

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF : COMMISSIONER OF EDUCATION
CARLOS BAEZA, SCHOOL DISTRICT OF THE : DECISION
TOWNSHIP OF IRVINGTON, ESSEX COUNTY. :
_____ :

SYNOPSIS

In October 2016, the Commissioner of Education issued an Order to Show Cause requiring respondent to show cause why an order should not be entered suspending his teaching certificate for unprofessional conduct pursuant to *N.J.S.A. 18A:26-10*, for resigning his position without giving the required 60 day notice. The respondent – a non-tenured teacher – contended that he did not have a contract for the 2016-2017 school year, and was therefore not obligated to provide a 60 day notice. The Board contended that – while no formal contract for the 2016-2017 school year was offered to Mr. Baeza – a June 20, 2016 letter rescinding respondent’s non-renewal created an implied contract.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:26-10* provides, in pertinent part, that any teaching staff member “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 this case, respondent was initially employed by the petitioning Board as a middle school science teacher in March 2016, under a “Contingency Employment Contract” which expired on June 30, 2016; in May 2016, respondent received a letter from the Board informing him that his employment would not be renewed for reasons of economy; in June 2016, respondent received a second letter from the Board stating that his non-renewal was rescinded, but he received no formal contract for his review and signature; respondent received two letters in August of 2016 regarding the beginning of the school year and classroom setup, but again did not receive a written contract; the second of these letters clearly indicated that respondent’s employment was contingent upon Board approval at a scheduled meeting on August 17; since respondent had still not received a formal contract for the 2016-2017 school year by late August, he accepted an offer of employment in the Paterson School District. The ALJ concluded that the respondent had no formal offer of employment for the 2016-2017 school year, but rather received a flurry of mixed messages, including: a non-renewal letter, a rescission of that letter, and a letter advising that his reemployment remained contingent on board approval. Respondent’s conduct in accepting a formal contract offered by another school district was reasonable and did not violate *N.J.S.A. 18A:26-10*. Accordingly, the petitioning Board’s request that the Commissioner suspend the respondent’s teaching certificate was denied.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter.

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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June 29, 2017

OAL DKT. NO. EDU 18362-16
AGENCY DKT. NO. 282-10/16

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF : COMMISSIONER OF EDUCATION
CARLOS BAEZA, SCHOOL DISTRICT OF THE : DECISION
TOWNSHIP OF IRVINGTON, ESSEX COUNTY. :

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

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) – for the reasons thoroughly set forth in the Initial Decision – that respondent did not enter into an employment contract with the Board for the 2016-2017 school year, and therefore acted reasonably in accepting new employment. As such, the Commissioner is in accord with the ALJ that respondent’s certificate should not be suspended pursuant to *N.J.S.A. 18A:26-10* because he is not guilty of unprofessional conduct.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 29, 2017

Date of Mailing: June 30, 2017

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 18362-16

AGENCY DKT. NO. 282-10/16

**IN THE MATTER OF THE SUSPENSION
OF THE TEACHING CERTIFICATE OF
CARLOS BAEZA, SCHOOL DISTRICT OF THE
TOWNSHIP OF IRVINGTON, ESSEX COUNTY.**

Yadira Duran, Esq., for petitioner (Hunt Hamlin and Ridley, attorneys)

Carlos Baeza, respondent, pro se

Record Closed: May 25, 2017

Decided: May 25, 2017

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Irvington School District (Irvington), seeks an order suspending respondent's teaching certificate for a period of one year, contending that he resigned from his teaching position with inadequate notice. Respondent, Carlos Baeza, replies that he had not been given a contract of employment for the 2016-2017 school year, and thus accepted alternative employment. Baeza asserts that his actions in no way violated N.J.S.A. 18A:26-10.

On or about October 3, 2016, at the request of Irvington, the Commissioner of Education (the Commissioner) entered an Order directing Baeza to show cause why his teaching certificate should not be suspended for unprofessional conduct, pursuant to N.J.S.A. 18A:26-10. Baeza filed an answer on December 2, 2016. On December 5, 2016, the Commissioner transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested case. A hearing was conducted on May 25, 2017, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The facts are not in dispute and I **FIND**:

Baeza holds certification issued by the Department of Education as a teacher of elementary and middle school science. He was initially employed by Irvington in March 2016 to serve as science teacher in the seventh and eighth grades at University Middle School. He was employed pursuant to a “Contingency Employment Contract” dated February 17, 2016; his contract expired on June 30, 2016.

On May 11, 2016, Baeza and every other non-tenured staff member received an email from the Superintendent of Schools advising that their employment would not be renewed. The email cited budgetary constraints, and urged that the non-renewal was not performance related. Superintendent Neely Hackett explained that a proposed move to a new health plan could potentially ease these budgetary restrictions; that the legality of the proposed change was under review; and that she hoped to be able to rescind the non-renewals in the coming weeks.

Baeza again heard from the district via a letter from the Human Resources Department dated June 20, 2016, advising that his non-renewal had been “rescinded as of the date of this letter.” But Baeza received no formal contract for his review and signature. By letter dated August 12, 2016, the principal of University Middle School shared information about the coming year; indicated that staff were required to report on

September 6, 2016; and would be able to set up their classrooms during the week of August 29, 2016. Baeza received this letter, but again, received no contract of employment. By letter dated August 17, 2016, the Irvington Schools Office of Government Programs advised that there would be a two-day orientation on August 31 and September 1, 2016. Baeza received this letter, but again, no contract of employment. And this latter letter states, quite unequivocally, “that [his] employment is contingent on Board approval at the scheduled Board of Education meeting on August 17, 2016.”

Counsel for the school district confirmed that no formal contract was ever offered to Baeza, urging that the June 20, 2016, letter rescinding his non-renewal created an implied contract. As for whether Baeza’s employment was approved by the Board on August 17, 2016, as noted in the letter of the same date, counsel had no knowledge whether his employment was approved by the Board that night, or any night before or after.

As a science teacher, Baeza’s services are in demand. Late in August 2016, he was approached with an offer of employment by the Paterson Schools. Having not yet received a contract, or any indication that the Board had approved his employment for the 2016-2017 school year, he accepted the position in Paterson. Via email sent on August 30, 2016, Baeza advised that, “as I had received no formal notice of my continuance at University Middle School, please be advised that I will not be returning to teach this academic year, as I had to make other arrangements for employment.” Hackett replied that he “most certainly did receive notice and...will be held to [his] 60-day requirement.” She asked for a letter of resignation. By reply email sent September 6, 2016, Baeza stated he had no intention of resigning as there was no employment from which to resign. He pointed out that his contract expired June 30, 2016, and he had not received a successor contract.

The district called Baeza himself as its only witness, and offered no evidence that Baeza’s conduct caused any inconvenience or disruption to the public schools.

CONCLUSIONS OF LAW

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, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year.” See also N.J.A.C. 6A:9-17.9. The Commissioner has held that the central 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. The decision to suspend a teaching certificate pursuant to N.J.S.A. 18A:26-10 is discretionary and the Commissioner has historically evaluated all circumstances specific to an individual case. Black Horse Pike Reg’l Sch. Dist. v. Mooney, 1984 S.L.D. 821; In re Capshaw, EDU 12318-06, Initial Decision (April 30, 2007), modified, Comm’r (June 12, 2007), <<http://njlaw.rutgers.edu/collections/oal/>>; East Amwell Twp. Bd. of Educ. v. Acken, 1986 S.L.D. 2803.

For a non-tenured staff member like Baeza, the inquiry regarding whether there has been a violation of N.J.S.A. 18A:26-10 must commence with an understanding of the “the term of his employment.” The contractual understanding between the parties thus becomes the critical reference point. A binding contract is formed between two parties when there is a meeting of the minds evidenced by a written offer and an unconditional written acceptance. Morton v. 4 Orchard Land Trust, 180 N.J. 118, 129–30 (2004) (citing Johnson and Johnson v. Charmley Drug Co., 11 N.J. 526, 538–39 (1953)). Here, Baeza did not terminate his employment before the expiration of the term of his employment, because he had no contract, and thus, no term of employment. Irvington’s argument that an implied contract was created by the rescission of its non-renewal notice is devoid of merit.

Indeed, N.J.S.A. 18A:27-5 makes it clear that a contract of employment must be in writing. And N.J.S.A. 18A:27-6 requires that such contracts specify a start date; the kind of certificate required; the salary; and “such other matters as may be necessary to

a full and complete understanding of the contract.” These statutory provisions echo the well accepted view that a contract must evidence the mutual understanding by the parties of its essential terms. A letter simply stating that an employee’s non-renewal has been rescinded meets none of these requirements, and cannot be held to form a binding contract, as Irvington suggests.

Moreover, N.J.S.A. 18A: 27-10 required the school district to non-renew Baeza on or before May 15, or give him a contract by that date. And Irvington did timely non-renew him. Only if it had not, would Baeza have had any absolute expectation of continued employment, as N.J.S.A. 18A: 27-11 provides that in the absence of timely notice of non-renewal the school district “shall be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as required by law or policies of the board of education.”

I thus agree with Baeza that he had no formal offer of employment for the 2016-2017 school year and instead, a flurry of mixed messages, to include, a non-renewal letter; a recession of that letter; and a letter advising that his reemployment remained contingent on board approval. Like most Americans, Baeza needed a job, so he did what anyone under the circumstances would have done, he accepted a formal contract offered by another school district. I **CONCLUDE** that his conduct was eminently reasonable, and did not violate N.J.S.A. 18A: 26-10.

I fully recognize that teaching is a unique occupation where a change in personnel can affect many young lives.² N.J.S.A. 18A:26-10 confirms that a dedicated teacher must always put his students first, and resigning teachers must afford as much notice as administration feels is needed to ensure that education will continue

² While I am willing to take judicial notice of the fact that a change in teacher creates added work for administration, the school district is cautioned for the future that it is obliged to offer evidence of actual disruption to the district and its students in a proceeding of this kind. Each circumstance is unique. Here, Baeza left before he met his students, and it is surely possible that the district immediately found a replacement, thus causing little or no disruption to the classroom. Or conversely, it might have taken the district months to replace him. The burden is on the school district to prove disruption. And the penalty imposed may vary, based on the disruption created by the teacher’s conduct.

uninterrupted. But the statute makes it plain that the non-tenured employee's professional obligations are those established by the "term of employment" agreed upon by the parties, and not by any intrinsic notion of professionalism. An employing school is thus obliged to offer a non-tenured staff member an actual contract, and not an implied one, if it expects that staff member to feel obliged to report to work at the start of a new school year.

Finally, I am compelled to point out that both the administrative law judge and the Commissioner roundly rejected the identical arguments when they were previously raised by Irvington in In Re Canela, Irvington School District, EDU 17209-16, Initial Decision (January 12, 2017), aff'd Commissioner (February 23, 2017), <<http://njlaw.rutgers.edu/collections/oal/>>. It is noteworthy that there too, the district cited N.J.S.A. 18:28-8 in its petition, which was inapplicable there, and is likewise inapplicable here, as that statute governs the obligations of tenured staff members.

ORDER

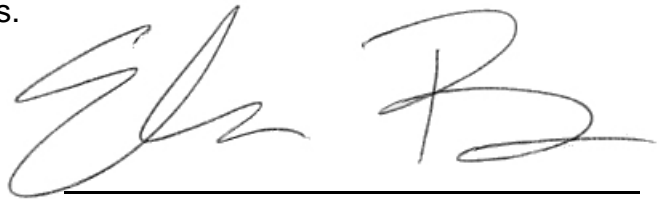
Based on the foregoing, it is **ORDERED** that the request by the Irvington Public Schools that the Commissioner suspend the teaching certificate of Carlos Baeza pursuant to N.J.S.A. 18A: 26-10 is **DENIED**.

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, P.O. 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.

May 25, 2017



DATE

ELLEN S. BASS, ALJ

Date Received at Agency:

Date Mailed to Parties:

APPENDIX

WITNESSES

For Petitioner:

Carlos Baeza

For Respondent:

Carlos Baeza

EXHIBITS

For Petitioners:

P-1 Email dated May 11, 2016

P-2 Email sent August 30, 2016

P-3 Email sent September 6, 2016, with email trail

P-4 Letter dated June 20, 2016, with acknowledgement of receipt

For Respondent:

R-1 Contract

R-2 Letter dated August 17, 2016

R-3 Letter dated August 12, 2016