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OAL Dkt. No. EDU 10384-22

Agency Dkt. No. 286-10/22

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the
Teaching Certificate of Helene Nguessan, Team
Academy Charter School, Essex County

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner, TEAM Academy Charter School, Inc., pursuant to *N.J.A.C. 1:1-18.4*, and the reply filed by respondent, Helene Nguessan, have been reviewed and considered.

Petitioner initiated this matter to suspend respondent's teaching certificate pursuant to *N.J.S.A. 18A:26-10*, alleging that she resigned from her teaching position with the TEAM Academy Charter School without providing sixty days' notice as was required under her employment contract. After respondent filed an answer, the matter was transmitted to the OAL for a contested hearing. The Administrative Law Judge (ALJ) made numerous factual findings and concluded that respondent's certificate should not be suspended. The ALJ reasoned that respondent did not cease to perform her duties before the expiration of the sixty-day notice period because: (1) on September 2, 2022, her doctor determined that she could not return to work due to a stress-related issue, and (2) on that same day, petitioner terminated her employment.

In their exceptions, petitioner denies that it terminated respondent's employment and claims instead that respondent voluntarily abandoned her position on September 2, 2022. Specifically, petitioner takes issue with the ALJ's finding regarding an email dated September 2, 2022, from petitioner to respondent. Petitioner's Exceptions, at 9. Page 6 of the ALJ's Initial Decision states: "Nguessan received an email from KIRA [the location at which respondent was employed] dated September 2, 2022, stating that September 2, 2022, was her last day and she would be paid until September 15, 2015 [sic]." Initial Decision, at 6. Petitioner asserts that no such email was presented at the hearing "because it does not exist" and that, therefore, the ALJ's finding regarding the termination is unfounded. Petitioner's Exceptions, at 9.

In reply, respondent argues, among other things, that petitioner did terminate her employment on September 2, 2022, before the sixty-day notice period ended. Regarding the email referenced by the ALJ in her Initial Decision, respondent claims that it does exist "but was dated September 20, 2022," not September 2, 2022, which suggests that the ALJ made a typographical error. Respondent's Reply, at 4. Respondent further asserts that although testimony was taken about the September 20, 2022, email during the hearing, the email was not moved into evidence because respondent's counsel "only received it the day of the hearing." *Id.* at 4-5.

Upon careful review and consideration, the Commissioner is constrained to remand this matter to the OAL to resolve the evidentiary issue raised in petitioner's exceptions regarding the September 2, 2022, email referenced on page 6 of the ALJ's Initial Decision, and to resolve

the related factual dispute concerning whether petitioner terminated respondent's employment on September 2, 2022.

Although the Initial Decision suggests that the ALJ relied upon an email dated September 2, 2022, to support her finding that petitioner terminated respondent on that date, the case record received from the OAL does not contain a copy of that email. Adding to the confusion, respondent supplied an email to the Commissioner with her reply exceptions dated September 20, 2022, related to her separation from employment with petitioner and suggested that this email was in fact the email referenced by the ALJ in the Initial Decision. But this email is not contained in the case file, either. The Commissioner cannot consider evidence that is not part of the record when rendering a final decision. *See N.J.S.A. 52:14B-10(d)* ("A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing . . ."). Furthermore, neither party provided the Commissioner with the hearing transcripts, and it is unclear from the Initial Decision whether any of the witnesses testified about either an email dated September 2, 2022, or an email dated September 20, 2022.

Accordingly, the Commissioner hereby remands this matter to the OAL for the ALJ to clarify whether the September 2, 2022, email referenced on page 6 of the Initial Decision was moved into evidence. If the ALJ's findings regarding the September 2, 2022, email were intended to describe the email dated September 20, 2022 (supplied by respondent with her reply exceptions), the ALJ should clarify same and confirm whether that email was moved into evidence. In addition, the ALJ should clarify whether there was an alternative evidentiary basis

for her finding that petitioner terminated respondent on September 2, 2022 (e.g., witness testimony), independent of any emails from petitioner to respondent.

IT IS SO ORDERED.¹


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

Date of Decision: November 6, 2023

Date of Mailing: November 8, 2023

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

AMENDED

INITIAL DECISION

OAL DKT. NO. EDU 10384-22

AGENCY DKT. NO. 286-10/22

**IN THE MATTER OF THE SUSPENSION OF
THE TEACHING CERTIFICATE OF HELENE
NGUESSAN TEAM ACADEMY CHARTER
SCHOOL, ESSEX COUNTY,**

Thomas O. Johnston, Esq. for Petitioner (The Johnson Law Group, LLC)

Steven V. Schusler, Esq., for Respondent

Record Closed: August 17, 2023

Decided: August 25, 2023

BEFORE **KIMBERLY A. MOSS**, ALJ:

Respondent Helene Nguessan opposes the suspension of her teaching certificates for allegedly resigning from the Team Academy Charter School, (TACS or petitioner) without giving sixty days' notice.

This matter was forwarded to the Office of Administrative Law from the Department of Education on November 17, 2022, as a contested matter. The hearing was held on June 1, 2023. Closing briefs were received on July 7, 2023. Reply briefs were received on August 17, 2023, at which time I closed the record.

FACTUAL DISCUSSION

TESTIMONY

Dana Kerrihard

Dana Kerrihard (Kerrihard) is the employee relations manager at TACS. KIP Team and Family is the corporate office that manages TACS. Kerrihard supports schools in human relations, teaching certificates and school-based employment matters. One of the KIP schools is KIP Upper Roseville School (KIRA). When an employ resigns, the resignation goes to employee relations to determine the last date of employment. Nguessan was employed by TACS at KIRA. She began prior to 2022. Nguessan's 2022-2023 employment contract with TACS states the renewal job location and salary. The contract is signed by the executive director of TACS and Nguessan. Nguessan signed the contract digitally on May 17, 2022. Nguessan was offered the position of teacher at KIRA in the 2022-2023 contract. The contract states that if Nguessan resigns, she must give sixty days' notice. Nguessan's resignation letter was dated August 3, 2022. It stated that she was leaving her position on August 12, 2022. This was not compliant with the sixty days' notice required by the contract. The students start back to school in mid-August.

On August 9, 2022, Nguessan agreed to comply with the sixty-day notice requirement. Her retirement date would be October 3, 2022. Nguessan was a Kindergarten teacher. She was moved to the position of enrichment teacher. Nguessan was given two paid time off days. She did not appear at the school in September 2022. She did not work until October 3, 2022. Nguessan provided a doctor's note dated September 2, 2022, stating that she was in the doctor's office on that date and that she was not cleared to return to work.

On August 30, 2022, Nguessan stated that she would only come to work through the end of the week. Nguesan's termination was effective September 2, 2022. She was paid through September 15, 2022.

Nguessan had issues with being an enrichment teacher and not receiving the swag that the other teachers received. Nguessan felt that she was being treated unfairly and felt that there was a lack of honesty. Kerrihard was unclear as to what the lack of honesty was that Nguessan referred to.

Helene Nguessan

Nguessan taught kindergarten at KIRA for three years. In May 2022, she signed a contract with TACS for the 2022-2023 school year. She intended to teach at KIRA that year. In mid-July 2023, she was contacted by a Paterson school administrator who had saw her resume. She interviewed for a teaching position at Paterson Art and Science Middle School. She was offered the position in Patterson on July 29, 2022. She accepted the position at Paterson on August 1, 2022.

Nguessan gave TASC two weeks' notice that she would be leaving. She spoke to Sam Geffrard on August 3, 2023, regarding her resignation. Nguessan was informed that she was required to give sixty days' notice, which she agreed to do. The 2022-2023 contract that Nguessan signed required her to give two months' notice if she resigned. She did not remember this provision of the contract when she gave KIRA two weeks' notice. Nguessan had previously been a teacher in Connecticut, where teachers had to give two weeks' notice when they left.

On August 8, 2022, an enrichment teacher, Thompson expressed to Nguessan that she wanted to return to kindergarten teaching. Nguessan told Thompson that there was a position open at KIRA since Nguessan was leaving. Thompson took over the kindergarten teaching position on August 10, 2022.

There was a change in the pattern of communication with the teachers at KIRA at this time. Nguessan did not receive communications. Her schedule was not set. Nguessan asked Geffrard if she could use PTO days to attend orientation at Paterson Art and Science Middle School but was refused. Nguessan intended to complete her

contract with TACS through October 3, 2022, but she felt under pressure every day since she gave her resignation.

Having reviewed the testimony and evidence, I **FIND** the following **FACTS** in this case.

KIP Team and Family is a corporate office that manages TACS. Kerrihard is an employee relations manager at TACS. KIP Team and Family through TACS owns KIRA.

Nguessan was employed by TACS at KIRA. She was employed as a kindergarten teacher at KIRA for three years. Nguessan was told in January 2022 that she would be offered the position of Kindergarten Grade Level Chair at KIRA. Nguessan signed the employment contract with TASC in May 2022. The contract was for teaching at KIRA for the 2022-2023 school year. The contract did not state that Nguessan would be the Kindergarten Grade Level Chair. The contract stated that if Nguessan were to resign, she would have to give sixty days' notice. If an employee does not give adequate notice, the employee will be referred to the Department of Education for not following through on the contract agreement. This affects the status of teaching certificates.

On August 3, 2022, Nguessan submitted a resignation letter to TASC stating that she was leaving her position on August 12, 2022. Once Kerrihard received Nguessan's resignation letter, she informed Nguessan of the sixty-day requirement which would mean that her resignation date is October 3, 2022. Nguessan was told that if she did not comply, that the matter would be referred to the Department of Education.

On August 9, 2022, Nguessan agreed to comply with the sixty-day notice provision of her contract. Nguessan was to be an enrichment teacher until she completed the sixty-day notice period. Her resignation would be effective on October 3, 2022.

Enrichment teachers support other teachers. Another teacher, Thompson, was moved to the kindergarten teacher position. Teachers can be moved to other teaching positions. The contract signed by Nguessan did not limit Nguessan's duties to kindergarten teacher. Thompson and Nguessan's positions were switched. On August 18, 2022, Nguessan confirmed that the kindergarten teacher position had been filled. Nguessan believed that with the kindergarten teaching position filled she could leave KIRA prior to October 3, 2022, sixty days after she gave notice of her resignation. Nguessan received an email from Kerrihard on August 19, 2022, stating it was necessary for her to fulfill her contractual obligation. The school can agree to an earlier resignation notice time if the position is filled before the sixty-day notice period. In this matter TACS needed to hire a new teacher and it is difficult getting new teachers in August.

Nguessan on August 21, 2022, was offered a higher position at KIRA of kindergarten grade level chair by Geffrard. She had previously been offered the position in January 2022, but it was not the position listed in her 2022-2023 contract. She refused the position. TACS was not originally going to have this position.

In August 2022, there was a staff development day. Swag was put out for the staff by their name tags. There was no swag put out for Nguessan. This was an oversight and Nguessan later received the swag. There was a change in the pattern of communication with the teachers at KIRA at this time at this time. Nguessan did not receive communications. Her schedule was not set.

Jasmine Ballard, the Director of Operations at KIRA told Nguessan at 7:15 a.m. one day in August 2022, that she had to move her belongings to another room. Nguessan was not assigned a room to put her belongings in as an enrichment teacher. She was told to put her belongings in Thompson's former room. One day the door to Thompson's former room was locked.

Nguessan was frustrated at how she was being treated at KIRA. She also began having physical problems. She did not have a set schedule; nothing was consistent after she gave her resignation notice. She felt that she was being punished because she did not accept the kindergarten grade level chair position.

On September 2, 2022, Ngnessan was again asked to move her belongings to another room. She was told that the room where she had her belongings was going to be used later in the day. She began experiencing stress. She scheduled a doctor's appointment within one hour of being told to remove her belongings. She asked staff at KIRA if she could see a doctor. Ngnessan had an enrichment class from 9:30-11:00a.m. She was told that she could not leave. Eventually, the head of the department took over the enrichment class and Ngnessan went to the doctor's appointment.

Ngnessan went to Dr. Rena Levykh-Chase on September 2, 2022, who wrote that Ngnessan is currently under stress and needs further time off. Ngnessan needed to be referred to a psychiatrist. Dr. Rena Levykh-Chase also noted that Ngnessan cannot return to work.

Ngnessan received an email from KIRA dated September 2, 2022, stating that September 2, 2022, was her last day and she would be paid until September 15, 2015. Ngnessan received counseling with Care Plus. She was having anxiety and in tears. Her initial appointment with Care Plus was within five days of the referral. The initial appointment was an intake there was a waiting list for another appointment. Her follow up appointment was on November 15, 2022. Ngnessan started her job with Paterson on September 22, 2022.

Kerrihard stated that it is her obligation to notify the state if Ngnessan does not comply with the terms of the contract. TACS asked for Ngnessan's credentials to be suspended. Kerrihard checked the employee contract to make sure that resigning employees give the correct amount of notice.

LEGAL ANALYSIS AND CONCLUSION

N.J.S.A. 18a:28-8 provides:

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.

N.J.S.A. 18a:26-10 provides:

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.

As used in this section, "approved private school for the disabled" means a private entity approved by the Department of Education to provide special education and related services to students with disabilities who have been placed by the district board of education or charter school responsible for providing their education.

In this matter Nguessan on August 3, 2022, submitted a resignation letter from KIRA stating her final day would be August 12, 2022. Once she was informed what her contract requires, she gave sixty days' notice before her resignation, she agreed to stay at KIRA until October 3, 2022. Her position was switched from kindergarten teacher to enrichment teacher. There was an event at KIRA in August 2022 where all of the teachers at KIRA were given swag at an event and Nguessan was not. Nguessan was told to leave her belongings in Thompson's former office, but it was not always open. On more than one occasion Nguessan was told to move her belongings to another area in August 2022. These things have caused Nguessan to experience stress to the extent that on September 2, 2022, after being told again to move her belongings, she scheduled an emergency doctor's appointment for the same day. She saw the doctor on September 2, 2022, who wrote that she could not return to work due to being under stress and that she needed to see a psychiatrist. TASC terminated Nguessan on September 2, 2022.

Nguessan did not cease to perform her duties prior to the expiration of the sixty-day notice. Her doctor stated that she could not return to work on September 2, 2022, which is the same day that TASC terminated Nguessan.

I **CONCLUDE** Nguessan did not cease to perform her duties before the expiration of the sixty-day notice period because on September 2, 2022, her doctor provided a letter stating that she could not return to work, and Nguessan was terminated on September 2, 2022.

ORDER

Based on the foregoing, it is **ORDERED** that TACS request that Nguessan's teaching certificates be suspended is **DENIED**.

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.

August 25, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

August 25, 2023

Date Mailed to Parties:

August 25, 2023

ljb

WITNESSES

For Petitioner

Dana Kerrihard

For Respondent

EXHIBITS

For Petitioner

- P-1 Nguessan Employment Agreement for 2022-2023
- R-2 Email dated August 21, 2022 from Nguessan
- R-3 Email Response to Nguessan dated August 23, 2022

For Respondent

- R-1 Resignation letter related documents
- R-2 Not in Evidence
- R-3 Emails
- R-4 Doctor's Note Dated September 2, 2022
- R-5 Resignation Letter of Nguessan
- R—6 Paterson ASCs Teacher Contract
- R-7 Nguessan Resume
- R-8 Nguessan Medical Records
- R-9 Nguessan Contract for 2022-2023 with TACS
- R-10 Not in Evidence
- R-11 Not in evidence