

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY
TRIBUNAL**

NZTDT 2022/44

**WĀHANGA
UNDER**

the Education Act 1989

**MŌ TE TAKE
IN THE MATTER**

of a charge referred by the Complaints
Assessment Committee to the New Zealand
Teachers Disciplinary Tribunal under
section 401 of the Act

**I WAENGA I A
BETWEEN**

**COMPLAINTS ASSESSMENT
COMMITTEE**

Kaiwhiu | Prosecutor/Referrer

**ME
AND**

JEREMY JARMAN

Kaiurupare | Respondent

DECISION OF THE TRIBUNAL

11 April 2023

Tribunal: James Gurnick (Deputy Chair)
Maria Johnson
Simon Walker

Hearing | Te Rongonga: On the papers

Representation | Hei Māngai: H Brown for the CAC
J Brown for the Respondent

Background | Tāhuhu kōrero

[1] The Complaints Assessment Committee (**CAC**) referred to the Tribunal a charge against the respondent, Mr Jeremy Jarman, alleging serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers under s 500 of the Education and Training Act 2020 (**the Act**). The CAC's notice of charge dated 16 September 2022 is set out in full below. It alleges that Mr Jarman:

On various dates between around 1 January 2019 and 11 August 2021 made inappropriate physical contact with students, including:

- (i) Touching the bottom of child A, aged 10, during a game of flag rugby;
- (ii) Placing his arm around the shoulders of child B, aged 9;
- (iii) Rubbing the stomach of child C, aged 10;
- (iv) Poking the chest of child D, aged 12;
- (v) On multiple occasions, touching/or rubbing students shoulders, including child B;
- (vi) On multiple occasions, rubbings students backs, including child E, aged 10;
- (vii) On multiple occasions, touching or rubbing students knees or thighs, including child A, child C, child F (aged approximately 11), and child G (aged 11);
- (viii) On multiple occasions, touching students on the waist, including child D and child G; and
- (ix) On at least two occasions, kissing unnamed student/s on the top of the head.

[2] The parties filed an agreed summary of facts dated 9 December 2022 which is set out in full below:

Background

1. The respondent, Jeremy Brett Jarman (Mr Jarman), is a registered teacher. He holds a practising certificate valid until 27 June 2023.
2. At all material times, Mr Jarman worked as a teacher at Windley School, a primary school in Porirua, Wellington (School). He had been working at the School since 1997. On 24 August 2021, the Teaching Council received a mandatory report from the School about Mr Jarman regarding allegations of inappropriate physical contact with multiple students.
3. On 22 September 2021, Mr Jarman signed a voluntary undertaking not to teach, which remains in place. He also remains on discretionary leave as at the date of this summary of facts.

Inappropriate physical contact with students

4. On various occasions between 1 January 2019 and 11 August 2021, while working as a teacher at the School, Mr Jarman had inappropriate physical contact with the following students. Each of the following incidents took place within the above date range.

Child A (aged 10)

5. On one occasion, during a rippa rugby game (where players wear flags around their waist which other players must rip off), Child A had been substituted off the field for another player and was standing next to Mr Jarman. Mr Jarman placed his hand on her bottom and said, "sorry I thought you still had a flag attached".

Child B (aged 9)

7. On one occasion, Mr Jarman placed his arms around Child B's shoulders and drew her close to him.
8. On other occasions, Mr Jarman placed his hands on Child B's shoulders and rubbed them.

Child C (aged 10)

9. On one occasion, Mr Jarman came up behind Child C at school and placed his hand on her stomach. Mr Jarman then rubbed Child C's stomach up and down (over her clothes).
10. On multiple other occasions, Mr Jarman placed his hand on Child C's thigh (over her clothes) and rubbed her thigh while he was seated next to her on the couch in his classroom.

Child D (aged 12)

11. On one occasion, Mr Jarman approached Child D in the playground. He then proceeded to poke the logo on Child D's shirt, which was located just above her breast area, asking her what brand it was.
12. On multiple occasions during basketball practice, Mr Jarman (who was the coach of the basketball team), would place both of his hands on Child D's waist and move her around the basketball court. This made Child D feel uncomfortable.

Child E (aged 10)

13. On multiple occasions, Mr Jarman placed his hand on Child E's back (over her clothes) while she was writing on the whiteboard in his classroom. With an open hand, Mr Jarman rubbed up and down her back, coming close to the top of her buttocks.
14. On multiple other occasions, Mr Jarman placed his hand on Child E's thigh (over her clothes) while he was seated next to her on a couch in his classroom.

Child F (aged 13)

15. On multiple occasions, as with Child A, Child C and Child E, Mr Jarman placed his hand on Child F's thigh (over her clothes) and rubbed her thigh while seated next to her on a couch in his classroom.
16. Child F was also on the basketball team. As with Child D, on multiple occasions during basketball practice, Mr Jarman would place both hands on Child F's waist and move her around the basketball court. This made Child F feel uncomfortable.
17. On one occasion in the School library, Mr Jarman kissed the top of Child F's head. This made Child F feel uncomfortable.

Child G (aged 11)

18. On multiple occasions, and as with the other children referred to above, Mr Jarman placed his hand on Child G's thigh (over her clothes) and rubbed her thigh while seated next to her on a couch in his classroom.
19. Mr Jarman would also place both hands on Child G's waist and move her around the court during basketball practices. This happened on multiple occasions and made Child G feel uncomfortable.

20. On one occasion, Mr Jarman was giving Child G a ride home from basketball practice. He placed his hand on her thigh. There was no one else in the car at the time.

School involvement

21. On 11 August 2021, the Principal of the School contacted Police regarding information he had received from the parents of a student. This student had posted a video on Tik Tok stating that his teacher, Mr Jarman, had been touching girls in his class. The School spoke with this student, who disclosed the names of a number of girls from his class that he was referring to on Tik Tok. None of the girls involved had disclosed the touching to their parents or teachers at this stage. The Police referred the matter to the Police and placed Mr Jarman on discretionary leave.
22. The Police commenced an investigation in conjunction with Oranga Tamariki. Oranga Tamariki identified 17 present and former students to be formally interviewed by Police. Of that 17, nine were deemed not suitable for interview for a variety of reasons, including no permission from caregivers and no disclosures of inappropriate touching made. The Police interviewed the nine students, seven of whom made disclosures of inappropriate touching (as detailed above). The Police then interviewed Mr Jarman but did not charge him on the basis that his conduct did not appear to involve any criminal offending.
23. On 24 August 2021, the School made a mandatory report to the Teaching Council, and the matter was referred to the Complaints Assessment Committee (CAC) to investigate.

Teacher's response

24. In his written response to the CAC, Mr Jarman noted that the student who disclosed the inappropriate touching on his Tik Tok was a challenging student and was often unhappy with Mr Jarman for trying to modify his disruptive behaviour. Mr Jarman explained that two or three days before he was placed on discretionary leave, he had sent this student to the principal's office for swearing at him.
25. In his response to the CAC and the Police, Mr Jarman accepted that he would regularly touch students on the knees, shoulders and waist. He explained that his intention was to comfort and reassure the students, and that this was a part of his teaching style. He stated that "at no point have my actions been anything other than trying to build safe, caring and effective relationships with my students."

26. In response to the specific allegations, Mr Jarman:
- a. denied touching Child A's bottom, but admitted touching her knee on the couch;
 - b. denied placing his arms around Child B and drawing her close, but admitted placing his hands on her shoulders and rubbing them;
 - c. admitted rubbing Child C's stomach and touching her knee on the couch;
 - d. denied poking Child D's shirt, but admitted placing his hands on her waist at basketball;
 - e. admitted touching Child E's knee on the couch, but could not recall rubbing her back. He admitted this could have happened but that there would have been no indecent intent if it had;
 - f. admitted to touching Child F's knee on the couch, but did not recall touching her leg in the car. He admitted this could have happened but that there would have been no indecent intent if it had; and
 - g. admitted touching Child G's knee on the couch and placing his hands on her waist at basketball. He did not recall kissing Child G on the head but admits to doing this to two other "unnamed" students.
27. With regard to touching students around the waist at basketball, Mr Jarman's said that this was a necessary coaching technique for students of that age in order to get them to stand in the correct position on the court.
28. Mr Jarman also explained that he had undertaken research that suggested touch can help build relationships. However, he was upset and embarrassed that his conduct made students feel uncomfortable and that he did not realise this was the case at the time.
29. When asked by the CAC if he had received any up-to-date guidance or advice about physical contact with students, Mr Jarman said he had not previously considered changing his practice and that was an error of judgment on his part. He explained that, if he is to return to teaching, which he hoped to do, he would change his teaching style.

Process

[3] The parties agreed that the hearing could proceed on the papers. We have received written submissions from both parties.

[4] At the outset the respondent accepts his conduct amounts to serious misconduct. Mr Jarman has been fulfilling a voluntary undertaking not to teach since 22 September 2021 (approximately 17 months).

Relevant Law to be Applied to the Charge

[5] Section 10(1)(a) of the Act defines “serious misconduct” as conduct by a teacher that either:

- (a) Adversely affects, or is likely to affect, the wellbeing or learning of one or more children; and/or
- (b) Reflects adversely on the teacher’s fitness to be a teacher; and/or
- (c) May bring the teaching profession into disrepute.

[6] For serious misconduct to be made out, as well as meeting one or more of the three limbs set out above, the conduct must at the same time meet one or more of the Teaching Council’s criteria for reporting serious misconduct. These rules make the following behaviour mandatory to report.

[7] In this case, the CAC relies on rr 9(1)(e)¹ and (k).²

¹ Teaching Council Rules 2016, r 9(1)(e) - “...breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher’s position as a teacher; for example,— (i) engaging in an inappropriate relationship with the child or young person: (ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:”

² Teaching Council Rules 2016, r 9(1)(k) - “...an act or omission that brings, or is likely to bring, the teaching profession into disrepute.”

[8] While the burden rests on the CAC to prove the charge on the balance of probabilities, we note the respondent accepts his behaviour constitutes serious misconduct.

[9] We are satisfied that the conduct adversely affected the wellbeing and learning of the students noting that child A, child D, child F, and child G said that Mr Jarman's actions made them feel "uncomfortable".³

[10] Secondly, we are satisfied that Mr Jarman's conduct reflects adversely on his fitness to teach. The physical contact he had with the students was not necessary and breached appropriate professional boundaries, having regard to the Code of Professional Responsibility (**Code**) and the commitments to demonstrate a high standard of professional behaviour and integrity, to promote the wellbeing of learners and protect them from harm, and to engage in ethical and professional relationships with learners that respect professional boundaries.⁴

[11] In relation to physical touching, we accept what the Tribunal said in *CAC v Huggard*:⁵

When a student feels uncomfortable with a teacher's interactions, it is difficult for the student to tell a teacher to leave [him] or her alone ... as the adult and a teacher, the respondent had a responsibility to maintain professional boundaries ... he was in a position of power and responsibility, where he should role model appropriate behaviour. His actions should attract esteem, not discomfort or fear.

[12] And what the Tribunal said in *CAC v Luff*:⁶

As a teacher, he had a responsibility to exercise some self-discipline and restraint and maintain professional boundaries. Reasons for this are many. Students should be free from any type of exploitation, harassment or emotional entanglement with teachers. In other words, they should be free from having their learning or wellbeing adversely affected ... There are enough emotional and social challenges for students without a teacher adding to the confusion.

³ Agreed summary of facts at [6], [12], [16], [17], and [19].

⁴ Code of Professional Responsibility at clause 1.4, 2.1 and 2.2.

⁵ *CAC v Huggard* NZTDT 2016/33, at [20]-[21].

⁶ *CAC v Luff* NZTDT 2016/70, at [11].

[13] While finding that Mr Jarman has fallen below the standards expected of a teacher, we note there was no sexual or indecent motivation to the touching. Following what seems a thorough Police investigation, no criminal charges were laid as the conduct did not involve criminal offending.

[14] We note that Mr Jarman did not shy away from accepting he regularly touched students on the knees, shoulders, and waist, and that his intention was to comfort and reassure students and that this was a part of his teaching style. He stated “at no point have my actions been anything other than trying to build safe, caring and affective relationships with my students.” Mr Jarman was upset and embarrassed that his conduct made students feel uncomfortable and that he did not realise it at the time. Apart from minor disagreements with the particulars of the touching, Mr Jarman admitted touching the children in the various ways described.

[15] While Mr Jarman’s actions were not acceptable, we are pleased Mr Jarman accepted full responsibility for his actions and acknowledged his actions did constitute serious misconduct.

Penalty

[16] The CAC has sought a rehabilitative penalty and submits the following orders are appropriate:

- (a) An order for censure, to mark the tribunal’s disapproval of Mr Jarman’s conduct;⁷
- (b) An order for suspension from teaching for 6-12 months;
- (c) Annotation of the Public Register for a period of two years or until the conditions referred to below have been complied with, whichever is later, to ensure public protection and maintenance of professional standards;⁸ and

⁷ Education and Training Act 2020, s 500(1)(b).

⁸ Education and Training Act 2020, s 500(1)(e).

(d) An order directing that the Teaching Council impose conditions on Mr Jarman's current or any future practising certificate and that those conditions remain until they have been complied with.⁹

[17] Mr Jarman has no personal aggravating factors that are relevant to penalty. The CAC accepts the following are mitigating factors:

- (a) Mr Jarman has no previous disciplinary history;
- (b) He has accepted responsibility for his conduct;
- (c) He had cooperated in the course of the disciplinary process; and
- (d) He has apologised and expressed remorse.¹⁰

[18] Mr Jarman wishes to return to teaching. Mr Jarman has advised the Tribunal that he has undertaken some research on professional boundaries and education and readily recognises that his conduct had breached the Code. Mr Jarman has reflected on the proposed practical changes he intends to make if he resumes practise as a teacher. Mr Jarman has confirmed he no longer intends to coach representative sport given the inevitability of physical contact in that area.

[19] The Tribunal is required to consider the range of powers available to it under s 500 of the Act and to impose the least restrictive penalty that can reasonably be imposed in the circumstances.

[20] This is a case which will not result in the cancellation of Mr Jarman's registration to teach.

[21] Mr Jarman began teaching in 1993. From 1995-2000, he studied and taught at the same time earning a higher diploma in teaching and an advanced diploma in teaching. In 2002 he received a study award and completed his bachelor's degree in education. In 2017, he was

⁹ Education and Training Act 2020, s 500(1)(j).

¹⁰ Reflective statement at [23]-[26], and [35].

appointed to the school's leadership team.

[22] While his conduct was well intended, and at times he may have considered he was taking a "fatherly approach", that was not his role. Mr Jarman's role was to teach, guide and nurture. His intentions were misguided. We are satisfied that he is remorseful for his conduct and he understands the impact his actions have had on his students. We are satisfied that he is taking steps to further educate himself on the importance of keeping professional boundaries. For that reason, we make the following orders:

- (a) Censuring Mr Jarman for his conduct;
- (b) An annotation is to be recorded on the Public Register for a period of two years; and
- (c) The Teaching Council is directed to impose the following conditions on Mr Jarman's current or any future practising certificate until the conditions have been complied with, namely:
 - (i) To work with a mentor for a period of one year, meeting not less than once a quarter;
 - (ii) To ensure that at six and 12 months the mentor is to provide written updates on the teacher's progress; and
 - (iii) To notify any current or future employer of the Tribunal's decision for a period of two years.

[23] The CAC has sought an order for suspension from teaching for 6-12 months. As discussed above, Mr Jarman has complied with a voluntary undertaking not to teach since 22 September 2021 (approximately 17 months). On that basis, we consider Mr Jarman has already effectively served any suspension and to impose an additional suspension is unnecessary in the circumstances.

Non-Publication

[24] Mr Jarman does not seek permanent name suppression. No order for suppression of Mr Jarman's name is made.

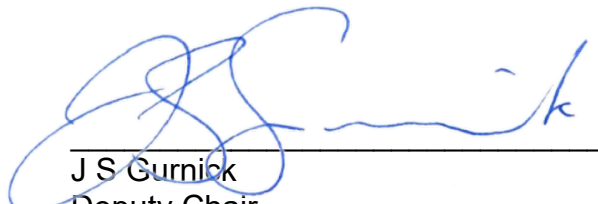
[25] We did not receive any submissions relating to name suppression from the school. Given the delay in this matter reaching the Tribunal, we are satisfied that there are no details contained in this decision that would lead to the children involved being identified. There is no order for suppression of the school.

[26] As indicated above, while there are no details that in our view would lead to the identity of the children becoming known by this decision, we nevertheless make a final order suppressing any names or identifying particulars of any student involved in this matter.

Costs

[27] As this matter has been determined on the papers and the respondent has fully cooperated both in terms of the investigation and in accepting responsibility, it is appropriate that a reduction in costs is made. On that basis, we direct that an award of costs in favour of the CAC is appropriate in the amount of \$2,736.00.¹¹

[28] In addition, it is appropriate that the Tribunal's costs be met. For the same reasons, the Tribunal's costs totalling \$582 are also ordered to be paid by Mr Jarman.¹²



J S Gurnick
Deputy Chair

¹¹ Being 40% of actual costs of the CAC in accordance with the Education and Training Act 2020, s 500(1)(h) and Practice Note 1 of Teachers Disciplinary Tribunal relating to costs.

¹² 40% of the total costs of the Tribunal.