

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF : COMMISSIONER OF EDUCATION
VINCENT MONTALBANO, SCHOOL DISTRICT:
OF RIDGEFIELD PARK TOWNSHIP, : DECISION
BERGEN COUNTY. :
_____ :

SYNOPSIS

Petitioning Board sought the suspension of respondent's teaching certificate for one year because respondent failed to resign from his position in accordance with statute. Respondent sought dismissal of the petition.

The ALJ determined that respondent failed to give proper notice of his resignation and that a one year suspension of his teaching certificate was appropriate. The ALJ found that respondent failed to present any credible mitigating factors, and noted that respondent provided less than the required 60 days notice, resigned solely because he had secured alternative employment as a police officer and took minimal steps to ensure a smooth transition for his class.

The Commissioner affirmed the ALJ's decision, holding that respondent departed on short notice knowing that a suitable replacement had not been found, and that his sudden departure disrupted his class. Because respondent presented no compelling argument or mitigating factors warranting a shorter period of suspension, the Commissioner suspended respondent's certification for a period of one year from the date of his decision.

OAL DKT. NO. 3588-00
AGENCY DKT. NO. 87-2/00

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent's exceptions and the Board's reply thereto were submitted in accordance with *N.J.A.C. 1:1-18.4*.

Respondent excepts to the Administrative Law Judge's (ALJ) conclusion that he was guilty of misconduct and failed to advance any factors which would mitigate against suspension of his certificate for one year. Respondent notes in this regard that:

[T]he ALJ made no mention of [his] outstanding record during his employment with the Board. In his letter to the Board, he listed 27 accomplishments of which he was proud in his service to the District. The Board was asked in interrogatories if there were any errors in the 27 separate accomplishments and to describe those errors. The Board disagreed with his statement that he used only two personal days. He also claimed that he never used "all four sick days in one year." The Board disagreed since staff receive ten days per year ***. Board records show that he used only two sick days during his employ. The Board did not take issue with respondent's statement that he "always had excellent evaluations" nor the 25 other achievements including that he was always a positive influence on all the students and gave them the best education possible. (Respondent's Exceptions at 4)

Thus, respondent reasons that the within matter is analogous to *Mooney, supra.*, wherein the Commissioner considered respondent's above average record of performance for the year and declined to assess the departing teacher with a penalty.

Similarly, respondent maintains that this matter is akin to *Burgess, supra*, wherein the Board accepted the teacher's resignation, noting that it would try to find a replacement, but would not release him earlier than 60 days unless it found one. There, the Commissioner found that because the Board had failed to keep its promise to accelerate the replacement process, suspension was not warranted. By comparison, respondent notes that Superintendent Benfatti, when urging that he reconsider his decision to leave, also told him that he would be released earlier than March 17, 2000 if a replacement was found. Thus, respondent argues that the ALJ's finding that "no promise was made to the respondent and that it was clear that he would not be let out of his contract until March 17, 2000" was erroneous. (*Id.* at 5)

Finally, respondent challenges the ALJ's finding that he left the Board's employ "to feather his own nest." (*Id.* at 6) Instead, respondent advances, as in *Rogers, supra*, his leaving to become a police officer was a "noble motivation." (*Ibid.*) Moreover, respondent notes that the ALJ's finding that he "could have waited until another position became available at the policy academy," (Initial Decision at 9) is simply incorrect, based on the record. "Having an opening in the police academy has nothing to do with being appointed to the police department," respondent contends. (Respondent's Exceptions at 6) Thus, respondent urges that the Commissioner reject the findings and conclusions of the ALJ and dismiss the within suspension proceedings. In the alternative, respondent asserts that a penalty far less than one year is warranted.

In response, the Board underscores that although respondent appears to be arguing the opposite, the case law supports the conclusion that a one-year suspension is the general rule when teachers fail to provide local boards with the statutory notice of intent to leave their positions. (Board's Reply at 1) Thus, the cases which respondent cites are not only exceptions to the general rule, but are distinguishable from the instant matter, according to the Board.

Specifically, the Board notes that, contrary to the facts in *Mooney*, *supra*, respondent herein was not compelled to leave his teaching position when he did. Rather, he could have waited for the next opportunity for a police officer's position in Washington Township or another town. (*Id.* at 2) Respondent, having resigned when he did, the Board argues, left the District in a difficult position. "It is exactly for this type of motivation that N.J.S.A. 18A:26-10 was drafted." (*Ibid.*) Additionally, contrary to the situation in *Mooney*, respondent was never told that his early departure would be acceptable. Neither did respondent take extraordinary measures, as the ALJ noted, to ease the transition for those left to cover his classes. Thus, the Board reasons that respondent's good record of performance in the District is without significance where the other *Mooney* factors are not present, since "[t]he ultimate effect that respondent's actions had on the district are in no way lessened by respondent's past record." (*Ibid.*)

Likewise, the Board argues that *Burgess*, *supra*, is distinguishable from the instant matter in several key aspects. First, the *Burgess* board actually resolved to let Burgess out of his contract if a replacement was found. Additionally, there was an available replacement, but the board, for reasons unacceptable to the Commissioner, failed to promptly act to appoint her. Finally, the teacher in *Burgess* took extraordinary measures to ease the transition by preparing lesson plans, reviewing the plans with his principal and other sixth grade teachers, leaving

personal items for use by the replacement teacher and offering to meet with that teacher on his own time. (*Ibid.*) By contrast, the Board herein did not resolve to let respondent out of his contract if and when a replacement was found, no replacement was available before respondent left the District and respondent took no such extraordinary measures. (*Id.* at 3)

Finally, the Board contends that *Rogers, supra*, is also distinguishable from the instant matter because, therein, a replacement was available for the teacher. (*Ibid.*) Additionally, in *Rogers*, the Commissioner acknowledged that the teacher left the district to work with severely and multiply handicapped children, which the Commissioner deemed a noble motivation. (*Ibid.*) By contrast, the Board herein asserts, there was no replacement available for respondent and, although he left to take a job that he always wanted:

[T]he noble choice would have been to continue working in his position in the Ridgefield Park School District where he was desperately needed for the statutory time period, not to take a position that he always wanted without regard for the effect that would have on the special education students and the staff and administration he left behind. (*Ibid.*)

For these reasons, the Board requests that the Commissioner affirm the decision of the ALJ.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ that there is ample documentation to support the Board's position that respondent's undeniable failure to comply with the provisions of N.J.A.C. 18A:26-10 and 18A:28-8 is sufficient to warrant the suspension of his teaching certificate for a period of one year. In so finding, the Commissioner determines there can be no dispute that respondent abandoned his class for another job: (a) knowing that he was not yet "released" from his position in the Ridgefield Park School District; (b) only 12 days after the delivery of his written resignation; and (c) knowing that a suitable replacement was not yet employed. *See, Dumont Board of Education v. Andrew Zweig*, 1988 S.L.D. 904, 910.

Despite respondent's urging, for the reasons set forth by the ALJ in the Initial Decision and advanced by the Board, the Commissioner concurs that this matter is not analogous to *Mooney, supra*; *Burgess, supra*; or *Rogers, supra*. Moreover, while respondent properly observes that Superintendent Benfatti indicated that he would be released earlier than March 17, 2000 *if* a replacement was found (Affidavit of Irene Benfatti at 3), notably, he does not dispute the ALJ's finding that "[a]lthough the Board placed ads for [his] position, it was not able to replace him ***." (Initial Decision at 3) Neither does respondent dispute the superintendent's attestations in this regard that:

2. After respondent *** left the Board's employ, I tried to replace him. An advertisement to fill his vacant position was posted in the district and advertised in the newspaper.***
3. No responses to that advertisement were received.
4. I would have preferred to replace Mr. Montalbano. However, since no responses were received to the advertisement for the position, I resorted to covering his classes with existing staff. This was not done easily.
5. The resulting situation was one that caused a strain on the district as well as the covering teachers.
6. For the 2000-2001 school year, Mr. Montalbano's former position has been filled. However, the district is still short one special education teacher.
7. It has been my experience that substitute teachers are hard to find. Further, it is my experience that special education teachers are very difficult to find. When you are looking for one in the middle of a school year, it is almost impossible.

(Second Affidavit of Irene Benfatti at 1, 2)

Pursuant to the enabling statute, as noted *supra*, the Commissioner has both the authority and the discretion to suspend a teacher's certificate for a period of up to one year for relinquishing his position without "at least 60 days written notice of his intention***." N.J.S.A. 18A:28-8. The Commissioner has recognized that "[t]he sudden departure of a teacher who has been working with a group of pupils for four months results in a disruption of the educational

program to those pupils, if only because of a sudden change in teachers.” See, *Dunellen Borough Board of Education v. David T. Drake*, 1987 S.L.D. 2016, 2019. Thus, although the Commissioner acknowledges the predicament in which respondent found himself when he was offered a position commencing mid-year in the Washington Township Police Department after having submitted numerous applications, there is no question that he “violated the letter and intent of the statute, resulting in disruption of his *** class.” *Dumont Board of Education, supra*, 1988 S.L.D. at 912. Inasmuch as respondent was a tenured teacher, the Board also offers a compelling policy consideration:

The Legislature has established a system for protecting the school community from disruption to the relationship under which experienced teachers provide an education to the students within the school district. By statute, tenured teachers have the security of knowing they can continue to hone their skills and provide their services to the students of their districts indefinitely, and that they will only be removed or non-reappointed under extreme circumstances and after lengthy proceedings. *** Because of these statutory protections, a school board makes a significant investment by granting tenure to any teacher. In exchange for this investment, the Legislature requires that tenured teachers provide their employers with a minimum of sixty days’ notice of their intent to discontinue to serve the school district.*** (Board’s Letter Brief in Support of Motion to Dismiss at 7-8; citations omitted)

Accordingly, the Commissioner concurs with the ALJ that respondent is guilty of unprofessional conduct and, as such, his teaching certificate should be suspended 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.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 11, 2001

Date of Mailing: June 12, 2001

* 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.