#49-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE HEARING OF IRANDOKHT TOORZANI, (A/K/A IRANDOKT TOORZANI) SCHOOL DISTRICT OF THE BOROUGH OF ELMWOOD PARK, BERGEN COUNTY.	: : :	COMMISSIONER OF EDUCATION DECISION

SYNOPSIS

The petitioning Board certified tenure charges of unbecoming conduct, insubordination and/or other just cause against respondent – a teacher of mathematics – for conducting herself inappropriately on various occasions over a protracted period of time, including, *inter alia*,: making numerous inappropriate, insubordinate and unprofessional statements or comments to and in the presence of parents, staff, administrators; repeatedly failing to comply with administrative directives; leaving assigned duties under false pretenses; expressing that she had problems teaching classified students, claiming that they were unmotivated and unable to learn; and continuing to engage in a pattern of misconduct notwithstanding numerous admonitions, directives, and intermediary disciplinary actions. The Board sought removal of respondent from her tenured position. Petitioner, acting *pro se*, submitted multiple filings denying the charges, but did not answer the Board's interrogatories and failed to appear or testify at the hearing despite appropriate notice of the hearing date. The Board presented *ex parte* proofs at the hearing, in accordance with *N.J.A.C.* 1:1-14.4(d).

The ALJ found, *inter alia*, that: the evidence presented at the *ex parte* hearing showed that respondent repeatedly violated the implicit standard of good behavior that is expected of a teacher; respondent's behavior evidenced a lack of respect for authority, a refusal to obey directives, and a combativeness that undermined the morale and efficiency of the district's high school; respondent repeatedly criticized the district administration and her colleagues by challenging their honesty and integrity; and her claims of mistreatment were not directed at one source, but rather at seven separate supervisors and administrators, and one union representative. The ALJ concluded that the Board has established good cause that between 2003 and 2011, respondent repeatedly conducted herself in an insubordinate manner, and has met its burden of proving that respondent repeatedly engaged in conduct unbecoming a teacher. Accordingly, the ALJ determined that such a persistent pattern of unacceptable behavior cannot be tolerated in a school setting, and ordered respondent dismissed from her tenured teaching position.

Upon independent review of the record, the Commissioner concurred with the findings of the ALJ, and adopted the Initial Decision as the final decision in this matter. Respondent was dismissed from her tenured employment, and a copy of this decision was forwarded to the State Board of Examiners for action against her certificate(s) as that body deems appropriate.

February 8, 2012

OAL DKT. NO. EDU 9713-11
AGENCY DKT NO. 170-6/11

IN THE MATTER OF THE TENURE	:	
HEARING OF IRANDOKHT TOORZANI,	:	COMMISSIONER OF EDUCATION
(A/K/A IRANDOKT TOORZANI)	:	DECISION
SCHOOL DISTRICT OF THE BOROUGH	:	
OF ELMWOOD PARK, BERGEN COUNTY.	:	
	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. By way of a 6-page facsimile – dated January 9, 2012 and entitled "Request for Extension" – respondent requested a 13-day extension to file exceptions to the Initial Decision.[1] Respondent was granted her requested extension. Upon expiration of the 13-day extension period on January 30, 2012 – rather than submitting exceptions – respondent hand delivered a 90-page document entitled "Motion for Emergency Relief Due to Lack of Jurisdiction in Lieu of Response to Judge Strauss' Correspondence/Order Dated January 3, 2012, Which is Void Due to Officials [sic] Misconduct, Denial of My Due Process and Fraud Upon the Court." In that there is no provision for emergent relief after the issuance of an Initial Decision,

[1] This submission additionally included a number of arguments/allegations including, *inter alia*,: "The Elmwood Park BOE's correspondence dated November 17, 2011, [which respondent claims she received on November 19, 2011] has been called a 'Post Hearing Submission' WHILE there has not been any hearing for the instant matter to have a post hearing submission since by October 18, 2011, my appeal to the Commissioner of Education for motion to dismiss the instant matter, Judge Strauss' recusal (*because of Judge Strauss' misconduct and blatant partiality*) and disqualification of complainant Elmwood Park BOE's attorneys (*because of their continuous misconduct and fraudulent conduct, included but not limited to making false certification*) had not yet been responded by [sic] Commissioner of Education (*I received the Commissioner's response on [October] 25, 2011)* and both Elmwood Park BOE and Judge Strauss were aware of that." (Respondent's Request for Extension at 2)

respondent's submission is being deemed her exceptions. The Board replied to respondent's filing[2] and both of these submissions were fully considered by the Commissioner.

The procedural history of this matter is as follows: On June 30, 2011, the District certified 28 tenure charges against respondent to the Commissioner, alleging unbecoming conduct, insubordination and/or other just cause. Upon receipt of respondent's Motion to Dismiss in Lieu of Answer, the matter was transmitted to the OAL for hearing. On September 12, 2011, the Administrative Law Judge (ALJ) conducted a pre-hearing telephone conference with the parties. During this conference the ALJ denied respondent's Motion to Dismiss the Tenure Charges,[3] denied her motion that he recuse himself from the proceedings,[4] and orally established hearing dates in this tenure matter of October 18 and 19, 2011 at 9:00 a.m.

[2] Respondent attempted to file a response to the Board's reply exception. As there is no provision for such a submission, it has not been reviewed here. Similarly, the Board attempted to file a reply to respondent's reply. Again, there is no provision for this submission. It likewise was not reviewed.

[3] Respondent's Motion to Dismiss the Tenure Charges was primarily predicated on her argument that the tenure charges were precluded by the doctrines of *res judicata* and collateral estoppel because of a prior suit she brought against the Board and certain of its employees in the United States District Court for the District of New Jersey. In this suit, respondent asserted claims which included retaliation and discrimination based on disability, ethnicity, religion and national origin. It is noted, however, that this suit was never litigated on the merits of her claims, but was instead dismissed – with prejudice – by the Court because she repeatedly failed to submit to depositions as ordered by the Court. The ALJ determined that, as *res judicata* and collateral estoppel attach only if there is a prior judgment on the merits in another forum, these doctrines are inapplicable here. An alternative basis for respondent's motion was a claim of invalidity of the tenure charges because they are based on fabrication of the facts, false and falsified information, and false and falsified statements. The ALJ found that respondent – by her own pleading – claims that the District's charges are based on a fabrication of facts, thereby raising genuine issues of material fact which can only be resolved in a plenary hearing.

[4] The record reveals that subsequent to the ALJ's oral denial of her motion to dismiss, respondent continued to argue that there was a final disposition in her District Court case and, therefore, *res judicata* and collateral estoppel must apply. The ALJ again explained his ruling. Respondent continued reiterating her argument. The ALJ explained that he had ruled and would be setting forth his ruling in writing and if respondent disagreed with it she could seek review of the ruling. Respondent continued advancing her argument, interrupting the judge. At some point, the ALJ firmly advised respondent to stop talking and stated that if she did not do so he would terminate the telephone conference and establish the hearing dates solely through consultation with the school board attorney. At this point, respondent requested that the ALJ recuse himself from this matter, indicating that she was distressed that he would not let her speak and that she wished an impartial judge to hear the case. The ALJ denied the recusal motion stating that he was impartial and interested in achieving the correct result as evidenced by the fact that he had fully read her submissions. He advised respondent that he had no reason to either believe or disbelieve her or her arguments or the arguments of the school district and, therefore, ruled that respondent had not advanced a valid reason for his recusal.

at the OAL, 33 Washington Street, 7th Floor, Newark, N.J.[5] These oral rulings of the ALJ were memorialized in his Prehearing Order dated September 19, 2011, which further specified with respect to the scheduled hearing dates: "[n]o adjournments will be granted except in strict accordance with the requirements of *N.J.A.C.* 1:1-9.6. Additionally, the timing of these hearing commencement dates are mandated by *N.J.S.A* 52:14B-10.1." (ALJ's September 19, 2011 Prehearing Order, Motion to Dismiss Order, Motion to Recuse Order, at #4.) Finally, this Order set October 14, 2011 as the date discovery in this matter must be completed.[6] Further submissions of respondent indicate she received this Order on September 20 or 21, 2011.

On September 28, 2011 respondent filed a request for Interlocutory Review by the Commissioner of Education of that portion of the ALJ's Prehearing Order which denied her motion for dismissal of the tenure charges.[7] By letter decision dated October 21, 2011 the Commissioner declined to grant interlocutory review. By letter dated September 18, 2011 to Laura Sanders, Acting Director and Chief Administrative Law Judge, OAL ("Acting Director of OAL") respondent alleged an improper relationship between the Elmwood Park Board of Education, its attorney, and the ALJ, and requested an investigation. A second document, received at the OAL on September 30, 2011, appealed ALJ Strauss's Order denying her motion

[5] A notification of the date, time and location of the scheduled hearing was additionally mailed to the parties on September 16, 2011 by the Deputy Clerk, OAL.

[6] Notwithstanding the ALJ's Order in this regard, rather than answering the Board's proffered interrogatories, respondent instead returned them to the Board in late September, unanswered.

[7] It is additionally noted that on October 5, 2011, respondent attempted to file a Motion to Disqualify Board Counsel with the Commissioner. She was advised – by letter dated October 7, 2011 from the Director, Office of Controversies and Disputes – that such a motion was not properly before the Commissioner but, rather, must be first made to the judge assigned to the case in accordance with *N.J.A.C.* 1:1-5.3. In the event she is dissatisfied with that judge's ruling, respondent may appeal that ruling to the Acting Director and Chief Judge of the OAL, pursuant to *N.J.A.C.* 1:1-14.10.

for recusal.[8] On October 6, 2011 the Acting Director of OAL agreed to interlocutorily review ALJ Strauss's denial of respondent's motion for his recusal from her tenure matter and by decision dated October 11, 2011, she affirmed Judge Strauss's Order denying respondent's motion for recusal. Pursuant to a letter to the parties dated October 21, 2011, the Acting Director of OAL advised that after a thorough review she found no basis to conclude the existence of any type of improper relationship or conduct on the part of the Board, its attorney and the ALJ.

As scheduled, the hearing in this matter took place on October 18, 2011. On that date counsel for the District appeared with witnesses. Respondent neither appeared nor contacted the OAL with an explanation for her failure to appear. In accordance with *N.J.A.C.* 1:1-14.4 (dealing with the failure of a party or his or her representative to appear at a scheduled proceeding), the ALJ did not take any evidence on October 18 but, rather, held the matter for a day in order to provide respondent with an opportunity to explain her non-appearance as required by *N.J.A.C.* 1:1-14.4(a). No explanation for respondent's non-appearance was received. On October 19, 2011, pursuant to *N.J.A.C.* 1:1-14.4(d) – because an Initial Decision is required in tenure charge cases – the ALJ accepted *ex parte* proofs from the District. At this *ex parte* hearing the District requested the opportunity to submit a brief and proposed findings of fact, based on the October 19, 2011 hearing. Pursuant to *N.J.S.A.* 52:14B-10 (d), the ALJ granted this request, received the District's brief on November 17, 2011, closed the record of this matter on that date, and issued his Initial Decision on December 28, 2011.

Turning to respondent's voluminous exception submission in this matter, such exceptions, *inter alia,*:

[8] The basis for respondent's two motions before the OAL was substantially identical – that the ALJ erroneously dismissed her motion to dismiss the tenure charges, that he intimidated her during the prehearing conference, that he misstated the law and facts during the prehearing conference, and that all of this was an attempt to assist the Elmwood Park Board of Education.

- Present an extensive recitation of her version of the **entire history** of this matter. Throughout her papers she charges the Board, its administrators, its attorneys, and the ALJ with knowing and intentional misrepresentation of the facts and the law, fraud, false statements and deprivation of her due process rights. She further contends that "[a]ll of these fraudulent conducts and violations of laws and rules have been willfully and intentionally condoned and permitted to be continued by both the OAL and Department of Education officials involved in the instant matter while I have been constantly informing them about all these fraudulent conducts." (Respondent's Exceptions, quote at 86)
- Continue to maintain that the tenure charges against her are barred by the Doctrine of *Res Judicata* and lays out an elaborate, albeit disjointed, argument as to why this is the case and presents reasons – such as bias and incompetence – as to why her motion to dismiss in this regard was denied.
- Maintain that she explained to the ALJ and the officials at the Department of Education – on at least three occasions – the reasons she would not attend the October 18 and 19, 2011 hearings:

> "**<u>For the first time</u>** during the phone conference of September 12, 2011.
>
> After I realized Judge Strauss was misrepresenting the facts and laws during that phone conference and I noticed that he was ignoring me and was not hearing me out, I told Judge Strauss (*when he was setting up an* [sic] *schedule for tenure hearing*) that because of my emotional distress and lack of concentration which had also affected on my speech and memory, I would not be able to attend and defend myself in any type of verbal conversation and hearing but I had provided them with the evidences attached to my motion to dismiss in lieu of answer to the tenure charges as Exhibits which could be reviewed by them. Judge Strauss asked me to stop talking and he did not respond [to]my concern and he said that if I had any trouble concentrating he would be issuing a prehearing order that would reflect what was discussed in that phone conference and also setting for [sic] hearing dates, which proves that Judge Strauss even was not listening to me when I was talking about my concerns." (Respondent's Exceptions at 41)

"**For the second time** in my appeal (*dated September 26, 2011*) to the Commissioner of Education regarding Judge Strauss' order denying my motion to dismiss in lieu of answer to the tenure charges and denying and [sic] my motion for his recusal. In that appeal I stated:

> I feel that I *(as an unrepresented party who is not even competent to defend herself verbally because of severe anxiety as Judge Strauss was witness of it during the phone conference of September 12, 2011)* am being forced against the law by Judge Strauss into proceeding which is in the first place is [sic] barred by the law. **No person with a [sic] common sense appears before a court and a judge who does not follow the law, misrepresent [sic] it and rules against it.** Therefore I am respectfully requesting the Commissioner of Education **to stay the proceeding of this case due to blatant prejudice against me[,]** and for all of the reasons stated in this letter and Respondent's Certification (attached) …" (*Ibid*.)

"For the 3rd time in my letter (*dated October 12, 2011*) which I wrote to Commissioner of Education…. In that letter I stated that:

> I believe as every other citizen I have the right to defend my constitutional rights and immunity under the 14th Amendment of [the] constitution which guarantees the fundamental rights of citizens to due process and fair and impartial trial and equal protection of the laws…All these injustices have been poisoning my health and I have had enough of Fraud upon the Court in the Federal Court for almost two years. Now, again if I am not supposed to be entitled to equal protection of the Laws and due process, I prefer not to participate in any proceeding in which I do not have any right since I do not want to be harassed and get injured more, physically and emotionally…"(*Id.* at 42)

(Respondent's Exceptions at 41-42)

- Again allege that the tenure charges against her are false or falsified and – with respect to each of them – raises what she alleges are factual discrepancies and alternate theories as to what actually occurred.

- Object to the *ex parte* hearing conducted on October 18 and 19, 2011 and the ALJ's January 3, 2012 decision[9] that included statements that there were no witnesses or exhibits presented on behalf of Ms. Toorzani. Her exceptions take issue with these facts: "NO Exhibits and witnesses for Toorzani (me, Respondent) despite the fact that I had furnished the Department of Education and accordingly Judge Strauss with about 460 pages of brief and direct physical evidences included [sic] [a] CD of recorded voice (*Motion to Dismiss in Lieu of Answer to the Tenure Charges*) which prove that the instant matter had been initially procured by perjury and by violating the OPMA and refute all the tenure charges (one by one) which had been brought against me by Richard D. Tomko, Superintendent, who had perjured himself to bring me up on those tenure charges." (Respondent's Exceptions at 46) Respondent charges that the ALJ should have denied the District's request to proceed with the hearing as she submitted her explanation as to why she would not attend. (*Id.* at 59) She charges that the ALJ "abandoned proper procedure by abusing his judicial power and authority and deprived me of my rights." (*Id.* at 80)

Upon full review and consideration of the entire record in this matter, the Commissioner is in accord with the ALJ's determination – for the reasons clearly presented on pages 19-23 of his decision – that the District has established its charges of unbecoming conduct, insubordination, and other just cause against respondent. In so determining, the Commissioner fully agrees that – under the circumstances existing in this matter – the ALJ's proceeding with an *ex parte* hearing was entirely appropriate. The record here evidences that with the ALJ's denial of her motion to dismiss the tenure charges and her motion for his recusal, respondent unilaterally determined to defy all of his directives. Such defiance is clearly apparent by 1) her

[9] It is noted that the ALJ's Initial Decision was dated December 28, 2011, and mailed to the parties on January 3, 2012.

ignoring of the ALJ's established date of October 14, 2011 for completion of discovery when – rather than answering the Board's interrogatories – she returned them to the Board unanswered, and 2) her self-admitted adamant refusal to attend the scheduled hearings on the established dates. Notwithstanding respondent's exception claim that she sought a "stay" of the instant proceedings from the Commissioner in her request for interlocutory review of the ALJ's denial of her motion to dismiss the tenure charges or, alternatively, that she harbored a belief that her interlocutory appeals automatically resulted in the cancellation of the scheduled hearing dates established by the ALJ in this tenure matter, the OAL provision governing stays pending Interlocutory Review, *N.J.A.C.* 1:1-14.10(h), clearly dictates:

> An agency head's determination to review interlocutorily an order or ruling *shall not delay the scheduling or conduct of hearings*, unless a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Either the presiding judge or the agency head may order a stay of the proceedings, either on their own or upon application. *Applications for stays should be made in the first instance to the presiding judge*. If denied, the application may be resubmitted to the agency head. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing. (emphasis added)

It is noted that no application for stay of the hearing dates – in accordance with the dictates of this provision – was ever made or granted in this matter. As respondent filed two requests for interlocutory review pursuant to *N.J.A.C.* 1:1-14.10, she must be presumed to have knowledge of all of this regulation's provisions.[10] More importantly, it is readily apparent on this record that respondent was not – in reality – seeking a "stay" of her tenure hearing but, rather, elimination of a hearing altogether. Respondent's proffered arguments make it abundantly clear that what she was seeking – or, better stated, demanding – was resolution of this matter in her favor either

[10] Indeed, it is noted that respondent's materials submitted to the Commissioner contain specific references to various portions of this regulatory provision.

through the grant of her motion to dismiss the charges as being barred by *res judicata* and/or collateral estoppel or summary decision based solely on her submitted factual recitations and exhibits, written arguments and accusations. The Commissioner concurs with the ALJ's cogent, comprehensive analysis contained in his September 19, 2011 Prehearing Order concluding that this matter is not amenable to resolution under either of these theories. Initially, with respect to the applicability of *res judicata* and/or collateral estoppel the ALJ found:

> *Res Judicata* and collateral estoppel are analogous legal doctrines designed to promote the conclusiveness of adjudications by precluding a party from relitigating issues previously decided by a tribunal. *Res judicata*, or claim preclusion, requires that a judgment in a prior action must be valid, final and on the merits; the parties in the later action must be identical or in privity with those in the prior action; and the claim in the prior action must grow out of the same transaction or occurrence as the claim in the earlier one. (citations omitted)
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> As indicated above, only a judgment on the merits in another forum will preclude a later action on the same claim. *Res judicata* does not apply if the prior action has been dismissed on grounds that do not go to the merits of the matter asserted. In her Motion to Dismiss, Respondent relies on a suit she initiated in the United States District Court for the District of New Jersey asserting claims which included retaliation and discrimination based on disability, ethnicity, religion and national origin. *See, Toorzini v. Elmwood Pk. Bd. of Educ. et al.*, No. 09-4262 (D.N.J. May 19, 2011) and *Order* No. 09-4242 (D.N.J. May 19, 2011), *aff'd. Toorzani v. Elmwood Pk. Bd. of Educ., et al.*, No. 11-1858 (3rd Cir., July 12, 2011) As set forth in an Opinion and Order of the Honorable Stanley Chesler, U.S.D.J., this suit was never litigated on the merits of Respondent's claims. It was, instead, dismissed with prejudice because she was "repeatedly ordered to appear for her deposition, and the record reflects [that she has] repeatedly failed to attend." *Id.* at 2. As there never was a trial on the merits of respondent's claims, no court ever made any factual determinations. In the absence of a judgment on the merits in the matter relied upon by Respondent, an essential element of *res judicata* claim, I CONCLUDE that there is no basis for dismissal of the instant matter on the basis of *res judicata.*
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> Collateral estoppel, or issue preclusion, "is that branch of the broader law of *res judicata* which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action." *State v. Gonzalez*, 75 *N.J.* 181, 186 (1977) (*citing Mazzilli v. Accident and Cas. Ins. Co., etc.*, 26 *N.J.* 307, 313-14 (1958); *Kelley v. Curtiss*, 16 *N.J.* 265, 273 (1954); *Miraglia v. Miraglia*, 106 *N.J. Super*. 266, 271 (App. Div. 1969). Again, there was no factual determination in the prior action upon which Respondent relies. Therefore, I CONCLUDE that there is no basis for dismissal of this matter under the doctrine of collateral estoppel. Additionally, the tenure charges which respondent claims to bar by the District Court action could not have been brought in that tribunal. Tenure charges are

> within the exclusive jurisdiction of the Commissioner of Education. "What constitutes grounds for a tenure dismissal is a question of fact and within the exclusive jurisdiction of the Commissioner of Education, who has the duty to conduct the hearing and render a decision." [emphasis supplied] *In re Cardonick*, 1990 *S.L.D.* 842, 849, citing *In re Fulcomer*, 93 *N.J. Super*. 404, 412 (App. Div. 1967).
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> (ALJ's Prehearing Order, Motion to Dismiss Order, Motion to Recuse Order, September 19, 2011, at 5-6)

As to respondent's claim of invalidity of the tenure charges because they are based on fabrication of the facts, falsified information and statements, the ALJ correctly concluded that a dismissal on this ground must satisfy the requirements of a Motion for Summary Decision:

> Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." *N.J.A.C.* 1:1-12.5(b).
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> The standard for granting summary judgment (decision) is found in *Brill v. Guardian Life Insurance Co. of America*, 142 *N.J.* 520 (1995). In *Brill*, the Court looked at the precedents established in *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.,* 475 *U.S.* 574 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 *U.S.* 242 (1986), and *Celotex Corp. v. Catrett*, 477 *U.S.* 317 (1986), wherein the Supreme Court adopted a standard that "requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict, *i.e.*, 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Brill, supra.* at 533 (quoting *Liberty Lobby, Inc., supra,* 477 *U.S.* at 251-252). The Court stated that under the new standard:
>
> > A determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." (*Id.* at 540 *(quoting Liberty Lobby, Inc., supra*, 477 *U.S.* at 251-252)].
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> The *Brill* standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. "To send a

case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose." *Id.* at 541

In addressing whether the *Brill* standard has been met in this case, further guidance is found in *Rule* 4:46-2:

> An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issues to the trier of fact.

Respondent, by her own pleading, emphasizes her view that the allegations raised by the District in its tenure charges are based on a fabrication of facts, thereby raising genuine issues of material fact that can only be resolved in a plenary hearing. Each and every fact alleged and relied upon by Respondent in her Motion is in dispute. For each and every tenure charge, Respondent raises factual discrepancies and alternate theories as to what allegedly occurred. I CONCLUDE that the existence of genuine issues of fact defeats a Motion to Dismiss.

(ALJ's Prehearing Order, September 19, 2011, at 4-5)

It is well established that tenure protects teachers from arbitrary dismissal for "unfounded, flimsy or political reasons." *Spiewak v. Rutherford Bd. of Educ.*, 90 *N.J.* 63, 73 (1982) (*quoting Zimmerman v. Newark Bd. of Educ.*, 38 *N.J.* 65, 71 (1962)) Because of the due process concerns that inform tenure proceedings – in matters like the instant case, with numerous recognized genuine issues of material fact – respondent may only be dismissed for unbecoming conduct, insubordination or other just cause after a hearing in compliance with the Tenure Employees Hearing Law, *N.J.S.A.* 18A:6-10 *et. seq.,* where respondent is entitled to present witnesses and evidence on her behalf and the District has the burden of proving the charges against her by a preponderance of the credible evidence. Here, however, respondent has steadfastly taken the position that this matter will proceed the way she wishes or not at all. She deliberately defied the Order of the ALJ with respect to discovery, the establishment of the

hearing dates of her tenure case,[11] [12] the clear dictates of *N.J.A.C.* 1:1-14.10(h), and, rather, elected not to defend herself at the evidentiary hearing to adjudicate the tenure charges filed against her. As such, because the District required an Initial Decision on its tenure charges, the ALJ was well within his authority, pursuant to *N.J.A.C.* 1:1-14.4(d), to take *ex parte* proofs from the District with respect to its charges and to render his Initial Decision based on these *ex parte* proofs. As this situation is solely attributable to the actions/inactions of respondent, she cannot – at this point in time – be heard to complain about the consequences of her own actions.

The Commissioner is in complete agreement with the ALJ that – based on the testimony of its witnesses and its advanced evidentiary proofs – the District has established its charges of unbecoming conduct and insubordination against respondent, as detailed on pages 21-22 of the Initial Decision. Similarly, with respect to the penalty to be imposed, the Commissioner concurs with the ALJ's cogent analysis in this regard:

> …the nature and circumstances of each of the incidents, when viewed singularly, are troubling rather than alarming. However, Toorzani's prior record is a poor one. Although she has never previously been suspended, there are many written warnings and reprimands. Yet, her conduct continued unabated. Her present attitude is as inappropriate as it has consistently been in the past. The testimony and documentary evidence elicited from a wide range of administrators is overwhelming. The effect of her conduct on the maintenance of discipline among staff is evident. Simply, she has created a toxic work environment for her various supervisors and administrators. Finally, her repeated failure to respond favorably to many attempts to elicit appropriate and professional behavior suggests that her past conduct was not an aberration but instead leads to a reasonable prediction that such behavior is likely to recur. The proofs here "are not trivial but rather reflect a pattern of professionally unacceptable conduct which cannot be tolerated in a school setting." (citation omitted) Accordingly, I CONCLUDE that Irandokht Toorzani should be dismissed from her tenured teaching position with the School District of the Borough of Elmwood Park. (Initial Decision at 23)

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[11] As a consequence of the Acting Director of OAL's October 11, 2011 Order, respondent was well aware – prior to the scheduled hearing dates of her tenure matter – that her Interlocutory Review request seeking Judge Strauss's recusal from this case had been denied.

[12] Indeed, respondent's submissions in this matter make it abundantly clear that she had no intention, whatsoever, of attending *any* hearing in this tenure matter.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Irandokht Toorzani is hereby dismissed from her tenured position with the School District of the Borough of Elmwood Park. A copy of this decision will be transmitted to the State Board of Examiners for action against respondent's certificate(s) as that body deems appropriate.

IT IS SO ORDERED.[13]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 8, 2012

Date of Mailing: February 9, 2012

[13] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)