

IN THE MATTER OF THE SUSPENSION OF :
THE CERTIFICATES OF MAGGIE STAWECKI, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP OF : DECISION
EAST GREENWICH, GLOUCESTER COUNTY. :

SYNOPSIS

In April 2016, an Order to Show Cause was served upon respondent, requiring her to show cause why an order should not be entered suspending her teaching certificates for unprofessional conduct pursuant to *N.J.S.A.* 18A:28-8 for resigning her tenured teaching position without giving the requisite 60 day notice. A pre-hearing conference was scheduled for August 2, 2016; petitioner’s counsel was prepared to take part in the conference, but respondent failed to do so. Respondent subsequently advised that she was unable to participate in any court proceedings in this matter because she could not take time off from work. She later failed to respond to the Board’s discovery requests. The Board filed a motion 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; respondent is a tenured teacher and, as such, the consequences for termination of her employment without the required notice are governed by *N.J.S.A.* 18A:28-8, which requires at least 60 days written notice of intent to resign a teaching position; additionally, *N.J.S.A.* 18A:26-10 provides that teaching staff members resigning without proper notice, and without consent of the Board, shall be deemed guilty of unprofessional conduct; further, in this circumstance, the Commissioner may suspend the teaching certificates of the former staff members to a period of up to one year; on or about February 25, 2016, respondent provided the Board with a letter of resignation effective March 9, 2016 – thereby providing just thirteen days’ notice of her resignation. The ALJ concluded that respondent’s resignation constitutes unprofessional conduct, warranting the suspension of her certificates; accordingly, the ALJ granted the petitioner’s motion for summary decision and suspended respondent’s instructional certificates for a period of one year.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. A copy of this decision shall be 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.
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February 13, 2017

IN THE MATTER OF THE SUSPENSION OF :
THE CERTIFICATES OF MAGGIE STAWECKI, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP OF : DECISION
EAST GREENWICH, GLOUCESTER 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.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 13, 2017

Date of Mailing: February 13, 2017

* This decision may be appealed to the Superior Court, Appellate Division, 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 GRANTING

SUMMARY DECISION

OAL DKT. NO. EDU 8807-16

AGENCY REF. NO. 112-4/16

**IN THE MATTER OF THE
CERTIFICATES OF MAGGIE
STAWECKI, SCHOOL DISTRICT OF
THE TOWNSHIP OF EAST GREENWICH,
GLOUCESTER COUNTY.**

Stephen M. Bacigalupo, Esq., for petitioner

Maggie StawECKI, respondent, pro se

Record Closed: December 11, 2016

Decided: December 28, 2016

BEFORE **EDWARD J. DELANOY, JR.**, ALJ:

STATEMENT OF THE CASE

Petitioner seeks to take action against the instructional certificates of respondent. Petitioner files a motion to strike respondent's answer, enter summary decision in favor of petitioner, and suspend respondent's instructional certificates for a period of one year.

PROCEDURAL HISTORY

The petitioner filed a petition seeking to take action against the instructional certificates of respondent on April 6, 2016. It was determined to treat the matter as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Respondent's answer was perfected on June 13, 2016. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on June 14, 2016. A notice of motion for summary decision was filed by petitioner on November 3, 2016, with supporting brief. The motion seeks to strike respondent's answer, enter summary decision in favor of petitioner, and suspend respondent's instructional certificates for a period of one year. Proof of service indicates that respondent was served with the motion via Federal Express at her address of record.

No response to the motion was filed by respondent, and as a result, the record closed on December 11, 2016.

FACTUAL DISCUSSION

The facts of this matter are not in dispute, and as a result, I **FIND** the following as the **FACTs** of this case: Respondent is the holder of the following certificates issued by the State Board of Examiners:

1. Instructional Certificate with an Elementary School Teacher in grades K-8 endorsement;
2. Instructional Certificate with an Elementary School Teacher in grades K-5 endorsement;
3. Instructional Certificate with a Teacher of Reading endorsement; and
4. Instructional Certificate with a Teacher of English endorsement.

Respondent originally sought employment with the East Greenwich Board of Education (Board) as a teacher for the 2010-11 school year and entered into a written contract regarding said employment. Since the 2010-11 school year, respondent has

been continuously employed by the Board and attained tenure in the East Greenwich school district (District). On or about February 25, 2016, respondent provided a February 24, 2016, written letter of resignation effective March 9, 2016. Respondent thus provided the District with a thirteen-day notice of her intention to resign. Having given notice of her intent to resign on or about February 24, 2016, respondent was required to work for the Board until April 23, 2016.

Respondent was subsequently advised that she would be required to continue her employment with the Board until an acceptable full-time candidate was found. On March 8, 2016, respondent sent an e-mail to the Board in which she wrote, "Please be aware that my final day as an employee of [the] East Greenwich Twp. Schools will be tomorrow, March 9th. I will not be returning following tomorrow's school day."

In response to respondent's e-mail, the Board advised respondent "[t]hat should you not be at work until formally released you will be considered both in violation of your contract and insubordinate and appropriate action will be filed against you." Moreover, on March 10, 2016, respondent was advised that:

On Wednesday, March 16, 2016, the School Board will accept your resignation dated February 24, 2016 . . . [T]his resignation per statute will be sixty (60) days of your letter or April 23, 2016. You are expected to continue with your service to the East Greenwich School District through that time.

On March 16, 2016, the Board accepted respondent's "resignation effective 60-days from February 24, 2016 or April 23, 2016." On March 17, 2016, respondent was advised of the following:

At the March 16, 2016 School Board meeting, the School Board voted 8-0 with 1 abstain to accept your resignation effective . . . April 23, 2016 . . . Until you are officially released from employment, you are expected to be at your position. Should you not be at your position until officially released, you will be subject to disciplinary action.

Respondent has not reported to work since March 9, 2016, and has ceased to perform her duties before the expiration of the term of her employment. As a result, the Board was forced to look for and secure the services of a substitute teacher until a permanent replacement for respondent could be secured.

Following respondent's resignation, an Order to Show Cause and Petition were filed with the Commissioner of Education (Commissioner), on or about April 5, 2016, seeking a suspension of respondent's teaching certificates for unprofessional conduct pursuant to N.J.S.A. 18A:28-8.

On or about April 11, 2016, Commissioner David C. Hespe entered the Order to Show Cause. On or about April 15, 2016, a copy of the fully executed Order to Show Cause, along with an affidavit in support of same with attached exhibits, were served upon respondent via lawyer's service and certified (return receipt) mail. That same day, a proof of service evidencing said service upon respondent was filed by M. Kathleen Duncan, Director, Bureau of Controversies and Disputes, New Jersey Department of Education.

Respondent subsequently filed an answer to the subject Order to Show Cause. Respondent's answer was initially deemed deficient, but respondent corrected any deficiencies in her answer, and the matter was transmitted to the OAL. The matter was assigned to this tribunal, and a prehearing conference was scheduled for Tuesday, August 2, 2016. While petitioner's counsel was prepared to take part in the prehearing conference, respondent failed to do so. As a result, she was instructed to issue correspondence explaining the reason(s) for her absence.

In response, respondent advised this tribunal, on or about August 4, 2016, that she "was not able to participate in the prehearing phone conference . . . due to . . . [her] work schedule." Respondent further advised this tribunal that she was "unable to take off time from work to appear in any court proceedings . . . [and could] no longer proceed any further with this matter.

On or about August 4, 2016, petitioner served discovery upon respondent via certified mail and regular mail. At the time of said service, respondent was advised that N.J.A.C. 1:1-10.4(c) required her to provide her discovery response “[n]ot later than 15 days from receipt of a notice requesting discovery.” Respondent failed to respond to petitioner’s discovery requests.

LEGAL DISCUSSION

The New Jersey Uniform Administrative Procedure Rule, N.J.A.C. 1:1-12.5, governs the petitioner’s motion for summary decision. The provisions of N.J.A.C. 1:1-12.5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. Summary decision is appropriate “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). To prevail, the adverse party “must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b). The non-moving party establishes a genuine issue of material fact if “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 fact-finder 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).

“An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submissions of the issues to the trier of fact.” R. 4:46-2. While it is true that a judge is not to “weigh evidence and determine the truth of the matter,” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995), “there is in this process a kind of weighing that involves a type of evaluation, analysis and sifting of evidential materials.” Id. at 536. Thus, a judge is to scrutinize the competent evidential materials presented, in a light most favorable to the

non-moving party, and consider whether a rational fact-finder could resolve the disputed issue in favor of the non-moving party. Id. at 540.

When a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth, by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing a summary judgment motion “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 County Welfare Bd. v. Stanley, 214 N.J. Super. 615 (App. Div. 1987). As discussed further below, as the facts are not in dispute in this matter, the petitioner has established, as the moving party, that it is entitled to prevail as a matter of law.

The petitioner requests this tribunal to strike respondent’s answer due to her unwillingness to participate in this matter and her failure to adhere to the requirements of the New Jersey Administrative Code. This tribunal has the authority to impose sanctions upon a party for his/her “failure to comply with the requirements of this subchapter.” N.J.A.C. 1:1-10.5 For instance, in the matter of Absolut Spirits Co., Inc. v. Monsieur Touton Selection, Ltd., OAL Dkt. No. ABC 4217-04, 2006 N.J. AGEN LEXIS 508, Final Decision (May 10, 2006), aff’d in part, rev’d in part on other grounds, A-5453-05 (App. Div. Oct. 22, 2007), petitioner sought the dismissal of respondent’s answer because respondent chose to either answer some interrogatories in a “vague and/or unresponsive” manner or not answer others at all. In striking/dismissing respondent’s answer, the Administrative Law Judge determined that petitioner was prejudiced by respondent’s failure to respond to previously served discovery requests.

Applying the aforementioned decision to the present matter, this tribunal must strike/dismiss respondent’s answer. In accordance with N.J.A.C. 1:1-10.4(c), “[n]o later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice.” (emphasis added.) Moreover, in the event the receiving party fails to abide by said provision or any other provision, sanctions may be imposed

pursuant to N.J.A.C. 1:1-10.5 and 1:1-14.14(a), up to and including suppressing “a defense or claim.” N.J.A.C. 1:1-14.14(a)2. Here, respondent was served with a “First Set of Interrogatories” and “First Notice to Produce” on or about August 4, 2016. As such, respondent had until August 19, 2016, to provide some form of response to discovery. Instead, respondent ignored the requests. Having not received any response from respondent, correspondence was issued, on or about September 1, 2016, in which respondent was afforded the opportunity to provide her outstanding answers to discovery and respondent was advised that her “now overdue responses to the . . . discovery requests [were due] within five (5) days of . . . [her] receipt of this notice.” Despite the issuance of the aforementioned correspondence, respondent again ignored the same and made no attempt to provide any type of response. Accordingly, this tribunal must strike/dismiss respondent’s answer pursuant to N.J.A.C. 1:1-10.5 and 1:1-14.14(a)2.

In addition, no issue of material fact exists that would preclude the granting of summary decision as it is beyond dispute that respondent failed to provide petitioner (i.e., her employer) with sixty days’ notice of her intent to resign. Accordingly, summary decision is warranted.

Respondent is a tenured teacher and therefore the consequences for termination of her employment without the required notice are governed by N.J.S.A. 18A:28-8, which provides:

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.

Additionally, N.J.S.A. 18A:26-10 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.

In accordance with these provisions, resignation without the consent of the Board and absent the required sixty days' notice constitutes unbecoming conduct per se. The central purpose of these provisions is to provide the board and its administration with notice so that a suitable replacement can be hired without adversely impacting students and disrupting the education process. See In the Matter of the Suspension of the Teaching Certificates of Robert F. Galgano, Central Jersey, College Prep Charter School, Somerset County, (OAL Dkt. No. EDU 3808-10, aff'd., Comm'r., March 21, 2011); Penns Grove-Carneys Point Board of Education v. Regina Leinen, 94 N.J.A.R. 26 (EDU) 405, 407.

The Commissioner of Education has consistently held that where facts demonstrating a teacher's resignation without providing requisite notice and without the consent of the board of education are clearly established, the teacher is guilty of unprofessional conduct as a matter of law. See In the Matter of the Suspension of the Teaching Certificate of Maximilian Capshaw, OAL Dkt. No. EDU 12318-06 (2007); In the Matter of the Suspension of the Teaching Certificate of Mary Savino, OAL Dkt. No. 11688-04 (2005); In the Matter of the Suspension of the Teaching Certificate of Marty Elizabeth Farran, Agency Dkt. No. 415-11/04 (2005).

Consistent with the above, respondent's conduct constitutes unprofessional conduct per se. Respondent was a tenured employee of the Board. On or about February 25, 2016, respondent provided the Board a written letter of resignation effective March 9, 2016. Respondent only provided the District with thirteen days' notice of her intention to resign, despite the fact that N.J.S.A. 18A:28-8 specifically requires a tenured employee such as respondent to provide the employing school district with "at least 60 days written notice of . . . [her] intention" to resign. As a tenured employee, respondent either knew or should have known that she was required to provide the District with sixty days' written notice of her intent to terminate her

employment with the Board. Having given notice of her intent to resign on or about February 24, 2016, respondent was required to work for the Board until April 23, 2016.

Moreover, the Board advised respondent that she would be required to continue her employment with the Board until an acceptable full-time candidate was found. On March 8, 2016, respondent sent an e-mail in which she wrote, "Please be aware that my final days as an employee of [the] East Greenwich Twp. Schools will be tomorrow, March 9th. I will not be returning following tomorrow's school day." In response to respondent's e-mail, the Board advised her "[t]hat should you not be at work until formally released you will be considered both in violation of your contract and insubordinate and appropriate action will be filed against you." Moreover, on March 10, 2016, the Board advised Mrs. Stawecki: "On Wednesday, March 16, 2016 the School Board will accept your resignation dated February 24, 2016 . . . [T]his resignation per statute will be sixty (60) days of your letter of April 23, 2016. You are expected to continue with your service to the East Greenwich School District through that time."

Subsequently, the Board accepted respondent's "resignation effective 60-days from February 24, 2016 or April 23, 2016." On March 17, 2016, the Board advised respondent that at its March 16, 2016, meeting, the Board "voted 8-0 with 1 abstain to accept your resignation effective . . . April 23, 2016 . . . Until you are officially released from employment, you are expected to be at your position. Should you not be at your position until officially released, you will be subject to disciplinary action." Thereafter, notwithstanding having been advised multiple times that the Board would hold her to the sixty days' notice required by State law, and that her resignation would not be effective until April 23, 2016, respondent failed to report to her position and ceased to perform her duties before the expiration of the term of her employment in violation of N.J.S.A. 18A:28-8.

Respondent's failure to provide the District with the statutorily required period (i.e. sixty days) regarding her notice to resign and complete unwillingness to perform her duties has had a direct and negative impact on the East Greenwich School District

by denying its students a full-time teacher who would have been able to provide them with continuity of instruction until such time as a full-time replacement was found.

Therefore, I **CONCLUDE** that respondent's resignation was without the requisite notice, and that the Board refused to consent to respondent's resignation without the requisite notice. Accordingly, respondent's conduct constitutes a clear violation of the applicable statutes and is unprofessional conduct per se, warranting the suspension of her certificates.

As to a penalty, it has been consistently held that absent mitigating circumstances, the appropriate penalty for a violation of N.J.S.A. 18A:28-8 and N.J.S.A. 18A:26-10 is suspension of a certificate for one year. As observed by the Administrative Law Judge in Penns Grove-Carney Point Board of Education v. Reginal Leinen, supra:

Most cases have resulted in the suspension of any and all teaching certificates for the maximum, one-year permitted if the Commissioner finds the teacher guilty of violating N.J.S.A. 18A:26-10. See In Re Russo, 33 C.D. 92; Collingswood Borough Board of Education v. Cashel, 88 S.L.D. 1898; In re Matthews, 267 C.D. 88; Dunellen Borough Board of Education v. Drake, 87 S.L.D. 206; In Re Evans, 249 C.D. 87; In Re Horter, 170 C.D. 87; Acken, 86 S.L.D. 2803; In Re Langford, 142 C.D. 84; In Re Minnich, 218 C.D. 83; In Re Cohen, 27 C.D. 83; In Re Reehill, 66 S.L.D. 201; In Re Finkelstein, 60 S.L.D. 75

In only the most rare and exceptional cases will the Commissioner of Education decline to impose the maximum one-year suspension for violations of N.J.S.A. 18A:18-8 and N.J.S.A. 18A:26-10. The Commissioner has noted that in determining the length of such a suspension for violations of these provisions the general rule is:

given the underlying purpose of the statute, this evaluation – with rare exception – has resulted in suspension of any and all certificates for the maximum one year period, particularly where the facts demonstrate that individuals have violated the 60-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 the Matter of the Suspension of the Teaching Certificate of Maximilian Capshaw, Upper Freehold Regional School District, Monmouth County (OAL Dkt. No. EDU 12318-06, aff'd Comm'r., June 12, 2007)

Although the Commissioner may impose a reduced suspension in cases which present compelling mitigating circumstances, such as a previous promise by the Board to consent to termination without notice, an employee's noble purpose, or an employee's attempt to ensure a smooth transition for her replacement, no such mitigating circumstances are present in this case. Respondent terminated her employment with the Board due to personal reasons. The law is clear that teachers are not free to unilaterally terminate their teaching obligations at the last minute, as was done herein by respondent. As a result of respondent's unprofessional conduct, I **CONCLUDE** that the appropriate penalty is suspension of her certificates for a period of one year.

Therefore, I **CONCLUDE** that respondent's answer is stricken, summary decision is entered in favor of petitioner, and respondent's instructional certificates are suspended for a period of one year. Petitioner's motion for summary decision requesting summary decision be granted in its favor must be **GRANTED**.

ORDER

It is hereby **ORDERED** that the petitioner's motion for summary decision is **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.



December 28, 2016 _____
DATE

EDWARD J. DELANOY, JR., ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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