

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificates of Craig Smith,
Board of Trustees of the Marion P. Thomas
Charter School, Essex County.

Synopsis

The petitioning Board sought the suspension of the teaching certificates of respondent – a non-tenured Science teacher – following his resignation without providing the notice required under *N.J.S.A. 18A:28-8*. Respondent submitted a letter on September 10, 2019, informing the Board that he intended to resign from his position sixty days from the date of the letter. The next day, the school sent respondent a letter advising that pursuant to his contract he would be released from the contract upon completion of the sixty days, on November 10, 2019, or sooner if the school was able to find a replacement. Subsequently, three weeks prior to that date – on October 19, 2019 – respondent stopped coming to work and abandoned his position. Respondent contended that there were mitigating circumstances which compelled him to resign due to the difficult work environment.

The ALJ found, *inter alia*, that: respondent intentionally and deliberately failed to provide the requisite sixty days' notice prior to resigning and abandoning his position; justifications offered for respondent's failure to complete his contractual obligations were without merit as respondent made no effort to provide evidence of mitigating circumstances or compelling reasons for his actions, aside from making unsupported personal attacks on the school administration; respondent made no effort to assure a smooth transition for the school, thereby negatively impacting the education of 120 seventh and eighth graders; respondent's certificates should be suspended pursuant to *N.J.S.A. 18A:28-8* because he resigned without providing the Board with the requisite statutory notice; and a one-year suspension is the appropriate penalty for such unprofessional conduct. Accordingly, the ALJ ordered that respondent's certificates be suspended for a period of one year.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion for the reasons outlined in the Initial Decision. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter. Respondent's certificates were suspended for one year from the filing date of this decision, a copy of which has been forwarded to the State Board of Examiners for implementation of the suspension.

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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Charter School, Essex County.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by respondent Craig Smith pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered.¹

The Board filed an Order to Show Cause seeking the suspension of respondent's teaching certificates for resigning from his teaching position without providing the required 60-day notice. Following a hearing, the Administrative Law Judge (ALJ) concluded that respondent failed to provide the required notice and also failed to present any mitigating circumstances or compelling reasons justifying his actions, other than making unsupported personal attacks on the school administration. Accordingly, the ALJ ordered that respondent's teaching certificates be suspended for one year.

In his exceptions, respondent reiterates arguments made below, indicating that he was fearful that there was an intentional attempt to discredit and disgrace him through complaints from and interactions with students, parents, and the school's administration.

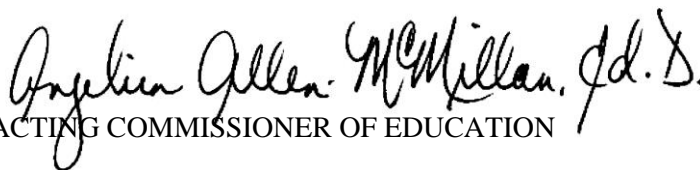
Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons outlined in the Initial Decision – that the respondent's certificates should be suspended pursuant to *N.J.S.A. 18A:28-8* because he resigned without providing the Board with the requisite statutory notice. The Commissioner is also in accord with the ALJ's determination that a one-year suspension of the respondent's certificates is the appropriate penalty. The Commissioner does not find

¹ The Board did not file a reply to petitioner's exceptions.

respondent's exceptions persuasive, as they merely reiterate arguments that the ALJ, who was in the best position to assess all of the testimony, found not to be credible.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The respondent's teaching certificates are suspended for a period of one year from the filing date of this decision, a copy of which shall be forwarded to the State Board of Examiners for implementation of the suspension.

IT IS SO ORDERED.²


ANGELICA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2021
Date of Mailing: July 29, 2021

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 09789-20

AGENCY DKT. NO. 45-2/20

**IN THE MATTER OF THE SUSPENSION
OF THE TEACHING CERTIFICATES OF
CRAIG SMITH, BOARD OF TRUSTEES
OF THE MARION P. THOMAS
CHARTER SCHOOL.**

Thomas O. Johnston, Esq., for petitioner (Johnston Law Firm, LLC)

Craig Smith, respondent, pro se

Record Closed: May 13, 2021

Decided: June 9, 2021

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Board of Trustees of the Marion P. Thomas Charter School, (petitioner or School) seeks the suspension of the teaching certificates of Craig Smith, (respondent or Smith) for his failure to provide a 60-day notice of resignation to the District. Respondent contends there were mitigating circumstances and that he was compelled to resign due to the difficult work environment. On or about December 4, 2019, the Board filed with the Commissioner of Education of the State of New Jersey

(Commissioner) a verified application for an Order to Show Cause (OTSC) as to why the teaching certificates of respondent Smith should not be suspended, contending that he resigned from his teaching position with inadequate notice. The Order to Show Cause was issued by the Commissioner on December 13, 2019, and was personally served on respondent on February 17, 2020. The Commissioner transmitted the case to the Office of Administrative Law (OAL) for hearing, where it was filed on October 9, 2020. A hearing was held via “ZOOM” recording on April 21, 2021. The record was left open for receipt of briefs until May 13, 2021 at which time the record closed.

FINDINGS OF FACT

The underlying facts are largely uncontroverted, and **FIND** the following to be the **FACTS**: On May 10, 2019, Smith executed his second one year employment contract as a non-tenured seventh and eighth grade Science teacher, to commence August 19, 2019 and to end June 30, 2020. (P-1). The contract specified that Smith could terminate the contract “upon Sixty (60) days written notice to the School...” On September 10, 2019 Smith sent the School a letter resigning his position effective sixty days from that date. The letter gave no specific reason for Mr. Smith’s quitting other than “under the current conditions” he “[would] not be able to carry out [his] responsibilities to the best of [his] abilities.” He thanked the administration for “all [their] support for all the time” that he had been there. (P-2)¹ On the next day, Mindy Weidman, the School’s chief talent officer sent Smith a letter advising that pursuant to his contract and school policy he would be released from the contract upon completion of the sixty days, on November 10, 2019, or sooner if the School was able to find a replacement.

However, on October 19, 2019, three weeks prior to his date of termination, and without further notice, Smith stopped coming to work and, as admitted by him in his testimony abandoned his position. He did however return to the school sometime after October 23, to return his keys and computer and conduct an exit review. However, both prior to Mr. Smith leaving the school abruptly one day and never returning to class, and after Mr. Smith never wrote to the school or Ms. Weidman, about his complaints.

¹ The exhibits by petitioner were pre-marked A through E, but were designated when entered by the Court as P-1 through P-5 to properly note which party submitted the document and for uniformity in written decisions.

According to Ms. Weidman's testimony, unrefuted by Smith, the School had no coverage for him, which was particularly problematic because science teaching, particularly for the graders who are required to take a science, is a hard to fill position. The result of Smith's abrupt early termination prior to the expiration of 60 days, resulted in the students having a period of those to three months where they had to be taught by less qualified and uncertified teachers. Also, according to Ms. Weidman, other students suffer when a teacher leaves abruptly and without proper notice as they become fearful that other teachers will abandon their posts, thus abandoning them. Finally according to Weidman, and undisputed by Smith, the school's continued existence as a public charter school depends on exceeding public schools performance standards. Therefore, from the School's perspective, Smith's abandonment of his position three weeks before he was permitted under his contract to leave certainly negatively impacted the School's 120 students and the continued viability of the School. Smith did not argue to the contrary.

Rather, Smith attempted to justify his actions because a student called him a "pervert." As a result, Smith was forced to physically bat this student from his classroom. Sometime after that Smith was called to the principal's office to learn that a parent had brought in her son, another student to complain about this accusation made by the other student. the result of which was a complaint made by the student's parent. Smith believed he was being set up for a criminal complaint. Also, according to Smith, the parent who had complained about him was a member of the Board of Directors of Brick Network, a management group for School. Further he had, with another teacher complained about the level of competency of one or some of the presenters of professional development meetings. One presenter was a female, who, according to Smith, accused him (and the other teacher, also, like Smith, a male) of "harassment." As a result, according to Smith the principal advised him not to attend further professional development meetings. Also, Smith, the parent who had complained about what Brick Network, a management group, for the administration of charter schools that had done since having "taken over" the management of the School after 2018-2019. According to Smith, the entire previous administration had resigned or not been offered contracts for 2019-2020, as a result of Brick Network's "unscrupulous practices", as summed up by Smith, in his post hearing brief/commentary. Ms. Weidman disputed that the level of resignations and non-renewals of the administrators of the schools was as high as Smith Claimed. I **FIND** these

statements by Smith concerning “unscrupulous practices” by Brick Network to be to be unsupported by any competent evidence presented and coming from a disgruntled ex-employee with a serious stake in the outcome of the present controversy to be otherwise not credible. Further I **FIND** his story about being targeted by the School for the student’s accusation and the parents’ complaint to be unfounded and because of the harassment accusation to be not credible. I note that there was a complete absence of Smith documenting these concerns to the School and prior to the litigation commencing, was consequently not mentioned in his letter of resignation. Further, no explanation for not calling any witnesses, such as the other teacher, was with Smith when the so called complained of “harassment” occurred. Nor did he attempt to call any ex-employees or document anything about ex-employees to support his claim about the “unscrupulous practices by Brick Network Further I find that Smith’s own testimony that the principal told him after learning of the interaction between the presenter and Smith to simply not go to any further professional development classes because he was leaving in a few weeks to be a perfectly reasonable resolution to that “problem” if indeed it was a problem. I do not see why any school should offer professional development classes to any teaching that is leaving in a few weeks.

According to Smith, he had no self-interested, reason for leaving the School, but his actions were completely motivated by his fear of being set up for punitive actions for being accused of being a “pervert” and a harasser. I find it not credible that Smith thought he was facing any punitive action and indeed there is no evidence that the School was doing anything but following normal procedure to discuss any complaint by a parent There is also no evidence the school to the complaint seriously. As for having to put up with the student who made the unjust accusation, Smith admitted he barred the student from his classroom. Moreover, it also would have been unreasonable for Smith to quit because a presenter said she was harassing him concerning his complaints he made over the presenter’s competence. Even if the “harassment” comment by the presenter had been made, which I doubt, as the only evidence of it comes from the self-interested respondent, there was no evidence that an “harassment” investigation was undertaken.

Smith impressed me as a strong, and strong willed individual unlikely to be pushed around or one who is particularly sensitive to outrageous claims because of being highly

strung or emotionally delicate. Therefore, Smith's story seems on balance an after the fact justification for quitting when it suited him to quit. Moreover, in November 2019 he began an interview process which resulted in his commencing, in January 2020, his new position as a middle school teacher at another Charter School. (P-5).

LEGAL DISCUSSION

The issue presented here is whether respondent's teaching certificates should be suspended for up to one year for failure to perform his duties prior to the expiration of the employment period, in accordance with N.J.S.A. 18A:26-10, which provides in pertinent part 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.

The procedure by which a teaching staff member must provide notice of resignation is set forth in N.J.S.A. 18A:28-8, 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 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 not more than one year.

By using the term "may" and not "shall," the Legislature did not intend for there to be an automatic suspension, rather, it determined to invest the Commissioner with discretion predicated on the facts and circumstances individual to the case. Thus, the Commissioner may suspend, in his or her discretion.

The purpose of these statutes is “to provide notice to the school so that a suitable replacement can be hired without adversely impacting students,” and thereby protect students. Penns Grove-Carneys Point Bd. of Educ. v. Leinen, 94 N.J.A.R.2d (EDU) 405, 407. The decision as to whether to suspend a teaching staff member’s certificate is a discretionary determination vested in the Commissioner, and historically all attendant circumstances specific to each case have been evaluated. Generally, this evaluation results in suspension of certificates for the maximum one-year period, especially when the facts demonstrate that “individuals violated the sixty-day notice requirement for strictly personal reasons, putting their own self-interest above the interests of students and their professional obligation to provide adequate notice to the Board.” In re Suspension of the Teaching Certificate of Capshaw, EDU 12318-06, Initial Decision (April 30, 2007), modified, Comm’r (June 12, 2007), <https://njlaw.rutgers.edu/collections/oal/>; see also Bd. of Educ. of Alpine v. Yuz, EDU 1116-06, Initial Decision (July 17, 2008), adopted, Comm’r (September 23, 2008), <https://njlaw.rutgers.edu/collections/oal/>, stating that, generally, a full one-year suspension of a teaching certificate for leaving a district without adequate notice is imposed, with the rare exception of compelling reasons.

The Commissioner imposed a three-month suspension in In re Suspension of the Teaching Certificate of Rogers, 1989 S.L.D. 1962 (May 16, 1989), adopted, 1989 S.L.D. 1968 (June 21, 1989), where a non-tenured teacher of the handicapped resigned to take a position in a State facility, switching employment for more “noble” reasons, to work with more severely handicapped children. Another matter in which less than a one-year suspension was imposed is In re the Suspension of the Teaching Certificate of Borden, School District of Edison, Middlesex County, Commissioner Decision 247-16, where a non-tenured teacher resigned following a debilitating injury that left her unable to drive or climb stairs. The Commissioner determined that while Borden’s conduct was unprofessional within the meaning of N.J.S.A. 18A:26-10, her resignation was motivated by a medical crisis, supported by medical records, and not personal gain, and imposed a three-month suspension.

In In re the Teaching Certificate of Burgess, 1983 S.L.D. 183, adopted, 1983 S.L.D. 195, the board accepted a two-week resignation predicated on its plan to find a

replacement by Burgess's termination date. The board failed to follow through on its promise, and so the Commissioner declined to impose a suspension.

In Board of Education of Black Horse Pike Regional School District v. Mooney, 1984 S.L.D. 810, adopted, 1984 S.L.D. 821, a teacher made considerable efforts to assist the board with a smooth transition; developed a program through the end of the year; met with her successor to put the program in place; and left final grades. The Commissioner determined to impose no suspension.

In the matter In re Suspension of the Teaching Certificate of Savino, EDU 11688-04, Initial Decision (July 28, 2005), modified, Comm'r (August 30, 2005), affirmed, State Bd. (February 3, 2006), <https://njlaw.rutgers.edu/collections/oal/>, Savino asserted that she was uncomfortable being reassigned from elementary school to middle school, and felt "unfit" to teach middle school even though she was fully certified to do so. The superintendent had warned her that the process for suspension would be commenced, as here, should she not comply with the advance-notice requirement. While the ALJ concluded that Savino's fear of unfitness constituted a mitigating factor warranting a shorter suspension, the Commissioner disagreed, and reversed the proposed sixty-day suspension in favor of a one-year suspension. No mitigation was found, nor were compelling reasons, unlike in Mooney and Rogers. Indeed, the compelling reasons found in Rogers nevertheless resulted in the imposition of a three-month suspension. See also In the Matter of Teacher Certificates of Erin Davidoe, Board of Education of Long Hill Township EDU 01563-20, Initial Decision (August 31, 2020).

It is clear and undisputed that Smith, intentionally and deliberately failed to provide the requisite sixty days' notice prior to resigning. At the hearing Smith defiantly took the stance that his actions were completely justified because of his fear of persecution as a result of what was admittedly a baseless complaint by a parent based on a frivolous or malicious action of a pupil. However, as noted by the School, Smith never documented any dispute over the Administration's handling of the complaint and Smith admitted in testimony the school had an obligation to investigate the complaint. Further, Smith's concern about the "harassment" statements made by the presenter at a professional development were unreasonable and not credible. Smith made no effort to offer any

mitigating circumstances or compelling reasons for his actions, other than by making unsupported personal attacks on the school administration.

As such, Smith is guilty of unprofessional conduct as defined in N.J.S.A. 18A:28-8. Undoubtedly, Smith knew the consequences of his actions to leave his position at the School in violation of the Notice requirement of his contract. He did not refute that science teachers for students of this age are difficult to obtain. The issue, therefore, is what constitutes an appropriate term for the suspension of respondent's certificates. The penalty assessed in many similar matters is a one-year suspension. There have been situations where less than a one-year suspension was deemed appropriate due to mitigating circumstances. Here, the respondent's letter of resignation alluded to circumstances which made it impossible to fulfill his duties to the best of his abilities but said nothing about any urgency in his leaving. As stated I find his claims about his fears of prosecution or persecution to be not credible. Further he provided a motive for leaving the School in the lurch and quitting early, by his unhidden expressions of his disdain of the current Administration. Not surprisingly, considering his convictions, he made no effort to ensure a smooth transition for the School. As a consequence, the education of 120 students were negatively impacted by Smith's self-centered conduct. Further this particular chartered School, the petitioner, was unfairly disadvantaged in its ongoing obligation to retain its own charter, while Smith pursued another position at another charter school. Finally, even if respondent were to be completely believed as to the issues the way he presented them, there were no dire circumstances or compelling reasons which caused him not to continue at the school another three weeks to complete his contractual obligation.

CONCLUSION

There is no dispute that respondent failed to provide the requisite timely notice of resignation, by failing to continue to report to work for the required sixty days after serving the School with Notice, and therefore is guilty of unbecoming conduct as defined in N.J.S.A. 18A:28-8. As there are no compelling reasons for Smith's conduct nor any mitigating circumstances, I **CONCLUDE** that a one-year suspension is appropriate.

ORDER

It is therefore **ORDERED** that respondent’s teaching certificates be and hereby are suspended for a period of one year commencing June 9, 2021 and ending on June 8, 2022.

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, PO 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 9, 2021
DATE


ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

June 9, 2021

Date Mailed to Parties:

June 9, 2021

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APPENDIX

LIST OF WITNESSES

For Petitioner:

Mindy Weidman, Chief Talent Officer

For Respondent:

Craig Smith

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

- P-1 Employment Contract between Craig Smith and Marion P. Thomas Charter School, dated May 10, 2019, for the school year, August 19, 2019 to June 30, 2020
- P-2 Letter of Resignation by Craig Smith, dated September 10, 2019, stating the effective date being in sixty days.
- P-3 Board acceptance of resignation upon expiration of 60 days' notice on November 10, 2019 or sooner if the Board finds a replacement., dated September 11, 2019
- P-4 Termination letter because of abandonment of position, dated October 30, 2019
- P-5 Tracking of Instructional/Teaching Certificates of Craig Smith

For Respondent:

None