#347-08 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu11569-07_1.html)

IN THE MATTER OF THE TENURE HEARING OF GILBERT YOUNG, JR., SCHOOL DISTRICT OF THE BOROUGH OF ROSELLE, UNION COUNTY.	:	COMMISSIONER OF EDUCATION DECISION

SYNOPSIS

The petitioning Board certified tenure charges of conduct unbecoming and other just cause against respondent Gilbert Young – a tenured teacher – for alleged sexual abuse of a minor student during the 2004-2005 school year, and sought his dismissal. The tenure charges had been presented to the Board subsequent to the student's reporting of his 2004-2005 relationship with respondent to school officials, in 2007, and after investigations by the police and the Department of Children and Families, Institutional Abuse Investigation Unit (IAIU). The IAIU opined that the allegations against respondent of sexual abuse/sexual penetration were unfounded. The police uncovered evidence that implicated respondent, but were precluded from bringing charges because C.W. had just reached the age of legal consent to sexual activity when the sexual abuse was said to have occurred. Respondent filed a motion for dismissal pursuant to *N.J.S.A.* 18A:6-7a, claiming that the IAIU determination of unfounded precluded the Board from bringing tenure charges predicated upon the same allegations.

The ALJ found that: the testimony at hearing of the minor student was credible, while that of respondent lacked credibility; the District met its burden of proof on the charges of conduct unbecoming and other just cause; respondent's actions were violative of the public trust, even though he was not prosecuted criminally nor were the allegations substantiated by IAIU; and *N.J.S.A.* 18A:6-7a did not preclude the District from independently bringing tenure charges for unbecoming conduct and other just cause. The ALJ concluded that the tenure charges are sustained, but that respondent must be paid back pay from the 121st day following the filing of tenure charges until the date of the final decision of the Commissioner, less any compensation received during that period.

Upon independent review of the record, the Commissioner found that: 1) there is nothing but support in the record for the ALJ's determination that C.W. was credible, including the fact that there was no indication of animus by C.W. toward respondent or any other motive to offer false information about him; 2) there is no caprice in the ALJ's determination that respondent was not credible; 3) the evidence as a whole supports C.W.'s account of the events at the heart of this controversy; 4) the record supports the ALJ's finding that petitioner proved its charges of unbecoming conduct against respondent; and 5) respondent's contention that *N.J.S.A.* 18A:6-7a precludes the institution of tenure charges against him is without merit. The Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, and ordered a copy of this decision forwarded to the State Board of Examiners for any action which that body may deem appropriate.

August 18, 2008

OAL DKT. NO. EDU 11569-07
AGENCY DKT. NO. 295-10/07

IN THE MATTER OF THE TENURE HEARING OF GILBERT YOUNG, JR., SCHOOL DISTRICT OF THE BOROUGH OF ROSELLE, UNION COUNTY.	: : :	COMMISSIONER OF EDUCATION CORRECTED DECISION

Respondent challenges an Initial Decision of the Office of Administrative Law (OAL) which upholds two charges brought against him for unbecoming conduct. Both charges pertain to improper relations with a teen-aged student. The Commissioner of Education (Commissioner) has independently reviewed the record, which includes transcripts for all three hearing dates, the Initial Decision and the exceptions and replies thereto. Upon such review, she adopts the Initial Decision as the final decision in this case. In addressing the parties' exceptions and reply exceptions, the Commissioner will rely on the Administrative Law Judge's (ALJ) comprehensive factual presentation and findings.

In his first and second exceptions, respondent asserts that the ALJ's credibility determinations concerning the first tenure charge against him were arbitrary, capricious, and not based on substantial evidence, and that petitioner consequently did not carry its burden to prove the charge.[1] These assertions were based upon the following propositions.

[1] The first charge stated:

> In or about December 2004 or January 2005, Young drove C.W. home after school on a couple of occasions. On one such trip, Young drove C.W. to Warinanco Park instead of bringing him home. It was dark at the time. Young turned off the motor and kissed C.W., putting his tongue in his mouth. He also caressed and touched his body, including his genitals, over his clothing. After 15 or 20 minutes, Young drove C.W. to a location near C.W.'s house and dropped him off.

First, respondent argued that C.W.'s credibility was weakened by alleged discrepancies between information given by C.W. to the police in a February 27, 2007 taped interview (the Police Interview) – which took place over two years after the events at the heart of this controversy – and testimony that C.W. gave at the OAL hearing in February of 2008. In particular, respondent points to C.W.'s failure to place the interactions between himself and respondent into the correct time frame during the Police Interview, which was transcribed and entered into evidence as Petitioner's Exhibit 12 (P-12). (Respondent's Exceptions at 3)[2] In that interview, C.W. told police that the interactions were in December 2004 or January 2005, that the incident in Warinanco Park occurred in late January 2005, and that a kissing incident that had preceded the Warinanco Park episode had occurred after New Year's Day, 2005.

At the OAL hearing in February 2008, C.W corrected his testimony about the timing of his involvement with respondent. He recalled going to respondent's classroom 2-3 times a week, beginning in September or October 2004, to do homework and talk. During cross examination about the differences between the Police Interview and his OAL testimony, C.W. stated that an investigator from the board attorney's office had visited him a few days before the OAL hearing and had showed him copies of the notes (dated October 22 and November 5, 2004) that he had given respondent in the Fall of 2004. The notes, which respondent had kept for over three years but never shown to the school authorities, apparently jogged C.W.'s memory.

[2] Respondent also opines that C.W. was influenced during the taped interview by certain questions that the police interviewer asked that pertained to the first kissing interaction between C.W. and respondent. More specifically, the interviewing detective reminded C.W. that he had previously told her about a kissing incident that had occurred prior to the one in Warinanco Park, and asked if that was still his testimony. Also, when C.W. could not remember when the first kissing incident occurred, the detective assisted him by asking if it was after Christmas; then if it was after the New Year. (Respondent's Exceptions at 3) The Commissioner cannot find that the detective unduly influenced C.W. by these questions.

Respondent contends that C.W., in changing his testimony about the time frame for the incidents in question, "destroyed his own credibility and the entire fabric of the Board's case." Thus, reasons respondent, the ALJ's determination about C.W.'s credibility was arbitrary and capricious and should be rejected by the Commissioner. (Respondent's Exceptions at 5) The Commissioner cannot agree.

C.W.'s estimate about when the interactions with respondent took place was "off" by no more than two months. Considering that C.W. was asked to pinpoint a time frame for incidents that occurred three years prior, the Commissioner cannot find fault with the ALJ's determination that C.W.'s inaccuracy was insignificant. Nor does the Commissioner find it surprising that the refreshment of C.W.'s memory – by the provision to him of copies of his dated notes to respondent – caused him to change his testimony about when the interactions occurred. Showing witnesses documents to help them recall details is a practice permitted by the court rules, and is not – as respondent suggests – inimical to the goal of fact-finding in a plenary hearing.

In addition to his arguments about C.W.'s recollections about time, respondent discusses certain differences between respondent's and C.W.'s testimony, and maintains that the ALJ should have chosen respondent's version. The differences in testimony pertained to 1) whether C.W. had been going to respondent's classroom after school to be tutored or to do homework and talk with respondent; and 2) whether C.W.'s parents knew that respondent sometimes drove him home. Respondent contends that because petitioner did not call C.W.'s parents to testify about their knowledge concerning tutoring or rides home from school, the ALJ should have accepted Young's account and found C.W.'s testimony to lack credibility. (Respondent's Exceptions at 5-7)

The Commissioner does not view the purpose of C.W.'s after-school visits to respondent, or C.W.'s parents' knowledge of the rides home, to be material to the resolution of issues in this case.[3] It is agreed by all that they occurred. At issue in this matter is whether C.W. was taken advantage of as a result of the after-school visits and rides home.[4]

Respondent also asserts that C.W.'s credibility should have been called into question by the ALJ because of a phrase in a sentence on page 9 of the transcript of the Police Interview. The phrase was part of a sentence uttered in response to the detective's questions about C.W. "seeing" a teacher. The detective asked "And what do you mean by 'seeing'?" C.W. responded "By going to visit him, <u>like how I was doing since seventh grade</u>." Respondent interpreted the underlined phrase to mean that C.W. had been visiting respondent <u>continually</u> since seventh grade. (Respondent's Exceptions at 7) Based upon that interpretation, respondent argued that C.W. presented conflicting information to the police, since C.W. stated later in the interview (P-12 at 14), that he did not visit respondent when he was in eighth or ninth grade. C.W. also told the police that he hadn't seen respondent from 7th grade to around December 2004, when he went to see his sister in the middle school where respondent then taught. Respondent urges the Commissioner to view the alleged conflict as further evidence of C.W.'s lack of credibility. (Respondent's Exceptions at 7)

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[3] The Commissioner notes that assuming, *arguendo,* that C.W.'s mother had asked respondent to tutor C.W., as respondent contends, it would not be unusual for C.W. to be unaware of his parent's request. Thus, the Commissioner cannot conclude that C.W.'s testimony – that he did not believe his mother asked respondent to tutor him – was untruthful.

[4] Respondent maintains that the ALJ improperly "found" that school policy forbade teachers from driving students home. (Respondent's Exceptions at 9) The Commissioner notes, however, that the language in the Initial Decision to which respondent refers was set forth solely in a summary of testimony – not in the ALJ's "Findings of Fact." Nor is the question of petitioner's policy about driving students home determinative of the credibility of the parties in this case or the merits of each party's position. Consequently, the issue needs no further discussion.

The Commissioner does not believe that respondent's understanding of the above quoted phrase is the only possible interpretation. C.W. told the police detective – on page 11 of P-12 – that while his relationship with respondent was initially strictly teacher-student at the beginning of his tenure in respondent's seventh grade math class, he started "liking [respondent in] like maybe February or March" of seventh grade. The phrase "like how I was doing since seventh grade" is consistent with the fact that C.W. started liking and talking to respondent in seventh grade. Under that scenario, it would be understandable for C.W. to refer to his tenth grade interactions with respondent as having originated in seventh grade, despite the hiatus during the eighth and ninth grades. Accordingly, the Commissioner is not prepared to conclude that C.W. testified inconsistently about the chronological parameters of his interactions with respondent.

Finally, to cast aspersions on C.W.'s credibility, respondent points out that the petitioner provided no witnesses to vouch for C.W.'s veracity, and that C.W. "admitted that his own father believed that C.W. was lying about the allegations against Mr. Young." (Respondent's Exceptions at 11)[5] Thus, respondent reasons, the ALJ improperly determined that C.W. was more credible than respondent, and that petitioner had sustained its burden to prove Charge I against respondent.

The Commissioner may not ignore an ALJ's credibility determinations simply because a party produced, or did not produce, witnesses to testify about the party's reputation for veracity. The ALJ had the opportunity to observe C.W. and respondent at the OAL hearing. He was able to make determinations about the viability of each witness's testimony and about both the overall internal consistency of witness testimony, and its consistency with all of the

[5] The Commissioner finds nothing out of the ordinary about a father who does not want to believe that his son has had a sexual encounter with a male teacher, and cannot conclude that such a paternal reaction signifies that C.W. is untruthful.

evidence presented at the hearing. *See, e.g., Congleton v. Pura-Tex Stone Corp.*, 53 *N.J. Super.* 282, 287 (App. Div. 1958). Respondent himself cited to the relevant case law which advises that the trier of fact, as part of his or her assessment of credibility, will evaluate whether the testimony can be accepted as probable in the circumstances – given "common experience and observation of mankind." (Respondent's Exceptions at 8, citing *Spagnuolo v. Bonnett*, 16 *N.J.* 547, 554-55 (1954), *et. al.*) The Commissioner cannot disagree that, overall, C.W.'s version of the facts could be accepted as probable in the circumstances – given common experience and observation of mankind.

The Commissioner "may not reject or modify any findings as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." *N.J.S.A.* 52:14B-10 (c). She finds nothing arbitrary or capricious about the ALJ's credibility determinations, which are well supported by the record. C.W. provided a great deal of accurate information about the events in question. In addition, much of C.W.'s testimony is corroborated by respondent himself. For example, respondent agrees that C.W. frequently visited his classroom after school during the Autumn of 2004, and that he gave C.W. rides home.

In considering respondent's credibility, the Commissioner notes that the ALJ had three days of hearing time to observe respondent. In addition, in weighing respondent's denials regarding the Warinanco Park charge, the ALJ had before him the following facts: respondent had known in the Fall of 2004 that C.W. was gay or bisexual; respondent had given C.W. rides; respondent had kept blatantly affectionate notes from C.W. for three plus years without bringing them to the attention of the school authorities; and respondent received a cell phone call from

C.W. in the Fall of 2004 – wherein C.W. had informed him that he was just out of the shower, wearing only a towel – but respondent never reported the call to the school authorities. In sum, the Commissioner has no grounds upon which to replace the ALJ's credibility determinations with her own. Those determinations, coupled with the facts in evidence, support Tenure Charge I.

In his third, fourth and fifth exceptions, respondent urges that – as to the second tenure charge in this case[6] – the ALJ's credibility determinations are arbitrary, capricious and unreasonable, and the ALJ's finding that petitioner proved the charge is erroneous. Respondent also claims that the ALJ improperly shifted the burden of proof to respondent.

Respondent's contentions about the second tenure charge also begin with an argument about the changes in C.W.'s recollections about time frames He urges that the Commissioner should find that C.W. was not credible because he failed to accurately pinpoint the date of the motel incident until after he was shown the motel receipt signed by respondent. For the same reasons that were discussed in conjunction with the first tenure charge, the Commissioner finds this argument to be without merit.

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[6] The second tenure charge provides:

> In or about January or February 2005, C.W. was staying at his grandmother's home in Irvington, New Jersey for a weekend visit. Young telephoned at approximately 5:30 a.m. and informed C.W. that he would pick him up in front of the house. Shortly thereafter, Young arrived and C.W. left with him in Young's vehicle. After stopping at a CVS store in Roselle to pick up a prescription for Young's daughter, they proceeded to the daughter's house to drop it off, and then to the Linden Motor Inn.
>
> After checking in, Young parked the car and he and C.W. entered a room at the Inn. Shortly thereafter, Young and C.W. disrobed and started kissing. They eventually engaged in oral and anal sex. Later, Young drove C.W. back to his grandmother's house.
>
> The foregoing conduct by Young constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

Additional differences between the information C.W. gave in the Police Interview, C.W.'s testimony at trial and a social worker's account of her interview with C.W. are recited by respondent in furtherance of his challenge to C.W.'s credibility. First, respondent asserts that C.W. presented conflicting statements about whether oral sex took place between C.W. and respondent in the Linden Motor Inn (the motel). During an interview with a social worker from the Department of Children and Families (DCF)[7] – called by the school authorities pursuant to law – C.W. allegedly denied that there was oral sex at the motel.[8] During the police interview, which was six days after the interview with the social worker, C.W.'s testimony indicated that he and respondent performed oral sex on each other. At the OAL hearing C.W. testified that respondent performed oral sex on him but denied that he performed oral sex on respondent.

At the outset, the Commissioner notes that Joint Exhibit 1 (J-1) – a copy of the IAIU social worker's report – is double hearsay, and must be given the weight that double hearsay warrants. The social worker, whose notes about her interview with C.W. are referenced by respondent, did not testify at the OAL hearing. The Commissioner will not give her account of what C.W. said priority over C.W.'s taped and transcribed statement to the police or his direct testimony at the OAL hearing. The fact that she read her account of C.W.'s statements to him and asked him if it was true,[9] cannot overcome the fact that she was not produced to testify and submit to cross examination. Thus, while C.W. seems to offer different responses to questions

[7] The social worker represented the Institutional Abuse Investigation Unit of the Department of Children and Families (IAIU).

[8] The social worker wrote, in pertinent part, "C[] reported that Mr. Young got undressed and then he got undressed and Mr. Young lay on top of him and then the two began kissing and ultimately engaged in anal sex. C[] reported that Mr. Young penetration (sic) him. He denied any oral sex occurred at that time." (J-1 at 38)

[9] C.W. was asked at the hearing whether the social worker read her account to him and whether she asked him if it was true. He was not, however, asked at the hearing to reveal how he responded to that question.

about oral sex with respondent, the Commissioner is satisfied that C.W.'s statements to the police and at the OAL hearing are consistent enough for the ALJ to conclude, in conjunction with the other evidence presented by petitioner, that oral sex took place between C.W. and respondent.

The second alleged discrepancy in C.W.'s testimony pertains to C.W.'s reaction to respondent's behavior. Respondent points to the social worker's interview summary which stated that C.W. "denied being forced or coerced." (J-1 at 38) On the other hand, C.W. told the police that he resisted by trying to break away from respondent when respondent was "on top of" him. (P-12 at 42) And at the OAL hearing C.W. testified that while respondent was on top of him, he told respondent to stop and tried to push him off. (1T87)[10] The Commissioner sees no arbitrariness in the ALJ's determination that C.W.'s testimony was not materially inconsistent concerning the issue of resistance to respondent's actions.

Respondent's next contention about C.W.'s allegedly inconsistent testimony concerned the manner in which C.W. exited and entered his grandmother's house before and after the motel incident. At the OAL hearing C.W. testified that when respondent brought him back to his grandmother's house he did not have to sneak in. (1T145) Respondent claims that that testimony is inconsistent with a clause in the IAIU social worker's summary of her interview with C.W. In the social worker's words, C.W. snuck out of his grandmother's house – while everyone was sleeping – to meet respondent. (J-1 at 38) As stated above, J-1 contains a third party's paraphrasing of C.W.'s interview. No inconsistencies between that double hearsay and C.W.'s direct testimony can be shown. Further, the Commissioner finds the question of how C.W. described his exit from the house to be unhelpful to the adjudication of the issues in this case.

[10] 1T = Transcript from February 20, 2008.

The third alleged discrepancy between information C.W. provided to the police and his OAL testimony related to his sexual history. Initially, the Commissioner concludes that C.W.'s sexual history should not be considered – directly or indirectly – in determining whether respondent behaved inappropriately. Nor is it germane to the evaluation of respondent's conduct as an adult teacher toward a teenaged student. As to respondent's position that C.W.'s testimony about his sexual history contained material inconsistencies, the Commissioner does not agree.

Respondent begins his argument with the supposition that CW "attempted to imply" that he had had only oral sex with men prior to the motel incident. This supposition is based upon respondent's counsel's questions to C.W. about his sexual history:

> Q. And had you had sexual experiences with men prior to January 1, 2005?
> A. No.
> . . . .
> Q. Do you recall telling the police that you'd been sexually active since you were 13 years old with both men and women?
> A. Yes.
> . . . .
> Q. Well, was it a lie?
> A. No, but – like, because it depends on what sex you're talking about, oral sex or –
> Q. So you were talking about the type of sex you were having?
> A. Yes.
> Q. But you were having some form of sexual activity with men prior to January 1, 2005?
> A. Yes.
> 1T105:21 to 1T106:20.

Respondent maintains that the foregoing testimony is at odds with the social worker's account of C.W.'s interview, which related that C.W. said he was not a virgin prior to the motel incident with respondent, but had previously engaged in sexual intercourse three or four times. (J-1 at 38) Respondent also suggests that C.W.'s statements to the police were inconsistent with his OAL testimony. The testimony in question consisted of C.W.'s disclosure that he had been familiar

with the kind of condom respondent used (P-12 at 56-57) and that – prior to his 2007 interview with the police – he had used lubricants. (P-12 at 60)

The Commissioner cannot agree that the foregoing suggests untruthfulness and should have altered the ALJ's evaluation of C.W.'s credibility. C.W. was clearly denying that he had had intercourse with a man prior to going to the Linden Motor Inn with respondent. To the extent that the ALJ should have even considered the social worker's interview summary, C.W.'s statement that he had had intercourse before the motel incident cannot be construed to mean that he had had it with a man. It is undisputed that C.W. identified himself as a bisexual. C.W.'s familiarity with condoms could be as easily attributed to sexual activity with females as with males. Finally, C.W.'s statement to the police about lubricants was made two years after the incident with respondent. The police did not specifically ask C.W. if he had used lubricants prior to January 1, 2005, but rather if he had ever used them in the past.

Finally, respondent suggests that there is internal inconsistency in C.W.'s testimony that his father questioned him about people touching him, and that his father did not believe him when he related the incident with respondent. (Respondent's Exceptions at 19-20) The Commissioner cannot fault the ALJ for seeing no inconsistency. Respondent's position that C.W.'s parents should have been called to testify on this point is without merit, as 1) there is no inherent contradiction in the testimony and 2) the parents' questions and reactions are not material to the ultimate issues in this case.

In sum, respondent's contentions about C.W.'s credibility are not persuasive. By way of contrast, the Commissioner concurs with the ALJ's determination that respondent was lacking in credibility – for the reasons set forth on page 13 of the Initial Decision. In addition, the Commissioner notes that the amount of detailed information C.W. provided about the

morning of January 1, 2005 could not be explained by respondent's assertion that he told C.W. by telephone about going to the CVS and taking his daughter to the Linden Motor Inn.

Respondent's story that he told C.W. the name of the motel does not explain why C.W. did not know its name in February 2007, but could direct the police to it when the police – with no prior warning – asked him to. Further, it is unlikely that, in addition to telling C.W. that he was bringing his daughter to the Linden Motor Inn, he would also have identified his daughter's address and described his daughter's dwelling, told C.W. how to get to the motel, and divulged the location of the room that he signed for – all facts which C.W. disclosed to the police in 2007 and at the OAL hearing.

In his sixth exception, respondent contends that the ALJ ignored the documentary evidence offered in this matter. Respondent's emphasis was on the phone records that he produced and a one-page police report concerning the January 1, 2005 incident at the apartment of his daughter. The Commissioner finds respondent's contention to be without merit.

On page 13 of the Initial Decision the ALJ specifically referred to the police report, and noted that there was no mention in the report of respondent's presence at the scene of the crime. The Commissioner agrees that the report supports the proposition that an altercation occurred at the daughter's apartment but does not prove that respondent went to the apartment.

As to the cell phone records produced by respondent, the ALJ specifically addressed them on page 10 of the Initial Decision. They add little to respondent's testimony, since no names or numbers are listed for the incoming calls. Respondent suggests that the absence of C.W.'s phone number on the sections of the bills identifying outgoing calls contradicts C.W.'s testimony that respondent called him on the morning of January 1, 2005. However, C.W. could not clearly remember the number of the cell phone he used during the time

period of the motel incident, and the presentation of two cell phone bills does not preclude the possibility that respondent contacted C.W. using a different telephone.

Thus, review of the Initial Decision reveals that the ALJ considered the phone bills, the police report concerning respondent's daughter, and the other material documents that had been entered into evidence – such as the statements by the school authorities to the police in February and March 2007 concerning C.W.'s disclosure about respondent, the motel receipt signed by respondent, the affectionate notes sent by C.W. to respondent, and the transcript of C.W.'s police interview. The Commissioner finds no arbitrariness in the ALJ's evaluation of the documentary evidence.

In respondent's last exception, he claims that the tenure charges should have been dismissed under *N.J.S.A.* 18A:6-7a.[11] The Commissioner agrees with the analysis in the Initial Decision, pages 18-19 that *N.J.S.A.* 18A:6-7a is inapposite to the instant matter. That statute requires that no action be taken against a school employee on the basis of a complaint of abuse made to the DCF if that agency determines that the complaint is unfounded. It also mandates that in the case of a DCF finding of 'unfounded,' all reference to the DCF complaint and investigation be removed from the employee's file.

[11] *N.J.S.A.* 18A:6-7a provides:

> When a complaint made against a school employee alleging child abuse or neglect is investigated by the Department of Children and Families, the department shall notify the school district and the employee of its findings. Upon receipt of a finding by the department that such a complaint is unfounded, the school district shall remove any references to the complaint and investigation by the department from the employee's personnel records. A complaint made against a school employee that has been classified as unfounded by the department shall not be used against the employee for any purpose relating to employment, including but not limited to, discipline, salary, promotion, transfer, demotion, retention or continuance of employment, termination of employment or any right or privilege relating to employment.

In the present case, no action was taken against respondent as a result of the DCF investigation and apparently no reference to it remains in respondent's file. Thus, *N.J.S.A.* 18A:6-7a has been satisfied.

Respondent erroneously suggests that *N.J.S.A.* 18A:6-7a has been violated because the tenure charges are the same "complaint" as the school officials' mandatory call to the IAIU, and are consequently action against respondent despite a finding of "unfounded." (Respondent's Exceptions at 41) The IAIU investigation, the police investigation and the compilation of tenure charges were unquestionably all reactions to respondent's behavior. However, they were each based upon separate causes of action, pursuant to separate legal authority, and effectuated by separate proceedings. Adjudication of the tenure charges are no more barred by *N.J.S.A.* 18A:6-7a than criminal charges would have been, had the prosecutor decided to press same.

The present action is based on facts generated by an independent police investigation – which was clearly more thorough than the IAIU inquiry – and information collected by petitioner in anticipation of tenure charges. The tenure charges are not criminal or quasi-criminal, or brought pursuant to Title 9 of the New Jersey Statutes which authorizes DCF investigations, but rather are charges of violations of the school laws governing the conduct of teaching staff members. *See, e.g., N.J.S.A.* 18A:28-5 and accompanying case law.[12]

In summary, the Commissioner finds that 1) there is nothing but support in the record for the ALJ's determination that C.W. was credible, including the fact that there was no indication of animus by C.W. toward respondent or any other motive to offer false information

[12] Respondent mistakenly contends that *In re L.R.,* 321 *N.J. Super*. 444 (App. Div. 1999) supports his position that *N.J.S.A. 18A*:6-7a bars the instant action. In *In re L.R.*, the court held that DYFS (predecessor agency to DCF) had the authority to make findings that respondents had not committed child abuse but had put children at risk. It also held that DYFS could not force school districts to implement its remedial suggestions concerning such respondents, and that the respondents had no right to a hearing to simply contest the results of an investigation.

about him; 2) there is no caprice in the ALJ's determination that respondent was not credible; 3) the evidence as a whole supports C.W.'s account of the events at the heart of this controversy; 4) the record supports the ALJ's finding that petitioner proved its charges of unbecoming conduct against respondent; and 5) respondent's contention that *N.J.S.A.* 18A:6-7a precludes the institution of tenure charges against him is without merit.

Accordingly, the Commissioner adopts the Initial Decision as the final decision in this case. The tenure charges are sustained and respondent's employment is terminated. Respondent is entitled to receive back pay from the 121st day following the filing of the tenure charges up to the date of this decision. A copy of this decision will be forwarded to the State Board of Examiners for action as that body deems appropriate.

The Commissioner further adopts the January 28, 2008 order of the ALJ sealing the IAIU records that were admitted into evidence at hearing.

IT IS SO ORDERED.[13]

COMMISSIONER OF EDUCATION

Date of Decision: August 18, 2008
Date of Mailing: August 19, 2008

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