

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching Certificates of Jesenia Chester, Board of Education of the Township of South Brunswick, Middlesex County.

Synopsis

The petitioning Board alleged that the respondent – a non-tenured kindergarten teacher – resigned her position without providing the notice required under *N.J.S.A. 18A:26-10* and sought the suspension of respondent’s teaching certificate for a period of one year. Respondent taught kindergarten in a South Brunswick school during the 2021-2022 school year and the Board asserted that her contract was renewed at a Board meeting on May 12, 2022. However, on August 4, 2022, respondent sent the District an email resigning her position effective September 1, 2022 and did not return to her position for the start of the new school year. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case and the matter is ripe for summary decision; there is no dispute that there was a contract in place between the parties, or at least that there was an implied contract; petitioner did not present any reasons justifying her resignation other than personal motives; under *N.J.S.A. 18A:26-10*, any teaching staff member employed by a board of education who ceases to perform his or her duties before the expiration of their term of employment, without the consent of the board, shall be deemed guilty of unprofessional conduct and the Commissioner may thereafter suspend his or her teaching certificate for a period not to exceed one year. The ALJ concluded that respondent engaged in unprofessional conduct by failing to give the required 60-day notice. Accordingly, the ALJ granted the Board’s motion for summary decision and ordered that respondent’s teaching certificate be suspended for one year.

Upon review, the Commissioner, *inter alia*, remanded the matter to the OAL for further fact-finding as the present record is devoid of information necessary to reach a final determination in this case. Specifically, it is necessary to review the contract under which respondent was employed in the 2021-2022 school year and whether it contained a 60-day notice provision or some other length of time, as well as respondent’s written acceptance of the Board’s offer of continued employment following the May 12, 2022 Board meeting. Accordingly, the matter was remanded to the OAL for further findings as noted herein.

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.

276-23

OAL Dkt. No. EDU 10542-22

Agency Dkt. No. 284-10/22

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Jesenia Chester,
Board of Education of the Township of
South Brunswick, Middlesex County.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.

Respondent Jesenia Chester, a teacher employed by the South Brunswick Board of Education (Board), notified the Board on August 4, 2022, that she would be resigning effective September 1, 2022. The Board filed an Order to Show Cause seeking the suspension of respondent's teaching certificates for resigning from her teaching position without providing the required 60-day notice. Following the Board's motion for summary decision, the Administrative Law Judge (ALJ) concluded that respondent engaged in unprofessional conduct by failing to give the required notice. The ALJ found that there is no dispute that there was a contract in place between the parties, or that there was at least an implied contract. The ALJ also concluded that petitioner did not present any reasons justifying her actions other than personal motives. Accordingly, the ALJ granted the Board's motion for summary decision and ordered that respondent's teaching certificates be suspended for one year.

Respondent filed exceptions to the Initial Decision; however, they were not considered because they were not timely filed. *N.J.A.C. 1:1-18.4* requires exceptions be filed within 13 days from the date the judge's initial decision was mailed to the parties. The Initial Decision was mailed on August 2, 2023, making the due date for any exceptions August 15, 2023. The tracking information for respondent's exceptions shows a mailing date of August 21, 2023, with delivery to the Department of Education on August 23, 2023. Respondent did not request an extension of time to file her exceptions.¹

Upon review, the Commissioner concludes that this matter must be remanded to the OAL. Initially, the Commissioner notes that *N.J.S.A. 18A:28-8*, which requires tenured teachers to give 60 days' notice before resigning, does not apply to respondent, who was not tenured. Instead, respondent's notice obligations are established by the terms of her employment contract. *IMO the Suspension of the Teaching Certificate of Melissa Van Pelt, Gray Charter School, Newark, Essex. Co.*, Commissioner Decision No. 170-09 (May 29, 2009), *aff'd*, 414 N.J. Super. 440 (App Div. 2010). If respondent's resignation was not in accordance with the terms of her contract, then she is guilty of unprofessional conduct and the Commissioner may suspend her certificates for up to one year. *N.J.S.A. 18A:26-10*.

The ALJ determined that there was a contract or an implied contract between the parties at the time of respondent's resignation. However, the Commissioner finds that the record does not contain sufficient evidence to reach that conclusion. *N.J.S.A. 18A:27-10* requires a board of education to provide nontenured teaching staff members with a written

¹ Because respondent's exceptions were not considered, the Board's reply thereto was also not considered. Furthermore, a September 23, 2023 email sent from respondent to counsel for the Board, in reply to the Board's exceptions, was not considered, as sur-replies are not permitted under the applicable regulations.

offer of a contract for employment, or a written notice that employment will not be offered, on or before May 15 of each year.² *N.J.S.A. 18A:27-12* requires the employee to accept the offer in writing on or before June 1. If the employee does so, employment continues, on at least the same terms and conditions as the previous school year, with such salary increases as may be required by law or board policy. *N.J.S.A. 18A:27-12*; *N.J.S.A. 18A:27-10*. If the employee does not accept the offer in writing, her employment is not renewed. *N.J.S.A. 18A:27-12*. The principles pertaining to implied contracts do not apply when the applicable statute specifically requires acceptances to be in writing.

There is no evidence in the record to demonstrate whether respondent accepted her employment in writing. Respondent did indicate that she remembered “saying thank you for the opportunity.” Response to Order to Show Cause, ¶123. If that statement was made in writing, it may be sufficient to constitute written acceptance. Alternatively, respondent may have accepted the offer in writing in another manner. However, if she did not accept her offer of employment in writing, then she was not under contract at the time of her resignation and had no notice obligations regarding her resignation.

Additionally, if respondent did accept the Board’s offer, her employment continued under the same terms and conditions established by her contract for the 2021-2022 school year, including any provisions regarding her notice obligations. However, the record does not

² It is not clear to the Commissioner that the Board complied with its obligation to make a written offer of employment. While respondent’s summative evaluation indicated that she was being recommended for a contract for the 2022-2023 school year, that evaluation was neither from the Board nor an offer of employment. Nonetheless, *N.J.S.A. 18A:27-11* provides that when a board of education fails to give an employee either an offer of employment or notice of non-employment, the board is deemed to have offered the employee continued employment for the next school year. Accordingly, the Board is deemed to have offered respondent employment for the 2022-2023 school year.

contain a copy of respondent's 2021-2022 contract. Therefore, the Commissioner is unable to determine whether the contract contained a 60-day notice provision or some other length of time.

Accordingly, this matter is remanded to the OAL for further findings regarding respondent's acceptance of the Board's offer of employment and, if such acceptance was given, the terms of the 2021-2022 contract.

IT IS SO ORDERED.³


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

Date of Decision: September 14, 2023
Date of Mailing: September 18, 2023

³ 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
MOTION FOR SUMMARY
DECISION

OAL DKT. NO. EDU 10542-2022
AGENCY DKT. NO. 284-10/22

**IN RE SUSPENSION OF THE TEACHING
CERTIFICATES OF JESENIA CHESTER,
BOARD OF EDUCATION OF THE
TOWNSHIP OF SOUTH BRUNSICK,
MIDDLESEX COUNTY.**

Marie-Laurence Fabian, Esq., for petitioner (Porzio Bromberg & Newman,
attorneys)

Jesenia Chester, respondent, pro se

Record Closed: June 26, 2023

Decided: August 2, 2023

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

The South Brunswick Board of Education (“Board” or “petitioner”) seeks an order suspending the teaching certificate of respondent Jesenia Chester (“respondent”) for

failing to provide adequate notice of resignation, in violation of her employment contract and N.J.S.A. 18A:26-10.

PROCEDURAL HISTORY

At the request of the Board, the Commissioner of Education issued an Order to Show Cause on October 7, 2022, ordering respondent to show cause why her teaching certificate should not be suspended for unprofessional conduct pursuant to N.J.S.A. 18A:26-10. Respondent filed an answer on November 14, 2022, and the matter was transferred to the Office of Administrative Law on November 28, 2023, for determination as a contested case. A status conference was scheduled for February 9, 2023, but the respondent? requested an adjournment based on her work schedule. A status conference was held on March 29, 2023. At that time, the parties informed this tribunal that they would prefer the matter to be determined based on the papers that were submitted. On March 30, 2023, this tribunal received a letter wherein both parties requested that the matter be decided in a “summary fashion” without a hearing based on the papers that were submitted to date. The Board requested the motion based on upon the affidavit, with attachments, of Kimberly Maloy-White dated October 12, 2022. The respondent requested the motion based on her Reply to the Order to Show Cause, with attachments dated November 14, 2022. On May 9, 2022, I requested from the parties letter briefs or memorandum of law addressing the appropriateness of summary decision and why each side is entitled to summary decision. The briefs with supporting documents were received and the record closed on June 26, 2023.

BACKGROUND FACTS

The following facts are found to be undisputed based on the record. On June 10, 2021, the Board hired respondent to serve as a Kindergarten teacher for the 2021-2022 school year. Certification of Maloy-White at ¶ 3. Respondent was assigned to Constable Elementary School District (the “District”). Ibid. Respondent began working in her position on or about September 1, 2021, where she continued until the end of the school year. Certification of Maloy-White at ¶ 5. On April 23, 2022 the respondent was notified through her summative evaluation that she was being recommended for a contract for the

2022-2023 school year. Certification of Maloy-White at ¶ 6. The respondent's contract was renewed by the Board of Education at its meeting on May 12, 2022. Certification of Maloy-White at ¶ 7.

On August 4, 2022, the respondent sent an email to the District informing them that she had decided to pursue her career as a teacher elsewhere, thereby submitted a resignation effective September 1, 2022. (Petitioner's Exhibit F.) Respondent was advised by Maloy-White that by law she was required to provide the District with sixty days' notice prior to resigning in order to give the District sufficient time to secure a replacement. Certification of Maloy-White at ¶ 10. Respondent was further notified that the failure to give the required sixty-day notice would jeopardize her teaching certificate. Ibid. Nevertheless, respondent did not return to her position when the school year began on September 1, 2022. Certification of Maloy-White at ¶ 12. Thus the respondent resigned without providing the requisite notice to the Board. (Petitioner's Brief dated June 8, 2023.) The District filled the position quickly with a teacher slated for another position, however the District was not fully staffed. See Supplemental Affidavit of Kimberly Maloy-White at 3. The district had to juggle positions and use substitutes in other classes. Ibid.

RESPONDENT'S POSITION

Respondent argues that her contract states that the effective date to start the 2022-2023 school year was "9/30/2022 and terminates on 6/30/2023." See Respondent's Letter Brief at ¶ 2. Respondent further argues that she was not in receipt of a contract and since her resignation was placed on 10/4/22¹(sic), she was not under tenure of service. Ibid. The respondent did not dispute the sixty days but instead emphasizes that without knowledge of salary, benefits and classroom designation, she was well within her right to explore options for her benefit. In addition to her economic situation, the salary at South Brunswick was not enough "to stabilize her life between student loans, numerous undisclosed medical emergencies, general cost of living expenses, without any guarantee, I . . . gave as short notice as possible." See Respondent's Letter Brief at ¶

¹ Respondent submit her resignation on August 4, 2022. This was determined to be a typo.

2. Moreover, her fiancée accepted a job in Pittsburg, Pennsylvania and as such she needed to plan accordingly. Id. at ¶ 3.

Respondent states that she is not certified to teach students with registered IEP and 504 Plans. However during the 2021-2022 school year, she was assigned an inclusion class where the teacher of record resigned midway through the school year. Id. at ¶ 4. In this position she states that she was forced to work as a teacher of record as well as a general education teacher. Ibid. She states that she takes her students' needs above anything else and felt that the "administration did not do their part to prove they cared for the children's (sic) needs as much" as she did. Ibid. Respondent also points to several reasons why she did not return for the 2022-2023 school year. These reasons include mental anxiety for which she sought help, depression, feelings of abandonment by the administration and by fellow Kindergarten teachers. Id. at ¶ 6, and ¶ 14. Respondent argues that stripping her of her certificate would devastate and disable her from doing what she loves and is passionate about. Id. at ¶ 16. She points to her summative evaluation where it states:

An example of Ms. Chester's work this year is her commitment to strong home/school partnerships to support student learning, as evidenced by her weekly newsletters and social media posts on Twitter. These proactive communications afford her the opportunity to tell the story of her classroom herself, and to invite families and others in to celebrate students' efforts and success. This serves as a point of pride in this practice Standard. Ms. Chester is commended for this contribution.

[Respondent's Brief at ¶ 18.]

Respondent states that by stripping her of her certification "with the fact that legislative statute instigates a lack of professionalism, that is an attack on my personal character and is a blemish that will never go away, and I will be stigmatized regardless of all my efforts to do everything for my students." Id. at ¶ 21.

Respondent stated that she was happy on May 12, when her contract was renewed, however she was never given a formal copy of the renewed contract. Id. at ¶ 2.

Respondent further stated that she was not aware of the sixty-day window of resignation. Id. at ¶ 23. Since she was not given a physical contract, she did not recall saying “I will be teaching here next school year”. Ibid. All she recalled saying is “thank you for the opportunity”. Ibid. She argues that this was not a contractual agreement, because, if it was, she would have “asked for additional documentation cementing the fact of my renewal for the 2022-2023 school year.” Ibid.

Respondent admits that she did give her resignation twenty-nine days prior to the contract effective date of September 1, 2023. Id. at ¶ 24. She states that if she had given sixty days from August 4, 2022, it would involve twenty-three days into the school year, and this would be far “too much time for a teacher to be involved and not affect the students if the teacher did in fact leave after that point. Id. In the best interest of the students she felt a teacher should be in the classroom for the entire school year. Id.

Respondent requested a copy of her contract on August 23, 2022. (Petitioner’s Exhibit H.) Maloy-White replied “ As I stated in my original conversation with you. You were re-appointed to a 2nd year contract at the May 12, 2022, board meeting. Salaries for the 2022-2023 school year are being approved at the August 25, 2022 board meeting. Contracts will be distributed after the board meeting. Your resignation is also being approved on August 25, 2022. You will not receive a contract since you are not returning to work on September 1, 2022”. Ibid.

According to the respondent she was informed by Maloy-White that she did not have tenure but she “was in a tenure tract position.” See Respondent’s Exhibit H. Respondent argues that N.J.S.A. 18A:28-8 does not apply to her because she is not “under tenure of service.”. Id. at ¶ 27. Furthermore, to reach tenure status a teacher must teach in the same school district for four full years. Ibid. The respondent says she has only taught in the South Brunswick School District for one full year. Ibid.

“[F]rom my proof regarding professionalism in the classroom and outside the classroom,” respondent concludes, “being told by way of written communication my resignation is being approved by the board at the August 25, 2022 board meeting, as well as the effective and terminating dates of both the 2021-2022 and 2022-2023 approval

meeting documents not being within the date I sent my resignation in, I hereby object to the action that my teaching certificate be revoked for one year pursuant to N.J.S.A. 18A:26.” Id. at ¶ 31.

BOARD’S POSITION

The Board stated that the respondent was hired by the South Brunswick School District (District) on or about September 1, 2021. On April 23, 2022, she was notified that she was being recommended for a contract for the 2022-2023 school year. (Petitioner’s Brief, dated June 8, 2023.) On May 12, 2022, Ms. Chester’s contract was renewed for the 2022-2023 school year. Ibid. On August 4, 2023, Ms. Chester informed the District that she decided to pursue her career as a teacher elsewhere effective September 1, 2022. Ibid. Ms. Maloy-White informed the respondent on April 10, 2022, that she was required to give the District sixty-day notice and that her teacher’s certificate would be jeopardized. Id. at 2. The Board argues that N.J.S.A. 18A:26-10 requires the suspension of Ms. Chester’s certificate. The Board further argues that:

it is well recognized that [t]he obvious purpose of this statute and N.J.S.A. 18A:28-8, a companion statute referring to tenured staff members, is to provide notice to the school so that a replacement can be hired without adversely impacting students.” IMO Suspension of Teaching Certificate of Maximillan Capshaw, OAL Docket No. EDU 12318-06, Commissioner Decision June 12, 2007.

[Petitioner’s Brief, dated June 8, 2023]

The Board argues that this matter is similar to IMO Capshaw. There, the petitioner submitted his resignation in August prior to the start of a new school year”. Ibid.

I **FIND** as **FACT** that there are no genuine issues of material fact requiring a hearing. This matter is therefore ripe for summary decision.

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).

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).

N.J.S.A. 18A:26-10 provides 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 . . . “ In order to sustain the charge of unprofessional conduct pursuant to N.J.S.A. § 18A:26-10, the petitioner must demonstrate that respondent: 1) was a teaching staff member employed by a board of education who; 2) ceased to perform her duties before the expiration of the term of her employment; 3) without consent of the board. The underlying purpose of N.J.S.A. 18A:26-10 is “to protect pupils from the disruption caused by ‘[s]taff members who leave before the expiration of their contracts.’” Ibid.

In the present matter, the record reflects that none of the required criteria are in dispute. Here, it is not disputed that respondent left the District before the expiration of her sixty-day notice period. Respondent was notified on April 23, 2022, through her summative evaluation that she was being recommended for a contract for the 2022-2023 school year. Certification of Maloy-White at ¶ 6. On May 12, 2022, respondent’s contract was renewed for the 2022-2023 school year. Certification of Maloy-White at ¶ 7, Exhibit D. On August 4, 2023, respondent notified the District that she would not return to teach in the 2022-2023 school year which was scheduled to begin on September 1, 2023. Respondent argues that she did not enter into a contract with the District and since she did not receive a contract, nor did she sign a contract for the 2022-2023 program year and as such.(Respondent’s Brief, dated June 15, 2023, Response to Order to Show Cause, dated November 14, 2022) I find no merit in this argument in that there is no dispute that there was a contract or at the very least there was an implied contract here. As stated in Snyder v. Freeman, 300 N.C. 204

:

A ‘contract implied in fact,’ . . . arises where the intention of the parties is not expressed, but an agreement in fact, creating an obligation is implied or presumed from their acts, or, as it has been otherwise stated, where there are circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intent to contract. 17 C.J.S., Contracts § 4(b) (1963). An implied contract is valid and enforceable as if it were express or written. [Id. at 217]

Moreover, the respondent admitted that there was a contract. She stated that, “[I]was delighted to hear that my contract was renewed.” Respondent’s Brief at ¶ 22. By submitting her resignation on August 4, 2022, the Board was given only twenty-eight days’ notice which does not comply with the sixty-days’ notice requirement and as such “shall be deemed guilty of unprofessional conduct” pursuant to N.J.S.A. 18A:26-10.

Far from offering compelling reasons or extenuating circumstances to explain her premature departure, respondent pleads that without knowledge of salary, benefits and classroom designation, she was well within her right to explore options for her benefit. In addition she argues that the salary at South Brunswick was not enough “to stabilize her life between student loans, numerous undisclosed medical emergencies, general cost of living expenses, without any guarantee. . . .” Respondent’s Brief at ¶ 2. Her departure disrupted the school environment in precisely the manner the law was designed to prevent.

Respondent’s implicit argument that had she given notice at sixty days it would involve twenty-three days into the school year, and this would be far “too much time for a teacher to be involved and not affect the students if the teacher did in fact leave after that point” (Respondent’s Brief at ¶ 24.), implies that she knew that sixty days was required, but decided to forego the requirement anyway. Furthermore, respondent was informed by Maloy-White on August 10, 2022, of the sixty days’ notice requirement. Accordingly, I **CONCLUDE** that the Board has met its burden by demonstrating by a preponderance of credible evidence that respondent is guilty of unprofessional conduct, and that the charge of such must be **SUSTAINED**.

PENALTY

Having sustained the charge of unprofessional conduct pursuant to N.J.S.A. 18A:26-10, the appropriate penalty to be imposed must be determined. N.J.S.A. 18A:26-10 and N.J.A.C. 6A:9B-4.8(b) both provide that once they receive notice of a teacher leaving their position prior to the term of employment as contemplated by N.J.S.A.

18A:26-10, the commissioner may suspend the certificates held by that teacher for a period not to exceed one year.

The decision to suspend a teaching certificate pursuant to N.J.S.A. 18A:28-8 is discretionary and the Commissioner has historically evaluated all attendant circumstances on a case-by-case basis. As a general rule, however, given the underlying purpose of the statute, teachers who have been found guilty of unprofessional conduct for failing to provide the requisite [sixty]-day notice receive a one-year certificate suspension. The one year suspension is routinely issued where the facts demonstrate that individuals have 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 Certificates of Chae Hyuk Im, 2018 N.J. Super. Unpub. LEXIS 1748 at 8-9.]

Although the Board did find a suitable replacement for the respondent, it was still at a cost to the Board. As the Board stated, “it was robbing Peter to Pay Paul.” (Petitioner’s Brief dated June 8, at 3.) In IM, the court found “[u]nlike these cases— which have justified an exception to the customary one-year suspension—the facts in this matter are neither exceptional nor do they warrant the exercise of the Commissioner’s discretion. Rather, in the instant matter, [Im’s] desire for the early release from his professional obligations was based solely on personal motives and his own convenience. Id. at 9.

Similarly, here, the respondent’s reason for resignation was to explore other teaching opportunities; solely for “personal motives.” Viewing all evidence in the light most favorable to respondent, no rational factfinder could find in her favor. Therefore, the Board’s motion for summary decision should be granted.

CONCLUSION

Based on the above, the Board’s motion for summary decision is **GRANTED**. The respondent’s motion for summary decision is **DENIED**. The charge of unprofessional

conduct against respondent is hereby **SUSTAINED**. Further, it is **ORDERED** that respondent's teaching certificate be **SUSPENDED** for a period of one year.

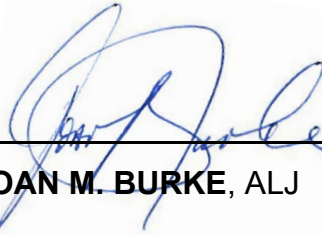
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 2, 2023

DATE



JOAN M. BURKE, ALJ

Date Received at Agency:

August 2, 2023

Date Mailed to Parties:

August 2, 2023

JMB/jm/mp

APPENDIX

Exhibits

For petitioner

Order to Show Cause with attachments

Letter Brief, dated June 8, 2023

Letter Brief, dated June 26, 2023

For respondent

Response to Order to Show Cause with attachments

Letter Brief, dated June 15, 2023

Letter Brief, dated June 26, 2023