

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF : COMMISSIONER OF EDUCATION
DANIELLE PONTI, GRAY CHARTER :
SCHOOL, ESSEX COUNTY. : DECISION
_____ :

SYNOPSIS

In September 2007, an Order to Show Cause was served upon respondent – a non-tenured teacher – requiring her to show cause why her teaching certificate should not be suspended for unprofessional conduct pursuant to *N.J.S.A.* 18A:26-10 for resigning her position as a first grade teacher on the second day of school, without notice and contrary to the terms of her employment contract. The respondent contended, *inter alia*, that: the aforementioned statute was not applicable to her as a non-tenured charter school employee; she was the subject of a constructive discharge as the result of alleged mistreatment and discriminatory harassment, namely that she was referred to as “Blondie” during a phonics workshop prior to the first day of school; and that any suspension is discretionary in nature and unwarranted under the circumstances of the case.

The ALJ found that: respondent ceased to perform her duties before the expiration of the term of her employment without the consent of the charter school, contrary to *N.J.S.A.* 18A:26-10; respondent’s contention that she was subject to harassment, discrimination, disparate treatment, or a hostile work environment is not supported by the evidence; rather, the job did not meet respondent’s expectations, and she was at odds with the director of the school. The ALJ concluded that the respondent resigned her teaching position on approximately 15 minutes notice and left her class without a teacher; accordingly, the respondent’s actions constituted unprofessional conduct and warrant the suspension of her teaching certificate for a period of one year.

Upon independent review of the record, the Commissioner concurred that the facts in this case do not support a finding of constructive discharge and that respondent’s behavior warrants the suspension of her teaching certificate for a period of one year from the filing date of this decision, a copy of which has been forwarded to the State Board of Examiners for the purpose of effectuating this order.

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.

May 12, 2010

OAL DKT. NO. EDU 11971-07
AGENCY DKT. NO. 294-10/07

IN THE MATTER OF THE SUSPENSION :
OF THE TEACHING CERTIFICATE OF :
DANIELLE PONTI, GRAY CHARTER :
SCHOOL, ESSEX COUNTY. :
_____ :

COMMISSIONER OF EDUCATION

DECISION

Petitioner, the Gray Charter School, demands that respondent Danielle Ponti's teaching certificate be suspended for a year in consequence of her resignation from her position before the end of her contractual term – in violation of *N.J.S.A.* 18A:26-10. Respondent's defense is that she was constructively dismissed from the position by virtue of alleged mistreatment and discriminatory harassment. After review of the record, the Initial Decision of the Office of Administrative Law (OAL), respondent's exceptions and petitioner's replies thereto, the Commissioner adopts the recommendation of the Administrative Law Judge (ALJ) that respondent's teaching certificate be suspended for the term of one year.

It is undisputed that respondent signed a contract requiring her to teach at the Gray Charter School for one school year, *i.e.*, from August 23, 2007 to June 30, 2008. (Petitioner's Exhibit P-1) It is also undisputed that respondent resigned by letter dated August 28, 2007, ten months before the end of her contractual obligation to petitioner. (Petitioner's Exhibit P-6) Such an early resignation, on its face, violates the provisions of *N.J.S.A.* 18A:26-10, which states:

Any teaching staff member employed by a board of education or an approved private school for the disabled, who shall, without the consent of the board or, in the case of an approved private school for the disabled, the board of directors of the school, 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.¹

Relying on *Penns Grove-Carneys Point Board of Education v. Leinen*, 94 N.J.A.R.2d (EDU) 405, 407, the Administrative Law Judge (ALJ) for this matter explained that “the obvious 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 The ultimate objective is to protect the students.” (Initial Decision at 29) The record reveals that respondent’s precipitous departure created disruptions that were contrary to the best interests of the pupils in the class to which respondent was assigned. (1T28-29²) Thus, both the letter and spirit of N.J.S.A. 18A:26-10 was defeated by respondent’s behavior.³

Further, after considering the testimony and exhibits, the ALJ found that respondent fell short of proving her affirmative defense of constructive discharge. In evaluating respondent’s most serious claim, *i.e.*, that she was repeatedly referred to by a phonics seminar instructor as “Blondie,” the ALJ noted that the instructor and three other seminar attendees denied that such behavior occurred. (Initial Decision at 23) The ALJ also found it significant that respondent never complained to the school affirmative action officer, the principal, or her mentor about the alleged harassment. (Initial Decision at 23-24) Further, the ALJ regarded respondent’s testimony as lacking in credibility (Initial Decision at 24), a finding to which the Commissioner must accord deference. *See, e.g. D.L. and Z.Y. on behalf of T.L. and K.L v. Board*

¹ It also violates Section 4.1 of the contract between petitioner and respondent, which allows employees to terminate their contract only under the following circumstances:

Termination Upon Agreement. Upon the written agreement of both Employee and the School (which agreement may be made by the Executive Director), this agreement shall immediately terminate.

² 1T signifies the transcript of the first day of the hearing conducted in the OAL.

³ The ALJ also found, and the Commissioner concurs, that during a meeting at the beginning of the school year, Principal Verna Gray impressed upon the teachers the importance of proper and sufficient (two months) notice of resignation. At that meeting, there was a discussion about the disruptions caused by the abrupt resignation of five teachers which, *inter alia*, caused the commencement of the school year to be delayed. (Initial Decision at 24-25)

of Education of the Princeton Regional School District, 366 N.J. Super. 269, 273 (App. Div. 2004) and N.J.S.A. 52:14B-10(c).

Another of respondent's allegations of mistreatment was the assertion that she was formally evaluated on her first day of work. The ALJ found, and the Commissioner concurs, that the record does not support the allegation. The facts show that on her first day respondent was observed by Mr. Collins, the phonics instructor, to ascertain whether she understood and could implement the techniques taught at the phonics seminar. (1T44; 3T18-19) She was also informally observed by Principal Gray, who apparently routinely observes the teachers on the first day. (1T43) No evidence was presented suggesting that a formal evaluation of respondent was conducted on her first day in class.

A third issue that respondent raised in defense of her sudden resignation was a letter from Gray to respondent, delivered to respondent on the second day of school, which warned that respondent had exhibited insubordination on the first day of school. The insubordination referenced in the letter was respondent's failure to teach, commencing at 8:00 a.m., the phonics skills presented at Mr. Collins' seminar. Respondent characterized the letter as unfair, disputing that Gray instructed her to teach the phonics method presented at the Collins seminar, claiming that respondent had good reasons for not teaching the required phonics at 8:00 a.m., and denying that Gray was in or about respondent's classroom between 8:00 and 8:30 a.m. on the first school day. However, the ALJ found Gray credible as a witness, and concluded that Gray had directed respondent to teach the phonics at 8:00 a.m. and that respondent did not do so. The warning about insubordination was consequently, in the ALJ's view, not unfounded. (Initial Decision at 25) The Commissioner finds that the record supports the ALJ's conclusion.

After an extensive review of the evidence as a whole, the ALJ found that

“respondent ceased to perform her duties before the expiration of the term of her employment without the consent of the Gray Charter School contrary to *N.J.S.A.* 18A:26-10 and that respondent’s actions constituted unprofessional conduct.” (Initial Decision at 30) He further determined that “the findings in this matter do not support respondent’s contention that she was subject to harassment, discrimination, disparate treatment or a hostile work environment.” (Initial Decision at 31)

The facts of this case may suggest differences in style and philosophy between an experienced school administrator and a new teacher, but the Commissioner agrees with the ALJ that they do not support a finding of constructive discharge. Respondent’s precipitous resignation was unjustified, violated *N.J.S.A.* 18A:26-10, disrupted her students’ education and was serious enough to warrant more than a minimal suspension of her teaching certificate. Accordingly, petitioner’s request for the suspension of respondent’s teaching certificate for one year is granted.⁴ A copy of this decision shall be forwarded to the State Board of Examiners for implementation.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: _____

Date of Mailing: _____

⁴ Respondent’s argument, in Point VII of its exceptions, that *N.J.S.A.* 18A:26-10 does not apply to charter school teachers has already been rejected in Commissioner Decision No. 297-08, issued on July 9, 2008, in consequence of a motion by the parties in this and six other cases. Said decision is thus the law of this case.

⁵ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.