

#170-09 (OAL Decision: Not yet available online)

IN THE MATTER OF THE SUSPENSION : COMMISSIONER OF EDUCATION
OF THE TEACHING CERTIFICATE OF
MELISSA VAN PELT, GRAY CHARTER : DECISION
SCHOOL, NEWARK, ESSEX COUNTY.
_____ :

SYNOPSIS

In September 2007, an Order to Show Cause was served upon respondent – a non-tenured teacher – requiring her to show cause why her teaching certificate should not be suspended for unprofessional conduct pursuant to *N.J.S.A. 18A:26-10* for resigning her position as an eighth grade teacher on one weeks’ notice, and contrary to the terms of her employment contract. The respondent contended that the aforementioned statute is not applicable to charter schools. The petitioning charter school filed a motion for summary decision.

The ALJ found that: *N.J.S.A. 18A:26-10* applies to teaching staff members in charter schools; and *N.J.S.A. 18A:26-10* prohibits a teaching staff member from ceasing to perform her duties contrary to the provisions of her contract with the charter school. The ALJ concluded that respondent ceased to perform her duties before the expiration of the term of her employment contrary to *N.J.S.A. 18A:26-10*, and that respondent’s teaching certificate should be suspended for a period of one year.

Upon independent review of the record, the Commissioner concurred with the findings of the ALJ, and adopted the Initial Decision as the final decision in this matter. Accordingly, summary decision is granted to petitioner, and respondent’s certificate is suspended for a period of one year from the date of the filing of this decision – a copy of which has been forwarded to the State Board of Examiners for the purpose of effectuating this order.

<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>

May 29, 2009

OAL DKT. NO. EDU 11556-07
AGENCY DKT. NO. 291-10/07

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The record of this matter, the Initial Decision of the Office of Administrative Law, and respondent's exceptions have been reviewed. For the reasons set forth therein, the Commissioner adopts the Initial Decision as the final decision in this case.

Respondent's suggestion that her employment by a charter school rendered her exempt from the provisions of *N.J.S.A. 18A:26-10* is rejected. The Commissioner has previously ruled – on an interlocutory motion filed in this case – that respondent, as a charter school employee, is subject to the sanctions set forth in that statute,¹ which states in pertinent part:

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.

Respondent did not perform the duties to which she had contractually bound herself. She did not have the consent of the petitioning charter school's administrator to leave service on a few days notice and, under the circumstances of this case, could not have reasonably believed that she would receive such consent. In sum, charter schools are public schools and, as a charter school employee, respondent's contractual responsibilities and her duty to the students were in no way

¹ See, *IMO Suspension of the Teaching Certificate of Melissa Van Pelt, Gray Charter School, Newark, Essex County*, et al., Commissioner Decision on Motion for Interlocutory Appeal, Decision #297-08 (July 9, 2008).

distinguishable from the responsibilities and duties of teachers in the traditional public schools of the Newark school district.

Further, the Commissioner has consistently explained, in decisions implicating *N.J.S.A. 18A:26-10* and *N.J.S.A. 18A:28-8*, that the underlying purpose of those statutory provisions is deterrence of the disruption of services that occurs when teachers abruptly resign. *See, e.g. Victoria Carrelle v. Board of Education of the Township of Bloomfield, Essex County*, OAL Dkt. No. EDU 1852-03, Agency Dkt. No. 6-1/03, Commissioner Decision No. 49-04, February 9, 2004, at 10-11, which states, in pertinent part:

Notice . . . is intended to protect both parties. Certainly the Board would not countenance a teacher who is perhaps offered a better paying position elsewhere . . . to disappear . . . thereby rendering no service to the children of the district with resulting disruption and detriment to the educational process. The Board would certainly expect the teacher to be on duty for the sixty days to better enable the Board to find an adequate replacement for the teacher while protecting the educative process for the children.

Thus, to distinguish between teachers of charter schools and traditional public schools in the application of *N.J.S.A. 18A:26-10* would create a false dichotomy and cannot be assumed to have been the intent of the legislature.

The Commissioner also rejects the argument presented in respondent's exceptions – *i.e.*, that the absence of a 60-day notice-of-termination clause in respondent's employment contract affects the nature of the sanction respondent should receive for leaving petitioner in the lurch. It is well-grounded in education law that determination of the sufficiency of a term of notice pursuant to this statute is dictated by the terms of the parties' employment contract and any resignation or termination must be in accordance with the terms of such agreement. *See Ralph Boguszewski v. Board of Education of the Borough of Woodcliff Lake, Bergen County*,

1979 S.L.D. 727, *aff'd* State Board 1980 S.L.D. 1477. Here, petitioner's contract contained a provision which stipulated that respondent could not terminate her employment without petitioner's consent – which was not given in this case. Thus, respondent was in violation of the contract and subject to sanction.

Second, the circumstances warrant a maximum sanction. Respondent faxed her resignation letter to the school administrator only two days before staff training was to commence for the 2007-2008 school year and one week before school was to begin. The result was disruption significant enough to warrant the suspension of respondent's teaching certificate for a full year. *See, e.g. Board of Education of the Borough of Alpine, Bergen County v. Leonid Yuz*, EDU 1116-06, Initial Decision (July 17, 2008) at 8, adopted by Commissioner, September 23, 2008, http://lawlibrary.rutgers.edu/oal/html/initial/edu01116-06_1.html :

Generally, the Commissioner has imposed the full one-year suspension of a teaching certificate for leaving a district without adequate notice. *E.g., Green v. School District of Mount Holly*, OAL Dkt. No. EDU 0773-02, Initial Decision Sept. 5, 2002, adopted by Commissioner, Decision No. 380-02, Oct. 25, 2002; *In re Suspension of the Teaching Certificate of Savino*, OAL Dkt. No. EDU 11688-04, Initial Decision July 28, 2005, modified by Commissioner, Decision No. 308-05, Aug. 30, 2005, affirmed by State Bd. of Ed. Feb. 3, 2006; *In re Suspension of the Teaching Certificate of Montalbano*, OAL Dkt. No. EDU 3588-00, Initial Decision April 24, 2001, adopted by Commissioner, Decision No. 186-01, June 11, 2001; *Penns Grove-Carneys Point v. Leinen*, 94 N.J.A.R.2d (EDU) 405 (Comm'r May 4, 1994); *Dumont Bd. of Educ. V. Zweig*, 1988 S.L.D. 904 (March 30, 1988), modified 1988 S.L.D. 914 (Comm'r May 16, 1988).

Nor does the record reveal mitigating circumstances that would justify a lesser sanction. Respondent's resignation does not appear to have been driven by illness or other such exigent circumstances. Her resignation letter explained that she had "decided to pursue other career opportunities," and it is undisputed that she accepted employment and served in the

Woodbridge public school district for the 2007-2008 school year. Thus, the Commissioner finds it unnecessary to remand this matter, as respondent suggests, for further proceedings relating to respondent's reasons for her unprofessional conduct.

In light of the foregoing, the Initial Decision recommending the imposition of a year's suspension of respondent's teaching certificate is adopted, and the New Jersey Department of Education, State Board of Examiners shall be so advised.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: May 29, 2009

Date of Mailing: May 29, 2009

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.