



National College for
Teaching & Leadership

Brett Benjamin Holden: Professional Conduct Panel outcome

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

July 2014

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Professional Conduct Panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher:	Mr Brett Benjamin Holden
Teacher ref no:	02/38681
Teacher date of birth:	5 March 1977
NCTL Case ref no:	00110543
Date of Determination:	8 July 2014
Former employer:	St George's Primary School / Worcestershire County Council

A. Introduction

A Professional Conduct Panel ("the Panel") of the National College for Teaching and Leadership ("the National College") convened on 7 and 8 July 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Brett Benjamin Holden.

The Panel members were Ms Nicole Jackson (Lay Panellist – in the Chair), Mr Colin Parker (Teacher Panellist) and Mr Michael Lesser (Teacher Panellist).

The Legal Adviser to the Panel was Ms Fiona Walker of Eversheds Solicitors.

The Presenting Officer for the National College was Mr Andrew Hurst of 2 Hare Court Chambers.

Mr Brett Benjamin Holden was not present and was not represented.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegations set out in the Notice of Proceedings dated 8 May 2014.

It was alleged that Mr Brett Benjamin Holden was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute, in that, whilst employed by Worcestershire County Council between 2008-2013, he:

1. Failed to maintain appropriate professional boundaries with pupils in that he:
 - a. sat between the legs of Pupil R;
 - b. allowed a pupil or pupils to sit on his lap on one or more occasions, including:
 - i. Pupil A;
 - ii. Pupil B;
 - iii. Pupil C;
 - iv. Pupil D;
 - v. Pupil E;
 - vi. Pupil G.
 - c. embraced pupils and/or allowed pupils to embrace him on one or more occasions, including:
 - i. Pupil E;
 - ii. Pupil F;
 - iii. Pupil G;
 - iv. Pupil I;
 - v. Pupil J;
 - vi. Pupil K;
 - vii. Pupil L;
 - viii. Pupil M;
 - ix. Pupil R.
 - d. tickled on one or more occasions:

- i. Pupil F;
 - ii. Pupil G,
 - e. fed Pupil F with a serving spoon directly into her mouth whilst serving school dinners, in front of other pupils,
 - f. called pupils by pet names including:
 - i. “My [name of pupil]”,
 - ii. “My [name of pupil]”,
 - iii. “[Redacted]”,
 - iv. “My Princess”,
 - v. “Princess [name of pupil]”,
 - vi. “[Redacted]”,
 - g. took four female pupils to the Build-A-Bear shop in his own car to buy teddy bears to be used as school house mascots including:
 - i. Pupil G,
 - ii. Pupil J,
 - iii. Pupil U,
 - h. allowed a pupil or pupils to call you “dad” on one or more occasions.
2. Whilst on a school residential trip in November 2012, unnecessarily entered the female pupils’ dormitory after the pupils had gone to bed.

Mr Brett Benjamin Holden does not admit the following allegations (adopting the numbering in the Notice of Proceedings), as set out in the Statement of Agreed Facts, signed by Mr Holden in December 2013 :

1(a); 1(c)(i)(ii)(iii)(iv) and (vii); 1(e); 1(f)(i)(ii)(iv) and (v); 1(g) and 2.

The allegations have not been admitted by Mr Brett Benjamin Holden as amounting to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

The Panel considered an application from the Presenting Officer to proceed in the absence of Mr Brett Benjamin Holden. The Panel determined that the NCTL had complied with the service requirements and that the teacher had been provided with the requisite length of notice of at least 8 weeks in accordance with the procedures and that the notice of proceedings contained the necessary details. The Panel found that the teacher had deliberately waived his right to participate in the hearing and there has been no indication that an adjournment might result in the teacher attending voluntarily. The Panel noted that these were serious matters and there was a public interest in the hearing taking place within a reasonable time of the events to which it relates. The Panel decided that the hearing should proceed in the absence of the teacher.

The Panel also considered an application from the Presenting Officer to amend the Notice of Proceedings to withdraw the allegation at 1 (f) (vi). The Panel took into account the interests of justice and whether any prejudice would be caused to the teacher if the withdrawal of the allegation were to be allowed. The Panel took into account that the withdrawal of the allegation did not change the overall nature and scope of the allegations or change the factual basis upon which the allegations were founded. The Panel considered that the teacher's case and his response would not have been affected had the withdrawal been made at an earlier stage. For these reasons, the Panel decided that the Notice of Proceedings should be amended to withdraw the allegation at 1 (f) (vi).

D. Summary of evidence

Documents

In advance of the hearing, the Panel received a bundle of documents which included:

Section 1 : Chronology, anonymised pupil list and list of key people

Section 2 : Notice of Proceedings

Section 3 : National College for Teaching and Leadership Witness Statements

Section 4 : National College for Teaching and Leadership Documents

Section 5 : Teacher Documents

The Panel Members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

The Panel heard oral evidence from:

1. Witness A
2. Witness B
3. Witness C
4. Witness D
5. Witness E
6. Witness F
7. Witness G
8. Witness H

All of the above witnesses were called by the Presenting Officer.

E. Decision and reasons

The Panel announced its decision and reasons as follows:

We have now carefully considered the case before us and have reached a decision.

We confirm that we have read all the documents provided in the bundle in advance of the hearing.

Summary of Evidence

Mr Holden was employed as deputy headteacher of St George's Primary School between 1 September 2008 and 14 April 2013. Between October 2010 and August 2011, he was temporarily employed as acting headteacher and between January 2012 and August 2012, Mr Holden undertook a secondment as acting headteacher at Catshill First School. It is alleged that Mr Holden failed to maintain appropriate professional boundaries with pupils in that he allowed pupils to sit on his lap; he embraced pupils; he tickled pupils; he fed a pupil with a spoon; took some pupils out of school to purchase teddy bears; allowed a pupil to call him "dad" and unnecessarily entered the female pupil's dormitory, whilst on a school trip, after the pupils were in bed.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against you proven, for these reasons:

1. Failed to maintain appropriate professional boundaries with pupils in that he:

a. sat between the legs of Pupil R;

The Panel heard evidence from Witness B that on an occasion when she entered the classroom, Pupil R was sat on the top of Mr Holden's desk with her legs spread in a v-shape. Mr Holden was sat in the teacher's chair at the desk between Pupil R's legs. Pupil R's bottom was at the end of the desk and Witness B confirmed that when she entered the room, Mr Holden pushed his chair back and leant back to create distance between himself and Pupil R. The Panel accepted the evidence of Witness B.

The Panel found on the balance of probabilities that the event occurred and finds the allegation to be proven.

b. allowed a pupil or pupils to sit on his lap on one or more occasions, including:

i. Pupil A;

ii. Pupil B;

iii. Pupil C;

iv. Pupil D;

v. Pupil E;

vi. Pupil G.

The allegation is admitted by Mr Holden and the Panel therefore finds the allegation to be proved. The Panel also heard evidence from Witness C that Mr Holden would often have Pupil A sat on his lap; that, during the residential trip to Stotteston in November 2012, Mr Holden would have Pupils A, B, C, D and E sat on his lap in the evenings and that, during school times and on a previous school residential trip, Pupil G would "constantly" be sat on Mr Holden's lap. The Panel also heard from Witness D that on one occasion during school, she witnessed Pupil G sat on Mr Holden's lap.

c. embraced pupils and/or allowed pupils to embrace him on one or more occasions, including:

i. Pupil E;

ii. Pupil F;

iii. Pupil G;

iv. Pupil I;

v. Pupil J;

vi. Pupil K;

vii. Pupil L;

viii. Pupil M;

ix. Pupil R.

The allegation is admitted by Mr Holden in respect of Pupils J, K, M and R. The Panel noted that the admission by Mr Holden is to “cuddling” the Pupils rather than embracing the Pupils. The Panel considered that there was no material difference to the substance of the allegation insofar as there is a difference between cuddling and embracing.

The Panel heard evidence from Witness A that on one occasion, she witnessed Pupil E with her arms around Mr Holden’s waist and Mr Holden had his arms around Pupil E’s waist, completely surrounding Pupil E. Witness A referred to the incident as “cuddling”. Witness A also gave evidence that she and two other members of staff witnessed Mr Holden embracing Pupil E and G at a Christmas Carol Concert. The Panel also heard evidence from Witness E that Mr Holden would often cuddle Pupil E. The Panel accepted the evidence of Witness A and Witness E and found, on the balance of probabilities, that the events occurred.

The Panel heard evidence from Witness D that she had seen Mr Holden with his arms around the shoulders of Pupils G, F and L on an occasion when she had been walking through the hall whilst Mr Holden was teaching PE. She described it as “very cuddling, overly-cuddling”. The Panel accepted her evidence and found that, on the balance of probabilities, the event occurred.

The Panel therefore found the allegation to be proved.

d. tickled on one or more occasions:

i. Pupil F;

ii. Pupil G,

The allegation is admitted by Mr Holden in respect of Pupils F and G and therefore the Panel finds the allegation to be proved.

e. fed Pupil F with a serving spoon directly into her mouth whilst serving school dinners, in front of other pupils,

The Panel heard evidence from Witness F that, during a lunchtime, Mr Holden served Pupil F with leftover Angel Delight directly off a spoon and directly into her mouth. She thought the behaviour was both unhygienic and unprofessional. The Panel accepted the evidence of Witness F and found, on the balance of probabilities, that the event took place.

The Panel therefore found the allegation to be proved.

f. called pupils by pet names including:

i. “My [name of pupil]”,

ii. “My [name of pupil]”,

iii. “[Redacted]”,

iv. “My Princess”,

v. “Princess [name of pupil]”,

The allegation is admitted by Mr Holden in relation to (iii) [redacted]. The Panel heard evidence from Witness C that she had heard Mr Holden refer to a pupil as “My [name of pupil]” and “My Princess”. She also confirmed that Mr Holden referred to another pupil as “My [name of pupil]”. Witness E gave evidence that she often heard Mr Holden refer to a pupil as “Princess [name of pupil]”.

The Panel accepted the evidence of Witness C and Witness E and the admission by Mr Holden. The Panel therefore finds the allegation to be proved.

g. took four female pupils to the Build-A-Bear shop in his own car to buy teddy bears to be used as school house mascots including:

i. Pupil G,

ii. Pupil J,

iii. Pupil U,

Mr Holden admitted taking one or more female pupils to Build A Bear to choose teddy bears as house mascots. However, Mr Holden stated that it was in a taxi

and not in his own car. He also stated that he had parental permission. The Panel also noted that, in Mr Holden's written answers to the written questions, he indicated that the pupils were not all girls and they were picked by their house to go and choose the mascots.

The Panel heard evidence from Witness B that the trip to Build A Bear took place and she recalled Mr Holden taking four female pupils (two of who she recognised) in his own car unaccompanied by any other staff member. The Panel also heard evidence from Witness D that she also saw Mr Holden leaving the school grounds in his car with four female pupils during lesson time. She believed that Individual A had insisted on obtaining permission from the pupils' parents before Mr Holden left. Both Witness B and Witness D gave evidence that they recognised the vehicle as Mr Holden's own car because of his personalised registration plate. The Panel gave greater weight to and accepted the evidence of both Witness B and Witness D to that of Mr Holden, in relation to the gender of the pupils and the vehicle.

The Panel found the allegation to be proved and that Mr Holden took four female pupils to the Build A Bear shop in his own car to buy teddy bears. The Panel noted that there was some confusion between the witnesses as to the identities of the four female Pupils.

h. allowed a pupil or pupils to call you "dad" on one or more occasions.

The allegation is admitted by Mr Holden and the Panel therefore find the allegation to be proved.

2. Whilst on a school residential trip in November 2012, unnecessarily entered the female pupils' dormitory after the pupils had gone to bed.

Mr Holden admits that in November 2012, whilst on a school residential trip he went into the girls' dormitory, at night, after the pupils had gone to bed and the lights were out. He also admits that the female members of staff had already attended the dormitory to check that the pupils were settled. The Panel noted that Mr Holden also stated, in the Statement of Agreed Facts, that he was the only teacher on the trip.

The Panel heard evidence from Witness C and Witness E that they had informed the girls that, in the event of an emergency, they could ring the bell which was installed in the dormitories and that the two teaching assistants would come to them. Both Witness C and Witness E also gave evidence that, on the evening in question, they had both already checked on the female pupils that evening and settled them into bed and therefore there was no cause to check on the girls. The Panel noted that Mr Holden did not inform the teaching assistants prior to going into the girls' dormitory and nor did he confirm he had done so later that evening. Nor had Mr Holden offered any explanation as to why he had entered the girls' dormitory when specifically asked by Witness C, the next

morning. The Panel heard that the two female teaching assistants were in a bedroom less than 10 metres away from the girls' dormitory.

The Panel accepted the evidence of Witness C and Witness E and found that Mr Holden unnecessarily visited the girls' dormitory. The Panel did not accept the reason proffered by Mr Holden in the investigation meeting on 31 January 2013 that he entered the girls' dormitory to carry out a safety check.

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

Having found the facts of all the allegations proved, the Panel has also taken the following matters into account in reaching its decision.

The Panel heard extensive and consistent evidence that Mr Holden regularly, and over a sustained period of time, had physical contact of an inappropriate nature with female pupils, primarily but not exclusively, female pupils in Years 5 and 6 and with one younger vulnerable pupil (who was profoundly deaf). The Panel found each of the witnesses to be credible and compelling in their accounts.

The Panel heard evidence from some of the witnesses (Witness B, Witness E and Witness C) that the physical contact included Mr Holden giving a pupil a "fireman's lift"; "hugging pupil's front to front so that they were touching"; "Mr Holden would slide the pupils down the front of his body"; "Pupil R was sat on the top of Mr Holden's desk with her legs spread in a v-shape"; "Mr Holden would always have Pupil E and G sat on his knee holding them"; "He put his arms round her, picked her up and his legs wrapped round his waist, then he slid her down his body" and "Mr Holden would cuddle the pupils whilst they were in their nightwear".

The Panel noted that whilst a lot of his behaviour was conducted openly, there were occasions that the witnesses gave evidence of, when the inappropriate physical contact took place behind closed doors and not in public view. Moreover, the Panel found that he did not discourage the pupils from initiating physical contact with him.

The Panel heard that Mr Holden had been advised on a number of occasions by different individuals about the inappropriateness of his behaviour. Despite the advice given, the Panel found that Mr Holden brazenly continued with a disregard for the guidelines, school policy and training he had received, in particular, the Safe Working Practices Training for Staff in Education Settings in January 2013; Safer Recruitment in Education in January 2010; Safeguarding Training in February 2010; Team Teach Training on positive handling strategies within a holistic framework in 2009 and Educational Visits Co-ordinator Revalidation in 2010. The Panel also noted that Mr Holden was a senior member of staff at all relevant times, at the very least he held the role of Deputy Headteacher. He was the Safeguarding Officer at the School and also had responsibility for educational visits. Despite this, the Panel found that Mr Holden failed to observe the

proper professional boundaries required between teacher and pupil and that he repeatedly blurred those boundaries.

In considering the allegations that the Panel has found proven, the Panel has had regard to the definitions in The Teacher Misconduct – Prohibition of Teachers Advice, which we refer to as the 'Guidance'.

The Panel is satisfied that the conduct of Mr Holden in relation to the facts found proven, involved breaches of the Teachers' Standards. The Panel considers that by reference to Part Two, Mr Holden 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The Panel is satisfied that the conduct of Mr Holden fell significantly short of the standards expected of the profession.

The Panel has also considered whether Mr Holden's conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Guidance and we have found that none of these offences are relevant.

Accordingly, the Panel is satisfied that Mr Holden is guilty of unacceptable professional conduct.

The Panel has taken into account how 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 has taken account of the uniquely influential role that teachers can hold in pupil's lives and that pupils must be able to view teachers as role models in the way they behave.

The Panel therefore finds that Mr Holden's actions constitute 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 unprofessional conduct and conduct that may bring the profession into disrepute, it is 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.

The Panel has heard no evidence as to Mr Holden's previous good character but, equally, has heard no evidence that he was not of previous good character although it was confirmed that there are no previous disciplinary decisions against Mr Holden.

In considering whether to recommend to the Secretary of State that a Prohibition Order should be made, the Panel has to consider whether it is an appropriate and proportionate measure, and whether it is 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 has considered the particular public interest considerations set out in the Teacher Misconduct – Prohibition of Teachers Advice and having done so has found a number of them to be relevant in this case, namely - the protection of pupils, the protection of other members of the public, the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr Holden, which involved findings that he failed to maintain appropriate professional boundaries with pupils, engaged in inappropriate physical contact with a number of pupils and unnecessarily visited the girls' dormitory during the night whilst on a school residential trip, there is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate physical contact with children.

Similarly, the Panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Mr Holden were not treated with the utmost seriousness when regulating the conduct of the profession.

The Panel considered that a strong public interest consideration in declaring proper standards of conduct in the profession was also present as the conduct found against Mr Holden was outside that which could reasonably be tolerated.

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 Mr Holden. There was no mitigation evidence presented for the Panel to take into account in forming its judgment although the Panel did have regard to the points made by Mr Holden in his written responses and his interviews, which purported to explain some of the incidents forming part of the allegations. The Panel was also mindful of the fact that prior to these findings

being made against him, Mr Holden was considered to be a person of good character with no criminal or disciplinary sanctions record against him.

In carrying out the balancing exercise the Panel has considered the public interest considerations both in favour of and against prohibition as well as the interests of Mr Holden, the Panel took further account of the Teacher Misconduct – Prohibition of Teachers Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proven. In the list of such behaviours are:

- serious departure from the personal and professional conduct elements of the teachers' standards
- misconduct seriously affecting the education and/or well being of pupils, and particularly where there is a continuing risk
- a deep-seated attitude that leads to harmful behaviour
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils

Even though there were behaviours that would point to a Prohibition Order being appropriate, the Panel went on to consider whether or not there were sufficient mitigating factors to militate against a Prohibition Order being an appropriate and proportionate measure to impose, particularly taking into account the nature and severity of the behaviour in this case. In light of the Panel's findings:

- There was no evidence that the teacher's actions were not deliberate
- There was no evidence to suggest that the teacher was acting under duress, and in fact the Panel found the teacher's actions to be calculated and motivated

The Panel is of the view that Prohibition is both proportionate and appropriate. We have decided that the public interest considerations outweigh the interests of Mr Holden. The protection of pupils given the serious findings of inappropriate physical contact with children and the deep seated attitude displayed by Mr Holden were significant factors in forming that opinion. Accordingly, the Panel makes a recommendation to the Secretary of State that a Prohibition Order should be imposed with immediate effect.

The Panel went on to consider whether or not it would appropriate for them to decide to recommend that a review period of the order should be considered. The Panel were mindful that the Teacher Misconduct – Prohibition of Teachers Advice advises that a Prohibition Order applies for life, but there may be circumstances in any given case that may make it appropriate to allow a teacher to apply to have the prohibition order reviewed after a specified period of time that may not be less than two years.

The Teacher Misconduct – Prohibition of Teachers Advice indicates that there are behaviours that, if proven, would militate against a review period being recommended.

Mr Holden has not shown any insight into his actions or shown any sign of remorse.

The Panel felt the findings indicated a situation in which a review period would not be appropriate and as such decided that it would be proportionate in all the circumstances for the Prohibition Order to be recommended without provisions for a review period.

Decision and reasons on behalf of the Secretary of State

I have given very careful consideration to this case and to the recommendations of the panel both in respect of sanction and review period.

In this case, there has been extensive and consistent evidence that Mr Holden regularly, and over a sustained period of time, had physical contact of an inappropriate nature with female pupils, primarily but not exclusively, female pupils in Years 5 and 6 and with one younger vulnerable pupil (who was profoundly deaf).

I have considered Mr Holden's conduct and am also satisfied that the facts found proven, involved breaches of the Teachers' Standards. Mr Holden 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;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality;
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

This misconduct falls significantly short of the standards expected of the profession and amounts to unacceptable professional conduct. In addition, the behaviours found proven constitute conduct that may bring the profession into disrepute.

I have considered carefully the guidance and have weighed the wider public interest with the interests of Mr Holden.

On balance, and taking into account the guidance, it appears to me that a prohibition order is appropriate in this case. In particular the reasons are that the following behaviours are present:

- serious departure from the personal and professional conduct elements of the teachers' standards
- misconduct seriously affecting the education and/or well being of pupils, and particularly where there is a continuing risk
- a deep-seated attitude that leads to harmful behaviour
- abuse of position or trust (particularly involving vulnerable pupils) or violation of the rights of pupils

In addition, there is no evidence that the teacher's actions were not deliberate or that Mr Holden was acting under duress. Indeed the panel's recommendation includes their view that Mr Holden's actions were both calculated and motivated.

I therefore support the view of the panel that a prohibition order is appropriate and proportionate.

I have also given careful consideration to the recommendation of the panel in respect of a review period. The panel are very clear that "Mr Holden has not shown any insight into his actions or shown any sign of remorse. "

This was serious repeated behaviour over a period of time. In addition Mr Holden was given warnings about his behaviour. For these reasons I support the recommendation of the panel that there be no review period.

This means that Mr Brett Holden is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. Furthermore, in view of the seriousness of the allegations found proved against him, I have decided that Mr Brett Holden shall not be entitled to apply for restoration of his eligibility to teach.

This Order takes effect from the date on which it is served on the Teacher.

Mr Brett Holden has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date he is given notice of this Order.

NAME OF DECISION MAKER: Alan Meyrick

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

Date: 10 July 2014

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