

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF : COMMISSIONER OF EDUCATION
MONIQUE WALKER, CENTRAL JERSEY : DECISION
ARTS CHARTER SCHOOL, UNION COUNTY. :

SYNOPSIS

Petitioning charter school contended that respondent resigned from her teaching position with inadequate notice and sought an order suspending respondent's teaching certificate for a period of one year. Respondent asserted that she complied with the terms of her contract of employment, which included a 60-day probationary period, and that because she resigned prior to the expiration of that period, her actions did not violate *N.J.S.A. 18A:26-10*. The case was heard in the Office of Administrative Law (OAL) on August 18, 2011.

The ALJ found that: respondent's contract of employment was for the entire academic year, and permitted her to terminate her employment on sixty days' notice; additional language in the contract, however, created two separate terms of employment by establishing a sixty-day probationary period during which respondent's employment would be reviewed and after which a permanent position would be offered based on satisfactory performance during the probationary period; respondent's probationary period extended to November 7, 2010, and until that time, she was an at-will rather than a permanent employee; and respondent's departure on two weeks' notice during the probationary period did not violate *N.J.S.A. 18A:26-10*. The ALJ concluded that respondent did not cease to perform her duties before the expiration of her term of employment because she departed during the probationary period, and denied petitioner's request to suspend her teaching certificate.

Upon independent and comprehensive review of the record, the Commissioner concurred with the ALJ that respondent's employment contract – on its face – created two separate terms of employment and that respondent did not cease to perform her duties before the expiration of the term of her employment in violation of *N.J.S.A. 18A:26-10*. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

<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>

November 10, 2011

IN THE MATTER OF THE SUSPENSION :
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ARTS CHARTER SCHOOL, UNION COUNTY. :

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Petitioner, Central Jersey Arts Charter School’s exceptions – filed in accordance with the provisions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in making his determination herein.¹

Although taking no issue with the Administrative Law Judge’s (ALJ) factual findings, the Board asserts that her ultimate legal conclusion that respondent was not guilty of unprofessional conduct pursuant to *N.J.S.A. 18A:26-10* is incorrect. In this regard, it renews its arguments advanced below that Paragraph 4.1 of respondent’s employment contract required her to provide sixty days’ notice of her intention to resign. The Board again maintains that nothing in Paragraph 1.1 – which provides that respondent was to be a probationary employee for sixty days, at which point she would be reviewed for permanent employment – relieves respondent of that obligation. (Board’s Exceptions 1-15)

However, even assuming, *arguendo*, that the ALJ was correct in determining that the language of respondent’s contract created two separate terms of employment, the Board charges that she engaged in unbecoming conduct pursuant to *N.J.S.A. 18A:26-10* “when she ceased to perform her duties prior to the expiration of her employment agreement – the date on which the term of her probationary period of employment with the Board expired.” (*Id.*, quote at 3) The Board maintains

¹ Respondent did not file reply exceptions.

that the ALJ should have found that respondent was legally required to either: 1) fulfill the full term of her probationary period by performing her teaching duties until her probationary period expired on November 6, 2010, or 2) obtain the Board's consent to resign prior to the conclusion of this period, and her failure to do either equated to unbecoming conduct pursuant to *N.J.S.A. 18A:26-10*, warranting a one year suspension of her teaching certificate. (*Id.*)

Upon comprehensive review and consideration of the record, and finding the Board's exception submission to be without merit, the Commissioner concurs with the ALJ that respondent's employment contract – on its face – “created two separate terms of employment by establishing a sixty-day probationary period during which time Walker's employment would be ‘reviewed for permanency,’ and after which a ‘permanent position will be offered if [the] probationary service is satisfactory’.” (Initial Decision at 6) The Commissioner further concurs with the ALJ that the implication of this probationary provision is that during these sixty days Central Jersey Arts could terminate respondent with no notice whatsoever and, concomitantly, respondent could immediately terminate the employment relationship during this period. Consequently, the Commissioner is in full accord with the ALJ's conclusion that respondent did not cease to perform her duties before the expiration of the term of her employment in violation of *N.J.S.A. 18A:28-10* by resigning with two weeks' notice during her probationary period.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons comprehensively detailed therein.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 10, 2011

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² 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*).