



Teaching
Regulation
Agency

Mrs Rachel Kearns: Professional conduct panel outcome

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

April 2024

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

Teacher:	Mrs Rachel Kearns
Teacher ref number:	1274076
Teacher date of birth:	13 May 1980
TRA reference:	21124
Date of determination:	25 April 2024
Former employer:	Rigby Hall Special School, Bromsgrove

Introduction

A professional conduct panel ('the panel') of the Teaching Regulation Agency ('the TRA') convened on 23 to 25 April 2024 by way of a virtual hearing, to consider the case of Mrs Rachel Kearns.

The panel members were Mr Martyn Stephens (lay panellist – in the chair), Ms Antonia Jackson (teacher panellist) and Mrs Beverley Montgomery (lay panellist).

The legal adviser to the panel was Mr Nicholas West of Birketts LLP solicitors.

The presenting officer for the TRA was Mr Lee Bridges, instructed by Kingsley Napley LLP solicitors.

Mrs Kearns was not present and was not represented.

The hearing took place by way of a virtual hearing in public and was recorded.

Allegations

The panel considered the allegations set out in the notice of hearing dated 12 February 2024.

It was alleged that Mrs Kearns was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that whilst working as a teacher at Rigby Hall School:

1. On or around 3 May 2022, she pushed Pupil A off a desk and/or onto the floor.
2. In or around March 2022 and/or on or around 4 May 2022, she dragged and/or pulled Pupil B by their wrist or wrists.
3. On or around 4 May 2022, she threw Pupil B on the floor.
4. On or around 4 May 2022, she grabbed Pupil C's wrist or wrists and/or forcefully moved Pupil C's arms down.
5. Her conduct at paragraph 4 above caused Pupil C to fall.
6. Between or around April to May 2022 she:
 - a) withheld food from Pupil B and/or Pupil C and/or Pupil D; and/or
 - b) put Pupil B's lunch in the bin.
7. In or around October 2021, she said to Pupil B "it's no wonder your mother didn't have any other children" or words to that effect.

Mrs Kearns denied allegations 1, 2, 3, 4, 5, 6(a), 6(b) and 7, and further denied that this behaviour amounted to unacceptable professional conduct and/or conduct that may bring the profession into disrepute, as set out in the response to the notice of hearing dated 4 March 2024.

Preliminary applications

Application to proceed in the absence of the teacher

Mrs Kearns was not present at the hearing nor was she represented. The presenting officer made an application to proceed in the absence of Mrs Kearns.

The panel accepted the legal advice provided in relation to this application and took account of the various factors referred to it, as derived from the guidance set down in the case of *R v Jones [2003] 1 AC 1* (as considered and applied in subsequent cases, particularly *GMC v Adeogba*).

The panel was satisfied that the notice of hearing had been sent to Mrs Kearns in accordance with the Teacher misconduct: Disciplinary procedures for the teaching profession May 2020 (the '2020 Procedures').

The panel concluded that Mrs Kearns' absence was voluntary and that she was aware that the matter would proceed in her absence.

The panel noted that Mrs Kearns had not sought an adjournment to the hearing and the panel did not consider that an adjournment would procure her attendance at a hearing. There was no medical evidence before the panel that Mrs Kearns was unfit to attend the hearing. The panel considered that it was in the public interest for the hearing to take place. It also considered the effect on the witnesses of any delay.

Having decided that it was appropriate to proceed, the panel agreed to seek to ensure that the proceedings were as fair as possible in the circumstances, bearing in mind that Mrs Kearns was neither present nor represented.

Application to admit additional documents

The panel considered a preliminary application from Mrs Kearns for the admission of additional documents.

Mrs Kearns' documents were an email from her to Kingsley Napley dated 9 April 2024, a written statement and two letters from Individual A, [REDACTED] of the School.

The documents subject to the application had not been served in accordance with the requirements of paragraph 5.37 of the 2020 Procedures. Therefore, the panel was required to decide whether the documents should be admitted under paragraph 5.34 of the 2020 Procedures.

The panel heard representations from the presenting officer who confirmed the TRA did not object to the application to admit the additional documents.

The panel considered the additional documents were relevant. Accordingly, the documents were added to the bundle.

Application for part of the hearing to be heard in private

The panel considered an application from Mrs Kearns that the hearing should be heard in private. [REDACTED].

The panel heard submissions from the presenting officer on the application before reaching its decision. The presenting officer objected to the application on the grounds that there was a presumption that the hearing should take place in public and that it was in the public interest that the proceedings should take place in public. The presenting officer suggested that this would not prevent the panel from exercising its discretion to exclude the public when matters of Mrs Kearns' [REDACTED] or the private life of witnesses or others were being discussed.

The panel did not grant the application for the hearing to be heard wholly in private as the panel considered it would be contrary to the public interest. The panel considered that any evidence related to aspects of Mrs Kearns' [REDACTED], could be heard in private. The hearing was still being held in public and this would be a discrete and limited area of evidence which would not undermine the public's ability to otherwise understand the case.

Application to amend allegations

The presenting officer made an application to amend allegation 2 to add in the wording in bold: "In or around March 2022 **and/or on or around 4 May 2022**, she dragged and/or pulled Pupil B by their wrist or wrists".

The panel noted that Mrs Kearns had been informed of the proposed change to allegation 2 by a letter from the TRA dated 15 April 2024 but the TRA had not received any response from Mrs Kearns.

The panel was advised that it had the power to amend allegations in accordance with paragraph 5.83 of the 2020 Procedures.

The panel considered that the proposed amendment would not change the nature and scope of allegation 2 as it would still relate to the same conduct. As such, the panel considered that the proposed amendment did not amount to a material change to allegation 2.

The legal adviser drew the panel's attention to the case of *Dr Bashir Ahmedsowida v General Medical Council [2021] EWHC 3466 (Admin), 2021 WL 06064095* which held that the lateness of amendments did not necessarily mean they were unjust, as acknowledged in the previous case of *Professional Standards Authority v Health and Care Professions Council and Doree [2017] EWCA Civ 319 at [56]*.

The panel was also of the view that granting the application for the proposed amendment would not cause unfairness and/or prejudice to Mrs Kearns on the basis that she had been informed of the amendment and therefore she had been given the opportunity to respond to the amended allegation.

Accordingly, the panel did grant this application and considered the amended allegations, which are set out above.

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 5 to 7
- Section 2: Notice of hearing and response – pages 8 to 15
- Section 3: TRA witness statements – pages 16 to 33
- Section 4: TRA documents – pages 34 to 348.

In addition, the panel agreed to accept the following:

- Late papers bundle – pages 1 to 15
- Service bundle – pages 1 to 43.

The panel members confirmed that they had read all of the documents within the bundle, in advance of the hearing and the additional documents that the panel decided to admit.

Witnesses

The panel heard oral evidence from the following witnesses called by the TRA:

- Witness A, [REDACTED]
- Witness B, [REDACTED]
- Witness C, [REDACTED]

Decision and reasons

The panel announced its decision and reasons as follows:

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

In September 2020, Mrs Kearns commenced employment at Rigby Hall Special School ('the School') through an employment agency.

On 16 March 2021, Mrs Kearns gained permanent employment at the School.

In October 2021, the alleged comment was made to Pupil B.

In April/May 2021, concerns arose that Mrs Kearns was withholding food from pupils and putting Pupil B's lunch in the bin.

On 3 May 2022, the alleged incident involving Pupil A occurred.

On 4 May 2022, the alleged incidents involving Pupil B and Pupil C occurred.

On 6 May 2022, concerns regarding the alleged incidents were reported to the headteacher.

On 6 May 2022, Mrs Kearns was suspended, the School informed the LADO and the [REDACTED] for Worcestershire of the concerns. The School also informed the police.

On 13 May 2022, a 'position of trust' meeting was held.

On 16 May 2022, the School informed the parents of Pupil B and Pupil C of the concerns involving their children.

On 18 May 2022, an investigation meeting was held with Mrs Kearns.

On 24 May 2022, an investigation report was sent to Mrs Kearns.

On 9 September 2022, the police interviewed Mrs Kearns.

On 14 September 2022, the re-scheduled disciplinary hearing took place.

On 17 September 2022, the School made a referral to the TRA.

Findings of fact

The findings of fact are as follows:

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

1. On or around 3 May 2022, you pushed Pupil A off a desk and/or onto the floor.

The panel considered the oral evidence and witness statement of Witness C, who stated that on 3 May 2022, Pupil A was laid over Mrs Kearns' desk "*with his arms locked on to the end of the desk and one leg over it*". She stated that Pupil A had [REDACTED] and liked to do this as a "*sensory thing*".

Witness C explained in her witness statement that Pupil A "*liked to swipe his arm over the desk and knock items*" onto the floor, and that he would do this on a daily basis. She stated that usually when Pupil A locked himself onto the desk, herself or other members of staff were "*able to coax him off it by giving him other activities to do*". Witness C confirmed that they would not move him physically.

Witness C submitted that on this day, Mrs Kearns was completing paperwork and there was paper all over the desk. She stated that Pupil A "*swiped everything off the desk while he was gripped onto it*", and in response to this, Mrs Kearns put both her hands up and "*shoved him off the desk with force by pushing his leg*".

Witness C stated that Pupil A "*flew off the desk and on to the floor*". Witness C considered that this would have required a lot of force as Pupil A was gripped tightly to the desk and it was "*not easy to remove him*".

Witness C explained that Pupil A stayed on the floor and did not move or cry, "*although he did not cry much anyway*". She stated that she went over to Pupil A and asked if he was okay. Witness C told Mrs Kearns that she was going to change Pupil B's nappy and submitted that she had changed his nappy prior to the incident but wanted to check that he did not have any injuries. Witness C stated that Pupil A did not have any injuries and was able to walk. She submitted that she did not speak to Mrs Kearns about the incident, and, on 5 May 2022, she spoke to the [REDACTED] about Mrs Kearns' behaviour.

The panel found Witness C's oral evidence to be consistent with her written statement and she further explained that Mrs Kearns pushed Pupil A with the palm of her hands with force on the top of his thigh area on his left side which sent him "*flying onto the floor*". The panel also reviewed the more contemporaneous documentary evidence from Witness C in the bundle which was consistent with her version of events that Mrs Kearns "*put hand on leg, shoved it*" and Pupil A "*fell onto floor*".

The panel considered the written statement of Mrs Kearns, which stated that Pupil A is prone to throwing items from her desk, and that on this occasion most children were sat on the floor behind Pupil A. She submitted that to prevent a child getting hurt, she "*steered*" Pupil A off the desk by "*placing a hand on his shoulder and a hand on his knee*", steering the shoulder to move him away from the desk.

The panel preferred the evidence of Witness C and found on the balance of probabilities it was more likely than not that Mrs Kearns pushed Pupil A off her desk and onto the floor. The panel therefore found allegation 1 proved.

2. In or around March 2022 and/or on or around 4 May 2022, you dragged and/or pulled Pupil B by their wrist or wrists.

The panel considered the oral evidence and witness statement of Witness C, who stated that on 4 May 2022, Mrs Kearns was sat at her desk. She stated that Pupil B enjoyed watching a large touch screen TV on the wall which he thought was controlled by something on Mrs Kearns' desk. Witness C explained that Pupil B thought that Mrs Kearns was going to turn off the screen and "*became upset, and started screaming*", before then hitting his head on the desk.

Witness C explained that Mrs Kearns then turned to Pupil B and stated "*can I not do anything around here*", or words to that effect. She stated that Mrs Kearns then stood up quickly and grabbed Pupil B by the wrists, "*then stormed approximately 6 to 7 metres across the room*" and "*as a result she lifted him off the floor when she did this*".

In Witness C's oral evidence, she confirmed that Mrs Kearns grabbed both of Pupil B's wrists, physically picked him up and marched across the room. The panel considered the more contemporaneous documentary evidence from Witness C in the bundle, which supported her version of events that Mrs Kearns "*jumped up and grabbed both wrists and dragged him across the floor*".

The panel considered the oral evidence and written statement of Witness B, who stated that in early May 2022, Mrs Kearns "*wanted Pupil B to get off her desk so she grabbed him by one wrist and pulled him aggressively off the desk and then approximately 5 metres across the room, placing him on the floor on his knees*". The panel noted Witness B's supplemental statement which confirmed that this date was incorrect and that her reference to an incident in March 2022 in her police statement was accurate.

The panel found Witness B's oral evidence to be honest in that she could not recall the date of this incident. The panel considered the more contemporaneous documentary evidence from Witness B in the bundle which suggested this incident may have occurred as early as January 2022. On the balance of probabilities, the panel could not be sure that Witness B's recollection of this incident was in or around March 2022 or on or around 4 May 2022.

The panel considered the written statement of Mrs Kearns, who stated that Pupil B was stood by the desk to watch the screen, and that "*he vocalises all of the time*" and bangs his head hard. Mrs Kearns submitted that she held his hand to negate the situation and to help him calm down.

Mrs Kearns stated that she took Pupil B's hand and "*moved him away*". She submitted that she wanted to make sure that Pupil B was away from other children and in a safer area away from furniture in order not to hurt himself.

The panel preferred the evidence of Witness C and determined, on the balance of probabilities, that on 4 May 2022, Mrs Kearns did drag and/or pull Pupil B by their wrist or wrists. The panel therefore found allegation 2 proved.

3. On or around 4 May 2022, you threw Pupil B on the floor.

The panel considered the oral evidence and witness statement of Witness C, who stated that after grabbing Pupil B's wrists, Mrs Kearns then stormed approximately 6 or 7 metres across the room and threw Pupil B on to the floor, "*like someone would throw a bin bag*".

Witness C submitted that Pupil B was [REDACTED], and as a result Mrs Kearns lifted him off of the floor when she did this.

The panel also considered the more contemporaneous documentary evidence from Witness C in the bundle. The earliest documentary evidence from Witness C dated 19 May 2022 did not mention Pupil B being thrown on the floor, only that "*he lifted his legs up*".

The panel considered the written statement from Mrs Kearns which stated "*he lifted his feet up off the floor, which was a regular occurrence*". Mrs Kearns stated that she then lowered her hands and allowed Pupil B to go to the ground so as to not put pressure on his wrists/joints.

Although the panel found Witness C's oral evidence to be honest, it could not be satisfied on the balance of probabilities that Mrs Kearns threw Pupil B on the floor. There was no reference to Mrs Kearns throwing Pupil B in the earliest documentary evidence available. Witness C's initial written statement dated 5 May 2022 did not mention Pupil B being thrown on the floor. Witness C's written representations provided as part of the School's investigation, dated 19 May 2022, also did not mention Pupil B being thrown on the floor.

Whilst the panel considered Witness C's evidence was honest, it was conscious of the passage of time and the failure to mention any throwing of Pupil B when investigated in May 2022. The panel therefore found allegation 3 could not be proved.

4. On or around 4 May 2022, you grabbed Pupil C's wrist or wrists and/or forcefully moved Pupil C's arms down.

The panel considered the oral evidence and witness statement of Witness C, who stated that on 4 May 2022, Pupil C went up to Mrs Kearns and put his arms out as if he was going to put them around her neck. She stated that Pupil C was in a phase of doing this, and that sometimes he would "*simply be giving a cuddle while other times he would pinch your neck, which hurt*". Witness C submitted that if she thought Pupil C was going to

pinch her neck, she would just step backwards so that he could not reach her or block him from doing this.

Witness C stated that on this occasion, Mrs Kearns “*did not block Pupil C but instead grabbed his wrists with her hands and threw his arms down with force, pulling his whole body weight down*”. Witness C’s oral evidence supported this version of events that Mrs Kearns grabbed Pupil C’s wrists, however, the panel also considered the contemporaneous documentary evidence from Witness C. The earliest written statement of Witness C from 5 May 2022 stated Mrs Kearns “*pushed his arms with force down*” and her police statement dated 30 August 2022 stated Mrs Kearns “*grabbed hold of [REDACTED] hands and pulled him down to the floor*”.

The panel considered the written statement of Mrs Kearns, who stated that Pupil C was showing physical signs that they were becoming frustrated, as their eyes were facing inwards. Mrs Kearns stated that she did not grab Pupil C, she “*conducted the Caring C’s hand shape and moved his arms down*”.

The panel considered it was not clear from the evidence available whether Mrs Kearns grabbed Pupil C’s wrist or wrists, however, the panel was satisfied on the balance of probabilities that Mrs Kearns forcefully moved Pupil C’s arms down. The panel therefore found allegation 4 proved.

5. Your conduct at paragraph 4 above caused Pupil C to fall.

The panel considered the oral evidence and witness statement of Witness C, who stated that Pupil C “*ended up being pushed to the floor before he had made any contact*” with Mrs Kearns. She submitted that Pupil C started hyperventilating and crying as a result and did not move from the floor.

The panel also considered the earlier documentary evidence of Witness C which was consistent with her version of events that Mrs Kearns’ conduct caused Pupil C to fall. Witness C’s written evidence dated 5 May 2022 stated Pupil C “*fell to the floor*” and her later written evidence dated 19 May 2022 stated Pupil C “*went straight to the floor. He then just stayed down there*”. Witness C’s police statement dated 30 August 2022 was also consistent with this version of events stating Mrs Kearns “*pulled him down to the floor*”.

The panel accepted the evidence of Witness C that Mrs Kearns’ conduct as described above would have caused Pupil C to fall. The panel therefore found allegation 5 proved.

6. Between or around April to May 2022 you:

- a) withheld food from Pupil B and/or Pupil C and/or Pupil D; and/or**

The panel considered the oral evidence and witness statement of Witness C, who stated that lunchtimes in Mrs Kearns' classroom were "*often the most stressful times of the day*", as Mrs Kearns would get increasingly frustrated with the children's behaviour. She explained that, due to their additional needs, many of the children were "*unable to sit and eat lunch at a table or did not want to eat a 'normal' lunch at a 'normal' lunchtime*".

Witness C submitted that Pupil B's [REDACTED] supplied snacks every day, at least about 6 or 7 different snacks, but Mrs Kearns locked them away so that Pupil B could not access them. She stated that if Pupil B made too much noise or threw food at lunchtime, she would shut him in the sensory room.

The panel considered the oral evidence and witness statement of Witness B, who stated that Mrs Kearns would not let Pupil B have his lunchbox if he was hungry and wanted food before lunchtime. She stated that Pupil B was not able to understand why he was not allowed his food and would get upset and distressed. Witness B explained that Pupil B ate little and often throughout the day as he has [REDACTED], but Mrs Kearns "*would still try to enforce normal mealtimes upon him*" and expect Pupil B to eat his entire lunch at lunchtime.

Witness B explained that sometimes Pupil B would "*reach for his cake before he had eaten his lunch*". She stated that she would allow Pupil B to eat his cake because she would rather this than Pupil B eating nothing at all but stated that Mrs Kearns would get frustrated and "*would tell Pupil B that he was not allowed his cake until he had eaten his main meal*".

Witness B submitted that she or Witness C would take Pupil B to the sensory room and give him snacks or give them to him when Mrs Kearns had left the room.

Witness B stated that she suggested to Mrs Kearns that Pupil B could eat his lunch later in the day if he did not want it at lunchtime, as some of the other children would eat bread and butter in the afternoon. She stated that Mrs Kearns "*said no and that Pupil B had to eat at lunchtime*".

Witness B explained that Mrs Kearns would also insist that Pupil C ate his lunch at lunchtime. Witness B stated that Pupil C used to [REDACTED] before School and would not always be hungry when he arrived at School and at lunchtime. She stated that he "*usually wanted food throughout the day rather than at set mealtimes*".

Witness B submitted that Pupil D did not want to sit at the table whilst eating his food and so Mrs Kearns would take his food away from him if he did not eat it at the table. She stated that when this child got angry, he would grab her in the face or hair and this would make Mrs Kearns cross.

Witness B expressed that it is important that the teachers adapt to the children's needs at lunchtime, as well as generally, because the children are "*not following a normal pattern*".

of development". She stated that if the children are hungry after lunch, they should be allowed to eat. Witness B confirmed that this is important because parents don't want their children to go hungry at School.

The panel considered Individual C's statement, provided as part of the bundle. Individual C stated that Mrs Kearns had told her that a few times Pupil C had tried school dinners. She stated that she noticed that Pupil C had not been touching anything out of his lunchbox, which she thought was because the teachers were trying him with school dinners. Individual C explained that on the days Pupil C came out with a full lunchbox, he would not stop eating, and sometimes she was told that he had not eaten much.

The panel considered the written statement of Mrs Kearns, who stated that Pupil B would drop food on the floor and "*bounce his forehead off the floor hard*". She stated that she would then have to show him the food again and frequently this action would be repeated. Mrs Kearns submitted the same response would happen with any food or snacks shown to him.

Mrs Kearns submitted that Pupil C brought in food from home and sat and ate all of his food.

Mrs Kearns submitted that Pupil D brought food from home and also had a school dinner, he was offered both choices daily. She stated that at the time in question Pupil D did not want either. Mrs Kearns submitted that Pupil D would go to the cupboard where his snacks were kept if he was hungry and she encouraged this regularly throughout the day.

Mrs Kearns stated that all children knew where snacks were kept and the lunch boxes were in the classroom, where children were encouraged to access them if they showed interest. She stated that on several occasions she would encourage this.

Mrs Kearns stated that Pupil D's [REDACTED] but due to his needs he does not understand this. She stated that there had been an incident where a parent wrote to the [REDACTED] querying if staff were giving the child extra food as the child was under the care of a nutritionist and could only consume the food sent in with them. Mrs Kearns stated that there were also other children with special food requirements and so leaving food out on the table was not an option from a duty of care, choke hazard and dietary requirement perspective.

The panel accepted oral evidence from Witness B that Mrs Kearns withheld food from Pupil B, Pupil C and Pupil D during April and May 2022.

The panel therefore found allegation 6(a) proved.

b) put Pupil B's lunch in the bin.

The panel considered the oral evidence and witness statement of Witness C, who stated that Pupil B would often refuse to eat his main meal at lunchtime and would often become upset and worked up in the run up to lunchtime. She stated that Mrs Kearns would throw Pupil B's lunch in the bin if he refused to eat it, or if he would not sit at the table to eat. She would not allow him to eat later in the day, as "*she said that he needed to learn that there were rules to follow at mealtimes*".

The panel considered the oral evidence and witness statement of Witness A, who submitted that there are "*no set school policies in relation to pupils eating at school*". She explained that staff are expected to encourage pupils to eat and try out different strategies to encourage them to eat, for example moving to a quieter room, providing smaller portions, separating food or prompting. Witness A confirmed that food can be thrown in the bin if a child displays behaviours to show that they did not like the food, and if the strategies to encourage eating have failed, then alternatives could be offered such as snacks brought from home, but there was not always alternative food offered to pupils.

The panel considered the oral evidence and written statement of Witness B, who stated that Mrs Kearns would often throw Pupil B's lunch in the bin if he refused to eat it at lunchtime.

The panel considered the written statement of Mrs Kearns who stated that if food was refused several times by a child they "*would dispose of it safely*". Mrs Kearns explained in an investigation meeting dated 18 May 2022 "*you put these things in place to stop a child banging his head and this is what happens*". The panel accepted that this strategy was applied by Mrs Kearns but the evidence suggested this strategy was not applied consistently and this was not the only reason that Pupil's B's food was put in the bin.

Based on the oral evidence of Witness C and Witness B, the panel was satisfied that between April to May 2022 Mrs Kearns put Pupil B's lunch in the bin.

The panel therefore found allegation 6(b) proved.

7. In or around October 2021, you said to Pupil B "it's no wonder your mother didn't have any other children" or words to that effect.

The panel considered the oral evidence and witness statement of Witness C, who stated that Mrs Kearns would often get frustrated with Pupil B, as he was one of the louder children in the class. She stated that Mrs Kearns would often shout at him rather than speaking to him and had made comments about his noises and about "*how his parents cope*". Witness C submitted that on one occasion, Mrs Kearns said to Pupil B "*it's no wonder your mother didn't have any other children*". Witness C stated that she was not sure whether Pupil B was able to understand this, as he is not able to speak.

The panel considered the written statement of Mrs Kearns who stated that she recalls the incident in question and "*what has been alleged was not said to the pupil*". She stated

that the conversation was with a member of staff whereby she shared with them that the parent of Pupil B had mentioned that due to his needs, this is why they have not had any more children. Mrs Kearns stated that the conversation was confidential and no child was within earshot at the time.

The panel found Witness C's oral evidence to be truthful and persuasive. On the balance of probabilities, the panel determined that Mrs Kearns did say to Pupil B "*it's no wonder your mother didn't have any other children*" or words to that effect.

The panel therefore found allegation 7 proved.

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

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

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

The panel was satisfied that the conduct of Mrs Kearns, in relation to the facts found proved, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part 2, Mrs Kearns was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by;
 - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position;
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
 - 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, 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 was satisfied that the conduct of Mrs Kearns, in relation to the facts found proved at allegations 1, 2, 6(a), 6(b) and 7, amounted to misconduct of a serious nature which fell significantly short of the standards expected of the profession.

The panel received legal advice as to whether the allegations against Mrs Kearns constituted a use of unreasonable force. The panel considered the non-statutory advice document 'Use of Reasonable Force - Advice for headteachers, staff and governing bodies on the use of reasonable force [July 2013 updated 2015]' which confirms that all members of staff may use reasonable force and reasonable in the circumstances means using no more force than is needed.

In respect of allegations 4 and 5, the panel considered that Mrs Kearns was using reasonable force to prevent Pupil C from attacking her. The panel considered that in the circumstances, where Pupil C was known to pinch members of staffs' necks, Mrs Kearns made a dynamic risk assessment and her conduct as found proved would have amounted to reasonable force.

The panel was not satisfied that the conduct of Mrs Kearns, in relation to the facts found proved at allegations 4 and 5, involved breaches of the Teachers' Standards. The panel did not, therefore, consider that Mrs Kearns' conduct in respect of allegations 4 and 5 fell significantly short of the standards expected of the profession.

The panel also considered whether Mrs Kearns' conduct displayed behaviours associated with any of the offences listed on pages 12 and 13 of the Advice.

The panel found that the offence type of violence was relevant in relation to the facts found proved at allegations 1 and 2. The panel found that the offence types of child cruelty and/or neglect and controlling or coercive behaviour was relevant in relation to the facts found proved at allegations 6(a) and 6(b). The panel found that the offence type of intolerance on the grounds of the protected characteristic of disability was relevant in relation to the facts found proved at allegations 1, 2, 6(a), 6(b) and 7. The Advice indicates that where behaviours associated with such offences exist, a panel is more likely to conclude that an individual's conduct would amount to unacceptable professional conduct.

The panel received legal advice as to the possibility of findings being cumulated in accordance with guidance given in the judgment of *Schodlok v General Medical Council [2015]*. However, as the panel concluded that each of the allegations 1, 2, 6(a), 6(b) and 7 based on the particulars found proved in respect of each allegation, amounted to unacceptable professional conduct, the panel did not need to determine whether it would be appropriate to cumulate any of those allegations.

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

The findings of misconduct in respect of allegations 1, 2, 6(a), 6(b) and 7 are serious, and the conduct displayed would be likely to have a negative impact on the individual's status as a teacher, potentially damaging the public perception.

The panel therefore found that Mrs Kearns' actions constituted conduct that may bring the profession into disrepute.

Having found the facts of allegations 1, 2, 6(a), 6(b) and 7 proved, the panel further found that Mrs Kearns' conduct amounted to both unacceptable professional conduct and conduct that may bring the profession into disrepute.

Panel's recommendation to the Secretary of State

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

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it would be an appropriate and proportionate measure, and whether it would be in the public interest to do so.

The panel was aware that prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had regard to the particular public interest considerations set out in the Advice and, having done so, found a number of them to be relevant in this case, namely: the safeguarding and wellbeing of pupils and the protection of other members of the public; the maintenance of public confidence in the profession; declaring and upholding proper standards of conduct within the teaching profession and that prohibition strikes the right balance between the rights of the teacher and the public interest, if they are in conflict.

In light of the panel's findings against Mrs Kearns, which involved pushing Pupil A; dragging and/or pulling Pupil B by their wrist or wrists; withholding food from pupils; throwing Pupil B's lunch in the bin and saying to Pupil B *"it's no wonder why your mother didn't have any other children"*, or words to that effect, there was a strong public interest consideration in the safeguarding and wellbeing of pupils and the protection of other members of the public.

Similarly, the panel considered that public confidence in the profession could be seriously weakened if conduct such as that found against Mrs Kearns was not treated with the utmost seriousness when regulating the conduct of the profession.

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

The panel decided that there was a strong public interest consideration in favour of retaining Mrs Kearns in the profession, when taking into account her specialist skill set including communication skills such as British Sign Language, Makaton and her degree in Deaf Studies and Linguistics, as well as training in Gastronomy and Naso-Gastric tube feeding.

In view of 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 Mrs Kearns. The panel was mindful of the need to strike the right balance between the rights of the teacher and the public interest.

In carrying out the balancing exercise, the panel had regard to the public interest considerations both in favour of, and against, prohibition as well as the interests of Mrs Kearns. The panel took further account of the Advice, which suggests that a prohibition order may be appropriate if certain behaviours of a teacher have been proved. In the list of such behaviours, those that were relevant in this case were:

- 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;
- abuse of position or trust (particularly involving pupils);
- failure to act on evidence that indicated a child's welfare may have been at risk e.g. failed to notify the designated safeguarding lead and/or make a referral to children's social care, the police or other relevant agencies when abuse, neglect and/or harmful cultural practices were identified;
- failure in their duty of care towards a child, including exposing a child to risk or failing to promote the safety and welfare of the children (as set out in Part 1 of KCSIE);
- violation of the rights of pupils; and
- sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues.

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

There was no evidence that Mrs Kearns' actions were not deliberate.

There was no evidence to suggest that Mrs Kearns was acting under extreme duress. However, the panel was mindful of evidence from Individual A, who was [REDACTED] at the time of the allegations, regarding staffing arrangements and the level of senior leadership support provided to Mrs Kearns. Individual A stated the ratio of 1:9 in Mrs Kearns' class was "*at the high end when considering the age of the children and the degree of special needs they typically have*" and, particularly at lunchtimes, the staffing levels were "*not reasonable*".

The panel noted in particular that allegations 6(a) and 6(b) occurred at lunchtime. The panel accepted evidence from Witness A's witness statement that there were "*no set school policies in relation to pupils eating at school*". The panel considered that the lack of a clear policy inappropriately led to staff interpreting the School's expectations around food in their own ways. In particular, the panel found there was an inconsistent application of the School's expectations regarding the provision of pupils' food with staff applying different strategies without clear negotiated discussion with each other.

The panel also took into account consistent witness evidence regarding Mrs Kearns' [REDACTED], frustration and multiple allegations of her shouting at children. The panel considered that these allegations should have been reported and recorded as safeguarding issues and the panel agreed with Individual A that Mrs Kearns' behaviour should have been "*picked up by senior staff*".

There was no evidence that Mrs Kearns demonstrated exceptionally high standards in both personal and professional conduct, nor that she has contributed significantly to the education sector.

The panel noted the lack of evidence of remorse on the part of Mrs Kearns.

The panel considered Mrs Kearns' witness statement, where she stated that the past two years have been "*incredibly stressful*" for her and her family. [REDACTED].

Mrs Kearns submitted that from a duty of care perspective from the School during this awful time, she received one text message from the time of suspension to the initial meeting.

[REDACTED]. Mrs Kearns submitted that due to the turmoil this has caused, she is "*unable to discuss this case or the unjust allegations that have been made*" against her. She stated due to [REDACTED] she is unable to open or read any correspondence in relation to the case, which has made it challenging for her to respond to the TRA.

Mrs Kearns submitted that throughout her career she has an exemplary record. She stated that she was considered an 'outstanding' teacher in relation to all the lessons observed throughout the schools she has worked in.

The panel first considered whether it would be proportionate to conclude this case with no recommendation of prohibition, considering whether the publication of the findings made by the panel would be sufficient.

The panel was of the view that, applying the standard of the ordinary intelligent citizen, it would not be a proportionate and appropriate response to recommend no prohibition order. Recommending that the publication of adverse findings would be sufficient would unacceptably compromise the public interest considerations present in this case, despite the severity of the consequences for Mrs Kearns of prohibition.

The panel was of the view that prohibition was both proportionate and appropriate. The panel decided that the public interest considerations outweighed the interests of Mrs Kearns. The seriousness of the conduct found against Mrs Kearns was a significant factor in forming that opinion. Mrs Kearns' conduct placed extremely vulnerable pupils, a number of whom were non-verbal and could not therefore communicate their needs, at significant risk. The panel considered this was contrary to the public interest consideration of safeguarding and protecting the wellbeing of pupils. Accordingly, the panel made 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 it to decide to recommend a review period of the order. The panel was mindful that the Advice states 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 2 years.

The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these behaviours includes child cruelty and/or neglect and the panel found that Mrs Kearns was responsible for withholding food from pupils and throwing Pupil B's lunch in the bin.

The Advice also indicates that there are behaviours that, if proved, would have greater relevance and weigh in favour of a longer review period. One of these behaviours includes violence and the panel found that Mrs Kearns was responsible for pushing Pupil A and dragging and/or pulling Pupil B by their wrist or wrists. Another of these behaviours includes intolerance on the grounds of a protected characteristic and the panel found that Mrs Kearns was responsible for pushing Pupil A; dragging and/or pulling Pupil B by their wrist or wrists; withholding food from pupils; throwing Pupil B's lunch in the bin and saying to Pupil B "*it's no wonder why your mother didn't have any other children*", or words to that effect.

The panel decided that 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 recommendation of the panel in respect of both sanction and review period.

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

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

The panel has made a recommendation to the Secretary of State that Mrs Rachel Kearns should be the subject of a prohibition order, with no provision for a review period.

In particular, the panel has found that Mrs Kearns 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, 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 was satisfied that the conduct of Mrs Kearns involved breaches of the responsibilities and duties set out in statutory guidance Keeping children safe in education (KCSIE).

The panel finds that the conduct of Mrs Kearns fell significantly short of the standards expected of the profession.

The findings of misconduct are particularly serious as they include a finding of pushing a pupil, dragging and/or pulling a pupil by their wrist or wrists, and withholding food from pupils.

I have to determine whether the imposition of a prohibition order is proportionate and in the public interest. In considering that for this case, I have considered the overall aim of a prohibition order which is to protect pupils and to maintain public confidence in the profession. I have considered the extent to which a prohibition order in this case would achieve that aim taking into account the impact that it will have on the individual teacher. I have also asked myself whether a less intrusive measure, such as the published finding of unacceptable professional conduct and conduct likely to bring the profession into disrepute, would itself be sufficient to achieve the overall aim. I have to consider whether the consequences of such a publication are themselves sufficient. I have considered therefore whether or not prohibiting Mrs Kearns, and the impact that will have on the teacher, is proportionate and in the public interest.

In this case, I have considered the extent to which a prohibition order would protect children and safeguard pupils. The panel has observed, "In light of the panel's findings against Mrs Kearns, which involved pushing Pupil A; dragging and/or pulling Pupil B by their wrist or wrists; withholding food from pupils; throwing Pupil B's lunch in the bin and saying to Pupil B *"it's no wonder why your mother didn't have any other children"*, or words to that effect, there was a strong public interest consideration in the safeguarding and wellbeing of pupils and the protection of other members of the public." A prohibition order would therefore prevent such a risk from being present in the future.

I have also taken into account the panel's comments on insight and remorse. The panel has noted a lack of evidence of remorse on the part of Mrs Kearns. The panel has not commented on insight but has noted that [REDACTED]. Mrs Kearns submitted that due to the turmoil this has caused, she is *"unable to discuss this case or the unjust allegations that have been made"* against her. She stated that due to [REDACTED] she is unable to open or read any correspondence in relation to the case, which has made it challenging for her to respond to the TRA." In my judgement, the lack of evidence of insight and remorse means that there is some risk of the repetition of this behaviour and this puts at risk the future wellbeing of pupils. I have therefore given this element considerable weight in reaching my decision.

I have gone on to consider the extent to which a prohibition order would maintain public confidence in the profession. The panel has observed, "public confidence in the profession could be seriously weakened if conduct such as that found against Mrs Kearns was not treated with the utmost seriousness when regulating the conduct of the profession." I am particularly mindful of the finding that the offence types of child cruelty

and/or neglect and controlling or coercive behaviour were relevant in this case and the impact that such a finding has on the reputation of the profession.

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

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

I have also considered the impact of a prohibition order on Mrs Kearns herself. The panel has commented “There was no evidence that Mrs Kearns demonstrated exceptionally high standards in both personal and professional conduct, nor that she has contributed significantly to the education sector.” However, the panel also noted that “there was a strong public interest consideration in favour of retaining Mrs Kearns in the profession, when taking into account her specialist skill set including communication skills such as British Sign Language, Makaton and her degree in Deaf Studies and Linguistics, as well as training in Gastronomy and Naso-Gastric tube feeding.”

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

In this case, I have placed considerable weight on the panel’s comments concerning the lack of evidence of remorse.

I have also placed considerable weight on the finding of the panel that “Mrs Kearns’ conduct placed extremely vulnerable pupils, a number of whom were non-verbal and could not therefore communicate their needs, at significant risk. The panel considered this was contrary to the public interest consideration of safeguarding and protecting the wellbeing of pupils.”

I have given less weight in my consideration of sanction therefore, to the contribution that Mrs Kearns has made to the profession. In my view, it is necessary to impose a prohibition order in order to maintain public confidence in the profession. A published decision, in light of the circumstances in this case, that is not backed up by evidence of insight and remorse, does not in my view satisfy the public interest requirement concerning public confidence in the profession.

For these reasons, I have concluded that a prohibition order is proportionate and in the public interest in order to achieve the intended aims of a prohibition order.

I have gone on to consider the matter of a review period. In this case, the panel has recommended that no provision should be made for a review period.

I have considered the panel's comments "The Advice indicates that there are behaviours that, if proved, would militate against the recommendation of a review period. One of these behaviours includes child cruelty and/or neglect and the panel found that Mrs Kearns was responsible for withholding food from pupils and throwing Pupil B's lunch in the bin." The panel has also noted that the Advice indicates that behaviours that involve violence or intolerance on the grounds of a protected characteristic would weigh in favour of a longer review period.

I have considered whether allowing a review period reflects the seriousness of the findings and is a proportionate period to achieve the aim of maintaining public confidence in the profession. In this case, factors mean that allowing a review period is not sufficient to achieve the aim of maintaining public confidence in the profession. These elements are the serious nature of the misconduct found proven and the lack of evidence of either insight or remorse.

I consider therefore that allowing for no review period is necessary to maintain public confidence and is proportionate and in the public interest.

This means that Mrs Rachel Kearns 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 her, I have decided that Mrs Kearns shall not be entitled to apply for restoration of her eligibility to teach.

This order takes effect from the date on which it is served on the teacher.

Mrs Kearns has a right of appeal to the King's Bench Division of the High Court within 28 days from the date she is given notice of this order.

A handwritten signature in black ink, appearing to read 'D Oatley', written in a cursive style.

Decision maker: David Oatley

Date: 29 April 2024

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