

OAL DKT. NO. EDU6490-09
AGENCY DKT. NO. 189-8/09

GARY GOLDBERG, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF SALEM AND AMIOT :
 PATRICK MICHEL, :
 :
 RESPONDENTS. :

This controversy arose in March 2009, when respondent Amiot Patrick Michel – the Superintendent of the respondent Salem Board of Education’s district – advised petitioner that his position, Director of Programs and Projects, would be eliminated and his employment would be terminated at the end of the school year. This advisement was repeated in letters from Michel dated May 5, 2009 and May 14, 2009, respectively.

It appears undisputed, however, that the respondent board of education never acted to eliminate the position. The Administrative Law Judge (ALJ) was therefore correct in determining that, as a matter of law and pursuant to *N.J.S.A. 18A:28-9*, petitioner’s position was never abolished. *See*, Initial Decision at 15-16. Similarly, the Commissioner agrees with the ALJ that since petitioner was a tenured administrator in respondent’s district and no tenure charges were brought against him, his employment was not, as a matter of law, terminated. *See*, Initial Decision at 16.

Accordingly, the Commissioner concurs with the ALJ's recommendation that petitioner be returned to the position of Director of Programs and Projects, with back pay and benefits. Further, if the Director of Programs and Projects position is eliminated, petitioner, as a tenured administrator in the district, will be entitled to other administrative positions – such as International Baccalaureate Program Director – where those positions are held by untenured individuals or individuals with less seniority within the categories of positions that petitioner has held in the district.¹

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 23, 2010

Date of Mailing: August 24, 2010

¹ In responding to petitioner's contention that he is eligible for certain supervisory positions, the ALJ found that he may be eligible for the position of Supervisor of Mathematics and Science. A challenge to that finding is the only issue raised in respondent's exceptions. The Commissioner need not reach this specific issue, as it is resolved by his holding in the instant case.

² This decision may be appealed to the Appellate Division of Superior Court pursuant to *P.L. 2008, c. 36*.