undisputed that respondent resigned without providing the requisite notice to the Board. It is, similarly, uncontroverted that the Board refused to release respondent from his 60-day obligation unless and until a suitable replacement was located, which did not happen. As such, the Commissioner concurs with the ALJ’s determination that respondent is guilty of unprofessional conduct for his failure to provide the 60-day notice required by statute.

¹ It is noted that *N.J.S.A.* 18A:26-10 is a companion statute applicable to *non-tenured* teaching staff members.

However, unlike the ALJ, the Commissioner is unable to conclude that circumstances in this matter serve to militate against the imposition of a one-year suspension of respondent's teaching certificate and she, therefore, rejects his conclusion that a lesser penalty is appropriate. The Commissioner is fully aware that – pursuant to *N.J.S.A. 18A:28-8* – whether a teaching staff member's certificate is suspended for failure to give the requisite notice and, if so, the length of such suspension up to the maximum one-year permitted by law, are both discretionary determinations vested in the Commissioner. In making determinations in this regard, the Commissioner has historically evaluated all attendant circumstances specific to each case. As a general rule, however, given the underlying purpose of the statute, this evaluation – with *rare* exception – has resulted in suspension of any and all certificates for the maximum one-year period, particularly where the facts demonstrate that individuals have violated the 60-day notice requirement for strictly personal reasons, putting their own self interest above the interests of students and their professional obligation to provide adequate notice to the Board. *See East Amwell Township Board of Education v. Patricia Acken*, 1986 *S.L.D.* 2803; *In the Matter of the Suspension of the Teaching Certificate of Vincent Montalbano*, decided by the Commissioner June 11, 2001; *In the Matter of the Suspension of the Teaching Certificate of Mary Elizabeth Farran, School District of the Chathams, Morris County*, decided by the Commissioner March 29, 2005; *In the Matter of the Suspension of the Teaching Certificate of Mary Savino, Rahway Board of Education, Union County*, decided by the Commissioner August 30, 2005.

Those unique instances where the Commissioner has found justification for exception to this general rule were cases which presented compelling mitigating circumstances, *e.g.* 1) *Board of Education of Black Horse Pike Regional School District v. Mooney*, 1984 *S.L.D.* 810, where the Board had a candidate to replace the respondent as of her requested

release date through the end of the school year. Additionally, the respondent made considerable efforts to assist the Board in ensuring a smooth transition for her replacement, including meeting with her successor in order to establish the program, including lesson plans; 2) *In the Matter of the Suspension of the Teaching Certificate of Burgess*, 1983 S.L.D. 183, where the Board failed to fulfill its promise to accelerate the replacement process, despite the almost immediate availability of a suitable replacement. Respondent left detailed lesson plans for his successor and even offered to meet with his replacement on his own time to ensure an orderly transition if necessary; and 3) *In the Matter of the Suspension of the Teaching Certificate of Rogers*, 1989 S.L.D. 1962 where a non-tenured teacher of the handicapped resigned on short notice to take a position at a state facility, New Lisbon Developmental Center, working with more severely and multiply handicapped children than those in his District. The Board was able to obtain a replacement for his position within one week. Here, the ALJ observed, and the Commissioner concurred, that respondent's early departure "was not to feather his own nest, ***but rather from honest and more noble motivations" in that "[n]otwithstanding the burdens of New Lisbon's work, school districts almost invariably pay better than does the State and the State has considerable difficulty obtaining sufficient dependable staff for that work. Civil service decisions out of the State developmental centers demonstrate a continuing theme of inability to obtain and hold staff due to the pay and working conditions there." *Rogers*, at 1966.

Unlike these rare cases cited above which have justified an exception to the customary one-year suspension, the facts in this matter are neither unique nor do they warrant the exercise of Commissioner discretion. Rather, in the instant matter, respondent's desire for early release from his professional obligations was based on personal motives and his own convenience, with nary a concern about the well-being of the special education students in need

of his assistance, the Board's ability to find a suitable replacement on such short notice, or the increased workload for his co-workers who were required to complete his evaluations and evaluation reports along with assuming his case management responsibilities for over 3-months subsequent to his abrupt departure from the District.

Accordingly, pursuant to *N.J.S.A. 18A:28-8* and consistent with the penalty assessed in similar matters, respondent Maximilian Capshaw is deemed guilty of unprofessional conduct and his teaching certificate is hereby suspended for a period of one year, effective upon the date of this decision. A copy of this decision is being forwarded to the State Board of Examiners for the purpose of effectuating this decision.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: June 12, 2007

Date of Mailing: June 12, 2007

² This decision, as the Commissioner's final determination, 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.*