

**DISCIPLINE COMMITTEE  
OF THE COLLEGE OF EARLY CHILDHOOD EDUCATORS**

**PANEL:** Karen Damley, Chairperson  
Barney Savage  
Lori Huston, RECE

**BETWEEN:** )  
)  
COLLEGE OF EARLY ) Jill Dougherty  
CHILDHOOD EDUCATORS ) Ada Keon  
) for the College of Early Childhood Educators  
)  
- and - )  
)  
AMY LYNN ELIZABETH SMITH ) Kathleen Kinch  
REGISTRATION # 25237 ) for the Member, Amy Lynn Elizabeth Smith  
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)  
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)  
) Lonny Rosen  
) Independent Legal Counsel  
)  
)  
) Heard: September 10-13, 2019

## DECISION AND REASONS

This matter was heard before a panel of the Discipline Committee of the College of Early Childhood Educators (the “**Panel**”) on September 10-13, 2019. The College of Early Childhood Educators (the “**College**”) was represented by Jill Dougherty and Ada Keon. The member, Amy Lynn Elizabeth Smith (the “**Member**”) was represented by Kathleen Kinch. Lonny Rosen served as Independent Legal Counsel to the Discipline Committee.

## THE ALLEGATIONS

The allegations against the Member, as stated in the Notice of Hearing dated August 8, 2019, (Exhibit 2) are as follows:

1. At all material times, the Member was a member of the College of Early Childhood Educators employed as an Early Childhood Educator at the Norwood District Public School (the “**School**”), located in Norwood, Ontario.
2. On or about March 8 or 9, 2017, the Member was supervising a group of children in the Kindergarten room, who were getting dressed in their outdoor clothes to go outside for recess. The Member spoke to Child X a four-year-old developmentally delayed student, in a harsh and/or aggressive manner, telling him that if he was not going to get dressed in his outdoor clothes inside, he could get dressed outside, or words to that effect.
3. The Member then threw Child X’s winter clothing outside and then took Child X (who was wearing only jeans, a t-shirt and socks) outside and left him there in the cold, returning inside. The Member did not go outside to assist Child X to get dressed or to bring him back inside to do so, despite the fact that Child X was crying, visibly upset and cold.
4. Child X was left outside for approximately three to five minutes without his winter clothing on before a placement student at the School assisted the child in putting on his winter clothing.
5. By engaging in the conduct set out in paragraphs 2-4 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, in that:
  - a) she verbally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3);

- b) she physically abused a child who was under her supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
  - c) she psychologically or emotionally abused a child who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.2);
  - d) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
    - i. she failed to provide a nurturing learning environment where children thrived, contrary to the Standard I.D. of the Standards of Practice;
    - ii. she failed to establish professional and caring relationships with children and/or to respond appropriately to the needs of children, contrary to Standard I.E. of the Standards of Practice;
    - iii. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the Standards of Practice;
    - iv. she failed to support children in developmentally sensitive ways and to provide caring, stimulating, and respectful opportunities for learning and care that are welcoming to children and their families, contrary to Standard III.C.1 [of the Standards of Practice];
    - v. she failed to make decisions, resolve challenges and/or provide behaviour guidance in the best interests of the children under her professional supervision, contrary to Standard IV.B.4 of the Standards of Practice;
    - vi. 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 Standards of Practice; and/ or
    - vii. she physically, verbally, psychologically or emotionally abused a child under her professional supervision, contrary to Standard V.A.1 of the Standards of Practice;
6. 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); and/ or
7. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

## THE MEMBER'S PLEA

The Member pleaded not guilty to all allegations.

## EVIDENCE

The College called four witnesses to testify at the hearing: Carly Griffin ("Ms. Griffin"), Kate Griffin, Cheryl Herder and Jennifer Rodman. The Member called three witnesses to testify at the hearing: Ann McMillan, Julie Elder and Jeffrey White. The Member also gave evidence herself. The following documents were entered into evidence at the hearing:

Exhibit #	Description
1	Notice of Hearing dated April 26, 2019 with attached Affidavit of Service
2	Notice of Hearing dated August 8, 2019 with attached Affidavit of Service
3	Agreed Statement of Facts
4	Norwood Ground Level Public School Floor Plan
5	Email Communication between Cheryl Herder and Amy Smith
6	Email Communication re: availability of Jessi Carter
7	Professional Development Management Software Summary of Staff Professional Development Activities
8	Email to staff re: Lip Sync Concert After School Practice
9	Transcript of a portion of the evidence of Jennifer Rodman (written evidence)
10	Bundle of documents produced by Jeff White
11	Joint Brief of Documents

## **The College's Case**

The College called four (4) witnesses at the hearing. Their evidence is summarized below:

### **Testimony of Carly Griffin**

Carly Griffin was an ECE placement student from Sir Sandford Fleming College, who was placed in the Member's classroom at Norwood Public School for what was to be a seven (7) week placement beginning at the end of February 2017, when she was twenty (20) years old. The Member served as her host education support. Ms. Griffin was at that time in her third year of a three year ECE program at Fleming College, and had completed previous placements at a Day Care, working in the toddler room beginning in November 2017 and as a supervisor of school age programs from September to December 2018.

Ms. Griffin started in the classroom during the week of February 27, 2017. She had two weeks of placement before March Break (March 13-17) and a third week of her placement the week of March 20-24, 2017.

Ms. Griffin testified that she observed the Member to have had an "amazing" relationship with the classroom teacher, Ms. Anne McMillan. She commented that Ms. McMillan and the Member had a very close, "mother-daughter-like" relationship. She also observed that the Member and Ms. McMillan spoke to the children in a grown up manner, which taught her that the children could handle learning at a higher level than she would have expected.

Ms. Griffin gave evidence that the incident in question occurred on March 9, 2017, the last school day before March Break (as March 10<sup>th</sup> was a P.A. Day), after morning snack. At that time, the children were getting ready to go outside for recess. Some children were already dressed in their outdoor winter clothing, but Child X was not. Ms. Griffin observed the Member to approach Child X, and take his winter clothing, including his coat and boots, and throw them outside. The Member then returned, took Child X by the hand and brought Child X to the door. Ms. Griffin believed that this was to show Child X that it was cold outside. Child X was wearing jeans, a t-shirt and socks. The Member then placed Child X outside, and the door to the outside closed. Ms. Griffin observed Child X to be crying very hard, gagging and drooling. Ms. Griffin

testified that she did not know what to do. She was at the cubby area of the classroom (at the end of which was the door to the outside play area), as was the Member. She testified that Ms. McMillan was standing in front of the door with her back to it, while the Education Assistant, Ms. Elder, was working with Child Y (another student with special needs). Ms. Griffin testified that the door to the outside was glass and that she could see Child X outside. She could also hear him crying. She expected this to last only for a couple of seconds, but Child X remained outside in the cold for about two to five minutes. When nobody went out to help Child X, Ms. Griffin did so. While she was outside helping Child X get his clothing on, the other children were released for recess.

Ms. Griffin testified that after the incident in question, Ms. McMillan and the Member had gone to get their lunch. Taken aback by what had happened, and by the fact that no other adult had reacted to this incident at all, Ms. Griffin stayed in the classroom during recess (while she would normally have gone to the staff room). Ms. Griffin did not raise any concern with the Member or teachers about this incident, as she was not sure if this was a normal occurrence or was something serious, not having worked in that environment before. Ms. Griffin was concerned that she had taken the incident "too much to heart". Though she felt that what had happened with Child X was wrong, Ms. Griffin second guessed herself and wondered if she was simply "over-analyzing" the situation, or failing to display a proper "backbone" regarding the discipline measure that had been used with Child X.

Ms. Griffin testified that during her lunch break, shortly after the incident, she called her mother, Ms. Kate Griffin, and confided in her that she was upset about what had transpired. She spoke briefly with her mother, and agreed to call her that evening. When they spoke that evening, Ms. Kate Griffin suggested that Ms. Griffin discuss the incident with someone at Fleming College, and that Ms. Griffin include this in her written reflective essay (an assignment Ms. Griffin was required to use to document her observations during her placement, and to submit to her professor). Ms. Griffin ultimately included a summary of this incident in the Form B: Reflective Summary for the weeks of February 27 – March 24, 2017, a document which she submitted on March 25, 2017 ("Reflective Summary").

Ms. Griffin gave evidence that a school assembly took place on March 9, 2017, the day of the incident, at which children got up and sang and the teachers performed a Lip Sync, although Ms. Griffin did not participate in that. Ms. Griffin also agreed that she and the Member took their

breaks at the same time, for 40 minutes following the morning snack break, during which time Ms. McMillan was on duty, and that it is possible that she was mistaken about the time and day that the incident occurred.

Ms. Griffin testified that Child X was a very sweet, small child, who was the youngest in the classroom. Child X was developmentally delayed and unable to do anything on his own. She noted that Child X needed much instruction, reminders and rewards to accomplish tasks. He had limited vocabulary and verbal skills, and was not easily understood. Child X needed reminders to get dressed for cold weather, and would get distracted if someone was not working with him directly.

Regarding the classroom routine, Ms. Griffin testified that the children had morning snack (from 10.35 – 10.55), outside time, recess (from 10.55 – 11.15) and afternoon snack (from 12.55 – 1.15). They also had a routine for getting ready for recess in cold weather, including that some children would get their snow pants on before snack but others would be playing with bean bags, etc. She agreed that the staff in the Member's classroom adhered strictly to their routines, as outlined in the Staff Supervision Schedule, included in Exhibit 11.

Ms. Griffin acknowledged under cross-examination that there was a routine in the classroom whereby a teacher or staff member would open the door to let the cold air in, in order to cue the students to the need to get dressed in their outdoor clothing. She stated, however, that the incident about which she complained was not an example of this practice. Ms. Griffin also acknowledged in her testimony that she was not entirely familiar with the routines of the classroom – including those surrounding the preparation of children for outdoor play.

Ms. Griffin received a mid-term evaluation from Ms. Smith during the week of March 20<sup>th</sup>, which was delivered to her orally despite the fact that her written mid-term evaluation, found at Tab A of Exhibit 11, was dated March 27<sup>th</sup>. The Member provided feedback that Ms. Griffin had to be more stern, and have “more of a backbone”. Ms. Griffin agreed with the observation that she had to implement daily activities, as she needed a reminder as to when to start activities, noting that she still did not know her place in the classroom at that time. Ms. Griffin also testified to having gotten “into trouble” for picking up a child in the classroom, something she had routinely done in the day care setting. Ms. Griffin testified that she had done this in the presence of the principal, and that she was taken aback by the feedback she received about this (that it was

against school system rules relating to touching students), which she described in her Reflective Summary as a "bad experience". Ms. Griffin testified that at that time, she "didn't feel like [she] fit in", and that she felt like she had a fundamental professional difference with the staff in the classroom.

Ms. Griffin testified that she described the incident with Child X in the Reflective Summary that was due on Friday March 24<sup>th</sup>. Additionally, she completed a feedback form each week, including for the week of March 6-10, 2017, which she submitted in the early morning on March 11, 2017. Ms. Griffin testified that she did not include the incident with Child X in that feedback form. In fact, that feedback form included comments regarding classroom staff members, including that "I love the ladies I work with dearly" and "they are fostering correct ideals". Ms. Griffin testified that she felt that the purpose of the feedback form was to convey her overall impressions, while the Reflective Summary had categories for ideas. She worked on both the Reflective Summary and the feedback form at the same time during the early hours of March 11, 2017, and did not give thought as to which of the two documents in which to include the incident with Child X.

Ms. Griffin testified that she received feedback on her Reflective Summary from her faculty supervisor, Professor Cheryl Herder, which Ms. Griffin saw on Sunday March 26<sup>th</sup>. She and Professor Herder had a telephone conversation that day, and agreed to meet at Ms. Herder's office on Tuesday March 28<sup>th</sup>. Ms. Griffin believes she attended Norwood P.S. on March 27, 2017, though she was not certain.

On March 28, 2017, Ms. Griffin met with Professor Herder at Fleming College. Ms. Herder advised Ms. Griffin that she would have to make a report to the children's aid society and to the College and that her placement at Norwood P.S. would have to be terminated. At that meeting, with Professor Herder's assistance, Ms. Griffin prepared an email to send to Jeff White, Principal of Norwood PS, advising that she would be discontinuing her placement at Norwood P.S. effective that day and attaching a memorandum describing the incident with Child X. She also prepared, with Professor Herder's assistance, reports to the College and to the Kawartha-Haliburton Children's Aid Society ("CAS"). Ms. Griffin's report to CAS was initially made by telephone on March 28, 2019, and is reflected in a summary prepared by a CAS Case Worker and included in Exhibit 11.

Ms. Griffin testified that she had never considered that she might have a reporting obligation before meeting with Ms. Herder.

### **Testimony of Ms. Kate Griffin**

Ms. Kate Griffin testified that Ms. Griffin called her from Norwood PS on the day of the incident with Child X. Ms. Griffin described the incident to her mother, and was very upset by what she had observed. Ms. Griffin testified that as a parent, she could not believe that this had occurred. She told Ms. Griffin to relax and calm down, and that they would discuss it that evening. They spoke again that evening, both by phone and in person, and Ms. Kate Griffin suggested that Ms. Griffin report it to her teacher at Fleming College, or include it in a document she would submit to the program.

### **Testimony of Cheryl Herder**

Professor Cheryl Herder testified that in March 2017, she served as Program Coordinator and faculty member in the ECE program at Fleming College, and in that capacity she would work alongside the faculty team, discussing the curriculum and courses, and deal with students. She would work with placement coordinators to help place ECE students in childcare and kindergarten settings. Ms. Herder was Ms. Griffin's Fleming College evaluator, and in that capacity she would make contact with the host educator (i.e. the Member) regarding her placement. Prior to receiving Ms. Griffin's Reflective Summary on March 25, 2017, she had no concerns regarding Ms. Griffin or her placement at Norwood PS.

Ms. Herder advised that Ms. Griffin had entered the Fleming College program in September 2014, and had taken a year off in 2016, returning in January 2017.

Ms. Herder testified that the feedback form was to be submitted by students in weeks 2, 4 and 7 of their placement for self-evaluative purposes. Students were to document their successes, accomplishments and challenges, and to create and track progress towards goals. The Reflective Summary was for students to reflect on what they have been taught about learning environments, relationships and curriculum presentation and how these are translating into practice.

Ms. Griffin received a good mid-term evaluation from the Member. Although there was room for growth, it reflected Ms. Griffin's transition from a childcare placement to a kindergarten placement.

Ms. Herder reviewed Ms. Griffin's Reflective Summary on March 25, 2017 in the evening. Upon reviewing Ms. Griffin's description of the incident with Child X, Ms. Herder prepared a feedback note to Ms. Griffin, which she sent electronically, in which she commented that she was "aghast" and that the Member's conduct towards the child was "highly inappropriate". She felt that Ms. Griffin was right to be concerned. Ms. Herder stated that she could not see any reason why this would be an appropriate form of behaviour guidance for a child not getting dressed in time to go outside.

Ms. Herder called Ms. Griffin at home on the weekend and told her they had to meet, in order that Ms. Herder could obtain further clarification about the event. Ms. Herder noted that Ms. Griffin was crying on the phone when speaking with her. They arranged to meet the following Tuesday, March 28<sup>th</sup>. At that meeting, in Ms. Herder's office, Ms. Griffin relayed the details of the incident to her. Ms. Herder then reviewed the relevant legislative provisions from the *Child and Family Services Act* (the "CFSA"), the *Early Childhood Educators Act* and the Professional Misconduct Regulation, and discussed with her the need to make a report to CAS. Ms. Herder then sat with Ms. Griffin and walked her through the steps to making a report. She began by calling CAS to seek advice on the reporting process, and learned that both she and Ms. Griffin were required to make reports. Ms. Griffin then called CAS to report the incident, with Ms. Herder sitting beside her. Ms. Herder made her own call separately. Ms. Herder then sat with Ms. Griffin as she prepared an email to Mr. White, in which she described the incident, her reporting obligation, and that she would be discontinuing her placement at Norwood PS. Ms. Herder testified that she pointed out relevant legislative provisions to Ms. Griffin, but that the email was prepared by Ms. Griffin. Ms. Herder noted that Ms. Griffin was quite traumatized about the incident overall and was concerned about how the complaint she was making would impact her placement.

### **Testimony of Jennifer Rodman**

Jennifer Rodman was a Supervisor at CAS and gave evidence regarding the CAS investigation into the incident reported to CAS by Ms. Griffin and Ms. Herder. Ms. Rodman testified that Laura

Rouse, a CAS case worker took the intake call from Ms. Griffin and Ms. Herder, and that another worker, Jesse Carter, was responsible for the investigation of the concerns. Ms. Carter was unable to attend the hearing to give evidence herself. Ms. Rodman's evidence was based on her review of the investigation file.

Ms. Rodman confirmed that the CAS file was opened upon receipt of Ms. Griffin's call on March 28, 2017, and that the investigation was classified as an institutional / community caregiver investigation. The intake case note indicated that the investigation was into an allegation of harm by omission – neglect of basic physical needs – risk that the child is likely to be harmed or become ill. Institutional investigations typically require a series of steps, including interviews with the victim, staff witness, child witnesses, the facility administrator, a supervisor of the perpetrator and the perpetrator themselves, and examining physical layout of setting. At the conclusion of these steps, the case worker makes a verification decision. Ms. Rodman stated that CAS's role in an investigation is to determine whether the child is in need of protection, as defined in the CFSA, and whether the concern is verified; CAS's mandate does not include determining whether a professional, such as an RECE, engaged in professional misconduct.

In this case, Ms. Carter interviewed Ms. Griffin, Ms. Herder, Ms. Elder, Mr. White, and Child X's mother. Ms. Carter contacted Ms. McMillan, but she declined to be interviewed, on the advice of her union representative. Ms. Carter also attempted to engage Child X, and noted that he did not appear upset and that she was not able to obtain any disclosure from him to verify or not verify concerns. Ms. Carter ultimately made the decision not to verify the allegation, based on the balance of probabilities standard. This investigation was completed and the verification decision made within 48 hours, although the documentation was not completed until later. The reasons given for not verifying the allegation through investigation included that: no disclosure was made by the child involved or their parent; the two staff members who were in the room where the incident is alleged to have occurred denied the allegations and gave the same, strikingly similar explanation of practices in classroom; and there were discrepancies between what Ms. Griffin documented and what she stated to the investigator in a follow up telephone conversation, including with respect to whether Child X was the first child outside or the other children were outside first, and when the Member threw items out the door. Ms. Rodman also noted that Ms. Griffin did not volunteer that Ms. Elder was a third adult witness in the classroom, but later confirmed that she was there as well. Ms. Rodman acknowledged, however, that none of the witnesses interviewed mentioned Ms. Elder until Ms. Carter asked about other adults

present, and that Ms. Griffin's reflective essay, which she reviewed, could be read as consistent with what Ms. Griffin reported, although Ms. Rodman did not read it that way.

Ms. Carter reviewed the case with Ms. Rodman for supervision, and Ms. Rodman supported her decision to close the case without verifying the allegation.

Ms. Rodman confirmed that there was a protocol between CAS and Kawartha Pineridge District School Board (the "Board"), of which Norwood PS was part, the *Child Protection Protocol for Reporting Allegations Against Board Employees* (the "Protocol"), included in the Joint Book of Documents (Exhibit 11). Ms. Rodman stated that the purpose of this protocol was to map out relationships between services at different points of intersection, and how CAS works with boards with respect to children in care and other services, to reduce conflict, increase problem solving and provide better quality service. The Protocol provides that where a report is made to CAS regarding a staff member of a school board, the staff member is to advise the school principal or supervisor about the report and CAS will direct the principal about how and when to inform the perpetrator. The Protocol also provides that CAS will direct the principal regarding notification of the staff involved, and that the principal shall not discuss or interview other parties except as directed by CAS. This is for preservation of evidence, and to reduce the possibility of contagion and discussion regarding the CAS investigation, in order to keep the investigation as objective as possible.

Ms. Rodman stated that by the time Ms. Carter contacted Mr. White, he had been made aware of the concerns and had already had a discussion about it with the kindergarten team. Ms. Rodman indicated that this was likely not in accordance with the Protocol. Ms. Carter advised Mr. White that it was necessary that the Member and Ms. McMillan be removed from the classroom to preserve the integrity of the investigation.

### **The Member's Case**

The Member gave evidence at the hearing, and called three (3) witnesses to give evidence. Their evidence is summarized below:

## **Testimony of the Member**

The Member, Amy Lynn Elizabeth Smith testified that she was an RECE, having worked with the Board for nine years and at Norwood PS for five years. For two years prior to March 2017, she was the RECE assigned to Ms. McMillan's kindergarten class. In 2017, Ms. Elder was an educational assistant (EA) assigned to the kindergarten class, but would mostly work with one child, Child Y, who was on the autism spectrum.

The Member's daily routine was as follows: she would arrive at school between 7:30 and 7:40 a.m. and prepare for the day's activities in the classroom; she would prepare and serve breakfast in the school's breakfast program from 8:00 to 8:35; and the children would come into the classroom when the bell rang at 8:55. The routine in the classroom was that the Member would review mail and notes from home while the children did jobs, followed by free play, tidying up, a morning circle, and a mini-lesson, before the children were dismissed to get ready for snack. During this time, the children would go to their cubbies, get their snow pants on (in winter), and then sit down and eat when O Canada and the bell signaled that it was time to eat. After snack, the children would start getting ready for recess. The expectation was that children would put their snow pants and boots on, and they would always all do this at the same time. At 10:35 a.m., the Member would leave for her break, going to the washroom and then to the staff room to eat her lunch. During her placement, Ms. Griffin was on the same schedule as the Member and would sometimes go with her during this 40 minute break. After this break, the children would come in for additional instructional time, before the afternoon break at 12:55.

The Member testified that her schedule and break times are the same every day. Ms. Elder would have breaks during instructional time, and would go outside during recess.

The Member had supervised ECE students before Ms. Griffin. She found Ms. Griffin to be meeting expectations in most areas, and although she needed a few reminders and some encouragement, the Member felt that Ms. Griffin would exceed expectations in all areas by the conclusion of her placement. She delivered constructive criticism to Ms. Griffin on one occasion where Ms. Griffin had picked up a child in the classroom during the first weeks of her placement, and encouraged her to find a stern, deep voice to help with classroom management. In relation to the written review she completed, the Member recalls discussing it with Ms. Griffin before it was submitted.

The Member described Child X, whom she had taught for two years, as “spunky”, energetic, intelligent, sweet, and adorable, but also as very stubborn. She noted that in 2017 his speech was delayed, making him difficult to understand, and that he would sometimes just grunt and point. Child X did not enjoy putting on winter clothing but did not like being cold. He could put on his own clothing, but required prompting to do so. He took part in class routines, and was required to put his snow pants on before he ate his snack.

The Member has no recollection of any incident like the one Ms. Griffin alleged. She stated that she did not throw Child X’s clothes outside, lead him outside in only his jeans, socks and indoor clothing, or leave him outside crying. The Member has no recollection of Ms. Griffin bringing Child X inside to get dressed, nor of anything extraordinary happening on the days before March break.

The Member stated that when Child X was not getting dressed, she would encourage him to do so. Although the Member did not recall this occurring specifically on March 9, 2017, she stated that she and Ms. McMillan had a technique, which they used in these circumstances about once per week. They would push the classroom door open so that cold air would waft in, to help Child X make the connection that it was cold and that he had to get dressed. When the door was opened, it would close slowly on its own.

The Member stated that she never discussed the incident with Ms. McMillan, whom she viewed like a mother. She also stated that she had a friendly, collegial relationship with Mr. White.

On March 29, 2017, the day of the CAS investigation, the Member recalls getting a message from Ms. Griffin saying that she would not be in that day. She agreed that although Mr. White received Ms. Griffin’s email describing the incident with Child X (at 2.38 p.m. on March 28<sup>th</sup>), he did not raise it with her until the morning of March 29<sup>th</sup>. Mr. White spoke with the Member about the incident during the morning of March 29<sup>th</sup>. Mr. White told her that he had received a message from Ms. Griffin and asked if she knew about it. The Member said she did not. At that time, the Member explained the approach of opening the door to the outside to let the cold air in. She stated that she was not aware of the Protocol or of a CAS investigation at that time. She also likely told Mr. White about her evaluation of Ms. Griffin. The Member then continued with her daily routine, until Mr. White returned and sent the Member home.

The Member insisted that she did not discuss the incident with Ms. McMillan or Ms. Elder, even prior to being removed from the classroom or warned not to discuss the incident. When at home, she received a call from CAS advising her not to return to work or speak to Ms. McMillan until she was told otherwise. She went with her union representative to CAS offices and spoke with Ms. Carter. Later that week, on March 30<sup>th</sup>, Ms. Carter and Mr. White both called and told her that she could return to work.

The Member testified that she and her union representative had a debrief meeting with Mr. White, during which they discussed the allegation and what it meant to the school family and to the Member. Mr. White offered her coaching, reminding her that it was okay to ask for help or extra support if this was needed, since the Member is “a helper” who does not often ask for help. They discussed strategies the Member could employ to continue to encourage students to get dressed, recognizing the challenge of getting all of the 25 children, some with behavioral issues, ready to go out for recess. Mr. White encouraged the Member to use a visual schedule with clothespins to support Child X as well as others, and to slow down, further reflect and think through strategies to better support students to be successful. Mr. White concluded the meeting by saying as a follow up and reminder, that the Member should feel comfortable asking for support to prevent a situation like this from reoccurring.

The Member was notified on June 8, 2017 of a public complaint to the College relating to this incident. In her response, submitted July 7, 2017, she acknowledged the complaint that was filed with CAS and brought to her supervisor and the school board’s attention, and provided a description of how she would open the classroom door to cue Child X to get dressed in winter clothing on his own. In her response to the complaint, the Member stated that “looking back now there should have been some communication and debrief for all involved.” She stated that she was referring to the CAS investigation, and her regret that she and Ms. McMillan did not have a discussion about this with Child X’s family.

In cross-examination with respect to the meeting with Mr. White, the Member agreed that she occasionally became frustrated. In cross-examination with respect to her response to the College complaint, the Member agreed that she referred to the incident on March 9<sup>th</sup> as a misunderstanding, and that she was describing a distinct incident, rather than a general practice

of opening doors. However, the Member did not agree that she led Child X outside, gave him his clothes and shut the door, or that she put Child X outside in part out of frustration.

### **Testimony of Ann McMillan**

Ms. McMillan gave similar evidence to that of the Member with respect to her role as kindergarten teacher at Norwood PS and with respect to the classroom routine. She stated that she supervises the dismissal of students for morning recess, then drives away from the school to smoke, returning by 11.05 a.m. Ms. McMillan described Child X and the technique described by the Member to cue him to put on his winter clothing. Ms. McMillan did not recall anything unusual occurring during the week prior to March Break 2017, and was sure that the Member did not speak harshly to Child X, throw his clothing outside, or lead him outside without winter clothing. She also stated that she did not observe Ms. Griffin going outside to help Child X get dressed. Ms. McMillan stated that Child X cried very loudly, and that if he was outside the classroom door crying, both she and Ms. Elder would have heard him. Ms. McMillan stated that even though she leaves the school property to smoke during morning recess, she would have been leaving as the children were being dismissed and would have seen Child X if he was outside crying at that time.

She stated that if Child X was standing outside crying on a winter day without his winter clothing, she would have gone outside and brought him in. She could not conceive of this lasting for 3-5 minutes. Ms. McMillan could not imagine the Member would ever have been so frustrated as to do this, and stated that she and the Member had a practice of saying “you’re it” to the other if one was getting too frustrated, to ensure things did not escalate.

Ms. McMillan stated that she first became aware of the incident when Mr. White spoke to her when their class was doing an outdoor activity, said he had to speak to her, and asked if she recalled a time where a child’s clothes were put outside and the child was put outside to get dressed. Ms. McMillan said no, and assumed Mr. White was asking about her. She was then told to send the Member to speak with him and to return to her class. Later, Mr. White told both her and the Member to leave. That is when she first learned of the CAS investigation, and she was told not to discuss the incident with anyone. Prior to that, Ms. McMillan and the Member had been busy with their class and had not had any opportunity to discuss the incident being investigated; thereafter, she did not discuss the incident with the Member or Mr. White, because

she was cautioned not to. Following the conclusion of the CAS investigation, Ms. McMillan never discussed the incident with the Member, because they would have been too emotional to manage their classroom. Ms. McMillan did not participate in any debrief meeting, and although they discussed strategies for improvements, they never discussed the allegation respecting Child X or the CAS investigation regarding same.

Ms. McMillan agreed that if the incident occurred as Ms. Griffin described it, it would be a completely inappropriate way to treat a child and it would have been completely inappropriate for her and Ms. Elder to stand by and not intervene. Ms. McMillan also agreed that she was like a mother or mentor to the Member, and that when she was told by Mr. White that he wanted to speak to the Member about the incident Ms. Griffin described, it was possible that he was investigating the Member. However, she knew that the truth had to come out and that talking to the Member at that time would have been “stupid”.

### **Testimony of Julie Elder**

Ms. Elder testified that she was an EA who worked with disabled and mentally and physically challenged children. She had worked for several school boards, and for five months in 2017 was placed at Norwood PS. Ms. Elder was assigned to Child Y.

Ms. Elder had met the Member during a previous placement, but did not know her socially before this placement, and she and the Member are not friends today but would talk if they see each other and may communicate by text.

Ms. Elder provided a similar summary of the classroom routines to that provided by Ms. McMillan and the Member. She stated that the Member was consistent about taking her morning break, and she does not recall the Member ever not taking her break.

Ms. Elder stated that the staff were consistent in trying to get the children dressed before they had morning snack, and would hold back Child X's snack until he dressed himself, which he was capable of doing. Child X was prone to meltdowns, during which he would be loud and not understandable. Ms. Elder stated that they used visual cues with both Child X and Child Y, and that she, Ms. McMillan and the Member all used the technique of opening the classroom door to show Child X that it was cold, to cue him to put on snow pants.

Ms. Elder did not recall anything unusual occurring during the week prior to March Break, 2017, and does not recall observing the Member raise her voice, place Child X outside without winter clothing, throw Child X's clothing outside, or leave him outside crying. She stated that even if she were working with Child Y, to whom she was assigned, she would have heard and seen Child X crying as she would have been just a few feet away. If she observed a staff member place a child outside without winter clothing, she would have gone out to help him get dressed and then raise the issue with someone "higher up" like the teacher or principal.

On the day of the CAS investigation, Ms. Elder initially thought that something had happened to a family member of the Member, as the Member was teary eyed and red faced, and simply said she needed to go home. Ms. Elder assumed Ms. McMillan was driving her. Ms. Elder remained in the classroom, and another teacher came in. Later that day, Mr. White asked her to speak to him and told her of the allegations. Ms. Elder agreed to speak to CAS and to write up a summary of her observations. Ms. Elder never discussed the incident with Ms. McMillan or the Member.

### **Testimony of Jeffrey White**

Mr. White attended to give evidence pursuant to a summons. He was principal at Norwood PS at the time of the events at issue. Mr. White met the Member when they both worked at another school within the Board, and met again when the Member was hired (by someone else) as an RECE at Norwood PS during the second or third year of his five year tenure there. Mr. White felt that the Member was very strong in her role as an ECE, and that she worked well with her teaching partner Ms. McMillan. Mr. White commended the Member's commitment to excellence and continuous improvement in the kindergarten program and to her extra-curricular activities such as the breakfast program and cross-country teams.

Mr. White had no concerns about the Member's behaviour or conduct, although he had minor concerns with her use of sarcasm. Mr. White felt that this feedback did not rise to the level of discipline. He had never heard the Member use harsh or abusive language.

When Mr. White received Ms. Griffin's email at 2:38 p.m. on March 28, 2017, he was likely at his desk. As he had an appointment at 4:00 that day, for which he likely left around 3 or 3:15 p.m.,

Mr. White speculates that he likely did not read the email in its entirety at that time. Upon reading it, Mr. White's plan would have been to speak with the kindergarten team about the concerns, though he would not have called anyone at home as he considered that family time. Mr. White testified that his first reaction was not to disbelieve the allegations or to take immediate action, but to find out what happened. As there are always two sides to a story, Mr. White would have wanted to hear from the staff. Mr. White did call the school superintendent to apprise him of the situation.

Mr. White spoke with Ms. McMillan first, and then with Ms. McMillan and the Member. Based on the documents in evidence, Mr. White believes that he would have spoken with the Member and Ms. McMillan at around 8:55 a.m., before the first instructional period, or during that period. He then sent them back to their class.

Mr. White stated that he did not appreciate at that time that a CAS investigation was pending, although he acknowledged Ms. Griffin's reference to section 72 of the CFSA in her email, and was aware of that section's reporting obligation. Mr. White was aware of the Protocol but deferred to the Board's HR staff in this regard. He may not have appreciated the effect of the Protocol when he interviewed Ms. McMillan and the Member, which was contrary to the Protocol.

Mr. White stated that he wore multiple hats, including that of principal, supervisor, advocate, parent and others. His priority was to find out what was going on, and to consult with the Board's human resources team, as he does not deal with CAS investigations on a day to day basis.

Mr. White then spoke with Ms. Carter at CAS. He provided addresses for the Member and Ms. McMillan, and informed Ms. Carter that they had explained the technique of opening the classroom door. Mr. White also noted that there had been no complaint by the parent, that the Child X had very limited speech, and that the incident had occurred three weeks earlier.

When CAS called, they directed Mr. White to send the Member and Ms. McMillan home because of a safety risk. Recognizing that the incident was alleged to have occurred three weeks earlier, and that he had worked with the Member for two or 2½ years, Mr. White disagreed with this assessment and challenged CAS on whether there was truly a safety risk,

but after CAS pushed back, in consultation with his superintendent and the Board's HR staff, he agreed to send the Member and Ms. McMillan home. They were clearly upset and in disbelief at the accusations made. The Member said that the events alleged did not happen. Mr. White cautioned them not to discuss the incident with anyone.

On March 31, 2017 he spoke with Ms. Elder and asked her to record her summary of events.

Mr. White stated that upon conclusion of the CAS investigation, the school board did its own investigation. He was provided with a script, and the Member and Ms. McMillan and their union reps would have been in attendance. Mr. White asked the Member whether she threw Child X's clothes outside, and the Member denied this. Mr. White then asked her to help him understand why this may have been reported, but the Member did not provide an explanation at this point. Mr. White asked the Member whether she thinks she handled the incident appropriately. The Member responded that with students like Child X, it takes a lot of patience, as he is frustrating and difficult to deal with. Mr. White then discussed the use of a visual schedule and steps the Member could take, and stated that the Member needed to slow down, think things through and to reflect more. Mr. White did not agree that this reflected that the Member was rushing and not thinking things through.

Following that investigation, Mr. White sent the Member a follow up letter, which served as a reflective tool. This confirmed Mr. White's advice regarding use of tone of voice when dealing with children, and the use of visual tools to cue students. Mr. White confirmed, however that the Member stated that she did not put the student outside, and that this letter was not a disciplinary tool.

## **SUBMISSIONS OF THE COLLEGE**

Counsel for the College presented a description of the facts of the case, substantially consistent with the Statement of Allegations. The facts relate principally to an event that occurred on or about March 8 or 9, 2017 involving the Member and Child X. This account, which was based substantially on information provided by Ms. Griffin, was as follows:

As the time for going outside for morning recess approached on this day, Child X was having difficulty putting on the outdoor clothing required for a cold and snowy day. Child X was among the youngest children in the class and possessed limited verbal skills. The Member gathered Child X's winter clothing and boots and threw them outside. She guided Child X outside, and left him outside wearing only a t-shirt, jeans and socks. While other children prepared for recess, Child X remained outside for two to five minutes. He was crying and extremely upset. Ms. Griffin could see Child X from inside the classroom, and went outside to help him put on his winter clothing and boots.

Ms. Griffin was shocked by the incident, but was unsure how to respond. In the time following the incident she spoke by phone with her mother, who suggested that the incident be reported to Ms. Griffin's academic supervisor. On March 25, 2017, Ms. Griffin submitted a Reflective Summary to her academic supervisor, Professor Herder, which contained a description of the incident. Professor Herder contacted Ms. Griffin on the weekend to follow up on the incident, and they arranged to meet two days later.

As a result of this meeting with Professor Herder three communications were initiated:

- The incident was reported to CAS;
- Ms. Griffin informed Ms. Smith's principal of her decision to terminate her placement; and
- A complaint was submitted to the College.

The College submitted that the school's actions were inconsistent with the Protocol. Specifically, Mr. White, principal of the school involved, discussed the matter with school staff prior to the interviews conducted by CAS. The College submitted that there was significant opportunity for witnesses to coordinate their accounts to the benefit of the Member.

The College also provided examples of inconsistency in the accounts of the Member, specifically on the question of whether there had been an incident of any kind with Child X on the day in question.

The College made submissions on a range of legal issues relating to the case, which are outlined below:

*Standard of Proof* – The College noted that the standard of proof for professional discipline is well established by case law. The College is required to prove its case, and must do so on a balance of probabilities, rather than a criminal standard of proof beyond a reasonable doubt. This has been established by the courts to mean that the Panel would be required to conclude that it is more likely than not that the events occurred as described in the Statement of Allegations as set out in the Notice of Hearing, or must dismiss the allegations.

*Assessing Credibility and Reliability* – The College cited case law that should guide the Panel in assessing the credibility and reliability of witness testimony, and emphasized that these are two distinct attributes. The courts have provided detailed guidance on how the Panel should consider credibility and reliability. The College reviewed these criteria.

*CAS Verification* – The College argued that the Panel must not rely on the CAS’s decision not to verify the complaint in reaching its conclusion about professional misconduct. The CAS investigation is not intended to assess professional discipline matters, and its procedures and processes are distinct from the College’s discipline process. Case law was cited to establish that the assessment by a CAS must not be determinative in other legal proceedings. Previous discipline proceedings at the CECE and other professional colleges have reached the same conclusion.

*Civil Standards of Negligence Do Not Apply* – The College cited case law in arguing that the principles associated with a civil proceeding of negligence must not be applied in a proceeding related to professional discipline.

*The Admissibility of Hearsay Evidence* – The College submission contained a rebuttal to the concerns of the Member that the College’s case relied on hearsay evidence. The College emphasized that it is appropriate for the Panel to consider out-of-court statements in its review of the evidence. There is no presumption that hearsay evidence is inadmissible – administrative tribunals such as the Discipline Committee are required to apply standards of evidence under the *Statutory Powers Procedure Act*, which are not as onerous as standards of evidence required in court proceedings. Case law was cited in support of the Panel’s authority to consider evidence that would not be admissible in court. This obliges the Panel to use its discretion in considering the admissibility of hearsay evidence. The Panel should determine the weight to give to hearsay evidence. In reaching this conclusion, the College argued that a range of factors

may be considered, including whether the statement was made spontaneously and without suggestion, and the person's motivation in making that statement. Statements made to Ms. Griffin's mother and academic advisor, for example, may be admitted and relied upon by the Panel in reaching its conclusion.

## **SUBMISSIONS OF MEMBER**

Through counsel, the Member submitted that there was no incident during the week of March 6, 2017, as described in the Notice of Hearing, and that the version of events put forward by Ms. Griffin has not been shown to have occurred on a balance of probabilities.

The Member offered the following reasons why the Panel should reach this conclusion:

*Absence of corroborating eyewitnesses* – The Member argued that it is highly unlikely that the Member's colleagues would have observed Child X underdressed and crying outside and would have failed to intervene. The Member's colleagues in the classroom did not corroborate the testimony of Ms. Griffin that Child X was outdoors without winter clothing, and extremely upset. Rather, the evidence of Ms. McMillan and Ms. Elder was consistent with that of the Member and was unwavering in the assertion that no incident as described by Ms. Griffin had occurred.

*Inconsistent testimony of Ms. Griffin* – The Member identified details in Ms. Griffin's account that had changed over time. In particular, the incident was initially alleged to have occurred on March 10, a date when the students were not in school. March 8 was also identified as a potential date, but Ms. Griffin testified that it was almost certainly Thursday March 9. The Member argued that the date "is not a peripheral issue." The Member also argued that there were inconsistent accounts about the length of time that Child X was outside without appropriate winter clothing – ranging from three to five minutes to a concession in cross examination that the length of time could not have been five minutes.

*Timing of the incident* – The Member argued that Ms. Griffin's account of the timing of the incident – and her identification of the school personnel in the room at the time – is rendered implausible by staff schedules. The Member argued that the schedule of the Member's break, coupled with the consistent practice of Ms. McMillan's schedule, make it practically impossible for the event to have occurred when it was alleged and for both the Member and Ms. McMillan

to have been in attendance. Case law was presented by the Member to support the admissibility of evidence respecting the staff members' professional routines and the utility of same.

*Timing of the report* – The Member asserted that the timing of the written report made by Ms. Griffin undermines the reliability and credibility of this account. Ms. Griffin was advised by her mother to submit a written description of the incident to her academic supervisor. Yet Ms. Griffin completed a feedback form on March 11, 2017, just a day and a half after the event was said to have occurred, without mention of the incident. Further, Ms. Griffin included in her feedback form statements about the other staff in the room, such as "I love the ladies I work with dearly" and "they are fostering correct ideals", that were inconsistent with having just seen one of them abuse a child. Instead, the account was provided in the Reflective Summary that was submitted approximately 15 days following the alleged incident. The Member argued that the time lapse between the incident and its reporting is inconsistent with the impact that the incident is alleged to have had on Ms. Griffin.

*Role of Professor Herder* – Ms. Griffin's description of the incident became the basis of a written account to the school principal, the CAS, and to the College. These reports were made by Ms. Griffin with some guidance from Ms. Griffin's supervisor, Professor Herder. The Member submitted that it was highly likely that Professor Herder "was involved in bolstering Ms. Griffin's three communications regarding the alleged incident". As a result, the accounts developed collaboratively by Ms. Griffin and Professor Herder should be "treated with caution."

*No evidence of collusion* – The College asserted in its submission that the key eyewitnesses had the opportunity to coordinate their accounts of the incident. The Member argued that there was no evidence of any collusion among the professionals involved in the investigation of the alleged incident. Further, the Member noted that ECEs are required by the College to have strong effective professional relationships with their peers, and that existence of strong professional relationships should not be used to suggest collusion in investigative matters.

## **DECISION ON THE ALLEGATIONS**

The Panel finds that the Member is not guilty of professional misconduct, as outlined in the Notice of Hearing, on the basis that the College did not establish, on a balance of probabilities, that she committed the acts of misconduct alleged.

## **REASONS FOR DECISION**

It is the College's task to prove the allegations of misconduct to the requisite standard through evidence that is clear, cogent and convincing. The College alleges that on or about March 8 or 9, 2017, Ms. Smith spoke harshly to Child X, threw Child X's clothes outside, and left Child X outside crying for three to five minutes. The Panel's conclusion is that an event likely occurred, likely on March 9, 2017, and that it involved the Member and Child X. However, the Panel's review of the evidence led it to conclude that the incident likely did not occur in a manner sufficiently consistent with the Statement of Allegations included in the Notice of Hearing to justify a finding of professional misconduct. In other words, the College did not prove that the Member engaged in the acts of professional misconduct alleged. We reached this conclusion for the reasons that follow.

### **Credibility Assessments**

The Panel received recommendations from the parties as to how to consider evidence, including with respect to assessing the credibility and reliability of each witness. Clearly, this is particularly important in cases such as this in which there is conflicting testimony from witnesses. The advice the Panel received from its independent legal counsel was based on the Divisional Court's decision in *Stefanov v. College of Massage Therapists of Ontario*<sup>1</sup>, which outlines the factors that courts and tribunals are to consider in assessing witnesses' credibility. These are as follows:

- a. The extent of the witness's opportunity to observe that to which he or she testified;
- b. Common sense and the probability or improbability of the witness' version of events;

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<sup>1</sup> [2016 ONSC 848 \(CanLII\)](#).

- c. Whether the witness' statements were consistent or inconsistent with any other evidence in the case (i.e. that of other witnesses or documents), noting that in cases of inconsistency the significance of the inconsistency should be assessed;
- d. Whether the witness was forthright in his or her evidence;
- e. Whether the witness has an interest in the outcome of the case;
- f. The appearance or demeanour of the witness;
- g. Whether the witness's evidence was contradicted by that of another witness; and
- h. Whether the witness previously gave a statement that was inconsistent with what he or she said in evidence.

Both the College and the Member made submissions to similar effect, citing *Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services*, [1985] O.J.No. 2578 (Div. Ct.) at para. 33. The Panel considered all of these factors when assessing the credibility of each witness, but set out in these reasons only those factors applicable to each witness.

#### Credibility of Carly Griffin

*The Witness's Ability to Observe and Recall* – The Panel is of the view that Ms. Griffin was clearly in a position to observe the alleged incident, as she was present in the room when the event is alleged to have occurred. However the Panel was obliged to consider what might have interfered with her opportunity to observe and accurately recount the specific details of the alleged incident. The Panel identified factors that influenced her capacity to accurately and reliably recount the details of the incident: the delay of over two weeks in reporting the incident; Ms. Griffin's unfamiliarity with a new educational milieu; her perception that children were being treated in a manner that was unduly strict, and her emotional response to this perception; and her relatively recent immersion in the routines and practices of a kindergarten classroom.

*Whether the Witness's Evidence Accords with Common Sense and is Plausible/Reasonable* – The Panel considered whether Ms. Griffin's explanation of the timing of her reporting accorded with common sense. The Panel heard reliable testimony that Ms. Griffin was emotionally impacted by the incident she observed, and her mother advised her to communicate her concerns to her professor. Common sense would suggest that Ms. Griffin would therefore report this incident at the first available opportunity. Yet the feedback form she submitted on March 11 made no mention of the incident. The Panel concluded that the length of time between the

incident and its formal reporting calls the reliability of Ms. Griffin's account of the incident into question. In addition, common sense would suggest that the incident be noted in the professional summary submitted by Carly Griffin on March 11<sup>th</sup>, which was in the days following the incident.

*Whether the Witness's Evidence Was Consistent with Other Evidence* – The Panel found that Ms. Griffin's testimony regarding several issues were consistent with that of other witnesses.

Ms. Griffin's evidence regarding the approximate time of the incident was consistent with the testimony provided by Ms. Kate Griffin on this point.

Ms. Griffin testified that she was emotionally affected by an incident that occurred with Ms. Smith and Child X. This was consistent with testimony offered by Ms. Kate Griffin (verifying Ms. Griffin's contemporaneous response) and Professor Cheryl Herder (confirming that Ms. Griffin continued feeling emotionally affected weeks later). Ms. Griffin also described a prior incident in which she picked up a child who had fallen, and the response of Ms. Smith to this incident. This account was consistent with testimony provided by Ms. Smith and Mr. White.

Ms. Griffin's account of who was in the room at the time of the incident was inconsistent with that of other witnesses. This was most apparent in the testimony provided by the Member, Ms. Elder and Ms. McMillan, who all maintained that the Member would not have been present in the room at the time described by Ms. Griffin. This account of the Member's absence was reinforced by information provided about the schedule of breaks.

Another inconsistency related to Ms. Griffin's understanding of the consequences of reporting her version of events to external authorities. Ms. Griffin testified that the content of her Reflective Summary was made without the knowledge that it would trigger a broader investigation by either the CAS or the College. Yet, Professor Herder testified that Carly Griffin was fully aware of the investigative processes that would necessarily result from providing her account of the incident, as this matter was taught clearly in her previous coursework as an early childhood education student.

There were additional inconsistencies in Ms. Griffin's evidence that the Panel did not consider to be of significance. Among these are the date of the incident, the precise length of time that Child

X was allegedly outside and distraught, and the precise time the Member would have gone on break. The precise time of the scheduled break did not play a significant role in the Panel's decision because:

- Ms. Elder testified that they began preparations for outside play prior to the Member's scheduled break of 10:30.
- There are circumstances that can require the adjustment of routines, and there was testimony that this was an atypical day, since March break was about to begin and the school was celebrating with an assembly.

The date of the incident did not play a significant role in the Panel's decision. The Panel learned that the Friday was a PD day, resulting in some confusion in retrospect about the date of the last working day in the week prior of March Break.

*Whether the Witness's Evidence was Internally Consistent* - Ms. Griffin's multiple accounts of the incident (contained in her initial reports to Ms. Herder and her mother, her Reflective Summary, her report to the CAS, Principal White and the College, her interview with CAS, and her testimony at the hearing) were consistent with each other, and the Panel concluded that they were substantively consistent. The Panel found, however, that different versions of the date and time of the incident were provided, and Ms. Griffin admitted that her previous description of the length of the incident might have been overstated as three to five minutes. However, the Panel was also not influenced by discrepancies in testimony about the precise length of the incident. Whether a particular distressing experience was three, four or five minutes in length is not particularly relevant.

*Whether the Witness was forthright in her Evidence* – The Panel found Ms. Griffin to be forthright in her testimony, and found that she recounted details with confidence. However, the Panel noted that the Member and each of her witnesses refuted Ms. Griffin's testimony about the incident, and provided an alternative account highlighting the established classroom practice for preparing Child X for outdoor play. The Panel also found no concerns about Ms. Griffin's honesty and did not accept the suggestion that there was any motive for Ms. Griffin to mislead, including to impress her professor, due to resentment about a performance review, or as a result of fundamental differences in approach to behavior management. The Panel did not find these suggestions to be compelling.

*Whether the Witness had an Interest in the Outcome* – The Panel does not believe that Carly Griffin has a vested interest in the outcome of this case. It is reasonable and plausible to conclude that something occurred that involved Ms. Smith and Child X. However, the Panel was unable to conclude that the details of the alleged incident as recounted by Ms. Griffin were sufficiently accurate to be reliable. Ms. Griffin’s version of events was refuted by multiple witnesses who – by Ms. Griffin’s account – were present for the incident. Further, these witnesses (Ms. McMillan and Ms. Elder, as well as the Member) provided a consistent account of classroom practices with Child X, which was plausible and reasonable.

*The Appearance and Demeanor of the Witness* – The Panel was cautioned that this criterion is unreliable on its own, and therefore did not put much emphasis on this factor, but noted that there was nothing in Ms. Griffin’s appearance or demeanour that caused the Panel to question her credibility.

*The Panel’s Conclusion on the Witness’s Credibility* – The Panel accepted that Ms. Griffin honestly presented evidence about what she now believes she observed with respect to the incident involving Child X. The Panel was unable to find, however, that Ms. Griffin’s account of the incident was sufficiently reliable because her unfamiliarity with a new educational milieu, her perception that children were being treated in a manner that was unduly strict, and her emotional response to this perception all impacted her perception of what transpired. Further, the delay in reporting impacted her ability to accurately recall what occurred.

#### Credibility of Ms. Kate Griffin

The Panel found Ms. Kate Griffin to be credible, and accepted her evidence with respect to the few defined matters peripheral to the event on which she gave evidence. The Panel found that Ms. Kate Griffin had nothing to gain or lose on the basis of the Panel’s decision, and that she was able to provide clear, plausible testimony on two specific matters: the emotional state of her daughter in the time immediately following the alleged incident and the approximate time of the alleged incident. She testified she received a phone call from Carly Griffin on the day of the incident between 10:00 am and 1:00 pm. She advised Carly Griffin that she should tell the teacher what had happened, and suggested that she formally document the incident. She also reported that Ms. Griffin had expressed concern prior to the alleged incident about the manner in which the classroom staff communicated with the children.

### Credibility of Cheryl Herder

The Panel found Professor Herder's evidence to be both credible and reliable. The Panel is of the view that Professor Herder has nothing to gain from the outcome of this case, and that her testimony appeared to be thoughtful and genuine. The Member contended that Professor Herder influenced the description of the incident, and may have inadvertently guided Ms. Griffin into exaggerating the details of the incident. The Panel does not accept this contention. The Panel concluded that Professor Herder provided appropriate guidance to Ms. Griffin in meeting her legal and ethical obligations to notify the principal and make a report to the CAS and the College. She may have assisted Carly Griffin in providing a complete account of her allegations, but the version of the incident delivered to authorities was largely consistent with the version presented in Ms. Griffin's Reflective Summary on the incident that was submitted to her professor. Professor Herder's response to the alleged incident reported to her was timely, and proportionate. She recognized the seriousness of the alleged incident, contacted Ms. Griffin immediately, advised that her placement be terminated, and proceeded to work with Ms. Griffin in making the appropriate reporting. Professor Herder's description of Ms. Griffin having been emotionally affected by the incident is consistent with testimony from both Ms. Griffin and Ms. Kate Griffin.

The Member suggested that Professor Herder had caused Ms. Griffin to embellish her report of the incident. The Panel concluded, however, that it is common sense that an educator would support a student in reporting a serious incident to the appropriate authorities, and plausible that a professor of early childhood education would recognize the ethical obligation to make a formal report on the alleged incident. As part of this obligation, she would have encouraged Ms. Griffin to include specific details in reporting the incident to the principal. Professor Herder's testimony about the timing of reports was consistent with Fleming College's Desire to Learn (D2L) document portal. Her account of reporting to CAS was supported by CPIN, the CAS client information system.

The Panel found that Professor Herder was thoughtful in her testimony, and accepted her acknowledgment that differences of interpretation could exist in documenting an incident that had taken place years earlier.

### Credibility of Jennifer Rodman

Ms. Rodman provided evidence with respect to the CAS investigation, which took place over two weeks following the alleged incident. Ms. Rodman was able to provide informed professional judgments on the documentation respecting the CAS investigation, the relevant child protection standards, and the Protocol. She had no independent recollection of the specific investigation, as she was a supervisor, and did not personally conduct the investigation.

The Panel is of the view that Ms. Rodman's evidence was plausible, reasonable and internally consistent. Ms. Rodman's presentation of reports and documentation was consistent with the testimony of other witnesses. The Panel accepted Ms. Rodman's evidence as both credible and reliable.

### Credibility of the Member

*The Witness's Ability to Observe and Recall* – The Panel considered the Member's evidence regarding a number of issues, but not with respect to the incident of which she was alleged to have been at the centre, as the Member denies that an incident occurred as described by Ms. Griffin. Rather, she suggests a misunderstanding may have occurred because of the practice of briefly opening the exterior door to motivate the children – including Child X – to dress appropriately for outdoor activity. Accordingly, there was no question with respect to the Member's opportunity to observe that to which she testified.

### *Whether the Witness's Evidence Accords with Common Sense and is Plausible/Reasonable* –

There were several elements of Ms. Smith's testimony that accorded with common sense:

- For children who present behavioural challenges, educators will have common strategies and well-developed routines to support transitions throughout the day. The Panel found that the strategy confirmed by multiple witnesses to prompt a non-verbal child to put on their outdoor clothes was reasonable, as a verbal instruction will generally not be as effective in describing weather to a child as a limited exposure to the elements.
- Classroom staff routines and schedules are generally followed and an orderly school typically depends on them. It does not surprise the Panel that a staff schedule would

generally be upheld. However this does not mean that a schedule cannot be deviated from in certain circumstances.

There was one significant component of the Member's evidence, however, that did not accord with common sense: the contention by the Member that she was notified about the CAS investigation but had no discussion whatsoever with colleagues strikes the panel as unlikely.

*Whether the Witness's Evidence Was Consistent with Other Evidence* – The Member's statements were for the most part consistent with the evidence of Ms. McMillan, Ms. Elder and Mr. White. The Member, Ms. McMillan, Ms. Griffin and Ms. Elder were at work on the day in question – this was consistent across everyone's testimony. Ms. Smith had worked with Ms. McMillan for five years in a kindergarten setting (three years prior to the incident in question), respected her greatly, and referred to her as 'Mom', indicating a close working relationship. The accounts of this relationship provided by Ms. Smith and Ms. McMillan were consistent.

The Member testified that Child X was a sweet child whose behaviour often presented challenges for educators, particularly when it came to putting on outdoor clothing. He had certain developmental delays, including very limited speech. He was required to follow the routine of putting his snow pants on before he sat down for his snack. The evidence of Ms. Elder and Ms. McLellan supported this testimony. The Member described how staff deployed a strategy of opening the outside door to prompt Child X to get dressed for outdoor play, which evidence was consistent with that of Ms. Elder and Ms. McLellan.

The Member described a previous incident in which Ms. Griffin picked up a child, and was informed by the Member that such conduct was not appropriate in a kindergarten class. She also delivered an evaluation on Ms. Griffin's performance that was generally positive, but included some areas for improvement. These contentions were supported by testimony from Ms. Griffin and Mr. White.

The Member provided testimony about the unusual nature of the school day when the incident is alleged to have occurred, as the school was celebrating the last day before March break with an entertaining assembly in which the Member and other teachers performed. Other witnesses supported this testimony.

*Whether the Witness's Evidence was Internally Consistent* – The Panel concluded that much of the Member's testimony was internally consistent. For example, the Member asserted that the classroom schedule was paramount, and there was reliable evidence to support her contention that she was not in the class at the time of the alleged incident. This was consistent with testimony offered by both Ms. McMillan and Ms. Elder.

However, the Member provided inconsistent testimony regarding the presence of Ms. Griffin in the classroom on March 27<sup>th</sup>. She initially stated that Ms. Griffin was present in the classroom on March 27<sup>th</sup>. But in cross-examination she confirmed receipt of a text from Ms. Griffin on the morning of March 27<sup>th</sup> stating she would not be working that day.

The Member also offered an inconsistent explanation of the need for a debrief after the incident – and indeed whether there had been any incident at all. In her testimony she claimed to have no recollection of any incident involving Child X and his preparation to go outside. Yet in cross examination she conceded that there was an incident of some kind, from which she had learned lessons about practicing as an ECE. Further, in the meeting with school officials to review what had happened, she and Principal White agreed that a situation had occurred, and discussed strategies to avoid any re-occurrence.

*Appearance and Demeanour, and Whether the Witness was forthright in her Evidence* – The Panel found that the Member was forthright in her evidence and was generally a strong witness who presented herself credibly as a hard-working professional who takes her responsibilities seriously, and is committed to ongoing learning. The Panel believes that the Member provided much information that was straightforward and trustworthy. There were some answers offered by Ms. Smith that suggested a memory about an important event that was more vague and non-committal than would have been expected. For example, when College counsel suggested that the close-knit kindergarten group would naturally have discussed the matter of the CAS investigation, she replied, “possibly.” When College counsel suggested that her desire for a post-event debrief demonstrates that there was, in fact, an incident of some of some kind, she replied “I guess.”

*Whether the Witness had an Interest in the Outcome* – Regarding whether the witness has an interest in the outcome of the case, the Panel noted that the Member's current professional standing and reputation with her colleagues – and the future career aspirations she described in her testimony – would be significantly impacted by a finding of professional misconduct.

The Member works in a small community to which she has strong ties (having grown up there and continuing to work on a family farm) and in which opportunities are limited, and accordingly a professional's reputation would be widely known in the community. The Panel found, therefore, that the Member had a significant interest in the outcome of the case, although that is the case with all members facing discipline allegations.

*The Panel's Conclusion on the Witness's Credibility* – The Panel ultimately determined that the Member was not entirely credible in her evidence respecting what transpired in the classroom with her and Child X and in the discussions with her colleagues thereafter. This was because of the Member's vague and non-committal answers (examples cited above) regarding whether an incident had occurred. The Panel determined that the Member's evidence may be relied upon to provide accurate information about classroom routines and schedules. However, as there exists some inconsistency in whether the practice of opening the door to prompt Child X to get ready for outdoor play was actually deployed on the day in question, and whether – if so – the Member would have been witness to or a participant in this act, the Panel did not find this evidence reliable.

#### Credibility of Anne McMillan

*The Witness's Ability to Observe and Recall* – Ann McMillan testified that she was in the classroom at the time of the alleged incident. Ms. McMillan claims no memory of the alleged incident, and that it did not happen. Because she claims that the day was otherwise unremarkable, her memory of specific events on the day in question is weak.

*Whether the Witness's Evidence Accords with Common Sense and is Plausible/Reasonable* – Ms. McMillan provided no testimony that the Panel assessed to be implausible or unreasonable. Ms. McMillan contended that she did not hear Child X crying, that she would have heard him crying, and she would have intervened in an incident such as described by Ms. Griffin. This seems to the Panel to be probable and in accordance with common sense.

*Whether the Witness's Evidence was Internally Consistent and Consistent with Other Evidence* – The Panel found there were no significant inconsistencies in her testimony. Ms. McMillan's description of the tactic of opening the door and allowing the cold air to prompt the children to dress for outdoor play was entirely consistent with testimony with that of the Member and mostly

consistent with that of Ms. Elder; the one inconsistency related to the timing at which this tactic was routinely deployed (10:35 according to Ms. McMillan; five to 10 minutes earlier, according to Ms. Elder).

*Whether the Witness was Forthright in her Evidence* – Ms. McMillan was an experienced kindergarten teacher. She testified to her presence in the classroom at the time of the alleged incident. Her testimony was consistent, forthright, and delivered in a confident, unwavering manner.

*Whether the Witness had an Interest in the Outcome* – It was the view of the Panel that Ms. McMillan has some interest in the outcome of the hearing that might have clouded her recollection or her evidence. Although she was unlikely to experience professional consequences of any significance due to the outcome of this hearing, as a professional who appears to take her responsibilities seriously, she likely would have a strong preference for a finding that no professional misconduct occurring in the classroom where she taught. Additionally, Ms. McMillan appeared to have a close professional relationship with Ms. Smith, and therefore has an interest in the outcome of the case.

*The Appearance and Demeanour of the Witness* – Ms. McMillan appeared to be exasperated by the requirement to participate in a legal process which she clearly felt to be unnecessary. However, the Panel assessed Ms. McMillan's demeanour to be authentic, and it did not raise any concerns about the accuracy of her testimony.

*The Panel's Conclusion on the Witness's Credibility* – The Panel ultimately found Ms. McMillan to be both credible and reliable in her testimony. Although she had an interest in the outcome of the case and an opportunity to discuss the investigation with the Member while it was ongoing, the Panel did not ultimately find that this hampered the credibility or reliability of Ms. McMillan as a witness.

#### Credibility of Julie Elder

Ms. Elder testified that she was present in the kindergarten room on the day of the incident. Ms. Elder was in a new role, in a new school. She was in the class for only a short period of time, and does not appear to have had a close or ongoing relationship with the Member or Ms.

McMillan. The Panel is therefore of the view that Ms. Elder has no interest in the outcome of the hearing that might cloud her recollection of the events. She has nothing to gain and the Panel felt her testimony revealed a strong personal and professional commitment to the well-being of children. Although Child X was not her primary focus, she was an experienced educational assistant supporting students with special needs. Ms. Elder had developed a strong relationship with Child X during her time in the class, and would support him throughout the day.

Ms. Elder's testimony was brief, and focused. There were no inconsistencies. Her description of Child X and the routine of getting partially dressed for outdoor play prior to snack was consistent with the testimony of other witnesses. However, her testimony about efforts to prepare children for outdoor play early suggests that the Member and Ms. McMillan would both have been in the room at the time of the alleged incident. Ms. Elder's assertion that no incident occurred is consistent with her CAS interview on March 31<sup>st</sup>, 2017. Her description of classroom routines (propping the door open and letting the cold air enter the classroom to motivate students to get dressed) was also consistent. Ms. Elder communicated clearly that she would have been in a position to have observed the incident described by Ms. Griffin, that she observed no such incident, and would have intervened in support of Child X if she witnessed such an event.

Ms. Elder appeared to have no particular interest in the outcome of the case, and she struck the Panel as being a forthright, convincing witness who places high priority on advocating for children. Her testimony was consistent with the information she provided to the CAS. The Panel found her testimony to be confidently delivered and that Ms. Elder's testimony was both credible and reliable.

#### Credibility of Jeffrey White

Jeffrey White testified that he was the principal at Norwood P.S. at the time of the incident and that he was not in the room at the time of the incident. The Panel does not rely on Mr. White's testimony regarding the incident, because he was not in the classroom at the time of the incident. Although Mr. White was not present for the incident, he had extensive notes about the event in his daybook, and this acted as a prompt for remembering the events in question. The principal is now at a different school. He has no particular stake in the outcome of the proceeding. While the College suggested that he had convened the kindergarten team to coordinate their responses to CAS – and noted that he failed to follow protocol regarding a CAS

investigation – the Panel heard no concrete evidence that such collusion had taken place. He referred consistently to his own notes, and his notes were consistent with the well-documented CAS investigation.

Mr. White reached his own conclusion that there was no risk to child safety related to the alleged incident described in Ms. Griffin's e-mail to him prior to the completion of the CAS investigation, and the Panel found this rush to judgement highly unsettling. However, there was no evidence presented to suggest that he believed that a serious incident with Child X had occurred.

The Panel is of the view that Mr. White's testimony was forthright. His responses were straightforward, and he acknowledged gaps in his understanding of the Protocol. Mr. White referred to contemporaneous notes as necessary to aid his memory, and his testimony was consistent with the documentation provided and the information he provided CAS. The Panel had no concerns about the credibility or reliability of this witness.

### **Conclusion on Findings**

Having made the credibility findings outlined above, the Panel then made the necessary factual findings to determine whether the College had proved its case to the requisite standard. The College alleges, based on Ms. Griffin's observations and complaint, that on March 9, 2017, the Member spoke harshly to Child X, threw Child X's outdoor clothes outside, and left Child X outside in only jeans, socks and a t-shirt, crying for three to five minutes. The parties were generally in agreement that if the Member had, in fact, engaged in this conduct it would have been highly inappropriate, and the Panel was of the view that this would constitute acts of professional misconduct as alleged by the College. The Panel's task, then, was to determine whether the College had proved, on a balance of probabilities, that the Member had engaged in this conduct.

### **Observations of Ms. Griffin**

The only evidence that this occurred was provided by Ms. Griffin, an ECE student on her first kindergarten student placement at the time of the alleged incident. While the Panel found Ms. Griffin's testimony about the occurrence of an incident with Child X to be compelling, there was no evidence to corroborate the specific details of the incident as described by Ms. Griffin. The

Panel sought this corroboration because there were three adults in the room who testified that this incident did not occur – and could not have occurred – as described by Ms. Griffin, and because there were elements of Ms. Griffin’s circumstances that may have affected her ability to fully and reliably recount all the details that she alleges occurred on March 9<sup>th</sup>. Among these factors are:

- *Ms. Griffin’s discomfort with kindergarten classroom structures and practices* – Ms. Griffin was beginning her final ECE student placement in a kindergarten class. She testified that she was not aware of the classroom routines, and she found the structures and practices in the classroom to be a new and surprising experience. She also appeared to be unaware of the practice of opening the outside door as a prompt used to motivate students to dress for outdoor play, while the Member, Ms. McMillan and Ms. Elder cited this practice as a commonly used strategy with Child X.
- *Ms. Griffin’s view of the Member as Harsh* – Ms. Griffin found the placement to be somewhat challenging because the teaching staff had an approach to the care of children that was not aligned with the more nurturing philosophy Ms. Griffin favoured, and which she had experienced in her previous placements within child care settings. Ms. Griffin found the approach of the educational staff to the children to be harsh. This was described in Ms. Griffin’s testimony, and supported by testimony from Ms. Katherine Griffin and Professor Herder about their conversations with Ms. Griffin. Ms. Griffin testified that she had been admonished by the Member for physically lifting a child who had fallen and was crying, which the Member and Principal White testified contravened school policy of not lifting children to comfort them. Ms. Griffin may therefore have been predisposed to view the Member’s actions with Child X in light of her assessment that the Member was generally harsh with the children. The Panel questions whether Ms. Griffin may have been too unsettled by her experience in the classroom to reliably assess what was occurring
- *Ms. Griffin’s Delay in Reporting the Incident* – There was an approximate two-week gap between the alleged incident and the reporting of the incident to her Professor, which was done in the context of the required Reflective Summary submitted on March 25<sup>th</sup>, rather than through any other more immediate means, such as the Feedback Form submitted on March 11<sup>th</sup>. Ms. Griffin did not raise the issue with the kindergarten staff when the incident occurred, or any time after. The Panel found that the absence of any

reference to the alleged incident in the Professional Summary submitted March 11<sup>th</sup> was unusual, and striking. Common sense would suggest that an incident that had made a significant impression on Ms. Griffin would have been reported at the first available opportunity.

Reporting by Ms. Griffin

Ms. Griffin first reported this incident to her mother, Ms. Kate Griffin, who gave evidence with respect to both the timing of Ms. Griffin's communication and Ms. Griffin's emotional state at the time. Ms. Kate Griffin corroborated Ms. Griffin's evidence regarding this conversation. She related the timing of the phone call to her work schedule, which allowed the Panel to conclude that Ms. Kate Griffin's account of the time of the incident was likely accurate.

The Panel heard evidence from Ms. Kate Griffin and from Professor Cheryl Herder that Ms. Griffin was emotionally affected by the incident, both contemporaneously and weeks later. The testimony about Ms. Griffin's emotional state led the Panel to accept that an incident had occurred, that a child had been treated in a manner Ms. Griffin assessed to be harsh, and that she was in a position to advocate for the child. Ms. Kate Griffin's testimony that there had been some tension between classroom staff and her daughter about the tone used with children was corroborated by both Ms. Griffin and Ms. Smith.

Ms. Griffin reported this to her academic supervisor for the placement, Professor Herder. However, she did so through a Reflective Summary submitted March 25, 2017, rather than through any more immediate means, such as the Feedback Form she completed and submitted electronically on March 11, 2017.

The Panel found that reporting this incident was an appropriate step, and Ms. Griffin's professor informed her of the duty to report this incident to child welfare authorities and to the College, and to communicate to Mr. White that she was discontinuing her placement. Given both the law and the public's strong interest in protecting children, both Ms. Griffin and Professor Herder were entirely justified in making their reports. The Panel would not want this ruling to be interpreted as a judgement on whether such incidents are worthy of reporting to regulatory authorities.

The Member contended that Professor Herder influenced the description of the incident, and may have inadvertently guided Ms. Griffin in exaggerating the details of the incident. The Panel does not accept this contention. The Panel concluded that Professor Herder provided appropriate guidance to Ms. Griffin in meeting her legal and ethical obligations to notify the principal and make a report to the CAS and the CECE. Professor Herder had nothing to gain from the outcome of this case, and her testimony appeared to be thoughtful and genuine. She may have assisted Ms. Griffin in providing a complete account of her allegations; but the version of the incident delivered to authorities was largely consistent with the version presented in Ms. Griffin's written reflection on the incident that was submitted to her professor.

#### *The Member's Evidence Regarding the Incident*

The Member's evidence was that the incident described by Ms. Griffin did not occur and that it could not have occurred as described, given classroom routines (all children were dressed in outdoor clothing before snack time) and schedules (the Member took her break prior to morning snack and Ms. McMillan left school property at recess). This account was corroborated by the evidence of Ms. McMillan and Ms. Elder. According to Ms. Griffin's evidence, both Ms. McMillan and Ms. Elder were present in the kindergarten room at the time of the incident, and presumably would have been aware that such an incident had occurred.

The Member suggests a misunderstanding may have occurred because of the practice of briefly opening the exterior door to motivate the children – including Child X – to dress appropriately for outdoor activity. Both Ms. McMillan and Ms. Elder corroborated this evidence, including the fact that this technique was used by all three classroom staff on a regular basis.

Ms. Griffin testified that although Ms. Elder was in the classroom during the incident, she was not sure whether Ms. Elder would have been aware of the incident as described by Ms. Griffin, due to her intensive responsibilities related to the care of Child Y. But Ms. Elder testified that she was very familiar with Child X, and that she would have been able to identify his loud and distinctive crying. The evidence presented regarding the physical layout of the space, including the location of the vicinity of the children's cubbies, convinced the Panel that she would have been well-placed to corroborate the details of Ms. Griffin's testimony. Ms. Elder and Ms. McMillan gave compelling evidence that the incident described by Ms. Griffin could not have occurred without their seeing and hearing it, and that if it had occurred they would have intervened. The Panel found this evidence persuasive.

### Communications Among Kindergarten Staff

The Panel is required to consider whether witnesses have a particular interest in the outcome of a decision that might influence the credibility of their testimony. The Panel recognizes that Ms. McMillan and the Member had a very close professional relationship. College Counsel suggested that this relationship was likely to have impacted on their post-incident coordination of how to report about the incident, as well as the reliability of their testimony. To that end, College counsel argued that the witnesses who worked with the member appeared to be “circling the wagons” and had an interest in protecting themselves from consequences (i.e. College proceedings, child welfare investigations, etc.) and in protecting the school board and educators from scrutiny and criticism.

The Panel accepts that there are elements of the conduct of Principal White that are consistent with this characterization. In particular, evidence was presented to demonstrate that the school principal did not follow the protocol in place between the child welfare agency and the district school board regarding investigation of child mistreatment. As a result of Mr. White’s failure to follow the Protocol, the College was able to demonstrate that there was significant opportunity for witnesses to communicate and coordinate their accounts of the incident, calling into question the credibility of their testimony. Although the College made a solid case to establish that the Member and the three witnesses who were favourable to her -- Ms. McMillan, Ms. Elder and Mr. White -- had the *opportunity* to coordinate their evidence, the Panel did not find any evidence to demonstrate – on the balance of probabilities – that such coordination occurred, which would have discredited the witnesses’ testimony. The Panel notes that a kindergarten class depends on routine and the repeated use of established practices. One such practice – which was described by Ms. Smith, Ms. McMillan and Ms. Elder – was the prompt of opening the outside door to encourage the children to prepare themselves for outdoor play. Multiple witnesses cited this practice, and the Panel cannot conclude that the citation of a repeated practice by multiple witnesses constitutes evidence that the account of events was coordinated among the witnesses.

The Panel considered the College’s submission that there had been an opportunity for the Member and Ms. McMillan to speak about the incident after it had been reported. However, the Panel was not persuaded that there was any evidence presented that collusion had occurred.

Similarly, Ms. Smith's testimony about some of the events that followed the launch of the CAS investigation was inconsistent. She initially stated that there had been no communication among the kindergarten team. Yet, on cross-examination, she agreed that there had been discussion among the members of the team about the complaint. Principal White's notes and testimony also revealed that there had been a meeting of the kindergarten team with Principal White.

However, there was insufficient evidence presented to establish that these witnesses engaged in a coordinated attempt to mislead the Panel or that this concern or interest impacted the witnesses' testimony in a substantial manner.

Additionally, although the Panel recognized that Ms. McMillan had an interest in the outcome of the case, due to her close relationship with the Member, the Panel was able to rely on corroborating testimony from Ms. Elder regarding classroom practices related to Child X and with respect to scheduling and classroom practices. On this basis, the Panel accepted that Ms. McMillan was unaware that any incident occurred with Child X. The Panel acknowledges that this contradicts Ms. Griffin's evidence of Ms. McMillan's presence at the outside door at the time of the incident, but having found Ms. Elder's evidence to be more reliable than that of Ms. Griffin, and that the Member and Ms. McMillan and Ms. Elder gave consistent evidence in this regard, the Panel accepted the evidence of the kindergarten staff over that of Ms. Griffin.

#### *Likelihood that an Incident Occurred with Child X*

The Panel was troubled by the evidence of the Member with respect to whether anything noteworthy had occurred with respect to Child X on the day in question. As part of the school's investigation, the Member admitted that this tactic was deployed on the day. Yet she also insisted in testimony that: (a) there was no incident; or (b) she was not present in the classroom at the time of the incident.

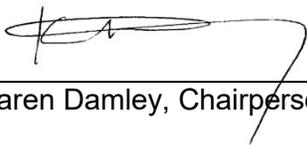
However, the Member's response to the College complaint and both she and Mr. White's account of the meeting after the incident confirms that the Member and Mr. White both believed there were lessons to be learned from these events. The Member also offered an inconsistent explanation of the need for a debrief after the incident – and indeed of whether there had been any incident at all. In her testimony she claimed to have no recollection of any incident involving Child X and his preparation to go outside. Yet under cross-examination the Member conceded that there was an incident of some kind. Further, in the meeting with school officials to review

what had happened, she and Principal White agreed that a situation had occurred, and discussed strategies to prevent any re-occurrence.

This leads the Panel to conclude that there likely was some incident, and that it involved Ms. Smith. At a minimum, this incident likely involved an opening of the door to allow cold air to enter, which was described in testimony of Ms. Elder and Ms. McMillan as a common classroom practice. These discrepancies led the Panel to have questions about the reliability of elements of Ms. Smith's testimony. It does not, however, provide sufficient evidence to demonstrate that the incident occurred as described by Ms. Griffin. In light of the testimony of the Member, Ms. McMillan and Ms. Elder that the incident did not occur; in light of their description of the practice of opening the outside door so that the cold air would prompt the children to dress for the weather, which could explain part of what Ms. Griffin observed; and in the absence of additional evidence to corroborate the details of the incident Ms. Griffin described, the Panel was not prepared to find that the incident had occurred as described by Ms. Griffin.

Since the incident as alleged was not proven on a balance of probabilities, the Panel finds Ms. Smith not guilty of professional misconduct as outlined in the Notice of Hearing.

**I, Karen Damley, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel.**



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Karen Damley, Chairperson

January 27, 2020

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Date