

271-22
OAL Dkt. No. 03411-22
Agency Dkt. No. 71-4/22

New Jersey Commissioner of Education
Final Decision

In the Matter of the Suspension of the
Teaching Certificate of Jolisa Johnson,
Board of Education of the Township of
Piscataway, Middlesex County.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that respondent's resignation from employment with only five days' notice justifies suspension of respondent's teaching certificates pursuant to *N.J.S.A. 18A:26-10* and *N.J.S.A. 18A:28-8*.

Accordingly, the Board's motion for summary decision is granted, and 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


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 19, 2022
Date of Mailing: October 19, 2022

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING

SUMMARY DECISION

OAL DKT. NO. EDU 03411-22

AGENCY DKT. NO. 71-4/22

**IN RE SUSPENSION OF THE TEACHING
CERTIFICATE OF JOLISA JOHNSON.**

David B. Rubin, Esq., for petitioner

Brian M. Cige, Esq., for respondent

Record Closed: June 30, 2022

Decided: September 12, 2022

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Piscataway Township Board of Education (“Board” or “petitioner”) seeks an order suspending the teaching certificate of respondent Jolisa Johnson (“respondent”) for failing to provide adequate notice of resignation, in violation of her employment contract and N.J.S.A. 18A:26-10.

The issue to be decided is whether, in this education matter in which the Acting Commissioner of Education, on application of the Piscataway Township Board of

Education, issued an order to show cause why respondent's teaching certificate should not be suspended for unprofessional conduct under N.J.S.A. 18A:26-10.

FACTUAL DISCUSSION

The following facts are not in dispute and as such I **FIND** as **FACT** that the Board appointed respondent to serve as a preschool teacher for the period September 30, 2021, through June 30, 2022. Certification of Sousa at ¶ 2. Respondent was assigned to the Children's Corner Preschool in the Piscataway Township School District (the "District"). Ibid. The employment contract respondent signed required her to provide 60 days' notice of her intent to terminate the contract. See Sousa's Ex. A.

Respondent submitted a letter of resignation dated February 28, 2022, indicating her intent to leave Children's Corner Preschool effective April 28, 2022, so that she could "focus on [her] upcoming commitment to graduate school." Petitioner's Ex. A; Respondent's Ex. A. This initial letter of resignation complied with respondent's obligation to provide 60 days' notice. Certification of Sousa at ¶ 3. On March 13, 2022, respondent notified her school's principal, via email, that she had found another opportunity that better aligned with her career goals and that her last day at the school would be that Friday, March 18, 2022. Ibid. Respondent was advised during a meeting the following day that she was required to continue working for the remainder of the 60-day notice period or she would risk suspension of her teaching certificate. Id. at ¶ 4. Nevertheless, respondent stopped going to work after March 18. Ibid. The Board accepted respondent's updated resignation date at its meeting on April 14, 2022. The District's Director of Human Resources, Catherine Sousa, communicated that acceptance to respondent by letter dated April 19, 2022. Petitioner's Ex. B; Respondent's Ex. B.

On April 1, 2022, the Acting Commissioner of Education, on application of the Board, issued an order requiring respondent to show cause why her teaching certificate should not be suspended. Respondent filed a certification opposing the suspension. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case on April 29, 2022.

On June 30, 2022, petitioner filed its motion for summary decision. That same day, respondent submitted a brief letter in lieu of a more formal cross-motion, comprising respondent's letter of resignation, the letter from the District, and the certification that responded previously submitted.

Petitioner argues that a one-year suspension of respondent's teaching certificate is appropriate because respondent's "abrupt[,] early departure caused the district a hardship." Petitioner's Brief at 2. With only five days' notice, "the district had to disrupt the schedule of a Master Teacher and an English-as-a-Second-Language teacher who had to provide classroom coverage while the district scrambled to find a full-time replacement." Ibid. According to petitioner, "[t]he Commissioner of Education has established a one-year suspension as the presumptive consequence for failing to fulfill the . . . notice-of-resignation requirement." Petitioner's Brief at 5. A lesser penalty is imposed only if there are "compelling reasons." Ibid.

Respondent's counsel characterizes the suspension sought as being one of "indefinite term." See Respondent's Letter Brief. Respondent does not dispute that she left the school's employ before her contract expired or that she provided inadequate notice of her resignation. She also does not dispute that she was warned of the consequences for leaving her teaching position prematurely. Instead, she emphasizes that she was "transparent and forthright with the moving party regarding [her] immediate goal of seeking continuing education opportunities." Certification of Johnson at ¶ 2. She says the Board was "not unaware" of her need to leave before the expiration of her employment contract or "the changes in circumstances requiring [her] to leave even earlier." Id. at ¶ 3. She points to the letter from the District accepting her earlier end date and offering best wishes, seemingly suggesting that the Board condoned her premature departure. Id. at ¶ 4.

Respondent insists that she did not intend "to take any action which would have a negative impact on [her] teaching certificate." Id. at ¶ 5. "[U]nder the circumstances," she concludes, "either the Order to Show Cause . . . should be denied or, if the Commissioner determines that some period of suspension is necessary," the suspension should be for "a minimum term." Id. at ¶ 7. Respondent does not attempt to explain why her

circumstances should mitigate any penalty that is assessed or why she was unable to honor her initial notice of resignation.

LEGAL DISCUSSION

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Such motion “shall be served with briefs and with or without supporting affidavits” and “[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). When the motion “is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

This standard is substantially the same as that which governs motions for summary judgment in civil litigation. Contini v. Bd of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995). In other words, a court must ascertain “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” L.A. v. Bd. of Educ. of Trenton, 221 N.J. 192, 204 (2015) (internal quotes and citations omitted).

- I. Petitioner’s motion for summary decision should be granted because respondent has not set forth specific facts showing that there is a genuine issue to be litigated.**

N.J.S.A. 18A:26-10, applicable to non-tenured certificated staff, provides that:

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.

[N.J.S.A. 18A:26-10.]

“The obvious purpose of N.J.S.A. 18A:26-10 is to provide notice to the school so that a suitable replacement can be hired without adversely impacting students.” Penns Grove-Carneys Point Bd. of Educ. v. Leinen, 94 N.J.A.R. 2d (EDU) 405, 407 (citing reference omitted).

The sufficiency of notice is dictated by the terms of the parties’ employment contract. In re Suspension of the Teaching Certificate of Schvamberg, EDU 09828-13, Initial Decision (January 21, 2014), adopted, Comm’r (March 5, 2014) https://njlaw.rutgers.edu/collections/oal/html/initial/edu09828-13_1.html. In most cases, the Commissioner has imposed the maximum one-year suspension of a teaching certificate for leaving without adequate notice. See, e.g., Green v. School Dist. of Mount Holly, EDU 0733-02, Initial Decision (Sept. 5, 2002), adopted, Comm’r (Oct. 25, 2002) https://njlaw.rutgers.edu/collections/oal/html/initial/edu00733-02_1.html; In re Suspension of the Teaching Certificate of Montalbano, EDU 3588-00, Initial Decision (April 24, 2001), adopted, Comm’r (June 11, 2001) https://njlaw.rutgers.edu/collections/oal/html/initial/edu3588-00_1.html; Penns Grove-Carneys Point v. Leinen, 94 N.J.A.R.2d (EDU) 405. “In rare circumstances in which the Commissioner has seen fit to lessen the suspension period, it was for compelling reasons.” Bd. of Educ. of Borough of Alpine v. Yuz, EDU 1116-06, Initial Decision (July 17, 2008), adopted, Comm’r (September 23, 2008) https://njlaw.rutgers.edu/collections/oal/html/initial/edu01116-06_1.html (citing In re Rogers, 1989 S.L.D. 1962 (May 16, 1989), adopted, Comm’r (June 21, 1989)).

“Compelling reasons” have been found, for example, where matters of significant public interest were involved and where constitutional issues were implicated. See Bey v. Bd. of Educ. of Newark, 93 N.J.A.R.2d (EDU) 288. The Commission also declined to suspend a teacher who went above and beyond to ensure a smooth transition by

developing a program through the end of the year and meeting with her successor to put the program in place. Bd. of Educ. of Black Horse Pike Regional School Dist. v. Mooney, 1984 S.L.D. 810, adopted, 1984 S.L.D. 821. A suspension of less than a year was imposed on a teacher of handicapped children who switched jobs for “noble” reasons—to work with more severely handicapped children at a state facility. In re Rogers, 1989 S.L.D. 1962 (May 16, 1989), adopted, Comm'r (June 21, 1989).

Here, it is undisputed that respondent left the District before the expiration of her 60-day notice period. Far from offering compelling reasons or extenuating circumstances to explain her premature departure, respondent pleads that she got a better job opportunity. Her sudden exit disrupted the school environment in precisely the manner the law was designed to prevent. Moreover, her implicit argument that the Board consented to her resignation, such that her nonperformance was excused, is belied by the fact that the Board did not act to accept her resignation until nearly a month after she stopped working, when rejecting her resignation would have been unavailing. Viewing all evidence in the light most favorable to respondent, no rational factfinder could find in her favor. Therefore, petitioner’s motion for summary decision should be granted.

CONCLUSION

Since all material facts are undisputed, the Board is entitled to summary decision in its favor. Accordingly, petitioner’s motion is appropriate under these facts and should be **GRANTED**.

Therefore, I **FIND** as **FACT** that there are no genuine issues of material fact requiring a hearing. I **CONCLUDE** that petitioner’s motion for summary decision is appropriate and should be **GRANTED**.

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.

September 12, 2022

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

September 12, 2022

Date Mailed to Parties:

September 12, 2022

DJB/cb