

IN THE MATTER OF THE SUSPENSION :

OF THE CERTIFICATE(S) OF : COMMISSIONER OF EDUCATION

CHAE HYUK IM, SCHOOL DISTRICT : DECISION

OF THE TOWNSHIP OF WAYNE, :

PASSAIC COUNTY. :

SYNOPSIS

In December 2014, the Commissioner of Education issued an Order to Show Cause requiring respondent to show cause why an order should not be entered suspending his teaching certificate for unprofessional conduct pursuant to *N.J.S.A. 18A:28-8* for resigning his position without giving the required 60 day notice. The respondent contended that he resigned because he was appointed as an FBI agent and had to begin his training immediately. Respondent further asserted that he had requested a leave of absence, but the Board denied his request; he therefore had no alternative but to resign immediately. The Board sought an order suspending Im’s teaching certificate for one year, and filed a motion for summary decision.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:28-8* provides that any tenured teaching staff member who wishes to leave their position “shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve of a release on shorter notice”; the statute further provides that any tenured teacher who fails to give such notice “shall be deemed guilty of unprofessional conduct and the commissioner may suspend his certificate for not more than one year.”; the wording of the statute is clear, and does not allow the Commissioner discretion in finding “unprofessional conduct”; there is, however, discretion allowed as to what penalty is imposed; the purpose of *N.J.S.A. 18A:28-8* is to protect students from unnecessary disruption of their education caused by the teachers leaving their posts on short notice; there are no disputed material facts as to the issue of unprofessional conduct in the instant matter, and the Board is entitled to judgment as a matter of law. The ALJ concluded that the respondent is guilty of unprofessional conduct, but on the issue of the penalty, there are questions of fact still outstanding that require testimony as to mitigation. Accordingly, the ALJ granted partial summary decision to the Board on the issue of unprofessional conduct, and ordered that the length of the respondent’s suspension be determined following additional testimony at a prospective hearing.

Upon comprehensive review, the Commissioner concurred with the ALJ that the respondent is guilty of unprofessional conduct pursuant to *N.J.S.A. 18A:28-8*. Accordingly, the Commissioner adopted the ALJ’s recommended Order on Partial Summary Decision, and ordered the matter to continue at the OAL for a hearing to determine if the respondent’s certificate should be suspended for failure to give the required notice.

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.
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The record of this matter and the Partial Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the respondent, Chae Hyuk Im, and the Wayne Board of Education's reply thereto.¹ This matter involves a determination as to whether the respondent's certificate(s) should be suspended pursuant to *N.J.S.A. 18A:28-8* for his failure to provide the Board with the requisite notice prior to resigning from his teaching position. The Administrative Law Judge (ALJ) issued a Partial Order on Summary Decision wherein she found that the respondent is guilty of unprofessional conduct for failing to provide the Board with the 60-days notice required under *N.J.S.A. 18A:28-8* when he voluntarily choose to pursue a career with the Federal Bureau of Investigation (FBI). The ALJ further found that since there are facts in dispute with respect to mitigation, a hearing is required before a penalty determination can be made.

Upon a comprehensive review of this matter, the Commissioner concurs with the ALJ – for the reasons outlined in the Partial Initial Decision – that the respondent is guilty of unprofessional conduct pursuant to *N.J.S.A. 18A:28-8*. Under *N.J.S.A. 18A:28-8*,

¹ Before the ALJ submitted the Partial Order on Summary Decision to the Commissioner for review under *N.J.A.C. 1:1-12.5(e)*, the respondent filed a request for interlocutory review of the ALJ's Order. The request for interlocutory review was subsequently denied on May 27, 2016. Thereafter, the parties both requested that their respective papers – which were submitted in the context of the request for interlocutory review – be considered as respondent's exceptions and the Board's reply thereto.

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 of a 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 a period not exceeding one year. [*N.J.S.A.* 18A:28-8 (emphasis added); *See also N.J.S.A.* 18A:26-10]

Despite the respondent's arguments to the contrary, the Commissioner agrees with the ALJ that the wording in *N.J.S.A.* 18A:28-8 is quite clear: when the requisite notice is not provided, the employee "shall" be deemed guilty of unprofessional conduct. A plain reading of the statute provides that the Commissioner is not afforded any discretion on the finding of unprofessional conduct when 60 days notice is not provided. In contrast, the use of the term "may" in connection with the penalty establishes that there is undoubtedly discretion afforded to the Commissioner to determine whether the lack of requisite notice warrants a suspension of the employee's certificate. The Commissioner is not persuaded that the cases relied on by the respondent support his assertion that the Commissioner has discretion to decide whether a teaching staff member is guilty of unprofessional conduct when it is undisputed that the employee did not provide the requisite notice under *N.J.S.A.* 18A:28-8. Instead, the cases cited by the respondent stand for the proposition that mitigating factors may exist which may warrant the suspension of a certificate for less than one year or even no suspension at all. *See, Board of Education of the Township of Clifton, Hunterdon County v. Robert Burgess*, 1983 *S.L.D.* 183; *Board of Education of the Black Horse Pike Regional School District, Camden County v. Janice Mooney*, 1984 *S.L.D.* 810, adopted 1984 *S.L.D.* 821.

The Commissioner also finds that the ALJ properly decided that the respondent is guilty of unprofessional conduct on a motion for summary decision.² The respondent maintains that the ALJ erroneously issued a Partial Order on Summary Decision because it effectively barred him from presenting evidence at a hearing with regard to the impact that a finding of "unprofessional

² The Commissioner also agrees with the ALJ's determination – for the reasons stated in the Partial Initial Decision – that the justification of "necessity" does not dictate a different result in this case.

conduct” will have on his future ability to testify in court in the course of his employment as an FBI agent. Respondent’s argument is misguided because there is no genuine issue of fact as to the respondent’s failure to provide the Board with the requisite notice; the material facts in dispute only pertain to the mitigating circumstances that could impact the potential suspension of his certificate. *See, In the Matter of the Suspension of the Certificate of Jacqueline Bordon, School District of the Township of Edison, Middlesex County*, EDU 12810-14, Initial Decision (June 18, 2015), adopted Commissioner Decision No. 247-15, decided July 29, 2015 (The teaching staff member’s abrupt departure was “unprofessional conduct” within the meaning of *N.J.S.A. 18A:26-10*; however, based on the mitigating circumstances only a three-month certificate suspension was warranted). Notwithstanding the finding of unprofessional conduct, the respondent will be afforded a hearing to determine whether a certificate suspension is appropriate in this case. To that end, the respondent will be given a full opportunity to present evidence of mitigation, including the fact that he left his teaching post to take a job with the FBI.

Accordingly, the recommended Order of the OAL is adopted for the reasons expressed therein. This matter shall continue at the OAL for a hearing to determine if the respondent’s certificate should be suspended for failure to give the 60 days notice required by *N.J.S.A. 18A:28-8*.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: June 30, 2016

Date of Mailing: June 30, 2016

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).