



2017 TAHP 01
Decision issued: May 1, 2017
Citation issued: July 7, 2015
Citation amended: February 9, 2016
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19 (the “*Teachers Act*”)

AND

A HEARING CONCERNING

ROBERT DARWIN AMMON

(An Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON CONSEQUENCES, COSTS AND PUBLICATION

Written submissions filed: December 5, 2016, January 5, 2017, and January 11, 2017
Panel: Sarah Levine, Chair, Rebecca Blair, Teresa Rezansoff
Counsel for the Commissioner: Maureen Boyd, Ministry of Justice
Counsel for the Respondent: Claire Hatcher, Bolton Hatcher Dance

INTRODUCTION

- [1] On October 27, 2016, the panel issued its decision finding the Respondent to have engaged in professional misconduct under section 63(1)(b) of the *Teachers Act* (the “Act”)(the “Findings Decision”). The parties agreed to conduct the penalty phase of the hearing by way of written submissions.
- [2] The Commissioner’s written submissions on penalty were filed December 5, 2016 and the Respondent’s submissions were filed January 5, 2017. The Commissioner filed Reply submissions on January 11, 2017.

CONSEQUENCES

Submissions

- [3] In his submissions, the Commissioner seeks the following consequences:
- (a) A requirement for the director of certification to suspend the Respondent's certificate of qualification for a five-month period, to occur during the school year.
- [4] In response, the Respondent argues that mitigating factors and a lack of aggravating factors justify a lesser penalty than that requested by the Commissioner, and suggests the following consequences:
- (a) A reprimand; *or*, in the alternative,
 - (b) A requirement for the director of certification to suspend the Respondent's certificate of qualification for a period of 1-2 months.

Applicable Law

- [5] Section 64 of the *Teachers Act* sets out the consequences after a hearing as follows:

64. If a panel makes a finding under section 63(1)(b), (c), or (d), the panel may make an order setting out one or more of the following:
- (a) a reprimand of the authorized person;
 - (b) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter or permission of the authorized person for a fixed period;
 - (c) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter or permission of the authorized person until the authorized person has fulfilled conditions imposed by the panel;
 - (d) a requirement for the director of certification to suspend the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person until the authorized person satisfies the director of certification that the authorized person is able to carry out the professional duties and responsibilities of an authorized person;
 - (e) a requirement for the director of certification to cancel the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person;

- (f) a requirement for the director of certification to suspend or cancel the certificate of qualification, independent school teaching certificate or a letter of permission unless the authorized person has fulfilled conditions by a fixed date imposed by the panel;
- (g) a requirement for the director of certification to not to issue a certificate of qualification, independent school teaching certificate or letter of permission for a fixed or indeterminate period;
- (h) a requirement for the director of certification to place limitations and conditions on the certificate of qualification, independent school teaching certificate or letter of permission of the authorized person.

- [6] The factors to consider when imposing consequences include:
- (a) the nature and gravity of the allegations;
 - (b) the impact of the conduct on the student(s);
 - (c) the presence or absence of prior misconduct;
 - (d) the extent to which the teacher has already suffered consequences;
 - (e) the role of the teacher in acknowledging the gravity of the conduct;
 - (f) the need to promote specific and general deterrence; and
 - (g) the need to maintain public confidence in the teaching profession as a whole.¹

Discussion

The Nature and Gravity of the Conduct

- [7] With respect to the nature and gravity of the allegations, the panel found that the Respondent engaged in an unprofessional and inappropriately personal relationship with a student (the “Student”). The Respondent spent time with the Student in early mornings before class time in a one-on-one fitness program. At that time, the Respondent communicated with the Student about highly personal, emotional and religious topics. The Respondent engaged in extensive, frequent, and confidential email communications with the Student in which he encouraged the Student to talk about the Student’s personal issues and emotions, at a time when he knew the Student was vulnerable. The Respondent expressed his affection for the Student, including telling the Student “I love you” in multiple emails. He repeatedly told the Student that he was proud of him and that

¹ McGeough Penalty Decision, January 17, 2013 at paragraph 7.

he would be there for him. The Respondent expressed his own desire or wish to hear from the Student on a regular basis. The email exchange took place outside of school hours, on weekends and late at night. The Respondent gave the Student gifts, and continued to do so in disregard to direct requests from the Student's parents to cease doing so, and his own assurance to the parents that he would adhere to their requests. The Respondent abruptly constricted the nature of his relationship with the Student after the summer break, a time when the relationship's intensity had increased. The Respondent failed to inform the Student's parents and the school administration of the Student's emotional vulnerability and poor academic performance at a time when it was likely that doing so could have allowed either or both to assist the Student.

- [8] The Commissioner submits that the seriousness of the Respondent's misconduct is a significantly aggravating factor. The findings were that the Respondent failed to act in the Student's best interests in that:
- (a) he failed to take steps to ensure that he was not exploiting the Student's emotional vulnerability by his unconditional promise of care and affection to meet his own emotional needs;
 - (b) he allowed the student to come to depend on him for guidance and emotional support at a difficult time in the student's life, and allowed and encouraged the Student to believe that he would be there for the Student unconditionally.
 - (c) he did not communicate with the Student's parents; he did not contact the parents about the Student's absenteeism; he did not tell the parents about the relationship; he gave the Student gifts after being asked not to give the student more gifts without the parent's permission; and he did not advise the parents about the student's emotional state; and
 - (d) the relationship lasted for a period of 3 months.

- [9] The Respondent submitted, in relation to the nature and gravity of his conduct, that the relationship was not a sexual one, did not include physical contact between himself and the Student, and that there was no finding of 'grooming' behaviour on the part of the Respondent. He submits that the duration of the relationship (three months) was not lengthy, and that the Respondent did not take steps to keep the relationship secret. The Respondent submits that while email communication is, by nature, private, he did not intend to maintain secrecy over the email communications between himself and the Student.

[10] The Findings Decision found that the Respondent's relationship with the Student was inappropriately personal and unprofessional. In respect to the seriousness of the misconduct, the Panel notes the following factors in particular:

- (a) The three-month duration of the relationship is a significant amount of time. Three months does not fall at either extreme for the duration of inappropriate relationships. This relationship persisted in an intensifying pattern over a period of months, which makes it more serious than if it were a very small number of less related incidents. However, the increasing intensity of the relationship is what constitutes the misconduct; it would be inappropriate to characterize this an aggravating circumstance. Considering these factors, the duration of this relationship is not an aggravating factor;
- (b) With regard to the "secrecy" of the Respondent's conduct with the Student, the Panel accepts the Respondent's submission that email is by nature private, and communication by email does not inherently draw an inference that the Respondent intended to keep the communication between himself and the Student private. However, the nature of the Respondent's communication with the Student was clearly of a nature that indicated that he believed that it would not be seen by anyone other than the Student, containing private messages, messages of love and affection, discussion of private emotions, discussion of the Student's parents, etc. Moreover, the Respondent failed to disclose the existence or nature of the email communication to the school administration and to the Student's parents at points in time where the Student was emotionally distressed and in need of intervention. Therefore, the reasonable conclusion is that the Respondent did intend to keep the communications private and that secrecy ultimately exacerbated the risk of harm to the Student.
- (c) The Respondent's failure to adhere to the Student's parent's direct requests, and acting in direct contravention of his reassurances to the Student's parent contributed to the seriousness of the misconduct.

[11] Taking all of these into account, the Respondent's misconduct was at the serious end of the spectrum for an inappropriate relationship of a non-sexual nature.

The Impact of the Conduct on the Student

- [12] The Commissioner noted that the focus of consequences is on the *risk created* by the Respondent, rather than the *actual outcome*. To unduly weight the effect on the Student would be somewhat arbitrary, because similar conduct may have more or less severe consequences depending on factors other than the Respondent's conduct.
- [13] With respect to the effect on the Student, the Commissioner noted that the Student felt angry and betrayed following the end of the relationship with the Respondent, and that the relationship subverted family unity at a time that the Student was being adopted by his family. The Respondent acknowledged that some of the Student's difficulties following the end of his relationship with the Respondent were likely attributable to his relationship with the Student and some to other causes.
- [14] There was evidence at the hearing that the Student entered a very destructive and difficult period of his life at and following the end of his relationship with the Respondent. The evidence was that the Student entered a period of extreme emotional distress, followed by frequent use of alcohol and marijuana, numerous absences from class and ultimately ceasing to attend school, more severe substance abuse and a period of homelessness. At the time of the hearing the Student had completed substance abuse treatment, obtained his high school diploma, and was employed. It was not suggested that the Student's relationship with the Respondent was responsible for the Student's behaviour following the end of the relationship. However, both the Student and his parent gave evidence that the Student did suffer severe emotional distress from the relationship and its termination, and that the Student was extremely emotionally vulnerable at the time of the relationship. The Student's evidence was that his emotional distress could have been a factor in his subsequent dysfunctional behaviour. In his submissions, the Respondent acknowledged and accepted this to be the case.
- [15] While it is difficult on the evidence to establish a specific causal connection between the Respondent's conduct and the Student's difficulties, this is why the focus is on the creation of the risk of harm, rather than the harm actually caused. Nevertheless, one of the criteria in considering severity of penalty is the harm to the student. In considering this, it is important to note that while it is correct that there was evidence of multiple sources of emotional turmoil in the Student's life around the time that his relationship with the Respondent ended, it is not open to a teacher who engages in inappropriate behaviour with a vulnerable student to avoid culpability for negative outcomes on the basis that it is impossible to infer the precise cause of the negative outcome. It is

obvious that a teacher who engages in inappropriate behaviour with an at-risk or vulnerable student is no less culpable than if the teacher engaged in the same behaviour with a less vulnerable student. To hold otherwise would provide less protection to vulnerable children than to other children, which is not the intent of the Act. Therefore, it is important to note that where teacher misconduct contributes to the risk of dysfunctional behaviour and negative outcomes, the contribution to that risk is an aggravating factor in considering penalty. Where the student has engaged in dysfunctional behaviour and endured negative outcomes following teacher misconduct with that student, it is appropriate for the Panel to consider evidence regarding whether the teacher's misconduct may have contributed to the materialization of that risk. In this case, the student and his mother indicated that he was despondent and emotionally devastated for a period of time following the end of his relationship with the Respondent. It may be inferred that the relationship and its termination contributed to the other considerable stressors facing the student at that time, and thus to his poor decision-making and negative outcomes that immediately followed.

- [16] Both the Commissioner and the Respondent correctly address this point by noting that it is the *creation of risk of harm*, rather than the specific outcome that occurs, that defines the nature and severity of the misconduct. The Respondent's inappropriate relationship with this particularly vulnerable student created a significant risk of a negative impact on the Student. This heightens the seriousness of the Respondent's misconduct.

The presence of absence of prior misconduct

- [17] The Commissioner and Respondent both acknowledged that the Respondent has no record of prior misconduct. This is a mitigating factor in considering penalty.

The extent to which the Respondent has already suffered consequences

- [18] The Commissioner submits that this factor relates to whether a respondent has had disciplinary measures taken against him or her through different proceedings, such as employment-related discipline. Where, for example, a teacher has faced a suspension through another proceeding, a panel may take that into account in determining its own penalty in order to keep the totality of the punitive measures against a teacher from being disproportionately to the misconduct.
- [19] The Respondent submits that this can include consequences related to the present process as well, including the extent to which the pre-hearing proceedings and hearing itself have

affected the Respondent. The Respondent also submits that the finding of professional misconduct in itself will have significant career consequences to the Respondent and that those should be taken into account when assessing whether an additional penalty is warranted.

- [20] In the present case, the Respondent's employer did not take any disciplinary action against the Respondent as a result of the conduct at issue.
- [21] The Panel does not consider the Commissioner's investigative process and the Teacher Regulation Branch's adjudicative process to constitute "consequences" that should mitigate the penalty in a finding of misconduct.
- [22] However, the Panel does consider the negative impact of the finding of misconduct on the Respondent's reputation and on his future professional prospects to be meaningful adverse consequences. The Panel takes into consideration the fact that the penalty imposed is in addition to the adversity to the Respondent caused by the damage to his professional reputation.

The role of the teacher in acknowledging the seriousness and gravity of the conduct

- [23] The Commissioner submits that:
- (a) The Respondent deliberately and consciously engaged in the conduct; there is little evidence that the Respondent has acknowledged the inappropriateness of his conduct, its effect on the Student and his family, or of any insight into why and how he behaved as he did.
- [24] The Commissioner submits that the Respondent's acknowledgement of wrongdoing is reluctant, limited in scope, and failed to include any initiative by the Respondent to inquire into the Student's well being or apologize to the Student. The Commissioner noted that the Respondent did not fully accept responsibility for his conduct in his testimony at the hearing, denying, *inter alia*, that his relationship with the Student had moved beyond a teacher-student relationship. The Commissioner noted that the Respondent deflected some of the responsibility for his situation to others, including other members of the school administration, and the Student's mother. The Commissioner submitted that the Respondent attributed any changes to his teaching and relating to students that he felt were necessary in the wake of the investigation and

hearing into his conduct to “the current climate”, rather than acknowledging that he personally had erred in his conduct in his relationship with the Student.

- [25] The Commissioner cites the Respondent’s testimony in which he resisted accepting some of the facts that constituted his misconduct. These include the Respondent failing to acknowledge or acknowledging very reluctantly that:
- (a) he treated the Student differently than other students;
 - (b) he offered the Student more than he could reasonably provide, including unconditional support;
 - (c) his relationship with the Student had moved beyond a teacher/student relationship.
- [26] Further, the Commissioner submits that the Respondent has not provided any evidence that he has taken any steps voluntarily to address his misconduct or shortcomings, aside from his testimony that he has adjusted his teaching practice to “pause”.
- [27] The Respondent’s position is that he did acknowledge his inappropriate conduct at the hearing, and that his intentions were at all times to help the student. He submits that he did not commence his dealings with the student to achieve a personal or emotional benefit. He notes that he did not have knowledge of the Student’s subsequent difficulties until the time of the hearing, and he says that he expressed remorse for the Student’s difficulties in his submissions on penalty. The Respondent submits that the evidence of his remorse is a statement that he made (at the hearing), that looking back now, with the benefit of hindsight, he would have made a different choice and not engaged in the misconduct.
- [28] The Panel finds that the Respondent’s submission that his intention was at all times to help the Student demonstrates the Respondent’s persistent unwillingness to adequately take into account the effects of his actions on the Student, both at the time that the conduct occurred and at any time thereafter. It also does not acknowledge the Respondent’s own emotional involvement in the relationship.
- [29] When all factors are considered, the Respondent’s acknowledgement of responsibility, remorse, and his insight into the nature of his misconduct are constricted and limited. None of these are mitigating factors in considering an appropriate penalty.

The need to promote specific and general deterrence and the need to maintain public confidence in the teaching profession as a whole

- [30] The Commissioner submits that public confidence in the teaching system requires that a consequence demonstrate to this Respondent and to the profession that this type of conduct will not be accepted. The Commissioner submits that this conduct is not at the low end of the spectrum, so a reprimand does not carry the necessary deterrent effect.
- [31] The Commissioner submits that this case requires specific deterrence, given that the Respondent maintained secrecy over his relationship with the Student and attempted to hide rather than rectify his conduct, advancing his own interests over those of the student.
- [32] The Respondent denies that he attempted to maintain secrecy over the relationship because he used his school email address.
- [33] The Commissioner submits a five-month suspension is an appropriate penalty; the Respondent submits that no suspension or a shorter suspension is more appropriate.
- [34] Both the Commissioner and the Respondent made submissions regarding the relevance of the penalties imposed in previous teacher discipline cases, in British Columbia and other Canadian jurisdictions. Both correctly noted that previous decisions are not binding, and that each case must be determined with reference to its own unique set of facts and circumstances.
- [35] The Respondent emphasized in his submissions, as he did throughout the hearing, the non-sexual nature of his relationship with the Student, and stressed that that factor distinguishes it in a meaningful way from many of the cases referred to by the Commissioner.
- [36] The Panel noted that the nature of the allegations against the Respondent were not of a sexual nature and carefully considered the elements of the Respondent's relationship with the Student, having regard to the non-sexual nature of the allegations. None of the cases cited by the Commissioner involve a teacher who engaged in a sexual relationship with a Student, though in one case, the panel noted that the contact had "sexual overtones".

- [37] Similar cases have imposed sanctions ranging from a 15-year prohibition on the issuance of a certificate of qualification to a former certificate holder² to a reprimand only³. Each case turns on its own unique circumstances, including mitigating and aggravating factors such as those noted above. In addition to factors unique to each circumstance, the less severe penalties are generally in cases where a teacher agreed to a consent resolution and penalty, and/or where the teacher had been suspended or dismissed by his or her employer. Neither of these factors applies in this case.
- [38] When considering penalties given to teachers found to have had inappropriate but non-sexual relationships with students, a five-month suspension falls at neither the short nor long end of the range of durations of suspensions.

Determination

- [39] The Panel is cognizant that the Respondent's misconduct in his relationship with the Student was not of a sexual nature. There was no allegation of any misconduct of a sexual nature in the original or amended citation. The appropriateness of the relationship between the Respondent and the Student was determined in the context of the allegations, which were of an inappropriate relationship of a non-sexual nature. The determination of penalty is made accordingly.
- [40] The Respondent's misconduct was serious enough to create an objectively appreciable and significant risk of serious emotional harm to a vulnerable student at an especially difficult time in his life. The Respondent was aware of the student's vulnerability. The relationship persisted for a period of months, the most inappropriate aspects of the relationship were kept secret, it was conducted in part in contravention of reassurances to the parent, and the extent of it was not disclosed at a time when disclosure might have ameliorated the extent of emotional harm to the Student. For these reasons, the serious penalty of a five-month suspension is appropriate in these circumstances.
- [41] The Respondent himself still submits in support of his position on penalty that at all times, his intent was to help the Student. This position is difficult to reconcile with understanding the nature of his misconduct and taking responsibility for it, both of which would be useful steps toward an assurance that the Respondent will not cross professional boundaries with a Student in the future.

² Re: BC Teachers Regulation Branch - and - McGeough, penalty decision, January 17, 2013

³ Ontario College of Teachers v. McCuaig, (2008) LNONCTD 44

- [42] The Respondent could not articulate how his teaching practice has changed since the investigation regarding the Student, other than to say that he now “pauses”. He also attributed his ceasing to coach students to “the current environment” rather than to an understanding of how he erred with the Student. Neither of these statements evidences an understanding of his responsibility for his misconduct, nor for an approach to interacting with students in the future that is positive and yet maintains appropriate professional boundaries.
- [43] For these reasons, the Panel accepts the Commissioner’s submission that specific deterrence is required in this case. Given that specific deterrence is an issue, penalty by way of suspension of the Respondent’s teaching certificate may not be adequate to achieve the goal of specific deterrence. The Panel therefore orders that the Respondent complete the British Columbia Justice Institute’s course titled “Reinforcing Respectful Professional Boundaries” (the “Boundaries Course”), or an equivalent course with comparable content and the same or greater number of course hours.
- [44] Because the conduct in this case took place entirely outside the classroom, and because there was no evidence that the Respondent’s conduct in the classroom setting was inappropriate, there is no reason to restrict the Respondent from the classroom until such a time as he has taken the Boundaries Course. However, the Respondent must not take on any extra-curricular duties that include the supervision of students on a one-on-one basis until such time as he has completed the course.

COSTS

- [45] No submissions were made on costs. There is no order made as to costs.

PUBLICATION

- [46] These reasons will be made public in accordance with section 66 of the Teachers Act.

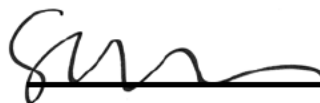
ORDER

- [47] The Panel directs the director of certification to suspend the Respondent’s teaching certificate for a period of five months, to occur during the academic school year (between September and June, inclusive). The Panel directs the director of certification to place

the following limitation on the Respondent's teaching certificate: the Respondent must refrain from leading extra-curricular duties that involve the supervision of students one-on-one until such time as the Respondent demonstrates he has successfully completed the Boundaries Course.

For the Panel

Date: May 1, 2017



Sarah Levine, Panel Chair



Rebecca Blair, Panel Member



Teresa Rezansoff, Panel Member