

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE PROFESSIONAL TEACHING PRACTICES COMMISSION**

In the Matter of)
)
HEATH DAY)
_____)

OAH No. 11-0068-PTP
Agency Case No. 11-32

ORDER OF SUSPENSION

I. Introduction

Heath Day, a social studies teacher at West Anchorage High School, resigned his position early in the 2010-2011 school year to accept other employment. After an investigation triggered by a complaint from the district, the Executive Director of the Professional Teaching Practices Commission filed an accusation alleging that Mr. Day violated his responsibility to honor his professional employment contract under 20 AAC 10.020(d)(15). The commission staff requested a one-year suspension as a sanction.

The Professional Teaching Practices Commission heard this case on April 21, 2011. Mr. Day attended in person and testified at the hearing. Assistant Attorney General Karen Hawkins represented the commission staff. Administrative Law Judge Christopher Kennedy presided. Based on the evidence¹ and the arguments of the parties, the commission has decided that Mr. Day violated the Alaska Code of Ethics and Teaching Standards, and that his misconduct merits suspension of his teacher certificate for the unserved portion of the 2010-2011 school year.

II. Facts

Heath Day holds an Initial Teacher Certificate issued by the Alaska Department of Education and Early Development.² On September 28, 2009 he signed an employment contract with the Anchorage School District (ASD).³ In the contract, he agreed to work for the district as assigned for 150 school days, from September 29, 2009 to the end of the 2009-2010 school year. The contract permitted Mr. Day to terminate his employment upon 30 days' written notice

¹ The evidence considered consisted of Staff Exhibit 1, pages 1-18 and Day Exhibits A-I, all admitted without objection at the hearing, and the testimony of witnesses Heath Day, Todd C. Hess (Director of Contract Administration, Anchorage School District), Richard D. Stone (Principal, West Anchorage High School), and Patricia Truman (Executive Director, PTPC). No evidence was excluded at the hearing.

² Exhibit 1, p. 10.

³ Exhibit 1, p. 8.

provided he had the written assent of the other party.⁴ Otherwise, he was obligated to complete the agreed term. Mr. Day satisfactorily completed the 2009-2010 contract.

For at least 30 years, it has been the practice of the ASD to “roll over” teacher contracts from year to year rather than to have teachers sign a new document if they are retained for the following year.⁵ The contract Mr. Day signed says nothing about such a rollover, however.⁶ Instead, prior to the 2010-2011 school year the district sent Mr. Day an “AEA Salary Placement Statement, School Year 2010-2011” indicating that he would be employed at West Anchorage High School for 182 “contract days” at a specified salary.⁷ The statement recited that “Provisions found in the employee’s official Anchorage School District ‘master contract’ are legal and binding between the District and the employee.”⁸ It restated the prior year’s contract provision that employment could be terminated by “mutual consent.”⁹

Mr. Day, who had previously taught for a number of years in Texas, was used to a system whereby teachers and school districts sign new, complete contracts each year.¹⁰ Nonetheless, after receiving the Salary Placement Statement he reported for duty at the beginning of the 2010-2011 school year and began teaching social studies to a mix of live and on-line classes consisting of high school juniors and seniors.¹¹

About three weeks into the school year, an opportunity arose for Mr. Day to launch a new venture for a nonprofit organization with which he was affiliated. To Mr. Day, the opportunity was a unique chance to pursue his calling, one that would allow him to serve youth—including some of the same students he taught at West High—in a different way. On September 2, 2010 he spoke to his principal and informed him that he might decide to resign his position. His principal responded that there might be consequences to Mr. Day if he did so. Neither then nor at any later time did Mr. Day receive oral or written consent from the ASD to leave his position.¹²

⁴ *Id.* at ¶ 9.

⁵ Testimony of Hess.

⁶ Exhibit 1, p 8.

⁷ Exhibit I.

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* Exhibits B-F (Mr. Day’s Texas contracts). The testimony in this case did not explore why the ASD does not use a similar system or, alternatively, why it does not place a provision in its initial yearly contract providing for renewal, setting the circumstances under which the parties will become bound to a renewal, and setting out how the terms of the renewal will be determined.

¹¹ Testimony of Mr. Day.

¹² *Id.*

On September 10, 2010, Mr. Day tendered his resignation to the ASD, to be effective Friday, October 1.¹³ The ASD Director of Contract Administration immediately e-mailed him, advising him that the district “has not mutually agreed to terminate your teaching contract” and inviting him to submit any circumstances that might excuse an early departure.¹⁴ Mr. Day did not respond to the e-mail.¹⁵

Mr. Day left his position at the end of Friday, October 1, 2010. The ASD did not have difficulty obtaining a certificated teacher to replace him in his social studies classes.¹⁶ The new teacher began work the next school day after Mr. Day’s departure, with no use of substitutes in the interim.¹⁷ Mr. Day introduced the replacement teacher to his students and gave him lesson plans and other assistance to make the transition as seamless as possible.¹⁸ After his departure, Mr. Day continued, with district approval, to work with students and coaches at West Anchorage High School in a different capacity.

The ASD made a complaint to the Professional Teaching Practices Commission in late November of 2010.¹⁹ After an investigation, the Executive Director issued an Accusation on February 4, 2011. Mr. Day filed a Notice of Defense on February 18, 2011, and this proceeding followed.

III. Analysis

A. Mr. Day’s Violation

Members of the teaching profession are required to abide by the professional teaching standards adopted by this commission.²⁰ In 20 AAC 10.020, we have adopted a Code of Ethics and Teaching Standards. A violation of this Code is grounds for revocation or suspension of a teacher certificate, or for the lesser sanctions of a warning or reprimand.²¹

Provision (d)(15) of our Code of Ethics and Teaching Standards provides that educators “may not unlawfully breach a professional employment contract.” Particularly in Alaska, it can be very difficult to replace teachers who prematurely leave positions they have promised to fill.

¹³ Exhibit 1, p. 9.

¹⁴ Testimony of Mr. Hess.

¹⁵ Testimony of Mr. Day.

¹⁶ Testimony of Mr. Stone.

¹⁷ Testimony of Mr. Day; *see also* Exhibit 1, p. 9 and Exhibit A. Mr. Stone’s testimony to the contrary was mistaken.

¹⁸ Testimony of Mr. Day. Mr. Stone agreed that the transition was smooth.

¹⁹ Exhibit 1, p. 5.

²⁰ AS 14.20.480.

The result can be highly disruptive to the educational process. For this reason, we require teachers to honor their commitments except in very unusual circumstances, such as a true health emergency or substantially misrepresented employment or working conditions.

Mr. Day has questioned whether he was under a contract in the 2010-2011 school year. He recognizes that he was in an employment relationship, which carries with it certain contractual terms such as the requirement that he be paid, but he questions whether there was any contractually binding understanding that he would work to the end of the 2010-2011 school year. In other words, he proposes that, after his 2009-2010 contract with the ASD expired, any continuation of his employment had an indefinite term.

At least in the context of the evidence submitted in this case,²² Mr. Day's question is not unreasonable. The 2009-2010 contract that he signed said nothing about renewal for a later year, still less anything about what terms would apply to such a renewal. Two factors establish that Mr. Day was indeed contractually bound to a one-year term in 2010-2011.

First, Alaska Statute 14.20.145 provides, in pertinent part:

If notification of nonretention or layoff is not given . . . , a teacher is entitled to be reemployed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or, if no terms are agreed upon, the provisions of the previous contract are continued for the following school year [T]he right to automatic reemployment under this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives a contract for reemployment.

This statute creates an expectation that teacher contracts will roll over from year to year if a teacher is neither given notice of nonretention nor a new contract. It does not, by itself, answer the contractual question in Mr. Day's case because his prior year's contract could not carry over to 2010-2011 without a modification, as it was for only a partial school year. Moreover, this statute only gives a teacher a right to reemployment on certain terms; the teacher must in some manner accept the reemployment for the contract to carry over. The statute seems to envision that the district will provide a "contract for reemployment," which is a step the ASD chooses not

²¹ AS 14.20.030(a)(4); AS 14.20.470(a)(3).

²² In this case, to establish the existence of a contract applicable to 2010-2011 the staff submitted only a copy of the expired 2009-2010 and relied on testimony that the ASD regarded that contract as being still in force, as though the unilateral assumption of one party could create a bilateral contract. The staff also never cited AS 14.20.145 to the commission.

The existence of the main evidence of an actual agreement to a new one-year term (Exhibit I) came to light through questioning by a commissioner. There may be other evidence, such as a union contract, that could have bearing on this issue, but it was not brought into this case.

to take. Nonetheless, the statute is part of the background against which the parties' conduct must be considered: it creates an environment in which the essential contractual employment relationship between a teacher and a district continues from year to year unless the parties terminate or modify it.

The second factor establishing the one-year term is the school district's issuance of a Salary Placement Statement to Mr. Day providing for "182 Contract Days," and Mr. Day's subsequent election to start work at that placement. Contracts are created by mutual assent.²³ Mutual assent is most easily shown by a document signed by both parties, but it can also be shown in other ways, including by "the reasonable meaning of a party's . . . acts."²⁴ A well-recognized way to show assent is by starting performance as proposed by the other party.²⁵ When Mr. Day began working in the 182-day placement he was offered, he accepted the terms of that offer and became bound to them.

Since Mr. Day was contractually bound to complete the 2010-2011 school year unless mutually agreed otherwise, his unilateral departure to accept a better opportunity was an unexcused violation of his employment contract and a violation of his professional duty under 20 AAC 10.020(d)(15).

B. Appropriate Sanction

In selecting an appropriate sanction, we look first to our prior handling of similar cases. While we may depart from these earlier benchmarks, we do so only for carefully articulated policy reasons. For violations of 20 AAC 10.020(d)(15) without adequate mitigating circumstances, it has been our practice, widely publicized in our newsletters to members of the profession, to impose a one-year suspension. For example, in the case of *In re Dunbar*,²⁶ decided after a full hearing in 2008, we imposed such a suspension on a teacher who violated a yearlong contract in Ketchikan by leaving unilaterally in February to accompany her husband to a new job, causing substantial disruption and even the withdrawal of two students from the school. In several recent cases where no hearing was sought we approved the same sanction: examples include *In re Kelly*²⁷ (departure at Christmas break for "personal reasons"); *In re Liss*²⁸

²³ See *Kingik v. State, Dep't of Administration*, 239 P.3d 1243, 1251 (Alaska 2010).

²⁴ *Id.*

²⁵ See, e.g., *McLane v. Paul*, 189 P.3d 1039, 1048 (Alaska 2008).

²⁶ PTPC Case No. 08-60, OAH No. 08-0375-PTP (Order of Suspension, Oct. 14, 2008).

²⁷ PTPC Case No. 08-36 (Decision and Order, May 5, 2008).

²⁸ PTPC Case No. 08-29 (Decision and Order, Jan. 17, 2008).

(departure in November for “job dissatisfaction”); and *In re Eubanks*²⁹ (walked out of classroom in October).

Mr. Day’s early departure was partially mitigated by several factors. First, it caused relatively minimal disruption, partly because Mr. Day gave considerable warning of his departure and was quite conscientious about assisting with the transition to a new teacher. Second, Mr. Day seems genuinely to have believed that he could serve students, including his existing students, better through his departure than he could have by remaining in his position; indeed, he continued to assist students and coaches at his school in his new position. We think Mr. Day’s enthusiasm for his new opportunity blinded him to some of the inherent negative consequences of a mid-semester change of teachers, but we recognize that he did not cavalierly abandon his students. Third, it was not completely unreasonable for Mr. Day to believe that his only contract with the ASD had already expired, and thus that he would not be breaching a contract. We think he was naïve to rely only on his own assessment of his legal obligations, and that he should have obtained expert advice before going through with his resignation. However, the lack of a signed contract for the current year, in contrast to the practice of many districts (including the one he had previously worked for), makes his culpability less stark than that of others whom we have suspended for a full year.

Because these mitigating factors support a moderate downward departure from the sanction we ordinarily impose for this violation of the Code of Ethics and Teaching Standards, we impose a shortened suspension period as set out below.

IV. Conclusion and Order

The commission finds that Heath Day unlawfully breached a professional employment contract in violation of the Alaska Code of Ethics and Teaching Standards, 20 AAC 10.020(d)(15). After considering the circumstances surrounding the violation, the commission suspends the Initial Teacher Certificate held by Heath Day for seven and one-half months, with the period of suspension to commence retroactively on October 4, 2010 and to continue through May 20, 2011. This decision becomes effective as provided in Alaska Statute 44.62.520.

²⁹ PTPC Case No. 07-30 (Decision and Order, April 10, 2007). In the case of *In re Weems*, PTPC Case No. 02-80 (Decision and Order, May 5, 2003), we imposed the harsher sanction of revocation. Mr. Weems, however, committed a second violation involving dishonesty. Mr. Weems’s certificate was restored in 2008. PTPC Case No. 02-80, OAH Case No. 07-0639-PTP (Order of Reinstatement, Jan. 28, 2008).

Commissioners Ailaud, Atwater, Black, Exe, Fry, Husa, Lum, and Pondolfino participated in this decision. The participating commissioners voted unanimously in open session to adopt the above conclusion and order on April 21, 2011.

DATED this 22nd day of April, 2011.

PROFESSIONAL TEACHING
PRACTICES COMMISSION

By: *Signed* _____
Linda Black, Chair

Certificate of Service: The Undersigned certifies that on the 4th day of May, 2011, a true and correct copy of this document was mailed to the following: Heath Day; Karen Hawkins, Assistant Attorney General.

By: *Signed* _____
Linda Schwass/Kim DeMoss

[This document has been modified to conform to the technical standards for publication.]