

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee of the College of Early Childhood Educators (the “**Panel**”) on May 21, 2019.

THE ALLEGATIONS

The allegations against Rehana Islam (the “**Member**”) as stated in the amended Notice of Hearing dated April 16, 2019 (Exhibit 1) were as follows:

1. At all material times, the Member was a member of the College of Early Childhood Educators (the “**College**”) who was employed as a registered early childhood educator at the Charlottetown Blvd. Child Care Centre (the “**Centre**”) in Scarborough.
2. On or about the afternoon of January 14, 2016, the Member and an educational assistant employed by the Centre were responsible for supervising a group of approximately 18 children on a bus who were being transported to the Centre and, subsequently, supervising the transition of the children from the bus to inside the Centre.
3. When the bus arrived at the Centre, the Member left one of the children whom she was supervising (X, a five-year old senior kindergarten student) asleep on the bus, without realizing that she had done so.
4. The Member failed to conduct a headcount and/or to take attendance after the children got off the bus, to ensure that all of the children who had been on the bus were present at the Centre.
5. The Member failed to notice that X was missing and proceeded to sign X into the senior kindergarten classroom on the Centre's sign-in sheet. When the receiving staff for the senior kindergarten classroom conducted a headcount and/or took attendance, the number of children noted on the sign-in sheet did not match the number of children in the room, and it was determined that X was still on the bus.
6. The bus had already left the Centre at that point and was travelling on the highway. Efforts were made by the Centre to contact the bus driver. In the interim, after noticing that X was still on the bus, the bus driver turned the bus around and subsequently returned X to the Centre.
7. On the date of the incident described above, the Member failed to watch the children in her care and/or failed to take attendance and/or failed to do a proper head count, contrary to the Centre's policies and procedures relating to supervision, management of transitions and/or bussing.

8. The Centre terminated the Member's employment at the Centre on or about January 20, 2016, due to the above incident, in addition to a previous incident when the Member reportedly left a child unattended in the washroom.
9. By engaging in the conduct set out in paragraphs 2 - 7 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8 (the "**Act**"), in that:
 - a. she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
 - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and/or
 - v. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
 - c. she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08. subsection 2(10);
 - d. she failed to comply with the Act and/or the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
 - e. she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and/or
 - f. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

WITHDRAWAL OF ALLEGATIONS

Counsel for the College advised the Panel that the College was requesting leave to withdraw the allegation set out in paragraph 9(d) of the Notice of Hearing because that provision was not in force at the time of the events at issue. This request was consented to by the Member. The Panel felt it was reasonable for the College to withdraw the allegations and granted this request.

THE MEMBER'S PLEA

The Member admitted to the allegations in the Notice of Hearing.

The Panel received a written plea inquiry which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

EVIDENCE

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2), which read as follows:

The Member

1. The Member initially registered with the College as a Registered Early Childhood Educator ("**RECE**") in May 2014 and is currently registered with the College.
2. At all material times, the Member was employed as an RECE at the Centre.
3. On January 20, 2016, the Member was terminated from her position at the Centre as a result of the incident described below. Prior to the incident described below, the Member had previously received a written warning letter from the Centre after she left a child unattended in a washroom.

Incident on January 14, 2016

4. On or about January 14, 2016, the Member and the Early Childhood Education Assistant ("**ECA**") were responsible for supervising a group of 18 kindergarten-aged children that were being transported from a nearby school to the Centre on a bus.
5. Once the bus arrived at the Centre, the Centre's Bussing Policy required the Member to lineup the children outside the bus, conduct a headcount and take attendance on an attendance sheet, and not allow the bus driver to leave until all children were accounted for. The Member acknowledges that she was aware of the requirements of this policy.
6. When the bus arrived at the Centre, the Member and the ECA unloaded the children off the bus without lining them up to take attendance and without conducting a headcount. As a result of their failure to follow the Centre's Bussing Policy, the Member and the

ECA failed to realize that a child had been left on the bus. Nonetheless, the Member checked off the attendance sheet to indicate that all 18 children were accounted for.

7. The Member and the ECA took the remaining 17 children into the Centre and signed them into the senior kindergarten room on the Centre's sign-in sheet. While they were bringing those children inside, the bus had left the Centre with a child on board. The bus driver was driving on a highway when she heard the child begin to cry. She then turned around and brought the child back to the Centre.
8. When the staff responsible for the senior kindergarten room conducted a headcount, she realized that one of the children was missing. She and the Member checked the hallways and the washroom, but could not find the missing child. As they were in the process of calling the bus company, the bus returned to the Centre with the child. The bus was gone for approximately 15 minutes.

College Standards of Practice

9. The Member agrees that the following are standards of the profession, as set out in the College's Code of Ethics and Standards of Practice:
 - a. Standard III.A.1 requires RECEs to maintain a safe and healthy learning environment.
 - b. Standard IV.A.2 requires RECEs to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision.
 - c. Standard IV.B.3 requires RECEs to observe and monitor the learning environment and anticipate when support or intervention is required.
 - d. Standard IV.C.1 requires RECEs to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families and to build effective relationships with colleagues and other professionals by using clear verbal and written communication.
 - e. Standard IV.E.2 requires RECEs to avoid conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.

Admissions of Professional Misconduct

10. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 4-8 above, and as defined in section 33(2) of the Act in that:
 - a. she failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
 - b. she failed to maintain the standards of the profession, contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:

- i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
 - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in her workplace in order to provide safe, secure, healthy and inviting environments for children and families and failed to build effective relationships with colleagues and other professionals by using clear verbal and written communication, contrary to Standard IV.C.1 of the College's Standards of Practice; and
 - v. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- c. she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to *Ontario Regulation 223/08*, subsection 2(10);
 - d. she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to *Ontario Regulation 223/08*, subsection 2(21); and
 - e. she conducted herself in a manner that is unbecoming a member, contrary to *Ontario Regulation 223/08*, subsection 2(22).

DECISION ON THE ALLEGATIONS

Having regard to the facts set out in the Agreed Statement of Facts, the Committee accepted the Member's admission and found that she committed all of the acts of professional misconduct set out in the Notice of Hearing as outlined above.

REASONS FOR DECISION

The Panel considered the Agreed Statement of Facts and the Member's plea and found that the evidence supported findings of professional misconduct.

The allegations set out in page 3 - 5 of the Notice of Hearing are supported by paragraphs 4 through 8 in the Agreed Statement of Facts. The evidence shows that the Member contravened the standards of practice when she failed to conduct a thorough headcount and left a child unsupervised on the bus. She then completed the attendance record indicating that all children were in attendance.

The Panel finds this conduct to be in direct violation of Regulation 223/08, subsection (2.2), (2.8), (2.10), (2.21) and (2.22) and the Code of Ethics and Standards of Practice.

The Panel finds that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable and unprofessional and as unbecoming of a member of the profession.

POSITION OF THE PARTIES ON PENALTY

The penalty phase of the hearing proceeded on a contested basis. The Member testified and the parties made submissions to the Panel regarding penalty.

Testimony of the Member

The Member testified that she is married with 3 daughters, two of whom are in University. She advised that she started work in the Toronto District School Board as a lunchroom supervisor and ultimately, became registered with the College in 2014 and started working as a RECE. She testified that she was fired in 2016 as a result of this incident and suffered financial hardship.

When the incident occurred, her evidence was that it was such a nightmare, and she felt so responsible and guilty. She wrote a letter of apology right away. Since the incident occurred, she took a workshop through the TDSB.

She was ultimately re-hired by the Centre and also has a job with the TDSB. The TDSB is not aware of this matter. When she went back to the Centre, she worked with the same children and found this was an opportunity to "correct" herself. She was able to speak with the parents of the child and apologize. She was crying when she did so and the parents were very understanding. She is very careful now to always do headcounts.

The Member provided an evaluation from the Centre (Exhibit 3) and references (Exhibits 4-6).

The Member is very concerned about the impact of the penalty and particularly, any suspension. She does own her own home, which she bought in 2016. Her husband is taking courses and as such, a suspension would be a huge hardship for her family. She has no savings and her husband's work is not steady so she is the primary financial support for the family. She has large expenses for her daughters' education.

The College's Submissions on Penalty

The College requested that the Panel impose the following penalty:

1. The Member be required to appear before the Panel to be reprimanded on the date of this Order.
2. The Registrar be directed to suspend the Member's certificate of registration for four (4) months.

3. The Registrar be directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the Early Childhood Educators Act, 2007 ("**Employment**"), the Member, at her own expense, will arrange for a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director of Professional Regulation (the "**Director**"). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.
 - vii. For clarity, the Member can commence or resume Employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.
 - b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
 - c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons, once available.
 - d. The Member will meet with the Mentor every two weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
 - e. After a minimum of five sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,

- ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
- f. All documents delivered by the Member to the College will be delivered by registered mail, courier or email, and the Member will retain proof of delivery.

The College submitted that the *Act* and its by-laws also require the results of the hearing to be recorded on the register, and for the Panel's decision and order be published in full, with the Member's name, on the College's website and in its official publication.

The College submitted that the proposed order is appropriate in light of the relevant factors and the circumstances of this case.

The College provided 15 cases in support of the proposed penalty which were cases involving a failure to supervise. The College submitted that a four-month suspension of the Member's certificate of registration was warranted in light of the penalties imposed in other similar cases, the facts of this case, and the fact that supervisory issues continue to be one of the most frequent types of misconduct that is referred to the Discipline Committee.

The College submitted that the mitigating factors in this case were:

1. The Member pled guilty;
2. The Member took responsibility for her actions and wrote an apology letter.

The College submitted that aggravating factors in this case were that

1. the Member's conduct put young children in her care at risk of harm, as a child's whereabouts were unknown for about 15 minutes before the child was returned to the Centre;
2. before the child was discovered, the child was at risk of harm as she was unsupervised;
3. the Member has been working as an RECE for a number of years and her failure to supervise cannot be attributed to inexperience – the need to conduct headcounts in order to properly supervise children is a basic aspect of the practice of early childhood education; the Member not only failed to conduct a headcount, but also marked the missing child down as present on the attendance sheet;
4. the Member was the only RECE responsible for supervising the group of children. As such, she had a leadership role to play in ensuring that the children were properly supervised at all times; and
5. the need to conduct head counts and take attendance was also a requirement of the Centre's policy, which the Member was required to comply with, in addition to being necessary in order to meet College standards regarding supervision.

The College also submitted that the Member should be required to pay the College's costs fixed in the amount of \$10,000. The College submitted that it was appropriate to require the Member to pay the Tariff costs allowable for one day of hearing, comprising \$10,000. Section 33(5) of the *Act* gives the Discipline Committee the ability to fix costs to be paid by the Member. Rule

16.05(3) and Tariff A in this College's Rules of Procedure indicate that when part of the College's request for costs includes the expenses of a day of hearing, the College is entitled to claim \$10,000 per hearing day, without the need to prove the amount of costs incurred for that hearing day. The tariff does not include the legal fees incurred for hearing preparation.

The College submitted that the amount of costs requested was in line with the costs awards in comparable cases, and is consistent with recent decisions of this College and of the Divisional Court.

Member's Submissions on Penalty

Counsel for the Member submitted that the proposed penalty was unreasonable and would cause undue hardship and specifically, challenged the length of the suspension and costs ordered. The Member submitted that there should be no or minimal costs. The Member asked that her evidence about her financial circumstances be considered.

The Member argued that she has an excellent work record and no further problems. She worked hard to correct the issue. The Member submitted a suspension of 2-3 months would be more appropriate and that this case could be distinguished from the ones relied upon by the College.

PENALTY DECISION

After careful deliberation, the Panel imposed the following Penalty Order:

1. The Member is required to appear before the Panel to be reprimanded on the date of this Order.
2. The Registrar is directed to suspend the Member's certificate of registration for four (4) months; effective immediately

3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the Early Childhood Educators Act, 2007 ("**Employment**"), the Member, at her own expense, will arrange for a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.
 - vii. For clarity, the Member can commence or resume Employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.
 - b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
 - c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons, once available.
 - d. The Member will meet with the Mentor every two weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).

- e. After a minimum of five sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
 - f. All documents delivered by the Member to the College will be delivered by registered mail, courier or email, and the Member will retain proof of delivery.
4. In terms of costs, the panel orders the Member to pay costs to the College in the amount of \$5,000.

REASONS FOR PENALTY

The Panel wishes to thank both counsel for their submissions on penalty. The Panel noted that the parties appeared to be in agreement with most of the terms with the exception of the length of the suspension and costs.

With respect to the penalty factors where there was no agreement, the Panel considered the evidence and the submissions of both counsel and applied the principles that are generally considered to determine an appropriate penalty - including the protection of the public, maintenance of the reputation and integrity of the profession and the principles of specific and general deterrence.

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, and remediation. The penalty should be proportionate to the misconduct.

The Panel is aware that no two cases are exactly alike. However, reviewing earlier cases can help determine the level of appropriate penalty. The Panel therefore considered the previous cases that were presented. While the panel heard the member's position for a shorter suspension, the panel felt that the public interest was better protected by aligning with previous penalty orders given the seriousness of the professional misconduct. The member's reasoning for a shorter term suspension and the corresponding evidence provided did not satisfy the panel.

This immediate suspension is appropriate given the aggravating factors in this case and to protect the public interest.

The suspension, along with the reprimand, will act as specific deterrents to the Member, and general deterrents to other members of the profession, from engaging in such conduct. The terms, conditions and limitations, including mentoring, will help to remediate the Member allowing her to return to her practice with new knowledge and enhanced skills.

ORDER AS TO COSTS

Subsection 33(5)(4) of the ECE Act provides that in an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct to pay all or part of the College's legal costs and expenses, investigation costs and hearing costs.

While the College proposed the amount of \$10,000.00 (which is the amount the College is entitled to request for one day of hearing pursuant to the Tariff), the Panel felt it was more appropriate to recover only a portion of the penalty hearing costs because it was not a fully contested hearing. Consideration was also given to the Member's position on the proposed costs award. The Panel acknowledges that the College incurs costs associated with any hearing; however, the Member is entitled to vigorously defend their position. The Panel feels that each cost award should be specific to the hearing based on its own evidence and process.

Therefore, the Panel orders that the Member pay the College \$5,000.00 of its costs.

I, Kristine Parsons, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.

 RECE

Kristine Parsons, RECE and Chairperson

August 26, 2019

Date