

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Erin Davidove, Board of Education of the Township of Long Hill, Morris County.

Synopsis

The petitioning Board sought the suspension of the teaching certificates of the respondent – a tenured special education teacher – after she submitted a letter of resignation on November 25, 2019 in which she stated that her last day on the job would be December 6, 2019. Subsequently, the superintendent met with respondent to clarify that sixty days’ notice of resignation was required. The superintendent also cautioned respondent that terminating her duties without the required notice would result in legal action to suspend her teaching certificates. Nonetheless, respondent did terminate her duties on December 6, 2019. Upon receipt of an Order to Show Cause from the Commissioner in January 2020 – requiring respondent to show cause why an order should not be entered suspending her teaching certificates for unprofessional conduct pursuant to *N.J.S.A.* 18A:26-10 for resigning her position without giving the notice required by her contract – the respondent submitted an undated letter stating that her resignation had been for personal reasons related to a difficult work environment and its effect on her health and wellbeing. The matter was subsequently transmitted to the Office of Administrative Law for a hearing. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact here, and the Board is entitled to prevail as a matter of law; the respondent’s certificates should be suspended pursuant to *N.J.S.A.* 18A:28-8 because she resigned without providing the Board with the requisite statutory notice; a one-year suspension of the respondent’s certificates is the appropriate penalty for such unprofessional conduct; and respondent’s efforts to assist in the transition during her two week notice period do not constitute mitigating circumstances. Accordingly, the ALJ ordered that respondent’s certificates should be suspended for a period of one year.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision of the OAL as the final decision in this matter. Respondent’s certificates were suspended for one year from the filing date of this decision, a copy of which has been forwarded to the State Board of Examiners for implementation of the suspension.

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.

October 9, 2020

New Jersey Commissioner of Education
Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Erin Davidove,
Board of Education of the Township of
Long Hill, Morris County.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons outlined in the Initial Decision – that the respondent’s certificates should be suspended pursuant to *N.J.S.A.* 18A:28-8 because she resigned without providing the Board with the requisite statutory notice. The Commissioner is also in accord with the ALJ’s determination that a one-year suspension of the respondent’s certificates is the appropriate penalty.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The respondent’s teaching certificates are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.¹

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: October 9, 2020
Date of Mailing: October 9, 2020

¹ 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 01563-20

AGENCY DKT. NO. 20-1/20

**IN THE MATTER OF THE SUSPENSION
OF THE TEACHING CERTIFICATES OF
ERIN DAVIDOVE, BOARD OF EDUCATION
OF THE TOWNSHIP OF LONG HILL,
MORRIS COUNTY.**

Nicholas Celso, Esq., for petitioner (The Busch Law Group, LLC, attorneys)

Erin Davidove, respondent, pro se

Record Closed: July 17, 2020

Decided: August 31, 2020

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Long Hill Township Board of Education, seeks the suspension of the teaching certificates of Erin Davidove, for failure to provide a 60-day notice of resignation to the District. Respondent contends there were mitigating circumstances and that she was compelled to resign due to the difficult work environment and the impact on her health and well-being. The State Board of Examiners (Board), issued an

Order to Show Cause (OTSC) as to why the teaching certificates of respondent Erin Davidove (Davidove or respondent) should not be suspended, contending that she resigned from her teaching position with inadequate notice. The OTSC was issued on January 15, 2020, and mailed to respondent on January 22, 2020, and respondent filed a letter reply to the OTSC which was received by the Department on January 30, 2020. The Commissioner transmitted the case to the Office of Administrative Law (OAL) for hearing, where it was filed on February 3, 2020. A hearing was scheduled for June 15, 2020, and adjourned due to the COVID-19 office closure. The District filed a Motion for Summary Decision. Respondent submitted a letter reply, and thereafter submitted an additional letter reply.

FINDINGS OF FACT

The underlying facts are largely uncontroverted. Davidove commenced her employment on approximately September 1, 2014, as a special-education teacher. In due course, she acquired tenure.

On November 25, 2019, respondent submitted her resignation letter indicating she wished “to explore different career opportunities outside of education.” The letter also noted respondent’s final date of employment would be December 6, 2019. On November 26, 2019, Dr. Edwin Acevedo, the superintendent of schools for the Long Hill Township Board of Education, met with respondent to clarify that sixty days’ notice of resignation was required. He explained that her continued services were necessary to minimize the disruption of a mid-year departure while a replacement was secured. Moreover, he cautioned that terminating her duties without such adequate notice or consent by the Board of Education would result in legal action to suspend her teaching certificates. On December 5, 2019, Dr. Acevedo sent a letter to respondent confirming their previous conversation. On December 6, 2019, respondent followed up and stated that despite her acknowledgment of the correspondence, her final date of employment with the Board would remain December 6, 2019.

With Dr. Acevedo's recommendation, petitioner approved and accepted respondent's resignation, effective January 24, 2020; this was the sixtieth day from her initial notice of resignation.

Petitioner moved before the Commissioner of Education for an Order to Show Cause, which was entered on January 15, 2020. The Order directed that Davidove show cause before the Commissioner why an Order should not be entered suspending her teaching certificates for unprofessional conduct pursuant to N.J.S.A. 18A:28-8. Respondent replied by (undated) letter to Dr. Lamont Repollet, the Commissioner of Education, which was received on January 30, 2020. Her letter indicated that her resignation was "due to personal reasons regarding the difficult work environment and impact on [her] health and well-being."

On February 24, 2020, respondent moved to withdraw from the case; however, as the matter had been transmitted by the Commissioner for hearing following the entry of an Order to Show Cause, respondent did not have the ability to withdraw.

On April 16, 2020, petitioner moved for summary decision to suspend respondent's certificates for one year. On April 28, 2020, nearly five months after she left her position, respondent submitted correspondence wherein she indicated that she had learned that her position (from which she resigned) had been eliminated, and that she likely would have been laid off regardless.

LEGAL DISCUSSION

The first issue is whether respondent may simply withdraw from the case. N.J.A.C. 1:1-19.2(a) states:

A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it

advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.

Although respondent attempts to withdraw, the matter was transferred to the OAL for hearing by the Commission of Education following issuance of the Order to Show Cause. That is, it was not the respondent who requested a hearing. When the Commissioner becomes aware of violations of school laws in school districts, he may allow any party subject to his jurisdiction an opportunity to present its views before imposing any sanction by issuing an order directing the party to show cause why the sanction should not be imposed. N.J.A.C. 6A:3-3.1(a). In fact, "This procedure shall not be deemed to be in lieu of a contested case hearing, and the right to a contested case hearing is independent of, and in addition to, this step." Ibid. This explicitly includes a circumstance suspending a teacher's certificates for wrongful cessation of duties. N.J.A.C. 6A:3-3.1(a)(4).

Since respondent may not withdraw from a matter that arises from an Order to Show Cause, the matter continued as an uncontested case.

I. Petitioner's Motion for Summary Decision

a. Summary-Decision Standard

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits that may have been filed with the application, show that there is no genuine issue of material fact and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary-judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “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 factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Even if the non-moving party comes forward with some evidence, summary decision must be granted if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted). The opposing party “who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant’s papers.” Burlington Cty. Welfare Bd. v. Stanley, 214 N.J. Super. 615, 622 (App. Div. 1987).

The issue presented here is whether respondent’s teaching certificates should be suspended for up to one year for failure to perform her duties prior to the expiration of the employment period, in accordance with N.J.S.A. 18A:26-10, which provides in pertinent part that

[a]ny 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.

The procedure by which a teaching staff member must provide notice of resignation is set forth in N.J.S.A. 18A:28-8, as follows:

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.

By using the term “may” and not “shall,” the Legislature did not intend for there to be an automatic suspension, rather, it determined to invest the Commissioner with discretion predicated on the facts and circumstances individual to the case. Thus, the Commissioner may suspend, in his or her discretion.

The purpose of these statutes is “to provide notice to the school so that a suitable replacement can be hired without adversely impacting students,” and thereby protect students. Penns Grove-Carneys Point Bd. of Educ. v. Leinen, 94 N.J.A.R.2d (EDU) 405, 407. The decision as to whether to suspend a teaching staff member’s certificate is a discretionary determination vested in the Commissioner, and historically all attendant circumstances specific to each case have been evaluated. Generally, this evaluation results in suspension of certificates for the maximum one-year period, especially when the facts demonstrate that “individuals violated the sixty 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.” In re Suspension of the Teaching Certificate of Capshaw, EDU 12318-06, Initial Decision (April 30, 2007), modified, Comm’r (June 12, 2007), <https://njlaw.rutgers.edu/collections/oal/>; see also Bd. of Educ. of Alpine v. Yuz, EDU 1116-06, Initial Decision (July 17, 2008), adopted, Comm’r (September 23, 2008), <https://njlaw.rutgers.edu/collections/oal/>, stating that, generally, a full one-year suspension of a teaching certificate for leaving a district without adequate notice is imposed, with the rare exception of compelling reasons.

The Commissioner imposed a three-month suspension in In re Suspension of the Teaching Certificate of Rogers, 1989 S.L.D. 1962 (May 16, 1989), adopted, 1989 S.L.D. 1968 (June 21, 1989), where a non-tenured teacher of the handicapped resigned to take a position in a State facility, switching employment for more “noble” reasons, to work with more severely handicapped children. Another matter in which less than a one-year suspension was imposed is In re the Suspension of the Teaching Certificate of Borden, School District of Edison, Middlesex County, Commissioner Decision 247-16, where a non-tenured teacher resigned following a debilitating injury that left her unable

to drive or climb stairs. The Commissioner determined that while Borden's conduct was unprofessional within the meaning of N.J.S.A. 18A:26-10, her resignation was motivated by a medical crisis, supported by medical records, and not personal gain, and imposed a three-month suspension.

In In re the Teaching Certificate of Burgess, 1983 S.L.D. 183, adopted, 1983 S.L.D. 195, the board accepted a two-week resignation predicated on its plan to find a replacement by Burgess's termination date. The board failed to follow through on its promise, and so the Commissioner declined to impose a suspension.

In Board of Education of Black Horse Pike Regional School District v. Mooney, 1984 S.L.D. 810, adopted, 1984 S.L.D. 821, a teacher made considerable efforts to assist the board with a smooth transition; developed a program through the end of the year; met with her successor to put the program in place; and left final grades. The Commissioner determined to impose no suspension.

In the matter In re Suspension of the Teaching Certificate of Savino, EDU 11688-04, Initial Decision (July 28, 2005), modified, Comm'r (August 30, 2005), affirmed, State Bd. (February 3, 2006), <https://njlaw.rutgers.edu/collections/oal/>, Savino asserted that she was uncomfortable being reassigned from elementary school to middle school, and felt "unfit" to teach middle school even though she was fully certified to do so. The superintendent had warned her that the process for suspension would be commenced, as here, should she not comply with the advance-notice requirement. While the ALJ concluded that Savino's fear of unfitness constituted a mitigating factor warranting a shorter suspension, the Commissioner disagreed, and reversed the proposed sixty-day suspension in favor of a one-year suspension. No mitigation was found, nor were compelling reasons, unlike in Mooney and Rogers. Indeed, the compelling reasons found in Rogers nevertheless resulted in the imposition of a three-month suspension.

The Board submits that there are no material facts in dispute and that the Board is entitled to summary decision pursuant to N.J.S.A. 18A:26-10 and N.J.S.A. 18A:28-8.

Respondent has not denied the allegations, and contends that she did not provide the required notice because of the “difficult work environment and impact on [her] health and well-being.” Thus, respondent’s desire for early release from her professional obligations was based upon personal motives and convenience. She asserts that she provided other teachers with materials she had created and used, and also made students aware of her impending departure. She also offers as mitigating circumstances the fact that another teacher replaced her when she left, and that some months later, certain classes were combined, and that she “likely would have been laid off regardless.”

In the instant case, no genuine issues of material fact exist. Respondent agrees to the facts outlined by petitioner, including in her response to the Commissioner’s Order to Show Cause and her answers, dated March 6, 2020, to the Board’s Request for Admissions. Respondent also does not raise objections to any assertions put forth by petitioner. Thus, the matter is ripe for summary decision.

It is clear and undisputed that respondent fell short of providing the requisite sixty days’ notice prior to resigning, and, as such, is guilty of unprofessional conduct as defined in N.J.S.A. 18A:28-8. She was reminded of the sixty-day-notice requirement both in a meeting with Superintendent Acevedo on November 26, 2019, and by follow-up letter on December 5, 2019, and of the possible consequences if she did not honor her professional obligations. The issue, therefore, is what constitutes an appropriate term for the suspension of respondent’s certificates. The penalty assessed in many similar matters is a one-year suspension. There have been situations where less than a one-year suspension was deemed appropriate due to mitigating circumstances. Respondent did not resign her position for what were determined to be noble reasons, as in Rogers. Rather, respondent resigned to pursue a career outside of education, alleging that “[her] mental and emotional states were being compromised by the severely troubled students [she] was challenged with this year and the lack of support provided by the Administration despite numerous attempts to bring this to their attention and requests for assistance.” Although respondent does make mental-health claims,

she does not provide medical records to support the posture (as distinguished from Borden, where the teacher had a significant, physical medical crisis that was supported by medical documentation).

Respondent did make efforts to ensure a smooth transition. Unlike in Rogers, however, no “noble” reason existed for leaving her position prematurely. Respondent left to pursue different work because she found the work environment difficult, and impacting her health and well-being. There was no well-founded reason why she could not continue performing her duties a while longer, until the required termination date, other than her desire to be elsewhere. She was on notice that the Board had not approved her early departure and that it would move to suspend her certificates should she choose to leave as indicated, which she did ultimately do.

CONCLUSION

There is no dispute that respondent failed to provide the requisite timely notice of resignation, did not continue to report for work even though directed to do so, and is guilty of unbecoming conduct as defined in N.J.S.A. 18A:28-8. The assertions that she behaved professionally during the two weeks between her resignation letter of November 25, 2019, and her departure on December 6, 2019, and that she helped where she could, do not constitute mitigating circumstances. I **CONCLUDE** that a one-year suspension is appropriate.

ORDER

It is therefore **ORDERED** that respondent’s teaching certificates be and hereby are suspended for a period of one year commencing August 31, 2020 and ending on August 30, 2021.

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.

August 31, 2020

DATE



LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

August 31, 2020

Date Mailed to Parties:

August 31, 2020

dr