

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Kwang Won Kim, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of, or any information that could identify, any person who is under 18 years old and is a witness in the hearing, or the subject of evidence in the hearing or under subsection 35.1(3) of the *Early Childhood Educators Act, 2007*.

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

PANEL: Kristine Parsons, RECE,
Chairperson
Cecil Kim, RECE
Barney Savage

BETWEEN:)
)
COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood
) Educators
)
- and -)
)
KWANG WON KIM) Jack Brown
REGISTRATION # 68303) KNC Law
) for the Member
)
)
)
) Elyse Sunshine
) Independent Legal Counsel
)
)
)
) Heard: October 3, 2019

DECISION AND REASONS

This matter came on for a hearing before a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") October 3, 2019.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel, on consent of the Member, pursuant to section 35.1(3) of the *Early Childhood Educators Act, 2007*. The order bans the public disclosure, publication and broadcasting outside of the hearing room, any names or identifying information of any minor children who may be the subject of evidence in the hearing.

THE ALLEGATIONS

The allegations against the Member as stated in the Notice of Hearing dated September 26, 2019 (Exhibit 1), were as follows:

1. At all material times, Kwang Won Kim (the "Member") was a member of the College of Early Childhood Educators and was employed as an Early Childhood Educator at the Willowbrae Academy, Bayview Village, in Toronto, Ontario (the "Centre").
2. On or about August 1, 2018, the Member was supervising a group of preschool aged children during naptime, including L., a 2½ year old girl (the "Child").
3. The Child did not want to lie on her cot or go to sleep. During a period of approximately 35 minutes, the Member approached the Child multiple times and attempted to force her to lie down and fall asleep.
4. The Member's physical contact with the Child included the following:
 - a) On eight occasions the Member abruptly and forcefully pulled the Child by her leg or arm to adjust her positioning on the cot.
 - b) On one occasion the Member abruptly lifted the Child up from the cot by her right arm, such that her feet dangled in the air for a few second.
 - c) On one occasion the Member sat on the Child's back for a few seconds.
 - d) On one occasion the Member spanked the Child twice on her buttocks.
 - e) On one occasion the Member grabbed the Child by the back of her neck.

- f) On three occasions the Member pushed the Child's head down into the cot and/or held the Child's head down on the cot.
 - g) On three occasions the Member restrained the Child's arms for up to 20 seconds.
 - h) On one occasion the Member sat near the Child, who was lying on the cot, and leaned with his body onto the Child, to prevent her from moving.
 - i) On one occasion the Member aggressively pushed on the Child's back for a few seconds.
5. A parent of another child in the room watched part of the interaction on live view camera and promptly attended the Centre to report what she had observed. The entire interaction was captured by video.
6. 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) The Member physically abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
 - b) The Member psychologically and/or emotionally abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.2);
 - c) The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to be knowledgeable about a range of strategies that support ongoing positive interactions with children and families, contrary to Standard I.B.2 of the College's Standards of Practice;
 - ii. The Member failed to engage in supportive and respectful interactions with children to ensure they feel a sense of security and belonging, contrary to Standard I.C.2 of the College's Standards of Practice;
 - iii. The Member failed to work in partnership with children, families and colleagues to create a safe, healthy and inviting environment that promotes a sense of belonging, well-being and inclusion, contrary to Standard III.C.1 of the College's Standards of Practice;
 - iv. The Member failed to know the current legislation, policies and procedures that are relevant to his professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice; and/or
 - v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or he failed to understand that his conduct reflects on him as a professional and on

his profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice.

- d) The Member 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
- e) The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

WITHDRAWAL OF ALLEGATIONS

Counsel for the College advised the Panel that the College was requesting leave to withdraw the allegation set out in paragraph 6(b) of the Notice of Hearing. This request was consented to by the Member. The Panel felt it was reasonable for the College to withdraw the allegations and granted this request.

EVIDENCE

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

The Member

1. The Member has had a certificate of registration with the College for approximately 1 year. He is in good standing with the College and does not have a prior discipline history with the College.
2. At all material times, the Member was employed as an RECE at the Centre in Toronto, Ontario.

The Incident

3. On August 1, 2018, the Member was supervising a group of 12 preschool aged children during naptime, including the Child, a 2½ year old girl.
4. The Child did not want to lie on her cot or go to sleep. During a period of approximately 35 minutes, the Member approached the Child multiple times and attempted to force her to lie down and fall asleep.
5. The Member's physical contact with the Child included the following:

- a) On eight occasions the Member abruptly and forcefully pulled the Child by her leg or arm to adjust her positioning on the cot.
 - b) On one occasion the Member abruptly lifted the Child up from the cot by her right arm, such that her feet dangled in the air for a few seconds.
 - c) On one occasion the Member sat on the Child's back for a few seconds.
 - d) On one occasion the Member spanked the Child on her buttocks.
 - e) On one occasion the Member grabbed the Child by the back of her neck.
 - f) On three occasions the Member pushed the Child's head down into the cot and/or held the Child's head down on the cot.
 - g) On three occasions the Member restrained the Child's arms for up to 20 seconds.
 - h) On one occasion the Member sat near the Child, who was lying on the cot, and leaned with his body onto the Child, to prevent her from moving.
 - i) On one occasion the Member aggressively pushed on the Child's back for a few seconds.
6. A parent of another child in the room watched part of the interaction on live view camera and promptly attended the Centre to report what she had observed. The entire interaction was captured by video.
 7. The Child repeatedly stood up from her cot and could be seen on video speaking with other children and the Member. She did not cry, was not injured and did not have marks on her body as a result of the incident.

Additional Information

8. The Centre's supervisor reported the incident to the Child's parent, the Toronto CAS Children's Aid Society ("CAS") and to the Ministry of Education. CAS did not open an investigation.
9. The Member failed to let the Child participate in quiet activities when she was unable to fall asleep, as was required by the Centre's Rest and Quiet Time Policy. Throughout this incident, another girl was allowed to sit by a table, draw and do crafts.
10. As of the date of the incident, the Member had been employed by the Centre for 2½ months and registered as an ECE for 2 months.

11. If the Member were to testify, he would advise the following:

- a. This was the Member's first job as an ECE and he found it stressful to care for multiple children who did not sleep, in addition to writing and filling progress reports which the Centre expected him to complete during this time.
- b. The Member was also stressed because the group of children the Member was responsible for supervising included two disabled students, one of whom is completely paralyzed, and he wanted to ensure they were able to sleep.
- c. At several points during the interaction the Member pointed at the video camera, which was placed above the Child's cot. The Member told the Child that her mother is watching her, hoping that it would convince the Child to lie down.
- d. The Member recognizes that the contact he made with the Child was inappropriate and deeply regrets his actions.

Admissions of Professional Misconduct

12. The Member admits that he engaged in and is guilty of professional misconduct as described in paragraphs 3 to 5 above, and as defined in subsection 33(2) of *the Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8, in that:

- a. The Member physically abused a child who was under his professional supervision, contrary to Ontario Regulation 223/08, subsection 2(3.1);
- b. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. The Member failed to be knowledgeable about a range of strategies that support ongoing positive interactions with children and families, contrary to Standard I.B.2 of the College's Standards of Practice;
 - ii. The Member failed to engage in supportive and respectful interactions with children to ensure they feel a sense of security and belonging, contrary to Standard I.C.2 of the College's Standards of Practice;
 - iii. The Member failed to work in partnership with children, families and colleagues to create a safe, healthy and inviting environment that promotes a sense of belonging, well-being and inclusion, contrary to Standard III.C.1 of the College's Standards of Practice;
 - iv. The Member failed to know the current legislation, policies and procedures that are relevant to his professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice; and/or

- v. The Member failed to model professional values, beliefs and behaviours with children, families and colleagues, and/or he failed to understand that his conduct reflects on him as a professional and on his profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice.
- c. The Member 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
- d. The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

The Member admitted to the allegations in the Agreed Statement of Facts.

The Panel received a written plea inquiry (Exhibit 3) which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

DECISION ON THE ALLEGATIONS

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

REASONS FOR DECISION

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

The evidence clearly shows that the Member contravened the standards of practice of the profession when he used harsh physical force on a young child. This was entirely inappropriate. The Member's conduct was not supportive of children and he did not respond properly to the needs of a child. Although he was new to the profession, his conduct was extremely problematic. As described in the profession's code of ethics and standards of practice, RECEs make the well-being, learning and care of children their foremost responsibility. RECEs commit themselves to interactions with children that ensure they feel a sense of security and belonging. The Member's conduct with the child in question failed to meet these objectives.

The Panel finds that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. His conduct

constituted a serious disregard for his professional obligations. The Member failed to know, understand and abide by the legislation, policies and procedures that were relevant to the professional practice and to the care and learning of children under professional supervision. This was also conduct unbecoming.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and Counsel for the Member made a joint submission as to an appropriate penalty. The joint submission as to penalty proposed that the Panel make an order as follows:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of
 - a. 5 months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) and 3(b) below,

Whichever is greater.

The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

Coursework

- a. Prior to the Member commencing or resuming employment as a Registered Early Childhood Educator ("RECE") or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director of Professional Regulation (the "Director") if a grade is not assigned) and at his own expense, the following course(s) (subject to the Director's pre-approval):
 - i. Building positive and responsive relationships with children; and
 - ii. Positive intervention strategies.

- b. The Member must provide the Director with proof of enrollment and successful completion of the course(s).

Mentorship

- c. Prior to the Member commencing or resuming employment as an RECE or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member, at his own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- d. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- e. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. the Panel's Decision and Reasons.
- f. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,

- iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that he is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of his employer(s)).
- g. After a minimum of 7 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
- i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(e),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(e) and discussed the subjects set out in paragraph 3(f) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into his behaviour.
- h. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
- i. The College may require proof of compliance with any of the terms in this Order at any time.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid on the date of this Order.

Submissions of the Parties

Counsel for the College submitted that the proposed order was appropriate and reasonable in light of the facts agreed upon.

Counsel for both the College and the Member provided three cases in support of the proposed penalty and submitted that these cases represented conduct of a similar nature and established that the proposed penalty was reasonable and would not bring the administration of justice into disrepute. These cases were::

- CECE and Eusebio, 2019 ONCECE 6 (CanLII) submitted by the College;
- CECE and Guyette, 2017 ONCECE 3 (CanLII), submitted by the Member; and
- CECE and Alves, 2019 ONCECE 5 (CanLII), submitted by both parties

The College submitted that the prime aggravating factors in this case were:

- The fact the Member repeatedly engaged in inappropriate physical activity with a child. .
- The length of time over which the incident occurred. This was not a single act, or a momentary lapse in judgement
- The age of the child, and therefore er inability to report to incident to parents or others.
- The existence of an alternative course of action. The Centre had a rest and quiet time policy for children who choose not to nap. In fact, another child was playing quietly at a table at the time of the incident.

The parties agreed that the mitigating factors in this case were:

- The pressure to create an environment conducive to rest for the other children, including special needs children.
- The Member acknowledged his wrongdoing.
- The Member pleaded guilty.
- The Member has been registered with the College for one year with an otherwise clean record.

Other considerations in determining penalty were brought to the attention of the Panel:

- The degree of force was considered to be minimal.
- The use of force by the Member appeared to have resulted in no injury to the child.
- There was no evidence presented that the child experienced any emotional impact resulting from the incident.

PENALTY DECISION

The Panel accepted the joint submission on penalty and makes the following order as to penalty:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter.

2. Directing the Registrar to suspend the Member's certificate of registration for a period of
 - a. 5 months; or
 - b. the period of time required to comply with terms, conditions and limitations set out in paragraphs 3(a) and 3(b) below,

Whichever is greater.

The suspension will take effect from the date of this Order and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

Coursework

- a. Prior to the Member commencing or resuming employment as a Registered Early Childhood Educator ("RECE") or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member must successfully complete, with a minimum passing grade of 70% (or to the satisfaction of the Director of Professional Regulation (the "Director") if a grade is not assigned) and at his own expense, the following course(s) (subject to the Director's pre-approval):
 - i. Building positive and responsive relationships with children; and
 - ii. Positive intervention strategies.
- b. The Member must provide the Director with proof of enrollment and successful completion of the course(s).

Mentorship

- c. Prior to the Member commencing or resuming employment as an RECE or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, the Member, at his own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,

- v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
- vi. is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- d. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- e. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. the Panel's Decision and Reasons.
- f. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that he is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of his employer(s)).
- g. After a minimum of 7 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(e),

- iii. that the Mentor reviewed the documents set out in paragraph 3(e) and discussed the subjects set out in paragraph 3(f) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into his behaviour.
- h. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
 - i. The College may require proof of compliance with any of the terms in this Order at any time.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, to be paid on the date of this Order.

REASONS FOR PENALTY

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

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest. In this particular case, the absence of a joint submission on penalty would have caused the Panel to consider more significant consequences for the Member who had been found to have committed prohibitive practices involving the use of force on a young child. Members of the profession ought to know that any use of physical force for behaviour management of children is rejected by the profession; preventing this type of behaviour is a fundamental element of the College's mandate to protect the public interest.

The Panel also considered the aggravating factors, mitigating factors, and other factors in reaching our decision.

The Panel is aware that no two cases are exactly alike. However, reviewing earlier cases can help determine the level of appropriate penalty. The Panel therefore considered the previous cases that were presented.

The suspension component of the penalty and the reprimand will specifically deter this Member from engaging in such conduct in the future. They will also send a message to the public, and the profession at large, that such conduct will not be tolerated.

The penalty is also intended to provide the Member with an opportunity for rehabilitation. The Panel concluded that the required course work is a particularly important element of the penalty, as it reinforces the foundation of the importance of relationships with children and families. The required course on intervention strategies should equip the member with the knowledge and tools to achieve behaviour management objectives without deploying physical force. We note that the Member will not be permitted to return to the profession until these courses have been successfully completed, meaning that the effective suspension might be longer than the five months

The Member cooperated with the College and, by agreeing to the facts and proposed penalty has accepted responsibility.

Having considered all of these factors, the Panel was satisfied that the proposed penalty in this case was appropriate and in the public interest.

ORDER AS TO COSTS

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

The parties are in agreement with respect to costs and the amount of costs to be ordered. The Panel agrees that that this is an appropriate case for costs to be awarded and the amount proposed by the parties is reasonable.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$1000 on the date of this Order.

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



Kristine Parsons RECE, Chairperson

October 28, 2019

Date