

NEW YORK STATE SUPREME COURT
ONONDAGA COUNTY

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SCOTT McCONNELL,	:	
	:	Index No.
Petitioner,	:	
	:	
-against-	:	
	:	VERIFIED PETITION
LE MOYNE COLLEGE,	:	
	:	
Respondent	:	

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Petitioner Scott McConnell, by his counsel undersigned, alleges as follows:

1. This is a special proceeding brought pursuant to Article 4 of New York’s Civil Practice Law and Rules (“CPLR”) seeking relief pursuant to CPLR 7803(3).

Venue is proper in this Court, as the parties reside in this County and the acts complained of occurred here.

PARTIES

2. Petitioner: Scott McConnell
 Address: 107 Bent Tree Lane
 Baldwinsville, New York 13027

 Respondent: Le Moyne College
 Address: 1419 Salt Springs Rd.
 Syracuse, New York 13214

FACTS

3. In the spring of 2004, when Scott McConnell was in his senior year at the State University of New York at Buffalo (“SUNY Buffalo”) and pursuing a B.A. in History, he applied to the Master of Science for Teachers program at Le Moyne

College (“the Le Moyne Teachers Program”).

4. McConnell wrote a personal statement as part of the application process.
5. McConnell also had an interview with an admissions officer at Le Moyne as part of the application process.
6. At no time during the application process were McConnell’s views on either corporal punishment or multicultural education either elicited or discussed.
7. Annexed to this petition as Exhibit 1 are excerpts from the Le Moyne College online catalogue for the academic year 2003-2004 (“the Catalogue”). To quote from the Catalogue, the five criteria used to evaluate a candidate’s credentials for graduate education are:

1. Completion of a baccalaureate degree from an accredited institution with a B average in the major field of study and a minimum grade point average of 3.0. If conditionally accepted, candidates with less than a 3.0 grade-point average must achieve at least a B in each of their courses prior to formal matriculation.

2. Graduate Record Exam General Test (GRE) score required.

3. Letters of recommendation stating that the student is capable of graduate study.

4. Candidate’s statement of purpose.

5. Evaluation of transfer credit, if applicable. (Must have grade(s) of B or higher.)

Ex. 1 at 300-01.

8. In his application, McConnell provided the information called for in criteria 2 through 4. The fifth criterion was inapplicable to him.
9. In the Catalogue, “Conditionally Matriculated” and “Matriculated” are listed as “Student Classifications.” The “Conditionally Matriculated” are stated to be

- “graduate students who have applied but not met all entry requirements, and appear to have the capability to achieve full graduate status.” Ex. 1 at 285.
10. Nowhere in the Catalogue is it stated that there is any ideological standard that an applicant must meet to be admitted either as a “conditionally matriculated” or “matriculated” graduate student.
 11. In the spring of 2004, McConnell was accepted as a “conditionally matriculated” graduate student in the Le Moyne Teachers Program.
 12. McConnell’s acceptance letter read that “[u]pon earning a grade of ‘B’ or higher in your first four courses, and upon completion of all admission requirements and/or course deficiencies, your status will change to full matriculation.” The letter is annexed to this petition as Exhibit 2.
 13. Later that spring, McConnell asked Anne Marie Trait, Le Moyne’s credentials officer, what the phrase “admissions requirements and/or course deficiencies” in the letter meant. She told him it meant that he had to complete his course work at SUNY Buffalo and receive his undergraduate degree.
 14. No one at Le Moyne ever informed or indicated to McConnell that his acceptance was conditional on his personal beliefs on corporal punishment, multiculturalism, or any other subject.
 15. No one at Le Moyne ever informed or indicated to McConnell that his acceptance was conditional on anything other than his receiving his undergraduate degree and earning a B or better in each of his first four classes in the LeMoyne Teachers Program.
 16. McConnell graduated from SUNY Buffalo later that spring.

17. In the two classes McConnell took in the summer 2004 semester in the Le Moyne Teachers Program, he received a B+ and an A-. His grades in the Le Moyne Teachers Program are annexed to this petition as Exhibit 3.
18. In the three courses McConnell took in the Le Moyne Teachers Program in the fall 2004 semester, he received an A and two A-'s. Ex. 3.
19. Thus, McConnell completed the only two conditions to his full matriculation set forth in his acceptance letter (Ex. 2).
20. In the fall of 2004, Linda Cerio of the Education Department at Le Moyne told McConnell that he would be registered as a full-time permanent student starting in the spring semester.
21. No faculty member, student, or employee of Le Moyne College ever told or indicated to McConnell that Le Moyne expected students to have a particular position on corporal punishment, multiculturalism, or any other subject.
22. In the fall semester of 2004, McConnell completed 64 hours of practicum teaching in Franklin Elementary School in Syracuse, as arranged by David C. Ringwood, the Field Placement Coordinator in the education department at Le Moyne. The Cooperating Teacher who observed McConnell in the classroom during his practicum teaching evaluated him using standard marks ranging from "0" ("No opportunity to observe") to "3" ("Excellent"). There were a total of twelve evaluation categories, including "Rapport with students," "Emotional maturity," "Capacity for future development," "Enthusiasm," and "Willingness to cooperate." The Cooperating Teacher gave McConnell a "3" (the highest possible mark) in each of the twelve categories, and her written comments read in

- full: “Scott has been a joy to have in a classroom. He has gone above and beyond the requirements and has established himself as a member of our classroom.” A copy of the evaluation is annexed to this petition as Exhibit 4.
23. On December 6, 2004, McConnell registered for his spring semester classes.
 24. In a class McConnell took in the fall entitled Planning, Assessing, and Managing Inclusive Classrooms, he was given the assignment of writing up a classroom management plan. McConnell performed this assignment honestly, and forthrightly stated his skepticism about aspects of multiculturalism and his view that corporal punishment could have a limited role in the classroom. A copy of the paper is annexed to this petition as Exhibit 5.
 25. McConnell’s professor in that class, Mark Trabucco, gave McConnell an A- on his paper on classroom management. Aside from a note concerning an apparent contradiction in the final paragraph, his only written comments were: “Interesting Ideas – I’ve shared these w/ Dr. Leogrande.” Ex. 5. Dr. Cathy Jo Leogrande chaired the Education Department at Le Moyne and was also the Director of the Graduate Education Program.
 26. No one ever told McConnell that his classroom management plan was deficient or academically unsound because of his views or for any other reason.
 27. McConnell was shocked when he received a letter from Dr. Leogrande, dated January 13, 2005, informing him that he could not continue with the Le Moyne Teachers Program. A copy of this letter is annexed to this petition as Exhibit 6.
 28. In this letter, Dr. Leogrande stated that she “ha[d] grave concerns regarding the mismatch between your personal beliefs regarding teaching and learning, and the

- Le Moyne College program goals. Based on this data, I do not believe that you should continue in the Le Moyne [Teachers] Program.” Ex. 6.
29. Dr. Leogrande gave no other explanation for the college’s action in the letter. Ex. 6.
 30. On January 18, 2005, McConnell met with Dr. Leogrande and Dr. Ringwood.
 31. Dr. Leogrande told McConnell at that meeting that the paper he had written in Dr. Trabucco’s class concerning his classroom philosophy was the reason he was not allowed to continue in the program.
 32. On March 14, 2005, McConnell wrote to Dr. John Smarrelli, Jr., Academic Vice President at Le Moyne, in an attempt to appeal the decision against him.
 33. In a letter dated March 30, 2005, Dr. Smarrelli informed McConnell in response that Dr. Leogrande’s letter of January 13, 2005, “constituted the College’s final action.” A copy of this letter is annexed to this petition as Exhibit 7.
 34. Annexed to this petition as Exhibit 8 are excerpts from the Le Moyne College Student Handbook, 2004-2005 (“the Student Handbook”). The Student Handbook states that “[a]s a comprehensive college, accredited by the State of New York and the Middle States Association, Le Moyne shares the ideals of academic freedom found in American institutions of higher education.” Ex. 8 at 3.
 35. Also, in the context of the traditions of education of the Society of Jesus (the Jesuit order), the Student Handbook states: “Because the search for meaning and value is at the heart of the intellectual life, critical examination of fundamental

- religious and philosophical questions is integral to Jesuit liberal arts education.”
- Ex. 8 at 3.
36. In the section of the Student Handbook on non-academic discipline, it is stated that a student guilty of a “Level B” offense is “subject to the maximum penalty of suspension or dismissal from the College.” Ex. 8 at 83.
37. Concerning suspension and dismissal, the Student Handbook states:
- Suspension and dismissal are severe sanctions that are imposed only in cases where there is a serious or persistent violation of the written community expectations and standards.
- Ex. 8 at 85. The Student Handbook also states:
- Dismissal from the College is imposed in cases of extremely serious misconduct when it is believed that the student charged should be permanently removed from the College community.
- Ex. 8 at 86.
38. One of the Level B offenses listed in the Student Handbook is “[i]ntentional or reckless interference with the freedom of expression of others.” Ex. 8 at 83.
39. Nowhere in the Student Handbook are students warned that their personal or philosophical beliefs may constitute “extremely serious misconduct” in punishment for which a student may be “permanently removed from the College community,” with or without a hearing.
40. In the Student Handbook, various guidelines for matters of non-academic discipline are provided “to insure that students involved in such cases realize that their case has been processed in a fair and judicious manner.” Ex. 8 at 83.
41. According to these guidelines, a student is entitled to a presumption of innocence; advance, written notice of charges; freedom from discipline pending the outcome

- of the hearing, except in cases of “a danger to the immediate well-being of the College community”; and an appeal process involving an appeal board with one faculty, one administration, and one student member. Ex. 8 at 83-85.
42. McConnell did not receive any of the procedural entitlements stated in these guidelines either prior to or after Dr. Leogrande’s January 13 letter.
 43. In May of 2004, McConnell began work as a substitute teacher in the Syracuse school district. From May of 2004 until January 20, 2005, McConnell worked during the school day as a substitute teacher. His classes at Le Moyne were in the evening.
 44. McConnell has never used corporal punishment in his classrooms. He has always thought that it would be improper for him to use corporal punishment in any New York public school.
 45. McConnell has never had the least difficulty reconciling his negative views about “multicultural education” with his responsibilities as a teacher.
 46. McConnell has never shared his views on either corporal punishment or multiculturalism with his students. He has no current intention to do so.
 47. McConnell has never stated that he would violate the laws of either New York State or any other jurisdiction in which he might teach.
 48. McConnell’s evaluations as a substitute teacher were uniformly excellent.
 49. The only way McConnell’s personal beliefs about corporal punishment or multiculturalism have ever entered into his employment as a substitute teacher was through his dismissal from Le Moyne. On January 20, 2005, an article about his removal from the Le Moyne Teachers Program appeared in the Syracuse *Post-*

- Standard.* That morning, when McConnell called the school district to learn if there was any work for him, he was told that he was suspended from work as a substitute teacher. Two or three weeks later, he was reinstated when he reiterated to a representative of the Syracuse school district that he had not (and would not) use corporal punishment. Unfortunately, he was forced to obtain another position in the interim to make money and could no longer accept work as a substitute teacher in Syracuse.
50. After McConnell's removal from the Le Moyne Teachers Program, he sought to attend a program in education at another graduate school. He was accepted into the graduate education program at Buffalo State College for the fall 2005 semester.
 51. Buffalo State College is approximately a two-and-a-half-hour drive from McConnell's home.
 52. If McConnell attends Buffalo State and does not commute, he will have to live apart from his wife and pay for additional housing for himself.
 53. Fall semester classes in the Le Moyne Teachers Program begin on August 29, 2005.
 54. Fall semester classes in the program McConnell has been accepted for at Buffalo State also begin on August 29, 2005.

PROCEDURAL HISTORY

55. McConnell commenced a hybrid action in New York State Supreme Court, Onondaga County, on May 5, 2005, seeking reinstatement pursuant to Article 78 of the CPLR, damages against various officials at Le Moyne pursuant to various

civil torts, and damages against those same officials pursuant to 42 U.S.C § 1983, for violation of McConnell's First Amendment rights. *McConnell v. Le Moyne College, et al.*, Index No. 2005-2530.

56. The defendants subsequently removed the action to federal court, and moved to dismiss the claim for violation of 42 U.S.C § 1983.
57. On August 17, 2005, in an opinion and order annexed to this petition as Exhibit 9, the federal court dismissed the Section 1983 action for failure to state a claim, and dismissed the state claims (including the claim for reinstatement) without prejudice. Ex. 9 at 7 n.4.

CLAIM FOR RELIEF

58. Petitioner incorporates each of the foregoing paragraphs 1 through 57 as if fully set forth herein.
59. Respondent abused its discretion, including with respect to the measure and mode of punishment, in dismissing petitioner from the Le Moyne Teachers Program.
60. In addition, respondent's dismissal of petitioner from the Le Moyne Teachers Program was made in violation of lawful procedure.
61. Accordingly, petitioner is entitled to relief pursuant to CPLR 7806 annulling Le Moyne's expulsion of petitioner and directing respondent to permit petitioner to attend classes in the Le Moyne Teachers Program.

PRAYER FOR RELIEF

WHEREFORE, petitioner requests that the Court grant judgment:

- A. Declaring that Le Moyne abused its discretion and failed to follow its own rules in dismissing petitioner from the Le Moyne Teachers Program;

- B. Ordering Le Moyne immediately to reinstate petitioner as a graduate student in the Le Moyne Teachers Program in the issuance of a temporary restraining order and a preliminary injunction;
- C. Enjoining respondents from retaliating against petitioner after his reinstatement; and
- D. Ordering such further and other relief which the Court deems just and proper.

Dated: August 19, 2005

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-and-

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