

#5-12 (OAL Decision: [http://lawlibrary.rutgers.edu/oal/html/initial/edu02879-11\\_1.html](http://lawlibrary.rutgers.edu/oal/html/initial/edu02879-11_1.html))

IN THE MATTER OF THE TENURE :  
HEARING OF MARY LOU FORSELL, : COMMISSIONER OF EDUCATION  
WEST WINDSOR-PLAINSBORO : DECISION  
REGIONAL SCHOOL DISTRICT, :  
MERCER COUNTY. :

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### SYNOPSIS

The petitioning Board certified tenure charges of unbecoming conduct, lack of professionalism, and failure to respect the privacy rights of students, against respondent – a teacher of business education – for, *inter alia*, behavior that included allowing the display of inappropriate photographs in the classroom, discussing a student’s family finances in inappropriate circumstances; and referring to classified students in a derogatory manner. Certain exhibits in this matter, which included images of minor children, were sealed by the Commissioner following a motion from the petitioning Board. The Board sought removal of respondent from her tenured position.

The ALJ found, *inter alia*, that: teachers are role models for students and carry a great responsibility to act correctly; many of the significant facts in this matter are not in dispute; the record shows that respondent failed to properly manage her classroom and in so doing allowed the posting of many inappropriate images depicting matters not properly exhibited in a school classroom – many of which included pictures of students; respondent allowed students to leave class early and did so herself; respondent on more than one occasion failed to exhibit the awareness of or ability to carry out her responsibility to protect the privacy of her students and their families in regard to financial information to which she was privy; and respondent made inappropriate remarks regarding special education, disability issues – including a reference to a classified student as a “sick freak” – and matters relating to personal family decisions. The ALJ concluded that the Board had proven by a preponderance of the credible evidence that respondent is guilty of conduct unbecoming a teacher, and that – with due consideration of her lengthy and previously discipline-free career – the appropriate sanction under the circumstances is removal of respondent’s tenure.

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.

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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January 9, 2012

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. Respondent’s exceptions and the District’s reply thereto – submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Respondent presents her own factual recitation – based on her testimony at hearing – of the events which transpired resulting in the District’s charged Specifications 1, 2, 3 and 6, emphasizing what she avers were mitigating or negating factors which should have been considered by the Administrative Law Judge (ALJ) in reaching his determinations with respect to these charges. Although acknowledging that she – like all teachers – made some mistakes, respondent maintains that in order to properly assess these mistakes and the appropriateness of any penalty, they must be viewed as a small part of respondent’s entire professional career record, which she charges the ALJ failed to do.

In reply, the District supports the ALJ’s well-reasoned decision and his recommended penalty. It charges that respondent’s testimony with respect to the photos on her classroom wall was particularly incredible. It maintains that this charge – which involves a five-

month pattern of conduct demonstrating a serious lack of judgment by respondent – standing alone is sufficient to warrant her termination. When added to the incidents underlying Specification 2 – occurring in two separate school years – demonstrating a pattern of insensitivity and disregard for the confidentiality rights of a student and her mother, and those incidents in Specification 3 evidencing a pattern of insensitive behavior toward classified students, the District contends that it is obvious that the ALJ correctly considered the totality of the evidence in reaching his conclusion that removal of respondent’s tenure is the appropriate penalty in this matter.

Upon a considered review of the entire record in this matter,<sup>1</sup> the Commissioner concurs with the ALJ that the District has sustained its burden of establishing Specifications 1, 2, 3 and 6 by a preponderance of the credible evidence, and that respondent’s termination from her tenured position is warranted. In so concluding, the Commissioner is in full accord with the ALJ’s analysis in this regard:

Based upon the record, I FIND that Ms. Forsell did engage in conduct unbecoming a tenured educator and exhibited a lack of concern for the privacy of students. She failed to properly manage her classroom and in so doing allowed the posting of many entirely inappropriate pictures depicting matters not properly exhibited in a school classroom, pictures which, in many cases, included the images of students. She allowed students to leave class early and did so herself. She on more than one occasion failed to exhibit either the awareness of, or ability to carry out her responsibility to protect the privacy of her students and their families in regard to financial information to which she had become privy. Finally, she made remarks that were simply inappropriate in the context in which they were expressed, regardless of her right to hold such views as she might have in respect to matters regarding special education, disability issues and matters relating to personal family decisions. (Initial Decision at 25)

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<sup>1</sup> With respect to respondent’s exceptions regarding the facts determined by the ALJ based on the testimony of the witnesses and the credence he ascribed to such testimony, the Commissioner notes that the record before him does not include transcripts of the hearing conducted at the OAL in this matter. Challenges to the factual findings predicated upon credibility determinations made by an ALJ require the party to supply the agency head with the relevant and necessary portion of the transcript. *See In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987)

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).

The Commissioner, nonetheless, concludes that the entirety of the record supports the ALJ’s cogent evaluation of these requisite factors here:

If this case only involved Ms. Forsell’s inappropriate comment to Ms. D. and her discussion with J.C. in the science class, the matter would not warrant more than a reprimand. The addition of her comments about the “sick freak” and the “abortion” are more troubling. They are indefensible in the context in which they were made, whatever her private views might be. When these are joined with the continued failure to manage, monitor or shutdown a site for the posting of what she had been alerted to as offensive and inappropriate materials that violated any common sense of what belonged on display in a classroom and which violated policies to discourage and stamp out discrimination and bullying, the level of Ms. Forsell’s misconduct and failure to live up to the professional standards expected of a tenured teacher is substantially increased. The repeated instances of lack of judgment in matters that could have caused serious offense is difficult to mesh with the high responsibility imposed upon teachers as role models and examples for students. Tolerance, even by neglect, of the sort of materials displayed in her room, is intolerable conduct. Under the circumstances, and with due consideration for her lengthy and apparently previously discipline-free career, I am constrained to CONCLUDE that removal of tenure is the appropriate sanction. (Initial Decision at 25-26)

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Mary Lou Forsell is hereby dismissed from her tenured position with the

West Windsor-Plainsboro Regional School District. 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.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 9, 2012

Date of Mailing: January 10, 2012

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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*)