

#544-11 (OAL Decision: [http://lawlibrary.rutgers.edu/oal/html/initial/edu05600-11\\_1.html](http://lawlibrary.rutgers.edu/oal/html/initial/edu05600-11_1.html))

IN THE MATTER OF THE TENURE :  
HEARING OF JENNIFER O'BRIEN, : COMMISSIONER OF EDUCATION  
STATE-OPERATED SCHOOL DISTRICT : DECISION  
OF THE CITY OF PATERSON, :  
PASSAIC COUNTY. :

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### SYNOPSIS

The petitioning Board certified eight tenure charges against respondent – a teacher who has been employed by Paterson schools since 1998, most recently instructing first graders – for conduct unbecoming a teaching staff member. All of the charges arose from two statements that respondent admitted to posting on her Facebook page in March of 2011, specifically: “I’m not a teacher – I’m a warden for future criminals!” and “They had a scared straight program in school – why couldn’t i (sic) bring 1<sup>st</sup> graders?” The charges asserted that respondent: breached her duty to maintain a safe, caring and nurturing educational environment for her first-grade class; offended District parents and libeled her students; made statements that reflect a low opinion of the children entrusted to her care; failed to exercise appropriate discretion; disrupted the educational environment by her actions; undermined public confidence in the Paterson schools; and violated District Policy 3281, which states that “(s)chool staff shall not make inappropriate comments to pupils or about pupils.” Respondent denied having engaged in conduct that warranted her dismissal or other discipline.

The ALJ found, *inter alia*, that: the respondent is not a novice in the classroom; respondent’s Facebook comments are not protected by First Amendment rights, as they were not intended to address a matter of genuine public concern but rather were a personal expression of job dissatisfaction; in a public-education setting, thoughtless words can destroy the essential partnership between home and school; respondent’s actions in posting her comments on Facebook showed a disturbing lack of self-restraint and inappropriate behavior which was detrimental to her role as a professional educator; respondent’s lack of sensitivity and her inability to fully understand the serious impact of her actions suggests that she could not effectively return to the classroom in Paterson. The ALJ concluded that the Board has met its burden of proving all charges against respondent with the exception of Charge Three, which pertains to claims of libel and slander over which the Commissioner has no jurisdiction. Accordingly, the ALJ dismissed respondent from her tenured position in petitioner’s schools.

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

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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December 12, 2011

IN THE MATTER OF THE TENURE :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of both the Board and the respondent – submitted in accordance with the requirements of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in making his determination herein.

Exceptions of the Board simply urge the Commissioner to adopt the Initial Decision of the Administrative Law Judge (ALJ) in its entirety.

Respondent's exceptions effectively recast and reiterate her arguments advanced below, essentially again arguing: 1) the tenure charges against respondent violate her constitutional right of free speech – because her comments were not made to students, in the presence of students or in a forum where her first grade students were likely to become aware of them and caused relatively little disruption in the District – she cannot be deprived of her constitutional free speech rights because of fear of reaction or because her opinions are unpopular; and 2) even if it is determined that respondent's postings were inappropriate, discipline imposed on her must be minimal in light of the fact that they represent a sole transgression in a career of over a decade with the District. In that it is determined that the ALJ

comprehensively considered and addressed these issues in her decision, and recognizing that respondent's exceptions raise no valid challenge to the ALJ's resolution of these issues, further discussion of them here is not warranted.

Upon comprehensive consideration of the record of this matter – which includes transcripts of the 3 days of hearing at the OAL,<sup>1</sup> the Commissioner concurs with the ALJ's findings and her conclusion that the Board has proven charges 1, 2, 5, 6, 7, and 8 against respondent by a preponderance of the credible evidence. Respondent's posting of derogatory and demeaning comments about her first grade students on Facebook – where she had 333 "friends" – showed a disturbing lack of self-control, insensitivity and unprofessionalism; was wholly inappropriate; and, without question, constituted unbecoming conduct.

Turning to the appropriate penalty to be imposed in this matter, the Commissioner is mindful that the "[f]actors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the individual's prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring." *In the Matter of the Tenure Hearing of Deborah Suitt-Green, State-operated School District of the City of Newark, Essex County*, decided by the Commissioner October 14, 1997, slip. Op. at 32, citing *In re Hearing of Ostergren, Franklin School District*, 1966 S.L.D. 535, 541; *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967).

While duly considering respondent's 13 years of apparently unblemished service in the District, the Commissioner nonetheless concludes that the entirety of the record supports

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<sup>1</sup> Hearing was held on August 3, August 4, and August 24, 2011.

the ALJ's cogent evaluation of these requisite factors set forth on pages 14-16 of the

Initial Decision:

O'Brien's conduct would be inexcusable anywhere, and in any school district. But the District urges, and I agree, that O'Brien has demonstrated a complete lack of sensitivity to the world in which her students live. This raises my concerns about her poor judgment to yet an even higher level.

A student's hopes and fears about the future are more intensely felt in the urban environment where O'Brien's students live, and where children do not have the luxury of being shielded from poverty, violence and crime. O'Brien teaches in a community where the sentiment that a six-year old will not rise above the criminal element that surrounds him cuts right to the bone. To have those comments come from the very person entrusted with expanding the opportunities available to Paterson children cuts even deeper. Indeed, O'Brien is responsible for far more than teaching her first graders to read, write and wait their turn. She is responsible for nurturing their potential. O'Brien urges strenuously that a decision about her future employment should not rest in the hands of public opinion. In theory, I agree, but the fallacy in O'Brien's argument is that the concerns expressed by the Paterson school community about her fitness to teach their children are understandable and valid. The parents of Paterson rightly demand a teacher who fully appreciates that she holds their children's destiny in her hands, and who embraces that obligation with loving dedication.

O'Brien's prior record is unblemished, and she urges that she should not be unduly penalized for a momentary lapse in judgment. This argument has appeal. But O'Brien's "present attitude" is as troubling as her Facebook posts. If this was an aberrational lapse in judgment, a reaction to an unusually bad day, I would have expected to have heard more genuine and passionate contrition in O'Brien's testimony. I needed to hear that she was terribly sorry she had insulted her young students; that she loved being their teacher; and that she wanted desperately to return to the classroom. I heard nothing of the sort. Rather, I came away with the impression that O'Brien remained somewhat befuddled by the commotion she had created, and that while she continued to maintain that her conduct was not inappropriate, she was sorry others thought differently. With some further time to reflect, and with some sensitivity training, O'Brien could successfully return to a public school classroom. But I do not believe that she can effectively do so in Paterson. Her relationship with the Paterson school community is irreparably damaged, not because the community thinks so, but because O'Brien fails to understand why it does.

Under these circumstances, the Commissioner finds and concludes that respondent is unfit to discharge the duties and functions of her position as a teacher in Paterson and he, therefore,

cannot entertain the prospect of respondent's return to the District and the resultant potential for the perpetration of an unhealthy educational environment.

Accordingly, the recommended decision of the OAL is adopted for the reasons comprehensively detailed therein. Respondent is hereby dismissed from her tenured teaching position with the State-operated School District of the City of Paterson. This matter 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.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 12, 2011

Date of Mailing: December 12, 2011

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<sup>2</sup> 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*)