

195-00
AGENCY DKT. NO. 69-2/00

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF :
ROSALIND McFADDEN, SCHOOL : COMMISSIONER OF EDUCATION
DISTRICT OF CHERRY HILL, CAMDEN : DECISION
COUNTY. :

For Petitioner, Nicholas Celso, III, Esq. (Schwartz, Simon, Edelstein, Celso & Kessler)

For Respondent, Rosalind McFadden, *Pro Se*

On February 8, 2000, the Cherry Hill Board of Education filed before the Commissioner of Education a Certification of Service, said certification confirming that Rosalind McFadden had been served with an Order to Show Cause, signed by the Commissioner on January 20, 2000, and an accompanying affidavit. The Order notified respondent that she had 20 days to submit a written answer addressing why an Order should not be entered suspending her certificate for unprofessional conduct, pursuant to *N.J.S.A.* 18A:26-10. On February 24, 2000, respondent filed a Certification in Opposition to the Board's Order to Show Cause. By letter of February 29, 2000, the parties were advised that it appeared that the material facts in this matter were not in dispute, thus rendering the matter ripe for summary judgment. Therefore, a briefing schedule was established, permitting the parties to submit briefs addressing the appropriateness of summary judgment and any additional information and/or legal arguments

which the parties wanted to be considered by the Commissioner in rendering the within decision.

On March 13, 2000, respondent filed a letter, dated March 10, 2000, which stated in its entirety:

In response to your letter dated February 29, 2000, I can only say that I resigned “with cause,” having made the decision not to pursue charges—that is why I resigned. As an employer, the Cherry Hill District has an obligation to its employees, the same as I had an obligation to them while they employed me. They had not fulfilled their responsibilities to me, therefore, I chose not to fulfill my responsibilities to them. I do not wish to take this any further. The decision is yours.¹

By letter of March 21, 2000, respondent was asked to clarify her intent, *specifically*, whether she objected to the matter being decided on the papers filed (the Order to Show Cause and her reply thereto), or whether she believed that a hearing and/or further argument was needed for a fair determination in this matter. Respondent was further advised that if she wished to submit additional arguments, she must do so within 20 days of the letter’s receipt, and that if no additional arguments were received by that date, her letter of March 10, 2000 would be considered as the entirety of the additional arguments submitted for the Commissioner’s consideration. Respondent was also informed that she must properly serve the Board’s attorney with both her March 10 letter and any additional submissions.

Respondent, however, submitted no further arguments nor did she provide the required proof of service of her March 10 letter.

BACKGROUND FACTS

The following facts are found to be true, based on the record. On June 30, 1999,

¹ In response to an acknowledgement of the receipt of this letter to the parties, the Board notified the Director of the Bureau of Controversies and Disputes by letter of March 17, 2000 that it had not been served with respondent’s submission.

respondent signed a contract accepting employment with the Cherry Hill Board of Education as a Language Arts Teacher for the contract year of 9/01/99-6/30/00. The contract states in pertinent part:

It is hereby agreed by the parties hereto that this contract may at any time be terminated by either party given to the other 60 days notice, in writing, of intention to terminate the same, but that in the absence of any provision herein for a definite number of days notice the contract shall run for the full term named above. (Board's Affidavit in Support of Application for Order to Show Cause, Exhibit A)

On or about December 10, 1999, respondent requested a three-week leave of absence, without pay, to take a trip to South Africa from February 7, 2000 through February 25, 2000. (*Id.*, Exhibit B)

By memo of December 14, 1999, Thomas P. Christensen, Acting Assistant Superintendent, denied respondent's request for a leave of absence, stating:

I have received your request for unpaid three week leave of absence from February 7 to 25, 2000. I cannot recommend the approval of this request due to the impact on the learning situation for the youngsters you teach at Beck. (*Id.*, Exhibit C)

By memo of December 15, 1999, respondent tendered her resignation from her teaching position. Respondent's memo states, in full:

This memo constitutes my 30 days notice of resignation from my position as English teacher at the Beck Middle School. I will be using up my sick days and personal days within this amount of time.

A quick study, open-minded team player, who is willing to learn and try new teaching methods, I have never before been so harshly viewed and undervalued by an immediate supervisor as I have this year.

Thank you for the opportunity to work with your most talented and interesting public that I have so

conscientiously worked with, trying to boost support for Beck with my 8-2 superior teaching team. (*Id.*, Exhibit D)

By memo of December 16, 1999, the Acting Assistant Superintendent informed respondent that her letter of resignation violated the terms of the contract. That memo stated:

I received your letter of resignation dated 12/15/99. I am writing to clarify some items mentioned in your letter. For all teachers, the contract calls for 60 days notice in resigning from a position not 30 days. Also, you are not entitled to “use up” your sick days and personal days once you give notice of your resignation. Personal days must be approved by your supervisor/principal/assistant principal. Sick days can only be used if you are sick and extended illnesses or an inconsistent attendance pattern could require a doctor’s note.

If you have any questions, regarding this memo, please contact me. (*Id.*, Exhibit E)

By memo of December 19, 1999, respondent answered the Acting Assistant Superintendent’s memo, as follows:

In response to your letter dated 12/16/99 which stated your expectation that I provide 60 days notice, this correspondence is to inform you that I will work until the end of the school day on 12/23/99. This resignation is predicated on cause and is outside of the scope of the employment contract. I believe an expedient disengagement of our professional relationship is in the best interest of all.

Thank you for your understanding and cooperation on this matter. (*Id.*, Exhibit F)

At its meeting on December 21, 1999, the Board accepted respondent’s resignation effective December 23, 1999, without prejudice to the Board’s right to pursue legal action for respondent’s failure to provide adequate notice of the resignation. (*Id.* at 2)

RESPONDENT'S POSITION

In her Certification in Response to Order to Show Cause, respondent claims that she had first inquired about the possibility of a leave of absence, without pay, three days into the school year and not receiving a response, confirmed that request in writing on or about November 10, 1999². Respondent avers her December 10, 1999 request for the leave of absence was made at the behest of the building principal so he could have something to take to the Board office. Respondent claims that she never received a response to her requests until the December 14 memo from Thomas Christensen. Although dated December 14, 1999, respondent notes that she did not receive the denial of her request for a leave of absence until December 16, 1999, the day after she submitted her resignation. (Respondent's Certification at 1)

Respondent avers that the reasons for her resignation go beyond the denial of her request for a leave of absence. She asserts that when the Board failed to respond to her requests for a leave of absence, she notified the building principal by letter of November 15, 1999³ that she was interpreting the District's lack of response as approval of her request for a leave of absence. Respondent claims that:

It was only after my notice that they finally began to take any action on the matter. That action, was to pursue a deceptive strategy to deflect the focus from the real deficiency in this matter, the lack of attention and regard to my request by the Cherry Hill School Administration. (*Id.* at 2)

Without providing specifics, despite being provided the opportunity to do so, respondent claims that she resigned "with cause," having made the decision not to pursue

² This letter is not a part of the record.

³ It appears that this is the same letter referred to as the November 10, 1999 letter above. However, this cannot be confirmed since respondent did not provide copies of the letter(s) referenced.

charges. She also claims that the Board had not fulfilled its responsibility to her, therefore, she chose not to fulfill her responsibilities to the Board. (Respondent's Letter of March 10, 2000)

BOARD'S POSITION

The Board asks the Commissioner to suspend respondent's teaching certificate for unprofessional conduct, pursuant to *N.J.S.A.* 18A:26-10, averring that respondent showed a blatant disregard for her contractual obligations and ignored the detrimental impact on her students' educational program by resigning abruptly. The Board states that it is having difficulty locating a suitable permanent replacement for respondent and has been compelled to assign a substitute teacher to cover the class at a time when the District is experiencing a shortage of substitute teachers. (Board's Affidavit in Support of Application for Order to Show Cause at 2, 3)

DISCUSSION

The Commissioner finds that the relevant and material facts in this matter are those stated, *ante*, as Background Facts. (*See Collingswood Borough Board of Education v. Edward J. Cashel*, 1988 *S.L.D.*1898.) These facts are not disputed. That respondent asserts that the District did not fulfill its responsibilities to her and that she resigned "with cause" is not determinative, *even assuming* it played a part in her decision to resign from the District.⁴ In *Penns Grove-Carneys Point Board of Education v. Leinen*, 94 *N.J.A.R.* 2d (EDU) 405, a learning disabilities teacher consultant urged that her certificate should not be suspended when she failed

⁴Respondent's resignation memo refers to "never having been so harshly viewed and undervalued by an immediate supervisor***." Despite being provided two opportunities to further explain her reasons for resigning, however, respondent did not cease the opportunity to do so.

to provide notice, because she claimed, *inter alia*, that her physical working conditions were “abhorrent” and caused her medical problems. (*Penns Grove-Carneys Point, supra*, at 406) Citing *In re Cronmiller*, 1970 S.L.D. 149, the ALJ underscored that if respondent’s allegations were true, she had avenues of appeal which she failed to employ, such as contacting her union. Similarly, in the instant matter, even assuming, *arguendo*, that respondent’s assertions that the Board did not fulfill its responsibilities to her to be true, respondent had other avenues of appeal to pursue. The Commissioner therefore finds those assertions irrelevant.

There is no dispute that respondent resigned without proper notice to the Board. Neither does respondent defend her actions by claiming that she was unaware of her contractual obligations. Respondent was specifically advised of her contractual obligation to provide a 60-day notice by the Acting Assistant Superintendent in his memo of December 16, 1999. Rather than changing her letter of resignation to reflect the 60-day requirement, respondent reacted by shortening her notice from 30 days to 8 days.

Pursuant to *N.J.S.A. 18A:26-10*, the Commissioner has both the authority and the discretion to suspend a teacher’s certificate for a period of up to one year for ceasing to perform her duties before the expiration of her employment. The Commissioner recognizes that “[t]he 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, supra*, at 407, citations omitted) In the instant matter, the Board claims that respondent’s lack of adequate notice has negatively affected her students because the Board has had difficulty finding a permanent replacement for respondent and there is a shortage of substitute teachers. However, even if the Board were able to find a replacement quickly, such replacement would not negate respondent’s unprofessional conduct. (*See In the Matter of the Suspension of the Teaching*

Certificate of Patricia Aiken, School District of the Township of East Amwell, Hunterdon County, 1986 S.L.D. 2816, 2821.) “The sudden departure of a teacher who has been working with a group of pupils for four months results in a disruption to the educational program to those pupils, if only because of a sudden change in teachers.” (*In the Matter of the Suspension of the Teaching Certificate of David T. Drake, School District of the Borough of Dunellen, Middlesex Co., 1987 S.L.D. 2016, 2019*)

The Commissioner agrees with the Board that in resigning abruptly, respondent put her own self-interest above the interests of her students and her professional obligation to provide adequate notice to the Board. Accordingly, summary decision is granted to the Board in this matter. Pursuant to *N.J.S.A. 18A:26-10*, respondent is deemed guilty of unprofessional conduct. The Commissioner determines to suspend the teaching certificate of Rosalind McFadden for a period of one year, which period shall commence upon the date of this decision. A copy of this decision is hereby forwarded to the State Board of Examiners for the purpose of effectuating the within decision and taking such further action, if any, as it deems appropriate.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: June 18, 2000

Date of Mailing: June 18, 2000

⁵ This decision, as the Commissioner’s final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.