

New Jersey Commissioner of Education**Final Decision**

In the Matter of the Suspension of the
Teaching Certificates of Jesenia Chester,
Board of Education of the Township of
South Brunswick, Middlesex County

Synopsis

In this matter on remand, the petitioning Board alleged that respondent – a non-tenured teacher – resigned her position on inadequate notice and sought to suspend her teaching certificate for unprofessional conduct pursuant to *N.J.S.A. 18A:26-10*. Respondent taught kindergarten in a South Brunswick school during the 2021-2022 school year and the Board asserted that her contract was renewed at a Board meeting on May 12, 2022. However, on August 4, 2022, respondent sent the District an email resigning her position effective September 1, 2022 and did not return to her position for the start of the new school year; she asserted that she had never received or signed a contract of employment for the 2022-2023 school year. After a hearing in the Office of Administrative Law, the ALJ concluded that respondent had engaged in unprofessional conduct by failing to give the Board 60 days' notice of her resignation. Following review by the Commissioner of Education, the matter was remanded to the OAL for further fact finding as the record was devoid of information needed to reach a final determination in the case.

On remand, the ALJ found, *inter alia*, that: the mandated notice requirement set forth in *N.J.S.A. 18A:28-8* is applicable to tenured staff members, but does not apply here given respondent's non-tenured status; the notice requirement for non-tenured individuals is governed by *N.J.S.A. 18A:26-10*, which authorizes the suspension of a teaching certificate "for wrongful cessation of performance of duties"; in this situation, respondent resigned after completion of her teaching duties for the 2021-2022 school year and never received or signed a written contract to continue her employment for the 2022-2023 school year; while respondent did sign a written contract for the 2021-2022 school year that included a 60 day notice provision, no such contract existed regarding her employment during the 2022-2023 school year as she never accepted an offer of continued employment in writing; consequently, respondent was not under contract when she submitted her resignation on August 4, 2022, as her 2021-2022 employment contract had expired at the end of June. The evidence on remand failed to demonstrate that respondent is guilty of unprofessional conduct within the meaning of *N.J.S.A. 18A:26-10* so as to justify the Commissioner's suspension of respondent's certificate. The ALJ concluded that no express contract existed between the parties regarding respondent's employment for the 2022-2023 school year; accordingly, the Board's request to suspend respondent's teaching certificate was denied.

Upon review, the Commissioner adopted the April 2024 Initial Decision as the final decision in this matter. Accordingly, the Order to Show Cause to suspend Jesenia Chester's teaching certificates was dismissed.

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.

200-24

OAL Dkt. No. EDU 09886-23 (EDU 10542-22 on remand)
Agency Dkt. No. 284-10/22

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the Teaching
Certificates of Jesenia Chester, Board of
Education of the Township of South Brunswick,
Middlesex County.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Respondent Jesenia Chester was previously employed by petitioner, Board of Education of the Township of South Brunswick (Board), as a nontenured teacher. The Board filed an Order to Show Cause to suspend respondent's teaching certificates pursuant to *N.J.S.A. 18A:26-10*, which 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 certificates for a period not exceeding one year." The Order to Show Cause alleged that respondent had committed unprofessional conduct by resigning from her teaching position without providing the Board with sixty days' notice.

In August 2023, upon review of the parties' written submissions, the Administrative Law Judge (ALJ) issued an Initial Decision granting the Order to Show Cause. In September 2023, the

Commissioner remanded the matter to the OAL for further fact-finding regarding respondent's acceptance of the Board's offer of employment and, if such acceptance was given, the terms of the employment contract.

In April 2024, the ALJ issued an Initial Decision after remand recommending that the Order to Show Cause be dismissed because: (1) no written contract existed regarding respondent's employment as a teacher for the 2022-2023 school year; (2) respondent never accepted the Board's offer of employment for the 2022-2023 school year in writing; (3) respondent was not under contract when she submitted her resignation on August 4, 2022, as her 2021-2022 employment contract had expired; and (4) the evidence failed to demonstrate that respondent is guilty of unprofessional conduct within the meaning of *N.J.S.A. 18A:26-10*.

Upon review, the Commissioner adopts the April 2024 Initial Decision as the final decision in this matter. As a nontenured teacher, respondent's notice obligations are established by the terms of her employment contract. *In re Suspension of Teaching Certificates of Melissa Van Pelt, Gray Charter Sch., Newark, Essex Cnty.*, Commissioner Decision No. 170-09 at 3 (May 29, 2009), *aff'd*, 414 *N.J. Super.* 440 (App. Div. 2010). *N.J.S.A. 18A:27-10* requires boards of education to provide nontenured teaching staff members with a written offer of a contract for employment, or a written notice that employment will not be offered, on or before May 15 of each year. *N.J.S.A. 18A:27-12* requires teaching staff members to accept employment offers in writing on or before June 1. If they do not accept the offers in writing, then their employment is not renewed.

Here, the Board did not provide respondent with a written employment contract for the 2022-2023 school year. Moreover, respondent did not accept the Board's offer of employment for the 2022-2023 school year in writing. Because she was not under contract at the time of her

resignation, respondent had no notice obligations to the Board. Therefore, respondent did not violate *N.J.S.A. 18A:26-10* as she did not cease to perform her duties before the expiration of her employment term.

Accordingly, the Order to Show Cause to suspend Jesenia Chester's teaching certificates is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2024
Date of Mailing: May 28, 2024

¹ 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 09886-23
AGENCY DKT. NO. 284-10/22
(EDU 10542-22 On Remand)

**IN RE SUSPENSION OF THE TEACHING
CERTIFICATE OF JESENIA CHESTER.**

Marie-Lawrence Fabian, Esq., for petitioner Board of Education of the Township
of South Brunswick (Porzio, Bromberg & Newman, attorneys)

Jesenia Chester, respondent, pro se

Record Closed: February 28, 2024

Decided: April 15, 2024

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Board of Education of the Township of South Brunswick (the Board) seeks an order suspending the teaching certificate of respondent, Jesenia Chester (respondent, Ms. Chester), for a period of one year based upon the allegation that she resigned from her teaching position with inadequate notice. At the request of petitioner, the Commissioner of Education issued an Order to Show Cause on October 7, 2022, ordering respondent to show cause why her teaching certificate should not be suspended for unprofessional conduct pursuant to N.J.S.A. 18A:26-10. Respondent filed an Answer

on November 14, 2022, and the matter was transmitted to the Office of Administrative Law on November 28, 2022, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties requested that the matter be decided in a “summary fashion” without a hearing based on the papers that were submitted.

An Initial Decision was issued by the undersigned on August 2, 2023. (C-1.) On September 14, 2023, the Commissioner issued a decision remanding the case to the OAL for additional fact finding. (C-2.) On December 7, 2023, a status conference was held with the parties, and a scheduling order was made for the submission of briefs. Upon receipt of the briefs, the record closed on February 28, 2024.

ISSUES PRESENTED ON REMAND

The remand decision presents the following issues for adjudication:

1. Does the contract under which the respondent was employed for the 2021–2022 school year contain a sixty-day-notice provision?
2. Is there a written acceptance of the Board’s offer of continued employment following the May 12, 2022, Board meeting?

FINDINGS OF FACT

The factual findings of the Initial Decision in EDU 10542-22 are incorporated herein by reference. The petitioner’s brief and affidavit of Kimberly Maloy-White, along with the respondent’s letter brief submitted, reveal the following additional uncontroverted facts, and I **FIND**:

On August 26, 2021, the Board entered into an employment contract (contract) with the respondent. (P-A.) The respondent signed the contract on September 25, 2021. (Ibid.) There is a notice paragraph in the contract that states: “It is hereby agreed by the parties hereto that this contract may at any time be terminated by either party to the other 60 days’ notice in writing of intension to terminate the same” (Ibid.)

On or about April 23, 2022, the respondent acknowledged receipt of the Summative Performance Report of Practice Standards (Report). (P-B.) At the end of this Report, it states, “Ms. Chester will develop the Independent Goal in her Professional Development Plan (PDP) for next year in collaboration with her supervisor” (Ibid.)

On May 13, 2022, the Board notified the respondent in a memorandum that she had been reappointed to the position of teacher at Constable Elementary School. The effective date was September 1, 2022, continuing until June 30, 2023. (See P-C.)

On June 20, 2022, the respondent acknowledged the Teacher/Education Specialist Composite Score Report. (P-D.) In this report, under the paragraph titled Recommendation, it states, “Recommended for continued employment.” (Ibid.)

Arguments of the Parties

The petitioner argues that the respondent signed the summative evaluation, which informed her that an offer of employment would be forthcoming. (Pet’r’s Br. at 2.) In addition, in the memo dated May 13, 2022, the respondent was informed that she was recommended for continued employment during the 2022–2023 school year. (Ibid.)

The petitioner further alleges that “[t]he memo ends with the following: If you have any questions, please do not hesitate to contact me.” (Ibid.) The respondent did not contact the petitioner and did not inform the Board that “she might not return, thereby creating the expectation that she would return to teach the next year.” (Pet’r’s Br. at 3.) The petitioner further argues that respondent “accepted the renewal contract, but then decided to resign on short notice. To find that Ms. Chester did not accept such employment is to elevate form over substance.” (Ibid.)

Respondent argues that petitioner’s exhibit D states, “under the heading of reappointment of non-tenured professional personnel,” that the contract runs from September 1, 2022, through June 30, 2023. (Resp’t’s Br. at 2.) Thus, “without signing of a contract, no salary, benefits, classroom designation discussion, I am under the

impression that I am not under any contract at the time of placing my resignation on August 4, 2022 and therefore within my rights to resign at any time.” (Id. at 2–3.)

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to N.J.S.A. 18A:28-8, a “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.” (Emphasis added.) By its express terms, this mandated sixty-day-notice requirement only applies to tenured teaching staff members. Carrelle v. Bloomfield Twp. Bd. of Educ., 2004 N.J. AGEN LEXIS 1283 (Feb. 9, 2004). It is undisputed that respondent had been employed by the Board for only one year at the time that she provided notice of her intent not to return to the South Brunswick School District. Accordingly, the mandated notice requirement set forth in N.J.S.A. 18A:28-8 is not applicable to the present situation given respondent’s non-tenured status.

The notice requirement for non-tenured individuals, such as respondent, is governed by N.J.S.A. 18A:26-10, which authorizes the suspension of a teaching certificate “for wrongful cessation of performance of duties.” The statute directs, in pertinent part:

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 . . . suspend his certificate for a period not exceeding one year.

[N.J.S.A. 18A:26-10 (emphasis added).]

See also N.J.A.C. 6A:9-17.9. The underlying 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 Commissioner has recognized that the language of 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 [or her] duties before the expiration of the term of his [or her] employment, and 2) the board does not consent to the teaching staff member's action.” In re Suspension of the Teaching Certificate of Fesolowich, 2006 N.J. AGEN LEXIS 915 (Sept. 14, 2006). The Commissioner has further explained that “[i]t is well-grounded in education law that determination of the sufficiency of a term of notice pursuant to this statute is dictated by the terms of the parties’ employment contract and any resignation or termination must be in accordance with the terms of such agreement.” In re Suspension of the Teaching Certificate of Van Pelt, 2009 N.J. AGEN LEXIS 1232 (May 29, 2009), aff’d, 414 N.J. Super. 440 (App. Div. 2010); Carrelle, 2004 N.J. AGEN LEXIS 1283 (Feb. 9, 2004). In other words, N.J.S.A. 18A:26-10 requires non-tenured teachers to abide by whatever notice provision is contained in their employment contracts.

A non-tenured teacher who violates the notice/termination requirements outlined in his or her contract of employment will generally be found to be guilty of “unprofessional conduct” within the intendment of N.J.S.A. 18A:26-10, warranting the suspension of the teacher’s certificate. See In re Suspension of the Teaching Certificate of Creekmur, 2011 N.J. AGEN LEXIS 624 (Nov. 21, 2011), adopted, 2012 N.J. AGEN LEXIS 600 (Jan. 4, 2012); In re Suspension of the Teaching Certificate of Ponti, 2010 N.J. AGEN LEXIS 103 (Feb. 18, 2010), adopted, 2011 N.J. AGEN LEXIS 264 (May 12, 2010), aff’d, 2011 N.J. Super. Unpub. LEXIS 1105 (App. Div. May 3, 2011); In re Suspension of the Teaching Certificate of Orban, 2009 N.J. AGEN LEXIS 296 (May 13, 2009), adopted, 2009 N.J. AGEN LEXIS 729 (June 11, 2009); In re Suspension of the Teaching Certificate of Stokes, 2009 N.J. AGEN LEXIS 316 (June 2, 2009), adopted, 2009 N.J. AGEN LEXIS 655 (July 15, 2009), aff’d, 2010 N.J. Super. Unpub. LEXIS 1776 (App. Div. July 27, 2010); In re Suspension of the Teaching Certificate of Van Pelt, 2009 N.J. AGEN LEXIS 237 (April 14, 2009), adopted, 2009 N.J. AGEN LEXIS 1232 (May 29, 2009), aff’d, 414 N.J. Super.

440 (App. Div. 2010); Borough of Alpine Bd. of Educ. v. Yuz, 2008 N.J. AGEN LEXIS 633 (July 17, 2008), adopted, 2008 N.J. AGEN LEXIS 1178 (Sept. 23, 2008).

The above cases, however, are markedly distinguishable from the present matter. In each of those cases, the teacher had executed a contract of employment agreeing to teach for a specified term, resigned before the expiration of his or her contract, and failed to comply with the termination provisions of his or her employment contract. Given these facts, each teacher “cease[d] to perform his [or her] duties before the expiration of the term of his [or her] employment,” amounting to “unprofessional conduct,” and resulting in the suspension of the teacher’s certificate. N.J.S.A. 18A:26-10; see In re Suspension of the Teaching Certificates of Walker, 2011 N.J. AGEN LEXIS 526 (Oct. 5, 2011), adopted, 2011 N.J. AGEN LEXIS 874 (Nov. 10, 2011) (holding that the respondent’s employment contract created two separate terms of employment, and respondent did not cease to perform her duties before the expiration of the term of her employment in violation of N.J.S.A. 18A:26-10 by resigning with two weeks’ notice during her probationary period).

Also, in In the Matter of the Suspension of the Teaching Certificate of Carreno, 2012 N.J. AGEN LEXIS 226 (May 3, 2012), adopted, Comm’r (June 14, 2012), <https://www.nj.gov/education/legal/commissioner/2012/jun/239-12.pdf>, the respondent worked for the Bergen County Technical School (BCTS) from September 1, 2009, to June 30, 2010, and she received a salary, pension contributions, and other benefits in the contract of employment she had entered into for the 2009–2010 school year. The respondent had received a contract of employment in early 2010. The term of that contract was for the 2010–2011 school year. The respondent did not sign the contract, and on August 31, 2010, the respondent sent an email thanking the school for the opportunity, but stating that due to personal financial circumstances, she had accepted another position elsewhere. In accepting the respondent’s position, the Commissioner stated:

N.J.S.A. 18A:27-11 explains:

Should any board of education fail to give to any nontenured teaching staff member either an offer of contract for employment for the next succeeding year or

a notice that such employment will not be offered, all within the time and in the manner provided by this act [i.e., May 15], then said board of education shall be deemed to have **offered** to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education.

[Emphasis added.]

The Commissioner went on to state:

In other words, a nontenured employee may regard the absence of either a contract renewal letter or a nonrenewal letter as tantamount to an “offer” of employment. However, there is nothing in N.J.S.A. 18A:27-11 that requires the nontenured teacher to accept the offer. In the present case, respondent did not accept the implied offer, and petitioner waited until August to address the issue, i.e., by sending respondent a contract to sign.

The only express statutory deadline for the acceptance—by nontenured teachers—of employment offers can be found in N.J.S.A. 18A:27-12. That statute requires that those nontenured employees who wish to accept employment offered to them on or before May 15, must accept in writing by June 1. It appears undisputed that respondent did not do so. Thus, even acknowledging that the absence of a nonrenewal letter constituted an offer of employment to respondent, the fact remains that she did not timely accept said offer. Petitioner’s expectation that she would return to teach in the next school year was consequently unwarranted. Further, in the absence of a contract, respondent was not obligated to give sixty days’ notice of her decision not to return.

[ibid.]

Here the facts are similar to those in Carreno, 2012 N.J. AGEN LEXIS 226 (May 3, 2012), adopted, Comm’r (June 14, 2012), <https://www.nj.gov/education/legal/commissioner/2012/jun/239-12.pdf>, except no contract was sent to the respondent at the time she had submitted her resignation. In

fact, in the case at bar, the respondent notified the Board on August 4, 2022, of her resignation. In Carreno, the respondent had received a contract but never signed it and notified the BCTS of her resignation on August 31, 2010, one day before the 2010–2011 school year was set to begin. In the current matter, respondent argues that she was under no contract at the time she submitted her letter of resignation because she did not receive or sign a contract. There is no dispute that she was offered employment. However, the determination of whether respondent provided sufficient notice to the Board pursuant to N.J.S.A. 18A:26-10 “is dictated by the terms of the parties’ employment contract, and any resignation or termination must be in accordance with the terms of such agreement.” Van Pelt, 2009 N.J. AGEN LEXIS 1232 at *4 (May 29, 2009). A non-tenured teacher will be deemed guilty of “unprofessional conduct” within the meaning of N.J.S.A. 18A:26-10 if the teacher fails to comply with the termination/notice requirements in his or her contract of employment. However, pursuant to N.J.S.A. 18A:27-12:

If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance the provisions of this article shall no longer be applicable.

I **CONCLUDE** that no express contract existed between the parties regarding respondent’s employment as a teacher for the 2022–2023 school year. Petitioner did not send a contract to the respondent. The petitioner admitted this would not be done until after their Board meeting on August 25, 2022. The petitioner further acknowledged that because the respondent had submitted a resignation on August 4, 2022, it would be approved at the same Board meeting on August 25, 2022. While there were various notices of employment for the 2022–2023 school year (i.e., Summative Performance Report of Practice Standards, a memorandum dated May 13, 2022, Education Composite Score Report), the record is bereft of evidence that the Board had provided respondent with a written offer or a contract for employment for the 2022–2023 school year that the respondent accepted. See N.J.S.A. 18A:27-10; N.J.S.A. 18A:27-12. Respondent, in her certification in the initial decision, did admit that she may have said, “thank you for the opportunity”; however, there was nothing in writing that indicated that this was said or that

this was a written acceptance of the contract. See In re Chester, 2023 N.J. AGEN LEXIS 579 (Aug. 2, 2023). (C-1.) Furthermore, as the Commissioner pointed out in Carreno, <https://www.nj.gov/education/legal/commissioner/2012/jun/239-12.pdf>, and is applicable in this matter:

Thus, even acknowledging that the absence of a nonrenewal letter constituted an offer of employment to respondent, the fact remains that she did not timely accept said offer. Petitioner's expectation that she would return to teach in the next school year was consequently unwarranted. Further, in the absence of a contract, respondent was not obligated to give sixty days' notice of her decision not to return.

I **CONCLUDE** that the respondent did not cease to perform her duties before the expiration of the term of her employment because she tendered her resignation after her 2021–2022 employment contract had expired and before an employment contract existed between the parties for the next school year. I **CONCLUDE** that the evidence fails to demonstrate that respondent is guilty of unprofessional conduct within the meaning of N.J.S.A. 18A:26-10 so as to justify the Commissioner's suspension of her teaching certificate. Although I recognize that the respondent's departure may have placed the Board at a disadvantage of not having a teacher, the statute makes clear that a non-tenured employee's professional obligations are those established by the "term of employment" agreed upon by the parties and not by any intrinsic notion of professionalism. Walker, 2011 N.J. AGEN LEXIS 526 at *13 (Oct. 5, 2001). If the Board wanted to impose a commitment upon the respondent to teach during the 2022–2023 school year, it should have done so by requiring her to take action in writing to either accept or decline a written offer or a contract of employment before August 2022.

ORDER

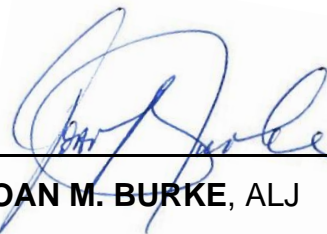
Based on the foregoing, it is **ORDERED** that the Board's request that the Commissioner suspends the teaching certificate of Jesenia Chester pursuant to N.J.S.A. 18A:28-8 and/or N.J.S.A. 18A:26-10 is **DENIED**, and that this matter is hereby **DISMISSED**.

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.

April 15, 2024
DATE



JOAN M. BURKE, ALJ

Date Received at Agency: April 15, 2024

Date Mailed to Parties: April 15, 2024

APPENDIX

WITNESSES

For Petitioner

None

For Respondent

None

EXHIBITS

For Petitioner

Petitioner's Brief with the Affidavit of Kimberly Maloy-White, along with Exhibits P-A through P-G

For Respondent

Respondent's Brief

Judge's Exhibits

C-1 Initial Decision, EDU 10542-22

C-2 Commissioner's Decision, EDU 10542-22