



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 12810-14

AGENCY DKT. NO. 281-9/14

**IN THE MATTER OF THE SUSPENSION OF THE
TEACHING CERTIFICATE OF JACQUELINE BORDON,
SCHOOL DISTRICT OF THE TOWNSHIP
OF EDISON, MIDDLESEX COUNTY.**

Ari Schneider, Esq., for petitioner, Edison Board of Education (The Busch Law Group, attorneys)

Liam Jones, Esq., for respondent, Jacqueline Bordon (Guillermo Arango, attorneys)

Record Closed: June 9, 2015

Decided: June 18, 2015

BEFORE ELLEN S. BASS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Board of Education of the Township of Edison (the Board), seeks an order suspending respondent's teaching certificate for a period of one year contending that she resigned from her teaching position with inadequate notice. Respondent, Jacqueline Bordon, replies that she resigned only because an injury

prevented her from performing the duties required by her teaching assignment for the 2014-2015 school year.

On September 16, 2014, at the request of the Board, the Commissioner of Education (the Commissioner) entered an Order directing Bordon to show cause why her teaching certificate should not be suspended for unprofessional conduct, pursuant to N.J.S.A. 18A:26-10. Bordon filed an answer on September 17, 2014. On October 2, 2014, the Commissioner transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested case.

A hearing was conducted on June 9, 2015, at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The underlying facts are fairly straightforward, and generally uncontroverted. Bordon was employed by the Board as a Teacher of World Languages, commencing in September 2012. She was re-employed via contract for the 2013-2014 school year. On May 8, 2014, Bordon signed a contract employing her for the 2014-2015 school year as a Teacher of Spanish, to commence on September 1, 2014, and to conclude on June 30, 2015. That contract contained the following language:

It is hereby agreed by the parties hereto that this contract may at any time be terminated by either party giving to the other sixty days' notice in writing of intention to terminate same.

[P-1.]

On May 30, 2015, while on a trip in Pennsylvania with her husband, Bordon suffered a debilitating injury. She was chased by goats, and fell trying to flee, rupturing her Achilles tendon in the process. Medical records bear out that her injury left her unable to drive. She was seen in the Hackettstown Regional Medical Center emergency room on June 1, 2014, where an MRI confirmed her diagnosis. A doctor's note indicates that she should not drive or climb stairs until cleared by a physician. In September 2014, Bordon began to treat with Dr. Scott Stoll, who advised via letter

dated June 3, 2015, that “[b]ased upon the complete disability with inability to use the right leg Jacqueline underwent a course of platelet rich plasma injection on 10/16/14 followed by Graston therapy” (R-11.) Bordon’s condition slowly improved, and she was cleared to begin driving on March 4, 2015.

At the time of her injury, there were several weeks left in the 2013-2014 school year, and Bordon completed her duties. Her husband drove her to school and back home; she testified that the trip took about one hour and fifteen minutes each way. Additionally, Bordon had committed to teach a summer ESL course. She kept that commitment as well, with her husband driving her daily to Edison. Bordon urged that she loved working in Edison; loved her students; and was passionate about her involvement with several student clubs. But the record is clear that even before her injury, Bordon had begun to explore other employment opportunities. She admitted that she had made application to a charter school in Pennsylvania, Lehigh Valley Charter High School of the Arts, in or about February, 2014. She likewise admitted that she had made application to at least one other school prior to her injury. Importantly, however, I heard no evidence that would lead me to find that, had Bordon been offered alternative employment prior to her injury, she would have necessarily accepted it or would have left Edison without notice.

Bordon received her teaching schedule for the 2014-2015 school year in early August and immediately became concerned that her health would preclude her from fulfilling her professional responsibilities. She was slated to teach four classes at the high school, and one class at the middle school. Bordon would have to navigate several classrooms at the high school, and then travel by car to the middle school. She noted that her direct supervisor, Virginia Santoro, was well aware of her physical limitations as she had observed Bordon finish out the prior school year from a wheelchair. Bordon felt helpless and uncertain how to proceed. She testified that suddenly a solution presented itself, in the form of an offer of employment from Lehigh Valley Charter, where she had applied for a teaching position earlier in the year. This school was only twenty-five minutes from her home. Bordon conducted a demonstration lesson at the school on August 13, 2014, and signed a contract of employment on August 25, 2014. Although the contract employs her effective August

15, 2014, she did not start at Lehigh Valley until August 28, 2014. It is noteworthy that Bordon took a significant cut in pay. Her salary in Edison was to have been \$61,282; her contract with Lehigh Valley compensated her at the rate of \$41,568 per annum.

Bordon resigned from her employment in Edison via letter to the Superintendent of Schools dated August 18, 2014. She does not mention her medical issues, stating simply, "I apologize for not being able to give more notice. However, I regret that, due to circumstances beyond my control, I need to resign right away." On August 19, 2014, Bordon forwarded a copy of her letter via email to Santoro. She wrote, "I'm sorry for any inconvenience this may cause, but after thinking and praying for a while, this is what I need to do for my health." The email was forwarded minutes later to Peter Pitucco, the Edison Director of Human Resources.

Pitucco immediately emailed Bordon and reminded her that her contract requires that she provide sixty day's notice of resignation. He indicated that he expected that her last day of employment would be October 17, 2014, and he asked Bordon to confirm that she would be fulfilling her contractual obligations. Bordon replied the next day, as follows, "Mr. Pituco [sic] thank you for the information. Unfortunately, I will not be able to report to work on 9/2/14 and comply with the contract requirement of 60 days. I can't drive and medical report will follow by mail." At its meeting of August 25, 2014, the Board accepted Bordon's resignation effective August 19, 2014. It is uncontroverted that the Board, through Pitucco or Santoro, made no effort to further discuss Bordon's illness with her. Indeed, Pitucco was quite adamant that if an employee needs a leave or other accommodation, it is the employee's obligation to broach the subject with him.

The parties stipulated that Bordon had signed a form confirming receipt and review of Board policies, including those pertaining to medical leaves. She also had a copy of the Collective Bargaining Agreement between the local Teacher's Association and the Board, which likewise addresses employee rights. But Bordon nonetheless urged that she was unaware that she had any option other than to abruptly resign, and admitted to having never reviewed the relevant Board policies. Bordon contended that she communicated via email with Santoro about adjusting her schedule to make a return to Edison feasible, but Santoro was unhelpful. Bordon's testimony in this regard

was not entirely credible. A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Bordon's testimony was a bit evasive, nonresponsive, and inconsistent. Indeed, the emails with Santoro were not produced, and despite inquiry by me, no explanation for their nonproduction was offered. Bordon urged that she had attached the email exchange with Santoro to the answer she filed with the Department; but when I shared the answer with her, she was forced to admit that they had not been attached.

Moreover, the contention that she asked to explore other options is inconsistent with the tenor of Bordon's letter of resignation, which is vague about her reasons for leaving, and unequivocal in its expression of her intent to leave at once. Bordon does not invite a discussion of options that would permit her to remain in Edison, either for the whole year, or long enough to secure a suitable replacement. I **FIND** that Bordon was struggling to commute to Edison each day, and that once she was injured continuing to do so presented a terrible hardship to her and her family. I also **FIND** that once she was offered employment closer to home, Bordon promptly accepted that employment; viewed it as the best solution to her problem; and made no effort to work out a compromise of any sort that would allow her to fulfill her contractual obligations. Indeed, the job at Lehigh Valley so better met her needs at the time that she was willing to take a significant cut in pay to work there.

But there is blame to go all around. Bordon forwards her letter of resignation to Santoro and cites her health as the reason for her abrupt departure. Bordon credibly testified that Santoro knew of her injury, and had witnessed her confinement to a wheelchair. Bordon's email notes that she has thought and "prayed" for a while, a clear indication to Santoro that Bordon had struggled with a solution to her concerns. Santoro simply forwards the email on to Pitucco; neither of them inquire further about Bordon's health; nor do they invite a conversation about helping her to remain in Edison. If there are emails that reflect anything other than a somewhat cold and callous

response to Bordon's resignation due to health concerns, none were produced by the Board.¹

Pitucco credibly described the turmoil that is created by an abrupt departure by a teacher. Instruction began in several classes with substitute teachers; elsewhere classes had to be combined with a resultant increase in class size. Several teachers took on a section of Bordon's classes in lieu of taking their preparation period. A new textbook was in place, and the teachers had to quickly familiarize themselves with it. Gradebooks for the four classes at the high school level had to be reassigned and this delayed the dissemination of information to parents about student progress. Finding a suitable replacement that late in the school year was difficult, and there was a limited applicant pool. Someone was hired on September 18, 2014, but because she had to give notice to her district, she could not start in Edison until December 2014. The change in teacher at that point in the school year again was disruptive to the students.

CONCLUSIONS OF LAW

N.J.S.A. 18A:26-10 provides that "[a]ny 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." See also N.J.A.C. 6A:9B-4.9. The Commissioner has held that the central 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-Carneys Point Bd. of Educ. v. Leinen, 94 N.J.A.R.2d (EDU) 405, 407.

The decision to suspend a teaching certificate pursuant to N.J.S.A. 18A:26-10 is discretionary and the Commissioner has historically evaluated all circumstances specific to an individual case. As a general rule, with rare exception, the Commissioner has

¹ The Board repeatedly urged that Bordon should have requested a leave of absence. This argument is bit disingenuous, however. Would not a leave of absence have also left the Board scrambling in September for a replacement teacher?

imposed suspensions for the one-year maximum period. Black Horse Pike Reg'l Sch. Dist. v. Mooney, 1984 S.L.D. 821; In re Suspension of the Teaching Certificate of Capshaw, EDU 12318-06, Initial Decision (April 30, 2007), modified, Comm'r (June 12, 2007), <<http://njlaw.rutgers.edu/collections/oal/>>; E. Amwell Twp. Bd. of Educ. v. Acken, 1986 S.L.D. 2803. But, the Commissioner has declined to order a full-year suspension when presented with compelling mitigating circumstances. Black Horse Pike Reg'l, supra, 1984 S.L.D. 821.

Here, Bordon did walk off the job, and did so to take a position at another school. She did not do so because she was going to earn more money; rather, because the new position resolved a personal crisis for her. Once Bordon was injured, she did initially conduct herself with professionalism. She could have immediately called in sick, but instead, finished the year, and even kept her promise to provide instruction during the summer. Nonetheless, her abrupt departure in August was "unprofessional conduct" within the meaning of N.J.S.A. 18A:26-10. Clearly, her conduct impaired the quality of instruction for Edison students. She could have and should have, at a minimum, explored solutions to her situation that might have accommodated both her needs and those of her students in Edison, and she did not. But I likewise **CONCLUDE** that the Board, through its administration, had a concomitant obligation to discuss accommodations with her, and to talk through a difficult situation with a previously reliable employee who was struggling with a debilitating injury and was likely overwrought under the circumstances. I **CONCLUDE** that the Board, through its administration, should have showed Bordon a modicum of compassion.

In determining an appropriate penalty, the Commissioner's decision in In the Matter of the Suspension of the Teaching Certificate of Rogers, 1989 S.L.D. 1962, is instructive. There, a certificate was suspended for only three months, in part because fortuitously, the board had located a replacement within a week. But the judge noted that her paramount consideration for reducing the penalty was the employee's motivation for his early departure; there it was to work with severely disabled students in an environment where it was difficult to secure and keep talented staff.

Bordon's conduct was not motivated by personal gain, but rather by a very real medical crisis. For this reason, and because the Board, through its administration, made no effort to acknowledge her medical concerns, or offer to discuss any constructive solution, I **CONCLUDE** that the penalty should likewise be reduced here to a three-month suspension.

ORDER


Based on the foregoing, it is **ORDERED** that Bordon's teaching certificate be suspended for a period of three months.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

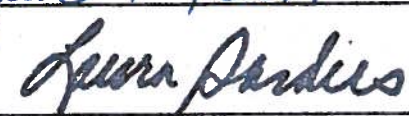
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 18, 2015
DATE



ELLEN S. BASS, ALJ

Date Received at Agency:

June 18, 2015


Date Mailed to Parties: June 19, 2015

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For Petitioner:

Peter Pitucco

For Respondent:

Jacqueline Bordon

Exhibits

For Petitioner:

- P-1 Employment Contract
- P-2 Letter dated August 18, 2014
- P-3 Email exchange
- P-4 Letter dated August 26, 2014
- P-5 Memorandum dated December 2, 2014
- P-6 Excerpt from Board minutes
- P-7 Not admitted
- P-8 Not admitted

For Respondent:

- R-1 Medical Records
- R-2 MRI Report
- R-3 Not admitted
- R-4 Not admitted
- R-5 Not admitted
- R-6 Medical reports

R-7 Not admitted

R-8 Not admitted

R-9 Not admitted

R-10 Employment Contract

R-11 Letter dated June 3, 2015

