



Teaching
Regulation
Agency

Ms Elisha Emirali Professional conduct panel meeting outcome

**Panel decision and reasons on behalf of the
Secretary of State for Education**

March 2022

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Ms Elisha Emirali
TRA reference: 19658
Date of determination: 14 March 2022
Former employer: Oak View School, Loughton, Essex.

Introduction

A professional conduct panel (“the panel”) of the Teaching Regulation Agency (“the TRA”) convened virtually on 14 March 2022, to consider the case of Ms Elisha Emirali.

The panel members were Mrs Kelly Thomas, lay panellist, in the chair, Mr Paul Hawkins, teacher panellist, and Mr Nigel Shock, lay panellist.

The legal adviser to the panel was Mr Matthew Corrie.

In advance of the meeting, after taking into consideration the public interest and the interests of justice, the TRA agreed to a request from Ms Emirali that the allegation be considered without a hearing. The panel considered the case at a meeting without the attendance of the presenting officer, Ms Emirali or any representative instructed on her behalf.

The meeting took place in private.

Allegations

The panel considered the allegations set out in the notice of meeting dated 1 February 2022.

It was alleged that Ms Emirali was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that she:

1. On or around 30 September 2020:
 - a. removed all sensory integration resources / equipment from the sensory room;
 - b. placed Pupil A in the sensory break out room and left him unattended and unsupervised;
 - c. locked the door to the sensory break out room with Pupil A inside;
2. Did not adequately record behavior incidents for Pupil A and/or other pupils in the class in the weeks leading up to 30 September 2020.
3. On one or more occasions, used equipment including plastic drawers, to block Pupil A from leaving the sensory break out room
4. On one or more occasions, including on or around 30 September 2020, you placed Pupil A in the corner of the room and caused distress to Pupil A and other pupils by using equipment such as the room divider and small tables, to inappropriately separate pupils.
5. On one or more occasions, between September 2020 and October 2020, you used inappropriate behavior management strategies, including making pupils sit facing the wall.

Ms Emirali admitted the facts and that her conduct amounts to unacceptable professional conduct and conduct that may bring the profession into disrepute.

Preliminary applications

There were no preliminary applications.

Summary of evidence

Documents

In advance of the meeting, the panel received a bundle of documents which included:

Section 1: Chronology, anonymised pupil list and list of key people – pages 1 to 3

Section 2: Notice of referral, response and notice of meeting – pages 4 to 19

Section 3: Statement of agreed facts and presenting officer representations– pages 20 to 24

Section 4: Teaching Regulation Agency documents – pages 25 to 89

Section 5: Teacher documents – pages 90 to 144

The panel members confirmed that they had read all of the documents within the bundle, in advance of the meeting.

Statement of agreed facts

The panel considered a statement of agreed facts which was signed by Ms Emirali on 3 December 2021. The teacher also submitted a mitigation statement of the same date which was also considered.

Decision and reasons

The panel announced its decision and reasons as follows:

The panel carefully considered the case and reached a decision.

In advance of the meeting, the TRA agreed to a request from Ms Emirali for the allegations to be considered without a hearing. The panel had the ability to direct that the case be considered at a hearing if required in the interests of justice or in the public interest. The panel took into account fairness to both the teacher and to the TRA but did not determine that such a direction was necessary or appropriate in this case.

The Oak View School in Loughton, Essex ("the School") is a school which caters for pupils with special educational needs and disability ("SEND") including those with severe or complex learning needs.

At the material time Ms Emirali was employed by the School as a class teacher and taught primary school aged children with severe and complex learning needs.

The conduct that forms the basis of the allegations arises from an incident involving Pupil A and Ms Emirali which took place on 30 September 2020 or came to light as a result of the investigation into the 30 September incident.

Pupil A was a [REDACTED], Ms Emirali was his class teacher.

On 30 September 2020 an incident took place in which Pupil A became distressed and physically aggressive. As a result, Ms Emirali removed all toys and equipment from a room known as the sensory room and then placed Pupil A in the room. Ms Emirali then locked the door and left Pupil A unattended in the room for a period of time.

It is this incident which forms the basis of allegation 1.

This matter was reported by a colleague and the School carried out an internal investigation. Over the course of the investigation a disciplinary investigation meeting took place between the teacher and the Head Teacher.

Allegations 2 to 5 arise from what was stated by Ms Emirali during the disciplinary investigation meeting or in her responses to the TRA investigation:

- Ms Emirali asserted that there had been previous instances in which Pupil A and others had presented with behavioural challenges and that she had not recorded these as required. (Allegation 2)
- Ms Emirali also stated that there had been occasions in which she had used plastic drawers to hold the door to the sensory room door ajar. (Allegation 3)
- She further stated that she had previously used the room dividers and tables to separate pupils from one another and that pupils had been asked to sit at desks which faced the walls to the room. (Allegations 4 and 5)

Findings of fact

The findings of fact are as follows:

The panel found the following particulars of the allegations 1 a. b. and c and allegation 2 against you proved. Despite the apparent admissions made in the statement of agreed facts, the panel found allegations 3, 4 and 5 not proved.

1. On or around 30 September 2020:

- a. removed all sensory integration resources / equipment from the sensory room;***
- b. placed Pupil A in the sensory break out room and left him unattended and unsupervised;***
- c. locked the door to the sensory break out room with Pupil A inside;***

The panel accepted the admission in relation to each particular of allegation 1 and found these matters proved. The admission was clear, unambiguous and unequivocal in that Ms Emirali accepted that she did what was alleged.

Moreover, the allegations were supported by other evidence in the material provided to the panel, namely the undated statement of [REDACTED] ("Colleague A") and the account provided by [REDACTED] ("Colleague B").

2. Did not adequately record behaviour incidents for Pupil A and/or other pupils in the class in the weeks leading up to 30 September 2020.

The panel found this allegation to be proved.

It noted that Ms Emirali admitted that she had not recorded behaviour incidents in relation to Pupil A and other pupils in the investigation interview, within the representations made

at the investigation stage, within the statement of agreed facts and within the mitigation statement. The panel considered that the admissions were clear, unequivocal and unambiguous.

3. On one or more occasions, used equipment including plastic drawers, to block Pupil A from leaving the sensory break out room

Within the statement of agreed facts this allegation was admitted.

However, within Ms Emirali's response to allegations dated 4 May 2021 she sets out that Pupil A found the room to be a calm and safe space which he would choose to use throughout the day. She asserts that Pupil A required that the doors were closed or he would act aggressively. The door had no latch and so a set of lightweight shelves were used for this purpose.

By way of further explanation, in her mitigation statement at paragraphs 7 and 8 Ms Emirali sets out that:

"I admit to using lightweight plastic drawers, after the main incident occurs, to block Pupil A from pinching and scratching at my legs through the gap in the door. Once the door was closed Pupil A continued to grab at my legs and was scratching and pinching my legs through the gap in the door. I moved the drawer to cover the gap and prevent Pupil A from causing injury to himself.

There have been a few times where the lightweight plastic drawers were used to hold the door ajar for Pupil A. When Pupil A chooses to use the room, he requests that the door is closed or pulled to/slightly ajar. The door itself does not stay shut, and naturally opens to a fully open door. This would unsettle Pupil A and trigger physical aggression from Pupil A. I have used the lightweight drawers to hold the door in position. The plastic drawers are extremely lightweight with Pupil A able to move the drawers and open the door as and when he needed to. My intention was to recreate the calm environment he requests to prevent Pupil A from experiencing sensory overload which triggers him to become physically aggressive. During these times Pupil A was able to leave the room freely, as and when he wanted. He would move the door which would automatically move the drawers..."

There is no evidence in respect of the use of equipment, in particular plastic drawers, to block Pupil A in the sensory room other than that from Ms Emirali. Further, Ms Emirali's evidence is unchallenged by the TRA.

The panel accepted that Ms Emirali had admitted to the use of the plastic drawers to prevent Pupil A from pinching and scratching her legs on 30 September 2020 and previously to keep the door ajar. However, the panel found no evidence which supported

the conclusion that Ms Emirali had sought to use the drawers (or other equipment) to block Pupil A from leaving the room.

Notwithstanding the admission, the panel, therefore, found this allegation unproven.

4. On one or more occasions, including on or around 30 September 2020, you placed Pupil A in the corner of the room and caused distress to Pupil A and other pupils by using equipment such as the room divider and small tables, to inappropriately separate pupils.

Within the statement of agreed facts this allegation was admitted.

Further, within Colleague B's account of 30 September 2020 she describes that Pupil A *"was put in the corner of the room which was separated by dividers. Pupil A then came out and then I believe he may have pinched again. He was then taken back into the corner by Elisha and this time a room divider, trays, small table was used to barricade him in."* [SIC]

However, within Ms Emirali's response to allegations dated 4 May 2021 she sets out that there is a sensory calm zone in the corner of the room and that this space can be used to direct pupils who are displaying aggressive behaviours.

Within her mitigation statement Ms Emirali at paragraph 10 explains that:

"I admit to using a small lightweight plastic table, placed next to the divider, to block the walkway of the sensory calm zone on one occasion. I had guided Pupil A to the area a few times to support him in regulating, when he became physically aggressive and violent during a lesson and teaching sessions. Pupil A kept leaving the space and continued to pinch, bite and attack me whilst I was teaching. This was extremely painful and made it extremely difficult to teach the class. I placed a small lightweight table in front of the walkway, next to the divider, which outlines the calm zone, to deter Pupil A away from coming back out to come and hurt me and to allow me to continue to teach the class without being pinched, bitten or kicked. I deeply regret this decision. My intention was not to upset Pupil A but to prevent him from causing injury to myself, to allow me space to teach pupils safely and to ensure that Pupil A was able to regulate in a calm space."

The panel received no specific evidence that the use of dividers and/or a plastic table caused distress to Pupil A or other Pupils. In any event, the panel has been provided with no evidence that the use of dividers and other equipment to separate pupils is inappropriate and was unable to make any conclusion as to whether such conduct was appropriate or not. Within the bundle there was a diagram which demonstrated that the room, ordinarily, was split into sections by use of dividers.

Despite it having been admitted, the allegation was, therefore found not proved.

5. On one or more occasions, between September 2020 and October 2020, you used inappropriate behaviour management strategies, including making pupils sit facing the wall.

Within the statement of agreed facts this allegation was admitted.

However, within Ms Emirali's response to allegations dated 4 May 2021 and her mitigation statement at paragraph 11 she admits that she had asked pupils to sit at a desk or work bay due to having hurt another pupil and asking pupils to face their desks. However, by reference to the plan of the room, she states that some of the desks face the wall. Ms Emirali denies having asked pupils to face the wall as a punishment or behaviour strategy.

The panel interpreted Ms Emirali's account as being to the effect that she accepted that pupils had been asked to sit at desks and that their desks faced the wall but that this was incidental and not as a punishment.

The panel noted Ms Emirali's account was unchallenged and there was no contradictory evidence in the material provided to the panel. The panel was unable to identify any evidence in the bundle which supported that asking pupils to sit at their desk was an inappropriate behaviour management strategy.

Notwithstanding the admission, the panel, therefore, found the allegation not proved.

Findings as to unacceptable professional conduct and/or conduct that may bring the profession into disrepute

Having found a number of the allegations proved, the panel went on to consider whether the facts of those proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel had regard to the document Teacher Misconduct: The Prohibition of Teachers (February 2022), which is referred to as "the Advice".

The panel was satisfied that the conduct of Ms Emirali in relation to the facts found proved at allegations 1 a, b and c, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Ms Emirali was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position

- having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions

The panel considered that there were a number of factors which mitigated the gravity of Ms Emirali's conduct towards Pupil A on 30 September 2020. These were: the extremely challenging behaviour that was being exhibited by Pupil A which included physical violence to Ms Emirali such as biting and pinching; apparent staff shortages and difficult teaching conditions caused by the pandemic and hybrid teaching requirements.

However, in removing all equipment from the sensory room, placing Pupil A in the room, positioning equipment in a way which meant there was no line of sight, locking the door and leaving Pupil A unattended, in the panel's view, Ms Emirali committed a serious failure in her care for Pupil A.

In relation to allegation 1 a. b. and c. the panel was satisfied that the conduct of Ms Emirali fell significantly short of the standards expected of the profession.

However, in regard to allegation 2, which was essentially a record keeping failure, whilst not acceptable, the panel did not consider that this omission met the threshold to amount to unacceptable professional conduct or conduct that may bring the profession into disrepute. In reaching this decision the panel took into account that the teacher had not been previously warned about poor record keeping in relation to pupil behaviours. Moreover, the conduct occurred during what was a very busy and challenging period at the School, in the context of staff shortages and Pupil A presenting with problematic and violent behaviour.

The panel did not consider that Ms Emirali's conduct displayed any of the behaviours associated with the offences listed at pages 12 and 13 of the Advice.

Accordingly, the panel was satisfied that Ms Emirali was guilty of unacceptable professional conduct in relation to the facts proved at allegation 1 a. b. and c.

The panel took into account the way the teaching profession is viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel also took account of the uniquely influential role that teachers can hold in pupils' lives and the fact that pupils must be able to view teachers as role models in the way they behave.

The findings of misconduct were serious and related to a [REDACTED] and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore found that Ms Emirali's actions constituted conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct and conduct that may bring the profession into disrepute it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely: the protection of pupils and other members of the public, the maintenance of public confidence in the profession and the declaring and upholding proper standards of conduct. In this case the panel also took into account the public interest in retaining teachers in the profession, especially in areas such as SEND because of staff shortages and the particular public interest of work carried out in this sector.

In the light of the panel's findings against Ms Emirali, there was a strong public interest consideration in the protection of pupils. Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Emirali were not treated with the utmost seriousness when regulating the conduct of the profession.

The panel decided that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Ms Emirali was outside that which could reasonably be tolerated.

The panel took into account that Ms Emirali had no previous findings by her regulator and has submitted evidence in support of her abilities as a teacher in the form of cards, Newly Qualified Teacher assessment form and testimonial emails. The panel concluded that there is a strong public interest in retaining able teachers within the SEND sector and that Ms Emirali is able, in the future, to make a valuable contribution to the profession.

Notwithstanding the clear public interest considerations that were present, the panel considered carefully whether or not it would be proportionate to impose a prohibition order, taking into account the effect that this would have on Ms Emirali.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Ms Emirali. The panel took further account of the Advice, which suggests that a prohibition

order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that are relevant in this case are:

- serious departure from the personal and professional conduct elements of the Teachers' Standards;
- violation of the rights of pupils

Even though some of the behaviour found proved in this case indicated that a prohibition order would be appropriate, the panel went on to consider the mitigating factors. Mitigating factors may indicate that a prohibition order would not be appropriate or proportionate.

The panel considered that the following mitigating factors applied:

- Pupil A behaviour was extremely challenging in that he was violent towards Ms Emirali including biting, pinching, kicking and head butts;
- Due to Covid-19, teaching conditions were extremely challenging around this time;
- Ms Emirali stated that she and her colleagues were stressed and anxious due to the threat of redundancy
- Further, the School was short staffed which exacerbated an already difficult situation;
- Ms Emirali has no previous findings before her regulator and this conduct took place over a short period of time and so can be described as generally out of character;
- Ms Emirali had some personal issues in her life which may have impacted on her judgment at the time. [REDACTED]

The panel also noted that Ms Emirali had been open and honest about her conduct from the outset of the internal investigation and throughout the TRA proceedings. She had made full admissions and indicated not only remorse but insight into her conduct and had given written evidence about how she would act differently in the future. The panel was impressed with her evidence and accepted her remorse and insight as genuine. The panel considered that a repetition of similar conduct to be highly unlikely.

Taking into account the particular mitigating circumstances of this case, combined with the teacher's insight and the public interest in her being allowed to continue working as a SEND teacher, the panel was of the view that, applying the standard of the ordinary intelligent citizen, recommending no prohibition order was a proportionate and appropriate response.

The panel considered that the publication of the adverse findings it made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendation of the panel in respect of sanction.

In considering this case, I have also given very careful attention to the Advice that the Secretary of State has published concerning the prohibition of teachers.

In this case, the panel has found some of the allegations proven and found that those proven facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. In this case, the panel has found some of the allegations not proven (specifically allegations 3, 4 and 5). I have therefore put those matters entirely from my mind.

The panel has recommended that the findings of unacceptable professional conduct and/or conduct likely to bring the profession into disrepute, or a relevant conviction should be published and that such an action is proportionate and in the public interest.

In particular, the panel has found that Ms Emirali is in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions

The panel finds that the conduct of Ms Emirali fell significantly short of the standards expected of the profession.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher.

I have also asked myself, whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct that may bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Ms Emirali, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and or safeguard pupils. The panel has observed, "in removing all equipment from the sensory room, placing Pupil A in the room, positioning equipment in a way which meant there was no line of sight, locking the door and leaving Pupil A unattended, in the panel's view, Ms Emirali committed a serious failure in her care for Pupil A." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse, which the panel sets out as follows, "She had made full admissions and indicated not only remorse but insight into her conduct and had given written evidence about how she would act differently in the future. The panel was impressed with her evidence and accepted her remorse and insight as genuine. The panel considered that a repetition of similar conduct to be highly unlikely." I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel observe, "the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception."

I have had to consider that the public has a high expectation of professional standards of all teachers and that the public might regard a failure to impose a prohibition order as a failure to uphold those high standards. In weighing these considerations, I have had to consider the matter from the point of view of an "ordinary intelligent and well-informed citizen."

I have considered whether the publication of a finding of unacceptable professional conduct, in the absence of a prohibition order, can itself be regarded by such a person as being a proportionate response to the misconduct that has been found proven in this case.

I have also considered the impact of a prohibition order on Ms Emirali herself. The panel comment, "Taking into account the particular mitigating circumstances of this case, combined with the teacher's insight and the public interest in her being allowed to continue working as a SEND teacher...."

A prohibition order would prevent Ms Emirali from teaching and would also clearly deprive the public of her contribution to the profession for the period that it is in force.

I have also placed considerable weight on the finding of the panel that, "The panel considered that a repetition of similar conduct to be highly unlikely."

For these reasons, I have concluded that a prohibition order is not proportionate or in the public interest. I consider that the publication of the findings made would be sufficient to send an appropriate message to the teacher as to the standards of behaviour that were not acceptable and that the publication would meet the public interest requirement of declaring proper standards of the profession.

A handwritten signature in blue ink, appearing to read 'Alan Meyrick', with a checkmark at the end.

Decision maker: Alan Meyrick

Date: 17 March 2022

This decision is taken by the decision maker named above on behalf of the Secretary of State.