

#113-05 (No OAL Decision)

IN THE MATTER OF THE SUSPENSION :

OF THE TEACHING CERTIFICATE OF :

MARY ELIZABETH FARRAN, SCHOOL : COMMISSIONER OF EDUCATION

DISTRICT OF THE CHATHAMS, : DECISION

MORRIS COUNTY. :

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 her resignation from her position as a teacher at Chatham 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 claimed she understood from a telephone conversation with the superintendent that the superintendent did not want her to return at the beginning of the school year to fulfill the 60 day notice obligation of her contract because it would be disruptive to her students, and further claimed that she was not told of the district's intent to apply for suspension of her certificate and therefore did not make arrangements to commute for the month of September in order to fulfill her contractual obligations. The superintendent denies that he told her that he did not want her to return to work.

Upon review of the parties' submissions, the Commissioner determined, pursuant to his discretionary authority under *N.J.A.C.* 6A:3-1.12, to grant summary decision to the Board, finding that respondent is guilty of unprofessional conduct in putting her own self-interest above the interests of her students and her professional obligation to provide adequate notice to the Board. In so determining, the Commissioner noted that even assuming, *arguendo*, that the content of the telephone conversation between respondent and the superintendent was as certified by respondent, which the superintendent strongly disputes, respondent's assertions are not material to a determination in this matter in that it cannot be concluded that respondent relied on this conversation in giving less than 60 days notice because such conversation occurred after respondent submitted her resignation letter giving less than the required notice. Therefore, pursuant to *N.J.S.A.* 18A:26-10, the Commissioner ordered that respondent's instructional certificate be suspended for a period of one year commencing as of the date of the decision, and forwarded the matter 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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For Petitioner, Nicholas Celso, III, Esq. (Schwartz, Simon, Edelstein, Celso & Kessler)

For Respondent, Gail Oxfeld Kanef, Esq. (Oxfeld Cohen, P.C.)

On November 22, 2004, the School District of the Chathams Board of Education (Board) filed before the Commissioner of Education a Certification of Service, said certification confirming that Mary Elizabeth Farran had been served with an Order to Show Cause (Order), signed by the Commissioner on November 17, 2004, 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 and *N.J.S.A.* 18A:28-8. On December 7, 2004, respondent filed a Letter Brief and Certification in Opposition to the Board's Order to Show Cause. On December 10, 2004, the Board filed a brief with Certification by Superintendent James F. O'Neill in response to respondent's submission. By letter of December 23, 2004, 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. The Board was, therefore, requested to

submit a Motion for Summary Decision and letter brief or memorandum of law addressing the appropriateness of summary decision in this matter and in support of its claim that respondent's teaching certificate should be suspended for her failure to give the requisite notice of her resignation, pursuant to *N.J.S.A. 18A:26-10*. Respondent was then accorded 20 days from receipt of the Board's submission to reply to same. On January 13, 2005, the Board filed a Motion for Summary Decision and on February 17, 2005, respondent filed a letter stating that she would rely on her brief and certification in opposition to the Order and the Board's accompanying affidavit.

BACKGROUND FACTS

The following facts are found to be undisputed, based on the record. On May 14, 2004, respondent signed a contract accepting employment with the School District of the Chathams Board of Education as a Language Arts Teacher for the 2004-05 school year. (Certification of Superintendent James F. O'Neill, No. 3, dated November 10, 2004, attached to the Order to Show Cause; Board's Exhibit A, Memorandum Agreement, attached to the Order to Show Cause; Respondent's Brief in Opposition to Order to Show Cause at 1; and Respondent's Certification No. 2, undated, attached to Respondent's Brief in Opposition to Show Cause) The employment contract included a provision that indicated that the contract could be terminated by either party with 60 days' written notice. (Certification of Superintendent James F. O'Neill, No. 4, dated November 10, 2004, attached to the Order to Show Cause and *Ibid.*)

By letter of July 28, 2004, respondent tendered her resignation from her teaching position. Respondent's letter states, in full:

I hope you are enjoying your summer. I am writing to you with both excitement and regret. Unfortunately I was unable to notify

you any sooner than now that I will not be able to return to Chatham Middle School this fall (sic). My family and I have recently completed construction on our first new home in Marshall's Creek, Pennsylvania. We were faced with many difficult decisions about this move and have come to the conclusion that it will be the best place for our growing family and our future.

I sincerely apologize for this late notification to you. I have truly enjoyed my years of teaching at Chatham Middle School. I have been so lucky to work with so many gifted professionals and great Chatham kids. The distance between our new home and the school and care for the baby would prove to be too much of a hardship for us. I will be happy to do what ever (sic) I can to help the school in any way possible.

Again, thank you for everything you have done for me in Chatham, (sic) I truly will miss the school and teaching. Best of luck for a successful 2004-2005 school year. (Board's Exhibit B, Letter from Respondent, dated July 28, 2005, attached to the Order to Show Cause)

Respondent did not report to school at the beginning of the 2004-05 school year.

(Certification of Superintendent James F. O'Neill, No. 7, dated November 10, 2004, attached to the Order to Show Cause and Board's Motion for Summary Decision at 2) Thus, the notice she provided was less than the required 60 days under her contract, *N.J.S.A. 18A:26-10* and *N.J.S.A. 18A:28-8*. (Board's Motion for Summary Decision at 2 and Respondent's Brief in Opposition to Order to Show Cause at 1) The Board did not consent to respondent's resignation on less than 60 days' notice. (Board's Motion for Summary Judgment at 2 and 4)

RESPONDENT'S POSITION

In her certification, respondent points out that she resigned her teaching position because she believed it would be difficult to commute from her new home in Pennsylvania and notes that she will not be teaching anywhere this school year. (Respondent's Certification No. 6) Respondent claims that, shortly after she submitted her resignation, she received a call from

Mr. O'Neill, the superintendent of schools, in which he indicated "that he did not believe it would be fair to the students in the district nor to the parents if I worked for the first few weeks of September, attended back to school night, and then left the district." (*Id.* at 5) Petitioner contends that it was her understanding from this conversation that the superintendent did not want her to return at the beginning of the school year for a few weeks to honor her obligation. (*Ibid.*) Moreover, petitioner avers that Mr. O'Neill never communicated to her that if she did not report to work to fulfill the 60-day notice obligation, he would apply to the Commissioner for suspension of her certificate. (*Id.* at 5) Because the District failed to put her on notice that it would be filing to have her certificate suspended, respondent contends that it is not appropriate to suspend her teaching certificate in that, if the superintendent had informed her of his intent, she "likely would have" made arrangements to commute for the first few weeks of school. (*Id.* at 5)

Additionally, if the District had wanted her to work the month of September, petitioner maintains, then Mr. O'Neill could have suggested it to her, but he never did so. (*Id.* at No. 7) Respondent also claims that Mr. O'Neill declined her offer to assist the new teaching staff member in the transition to his/her new position. (*Ibid.*)

Respondent points to *In the Matter of the Suspension of the Teaching Certificate of Vincent Montalbano*, decided by the Commissioner June 11, 2001, wherein the Administrative Law Judge (ALJ), citing to *Bd. of Educ. of the Black Horse Pike Regional School District v. Mooney*, 1984 *S.L.D.* 810, 814, adopted by Comm'r, 1984, *S.L.D.* 821, concludes that "neither the statute nor the regulations impose an automatic one year suspension," that "the Commissioner's authority to suspend a teaching certificate has been deemed discretionary," and that, "by using the term 'may' as opposed to 'shall' in the statute it appears the legislature did not intend the suspension of a teacher's certificate to be automatic, even if the Board's consent is not

obtained prior to the cessation of duties.” (Respondent’s Brief in Opposition to Order to Show Cause at 3) Additionally, respondent also points out that, in *Mooney, supra*, in rejecting the Board’s application to suspend Mooney’s teaching certificates, the Commissioner noted the full purpose of *N.J.S. A. 18A:26-10*, stating:

Not to prevent a teaching staff member from leaving his or her teaching position; rather it is to provide the local Board of Education with a reasonable opportunity to obtain a replacement and to acquaint the replacement with the background of the students and the duties and responsibilities of that particular teaching position. (*Id.* at 3-4)

Moreover, in evaluating the appropriateness of suspending Mooney’s certificate, the ALJ noted that Mooney: 1) provided compelling reasons for needing the early release; 2) immediately notified the Board and assisted in the development of a program for the class through the end of the year; 3) met with the successor teacher to discuss grades and lesson plans; 4) did not seek an early release to obtain employment elsewhere in New Jersey; and 5) had an above average annual performance evaluation for the final year of employment. (*Id.* at 4) Respondent argues that, based on the factors set forth in *Mooney*, her certificate should not be suspended in that: 1) she did not resign to accept employment elsewhere and, in fact, will not be teaching in the current school year; 2) the District found a replacement for her; 3) she offered any assistance she could provide, but such assistance was never requested; 4) her evaluations are excellent; and 5) the District never advised her that it would seek to suspend her certificate. (*Ibid.*)

Respondent further maintains that, unlike *Montalbano, supra*, where the Board’s resolution accepting Montalbano’s resignation made clear that the early resignation would not be accepted, in this matter, respondent was never notified that her early resignation would not be accepted, and, to the contrary, the superintendent led her to believe that he did not want her to

work in September. (*Id.* at 5) Moreover, respondent submits, if there was difficulty in hiring a replacement for her, she was never contacted and asked to work. (*Ibid.*) In conclusion, respondent contends that, given the mitigating factors in this matter as described in *Mooney* and given the Board's failure to warn her that the within application would be filed if she failed to report to work, the Commissioner should exercise his discretionary authority and deny the Board's application to suspend her teaching certificate. (*Ibid.*)

BOARD'S POSITION

Initially, the Board, relying on *Brill v. Guardian Life Ins. Co. of America*, 142 N.J. 520 (1995), submits that the within matter is ripe for summary judgment in that there are no material facts in dispute and the Board is entitled to prevail as a matter of law. In support thereof, the Board argues that, “[u]nder N.J.S.A. 18A:28-8 and N.J.S.A. 18A:26-10, resignation on less than 60 days’ notice without consent from the local board of education to a lesser notice period, constitutes unbecoming conduct *per se.*” (Board’s Brief in Support of Motion for Summary Decision at 3-4) In that it is undisputed that respondent did not provide 60 days’ notice, nor did the Board approve respondent’s early release from her teaching duties, the Board asserts that respondent has violated the applicable statutes and is guilty of unprofessional conduct, warranting the penalty of a one year-suspension of her teaching certificate. (*Ibid.*)

In arguing the appropriateness of a one-year suspension, the Board points to *Bd. of Ed. of Penns Grove-Carneys Point Reg. Sch. Dist. v. Leinen*, 94 N.J.A.R.2d (EDU) 405, 407 wherein the ALJ cited numerous cases in observing that “[m]ost 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.” (*Id.* at 5) The Board

contends that the within matter is analogous to *East Amwell Twp. Bd. of Ed v. Acken*, 86 *S.L.D.* 2816, and *Montalbano, supra*. (*Id.* at 6) In *Acken*, the Commissioner ordered a one-year suspension of Acken's teaching certificate, finding that the teacher, who had moved to Florida during the summer and had only given 11 days' notice prior to the opening of school, failed to give adequate notice of her resignation for purely personal reasons related to her uncertain future, given that her husband was unemployed and her house in New Jersey had not sold. (*Id.* at 5) In *Montalbano*, the Commissioner also ordered a one-year suspension of Montalbano's teaching certificate, finding that the teacher, who had given 12 days' notice of his resignation, failed to give adequate notice of his resignation for purely personal reasons, *e.g.*, his securing of alternate employment as a police officer in New Jersey. (*Id.* at 6) The Board posits that the respondent in this matter, as in *Acken* and *Montalbano*, failed to give adequate notice of her resignation for purely personal reasons, *e.g.*, allowing the maximum time for the completion of her home in Pennsylvania before advising the Board of her resignation. (*Ibid.*)

The Board also submits that there are no mitigating circumstances in this matter which would warrant a penalty of less than a one-year suspension of respondent's teaching certificate. (*Id.* at 7) In support of this contention, the Board avers that the Commissioner rarely declines to impose a one-year suspension in matters of this type and cites three examples where a lesser penalty was imposed due to mitigating factors, claiming that none of these factors is present in the instant matter. (*Ibid.*) In this regard, in *IMO Suspension of the Teaching Certificate of Rogers*, 1989 *S.L.D.* 1962, adopted by Comm'r, 1989 *S.L.D.* 1968, the Board points out that the Commissioner imposed a three-month suspension where the teacher failed to give adequate notice of resignation, but demonstrated a "noble" purpose in resigning in order to take a position working with the severely handicapped students in a State Development Center.

(Id. at 7-8) In *IMO Suspension of the Teaching Certificate of Robert J. Burgess, Sch. Dist. Of Twp. of Clinton*, 1983 *S.L.D.* 183, adopted by Comm’r, 1989 *S.L.D.* 1968, the Board notes that the Commissioner declined to impose a suspension of any length because the board in that matter made promises about a possible early release date, but did not fulfill its promises, a situation not analogous to this matter, the Board asserts, because the Board herein made no promises of any kind to respondent. (*Ibid.*) Additionally, in *Mooney, supra*, the Board claims that the Commissioner declined to impose a suspension in that case because the employee had gone to extraordinary lengths to insure her successor’s smooth transition. (*Id.* at 7) In the instant matter, the Board asserts, respondent “did not do a single thing to assist the Board.” (*Id.* at 8) Thus, the Board asks the Commissioner to grant its Motion for Summary Decision and impose a one-year suspension of respondent’s teaching certificate, commencing no earlier than the date of the Commissioner’s decision. (*Ibid.*)

Additionally, a Supplemental Affidavit of Superintendent of Schools James F. O’Neill was submitted by the Board to address the portion of respondent’s certification relating to a telephone conversation that occurred between respondent and Superintendent O’Neill subsequent to respondent’s resignation, certifying, in pertinent part:

* * * * *

2. As set forth in Respondent’s Certification, I contacted her by telephone shortly after she tendered her resignation letter. However, Respondent’s Certification does not accurately reflect the substance of our telephone conversation.
3. During our telephone conversation, I advised Respondent that her abrupt resignation was putting the District in a bad position. Her response to me was that she simply could not fulfill her obligation to the District. She stated that she had driven from her new home in Pennsylvania once or twice and that she just couldn’t do it. She also mentioned having child care issues.

4. I told her that I could file an application with the Commissioner to suspend her certificate for failing to give appropriate notice. Her response was that she hoped I wouldn't do that. Respondent clearly was aware of my concerns and the possibility that her certificates could be suspended. Nevertheless, she never came back to work.
5. During my telephone conversation with Respondent, I never told her that I did not want her to return to work.
6. At no point during our telephone conversation did Respondent offer to assist the District in any way.
(Supplemental Affidavit of James F. O'Neill at 1-2)

COMMISSIONER'S DETERMINATION

Upon a thorough review of the parties' submissions, the Commissioner has determined, pursuant to his discretionary authority under *N.J.A.C.* 6A:3-1.12, to grant summary decision to the Board, finding that respondent is guilty of unprofessional conduct and suspending her teaching certification for a period of one year. Pursuant to *N.J.A.C.* 1:1-12.5(b) and *Contini v. Bd. of Educ. of Newark*, 286 *N.J. Super.* 106, 121-122 (App. Div. 1995) (*citing Brill, supra*), summary decision may be granted in an administrative proceeding if there is no genuine issue of material fact in dispute and the moving party is entitled to prevail as a matter of law.

In this regard, the Commissioner finds that the relevant and material facts in this matter are those stated, *supra*, as "Background Facts." (*See Collingswood Borough Board of Education v. Edward J. Cashel*, 1988 *S.L.D.* 898.) These facts are not disputed. Notwithstanding respondent's claims that the superintendent indicated to her in a telephone conversation occurring subsequent to her submission of a resignation letter that: 1) he didn't want her to return to her teaching duties at the beginning of the school year; 2) he failed to inform her that he would apply to suspend her certificate if she did not return to work to fulfill

her 60-day notice obligation; and 3) he declined her offer to assist her successor's transition, the Commissioner finds these assertions are not material to a determination in this matter. Even assuming, *arguendo*, that the content of the telephone conversation between respondent and Mr. O'Neill was as certified by respondent, which Mr. O'Neill strongly disputes, such conversation occurred *after* respondent submitted her resignation letter in which she gave less than the required 60 days' notice. Thus, it cannot be concluded that respondent relied on this conversation when she failed to provide less than 60 days' notice in resigning from her teaching position in the District. Moreover, respondent acknowledges that she was aware of the 60-day notice requirement, and there is nothing in the applicable statutes that requires a District to notify a teacher of its intent to seek suspension of the teacher's certification if the 60-day notice requirement is not fulfilled.

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 admits that she was aware of her obligation to give 60 days' notice of her resignation. Accordingly, the Commissioner finds 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*. Moreover, the Commissioner is unable to conclude that there are factors which would mitigate the imposition of a one-year suspension of respondent's teaching certificate. In so concluding, the Commissioner rejects respondent's claim that her failure to give the required notice is mitigated by factors similar to those applied in *Mooney*. The situation herein is substantially different. Unlike *Mooney*, respondent does not provide compelling reasons for needing early release. Instead, respondent's desire for an early release from her professional obligations is based solely on personal convenience. Additionally, 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, but, instead, respondent clearly made a unilateral decision to resign with full knowledge that her notice did not satisfy the notice requirement. Moreover, the actions taken by respondent to insure that her successor made a smooth transition were, at best, minimal. In the telephone conversation between the superintendent and respondent where it is undisputed that this issue was discussed, although the content of that conversation is disputed, both parties acknowledge that it was the superintendent, not respondent, who initiated the contact.

Additionally, although 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), 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 Commissioner, therefore, 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*, Mary Elizabeth Farran is, therefore, 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. 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.*

COMMISSIONER OF EDUCATION

Date of Decision: March 29, 2005

Date of Mailing: March 29, 2005

* 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.*