In the (2008) *Toronto District School Board* arbitration decision[[1]](#endnote-1) an elementary teacher received a letter of reprimand for allegedly pushing a Grade 8 student, identified as "Student K.", age 12 or 13 years old, in the course of a verbal altercation in the school's playground during the lunch period. The Federation grieved the letter of reprimand.

In the course of deciding that the School Board had not presented sufficient evidence to support a finding that the elementary teacher pushed the student Arbitrator Luborsky made the following comments about the relationship between a mild letter of reprimand, the underlying discipline and a teacher’s professional reputation.

Even though the discipline to the Grievor in the present case is a relatively mild letter of reprimand; underlying that discipline is a serious matter going to the Grievor's fitness to practice as a teacher to the accepted standards of his profession. As such, the Grievor has an important stake in preserving his professional reputation that is brought into disrepute by such a letter of reprimand and, in our view, the Board has a corresponding obligation to justify its disciplinary actions on the basis of reasonably clear, convincing and cogent evidence given the potential consequences to the Grievor's professional standing by an adverse finding in this case. … (para. 46)

In the (2010) *Toronto District School Board* arbitration decision[[2]](#endnote-2) an elementary teacher took a grade 4/5 class on a walking trip to York University which is located very close to the school. Towards the end of the day the grievor became separated from and unable to locate a group of approximately ten students who were with a volunteer. Two of these students became involved with some parked motorcycles, one of which fell over. This resulted in one of the students being bruised and minor damage to the motorcycle. As a result of these events the principal of the school issued a letter of discipline to the grievor. The Federation grieved the letter of reprimand.

Arbitrator Springate made the following findings of fact.

The grievor was the class teacher and as such had responsibility for the students. Had she turned around sufficiently often to check the whereabouts of her students after she started off across the field she would have realized that a number of them had stopped following her. She then could have taken corrective action. Instead, when she turned to look a sizeable proportion of her class were nowhere in view. She could not know at the time if the students were still coming but blocked from view by York students crossing the field or whether something more serious had happened.

Two of the students with a parent volunteer became involved in an incident with a motorcycle which resulted in one of them received bruises and the motorcycle suffering minor damage. Fortunately, the result was not any worse. It does, however, highlight the potential harm that can arise when a teacher loses contact with part of his or her class, despite them being with a volunteer.

Not knowing where the other students were and recognizing that the parent volunteer might be leading them back … by a different route, realistically the grievor did not have any good options open to her. This, however, goes back to the root of the problem, namely her failing to ensure that the entire class was following her. Her conduct involved a lack of proper care which resulted in her losing contact with a group of approximately ten students. It was conduct which justified a disciplinary response on the part of the Board. (paras. 87-89)

In the course of reaching his decision Arbitrator Springate referred to Arbitrator Luborsky comments in the earlier (2008) Toronto District School Board decision and noted that a disciplinary letter must accurately recount the events which lead to the discipline.

A disciplinary letter is generally viewed as the least serious form of formal discipline. Accordingly, the Federation's cases respecting progressive discipline are not of direct relevance. What is relevant is Arbitrator Luborsky's discussion in the 2008 Toronto District School Board case relating to the potential impact on a teacher's professional reputation of a serious allegation contained in a disciplinary letter. (para. 82)

My conclusion that the Board was justified in disciplining the grievor does not fully answer the question of whether the Board had just cause to issue the letter of discipline that it did. As indicated by Federation counsel and Arbitrator Luborsky in the (2008) Toronto District School Board case a disciplinary letter can impact on a teacher's professional reputation and future employment opportunities. Further, when an arbitrator assesses an employee's prior disciplinary record generally they will not permit a union to go behind or seek to explain away the wording of a disciplinary letter that was not successfully challenged. This is the "flip side" of the general arbitral practice of not allowing an employer to rely on alleged prior misconduct that did not result in discipline at the time. Taking these considerations into account a letter of discipline should accurately reflect what occurred and not directly or by implication mischaracterize events. The letter of June 16, 2008 does not, however, accurately reflect the events of May 16, 2008. (para. 91)

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1. *Toronto District School Board*, 2008 OLAA 197 [↑](#endnote-ref-1)
2. *Toronto District School Board*, 2010 OLAA 4 [↑](#endnote-ref-2)