

EDU #9801-98
C # 392-99
SB # 56-99

NICHOLAS DUVA, :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF JERSEY CITY, :
HUDSON, COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, December 3, 1999

For the Petitioner-Appellant, Bucceri & Pincus (Louis P. Bucceri, Esq., of
Counsel

For the Respondent-Respondent, Charlotte Kitler, Esq.

For the Intervenors-Respondents, Robert M. Schwartz, Esq.

Nicholas Duva (hereinafter "petitioner") filed a petition of appeal with the Commissioner of Education alleging that the State-operated School District of the City of Jersey City (herinafter "State-operated District") had violated his tenure and seniority rights when it abolished his position as Director, Planning/Evaluation/Grants in July 1998 and failed to reemploy him in a supervisory position held by a non-tenured individual. As stipulated by the parties, the petitioner possessed an Educational Services Certificate with an endorsement as a school psychologist and an

Administrative Certificate with endorsements as a school administrator and as a supervisor.¹

The petitioner had been employed by the district as a school psychologist under his Educational Services Certificate from 1971 until October 1980. At that time, he was appointed to serve in the unrecognized position title of “Director of Research, Planning and Evaluation,” an assignment for which the district board required an Administrative Certificate with an endorsement as either a principal or supervisor. In April 1990, following the statutorily-mandated reorganization of the district after creation of the State-operated District, the petitioner was appointed “Director, Research/Planning/Evaluation.” While also an unrecognized position title, the job description for this assignment was different than that for the petitioner’s previous administrative assignment and did not include a certification requirement. The job description was again changed in 1994, and the position title was designated as “Director, Planning/Evaluation/Grants.” As in the original job description, the State-operated District required that the individual serving in the new position title possess an Administrative Certificate with an endorsement as either a principal or supervisor. The petitioner served therein until the position title was abolished in 1998.

¹ N.J.A.C. 6:11-2.3 provides that:

Consistent with N.J.S.A. 18A:6-38, the State Board of Examiners shall issue three educational certificates: the Instructional Certificate, the Administrative Certificate and the Educational Services Certificate. The Board may issue for each teaching, administrative or service position a special endorsement under the appropriate certificates.

As more fully detailed herein, there are four endorsements issued on the Administrative Certificate: school administrator, principal, supervisor and school business administrator. N.J.A.C. 6:11-9.3.

Following the abolishment of his administrative assignment, the petitioner was employed by the State-operated District as a school psychologist under his Educational Services Certificate. The petitioner filed a petition with the Commissioner of Education challenging the termination of his employment under his Administrative Certificate. The petitioner claimed that by virtue of his service in the position title of “director,” he had acquired tenure rights entitling him to employment as a supervisor over any individuals who had not achieved tenure.

In her initial decision issued on October 14, 1999, the Administrative Law Judge (“ALJ”) rejected the petitioner’s claim. The ALJ concluded that the petitioner had achieved tenure as a “director,” finding that a directorship constituted a distinct position for tenure purposes. On the basis of this premise, the ALJ reasoned that although the petitioner possessed certification as a supervisor, the tenure rights he had accrued as a result of his service as a “director” could not be asserted so as to permit him to claim a supervisory assignment. In this respect, the ALJ found that a supervisory assignment, like a directorship, constituted a distinct position for tenure purposes, *i.e.*, that it was a “separately tenurable position.” Thus, the ALJ concluded that the petitioner had no entitlement to any of the supervisory assignments in which the intervenors, non-tenured supervisors, were serving.

On December 3, 1999, the Commissioner adopted the ALJ’s conclusions and dismissed the petition. In so doing, the Commissioner agreed with the ALJ that “the positions of supervisor and director must be deemed to be separately tenurable...” Commissioner’s Decision, slip op. at 20 (emphasis added).

The petitioner filed the instant appeal to the State Board.

On September 18, 2001, the parties submitted a proposed settlement agreement in which the petitioner agreed to withdraw his appeal and the State-operated District agreed “to re-establish the position of Director of Research, Planning and Evaluation and to place Nicholas Duva in that position, effective September 1, 2001, with tenure in that position...” Stipulation of Settlement, at 2.

After reviewing the proposed settlement, we are unable to approve it. We have no difficulty with the fact that the proposed agreement provides for the petitioner to be reemployed in the capacity in which he had previously served. We are, however, troubled by the fact that the proposed settlement can be read to confer tenure on the petitioner in the position of “director.” After careful review of the statutory scheme and the regulations promulgated thereunder, and as more fully detailed below, we can find no authority for limiting the scope of the position in which the petitioner achieved tenure by virtue of his service under his Administrative Certificate to the assignment of “director.” That being the case, we cannot approve the proposed settlement that has been submitted to us.

Since we cannot approve the proposed settlement, we must decide the merits of the petitioner’s appeal. We turn now to that task.

As set forth above, the lynchpin of the Commissioner’s decision is his determination that the assignment of “director” in which petitioner had served and the supervisory assignments in which intervenors were serving constituted “separately tenurable positions.” As a result of that determination, the Commissioner concluded that although the intervenors were not tenured, the petitioner could not assert his tenure rights so as to claim their assignments.

As acknowledged by the New Jersey Supreme Court, the laws involving educational tenure are complex. Denney v. Board of Educ., 131 N.J. 626, 629 (1993). Nonetheless, a series of cases has resolved the basic concepts governing tenure and helped to define the scope of the “position” to which tenure protection attaches.

In Capodilupo v. West Orange Bd. of Ed., decided by the State Board of Education, September 3, 1986, slip op. at 7, aff'd, 218 N.J. Super. 510 (App. Div. 1987), certif. denied, 109 N.J. 514 (1987), we considered an appeal by a tenured physical education teacher who was terminated as the result of a reduction in staff. Although the petitioner therein had taught only at the high school level, he claimed entitlement on the basis of tenure to retention over non-tenured physical education teachers serving at the elementary level. Reversing the Commissioner’s determination, the State Board found that the petitioner had achieved tenure under his Instructional Certificate in the position of teacher, which is one of the positions specifically enumerated in N.J.S.A. 18A:28-5, and that his tenure rights extended to any assignments for which he was qualified by virtue of his endorsement as a physical education teacher. Since that endorsement authorized the petitioner to teach physical education in grades K-12, his tenure status entitled him to retention at the elementary level over non-tenured teachers, notwithstanding the facts that he had never served at that level and that elementary and secondary levels were separate categories under the seniority regulations.

In arriving at our decision in that case, we found that the lack of precision in the use of the vocabulary associated with the tenure laws had resulted in an accumulation of case law which had applied the tenure statutes in a confusing and inconsistent manner. Thus, in our decision, we revisited some of the basic concepts embodied in

the tenure laws. Given the conclusions reached by the ALJ and the Commissioner in the case now before us, we find that those concepts bear repeating.

As we stressed in Capodilupo, tenure is a legislatively conferred status, and an individual achieves tenure status if he meets the precise conditions set forth in the statute. Those conditions are set forth in N.J.S.A. 18A:28-5, which provides that:

[t]he services of all teaching staff members employed in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency....

Thus, definition of the scope of the positions in which tenure may be achieved is initially provided by the express language of N.J.S.A. 18A:28-5. Under the terms of the statute, an individual must be a teaching staff member serving either in a capacity specifically designated in the statute or serving in a “position” requiring him to hold an appropriate certificate in order to be eligible to achieve tenure. By specifying that the services of teaching staff members employed as teachers, principals, other than administrative principals, assistant principals, vice-principals, assistant superintendents, all school nurses and any other nurses performing school nursing services, and school athletic trainers shall be under tenure if the statutory prerequisites are met, the Legislature defined, for those serving in these capacities, the scope of the “position” in which tenure is achieved and to which tenure protection attaches. Hence, under the

statute, the position in which an individual achieves tenure is either one of those specifically enumerated in N.J.S.A. 18A:28-5 or other employment for which an appropriate certificate is required.

As we emphasized in Capodilupo, under the statutory scheme, tenure is achieved in a particular “position,” and, where the “position” is not one of those enumerated in N.J.S.A. 18A:28-5, the scope of the “position” to which tenure protection attaches is initially limited by the scope of the certificate that the teaching staff member must hold in order to fulfill the statutory prerequisite of qualification for his employment. In contrast to the numerous endorsements that are enumerated in the certification regulations and which establish the threshold qualifications for assignment to particular position titles, the Board of Examiners issues only three kinds of standard certificates: 1) Instructional, 2) Educational Services, and 3) Administrative. N.J.A.C. 6:11-5.1 et seq. through 6:11-11.1 et seq.

In order to be authorized to teach in the public schools, an individual must possess an Instructional Certificate with a teaching endorsement corresponding to the teaching assignment in which the individual is serving. See N.J.A.C. 6:11-6.1(a). However, Capodilupo settled that, because “teacher” is one of the positions enumerated in N.J.S.A. 18A:28-5, tenure achieved under the Instructional Certificate is as a “teacher.” Capodilupo also settled that the scope of the tenure protection to which a tenured teacher is entitled extends to all of the grade levels at which service is authorized by the endorsement on the Instructional Certificate under which the teacher served in acquiring tenure. Capodilupo, however, did not present – and we therefore did not address in that case – the question of whether tenure rights extended to other

endorsements on the Instructional Certificate that the teacher possessed but under which she had never served. In Grosso v. Board of Education of the Borough of New Providence, decided by the State Board of Education, March 7, 1990, appeal dismissed, Dockets #A-4359-89T5 and A-4360-89T5 (App. Div. 1990), we resolved that question in the affirmative, concluding that the petitioner therein had achieved tenure as a “teacher” and that in contrast to his seniority rights, the scope of his tenure protection extended to all of the endorsements on his Instructional Certificate, regardless of whether he had served under those endorsements.

Both Capodilupo and Grosso examined the scope of tenure protection under the Instructional Certificate. Ellicott v. Board of Educ., decided by the State Board of Education, November 19, 1990, aff’d, 251 N.J. Super. 342 (App. Div. 1991), established that the same principles apply in determining the scope of the tenure protection afforded to teaching staff members who acquired tenure under the Educational Services Certificate. However, as previously stated, pursuant to N.J.S.A. 18A:28-5, tenure under the Instructional Certificate is achieved in the position of “teacher,” and the endorsements issued on the Instructional Certificate do not encompass any other positions enumerated in the statute. In contrast, the numerous endorsements issued on the Educational Services Certificate include the endorsement authorizing service as a school nurse, which is one of the positions specifically enumerated in N.J.S.A. 18A:28-5. Since the position of school nurse is enumerated in the statute, it is “separately tenurable.” We therefore concluded in Ellicott that the scope of the tenure protection afforded to a teaching staff member who acquires tenure under the

Educational Services Certificate extends to all endorsements issued on that certificate that are possessed by that staff member, with the exception of school nurse.

In Schienholz v. Board of Educ. of Tp. of Ewing, decided by the State Board of Education, 1990 S.L.D. 1809, aff'd, Docket #A-2905-89T3 (App. Div. 1990), certif. denied, 126 N.J. 321 (1991), we began the process of examining the scope of the tenure protection afforded to those teaching staff members who have acquired tenure under the Administrative Certificate, finding that tenured principals, like teachers, are entitled to assert tenure rights at all grade levels at which their endorsement authorizes them to serve. We stressed, however, that as one of the positions specifically enumerated in N.J.S.A. 18A:28-5, the position of principal was “separately tenurable.”

The process of refining the definition of the rights of teaching staff members who achieve tenure by virtue of service under the Administrative Certificate continued as the Commissioner considered the case of a teaching staff member who had achieved tenure under that certificate on the basis of his service as a supervisor. Nelson v. Board of Educ. of Tp. of Old Bridge, 148 N.J. 358 (1997) [prior history omitted]. In addition to holding an endorsement as a supervisor, the petitioner in Nelson also possessed a principal’s endorsement, although he had never served in that capacity. When his supervisory assignment was eliminated, the petitioner claimed tenure entitlement to a principalship for which a non-tenured individual had been employed.

The Commissioner rejected that claim, holding that tenure could accrue in the “separately tenurable position” of principal only on the basis of service in that position. The State Board affirmed the Commissioner’s determination, but the Appellate Division reversed the State Board’s decision. In doing so, the Appellate Division rejected the

view that the positions enumerated in N.J.S.A. 18A:28-5 were “separately tenurable.” That decision was reversed by the New Jersey Supreme Court, which agreed with the State Board and the Commissioner that the positions specifically enumerated in N.J.S.A. 18A:28-5, including principal, are “separately tenurable.”

In addition, prior to the Supreme Court’s decision in Nelson, the Legislature, in response to the Appellate Division’s decision in that case, had amended N.J.S.A. 18A:28-5 so as to make clear that the positions listed therein are separately tenurable. In a statement to the amendment, the Legislature found and declared that “due to the interpretation of N.J.S. 18A:28-5 by the Appellate Division in the case of Nelson v. Board of Education of the Township of Old Bridge, a clarification of that statute is necessary in order to continue the traditional practice of providing that tenure is acquired in one of the specifically enumerated positions only if the individual has served for the requisite statutorily required period of time in that position.” L.1996, c. 58, § 1. Moreover, the amendment provided that: “For purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position....”

In the case now before us, the petitioner contends that the tenure rights he acquired as a result of his service as a “director” entitled him to supervisor assignments held by non-tenured individuals. In order to resolve this claim, it is necessary to apply the principles established by the pertinent administrative and judicial decisions so as to properly determine the scope of the “position” in which the petitioner achieved tenure and the scope of the tenure protection to which he is entitled.

Although we have not previously confronted this issue,² based on the principles set forth above, its resolution is simple. In stark contrast to the positions of teacher, principal, assistant principal, vice-principal, assistant superintendent and school nurse, neither “director” nor “supervisor” are among those positions specifically enumerated in N.J.S.A. 18A:28-5.³ Given the plain language of the statute and the applicable precedent, there is no basis to hold that these assignments constitute “separately tenurable positions.” Nelson, supra; Ellicott, supra. We would therefore reverse the Commissioner’s determination in this respect.

Since neither “supervisor” nor “director” are among the positions enumerated in N.J.S.A. 18A:28-5, the starting point for determining the scope of petitioner’s tenure protection is the certification that was required in order for him to be authorized to serve in the capacity in which he was employed by the school district. Because his service as a “director” was in an unrecognized position title, it is necessary to examine the duties with which he was charged by the job descriptions under which he served so as to ascertain the certification requirements of those assignments.

² In its exceptions to our Legal Committee’s report, the State-operated School District argued that our decisions in Rogers v. Board of Education of Highland Park, 1990 S.L.D. 691, and Kaprow v. Berkeley Twp. Bd. of Educ., 1989 S.L.D. 2885 (subsequent history omitted), establish that an individual may achieve tenure in the “separately tenurable position” of “supervisor.” District’s exceptions, at 6-7. In rejecting this argument, we note that Rogers involved the question of whether an individual who had achieved tenure on the basis of service in a supervisory assignment was entitled to employment following abolishment of that assignment in a different supervisory assignment in preference to an individual who was tenured as a teacher. In that petitioner in that case did not claim an entitlement to any other employment, we did not consider whether the tenure he had acquired on the basis of his service in a supervisory assignment would have entitled him to employment in any other capacity under his Administrative Certificate. Similarly, as the District points out in its exceptions, dismissal of the petition in Kaprow was for untimeliness. Id. at 6. Hence, our decision in Kaprow did not represent a determination of the question presented by the case we are deciding today.

³ Although director and supervisor were added to the list of expressly enumerated positions in the bill amending N.J.S.A. 18A:28-5, they were deleted prior to final passage.

We recognize that the county superintendent is charged with the responsibility in the first instance for determining the appropriate certification for service in an unrecognized title based upon the duties required to be performed. N.J.A.C. 6:11-3.3(b). However, there is no indication in the record that the unrecognized position titles in this case were ever submitted to the county superintendent for determination of the appropriate certification as required by N.J.A.C. 6:11-3.3(b).⁴ Moreover, it is well established that the State Board of Education has the ultimate administrative authority to determine certification. See South River Education Association v. Board of Education of the Borough of South River, decided by the State Board of Education, November 4, 1987, aff'd, Docket #A-1695-87T8 (App. Div. 1990). As the ultimate fact-finder and administrative decision-maker for disputes arising under the school laws, Dore v. Bedminster Tp. Bd. Of Ed., 185 N.J. Super. 447 (App. Div. 1982), we have reviewed the record before us, including the job descriptions for the director's assignments held by the petitioner. Based on that review, we conclude that the duties of those assignments were of such character as to require that the individual serving in them possess an Administrative Certificate with an endorsement as a school administrator in order to be authorized by statute and regulation to fulfill such functions.

The job description adopted by the district board for the director's assignment at the time the petitioner commenced his employment therein in 1980 indicated that certification as either a principal or supervisor was required. Exhibit D, in evidence. Similarly, a revised job description adopted by the State-operated District in 1994 also

⁴ That regulation further provides that all previously approved unrecognized position titles must be reviewed annually by the county superintendent.

required certification as a principal or supervisor.⁵ There is no dispute that the assignments in which petitioner served required possession of an Administrative Certificate. However, as previously stated, there are four endorsements issued on the Administrative Certificate: 1) school administrator, 2) principal, 3) supervisor, and 4) school business administrator. The question we must resolve is which of these endorsements authorizes an individual to perform the duties set forth in the job descriptions under which the petitioner served.

Endorsement as a school business administrator authorizes an individual to perform duties at the district level in the areas of financial budget planning and administration. It also authorizes the holder to perform duties in the areas of insurance/risk administration, purchasing and financial accounting and reporting, and may include responsibilities such as plant planning, construction and maintenance. Given the character of this endorsement, it is clear that it would not authorize an individual to perform the functions delineated in the job descriptions involved here. Hence, we need consider only the endorsements for school administrator, principal, and supervisor in determining the appropriate certification for the unrecognized position titles in which the petitioner served.

Endorsement as a school administrator is required in order for an individual to be authorized to serve in:

any position that involves services as a district-level administrative officer. Such positions shall include superintendent, assistant superintendent, executive superintendent and director. Holders of this endorsement are authorized to direct the formulation of district goals, plans, policies, and budgets, to recommend their approval by

⁵ As previously indicated, the job description adopted by the State-operated District in 1990 did not include a certification requirement. Exhibit E, in evidence.

the district board of education, and to direct their district-wide implementation. Holders of this endorsement are authorized to recommend all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of school business administrators, for approval by the district board of education. Holders of this endorsement are authorized to direct district operations and programs, and to supervise and evaluate building administrators and central office staff, including school business administrators. They are also authorized to oversee the administration and supervision of school-level operations, staff and programs.

N.J.A.C. 6:11-9.3(a).

A principal's endorsement is required:

for any position that involves service as an administrative officer of a school or other comparable unit within a school or district. Such positions shall include assistant superintendent for curriculum and instruction, principal, assistant principal, vice-principal and director. Holders of this endorsement are authorized to direct the formulation of goals, plans, policies, budgets and personnel actions of the school or other comparable unit, to recommend them to the chief district administrator, and to direct their implementation in the school or other comparable unit. Holders of this endorsement also are authorized to direct and supervise all school operations and programs, to evaluate school staff, including teaching staff members pursuant to N.J.A.C. 6:3-1.19 and 1.21, and to direct the activities of school-level supervisors.

N.J.A.C. 6:11-9.3(b).

By contrast, a supervisor's endorsement is required:

for supervisors of instruction who do not hold a school administrator's or principal's endorsement. The supervisor shall be defined as any school officer who is charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel. This endorsement also authorizes appointment as an assistant superintendent in charge of curriculum and/or instruction.

N.J.A.C. 6:11-9.3(c).

As indicated in the original job description under which the petitioner served from 1980 until it was revised in 1990 following the creation of a State-operated District, exhibit D, in evidence, the Director of Research, Planning and Evaluation reported directly to the superintendent of schools. The job goal as set forth therein was “to provide directly to the Superintendent of Schools and the Board of Education an ongoing independent audit of all educational programs, a longitudinal record of progress, recommendations for program improvement, analysis of the cost effectiveness of funded programs and continuous movement toward compliance pursuant to law and regulation. The purview, authority and responsibility of the Director, under the direct auspices of the Superintendent, shall be district-wide.” Id. The specific responsibilities enumerated in the job description included development and implementation of educational research activities on issues concerning the schools, researching and assisting in the design of educational programs, developing long-range plans, development of evaluation procedures for educational program and administrative activities, and recommending improvements for district programs.

The job description was modified in 1990 following the creation of a State-operated District. Exhibit E, in evidence. In the revised job description, the position reported to the State Assistant Superintendent—Education Programs and Services and supervised the Supervisor of Student Assessment and Grants. The job goal was “[t]o direct an ongoing program of evaluation planning and development to enable the district to continually upgrade and improve its effectiveness in meeting the educational needs of all students.” Id. The responsibilities included assisting in developing goals and objectives for the district; coordinating all research and development programs; serving

as primary coordinator and consultant in developing, administering, interpreting and reporting the district's evaluation programs and procedures; coordinating and monitoring grants and funded programs; preparing and maintaining a five-year master plan to include educational program planning and development; developing a model that integrates financial, statistical and pupil achievement data for educational support programs; recommending programs for district-wide implementation; designing, implementing and monitoring the planning process; acting as the primary evaluator for assigned staff; preparing and administering the department budget and organizing the department.

The job description was modified again in 1994 to reflect the added goal of "utiliz[ing] funding opportunities to benefit the educational excellence of the district's programs, facilities & personnel." Exhibit F, in evidence. The title of the position was changed at that time to Director, Planning/Evaluation/Grants.

We find that the duties specified in the job descriptions under which petitioner served are beyond the scope of those authorized by the supervisor endorsement. As set forth above, both the school administrator and the principal endorsements authorize service as a "director." N.J.A.C. 6:11-9.3(a) and (b). In contrast, the supervisor endorsement does not expressly authorize such service. N.J.A.C. 6:11-9.3(c). Furthermore, based on our review of the job descriptions, we find that the director's assignments at issue in this case had "a qualitatively higher level of administrative responsibility than that entrusted to a supervisor." Schaefer v. Board of Education of the Township of Lakewood, decided by the State Board of Education, August 2, 1995, slip op. at 6.

Similarly, we find that an Administrative Certificate with an endorsement as a principal would not constitute appropriate certification for the assignments at issue given the responsibilities set forth in the job descriptions under which the petitioner served. In this respect, we stress that the petitioner's duties as specified in every job description under which he served involved district-level responsibilities. Hence, his service was not as an administrative officer of a school or comparable unit, and the principal endorsement would not have authorized him to fulfill the district-level responsibilities with which he was charged.

Given the job descriptions involved here, we conclude that the individual serving in the assignments at issue was required to possess an Administrative Certificate with an endorsement as a school administrator in order to be authorized to fulfill the functions of those assignments. As previously stated, the petitioner did hold such an endorsement, which he obtained in 1984. Inasmuch as he fulfilled the statutory requirements of N.J.S.A. 18A:28-5, he achieved tenure by virtue of his service under that endorsement.

Furthermore, the petitioner's tenure protection extended to all assignments under his Administrative Certificate for which he held the appropriate endorsement, except for those positions specifically enumerated in N.J.S.A. 18A:28-5. As previously stated, in addition to possessing an endorsement as a school administrator, petitioner also possesses an endorsement as a supervisor. Given that neither "director" nor "supervisor" are among those positions enumerated in N.J.S.A. 18A:28-5, the scope of petitioner's tenure protection under his Administrative Certificate extended to all assignments for which he was qualified by virtue of possessing a supervisor's

endorsement. Hence, upon abolishment of his director's assignment, the petitioner was entitled to be employed in assignments requiring a supervisor endorsement in preference to any non-tenured individuals.

In addition, the petitioner was entitled by virtue of seniority to reemployment in his former director's assignment when it was re-established by the State-operated District.⁶ N.J.S.A. 18A:28-12. Given the fact that the petitioner apparently has been reemployed in that capacity,⁷ his damages are limited to the period between the elimination of his directorship in 1998 and its re-establishment in September 2001. We stress in that regard that the amount of damages to which the petitioner is entitled would be subject to standard mitigation principles, including a reduction by the amount of salary he earned as a school psychologist during that period. See Goodman v. London Metals Exchange, Inc., 86 N.J. 19 (1981).

Attorney exceptions are noted.

March 6, 2002

Date of mailing _____

⁶ Each director assignment is regarded as a separate category for purposes of seniority. N.J.A.C. 6:3-5.1(l)(3).

⁷ The State-operated District stipulated in the proposed settlement that it had agreed to re-establish the position of Director of Research, Planning and Evaluation and to assign the petitioner thereto effective September 1, 2001.