

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 October 26, 2018.

THE ALLEGATIONS

The allegations against the Member as stated in the Notice of Hearing dated October 9, 2018, are as follows:

1. At all material times, Dominika Maria Walczak (the "Member") was a member of the College of Early Childhood Educators who was employed as a registered early childhood educator ("RECE") at Learning Ladder Childcare (the "Centre") in Oakville.
2. On or about November 24, 2015, the Member and an educational assistant were responsible for supervising a group of preschool children.
3. At some point that afternoon, during or immediately after a transition from outdoors back into the Centre, another RECE employed by the Centre saw two children from the Member's preschool class outside, unsupervised, in front of the Centre, and alerted Centre staff to this fact. Both of the children were under three years of age at the time.
4. The Member did not see the children leave the Centre and was unaware that they were missing. She did not learn of their absence until the other RECE staff member reported it.
5. The educational assistant went outside and retrieved the two children, who had wandered across the plaza where the Centre was located and/or onto or across the road in front of the Centre.
6. At the relevant time, the Member failed to watch the children in her care, contrary to the Centre's policies and procedures relating to supervision and management of transitions.
7. By engaging in the conduct set out in paragraphs 2-6 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 (the "**Act**"), in that:
 - a) she failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b) she failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - i. she failed to maintain a safe and healthy learning environment, contrary to Standard III.A.1 of the College's Standards of Practice;

- ii. she failed to know, understand and abide by the legislation, policies and procedures that are relevant to her professional practice and to the care and learning of children under her professional supervision, contrary to Standard IV.A.2 of the College's Standards of Practice;
 - iii. she failed to observe and monitor the learning environment and anticipate when support or intervention was required, contrary to Standard IV.B.3 of the College's Standards of Practice;
 - iv. she failed to work collaboratively with colleagues in the workplace in order to provide a safe, secure, healthy and inviting environment for children and families, contrary to Standard IV.C.1 of the College's Standards of Practice; and/or
 - v. she conducted herself in a manner that could reasonably be perceived as reflecting negatively on the profession of early childhood education, contrary to Standard IV.E.2 of the College's Standards of Practice;
- c) she acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10);
 - d) she failed to comply with the Act and/or the professional misconduct regulation made under the Act (being Ontario Regulation 223/08), contrary to Ontario Regulation 223/08, subsection 2(19);
 - e) she contravened a law, which contravention caused a child or children under the Member's professional supervision to be put at or remain at risk, contrary to Ontario Regulation 223/08, subsection 2(21); and/or
 - f) she conducted herself in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

The Member admitted to all of the allegations in the Notice of Hearing as set out above. The Panel conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

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, which read as follows.

The Member

1. The Member was initially registered with the College of Early Childhood Educators (the "College") as a RECE in April 2009 and remains in good standing with the College.
2. At all material times, the Member was employed as an RECE at the Centre..
3. On November 25, 2015, the Member was suspended for five days as a result of the incident described below.

Incident on November 24, 2015

4. On November 24, 2015, the Member and an educational assistant were responsible for supervising a group of preschool-aged children at the Centre.
5. That afternoon, the Member and the educational assistant transitioned a group of 15 children whom they were supervising from the outdoor playground to inside the Centre. When the Member entered the Centre from the outdoor playground, she temporarily left the group of children to close an open gate to one of the toddler rooms, leaving the educational assistant alone with all 15 children.
6. Without the Member noticing, two children under her supervision managed to leave the Centre. Another staff employed at the Centre saw the two children outside, alone and unsupervised, and notified the educational assistant of this fact. The Member did not see the children leave the Centre and was unaware that they were missing. She did not learn of their absence until the other staff member reported it. Both children were under three years of age at the time.
7. At that point, the educational assistant went outside to retrieve the two children, who had wandered across the parking lot of the plaza where the Centre was located and crossed the road in front of the Centre. By the time the educational assistant arrived, a bus and two cars had stopped for the children and a member of the public had gone to assist them.

College Standards of Practice

8. 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 their professional practice and to the care and learning of children under their professional supervision.

- c. Standard IV.B.3 requires RECEs to observe and monitor the learning environment and anticipate when support or intervention is required.
- d. Standard IV.C.1 requires RECEs to work collaboratively with colleagues in the workplace in order to provide safe, secure, healthy and inviting environments for children and families.
- e. Standard IV.E.2 requires RECEs to avoid conduct that could reasonably be perceived as reflecting negatively on the profession of early childhood education.

Admissions of Professional Misconduct

- 9. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 4-7 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 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 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 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 in the Notice of Hearing.

Allegation #7 in the Notice of Hearing is supported by paragraphs 5, 6, 7, 8, and 9, in the Agreed Statement of Facts. The evidence shows that the Member contravened the standards of practice when she left two children in the outdoor playground unsupervised, she was not aware that two children, under her supervision had left the child care centre property and wandered across the parking lot of the plaza and crossed the road in front of the centre.

With respect to allegation #7, the Panel finds that the Member's conduct would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional. The evidence established that the Member contravened the standards of practice in connection with this incident. She only became aware of the children when another staff employed at the centre reported it.

The Panel found that the Member's conduct in connection with this incident constituted professional misconduct pursuant to subsection of 33(2) of the Act. This conduct also constituted a failure by the Member to maintain each of the standards of the profession as set out in paragraph eight (8) of the Agreed Statement of Facts in that the evidence and facts as admitted by the Member make out the findings of misconduct as alleged.

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 the Panel to be reprimanded on the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for five 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 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.
 - 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 two weeks after she 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 registered mail or courier, and the Member will retain proof of delivery.
4. Directing that in accordance with section 29(2) of the *Early Childhood Educators Act, 2007* (and as required even in the absence of the Discipline Committee's direction), the Member's suspension, the terms, conditions and limitations imposed on her certificate of registration and a link to the Discipline Committee's decision will be publicly posted on the College's register.
5. Requiring the Member to pay the College's costs fixed in the amount of \$1,500 on the date of this Order.
6. 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.

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

Counsel for the College further submitted that a joint submission should be accepted by the Panel unless it would bring the administration of justice into disrepute.

Counsel for the College submitted that the proposed penalty was appropriate and protected the public interest by serving the functions of general and specific deterrence. The proposed penalty was further proportionate to the misconduct and was consistent with penalties in analogous cases. In this regard, College Counsel provided two other cases from this College in support of the proposed penalty, which contained analogous conduct and findings of misconduct (*College of Early Childhood Educators v. Qin* (2018 ONCECE 5) and the Order from *College of Early Childhood Educators v. Lealess* (2018 ONCECE 2)).

The Member's counsel agreed with the principles as outlined by College counsel.

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

1. The Member acknowledged her wrong doing;
2. The Member fully cooperated with the investigations conducted by the Centre and the College;
3. The Member entered a guilty plea and agreed to a joint submission on penalty;
4. The Member has been registered with the College since 2009 with no prior misconduct history.

The prime aggravating factors in this case included the nature of the professional misconduct involved, specifically:

1. The children's young ages;
2. The children were able to leave the outdoor playground and the Centre;
3. The children were found across the street from the Centre's parking lot, which increased the possibility of harm to the children;
4. The Member did not know the children had left the outdoor playground and the Centre;

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 the Panel to be reprimanded on the date of this Order.
2. Directing the Registrar to suspend the Member's certificate of registration for five 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 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.
 - 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 two weeks after she 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 registered mail or courier, and the Member will retain proof of delivery.
4. Directing that in accordance with section 29(2) of the *Early Childhood Educators Act, 2007* (and as required even in the absence of the Discipline Committee’s direction), the Member’s suspension, the terms, conditions and limitations imposed on her certificate of

registration and a link to the Discipline Committee's decision will be publicly posted on the College's register.

5. Requiring the Member to pay the College's costs fixed in the amount of \$1,500 on the date of this Order.
6. 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 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.

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 Panel recognized that the Member cooperated with the College by agreeing to the facts and proposed penalty. The Panel found that the penalty proposed satisfies the principles of specific and general deterrence.

An oral reprimand provides the Panel with the opportunity to remind the Member of her professional obligations as an early childhood educator.

The suspension of five (5) months acts as a specific deterrent to the Member, and as a general deterrent to other members of the profession, from engaging in such conduct. This also enhances the public's confidence that the College will address such serious breaches of the Code of Ethics and Standards of Practice.

When the Member returns to practice, she will be rehabilitated through the specified mentorship relationship as agreed upon.

These terms, conditions and limitations will be listed on the Member's certificate of registration until they have been satisfied.

Having considered all of the 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 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 \$1500.00 on the date of this Order.

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



Barbara Brown, RECE, Chairperson

December 11, 2018

Date