



2018 TAHP 02
Decision issued: April 24, 2018
Citation issued: September 12, 2017
File No.: [REDACTED]

IN THE MATTER OF THE *TEACHERS ACT*, SBC 2011, c. 19
AND
A HEARING CONCERNING
DUC-HUNG TRAN
(An Authorized Person under the *Teachers Act*)

REASONS FOR DECISION ON FINDINGS AND DETERMINATION

Written submissions filed: February 7, 2018
Panel: Karen Nordlinger Q.C., Chair, Rebecca Blair, Peter Van Huizen
Counsel for the Commissioner: Maureen Boyd, Ministry of Attorney General
Counsel for the Respondent: Claire Hatcher, Pender Litigation

1. A Citation was issued against the Respondent on September 12, 2017 alleging that, while working as a teacher at a secondary school in School District #42 (Maple Ridge-Pitt Meadows), he

“told a female grade 11 student [“Student”] who was in his class, to come with him into a classroom and then into a storage room to speak privately. He closed the door and then he hugged her and said words to the effect that he was attracted to her. He told her not to tell anyone what he had done.”

2. The parties have filed a joint submission in which they have agreed to the relevant facts as set out in the Citation, that the Respondent’s conduct is a breach of Standards No. 1 and 2 of the Standards for the Education, Competence and Professional Conduct of Educators in British Columbia and that such conduct constitutes professional misconduct under s. 63(1)(b) of the *Teachers Act*.

3. The parties agree that the Respondent was served with the Citation, and waived the requirements of s. 56(3)(a) of the *Teachers Act*.
4. The Panel has reviewed all of the facts in the Agreed Statement of Facts and sets out below some of the relevant facts from that submission:
 - (a) The Respondent has been employed by the District since September 1, 2000.
 - (b) In the 2013 to 2014 school year, he taught math, science and marketing 11.
 - (c) At the material time, the Respondent was married and had two school-age children.
 - (d) The Respondent arrived at the school on the morning of February 5, 2014 with the intention of telling the Student how he felt about her.
 - (e) The Respondent asked the Student to go to the science classroom with him. He then asked her to go into a storage room which is connected to the science room, which she did. The Respondent closed the door.
 - (f) The Respondent asked the Student if she wanted a hug and they hugged. The Student felt uncomfortable so she stepped back and broke the hug. She felt the situation was not right. The Respondent acknowledged that he was aware that the Student seemed reluctant and apprehensive when he hugged her.
 - (g) The Respondent said words to the effect of “I am attracted to you” to the Student.
 - (h) The Student was shocked and responded to him by saying that he was a teacher and had a family. The Respondent said words to the effect of “I can’t help it”.
 - (i) The Respondent, opened the door, left the storage room followed by the Student. The Respondent then asked the Student not to say anything to anyone. He said that he had “demons inside”, that teacher/student relationships never work out, and that he was thinking of quitting teaching to go into real estate.
 - (j) The Student left the classroom and went to the washroom. She was upset and scared. After some time she returned to class, but avoided the Respondent.
 - (k) The Student told her father about the incident that evening. The father reported the incident to the school’s Vice-Principal and Principal.
 - (l) On February 11, 2014, the District provided the Respondent with a letter advising him that he was being investigated with respect to the incident on February 5, 2014 and that he was suspended with pay pursuant to s. 15(5) of the *School Act* until further notice.
 - (m) On February 12, 2014, the District made a report to the Commissioner under s. 16(2) of the *School Act*.

- (n) On February 12, 2014, the District informed the RCMP of the incident and the Respondent was arrested on February 13, 2014. The Police completed their investigation but no charges were approved against the Respondent.
- (o) The District retained an independent consultant, Mary Stewart, to conduct an investigation. On April 16, 2014, the Respondent submitted to the District a medical certificate which stated that the Respondent required full-time medical leave for major depressive disorder. A further medical certificate was provided indicating that the Respondent required a full-time leave for major depressive disorder. Further medical certificates were provided on July 31, October 1 and November 4, 2014.
- (p) On November 5, 2014, the Board of Trustees of the District decided to continue the suspension of the Respondent but to make the suspension without pay while allowing the Respondent access to medical leave benefits.
- (q) On January 23, 2015, Mary Stewart continued her investigation and the Respondent attended an interview with a representative of Maple Ridge Teachers' Association.
- (r) On February 25, 2015, the District advised the Respondent that he was to be
 - (i) suspended without pay for six weeks to commence immediately upon the Respondent's return from medical leave;
 - (ii) transferred from the school to another school, which was not attended by the Student or any members of her family;
 - (iii) complete the Professional Boundaries Course presented by the Teacher Regulation Branch before returning to work;
 - (iv) continue treatment for his medical condition, including counselling, and
 - (v) be monitored by the administrators in the school where he taught.
- (s) The Respondent was deemed fit to return to work on April 27, 2015 and he served the six week suspension without pay from April 27, 2015 to June 5, 2015.
- (t) On June 8, 2015, the Respondent returned to teach in the District as a teacher on call.
- (u) On July 22, 2015, the Respondent successfully completed the Professional Boundaries Course presented by the Teacher Regulation Branch.
- (v) The Respondent was medically approved to return to work in September, 2015 at a 90% basis. He returned to full-time teaching in January, 2016.
- (w) The Student graduated from the school. She felt betrayed by the Respondent.

5. Given the admission of facts and our review of the law, the panel finds that the Commissioner has met the burden of proving the conduct.
6. S. 63(1)(b) of the *Teachers Act* provides the authority for the panel to make a determination of professional misconduct. Generally, “professional misconduct” has been differentiated from “conduct unbecoming a teacher” by the circumstances in which the conduct arose. Misconduct by a teacher that arises during the teacher’s engagement as a teacher is generally considered to be professional misconduct while misconduct during a teacher’s private time may, in certain circumstances, be considered conduct unbecoming. In this case, the Respondent was engaged in his employment as a teacher at the time of the misconduct, and we agree with the joint submission that it constitutes professional misconduct. We have considered the various factors for determining professional misconduct, as follows:

- (a) The Standards for the Education, Competence and Professional Conduct of Educators in British Columbia are the guiding principles for teachers in British Columbia. Standard No. 1 states:

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

The annotation to that Standard states:

“Educators are responsible for fostering the emotional, esthetic, intellectual, physical, social and vocational development of students. ... Educators have a privileged position of power and trust. Educators do not abuse or exploit students or minors for personal, sexual, ideological, material or other advantage.”

- (b) Standard No. 2 states:

“Educators are role models who act ethically and honestly.”

The annotation to that Standard states, amongst other things:

“Educators, ... understand that their individual conduct contributes to the perception of their 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.”

7. Many cases have dealt with the nature of professional misconduct. It is submitted by the parties that there is a “bright line over which a teacher may not cross with a student, such that any conduct of a sexual or romantic nature is a breach of the standards and likely to be professional misconduct.” The Joint Submission cites the following examples:

- (a) Text messages in which a teacher says that she is attracted to a student.

Consent Resolution Agreement re Neal, January 28, 2016

- (b) Creating a sexualized environment and urging students to give the teacher back massages.

Consent Resolution Agreement re Easton, April 8, 2014

- (c) Texting students, touching a student and drawing a smiley face on her hand and being alone with the student with the classroom door closed.

Consent Resolution Agreement re Horvath, July 9, 2013

- (d) Asking a student not to disclose misconduct.

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- (e) A rebuff by the student does not constitute mitigation or excuse of the teacher's conduct.

Consent Resolution Agreement re Neal, January 28, 2016

8. The Joint Submission submits that the appropriate test for professional misconduct is whether “the conduct is a marked departure from the standards expected of teachers in this province”.

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The Panel agrees that the conduct of the Respondent was professional misconduct as it was a marked departure from the Standards expected of teachers, particularly in Standard 1 and 2. We agree that he put his needs above the needs of the Student, despite his recognition that she was reluctant and apprehensive at his approach. The Panel further agrees that the act of hugging is not “inherently sexual or romantic”. However, coupled with the representation that the Respondent made to the Student that he was attracted to her and the circumstances of advising her of such in a closed storeroom away from public view, hugging in this case, manifestly crossed the line. The Respondent did not respect proper professional boundaries and thus engaged in professional misconduct.

Penalty

The Panel has been advised that no restrictions on publication have been requested by either party and the Panel finds that publication of this decision should proceed. The Panel directs that further submissions regarding penalty and costs may be made in writing unless, within ten days of delivery of these Reasons on Verdict, either party objects in writing to the Hearing Coordinator at the Teacher Regulation Branch, in which case the Panel will consider and determine whether such submissions shall be made orally or in writing. The Hearing Coordinator will contact the parties to set a schedule for the filing of submissions.

For the Panel

Date: April 24, 2018

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Karen Nordlinger, Q.C.
Panel Chair

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Rebecca Blair
Panel Member

A handwritten signature in black ink, appearing to read 'Peter Van Huizen', written above a horizontal line.

Peter Van Huizen
Panel Member