



2016 TAHP 05  
Decision issued: April 20, 2016  
Citation issued: August 12, 2014  
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19  
AND  
A HEARING CONCERNING  
VIOLET LORRAINE NIELSEN  
(an Authorized Person under the *Teachers Act*)

**NOTICE OF REASONS FOR DECISION ON PENALTY (CONSEQUENCES)**

Written submissions on penalty filed February 11, 2016  
Panel: Patrick Poyner (Chair), John Hall, John Tyler  
Counsel for the Commissioner: Maureen Boyd, Ministry of Justice  
Counsel for the Respondent: Self-represented

**INTRODUCTION**

[1] On December 22, 2015, the panel issued its decision in this matter finding that the Respondent had committed professional misconduct under section 63(1)(b) of the *Teachers Act* (the “Act”). The panel directed that written submissions be prepared by the parties with respect to the appropriate penalty and costs. The Commissioner filed written submissions on February 11, 2016 and, despite being provided with notice to do so, the Respondent did not file written submissions.

**PENALTY**

[2] The panel found that the Respondent committed professional misconduct insofar as she failed to implement the Individual Education Plan (“IEP”) for a student (the “Student”) in her Grade 6 class during the 2010-2011 school year.<sup>1</sup>

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<sup>1</sup> Reasons for Decision, December 22, 2015, paragraph 136

[3] The Commissioner submits that an appropriate penalty in this matter is a three week suspension of the Respondent's certificate of qualification pursuant to section 64(b) of the *Act*.

## **DISCUSSION**

[4] In its written submissions, the Commissioner submits that the relevant factors for consideration when imposing a penalty are as set out in *Re: Teacher Regulation Branch – and – Kiteley* (June 19, 2014) as follows:

- (a) The nature and gravity of the allegations;
- (b) The impact of the conduct on the students;
- (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.

[5] The Commissioner further asserts that when considering those factors, the panel must also consider whether each is mitigating or aggravating in nature. The Commissioner suggests that mitigating factors may include the following:

- (a) The absence of any prior misconduct;
- (b) The fact that a teacher has already suffered significant consequences;
- (c) An acknowledgement by the teacher of the misconduct (such as admissions of misconduct, timely apology to the subject of the misconduct) and any acts of restitution (such as returning funds taken without approval); and
- (d) Steps taken voluntarily by the teacher to address his or her misconduct or shortcomings (such as taking appropriate courses or counselling).

[6] Conversely, the Commissioner suggests that aggravating factors would include those which demonstrate a need for a more severe sanction in order to protect the public interest and impress upon the teacher the need to change his or her conduct. Specific examples provided by the Commissioner include the following:

- (a) Conduct which was repeated or continued over a long period of time;
- (b) Significant or lasting harm on the student(s) subject to the teacher's conduct;
- (c) A lack of explanation or remorse by the teacher; and
- (d) A disciplinary record, particularly with misconduct of the same or similar nature.

[7] The panel has considered the factors as described above and has considered whether they are to be characterized as aggravating or mitigating in nature.

### **Nature and Gravity of Allegations**

[8] The panel found that the Respondent failed to implement the Student's IEP over the course of the 2010-2011 school year despite being well aware of the necessity and her responsibility to do so and the ease by which it could be achieved. The panel further found that

this failure and the need to rectify the situation was brought to the Respondent's attention on multiple occasions by Principal Bob Young, the Student's mother [REDACTED] and the Student's school counsellor Bernard Klop.

[9] Principal Young described the IEP as "a success plan for students who are struggling." By failing to implement the IEP, the Respondent created a barrier for the Student's academic success. This barrier was identified early on during School Based Team meetings which the Respondent attended. Further, the Respondent was made aware of the requirement to implement the IEP by Principal Young. The Respondent's failure to implement the IEP was a serious one and created a barrier for the Student's academic success.

### **Impact of the incident on the Student**

[10] [REDACTED] evidence was that as a result of the Respondent's misconduct, the Student began demonstrating depression-like symptoms, begged not to go to school as he felt he was stupid and unable to do the work assigned to him. In meetings with Mr. Klop, the Student rated his school experience as a 2 out of 10, that he felt the Respondent did not like him very much and that he wished he could have a different teacher.

[11] While students will from time to time find school unpleasant for a host of reasons, it is telling in the present case that the Student experienced detrimental impacts that were directly tied to his school work, both at home and in the classroom. [REDACTED] identified her son as feeling overwhelmed and unsuccessful within the context of the work that he was being directed to complete. This in turn resulted in the Student experiencing anxiety, increased fatigue, decreased self-esteem and a general sense of dread when going to school. The impact of the Respondent's failure to implement the Student's IEP was clearly detrimental and threatened his education although the panel acknowledges the evidence of [REDACTED] that the Student experienced improvement in that respect once Mr. Hagkull became the Student's teacher late in the school year. Overall, the panel finds that the Respondent's failure to implement the IEP had a detrimental impact on the Student.

### **The presence or absence of prior misconduct**

[12] The Commissioner argues that in 2006 the Respondent was subject to an investigation following numerous complaints at the school where she formerly taught. These complaints included treating students in a disrespectful manner, having rigid expectations for behaviour and the completion of excessive amounts of homework, failure to adequately instruct or support "lower achieving pupils" and failing to cooperate with School Based Teams.

[13] The Commissioner points to the evidence of Principal Young that when he read the report prepared by the investigator in that matter ("the 2006 Report") that he "felt sick" as the conduct described therein was "exactly" what had occurred with the Respondent during the 2010-2011 school year.

[14] The panel notes that the allegations raised in the 2006 Report were not the subject of an adjudicated hearing. In the 2006 Report, the investigator notes in the Summary of Findings that the Respondent defended her position as a teacher and believed that she was doing her best for her students. The investigator noted that the Respondent was "perplexed" by and did not agree with the comments made about her.

[15] While the Respondent was ultimately directed to participate in a peer support program and transferred to another school, the panel again notes that the findings in the 2006 Investigation Report were not subject to a disciplinary hearing and were challenged by the Respondent. As such, the panel is of the view that the findings contained in the 2006 Report should not be considered as “prior misconduct” in the determination of a penalty in this matter.

### **The extent to which the Respondent has already suffered consequences**

[16] The Commissioner argues that the Respondent has suffered no consequences in relation to this matter aside from undertaking university coursework which was intended to improve her teaching practice. The coursework was noted by the Commissioner as being paid for by the School District. The Respondent continues to teach and the panel finds that she has suffered little if any consequences in relation to this matter.

### **The role of the Respondent in acknowledging the gravity of the conduct**

[17] The Panel finds that the Respondent has not acknowledged the gravity of the conduct in this matter. While the Respondent did complete the university coursework required of her, it was only after being threatened with disciplinary action for a failure to do so by a previous deadline. The Panel notes that the Respondent did not take part in the hearing of this matter and did not provide written submissions with respect to penalty. While it is not required that the Respondent participate in this matter, her lack of acknowledgement of the gravity of her conduct in question is a factor that the panel must consider in its determination of penalty.

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

[18] The Respondent’s failure to implement the Student’s IEP was brought to her attention early and throughout most of the 2010-2011 school year. Despite this, she refused to acknowledge her failure and refused to take steps to implement the IEP. The Respondent only undertook the required university coursework when threatened with disciplinary action by the School District. These circumstances favour a penalty that will specifically deter the Respondent from similar conduct in the future.

[19] Similarly, any penalty imposed by the panel in this matter must serve to deter the teaching profession generally from engaging in similar conduct. Where a student with special needs requires assistance in attaining academic success through the use of an IEP, the teaching profession as a whole must recognize that failure to implement it is a serious matter and may result in a sanction.

[20] Finally, the British Columbia Court of Appeal has commented in *McKee v. College of Psychologists (British Columbia)* (1994) 95 BCLR (2d) 66 at page 68 as follows:

In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest.

[21] To maintain public confidence in the teaching profession as a whole, a penalty must take into consideration all relevant factors and provide assurance to the public that the Teacher Regulation Branch maintains the ability to supervise the conduct of its teachers and where applicable, issue appropriate penalties where findings of misconduct are made.

## **DECISION**

[22] Section 64 of the *Act* authorizes a panel to issue a penalty consisting of one or more of the listed options under the section. In the present case, after giving consideration to the factors as set out above, the Panel finds that an appropriate penalty in this matter is a three week suspension of the Respondent's certificate of qualification.

[23] Counsel for the Commissioner advised the Panel at the conclusion of the hearing of this matter that it would not seek an award of costs and the Panel therefore declines to make such an order.

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