#122-15A (SBE Decision: http://www.state.nj.us/education/legal/examiners/2014/apr/1112-137.pdf)

STATE BOARD OF EXAMINERS DKT. NO. 1112-137;
COMMISSIONER APPEAL NO. 5-5/14A

CRAIG BELL.	:	
APPELLANT,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
NEW JERSEY STATE BOARD OF EXAMINERS,	:	
RESPONDENT.	:	

Appellant Craig Bell challenges the determination of the New Jersey State Board of Examiners that his substitute teaching credential should be revoked. The Commissioner has reviewed the record, the findings set forth in the Initial Decision of the Office of Administrative Law (OAL), and the Board's Order of Revocation, and has determined to affirm the Board's Order.

The New Jersey State Board of Examiners (Board) may revoke the teaching credential of an individual on the basis of unbecoming conduct. *N.J.A.C.* 6A:9-17.5. In reviewing an appeal from such an action by the Board, the Commissioner's task is to determine whether the Board's decision is supported by sufficient, credible evidence, and is not arbitrary, capricious or contrary to law. *See, N.J.A.C.* 6A:4-4.1(a). In the instant case, the Board adopted the determination of the OAL that, on January 16, 2005, appellant engaged in unbecoming conduct by 1) allowing or fostering an unprofessional relationship with P.P., a fourteen-year-old student who attended the school where he served as a substitute physical education teacher, 2) communicating with P.P. by telephone in furtherance of the unprofessional relationship, and

3) engineering or agreeing to a weekend meeting with P.P., during which he picked her up in his vehicle, kissed her, and left the zipper on his trousers undone. Appellant's challenge to the Board's decision consists entirely of disputes of fact.

Credibility determinations were a significant factor driving the findings of the Administrative Law Judge (ALJ) and the decision of the Board. The ALJ's credibility determinations were made following a four-day hearing during which the ALJ's opportunity to observe appellant stretched over a three day period, and his opportunity to observe P.P. lasted for at least a half day. After the ALJ assessed appellant's and P.P.'s testimony, demeanor and consistency, he determined that P.P.'s testimony was credible and appellant's was not. It is well settled that reviewing courts or agencies should give great weight to the credibility findings of the one who actually heard and observed the witnesses, unless the evidence does not support such findings. *N.J.S.A.* 52:14B-10(c). *Clowes v. Terminex*, 109 *N.J.* 575, 587 (1988). With that in mind, and after reviewing the record, the Board found no reason to disturb the ALJ's determinations. The Commissioner's review of the record also leads to the conclusion that the ALJ's determinations were supported by the evidence. Thus, there is no basis to find that the Board was arbitrary or capricious in adopting the Initial Decision.

Appellant's arguments before the Commissioner are similar to those he made to the Board. First, he urges that certain alleged inconsistencies in P.P.'s accounts of the date, location and particulars of the encounter to various school officials necessitate a finding that P.P. was not credible. Second, he contends that the ALJ strained to find inconsistencies in the testimony of appellant and his "friend" William Malave. Third, appellant asserts that the ALJ's and Board's determinations were arbitrary, capricious and unreasonable because they did not precisely track the charges set forth in the Board's January 10, 2012 order to show cause. More

specifically, appellant argues that since the ALJ did not specifically find that appellant "fondled" P.P., as stated in paragraph three of the order to show cause, the charges against appellant should have been dismissed. After extensive review of the record, the Commissioner rejects appellant's arguments.

Appellant relies heavily on certain documentary exhibits for his position that P.P.'s account of events was inconsistent. But said documents are not communications by P.P. or by others with first-hand knowledge. Rather, they are memoranda by various school administrators to whom P.P. did not speak. They contain double and triple hearsay statements which are highly susceptible to interpolations of meaning which was never imparted by P.P.

As to the date of the encounter between P.P. and appellant: less than two weeks after the weekend of January 15-16, 2005, P.P. was interviewed by Burlington County Detective D. Anderson. She stated at that time that the incident had occurred on Sunday, January 16. Appellant had given her his cell phone number on Friday, January 14; she spoke with him on both Saturday, January 15, and Sunday, January 16, and they met up on that Sunday.[1] (J-3) P.P.'s assertion that the encounter with appellant had taken place on Sunday, January 16, was contemporaneously corroborated by her foster mother, R.C. (J-3; J-11; 1T45; 1T65-66[2])

As to the location of the encounter: in the same interview with Detective Anderson, P.P. related that on the Sunday in question, appellant picked her up on the street where her home was and drove her to Millbrook Park. (J-3) In an October 26, 2012 statement, R.C. corroborated P.P.'s account of where the encounter took place. (J-11) More specifically,

[1] At the hearing in 2012, P.P. testified that she no longer independently remembered the date of the encounter – other than that it was in January 2005. (2T106)

[2] 1T represents the transcript of the November 9, 2012 hearing day.
2T represents the transcript of the February 1, 2013 hearing day.
3T represents the transcript of the February 8, 2013 hearing day.
4T represents the transcript of the May 7, 2013 hearing day.

R.C. related that P.P. had told her, one or two days after the incident, that appellant had picked her up at the end of their block and had driven her to a nearby park. R.C. also testified to same on November 9, 2012, the first day of the OAL hearing. (1T29) On the same hearing date, P.P.'s guidance counselor, Cheryl Alston-Jones, testified that she had also been told by P.P. – a day or two after the incident – that appellant had picked P.P. up near her home, and had driven her to a park. (1T92)[3]

As to what happened on January 16, 2005, Detective Anderson's report of his January 28, 2005 interview with P.P. states that she described getting into appellant's blue SUV, being kissed by appellant, being asked to engage in sex and hearing appellant's zipper opening. (J-3) The testimony of P.P.'s guidance counselor, Alston-Jones, was in accord. She recalled that a few days after the incident, P.P. disclosed to her that appellant had picked her up and kissed her in his vehicle. (1T92) Similarly, R.C. related – in a written statement dated October 26, 2012 (J-11), and at the OAL hearing (1T30) – that a day after the incident, when P.P. arrived home from school, she told R.C. about the encounter with appellant. (1T29) P.P. disclosed that appellant had kissed her while they were in his vehicle. (1T29-30) [4]

The foregoing accounts are all corroborative of P.P.'s testimony at the OAL hearing in February of 2013. During both direct and cross examination she testified that appellant had kissed her in his vehicle, but that when she saw his fly open, she exited the car. (2T43; 2T51; 2T53; 2T123; 2T133-36) She did not specifically remember appellant touching

[3] At the OAL hearing, P.P. remembered that appellant drove the vehicle after she entered it, but did not remember driving to a park. (2T123-24) At the same time, she emphasized that she no longer remembered everything about the incident, which had occurred seven years prior to the hearing. She did remember being in Bell's car, kissing, the open zipper. The things she related to the police in the days after the incident were true, but seven years later she could not remember everything. (2T123)

[4] In her October 26, 2012 statement, R.C. also wrote that she thought P.P. had also told her that appellant took her hand and put it on his penis while he was kissing her. (J-11)

her (2T116-18), but testified that appellant might have grabbed her while kissing her. (*Ibid.)* In response to cross examination, P.P. candidly testified that she could no longer remember everything about the incident with appellant, which incident had occurred eight years prior to the hearing – when she was a fourteen-year-old child. (2T122) But facts recorded in the police statement were the truth. (*Ibid.*) She remembered meeting up with appellant, being in appellant's car, kissing, and seeing his open zipper: "those four things, we kissed, his zipper was down, I got in his car and we met up was the truth . . . ." (2T138)

The Commissioner finds that appellant's testimony, Malave's[5] testimony and the hearing exhibits are far more inconsistent with each other than the various accounts of the events which are set forth in the respondent Board's case. The Commissioner finds significant, for example, the entry in R-12 – appellant's January 2005 bank statement – showing that appellant had made a cash withdrawal in Willingboro at 11:05 am on January 16, 2005. This puts appellant in Willingboro at the time that P.P. alleges he picked her up, and belies Malave's testimony that he and appellant were camping in Pomona until after dark that day.

Moreover, from its inception, appellant's alibi was tenuous. It is undisputed that throughout the approximately half-hour meeting on January 19, 2005 between appellant, School Security Director Norman Perry, and Human Resources Director Marvin Hopkins, appellant could not account for his whereabouts on the immediately previous Saturday and Sunday. (J-5; 1T196-98) Five minutes after said meeting had ended and appellant had left the building, he returned with the revelation that he had been camping the entire weekend with two unnamed friends. (J-5; 1T204-05)[6] William Malave was not mentioned. Seven years later, when

[5] William Malave was the equivalent of appellant's brother-in-law. More specifically, he is the brother of the woman with whom appellant was living in 2005, with whom appellant had a child, and to whom appellant was later married, albeit briefly. (2T183; 2T331-33; 3T59)

appellant produced his answers to interrogatories in June 2012, he still did not mention Mr. Malave. (3T91) It was not until between June and October 2012 that appellant identified his camping companion as Malave – the brother of his live-in fiancée. (J-5; 1T203-04)

Also notable in the record is appellant's denial of any interaction with P.P. off of school grounds – including telephone contact. (2T231) This is inconsistent not only with P.P.'s testimony that appellant gave her his telephone number (2T25; J-3), but also with the fact that R.C. told Detective Anderson during her January 28, 2005 interview that on Sunday, January 6, 2005, she received a call from an older male asking for P.P., and that she later learned from the police that the call had been from appellant's cell phone. (J-3) R.C. also testified on November 9, 2012 that she had been told by the police that the call was from appellant's cell phone. (1T65)

The Commissioner also finds significant the information in the record concerning two notes which appellant admitted receiving, *i.e.*, J-8 and J-9. (2T289-90) In a January 20, 2005 memorandum about the above-referenced January 19, 2005 meeting between Hopkins, Perry and appellant (J-5), Hopkins disclosed that appellant had produced J-8 at the meeting. Perry corroborated that in his OAL testimony. (1T195-96) According to Hopkins, appellant advised that he had received J-8 a week prior to the meeting. (J-5 at 1) Hopkins wrote that appellant had also recalled receiving a note from P.P. about two weeks prior to the meeting. (*Ibid.)* He had not turned the notes in to the administration, purportedly because he did not want to get G. J.-L., a student mentioned in J-8, into trouble. (*Ibid.)*

In his memorandum, Hopkins described the content of the note: "the note informed [appellant] that G.J.-L. liked him and she wanted Mr. Bell to know that she had

[6] Seven years later, in June 2012, when he answered the Board's interrogatories, appellant certified that he did not remember where he was the weekend of January 15-16, 2005. (3T52-53) However, eight months after that, at the OAL hearing, his memory was once again restored, and he testified about his whereabouts during that weekend.

previous relations with older men." (J-5 at 1) At the OAL hearing, Perry confirmed that the J-8 content had been discussed at the January 19, 2005 meeting. (1T196) In the Commissioner's view, the fact that the memorandum identified some of the contents of J-8 is harmonious with Hopkins' report that appellant had produced J-8 at the meeting.

Yet, in his testimony in the OAL, appellant maintained that he did not give any notes to Perry and Hopkins at their meeting. (2T308; 3T42) He testified that he had found J-8 and J-9 prior to his meeting with Perry and Hopkins, had read them, and had done nothing with them. (2T143-44) He did not believe, at the time, that he was required to turn them in to the administration. (2T244) Appellant also testified that he had received the notes only a day or two before the meeting with Perry and Hopkins – contrary to the statement in J-5, *i.e.,* that he had received them one and two weeks prior to the meeting, respectively. (2T322-25) Appellant speculated that the meeting with Perry and Hopkins had been precipitated by a different note which had allegedly been confiscated when it was passed from P.P. to another student. (2T290) He provided no basis for that assumption.

The Commissioner also notes that appellant's "answer" to the Board's order to show cause was devoid of specific denials to the specific allegations in paragraph three of the order. Instead, it was filled with innuendo and rumors about P.P., and self-aggrandizing portrayals of his own character.[7]

As discussed above, the Commissioner's task in reviewing a decision by the Board is not to second guess or replace the Board's judgment with his own. Rather, it is to

[7] Appellant also urged in his answer and testimony that weight should be given to the fact that neither the prosecutor nor the Division of Youth and Family Services (DYFS) chose to bring charges against him. However, it is of no moment that the prosecutor chose not to press charges against appellant, since criminal investigations are ruled by different standards than those which govern the Board of Examiners and the Commissioner. Similarly, the Commissioner need not draw any conclusions from the fact that DYFS did not make a finding of abuse. In fact, P.P. testified that DYFS never interviewed her. (2T87-88; 2T165-66) The Department of Education held the sole hearing in this matter, and the findings from the hearing will dictate the Commissioner's decision.

ascertain whether the Board's determination is supported by sufficient, credible evidence, and is not arbitrary, capricious or contrary to law. The Commissioner perceives nothing in the record that would suggest that the ALJ's credibility findings were inappropriate and, in fact, agrees with same. Further, the exhibits entered into evidence are more supportive of P.P.'s account of what happened on January 16, 2005 than of appellant's vague and rambling testimony.

Nor does the Commissioner credit appellant's argument that the Board's case must fail because it did not prove each allegation of paragraph three of the order to show cause. The evidence supports, at a minimum, that appellant called P.P.'s home on January 16, 2005 – when she was fourteen years old – picked her up in his vehicle, and kissed her. Those facts are more than sufficient to warrant revocation of his substitute teaching credential. *See, e.g. Redcay v. State Bd. of Educ.*, 130 *N.J.L.* 369, 371 (Sup. Ct. 1943). *aff'd*, 131 *N.J.L.* 326 (E & A 1944) (unfitness for a position may be shown by a series of incidents or one incident, if sufficiently flagrant).

Finally, the Commissioner rejects as meritless appellant's contention that the ALJ exhibited bias against him. .

In light of the foregoing, the Commissioner affirms the decision of the Board of Examiners to revoke appellant's substitute teaching credential.

IT IS SO ORDERED.[8]

COMMISSIONER OF EDUCATION

Date of Decision: April 1, 2015
Date of Mailing: April 2, 2015

[8] Pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Appellate Division of the Superior Court.