

IN THE MATTER OF THE SUSPENSION :

OF THE TEACHING CERTIFICATE OF :

COMMISSIONER OF EDUCATION

THOMAS FESOLOWICH, TERA NOVA :

DECISION

GROUP T/A CHANCELLOR :

ACADEMY II, MORRIS COUNTY. :

_____ :

SYNOPSIS

Petitioner 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 his position as a physical education teacher at Chancellor Academy II, a private school for the disabled. Respondent contends that petitioner: did not offer him a contract renewal at the time other staff members were renewed; was critical of his work performance in a meeting on May 18 which respondent had requested in order to clarify his work status for the following academic year; and terminated him two days after this hostile meeting by signaling that he should hand over his keys.

The ALJ found, *inter alia*, that: the primary issue in this case is whether the respondent was terminated or left voluntarily; the testimony of the witness for the petitioner was less than straightforward and decisive, and therefore lacking in credibility; the witness for the respondent was credible; and the petitioner failed to sustain the burden of proof in this matter. Accordingly, the ALJ concluded that the petition should be dismissed with prejudice.

Upon a thorough and independent review, the Commissioner concurs with the determination of the ALJ that this matter is appropriately dismissed. In so doing, she emphasizes that the language of the controlling statute is clear and explicit, and requires that both of the requisite conditions for a cause of action to arise under its terms must be met, ie.: a teaching staff member has ceased to perform his duties before the expiration of the term of his employment, **and** the board has not consented to the teaching staff's action. The Commissioner agrees that petitioner has failed to sustain its burden of establishing that respondent is guilty of unprofessional conduct so as to justify the Commissioner's suspension of his teaching certificate for a period not exceeding one year. Accordingly, the Initial Decision of the OAL is adopted, and the petition is dismissed.

<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>

September 14, 2006

OAL DKT. NO. EDU 11608-05
AGENCY DKT NO. 205-8/05

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF :
THOMAS FESOLOWICH, TERA NOVA :
GROUP T/A CHANCELLOR :
ACADEMY II, MORRIS COUNTY. :
_____ :

COMMISSIONER OF EDUCATION
DECISION

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon an independent and careful review of the record in this matter, the Commissioner concurs with the determination of the Administrative Law Judge (ALJ) that this matter is appropriately dismissed. In so determining, the Commissioner finds that the language of the controlling statute in this matter, *N.J.S.A.* 18A:26-10, is clear and explicit as to the requisite conditions for a cause of action to arise under its terms, namely, 1) a teaching staff member ceases to perform his duties before the expiration of the term of his employment, **and** 2) the board does not consent to the teaching staff member's action. According due deference to the ALJ credibility determinations,¹ the Commissioner agrees that petitioner has failed to sustain its burden of establishing that Mr. Fesolowich is guilty of unprofessional conduct pursuant to this

¹ The Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." *N.J.S.A.* 52:14B-10(c). The record before the Commissioner provides no cause for modification or rejection in this regard.

provision so as to justify the Commissioner's suspension of his teaching certificate for a period not exceeding one-year.

Accordingly, the recommended Initial Decision is adopted for the reasons clearly stated therein and the instant matter is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 14, 2006

Date of Mailing: September 14, 2006

² This decision 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.*