

THE TEACHING AGENCY

Decision of a Professional Conduct Panel

Teacher: Ms Teresa Ann McKenzie
Teacher ref no: 9337551
Teacher Date of Birth: 24 November 1970
TA Case ref no: 5208
Date of Determination: 25 September 2012
Former Employer: Delamare Forest School, Cheshire

A. Introduction

A Professional Conduct Panel (“the Panel”) of the Teaching Agency convened on Monday, 24 and Tuesday, 25 September 2012 at 53-55 Butts Road, Earlsdon Park, Coventry, CV1 3BH to consider the case of Ms Teresa Ann McKenzie.

The Panel members were Mr Martin Pilkington (Lay Panellist – in the Chair), Mr Kevin Nolan (Teacher Panellist) and Mrs Kathy Thomson (Teacher Panellist).

The Legal Adviser to the Panel was Mr Tom Rider of Field Fisher Waterhouse LLP Solicitors.

The Presenting Officer for the Teaching Agency was Ms Stephanie Coates of Browne Jacobson LLP Solicitors.

Ms McKenzie was present and was represented by Mr Tim Roberts QC instructed by Mr Shaun Draycott of Draycott Browne Solicitors.

The hearing took place in public and was recorded.

B. Allegations

The Panel considered the allegation set out in the Notice of Proceedings dated 14 March 2012 as amended at the beginning of the hearing (see section C below).

It was alleged that Ms McKenzie was guilty of unacceptable professional conduct in that:

Whilst employed at Delamere Forest School, Cheshire, between December 2007 and July 2008 she:

1. Engaged in inappropriate communications with Pupil A in that she:

- a) Gave Pupil A a note regarding her absence from the classroom and 2 letters, undated, beginning 'To my gorgeous Pirate' and 'Sweet Pupil A';
- b) Called and/or sent text messages to Pupil A numbering 644 between December 2007 and July 2008;
- c) Sent 4 emails to Pupil A, dated: 6th January 2008
15th January 2008
16th March 2008
26th March 2008.

2. Failed to maintain professional boundaries with Pupil A.

Ms McKenzie admitted the facts of the amended particulars of the allegation and that she was guilty of unacceptable professional conduct.

C. Summary of Evidence

Documents

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

- Section 1: Anonymised Pupil List
- Section 2: Notice of Proceedings (1-7)
- Section 3: Teaching Agency Statements (pages 11-25)
- Section 4: Teaching Agency Documents (pages 26-131)
- Section 5: Teacher's Documents (pages 132-560)

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

In addition, as previously stated, the Panel agreed to accept the following:

- The amended particulars of the allegation (inserted into the bundle as page 1A);
- The copies of the emails from Ms McKenzie to Pupil A dated 6 January, 15 January, 16 March and 26 March 2008 (inserted into the bundle as pages 131A-D).

The Panel confirmed that they had read these additional documents. The Chair further pointed out that the final page of Witness A's statement was in fact at page 401 and not page 489. Further, it was confirmed that the document at page 452 had nothing to do with this case and should be ignored.

Brief summary of evidence given

There were no witnesses called by the Presenting Officer, given that the particulars of the allegation were admitted. However, in the absence of an Agreed Statement of Facts, the Presenting Officer drew the Panel's attention to the documents in the bundle that were relevant to each of the particulars.

Mr Roberts in reply confirmed that Ms McKenzie accepted unreservedly that the contents of the communications referred to in the particulars of allegation were unacceptable and unprofessional. However, he submitted that there were extenuating circumstances and called three witnesses in mitigation.

Please note that the following is intended to be a summary – it does not reflect the complete evidence given.

Witness A

Mr Roberts' first witness was Witness A, a teaching assistant at the school in 2007-08. She confirmed her witness statement at pages 485-488 and 401. In evidence she stated that:

- She had been line managed by Ms McKenzie.
- She found Pupil A to be an intimidating person, whose behaviour was unpredictable and who had been threatening to staff.
- Several staff felt this was not the right school for Pupil A.
- The staff were not equipped to deal with his needs.
- Only Ms McKenzie succeeded in establishing a connection with Pupil A.
- Other staff had felt sorry for Ms McKenzie in that she had been left to deal with Pupil A and they had warned her to be careful as Pupil A was abusive and threatening.
- Ms McKenzie quite often signed her name in emails with multiple kisses eg. "xxx".
- She had not seen the emails or text messages between Ms McKenzie and Pupil A.
- She personally never communicated with pupils by text as she felt that it was not appropriate.

Witness B

Mr Roberts' second witness was Witness B, the school secretary and the mother of the first witness. She confirmed her witness statement at pages 172-176. In evidence, she stated that:

- She vividly recalled Pupil A's challenging behaviour to staff. He was very demanding.
- Ms McKenzie' had a kind and caring approach to Pupil A, which she used to diffuse situations in order to protect other pupils and staff.
- Ms McKenzie was an extremely warm person to work for, as well as being very professional and hard working.

- Ms McKenzie had been persuaded by the Head Teacher to be Pupil A's key care worker during his second year. The previous key care worker had been unwilling to continue in the role.
- She could not understand why Pupil A had been allowed to return to the School, having been permanently excluded in July 2007.
- She believed that Ms McKenzie had felt totally committed to Pupil A, to the extent that some staff felt aggrieved by the amount of time Ms McKenzie had to spend with Pupil A.
- She had been concerned for Ms McKenzie's safety and she was aware from what Ms McKenzie told her how difficult she found the situation.
- Pupil A's mother would frequently ring the school and would expect to be able to speak to Ms McKenzie. She was quite persistent.
- It was common for Ms McKenzie to sign her name in emails with multiple kisses eg. "xxx".
- There was no requirement of which she was aware for Ms McKenzie to meet Pupil A in London during the holidays.

Ms McKenzie

Mr Roberts' third witness was Ms McKenzie. She confirmed her witness statement at pages 490-560. In evidence, she stated that:

- Before joining the School, she had no previous experience of working in a Special School.
- She was appointed Assistant Head Teacher shortly after joining the School in February 2006 and she was appointed Deputy Head Teacher in around September 2007.
- During Pupil A's first year at the School, her contact with him had been purely in a teaching capacity. She taught him four mornings a week.
- Pupil A had been permanently excluded from the School in July 2007. However, in September 2007, there was a fear that Pupil A's mother would litigate as the School had provided no psychiatric care for Pupil A the previous year and so the School had not delivered his care package. The decision was therefore taken that he should be allowed to return.
- She became the key care worker for Pupil A in September 2007.
- Pupil A's mother was one of the saddest parents she had ever met. She felt deeply for her.
- She was committed to putting things right from the year before. She felt she could change the boy's life.
- Pupil A's mother made her understand that she was the person who could sort matters out for Pupil A.
- There was no school policy about emailing or telephoning parents in the evenings. It did not usually happen for teachers but it was quite normal for care staff.
- Home visits were part of her role and in March 2008 she visited the family to assess Pupil A's brother.
- She gave Pupil A a big hug after a successful meeting with his London social worker. She told Pupil A's mother about it. They were a very tactile family.
- Pupil A responded to her support and constancy.

- The professionals dealing with Pupil A either changed jobs or were withdrawn from working with Pupil A. Individual A, the new psychiatrist, emphasised to her the need for Pupil A to have an enduring adult figure in his life.
- Pupil A was very physical. He was over 6ft tall. He would intimidate her by standing close and push her against the wall. Sometimes he punched her on the arm and on one occasion he bit her on the arm.
- Other staff, including the Head Teacher, were aware of this as it would often happen in front of them.
- She was frightened of him and so to diffuse the situation she would try to be overwhelmingly positive and kind to him. The instances of physical and verbal abusive behaviour towards her reduced. Her language became, "very sugar coated" and endlessly positive so that he would not be abusive.
- During his second year, he started to write and progress academically.
- Pupil A told her of his childhood and the abuse within his family. He had suicidal ideas and twice attempted suicide.
- She had been "really frightened of what might happen on her watch". She tried endlessly to be supportive.
- She felt that if she gave up at any point the placement would fail and Pupil A would not survive.
- She and her family frequently used the word 'gorgeous' and she had carried this into her teaching life.
- Her letter to Pupil A addressed "To my gorgeous pirate" was written after the children had been to see Pirates of the Caribbean. She had talked to them of escaping drugs misuse through the use of imagination. The reference to a penguin was to a soft toy Pupil A kept in his pocket. The purpose of the letter was to reassure Pupil A that she would be "with him forever".
- She did not now really understand why she had felt the need to write this letter. It was inappropriate but there was nothing dishonourable about it.
- The letter addressed "Sweet Pupil A" was written at a time when she was teaching them about the play of Romeo and Juliet for GCSE.
- At the end of that day, Pupil A had tried to kiss her. She rejected him and he ran off. She regretted that she had handled it so abruptly. She remembered how the previous Head of Care had been through the same thing. Using the display sheet for Romeo and Juliet, she wrote this note. The letter had been written as a parody and Pupil A found it amusing.
- She had taken part in multi-agency meetings during January-February 2008. In the early months, she was just hanging on until the psychiatrist came on board. It was in March or April 2008 that Pupil A had his first psychiatric session with Dr Woodhall.
- Regarding particular 1(b), there had been concern in December 2007 about Pupil A's placement. Pupil A would therefore telephone or text her and she would respond. Initially, the telephone calls were practical in nature. However, that developed and she frequently found herself counselling him on the phone.
- Regarding her email of 6 January 2008, Pupil A had phoned and texted her over the holiday period and she had heard the stepfather being abusive. This email was a response to a text in which he had said he was not sure if he wanted to come back to the School.

- Her email of 15 January 2008 was written after a 'special day' where Pupil A had written his first piece of GCSE course work. In her view this was a massive step forward.
- Her email of 16 March 2008 was sent when he was at Brookvale. The night before, he had taken and consumed most of the contents of the medicine cabinet. She spent hours that night 'talking him down'.
- The email of 26 March 2008 was sent when he was at home and she had visited the day before to assess his brother. He had been jealous. The email was an over the top way of trying to reassure him.
- She accepted that the emails used unacceptable language.
- She reported every suicide attempt to the Headteacher and Individual A but it seemed there was nothing anyone could do. She was "way out of her depth".
- The only advice she received was to quit but she was not willing to do that.
- Individual A told her that she should have held the line more firmly with Pupil A from the start.
- She saw herself as "fire fighting". She had taken on too much; she could see that in hindsight.
- She should have sought training but this was not possible as there was no cover or supply staff.
- Outside of School, he would act like a grown up. This was why the Rabbi was able to take him to and from school. Nevertheless, on the occasion that she had taken him to school, she accepted it had been foolish to put Pupil A in the car with her children.
- In hindsight, she could see that Pupil A would have thought that she loved him. However, that was not her intention.
- Her intention had been to support and reassure Pupil A. She had "a martyr syndrome".
- In Autumn 2007 when Pupil A was allowed to return, the Headteacher and the governors explained the financial situation of the School to her. They said two teachers would have to be made redundant if she did not take on Pupil A. The Head of Care had refused to do so. Pupil A brought in £44,000. She felt she had no choice.
- Regarding the time when Pupil A tried to kiss her, she could have reported it to the Head Teacher and explained that Pupil A was getting too close. This would have led to the governors having to accept that the placement would fail and two staff would have lost their jobs.
- Pupil A was in charge of the relationship and she knew that at the time. If she did not comply, he would threaten and blackmail her. It was not healthy.
- The governors had told her that they wanted her to be the Headteacher. This appealed to her because she thought she had a better vision for the School. She was not motivated by money or the status.
- She accepted now that it was "professional vanity" but she thought she could save Pupil A and that is how she had felt at the time. She "put everything at risk in trying to save the boy".

D. 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 as well as the further documents submitted to us during the course of the hearing.

This case concerns the period between December 2007 and July 2008 when Ms McKenzie was employed by Delamere Forest School, Cheshire. The School was a residential and educational establishment for pupils with special needs. Ms McKenzie joined the School in late February 2006 as a teacher.

Around this time, the School had 24 pupils. Most had speech, language and communication difficulties, with some having Autism and Asperger's Syndrome. In around the spring of 2006, the Governors decided to widen the intake of pupils in order to remain financially viable, which meant taking on more challenging pupils, and with this in mind she was appointed as Assistant Headteacher. She subsequently became Deputy Headteacher.

Pupil A joined the School in October 2006 as a boarder. He had been receiving psychiatric treatment and we received evidence in the form of a psychiatric report that he suffered from the combined form of Attention Deficit/Hyperactivity Disorder (AD/HD) i.e. restless, inattentive impulsive with associated Unsocialised Conduct Disorder and Specific Scholastic Skills Disorder. He was in the care of the London Borough of Hackney and his mother had brought a successful legal action against the LEA for him to be placed at the School as it was the only Jewish residential school in the country. Ms McKenzie taught him English, History and Science as part of a class of 5 pupils during his first year at the School.

In July 2007, at the end of the first year, the Head Teacher decided permanently to exclude Pupil A from the School. There had been a number of incidents during that time involving threatening behaviour by Pupil A towards pupils and staff, culminating in one where Pupil A had hit another pupil and broken his nose.

However at the beginning of the next academic year, the Head Teacher and Senior Management Team decided to allow Pupil A to return to the School. The decision was controversial and was opposed by a number of staff and parents. The School's Head of Care, who had also been Pupil A's key care worker, refused to have him stay at the School on a residential basis. In consequence, he became a day pupil and the School had to find a residential placement for him.

Pupil A returned to the School in November 2007. By this time, he was 16 years of age. Ms McKenzie became his key care worker and Head of Care at the School. She held these positions for the remainder of the school year. She also continued to teach him four mornings a week.

The allegations made against Ms McKenzie in these proceedings are that between December 2007 and July 2008 she failed to maintain professional boundaries with Pupil A and engaged in inappropriate communications with him. Ms McKenzie admits the allegations.

It is important to record, however, that what is not being alleged in this hearing is that she had any form of sexual relationship with Pupil A. We emphasise this because in March 2010, at the end of a fully contested trial during which Pupil A gave evidence for the prosecution, Ms McKenzie was found not guilty at Chester Crown Court of charges brought under section 16(1) of the Sexual Offences Act 2003.

In view of the admissions made by Ms McKenzie, no witnesses were called by the Presenting Officer. However, we heard oral evidence from three witnesses called by Mr Roberts QC in mitigation on behalf of Ms McKenzie: Witness A, who was a Teaching Assistant at the School at the relevant time and who was line managed by Ms McKenzie; Witness B, who was the School Secretary; and Ms McKenzie herself.

Findings of fact

Our findings of fact are as follows:

We have found the following particulars of the allegation against Ms McKenzie proved:

"Whilst employed at Delamere Forest School, Cheshire, between December 2007 and July 2008, she:

1. Engaged in inappropriate communications with Pupil A in that she:
 - a) Gave Pupil A a note regarding her absence from the classroom and 2 letters, undated, beginning 'To my gorgeous Pirate' and 'Sweet Pupil A';
 - b) Called and/ or sent text messages to Pupil A numbering 644 between December 2007 and July 2008;
 - c) Sent 4 emails to Pupil A, dated: 6th January 2008
15th January 2008
16th March 2008
26th March 2008.
2. Failed to maintain professional boundaries with Pupil A."

Ms McKenzie has admitted all these allegations. We are also satisfied from the evidence that we have read and heard that these allegations are made out.

On particular 1(a), the communications contained phrases including "my seafaring sweetie", "I will love you forever and ever and ever" and "I won't be able to concentrate in the meeting thinking about your beautiful eyes, strawberries and

cream hair, soft hands, gorgeous laugh, strong-shoulders, delicious lips", which were quite inappropriate for a teacher to write to a pupil.

On particular 1(b), the number of texts and phone calls was quite excessive.

On particular 1(c), Ms McKenzie used highly inappropriate language, including "How are you sweetie?" "Imagine me giving you a big hug and kiss this morning. How I'd love to do that" and "I love you darling".

On particular 2, we are satisfied that these communications demonstrated a failure to maintain professional boundaries with Pupil A.

Findings as to Unacceptable Professional Conduct

Having found that Ms McKenzie engaged in inappropriate communications with a pupil and failed to maintain professional boundaries, we further find that they constitute unacceptable professional conduct.

In coming to this judgment, we have had regard to Part Two of the Department for Education's current Teachers' Standards and, in particular, the need for teachers to uphold public trust in the profession and maintain high standards of ethics and behaviour by:

"at all times observing proper boundaries appropriate to the teacher's professional position".

Ms McKenzie was in a senior position and one of considerable trust in relation to this highly vulnerable adolescent, who became dependent on her. In her efforts to support him, she lost her objectivity and this impacted on her professional judgment. She mismanaged the situation and by her own admission was out of her depth.

Panel's Recommendation to the Secretary of State

The Panel's recommendation is that a Prohibition Order should be imposed in this case.

The Panel has carefully considered the relevant factors set out in the guidance on the Prohibition of Teachers. In particular, it has considered the public interest and whether a Prohibition Order is proportionate.

The Panel recognises that there are a number of mitigating factors. Ms McKenzie is of previous good character and felt passionately about teaching. The Panel has read the 14 testimonials that have been submitted on her behalf, including those from her former Head Teachers and colleagues that speak extremely highly of her professional skills and dedication as a teacher.

Further, the Panel acknowledges that Ms McKenzie found herself in a school that was in poor financial straits and one that suffered from ineffective management. In addition, she was directed by the Head Teacher to take on the roles of Head of Care

at the School and the key care worker for Pupil A; roles for which she had no previous experience, training or qualifications. This was in addition to being the Deputy Head Teacher and having teaching responsibilities. Nobody else at the School was prepared during the academic year of 2007/08 to take responsibility for Pupil A, who was a highly vulnerable and demanding adolescent, with a history of threatening behaviour and mental health issues.

Nevertheless, it is clear that her failure to maintain proper professional boundaries with Pupil A over this 7-8 month period marks an extremely serious departure from the standards of professional conduct expected of a teacher. While wanting to support Pupil A, her use of over-affectionate and inappropriate language in her written communications with Pupil A encouraged and allowed him to develop a dependency on her. In so doing, she was placing an already highly vulnerable, 16 year old pupil at potentially greater risk of emotional harm. She gave inadequate thought to how her language and behaviour was being perceived by the pupil.

Further, by not reporting significant incidents to the Head Teacher, such as when Pupil A attempted to kiss her, she was putting herself and the rest of the school at greater risk. She was also setting a poor example as a member of the senior management team. By her own admission, this was, 'professional vanity' on her part. She thought she could cope and to use her own words was on, 'a crusade' to save Pupil A, even though she accepted that she was out of her depth. She told the Panel that she was scared of him and she realised at the time that he was the person who was really in control of their relationship.

Ms McKenzie now appreciates that she wholly mismanaged the situation. Were she to be placed in precisely the same position again, the Panel has no doubt that she would handle it differently. However what is of concern is how easily she lost her objectivity in an attempt to help a pupil and how this caused her to exercise poor professional judgment over a sustained period of time. She told the Panel that she has something of, 'a martyr syndrome'. The Panel is therefore not convinced that this tendency would not lead to occasions in the future when further poor professional judgment occurs.

It is in all these circumstances that the Panel considers, on balance, that it is appropriate in the public interest and proportionate for a Prohibition Order to be imposed.

However, given her clear abilities as a classroom teacher, the Panel recommends that the minimum period before the end of which Ms McKenzie may apply for a review of the Prohibition Order should be two years.

Secretary of State's Decision and Reasons

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

Ms McKenzie failed to observe professional boundaries, and in failing to observe those boundaries she abused the position of trust that she held with a

vulnerable pupil. Her behaviour also set a poor example to her colleagues and placed others in the school at risk.

The language used by Ms McKenzie in her communications with Pupil A was inappropriate and the amount of these communications was excessive.

I consider that it is in the public interest to support the recommendation of the panel that Ms McKenzie is prohibited from teaching.

The panel have considered a number of testimonials regarding Ms McKenzie and taking that into account I support the review period of 2 years.

This means that Ms Teresa McKenzie 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 03 October 2014, 2 years from the date of this order at the earliest.** If she does apply, a panel will meet to consider whether the Prohibition Order should be set aside. Without a successful application, Ms Teresa McKenzie remains barred from teaching indefinitely.

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

Ms Teresa McKenzie has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this Order.

**NAME OF DECISION MAKER: Alan Meyrick
Date: 26 September 2012**