



National College for
Teaching & Leadership

Helen Rossenberg: Professional conduct panel outcome

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

January 2017

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

Teacher: Ms Helen Rossenberg

Teacher ref number: 1576293

Teacher date of birth: 14 October 1957

NCTL case reference: 15082

Date of determination: 20 January 2017

Former employer: Bourne End Academy, Buckinghamshire

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 18 January 2017 at The Study Inn Conference Centre, 175 Corporation Street, Coventry, CV1 1GU to consider the case of Ms Helen Rossenberg.

The panel members were Brian Hawkins (teacher panellist – in the chair), John Matharu (lay panellist) and Karen McArthur (lay panellist).

The legal adviser to the panel was James Danks of Blake Morgan LLP.

The presenting officer for the National College was Louisa Atkin of Browne Jacobson LLP.

Ms Rossenberg was not present and 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 21 November 2016.

It was alleged that Ms Helen Rossenberg was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that, whilst employed as a teacher at Bourne End Academy 'the School' between September 2015 and December 2015, she:

1. made inappropriate physical contact with one or more students, including by;
 - a) pushing Student C on or around 16 November 2015;
 - b) standing/treading on Student I's foot on or around 16 November 2015;
 - c) pulling Student G's hair on or around 17 November 2015;
 - d) grabbed one or more students by the arm in order to gain their attention.
2. made inappropriate comments to and/or about one or more students, including by;
 - a) describing a student with special educational needs as "*thick*";
 - b) saying "*all they would do is sit there scratching their balls*" or words to that effect, in reference to students who were absent from a lesson;
 - c) telling a student to "*sit your black ass down on that chair*" on or around 30 September 2015;
 - d) making reference to Student G having "nits" on or around 17 November 2015;
 - e) referring to one or more students as "*fat*" and/or "*ugly*" and/or "*gay*".

In the absence of Ms Rossenberg and any admissions, it was taken that all allegations are denied.

C. Preliminary applications

The panel initially considered an application from the NCTL to proceed in the absence of Ms Rossenberg. The panel was provided with evidence that service had been sent to Ms Rossenberg:

- a) at least 8 weeks prior to the first day of the hearing in compliance with rule 4.11; and
- b) sent to her last known address in compliance with Regulation 19(1)(b) of The Teachers' Disciplinary (England) Regulations 2012.

The panel also considered the emails sent by the NCTL to Ms Rossenberg in December 2016 and January 2017, which invited written submissions to be provided were she to decide not to attend. The panel took account of Ms Rossenberg's responses that included, by benefit of her response to an email that had resent the relevant documents including

the charges, confirmation she had received the same and had no interest in returning to the UK.

Having considered all of the documentation and rules 4.27 to 4.29, the panel decided that the Notice of Proceedings had been properly served, and in light of Ms Rossenberg's knowledge of the proceedings and her responses, there would be no benefit in adjourning proceedings and it was in the interests of justice that the hearing proceeded in her absence.

The panel also decided to enter the three most recent emails between the Presenting Officer and Ms Rossenberg, not contained within the original bundle, as pages 31a to 31c.

Three further preliminary applications were then made by the NCTL as follows (numbered to take into account the first application):

- 2) the evidence of the child witnesses be allowed to take place via video-link;
- 3) the evidence of Witness B to take place via video-link; and
- 4) a further witness statement of Witness B dated 16 January 2017 be entered into evidence.

In respect of each application the panel decided as follows:

- 2) considering the child witnesses were both under 18, to minimise the disruption to their schooling and the fact that Ms Rossenberg had been notified of the application (and had not objected), it was in the interests of justice that they be allowed to give evidence remotely;
- 3) Ms Rossenberg had been notified of the application (and had not objected) and as there was no anticipated difference in the standard of Witness B's evidence whether it be physically live or by video-link, it was in the interests of justice that this application be allowed; and
- 4) the further evidence amounted to little more than a production statement from Witness B regarding evidence already contained within the bundle. In the circumstances, the new evidence was relevant and it was fair to admit this evidence at page 39a.

D. Summary of evidence

Documents

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

Section 1: Chronology and anonymised pupil list – pages 2 to 5

Section 2: Notice of Proceedings and response – pages 7 to 31

Section 3: NCTL witness statements – pages 32 to 39

Section 4: NCTL documents – pages 41 to 110

Section 5: Teacher documents – none submitted

In addition, as set out above, the panel agreed to accept the following:

- three emails regarding the hearing proceeding in Ms Rossenberg's absence at pages 31a to 31c;
- the witness statement of Witness B dated 16 January 2017 at page 39a.

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, Deputy Headteacher and Investigating Officer;
- 2) Student I;
- 3) Student M; and
- 4) Witness B, Teaching Assistant.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel has carefully considered the case before it and have reached a decision.

The panel confirms that it has read all the documents provided in the bundle in advance of the hearing as well as those included in the preliminary stages.

Ms Rossenberg had been employed at the School between September to December 2015 as a Maths teacher. Although this was her first position in the UK, she had over twenty years' experience teaching in Australia. It is alleged that Ms Rossenberg on five separate occasions made comments to, or about, students that were inappropriate and derogatory.

It is also alleged that Ms Rossenberg made inappropriate physical contact with a number of students on several occasions.

Findings of fact

Our findings of fact are as follows:

The panel has found the following particulars of the allegations against you proven, for these reasons:

1. You made inappropriate physical contact with one or more students, including by;

a) pushing Student C on or around 16 November 2015;

We find this factual particular proved. Whilst there was no live evidence for this particular, the panel gave some weight to the statement of Student C, which although hearsay, was his first hand account of the incident and was made relatively contemporaneously after the incident. The panel has also taken into account that Student C is under 18 and, whilst seemingly willing to provide live evidence, required parental consent to do so, which was not forthcoming.

Furthermore, the panel also notes the corroborative accounts of the incident as provided by a number of other students, which again were made on the day or soon after the incident.

Although Ms Rossenberg is not present at the hearing, the panel has noted her witness statement dated 17 November 2015 on this incident. It is unclear to the panel what defence she may be providing when suggesting students pushed her but, nevertheless, we note that Student C is not named by her as one of the offending students in any case.

b) standing/treading on Student I's foot on or around 16 November 2015;

We find this particular proved. The panel heard live evidence from Student I, whom the panel felt gave consistent and credible evidence and did not try to exaggerate any fact when possible to do so. Student I's description of Ms Rossenberg raising her leg and then putting her heel on Student I's toes meant the action was not accidental and was therefore a deliberate act.

Again, the panel noted the corroborative evidence of the facts surrounding the incident provided by a number of other students.

Having considered Ms Rossenberg's account that this was an accident, in light of the manner in which Student I gave evidence and the written statements provided, we do not accept her explanation on the balance of probabilities.

c) pulling Student G's hair on or around 17 November 2015;

We find this particular proved. The panel heard live evidence on this incident from Student I who witnessed the action. Again, the panel felt Student I gave a consistent, credible account of what had happened and stood up to questioning. Student I was able to provide further information when asked and the panel also took into account that Ms Rossenberg had accepted that she had '...picked up a lock of her hair and said "come on sit down"...'.

The panel also gave some weight to the written statement provided by Student G on the basis that it was provided soon after the incident and the witness was due to provide live evidence save for the absence of parental consent. The panel has also considered the account provided by Individual A immediately after the incident and based on the account given to him by Pupil G as further evidence.

2. You made inappropriate comments to and/or about one or more students, including by;

a) describing a student with special educational needs as “*thick*”;

b) saying “*all they would do is sit there scratching their balls*” or words to that effect, in reference to students who were absent from a lesson;

The panel found these allegations proved.

The panel heard live evidence from Witness B who was able to provide first hand evidence as to what was said by Ms Rossenberg regarding the student with special needs and reference to absent students.

The panel found that Witness B gave compelling evidence. He was able to explain the situation that gave rise to the alleged comments and was adamant that the comment regarding a student being 'thick' was not directed to him but rather towards the student. He explained that the student's perception of the situation may have been altered by the fact the student was engrossed with work, had special needs and therefore may not have fully understood who the comment was aimed at.

The panel also considered the statement of Individual B, who was present in the classroom and heard the comment, and three separate students who provided useful corroborative evidence as to the events.

The panel also noted that, although the situation was different, Ms Rossenberg accepted that she said the comment regarding students 'scratching their balls' and therefore this was a phrase she used.

On the balance of probabilities, the panel therefore decided these allegations proved.

c) telling a student to “*sit your black ass down on that chair*” on or around 30 September 2015;

The panel found this allegation proved.

The panel noted that during the disciplinary process, Ms Rossenberg had accepted saying a phrase with similar wording along the lines of 'sit your ass down on that black chair'. The panel was assisted by the live evidence from Witness A that the chairs in the relevant classroom were brown and the only black chairs were in the 6th form.

The panel heard further live direct evidence from Witness B who was present when the alleged comment was said by Ms Rossenberg. He explained that the student to whom the comment was made was in fact white and had objected to what had been said. Witness B stated that Ms Rossenberg had immediately said she was referring to the colour of the student's black trousers.

In considering this charge, the panel noted that the evidence provided by Witness B was again clear and coherent and that Ms Rossenberg's explanation as to what had been said, and the reason for it, was inconsistent. The panel therefore considered this allegation proved.

d) making reference to Student G having “nits” on or around 17 November 2015;

The panel found this allegation proved.

No live evidence was called on this allegation but the panel noted that Ms Rossenberg admitted saying that a student had nits but explained this as 'banter'. Whilst the panel accepts there may possibly be situations when 'banter' is appropriate to foster a stronger relationship between teacher and student, this would be very specific on the circumstances.

The panel also considered the written evidence from Individual A who provided a first hand account of hearing this comment being made by Ms Rossenberg followed by a comment that her hands were dirty from the nits.

In this case, the panel did not accept Ms Rossenberg's explanation for this comment as appropriate. She was a new teacher to the School and Student I and M gave evidence that the expected relationship with her students that may allow this comment to be made appropriately had not developed.

e) referring to one or more students as “*fat*” and/or “*ugly*” and/or “*gay*”.

The panel found that all parts of this particular allegation proved.

The panel heard live evidence on this matter from Student M. Although his evidence was not as clear as it may have been, he was consistent and explained that when Ms Rossenberg made these comments, she was challenged by students who found the comments inappropriate. Student M's live evidence was again corroborated by a number of witness statements from students made around the relevant time period. The panel also noted that these students had been interviewed separately, thereby reducing any opportunity to collaborate.

The panel has found the following particulars of the allegation against you not proven, for these reasons:

1. made inappropriate physical contact with one or more students, including by;

d) grabbed one or more students by the arm in order to gain their attention.

The panel found this allegation not proved.

The panel found that the term 'grabbed' indicated a degree of force being used, the appropriateness of this force being a subjective perception. No live evidence was called on this allegation and the panel noted that within the NCTL's case there were inconsistencies as to what level of contact there was between Ms Rossenberg and students. By way of example, Student H had stated that her arm had been grabbed but not in a way that it hurt and that it was in an attempt to move her out of the way.

Whilst the panel accepted on the balance of probabilities that there had been physical contact between Ms Rossenberg and students, in the absence of live evidence that could have been explored, the panel was not convinced that the NCTL had proved to the necessary standard that this contact was inappropriate.

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

Having found a number of the allegations to have been proven, the panel has gone on to consider whether the facts of those proven allegations amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel refers to as "the Advice".

The panel is satisfied that the conduct of Ms Rossenberg in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considers that by reference to Part Two, Ms Rossenberg 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;
 - showing tolerance of and respect for the rights of others.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel is satisfied that the conduct of Ms Rossenberg fell significantly short of the standards expected of the profession. Furthermore, the panel was concerned that despite the considerable support that the School had provided or offered to Ms Rossenberg, there had been a rapid escalation in the seriousness of the incidents that pupils were exposed to by Ms Rossenberg's behaviour, both oral and physical.

Accordingly, the panel is satisfied that Ms Rossenberg is guilty of unacceptable professional conduct.

The panel considers that Ms Rossenberg's actions were serious misconduct, all of which took place during school time. These actions had been communicated to parents who had raised concerns with the School.

In the circumstances, the panel has also taken account of 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 hold in pupils' lives and that pupils must be able to view teachers as role models in the way that they behave.

The conduct of Ms Rossenberg would likely have a negative impact on her status as a teacher and potentially damaging the public perception of the profession. It therefore necessarily follows that the panel finds the actions of Ms Rossenberg 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 professional conduct/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 Advice and having done so has found a number of them to be relevant in this case, namely:

- the protection of pupils;
- the maintenance of public confidence in the profession; and
- declaring and upholding proper standards of conduct.

In light of the panel's findings against Ms Rossenberg, which involved a number of complaints regarding inappropriate physical contact and comments to pupils, including those considered vulnerable, there has clearly been a serious departure from the personal and professional elements of the Teachers' Standards. There is a strong public interest consideration in respect of the protection of pupils given the serious findings of inappropriate contact with children.

Further, the panel considers that public confidence in the profession could be seriously weakened if conduct such as that found against Ms Rossenberg were not treated with the utmost seriousness when regulating the conduct of the profession.

Similarly, 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 Ms Rossenberg 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 Ms Rossenberg.

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 Ms Rossenberg. 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 proven. 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;

- 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;
- deliberate behaviour that undermines 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.

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 in as far as her recollection of events varied on occasion depending on who she was speaking to.

The teacher did have a previously good history but the panel also believes Ms Rossenberg's lack of engagement with the process indicates a lack of insight arising from her deep-seated attitudinal issues.

The panel is of the view that prohibition is both proportionate and appropriate. The panel has decided that the public interest considerations outweigh the interests of Ms Rossenberg. The protection of students was a significant factor 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 be appropriate for them to decide to recommend that a review period of the order should be considered. The panel were mindful that the 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 panel noted that none of the circumstances listed at page 12 of the Advice are present in this case and concluded that the findings in this case indicated a situation in which a review period would be appropriate. The panel decided it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period after a minimum period of three years. The panel noted that Ms Rossenberg has not expressed any remorse, regret or a willingness to engage cooperatively with this process. There has been no suggestion that Ms Rossenberg has shown any insight into her actions.

The panel felt the findings indicated a situation in which a review period would be appropriate and as such decided that it would be proportionate in all the circumstances for the prohibition order to be recommended with provisions for a review period.

The panel would expect any application for the prohibition order to be set aside to address Ms Rossenberg's ongoing proper understanding of the professional requirements placed upon her as a member of the teaching profession. The panel also recommends that she demonstrate insight into her professional behaviour and awareness of appropriate boundaries.

Decision and reasons on behalf of the Secretary of State

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

I have noted the allegations that the panel has found proven in this case, and those allegations that were not found proven I have set from my mind.

The panel has found Ms Rossenberg guilty of unacceptable professional conduct, and conduct that may bring the profession into disrepute.

The panel found that Ms Rossenberg 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;
 - showing tolerance of and respect for the rights of others.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach.

The panel is satisfied that the conduct of Ms Rossenberg fell significantly short of the standards expected of the profession. I agree with the panel's view.

I agree with the panel's concerns around the seriousness of the incidents that pupils were exposed to by Ms Rossenberg's behaviour, both oral and physical. I also agree that the conduct of Ms Rossenberg would likely have a negative impact on her status as a teacher and potentially damaging the public perception of the profession.

Ms Rossenberg's actions amount to serious misconduct, all of which took place during school time. I note these actions had been communicated to parents who had raised concerns with the School.

I have taken into account the guidance published by the Secretary of State.

I have also taken into account the need to be proportionate and to balance the public interest with the interests of Ms Rossenberg. In carrying out the balancing exercise, I have taken account of the 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, those that are relevant in this case 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;
- deliberate behaviour that undermines pupils.

For all of the reasons set out, I support the recommendation of the panel that Ms Rossenberg should be prohibited from teaching. I agree this is both a proportionate and appropriate response.

I now turn to the matter of a review period. I have considered the recommendation of the panel and noted their comments on insight and remorse. Ms Rossenberg has not expressed any remorse, regret or a willingness to engage cooperatively with this process. There has been no suggestion that Ms Rossenberg has shown any insight into her actions.

For the reasons given, I support the recommended review period of three years which seems proportionate and appropriate in the circumstances.

This means that Ms Helen Rossenberg is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 1 February 2020, three years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Rossenberg remains prohibited from teaching indefinitely.

A handwritten signature in black ink, appearing to be 'J. Millions', with a small dot at the end.

Decision maker: Jayne Millions

Date: 25 January 2017

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