EDU #7548-94
  C # 210-98
  SB # 51-98

NICHOLAS A. CIUFI,   :

    PETITIONER-APPELLANT,   :

V.   :   STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE   :   DECISION
TOWNSHIP OF IRVINGTON, ESSEX
COUNTY,   :

    RESPONDENT-RESPONDENT. :
_____

Decided by the Commissioner of Education, May 15, 1998

For the Petitioner-Appellant, Wayne J. Oppito, Esq. and Teitelbaum &
      Caccavale (Edward Teitelbaum, Esq., of Counsel)

For the Respondent-Respondent, Schwartz, Simon, Edelstein, Celso &
      Kessler (Joseph R. Morano, Esq., of Counsel)

The decision of the Commissioner of Education dated May 15, 1998 denying

petitioner's request for indemnification of his legal fees incurred in the defense of

criminal charges alleging improper sexual contact with a student is affirmed for the

reasons expressed therein. We fully agree with the Commissioner that petitioner has

not met his burden of demonstrating that the criminal charges arose "out of and in the

course of the performance of [his] duties" as an assistant principal, a statutory

requirement for indemnification. N.J.S.A. 18A:16-6.1. See N.J.S.A. 18A:16-6. Under

these circumstances, we find it unnecessary to determine whether the criminal charges

had been "dismissed or result[ed] in a final disposition in [petitioner's] favor" within the intent of the statute.

We note, in addition, that subsequent to the Commissioner's decision denying petitioner's request for indemnification, we affirmed the Commissioner's determination to dismiss petitioner from his tenured employment on the basis of tenure charges arising from the same incident which formed the basis for the criminal charges. <u>In the Matter of the Tenure Hearing of Nicolas Ciufi</u>, decided by the Commissioner of Education, September 3, 1996, <u>aff'd</u> by the State Board of Education, July 1, 1998, <u>appeal pending</u> (App. Div.). We agreed that the Irvington Board had proven the tenure charges against petitioner by a preponderance of the credible evidence and that dismissal was the appropriate penalty under the circumstances.

September 2, 1998

Date of mailing _____