



Decision Issued: December 18, 2013
Citation Issued: December 12, 2012
File No.: I [REDACTED]
Court reporter: Mitchell Preston Nardi

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

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Date and location: October 22, 2013 at the Teacher Regulation Branch
Panel: Meg Gaily (Chair), Lynn Bosetti, John Hall
Counsel for the Commissioner: Maureen S. Boyd
Counsel for the Respondent: Gretchen Brown

INTRODUCTION

1. A panel was appointed by the Commissioner to conduct a hearing with respect to an allegation set out in a citation issued in this matter on December 12, 2012 (the “Citation”).¹
2. Debra Irene Punshon (the “Respondent”) holds a Professional Certificate, No. [REDACTED] issued by the B.C. College of Teachers under the *Teaching Profession Act* on June 3, 1991, valid from January 1, 1988, and continuing under the *Teachers Act* (the “Act”) as of January 9, 2012.
3. The Respondent currently maintains practising status with the Teacher Regulation Branch (the “Branch”). She retired from her employment with School District No. 68 (Ladysmith-Nanaimo) (the “District”) effective June 30, 2012.

¹ The Citation is Exhibit #1 in these proceedings.

PROCEDURE

4. The Respondent admits that on December 17, 2012, a copy of the Citation was delivered to her in accordance with the requirements of section 56(3)(a) of the Act.

5. The Respondent did not attend the hearing, but was represented by legal counsel at the hearing. The hearing proceeded on the basis of an agreed statement of facts dated October 11 and 15, 2013 (“Agreed Statement of Facts”).² The parties agreed that each document attached to the Agreed Statement of Facts was a true copy of the original document. There were no witnesses called by either party at the hearing.

ISSUE

Allegation contained in the Citation

6. The citation sets out an allegation that the Respondent engaged in professional misconduct and/or conduct unbecoming a teacher, when she was absent from work without proper authorization from the school district. The Respondent requested leave between September 12-23, 2011 (ten working days) and had been denied, that is, the District granted the Respondent leave for only five working days, but the Respondent absented herself from work on or about September 12-23, 2011 in order to vacation with her family.

7. Briefly, the issue in this case is whether the Respondent’s unauthorized absence from work for five days in September 2011 constitutes professional misconduct under the Act. At the hearing, the Commissioner conceded that the Respondent’s conduct was not conduct unbecoming a teacher.

FACTS

8. The District hired the Respondent in September 1986 as a teacher-on-call (“TOC”) and then in January 1989, on a continuing status as an elementary teacher. From September 2007 through June 2012, the Respondent worked at McGirr Elementary School (the “School”). She was assigned to teach a grade two class for the 2011-2012 school year.

² The Agreed Statement of Facts is Exhibit #2 in these proceedings.

9. In April 2011, the Respondent purchased airline tickets for a trip to Hawaii for a family vacation/reunion in September 2011. The timing of the vacation meant that she would miss ten school days, from Monday, September 12, through Friday, September 23, 2011.

10. Under the terms of the collective agreement in effect in the District at the relevant time, short term leaves of absence, including discretionary leave and personal leave, must be approved by the Administrative Officer (here, the School principal) or the Superintendent (or the Superintendent's designate).

11. Although she purchased the tickets to Hawaii in April 2011, the Respondent did not request a short term leave of absence at that time because she wanted to ensure the availability of Jane Lauzier, the TOC that the Respondent wanted to substitute for her. In June 2011, the Respondent told Jill Wilkie, the School principal, about her planned autumn trip, but did not mention the dates or formally apply for leave. The Respondent also contacted Ms. Lauzier, who said that she probably could cover for the Respondent.

12. On or about August 30, 2011, the Respondent met with Ms. Wilkie and told her that her trip was planned for two weeks commencing on September 12, 2011 and that she had arranged for Ms. Lauzier to substitute for her. Ms. Wilkie told the Respondent to submit a *Teachers' Request for Short-Term Leave of Absence* right away. The Respondent did so, requesting three discretionary leave days and seven personal leave days.

13. Ms. Wilkie approved the request on August 31, 2011. Although she considered that the timing of the leave was problematic, as it was at the beginning of the school year, she was satisfied with the Respondent's arrangements because Ms. Lauzier was well-known at the School and Ms. Wilkie was confident that the Respondent would provide Ms. Lauzier with her class plans. Ms. Wilkie forwarded the form for approval by the District administration and expected that it would be approved.

14. The District administration office received the form on September 6, 2011, the first day of school. The Assistant Superintendent, Christine Southwick, approved four days of discretionary leave and one day of personal leave, amounting to five of the ten days the Respondent had requested. In making her decision, Ms. Southwick considered the following factors:

- a) the impact on student learning and in particular the potentially detrimental effect on students at the primary level of the absence of their teacher for two weeks at the start of the school year;

- b) the requested leave included the first day that the grade two students would be in their permanent classroom but would be taught by a teacher-on-call;
- c) the late notice given by the Respondent of the requested leave; and
- d) by granting five days of leave, the Respondent would have a total of nine days including weekend days to attend the family reunion.

15. Ms. Wilkie informed the Respondent of Ms. Southwick's decision on September 7, 2011. The Respondent emailed Ms. Southwick later that day to ask her to reconsider:

Hi Chris, I'd like you to reconsider my leave as I have rarely requested any discretionary days in my over 20 years with the district. I have only asked for time off for reasons other than health two times. This is an event that is very important to our family and I didn't have any choice as to when it was to be held. The reason it is seemingly late in being requested is because I wanted to make sure that I could have Jane Lauzier replace me. I think that you understand that the way things work, we can't always count on having the person replace us who would be best for the children. Jane was part of our start-up last year for [a child] and was working closely with the 2s and 3s last year. She was part of our Grade 1, 2 and 3 planning for September 2011 in June and is aware of my educational plan for the next two weeks. This is my 5th year at McGirr and the children know me well (not just those who I've taught). This week is going well and I feel satisfied that routines will continue to fall into place in my absence. Jill [Wilkie] has been aware of this event for several months. I would ask you to reconsider your decision. Thanks, Debbie

16. Ms. Southwick responded the same day, confirming that only five of the ten requested days of leave were authorized.

17. Subsequently, the Respondent told Ms. Wilkie that she was going to take the full trip even though five of the ten days had not been authorized. Ms. Wilkie advised her to carefully consider her decision.

18. The 2011-2012 school year commenced on Tuesday, September 6, 2011. Following the School's usual practice, students were not placed in classes that week, but worked by age groupings. The Respondent and the other grade two teacher worked with the students who would be placed in their classrooms. On the Friday afternoon, the teachers and principal of the School met to determine final class placements. On Monday, September 12, 2011, students were moved into their permanent classes and their parents found out who their child's teacher was for that school year. Students in the Respondent's class were taught by Ms. Lauzier that week and the week after.

19. The parties agree that the first day in the classroom and the weeks following it in September are an important time when class routines are established and students and their parents get to know the teacher.
20. The Respondent was absent from work for two weeks from Monday September 12 through Friday, September 23, 2011 only the first week of which was authorized.
21. The parties agree that the Respondent acknowledges that she made the decision to go to Hawaii for the entire ten day period before she left for Hawaii and that she knew at that time that only five days of leave had been approved.
22. On or about September 15 or 16, 2011, Ms. Wilkie asked Ms. Lauzier for confirmation that she would be substituting for the Respondent for the following week, which was the week of September 19, 2011.
23. On Tuesday, September 20, 2011, the Respondent sent the following email to Ruth Williams, the School secretary:

Hi Ruth, ... I think I mentioned to you to just to keep signing Jane [Lauzier] in on the leave of absence she was originally given the two weeks for. Derek [DeGear, Nanaimo District Teachers' Association] thought that would be best rather than to use sick leave. Then the district knows I'm being honest about my disobedience and am not trying to cheat them out of any money. ...
24. The Respondent returned to work on September 26, 2011. Ms. Wilkie did not receive any complaints from parents about the Respondent's absence.
25. On September 30, 2011, Ron Erikson, then the Acting Director of Human Resources for the District, interviewed the Respondent and during this interview, the Respondent acknowledged that Ms. Southwick "had a point" about the impact of a September leave, but felt comfortable because Ms. Lauzier would be replacing her.
26. On November 3, 2011, the District disciplined the Respondent by suspending her. The Respondent did not grieve either the denial of leave or the imposition of discipline.

THE ISSUES BEFORE THIS PANEL

27. 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. Does the proven conduct breach any of the Standards for Education, Competence and Professional Conduct of Educators in British Columbia (the “Standards”)?
3. Does the conduct amount to professional misconduct such that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act?

28. In this case, the Respondent admits that the conduct as alleged in the Citation occurred and the Commissioner is relieved of the onus to prove that it is more probable than not that the Respondent’s conduct occurred.

29. Accordingly, the issues before this panel are whether the Respondent’s conduct breaches one or more of the Standards and whether her conduct amounts to professional misconduct in the context of professional regulation under the Act.

Applicable Law

30. As stated by the Supreme Court of Canada in its 1996 decision in *Ross v. New Brunswick School District No. 15*, “... teachers occupy positions of trust and confidence and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community’s perception of the ability of the teacher to fulfill such a position of trust and influence, and upon the community’s confidence in the public school system as a whole.”³

31. Teaching is a regulated profession because of the trust relationship between teachers and their students. Teachers in British Columbia are subject to discipline in the employment context under the terms of the applicable collective agreements, as well as to discipline by the Branch, the professional regulator.

32. Although the Respondent acknowledges that her conduct amounts to insubordination in the employment context and she has not taken issue with the resulting discipline, it does not necessarily follow that the Respondent engaged in professional misconduct.

33. The legislative scheme provides that, under subs. 16(2) and (3) of the *School Act*, RSBC 1996, c. 412, if a Superintendent or a school board suspends a teacher, a report of the suspension must be sent to the Commissioner.

³ [1996] 1 S.C.R. 825, 133 D.L.R. (4th) 1 at paragraph 43

34. Under s. 44 of the Act, upon receipt of a report of suspension, the Commissioner must conduct a preliminary review. Following that review, the Commissioner may conduct an investigation or issue a citation, or, if one of the following criteria is met, the Commissioner may decide to take no further action, as provided in s. 45 of the Act.

45 (1) The commissioner may decide after a preliminary review not to take further action in respect of one or more of the matters raised in a report or complaint if the commissioner determines that any of the following apply:

- (a) the matter is not within the jurisdiction of the commissioner or a panel;
- (b) the matter is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (c) the report or complaint was made in bad faith or filed for an improper purpose or motive;
- (d) there is no reasonable prospect the report or complaint will result in an adverse finding by a panel;
- (e) it is not in the public interest to take further action in respect of the matter;
- (f) the matter has not been pursued in a timely manner.

35. The Commissioner has issued this Citation, which means that he considers that the conditions in s. 45(1) do not apply. The statutory scheme therefore contemplates that the suspension of a teacher by her or his employer for any reason, including for taking an unauthorized leave, is sufficiently serious to warrant a report to and a preliminary review by the Commissioner. By deciding to take further action, the Commissioner is effectively concluding that the circumstances of this particular suspension engage the public interest.

36. Once a citation is issued, the discipline panel must conduct a hearing and determine whether to dismiss the citation or make another order under s. 63 of the Act.

37. However, the determination of whether conduct that warrants a suspension in the context of employment *also* breaches one or more of the Standards and amounts to professional misconduct are matters that must be decided independently by this panel. The suspension of a teacher in respect of which a citation is issued is not necessarily professional misconduct, but must be determined on the facts of each case.

38. The Standards in effect at the time the Respondent's conduct arose were issued in 2008 (3rd edition – the 4th edition of the Standards has since been reissued in 2012, but the wording of the Standards remains the same). The Standards establish commonly held professional standards of practice and conduct for the teaching profession. The Commissioner alleges that the

Respondent's admitted conduct breaches Standards #1 and #2 (there is no allegation that the conduct breaches any of the other Standards). Standards #1 and #2 provide as follows:

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

Educators are responsible for fostering the emotional, esthetic, 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, materials or other advantage.

2. Educators are role models who act ethically and honestly.

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.

39. Accordingly, this panel must determine whether the Respondent's admitted conduct in taking five days unauthorized leave breaches either or both of Standards #1 and #2.

40. In addition to determining whether the Respondent's conduct breached one or both of the two noted Standards, this panel must determine whether the Respondent's conduct amounts to professional misconduct, such that this panel finds her guilty of professional misconduct under s. 63(1)(b) of the Act.

41. The Act does not provide a definition of professional misconduct. The Commissioner referred the panel to the *Ontario College of Teachers Act Professional Misconduct Regulation*, which provides that the definition of professional misconduct under the *Ontario College of Teachers Act* includes, "an act or omission that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional."⁴

42. The Commissioner also pointed to the standard applied by the Law Society of British Columbia in its discipline proceedings, articulated in *Law Society of British Columbia v.*

⁴ O.Reg 437/97, section 1(18).

Martin.⁵ Both parties agree that this panel should adopt the *Martin* test in determining whether the Respondent's conduct amounts to professional misconduct.

43. *Martin* defines professional misconduct as “a marked departure from the conduct that the [regulator] expects of its members.”⁶ *Martin* asks the professional regulator to consider whether the behaviour “displays culpability which is grounded in a fundamental degree of fault, that is, whether it displays gross culpable neglect of his [of her] duties as a [member of the profession].”⁷ Although the Branch is not independent of government in the way that the Law Society of British Columbia is, we agree that the *Martin* test is an appropriate test to apply in determining professional misconduct for teachers.

44. A finding that the Respondent's conduct may have breached Standard #1 and/or Standard #2 does not necessitate a finding that the Respondent is guilty of professional misconduct under s. 63(1)(b) of the Act. Applying *Martin*, to find the Respondent guilty of professional misconduct, this panel must determine that the Respondent's conduct amounted to a “marked departure” from the Standards, that it displays “gross culpable neglect” of her duties as a teacher.

PANEL'S ANALYSIS AND FINDINGS

Does the Respondent's conduct breach the Standards?

45. The Commissioner says that the Respondent's conduct is the kind of conduct that brings the teaching profession into disgrace and disrepute, damaging the credibility of the public school system and the public's confidence in it.

46. According to the Commissioner, Standard #1 sets out the obligation of teachers to act in the best interests of their students, and Standard #2 recognizes that teachers are role models who transmit social and cultural values to students. The Commissioner submits that the Respondent's decision to take five days leave knowing that it was not authorized breaches Standard #1 because the Respondent placed her own interests above the interests of her students and the public, and breaches Standard #2 because the Respondent did not act ethically or as a role model for her students.

47. The Commissioner points to three factors that he says are significant and support his position that the Respondent's conduct breached Standards #1 and #2:

⁵ 2005 LSBC 16 (“*Martin*”).

⁶ *Martin* at paragraphs 171 & 154.

⁷ *Martin* at paragraph 154.

- a) the timing of the Respondent's absence at the beginning of the school year is not in the best interests of students because this is when the teacher's presence in the classroom is especially important;
- b) the purpose of the Respondent's absence, which was purely personal and was not due to circumstances beyond her control such as illness; and
- c) the Respondent's deliberate decision to take the unauthorized leave in the full knowledge that it would attract discipline from her employer.

48. The Commissioner points to the *School Regulation* under the *School Act* which stipulates that the duties of a teacher include encouraging the regular attendance of students assigned to the teacher.⁸ The Commissioner submits that taking an unauthorized absence contradicts the Respondent's obligation to encourage student attendance and is not acting as a role model to students, thereby breaching Standard #2.

49. The Commissioner says that the Respondent failed to fulfil the expectation of Standard #2 to act with integrity and maintain the dignity and credibility of the profession. The Commissioner says that the requirement in Standard #2 to act ethically and honestly as a role model and to maintain the dignity and credibility of the profession encompasses more than a bare requirement to be honest. The Commissioner says that integrity speaks to the possession of firm principles and high moral standards, which are broader than simple honesty. The Commissioner says that, in knowingly taking five days leave without authorization, the Respondent did not act with integrity and is in breach of Standard #2.

50. The Respondent says that her conduct, while it is admitted insubordination attracting discipline in the employment context, is not conduct which breaches either of Standards #1 or #2.

51. The Respondent points to the agreed evidence that, although she absented herself without authorization, she took all necessary steps to ensure that her assigned students had a trusted, experienced TOC known to the School to teach in her absence. She submits that she was honest with her principal and the School secretary about her insubordination – telling Ms. Wilkie that she intended to take her vacation as planned (all ten days, over and above the authorized five), and contacting the School secretary to confirm her continued absence and the need for the TOC the second week she was away.

⁸ B.C. Reg. 265/89, s. 4(1)(f).

52. The Respondent says that her conduct did not breach Standard #1 and notes the agreed evidence that the parents of her students did not raise any complaints or questions about her absence. She submits that the Commissioner has not put forward any evidence to demonstrate that her absence had a negative effect on any of her students or the operation of the School. The Respondent submits that she carefully balanced her obligations to her family with her obligations to her employer, and there is no evidence of any concern about or actual negative effect on her students because no parent expressed concern about her absence. Therefore, she says her conduct did not breach Standard #1.

53. The Respondent says her conduct did not breach Standard #2 because she acted with integrity in all her communications with her employer, she was direct and honest about her decision, and she showed an understanding of the rules that applied with respect to her duty to attend work. For this reason, the Respondent says she did not breach the provisions of Standard #2 as alleged by the Commissioner.

54. The question of whether the Respondent's conduct breaches Standards #1 and/or #2 is one of common sense. Given the facts of this case, there are no precedents for this panel to follow in reaching our determination.

55. With respect to Standard #1, we find that the Respondent's conduct did not breach this Standard. We note that Ms. Wilkie approved the whole of the leave requested by the Respondent and Ms. Southwick approved an absence of five days. This demonstrates that they considered that some period of absence was not contrary to the best interests of the Respondent's students. Further, the Respondent's actions in arranging a suitable substitute and in communicating with the School, together with the absence of any concerns from parents, show that her actions did not compromise the best interests of her students or negatively affect their emotional or physical safety.

56. The agreed evidence shows that the Respondent sought out and confirmed the availability of the TOC, Ms. Lauzier, and that Ms. Lauzier would teach the Respondent's class for her during her absence. The parties also agreed that the Respondent contacted the School and confirmed her ongoing absence (albeit unauthorized) and was honest that she would not be reporting for work during the five days for which she had not received approved leave. It is the panel's opinion that this conduct does not reflect a preference of the Respondent's interests over those of her students, such that it amounts to a breach of Standard #1 as alleged by the Commissioner.

57. Accordingly, this panel finds that the Respondent's conduct in taking five unauthorized days off work in September 2011 does not breach Standard #1.

58. Standard #2 requires teachers to be role models who act ethically and honestly “with integrity, maintaining the dignity and credibility of the profession.” The Commissioner asks this panel to find that Standard #2 requires more than a bare requirement to be honest, that integrity (as articulated in Standard #2) speaks to the possession of firm principles and high moral standards. According to the Commissioner, a teacher who knowingly takes unauthorized absence cannot be acting with the integrity required of Standard #2.

59. The Respondent points to the agreed evidence which illustrates that she was forthright and honest about her intention to take the unauthorized leave and that, as a role model to students, she was accountable for her conduct. The Respondent asserts, and it is agreed, that she took necessary action to ensure her absence did not negatively affect her students or the regular operation of the School, which she says shows she maintained the dignity and credibility of the profession and did not breach Standard #2.

60. The Respondent admits that she was insubordinate. She knew that she had only been granted five days leave, and she admits that she took an additional five days leave knowing it was not authorized by her employer.

61. Common sense dictates that this act of insubordination in and of itself displays a lack of integrity. The panel finds that the Respondent did not act with integrity when she took the unauthorized leave and is in breach of Standard #2. The panel stresses that it is only this single aspect of the Respondent’s conduct, the act of knowingly taking leave without authorization, which breaches Standard #2 and that in every other respect, her conduct did not breach the Standard.

Does the Respondent’s conduct amount to professional misconduct?

62. As noted earlier in these reasons, a finding that the Respondent breached one or more of the Standards does not necessitate a finding of professional misconduct under the Act. Applying the *Martin* test, to find the Respondent guilty of professional misconduct, this panel must determine that the Respondent’s conduct amounts to a marked departure from the Standards, that it displays gross culpable neglect of her duties as a teacher.

63. This panel has found that the Respondent did not act with integrity when she knowingly absented herself without authorization and that for this reason she is in breach of this aspect of Standard #2. The Commissioner says that the Respondent’s conduct in this respect displays a lack of integrity and contradicts her obligation to act as a role model to her students, that the conduct displays a marked departure from Standard #2 and a gross neglect of the Respondent’s duties as a teacher such that it amounts to professional misconduct under the Act.

64. In contrast, the Respondent says that her only wrongdoing was to take the leave despite the fact that her employer had denied it. She says there is no precedent for finding that failure to attend work in itself is professional misconduct attracting a finding of guilt under s. 63(1)(b) and subsequent sanction under the Act.

65. The Respondent says that the Act regulates the conduct of teachers as professionals, and that the legislature has established a separate regime through the *School Act*, its regulations, and the applicable collective agreements, to address the conduct of teachers as employees. The Respondent submits that while there may be overlap between these two regimes, cases like hers that are primarily employment matters should not be the subject of Branch proceedings and should not be addressed through professional misconduct hearings.

66. The Respondent directed this panel to the legislative history of the Act, including the Hansard debates in the legislature, and submits that the purpose of discipline panels under the Act, especially as reflected in the Hansard debates, is to hear matters in which a teacher's conduct has negatively affected students or the public's confidence in the profession.

67. The Respondent says that in the circumstances of this case, her conduct was not serious enough to constitute professional misconduct and that finding that it does will result in a significant and unwarranted expansion of what constitutes professional misconduct for teachers in this province. She submits:

Applying professional discipline to employment issues is especially problematic when the issue is, as it is here, insubordination through failure to attend work. Defining insubordination as professional misconduct has the potential to undermine the balance of power between employers and employees, particularly when we are dealing with a regulator which is a branch of government as opposed to a self-regulating body. Discipline by a government regulatory body for failure to attend work engages fundamental liberty issues for employees. While the employer has a right to compel attendance at work through the threat of disciplinary sanctions, governments are generally very cautious about intervening to support those rights.

68. This panel must make its determination of whether the Respondent's conduct amounts to professional misconduct on the facts before us. The Respondent's conduct demonstrates that although she knew she was going to be insubordinate and take leave without authorization, she ensured that her actions did not result in any negative impact on her students or the operation of the School. This panel finds that the Respondent did not put her interests before those of her students or the School.

69. Applying the test articulated in *Martin*, this panel finds that the Respondent's conduct does not amount to a marked departure from the conduct expected of teachers in this province. This panel finds further that the Respondent's conduct does not display a gross culpable neglect of her duties as a teacher, in fact, it is far from it. It is clear that the Respondent took steps to mitigate the adverse impact of her absence on her students and on the School. She delayed requesting leave until she had confirmed that Ms. Lauzier was able to substitute for her and, after she learned that she had only been granted five of the ten days of leave she had requested, she notified the principal of her intention to be absent for the whole ten day period and further contacted the School secretary to confirm her ongoing absence.

70. This panel agrees with the Respondent's submissions that in the circumstances of this case, the Respondent's conduct is not serious enough to warrant a finding of professional misconduct under s. 63(1)(b) of the Act.

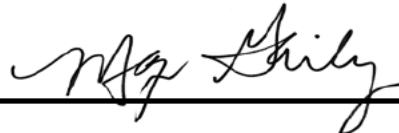
DECISION

71. In summary, for all of the reasons given, the panel finds that the Respondent, in knowingly absenting herself without authorization from teaching at the School for five days from September 19-23, 2011, did not engage in professional misconduct under subsection 63(1)(b) of the Act.

72. The panel dismisses the Citation pursuant to subsection 63(1)(a) of the Act. Given this panel's determination that the Citation is dismissed, there is no need for a further hearing to determine a sanction.

73. The Panel directs that submissions regarding the publication of these reasons be made in writing unless, within 3-weeks of the date of issuance of these reasons, either party objects in writing to the Hearing Coordinator of the Branch, in which case the Hearing Coordinator will set a schedule for filing submissions and the panel will determine whether to proceed orally or in writing.


For the Panel
Date: December 18, 2013



Meg Gaily, Chair



John Hall



Lynn Bosetti