

IN THE MATTER OF THE SUSPENSION OF :
 THE CERTIFICATES OF ESTHER CANELA, : COMMISSIONER OF EDUCATION
 SCHOOL DISTRICT OF THE TOWNSHIP OF : DECISION
 IRVINGTON, ESSEX COUNTY. :

SYNOPSIS

In October 2016, the Commissioner of Education issued an Order to Show Cause requiring respondent to show cause why an order should not be entered suspending her teaching certificate for unprofessional conduct pursuant to *N.J.S.A. 18A:26-10*, for resigning her position without giving the required 60 day notice. The respondent – a non-tenured teacher – contended that she did not have a contract for the 2016-2017 school year, and was therefore not obligated to provide a 60 day notice. Respondent filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; *N.J.S.A. 18A:26-10* provides, in pertinent part, that any teaching staff member “who shall, without the consent of the board...cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year”; in this case, respondent was employed under contract by the petitioning Board as a World Languages-Spanish teacher for the 2015-2016 school year; in May 2016, respondent received a letter from the Board informing her that her employment would not be renewed for reasons of economy; in June 2016, respondent received a second letter from the Board stating that her non-renewal was rescinded, but the letter did not contain any terms of employment for the 2016-2017 school year; respondent signed an acknowledgment of receipt of the letter, which stated only that she was in receipt of a letter from the Human Resources Department, dated June 22, 2016; respondent never received an employment contract from the Board subsequent to her receipt of the non-renewal letter in May 2016; three weeks prior to the opening of the 2016-2017 school year – on August 17, 2016 – respondent advised the Board by letter that she had accepted an offer of employment from another school district, and that she was “resigning” her position in Irvington. The ALJ concluded that: the Board’s contention that respondent effectively accepted renewal of her position when she signed an acknowledgement that her non-renewal had been rescinded is without merit; the letter rescinding respondent’s non-renewal did not include any terms of employment, did not list her position or salary for the 2016-2017 school year, and cannot be considered as a basis for the Board to assume that respondent would return to teach in the 2016-2017 school year. Respondent did not violate *N.J.S.A. 18A:26-10*, because the expiration of her employment term was at the end of the 2015-2016 school year. Accordingly, the ALJ granted respondent’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter.

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.

IN THE MATTER OF THE SUSPENSION OF :
THE CERTIFICATES OF ESTHER CANELA, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP OF : DECISION
IRVINGTON, ESSEX COUNTY. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the Irvington Board of Education (Board) and respondent Esther Canela’s reply thereto. In this case, the Board is seeking to have the respondent’s certificates suspended pursuant to *N.J.S.A.* 18A:26-10 for resigning from her teaching position before the expiration of the term of her employment. The Administrative Law Judge (ALJ) found that the respondent did not violate *N.J.S.A.* 18A:26-10 because she did not have an employment contract with the Board for the 2016-17 school year; accordingly, the ALJ granted summary decision in favor of the respondent.

Upon a comprehensive review of this matter, the Commissioner concurs with the ALJ – for the reasons outlined in the Initial Decision – that the respondent’s certificates should not be suspended under *N.J.S.A.* 18A:26-10 because she is not guilty of unprofessional conduct.

Pursuant to *N.J.S.A.* 18A:26-10:

Any teaching staff member employed by a board of education ... who shall, without the consent of the board ... cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year.

It is clear from the record in this matter that the respondent and the Board did not enter into an employment contract for the 2016-17 school year; therefore, there was no term of employment that triggered the requirements in *N.J.S.A. 18A:26-10*.¹

The Commissioner is not persuaded by the Board's sole argument advanced in its exceptions: that there was a genuine issue of material fact that precludes the disposition of this matter on summary decision. Despite the Board's assertion to the contrary, the use of the word "resign" in the respondent's August 2016 letter to the Board, and the respondent's intended meaning, does not amount to a material fact in dispute.² The respondent's August 2016 letter and the intent behind the wording is irrelevant because the Board never offered the respondent an employment contract for the 2016-17 school year, and the respondent never accepted an employment contract. In the absence of any genuine issue of material fact in dispute, this matter was appropriately decided on summary decision. *Robin Brill v. Guardian Life Insurance Company of America, et al.* 142 *N.J.* 520, 523 (1995).

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 23, 2017

Date of Mailing: February 23, 2017

¹ It is undisputed that the respondent did not have tenure in the district. Therefore, *N.J.S.A. 18A:28-8* is not applicable to the circumstances in this case.

² The events that transpired between May 2016 – when the Board informed the respondent that her employment would not be renewed – and August 2016 are summarized in the Initial Decision.

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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 17209-16

AGENCY DKT. NO. 285-11/16

**IN THE MATTER OF THE SUSPENSION OF
THE TEACHING CERTIFICATE OF ESTHER
CANELA, SCHOOL DISTRICT OF THE
TOWNSHIP OF IRVINGTON, ESSEX
COUNTY,**

Yadira Cristal Duran, Esq., for petitioner Irvington Board of Education (Hunt,
Hamlin & Ridley, attorney)

William Hannan, Esq., for respondent, Esther Canela (Oxford Cohen, attorney)

Record Closed: January 11, 2017

Decided: January 12, 2017

BEFORE: **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The School District of the Township of Irvington (Board or petitioner) seeks to suspend Esther Canela's (respondent or Canela) teaching certificate for one year for failure to provide sixty days' notice at the time of her resignation. The Board filed an Order to Show cause with the New Jersey Department of Education on September 23,

2016. The Order to Show Cause was served upon respondent on October 12, 2016. Canela filed a motion for summary decision on November 10, 2016. The matter was filed with the Office of Administrative Law (OAL) as a contested matter on November 14, 2016. A pre hearing conference was held on December 7, 2016 during which time a hearing date was scheduled. The Board filed opposition to respondent's motion for summary decision on January 4, 2017. Canela filed a response to the opposition on January 11, 2017.

FACTUAL DISCUSSION

Based on the documentary evidence submitted, I **FIND** the following **FACTS**:

Canela was employed by the Board as an untenured World Languages-Spanish teacher at Irvington High School for the 2015-2016 school year. On May 11, 2016, Canela received a letter from the Board informing her that her employment as a non-tenured member of the teaching staff would not be renewed for reasons of economy. Subsequent to receiving this letter Canela began looking for employment in other school districts. On or about June 20, 2016, Canela received a letter from the Board stating that the non-renewal of was rescinded. Canela signed an acknowledgement of receipt of the letter stating that the non-renewal was rescinded on June 22, 2016. The letter rescinding the non-renewal states:

Please be advised that your non-renewal as a non-tenured or non-bargaining staff member in the Irvington Public Schools effective for the 2016-2017 school year has been rescinded as of the date of this letter.

If you have any questions please call the Department of Resources at 973.399.6800 x2100

The above letter did not contain any terms of employment for the 2016-2017 school year. The acknowledgement signed by Canela states:

I Esther Canela am in receipt of a confidential letter from the Human Resources Department. It is dated June 22, 2016.

Canela never received an employment contract from the Board subsequent to receiving the non-renewal letter of May 2016.

In August of 2016, respondent received an offer of employment in a staff position from another school district. In mid-August Canela contacted the Board's supervisor of World Languages, Dr. Pedro Ruiz to inform him that she had accepted a position at another school. On August 17, 2016, Canela advised the Board that she was resigning from her position as a World Language-Spanish teacher. This letter was sent three weeks before the opening of the school year.

LEGAL ANALYSIS AND DISCUSSION

Canela seeks to summarily dismiss petitioner's claim. The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits, which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged requires the Motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

In this matter there are no questions of fact. The legal question is whether Canela's signing the acknowledgment of rescinding the non-renewal of employment and

her use of the word resign in her letter of August 17, 2016 constitute that she had an employment contract with the Board. In its petition the Board states that petitioner violated N.J.S.A. 18A:28-8 which provides:

Any 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.

The Board's first paragraph of its petition states that Canela is "A non-tenured World Language-Spanish teacher employed at Irvington High School." I **CONCLUDE** that Canela did not violate N.J.S.A. 18A:28-8 because she was not under tenure of service.

The Board did not provide any other basis in its petition as to why Canela's teaching certificate should be suspended for one year other than violation of N.J.S.A. 18:28-8. I will address the regulation regarding non tenured teachers ceasing employment since it was briefed by both parties. N.J.S.A 18A:26-10 provides:

Any teaching staff member employed by a board of education or an approved private school for the disabled, who shall, without the consent of the board or, in the case of an approved private school for the disabled, the board of directors of the school, cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year.

As used in this section, "approved private school for the disabled" means a private entity approved by the Department of Education to provide special education and related services to students with disabilities who have been placed by the district board of education or charter school responsible for providing their education.

The issue in this matter is whether Canela ceased to perform his duties before the expiration of the term of her employment. This turns on when was the expiration of Canela's term of employment. The Board argues that Canela signing an acknowledgement that she received the letter rescinding the non-renewal that she

accepted a renewal of the position. The Board relies on In the Matter of the Teaching Certificates of Robert Galgano EDU 03805-10 Final Decision (March 21, 2011) <<http://lawlibrary.rutgers.edu/oal/search>. In that case Galgano was sent letter with an offer of employment which included the position and salary. Galgano signed the letter and checked the accepted box. He commenced teaching and taught for two months then tendered his resignation. The Galgano case is clearly distinguishable from this matter. Canela signed an acknowledgement that she received a letter rescinding the non-renewal of June 20, 2016. The letter did not include any terms of employment. It did not list her position for the 2016-2017 school year or her salary for the 2016-2017 school year. In addition signing a document stating that you acknowledge receipt of a letter is not accepting terms of employment.

In the Matter of Teaching Certificates of Suzanne Cerreno, Bergen County Vocational School District, Bergen County EDU-12508-10 Final Decision (June 14, 2012) <<http://lawlibrary.rutgers.edu/oal/search.html> Cerreno was an untenured math teacher for the 2009-2010 school year. She was not offered a contract for the 2010-2011 school year until August 2010. At the end of August 2010 Cerreno advised the Board that she would not be returning. The Commissioner stated:

In other words, a non-tenured employee may regard the absence of either a contract renewal letter or a nonrenewal letter as tantamount to an “offer” of employment. However, there is nothing in N.J.S.A. 18A:27-11 that requires the non-tenured teacher to accept the offer.

In this matter even if the letter rescinding the non-renewal of her employment is considered an offer of employment, Canela signing an acknowledgement that she received the letter is not acceptance of the offer, it is acknowledgement that she received the letter.

The Board also alleges that since Canela used the word resign in her letter of August 17, 2016 that there had been an implied contract and that she cease to perform her duties before the expiration of the term of her employment. The Board’s reliance on the word resign is misplaced. In her certification Canela stated that the letter was a courtesy and she never received an offer of employment for the 2016-2017 school year.

The use of the word resign does not change Canela's acknowledgement of receipt of the rescinding of the non-renewal letter to an acceptance of an offer of employment. Other than sending the letter rescinding the non-renewal on June 20, 2016, the Board did not contact Canela. There was no basis for the Board to assume that Canela would return to teach in the 2016-2017 school year. Canela never indicated to the Board that she would return to teach for the 2016-2017 school year.

CONCLUSION AND ORDER

I **CONCLUDE** that even though it was not the basis of the petition of the Board to rescind respondent's teaching certificate for one year, that Canela did not violate N.J.S.A 18A:26-10 because the expiration of her employment was the end of the 2015-2016 school year.

Accordingly, based upon Canela's moving papers, supporting exhibits and certification, I hereby **GRANT** the motion for Summary Decision. I therefore, **ORDER** the action filed by the Board be **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 12, 2017



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

January 12, 2017

Date Mailed to Parties:
ljb

DOCUMENTS RELIED ON

Petitioner and Respondent's, motion, briefs and exhibits.