

New Jersey Commissioner of Education**Final Decision**

In the Matter of the Suspension of the
School Nurse Non-Instructional Emergency
Certificate of Lydia Mokaya, North Hudson
Academy, Hudson County.

Synopsis

Petitioner sought to suspend the School Nurse, Non-Instructional Emergency Certificate of the respondent for resigning on inadequate notice, pursuant to *N.J.S.A. 18A:26-10*. Respondent filed an answer to an Order to Show Cause in January 2019, and the matter was transmitted to the Office of Administrative Law (OAL) for a hearing. The hearing was held remotely via Zoom on January 29, 2021, and an Initial Decision was subsequently issued by the Administrative Law Judge (ALJ) on March 15, 2024.

The ALJ found, *inter alia*, that: North Hudson Academy (North Hudson) is a private school for the disabled; respondent was initially hired by the petitioner as a paraprofessional and thereafter attended nursing school; she was offered the position of school nurse for the 2018-2019 school year under an emergency certificate, and was allowed to work a 30 hour week instead of the usual full time schedule of 35 hours/week; petitioner became concerned that her part time nursing schedule was not adequate to cover the medical needs of the students at North Hudson and discussed this with the school director on September 11, 2018; at this meeting, the school director told respondent that if she found a full-time school nurse to replace her, he would hire them; respondent then sought and found a replacement for her position; respondent tendered a letter of resignation on September 28, 2018, stating that she would work through December 21, 2018; and her replacement assumed the position of school nurse in January 2019. As *N.J.A.C. 6A:9B-4.8*, the regulation governing suspension of certificates for failure to give notice of intention to resign, provides an exception for employees who resign with consent of the school administration, the ALJ concluded that North Hudson Academy failed to sustain its burden of proof that the respondent is guilty of unprofessional conduct under *N.J.S.A. 18A:26-10* and *N.J.A.C. 6A:9B-4.8*; accordingly, the Order to Show Cause seeking a finding that respondent was guilty of unprofessional conduct was denied.

Upon review, the Commissioner concurred with the ALJ that petitioner, North Hudson Academy, has not demonstrated by a preponderance of the credible evidence that respondent committed unprofessional conduct warranting suspension of her certificate under *N.J.S.A. 18A:26-10*. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the Order to Show Cause was denied.

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.

New Jersey Commissioner of Education

Final Decision

In the Matter of the Suspension of the School
Nurse Non-Instructional Emergency Certificate
of Lydiah Mokaya, North Hudson Academy,
Hudson County.

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

Upon review, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the Administrative Law Judge that petitioner, North Hudson Academy, has not demonstrated by a preponderance of the credible evidence that respondent committed unprofessional conduct warranting suspension of her certificate under *N.J.S.A. 18A:26-10*.¹

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the Order to Show Cause is hereby denied.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2024
Date of Mailing: April 24, 2024

¹ According to the record, respondent's certificate expired in July 2019.

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 02633-19

AGENCY DKT. NO. 38-2/19

**IN THE MATTER OF THE TEACHING
CERTIFICATE(S) OF LYDIA MOKAYA,
NORTH HUDSON ACADEMY, HUDSON CO.**

TJ Legg, Esq., for petitioner, North Hudson Academy, (The Legg Law Firm, LLC,
attorneys)

Eldridge Hawkins, Sr., Esq., for respondent, Lydia Mokaya

Record Closed: February 20, 2024

Decided: March 15, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

SUMMARY OF THE CASE

Petitioner, North Hudson Academy seeks to suspend the School Nurse, Non-Instructional Emergency Certificate of respondent, Lydia Mokaya for resigning on inadequate notice, pursuant to N.J.S.A. 18A:26-10.

PROCEDURAL HISTORY

On January 14, 2019, petitioner, the North Hudson Academy (North Hudson Academy), filed with the Commissioner of the State of New Jersey, Department of

Education (Commissioner of Education) , an Order to Show Cause and Affidavit of Dennis P. McCarthy, Director of North Hudson Academy, seeking to suspend the School Nurse, Non-Instructional Emergency Certificate (certificate) of respondent, Lydia Mokaya (Mokaya) for unprofessional conduct pursuant to N.J.S.A. 18A:26-10.

On January 23, 2019, the Commissioner of Education entered the Order to Show Cause and instructed North Hudson Academy to serve the same on Mokaya in order to initiate proceedings before the Commissioner of Education. Mokaya was served and on February 19, 2019, Mokaya filed her answer.

On February 25, 2019, the Commissioner of Education transmitted the underlying case to the Office of Administrative Law for an evidentiary hearing. On March 26, 2019, an initial status telephone conference was held, and a Prehearing Order was entered therein. On September 3, 2019, a Notice of Substitution of Attorney was submitted to the undersigned, wherein the Academy's legal counsel, Gregory Mgrditchian, Esq., of the law firm of DeGrado Halkovich, LLC, was substituted by TL Legg, Esq., of the law firm of Legg Law Firm, LLC.

An evidentiary hearing was held via zoom on January 29, 2021. The parties requested the record to remain open to obtain hearing transcripts and submit post-hearing written summations. Following the hearing, telephone status conferences were held on May 3, 2021, June 3, 2021, and September 27, 2021, regarding the status of the hearing transcripts, and submission of the post hearing briefs. Written summations were filed by petitioner on December 21, 2021, and respondent on July 25, 2022.

The record remained open to allow for a review of the hearing exhibits, transcript, and summations, and the same closed on February 20, 2024.

FACTUAL DISCUSSION

In the evidentiary hearing, North Hudson Academy called Mokaya to testify and also presented testimony from Robert Federer, Esq., and Dennis McCarthy, Director of the North Hudson Academy. Mokaya also testified on her own behalf. I **FIND** all of the

witnesses in this matter credible and their testimony to be truthful, and where appropriate, to be corroborated by the documentary evidence submitted herein.

Having considered the testimony of Lydia Mokaya, Robert Feder, Esq., and Dr. Dennis McCarthy, and the following documentary evidence entered into the record: as to North Hudson Academy, exhibit P-2; and as to Mokaya exhibits R 1 through R5, and R8 through R11, I make the following **FINDINGS** of **FACT**:

North Hudson Academy is a private non-profit corporation providing education to the disabled, in North Bergen, New Jersey.¹ Mokaya was originally hired by North Hudson Academy as a para profession. Thereafter, she attended nursing school. On June 5, 2018, Mokaya entered into an employment contact with North Hudson Academy for the school year 2018-2019, as a School Nurse, holding a School Nurse Non-Instructional Emergency Certificate (R-1). The “school year” is defined from when classes begin in September through the end of the school year in June. (Id.) Although her title was that of a “non-instructional” school nurse, North Hudson Academy listed her as a “teaching staff member” because she had been a para professional at the school prior to being hired as the school nurse. (Transcript: 245: 3-13).

The School Nurse position was a full-time position, of thirty-five hours per week. At the time she signed the employment contract, Mokaya intended to work for the full term of the agreement. However, Mokaya was unable to work the full-time schedule required because she worked at night and North Hudson Academy allowed her to work about thirty (30) hours per week. Mokaya acknowledged the terms of the employment contract requiring her to work a full school year and the consequences for her not doing the same. (R-1, Section 6.3, and Memorandum dated June 1, 2018).

Mokaya was concerned that because some of the students who attended North Hudson Academy required medical attention, and she could not work the full-time hours, the school would be best served by a full-time School Nurse. On September 11, 2018, Mokaya had a conversation with Dr. Dennis McCarthy (Dr. McCarthy), where she

¹ It was represented by Dr. Dennis McCarthy, Director of North Hudson Academy that the school is approved by the Commissioner of Education as a private non-profit school providing education to the disabled.

expressed her concern that North Hudson Academy needed a full-time School Nurse to attend to some of the student's medical needs. Dr. McCarthy told her to "find me a full-time nurse and I'll hire them." (Transcript 54:22-55:10). Mokaya believed that if she could find a full-time School Nurse she could leave her employment at North Hudson Academy. (Id.)

On September 28, 2018, Mokaya tendered a letter of resignation to Dr. McCarthy, effective December 21, 2018. (R-9). As per her discussion with Dr. McCarthy, Mokaya sought a replacement for the School Nurse position, for when she was to leave. Mokaya knew someone called "Sabrina" and told her about the upcoming opening at North Hudson Academy due to her pending resignation in December 2018. (R-10). Sabrina applied, was interviewed, and hired by North Hudson Academy as School Nurse, and commenced her employment as School Nurse in January 2019, after Mokaya left. After satisfying North Hudson Academy's sixty-day probationary period for new hires, Sabrina remained School Nurse at North Hudson Academy through the end of the school year in June 2019. Sabrina did not seek to renew her contract with North Hudson Academy after the school year.

On December 7, 2019, Dr. McCarthy prepared a Memorandum addressed to Mokaya, referencing her "Employment Resignation" (R-3). The Memorandum contained the following language:

You have informed the school administration that you have decided that your last day of work attendance will be December 21, 2018.

It is understood that you will professionally and satisfactorily perform all current duties as a School Nurse through 3:15PM Friday, 12/21/18, including the successful transition of information and support to staff who may be assuming your duties.

Finally, you are responsible for the satisfactory completion (and review with the Indicated staff member) of the following prior to 3:15PM 12/21/18:

[listed obligations are not included herein]

Please be advised that your final pay check cannot be release if the obligations above ae not satisfactorily met by your last day of work.

[R-3]

Mokaya completed all of the required obligations contained in the Memorandum and her last day of employment as School Nurse at North Hudson Academy was December 21, 2018, which was the last day of classes. She was paid her final pay check said date. (R-10A).

North Hudson Academy affirmed that the employment contract (R-1) prepared by its counsel, Robert Feder, Esq., (Feder), was revised by Dr. McCarthy as to the terms applicable to for the school year in question (2018-2019) (R-3). Feder also affirmed that the employment contract did not have a breach of contract provision or early termination provision. (Transcript: 125:19-22). Feder further confirmed that the decision to file the Order to Show Cause in this matter was made by Dr. McCarthy and did not include the Board of Trustee's vote. (Transcript: 153: 19-25 and 154: 1:5). Feder further confirmed that the purpose of proceeding with the underlying Order to Show Cause against Mokaya was "among other things is the [sic] discouraging people to breach their contracts and the detrimental affect it has on the school and its student population." (Transcript: 155:19-24).

Dr. McCarthy testified that North Hudson Academy undertook the within action against Mokaya because he believed she was guilty of "unprofessional conduct" because she left her employment before the end of her one-year term. (Transcript: 190:5-25). When asked on direct examination to explain the December 7, 2018 memorandum (R-3), Dr. McCarthy stated that the memorandum contained the items Mokaya needed to complete before she left her employment after December 2018. (Transcript: 202:23-24; 203: 1-25). Dr. McCarthy testified that Mokaya's decision to leave her employment prior the end of the term was a "breach" of the employment contract and that he never intended or communicated to Mokaya that she was being let out of her contract prior to its term. (Transcript: 209:2-12).

On cross-examination, Dr. McCarthy denied requesting a replacement nurse from Mokaya and denied agreeing to the same, despite one being provided and hired by the school. (Transcript: 221: 4-12). Dr. McCarthy confirmed that the primary reason the underlying action was filed was because Mokaya left prior to the end of her employment contract and the school needed “consistency” of a nurse for the school year. (Transcript: 227: 1-7). In cross-examination, Dr. McCarthy admitted that he knew a replacement for Mokaya had been hired, but he did not know at the time if she would be a “qualified” replacement. (Transcript: 276:9-13). Dr. McCarthy confirmed that Sabrina was a qualified replacement, as she remained through the end of the school year. (Transcript: 281: 18-23).

Dr. McCarthy testified that after June 2019, Sabrina left and North Hudson Academy contracted a nursing service company, which did not always provide the same nursing personnel during the school year. (Transcript: 240: 6-20). Dr. McCarthy confirmed that with the exception of one employee who left during their sixty-day probationary period, all prior staff who left North Hudson Academy before the end of their contract term were brought up on charges before the State Department of Education. (Transcript: 285:3-7). Dr. McCarthy further stated that the decision to commence the within action against Mokaya was done strictly for school policy reason and not with any malice toward Mokaya.(Transcript: 286:10-14). North Hudson Academy affirmed that it did not suffer any monetary damages due to Mokaya leaving her employment prior to the contract term. (Transcript: 297: 17-26).

CONCLUSIONS OF LAW

N.J.S.A. 18A:26-10 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 . . .” In order to sustain the charge of unprofessional conduct pursuant to N.J.S.A. § 18A:26-10, the petitioner must demonstrate that respondent: 1) was a teaching staff member employed by a board of education who; 2) ceased to perform her duties before the expiration of the term of her employment; 3) without consent of the board. The underlying purpose of N.J.S.A. 18A:26-10 is “to protect pupils from the

disruption caused by '[s]taff members who leave before the expiration of their contracts.'" Ibid. (citation omitted.)

In the present matter, the record reflects that the only required criteria in dispute is whether North Hudson Academy gave "consent" for Mokaya's departure prior to the expiration of her employment agreement. Mokaya's employment contract with North Hudson Academy does not provide an early termination provision. However, the employment contract does provide at paragraph 6.3 that an employee who leaves prior to the end of the school year, will be responsible for any "damages" the school incurs and will also be "assumed guilty" of unprofessional conduct "as per N.J.A.C. 6A:9-17.9" (R-1). The cited regulation is now known as N.J.A.C. 6A:9B-4.8, suspension of certificates for failure to give notice of intention to resign, and provides:

- (a) A teaching staff member employed by a district board of education who ceases, without the district board of education's consent, to perform the teaching staff member's duties prior to the expiration of the term of employment shall be deemed guilty of unprofessional conduct.
- (b) Upon receiving notice of the fact, the Commissioner may suspend the certificate for a period not to exceed one year pursuant to N.J.S.A. 18A:26-10.
- (c) Appeal of the Commissioner's decisions pursuant to this section shall be in accordance with N.J.A.C. 6A:4.

The Commissioner of Education has held that the central 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-Carney's Point Board of Education v. Leinen, 94 N.J.A.R.2d (EDU) 405, 407.

The operative word in N.J.A.C. 6A:9B-4.8 for a teaching staff member not to be found guilty of unprofessional conduct is that the school gave "consent" to their departure prior to the term of their employment agreement. The testimony of both Mokaya and Dr. McCarthy show that North Hudson Academy was aware as early as September 18, 2018, that Mokaya would be leaving the school prior to end of her contract term. Said testimony

and that of Feder, further reveals that the school did not sustain any “damages” as Mokaya produced Sabrina as her replacement, who remained as school nurse through the school year. Moreover, the record reveals that Mokaya completed all of her assigned tasks prior to her departure in January 2019 (R-3). The only reason this action was commenced by North Hudson Academy was because Dr. McCarthy felt that the time of Mokaya’s departure he did not have a “qualified” replacement in Sabrina.

Dr. McCarthy’s testimony that Mokaya’s early departure would be disruptive to the school is contradicted by the record which shows: 1) Mokaya provided four-months’ notice of her departure; 2) nurse replacement was in place prior to Mokaya’s departure and 3) the replacement nurse remained employed through the end of the school year.

For these reasons, I **CONCLUDE** that petitioner, North Hudson Academy has not sustained its burden of proof by a preponderance of the credible evidence that Mokaya is guilty of unprofessional conduct under N.J.S.A. 18A:26-10 and N.J.A.C. 6A:9B-4.8. Accordingly, I **CONCLUDE** that the Order to Show Cause seeking a finding that Mokaya is guilty of unprofessional conduct under N.J.S.A. 18A:26-10 is **DENIED**.

ORDER

The charge of unprofessional conduct against respondent Lydia Mokaya is hereby **DENIED**.

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.

March 15, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

March 15, 2024

Date E-Mailed to Parties:

March 15, 2024

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APPENDIX

WITNESSES

For Petitioner:

Lydia Mokaya

Robert S. Feder, Esq.

Dennis P. McCarthy

For Respondent:

Lydia Mokaya

EXHIBITS

For Petitioner:

P-2 Text messages

P-3 Certification of Lydia Mokaya

For Respondent:

R-1 Employment Agreement

R-2 June 1, 2018, Memorandum

R-3 December 7, 2018, Memorandum

R-4 Affidavit of Dennis P. McCarthy

R-5 Order to Show Cause

R-6 and R-7 Not admitted

R-8 Emergency Diabetic Plan

R-9 September 28, 2018 Letter of Resignation

R-10 Text exchanges between Mokaya and Sabrina

R-10A Pay Stubs

R-11 June records and memos regarding Mokaya