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Board of Examiners Dkt. No. 1920-148  
OAL Dkt. No. EDE 06520-2020  
Agency Dkt. No. 6-6/25A

## **New Jersey Commissioner of Education**

### **Final Decision**

In the Matter of the Certificates of Matthew O'Brien, State Board of Examiners, New Jersey Department of Education

The Commissioner has reviewed the record and papers filed in connection with appellant Matthew O'Brien's appeal of the Order of the State Board of Examiners (Board) dated May 22, 2025, revoking his Teacher of Business: Finance/Economics/Law Certificate of Eligibility and standard Teacher of Business: Finance/Economics/ Law certificate.

Appellant was a tenured teacher in the River Dell Regional School District (District). In August 2019, the District completed an Affirmative Action investigation, after receiving an anonymous report that appellant had engaged in inappropriate behavior, discrimination, and harassment towards two students in the district. The investigation concluded that appellant engaged in harassing conduct towards a classified student and female employees and students, made sexual comments in the presence of students, made inappropriate comments about the aforementioned classified student in the presence of other staff members and students, inappropriately identified the student as a classified student in the presence of other students, caused a classified student to be late for classes, utilized a "Wall of Shame" in his classroom, and consumed alcohol with District high school students at a party in a student's home.

On March 4, 2020, the State Board of Examiners (Board) issued an Order to Show Cause (OSC) seeking revocation of appellant's teaching certificates based on information in the Affirmation Action Investigation Final Report. On April 22, 2020, appellant filed an answer in which he admitted that he resigned from his teaching position amidst the allegations but denied that he engaged in harassment of a student and exhibited inappropriate behavior towards female staff members and students. The matter was transmitted to the Office of Administrative Law (OAL) on July 16, 2020.

Following a contested hearing at the OAL, the Administrative Law Judge (ALJ) determined that appellant engaged in conduct unbecoming a teacher in his interactions with a classified student and in a one-time interaction with a female student. In reaching her determination, the ALJ found that many of allegations in the OSC were unsubstantiated except for the following: (1) that appellant mimicked a classified student's voice and mannerisms in the presence of other students and asked him questions that staff members considered to be demeaning and inappropriate; (2) that appellant behaved inappropriately when he "checked out" a female student walking down the hallway and made an inappropriate and suggestive comment about her to male students; and (3) that appellant utilized a "Wall of Shame" in his classroom where he listed the names of students who demonstrated bad behavior in the classroom. Next, the ALJ determined that appellant's use of the "Wall of Shame" did not constitute unbecoming behavior "since the evidence does not preponderate that the use of a 'Wall of Shame' was inappropriate." Initial Decision at 16. The ALJ reasoned that there was insufficient evidence demonstrating that the Wall was intended to humiliate or improperly embarrass students or that it had that effect. The ALJ further reasoned that the Board offered no expert testimony challenging appellant's use

of the Wall and that appellant testified credibly that he used the Wall to deter bad behavior. Lastly, the ALJ noted that appellant used the Wall for years and there is no evidence that the District ever warned or disciplined appellant over its use.

As to appellant's interactions with the classified student and one-time interaction with the female student, the ALJ concluded that the Board adequately demonstrated that appellant acted in an unbecoming manner. Specifically, the ALJ found that appellant displayed a lack of sound judgment in his interactions with the classified student, and that his behavior was "tone-deaf" and "insensitive." *Ibid.* The ALJ noted that appellant should have been aware that his mimicking of the classified student in front of other students and staff would be viewed as demeaning and a mockery of the student and his disability. Regarding the female student, the ALJ found that appellant's behavior, particularly the way he looked at her and made a suggestive comment concerning her in the presence of male students, was inappropriate and a "very poor example for the male students who may have heard him." *Id.* at 17.

Regarding the penalty, the ALJ determined that appellant's conduct did not rise to the level warranting the revocation of his certificates. After considering the totality of the circumstances, the ALJ recommended that appellant's certificates be suspended for one year. Among the mitigating factors that the ALJ listed was the fact that appellant had never been previously warned or disciplined by the District for his interactions with the classified student; the ALJ did not find that appellant acted with intent to harm or harass; there was no evidence that the student was negatively impacted; and the evidence suggests that appellant was one of the classified student's favorite teachers. As to appellant's conduct with the female student, the

ALJ found that the interaction was an isolated incident and that there was no evidence that his behavior had a negative impact on the student.

After considering the exceptions and reply exceptions filed by both parties, the Board adopted the ALJ's factual and credibility findings; adopted the ALJ's legal conclusions finding unbecoming conduct as to appellant's interactions with the classified student and one-time interaction with the female student in the hallway; rejected the ALJ's legal conclusion that appellant's use of the Wall of Shame and alleged identification of a student as a classified student in the presence of other students were not unbecoming conduct; and modified the recommended penalty. Contrary to what the ALJ had concluded, the Board concluded that utilizing a Wall of Shame was unbecoming conduct because it "demonstrates degradation of certain students which should never be condoned by an educator"; moreover, the Board reasoned that the public embarrassment of students does not comport with the "role model" behavior it expects from a teacher. Order of Revocation at 11-12. The Board also concluded that the identification of a classified student in the presence of other students is unbecoming conduct because it falls short of the role model behavior expected from an educator.

As for the penalty, the Board rejected the ALJ's determination that the totality of the circumstances warranted only a one-year suspension. The Board disagreed with the ALJ that a negative impact of conduct is required to warrant the imposition of a penalty. The Board explained that appellant's comments about the female student to the male students was unacceptable behavior and not that of a role model. The Board also reasoned that the comments could have had a negative impact on the male students who heard them. Concerning appellant's interactions with the classified student, the Board found that appellant displayed more than just

a lack of sound judgment; rather, the Board found that appellant's "repeated behavior" of mocking a special education student in the presence of other students constitutes "egregious conduct warranting a serious penalty." *Id.* at 13. As to the Wall of Shame, the Board explained that a teacher shaming a student in front of their peers can cause unnecessary harm to students when other private methods of communication are available. Ultimately, the Board concluded that although appellant had no previous disciplinary history, appellant's conduct in totality "including the severity of his actions and the repeated nature of some" shows that he is unfit to be an educator. *Id.* at 14. Accordingly, the Board ordered that appellant's teaching certificates be revoked.

On appeal, appellant contends that the Board's conclusion that appellant engaged in conduct unbecoming with respect to the interaction with the female student in the hallway, the identification of the classified student, and the Wall of Shame is not sufficiently supported by credible evidence in the record and is therefore arbitrary and capricious. Concerning the interaction with the female student, appellant argues that the finding of unbecoming conduct should be reversed because it is unknown what specific comment was made to the female student, the identity of the female student, and whether the comment impacted her. Appellant further argues for reversal because neither the female student nor the male students who were reportedly nearby testified at the hearing. Concerning the identification of a classified student, appellant asserts that the Board's finding of conduct unbecoming should be reversed because there is no evidence that he knew the student's classification. As to the Wall of Shame, appellant contends that it cannot be determined that his use of the Wall of Shame is unbecoming conduct

when there is no showing that it negatively impacted the students, violated any known District policies, was objected to by school officials, or was an inherently inappropriate practice.

Appellant argues that the Board failed to consider mitigating evidence, such as the character letters written on his behalf by former District faculty members and a former student. Appellant also argues that the Board failed to consider that he did not act with an intent to harm the classified student, nor was there evidence that the student was in fact harmed by his interactions with appellant. Lastly, appellant argues that revocation is overly severe considering the circumstances of this matter, and when compared to prior school law cases with conduct far more damaging.

In response, the Board asserts that the Order of Revocation is supported by credible evidence in the record and therefore is not arbitrary, capricious, or contrary to law. The Board argues that the record establishes that appellant made a remark about a female student in the presence of male students as the female student walked by in the hallway, and that a staff member witnessed this interaction and found it to be inappropriate. The Board further argues that an educator “checking out” a student and making an inappropriate comment about that student to other students is undoubtedly unbecoming conduct, and whether or not the student heard the comment or was impacted by it has no bearing on the egregiousness of appellant’s behavior. Regarding the identification of a classified student, the Board contends that credible witness testimony establishes that through appellant’s inappropriate line of questioning and interactions with the classified student in the hallway, appellant singled out and identified the student as a special education student in front of others. The Board also contends that appellant’s purported lack of awareness as to the classified student’s specific classification or

disability is irrelevant and that at some point, appellant did learn that the student is a special education student. As to the Wall of Shame, the Board asserts that the record contains credible witness testimony supporting the conclusion that appellant engaged in unbecoming conduct. Furthermore, the Board argues that the Wall of Shame has the effect of publicly embarrassing a student.

The Board maintains that revocation is the appropriate penalty for appellant's unbecoming conduct, particularly for harassing and bullying a special education student. Citing to case law, the Board argues that name-calling, mocking, and teasing a student's intellectual abilities constitutes conduct unbecoming and provides just cause for revocation of a teacher's certificates. The Board further argues that a heightened penalty is more appropriate given the repeated instances of unbecoming conduct. The Board contends that appellant's claim that he did not act with the intent to harm the classified student "has no bearing on whether his conduct arises to the level of severity warranting action against his teaching certificates." Opposition Brief at 34. According to the Board, "mitigating a penalty simply because a student was not 'harmed' by the conduct would create troubling precedent – it has the effect of diminishing the egregiousness of [appellant]'s actions based on the personal characteristics of the victim." *Id.* at 33. Furthermore, the Board argues that several District teachers and staff members testified that the classified student lacked the understanding to recognize that he was a victim of harassment by appellant. Lastly, the Board contends that the cases appellant cites are inapposite and that the Board appropriately considered the entirety of the record in rendering its penalty determination.

In his reply brief, appellant advances the following arguments: (1) that the ALJ found that appellant's interactions with the classified student were not intended to harm or harass the student, such that testimony from the Board's witnesses that appellant mocked, belittled or hazed the student cannot be used to support a finding for conduct unbecoming or be afforded weight in considering an appropriate penalty; (2) that the ALJ "credited" appellant's testimony regarding the Wall of Shame, such that the Board had no basis to reverse the ALJ's conclusion that appellant's use of the Wall of Shame does not constitute conduct unbecoming; (3) that there are insufficient facts in the record to sustain both the ALJ's and Board's determination that appellant engaged in unbecoming conduct when he made the suggestive comment about the female student; (4) that there is no evidence indicating that appellant wrongfully identified a student as classified in front of other students; (5) that the cases relied upon by the Board in support of revocation are distinguishable from the present matter; and (6) that in rendering its determination, the Board ignored substantial mitigating evidence that weighed in favor of a reduced penalty.

In reviewing appeals from decisions of the State Board of Examiners, the Commissioner may not substitute her judgment for that of the Board so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. The Commissioner's role in reviewing appeals is constrained by *N.J.A.C. 6A:4-4.1(a)*, which specifies that "the Commissioner shall ascertain whether the decision is supported by sufficient credible evidence in the record and shall not disturb the decision unless the appellant has demonstrated the State Board of Examiners . . . acted in a manner that was arbitrary, capricious, or contrary to

law.” See *Morison v. Willingboro Bd. of Educ.*, 478 N.J. Super. 229, 238 (App. Div. 2024) (citing N.J.A.C. 6A:4-4.1(a)).

“[T]eachers . . . are professional employees to whom the people have entrusted the care and custody of . . . school children . . . . This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *IMO Tenure Hearing of Sammons*, 1972 S.L.D. 302, 321. Teachers “hold positions demanding public trust, and in such positions they teach, inform, and mold habits and attitudes, and influence the opinion of their pupils.” *IMO Tenure Hearing of Tordo*, 1974 S.L.D. 97, 98-99. “Conduct unbecoming” is an “elastic” concept that includes “conduct which adversely affects the morale or efficiency” of the public entity or “which has a tendency to destroy public respect for [public] employees and confidence in the operation of [public] services.” *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960). *Accord Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 13 (2017). A finding of unbecoming conduct “may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” *Bound Brook Bd. of Educ.*, 228 N.J. at 14 (quoting *Karins v. City of Atlantic City*, 152 N.J. 532, 555 (1998)). Unfitness to hold a position in a school system may be demonstrated through just one incident, “if sufficiently flagrant.” *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (1943), *aff’d*, 131 N.J.L. 326 (E & A 1944).

Upon review, the Commissioner finds that the Board’s determination that appellant committed unbecoming conduct by making a suggestive comment about a female student in the presence of male students and through his interactions with the classified student was not arbitrary, capricious, or contrary to law. The ALJ found that District teacher, Jennifer Stuber,

credibly testified that on one occasion, appellant “checked out” or inappropriately looked at a female student walking in the hallway and that he made a suggestive, inappropriate remark concerning the student to male students. Commenting on a student’s appearance to other students is inappropriate behavior for an educator and has a tendency to destroy the public trust and confidence in school employees and the operation of public schools. Similarly, appellant mimicking a classified student’s voice and mannerisms in the presence of other students and asking him questions that staff members considered to be demeaning evidences a troubling lack of self-control, violates the public’s trust in educators, and is not behavior expected of a teacher who, due to his position, has influence over the opinions of his pupils.

The Commissioner further finds that the Board’s determination that appellant committed unbecoming conduct by utilizing a “Wall of Shame” was not arbitrary, capricious, or contrary to law. The ALJ found that appellant would list the names of students who demonstrated bad behavior on the “Wall of Shame” in his classroom, and that inclusion on the Wall could impact a student’s class participation grade. Although the ALJ found that there is insufficient evidence that the “Wall of Shame” was intended to embarrass students or that it had that effect, the Commissioner notes that the Wall has the word “shame” in its title. Appellant listing the names of students on a “Wall of Shame” in his classroom is inappropriate particularly because appellant utilized in the same classroom a “Wall of Fame,” wherein he praised students for good behavior and excellent performance on assignments, and rewarded students who were frequently on the list at the end of the year. The Commissioner cannot condone a classroom setting where some students are publicly categorized under a category of “shame” and others under “fame.” Furthermore, appellant’s conduct is inappropriate considering the influential position teachers

hold over their pupils. The Commissioner agrees with the Board that schools must be able to rely on teachers to encourage growth in their students rather than publishing a student's missteps.

The Commissioner finds that the Board's determination that the appellant engaged in unbecoming conduct when he inappropriately identified a student as a classified student in the presence of other students was not arbitrary, capricious, or contrary to law. The ALJ found the testimony of the Board's witnesses to be credible and reliable, and found the testimony of James Cooney, the Director of Special Services in the District, to be credible concerning the classified student and the manifestation of his disabilities. Cooney testified that the student was being identified as a classified student through appellant's questioning of him in the hallway. Cooney stated that, "many of [appellant's] questions as to whether he's a good boy, a bad boy, did you take the big boy bus -- those types of questions were asked . . . during those times." 1T60: 20-

23. Cooney further testified:

Taking a big boy bus in front of other students, staff members, busing -- very specific, busing -- we don't have busing in the district. If you get a bus, you're a special education student. Kids walk to school or get driven to school. So, you're being identified as a special education student.

1T68: 19-24.

Appellant's inappropriate line of questioning in the hallway effectively identified the student as a classified student in front of his peers and constitutes unbecoming conduct.

Turning to the specific points appellant raised in his brief, he contends that the finding of unbecoming conduct as to the identification of the classified student should be reversed because he did not know the student's classification and lacked access to the student's Individual Education Placement (IEP) plan and pupil file. The Commissioner finds this argument to be unavailing. Initially, the Commissioner notes that the OSC alleges that appellant "inappropriately

identified a student as a classified student in front of other students.” OSC at 1. The allegation does not indicate that appellant disclosed the student’s *specific* classification under *N.J.A.C. 6A:14-3.5*. Furthermore, the fact that appellant may not have known the student’s specific classification does not temper the egregiousness of appellant’s line of questioning or render the Board’s determination arbitrary, capricious, or unreasonable.

Appellant also argues that it cannot be determined that his use of the Wall of Shame is unbecoming conduct when there is no showing that it negatively impacted the students, violated any known District policies, was objected to by school officials, or was an inherently inappropriate practice. The Commissioner rejects this argument. The Commissioner cannot condone the use of a teaching tool with the word “shame” in its title, nor can the Commissioner condone educators public shaming students in the presence of their peers when there are other private methods of communication available for a teacher to interact with a student. *See, e.g.,* Revocation Order at 13-14.

As to the penalty, the Commissioner concludes that the Board’s decision to revoke appellant’s certifications was not arbitrary, capricious, or unreasonable. Relevant factors to consider when deciding whether revocation or suspension of certificates is warranted “include the nature and gravity of the offense, any evidence as to provocation, extenuation or aggravation, and any harm or injurious effect that the teacher’s conduct may have had on the maintenance of discipline and the proper administration of the school system.” *In re Certificates of Maffucci*, OAL Dkt. No. EDE 06423-2021, Initial Decision at 29 (June 29, 2023) (citing *In re Fulcomer*, 93 *N.J. Super.* 404, 422 (App. Div. 1967)), *adopted*, St. Bd. of Exam’rs, Dkt. No. 2021-163 (Oct. 27, 2023), *affirmed*, Commissioner Decision No. 179-24 (May 6, 2024).

Having considered the above factors, the Commissioner finds that the Board's recommended penalty of revocation is reasonable given the nature and extent of the unbecoming conduct at issue. Particularly egregious was appellant's inappropriate interactions with the classified student over the course of several months wherein he mimicked the student's voice and mannerisms and asked him demeaning questions in the presence of staff and other students. Even worse, appellant did not curtail his behavior after District teacher Maureen Kiele confronted him and told him that she viewed these interactions as making fun of and belittling to the student. The Commissioner agrees with the Board that such repeated behavior cannot be tolerated in a school setting by a teacher, and that an educator who commits such behavior cannot be a role model.

The Commissioner does not find appellant's arguments for mitigation to be persuasive. The fact that the ALJ found that appellant did not act with an intent to harm the classified student and found no evidence that appellant's conduct negatively impacted the student is not dispositive. The Commissioner agrees with the Board's argument that mitigating a penalty just because a student was not harmed by the conduct would create troubling precedent of diminishing the egregiousness of teacher's actions based on the personal characteristics of the victim. Furthermore, several District teachers and staff members testified, and the ALJ found that, due to his disability, the classified student lacked the understanding to recognize that someone was mocking him. Moreover, the ALJ reasoned that appellant should have been aware that mocking the classified student's mannerisms and voice in front of staff and other student would be seen as demeaning and a mockery of the student and his disability. The Commissioner is similarly not persuaded by appellant's contention that the Board erred in failing to consider

mitigating evidence such as the character letters written on his behalf by former District faculty members and a former student that appellant included in his exceptions. The Commissioner notes that appellant's inclusion of these letters not entered into evidence at the OAL hearings is improper per *N.J.A.C. 1:1- 18.4(c)*. Therefore, these materials were not considered.

The Commissioner agrees with the Board that the totality of the circumstances in this matter demonstrate conduct so egregious as to warrant revocation. Appellant's repeated inappropriate behavior towards the classified student in conjunction with the identification of the student as a classified student in front of other students, utilization of the "Wall of Shame," and checking out and making a suggestive comment about a female student to male students is sufficient to warrant revocation. Because the Board's decision is supported by sufficient, credible evidence, and appellant has failed to establish that it was arbitrary, capricious, or contrary to law, the Commissioner has no grounds to disturb it. *N.J.A.C. 6A:4-4.1(a)*.

Accordingly, the decision of the State Board of Examiners revoking appellant's certificates is affirmed. Appellant's Teacher of Business: Finance/Economics/Law Certificate of Eligibility and Teacher of Business: Finance/Economics/ Law certificate are hereby revoked.<sup>1</sup>



COMMISSIONER OF EDUCATION

Date of Decision: April 28, 2026  
Date of Mailing: April 29, 2026

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION  
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS  
MATTHEW T. O'BRIEN : ORDER OF REVOCATION  
\_\_\_\_\_ : DOCKET NO: 1920-148

Matthew T. O'Brien (O'Brien) is the holder of a Teacher of Business: Finance/Economics/Law Certificate of Eligibility, issued July 2007, and a standard Teacher of Business: Finance/Economics/Law certificate, issued October 2008.

At its meeting of January 23, 2020, the State Board of Examiners (Board) reviewed information it received from the River Dell Regional School District (River Dell) regarding O'Brien. River Dell communicated to the Board that O'Brien had resigned his position at River Dell following allegations that he engaged in harassment of a student and demonstrated inappropriate behavior toward female staff members, a current female student, and a former female student. According to River Dell, it had completed an Affirmative Action investigation in August 2019 after receiving an anonymous report that O'Brien was involved in inappropriate behavior, harassment, and discrimination towards students. In its final report, River Dell concluded that O'Brien engaged in harassing conduct towards female students and female employees, made sexual comments in the presence of students, made inappropriate comments about classified students in the presence of other staff members and students, inappropriately identified a student as a classified student in front of other students, used a "Wall of Shame" in his classroom, and consumed alcohol with River Dell High School students at a party in a student's home.

After reviewing the above information, at its February 28, 2020 meeting, the Board voted to issue an Order to Show Cause (OSC) to O'Brien as to why his certificates should not be revoked.

On or about March 4, 2020, the Board sent O'Brien the OSC by regular and certified mail. The OSC provided that O'Brien must file an Answer within 30 days pursuant to *N.J.A.C. 6A:9B-4.6(b)*. On April 22, 2020, O'Brien submitted an answer in which he admitted that he resigned from his position amidst allegations of inappropriate conduct, but denied he engaged in harassment of a student and exhibited inappropriate behavior toward female staff members and students. *See* Answer, dated April 22, 2020, ¶ 3. Further, he denied the allegations in the River Dell's Affirmative Action investigation, and disputed the conclusions contained in the resulting report. *Id.* at ¶ 4.

As there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) for a hearing on July 16, 2020. The hearing in this matter was held on December 8 and 13, 2023, and February 28, 2024. Following the submission of post hearing briefs, the record closed on November 14, 2024.

On January 2, 2025, Administrative Law Judge (ALJ) Susana E. Guerrero issued an Initial Decision in the case. *In the Matter of the Certificates of Edward C. Meier*, OAL Dkt. No. EDE 06520-20 (Initial Decision, January 2, 2025). The ALJ heard testimony from seven witnesses on behalf of the Board – James Cooney, who conducted the investigation; Christopher Michael Meo, an aide in O'Brien's classroom; and district teachers Jennifer Luberto Stuber, Pam LoPilato, Catherine Arlak, Maureen Kiel, and Olga Sagalchik. *Id.* at 3. The ALJ heard testimony from three witnesses on behalf of O'Brien – Russell Bendian, father of a former student; district teacher Ellen Delrose-Hill; and himself. *Ibid.* The ALJ found that O'Brien engaged in conduct unbecoming a teacher and other just cause, and that a one-year suspension of his certificates was warranted. *Id.* at 16-17.

In so doing, the ALJ noted that many of the allegations reflected in the OSC were not substantiated at the hearing as the Board relied largely on uncorroborated hearsay. *Id.* at 15. Specifically, the ALJ found as fact that there was no competent evidence presented that O'Brien harassed any female employees at the school or that he consumed alcohol with high school students at parties, even though there were reports otherwise. *Id.* at 11. The ALJ also held that, while a colleague testified that she observed O'Brien flirt with female students, she could not find as uncontested fact that O'Brien was flirting or behaving inappropriately with those female students because the colleague conceded that she did not hear what the conversation between O'Brien and the female students was about, there was no physical contact, no female student complained about it, and the colleague never reported it. *Id.* at 11-12. Further, the ALJ held that the Board failed to establish that O'Brien made sexual comments in the presence of students. *Id.* at 12.

The ALJ did find that, on one occasion, "O'Brien 'checked out,' or inappropriately looked at, a female student walking down the hallway, and that he made an inappropriate, suggestive remark concerning the [female] student to male students." *Id.* at 12, 15. The ALJ also found that "[t]he evidence preponderates that O'Brien made insensitive and inappropriate comments to a classified student and inappropriately mimicked the student's manner of speaking in the presence of staff and students." *Id.* at 13, 15. O'Brien also "mimick[ed] [the classified student's] voice and mannerisms in the presence of other students by, for example, asking [the classified student] if he was a 'good boy' or a 'bad boy' or whether he took a 'big boy shower' – questions one would ask a small child, not a high school student" – which were viewed by staff as demeaning and inappropriate. *Id.* at 15, 17. The ALJ also found that O'Brien's behavior in the hallway with the female student and the manner in which he looked at her and made a suggestive comment concerning her in the presence of male students and a male colleague was inappropriate and

unbecoming conduct. *Id.* at 12, 16. Further, the ALJ found that O'Brien's interactions with the classified student constituted unbecoming conduct. *Ibid.* The ALJ reasoned that O'Brien "should have been aware that his mimicking of [the classified student's] voice and mannerisms in front of other students and staff would be viewed as demeaning and a mockery of [the classified student] and his disability." *Ibid.*

The ALJ also found that "O'Brien maintained a 'Wall of Shame' in his classroom, where he listed the names of students who demonstrated bad behavior in the classroom" and that a student's class participation grade could be impacted if their name was included. *Id.* at 13, 15. However, the ALJ found that while O'Brien maintained a "Wall of Shame[,]" the evidence does not preponderate that the use of it was inappropriate. *Id.* at 15. The ALJ reasoned that there was insufficient evidence that O'Brien "intended to improperly embarrass or humiliate students, or that it actually had that effect[,]" that "O'Brien testified credibly that the purpose of the Wall was to deter bad behavior and that he also maintained a 'Wall of Fame'" to acknowledge and reward students," and that O'Brien had used the Wall for years with no evidence of discipline by the district. *Id.* at 15-16. For these reasons, the ALJ concluded that O'Brien's conduct was unbecoming of an educator. *Id.* at 16.

In determining the appropriate penalty, the ALJ noted that relevant factors included the nature and gravity of the offense, any evidence as to provocation, extenuation or aggravation, and any harm or injurious effect. *Id.* at 16-17. The ALJ concluded that O'Brien's conduct did not rise to the level warranting revocation, and that considering the totality of the circumstances, his certificates should be suspended for one year. *Id.* at 17. In reaching this decision, the ALJ reasoned that O'Brien's conduct concerning the female student in the hallway was an isolated incident, and there was no evidence of any negative impact on the female student. *Ibid.* As to his conduct with

the classified student, the ALJ held that O'Brien displayed a lack of sound judgment and his behavior was "inappropriate, insensitive, and tone-deaf." *Ibid.* However, the ALJ reasoned that O'Brien was never previously warned or disciplined by the district, there was no evidence that the classified student was negatively impacted, and the evidence suggested O'Brien was one of the classified student's favorite teachers. *Ibid.* Overall, the ALJ noted as mitigation that there is no record of other alleged infractions previously committed by O'Brien, that O'Brien has never received less than an "effective" rating. *Ibid.*

On March 5, 2025, O'Brien filed Exceptions. O'Brien argued that the finding of "conduct unbecoming based on his interactions with a female student in the hallway should be reversed" because it relied entirely on the testimony of one witness, "who had only a vague recollection of it" and neither the female student, nor any of the male athletes who were reportedly nearby provided testimony. *See* O'Brien Exceptions, p. 1, 3. O'Brien also argued that his ability to prepare his defense was compromised because he was never sufficiently noticed of this offense. *Id.* at 4-5. Further, O'Brien argued that the ALJ's recommended penalty of a one-year suspension is "far too severe under the circumstances." *Id.* at 1-2. He stated that he acknowledged in his testimony, with regard to the classified student, that "he failed to appreciate the *perception* of others who observed them, and in hindsight, he should have addressed the matter with school staff to ensure that no one got the wrong idea." *Id.* at 6. However, he asserted it was established that he neither intended, nor caused, any harm to the student and that his interactions with the student had a "positive effect[.]" and were "specifically designed to help [the student] transition to the high school by boosting his self-esteem and general disposition" and that no evidence was presented to the contrary. *Ibid.* Lastly, O'Brien argued that his intentions with respect to his

interactions with the classified student “were done in good faith, even if they seemed inappropriate from an outside observer’s perspective.” *Id.* at 10.

As to mitigation, O’Brien also argued that he never caused any harm to anyone or caused disruptions to the operations of the school; he had no previous disciplinary history; his performance reviews were stellar throughout his career; and he was heavily involved in extracurricular programs and community events. *Id.* at 8. Further, he held himself accountable by resigning “shortly after the allegations were revealed to him, even though they were overwhelmingly false” and that he has “suffered enough[.]”. *Id.* at 6, 8.

On March 5, 2025, the Deputy Attorney General (DAG) representing the Board also filed Exceptions. The DAG argued that, after finding the Board’s seven witnesses “to be credible and reliable, ‘particularly concerning their observations of, and interactions with, [Respondent][.]’” the ALJ improperly failed to find that O’Brien did not engaged in unbecoming conduct when he used a “Wall of Shame” in his classroom, inappropriately interacted with female students, and inappropriately identified a special education student as a classified student in front of others. *See* Board Exceptions, p. 1, 20-21.

Specifically, the DAG argued there was testimony by Meo that students would get “upset” when their names were placed on the wall and he opined that the “Wall of Shame” was being utilized to degrade the students rather than correct a student’s behavior. *Id.* at 28. The DAG also argued that Meo “testified that he observed [O’Brien], on more than one occasion, giving ‘long looks’ to female students outside of the classroom, which [the witness] found to be ‘unsettling.’” *Id.* at 29. Further, the DAG argued that “Kiel testified that she witnessed [O’Brien] asking female students whether they ‘missed’ him, which she felt was ‘creepy’” and that the “record demonstrates that LoPilato observed [O’Brien], based on body language, flirting with female students on a few

occasions.” *Ibid.* The DAG also argued that these inappropriate interactions with females were all supported by direct, firsthand testimony and that the ALJ should have found a pattern of unbecoming conduct. *Id.* at 30.

The DAG argued that “the record demonstrates that through [O’Brien’s] inappropriate line of questioning and interactions with [the student] in the hallway, [O’Brien] inappropriately identified [the student] as a classified student in front of other students” and was confirmed by Cooney’s testimony. *Ibid.* Further, the DAG argued that Kiel testified that she “observed [O’Brien] asking [the classified student] whether he was going to ‘class with a lot of kids or a . . . few kids’” and that “our kids who are . . . special ed. worry about that perception of being in a class with a few number of children.” *Id.* at 32. For these reasons, the DAG argued that the Board should reject the ALJ’s findings as to these issues and find that these actions constitute unbecoming conduct by O’Brien.

The DAG also argued that O’Brien’s conduct here warrants more than a one-year suspension as it was far too lenient for O’Brien’s violations, which demonstrate his lack of fitness to serve as a teacher and warrant revocation. *Id.* at 2, 26. The DAG reasoned that “[e]ven based solely on the conduct unbecoming found by the ALJ, revocation is the appropriate penalty because harassing and bullying a special education student cannot be countenanced” based on previous cases decided by the Board. *Id.* at 32-34. Further, the DAG argued that with the additional instances of misconduct found as discussed above, “a heightened penalty is even more appropriate.” *Id.* at 33. The DAG also argued that what the ALJ found as mitigation—that is, that O’Brien was never warned or disciplined by the district prior to the filing of tenure charges and his resignation—“is irrelevant to the consideration of an appropriate penalty, ‘since it is the Board, not his [former] employer, who is empowered to determine whether he may retain his certification

to teach.” *Id.* at 37 (quoting *IMO Certificates of Michael D’Alessio*, Agency Dkt. No. 5-7/22A, Comm’r. of Educ. Decision at p.5). Further, the DAG argued that O’Brien’s “purported intent has no bearing on whether his conduct arises to the level of severity warranting action against his teaching certificates” and that the “ALJ’s own findings [] contravene the ALJ’s assessment that [O’Brien] did not intend to ‘demean, harm or harass [the classified student].” *Id.* at 38-39. Lastly, the DAG argued that mitigating a penalty because a student was not ‘negatively impacted’ by the conduct would create troubling precedent of diminishing the egregiousness of conduct based on the personal characteristics of the victim. *Id.* at 39.

On March 10, 2025,<sup>1</sup> O’Brien filed Reply Exceptions. O’Brien argued that the ALJ’s “determination to dismiss the allegations related to the so-called ‘Wall of Shame,’ inappropriate interactions with female students, and the purported ‘identification’ of a classified student was correct because these allegations were not proved at the hearing.” O’Brien Reply Exceptions, p.1. He further argued that the “entire case on the ‘Wall of Shame’ issue was predicated on the opinions of a disgruntled former in-class support staff member” and that testimony from alleged victims of this “Wall of Shame” was necessary for the Board to meet its burden. *Id.* at 2. O’Brien also argued that “[t]here is nothing inherently wrong with writing a student’s name on a board for failing to pay attention or completing an assignment or using a cell phone in class, etc.” *Ibid.* Further, O’Brien argued that there was “absolutely no evidence [] presented in support of [the] allegation” that he identified a classified student and that it would have been impossible for him to identify the student’s classification because he was not the student’s teacher and had no role in counseling or special education and never reviewed the student’s IEP. *Id.* at 3.

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<sup>1</sup> On March 12, 2025, the Board accepted the filing of a revised reply brief from O’Brien with the consent of the DAG.

On March 10, 2025, the DAG filed Reply Exceptions, wherein she argued that regarding O'Brien's claim that he was not sufficiently noticed of the violation involving a female in the hallway, the OSC summarized the outcome of the district's investigation and noted that the district's affirmative action final report was "incorporated herein by reference." Board Reply Exceptions, p. 2 (quoting the Board's OSC at ¶ 4). The DAG stated that the "report and interview statements were not only provided in discovery, but were also admitted into evidence, without any objections, at the hearing." *Id.* at 3. The DAG argued that the ALJ found that Stuber credibly testified that O'Brien "checked out, or inappropriately looked at a female student walking down the hallway, and that he made an inappropriate, suggestive remark concerning the student to male students." *Ibid.* The DAG also argued that the "record is replete with numerous instances of staff members finding [O'Brien's] interactions with [the classified student] inappropriate as they 'appeared to mock [the classified student] and the manifestation of his disability.'" *Id.* at 5. Further, the DAG argued that the "record is replete with evidence that [the classified student's] intellectual capabilities prevented him from even realizing that he was being bullied." *Id.* at 6. Lastly, the DAG argued that because the harassment and bullying of the classified student occurred frequently and in open areas of the school a heightened penalty was appropriate and that precedent demonstrated that revocation was warranted. *Id.* at 7-8.

The Board must now determine whether to adopt, modify, or reject the Initial Decision in this matter. At its meeting of April 11, 2025, the Board reviewed the Initial Decision, Exceptions filed by both parties, and Reply Exceptions filed by both parties. After full and fair consideration of the Initial Decision and submissions, the Board voted to adopt the findings of facts by the ALJ; adopt the legal conclusions finding unbecoming conduct as to the comments about the female student in the hallway and the interactions with the classified student; adopt the legal conclusions

that there was no evidence of harassing conduct towards female students and female staff members or having alcohol with a minor; reject the legal conclusions not finding unbecoming conduct relating to the “Wall of Shame” and the identification of a classified student and rather find that such actions by O’Brien constitute unbecoming that of an educator; and modify the appropriate penalty to revocation.

The Board, in reviewing this matter, does not find the ALJ’s factual and credibility findings to be arbitrary or not based on sufficient credible evidence. The ALJ’s credibility determinations were well supported and based on his first-hand observations. Accordingly, the Board is constrained by the ALJ’s findings of facts and credibility determinations in this matter. The Board does not find a sufficient basis by which it could overturn same. *N.J.A.C.* 1:1-18.6(b).

The Board has the authority to “issue appropriate certificates to teach or to administer” and “may revoke the same under rules and regulations prescribed by the State board.” *N.J.S.A.* 18A:6-38; *see also N.J.A.C.* 6A:9B-3.2 and -4.4); *Morison v. Willingboro Bd. of Educ.*, 478 N.J. Super. 229 (App. Div. 2024), *cert. denied* 258 N.J. 143 (July 11, 2024). The Board may take action against a certificate holder on the basis of “demonstrated inefficiency, incapacity, conduct unbecoming a teacher, or other just cause.” *N.J.A.C.* 6A:9B-4.4; *see also Morison*, 478 N.J. Super. at 246, 248 (the Board is responsible for protecting schoolchildren from improper teacher conduct and may suspend or revoke an educator’s continued ability to serve as a teacher at any public school based on unbecoming conduct).

Unbecoming conduct is defined as “conduct ‘which adversely affects the morale or efficiency of the [department]’ or ‘has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services.’” *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4, 13 (2017) (quoting *In re Young*, 202 N.J. 50, 66 (2010), *Karins v. Atl. City*,

152 N.J. 532, 554 (1998)). “[A] finding of unbecoming conduct ‘need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legal correct.’” *Id.* at 13-14 (quoting *Karins*, 152 N.J. at 555). “It focuses on the morale, efficiency, and public perception of an entity, and how those concerns are harmed by allowing teachers to behave inappropriately while holding public employment.” *Id.* at 14. “The touchstone of the determination lies in the certificate holder’s ‘fitness to discharge the duties and functions of one’s office or position.’” *Young*, 202 N.J. at 66 (citing *In re Grossman*, 127 N.J. Super. 13, 29 (App. Div. 1974)).

As noted above, after reviewing the record, the ALJ concluded that the Board sustained its burden of proof that O’Brien engaged in conduct unbecoming by demonstrating O’Brien’s actions in commenting to male students about a female student in the hallway and his inappropriate interactions with the classified student. As to these issues, the Board agrees with the ALJ’s legal conclusion. Commenting to students about another student’s appearance as they walk through the halls is not respectful to the student in question and certainly inappropriate behavior of an educator. Further, mimicking a classified student’s voice and mannerisms is certainly not the behavior we would expect for a role model. The Board also agrees that no evidence was presented that O’Brien engaged in harassing conduct towards females in the district or that he consumed alcohol with River Dell high school students.

However, the Board disagrees with the ALJ’s legal conclusion regarding the “Wall of Shame” and the identification of the student as a classified student. Rather, the Board agrees with the DAG that O’Brien’s conduct in utilizing the “Wall of Shame” is also certainly unacceptable and unbecoming of a teacher. Such conduct demonstrates degradation of certain students which

should never be condoned by an educator. Further, public embarrassment of students does not comport with “role model” behavior we expect of an educator. The schools must be able to rely on educators to encourage positive growth and progress in their students rather than publishing a student’s missteps or insufficient progress. The Board also agrees with the DAG that the identification of a classified student in the presence of other students is unacceptable behavior of an educator and falls short of role model behavior expected of an educator.

Having found that O’Brien engaged in unbecoming conduct, the Board must now determine the appropriate penalty to be applied. In doing so, the Board considers the “nature and gravity of the offenses under all the circumstances involved, any evidence as to provocation, extenuation or aggravation,” and any “harm or injurious effect” on the maintenance of discipline and the proper administration of the school system. *In re Fulcomer*, 93 N.J. Super. 404, 422 (App. Div. 1967). “Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *Tenure of Sammons*, 1972 S.L.D. 302, 321. Fitness to teach depends on a broad range of factors, including the teacher’s impact and effect upon the students, because a “teacher works in a sensitive area in a schoolroom” and “shapes the attitude of young minds toward the society in which they live.” *Grossman*, 127 N.J. at 30 (quoting *Adler v. Bd. of Educ. of City of New York*, 342 U.S. 485, 493 (1952)). Importantly, unfitness to hold a position in a school system may be shown by one incident if sufficiently flagrant. *Fulcomer*, 93 N.J. Super. at 421; *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (1943), *aff’d*, 131 N.J.L. 326 (E & A 1944).

In this instance, the ALJ determined that, after consideration of mitigating factors, a one-year suspension was appropriate for the comments relating to the female student in the hallway

and for the interactions with the classified student. The Board disagrees that a one-year penalty is sufficient given the totality of the circumstances in this matter. Rather, the Board finds that revocation of his teaching certificates is warranted.

As noted above, the Board agrees with the ALJ that O'Brien's comments about the female in the hallway were unbecoming conduct. However, the Board disagrees with the ALJ's mitigation that there is no evidence of negative impact on the female student. The Board disagrees that a negative impact of conduct need be found to warrant the imposition of a penalty. O'Brien's comments to the male students could have had a negative impact on them and the comments were certainly unacceptable behavior and not that of a role model.

The Board also agrees with the ALJ that the interactions with the classified student were unbecoming conduct. However, the Board disagrees with the ALJ's mitigation that there is no evidence of negative impact on the classified student and that O'Brien simply displayed a lack of sound judgment. The Board finds that O'Brien displayed not only a lack of sound judgment with his interactions with the classified student, but rather his multiple inappropriate interactions with the classified student when other students were present demonstrated repeated behavior that cannot be tolerated in a school setting by a teacher. An educator who commits such behavior is not exhibiting a great moral compass and cannot be a role model for students. O'Brien's actions of mocking a special education student on numerous occasions clearly demonstrates egregious conduct warranting a serious penalty.

Importantly, unlike the ALJ, the Board also found as unbecoming conduct O'Brien's actions in utilizing and maintaining a "Wall of Shame" in his classroom. The Board agrees with the DAG that the district's silence as to the "Wall of Shame" is irrelevant. The Board cannot condone educators publicly shaming students in the presence of their peers as it can cause

unnecessary harm to students when other private methods of communication are available for a teacher to interact with a student. Moreover, unlike the ALJ, the Board also found as unbecoming conduct and the fact that O'Brien identified the student as a classified student in the presence of other students. An educator should protect a student's status as classified or special needs and not use that fact to make jokes or be humorous.

Overall, the totality of the circumstances here demonstrate conduct so egregious as to warrant revocation. The Board agrees with the DAG that O'Brien's claim that he was never sufficiently noticed of the comments relating to the female in the hallway is meritless. The OSC incorporated the district's affirmative action final report in which the offense was noted, the report was provided to O'Brien in discovery, and the report was entered into evidence without objection. The Board acknowledges that O'Brien has never been disciplined previously by his district and the evidence relating to the conduct with the female student in the hallway demonstrated is an isolated incident. However, based on O'Brien's actions in totality, including the severity of his actions and the repeated nature of some, he has demonstrated that he is unfit to be an educator. Thus, the Board finds that revocation of his certificates is warranted in this matter.

Accordingly, on April 11, 2025, the Board voted to adopt the factual findings and reject the legal conclusion in the Initial Decision and modify the penalty and ordered the revocation of O'Brien's certificates. On this 22nd day of May 2025, the Board formally adopted its written decision to adopt the factual findings and reject the legal conclusion in the Initial Decision in this matter, with modification of the penalty, and it is therefore ORDERED that Matther O'Brien's Teacher of Business: Finance/Economics/Law Certificate of Eligibility and standard Teacher of Business: Finance/Economics/Law certificate are hereby REVOKED, effective immediately. It is further ordered that O'Brien return his certificates to the Secretary of the State Board of Examiners,

Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.



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Rani Singh, Secretary  
State Board of Examiners

**Date of Mailing:** 5/23/2025  
**via certified and regular mail**

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDE 06520-20

AGENCY REF. NO. 1920-148

**IN THE MATTER OF THE CERTIFICATE(S)  
OF MATTHEW O'BRIEN.**

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**Amna T. Toor**, Deputy Attorney General for petitioner New Jersey State Board of Examiners (Matthew J. Platkin, Attorney General of New Jersey, attorney)

**Nicholas Poberezhsky**, Esq., for respondent Matthew O'Brien (Caruso Smith Picini, attorneys)

Record Closed: November 14, 2024

Decided: January 2, 2025

BEFORE: **SUSANA E. GUERRERO**, ALJ:

**STATEMENT OF THE CASE**

This matter was commenced by an Order to Show Cause (OTSC) issued by the New Jersey State Board of Examiners (Board of Examiners or the Board). The OTSC directs respondent Matthew O'Brien (O'Brien) to show cause why his teaching certificates should not be revoked due to alleged conduct while he taught at the River Dell Regional School District.

## **PROCEDURAL HISTORY**

This matter was transferred to the Office of Administrative Law (OAL) as a contested case on July 16, 2020. The hearing was scheduled for October 2, 2023, and October 3, 2023, but adjourned at the request of the Board due to a scheduling conflict. The hearing was rescheduled to begin on December 4, 2023, but that date was later adjourned at the request of the Board. The hearing was ultimately held on December 8 and 13, 2023, and continued on February 28, 2024. The record remained open for the parties to obtain transcripts of the hearing and to file post-hearing briefs. The parties requested several extensions to file post-hearing briefs, and the record closed on November 14, 2024, upon receipt of the Board's brief.

## **FACTUAL DISCUSSION**

I **FIND** the following **FACTS**, which are largely undisputed:

O'Brien is the holder of a Teacher of Business: Finance/Economic/Law Certificate of Eligibility and a Teacher of Business: Finance/Economic/Law Certificate. He was employed as a teacher with the River Dell Regional School District (the District) from September 2011 through November 30, 2019, when he resigned after the District sought to withhold his increments for the 2019–2020 school year and to have him terminated following an affirmative action investigation.

The investigation was initiated by the District when, in or around May 2018, it received an anonymous report that O'Brien had an inappropriate relationship with a female student (Ann)<sup>1</sup> and that he harassed or mistreated a male special education student (Sam). The District reported the anonymous complaint to the Department of Children and Families' Institutional Abuse Investigation Unit (IAIU), which investigated the complaint and ultimately determined that the allegations concerning the female student were "unfounded" and that the allegations concerning the male student were "not substantiated." Apart from the IAIU's investigation, the District also tasked James

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<sup>1</sup> Fictitious names are used to identify the students (Ann, Sam, and Jane).

Cooney (Cooney), the Director of Special Services for the District, to conduct an investigation. Cooney conducted an investigation and issued an “Affirmative Action Final Report” on August 1, 2019. As part of the investigation, Cooney interviewed about thirty individuals, some of whom made other claims about O’Brien that went beyond the scope of the anonymous complaint. Therefore, the District’s report includes allegations and findings not only concerning Ann and Sam but also concerning O’Brien’s interactions with female employees and other students. This report forms the basis of, and is incorporated in, the Board’s OTSC.

The OTSC notes that the District concluded that O’Brien “engaged in harassing conduct towards female students and female employees, made sexual comments in the presence of students, made inappropriate comments about classified students in the presence of other staff members and students, inappropriately identified a student [Sam] as a classified student in front of other students, used a ‘Wall of Shame’ in his classroom, and consumed alcohol with River Dell High School students at a party in a student’s home.”

The Board found that the level and nature of O’Brien’s conduct provide just cause for consideration of the revocation of his certificate.

### **Testimony**

Seven witnesses testified on behalf of the Board: Cooney, who conducted the investigation; Christopher Michael Meo, who served as an aide in O’Brien’s classroom; District teachers Jennifer Luberto Stuber, Pam LoPilato, Catherine Arlak, Maureen Kiel, and Olga Sagalchik. O’Brien testified on his own behalf, and his witnesses included Russell Bendian, father of a former student, and District teacher Ellen Delrosa-Hill.

#### **James Cooney**

Cooney, who conducted this investigation, is also the Director of Special Services in the District, where he supervises the District’s special education program

and also serves as the District's Affirmative Action Officer. He interviewed O'Brien and about thirty individuals as part of his investigation.

Regarding female student Ann, Cooney found there was no evidence substantiating the anonymous report, and he testified that his findings align with that of the IAIU investigation, which concluded that the allegations concerning Ann were unfounded.

The anonymous complaint also included allegations about O'Brien's treatment of Sam, who at the time was a seventeen-year-old student with autism and an IQ in the borderline range. Cooney testified that the student struggles with inferential thinking and abstract reasoning and has limited social skills. O'Brien often interacted with Sam in the hallway, and there were often other students present. Cooney opined that even though Sam may have enjoyed the social interaction with O'Brien, he does not have the wherewithal to recognize that he is a victim of harassment. Cooney also testified that Sam spoke in a "very high, squeaky voice" comparable to a "cartoon voice," and that O'Brien mimicked his voice.

As reflected in his report, Cooney found that several staff members and students reported that O'Brien mimicked Sam, a classified student, when interacting with him, a claim that O'Brien denied. Cooney also noted that he received a report that someone observed O'Brien call Sam a "dirty boy" and that some staff members observed O'Brien ask Sam if he "had taken a big boy shower." He testified that other staff members reported observing O'Brien call Sam a "good boy" or a "bad boy," or asking him if other students were "good boys/girls" or "bad boys/girls." He testified that he was told that O'Brien would orchestrate groups within the hallway with Sam in the center of the groups and have him talk and then mimic his voice. Cooney's report also notes that Maureen Kiel reported observing O'Brien ask Sam "if he attends class with a lot of students or with few students" and "if he takes the bus to school each day." Cooney found that O'Brien "demonstrated pervasive harassment of . . . [Sam], mimicking him, [and] calling him names." On cross-examination, Cooney agreed that when he interviewed Sam, Sam did not believe that he was being bullied by O'Brien, and Sam even identified O'Brien as a teacher whom he liked.

Cooney also determined that O'Brien demonstrated inappropriate behavior towards female staff members, current female students and a former student. His findings were based primarily on statements made to him by others, mainly other staff members, most of whom did not testify. In his report, Cooney noted that Christopher Michael Meo reported that he observed O'Brien give female students "long looks," especially in warmer months, and one staff member reported that she was catcalled by O'Brien. Cooney also noted that Jane, a former student who did not testify, reported that O'Brien called her pretty on several occasions, told her that she had "daddy issues," and that she saw him partying with high school students.

Cooney also testified concerning a statement made to him by Coach Herman concerning an inappropriate conversation that O'Brien had with a male student at a soccer dinner. The coach did not testify.

Cooney also noted that it was reported to him that O'Brien maintained a Wall of Shame in his classroom, where he would write the names of students who did poorly.

#### Jennifer Luberto Stuber

Stuber testified credibly that she observed O'Brien looking at, or "checking out," girls in the hallway and that he made a suggestive comment directed at a female student when he was walking down the hall with male athletes. She testified that she observed O'Brien look a female student up and down and tell the boys something along the lines of "damn," or "Mmm, you see that?" The boys then giggled. Stuber confronted O'Brien privately and told him to stop doing that. She reported this to the principal.

Stuber also testified that she heard O'Brien ask Sam, in the presence of boys, whether he was a good boy or a bad boy and whether he was a clean boy or showered that weekend. She described O'Brien's behavior as mocking Sam. Stuber witnessed similar exchanges with Sam at least three times. She also reported O'Brien to the principal.

Stuber also testified that a former student informed her that O'Brien was still trying to reach out to Jane, a former high school student who had graduated. She also testified that, as a student, Jane had expressed concerns to her about O'Brien and how he made her feel uncomfortable.

Christopher Michael Meo

Meo, an aide in O'Brien's classroom about eight years ago, had several criticisms of O'Brien's teaching practices that are not at issue here. He also testified that O'Brien maintained a Wall of Shame in his classroom, where O'Brien would add the names of students who did not perform to O'Brien's satisfaction. Meo testified that he viewed this as O'Brien passing judgment on students' intelligence with the intent to degrade them.

Meo also testified that he observed O'Brien give "long looks" to female students outside his classroom about a handful of times. He also testified that he overheard an inappropriate conversation that O'Brien had with two girls during class time when, after one of the girls told O'Brien that she had just gotten a tattoo, he asked her where it was. These alleged events occurred during the 2017–2018 school year.

Pam LoPilato

LoPilato is a special education teacher at River Dell High School. According to her written statement, she heard O'Brian ask Sam if "he was being a good boy today" and "if he took a big boy shower today." She testified that he seemed to be mimicking Sam, which she thought was inappropriate. She testified that this occurred about once or twice a week during the 2018–2019 school year.

LoPilato also testified that she observed O'Brien engage in flirtatious behavior with female students after school about once a week for four months. She observed the girls giggling but did not hear what was said, nor did she observe any physical contact. She was not sure whether these were the same girls each time. LoPilato is unaware of any girl complaining about O'Brien's behavior, and she never reported it.

Katherine Arlak

Arlak is a special education teacher and tennis coach with the District. Her testimony consisted largely of rumors and hearsay about O'Brien. She did, however, testify that she observed him mimic Sam's voice and ask Sam if he took a "big boy shower" and whether he was a "good boy or a bad boy." She testified that this happened about five times in or around 2018, within a one- or two-month period. Arlak testified that she found this inappropriate and that the student did not understand. She agreed that Sam never appeared distressed during these interactions but testified that Sam was a lower-functioning student who was not very socially aware and would have been unaware of the inappropriateness of O'Brien's questions. She testified that a co-worker reported this to Cooney and that Cooney later reached out to her as part of this investigation.

Arlak testified that a student reported to her that O'Brien stared at her and made her feel uncomfortable while he was proctoring a standardized assessment. This student did not testify. She also reported hearing about the Wall of Shame, a comment that he made at a sports dinner, none of which she directly observed, and other rumors that she heard in the school about O'Brien.

Maureen Kiel

Kiel is a special education teacher at River Dell High School who taught in a classroom near O'Brien's classroom. She testified that, due to his disability, Sam would not recognize if he was being made fun of. She observed O'Brien ask Sam whether he got to school on a little or big bus and saw the boys around O'Brien laugh. Kiel testified that she confronted O'Brien, asked him what he was doing, and told him that Sam was a special education student. O'Brien told her that Sam likes the attention, and Kiel testified that she saw O'Brien repeat this behavior with Sam. She reported this to the principal and Cooney, her direct supervisor.

Kiel also testified that in her leadership class, students mentioned O'Brien when they were discussing crossing boundaries, and she reported this to the principal. She also testified that, in 2017, female students told her that he made them uncomfortable, which she also reported to the principal. Kiel testified that, following a trip, she overheard O'Brien ask a female student in the hallway: "Do you miss me? . . . . But do you Really miss me?" which she thought was inappropriate. She testified that a student referred to O'Brien as a predator in her class but also confirmed that this student had never been victimized by O'Brien. Finally, she testified that about five students also reported to her that O'Brien attended student parties in the fall of 2018 and drank beer. None of these students testified at the hearing.

#### Olga Sagalchik

Sagalchik is a special education teacher at the District's high school. She taught Sam during the 2018–2019 school year and noted that he was cognitively low and that it was hard for him to understand social cues. Sagalchik testified that she observed O'Brien mimic Sam's voice and ask him inappropriate questions. She heard O'Brien ask Sam whether he was a "good boy or a bad boy," which she viewed as inappropriate to ask a high school student. She observed this a "handful of times" and testified that she reported O'Brien.

#### Russell Bendian

Bendian, the father of a former high school student, testified on behalf of O'Brien. He testified that his son, who was about twenty-four years old at the time, invited several people to his house before they moved out of the district, and that O'Brien was one of the individuals who attended. He denied ever witnessing him drink or do anything inappropriate and testified that he was unaware of anybody under twenty-one years of age at the gathering.

Ellen DeRosa-Hill

Ellen DeRosa-Hill is a teacher at the high school who is friendly with O'Brien. She testified that she thought he did a great job, was willing to work and had a good rapport with students. She did not observe him acting inappropriately with students. She was not questioned as part of the District's investigation.

Matthew O'Brien

O'Brien testified that he began working as a business education teacher at River Dell High School in 2011 and continued to work there until he resigned in 2019. He testified that he earned "effective" or better summative evaluation ratings throughout his teaching career. Aside from the allegations made here, he has had no other disciplinary history, nor any criminal history.

O'Brien denied many of the allegations made against him. He denied Luberto's claim that he made a "cat-call" sound as a female student walked past him and athletes in the hallway. He also denied attempting to obtain Jane's phone number for the purpose of getting together with her. O'Brien testified that he was called in by the superintendent and principal and was informed about a rumor that he was having a relationship with Jane, a former student. After the District determined that the rumor was false, he asked another former student for Jane's number so that he could discuss these rumors with her and try to find out where they originated. He also testified that Jane was at least a sophomore in college at the time and that she denied knowing about the rumors or where they came from. Jane made no report or complaint regarding their conversation, and the allegations about O'Brien concerning Jane were deemed unfounded. O'Brien conceded that when she was in his class, he asked her if she had "daddy issues" but explained that he was just reiterating what she had said.

O'Brien denied Meo's allegations that he spoke with female students in a flirtatious manner and that he stared at them when they wore revealing clothing. He acknowledged having a "Wall of Shame" in his classroom where he would write the names of students who demonstrated bad behavior, such as using a laptop to play

games when they were supposed to be working on an assignment. He noted that the purpose of the “Wall of Shame” was to deter repeated instances of poor behavior and that having your name on the “Wall of Shame” could impact the student’s class participation grade. O’Brien testified that he also maintained a “Wall of Fame” where he praised his students by listing those who behaved well or excelled on a test or assignment. Those students who were frequently on the “Wall of Fame” earned an end-of-year reward breakfast and were named to an all-star team. He used the “Wall of Shame” and “Wall of Fame” for years, even during his observations, and no administrator nor student had ever objected to it. He was not aware of any rule, policy or directive in place at the time that would prohibit him from using a “Wall of Shame” or something similar to that.

O’Brien testified about how he first met Sam. At some point, he learned that he had special needs but did not know any specifics about his disability. He agreed that he interacted with Sam regularly in the hallway. O’Brien agreed that he changed his voice when he spoke with Sam, believing that it made him feel more comfortable since that is how Sam spoke and that Sam had a positive reaction to it. He denied that he spoke to Sam in that fashion to try to get a laugh out of other students or that he tried to demean or belittle him. He also denied asking Sam if he took a shower or whether he rode the short bus. O’Brien testified that he believes that Sam told Cooney that he was his favorite teacher because he showed genuine interest in Sam and that he felt that O’Brien was his buddy, while most others simply ignored him. O’Brien also testified that the staff was encouraged to interact with special education students, and he does not regret the interactions he had with Sam.

O’Brien conceded that Kiel confronted him about his interaction with Sam and that she told him to “stop that,” which he, unconvincingly, claimed was ambiguous and that he thought that she was telling him to stop interacting with Sam. O’Brien testified that no one else approached him about his interactions with Sam. He also denied having any alleged inappropriate discussion with another student at the soccer banquet.

**Assessment of Testimony and Additional Findings of Fact**

Overall, I found the Board's witnesses to be credible and reliable, particularly concerning their observations of, and interactions with, O'Brien. I also found Cooney, Arlak and Kiel credible regarding their testimony concerning Sam and the manifestation of his disabilities. However, much of the testimony presented on behalf of the Board, including statements allegedly made by students and other teachers to District staff, constituted uncorroborated hearsay. The testimony offered by O'Brien's witnesses, Bendian and DeRosa-Hill, was not particularly useful in considering the charges against O'Brien.

Based on my consideration of the testimony and my assessment of its credibility and reliability, I **FIND** the following additional **FACTS**:

Many of the allegations made against O'Brien constitute unsubstantiated hearsay. No competent evidence was presented that O'Brien harassed any female employees at the school or that he consumed alcohol with high school students at parties. While some teachers or students interviewed by Cooney may have reported this to him, no individual with first-hand knowledge of this testified at the hearing.

Regarding allegations made concerning O'Brien's interactions with female students, most of the evidence presented to support this constitutes unsubstantiated hearsay. While O'Brien may have asked former student Ann years ago if she had "daddy issues," the context in which that was said is unknown, and its meaning and O'Brien's intention in saying it are also unclear. Allegations that O'Brien had an improper relationship with Ann were deemed unfounded by the District. The evidence is inconclusive that O'Brien had an inappropriate relationship with Ann, or any other student, and there is no evidence that he harassed or treated her in an inappropriate manner.

While LoPilato testified that she observed O'Brien flirt with female students on a few occasions, LoPilato conceded that she did not hear what they were saying; there was no physical contact; no girl complained about it; and LoPilato herself never reported

it. Based on this testimony alone, **I CANNOT FIND** that O'Brien was flirting or behaving inappropriately with these female students.

While Meo may have thought it was inappropriate when O'Brien asked a female student where her new tattoo was, **I CANNOT FIND** that this question, in the context presented, was inappropriate or unbecoming. The student shared with O'Brien that she had just gotten a new tattoo; they were having a conversation about tattoos, and there is no evidence that the female student even felt uncomfortable with the question. Moreover, while there is an allegation that O'Brien made a "sexual comment" at a soccer dinner, nobody with firsthand knowledge of the incident testified at the hearing, and O'Brien denied the allegation. The Board failed to establish that O'Brien made sexual comments in the presence of students.

Stuber testified credibly that on one occasion, O'Brien "checked out," or inappropriately looked at, a female student walking down the hallway, and that he made an inappropriate, suggestive remark concerning the student to male students. Even though there is no evidence that the female student heard O'Brien, O'Brien's behavior in this instance was unbecoming. There is insufficient competent and credible evidence, however, that O'Brien engaged in harassing conduct towards female students, as alleged in the OTSC.

Sam was a classified high school student with a low IQ, poor social skills, and limited self-advocacy skills. Due to his disability, he would likely fail to recognize when someone was mocking him. The evidence suggests that Sam liked O'Brien and that he viewed his interactions with O'Brien as positive. Sam spoke in a "high-pitched" voice, and O'Brien mimicked his voice when he spoke with him. This was sometimes done in the presence of other students and staff, who viewed this as mocking Sam. On several occasions, O'Brien would also ask Sam whether he or others were "good boy[s]" or "bad boy[s]," whether he was a "clean boy," or had taken a "big boy shower." These interactions were also witnessed by other staff members, including those who were familiar with Sam and his disabilities. Several staff viewed O'Brien's interactions with Sam—the exchanges and the mimicked "high-pitched" voice—as inappropriate. LoPilato testified credibly that she viewed O'Brien as "mimicking and finding

amusement” with Sam, and that other students close by also appeared amused by the interaction O’Brien had with Sam. Kiele confronted O’Brien about his interactions with Sam because she viewed them as making fun of and belittling Sam, but O’Brien never curtailed his behavior. The Board’s witnesses testified credibly that O’Brien’s interactions with Sam were inappropriate because they appeared to be made in a mocking or joking manner at Sam’s expense. The evidence preponderates that O’Brien made insensitive and inappropriate comments to a classified student and inappropriately mimicked the student’s manner of speaking in the presence of staff and students. While the interactions with Sam in the hallway sometimes appeared to mock Sam and the manifestation of his disability, I **CANNOT FIND** that O’Brien acted with intent to demean, harm or harass Sam. There is also no evidence that O’Brien’s actions had any negative impact on Sam, and the evidence does not preponderate that O’Brien inappropriately identified that student as a classified student in front of other students. While one co-worker, Kiel, confronted O’Brien about his interactions with Sam, there is no evidence that he was ever reprimanded or disciplined by the District administration prior to the filing of tenure charges and O’Brien’s resignation.

O’Brien maintained a “Wall of Shame” in his classroom, where he listed the names of students who demonstrated bad behavior in the classroom. The record is inconclusive as to whether students were also listed on the “Wall of Shame” when they failed to perform well academically. The purpose of the Wall was, at least in part, to deter repeated instances of poor behavior since having your name on the Wall could impact the student’s class participation grade. O’Brien also maintained a “Wall of Fame,” where he praised students who behaved well or excelled on a test or assignment. Those students who were frequently on the “Wall of Fame” earned an end-of-year reward breakfast and were named to an all-star team. There is no credible or competent evidence that O’Brien used the Wall to insult or degrade students, as Meo alleged. O’Brien used the “Wall of Shame” and “Wall of Fame” for years, even during his observations, and no administrator or student objected to its use. Moreover, there is no evidence of any rule, policy or directive in place at the time that would prohibit its use.

## LEGAL ANALYSIS AND CONCLUSION

Pursuant to N.J.A.C. 6A:9B-4.4, “[t]he Board of Examiners may revoke or suspend the certificate(s) of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. Other just cause shall include, but not be limited to, offenses within the terms of the forfeiture statute, N.J.S.A. 2C:51-2, or the disqualification statute, N.J.S.A. 18A:6-7.1. The Board of Examiners may revoke or suspend a certificate upon evidence that the holder did not meet the qualifications for the certificate at the time of issuance or no longer satisfies the criteria set forth in N.J.A.C. 6A:9-5.1(b). The Board of Examiners shall not revoke or suspend a certificate without providing the holder an opportunity to be heard pursuant to N.J.A.C. 6A:9-17.6. A hearing allows the certificate holder “to demonstrate facts or circumstances that might counter the charges set forth in the Order to Show Cause.” State Bd. of Exam’rs v. Brown, 91 N.J.A.R. 2d (EDE) 5, 7.

The burden of proof that O’Brien engaged in conduct unbecoming a teacher lies with the Board. The Board must show this by a preponderance of the credible and competent evidence. In re Polk, 90 N.J. 550 (1982). It has been held that “[e]vidence is found to ‘preponderate’ if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis . . . is true.” State Bd. of Exam’rs v. Ferreira, EDE 3390-04 (July 5, 2006), adopted, Exam’rs (Sept. 22, 2005), aff’d, St. Bd. of Educ. (April 5, 2006), <<http://njlaw.rutgers.edu/collections/oal/>>. Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975).

“Unbecoming conduct” is a broadly defined, elastic term, encompassing any conduct that has a tendency to destroy public respect for government employees and confidence in the operation of public services. Karins v. Atl. City, 152 N.J. 532 (1998). A finding of unbecoming conduct does not require a violation of any specific rule or regulation but rather may be based on the implicit standard of good behavior “which

devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

Teachers, in particular, “are held to a high standard of conduct because of the influence they exercise over students.” State Bd. of Exam’rs v. Charlton, 96 N.J.A.R.2d (EDE) 18, 21. Due to that influence, teachers “must exhibit a high degree of exemplary behavior.” In re Tyler, 13 N.J.A.R. 297, 308 (1991). Teachers “must comport themselves as models for young minds to emulate” and maintain a “dedication to civility and respect for people as human beings.” In re Tenure Beam, 1973 S.L.D. 157, 163.

The instant matter turns on conduct unbecoming. The Board asserts that O’Brien’s teaching certificate should be revoked given his unbecoming conduct, as reflected in the OTSC. O’Brien denies that he conducted himself in an unbecoming manner and argues that even if it were determined that he was culpable of conduct unbecoming, the mitigating evidence is substantial and weighs against the imposition of severe discipline.

Many of the allegations reflected in the OTSC were not substantiated at the hearing as the Board relied largely on uncorroborated hearsay. The only allegations that were substantiated were that: O’Brien mimicked Sam’s voice and mannerisms and asked him questions that were viewed by staff as demeaning and inappropriate; that he utilized a “Wall of Shame” in his classroom; and that he behaved inappropriately when he “checked out” a female student in the hallway and made a suggestive and inappropriate comment about her to male students.

O’Brien admitted to using a “Wall of Shame,” and while the Board asserts that it had the effect of publicly embarrassing students, there is insufficient evidence that the “Wall of Shame” was intended to improperly embarrass or humiliate students, or that it actually had that effect. While some may disagree with O’Brien’s teaching method, the Board offered no expert testimony challenging his use of the Wall. O’Brien testified credibly that the purpose of the Wall was to deter bad behavior and that he also maintained a “Wall of Fame” to acknowledge and reward students. It is also worth noting that O’Brien used the “Wall of Fame” and “Wall of Shame” for years, and there is

no evidence that the District ever warned or disciplined O'Brien about its use. As such, since the evidence does not preponderate that the use of a "Wall of Shame" was inappropriate, I **CANNOT CONCLUDE** that its use constituted unbecoming conduct.

O'Brien's behavior in connection with the female student in the hallway, and specifically the manner in which he looked at her and made a suggestive comment concerning the female student in the presence of male students and Stuber, was inappropriate, and I **CONCLUDE** that this behavior constitutes conduct unbecoming of a teacher.

I **ALSO CONCLUDE** that O'Brien's interactions with Sam in the hallway constitute unbecoming conduct. While I can appreciate O'Brien's intention to acknowledge and befriend Sam, he should have been aware that his mimicking of Sam's voice and mannerisms in front of other students and staff would be viewed as demeaning and a mockery of Sam and his disability. While I am not convinced that O'Brien intended to humiliate, harass, or hurt Sam, his behavior was insensitive and tone-deaf, and they were perceived negatively by several staff members.

Based on the foregoing, I **CONCLUDE** that there is just cause to warrant action regarding O'Brien's certificates. While the State has failed to meet its burden to provide the majority of the allegations in the OTSC, it did adequately demonstrate that he acted in an unbecoming manner concerning his interactions with Sam and the female student on one occasion.

### **PENALTY**

N.J.A.C. 6A:9-17.5 contemplates situations that warrant a suspension rather than the ultimate penalty of certificate revocation. Whether a penalty for unbecoming conduct should be a suspension or revocation of one's teaching certificate is "discretionary, on a case-by-case basis, after considering the individual facts and circumstances." In re Certificate of Fargo, 91 N.J.A.R.2d (EDE) 1, 3. "Relevant factors . . . [to] determine whether revocation or something else is appropriate include the nature and gravity of the offense, and any evidence as to provocation, extenuation or

aggravation, and any harm or injurious effect... on the maintenance of discipline and the proper administration of the school system.” In re Certificate of Cooper, EDE 06784-13 (December 29, 2014), <<http://njlaw.rutgers.edu/collections/oal/>> (citing In re Fulcomer, 93 N.J. Super. 404, 422 (App. Div. 1967)).

Here, there is no record of other alleged infractions previously committed by O’Brien. His unrefuted testimony suggests that in the years he worked for the District, he had never been disciplined, and he had never received less than an “effective” rating.

While O’Brien’s conduct concerning the female student in the hallways was unbecoming and a very poor example for the male students who may have heard him, it was one isolated incident, and there is no evidence that his behavior had any negative impact on the female student, who may or may not have heard him.

Moreover, while O’Brien’s interactions with Sam continued over the course of several months, it is worth noting that he was never previously warned or disciplined by the District for this, and while the exchanges with this classified student were viewed by other teachers as mocking the student, I did not find that O’Brien acted with any intent to harass or harm him. Sam did not testify at the hearing, and there is no evidence that he was negatively impacted by these exchanges or that other students viewed O’Brien’s behavior as malicious, or even inappropriate. In fact, the evidence suggests that O’Brien was one of Sam’s favorite teachers. Yet, by mimicking Sam’s voice and mannerisms in the presence of other students by, for example, asking Sam if he was a “good boy” or a “bad boy” or whether he took a “big boy shower”—questions one would ask a small child, not a high school student—O’Brien displayed a lack of sound judgment. His behavior, ultimately, was inappropriate, insensitive, and tone-deaf.

Given the aforementioned findings and mitigating factors, I **CONCLUDE** that O’Brien’s unbecoming conduct does not rise to the level warranting the revocation of his certificates. Rather, considering the totality of the circumstances, I **CONCLUDE** that O’Brien’s certificates should be suspended for one (1) year.

**ORDER**

I hereby **ORDER** that the charge of conduct unbecoming a teacher and other just cause be sustained and suspend O'Brien's certificates for one (1) year.

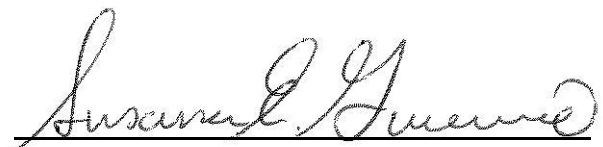
I hereby **FILE** my initial decision with the **STATE BOARD OF EXAMINERS** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE BOARD OF EXAMINERS**, which by law is authorized to make a final decision in this matter. If the State Board of Examiners does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE STATE BOARD OF EXAMINERS, 100 Riverview Plaza, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 2, 2025

DATE



**SUSANA E. GUERRERO, ALJ**

Date Received at Agency:

January 2, 2025

Date Mailed to Parties:

January 2, 2025

jb

**APPENDIX**

**List of Witnesses**

**For Petitioner:**

James Cooney  
Jennifer Luberto Stuber  
Christopher Michael Meo  
Pam Lopilato  
Katherine Arlak  
Maureen Kiel  
Olga Sagalchik

**For Respondent:**

Russell Bendian  
Ellen DeRosa-Hill  
Matthew O'Brien

**List of Exhibits**

**For Petitioner:**

P-1 August 19, 2019, Correspondence to O'Brien, enclosing Affirmative Action Investigation Final Report, dated August 1, 2019 (DOE 257-263)  
P-2 Interviews and Certifications (DOE 347-426)  
P-3 Resignation Letter

**For Respondent:**

None