



Decision Issued: June 9, 2014
Citation Issued: September 19, 2013
Amended February 25, 2014
File No.: [REDACTED]
Court reporter: Coast Reporting

IN THE MATTER OF
THE TEACHER REGULATION BRANCH OF THE MINISTRY OF EDUCATION
AND A CITATION ISSUED PURSUANT TO SECTION 56(1)
THE *TEACHERS ACT*, SBC 2011, c. 19
AND A HEARING CONCERNING
GEORGE WILLIAM KITELEY
(a Former Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date and location: February 25, 26 & 27, 2014 at the Teacher Regulation Branch
Panel: Meg Gaily (Chair), Daniel Blais, John Hall
Counsel for the Commissioner: Maureen E. Baird, Q.C.
Counsel for the Respondent: Peter Busch

INTRODUCTION

[1] A panel was appointed by the Commissioner to conduct a hearing into a citation issued by the Commissioner under section 56(1) of the *Teachers Act*, S.B.C. 2011, c. 19 (the “Act”) on September 19, 2013 (the “Citation”).¹

[2] School District No. 43 (Coquitlam) employed George William Kiteley (the “Respondent”) as a grade 6-7 teacher at Moody Middle School for the 2011-2012 school year.

¹ Exhibit #1, Citation dated September 19, 2013 and Exhibit #4, Amended Citation dated February 25, 2014.

He held a certificate of qualification, which he relinquished on or about June 27, 2012 and he resigned effective June 30, 2012.² The Citation sets out the following allegations:

1. On or about September 6 to October 18, 2011, [the Respondent], a former authorized person under the Act (Professional Certificate No. [REDACTED]), while employed as a teacher by School District No. 43 (Coquitlam) at Moody Middle School (the “School”) engaged in inappropriate behaviour directed toward students including:
 - a. Use of the term “homosexual” in connection with a male student’s choice to wear a pink shirt;
 - b. Use of the term “retarded” in a derogatory way when speaking to students;
 - c. Asking students “are you on crack?” and making reference to “crack-heads”;
 - d. Reference to a student as an “illegal alien” and/or an “illegal immigrant”;
 - e. Repeated reference to a student as “Persian Prince”;
 - f. Use of profanity in the classroom, such as “I’m not your bitch”;
 - g. Use of public humiliation as a form of classroom management;
 - h. Physical intimidation of students through the use of physical contact (poking and/or shaking and/or pushing) and verbal and gestural threats of violence, such as mimicking the loading and shooting of a gun and punching one fist into the other;
 - i. Reference to the class as “perverted” in response to a question about sex education; and
 - j. Reference to a student who was squinting to see the board as having “Asian eyes”.

The Commissioner asserts in the Citation that the Respondent engaged in conduct which is contrary to one or more of Standards #1 and #5 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 4th edition, January 2012 (the “Standards”). The Commissioner further alleges that the Respondent is guilty of professional misconduct under section 63(1) of the Act. Although the Citation alleges that the Respondent is alternatively guilty of conduct unbecoming a teacher, the Commissioner did not pursue this allegation at the hearing and the panel has not considered it. The Respondent did not attend the hearing, but was represented by legal counsel.

² The Citation was amended on February 25, 2014 to reflect that the Respondent is a former authorized person under the Act.

ISSUES

[3] In any conduct hearing before a discipline panel constituted under s. 57(1) of the Act, the panel must make the following three determinations:

1. Has the Commissioner proved on a balance of probabilities that the conduct set out in the Citation occurred?
2. If so, does the proven conduct breach any of the Standards (in particular in this case, Standards #1 and #5)?
3. If so, does the conduct amount to professional misconduct such that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act?

REVIEW OF EVIDENCE AND PANEL'S FINDINGS OF FACT

[4] The Respondent did not testify at the hearing and his counsel did not lead any evidence. The only evidence before the panel was that led by the Commissioner through Nancy Bennett, the principal of the School in 2011-2012 and six students of the Respondent in that year. At the time of the alleged incidents, the students were approximately 12 years old; at the time of the hearing, they were 14 years old. As requested by counsel for the Commissioner and agreed to by the Respondent's counsel, the students' anonymity is protected by referring to them in the order in which they testified. Although counsel for the Respondent cross-examined each witness, none of them made any admissions against interest or changed their testimony. The panel therefore accepts the evidence to the extent that there is no inconsistency between the accounts provided by the witnesses. Where there are inconsistencies, the panel resolves them as identified below.

Background

[5] For the 2011-2012 school year, the Respondent taught grade 6 and 7 math and science to two groups of students, those assigned to his home-room class, and those in a partner "switch" class across the hallway assigned to Ms. E. To his home-room class, he also taught Health and Career Education or "HACE." The students would switch teachers halfway through the school day and Ms. E. taught the students grade 6 and 7 English and social studies. The classes were held in a "pod" of portables and the Respondent's class had two doors – one to the covered hallway where the students' lockers and washrooms were located, the other to a partially covered rear porch.

[6] According to Ms. Bennett, the 2011-2012 school year was the Respondent's first experience teaching middle school. There were 27-28 students in the classes taught by the Respondent and Ms. E., with an even mix of grade 6 and grade 7 students. One class had two and the other class had three students designated with learning disabilities. One class had three and the other had five gifted students. Six of the students who testified were Grade 7s in the Respondent's home-room class; Student A was the only witness in the switch class.

[7] Ms. Bennett first became aware of issues involving the Respondent's conduct in mid-October 2011 when she was approached by a teacher who had previously taught several of the Respondent's current grade 7 students. The teacher told Ms. Bennett that Students D, E, and G had approached her at a School social function and expressed concern about the Respondent's treatment of students in his class. Ms. Bennett conducted brief interviews with each of the three students. Following protocol, she then delivered a letter to the Respondent dated October 14, 2011. The letter stated that Ms. Bennett was commencing an investigation as a result of complaints from three students in his class that he had made comments in the classroom to individuals and groups that were humiliating and embarrassing.³

[8] Ms. Bennett and the Vice Principal interviewed 24 students, 12 from the Respondent's home-room class and 12 from the switch class on October 17 and 18, 2011. They asked the students not to discuss the interviews with other students or with the Respondent, and Ms. Bennett also told the students that if they had further concerns, they should come back and speak with her.

[9] Ms. Bennett delivered a second letter to the Respondent dated October 18, 2011⁴ that was worded exactly as the October 14 letter. She explained that she wrote the second letter to encompass complaints from two students that involved conduct that occurred after the October 14, 2011 letter was delivered.

[10] The Respondent met with Ms. Bennett, the Vice Principal, and a representative of the Teachers' Association on October 18, 2011, after which he gathered his personal belongings and left the School. The Respondent did not return to the School to teach after this date.

Allegation (a) - use of the term "homosexual" in connection with a male student's choice to wear a pink shirt

[11] Ms. Bennett said that in her initial interview with Students D, E and G, they told her that the Respondent had referred to a male grade 6 student wearing a pink shirt as a "homosexual." Ms. Bennett said that the student in the pink shirt had a learning disability and was an Aboriginal student.

[12] Students C, D, E, F, and G testified that the Respondent made a comment during class that associated a male grade 6 student wearing a pink shirt with being homosexual or gay. Students C, D, E and F testified that they thought the student in the pink shirt was upset and embarrassed during the incident. Students D and E testified that they were upset by the Respondent's comment. Although there were slight differences in the various individual accounts, the evidence was consistent that the Respondent made a derogatory comment – whether through the use of the word "homosexual" or "gay" – to a male student who was wearing a pink shirt.

³ Exhibit #2, letter from Ms. Bennett to the Respondent dated October 14, 2011.

⁴ Exhibit #3, letter from Ms. Bennett to the Respondent dated October 18, 2011.

[13] Accordingly, the panel finds that the Commissioner has proven on a balance of probabilities that the Respondent engaged in the conduct set out in paragraph 1(a) of the Citation.

Allegation (b) – use of the term “retarded” in a derogatory way when speaking to students

[14] Six of the seven students described the Respondent using the word “retarded” in a derogatory way on more than one occasion when speaking to students in his classes, whether directed at an individual or group of students. None of the students agreed with the Respondent’s counsel’s suggestion that the Respondent used the word “retarded” in the context of teaching a lesson about engine mechanics. Student C testified that she was upset by the Respondent’s use of the word “retarded” and confronted the Respondent about it. Student E thought it was a “mean thing to say to kids” and Student D said being called “slow” by the Respondent made him feel bad about himself. The panel finds that the Commissioner has proven on a balance of probabilities that the conduct alleged in paragraph 1(b) of the Citation occurred.

Allegation (c) – asking students “are you on crack?” and making reference to “crack-heads”

[15] Student G was the only student witness who testified that the Respondent used the word “crack” in class and his recollection was vague. During his testimony, Student G had to be prompted by counsel for the Commissioner to recall the Respondent making reference to “illegal drugs.” The panel finds that a single student’s vague recollection is not sufficient to prove that the alleged conduct occurred.

Allegation (d) – Reference to a student as an “illegal alien” and/or an “illegal immigrant”

[16] Student F testified that he was new to the School in the 2011-2012 school year and when the students were introducing themselves in class, he said that he was born in New Mexico. Student F said the Respondent then asked him in front of the class if he was an “illegal immigrant.” Student F said that he was a little insulted by the comment, but that the Respondent did not refer to him again as an “illegal immigrant.” Student B testified that the Respondent referred to Student F as an “illegal immigrant.” The panel finds the testimony of Students F and B to be credible and finds that the Commissioner has established that it is more probable than not that the Respondent referred to Student F as an “illegal immigrant” in the class in front of other students, as alleged in paragraph 1(d) of the Citation.

Allegation (e) – repeated reference to a student as “Persian Prince”

[17] Student A testified that one of the students in his class of Iranian origin referred to himself as “Persian Prince” and that the Respondent called this student “Persian Prince” in front of the class at least 5 times. Student A agreed that the student did not seem to mind at first, but that the student became upset that the Respondent continued to refer to him as “Persian Prince.”

[18] Ms. Bennett testified that at the investigation meeting held on November 2, 2011, the Respondent admitted that he called one of the students in his class “Persian Prince” and said he did this because the student was from “Persia land.” Ms. Bennett said that when the Coquitlam Teachers’ Association representative advised the Respondent that there was no “Persia land” the Respondent replied that he did not know that.

[19] The panel finds that the Respondent repeatedly referred to one of his students as “Persian Prince” as alleged.

Allegation (f) – Use of profanity in the classroom, such as “I’m not your bitch”

[20] Student A testified that he overheard the Respondent refer to a student with red hair in his class as a “ginger bitch” once. Students A and F testified that the Respondent often swore under his breath when he was frustrated or forgot something, but loud enough that students could hear him. The panel finds that it is more probable than not that the Respondent used profanity in the classroom. Both witnesses were credible, and their evidence is consistent with other evidence of the Respondent’s frustration and his responses to classroom conduct.

Allegation (g) – Use of public humiliation as a form of classroom management

[21] Student D said that the Respondent would make students stand in the corner of the classroom “if he was fed up” but did not provide any details of when this took place or the number of students involved and his testimony was not corroborated by the other students. The panel finds that a single student’s general and uncorroborated recollection is not sufficient to establish that it was more likely than not that the Respondent made students stand in a corner, as this would be very unusual in a middle school class.

[22] Student A testified that if a student could not spell a word correctly when asked to do so out loud, the Respondent would make the student sing and/or dance in front of the class and that he remembered two students singing and/or dancing in front of the class. Student E testified that he remembered the Respondent made one student in his class sing “O Canada” at the front of the class because the student had been talking. None of the student witnesses had themselves been disciplined in this way. None of the students testified that they found this conduct humiliating or that they thought the students who sang or danced were embarrassed.

[23] Ms. Bennett and all of the students except Student C testified that the Respondent had a practice of sending disruptive students out of the classroom to the hallway or to the porch. The students said the Respondent sent them out when they were acting up in class, talking too much, or not doing their work. Students A and E said that the Respondent would come out to the hall and speak to them about their behaviour before he allowed them back in to the class. Both testified that he treated them with respect when talking to them saying that he didn’t shout at them or raise his voice at the time.

[24] The panel finds that this allegation has not been proved. Although the panel is satisfied that the conduct occurred, there is no evidence to establish that the students experienced it as humiliating.

Allegation (h) – Physical intimidation of students through the use of physical contact (poking and/or shaking and/or pushing) and verbal and gestural threats of violence, such as mimicking the loading and shooting of a gun and punching one fist into the other

[25] Students B and F testified that the Respondent poked them in the chest and/or stomach area while pointing and /or waving his finger at them when he talked to them in the hallway about the conduct that had led to them being sent out of class. They each said they were alone in

the hallway when he did this. Student F testified that the Respondent grabbed him on the shoulder to escort him out of the classroom when he was sent to the hallway, and that on one occasion the Respondent pushed or shoved him back into the classroom causing him to stumble. Both Students B and F admitted that they talked a lot in the class – more than other students. While, as noted above, students A and E testified that the Respondent spoke to them with respect when they had been sent into the hall, the panel does not regard this as inconsistent with the accounts of Students B and F. Their admissions that they were more disruptive than other students support an inference that the Respondent was more frustrated with them.

[26] Student C testified that she recalled one time the Respondent said, “don’t make me hit you” to Student F, but Student F did not describe this incident in his testimony. Students D and E testified that the Respondent referred to one of the students in their class as a “memory from hell” while miming loading a shotgun, aiming it at the student and making a bang noise. Student E testified that he found this action by a teacher “a bit weird or scary.” Student G testified that the Respondent would punch one of his fists into his other palm and say “better get it done” when the students were slow to perform their work.

[27] In summary, six of the seven students described the Respondent’s behaviour as physically intimidating on occasion: he used physical contact (Students B and F) and made verbal and gestural threats of violence, such as mimicking the loading and shooting of a gun (Students C, D and E) and punching one fist into the other (Student G). Although their examples differed, the students’ evidence of physical intimidation was consistent and the panel finds that the conduct described in this allegation occurred.

Allegation (i) – Reference to the class as “perverted” in response to a question about sex education

[28] Ms. Bennett testified that on October 17, 2011, Student G told her that the Respondent had referred to the students as “perverts” in their class. Student G testified that when one student in the class asked if the Respondent was going to teach them “sex ed.” in their HACE class, the Respondent called the students “perverts,” saying words to the effect that “you guys are all perverts.” Student G’s evidence was corroborated by Ms. Bennett whose response to the reported behaviour (together with the conduct alleged in paragraph (j) discussed below) was to issue the October 18, 2011 letter to the Respondent. The panel accepts the evidence of Student G and Ms. Bennett and finds that the Commissioner has proven that it is more likely than not that the Respondent referred to the class as “perverted” as alleged in paragraph 1(i) of the Citation.

Allegation (j) – Reference to a student who was squinting to see the board as having “Asian eyes”

[29] Student F testified that the Respondent asked an Asian student who had poor eyesight if he was squinting at the board because “he had slanty eyes.” Ms. Bennett testified that on October 18, 2011, one of the Respondent’s students told her that the Respondent had sent him out into the hallway when he was squinting at the chalkboard, saying, “I know you are Asian, but you can’t squint your eyes like that.” Ms. Bennett said that the student is an Asian student. That student did not testify. The panel finds that the direct evidence of Student F about this incident combined with Ms. Bennett’s evidence of what the affected student told her is sufficiently detailed and consistent to establish that the conduct occurred.

ANALYSIS AND DECISION

[30] There is no dispute that the applicable standard of proof is the balance of probabilities. As noted above, that panel finds that the Commissioner has proven that it is more likely than not that the conduct alleged in paragraphs 1(a), (b), (d), (e), (f), (h), (i) and (j) of the Citation occurred. The evidence does not substantiate the allegations set out in paragraphs 1(c) and (g) of the Citation.

Does the proven conduct breach the Standards?

[31] The relevant Standards provide as follows:

1. Educators value and care for all students and act in their best interests.

Educators are responsible for fostering the emotional, aesthetic, intellectual, physical, social and vocational development of students. They are responsible for the emotional and physical safety of students. Educators treat students with respect and dignity. Educators respect the diversity in their classrooms, schools and communities. Educators have a privileged position of power and trust. They respect confidentiality unless disclosure is required by law. Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage.

5. Educators implement effective practices in areas of classroom management, planning, instruction, assessment, evaluation and reporting.

Educators have the knowledge and skills to facilitate learning for all students and know when to seek additional support for their practice. Educators thoughtfully consider all aspects of teaching, from planning through reporting, and understand the relationships among them. Educators employ a variety of instructional and assessment strategies.

[32] The Commissioner submits that the Respondent's conduct breaches both Standards. With respect to Standard #1, the Commissioner says that the Respondent did not treat his students with respect and dignity; in particular, when he made a homophobic remark to a male student wearing a pink shirt, referred to students as "retarded," called individual students "illegal immigrant" and "Persian prince," referred to an Asian student as having "slanty" or "slanted" eyes and called the class "perverts." The Commissioner also says that the Respondent displayed a lack of responsibility for the emotional and physical safety of his students contrary to Standard #1 by poking two students in the chest and/or stomach while discussing discipline with them, and miming the loading and firing of a shotgun at a student in his class. The Commissioner submits that the Respondent breached Standard #5 because he lacked the classroom management skills to facilitate effective learning and points to the Respondent's practice of sending students to the hall as a disciplinary measure (such that these students were not participating in the classroom activities and lessons) and his use of demeaning and derogatory comments as examples.

[33] Counsel for the Respondent submitted that the Respondent's conduct did not breach either Standard. Counsel for the Respondent made submissions based on evidence that was not before the panel; for example, he suggested that the Respondent had a hearing impairment that caused him to shout to be heard; that the students were trouble-makers who fabricated evidence

and colluded against the Respondent. The panel can have no regard to submissions that are not supported by evidence. The Respondent chose not to tender any evidence and cannot counter the evidence that was presented only through submissions (see the rule in *Browne v. Dunn*⁵).

[34] Counsel for the Respondent also argued with respect to the allegation in paragraph 1(e) of the Citation that it was not inappropriate for the Respondent to refer to a student as “Persian Prince” because the student had used that name to refer to himself. The panel rejects this argument. Such a term when used by a child self-referentially (whether it is appropriate) has a wholly different connotation than when used by a teacher to refer to his student. When used by a teacher to refer to a student, it demonstrates disrespect and disparagement contrary to Standard #1.

[35] We agree with the Commissioner’s submission and find that the Respondent contravened Standard #1 in that he failed to treat his students with respect and dignity and demonstrated a lack of respect for diversity by engaging in the conduct to which the Commissioner has referred as contravening this Standard.

[36] With respect to Standard #5, we find that the Respondent failed to demonstrate effective classroom management skills by referring to students in grades 6 and 7 as “perverted” when he was asked about learning “sex ed.”, by referring to his students as “retards” when they were disruptive, and by miming the loading and firing of a shotgun at a student to whom he referred as a “memory from hell.” However, we find that the Respondent’s practice of sending disruptive students to the hallway does not breach Standard #5 because the students who testified about being sent to the hallway admitted that they were disrupting the class at the time and none of them said that they felt that the Respondent’s treatment of them was humiliating.

Does the Breach of the Standards amount to Professional Misconduct under the Act?

[37] The Act does not define professional misconduct and, as noted by the Commissioner in his submissions, a breach of the Standards does not necessarily result in a finding of professional misconduct. The panel finds that the test for whether a breach of the Standards amounts to professional misconduct under the Act is whether the Respondent’s conduct was a “marked departure” from the norms expected of a teacher in this province. This test was adopted by the Law Society of British Columbia in disciplinary proceedings in *Martin*⁶ and was used by another panel of the Branch in a decision released earlier this year.⁷

[38] The Commissioner submits that the “public humiliation, physical intimidation, verbal and gestural threats of violence, and racist and derogatory epithets have no place in a public school” and says that the Respondent’s conduct “fell well below the standard of conduct expected of a British Columbia teacher.” Accordingly, the Commissioner submits that this panel should have little difficulty concluding that the Respondent committed professional misconduct.

⁵ *Browne v. Dunn* (1894) 6 R. [H.L.] at page 79 per Lord Morris.

⁶ *Law Society of British Columbia v. Martin*, 2005 LSBC 16 at par. 171.

⁷ *Re Freeman* (February 6, 2014) at para. 23-27.

[39] Counsel for the Respondent did not expressly address this issue. He submitted only that the students fabricated and/or embellished their evidence because they did not like the Respondent and found his “old school sense of humour” boring.

[40] In considering whether the Respondent’s conduct is a marked departure from the expected conduct of teachers in this province such that it amounts to professional misconduct under the Act, the panel considers the whole of the proven conduct.

[41] The Respondent’s question to a student about whether he was an “illegal immigrant” and his reference to students as “perverted” or “perverts” for asking about “sex ed.” in their HACE class are instances of breaches of the Standards that do not amount to professional misconduct. Although clearly inappropriate, each remark was made on a single occasion and there was no evidence that the students experienced them as humiliating.

[42] The panel reaches a different conclusion with respect to the Respondent’s pejorative remarks about sexual orientation, race and disability. Teachers must be cognizant of social values and respect the dignity and diversity of their students. It is not acceptable for a teacher to make homophobic remarks to students in his classroom, particularly in the context of a male student wearing a pink shirt, the trigger for a popular national anti-bullying campaign in schools. It is similarly unacceptable for a teacher to refer to students as “retarded” when they misbehave and for a teacher to make an overtly racist remark by referring to an Asian student as having “slanted eyes” or suggesting he or she “can’t squint your eyes like that” and to refer to a student of Iranian origin as a “Persian Prince.”

[43] The Respondent’s intimidation of his students by poking those he was admonishing for misbehaving, and by miming the loading and firing of a shotgun at a student in the classroom was also an egregious departure from the standards of conduct expected of teachers, particularly in light of the students’ age.

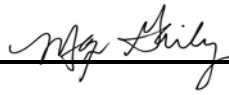
[44] Viewed as a whole, the panel finds that the Respondent’s conduct in breach of the Standards is egregious, amounts to a marked departure from the standards of conduct expected of teachers, and constitutes professional misconduct under s. 63(1)(b) of the Act.

PENALTY & COSTS


[45] Having found the Respondent guilty of professional misconduct under section 63(1)(b) of the Act, this panel is empowered to impose a penalty on the Respondent. The Commissioner has requested that the submissions on appropriate penalty be submitted in writing and counsel for the Respondent agreed. The panel directs that submissions on penalty be made in writing and that any submissions on costs be submitted in writing. The deadlines for these submissions shall be set by the Hearing Coordinator of the Teacher Regulation Branch.

For the Panel


Date: June 9, 2014



Meg Gaily, Chair



John Hall



Daniel Blais
