

IN THE MATTER OF THE SUSPENSION :  
OF THE TEACHING CERTIFICATE OF : COMMISSIONER OF EDUCATION  
MARY SAVINO, RAHWAY BOARD : DECISION  
OF EDUCATION, UNION COUNTY. :

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SYNOPSIS

The Board sought to suspend the instructional certificate of respondent pursuant to *N.J.S.A. 18A:26-10* for not providing adequate notice of resignation from her position as a teacher in the Rahway Middle School. The Board submitted that there were no material facts in dispute, and that the Board was entitled to summary judgment pursuant to *N.J.S.A. 18A:26-10* and *N.J.S.A. 18A:28-8*. Respondent contends that she had mitigating circumstances and was compelled to resign due to her unfitness to teach middle school.

The ALJ found, *inter alia*, that: respondent is guilty of unprofessional conduct for failure to provide 60 days written notice of resignation; respondent was stressed and fearful regarding her reassignment to teach at the middle school rather than an elementary school; respondent had no motive of self-interest in her action; and respondent's honesty regarding her professed unfitness to teach middle school should be considered a mitigating factor in determining the appropriate penalty in this case. The ALJ concluded that a suspension of respondent's teaching certificate for one year is unnecessarily harsh punishment, and recommended a penalty of 60 days suspension of respondent's teaching certificate.

Upon a thorough and independent review, the Commissioner agrees that the respondent is guilty of unprofessional conduct, but disagrees with the ALJ's assessment of respondent's behavior, finding that there is nothing in the record to suggest any mitigating factors in this matter; he concludes that respondent's desire for early release from her professional obligations was based on personal motives and convenience. Respondent is therefore deemed guilty of unprofessional conduct and – consistent with the penalty assessed in similar matters – her teaching certificate is hereby suspended for a period of one year commencing upon the date of this decision. A copy of this decision will be forwarded to the State Board of Examiners for the purpose of effectuating this order.

<p>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.</p>
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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

As noted by the Administrative Law Judge (ALJ), it is undisputed that respondent entered into an employment contract with the Rahway Board of Education (Board) on or about May 11, 2004 to serve as a teacher in the Rahway School District from September 1, 2004 to June 30, 2005. The contract signed by the parties provided that either party could terminate the contract with 60 days written notice. Notwithstanding this notice requirement, respondent did not report to work on September 1, 2004, but, instead, submitted her resignation to the Board via e-mail on September 2, 2004, one day after the start of the 2004-2005 school year, with an effective date of September 7, 2004.

*N.J.S.A.* 18A:28-8 establishes the procedure by which a teaching staff member must provide notice of resignation to a board of education and authorizes the Commissioner to suspend a teacher's certificate if that teacher fails to comply, as follows:

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 or 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, 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 obligations. *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 the instant matter it is undisputed that respondent resigned without proper notice to the Board. Additionally, respondent acknowledges that Superintendent Petrino, in a telephone conversation on September 3, 2004, reminded her of the 60-day notice requirement and explained that failure to honor the 60-day notice requirement could place her certification to teach in the State of New Jersey in jeopardy. Accordingly, the Commissioner concurs with the ALJ's determination that respondent is guilty of unprofessional conduct for her failure to provide the 60-day notice required by her contract, *N.J.S.A.* 18A:26-10 and *N.J.S.A.* 18A:28-8.

The Commissioner, however, is unable to conclude that there are factors which would mitigate the imposition of a one-year suspension of respondent's teaching certificate and, thus, rejects the ALJ's conclusion that a lesser penalty is appropriate in this instance. In so concluding, the Commissioner disagrees that petitioner's failure to give the required notice is mitigated by factors similar to those applied in *Mooney, supra*, and *Rogers, supra*. The situation herein is substantially different. Unlike *Mooney* and *Rogers*, respondent does not provide compelling reasons for needing early release, and respondent does not make any claim that she attempted to communicate with the Board to negotiate a mutually beneficial and agreeable earlier release date than the required 60 days' notice. Instead, the record reflects that respondent clearly made a unilateral decision to resign with full knowledge that her notice did not satisfy the notice requirement.

Moreover, although respondent claims that she is “unfit” to teach middle school students, petitioner has presented nothing to suggest that she is not fully certified to teach the middle school classes to which she was assigned. It is apparent, though, that respondent both prefers to teach elementary students and that she is uncomfortable in a middle school environment. Respondent’s preferences, however, do not excuse her failure to act in a professional manner. Respondent was aware in the Spring of 2004 that she was going to be re-assigned from her elementary Special Education teaching position to the position of Special Education Teacher at the middle school for the 2004-2005 school year. Instead of declining to sign the teaching contract for the 2004-2005 school year or giving notice of her resignation by July 1, 2004, as required by her contract, respondent spent the summer trying to find another position. When she was unsuccessful, respondent gave her notice of resignation on September 2, 2004, one day after school began. It is evident from these actions that respondent was trying to keep her options open without any consideration of her responsibilities to the school district and her students. The Commissioner, therefore, concludes that respondent’s desire for an early release from her professional obligations was based solely on personal motives and convenience.

Additionally, the ALJ found that respondent’s actions of blocking any incoming email messages from the school district, not accepting telephone calls, and lying to the superintendent about having another job were mitigating factors because they demonstrated that respondent was under stress. The Commissioner disagrees. Unlike the ALJ, the Commissioner finds these actions only serve to support the conclusion that respondent acted unprofessionally. Moreover, respondent’s offer to surrender her teaching certificate for the 2004-2005 school year and the *de facto* suspension she imposed on herself by not seeking employment as a teacher since her September 2004 resignation demonstrate respondent’s attempt to control the situation for her personal convenience.

The Commissioner emphasizes 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\*\*\*\*” (*Bd. of Ed. of Penns Grove-Carneys Point Reg. Sch. Dist. v. Leinen*, 94 N.J.A.R.2d (EDU) 405, 407, citations omitted). By resigning from her teaching position with only five days notice on the second day of school, petitioner showed a blatant disregard for the middle school students assigned to her care and the District’s ability to find a suitable replacement on such short notice. Even if the Board were able to find a replacement quickly, however, such replacement would not negate respondent’s unprofessional conduct. (*See Aiken, supra*, at 2821)

For the reasons set forth above, therefore, the Commissioner agrees with the Board that, in resigning abruptly, respondent’s actions of putting her own self-interest above the interests of her students and her professional obligation to provide adequate notice to the Board dictate the maximum penalty. Accordingly, pursuant to N.J.S.A. 18A:26-10 and consistent with the penalty assessed in similar matters, respondent Mary Savino is deemed guilty of unprofessional conduct and her teaching certificate is hereby suspended for a period of one year, which period shall commence upon the date of this decision. (See, *e.g.*, *Montalbano, supra*; *Farran, supra*; and *Aiken, supra*.) A copy of this decision is being 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.\*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 30, 2005

Date of Mailing: August 30, 2005

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\* 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.*