

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D31659
G/kmb

_____AD3d_____

Argued - March 14, 2011

PETER B. SKELOS, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2010-05359

DECISION & JUDGMENT

In the Matter of Marco Alarcon, petitioner,
v Board of Education of South Orangetown
Central School District, et al., respondents.

(Index No. 2373/10)

James M. Rose, White Plains, N.Y., for petitioner.

Shaw, Perelson, May & Lambert, LLP, Poughkeepsie, N.Y. (Julie Shaw and Mark
C. Rushfield of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Board of Education of the South Orangetown Central School District dated December 4, 2009, which adopted the recommendation of a hearing officer dated November 26, 2009, made after a hearing, finding the petitioner guilty of certain charges of misconduct and incompetence, and terminating his employment.

ADJUDGED that the petition is granted, the determination is annulled, on the law, without costs or disbursements, and the matter is remitted to the Board of Education of South Orangetown Central School District for a hearing at which the evidence of recantation of testimony by witness Ramon Reyes against the petitioner shall be received, and for a new determination thereafter.

The hearing officer's recommendation was largely based upon the testimony of the eyewitness, Ramon Reyes, who, after testifying, but prior to the issuance of the hearing officer's report and recommendation, recanted his testimony. Reyes alleged, in a sworn affidavit, that the

June 7, 2011

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testimony he had given at the hearing was false and that he gave false testimony because his supervisor directed him to lie. We find that under the circumstances presented, the petitioner should be afforded the opportunity to recall Reyes. We therefore remit the matter to the Board of Education of South Orangetown Central School District for the receipt of this newly discovered evidence and for a new determination thereafter (*see Matter of Browne v County of Dutchess*, 16 AD3d 495, 496; *Matter of Osgood v Webb*, 167 AD2d 665, 668; *Matter of Boone v Ristich*, 48 AD2d 833, 834).

SKELOS, J.P., ENG, AUSTIN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court