

NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Vijayalakshmi Ethiraju 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: Barney Savage, Chairperson
Lori Huston, RECE
Lois Mahon, RECE

BETWEEN:)
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COLLEGE OF EARLY) Vered Beylin
CHILDHOOD EDUCATORS) for the College of Early Childhood Educators
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- and -)
)
VIJAYALAKSHMI ETHIRAJU) Geetha Philipupillai,
REGISTRATION # 03781) Goldblatt Partners LLP
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)
) Elyse Sunshine, Rosen, Sunshine LLP
) Independent Legal Counsel
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) Heard: April 21, 2020

DECISION AND REASONS

This matter was heard via videoconference by a panel of the Discipline Committee of the College of Early Childhood Educators (the "Panel") on April 21, 2020. It was heard together with the matter of *College of Early Childhood Educators v Edlinda Gacaj* on consent of the parties.

At the outset, the Panel directed the participants to refrain from making audio or video recordings of these proceedings without seeking permission of the Panel. No permission was sought.

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 "Act"). 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 March 17, 2020, (Exhibit 1) were as follows:

1. At all material times, Vijayalakshmi Ethiraju (the "Member") was a member of the College of Early Childhood Educators working as an early childhood educator at YWCA Bergamot Early Learning Centre (the "Centre"), a child care centre in Etobicoke, Ontario.
2. On or about June 3, 2016, the Member and two other staff members, E.G. and F.S., were responsible for supervising a group of eight children (the "Children") in the infant program room at the Centre.

3. That morning, the Member, E.G. and F.S. prepared to take the Children out for a walk. Before placing the Children in strollers, they filled out the Centre's transitional attendance record. They then placed seven of the eight children in strollers and left the Centre for a walk, forgetting a 14 month old child ("the Child") who was asleep in the infant program room. Neither the Member, nor her co-workers, checked the room or performed a headcount before leaving the Centre.
4. Approximately 10 to 12 minutes after the Member, E.G. and F.S. left the Centre, one of the Member's co-workers found the Child crying alone in the infant program room.
5. The Member, E.G. and F.S. did not realize that the Child was not in one of the strollers until they received a call from their supervisor approximately 40 minutes after they left the Centre.
6. On or about June 8, 2016, the Member was suspended for ten days without pay, which was later reduced to a seven day suspension.
7. By engaging in the conduct set out in paragraphs 2-5 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 observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
 - (iv) she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and/or
 - (v) she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- c) she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
 - d) she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and/ or
 - e) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

EVIDENCE

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 3), which read as follows:

The parties hereby agree that the following facts may be accepted as true by the Discipline Committee:

The Member

1. The Member has had a certificate of registration with the College for approximately 10 years. She is in good standing with the College and does not have a prior history with the College.
2. At all material times, the Member was employed as an RECE at the Centre in Toronto, Ontario.

Incident on June 3, 2016

3. On June 3, 2016, the Member and two other RECEs, F.S. and E.G. (collectively, the "Staff"), were responsible for supervising a group of eight children in the infant program room at the Centre.
4. That morning, the Staff were preparing to take the children out for a walk. One of the children, a 14-month-old boy (the "Child"), was crying and in a bad mood. In order to calm the Child, the Staff fed him and placed him in a rocker by the window.
5. As the Staff were organizing the children and dividing them up between three multi-seat strollers, some of other children began crying. In the meantime, the Child fell asleep in the rocker, and the Staff decided to put him in the stroller last, to allow the Child to rest while the children settle in their seats. The Staff verbally reminded each other to retrieve the Child from the rocker before leaving for the walk.
6. E.G. exited the Centre first, with 2 children in her stroller. The children were crying, so E.G. decided to wait for the rest of the Staff and the other children outside.
7. F.S. and the children who were seated in her stroller waited in the hallway outside the infant program room for the Member, who was supposed to bring out the remaining children in the third stroller. However, the Member first became distracted by parents who arrived at the Centre to drop off diapers and then by having to warm up a bottle for one of the children and talking to another parent. As a result, the

Member forgot to take the Child with her when she exited the infant program room, and the Child remained alone and unsupervised.

8. At approximately 9:15 a.m., the Member and F.S. joined E.G. outside and the Staff began their morning walk with 7 of the 8 children they were responsible for supervising.
9. Approximately 10 to 12 minutes later, another co-worker found the Child alone in his rocker inside the infant program room. The rocker was on a mat, turned away from the door and facing the window. The Child was securely strapped in the rocker, did not show any signs of distress and was awoken from his sleep by the co-worker entering the room.
10. The Staff did not notice that the Child was missing until they received a call from their supervisor, approximately 40 minutes after they had left the Centre.
11. In the course of the incident the Staff failed to do the following:
 - a. The Staff filled out the Centre's transitional attendance sheet to indicate that all the children were placed in the strollers and taken on a walk, before actually placing the children in the strollers. In doing so, the Staff failed to abide by the Centre's policies and procedures.
 - b. The Staff did not conduct a headcount of the children seated in the strollers prior to leaving the Centre.
 - c. The Staff did not conduct a physical check of the infant program room prior to leaving, to ensure that no child was left behind. The Centre's policy did not require the physical check at the time, but was amended to reflect the requirement after the incident.
12. During the investigation of this incident, the Member took full responsibility for her actions. She also expressed remorse and emphasized that she understood the

seriousness of what had happened.

13. As a result of the incident, the Member was suspended for 10 days without pay, which was later reduced to a 7 day suspension, as a result of a grievance settlement.

Admissions of Professional Misconduct

14. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 - 11 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 111.A.1 of the College's Standards of Practice;
 - ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
 - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in her workplace in order to provide safe, secure, healthy and inviting environments for children and families, contrary to Standard

IV.C.1 of the College's Standards of Practice; and

- v. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- c. she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
- d. she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and
- e. she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

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

The Panel received a written plea inquiry (Exhibit 5) 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 she committed all of the acts of professional misconduct set out in the Notice of Hearing as outlined above.

REASONS FOR DECISION

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

The allegations of misconduct are supported by the facts set out in the Agreed Statement of Facts. The evidence shows, and the Member admitted, that she contravened the standards of practice when she failed to do a headcount of the children in the stroller prior to leaving the Centre and filled out the transitional attendance sheet before placing the children in the stroller. As a result of this failure to follow Centre policy and exercise good judgment, the Child was left completely unsupervised. By engaging in such conduct, the Member admitted, and the Panel finds, that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The risk of leaving a child unattended could have resulted in harm to the Child and reflects negatively on the profession and is conduct unbecoming a member of the profession. The Member did not comply with the Act, and thereby failed to meet her obligations as an RECE.

POSITION OF THE PARTIES ON PENALTY AND COSTS

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

1. Requiring the Member to appear before the Panel 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 four months. The suspension will take effect from the date of this Order and will run without interruption as long as the Member remains in good standing with the College.
3. Directing the Registrar to impose the following terms, conditions and limitations on the

Member's certificate of registration:

- a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the *Early Childhood Educators Act, 2007*, ("Employment") the Member, at her own expense, will arrange 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 as an RECE, the

Member will ensure that the Director is notified of the name, address and telephone number of all employer(s).

- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons.

- d. The Member will meet with the Mentor 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 she is meeting the College's Standards of Practice (without disclosing

personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).

e. After a minimum of five sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:

i. the dates the Member attended the sessions with the Mentor,

ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),

iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and

iv. the Mentor's assessment of the Member's insight into her behaviour.

f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.

4. Requiring the Member to pay the College's costs fixed in the amount of one thousand dollars (\$1000), to be paid in ten installments of one hundred dollars (\$100) each. Each installment will be payable on the first of the month, with the first installment being due 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 the College 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:

- *College of Early Childhood Educators v Jenny Ng-Nakatani*, 2019 ONCECE 17
- *College of Early Childhood Educators v Sarah Ashley Walton*, 2019 ONCECE 10
- *College of Early Childhood Educators v Rehana Islam*, 2019 ONCECE 12

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

- Age of the Child – The Child left unsupervised was only 14 months old.
- Child was completely unsupervised – For a period estimated to be 12 to 14 minutes, the Child was left with no supervision.
- Time lag in recognizing the problem – Although the Child was accidentally discovered by another staff member after 12-14 minutes, it took 40 minutes for the Member to become aware that the Child had been left unattended.. Because the Member was not aware of her mistake, the length of time the Child was unsupervised could have been much longer, and had graver consequences.
- Failure to follow established procedures – The Centre had detailed procedures and protocols in place to ensure that transitions are conducted safely, and that all children are accounted for. In this case, the Member failed to follow these procedures and protocols. Most notably, the Member's failure to conduct a head count of children is troubling.

College Counsel asked the Panel to consider three other important factors:

- The Child was not injured or harmed.
- There is no evidence that the Child experiences any emotional trauma as a result of the incident.
- There is no pattern of behaviour that can be cited as evidence of a persistent issue affecting the safety and well-being of children.

The parties both submitted that the mitigating factors in this case were:

- Acknowledgement of error –The Member has taken responsibility for her error and acknowledged her wrongdoing.
- Co-operation – The Member pleaded guilty to professional misconduct. She co-operated with the College and worked with College Counsel on the basis of an agreed statement of fact and a joint submission on penalty. This saved the College considerable resources.
- No history of misconduct – The Member has a 10-year record as a member of the College that is otherwise unblemished.

Counsel for the Member also submitted that because this was a joint submission, the threshold to interfere with it was high. Counsel submitted that the proposed Order was the subject of careful discussion and negotiation. She further submitted that the proposed Order was not unreasonable and was proportionate to the misconduct. Member's Counsel advised that the proposed Order would accomplish the general principles of sentencing including general and specific deterrence, public confidence and remediation.

PENALTY DECISION

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

1. The Member is required to appear before the Panel to be reprimanded immediately following the hearing of this matter.
2. The Registrar is directed to suspend the Member's certificate of registration for a period of four months. The suspension will take effect from the date of this Order and will run without interruption as long as the Member remains in good standing with the College.
3. The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the Early Childhood Educators Act, 2007, ("Employment") the Member, at her own expense, will arrange 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.

- b. 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 employer(s).
- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,

- iii. the Joint Submission on Penalty, and
 - iv. a copy of the Panel's Decision and Reasons.
- d. The Member will meet with the Mentor 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 she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- e. After a minimum of five sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
- i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.

- f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.

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 case, the parties provided previous cases that clearly demonstrate that the proposed penalty is largely consistent with the penalties ordered in previous cases involving failure to adequately follow protocols and procedures regarding the supervision of young children.

The Panel was satisfied that the proposed penalty achieved public protection by temporarily removing the Registrant from practice so that she could reflect on the consequences of her misconduct and refine her understanding of the College's expectations.

The Panel was also satisfied that a reprimand and the suspension would discourage other registrants from engaging in similar conduct by demonstrating that this Committee takes supervision of children seriously and that these acts of professional misconduct will attract sanctions, up to and including temporary removal from practice.

Furthermore, the Panel was hopeful that a suspension, in combination with a reprimand and mentorship program, would achieve the goals of remediation and specific deterrence by affording the Registrant an opportunity to improve her understanding of the College's expectations and by discouraging similar acts of misconduct when she returns to practice. The

Panel was also hopeful that the Registrant's participation in the mentorship would promote public confidence in the College's ability to regulate the profession and to ensure that registrants adhere to established standards of practice.

The Panel accepted the Proposed Order as being proportionate to the Registrant's conduct, while also reflecting the mitigating circumstances in this case, including the absence of prior discipline history and her cooperation with the College throughout the investigation and prosecution of the allegations.

ORDER AS TO COSTS

Subsection 33(5)(4) of the 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 \$1,000.00 to be paid in accordance with the payment schedule noted above.

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



May 15, 2020

Barney Savage, Chairperson

Date