

**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.

**Synopsis**

In this matter on remand, petitioner TEAM Academy Charter School (TEAM) sought to suspend respondent's teaching certificate pursuant to *N.J.S.A. 18A:26-10*, alleging that she resigned from her teaching position without providing sixty days' notice as was required under her employment contract. Following a hearing in the Office of Administrative Law (OAL), the ALJ issued an Initial Decision in August 2023 concluding that the respondent's certificate should not be suspended based on findings of fact that indicated TEAM had terminated respondent's employment via email dated September 2, 2022, prior to the end of the sixty-day notice period. Following review by the Commissioner of Education, the matter was remanded to the OAL to resolve an evidentiary issue regarding the September 2, 2022, email and to resolve the related factual dispute concerning whether petitioner did in fact terminate respondent's employment on September 2, 2022.

On remand, the ALJ, *inter alia*, incorporated findings from her August 2023 Initial Decision: respondent was in her third year as a kindergarten teacher with TEAM when she was told she would serve in the position of Kindergarten Grade Level Chair for the following school year; the annual contract she received and signed for the 2022-2023 school year was for the position of kindergarten teacher but did not mention the Grade Level Chair title; the employment contract included a 60 day notice clause; respondent submitted a letter of resignation on August 3, 2022, but – following a conversation with Human Resources – agreed to work through the end of the 60 day notice period in the position of enrichment teacher; however, respondent became frustrated with how she was treated after this change and began having stress-related health issues; on September 2, 2022, respondent went to a doctor who wrote a letter stating that she was experiencing work-related stress and would need additional time off; on the same day, respondent claims she received an email terminating her employment with TEAM; she later received an order to show cause why her teaching certificate should not be suspended for unbecoming conduct for not continuing to teach until the end of the 60 day notice period. On remand, the ALJ clarified that her determination that TEAM had terminated respondent was based on testimony from TEAM's employee relations manager, who confirmed that respondent had been terminated by TEAM on September 2, 2022. Accordingly, the ALJ concluded that respondent did not cease to perform her duties before the expiration of the sixty-day notice period and denied TEAM's request to suspend her teaching certificate.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that, given the unique circumstances in this case, respondent did not violate *N.J.S.A. 18A:26-10* by failing to report to work through October 3, 2022, as TEAM had terminated her employment on September 2, 2022. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, with modification to disallow the email evidence that was never entered into the record.

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.

201-24

OAL Dkt. No. EDU 4392-24 (EDU 10384-22 on remand)  
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 June 1, 2023, hearing transcript, the Initial Decisions 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.

By way of background, 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 without providing sixty days' notice as was required under her employment contract. *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, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year."

Following a contested hearing, the Administrative Law Judge (ALJ) issued an Initial Decision on August 25, 2023, wherein she rendered factual findings and concluded that

respondent's certificate should not be suspended. The ALJ reasoned that respondent did not cease to perform her duties prior to the expiration of the sixty-day notice period on October 3, 2022, in violation of *N.J.S.A. 18A:26-10* because: (1) on September 2, 2022, respondent's doctor determined that she could not return to work due to a stress-related issue; and (2) on that same day, after receiving a note from respondent's doctor, petitioner terminated her employment.

In November 2023, the Commissioner remanded the matter to the OAL to resolve an evidentiary issue regarding a September 2, 2022, email referenced in the ALJ's Initial Decision, and to resolve a related factual dispute concerning whether petitioner terminated respondent's employment on September 2, 2022. The Commissioner directed the ALJ to clarify whether emails dated September 2, 2022, and/or September 20, 2022, were moved into evidence, and whether there was an alternative evidentiary basis for the finding that petitioner terminated respondent on September 2, 2022 (e.g., witness testimony), independent of any emails from petitioner to respondent. At that time, the Commissioner had not yet been provided with a copy of the June 1, 2023, hearing transcript.<sup>1</sup>

In an Initial Decision filed April 10, 2024, in response to the remand, the ALJ clarified that she relied upon hearing testimony from Dana Kerrihard, Employee Relations Manager, to support her conclusion that petitioner terminated respondent's employment on September 2, 2022. However, the ALJ did not provide any clarification regarding the emails. Because those emails were not part of the hearing record, the Commissioner rejects any findings made by the ALJ in her August 25, 2023, Initial Decision with respect to same.

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<sup>1</sup> Petitioner provided the Commissioner with a copy of the June 1, 2023, hearing transcript in April 2024.

In their exceptions, petitioner argues that the Commissioner should reject the ALJ's Initial Decisions and takes exception to the following findings of fact made by the ALJ: (1) TEAM Academy "owns KIPP Upper Roseville School (KIRA)"; (2) respondent "did not receive communications" from TEAM administration during her notice period; (3) respondent's "schedule was not set"; (4) respondent had "physical problems" during her notice period; and (5) respondent "received an email from [TEAM] dated September 2, 2022." Petitioner's Exceptions, at 6-16.

Petitioner also takes exception to the ALJ's legal conclusions and asserts they are incorrect because respondent abandoned her teaching position on September 2, 2022, prior to the conclusion of the sixty-day notice period, thereby violating her employment contract and *N.J.S.A. 18A:26-10*. Petitioner denies that it terminated respondent and claims that the ALJ mischaracterized Kerrihard's testimony in that regard. Petitioner emphasizes that as of August 30, 2022, respondent had already notified Kerrihard via email that she only intended to work through the end of that week—i.e., until September 2, 2022.

In reply, respondent contends that the ALJ's decisions should be adopted. Citing Kerrihard's testimony, respondent maintains that her employment was terminated by petitioner on September 2, 2022, before the sixty-day notice period expired. Respondent asserts that the doctor's note stating that she could not return to work was admitted into evidence at the OAL hearing without objection from petitioner. Additionally, respondent contends that the Commissioner lacks jurisdiction to act against her credentials because "[t]here is no evidence that TEAM is a legally authorized board of education under the statute

nor an approved private school for the disabled,” and that her May 17, 2022, employment contract is not legally enforceable. Respondent’s Reply to Exceptions, pp. 8-10.

As previously stated, the Commissioner agrees with petitioner that any factual findings made by the ALJ in her August 25, 2023, Initial Decision regarding an email dated September 2, 2022, are rejected, as that email is not part of the record. As for the other factual findings disputed by petitioner, the Commissioner finds that they are adequately supported by the record. Kerrihard’s hearing testimony reflects that TEAM Academy Charter School is a charter school network which operates schools at multiple locations, one of which is the KIPP Upper Roseville School location where respondent worked (see hearing transcript, pp. 11-12). Respondent testified that due to a change in technology platform, she did not receive certain communications from petitioner (see hearing transcript, pp. 62-63). Respondent further testified that once she took over the enrichment teacher position, “the schedule was not set” (see hearing transcript, p. 63). Respondent also testified that she began having “physical problems” at work and, consequently, visited her primary care doctor (see hearing transcript, p. 69) and respondent’s Intake Assessment at Care Plus NJ, marked R-8 in evidence, states: “Client notes symptoms to include back pain, chest pain, racing thoughts, and butterflies in her stomach.”

Moreover, upon careful review, the Commissioner concurs with the ALJ that respondent did not violate *N.J.S.A. 18A:26-10* by failing to report to work until October 3, 2022, because petitioner terminated her employment on September 2, 2022. Page 43 of the hearing transcript—specifically, Kerrihard’s testimony—fully supports the ALJ’s finding in this regard, and the ALJ in no way mischaracterized that testimony which reads:

Q. Okay. Now didn't you, in fact, terminate Ms. Nguessan from her position before the sixty days expired?

A. Correct, we did terminate her employment.

Q. And was effective September 2, 2022; isn't that right?

A. Correct.

Consequently, respondent's employment term ended on September 2, 2022. Therefore, it was not possible for respondent to report to work until October 3, 2022, when the sixty-day notice period at issue would have expired.

Additionally, the Commissioner disagrees with petitioner that "[t]he Remand Decision, if left standing, will send a clear message . . . that the statutory mandate for certified personnel to work through their contractual notice period is unenforceable, since the resigning employee can simply produce a doctor's note from a non-counseling medical professional excusing them from work, even if, as the evidence here demonstrates, the employee exhibited 'minimal' symptoms of anxiety, merely from the stress from violating her contractual notice period." Petitioner's Exceptions, at 2. In this case, petitioner terminated respondent's employment, thereby ending the contractual relationship between the parties prior to the conclusion of the sixty-day notice period. Once the termination occurred, the existence of the doctor's note and its contents became irrelevant. Since petitioner opted to terminate respondent's employment on September 2, 2022, any arguments it now attempts to make regarding the evidentiary competency of the doctor's note and respondent's failure to continue working until the sixty-day notice period ended on October 3, 2022, are moot.

Given the unique facts and circumstances established in this case, the Commissioner cannot find that respondent violated *N.J.S.A. 18A:26-10* by ceasing to perform her duties in

accordance with her employment contract prior to the expiration of her employment term. Accordingly, the Initial Decisions of the OAL are adopted, with modification as explained herein, and the Order to Show Cause to suspend Helene Nguessan's teaching certificate is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>



ACTING COMMISSIONER OF EDUCATION

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

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<sup>2</sup> 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 04392-24

AGENCY DKT. NO. 286-10/22

(on remand EDU 10384-23)

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

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

**Steven V. Schusler, Esq.,** for Respondent

Record Closed: March 28, 2024

Decided: April 10, 2024

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. A reply brief from respondent was received on August 17, 2023, at which time I closed the record. I issued a decision on August 25, 2023. By Order dated November 6, 2023, the matter was remanded to OAL. This matter was received at OAL on March 28, 2024. The New Jersey Commission of Education requested clarification on whether an email dated September 2, 2022 was moved into evidence; was that email intended to describe the September 20, 2022 email; was the September 20, 2022 email moved into evidence and was there an alternative evidentiary basis for my finding that petitioner was terminated on September 2, 2022.

I am incorporating by reference my decision of August 25, 2023, in this matter. Dana Kerrihard was asked:

Q. Okay, Ms Kerrihard did you have an understanding about why Ms. Nguessan did not complete her sixty days of teaching at your institution?

A. Yes, she submitted this doctor's note. (Tr. Pg. 42 lines 14-17). Ms Kerrihard understood the doctor's note to state Ms. Nguessan was under stress and not cleared to report to work. (Tr. Pg. 42) Ms. Kerrihard did not dispute the doctor's note. Ms. Kerrihard testified that Nguessan was terminated from her position effective September 2, 2022. (Tr. Pg. 43)

Nguessan testified that she gave the September 2, 2022, doctor's letter to HR and Ms. Geffard. (Tr. Pg. 71) She testified that she did not receive any communication from the school until she received an email sent in late September, which stated that she was terminated as of September 2, 2022. (Tr. Pg. 72)

Based on this testimony I concluded that Nguessan was terminated from employment of September 2, 2022, when she had provided a doctor's note stating that she was not cleared to work.

I **CONCLUDE** Nguessan did not cease to perform her duties before the expiration of the sixty-day notice period because her doctor provided a letter stating that

on September 2, 2002, 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.

April 10, 2024



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency:

April 10, 2024

Date Mailed to Parties:

April 10, 2024

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