

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATES OF : COMMISSIONER OF EDUCATION
ROBERT F. GALGANO, CENTRAL :
JERSEY COLLEGE PREP CHARTER : DECISION
SCHOOL, SOMERSET COUNTY. :

SYNOPSIS

In March 2010, an Order to Show Cause was served upon respondent – a non-tenured mathematics teacher – requiring him to show cause why his teaching certificate should not be suspended for unprofessional conduct pursuant to *N.J.S.A. 18A:26-10* for resigning his position on inadequate notice after two months of teaching. The respondent contended, *inter alia*, that he never executed a formal contract of employment and that the aforementioned statute was not applicable to him as a non-tenured charter school employee.

The ALJ found, *inter alia*, that: a binding contract is formed between two parties when there is a meeting of the minds evidenced by a written offer and an unconditional written acceptance; in the instant case, the November 2, 2009 letter offering respondent employment, which he signed as “accepted” on November 3, 2009, created a binding employment agreement to teach for the rest of the 2009-2010 school year; respondent ceased to perform his duties before the expiration of the term of his employment without the consent of the charter school, contrary to *N.J.S.A. 18A:26-10*; respondent’s conduct in announcing first that he was offering sixty days’ notice of his resignation, only to leave on a one day notice a few school days later, was grossly unprofessional as it allowed no time for the school administration to smoothly transition his students to a new teacher. Accordingly, the ALJ concluded that respondent’s abrupt resignation without notice warrants the suspension of his teaching certificate for a period of one year.

Upon independent review of the record and the Initial Decision, the Commissioner found both an express contract between the parties and a contract implied in fact. He concurred with the ALJ that respondent’s behavior warrants the suspension of his teaching certificate for a period of one year and forwarded a copy of the instant decision to the State Board of Examiners for the purpose of effectuating the suspension.

<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>

March 21, 2011

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATES OF : COMMISSIONER OF EDUCATION
ROBERT F. GALGANO, CENTRAL :
JERSEY COLLEGE PREP CHARTER : DECISION
SCHOOL, SOMERSET COUNTY. :

After review and consideration of the Initial Decision of the Office of Administrative Law (OAL) and the record for this case,¹ the Commissioner concurs with the Administrative Law Judge (ALJ) that respondent Galgano is subject to a one-year suspension of his teaching certificate for violating *N.J.S.A.* 18A:26-10 when, without the consent of his employer, he ceased to perform his duties before the expiration of the term of his employment.

It is undisputed that on November 2, 2009, petitioner sent respondent an offer of employment as a full-time mathematics teacher for the 2009-2010 academic year at a salary of \$49,152. (Petitioner’s Exhibit P-1) On November 3, 2009, respondent signed the offer letter, checking the term “accepted,” and returned same to petitioner. (*Ibid.*) He commenced teaching on November 4, 2009, and continued, ultimately, for two months.

In December, the school’s curriculum director indicated to respondent that there were some deficiencies in his performance. Relations between Galgano and his supervisors subsequently deteriorated and respondent tendered his resignation on December 22, 2009, writing that he would “stay until a replacement [was] found for [him] or until the 60-day waiting period [was] over (February 22).” (Petitioner’s Exhibit P-3)

¹ The Commissioner was not provided with a transcript of the December 10, 2010 hearing.

It is undisputed that a five-page form which the school had normally used for teacher contracts (the Long Form) – which was identified at the OAL hearing as Petitioner’s Exhibit P-5 – was not presented to respondent when he was hired. Knowing this to be the case, respondent asked the principal, Bekir Duz, for a copy of ‘his contract’ when he came to work on January 5, 2010. When Duz realized that a Long Form had never been proffered to respondent, he asked the business administrator, Veli Altas, to give one to respondent to sign. Respondent refused, advised Altas that he would not return to work, and sent an email to Duz conveying same. (Petitioner’s Exhibit P-4) The stated basis for respondent’s precipitous abandonment of his position was “the school’s failure to provide me with a contract of employment in a timely and professional manner” (*Ibid.*) Duz testified that he did not see the email until after 4 pm on January 5. (Initial Decision at 8)

The exceptions submitted by respondent have been considered, but are not persuasive. He first contends that no contract was ever formed between the parties because the November 2, 2009 acceptance letter contained insufficient terms. Citing to *N.J.S.A. 18A:27-6*, respondent points to the absence of a specific starting date, or information about the length of pay periods. Respondent further argues that the requirement in *N.J.S.A. 18A:27-6(4)* that a contract include “[s]uch other matters as may be necessary to a full and complete understanding of the contract” was violated because the November 2, 2009 written offer included far fewer terms than the Long Form.

It is axiomatic that a contract arises from an offer and an acceptance, which in the present case occurred on November 3, 2009. If parties agree on essential terms and manifest the intention to be bound by those terms, they have created an enforceable contract. *See, Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435 (1992); [*West Caldwell v. Caldwell*, 26 N.J. 9, 24-25](#)

(1958); Johnson & Johnson v. Charmley Drug Co., 11 N.J. 526, 539 (1953); Knight v. New England Mutual Life, 220 N.J. Super. 560, 565 (App. Div.1987), certif. denied, 110 N.J. 184 (1988). The Commissioner finds that there was an express contract between the parties.

The offer letter from petitioner – which was expressly accepted by respondent on November 3, 2009 – sufficiently identified the nature of the services to be performed, the term of employment, and the salary to be paid in consideration of the services. The Commissioner sees no reason to invalidate an offer of employment for want of a written starting date, when the respondent admittedly commenced his employment the day after he signed the offer letter – with petitioner’s blessing. Similarly, insofar as respondent worked – and was paid – for two months in petitioner’s school, the Commissioner cannot conclude that the absence of a pay period schedule in the offer letter was fatal to the formation of the express contract.

Further, contracts are formed not just by executed writings – express contracts – but also by conduct, i.e. contracts implied-in-fact. *Wanaque Borough Sewerage Auth. v. Twp. of W. Milford*, 144 N.J. 564, 574 (1996) (Contracts are traditionally classified as express, implied-in-fact or implied-in-law. The contract is express if the agreement is manifested by written or spoken word, and implied-in-fact if the agreement is manifested by other conduct). Contracts implied in fact are no different than express contracts, although they exhibit a different way or form of expressing assent than through statements or writings. *Ibid.* Even without the accepted written offer of November 3, 2009, the parties in the instant case evidenced their assent to the offered employment relationship by respondent’s assumption and continuation of teaching duties for several weeks, and by petitioner’s payment of the promised remuneration therefor.

In summary, having manifested his assent to the offer of employment by signing and returning the offer letter, and having ratified his assent by performing in the offered position for two months and by accepting the offered remuneration, petitioner cannot now take the position that there was no contract. Nor is it of any consequence that respondent's contract with petitioner was formed differently than the contracts between petitioner and other employees.

Respondent's second argument appears to rely on language in the Long Form. More specifically, respondent refers to the last paragraph in the Long Form which reads: "This contract must be signed and returned by the Employee no later than _____. Failure by [sic] Employee to submit this Contract to the CJCP before this date nullifies this Contract K. and the offer of employment." The Commissioner finds that neither this language nor any other language in the blank Long Form controls the case, because at the time the contract between the parties was formed, that document was neither offered by petitioner nor accepted by respondent. Altas' subsequent presentation of the blank Long Form to respondent for signature does not negate the contract that had been entered into by the parties two months prior.²

In connection with Altas' proffer to respondent of a Long Form for signature, respondent contends that Altas advised him: "without a signed contract you cannot work here." (Initial Decision at 6) At the OAL hearing, Altas denied saying this. After consideration of this single material factual dispute, the ALJ found Business Administrator Altas credible. (Initial Decision at 6-7)

The Commissioner must defer to the ALJ's credibility finding unless it is clearly arbitrary, capricious or unreasonable. *See, e.g. D.L. and Z.Y. on behalf of T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div.

² The irrelevance of the blank Long Form renders moot respondent's assertion that its language must be construed against petitioner.

2004) and *N.J.S.A. 52:14B-10(c)*. A review of ALJ Bass' discussion of the bases for her credibility determination reveals nothing arbitrary, capricious or unreasonable. To the contrary, the ALJ's description of Altas' non-aggressive demeanor and her consideration of other pertinent facts – such as his lack of authority to dismiss staff and the fact that threatening respondent with dismissal was counter to the school's interests until a replacement was hired – was adequate support for her finding that Altas did not tell respondent that failure to sign the Long Form would mean immediate termination of his job.

Regarding the one-year license suspension recommended by the ALJ, respondent urges that the penalty is too severe. He observes that the period of instructional disruption caused by him was no longer than that which occurred in October 2009, before the beginning of his employment by the school, and refers to the fact that the school administrators had already been obliged to contend with an abrupt departure before his sudden resignation on January 5, 2010. The Commissioner cannot regard these facts as mitigating circumstances. Respondent was cognizant that his students' instruction had been significantly disrupted before he arrived and surely could not have failed to foresee that another disruption only two months later could have an exponentially negative effect on their education. Nor did the fact that the school administrators had to replace the first mathematics teacher early in the year lessen the inconvenience caused by respondent's subsequent abrupt departure.

Finally, respondent contends, ignoring established precedent, that *N.J.S.A. 18A:26-10* does not apply to charter schools and that the Commissioner consequently has no authority to suspend respondent's teaching certificate. This contention was adjudicated some years ago and rejected by the Commissioner, whose decision was affirmed by the Appellate Division of Superior Court. *See, IMO Suspension of the Teaching Certificate of*

Nadira Raghunandan, Grey Charter School, Newark, Essex County, et al., Commissioner Decision No. 297-08 (July 9, 2008); In the Matter of the Suspension of the Teaching Certificate of Melissa Van Pelt, Grey Charter School, Newark, Essex County, Commissioner Decision No. 170-09 (May 29, 2009), aff'd 414 N.J. Super. 440 (App. Div. 2010). It will not be revisited here.

Accordingly, the recommendation in the Initial Decision that respondent's teaching certificate be suspended for one year is adopted. A copy of this decision will be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 21, 2011

Date of Mailing: March 21, 2011

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.