

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/87

UNDER
WĀHANGA

the Education and Training Act
2020

IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Prosecutor/Referrer | Kaiwhiu

AND
ME

JANINE MILLER

Respondent | Kaiurupare

Hearing | Te Rongonga

8 October 2024 (on the papers)

Representation | Hei Māngai

R Belcher for the CAC

J Brown NZEI for the Respondent

Tribunal panel | Pae Taraipiunara

T Mackenzie (Deputy Chair), C Harrington,
D Spraggs

**DECISION OF THE TRIBUNAL ON CHARGE, PENALTY, COSTS AND
PUBLICATION**

31 March 2025

Introduction

[1] Ms Miller is a registered teacher. She has been charged by the Complaints Assessment Committee (CAC) with Serious Misconduct for striking a student on the hand with a ruler.

[2] Ms Miller accepts the facts and accepts liability for the charge. We will consider the charge, penalty, and costs in this decision.

Charge and facts

[3] The charge and the agreed facts are attached to this decision.¹

Serious misconduct - law

[4] We will first set out the general legal principles which apply to the serious misconduct test.

[5] The test for serious misconduct is set out at s 10 of the Education and Training Act 2020. Section 10 defines “serious misconduct” as follows:

serious misconduct means conduct by a teacher—

(a) that—

(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or

(ii) reflects adversely on the teacher’s fitness to be a teacher; or

(iii) may bring the teaching profession into disrepute; and

(b) that is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct

[6] Regarding the first aspect of this test (adverse affect(s)). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.² The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[7] The second limb (fitness) has been described by the Tribunal as follows:³

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher’s

¹ The amendment by the CAC was granted.

² *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

³ *CAC v Crump* NZTDT 2019-12, 9 April 2020 (referring to the test in the 1989 Act, which used different paragraph references).

conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[8] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.⁴ The Court considered that the question that must be addressed is an objective one: whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[9] Section 10(b) of the serious misconduct test refers to reporting criteria. The Court of Appeal (discussing the same wording from the former Education Act 1989) has affirmed that this reporting criteria limb creates a conjunctive test for serious misconduct.⁵ That is, one of the three limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out.

This conduct - is the charge proven?

[10] Whilst the charge is accepted, we must still ourselves be satisfied that this is serious misconduct.

[11] Generally, cases of striking a child will result in a finding of serious misconduct. The degree of force used will rarely influence this if there is an intentional assault. We also take into account in this case that the victim was particularly vulnerable, being new to New Zealand and the school and having very limited English. There was no justification for the conduct.

[12] At the least the conduct was likely to adversely affect the child's wellbeing. It also clearly reflects on fitness to be a teacher, and brings the reputation of the profession into disrepute.

[13] We also consider that the reporting rules test is made out, particularly rule 9(1)(a) (unjustified physical force on a child); rule 9(1)(j) (an act that may be an offence punishable by a term of 3 months imprisonment or more, of which assault on a child is), and rule 9(1)(k) (disrepute).

[14] We therefore conclude that the proven conduct would amount to serious misconduct.

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

Penalty – law

[15] We will first set out the applicable principles. In *CAC v McMillan* the Tribunal summarised the role of disciplinary proceedings in this profession as:⁶

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

[16] The Tribunal in *McMillan* noted that there are three primary purposes when imposing penalty. These are:

- I. to protect the public through the provision of a safe learning environment for students;
- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.

[17] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.⁷

[18] In *CAC v Fuli-Makaua* this Tribunal noted that cancellation may be required in two overlapping situations:⁸

- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and
- b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

[19] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case presents to us. Penalties can range from taking no steps, to cancellation of a teacher's registration.

[20] Although the penalty range can appear somewhat linear, our real task is to impose the appropriate penalty considering the purposes of this regime, all of the facts of the conduct, and all of the features of the respondent. The nuances

⁶ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

⁷ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

⁸ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

involved mean that attempts at like for like comparisons of end results in other cases may not yield more than general patterns.

What are the appropriate orders here?

[21] We have considered the various cases and submissions advanced by the parties. In cases such as the present, with engagement from the teacher, penalties short of cancellation or suspension have been imposed.

[22] We have considered the features of Ms Miller in relation to penalty. Although initially denied, Ms Miller is remorseful for what occurred. She has taken appropriate steps to recognise the issue and reduce the risk of further occurrence. She has taken a break from teaching and restructured her work life into more manageable commitments and roles. She has also undertaken professional mentoring.

[23] Balancing all factors in this case we consider the appropriate orders to be:

- Censure
- Annotation of the Register for two years
- A condition on Ms Miller's current practicing certificate and any future certificate in the next two years, requiring provision of this decision to any education related employer.

Non-Publication

[24] We consider it proper to order non-publication of the name of the child involved. This will extend to his age, what country he was from and precisely when he arrived at the school.

[25] Ms Miller has not sought any orders herself.

[26] The school where this conduct occurred has sought non-publication on the basis that otherwise the child may be able to be identified. We do not consider there is a real risk of that, due to the conditions we have attached to the non-publication orders above.

[27] The school has further concerns as to the impact on this community and for the good work that the school has done in this area. Whilst we accept the school's sentiments in this regard, they are really reputational concerns. These are commonly raised by schools but are rarely successful.

[28] A final concern is that suspicion might fall on other teachers at the school. This would only apply however if Ms Miller's name was unable to be published.

Costs

[29] The respondent is liable to contribute to the costs of this disciplinary case. A contribution of 40% of reasonable CAC costs is appropriate.

[30] The CAC costs in total are \$7932.94. This is made up of legal fees of \$6314 and CAC internal costs of \$1618.94.

[31] Ms Miller queries whether the costs are excessive and refers to legal fees in other cases before us, for instance in *Rathgen* where the legal fees were \$1375.

[32] This case concerned a very short factual incident. Whilst it was not originally accepted, there was little extra work to do because of that. Ultimately the facts were agreed, and the charge. Submissions were not extensive. We consider that a reasonable sum for legal costs in this case is \$5000. The total CAC costs liability is set at \$6618.94. Ms Miller is directed to meet 40% of these, being \$2647.58 ordered as payable to the CAC.

[33] Whilst financial capacity is mentioned, no real evidence is before us. We note that the costs sum has already been reduced.

[34] Tribunal costs are set at \$1500 for this matter. 40% is \$600, which we order as payable to the Teaching Council.



T J Mackenzie
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal /
Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa

IN THE MATTER OF the Education and Training Act 2020
AND
IN THE MATTER OF an inquiry by the New Zealand Teachers Disciplinary Tribunal of
the Teaching Council of Aotearoa New Zealand into the conduct
of **Janine Miller**, of **Hamilton**, Teacher (Registration Number
137383).

NOTICE OF CHARGE

TAKE NOTICE that a Complaints Assessment Committee (the **CAC**) has determined that in accordance with section 497 of the Education and Training Act 2020:

- (a) Information received from the mandatory report provided by Berkley Normal Middle School about the conduct of **Janine Miller** should be considered by the New Zealand Teachers Disciplinary Tribunal (the **Tribunal**).
- (b) The CAC charges that the teacher has engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.

Particulars of the Charge

- 1. The CAC charges that **Janine Miller**, registered teacher, of Hamilton, on 30 August 2022:
 - a. Struck Learner A on his hand with a ruler and raised her voice at him
- 2. The conduct alleged in paragraph 1, amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and rule 9(1)(a) of the Teaching Council Rules 2016 or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020.

Penalties

Your attention is drawn to the penalties as set out in section 500 of the Education and Training Act 2020 and which sets out the powers of the Tribunal, a copy of which is **attached**.

Practice Note

Your attention is also drawn to the Practice Note that came into force on 1 July 2014 regarding the public hearings of the Tribunal, a copy of which is **attached**.

Dated the 5th day of December 2023

A handwritten signature in black ink, appearing to read 'Lynda Harris', with a stylized flourish at the end.

Lynda Harris
Chair, Complaints Assessment Committee

IN THE MATTER OF the Education and Training Act 2020

AND

IN THE MATTER OF an inquiry by the New Zealand Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand into the conduct of **JANINE MILLER**, of **HAMILTON**, Teacher (Registration Number **137383**)

SUMMARY OF FACTS

Background

1. The respondent, **JANINE MILLER**, is a fully registered teacher. She was first registered on 18 January 1991. Her practising certificate is due to expire on 8 November 2024.
2. At the time of the incident, Ms Miller was employed at Berkley Normal Middle School (the **School**) and had worked there for 27 years.
3. On 29 September 2022, the Teaching Council received a mandatory report filed by Nathan Leith, the Principal of the School. This alleged that on 30 August 2022, Ms Miller yelled at Student A and hit him with a ruler. An internal investigation occurred at the school, which involved interviewing the students present in the classroom at the time. As a result of the investigation, Ms Miller resigned on 20 September 2022.

Incident with Student A

4. Student A is an [REDACTED] who started at the School on [REDACTED]. He had almost no English at the time of the incident.
5. On 30 August 2022, Student A's Year 7 class had an art class with Ms Miller. Student A's classroom teacher had emailed Ms Miller the previous day to tell Ms Miller that Student A was [REDACTED]

JRM
30 May 2023

6. During the art class, Ms Miller was working with Student A on the computer. Student A was holding the mouse and Ms Miller was trying to control his hand. Ms Miller had a ruler in her right hand, which she was using to point to things on the computer.
7. Student A could not understand what Ms Miller was saying and was not following her instructions. Student A would respond by repeatedly saying "no". Ms Miller became angry and started to raise her voice when speaking to Student A. When Student A failed to follow Ms Miller's instruction, she then hit Student A with the ruler on the back of his hand. The ruler made a loud noise when it hit him. Ms Miller continued to yell at Student A after she had hit him. Student A looked shocked and confused after Ms Miller hit him.
8. This incident came to the School's attention as one of the other students told their parents they did not feel comfortable going back to art class after what happened.

Teacher's response

School's investigation

9. When Mr Leith initially asked Ms Miller about the incident, she became defensive and stated, "hand on heart, or the bible, I did not hit a student or desk".
10. The School began a formal investigation which involved meeting with Ms Miller and her representative on 9 September 2022. At the meeting, Ms Miller stated that she was not frustrated or angry and did not yell. Ms Miller said that she had used a clear voice to give instructions that could be heard from the other end of the room. Ms Miller said that Student A had been coping with the tasks, and that when Ms Miller realised he was struggling she adapted her methods. Ms Miller was using the ruler to tap the screen so she did not lean on Student A. Afterwards, Ms Miller said she placed the ruler on the desk and did not hit Student A. She said that Student A left the classroom happy.
11. Ms Miller also said the students from the art class were lying about other matters that happened that day, namely a video not being able to be accessed and instructions to return to finish their work after lunch.

*Ms Miller
20 May
2024*

CAC hearing

12. Ms Miller did not provide any comments during the triage stage. However, she attended the CAC hearing and maintained she did not strike Student A with a ruler. She said that there had been concerns that homework had not been completed, and the student who complained to their parent had not completed their classwork.
13. Ms Miller said she sat with Student A after realising he needed more support. She said she may have raised her voice to get him to stop when he drifted off task. This was because the language barrier meant Student A did not respond to "stop", and she needed to be firmer. Ms Miller maintained she only used the ruler to tap the screen and keyboard. If she had a longer pencil, she would have used that instead.



R W Belcher | R G Buckman

Counsel for the CAC

Date: 4/6/24



J Miller

Respondent

Date: 30th May 2024