

#77-11 (OAL Decision: Not yet available online)

KEVIN GILBERT,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
ADELAIDE L. SANFORD CHARTER	:	DECISION
SCHOOL, ESSEX COUNTY	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioner, an elementary school teacher formerly employed by respondent Adelaide L. Sanford Charter School, appealed the non-renewal of his employment contract. Petitioner asserted that he was not given written notice of his non-renewal on or before May 15, 2010, as required by *N.J.S.A.* 18A:27-10, and was not provided with written reasons for his non-renewal as required by *N.J.S.A.* 18A:27-3.2.

The ALJ found, *inter alia*, that: petitioner was timely served with notice of his non-renewal; while there appears to have been a technical procedural violation of the statute with respect to him being provided with written reasons for his non-renewal, such violation did not impact petitioner’s ability to present his case to the Board at a hearing on July 13, 2010. Petitioner additionally failed to sustain his burden to prove that respondent’s decision not to renew his contract was arbitrary, capricious or unreasonable. Accordingly, the ALJ recommended dismissal of the petition.

The Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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.

March 7, 2011

OAL DKT. NO. EDU 9321-10
AGENCY DKT. NO. 146-7/10

KEVIN GILBERT,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
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ADELAIDE L. SANFORD CHARTER	:	DECISION
SCHOOL, ESSEX COUNTY	:	
	:	
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Petitioner’s exceptions essentially attempt to relitigate his case. In so doing, he 1) challenges the Administrative Law Judge’s (ALJ) conclusion that he was served with notice of his non-renewal on or before May 15, 2010 as required by statute, presenting a myriad of reasons he believes demonstrate that the testimony of the individual who claims to have delivered such notice was not believable, and 2) disagrees with the ALJ’s discounting of the significance of the school’s failure to provide a written statement of reasons for his non-renewal.

Upon full consideration, finding petitioner’s exception arguments to be non-persuasive, the Commissioner concurs with the ALJ – for the reasons clearly and thoroughly presented in her decision – that petitioner was timely served with notice of his non-renewal

(Initial Decision at 5-6)¹; that any procedural violation with respect to the provision of written reasons for petitioner's non-renewal was cured (Initial Decision 6-7); and that petitioner has failed to sustain his burden of establishing that the Charter School's decision not to renew his teaching contract was arbitrary, capricious or unreasonable (Initial Decision at 7-8).

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2011

Date of Mailing: March 9, 2011

¹ It is noted that the ALJ's determination of this issue was solely based upon her assessment of the credibility of the witnesses. The Commissioner's applicable standard of review in this regard is clear and unequivocal – he “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.” (*N.J.S.A.* 52:14B-10(c)) A reasoned review of the ALJ's stated reasoning in this regard, with this governing standard in mind, does not provide a basis for concluding that her implicit credibility assessments and resultant fact finding were without the requisite level of support.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1)