



2015 TAHP 17  
Decision issued: December 22, 2015  
Citation issued: August 12, 2014  
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19  
AND  
A HEARING CONCERNING  
VIOLET LORRAINE NIELSEN  
(an Authorized Person under the *Teachers Act*)

**NOTICE OF REASONS FOR DECISION ON FINDINGS AND DETERMINATION**

Date(s) and location(s): May 26, 27, & 28, 2015 at the Teacher Regulation Branch  
Panel: Patrick Poyner (Chair), John Hall, John Tyler  
Counsel for the Commissioner: Maureen Boyd, Ministry of Justice  
Counsel for the Respondent: Self-represented

**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 August 12, 2014 (the “Citation”).<sup>1</sup>

[2] School District No. 33 (Chilliwack) employed Violet Lorraine Nielsen (the “Respondent”) as a grade 6 teacher at [REDACTED] (the “School”) during the 2010-2011 school year.

[3] The Respondent holds a certificate of qualification [Professional Certificate No. [REDACTED]] issued on June 5, 1989 and valid from September 1, 1989 to present.

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<sup>1</sup> Exhibit #4, Citation dated August 12, 2014

[4] The Citation sets out the following allegations against the Respondent:

1. During the 2010-2011 school year, [the Respondent], an authorized person under the Act (Professional Certificate no. [REDACTED]), while employed as a teacher by School District No. 33 (Chilliwack) at [REDACTED] (the “School”),
  - (a) failed or refused to implement, adequately or at all, the Individual Education Plan for a student [referred to hereafter as the “Student”];
  - (b) interacted with the Student in an unprofessional and disrespectful way, including:
    - i. on or about February 2, 2011, Nielsen ended a peer tutoring session for the Student and said to him, in front of others, words to the effect of “now you have zero chance of passing the test”;
    - ii. on or about March 9, 2011, Nielsen repeatedly instructed the Student to pick items up off the floor, in front of others, using words to the effect “pick that up now”;
    - iii. on or about March 10, 2011, Nielsen, using a loud voice, told the Student to pick up a bag of carrots from the floor and after he refused, loudly said words to the effect “I said do it now”;
    - iv. on or about March 30, 2011, Nielsen ignored the Student when he asked her about his homework;
  - (c) failed to communicate with the Student’s parent, and, in particular, to communicate any adaptations made to the Student’s homework.

[5] The Commissioner asserts that this conduct is contrary to one or more of Standards #1, 2, 3, 4, 5 and 7 of the *Standards for the Education, Competence and Professional Conduct of Educators in British Columbia*, 3<sup>rd</sup> Edition, February 2008 (the “Standards”). The Commissioner further alleges in the Citation that the Respondent is guilty of professional misconduct, or alternatively, has been or is incompetent under section 63(1) of the Act.

[6] At the commencement of the hearing, the Commissioner advised the Panel that it was not pursuing the allegations as set out in paragraph 1(b)(i) and (iii) of the Citation. Therefore, pursuant to section 63(1)(e) of the Act, the Panel directs the Commissioner to amend the Citation by deleting paragraphs 1(b)(i) and (iii).

## **PROCEDURE**

### *Delivery of Citation*

[7] The Respondent did not appear at the hearing and she was not represented by counsel at the hearing. The Commissioner argued that the hearing should proceed in the Respondent's absence pursuant to section 62 of the Act which provides as follows:

62. If an authorized person who is the subject of a citation being heard by a Panel fails to attend the hearing, on proof that a copy of the citation was delivered to the authorized person's last known address in accordance with section 56(3)(a), the Panel may proceed with the hearing and may take, without further notice, any action it is authorized to take under this Act and make any order that the Panel could have made in the presence of the authorized person.

[8] Section 56(3)(a) of the Act provides that if the Commissioner issues a citation, the Commissioner must deliver a copy of the citation to the last known address of the authorized person who is the subject of the citation.

[9] The Commissioner led evidence that a copy of the Citation was served personally on the Respondent on August 13, 2014. Susanna Mate, a process server, swore an affidavit of service in which she states that she served a copy of the Citation on the Respondent personally on August 13, 2014 at the Respondent's home address and that at the time of service, the Respondent admitted that she was the proper party to be served.<sup>2</sup> Attached to Ms. Mate's affidavit is a copy of a letter dated August 13, 2014 addressed to the Respondent from counsel for the Commissioner as well as a copy of the Citation.

[10] The Panel notes that the date of Ms. Mate's affidavit is August 4, 2014 which pre-dates the date of service. However, after reviewing the body of the affidavit as well as the attachments to it, the Panel is satisfied that the date of Ms. Mate's affidavit is an error that is not fatal to the issue of service. The Panel is satisfied that the Commissioner delivered the Citation to the Respondent at her home address in accordance with section 56(3) of the Act and that therefore, the hearing could proceed in the Respondent's absence pursuant to section 62 of the Act.

#### Disclosure of Evidence

[11] Section 37 of the Commissioner's Rules for Disciplinary and Professional Conduct Inquiries (the "Rules") provides that a person under a citation has a right to disclosure of evidence as follows:

37. After a citation has been issued, the commissioner must provide the person under citation, at least 14 days before the start of the hearing, the following:

(a) a list of every relevant document in the commissioner's possession or available to the commissioner in his files in relation to the citation whether or not the commissioner intends to introduce that evidence at hearing; and

(b) a copy of a summary of the anticipated evidence of any person whom the commissioner intends to call as a witness at the hearing.

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<sup>2</sup> Exhibit 1, Affidavit of Susanna Mate sworn September 4, 2014

A person under citation may request the commissioner provide to the person a copy of any document described in clause (a).

[12] The hearing of this matter was set for 3 days, commencing on May 26, 2015. The Commissioner led evidence that a copy of the Notice of Hearing was served personally on the Respondent on March 5, 2014. Larry Galvin, a process server, swore an affidavit of service on March 19, 2015 in which he swears that he served a copy of the Notice of Hearing on the Respondent personally on March 5, 2015 at the Respondent's home address and that at the time of service, the Respondent admitted that she was the proper party to be served.<sup>3</sup>

[13] Megan Tompkins, a legal assistant with the Ministry of Justice, swore an affidavit describing various correspondence and documents that were delivered to the Respondent.<sup>4</sup> In particular, Ms. Tompkins described the following:

(a) On October 17, 2014, counsel for the Commissioner delivered a letter by both regular and registered mail to the Respondent at her home address enclosing a copy of the Commissioner's "first disclosure index."

(b) On February 13, 2015, counsel for the Commissioner delivered a letter by regular mail to the Respondent's home address and by email to the Respondent's personal and work email addresses enclosing a copy of the Commissioner's "second disclosure index."<sup>5</sup>

(c) On March 23, 2015, counsel for the Commissioner delivered a letter by regular mail to the Respondent's home address and by email to the Respondent's personal and work email addresses enclosing a copy of the Commissioner's "third disclosure index" as well as witness statements of [REDACTED] and Bob Young.<sup>6</sup>

(d) On April 10, 2015, counsel for the Commissioner delivered a letter by regular mail to the Respondent's home address and by email to the Respondent's personal and work email addresses enclosing copies of the affidavits of Patti Isaak and Bradley Hagkull.<sup>7</sup>

[14] On April 23, 2015, counsel for the Commissioner received a telephone call from Stefanie Quelch, a lawyer employed by the British Columbia Teachers' Federation. At that time, Ms. Quelch advised the Commissioner that she was representing the Respondent in respect of the Citation. That same day, counsel for the Commissioner sent an email to Ms. Quelch advising her of the witnesses to be called to give evidence in this matter and the persons from whom affidavit evidence would be tendered. Further, copies of the three disclosure indexes previously delivered to the Respondent were attached to that email.<sup>8</sup>

[15] On May 12, 2015, counsel for the Commissioner received a letter from Ms. Quelch advising that the Respondent wanted to "direct her energy and focus on teaching her students

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<sup>3</sup> Exhibit 3, Affidavit of Larry Galvin sworn March 19, 2015

<sup>4</sup> Exhibit 2, Affidavit of Megan Tompkins sworn May 22, 2015

<sup>5</sup> Ibid at paragraph 8

<sup>6</sup> Ibid at paragraph 9

<sup>7</sup> Ibid at paragraph 10

<sup>8</sup> Ibid at paragraphs 11 and 12

rather than on the upcoming hearing” and that Ms. Quelch was no longer able to represent the Respondent in this matter.<sup>9</sup>

[16] On May 13, 2015, counsel for the Commissioner delivered a letter by regular mail to the Respondent’s home address and by email to the Respondent’s personal and work email addresses enclosing a copy of the affidavit of Bernard Klop.<sup>10</sup>

[17] As noted above, Rule 37 of the Rules provides that a person under citation has a right to the disclosure of evidence 14 days before the start of the hearing. In the present case, the hearing commenced on May 26, 2015 thereby creating a “deadline” of May 12, 2015.

[18] While Mr. Klop’s affidavit was delivered to the Respondent on May 13, 2015, counsel for the Commissioner argues that it should be admitted as an exhibit. Specifically, counsel submits that on May 11, 2015, prior to Ms. Quelch removing herself as the Respondent’s counsel, a letter was delivered to Ms. Quelch by email advising her that Mr. Klop’s affidavit would be provided later in the week due to Mr. Klop’s illness.<sup>11</sup>

[19] While Mr. Klop’s affidavit was delivered one day after the May 12, 2015 deadline, the Panel determined that it should be admitted as an exhibit because: (1) the Panel found that the Respondent, through her counsel, had notice the affidavit was forthcoming; (2) the affidavit was delivered only one day after the deadline; and the Respondent did not attend the hearing. Balancing these three factors, the Panel has determined that Mr. Klop’s affidavit should be admitted.

[20] As the Panel is satisfied that the Commissioner has complied with the requirements of section 56(3)(a) of the Act and with Rule 37, the Panel proceeded with the hearing in the Respondent’s absence as provided for in section 62 of the Act.

## **ISSUES**

[21] The issues before the Panel are:

- (a) whether the Respondent is guilty of professional misconduct and/or incompetence; and
- (b) if the verdict is guilty, what appropriate orders should be made with respect to penalty, costs and publication.

## **REVIEW OF EVIDENCE AND PANEL’S FINDINGS OF FACT**

[22] The Commissioner called two witnesses at the hearing:

- (a) [REDACTED] - the mother of the student referred to in the Citation; and
- (b) Bob Young - the principal at the School during the relevant time period.

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<sup>9</sup> Ibid at paragraph 14

<sup>10</sup> Exhibit 8, Affidavit of Megan Tompkins sworn May 26, 2015 at paragraph 2

<sup>11</sup> Exhibit 2 at paragraph 13

[23] In addition to [REDACTED] and Mr. Young, the Commissioner relied on the affidavit evidence of three witnesses:

(a) Bernard Klop - a counsellor at the School;

(b) Patti Isaak - an employee at the Student's after school day care; and

(c) Bradley Hagkull - a teacher who assumed responsibility for the Respondent's class while she was on a personal leave of absence from April through June 2011.

[24] As noted in the Citation, the Respondent taught a grade 6 class at the School during the 2010-2011 year. During that school year the Student was in the Respondent's class.

[REDACTED]

[25] [REDACTED] testified that, while the Student was in grade 5 (during the 2009/2010 school year), his teacher Tim Janz alerted her to what he was seeing in class. Following examinations by his family physician and other testing, the Student was diagnosed with absence seizures and a mild form of epilepsy. [REDACTED] described his seizures as being "like a volcano" and that his absence seizures would cause him to slump and stare into space with his mouth open and fingers tapped together.

[26] Following his diagnosis, confirmed in a letter dated December 21, 2009, from the Student's paediatrician,<sup>12</sup> [REDACTED] requested a School Based Team Meeting ("SBT") which took place on December 17, 2009. The meeting was attended by [REDACTED] the School's then principal Carol Lees, district counsellor Bernard Klop, Learning Assistance Teacher Heidi Tester and Tim Janz. Minutes from the SBT were prepared and they indicate that the Student's paediatrician recommended that the Student have a consistent schedule, that his stress be kept to a minimum and that Mr. Janz would reduce the amount of school work the Student had to complete for the time being on an as-needed basis.<sup>13</sup>

[27] Following the December 21, 2009 SBT, an Individual Education Plan ("IEP") was prepared for the Student.<sup>14</sup> The persons consulted in the development of the IEP included [REDACTED], Principal Lees, Ms. Tester, Mr. Klop and Mr. Janz. [REDACTED] testified that the purpose of the IEP was to increase the Student's chances of success and that a key element was the reduction of the amount of work he was required to do.

[28] At the conclusion of the Student's grade 5 school year, a second SBT meeting took place on June 9, 2015 which was attended by [REDACTED], Mr. Janz and Brigitte Daniels who was a Learning Assistance Teacher. [REDACTED] testified that the purpose of this SBT was to review the Student's IEP and to continue to build on the reduction of the volume of work that he was required to do. Included in the "Discussion Highlights" of the minutes from this SBT was a need

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<sup>12</sup> Exhibit 5, Book of Documents of the Commissioner, Document #4

<sup>13</sup> Ibid, document #3

<sup>14</sup> Ibid, document #5

to cut back on length of assignments, a possible need for extended time on tests and adaptation of some oral testing.<sup>15</sup>

[29] ██████ testified that prior to the Student beginning grade 6, his IEP was reviewed as it was to be continued from grade 5. As with the original IEP, a number of people were consulted including ██████ and Ms. Daniels. Also consulted were the School's new principal Bob Young, an education assistant at the School named Leslie Connor as well as the Respondent. On the second page of this IEP under "Annual Goals and Objectives", a "Goal Statement" for the Student was described as "[The Student] will complete the grade 6 curricular outcomes with adaptations regarding time and amount of work" with the Respondent noted as being responsible for this goal.<sup>16</sup>

[30] ██████ testified that outside of the SBT meetings she would attend at the Student's classroom to informally meet with and attempt to build a rapport with the Respondent. ██████ described her attempts at this as being unsuccessful. She said the Respondent often related her frustrations with the Student to her. ██████ recalled one meeting in particular in which she observed the Student's desk to have been moved the farthest from the front of the classroom to which the Respondent stated that "I just can't deal with him anymore." ██████ testified that she advised the Respondent that the Student was better able to focus at the front of the classroom but that he was never moved back.

[31] ██████ testified that, on many occasions, she reminded the Respondent of the Student's medical condition, his required medications, and the need to adapt his school work. She recalled specifically placing the Student's homework on the Respondent's desk and asking what portion of it he had to do. Rather than adapt the work the Respondent replied "You pick" or "Do what he can do."

[32] ██████ testified that in the early part of the Student's grade 6 school year, the Respondent advised her that the Student was not doing his work. When she asked the Respondent what portion the Student was responsible for, the Respondent stated "All of it" which she interpreted to mean that the Respondent had not adapted his work as provided in the IEP.

[33] ██████ further testified that in the early part of grade 6 the Student began demonstrating depression-like symptoms. He begged not to go to school as he felt he was stupid and unable to do the work.

[34] On October 20, 2010, ██████ wrote a letter to the School.<sup>17</sup> In it, in addition to providing an update regarding the Student's medical condition and medication requirements, she re-visited the issue of the recommended volume of work being done by the Student and she requested another SBT "to clarify and/or alter [the Student's] learning plan as soon as possible" as she didn't feel that things were happening as they should be.

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<sup>15</sup> Ibid, document #7

<sup>16</sup> Ibid, document #9

<sup>17</sup> Ibid, document #10

[35] On November 5, 2010, ██████████ sent an email to Principal Young as a follow up to her October 20, 2010 letter.<sup>18</sup> ██████████ testified that her concerns were that: (1) the Student was still being given the same volume of work as the rest of his class; (2) his level of homework was overwhelming; (3) on at least two occasions, the Respondent refused to modify the Student's work; (4) the Student had been singled out by having his desk moved to the back of the class; (5) the Student had been kept in by the Respondent at recess and/or lunch break to complete his work; and (6) the Respondent ignored the student. Additionally, the Respondent admitted to being hard on the Student out of frustration. In her email, ██████████ requested that the Student be moved out of the Respondent's class.

[36] On November 17, 2010, another SBT meeting took place.<sup>19</sup> The minutes from that meeting indicate that it was attended by ██████████, Principal Young, the Respondent, Ms. Daniels, Mr. Klop and Diane Baginsky, an Aboriginal Support Worker at the School. The Student also attended at the end of the meeting. ██████████ testified that the purpose of the meeting was to discuss her concern that the IEP was not being followed by the Respondent. Specifically, she was concerned that the amount of homework being sent home continued to be excessive with the result that she had to decide how much was enough for the Student. The minutes from that meeting set out a number of recommendations, one of which was that the Respondent would be responsible for giving less homework, that it should be completed at a homework club and that she was not to send regular homework home.

[37] ██████████ testified that at that time, the volume of homework the Student was being assigned would bring him to tears and cause him to become tired and experience headaches. He would comment to ██████████ "I can't do it."

[38] The next SBT meeting took place on December 2, 2010. In attendance were ██████████, Principal Young, the Respondent, Ms. Daniels, Mr. Klop and Ms. Baginsky. ██████████ gave evidence that she found "hope and some excitement" at this meeting because Ms. Baginsky had begun attending the Student's homework club where she took it on herself to adapt his homework and help him remain organized.

[39] Between February 3 and February 12, 2011, ██████████ and Principal Young continued to exchange emails regarding the Student and his classroom environment. ██████████ testified that on February 3 she sent an email to Principal Young raising concerns that the Student was still being kept in class at recess and lunch time to complete school work so he had no time for a snack or lunch. Also, he was still being asked to do the same volume of school work as the other students and there had not been any adaptations to his school work as they had discussed at the previous SBT.<sup>20</sup> Principal Young responded on February 11, indicating that he had discussed the matter with the Respondent who denied keeping the Student in during recess and lunch time. Principal Young also indicated that he had asked the Respondent to contact ██████████ regarding the Student's adapted program. In a February 12, 2011 email response, ██████████ advised

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<sup>18</sup> Ibid, document #11

<sup>19</sup> Ibid, document #13

<sup>20</sup> Ibid, document #16



Principal Young that the Student continued to do the same tests as his classmates and that she still had not heard from the Respondent regarding the Student's adapted program.<sup>21</sup>

[40] ██████ testified that in mid-February 2011, she attended a meeting with Principal Young, the Respondent and another person who the Respondent "answered to." It was ██████ understanding that the Respondent was to have brought documents to the meeting to demonstrate how she was adhering to the Student's IEP and that in the course of the meeting the Respondent was not able to provide a response as to why no adaptations had been made. Following that meeting, ██████ sent an email to Principal Young and stated that she was not convinced that the Respondent had actually adapted anything for the Student.<sup>22</sup>

[41] On March 10, 2011, ██████ sent an email to Principal Young regarding an incident that occurred the prior day. She gave evidence that she had received a call from the Respondent that morning who told her that the Student had not been working in class. She further testified that she had been advised by Patti Isaak who worked at the Student's after school day care that she had witnessed the Respondent berating and embarrassing the Student in front of other students. Ms. Isaak advised ██████ that the manner in which the Respondent spoke to the Student was akin to speaking to someone she hated and that it was very demeaning and condescending.

[42] ██████ testified that she emailed Principal Young again on March 30, 2011 to advise him that the Student's work still had not been adapted and that she had adapted it herself.<sup>24</sup> She stated that she had written a note to the Respondent but had not received a reply. ██████ also alerted Principal Young to a second incident witnessed by Ms. Isaak between the Respondent and the Student. Ms. Isaak observed the Student asking the Respondent what his homework was. After ignoring him for some period of time, she responded "it's on your desk."

[43] ██████ testified that following her March 30, 2011 email, things became worse for the Student and she asked that the Student be removed from the Respondent's classroom. ██████ recalled that she had made similar requests 3 or 4 times previously with not less than 3 times in writing.

[44] In April 2011, the Respondent went on personal leave and ██████ testified that the Student's situation at school took a dramatic positive turnaround. A substitute teacher named Brad Hagkull took over the Respondent's classroom and ██████ described him as supportive and encouraging and that he took active steps to adapt the Student's school work. Further, she described Mr. Hagkull as being communicative and helping re-build the Student's self-esteem. ██████ described Mr. Hagkull as "amazing."

[45] On May 27, 2011, ██████ emailed Principal Young to update him on the Student's progress.<sup>25</sup> She described him as recording positive results on tests and projects and showing

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<sup>21</sup> Ibid, document #17

<sup>22</sup> Ibid, document #19

<sup>23</sup> Ibid, document #21

<sup>24</sup> Ibid, document #24

<sup>25</sup> Ibid, document #36

outward signs of confidence and motivation to succeed. [REDACTED] testified that the changes made by Mr. Hagkull resulted in these improvements.

[46] [REDACTED] gave evidence that the Student was unable to attend the hearing due to an ongoing medical condition.

Bob Young

[47] Bob Young testified that he was the principal at the School during the 2010/2011 school year, his first at the School. Mr. Young described his extensive background as a teacher and administrator and he described the School as having an enrolment at that time of 440-450 students between kindergarten and grade 6.

[48] Mr. Young testified that he did not know the Respondent prior to arriving at the School other than by name but that she had approximately 20-25 years of teaching experience at that time. He recalled that during the 2010/2011 school year the Respondent taught a grade 6 class consisting of 29 students, three of whom had IEP's including the Student.

[49] Mr. Young described IEP's as a success plan for students who are struggling. In preparing an IEP, a number of people work together to identify issues, look at resources and strategies and determine how to assess the student in question. Mr. Young testified that IEP's are dynamic and always shifting and as a result require continuous "tweaking" with parents almost always participating. Mr. Young further described the concept of "adaptation" as one where a student does the entire regular curriculum but requires either more time or less work or both.

[50] Mr. Young described the teacher's role in the preparation and implementation of an IEP as providing input to the IEP and in monitoring the student to make sure that the IEP is working. In the case of the Student, the Respondent was primarily involved in coordination with the Resource Teacher, Brigitte Daniels, who served as a case manager for the Student. He also described the role of Education Assistants as assistants directed by the teacher to help students achieve directives in the IEP.

[51] Mr. Young further described the function of the SBT. He testified that the participants were a problem-solving group which allowed for brainstorming of possible solutions where something is not working for a teacher. He testified that during the 2010/2011 school year, the Respondent had three education assistants working with her for varying lengths of time for some days of the week, including one assigned specifically to a boy with autism as well as Leslie Connor and Suzanne Hamel.

[52] Mr. Young referred to the Student's IEP as a success plan for his grade 6 school year and included goal statements that the Student would "complete the grade 6 curricular outcomes with adaptations regarding the time and amount of work" and that the Student required help with the improvement of his organizational skills.<sup>26</sup>

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<sup>26</sup> Ibid, document #9

[53] Mr. Young described the adaptations of time and amount of work as “key.” He gave an example of a homework assignment with 20 questions where the Student would be expected to either complete all of the odd ones or all of the even ones and that the amount of time required to complete the questions would be increased.

[54] Mr. Young testified that, in the fall of 2010, he received 3 or 4 telephone calls regarding the Respondent in the first month of school as [REDACTED] was growing frustrated due to the lack of communication and the lack of adaptation of school work. As a result, he met with the Respondent and provided her with suggestions to consider with respect to the Student and another student’s IEP. Specifically, he suggested that the Respondent check the Student’s student file and speak with his grade 5 teacher who was still at the School to try and determine what was done during the previous school year that was successful. When he followed up with the Respondent at the end of September or the beginning of October he found that she had not done either of these tasks and she had not spoken with Ms. Moore or Ms. Daniels.

[55] Mr. Young testified that around the time he received [REDACTED] email of November 5, 2010, there were a number of issues concerning the Respondent and the Student. He stated that he was concerned with the issues in the classroom, specifically, the relationship between the Respondent and the Student, the lack of adaptation and the lack of breaks being taken by the Student each day. Mr. Young testified that “adapted and modified” are not complicated things and that the Respondent never came to him to ask what they meant either before or after the IEP was completed.

[56] On December 2, 2010, Mr. Young attended an SBT meeting<sup>27</sup>. He testified that the overriding concern was that the Student’s IEP was not working and that the Respondent was not following it. The purpose of the adaptation of the Student’s work was discussed with the goal of reducing the amount of his school work and giving him more time to complete his work if needed.

[57] Mr. Young testified that first term report cards were to be issued in December 2010 but on receiving the Student’s report card he sent it back to the Respondent and asked that it be re-done. Specifically, he noted that there were no comments and no mention of the Student’s IEP in his report card.

[58] Mr. Young received [REDACTED] February 3, 2011 email which told him that things with the Respondent and the Student had not changed and as a result he proposed a meeting with [REDACTED], the Respondent and a representative from the Chilliwack Teacher’s Association (“CTA”).

[59] Mr. Young testified about his request that the Respondent communicate with [REDACTED]. He stated that in elementary school, parent contact is standard and that there was a lot of parent contact at the School. He said that, as the Student was on an IEP, there should be more communication than usual. It was his understanding that the Respondent was concerned that the Student was not doing the assigned school work and as such, it would have been standard for her to contact his parents. He found it unusual and concerning that there were no calls from the Respondent to [REDACTED].

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<sup>27</sup> Ibid, document #14

[60] Mr. Young testified that he scheduled the February 22, 2011 SBT meeting. In an email to the Respondent dated February 21, 2011, he asked her to bring to that meeting all tests, quizzes and assignments that the Student had been assessed on for the second school term along with the adaptations she had made for each of them.<sup>28</sup> During the SBT meeting, the Respondent admitted that she had made the Student do all of the work, waited until he “shut down” and then adapted it.

[61] Mr. Young testified that the practice described by the Respondent during the February 22, 2011 SBT meeting was not the proper way to adapt school work and that he was concerned with her approach. Nothing ever was communicated by the Respondent to [REDACTED] describing the adaptation. Rather, the approach was for the Student to simply do all the work. Mr. Young told the Respondent to apply the adaptations to the work and communicate it to [REDACTED] as he was concerned the Student was becoming disillusioned and unmotivated and did not like school because he felt the Respondent did not like him. Mr. Young felt that no plan for the Student’s success had been laid out.

[62] Mr. Young testified that it was his view that the Respondent was resisting when it came to applying the Student’s IEP. He provided an example where he asked the Respondent why she was not permitting the Student to write his tests in a different room than the other students. Her reply was that doing so would provide him with different results. Mr. Young stated that he was “blown away” by this answer and he questioned why the Respondent would not take advantage of such an arrangement given the goals of the IEP.

[63] On March 10, 2011 Mr. Young received [REDACTED] email which he described as “the straw that broke the camel’s back.” Based on [REDACTED] continuing complaints regarding the Respondent continuing to not follow the IEP and her poor treatment of the Student, Mr. Young determined that it was necessary for him to conduct a formal investigation into allegations of the Respondent’s unprofessional conduct. By letter dated March 11, 2011, he notified the Respondent and the CTA of the investigation.<sup>29</sup>

[64] Following the spring break vacation in 2011, Mr. Young testified that he began to plan his investigation and that the CTA convinced the Respondent to go on paid leave while that was undertaken. Mr. Young arranged for a Teacher On Call (“TOC”) named Brad Hagkull to teach the Respondent’s class. Mr. Young recalled that Mr. Hagkull immediately connected with the students, knew their strengths and areas of concern and strategies for success.

[65] Mr. Young testified that the Respondent’s leave was extended to June 3, 2011 and he recalled the May 27, 2011 email from [REDACTED] calling her description of the Student’s circumstances as “how it should have been in September.”

[66] Mr. Young testified that as part of his investigation into the Respondent’s conduct, he interviewed [REDACTED], Ms. Daniels, Ms. Hamlin, Ms. Connor and Ms. Isaak. He also interviewed five students including the Student, the parent of another student and the Respondent. Mr. Young testified that in the course of his interview with the Respondent, she did not raise concerns regarding the Student’s IEP and he concluded that she never followed it.

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<sup>28</sup> Ibid, document #18

<sup>29</sup> Ibid, document #22

[67] Following the interviews, Mr. Young prepared a letter dated June 24, 2011 addressed to the Respondent outlining his conclusions.<sup>30</sup> In the letter, Mr. Young writes that he has concluded that the Respondent had “engaged in professional misconduct by failing to implement the Individual Education Plan (“IEP”) for at least one student in your class with identified special needs, and by failing to consult in a meaningful way with the parents of this student.”

[68] As a result of his conclusions, Mr. Young testified that he wanted to “put something in place” consisting of “heavy recommendations” including a requirement that the Respondent take a university course on dealing with diverse learners in the classroom and that she receive a grade of not less than a B with the course to be completed no later than December 31, 2011.

[69] Mr. Young testified that he scheduled a meeting for June 24, 2011 at the Chilliwack School Board Office, the purpose of which was to read his “Investigation Presentation” to the Respondent in person in the presence of the CTA president and the Chilliwack School District Principal of Human Resources Janet Carroll. The Respondent did not appear at that meeting and it was re-scheduled to June 29.

[70] On June 29, 2011, Mr. Young met with the Respondent in the presence of the CTA president and Janet Carroll. At that time, he read his Investigation Presentation to the Respondent. As set out in his June 24, 2011 letter to the Respondent, the Investigation Presentation concluded that the Respondent engaged in professional misconduct by failing to implement the IEP for at least one student in her class with identified special needs and by failing to consult in a meaningful way with the parents of this student.<sup>31</sup>

[71] The Investigation Presentation further set out Mr. Young’s recommendation that the Respondent complete university coursework in meeting diverse needs of learners.

#### *Affidavit Evidence*

[72] Affidavits sworn by Mr. Hagkull, Ms. Isaak and Mr. Klop were read into the record following the testimony of [REDACTED] and Mr. Young.

#### *Bradley Hagkull*

[73] Mr. Hagkull deposed that he holds a Professional Certificate of Qualification issued September 2, 2010 and that during the 2010/2011 school year he worked as a teacher-on-call in School District No. 33 (Chilliwack). He states that in early April 2011, he met with Principal Young who asked that he serve as a substitute teacher for a grade 6 class at the School for a couple of weeks in April and he agreed to do so although he ended up being required for a longer period and he in fact worked with that class for the balance of the school year.<sup>32</sup>

[74] The Student was in Mr. Hagkull’s class. Mr. Hagkull learned through class records that the Student had a medical condition and an IEP as a result of that condition. Mr. Hagkull described the class as containing students “with a diversity of achievement levels and learning

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<sup>30</sup> Ibid, document #39a.

<sup>31</sup> Ibid, document #41

<sup>32</sup> Exhibit 6, Affidavit of Bradley Hagkull, paragraphs 1-2

needs” and there were other students in the class who had IEP’s. While Mr. Hagkull considered the class to be “complex,” he has worked in classrooms that are more complex.<sup>33</sup>

[75] Mr. Hagkull noted the Student had difficulty focusing and staying on task due to his medical condition. He needed more time to do tasks than other students in the class and he required extra patience and directions to be repeated. Mr. Hagkull adapted the time given to the Student to complete his work by giving him extra time and he adapted the size of assignments by shortening them. Mr. Hagkull described these strategies as consistent with those outlined in the student’s IEP.<sup>34</sup>

[76] Mr. Hagkull recalled the Student’s grades improving in the last term of grade 6 and he was of the opinion that the adaptations to his school work assisted the Student in being more successful as he was able to complete assignments and feel achievement from doing so. Mr. Hagkull observed the Student experiencing success during his tenure with the class and while he continued to struggle in several academic areas, he developed confidence that he could accomplish tasks.<sup>35</sup>

[77] Mr. Hagkull recalled that during his time teaching the Student’s class, he did not have trouble managing the Student’s behaviour and did not find him to be intentionally disruptive in class. Mr. Hagkull found the Student to be a friendly and respectful student. He further found ██████████ to be friendly and co-operative although his interactions with her were limited.<sup>36</sup>

Patricia Isaak

[78] Ms. Isaak deposed that during the 2010/2011 school year, she was employed by the Fairfield Island Preschool and Daycare (“the Daycare”) which enrolled children from the School. During that school year, a number of children from the School attended the Daycare. One of her roles was to meet the children at the School and accompany them to the Daycare. One of the students who attended the Daycare was the Student.<sup>37</sup>

[79] On or about March 9, 2011, Ms. Isaak attended the School to meet the Student. As he was not at the pre-arranged meeting place, Ms. Isaak went to his classroom to pick him up and to speak with his teacher to ensure that he had his homework. As she arrived at the Student’s classroom, Ms. Isaak noted that the end of school bell went and that all but four or five students remained in the classroom including the Student. Ms. Isaak observed him sitting at his desk with the Respondent in front of him, leaning over him while pointing her finger at him and saying words to the effect of “you get this mess cleaned up.” Ms. Isaak noted a red textbook on the floor under the Student’s desk with lined paper sticking out of it. Ms. Isaak further observed that the Student had his head down, his face was red and he appeared to be embarrassed and uncomfortable. Ms. Isaak felt bothered and uncomfortable with how the Respondent was speaking to the Student.<sup>38</sup>

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<sup>33</sup> Ibid, paragraphs 3-4

<sup>34</sup> Ibid, paragraph 5

<sup>35</sup> Ibid, paragraphs 6-7

<sup>36</sup> Ibid, paragraphs 8-9

<sup>37</sup> Exhibit 7, Affidavit of Patricia Isaak, paragraphs 1-2

<sup>38</sup> Ibid, paragraphs 7-8

[80] As she did not like the way in which the Respondent was speaking to the Student Ms. Isaak entered the classroom and said “Hi [Student], how’s it going?” or words to that effect. The Respondent asked Ms. Isaak “And who are you?” After introducing herself, Ms. Isaak asked the Respondent whether the Student had a planner or homework folder to which the Respondent replied “[The Student] knows what he has to do” in a demanding and condescending tone. As a result of this incident, Ms. Isaak told ██████████ about it and Ms. Issak prepared an incident report at the Daycare and gave it to the manager there.<sup>39</sup>

[81] Ms. Isaak observed a second interaction between the Respondent and the Student in the classroom on March 29, 2011. Ms. Isaak again arrived at the Student’s classroom to bring him to the Daycare. She asked the Student if he had any homework and he replied that he was not sure so Ms. Isaak suggested he ask the Respondent when she was finished talking. Ms. Isaak observed the Student ask the Respondent what he had for homework twice. On the first occasion, the Respondent did not answer but rather walked away from the Student. On the second occasion, the Respondent told the Student that his homework was “on the board” and said something about not needing to do it anyway which Ms. Isaak felt was rude towards the Student. Ms. Issak asked the Respondent if setting out the homework assignment on the board rather than in the Student’s homework folder was new but the Respondent did not answer her so she left with the Student.<sup>40</sup>

[82] Ms. Isaak worked with the Student on his homework for most of March 2011. During that time, the Student told her that his homework folder consisted of worksheets and that he was usually required to complete all of the questions. On some occasions specific questions were circled but not usually and there was never any written instruction as to what he was supposed to do so he would normally complete the entire worksheet. It also appeared to Ms. Isaak that his completed work was often not marked.<sup>41</sup>

[83] Ms. Isaak noticed a significant difference in the Student in or about mid-April when Mr. Hagkull took over his class. She noted the Student to be bouncy and much happier and that he started completing his work in class resulting in less homework. Ms. Isaak found the Student to be polite in the way he interacted with adults and while he was shy, he was not withdrawn.<sup>42</sup>

### Bernard Klop

[84] Mr. Klop deposed that he has been employed as a district counsellor by School District No. 33 (Chilliwack) since January 2003, that he holds a Professional Certificate of Qualification and that he has worked in education for over 30 years. During the 2010/2011 school year, he spent one day per week at the School primarily working on short term one-on-one counselling with students with emotional or behavioural difficulties. He was part of the SBT and attended two SBT meetings regarding the Student on November 17 and December 2, 2010.<sup>43</sup>

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<sup>39</sup> Ibid, paragraphs 9 and 10

<sup>40</sup> Ibid, paragraphs 11 and 12

<sup>41</sup> Ibid, paragraph 13

<sup>42</sup> Ibid, paragraphs 14 and 15

<sup>43</sup> Exhibit 9, Affidavit of Bernard Klop, paragraphs 1-2

[85] Mr. Klop became acquainted with the Respondent, the Student and ██████████ in his role as district counsellor. He first became acquainted with the Respondent during the 2009/2010 school year. He was aware that the Student had an IEP as a result of his medical condition and that the IEP required adaptation of the academic curriculum. He recalled in the SBT that the Respondent commented that the Student did not work in class and there was uncertainty on the part of the SBT about what the Student was capable of doing academically.<sup>44</sup>

[86] At some point between November 2010 and February 2011, Mr. Klop discussed the Student's IEP with the Respondent. He recalled the Respondent seeming fixed in her position that the Student had more ability than he let on. His advice to her was that, regardless of her belief, they had to work together to ensure that the Student's IEP was effective to meet his needs and that the situation would become inflamed if she was rigid in her approach towards the Student and how she was adapting his work.<sup>45</sup>

[87] Mr. Klop met with the Student twice at Mr. Young's request. During their first meeting on February 3, 2011, the Student indicated that, on a scale of 1-10 (with 10 being very happy and 0 being very unhappy and sad) while at home he was a 7, with his friends he was an 8, at school he was a 2 and overall he was a 3. The Student indicated to Mr. Klop that the number for school would increase if he had a different teacher as he felt the Respondent didn't like him much. In response to a question from Mr. Klop as to what he would wish for if he had 3 wishes, the Student stated he would wish for more wishes, a bigger house, a different teacher and to live closer to friends. He further stated that a "good day" at school included not getting detentions or homework.<sup>46</sup>

[88] Mr. Klop met with the Student again on February 10, 2011. Using the 1-10 scale again, the Student reported that at home he was a 9, with his friends he was a 10, at school he was a 4 and overall is noted as "?". A third meeting took place on March 31, 2011 at which time the Student advised Mr. Klop that he had a good spring break and was feeling "okay" about school. Mr. Klop attended at the Student's classroom after the Respondent went on her leave of absence and he noted that things seemed to be going well for the Student and as such no further meetings were scheduled.<sup>47</sup>

### *Standard of Proof*

[89] The Commissioner bears the onus of proving the conduct alleged in the Citation and that it constitutes one or more of the adverse findings set out under section 63(1) of the *Act*.<sup>48</sup> The Supreme Court of Canada has established that the standard of proof is the civil standard which is proof on a balance of probabilities and that the evidence as a whole "must always be sufficiently clear, convincing and cogent" in order to establish "whether it is more likely than not that an alleged event occurred."<sup>49</sup>

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<sup>44</sup> Ibid, paragraphs 3-4

<sup>45</sup> Ibid, paragraph 5

<sup>46</sup> Ibid, paragraphs 6 and 7

<sup>47</sup> Ibid, paragraphs 8-10

<sup>48</sup> Commissioner's closing submissions, paragraph 3

<sup>49</sup> *F.H. v. McDougall*, 2008 SCC 53 at paragraphs 46 and 49



Findings of Fact Regarding Allegations in Citation

[90] The Commissioner argues that the evidence in support of the allegations in the Citation is uncontradicted and has not been responded to by the Respondent. The Commissioner submits that the oral and affidavit evidence is highly reliable insofar as it is corroborated by documents that were created at the time the events occurred.

*Failure or Refusal to Implement the IEP*

[91] The Commissioner argues that, despite being aware of the Student's IEP from the beginning of the 2010-2011 school year, the Respondent pushed the Student to complete the same work as the rest of his classmates and therefore failed to implement required adaptations. The Commissioner refers to the evidence of Bob Young who testified that the adaptations required to support the Student's learning were easy to implement and that several meetings took place with the Respondent to bring the concerns regarding the IEP to her attention including:

- (a) SBT meetings on November 17, 2010 and December 2, 2010; and,
- (b) the February 22, 2011 meeting attended by the Respondent, Mr. Young, [REDACTED] and a CTA representative.

[92] The Commissioner referred the Panel to the affidavit of Mr. Klop in which he states that sometime between November 2010 and February 2011 he had a brief discussion with the Respondent regarding the Student's IEP and the need to make it effective for him but that the Respondent appeared fixed in a position that the Student had more ability than he let on.

[93] The Commissioner submits that the evidence shows that the Respondent was an experienced and capable teacher who was required to implement an "easy" IEP but did not do so despite being told on multiple occasions that her approach was not meeting the Student's needs or the IEP. The Commissioner further submits that the Respondent knew what was required of her but that she simply did not do it.

[94] The Panel finds that Student's IEP was clear and unambiguous and that the Respondent was consulted in its development. The IEP clearly set out the Student's medical condition and provided as a goal statement that the Student "will complete the grade 6 curricular outcomes with adaptations regarding time and amount of work." This goal would be met through shortened assignments, more time for tests and allowing the Student to type his assignments. The Respondent was the person designated in the IEP as being responsible for this.

[95] The Panel has considered the uncontradicted evidence of [REDACTED], Mr. Young and Mr. Klop. Notably, it was Mr. Young's evidence that during his February 22, 2011 meeting with the Respondent that she did not adequately explain the adaptations she had made to the Student's homework and she admitted that she was making the Student do all of the work until he "shuts down." The Panel further considers the evidence of Mr. Hagkull who states in his affidavit at paragraph 5 the following:

[The Student] had difficulty focusing and staying on task because of his medical condition. He needed more time to do tasks than the others in his class. His learning needs required that I be extra patient and often repeat directions to him. I also adapted the time given to [the Student] to

complete the work by providing extra time and adapted the size of assignments to shorten them. These strategies were consistent with the strategies outlined in [the Student's] IEP.

[96] Finally, the Panel notes the evidence of ██████ that, sometime in November 2010, the Respondent told her that she would not follow the IEP. Considering the evidence as a whole, the Panel finds that the Commissioner has proven on a balance of probabilities that the conduct alleged in paragraph 1(a) of the Citation occurred.

*Interacted With the Student in an Unprofessional and Disrespectful Way*

[97] The Commissioner submits that this allegation is supported by the two incidents that were witnessed by Ms. Isaak on March 9 and 29, 2011 which are described as “acts of the Respondent which reflect intent to embarrass, belittle or hurt the subject” as well as ██████ evidence relating to the moving of the Student’s desk by the Respondent to the back of the classroom.

[98] Ms. Isaak deposed in her affidavit that on March 9, 2011, she witnessed the Respondent leaning over the Student while he was seated at his desk, pointing her finger at him and telling him words to the effect “you get this mess cleaned up” and that this occurred while some students remained in the classroom. While this occurred, Ms. Isaak observed that the Student’s head was down and his face was red and she further observed him appearing to be embarrassed and uncomfortable. Ms. Isaak was troubled by this incident and prepared an incident report for her manager and she told ██████ about what she had witnessed. ██████ related this incident to Mr. Young in an email the following day.

[99] Ms. Isaak deposed in her affidavit that on March 29, 2011, she witnessed the Student ask the Respondent what he had for homework. The Respondent did not answer the Student and he asked again. Ms. Isaak observed the Respondent turn and walk away from the Student without answering his question. The Student asked a third time what his homework was to which the Respondent answered “It’s on the board” while adding words to the effect that he did not need to do it. This incident was again related to Mr. Young by ██████ the following day.

[100] The Panel approaches the evidence of Ms. Isaak with some caution given that it was tendered by affidavit. However, the Panel is mindful of the corroborative evidence of ██████ regarding these two incidents. ██████ sent an email to Mr Young on March 10, 2011 in which she cites Ms. Isaak’s report of the March 9, 2011 incident to her. Similarly, ██████ emailed Mr. Young again on March 30, 2011 and referenced the March 29, 2011 incident witnessed by Ms. Isaak. While there is some variation between Ms. Isaak’s recounting and that of ██████ concerning the March 29, 2011 incident (homework on the board vs. on his desk) they are consistent with respect to the manner in which the Respondent interacted with the Student and the Respondent ignoring the Student while he asked about his homework.

[101] Finally, the Commissioner submits that by moving the Student’s desk away from her to the back of the classroom, the Respondent demonstrated a powerful symbol of her attitude towards the Student which is supported by her comment to ██████ that the Respondent couldn’t “deal with [the Student]” any longer.

[102] In making a determination as to whether the Respondent engaged in unprofessional and disrespectful interaction with the Student, the Panel notes that the Commissioner has elected to include in the Citation four specific examples in support of the allegation in paragraph 1(b) with the examples in paragraph 1(b)(i) and (iii) having been withdrawn. While the Panel finds that the evidence of Ms. Isaak and ██████████ in respect of the examples in paragraph 1(b)(ii) and (iv) was not challenged or contradicted, the example of the Respondent moving the Student's desk to the back of the classroom was not included in the Citation. As it is a principle of natural justice that a person must be provided the opportunity to know and respond to the case against them, the Panel cannot rely on the example of the Respondent moving the Student's desk to the back of the classroom as evidence in support of the allegation in paragraph 1(b) of the citation. However, the Panel finds that the Respondent's interaction with the Student as described by Ms. Isaak supports the allegations in the Citation and paints a picture of a teacher who was unable or unwilling to work with the Student and whose solution was to ignore and belittle him. The Panel finds that the Commissioner has proven on a balance of probabilities that the conduct set out in paragraph 1(b) (ii) and (iv) of the Citation occurred.

*Failure to Communicate With ██████████*

[103] This allegation in the Citation has two aspects. The Respondent is alleged to have failed to communicate with ██████████ and she is further alleged to have failed to communicate any adaptations made to the Student's homework.

[104] The Commissioner submits that the evidence demonstrates a pattern of a failure or refusal by the Respondent to communicate in a reasonable way with ██████████. Specifically, the Commissioner refers to the following evidence:

- (a) ██████████ was not advised by the Respondent if limiting the Student's homework was acceptable despite repeated meetings with the Respondent;
- (b) Mr. Young asked the Respondent in February 2011 to contact ██████████ to explain the Student's test results and discuss the adapted program;
- (c) ██████████ testified that by February 12, 2011 she had not heard from the Respondent;
- (d) The Respondent admitting at the February 22, 2011 meeting with Mr. Young, ██████████ and the CTA representative that she had not contacted ██████████ during that term; and
- (e) That the telephone call made by the Respondent to ██████████ on March 9, 2011 was the only call she ever received from her.

[105] The Panel notes that ██████████ gave evidence that, at the beginning of the Student's grade 6 year, she would attend at his classroom to "touch base" with the Respondent and to attempt to build a rapport. Further, the Panel notes that ██████████ and the Respondent met on at least three formal occasions, the November 17, 2010 and December 2, 2010 SBT meetings and the February 22, 2011 meeting facilitated by Mr. Young.

[106] Further, the Panel notes that ██████ testified that she discussed the adaptation of the Student's work "many times" with the Respondent although ultimately those adaptations were found to be inadequate at best.

[107] At the December 2, 2010 SBT meeting which was attended by ██████ and the Respondent, under the heading "Fine Tuning" the adaptations to the Student's work appear to have been discussed as they are noted as likely having to be increased. Further, the purpose of the meeting is noted as "Updated on IEP adaptations."

[108] Considering this evidence, the Panel finds that the Respondent did communicate with ██████ during informal meetings at the classroom and during SBT meetings. While the nature of the communication was not to ██████ satisfaction, it was communication nonetheless. Further, while ██████ and Mr. Young viewed the adaptations made by the Respondent to be inadequate, those adaptations were discussed in the course of SBT meetings which were attended by the Respondent and ██████.

[109] For these reasons, the Panel finds that the Commissioner has not proven on a balance of probabilities that the conduct set out in paragraph 1(c) of the Citation occurred.

## ANALYSIS AND DECISION

### Breach of the Standards

[110] In making a determination as to whether the Respondent has breached one or more of the Standards, the Panel has considered the preamble to the Standards which were in effect during the Student's 2010-2011 school year and which provides as follows:

The BC College of Teachers is the professional body for the majority of educators in British Columbia, and is directed through legislation to set standards for the profession. Section 4 of the *Teaching Profession Act* articulates this.

*It is the object of the College to establish, having regard to the public interest, standards for the education, professional responsibility and competence of its members, persons who hold certificates of qualification and applicants for membership and, consistent with that object, to encourage professional interest of its members in those matters.*

[111] The Commissioner submits that teachers are held to a high standard of conduct, both on and off duty, due to their position of trust and influence.<sup>50</sup>

[112] The Commissioner further submits that the Standards constitute "the guiding regulatory framework that communicates to teachers and to the public the expectations for the conduct of teachers as professionals."<sup>51</sup>

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<sup>50</sup> *Young v. British Columbia College of Teachers* (2001) B.C.C.A. 164 at paragraph 50

<sup>51</sup> Commissioner's closing submissions, paragraph 23

[113] The Commissioner alleges in the Citation that the conduct of the Respondent as set out above constitutes breaches of Standards 1, 2, 3, 4, 5 and 7. The Standards alleged to have been breached 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.
2. Educators act with integrity, maintaining the dignity and credibility of the profession. They understand that their individual conduct contributes to the perception of the profession as a whole. Educators are accountable for their conduct while on duty, as well as off duty, where that conduct has an effect on the education system. Educators have an understanding of the education system in BC and the law as it relates to their duties.
3. Educators are knowledgeable about how children develop as learners and as social beings, and demonstrate an understanding of individual learning differences and special needs. This knowledge is used to assist educators in making decisions about curriculum, instruction, assessment and classroom management.
4. Educators understand, respect and support the role of parents and the community in the education of students. Educators communicate effectively and in a timely manner with parents and consider their advice on matters pertaining to their children.
5. 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.
7. Educators engage in professional development and reflective practice, understanding that a hallmark of professionalism is the concept of professional growth over time. Educators develop and refine personal philosophies of education, teaching and learning that are informed by theory and practice. Educators identify their professional needs and work to meet those needs individually and collaboratively.

*Standard #1*

[114] The Commissioner submits that the Respondent's conduct constitutes a breach of Standard #1. Specifically, the Commissioner argues that the Respondent failed to adjust her teaching style to implement the Student's IEP and in doing so she failed to foster the Student's emotional or intellectual development, failed to act in his best interests and failed to protect the Student's emotional safety by continuing to use educational methods that undermined his self-confidence and self-esteem leaving him to believe that he was "not smart."

[115] The Panel finds that the Respondent breached Standard #1. This Standard requires that teachers value and care for students and act in their best interests while being responsible for, *inter alia*, students' emotional safety and intellectual and emotional development. Standard #1 further requires teachers to treat students with respect and dignity. In the present case, the Respondent did not foster the Student's intellectual development insofar as she failed to take steps to implement the Student's IEP despite the steps being described by Mr. Young as not complicated and the evidence of Mr. Hagkull that he was able to implement the necessary adaptations which resulted in the Student experiencing academic success.

[116] The Respondent contributed to the Student's IEP, she knew of its purpose and her role in implementing it but for reasons known only to her she never followed it.

[117] The Panel further finds that the Respondent failed to treat the Student with respect and dignity. Examples include ignoring the Student when he asked what his homework was and verbally reprimanding the Student in a manner that was objectively excessive.

#### *Standard #2*

[118] The Panel does not find that the Respondent breached Standard #2. This Standard requires that teachers act ethically, honestly and with integrity and that they maintain the dignity and credibility of the profession. While the Panel has found that the Respondent failed to implement the Student's IEP and that she interacted unprofessionally and disrespectfully with the Student, the Panel does not find that these actions constitute a failure to meet this Standard.

#### *Standard #3*

[119] The Commissioner submits that the Respondent's conduct constitutes a breach of Standard #3. Specifically, it argues that the Respondent failed to adjust her teaching style to implement the Student's IEP and in doing so she failed to demonstrate an understanding of the Student's individual learning differences and special needs.

[120] The Panel finds that the Respondent breached Standard #3. This Standard requires that educators understand and apply knowledge of student growth and development and "demonstrate an understanding of individual learning differences and special needs." From the beginning of his grade 6 year, the Student's medical condition and coinciding educational needs were made known to the Respondent through the IEP and on an ongoing basis through SBT meetings. Despite this knowledge, the Respondent failed to adapt the Student's school work which the Panel finds is a reflection of her failure to understand the Student's individual learning differences and special needs.

[121] No evidence was led to suggest that the Respondent did not understand the IEP, its goals or how to implement them. The IEP was clear that as a result of his educational challenges, "adaptations regarding time and amount of work" were a stated goal with the Respondent being

responsible for that.<sup>52</sup> By failing to implement the Student's IEP, the Respondent failed to demonstrate an understanding of the Student's individual learning differences and special needs.

#### *Standard #4*

[122] The Panel does not find that the Respondent breached Standard #4. This Standard requires that educators value the involvement and support of parents, guardians, families and communities in schools and that they communicate effectively and in a timely manner with parents. As noted previously in this decision, the Panel has found that it has not been proven on a balance of probabilities that the Respondent failed to communicate with [REDACTED] generally or in respect of any adaptations made to the Student's homework. As the conduct alleged in the Citation has not been found to have been proven, the Panel cannot make a determination that Standard #4 has been breached by the Respondent.

#### *Standard #5*

[123] The Commissioner submits that the Respondent's conduct constitutes a breach of Standard #5. Specifically, it argues that the Respondent failed to adjust her teaching style to implement the Student's IEP and in doing so she failed to employ a variety of instructional and assessment strategies.

[124] The Panel finds that the Respondent breached Standard #5. This Standard requires that educators implement effective practices in areas of classroom management, planning, instruction, assessment, evaluation and reporting. The Student began his grade 6 school year with established, known medical conditions that impacted his learning. It was incumbent on the Respondent to teach the Student in a manner that was consistent with the goals set out in the IEP. As noted earlier in this decision, the Panel has found that the Respondent failed to implement the IEP and, rather than work with him, she chose to ignore and belittle him. The Respondent failed to employ a variety of instructional and assessment strategies and as such, she breached Standard #5.

#### *Standard #7*

[125] The Panel does not find that the Respondent breached Standard #7. This Standard requires that educators engage in career-long learning. No allegation relating to this Standard was included in the Citation.

#### *Summary of Findings*

[126] The Panel has found that the conduct alleged in paragraph 1(a), 1(b)(ii) and 1(b)(iv) of the Citation has been proven by the Commissioner and that the proven conduct constitutes breaches of Standards 1, 3 and 5. The Panel must now consider whether the Respondent's conduct constitutes professional misconduct.

#### *Does the Respondent's Conduct Constitute Professional Misconduct?*

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<sup>52</sup> IEP, pg1

[127] The *Act* does not define professional misconduct. However, counsel for the Commissioner submits that the appropriate test for determining whether conduct constitutes professional misconduct is “whether the conduct is a marked departure from the standards expected of teachers in this province.”<sup>53</sup>

[128] In support of this submission, counsel for the Commissioner refers the Panel to the Reasons for Decision of a prior discipline Panel appointed by the Commissioner in *Re In the Matter of Teachers Act – and – Kiteley* (June 19, 2014). In that decision the Panel made the following finding with respect to the appropriate test for determining whether conduct constitutes professional misconduct:

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* [2005 LSBC 15] and was used by another Panel of the Branch in a decision released earlier this year [*Re In the Matter of the Teachers Act – and – Freeman*, February 6, 2014].

[129] The Commissioner further submits that the Panel may find the departure to be “marked” if it is “clearly noticeable” as defined in the *Oxford English Dictionary* (Third Ed.)

[130] The Commissioner argues that the Respondent’s failure to implement the Student’s IEP was a “sustained and knowing breach” of the Standards which “resulted in significant detrimental impact on a student who was particularly vulnerable because of his medical condition.” The Commissioner submits that this constitutes professional misconduct.

[131] In support of this argument, the Commissioner referred the Panel to a discipline Panel decision in *The British Columbia College of Teachers v. Brown* (May 26, 2004). In that case, the Respondent teacher was found by the Panel to have failed to prepare IEP’s for students in a timely way. In finding that this constituted professional misconduct, the Panel stated:

Dr. Brown’s failure to develop IEP’s (individual education plans) for approximately two-thirds of the students assigned to him for the 2000-2001 school year put students for whom he was responsible with respect to educational opportunities and success at risk of failure and frustration.

[132] The Commissioner further referred the Panel to a number of decisions in which discipline Panels made findings of professional misconduct. In *Ontario College of Teachers v. Lutz* (2011 LNONCTD 27), the Panel found that the Respondent teacher committed acts of professional misconduct including “being inattentive to [the student’s] IEP.”

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<sup>53</sup> Commissioner’s written submissions at para.12.



[133] The Commissioner also urges the Panel to find that the Respondent's proven unprofessional and disrespectful interaction with the Student constitutes professional misconduct. Specifically, the Commissioner points to the two incidents witnessed by Patricia Isaak in March 2011 which counsel describes as "acts of commission which reflect intent to embarrass, belittle or hurt the subject."

[134] Further, the Commissioner argues that the Respondent's act of moving the Student's desk to the back of the classroom "was a powerful symbol of her attitude towards him" which is reflected in the November 5, 2010 email from ██████████ in which she wrote that the Respondent told her that she couldn't "deal with him" any longer.

[135] In support of this argument, the Commissioner referred the Panel to a discipline Panel decision in *Re: In the Matter of the Teachers Act – and – Teacher A* (Ref. T-A07-2013). In that case, the Respondent teacher was found by the Panel to have humiliated two vulnerable special needs students in his class by making one read out loud in front of the class despite being aware of the discomfort this would cause her and by reading another's schoolwork to the class as a negative example for others. The Panel further found that this behaviour constituted professional misconduct.

[136] In determining whether the Respondent's conduct constitutes professional misconduct, the Panel considers the conduct described in the Citation and found to be proven. The Panel has found that during the 2010-2011 school year, the Respondent failed to implement the Student's IEP despite being well aware of the necessity to do so and the ease by which it could be achieved. The fact that this ongoing failure was brought to the Respondent's attention by ██████████, Principal Young and Mr. Klop on numerous occasions with little or no impact and ██████████ evidence that the Respondent told her that she would not follow the IEP makes this failure particularly egregious. This failure demonstrates a marked departure from the conduct expected of teachers in this province and constitutes professional misconduct.

[137] Further, the Panel has found that the Respondent interacted with the Student in a manner that was demeaning and disrespectful and included verbally reprimanding him in the classroom and ignoring him when he sought clarification of his homework. As noted previously, the allegation that the Respondent moved the Student's desk to the back of the classroom was not included in the Citation and the Panel does not rely on it in making a determination of professional misconduct.

[138] The Panel does not find that verbally reprimanding the Student or ignoring his request for clarification of his homework constitutes a marked departure from the norms expected of teachers in this province. It is to be expected that from time to time teachers will become frustrated with students and as a result, they will act or respond in a manner that does not meet the Standards. However, as set out in *Kiteley*, a breach of the Standards does not necessarily result in a finding of professional misconduct and on consideration of the facts in the present case, the Panel finds that the Respondent's verbally reprimanding and ignoring the Student as set out above does not constitute professional misconduct.

## **PENALTY & COSTS**

[138] 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 Panel asks that counsel for the Commissioner and the Respondent provide written submissions with respect to penalty pursuant to a schedule to be set by the Hearing Coordinator of the Teacher Regulation Branch.

[139] Counsel for the Commissioner advised the Panel at the conclusion of the hearing of this matter that it would not seek an award of costs and the Panel therefore declines to make such an order.

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