

PRACTICE REVIEW HEARING COMMITTEE

DECISION IN THE MATTER OF KEVIN GIETZ

**HEARING HELD ON OCTOBER 21, 22, 23 AND 24, 2019
IN LETHBRIDGE, ALBERTA**

The Practice Review Hearing Committee (the “Committee”), established in accordance with section 7 of the *Practice Review of Teachers Regulation*, Alberta Regulation 11/2010 (the “Former Regulation”), convened to hear a complaint about the alleged unprofessional conduct of Kevin Gietz (the “Teacher”) pursuant to the *Practice Review of Teachers and Teacher Leaders Regulation*, Alberta Regulation 92/2019 (the “Regulation”).

The hearing was held on Monday October 21, 2019 to Thursday October 24, 2019, at the [REDACTED]

The following individuals were present at the hearing:

Members of the Committee:

- [REDACTED]
- [REDACTED]
- [REDACTED]

In addition to the Committee, the following individuals were also present at the hearing:

- | | |
|--------------|------------|
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |
| ■ [REDACTED] | [REDACTED] |

The proceedings were recorded by [REDACTED] court reporters.

PRELIMINARY MATTERS

1. The parties confirmed that there were no objections to the composition of the Committee and no objections were raised regarding the Committee’s jurisdiction to hear the matter.
2. The Chair confirmed that the hearing was open to the public and noted that there were members of the public present.

BACKGROUND

3. The hearing commenced on February 4, 2019 to hear an application with respect to document production. The Committee issued an interim decision dated February 11, 2019 with respect to the preliminary application.
4. The Committee also issued an interim decision dated May 13, 2019, with respect to an adjournment request. The Committee issued a further interim decision dated October 30, 2019 with respect to a request by the Registrar to enter transcripts from a civil proceeding in lieu of having a witness provide testimony during the hearing.
5. The hearing continued on Monday October 21, 2019. At this time, the substantive hearing commenced, with counsel for the Registrar and counsel for the Teacher making opening submissions and the Registrar calling witnesses. The hearing continued until Thursday October 24, 2019 with various witnesses for the Registrar presenting evidence. The witnesses who testified included five of the six initial complainants.
6. On Thursday October 24, 2019, [REDACTED], counsel for the Registrar and [REDACTED], counsel for the Teacher advised the Committee that they had reached an Agreed Statement of Facts and Joint Recommendation for Penalty. The Committee adjourned to review the Agreed Statement of Facts and Joint Recommendation for Penalty.

EXHIBITS

7. The following exhibits were entered throughout the course of the hearing:
 - Exhibit 1: Anonymous Letter to [Name Redacted] dated January 2014
 - Exhibit 2: Letter dated February 10, 2015 from [Name Redacted] to [Name Redacted] and undated typewritten notes of [Name Redacted]
 - Exhibit 3: Notice of Decision and Registrar's Decision and Reasons for Decision
 - Exhibit 4: Letter dated January 28, 2010 from [Name Redacted] to Whom it May Concern re [Name Redacted]
 - Exhibit 5: Letter dated May 11, 2010 from [Name Redacted] to [Name Redacted]
 - Exhibit 6: Organizational Review [School Division Redacted]
 - Exhibit 7: Email from [Name Redacted] to [Name Redacted] dated October 30, 2009
 - Exhibit 8: [School Division Redacted] Evaluation Reports
 - Exhibit 9: Agreed Statement of Facts and Joint Recommendation for Penalty

ALLEGATIONS AND ADMISSIONS

8. The Teacher admitted to the following conduct in the Agreed Statement of Facts and Joint Recommendation for Penalty:
9. Mr. Gietz admitted to the following acts during the time he was Superintendent of [School Division Redacted]
 - a. Criticizing Alberta certificated teachers and administrative staff outside private or confidential meetings to, or within the hearing, of [School Division Redacted] employees who had no professional role in the supervision of the teachers and administrative staff who were the subjects of the criticism;
 - b. Being overly aggressive and angry at times with other [School Division Redacted] employees in carrying out his Superintendent's role, particularly during School Goals meetings and Administrators' meetings;
 - c. Regularly using profanity in the [School Division Redacted] Central Office;
 - d. Placing his hands on one occasion on the shoulders of a [gender redacted] subordinate [School Division Redacted] employee. This touching happened in the [Location Redacted] open area during work hours in late 2007. It was not solicited and it was not welcomed by the [gender redacted] subordinate [School Division Redacted] employee;
 - e. Placing his hands on one occasion on the shoulders of a different [gender redacted] subordinate [School Division Redacted] employee. This touching happened in the [Location Redacted] open area during work hours between 2007 and 2010. It was not solicited and it was not welcomed by the [gender redacted] subordinate [School Division redacted] employee;
 - f. Touching [School Division Redacted] employee [Name Redacted]'s shoulders and waist a number of times and teasing [gender redacted] by pantomiming a kiss on [gender redacted] forehead in or about 2007-2008. This touching and teasing happened in the [Location Redacted] open area. It was not solicited and not welcomed by [Name Redacted]; and
 - g. Allowing alcohol to be consumed by [School Division Redacted] employees on a charter bus and to consuming alcohol on the charter bus without having a liquor licence for such consumption in 2007.
10. Mr. Gietz agreed the conduct admitted to in the paragraph above constitutes unprofessional conduct pursuant to section 26(1)(a)(i) and (ii) of the Regulation.

FINDINGS OF THE COMMITTEE

11. The Agreed Statement of Facts and Joint Recommendation for Penalty indicates that the facts are presented by the Registrar and admitted to by Mr. Gietz, an Alberta certificated teacher, for the purpose of dispensing with formal proof of such facts in respect of an allegation of unprofessional conduct against Mr. Gietz.
12. The Committee accepts the facts as set out in the Agreed Statement of Facts and Joint Recommendation for Penalty. The Committee's findings of facts are based on the admissions in the Agreed Statement of Facts and Joint Recommendation for Penalty.
13. Mr. Gietz currently holds a valid Permanent Professional Certificate [Number redacted] issued on December 7, 2006 in the province of Alberta, in accordance with the *Certification of Teachers Regulation*.
14. The conduct of Alberta certificated teachers who are not subject to the *Teaching Profession Act* is governed by *Practice Review of Teachers and Teacher Leaders Regulation* (AR 92/2019) ("Regulation"). During the time period covered by the facts admitted, teachers who were not subject to the *Teaching Profession Act* were governed by the *Practice Review of Teachers Regulation* (AR 11/2010), repealed on September 1, 2019.
15. A complaint of alleged unprofessional conduct was filed with the Registrar against Mr. Gietz on January 29, 2016 by [Names Redacted]. At the time the complaint was filed, Mr. Gietz was employed by the [School Division Redacted] as Superintendent.
16. The Complainants alleged that Mr. Gietz engaged in harassment and bullying of [School Division Redacted] staff, inappropriate use of alcohol, and a pattern of unprofessional conduct.
17. In accordance with the Regulation, the Registrar directed a Conduct Investigation following a preliminary inquiry into the complaint. The Conduct Investigation was completed on November 2, 2017 and a Follow-Up Investigation was completed on March 14, 2018.
18. Upon receipt and review of the Conduct Investigation and Follow-Up Conduct Investigation, the Registrar issued a Notice of Decision referring the allegations of unprofessional conduct to a practice review hearing committee for a hearing.
19. During the time he was Superintendent of [School Division Redacted], Mr. Gietz criticized Alberta certificated teachers and administrative staff outside private or confidential meetings to, or within the hearing, of [School Division Redacted] employees who had no professional role in the supervision of the teachers and administrative staff who were the subjects of the criticism.
20. While Superintendent of [School Division Redacted], Mr. Gietz was overly aggressive and angry at times with other [School Division Redacted] employees in carrying out his

Superintendent's role, particularly during School Goals meetings and Administrators' meetings.

21. Mr. Gietz regularly used profanity in the [School Division Redacted] Central Office while he was Superintendent.
22. During the time he was Superintendent, Mr. Gietz placed his hands on one occasion on the shoulders of a [gender redacted] subordinate [School Division Redacted] employee. This touching happened in the [Location redacted] open area during work hours in late 2007. It was not solicited and it was not welcomed by the [gender redacted] subordinate [School Division Redacted] employee.
23. During the time he was Superintendent, Mr. Gietz also placed his hands on one occasion on the shoulders of a different [gender redacted] subordinate [School Division Redacted] employee. This touching happened in the [School Division Redacted] Central Office open area during work hours between 2007 and 2010. It was not solicited and it was not welcomed by the [gender redacted] subordinate [School Division Redacted] employee.
24. Mr. Gietz also touched [School Division Redacted] employee [Name Redacted]'s shoulders and waist a number of times and teasing [gender redacted] by pantomiming a kiss on [gender redacted] forehead in or about 2007-2008. This touching and teasing happened in the [School Division Redacted] Central Office open area. It was not solicited and not welcomed by [Name Redacted].
25. Mr. Gietz allowed alcohol to be consumed by [School Division Redacted] employees on a charter bus and consumed alcohol on the charter bus without having a liquor licence for such consumption in 2007.
26. Both the Registrar and Mr. Gietz verbally confirmed during the hearing that they agreed with the agreed facts, admissions and joint recommended penalty as set out in the Agreed Statement of Facts and Joint Recommendation for Penalty.
27. In addition, the Committee notes that the witnesses for the Registrar presented evidence that was consistent with and supports the findings of fact made above.

DECISION OF THE COMMITTEE

28. The Committee has carefully considered the evidence presented and the submissions of the parties. The Committee accepts the facts as set out in the Agreed Statement of Facts and Joint Recommendation for Penalty. The Committee also acknowledges that it has not heard all the evidence that was intended to be presented in this case, including the evidence of Mr. Getz.
29. The Committee finds that the conduct of Mr. Gietz constitutes unprofessional conduct, for the reasons set out below.
30. The Committee considered section 26(1)(a)(i) and (ii) of the Regulation, which states:

Finding — unprofessional conduct

26(1) The practice review hearing committee

- (a) may find the conduct of the teacher or teacher leader who is the subject of the hearing to constitute unprofessional conduct if, in the opinion of the practice review hearing committee, the teacher's or teacher leader's conduct
 - (i) is detrimental to the best interests of students, the public, teachers or teacher leaders generally, or
 - (ii) does not meet the professional conduct requirements ...

31. The Committee further considered the definition of unprofessional conduct, as set out in section 2 of the Regulation, as follows:

Unprofessional conduct

2 Conduct that

- (a) is detrimental to the best interests of students, the public, teachers or teacher leaders generally,
- (b) does not meet the professional conduct requirements, or
- (c) is the basis for a conviction for an indictable offence

constitutes unprofessional conduct.

32. The Committee finds that the conduct of Mr. Gietz was detrimental to teacher and teacher leaders. His actions caused other teacher leaders and teachers to be inhibited in their day to day operations and communications with colleagues. It created barriers to constructive and collaborative relationships. It contributed to an atmosphere of perceived fear, including fear of reprisals.
33. The conduct of touching [gender redacted] subordinates is also detrimental to the interests of teachers and teacher leaders. It would have added to an environment of fear and intimidation.
34. Teacher leaders are held to a high standard of professionalism. Teacher leaders are expected to model appropriate professional behavior. Consuming alcohol and allowing alcohol to be consumed by [School Division Redacted] employees on a charter bus during the work day was detrimental to the teacher leaders and damaged their sense of professionalism and reputation.
35. The Committee further considered the Professional Conduct Requirements as set out in the Schedule to the Regulation. The Committee considered that the following Professional Conduct Requirements apply:

Schedule

Professional Conduct Requirements for Teachers and Teacher Leaders

The conduct of teachers and teacher leaders, both on and off duty, bears directly on the community's perception of the ability of teachers and teacher leaders to fulfill their unique position of trust and influence. Society and the school community hold teachers and teacher leaders to a high standard of conduct. Teachers and teacher leaders are expected to conduct themselves with due regard to the honour, dignity, welfare, rights and best interests of students, parents, colleagues, their employer and the teaching profession.

These are minimum professional conduct requirements for teachers and teacher leaders who are not subject to the *Teaching Profession Act*. It is not an exhaustive list of requirements.

A teacher or teacher leader who is not subject to the *Teaching Profession Act* and who is alleged to have violated the standards of the profession, including these requirements, may be subject to a complaint of alleged unprofessional conduct under the *Practice Review of Teachers and Teacher Leaders Regulation*.

...

3 In relation to colleagues, the teacher or teacher leader is required

...

- (b) not to criticize the professional competence or professional reputation of another teacher or teacher leader, including a teacher or teacher leader to whom the *Teaching Profession Act* applies, except
 - (i) in confidence to appropriate officials and after informing the other teacher or teacher leader of the criticism, subject only to section 24 of the *Teaching Profession Act*,
 - (ii) in making a complaint about the unprofessional conduct of a teacher or teacher leader under section 11 of the *Practice Review of Teachers and Teacher Leaders Regulation* or section 24 of the *Teaching Profession Act*, or
 - (iii) as reasonably necessary, in the case of a superintendent as defined in section 1(i) of the *Teaching Profession Act* or an administrator acting in the course of the superintendent's or administrator's leadership duties with respect to the teacher or teacher leader,

5 In relation to the teaching profession, the teacher or teacher leader is required

- (a) to conduct himself or herself in a manner that maintains the honour and dignity of the profession, and
- (b) not to engage in activities that adversely affect the quality of the teacher's or teacher leader's professional service.

36. Mr. Gietz's conduct was a direct breach of standard 3(b). The manner in which he criticized teachers and administrative staff was not professional. The criticism of teachers and administrative staff did not fall within any of the listed exceptions.

37. Mr. Gietz's conduct also demonstrated a significant lack of treating colleagues with honour and dignity. He demonstrated a pattern of behaviour that disrespected his colleagues. This was damaging to the work environment and to Mr. Gietz's colleagues, including staff, teachers and teacher leaders. Mr. Gietz's conduct was a breach of standard 5(a) and (b).

38. The conduct of Mr. Gietz showed a pattern of behaviour that breached the standards set out in the Schedule of the Regulation over a period of time. This demonstrated pattern is serious and constitutes unprofessional conduct.
39. For these reasons, the Committee finds that the conduct of the Mr. Gietz constitutes unprofessional conduct on the basis that his conduct was detrimental to the best interests of students, the public, teachers or teacher leaders generally and did not meet the professional conduct requirements.
40. The Committee has referenced the current Standards in the Regulation, given the wording of the transitional provision in section 35(8) of the Regulation. However, the Committee notes that the Standards under the Former Regulation are substantively similar to the Standards that now exist in the Regulation. The difference between the two is the addition of “teacher leaders” to the Regulation. As such, Mr. Gietz is not being held to a Standard that was not in place at the time the conduct occurred.

SUBMISSIONS REGARDING PENALTY

41. The Registrar and Mr. Gietz jointly ask the Committee to recommend to the Minister pursuant to section 27(3)(b) of the Regulation that the Minister:
 - a. Suspend Kevin Gordon Gietz’s teaching certificate until June 30, 2020, subject to the following conditions:
 - i. Completion of a course approved by the Registrar in anger management, such approval not to be unreasonably withheld, no later than 4:00 p.m. MST, June 30, 2020;
 - ii. Completion of a course approved by the Registrar addressing respectful conduct in the workplace, such approval not to be unreasonably withheld, no later than 4:00 p.m. MST, June 30, 2020;
 - iii. Proof satisfactory to the Registrar of successful completion of the above two courses provided to the Registrar no later than 4:00 p.m. MST, July 07, 2020;
 - b. Kevin Gordon Gietz acknowledges that failure to comply with the conditions set out in sub-paragraph (a), above, will result in cancellation of his Permanent Professional Certificate on July 14, 2020.
42. In the Agreed Statement of Facts and Joint Recommendation for Penalty, the parties agree that the joint submission on penalty is reasonable and appropriate, considering:
 - a. The nature of the misconduct as described above and its effect on the workplace and [School Division Redacted] employees;
 - b. The frequency and dates of occurrence of the misconducts described above;

- c. The Committee has not heard all the evidence that was intended to be presented in this case, including the evidence of Kevin Gordon Gietz;
 - d. Mr. Gietz has acknowledged his misconduct by accepting this joint submission.
43. In addition, in the Agreed Statement of Facts and Joint Recommendation for Penalty, the Teacher acknowledges that if the Committee accepts this joint submission and makes this agreed upon recommendation for penalty to the Minister of Education, the Minister of Education is not bound by the recommendation and has discretion pursuant to section 33 of the Regulation to dismiss the complaint, substitute a lesser or greater penalty, or cancel or amend the conditions.

DECISION OF THE COMMITTEE REGARDING RECOMMENDATIONS TO THE MINISTER

44. The Committee considered what recommendations it can make pursuant to section 27 of the Regulation, as follows:

Recommendations of practice review hearing committee

...

27(2) The practice review hearing committee may make a recommendation to the Minister under subsection (3) if the practice review hearing committee finds

- (a) that the teacher or teacher leader who is the subject of the hearing is
 - (i) unskilled or incompetent in teaching,
 - (ii) unskilled or incompetent in carrying out the leadership duties related to a leadership certificate, or
 - (iii) unskilled or incompetent in carrying out the leadership duties related to a superintendent leadership certificate,

or

- (b) that the conduct of the teacher or teacher leader constitutes unprofessional conduct.

(3) The practice review hearing committee may recommend that the Minister do one or more of the following:

- (a) serve a letter of reprimand on the teacher or teacher leader;
- (b) suspend one or more of the certificates of the teacher or teacher leader, with or without conditions;
- (c) cancel one or more of the certificates of the teacher or teacher leader or cancel the certificate and issue a certificate of a different class, with or without conditions;
- (d) order that the teacher or teacher leader be ineligible for one or more certificates for a definite or indefinite period of time, with or without conditions.

45. The Committee finds that the recommended penalty is appropriate in the circumstances of this case, for the reasons set out below. The Committee finds that the recommended penalty is reasonable and will serve the public interest.
46. The Committee recognizes that it did not hear all of the evidence that was intended to be presented in this case, including the evidence of Mr. Gietz. However, based on the admissions and the evidence of the witnesses who did present evidence, it is clear that the conduct by Mr. Gietz and the impact of his behaviour are significant and serious and warrant a suspension for a certain period of time and until certain conditions have been met, in this case the requirement to complete courses in anger management and respectful conduct in the workplace.
47. The recommended courses directly relate to the conduct that was at issue in this hearing. They serve the purpose of helping Mr. Gietz address the conduct in the allegations, so that Mr. Gietz will develop the capacity to engage in professionally appropriate and constructive behaviour in the workplace in the future.
48. The Committee recommends that pursuant to section 27(3)(b) of the Regulation that the Minister:
 - a. Suspend Kevin Gordon Gietz’s teaching certificate until June 30, 2020, subject to the following conditions:
 - i. Completion of a course approved by the Registrar in anger management, such approval not to be unreasonably withheld, no later than 4:00 p.m. MST, June 30, 2020;
 - ii. Completion of a course approved by the Registrar addressing respectful conduct in the workplace, such approval not to be unreasonably withheld, no later than 4:00 p.m. MST, June 30, 2020;
 - iii. Proof satisfactory to the Registrar of successful completion of the above two courses provided to the Registrar no later than 4:00 p.m. MST, July 07, 2020.
 - b. Failure to comply with the conditions set out in sub-paragraph (a), above, will result in cancellation of his Permanent Professional Certificate on July 14, 2020.
49. The executed Agreed Statement of Facts and Joint Recommendation for Penalty (Exhibit 9) is attached to this decision as Appendix “A”.

Signed, on behalf of the Practice Review Hearing Committee



Practice Review Hearing Committee


November 8, 2019

Date

OPTION TO APPEAL – NOTICE TO TEACHER & REGISTRAR

You have fifteen (15) days from receipt of this decision to submit an appeal to the Practice Review Appeal Committee, in accordance with section 29 of the *Practice Review of Teachers and Teacher Leaders Regulation* AR 92/2019.

The appeal must be in writing and must describe the finding or recommendation, or both, being appealed and state the reasons for the appeal. The appeal must be addressed to:

Chair of the Practice Review General Panel
c/o Ms. 
44 Capital Blvd., 10044 – 108 Street
Edmonton, Alberta T5J 5E6