Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
GIZACHEW WUBISHET Employee	OEA Matter No. 1601-0106-06
	Date of Issuance: June 23, 2009
D.C. PUBLIC SCHOOLS Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Gizachew Wubishet ("Employee") worked as a special education teacher with the D.C. Public School System ("Agency"). By letter dated June 21, 2006, Employee received notice that he would be separated from service with Agency effective June 30, 2006. The letter stated that Employee was being terminated because he failed to submit sufficient documentation relevant to his progress in obtaining a valid District of Columbia teaching certification. The notice informed Employee that he had the right to appeal Agency's decision to the Office of Employee Appeals ("OEA"). The notice also

stated that Employee could elect to file a grievance with the Washington Teachers' Union Local #6.

Only July 21, 2006, Employee filed a Petition for Appeal with OEA. Employee argued that he was wrongfully terminated because he was a permanent employee in the Educational Service of Agency and that he submitted all the documentation required by DCPS to retain his position.

In response to Employee's Petition for Appeal, Agency argued that Employee was properly terminated because his provisional teaching license had expired on June 30, 2004. Agency stated that Employee received notice that his employment was contingent upon satisfactory completion and maintenance of the teacher certification and license requirements.[1] To support its argument, Agency provided copies of several letters addressed to Employee concerning his nonrenewable provisional license. In a letter dated May 2, 2006, Agency informed Employee that he was not in compliance with the certification requirement.[2] Agency directed Employee to submit copies of all official and unofficial transcripts as well as all Praxis assessment results by May 15, 2006. The letter stated that failure to do so would result in Employee's termination effective June 30, 2006.

In an Initial Decision issued March 23, 2007, the AJ dismissed Employee's appeal for lack of jurisdiction. The AJ held that the documents of record indicated that Employee failed to obtain permanent status with Agency at the time of his termination and was therefore an "at-will" employee who did not have job tenure or protection.[3] The AJ further stated that Employee had the burden of proof in this case and failed to

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[1] *District of Columbia Public Schools' Answer to Employee's Petition for Apppeal*, p. 3 (August 24, 2006).
[2] *Id.*
[3] *Initial Decision*, p. 2 (March 23, 2007).

establish by a preponderance of the evidence that this Office had jurisdiction over the matter.

Employee then filed a Petition for Review on May 10, 2007. Employee asks us to reverse the Initial Decision on the grounds that he was a permanent employee of DCPS at the time he was terminated. Employee also believes he was not given proper notice with respect to the requirement that he obtain a permanent teaching license.

Although he identifies himself as being in permanent status, Employee has only submitted a copy of a letter addressed to DCPS Human Resources from Wardell Hollis, Ludlow-Taylor Elementary Principal, requesting that Employee's status be changed from temporary to permanent.[4] On April 7, 2003, DCPS issued Employee a letter verifying the correct expiration date of his provisional license. The letter stated that the correct date for expiration was June 3, 2004.[5] Once his provisional license expired on June 3, 2004, Employee remained an "at-will" employee at the time of termination. It is well established in the District of Columbia that, with some exceptions not relevant here, an employer may discharge an "at-will" employee "at any time and for any reason, or for no reason at all."[6] Nowhere in the record is there a personnel form to reflect that Employee obtained permanent status or a permanent teaching license. Furthermore, Employee has not provided documentation to this Office regarding the status of his progress to obtain certification.

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[4] *Employee's Petition for Review*, p. 3 (May 10, 2007).
[5] *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, (August 24, 2006).
[6] *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991); *See also Alston v. District of Columbia Public Schools*, OEA Matter No. 1601-0113-07 (November 30, 2007).

This Office has no authority to review decisions beyond its jurisdiction.[7] OEA Rule 629.2 states that the employee filing an appeal with this Office has the burden of proof as to issues of jurisdiction, including timeliness of filing. According to OEA Rule 629.1, the burden must be met by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

Although it is regrettable that Employee was erroneously informed by Agency of his right to appeal to this Office, he has offered no evidence to prove that he obtained permanent status as a teacher. Employee has also failed to produce documentation proving that he obtained a permanent teaching license by the date of termination. As a result, Employee remained an "at-will" Employee and could be separated from service at any time. For the reasons above this Board finds that Employee has failed to meet his burden of proof and the Petition for Review must therefore be denied.

[7] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order Petition for Review (Sept. 30, 1992).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

Hilary Cairns

Clarence Labor, Jr.

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after the formal notice of the decision or order sought to be reviewed.