

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2021/23

WĀHANGA
Under

the Education Act 1989

MŌ TE TAKE
In the matter of

of a charge referred by the Complaints
Assessment Committee to the New Zealand
Teachers Disciplinary Tribunal

I WAENGA I A
Between

COMPLAINTS ASSESSMENT COMMITTEE

ME
And

CRAIG ALAN HENDERSON

Kaiurupare
Respondent

TE WHAKATAUNGA Ā TE TARAIPUNARA
TRIBUNAL DECISION DATED 11 OCTOBER 2022

HEARING: Held in Christchurch on 2 and 3 May 2022

Further deliberation on 1 August 2022

TRIBUNAL: Theo Baker (Chair)

Rose McInerney and Simon Williams (members)

REPRESENTATION: Mr R Belcher for the Complaints Assessment Committee

Mr Henderson represented himself

Hei timatanga kōrero – Introduction

1. In a Notice of Charge dated 14 June 2021, the Complaints Assessment Committee (**CAC**) charged Craig Alan Henderson (**the respondent**) with serious misconduct. The charge covered two separate incidents while he was teaching at Westland High School (**the school**) in Hokitika.
2. The CAC alleged that the respondent:
 - a) On 10 February 2020:
 - i. Threw a rubber at Student A, hitting Student A in the head
 - ii. Hit Student A on her head with his hand
 - b) On 21 November 2018:
 - i. Physically restrained Student B by grabbing her arm by the wrist and holding and/or pulling her
 - ii. Pushed Student B
 - iii. Repeatedly attempted to physically remove glasses from Student B's face with his hands
 - iv. Continued to attempt to physically remove glasses from Student B's face with his hands after she had requested him to stop.
3. It was alleged that the conduct amounted to serious misconduct under section 378 of the Education Act 1989 (**the Act**) and rule 9(1)(a) and/or (j) and/or (k) of the Teaching Council Rules (**the Rules**), or alternatively amounts to conduct otherwise entitling the Tribunal to exercise its powers under section 404 of the Act.
4. The respondent denied the charge.
5. We must first decide if the CAC has proved the allegations in the charge. If we are satisfied on the balance of probabilities that the conduct occurred, we may then consider whether the conduct amounts to serious misconduct.

Whakarapopotanga – Summary of decision

6. The Tribunal found the respondent:
 - a) threw a rubber at Student A, but that it was done in jest. Although not appropriate behaviour for a teacher, it did not meet the threshold for a finding of serious misconduct.
 - b) restrained Student B by grabbing her arm by the wrist and holding and/or pulling her.
 - c) repeatedly attempted to physically remove glasses from Student B's face with his hands and continued to attempt to physically remove glasses from Student B's face with his hands after she had requested him to stop.
7. The Tribunal was not satisfied on the balance of probabilities that the respondent hit Student A across the head or pushed Student B.
8. The Tribunal found that the respondent's established treatment of Student B amounted to serious misconduct.
9. The following penalty was imposed:
 - a) The respondent is censured under section 404(1)(b)
 - b) Should the respondent return to practice, under section 404(1)(j) the following conditions are to be placed on any future practising certificate:
 - i. Within 12 months of recommencing practice he is to complete a behaviour management programme approved by the Teaching Council;
 - ii. For a period of two years after recommencing practice, the respondent is to have a mentor who is approved by the Teaching Council, and any costs paid for by the respondent. The mentor is to provide reports to the Council at the end of each term for the first year and then at such intervals as the Council directs.
 - iii. For a period of two years after recommencing practice, the

respondent is to provide a copy of this decision to any prospective employers in the education sector.

10. Under section 404(1)(h) the respondent is to pay \$8,000 of the CAC costs of investigation and prosecution and under section 404(1)(i) the respondent is to pay \$6,500 of the Tribunal costs.

Korero Taunaki – Evidence

11. The CAC provided briefs of evidence for the following witnesses:
- a) Student A
 - b) Student B
 - c) Student C
 - d) Mr Brailsford, Deputy Principal
 - e) Ms Bateup, Academic and Pastoral Leader at the School.¹
 - f) Mr Iain Murray, Principal
 - g) Lead Investigator from the Teaching Council (**the Council**).
12. There was also an Agreed Bundle of documents which included statements made by students at the time of the events, appraisal documents for the respondent and a mandatory report made by the Principal of the School to the Council. Many of these documents were produced by the Investigator.
13. Some of Mr Henderson’s cross-examination focused on the way he was treated at the school and, in particular, the school’s response to the events in 2018 and in 2020. This would have had more relevance to the Tribunal’s decision-making if Mr Henderson had intended to continue teaching. Reference is made to this later in the decision under “Penalty”.

¹ Also known as a Dean

21 November 2018 incident

Student B - [REDACTED]

14. Student B told the Tribunal that in [REDACTED] at the School. She has now left school.
15. On 21 November 2018 during period 5 Student B and Student C were in Maths class. Student B said they got bored and so decided to go outside, even though the respondent said "No".
16. They went outside and played with a frisbee for about five minutes. The respondent then came out and said, "Can I play?". Student B said that they knew he was asking to play just to get the frisbee from them and so they said, "No". Then they played a sort of piggy-in-the-middle because he was trying to take the frisbee off them.
17. Student B said that the respondent told them to go back inside but they didn't listen. He then tried to take her glasses off her face and then backed her into a wall. She explained that he did this by moving towards her as she moved backwards, and he was trying to take her glasses off her and also trying to get the frisbee off them. She said that he tried to take her glasses by reaching out his hand touching the middle of her glasses, and she backed away. He tried to grab her glasses a second time with both hands. He was reaching for the outsides of her glasses, but she raised both hands and brushed both of his hands away. He tried again and again she brushed his hands away and she asked him for a third time to stop.
18. Student B said she was walking backwards and came to a wall so didn't really have anywhere else to go. The respondent stopped less than half a metre away from her. She moved out in the open to get away from him, and he tried to take her glasses off her again but she kept pushing his arms away so that he could not. She said he tried to grab her glasses at least 4 times. She described him as being fairly close, and she was dodging him and he kept missing.
19. Student B said that the respondent then started to push her and shove her back

into the class. They were about 7 to 8 metres from the classroom. He pushed her from behind. In answer to questions from the Tribunal, she clarified that was with one hand and around the middle of her back. Student B said it was not a hard push, but she slightly lost her balance because she wasn't expecting it.

20. Student B said that after the push the respondent moved in front of her and grabbed her left wrist to try and pull her inside. His grip got tighter when he was pulling her. His grip lasted for maybe two to four seconds. At the start it did not hurt but then after a little bit it started to hurt. It felt like he was squeezing it at the same time and pulling. During this time she swore at him. She said that she may have said something like "Fuck off".
21. They went inside, and after that went out into the corridor. The respondent came out and sent everyone back inside.

Student C [REDACTED]

22. Student C read from the statement that she made in 2018. She said that on 21 November during period 5 she and Student B were sitting inside and weren't doing anything so they decided to get the frisbee and go outside. They were sitting outside for about ten minutes until the respondent came out and asked them to go inside. They asked why because there were others outside not doing anything. He then went back inside and they continued playing with the frisbee.
23. Student C said that the respondent then came back out and they were kind of playing piggy-in-the-middle and not letting him get the frisbee. He then went towards Student B and cornered her towards the wall. Student B asked him to step back and he started to try and take her glasses.
24. Student C said they kept playing frisbee and the respondent came out a third time and grabbed Student B's wrist, and pulled her inside so Student C followed. This was for about 8 to 10 seconds and he let go once they were inside the door.
25. After about ten minutes the girls were bored in class and went into the corridor. The respondent came out and pushed Student C into class.

26. In answer to questions from the Tribunal, Student C said, “To be fair, we probably pushed [the respondent]”, but she didn’t think it was the way a teacher should behave.

Iain Murray

27. The Tribunal also heard from Mr Iain Murray, the Principal at the School. He said that from what he recalled, he would get either Sarah Bateup, or Peter Brailsford, to undertake the interviews for “these types of processes”. He and Ms Bateup were both in the room for the 2018 interviews.
28. On 4 December 2018 he wrote to the respondent alleging that the respondent had physically restrained a student’s arms or wrist and held/pulled her and that he had pushed a student.
29. On 7 December 2018 the respondent submitted a response, in which he said that he had shepherded Student B into a corner and thus deprived her of the space necessary to distribute the frisbee back to Student C. When she refused an instruction to enter the classroom, the respondent escorted Student C back by her arm. He said that she moved of her own volition, and he made no effort to prevent her escaping his grasp if she so wished. He said Student C also followed behind rather than remaining alone outside.
30. In that record the respondent also said that the girls briefly settled until several boys truant from another class arrived at the door. The respondent refused their contact with any of his students and he positioned himself in the doorway to prevent their entry, while he was directing them back to the classes to which they belong, Student C made several attempts to barge past him, finding her path blocked each time. No physical contact was made.
31. The same day, a letter was addressed to Mr Henderson in which two other allegations were made regarding his attempts to remove glasses from a student’s face and proceeding to attempt to remove glasses from a student when she had requested him to stop.
32. Some notes of interview from 10 December 2018 with Student B were also

produced. This was an interview conducted by Mr Murray and Ms Bateup, who also gave evidence to the Tribunal.

33. In a letter dated 17 December 2018 Mr Murray said to Mr Henderson:

Having carefully considered your responses to the allegations, I have determined that you did physically hold a student – the detail in the accounts received are conflicting, but it is clear that physical contact was made. I have also determined that you did attempt to remove the glasses off a student's face (or gave her the perception you were trying to remove them) and that you did not stop this action despite her requesting you to stop.

34. The letter goes on to tell Mr Henderson that from Mr Murray's investigations, he had concluded that the respondent was finding classroom behaviour management of some students challenging. Professional learning and support were therefore to be offered during 2019 as follows:

- Access to professional in-school support. The respondent was to meet fortnightly with his head of department mathematics and to discuss and to provide for mathematical pedagogy and classroom behaviour management support.
- The respondent was to meet with Mr Peter Brailsford, Deputy Principal, in the first week of term one and then as the respondent felt the need, particularly in relation to behaviour management. The respondent was to participate meaningfully in all school-wide and identified professional learning at the school.
- A specialist classroom teacher, Dr Tim Shawcross, was to provide support to the respondent as a provisionally registered teacher on request.

35. The respondent was reminded not to make any physical contact with students, for example, pushing, pulling, guiding, grabbing, restricting movement or similar, particularly in regard to managing behaviour and in the day-to-day activities of the School. The respondent was to be referred to the "Code of Professional Responsibility, Examples in Practice", produced by the Council.

36. The School made no referral of the respondent to the Council on the basis of this conduct.
37. The respondent denied receiving the letter dated 17 December 2018. He did not accept that he had been under any particular programme of support or guidance following the November events. Although he attended some professional development on behaviour management, he was not aware that it was part of any particular programme to support or rehabilitate him. He attended with Mr Brailsford.
38. When asked why there had been no mandatory report to the Teaching Council of this incident, Mr Brailsford said that he had received advice that it was relatively low-level and that a reprimand would be sufficient.

Sarah Bateup

39. Sarah Bateup is the Academic and Pastoral Leader at Westland High School. Following the 2018 incident Ms Bateup spoke with four students individually. She took notes, which were not signed.

Other witnesses

40. Included in the bundle of documents were statements signed by two other students, but neither of them gave evidence to the Tribunal. [REDACTED] (Student X) said that she and another student were outside the classroom and saw the respondent trying to get the frisbee back for [REDACTED] and [REDACTED] but they didn't give it back. She said that Mr Henderson tried taking [REDACTED] glasses from her face, that he was trying to grab them.
41. [REDACTED] (Student Y) said that she was sitting outside and [REDACTED] and [REDACTED] came outside and started playing with a frisbee, Mr Henderson came out and was playing with them for a bit. She said that when they come over to where [REDACTED] and [REDACTED] were, Mr Henderson was grabbing "her" wrist and pulling over towards the class area, right by the steps. She said that [REDACTED] was trying to pull away and he was trying to pull her back. She thought that Mr Henderson just let go and went back inside, and [REDACTED] and [REDACTED] went inside after that.

The respondent

42. The respondent is no longer working as a teacher. He originally trained in 2016, taught in Wellington in 2017 and then started at Westland High School in 2018, teaching maths, statistics, physics, computing and a course on the law.
43. The respondent's account of the incident in 2018 differs from the students'. In his earlier statements, he said that he had come back from lunch and the students were not in the class. He said that he escorted student B by the elbow.
44. In cross-examination, the respondent denied having any particular issues with behaviour management of the class, that they were no more or less than for any other beginning teacher.
45. The respondent agreed that he asked the students to stop playing frisbee, that he was "piggy in the middle", but denied that he was trying to get the frisbee off them, or that he tried to grab it as it went past.
46. The respondent denied that he was angry or frustrated but accepted that he was displeased. He agreed that he had described their conduct as defiant. He denied that he was more than simply displeased, saying that he is not an emotional person.
47. The respondent denied that he tried to removed Student B's glasses. He said he was swiping but said that he was at such a distance that his actions were "pantomime". He did not accept that he swiped near her face or that he touched her glasses. The respondent did not accept that it was an action of frustration. He did not agree that the action was as close as 15 to 20cm, saying that it was at least one metre.
48. When asked if it was appropriate to swipe at Student B, the respondent said, "possibly not". He added that the description (of swiping) was probably not accurate, saying it was probably not his "best word". He said, however, that it achieved its purpose.
49. The respondent accepted that swiping close to Student B's had the potential to

- hit her, but said that his real goal was to shepherd her.
50. The respondent did not recall Student B saying, "Don't", but accepted that it could have happened, and that if she did, it possibly would not have been appropriate to continue, but added that the "pantomime" was very brief.
 51. The respondent denied pushing Student B. Although he had referred to her being in his grasp, he said that she could freely escape. He could not find the correct word to describe what he meant. He said his fingers were "half-wrapped". He denied it was a firm grip. He did not accept that he pulled her.
 52. In answer to questions from the Tribunal, the respondent agreed that his behaviour was quite disrespectful. His reason for escorting Student B was that she was closest; by bringing her back, the others would follow.
 53. The respondent said that by "pantomime", he meant an exaggerated show. Students find it funny and he can get them back on task. He did not do it to be a "cool teacher", but it made them less "anti-teacher".

10 February 2020

Student A

54. Student A gave evidence to the Tribunal.

. On 10 February 2020 she and her friend were in Maths class. She said her friend, Student Z, was taking a long time to do her work and Student A was distracting her. She started writing on the back of her piece of paper and playing noughts and crosses with her. Then the respondent threw an eraser at her. She said it was half a broken eraser, the sides had been worn off and it was about an inch long. She said she thinks he threw it overarm but she doesn't know because she wasn't really watching. She kind of saw it out of the corner of her eye.
55. The eraser hit Student A, jumping off her head and on to the ground. Student A felt a little wave of shock. She said it hurt a little bit too, maybe a 3 or 4 out of ten.
56. Student A said to the respondent, "That's child abuse". The respondent said something like, "No, that's not abuse. This is." Then he went over, picked up the

- eraser, came up in front of Student A's seat and hit her on the head. Student A said it was with an open hand, his right hand and it was about a hand away from her forehead on the left side of her head just above her ear. She said it hurt more than when the eraser hit her, maybe a 7 or 8 out of ten. She said she got a Panadol on her way to the next class because her head started hurting.
57. After the hit, Student A got up and said something like, "I'm going to tell the Deputy Principal" and walked out of the classroom. The respondent told her to come back. As she walked back to her seat, Student A said, "Do you know who my brother is?" and she believes that the respondent said no. Her explanation for asking this was because her brother was "a pain in the school".
58. Student A thought that after class finished, she went to find Ms Bateup (who was the APL).² Student A said that she can't remember if she went to find Ms Bateup or Ms Bateup found her. That is when the incident was written down in a book. Then she was sent back to class and that was it.
59. Student A would not go back to the respondent's Maths class. She ended up sitting in her brother's Maths class for every Maths period.
60. When she got home she spoke to her mum about it.
61. Included in the bundle of documents was an email from Student A's mother to the School saying that Student A had come home that day and told her that the respondent had hit her.
62. Also included in the bundle of documents was an email dated Monday 10 February 2020 at 3:20 pm sent by Fiona Lauder, Guidance Counsellor, to the Principal saying that Student A had been with her during period 3 and one of the things that was mentioned was an incident in Maths period 2. Student A had told the Student Counsellor that the respondent threw a small eraser at her and it hit her on the head. Student A then said to him, "That's child abuse". The respondent said, "That's not child abuse – this is" and then slapped her lightly on

² Academic and Pastoral Leader, also known as a Dean.

the side of her forehead.

63. At 9:09 am on Tuesday 11 February Mr Murray forwarded this email to Mr Peter Brailsford, the Deputy Principal.
64. At the hearing, Student A was asked some further questions. When asked the size of the rubber, she held up her hand, showing a gap between her thumb and forefinger that was 2 to 3 inches long.
65. When asked how hard she had been hit, Student A said it was moderate to hard.
66. Student A was asked about the email that the Fiona Lauder, Guidance Counsellor, had sent on 10 February 2020 about the incident, in statement in that email: “[Student A] told me that [the respondent] threw a small eraser at her and it hit her on the head.” It also recorded that Student A said that the respondent had slapped her lightly on the side of her forehead. Student A did not recall telling Ms Lauder this.
67. Student A was asked about a record contained in an incident report completed by Peter Brailsford on 12 February 2020, in which he recorded that the day after the incident during period 1 Miss Bateup had interviewed Student A. He recorded that when asked about the degree of force used when throwing the rubber, she said it had been thrown several metres, and was “lobbed or tossed”. When asked to describe the force used when he hit her head, it was recorded as “fairly light, but that it did hurt a little”. Student A did not remember exactly what she said.
68. Student A was also asked about an interview with Miss Bateup on 18 February 2020 that was contained in the Bundle. She did not remember saying that the respondent hit her “on my head (hair part). It wasn’t aggressive by he did hit me on my head and it hurt”.
69. Student A was asked about a typed statement dated 26 February 2020 which ends “regards [student A]”. She did not remember writing it. In that statement, it is recorded that the respondent stood in front her and threw an eraser just above her ear, “...and I said that is child abuse and was that supposed to be a joke or

not. He said that was not child abuse this is and he slapped me on the face and it heart (sic) so I got up and and said I'm going to go..." She was asked if it was accurate that the respondent slapped her across the face, and she said, "yes it is".

70. Student A was interviewed for a third time on 26 February 2020 by the Chair of the Board and two Board members, this time in the presence of her mother, who occasionally intervened and answered. It is recorded that Student A said, "[the respondent] was standing at the back of the class and he was going to help [Student Z] and then just threw the eraser at me". It is recorded that in that interview, Student A said on two occasion, "He slapped me across the face".

Sarah Bateup

71. On 18 February 2020 Ms Bateup interviewed Student A and made a handwritten record of that conversation which was provided to the Tribunal in the bundle of documents and referred to above. On the same day she interviewed Student Z and made a handwritten record of that which was included in the bundle of documents.

Peter Brailsford

72. Peter Brailsford is the Deputy Principal. He was not involved in investigating the 2018 incident.
73. In 2019 he and the respondent attended a PB4L conference in Wellington. He said that the respondent was encouraged to be involved on the basis of what had happened in 2018. Mr Brailsford said that he had various conversations with the respondent about behaviour management and offered him ongoing conversations, but he does not recall that the respondent took him up on that.
74. Included in the bundle of documents were copies of notes of interview undertaken in 2020. There was an incident report signed by Mr Brailsford and dated 12 February 2020. It records that Student A had spoken to her guidance councillor as well as two teachers. It also records that Mr Brailsford interviewed another student, Student Z. Mr Brailsford did not have clear recollections of the

interviews that were undertaken.

75. On 12 February 2020 a letter was addressed to Mr Henderson outlining two incidents:
 - (1) That he threw a rubber at a student and the rubber hit the student's head;
 - (2) That he hit the same student about the head with his hand.
76. A "informal meeting" was held at 2 pm on 14 February in the Principal's office with the Principal, the Deputy Principal and the respondent. Notes of that meeting were provided.
77. Also on the same day the Principal sent a mandatory report to the Council.
78. On 24 February 2020 the Chair of the Board notified the respondent that there would be a formal disciplinary procedure. Mr Henderson replied, and referred to that response in his evidence.
79. Student A was interviewed a further time on 26 February 2020, this time by a committee of the Board. The respondent was then interviewed by a committee on 2 March 2020.
80. The Board advised the respondent of its findings in a letter dated 18 March 2020 and invited him to attend a meeting to discuss penalties. On 19 March the respondent declined. Employment at proceedings followed, and the parties reached a settlement.

Other witnesses

81. Included in the Bundle of Documents was a handwritten note of interview/statement signed by Student Z. She said that the respondent "whacked" Student A on the head, that it wasn't a swing and a miss".

The respondent

82. The respondent said that Student A's account was not altogether accurate. He admitted that he threw a rubber, but said it was a small rubber from the end of a pencil. She giggled. He swung at Student A but did not make contact with her.
83. In a letter dated 24 February 2020 to the school's Board, the respondent said that

he gently tossed a pea-sized rubber of negligible mass in an arc which elicited a giggle on contact. He denied swinging his arm. He said he extended his arm slowly over the student's head and turned his wrist upward from a static position. The respondent said, "This was overacted in dramatic fashion specifically in order to communicate good humour, and it was received as such by the student, again provoking laughter in response."

84. At the hearing, the respondent could not recall why he threw the rubber. He said described the action as "lobbing". He denied it was with moderate force, saying it was light force. When it was put to him that it was not appropriate, he said, "I can't imagine anyone would say so". He did not recall saying, "This is child abuse". He denied that the movement was towards her head, saying that it was 20 to 30cm above her head.
85. In answer to questions from the Tribunal, the respondent agreed that Students A and X were not on task and were disrupting others, and that his own actions might well have created disruption.
86. When asked, the respondent said it was possible that he had thrown other classroom items. In explanation, he said that students would have been receptive.
87. After the 2018 incident, the respondent did not think much about what had happened and went back to class. His reflection on the 2020 incident was that he could have handled it better but there was no blow-up.

Factual findings

88. We found Student B and Student C to be credible, reasonable witnesses, who have now left school. They did not minimise their own disrespectful behaviour. They did not seem prone to exaggeration and did not have any difficulty continuing in the respondent's class for further maths classes.
89. Both witnesses gave evidence of the respondent's attempts to get Student B's glasses.

90. The Tribunal is satisfied on the balance of probabilities that the respondent corralled Student B towards the wall and attempted to get her glasses.
91. The respondent acknowledged that Student B might have asked him to stop. We accept Student B's evidence that this happened about four times and that it continued after she had asked him to stop.
92. Although the respondent may have been trying to distract Student B's attention by reaching for her glasses, we do not accept that this was merely a "pantomime". Even on the respondent's evidence of being as close as 1 to 2 metres from her, he was sufficiently close to get the frisbee from her. We therefore find that he was close enough to her that any swiping for her classes was more than pantomime and was a reasonable attempt to grab them.
93. Therefore particulars b iii) and iv) are established.
94. Particular b ii) alleges pushing Student B. Although Student B mentions being pushed, Student C has not mentioned pushing. Even the statements included in the Bundle from two other students, Student X and Student Y do not mention pushing.
95. It is possible that the respondent pushed Student B, but we are not satisfied on the balance of probabilities that this occurred.
96. As for particular b i), Student B and Student C both said that Student B was grabbed by the wrist, as do the other two statements. We find it is more likely than not the respondent held her wrist and led her in. His intention was to get her back into class, and her intention was not to go into class.
97. In 2018 restraint was defined as "use physical force to prevent, restrict, or subdue the movement of a student's body or part of the student's body". We find that the respondent used physical restraint and therefore particular b i) is established.
98. Turning to the events on 10 February 2020, the respondent admits throwing a rubber that hit Student A's head. There is a dispute about the size of the rubber.

No-one produced the rubber. The respondent said it was from the top of a pencil, about the size of a pea. Student A showed it to be about an inch long. The counsellor whom she saw immediately noted it was small rubber. We find that it was a small school rubber, broken down, and it was no more than an inch long.

99. At the hearing the respondent said that he was 2 metres away but has previously said half a metre.
100. In her evidence to the Tribunal, Student A said that she did not see the rubber being thrown, but felt it hit her. In a statement dated 26 February 2020 that appears to have been prepared by on her on her behalf, Student A said that the respondent stood in front of her and threw an eraser, and it hit her just above her ear.
101. In an interview conducted on the same day, Student A described the respondent being at the back of the classroom and coming to help Student Z.
102. In her statement to Sarah Bateup she acknowledged that it was supposed to be funny but she didn't find it funny.
103. The Tribunal finds that the respondent threw a small rubber at Student A. It was not done in anger or as an act of aggression. The Tribunal accepts that it was intended to be a light-hearted, but misguided, gesture to get Student A's attention.
104. Student A also said that Mr Henderson hit her. We found her evidence inconsistent with prior statements in relation the point of her head that contact was made and the degree of force that was used. Through no fault of Student A's, she was interviewed several times about these incidents and it is not surprising that her memory is now a little muddled. At the time of the hearing, it was over two years since the events, which is a long time in a young person's life. The Tribunal gained the impression that Student A was understandably irritated or embarrassed by the respondent's actions. Her statement to the respondent that throwing the rubber was "child abuse" was provocative, and was an exaggeration of the facts.

105. It is not known why Student Z was not called. Had the respondent been represented, it is possible that the records of Student Z's statements to the school would have been objected to as a breach of the rule against hearsay.
106. Without hearing from Student Z in person, the Tribunal attaches less weight to the statement contained in the notes of interview on 18 February 2020 with Ms Bateup.
107. In conclusion we found particulars a i) , b i), ii), iii) and iv) are established.
108. We invited submissions on serious misconduct and penalty. These were filed and the Tribunal further deliberated.

Serious misconduct

109. The definition of serious misconduct is found in section 378 of the Act:

serious misconduct means conduct by a teacher –

(a) *that –*

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

(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.*

110. The criteria for reporting serious misconduct referred to in section 378 (b) are found in rule 9 of the Teaching Council Rules 2016

CAC submissions

111. The CAC submitted that the respondent's conduct met both limbs of the above definition, in particular that it engages all three of the adverse professional effects or consequences outlined above in the definition of serious misconduct and it was conduct of a character or severity that meets one or more of the following examples for reporting serious misconduct:

(i) Rule 9(1)(a): using unjustified or unreasonable physical force on a

child or young person or encouraging another person to do so;
and/or

- (ii) Rule 9(1)(j): an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more; and/or
- (iii) Rule 9(1)(k): an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

112. The CAC submitted that the conduct was likely to adversely affect the wellbeing of one or more learners as follows:

- a) Student B's evidence was that Mr Henderson's grip when pulling her hurt her, "it felt like he was squeezing at the time same and pulling".
- b) Student A's evidence is that she experienced a low to moderate level of pain (3 or 4 out of 10) as a result of the eraser hitting her head.
- c) Further, at the hearing, Student B said that Mr Henderson's conduct "wasn't right".

113. The CAC submitted the conduct was likely to impact on students' trust in teachers and other authority figures and their feelings of security in their place of learning. These adverse impacts are also likely to have been felt by other students who viewed the conduct.

114. It was further submitted that the respondent's conduct cumulatively and/or separately adversely reflects on his fitness to teach under s 378(1)(a)(ii). His conduct was a frustration-driven response to the students' challenging behaviour, demonstrating (in those two circumstances) an inability to use appropriate behaviour management techniques, a lack of professional judgment and inadequate control over his own emotions.

115. With respect to s 378(1)(a)(iii) and r 9(1)(k) (bringing the profession into disrepute), the CAC submits that it is expected that, from time to time, teachers will experience challenging behaviour from students. That is not an excuse for a

teacher to behave in kind. Teachers' overriding responsibility is to ensure that students' wellbeing and safety are protected; using unreasonable and/or unjustified force to address challenging behaviour is inconsistent with teachers' core obligations and risks bringing the teaching profession into disrepute.

116. The CAC submitted that the respondent's conduct is of a character and severity that meets the criteria for reporting serious misconduct contained in the Rules, specifically, rule 9(1)(a) (using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so).
117. Mr Belcher referred to 139A of the Act which prohibits the use of force, by way of correction or punishment, towards any student or child enrolled at or attending the school, institution, or service, and the Tribunal's decision of *CAC v Teacher NZTDT 2014/49* where the Tribunal said:

[We] repeat as we have said in a number of cases in the past that the use of physical force – even at a lower level such as evident in this case – is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to section 139A puts his or her status as a teacher in peril.

118. Mr Belcher also referred to the Code of Professional Responsibility which sets out the standards expected of every teacher. It states that the teachers must "respect [their] trusted position in society". Learners, families and whānau, and the wider community place a significant amount of trust in teachers to guide their children and young people on their learning journey and to keep them safe. By acting with integrity and professionalism, teachers and the teaching profession maintain this trust and confidence.

119. Clause 2.1 of the Code reads:

I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.

120. The CAC submitted that the respondent's actions involved a breach of standards

set out in the Code of Professional Responsibility (**Code**) and therefore supports a finding that this was conduct that risks bringing the teaching profession into disrepute. Specifically, the respondent's actions were contrary to Clause 2.1 (promoting the wellbeing of learners and protecting them from harm). The CAC submitted that the guidance suggests inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour is an example of conduct which will not comply with clause 2.1 of the Code.

121. As for Rule 9(1)(j), the CAC submitted that the respondent assaulted Students A and B. Common assault carries a maximum penalty of imprisonment for 1 year.³ and is complete with the intentional application, or attempted application, of force by one person (the respondent) to another (the students).
122. Mr Belcher referred to *CAC v Teacher S*, it may be possible that a trivial matter may not reach a level where prosecution would be considered however, "... the rule is met simply by the possibility of the prosecution." It was submitted that the respondent intentionally used force against the students, either by grabbing and pulling by the wrist or throwing a rubber. Therefore, the possibility of prosecution exists, even if the conduct may not reach the threshold for criminal consequences to follow. The attempts to grab Student B's glasses satisfy the elements of the offence of common assault. He came close to her face on several occasions and the repeated swipes towards the student's face risked making contact and/or causing harm to her when the glasses were removed.
123. It was submitted that the unjustified use of that unjustified use of physical force will, or at the very least is likely to, bring the teaching profession into disrepute. The prohibition on the use of force against students is a reflection of societal attitudes towards corporal punishment and amounts to the crime of common assault, male assaults female and assault on a child.⁴

³ Section 196 of the Crimes Act 1961

⁴ Section 194 of the Crimes Act 1961

124. The CAC referred to previous Tribunal findings of serious misconduct for the use of force, including
- a) *CAC v Mackey*⁵ where a teacher pushed a 14-year-old against the wall, held her there and yelled and swore at her.
 - b) *CAC v Reid*⁶ where the teacher slapped a student in the head after the student continued to eat after being told three times not to eat in class
 - c) *CAC v Crump*⁷ where the teacher pulled on a student's hair tie, shepherded the student back by gently pushing on her back and twice led the student by the wrist. The conduct was in response to "defiant" behaviour by the student. The Tribunal was satisfied that leading the student by the wrist was conduct that might adversely affect the student's wellbeing and reflected adversely on the teacher's fitness but was not satisfied that it was likely to bring the teaching profession into disrepute.
125. The CAC conceded that the conduct in the present case was not as serious as that in *Reid* and *Mackey* but was more serious than *Crump*.

Respondent submissions

126. The respondent also filed comprehensive written submissions. He said that all events occurred in very public locations. All witnesses appearing for the CAC were in agreement that no student other than those directly involved took any interest in the events unfolding. The respondent said that this in noteworthy "[i]n this volatile environment where a single word awry can provoke the students to riot". The respondent referred to Student A's evidence that Student X was in a state of amusement.
127. The students did not give evidence of distress, instead speaking in abstract terms about what they think is appropriate behaviour from a teacher. The respondent submitted that if these individuals are unmoved, "it is certainly the case that the

⁵ *CAC v Mackey* NZTDT 2016-60, 24 February 2017

⁶ *CAC v Reid* NZTDT 2018-39

⁷ *CAC v Crump* NZTDT 2018-37

131. Ms Hulme also said, “Craig is a popular teacher and well-liked by many students, but not everyone “gets him” until they know him better. He is a talented teacher.”
132. The respondent did not accept Student B’s description that, “It felt like he was squeezing at the time same and pulling”, is an account of any pain experienced from this.
133. In addition he submitted that it is not contested that learning outcomes of his students in general had been exemplary, which according to modern educational research is not possible under such circumstances as s378(1)(a)(i) concerns.
134. Referring to conduct reflecting adversely on the teacher’s fitness to be a teacher, Mr Henderson observed that having worked closely across multiple tight-knit departments and with a permanent learning support team assisting in his classroom, he has enjoyed the full confidence of all who have observed him. He did not accept that the incidents were “frustration-driven” responses or that he had “inadequate control over my emotions” or that there was evidence to support such a submission. He said that all testimony described him as being perfectly collected including during the incidents in question.
135. The respondent did not accept that he had failed to “engage meaningfully with professional development” or that the evidence supported this submission. He said he had fully participated in appraisal activities to the satisfaction of school leadership, and evidence was heard that he was engaged in the school’s restorative behaviour programme. The only evidence submitted in support of this is a development plan purported to stem from the 2018 incident, but the existence of this plan was refuted by one of its stated leaders, and appraisal documentation available discusses with another of these stated leaders a wholly different development goal than this document directs to have been put in place. He also submitted that the architect of this document was also evasive in response to questioning.
136. The respondent submitted that the fact that the students had the option to remove themselves to another class, either due to an elective class structure in

2018 or a fresh school year with another class available that was briefly attended in 2020. Unanimously they all chose to continue in his care.

137. The respondent submitted that *Mackey* and *Reid* had little relevance as they both concern clear unequivocal acts of violence carried out with significant aggression, but *CAC v Crump*, however, has significant parallels in that the circumstances of the allegations were similar and the specific acts of shepherding and leading by the arm are directly comparable.
138. He said that in *Crump* the teacher stood to the left of a student, with her right arm extended for about 30 seconds. The student said, “Don’t touch me”. The teacher told her to go to the office. Because it was taking a long time and she had a class to get to, the teacher took hold of the student’s wrist to encourage her to walk in the direction of the office. The student pulled away and the respondent held the student’s wrist for a second time before the student took off towards the Room 12 area. The total time of holding the wrist was less than one minute.
139. The respondent submitted that the present case differs from *Crump* in that there was no protracted struggle, it was significantly briefer, and occurred for the purpose of guiding and not restraining the student. In *Crump*, there was clear hostility between teacher and student, and ultimately no resolution was reached. In the present case, the student accepted to return to class and described no single instance of animosity persisting after the fact.

Discussion

140. On the question of rule 9(1)(a), the respondent referred to some passages from *CAC v Rowlingson*.⁸ In fact that case was decided under a former iteration of rule 9(1)(a),⁹ which referred to the use of physical abuse. Since 19 May 2018,¹⁰ a serious breach of the Code is a basis for a mandatory referral by an employer to the Council. Such a breach includes, but is not limited to, any of the grounds listed in paragraphs (a) to (k) of the Rules. The current rule 9(1)(a) has applied

⁸ 2015/54, 9 May 2016

⁹ New Zealand Teachers Council (Making Reports and Complaints) Rules 2004, rule 9(1)(a)

¹⁰ Rule 9 was replaced on 19 May 2018, by rule 6 of the Education Council Amendment Rules 2018

since then and the use of unjustified or unreasonable physical force is now a basis for a report to the Teaching Council under the criteria for referral set out in Rule 9. Therefore the passages quoted from *Rowlingson* are not relevant to our discussion of the present rule 9(1)(a).

141. The new wording is consistent with the numerous cases in which we had found that unjustified or unreasonable physical force amounts to serious misconduct¹¹ and the Tribunal had also affirmed that the use of force for a corrective purpose, even if no aggression or anger is involved, will typically amount to serious misconduct.¹²
142. In *CAC v Welch*,¹³ the Tribunal considered section 139A of the Act, considered that the section “makes it clear that a teacher has no unique right to use force” and that “Teachers must be careful not to abuse the position of authority that they have in a classroom”. In *CAC v Batang*, it was stated that “whether the use of force is for punishment or corrective purposes does not necessarily make the conduct more or less serious; rather, s 139A makes it clear that discipline is not a justification or excuse for the use of violence”.¹⁴
143. Dealing with the conduct relating to Student A, the Tribunal has not found that the allegation of hitting Student A is established. We accept that his action in throwing the rubber was not done in anger or aggressively. We accept that he meant it to be taken in humour. It was not appropriate and ill-advised. It is not surprising that Student A took umbrage at this incident, but it is not a case of conduct that was likely to adversely affect a student’s wellbeing or learning. It was not a serious breach of the Code of Professional responsibility.
144. It is the earlier conduct involving Student B that was more concerning. The Tribunal accepts that no actual harm was caused to Student B, but attempting to grab a student’s glasses and grabbing her wrist is conduct that is likely to

¹¹ See, for example, *CAC v Haycock* NZTDT 2016/2, 22 July 2016; *CAC v Maeva* 2016/37, 24 May 2017

¹² *CAC v Haycock* NZTDT 2016-2, 22 July 2016

¹³ *CAC v Welch* NZTDT 2018-4 at [16]

¹⁴ *CAC v Batang* NZTDT 2018-47 at [10]

adversely affect a student's well-being or learning. In any setting outside the school, a man holding teenage girl by the wrist and leading her would not be tolerated. Nor is it acceptable in the school-setting. The Tribunal also finds that it is conduct that reflects adversely on Mr Henderson's fitness to be a teacher and it is conduct that may bring the teaching profession into disrepute.

145. The Tribunal also finds that this is a serious breach of the Code of Professional Responsibility. It was an unjustified and unreasonable use of force under rule 9(1)(a). It is therefore technically an assault, which therefore could be the subject of a charge under section 9 of the Summary Offences Act 1981, section 196 or 194 of the Crimes Act 1961, all of which are punishable by a term of imprisonment of 3 months or more. That makes it a breach of rule 9(1)(j) as argued by the CAC. Finally, the Tribunal finds it is conduct that is likely to bring the profession into disrepute.

Penalty

146. Section 404 of the Act provides:

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
 - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*

- (f) *impose a fine on the teacher not exceeding \$3,000:*
- (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
- (h) *require any party to the hearing to pay costs to any other party:*
- (i) *require any party to pay a sum to the Teaching Council in respect of the costs of conducting the hearing:*
- (j) *direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher*

Submissions

147. The CAC submitted that censure and conditions are appropriate to protect students' learning and wellbeing and ensure public confidence in the teaching profession.
148. Mr Belcher referred to the following passage from *CAC v McMillan NZTDT 2016/52*:
- The role of disciplinary proceedings is therefore 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.
149. In the CAC's submission, the conduct in question discloses some difficulty with behaviour management. The CAC submitted that a condition requiring the respondent to undertake a course in behaviour management would assist him to develop this area of his teaching. Further, to receive proper support and mentoring, the CAC submitted that it is necessary for any future employer (in the

education sector) to be made aware of the Tribunal's decision for two years after his return to the profession.

150. The CAC referred to comparable cases: *Reid*,¹⁵ *Crump*¹⁶ and *CAC v Davies*,¹⁷ where a teacher:

... put her hand on a student's head to stop him banging the other student's head on the desk. She put pressure on the student's head and he pushed back against her hand. She then realised what she had done and removed her hand.

151. It was submitted that the respondent's conduct is more serious than in *Crump* or *Davies* and that the respondent has not displayed any of the insight or remedial steps demonstrated in those cases.
152. The respondent said that his teaching career ended after he left Westland High. He has no personal interest in the penalty imposed and defers to the discretion of the Tribunal.
153. The respondent took issue with the CAC's suggestion that he has failed to reflect on his conduct, saying he has been nothing but forthright. He said that the CAC's case relies largely on his own evidence for credibility.

...indeed the CAC's case relies largely on my own evidence for credibility, having only the accounts of the students originating the allegations to support their case otherwise. The only evidence to the contrary is that I have challenged those aspects of the allegations that were malicious, and it is unquestionably my right and my obligation to do so. To accept the CAC's submissions on this question would be to communicate to teachers they should remain silent in response to any and all allegations or "lawyer-up", and it is clearly not in the public interest for this to be the case.

¹⁵ Above, note 6

¹⁶ Above, note 7

¹⁷ NZTDT2016/28

Discussion

154. In considering the appropriate penalty to impose in the present case, we have been guided by the principles traversed in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand*¹⁸ and further considered in the context of the Teachers Disciplinary Tribunal *CAC v Cook* NZTDT 2018-50.¹⁹
155. The respondent's conduct with Student B is not at the most serious end of the spectrum, but it is nonetheless unacceptable. We mark our disapproval by imposing a censure under section 404(1)(b).
156. The Tribunal acknowledges that the respondent's experience has put him off teaching. This is regrettable, given the favourable comments made by Ms Hulme. We believe that he had a valuable contribution to make to the teaching profession.
157. We accept the respondent's evidence that between the 2018 incident and the 2020 he was not under any particular programme of support or guidance following the November events. The Tribunal formed the view that if the respondent had received the letter dated 17 December 2018, he would likely have taken issue with it and/or ensured that any meetings were properly recorded and he struck the Tribunal as someone who would have sought specificity of the requirements, an end date, and what he needed to do to achieve that.
158. There was no evidence that apart from these two incidents anyone had raised any concerns about Mr Henderson's behaviour management or pedagogy. Someone with his qualifications would no doubt be sought after by many schools.
159. Should the respondent change his mind about returning to teaching, we do think he would benefit from some support and guidance. The Tribunal found some basis for the submission that the respondent lacks insight. That is a word that can

¹⁸ *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [51]

¹⁹ *CAC v Cook* NZTDT 2018-50, 11 April 2019

have various connotations. In the present case, we accept the CAC's submission. The respondent lacks insight in that he did not see anything wrong with throwing items at students, no matter how small. He did not seem to think that he could have handled either incident differently and did not consider he had any issues with managing behaviour of students. He is aggrieved at how he has been treated, but did not seem to have the ability to see how his actions would have appeared to others, or how it might have felt for others to experience his conduct. His approach to resolving disagreements with his Principal seemed to lack maturity in that being right seemed more important than solving a problem.

160. The Tribunal believes that if the respondent were to return to teaching, he would benefit from a behaviour management programme such as one currently offered by the Ministry of Education Understanding Behaviours.
161. The Tribunal also felt that a programme of mentoring would also assist him in reflecting on his interactions with students and peers.
162. Therefore, in addition to a censure, we decided that should the respondent return to practice, under section 404(1)(j) the following conditions are to be placed on any future practising certificate:
 - a) Within 12 months of recommencing practice he is to complete a behaviour management programme approved by the Teaching Council;
 - b) For a period of two years after recommencing practice, the respondent is to have a mentor who is approved by the Teaching Council, and any costs paid for by the respondent. The mentor is to provide reports to the Council at the end of each term for the first year and then at such intervals as the Council directs.
 - c) For a period of two years after recommencing practice, the respondent is to provide a copy of this decision to any prospective employers in the education sector.

Costs

163. The CAC referred to the Tribunal's Practice Note on costs, issued on 1 April 2022 and accepted that the costs award should reflect that Mr Henderson was not found to have committed all of the particulars alleged in the charge. It therefore submitted a 40 per cent contribution by Mr Henderson to the CAC's costs is appropriate in this case, acknowledging that the profession ought not to be expected to fund all the costs of the disciplinary regime.
164. A schedule of the CAC costs totalled \$32,316.29, which was largely the legal costs of \$30,697.35.
165. An estimate of the Tribunal costs was \$17,521.92, including accommodation and travel expenses.
166. That makes a total of \$49,838.21.
167. The respondent submitted that the costs sought by the CAC are plain nonsense. He said that the facts of the case are in no way novel, requiring no research on their part to bring the case. He had have submitted little evidence for review and called no witnesses, and made every possible accommodation to ensure the case was concluded with little obstacle. He said that he did not demand the CAC witnesses be available for questioning nor even that a hearing take place, preferring instead for it to be settled on the papers. Delays in settling this case have come against his personal objections.
168. He said that the hearing that did take place was a civil case in a tribunal, and he thought was clear from his questions of the panel that the CAC counsel was a novice, suggesting that legal fees should be at their absolute minimum. Mr Henderson said that his sole input to this process has been to refute the factual inaccuracies, a matter in which he felt he was largely successful. Mr Henderson submitted that "in spite of this most extreme cooperation", the CAC have tabled costs far in excess of other cases held before the tribunal. They have not scheduled these costs as suggested, but instead obfuscated the work

undertaken with two mere totals.

169. The CAC was asked to provide a breakdown of costs, to which the respondent has not responded.
170. As noted in the Practice Notes on Costs, where the CAC is successful against a teacher, the Tribunal has adopted the approach used in health disciplinary cases, starting with *Cooray v Preliminary Proceedings Committee*.²⁰ In that case Doogue J held that the starting point for a reasonable order of costs is 50 per cent of reasonable costs, and that in some circumstances downwards or upwards adjustment will be appropriate.
171. The Tribunal did not agree with any comments about the CAC's counsel's experience. The Tribunal may adapt its procedures according to the case. Discussion with counsel about procedure is not uncommon. The Tribunal did not consider Mr Henderson's cooperation "extreme". He could have negotiated an agreed summary of facts with the CAC. He could have agreed that his conduct was not appropriate. The charge of serious misconduct has been made out.
172. The Tribunal agrees the CAC costs are sizeable and accordingly makes some adjustment to \$24,000. A reduction is made to 33% given that not all of the charge was established. The following costs orders are made:
- a) Under section 404(1)(h) the respondent is to pay \$8,000 of the CAC costs of investigation and prosecution.
 - b) Under section 404(1)(i) the respondent is to pay \$6,500 of the Tribunal costs.

Non-publication

173. The CAC seeks suppression orders for the students. This was not contested by the respondent.
174. Balancing the public interest and the interests of the students, the Tribunal has decided it is proper to make an order under section 405(6) prohibiting publication of the name of any of the students referred to in the decision. The last four

²⁰ *Cooray v Preliminary Proceedings Committee* (Unreported, High Court Wellington Registry, AP 23/94)

sentences of paragraph 130 will also be suppressed

175. Mr Henderson did not seek name suppression.



Theo Baker
Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).