

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

D25874
C/prt

_____AD3d_____

Argued - December 21, 2009

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-06788

DECISION & ORDER

In the Matter of Denise M. Ferencik, appellant, v
Board of Education of Amityville Union Free
School District, et al., respondents.

(Index No. 10953/07)

Eugene Kirby Ferencik, Massapequa, N.Y., for appellant.

Babchik & Young LLP, White Plains, N.Y. (Jack Babchik and Jordan Sklar of
counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to compel the respondents to retroactively appoint the petitioner to a teaching position, the petitioner appeals, as limited by her brief, from so much of an order and judgment (one paper) of the Supreme Court, Nassau County (Woodard, J.), dated May 29, 2008, as denied the petition and dismissed the proceeding.

ORDERED that the order and judgment is affirmed insofar as appealed from, with costs.

The petitioner's position as an art teacher in the Amityville Union Free School District (hereinafter the district) was abolished in 1992, and she was rehired by the district in 2001. In 2007 she commenced this proceeding alleging that in 2006, she became aware that an art position had become available in 1994 for which she should have been appointed pursuant to Education Law § 3013(3)(a). Contrary to the petitioner's contention, the Supreme Court properly denied the petition and dismissed the proceeding pursuant to the doctrine of primary jurisdiction, as the Commissioner

January 26, 2010

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AMITYVILLE UNION FREE SCHOOL DISTRICT

of Education has the specialized knowledge and expertise to resolve, in the first instance, the factual question of whether a position similar to the petitioner's former position became available in 1994 (see *Matter of deVente v Board of Educ., Broome-Tioga Bd. of Coop. Educ. Servs.*, 15 AD3d 716, 718; *Matter of Markow-Brown v Board of Educ., Port Jefferson Pub. Schools*, 301 AD2d 653, 653-654; *Matter of Donato v Board of Educ. of Plainview, Old Bethpage Cent. School Dist.*, 286 AD2d 388).

The parties' remaining contentions are without merit or not properly before this Court.

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court