



National College for
Teaching & Leadership

Mr Jason McDermott: 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 Jason McDermott
Teacher ref no:	0116925
Teacher date of birth:	24 June 1969
NCTL Case ref no:	0010765
Date of Determination:	22 July 2014
Former employer:	CTC Kingshurst Academy, Solihull

A. Introduction

A Professional Conduct Panel (“the Panel”) of the National College for Teaching and Leadership (“the National College”) convened on 21 July 2014 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Mr Jason McDermott.

The Panel members were Mr Nicholas Andrew (Lay Panellist – in the Chair), Ms Nicole Jackson (Lay Panellist) and Mr Steve Oliver (Teacher Panellist).

The Legal Adviser to the Panel was Mr Thomas Whitfield of Eversheds LLP Solicitors.

The Presenting Officer for the National College was Mr Ben Bentley of Browne Jacobson LLP Solicitors.

Mr Jason McDermott was not present and was not represented.

The meeting took place in private. The Panel’s decisions as to whether the allegations were proved and whether the proved allegations amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute were announced in public and were recorded.

B. Allegations

The Panel considered the amended allegations set out in the statement of agreed facts signed by Mr McDermott on 20 May 2014.

It was alleged that Mr Jason McDermott is guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst employed at CTC Kingshurst Academy, Solihull, there was a pattern of him engaging in inappropriate physical contact with pupils, as set out below:

1. In January 2011 he pulled/grabbed Pupil A's hair;
2. He punched and/or jabbed students in the stomach/sterum region on a number of occasions including:
 - a. Pupil B in September/October 2012;
 - b. Pupil C on 7 January;
 - c. Pupil D on 11 January 2013 causing him to be sick for a couple of days; and
 - d. Pupil C on 8 March.

Mr McDermott admits the facts of the allegations and admits that they amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

C. Preliminary applications

The Panel noted that the allegations in the statement of agreed facts signed by Mr McDermott on 20 May 2014 differed from those in the notice of proceedings dated 6 February 2014. The Panel agreed to the amendment of the allegations, to those set out in the statement of agreed facts.

D. Summary of evidence

Documents

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

Chronology, anonymised pupil list and list of key people	1 to 3
Notice of referral, response and notice of	4 to 8b

meeting	
Statement of agreed facts and presenting officer's representations	9 to 14
The National College's documents	15 to 72
Teacher's documents	73 to 96

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

The Panel noted that two pages of the record of the Position of Trust meeting of 27 January 2011 were missing from the National College's documents. This was raised with the National College prior to the date of the hearing. On the day of the hearing the National College informed the Panel that the Presenting Officer had sought the missing pages from the Local Authority, but had been informed that they were not available. The Panel considered whether it would be in the public interest and/or the interests of justice to adjourn the meeting or decide that the allegations should be considered at a hearing. The Panel noted that the Presenting Officer had had an opportunity to obtain the missing pages and had been unable to do so and that there was no indication that the missing pages were likely to be material to the case. The Panel therefore concluded that neither an adjournment of the meeting nor proceeding to a hearing would be in the public interest or in the interests of justice.

Witnesses

The Panel did not hear any oral evidence.

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 McDermott commenced employment at CTC Kingshurst Academy, Solihull, on 13 September 1999. Mr McDermott taught, and was the coordinator for, the BTEC uniformed services course.

In January 2011 Mr McDermott pulled the hair of Pupil A. Pupil A's mother complained and the incident was referred to a Local Authority Position of Trust meeting. At that meeting it was concluded that the allegation was "unfounded [due] to the physical nature of the course and does not meet Position of Trust thresholds at this stage". The meeting determined that the issue would be referred back to the Principal of the Academy to deal with under their own procedures. The Principal of the Academy discussed the issue with Mr McDermott, but there is no contemporaneous written record of that discussion and the subsequent evidence of those discussions is inconsistent.

Four instances, taking place between September/October 2012 and 8 March 2013, have been recorded of Mr McDermott punching or jabbing students in the stomach or sternum. These events were reported to Individual A, Vice Principal of the Academy, by another teacher on the uniformed services course, in March 2013. Shortly after the issues were reported, Mr McDermott was suspended. Mr McDermott subsequently resigned.

Findings of Fact

Our findings of fact are as follows:

We have found the following particulars of the allegations against Mr McDermott proved, for these reasons:

Whilst employed at CTC Kingshurst Academy, Solihull, there was a pattern of him engaging in inappropriate physical contact with pupils, as set out below:

1. In January 2011 he pulled/grabbed Pupil A's hair;

These particulars of the allegations are admitted and the Panel found them proved.

2. He punched and/or jabbed students in the stomach/sternum region on a number of occasions including:

These particulars of the allegations are admitted and the Panel found them proved.

a. Pupil B in September/October 2012;

These particulars of the allegations are admitted and the Panel found them proved.

b. Pupil C on 7 January;

These particulars of the allegations are admitted and the Panel found them proved.

c. Pupil D on 11 January 2013 causing him to be sick for a couple of days; and

These particulars of the allegations are admitted and the Panel found them proved.

d. Pupil C on 8 March

These particulars of the allegations are admitted and the Panel found them proved.

Findings as to Unacceptable Professional Conduct and/or Conduct that may bring the profession into disrepute

In considering the allegations that the Panel has found proved, 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 McDermott in relation to the facts found proved, involved breaches of the Teachers’ Standards. The Panel considers that by reference to Part Two, Mr McDermott 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 Jason McDermott fell significantly short of the standards expected of the profession.

The Panel has also considered whether Mr McDermott’s conduct displayed behaviours associated with any of the offences listed on page 8 and 9 of the Guidance and we have found that Mr McDermott’s conduct did display behaviour associated with offences involving violence. The Guidance indicates that where behaviours associated with such an offence exist, a Panel is likely to conclude that an individual’s conduct would amount to unacceptable professional conduct.

Accordingly, the Panel is satisfied that Mr Jason McDermott 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 pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

The Panel therefore finds that Mr Jason McDermott'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.

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 Guidance and having done so has found a number of them to be relevant in this case, namely the protection of pupils and declaring and upholding proper standards of conduct.

In light of the Panel's findings against Mr McDermott, which involved unacceptable physical contact with pupils, the Panel finds that there is a strong public interest consideration in respect of the protection of pupils.

The Panel also finds that there is a public interest consideration in declaring proper standards of conduct in the profession, as the conduct found against Mr McDermott was outside that which can reasonably be tolerated.

Notwithstanding the 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 McDermott. In forming a judgement in this respect, the Panel took account of the mitigation evidence that was presented to it by Mr McDermott, in which he stated that when the Principal and Vice Principal spoke to him after the first incident, that meeting "felt very low key. There was also no follow up to this or any suggestion or offering of training or mentoring to support me" and he was not given the impression that this was a serious warning. The Panel

was also mindful of the fact that, as described below, Mr McDermott was considered to be a person of good character with no criminal or disciplinary sanctions recorded against him, prior to the first of the incidents giving rise to these allegations.

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 McDermott, the Panel took further account of the Guidance, which suggests that a Prohibition Order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours is:

- serious departure from the personal and professional conduct elements of the teachers' standards.

The Panel is satisfied that Mr McDermott's conduct involved such behaviour.

Also in the list of behaviours is:

- a deep-seated attitude that leads to harmful behaviour.

The Panel noted Mr McDermott's assertions, in his statement of 24 April 2013, that the physicality between staff and students has always been a part of the relationship on the course and that this has included boisterous play between students and Mr McDermott, that has seen Mr McDermott and students "on the end of many dead leg/arm or bottom of a pile on". Mr McDermott goes on to describe the physicality between staff and students as "a unique paradigm we have". The Panel also notes that in an investigation meeting on 23 April 2013 Mr McDermott stated that if he couldn't teach in this way, he couldn't teach the course. The Panel was struck however by the statement in the report of the independent HR consultant that there was "no evidence that any other members of the staff team have actually punched or hit a student". On balance, the Panel finds Mr McDermott's conduct to be demonstrative of a deep-seated attitude and that this has led to harmful behaviour.

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, seriousness and recurrence of the behaviour in this case.

The Panel did not find that Mr McDermott's actions were not deliberate. Nor did the Panel find that Mr McDermott was acting under duress. The Panel did note however that, according to the Principal, speaking on 29 April 2013 to an independent HR consultant investigating allegations against Mr McDermott, Mr McDermott had, in 2011, "an unsullied record with students".

The Panel noted that, following the events of 2011, the Academy had given some form of feedback to Mr McDermott about his interactions with pupils. However, the evidence

before the Panel about this feedback was inconsistent. According to the notes of the telephone call of 29 April 2013, the Principal states that following a position of trust meeting in 2011, involving the Local Authority Designated Officer ('LADO') and the Police, "given the different approach of [the uniformed services] course", she had asked that she "be given an opportunity to lay it down that harassing or touching of students at all would not be tolerated". The Principal went on to say that she had "stated that there was no difference in the way these students should be treated to any other", that "she had been absolutely clear that it related to any physical contact and he had been under no uncertainty as to what was required although he had seemed taken aback that it had been necessary" and that "she had made it clear that if anything similar happened, the CTC would go the 'whole way'". Mr McDermott states, about the same meeting that "I did not leave that meeting feeling the severity that has been stated. It felt very low key. There was also no follow up to this or any suggestion or offering of training or mentoring to support me".

The Panel concludes from the evidence before it that Mr McDermott had been given some indication, not least through the involvement of the Police and the LADO, that his physical interaction with pupils should be tempered. However, whilst the evidence is unclear, the Panel is not satisfied that Mr McDermott was given a sufficiently clear indication that pupils on the uniformed services course should be treated in the same manner as other students and that rough physical contact with pupils was not acceptable.

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 McDermott. The fact that this involved recurring violence against pupils, of a potentially criminal nature, is a significant factor in forming that opinion, although the Panel recognises that the violence in question is towards the lower end of the scale. The fact that parents and pupils had not generally complained about such conduct is not a determining consideration in the Panel's view. 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 be appropriate to recommend that a review period of the order should be considered. The Panel was mindful that the Guidance 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 Guidance indicates that there are behaviours that, if proved, would militate against a review period being recommended. These behaviours include violence. The Panel has found that Mr McDermott has used a degree of violence against pupils.

The Panel notes that Mr McDermott says that he accepts that what he did was wrong and that he has deep regret for his actions. However, his communications to the Presenting Officer include the phrases "I fully accept that looking at it from an outside

perspective and following the guidelines it is wrong” and that his actions were “merely over boisterous behaviour which was reciprocated by my students. I understand though from the outside how this looks ...”. Such comments lead the Panel to be concerned that Mr McDermott does not appear to accept that he has done wrong; rather he recognises that others consider his actions to be wrong.

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 provision for a review period.

Decision and reasons on behalf of the Secretary of State

I have given careful consideration to the findings and recommendations of the panel in this case.

Mr McDermott has admitted all the allegations and agreed that those facts amount to unacceptable professional conduct and conduct that may bring the profession into disrepute. The panel have endorsed those findings.

Mr McDermott has engaged in a pattern of inappropriate physical contact with pupils over a period of two years. The panel have satisfied themselves that Mr McDermott’s conduct fell significantly short of the standards expected of the profession having breached a number of the Teachers’ Standards.

The panel have taken account of how the profession is viewed by others and the influential role that teachers can hold in pupils’ lives.

In considering whether a prohibition order is an appropriate and proportionate sanction they have properly considered the public interest and in particular the protection of pupils and upholding proper standards of conduct. The panel have judged there to be a strong public interest element to this case.

They have balanced this against any possible mitigating factors. The independent HR consultant referred to an ‘unsullied record with students’ up to the events of 2011. Whilst he had received some feedback regarding his physical interaction with pupils the panel was not satisfied that he had been given a sufficiently clear indication that pupils on the uniformed service course should be treated in the same manner as other pupils.

The panel have decided that the public interest considerations outweigh the interests of Mr McDermott particularly as his behaviour involved recurring violence against students of a potentially criminal nature. I agree with their recommendation that a prohibition order is an appropriate and proportionate sanction.

In considering the question of a review period the panel noted that Mr McDermott accepts that what he did was wrong and that he regrets his actions. However communications with the presenting officer lead them to be concerned that he does not appear to accept that his actions were wrong, rather he recognises that others might judge his actions to be wrong.

In the circumstances I agree with the panel's recommendation that the order should be without provision for it to be reviewed.

This means that Mr Jason McDermott 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 allegation found proved against him, I have decided that Mr Jason McDermott 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 Jason McDermott 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.

A handwritten signature in black ink, appearing to read 'P Heathcote', with a large, stylized flourish at the end.

NAME OF DECISION MAKER: Paul Heathcote

Date: 22 July 2014

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