

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

PANEL: Karen Damley, Chairperson
Kristine Parsons, RECE
Barbara Brown, RECE

BETWEEN:)	
)	
COLLEGE OF EARLY)	Jill Dougherty
CHILDHOOD EDUCATORS)	for the College of Early Childhood
)	Educators
- and -)	
)	
GLORIA NANCY CHOY)	Patricia D’Heureux
REGISTRATION # 03851)	Cavalluzzo LLP
)	For the Member
)	
)	
)	
)	Elyse Sunshine
)	Independent Legal Counsel
)	
)	
)	Heard: June 26, 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") on June 26, 2019.

THE ALLEGATIONS

The allegations against the Member as set out in the Notice of Hearing dated June 18, 2019 (Exhibit 1), are as follows:

1. At all material times, Gloria Nancy Choy (the "Member") was a member of the College of Early Childhood Educators working as a designated early childhood educator in the full-day kindergarten ("FDK") class at Montclair Public School (the "School") in Oakville, Ontario.
2. On or about October 29, 2015, the Member was working in the FDK class at the School with her teaching partner.
3. At some point that morning, one FDK student (the "Student") was given permission to go to the bathroom. The Student did not return from the bathroom, and instead left the School without the knowledge of the Member and/or other staff supervising the FDK class.
4. It was standard practice to perform head counts during transitions. The Member failed to perform a headcount during one or more transitions that morning. As a result, the Member did not notice that the Student was missing.
5. The Student was found walking down a road by a motorist, who contacted the police. The Student was ultimately returned to the School by the police and his parents.
6. In total, the Student was missing for approximately one hour without the Member noticing his absence.
7. By engaging in the conduct set out in paragraphs 3-4 and 6 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 failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b. she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8) in that:
 - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;

- iii. she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice;
 - iv. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- c. she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
 - d. she failed to comply with the Act and/or the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
 - e. she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and
 - f. 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 was not present (although her counsel was) but admitted to the allegations in the Notice of Hearing.

A signed plea inquiry from the Member was provided.

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 3), which read as follows.

The Member

1. The Member initially registered with the College of Early Childhood Educators (the "College") as a Registered Early Childhood Educator ("RECE") in March 2009 and remains in good standing with the College.
2. At all material times, the Member was employed as an RECE at the School.
3. On November 12, 2015, the Member was suspended from her position at the School for one day and a letter of discipline was placed in her employee file as a result of the incident described below.
4. The Member has not previously been the subject of any discipline by her employer or the College.

Incident on October 29, 2015

5. On October 29, 2015, the Member and her teaching partner, D.B., were responsible for supervising a class of FDK students at the School. The Member and D.B. were also being assisted by S.P., a primary coverage teacher at the School.
6. At approximately 9:00 a.m., D.B. took half of the students in the FDK class to the gymnasium at the School (the "First Group"). The Member remained in the FDK classroom with the other half of the FDK students (the "Second Group"), which included child D. At approximately 9:30 a.m., D.B. brought the First Group back to the classroom and took the Second Group to the gymnasium. The Member remained in the classroom with the First Group.
7. At approximately 9:35 a.m., after the Second Group had arrived in the gymnasium, D asked to use the washroom. D.B. permitted D to go to the washroom with another child as part of the "buddy system" and the two children returned to the gymnasium shortly thereafter. At approximately 9:45 a.m., D asked to use the washroom a second time, and the same two children went to the washroom again. While the other child eventually returned the gymnasium, D did not.
8. At approximately 9:50 a.m., S.P. joined the Second Group in the gymnasium. At approximately 9:55 a.m., S.P brought the Second Group back to the FDK classroom without D. D.B. had remained in the gymnasium to clean up equipment. Neither S.P. nor D.B. noticed that D was not with the Second Group.
9. At approximately 9:55 a.m./10:00 a.m., S.P. brought the Second Group back to the FDK classroom without D. When the Second Group returned to the classroom, the Member and S.P did not conduct a headcount to ensure that all children were accounted for. Neither the Member nor S.P. realized that D was missing. RECEs and teachers employed at the School are expected to conduct headcounts during transition periods.
10. D was found by a motorist walking alone along a road. When D was found, he was not wearing a jacket and the motorist reported that his shoes were on the wrong feet. At approximately 10:30 am, D was returned to the school by his mother and a police officer.
11. At approximately 10:40 a.m., the Vice Principal of the School arrived at the FDK classroom and informed the Member that D had been returned to the School by the police and his mother. The Member had not realized that D was missing until this point, a period of approximately 45 minutes.
12. The day after this incident, the Member and D.B. met with the school administration to review the incident. As a result of that meeting, a school-wide process of taking attendance at the beginning of each period was implemented.

College Standards of Practice

13. The Member agrees that the following are standards of the profession, as set out in the College's Code of Ethics and Standards of Practice:

- a. Standard III.A.1 requires RECEs to maintain a safe and healthy learning environment.
- b. Standard IV.A.2 requires RECEs to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision.
- c. Standard IV.C.1 requires RECEs to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families.
- d. Standard IV.E.2 requires RECEs to avoid conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.

Admissions of Professional Misconduct

14. The Member admits that she engaged in and is guilty of professional misconduct as described above, and as defined in section 33(2) of the *Early Childhood Educators Act, 2007*, in that:

- a. she failed to supervise adequately a person who was under her professional supervision, contrary to *Ontario Regulation 223/08*, subsection 2(2);
- b. she failed to maintain the standards of the profession, contrary to *Ontario Regulation 223/08*, subsection 2(8) in that:
 - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to the Member's professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
 - iii. she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and
 - iv. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- c. she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to *Ontario Regulation 223/08*, subsection 2(10);
- d. she failed to comply with the Act and/or the professional misconduct regulation made under the Act (being *Ontario Regulation 223/08*), contrary to *Ontario Regulation 223/08*, subsection 2(19);

- e. she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to *Ontario Regulation 223/08*, subsection 2(21); and
- f. she conducted herself in a manner that is unbecoming a member, contrary to *Ontario Regulation 223/08*, subsection 2(22).

DECISION ON THE ALLEGATIONS

Having regard to the facts set out in the Agreed Statement of Facts, the Panel accepted the Member's admission and found that she committed an act of professional misconduct as alleged in the Notice of Hearing.

REASONS FOR DECISION

The Panel considered the Agreed Statement of Facts ("ASF") and the Member's plea and found that the evidence supported findings of professional misconduct as alleged in the Notice of Hearing.

Allegations contained in paragraph two through six in the Notice of Hearing are supported by paragraphs five through twelve in the ASF. The evidence shows that the Member contravened the standards of practice when she placed the safety of a child at risk by failing to do a head count, which is standard practice to ensure proper supervision. Additionally, the ASF highlights that RECEs and teachers employed at the School are expected to conduct head counts during transition periods.

The Panel finds that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The College's Code of Ethics and Standards of Practice require all Members to know, understand and abide by the legislation, policies and procedures that are relevant to the professional practice and to the care and learning of children under their professional supervision. Early Childhood Educators are required to work in collaboration with their colleagues in their workplaces in order to provide safe, secure, healthy and inviting environments for children and families. The Member's failure to conduct a head count upon transition; which failed to identify the loss of a child, who was found by a passing motorist and who was later returned to the school by the police, is viewed by the Panel as unprofessional behaviour that is also disgraceful and dishonourable. The child was subjected to greater risk as they were missing for over 45 minutes.

The Panel notes that although there was some discussion about whether the Panel should parse out the allegation relating to disgraceful, dishonourable or unprofessional conduct, the Member admits in the Agreed Statement of Fact that her behaviour constitutes disgraceful, dishonourable or unprofessional conduct without distinguishing between the terms. As such, the Panel need not parse out the wording, since the fact that the wording of the provision is disjunctive (i.e. uses the word "or" rather than "and") is sufficient to address the matter. The Panel agrees with the College that it is not necessary to prove that the Member's behaviour falls into all three categories, or to identify which categories it falls under.

The Panel further notes that in closing argument there appears to have been some discrepancy between counsel about some of the facts. However, the Panel agrees with both parties that we are confined to the evidence as presented in the ASF. Accordingly, our decision was based solely on those facts.

POSITION OF THE PARTIES ON PENALTY

The College and the Member advised that agreement had been reached on the proposed penalty and costs aside from the issue of the length of the suspension. The parties made a Partial Joint Submission on Penalty and Costs (Exhibit 4). The Partial Joint Submission proposed that the Panel make an Order which included the following:

1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded, such reprimand to be administered in person, on a date not later than 60 (sixty) days from the date the Order is imposed.
2. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007* ("**Employment**"), the Member, at her own expense, will arrange for a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director of Professional Regulation (the "Director"). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, the Member can commence or resume Employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.
 - b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
 - c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Partial Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons.

- d. The Member will meet with the Mentor every two weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
 - e. After a minimum of three sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
3. Requiring the Member to pay the College's costs fixed in the amount of \$1800, to be paid in full on a date not later than 60 (sixty) days from the date the Order is imposed.
 4. All documents delivered by the Member to the College or the Mentor will be delivered by registered mail or courier, and the Member will retain proof of delivery.

All aspects of the penalty in this case were agreed by the parties, except for the length of the suspension, which the College submitted should be six months. The Member submitted that no suspension was necessary or warranted.

College Submissions on Penalty

The College submitted that the Panel's order should focus on the nature of the misconduct and the Member's circumstances. In determining the appropriate order to make, the Panel should consider the seriousness of the misconduct, the need to deter the Member from engaging in such misconduct again, the need to rehabilitate the Member (if possible), and the need to deter other members from engaging in similar misconduct. The Panel should also be guided by the need to maintain the public's confidence in the College. Finally, the appropriate order should be considered in light of the aggravating and mitigating factors and the penalties imposed by the Discipline Committee in other similar cases.

The College submitted that the Panel should consider the aggravating and mitigating factors in the case. The mitigating factors were that:

1. the Member has no previous findings of professional misconduct, and has not previously been the subject of any discipline by her employer;
2. the Member entered into an Agreed Statement of Facts, admitting the facts and misconduct alleged, avoiding the need for formal proof by means of a contested misconduct hearing; and
3. the Member entered into a partial Joint Statement on Penalty, in which both the Member and the College agreed on all aspects of the penalty with the exception of the length of the suspension. This has limited the contested portion of the penalty hearing.

The College submitted that while these mitigating factors should be considered by the Panel in connection with the agreed portion of the penalty, these factors did not weigh in favour of a lower suspension than the one sought, let alone no suspension at all.

The aggravating factors included:

1. the Member failed to conduct a headcount when the group of children (which should have included the missing child) was returned to the classroom. RECEs and teachers employed at the School were expected to conduct headcounts during transition periods and doing so is a basic and important supervision tool for RECE's generally;
2. the Member's conduct put a young child in her care at risk of serious physical harm by allowing the child to wander unattended outside of the school, along a road. The Child was not properly dressed, and was found by a passing motorist (i.e. a stranger), who fortunately called the police;
3. the young Child was gone for an extended period of time (45 minutes). The Child only returned to the school and came to the Member's attention then because a parent and the police brought the Child back;
4. the Member is not a junior member of the profession, having practised as an RECE for roughly 10 years, and her conduct therefore cannot be attributed to inexperience; and
5. the need to ensure adequate supervision and conduct head counts during transitions is a basic requirement of RECE practice and has been the subject of repeated, published decisions by the Discipline Committee of this College.

The College submitted that a six-month suspension of the Member's certificate of registration was an appropriate suspension in light of the penalties imposed in other similar cases, the facts of this case, and the fact that supervisory issues continue to be one of the most frequent types of misconduct that is referred to the Discipline Committee, The College relied on a number of published decisions to demonstrate that a six month suspension was reasonable and

appropriate in the circumstances.¹The College submitted that discipline panels have been increasingly concerned with cases involving a failure to supervise and penalties have appropriately increased for such cases over time.

The College submitted that a penalty without a significant suspension would be out of step with the College's jurisprudence developed in similar cases and would be wholly inadequate to address the goals of specific and general deterrence, which are fundamental to any penalty for this type of conduct.

Member's Submissions

The Member made a number of submissions as to why no suspension was warranted in these circumstances.

The Member argued that a suspension was unnecessary to meet the goals of public protection and general and specific deterrence and further, that it would be unjust to impose a suspension on the Member in this case. The Member argued that a suspension was not necessary because this was an isolated incident and therefore there was no ongoing need to protect the public in this case. The Member argued that the Partial Joint Submission, without any suspension, would be sufficient to address the matter. The Member submitted that the penalties agreed to in the Partial Joint Submission would meet the goals of discipline and were more than sufficient to address the conduct at issue, and that a suspension was neither necessary nor appropriate under the circumstances.

The Member also outlined the mitigating factors in this case (most of which were agreed upon by the College) but also highlighted that it was significant that the child went missing while he was under the care and supervision of another staff member, at a time when the Member was not present with and had no active supervisory duties over the group of students. The Member argued that a six month penalty would be disproportionate to previous cases considered by the Discipline Committee. The Member made arguments to distinguish the cases relied upon by the College from her case, including that the other failure to supervise cases involved "direct" or "active" care and supervision, while in her case, the supervision was "indirect" or "inactive" supervision.

The Member requested that the Panel consider the financial impact of a suspension when deciding whether or not to order a suspension. The Member submitted that the Panel consider as self-evident the effect a six month suspension would have on her.

PENALTY DECISION

After careful deliberation the Panel imposes the following Penalty Order

¹ College of Early Childhood Educators v Sarah Ashley Walton, 2019 ONCECE 10 (CanLII); College of Early Childhood Educators v Sarah Louise Cameron, 2019 ONCECE 7 (CanLII); College of Early Childhood Educators v Virginia Wai-Yee Me, 2019 ONCECE 8 (CanLII); College of Early Childhood Educators vs Jessica Lealess, 2018 ONCECE 2 (CanLII); College of Early Childhood Educators v XINAI ("CICI") QIN, 2018 ONCECE 5 (CanLII)

1. The Registrar is directed to suspend the Member's certificate of registration for six (6) months; effective immediately from the date the Order is imposed.
2. The Member is required to appear before a Panel of the Discipline Committee to be reprimanded, such reprimand to be administered in person, on a date not later than 60 (sixty) days from the date the Order is imposed.
3. The Registrar is directed the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. Prior to the Member commencing or resuming employment as a 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 ("Employment"), the Member, at her own expense, will arrange for a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director of Professional Regulation (the "Director"). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, the Member can commence or resume Employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.
 - b. Within 14 days of commencing or resuming Employment, the Member will ensure that the Director is notified of the name, address, and telephone number of all employer(s).
 - c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Partial Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons.
 - d. The Member will meet with the Mentor every two weeks after the Mentor has been approved by the Director to discuss the following subjects:

- i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- e. After a minimum of three sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
- i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
4. Requiring the Member to pay the College's costs fixed in the amount of \$1800, to be paid in full on a date not later than 60 (sixty) days from the date the Order is imposed.
5. All documents delivered by the Member to the College or the Mentor will be delivered by registered mail or courier, and the Member will retain proof of delivery.

REASONS FOR PENALTY

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

With respect to the penalty, the Panel considered the evidence and the submissions of both counsel and applied the principles that are generally considered to determine an appropriate penalty – including the protection of the public, maintenance of the reputation and integrity of the profession and the principles of the specific and general deterrence and remediation.

The Panel considered the Member's submission that this was an isolated incident and therefore there is no ongoing need to protect the public in this case. However, the Panel agrees with the College that the misconduct does not need to be repetitive to warrant protecting the public against it. General deterrence should not be reserved only for cases involving more than a single incident. The Panel notes that there can be cases where an isolated incident is far more serious than even repetitive behaviour. Practically all of the supervision cases decided by this College's Discipline Committee have involved a single incident and not a pattern of behaviour.

The Panel finds that failure to supervise children is extremely serious conduct for an RECE. Maintaining a safe and healthy learning environment by, among other things, ensuring proper supervision of children under the member's professional supervision is fundamental to the practise of the profession and to public confidence in RECE's. It is important, in the context of this profession, to send a clear message that failure to supervise is taken seriously and will not be tolerated.

While the argument has been made by the Member that the child did not leave the building while under the supervision of the Member, the Member did admit to the allegations and the facts in the Agreed Statement of Fact. The Panel also accepts the College's submissions that the ASF clearly stipulates that the Member was responsible for supervising the FDK class that included the Child (ASF, para. 5) and that the Child was under the Member's professional supervision (ASF, para. 14(a)). The Panel agrees that the fact that other staff members were supervising children in the class at various times, in various locations, does not detract from the Member's responsibility to adequately supervise the children that were under her care and supervision. In any event, even if one accepts the Member's submissions about how the facts should be interpreted, she still did contribute to the time frame that the child was missing. Had she conducted a head count at the time the children were transitioned back to her care in the classroom, perhaps the child would have been missing for less time and the authorities would have been notified in a much timelier manner reducing the risk of harm to the child. Notwithstanding the Member's submissions regarding active vs, inactive supervision, the Member plead guilty to the conduct agreed on facts and this argument did not change the Member's role in these series of events.

Shared responsibility for the supervision of the child does not negate the Member's individual responsibility for the child's safety. The Panel recognizes that the Member has acknowledged her own responsibility in this matter by entering a guilty plea but feels that the penalty imposed, including the six month suspension, is appropriate in the circumstances.

In making our decision, the Panel considered prior case decisions. 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. Consideration was given to who was supervising at the time the child went missing, where the child was found and by whom, the length of time the child had been missing, the age of the child and the emotional impact on the child. The Panel also gave weight to the fact that RECEs and teachers employed at the school are expected to conduct head counts during transition periods.

The Panel feels that the imposed suspension is in keeping with the range of suspensions that have been imposed in previous cases at this College. In reviewing *Lealess v. the College of ECE*², the member received a four month suspension in a similar case for failure to supervise a child. However, the child was missing for a shorter period of time and was found on school property. In reviewing *Cameron v. the College of ECE*³, the member received a six month suspension. In this case, the child was missing for a longer period of time and was found by a passerby. In reviewing *Qin v. the College of ECE*⁴, the member received a seven month

² College of Early Childhood Educators vs Jessica Lealess, 2018 ONCECE 2

³ College of Early Childhood Educators v Sarah Louise Cameron, 2019 ONCECE 7 (CanLII)

⁴ College of Early Childhood Educators v XINAI ("CICI") QIN, 2018 ONCECE 5 (CanLII)

suspension but the member had a previous supervision incident. This is the Member's first supervision incident. In reviewing *McKenzie v. the College of ECE*⁵, the member received a five month suspension. In this case, a child was also found alongside a roadway by a motorist. In the years since *McKenzie*, the College has identified a trend in similar cases and as such, an increased suspension is warranted. The Panel has noted that there are an increasing number of supervision cases coming before the Discipline Committee of the College which reflects a growing problem in the profession that requires a significant sanction to deter other members of the profession from engaging in similar conduct. The Panel cannot accept the member's submission that no suspension was warranted and indeed, feels that a six month suspension was warranted, appropriate and proportionate.

The Member requested that the Panel consider the financial impact of a suspension when deciding whether or not to order a suspension. The Member acknowledges that no evidence of her specific income was provided to the Panel, but requested that the Panel consider as self-evident the effect a six month suspension would have. While the Panel acknowledges the impact of a suspension on a professional person, the Panel agrees with the College that a suspension would not preclude the Member from working in another field. Additionally, if the Member is seeking to establish financial hardship, there needs to be evidence of impecuniosity.

The Panel found that the penalty satisfies the principles of general deterrence and public protection. The suspension along with the reprimand will act as specific deterrents to the Member, and general deterrents to other members of the profession from engaging in supervision errors that put children at risk. The terms, conditions and limitations, including the suspension, will help to protect the public. The Member will be rehabilitated through the mentorship program.

The Panel disagrees with the Member's suggestion that publication of the misconduct finding and measures in the Partial Joint Submission, without suspension, would be enough to address the matter. The Panel accepts the College's submission that publicizing a penalty that is insufficient and inconsistent with past College jurisprudence would send the message that the College does not take the conduct seriously. In turn, the perception that the College agreed to and the Discipline Committee imposed an insufficient penalty would erode public confidence in the profession to govern itself.

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.

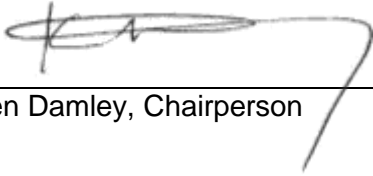
The Member argued that the cost order against the Member of \$1800 acts as a specific deterrent and is a significant financial penalty. The Panel would note that costs are not considered to be part of the penalty. They are designed to reimburse the College for a portion of the costs incurred in a discipline proceeding such that the membership as a whole is not responsible, through their dues, to pay for the misconduct of one member.

⁵ College of Early Childhood Educators v McKenzie, 2017 ONCECE 5 (CanLII)

In any event, 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 \$1800 within sixty (60) days of the date of this Order.

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.



Karen Damley, Chairperson

November 15, 2019

Date