

JOYCE TUCK-LYNN, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT OF : DECISION
 THE CITY OF NEWARK, ESSEX COUNTY, :
 AND LASHAWN GIBSON-BURNEY :
 AND RAS BARAKA, :
 :
 RESPONDENTS. :
 _____ :

SYNOPSIS

Petitioner appealed the non-renewal of her employment as a special education teacher at the expiration of her contract on June 30, 2007, asserting, *inter alia*, that she was denied due process, was not evaluated in accordance with established required procedures, and that her non-renewal was arbitrary and capricious. Respondent denied that its actions in non-renewing the petitioner were arbitrary or capricious, and asserted that the petition was untimely.

The ALJ found, *inter alia*, that: a board of education has an almost complete right to terminate the services of a teacher who does not possess tenure, even if the recommended procedures to be followed for evaluating the teacher are not adhered to; there is no power to impose a penalty for noncompliance with the statutes governing recommended observations and evaluations of novice teachers, and no authority requiring reinstatement or a penalty absent a showing that the non-renewal was arbitrary and capricious. The ALJ concluded that the facts and circumstances of the case do not substantiate the petitioner's contention that her non-renewal was arbitrary and capricious, and affirmed the determination of the respondent Board not to renew petitioner's contract.

Upon careful and reasoned review of the record, the Commissioner concurred with the ALJ that petitioner has failed to sustain her burden of establishing that the District's non-renewal of her employment contract was arbitrary, capricious or unreasonable. The Commissioner additionally noted that the Initial Decision failed to address the petitioner's claim that she performed twelve days of work for the District after her contract had expired, and directed that she be compensated for any services which may have been performed by her at the District's request subsequent to the expiration of her 2006-2007 contract.

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.

November 20, 2009

OAL DKT. NO. EDU 3181-08
AGENCY DKT. NO. 21-1/08

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Subsequent to the expiration of the exception period pursuant to *N.J.A.C.* 1:1-18.4, petitioner – who was represented by counsel in this matter – attempted to file materials purporting to be exceptions to the Initial Decision.^{1 2} In that the Commissioner and her staff are, by law, strictly proscribed from considering information or argument outside the formal record of contested case proceedings – including papers sent directly by a party who is represented by legal counsel – petitioner’s materials were returned to her without consideration.³ They would not have been considered in any event because they were untimely.

Upon her reasoned review, the Commissioner agrees with the Administrative Law Judge – for the reasons presented on pages 18-24 of her decision – that petitioner has failed to

¹ There was no indication that a copy of this submission had been served on counsel for the State-operated District.

² The Initial Decision was mailed to the parties on October 16, 2009. Petitioner’s submission was dated October 30, 2009 and filed on November 4, 2009.

³ Subsequently – by letter dated November 11, 2009 and filed on November 13, 2009 – counsel for petitioner submitted exceptions to the Initial Decision. As these were well outside the *N.J.A.C.* 1:1-18.4 exception period timeline, they also were not considered.

sustain her burden of establishing that the District's non-renewal of her employment contract for the 2007-08 school year was arbitrary, capricious or unreasonable. Left unaddressed by the Initial Decision, however, is petitioner's claim that subsequent to her non-renewal and after her contract had expired, she performed work for the District in November and December 2007 for a total of twelve days and submitted signed timesheets daily. (See Initial Decision at 3) The Commissioner hereby directs that petitioner be compensated for any services which may have been performed by her at the District's request subsequent to the expiration of her 2006-2007 contract.

Accordingly, the recommended decision of the OAL is adopted – as modified above – and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: November 20, 2009

Date of Mailing: November 20, 2009

⁴ 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).