

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

DECISION NO: NZTDT 2022/28

UNDER THE Education Act 1989

IN THE MATTER of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **AUGUST JUNIOR LEAUPEPE** registered teacher (Registration Number 326291), of Auckland

Hearing held on the papers on Tuesday, 15 August 2023

Tribunal: Jo Hughson (Deputy Chairperson),
Kiri Turketo, Louise Arndt (registered teachers)

Shannon Hullett (Tribunal Coordinator)

Appearances: Ms C Best and Mr E McCaughan for the Complaints
Assessment Committee

Mr Leaupepe (no submissions filed by or for him)

Decision: 8 September 2023

Summary

- [1] Mr Leaupepe was first registered as a teacher and provisionally certificated on 16 March 2016. His provisional registration expired on 16 March 2021.
- [2] In July 2019 Mr Leaupepe was employed as a teacher aide at Flat Bush Primary School in Otara, South Auckland. On 6 July 2019 the Principal filed a mandatory report with the Teaching Council about Mr Leaupepe's assault of a 10-year-old student when he was teaching in a classroom at the school on 5 July 2019. On that date Mr Leaupepe was relief teaching in the classroom in question, rather than teacher aiding.
- [3] In respect of his alleged assault on this student, on 20 May 2020 Mr Leaupepe was charged with assaulting a child under section 194(a) of the Crimes Act 1961. This offence is punishable by a maximum penalty of two years' imprisonment. Mr Leaupepe pleaded guilty to the charge on 16 March 2021. He was discharged without conviction by Judge R J Earwaker in the Manukau District Court on 16 August 2021.
- [4] On 21 April 2022, the Complaints Assessment Committee (CAC) appointed by the Teaching Council concluded its investigation into the mandatory report and determined to bring a disciplinary charge against Mr Leaupepe.
- [5] The CAC charged that on 5 July 2019, whilst teaching in the classroom at Flat Bush Primary School, Mr Leaupepe assaulted Student Z (aged 10). This conduct was alleged to amount to serious misconduct. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitled the Tribunal to exercise its powers pursuant to section 404 of the Act.
- [6] The Charge was heard on the papers. The evidence produced by the CAC was an agreed summary of facts which Leaupepe had signed on 17 March 2023¹. The Ruling of Judge Earwaker on Mr Leaupepe's application under section 106 of the Sentencing Act 2002 (for a discharge without conviction) was also produced².

¹ Agreed Summary of Facts signed by both Counsel for the CAC (Ms Best) and Mr Leaupepe.

² Hearing Bundle, pages 32-38. *New Zealand Police v August Junior Leaupepe* [2021] NZDC 16590.

- [7] Written submissions were received from Counsel for the CAC addressing the issues of liability and penalty.
- [8] The Tribunal found the Charge made out and that Mr Leaupepe's action amounted to serious misconduct as that term is defined in section 378 the Act.
- [9] The decision of the Tribunal is that penalties should be ordered against Mr Leaupepe for his act of serious misconduct. Mr Leaupepe is censured; for a period of one year from the date of this decision the Register is to be annotated to note the censure; and there are to be conditions on any subsequent practising certificate that may be issued to Mr Leaupepe, to apply for one year. The conditions are designed to ensure that Mr Leaupepe receives appropriate support in his teaching practice. The Tribunal considered that without having had the supports that a first-year teacher would have had at the time of the conduct (when he was fulfilling a relief teacher role), he had been put in a precarious position. The Tribunal considers that Mr Leaupepe would benefit from professional development and support in classroom management and student behaviour management. The Tribunal does not want to see Mr Leaupepe lost to the teaching profession, particularly at a time when Pasifika teachers are in short supply.
- [10] Mr Leaupepe is also being ordered to contribute towards the costs of the CAC and the Tribunal associated with these proceedings.
- [11] Mr Leaupepe did not seek permanent name suppression. His name may be published in connection with these proceedings.
- [12] The name of the student (Student Z) is permanently suppressed pursuant to an order the Tribunal made under section 405(6) of the Act. This permanent order was made to protect the privacy and wellbeing interests of the student. There is no public interest in the student's name being published.
- [13] At a pre-hearing conference held on 9 March 2023, the Deputy Chairperson, Ms Hughson, directed Counsel for the CAC to notify Flat Bush Primary School of hearing dates and discuss the School's position on non-publication orders. No order was sought in respect of the name of the school.

Factual Findings

- [14] The Tribunal made the following findings of fact based on the evidence in the Agreed Summary of Facts.

[15] The offending was (as described in the Police summary of facts, which Mr Leaupepe accepted as part of his guilty plea to the criminal charge brought against him in the District Court):

- (a) On 5 July 2020 at about 10.30am, Student Z, who was 10 years old, was in his classroom at Flat Bush Primary School, along with 22 other students.
- (b) Mr Leaupepe was a relieving teacher on that day for the classroom.
- (c) The students in the classroom were tasked to complete a word search exercise. While they were completing this exercise, Student Z took another student's paperwork and was refusing to return it to the student.
- (d) Mr Leaupepe asked Student Z to return the other student's paperwork to the student.
- (e) Student Z responded by saying "you are not the boss of me".
- (f) Mr Leaupepe said to Student Z, "Yes, I am".
- (g) Student Z replied by saying "No, my dad is".
- (h) Mr Leaupepe lifted Student Z from his chair by holding onto the back of his t-shirt using both his hands. This caused the student's feet to be lifted off the ground.
- (i) Mr Leaupepe forcefully walked Student Z out of the classroom.
- (j) Whilst being walked out of the class, Student Z struggled in an attempt to escape from Mr Leaupepe, causing the side of his hip to bang against a trolley that was in the classroom.
- (k) Mr Leaupepe opened the classroom door using one of his hands while he was still holding Student Z around the back of his t-shirt with his other hand.
- (l) Mr Leaupepe threw Student Z on the deck outside the classroom with force.
- (m) Student Z landed on the wooden deck outside the classroom, hitting the right side of his body on the ground.

- (n) As a result of the incident, Student Z could not breathe properly for some time and the right side of his body was grazed, bruised, and sore.
- (o) Mr Leaupepe, in his explanation to Police, stated that he did not drag the student; he lifted him up and escorted him out of the classroom. He stated that the student was holding onto his arms, and he let go of him, so he probably fell when he let go of his arms. Mr Leaupepe said he did not know how the student got the bruises, but it was either when he fell or when he grabbed him. Mr Leaupepe acknowledged that maybe his grip “got him hard”.

Legal Principles - Liability

[16] It was for the CAC to prove the charge on the balance of probabilities.

[17] The definition of serious misconduct in section 378 of the Education Act 1989 (this Act has been repealed and replaced by the Education and Training Act 2020 which contains an identical definition) was:

Serious misconduct means conduct by a teacher –

- (a) that-
 - (i) adversely affects, or is likely to adversely affect, the wellbeing 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.

[18] The test is conjunctive³. That means that as well as being behaviour by a teacher that has one (or more) of the adverse professional effects or consequences described in subsection (a) (i)-(iii), the conduct must also have been of a “character or severity” that meets the Teaching Council’s criteria for reporting serious misconduct.

³ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64] with reference to the definition in section 378 of the Education Act 1989.

[19] Rule 9(1)(a), (j), and (k) in Part 3 of the Teaching Council Rules 2016 (the Rules) were relied on by the CAC⁴:

9 Criteria for reporting serious misconduct

(1) A teacher’s employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to):¹ or more of the following:

(a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:

....

...

(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.

(k) an act or omission that brings or is likely to bring the teaching profession into disrepute.

[20] Rule 9(1)(k) is a “catch-all” provision. An act or omission will satisfy this if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the teacher’s behaviour.

[21] Whether there has been serious misconduct (or misconduct simpliciter⁵) and the severity of any such misconduct, is to be assessed by objective standards.

[22] Previous Tribunal decisions demonstrate that “fitness to be a teacher” in the definition of serious misconduct includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct

⁵ The District Court on appeal, has ruled that if any one of the matters under limb (a) of the definition of serious misconduct are made out, the teacher’s conduct will amount to misconduct, whereas if the conduct also meets limb (b), the conduct will meet the conjunctive test for serious misconduct; *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64]. *Evans v Teachers Disciplinary Tribunal* [2020] NZDC 20062, 8 October 2020, at [42].

which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.⁶

- [23] Subjective matters that are personal to the respondent teacher are not to be considered in any significant way when the Tribunal objectively assesses whether there has been serious misconduct. Personal factors raised by the teacher, including explanations for their conduct, are to be considered at the penalty stage if a charge is found to have been established.⁷

Relevant standards

- [24] The Tribunal assessed Mr Leaupepe's conduct against the following standards.

Section 139A

- [25] Section 139A(1) of the Act prohibits a teacher at a registered school using force, by way of correction or punishment, towards any student or child enrolled at or attending the school.

- [26] In *CAC v Teacher*⁸ the Tribunal commented about the use of physical force to any degree in the school environment:

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 evidence in this case – is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to s 139A put his or her status as a teacher in peril.

Code of Professional Responsibility

- [27] The high standards for ethical behaviour that are expected of every registered teacher are contained in the Teaching Council's Code of Professional Responsibility (the Code). The Code states that teachers must "respect [their] trusted position in society". By acting with integrity and professionalism, teachers, and the teaching profession, maintain the trust and confidence that learners, whānau, and the wider

⁶ This is the approach taken to "fitness to practise" for the purposes of the Health Practitioners Competence Assurance Act 2003, and the approach which has been taken to the test for "fitness to be a teacher", by this Tribunal in previous decisions.

⁷ See *Martin v Director of Proceedings* [2010] NZAR 333 and *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, at [126]-[130] applied in previous decisions of this Tribunal.

⁸ NZTDT 2014/49.

community place in them to guide their children and young people on their learning journey and keep them safe.⁹

[28] Clause 1 sets out the expectation that teachers demonstrate a high standard of professional behaviour and integrity (clause 1.3). This is required to maintain public trust and confidence in the teaching profession.

[29] Clause 2 sets out the expectation that teachers work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm; and engaging in ethical and professional relationships with learners that respect professional boundaries.

[30] The Code was issued with 'Examples in Practice'. The examples include behaviours that are unacceptable and in breach of the Code.¹⁰ An example given of behaviour that does not promote learners' wellbeing and may cause harm (clause 2.1) include:

- Inappropriate handling such as physically grabbing, shoving, or pushing, or using physical force to manage a learner's behaviour; and
- Using verbal or body language that is unreasonable and inappropriate (for example, using aggressive, threatening, or humiliating language, or using an intimidating stance or demeanour).

[31] A number of previous cases demonstrate that conduct of the nature the Tribunal has found occurred here, will likely amount to serious misconduct. Counsel for the CAC referred in detail to five comparable cases which involved teachers who had assaulted students in the classroom.¹¹

[32] In *CAC v de Kriek*¹² which the Tribunal is the most comparable case, the teacher was teaching a Year 7 and 8 maths class. She went to the computer room to help a

⁹ *CAC v Teacher Z* NZTDT 2020/19 at [26].

¹⁰ Code of Professional Responsibility, 'Examples in Practice' (Education Council, Wellington, June 2017).

¹¹ *CAC v Deans* NZTDT 2015/66; *CAC v X* NZTDT 2013/26, *CAC v Allen* NZTDT 2015/15, *CAC v de Kriek* NZTDT 2019/132, and *CAC v Meads* NZTDT 2021/65.

¹² *CAC v de Kriek* NZTDT 2019/132.

student who was having difficulty with a computer. When she saw that R (a Year 7 student) was playing a game on his computer, she spoke angrily to him. R turned his chair and Ms de Kriek took him by his collar and pulled towards her. Ms de Kriek continued to pull his collar as R stood up. The matter was reported to Police and Ms de Kriek was issued with a warning for assaulting a child under section 194(a) of the Crimes Act 1961. The Tribunal considered that Ms de Kriek's conduct was serious misconduct, commenting at [18] of its decision:

While the incident involved a momentary loss of control, nonetheless the respondent used physical force against a student. Such a response by a teacher and the obvious loss of self-control reflects adversely on the respondent's fitness to be a teacher.

Findings on the Charge

[33] The Tribunal was satisfied that the alleged act in the Charge was proved, on the evidence received.

[34] As to whether the established conduct was serious misconduct, the Tribunal accepted the following submissions that were made for the CAC:

- (a) Mr Leaupepe's conduct was an inappropriate and unprofessional way to deal with a student's misbehaviour. It involved breaches of Clauses 1 and 2 of the Code of Professional Responsibility.
- (b) Mr Leaupepe's conduct was likely to adversely affect the wellbeing or learning of the student involved. The student suffered injuries as a result of the incident. Limb (a)(i) of the definition of serious misconduct is met.
- (c) The conduct reflects adversely on Mr Leaupepe's fitness to be a teacher. Regardless of the circumstances, no teacher should use physical force to correct a child's behaviour. Limb (a)(ii) is met. The Tribunal acknowledges that it would appear that Mr Leaupepe momentarily lost control.
- (d) Reasonable members of the public, informed of all the facts, would likely consider that Mr Leaupepe's conduct breached the trust and professionalism that is expected of members of the teaching profession, and that the profession has been brought into disrepute. Limb (a)(iii) is also met.

- (e) In terms of rule 9(1)(a), Mr Leaupepe's use of force was both unjustified and unreasonable. There were other ways that he could have dealt with Student Z's behaviour.
- (f) Indisputably, Rule 9(1)(j) is met because Mr Leaupepe was prosecuted and pleaded guilty to a criminal charge of assaulting a child, which carries a maximum penalty of 2 years' imprisonment. The fact that Mr Leaupepe was discharged without conviction makes no difference.
- (g) Rule 9(1)(k) is also met, for the same reason as the Tribunal has found that that limb (a)(iii) is met.

[35] For those reasons the Tribunal's opinion was that the test for serious misconduct is met. Accordingly, the Charge is established.

Penalty

[36] Having made an adverse finding of serious misconduct, the Tribunal was entitled to exercise its powers under section 404 of the Act. The Tribunal could do one or more of the things set out in section 404(1).

[37] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who have been found guilty of a disciplinary offence are to maintain professional standards (through general and/or specific deterrence, so that the public is protected from poor practice and from people unfit to teach), to maintain the public's confidence in the teaching profession, and to protect the public through the provision of a safe learning environment for students¹³.

[38] In previous decisions the Tribunal has accepted as the appropriate sentencing principles those identified by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*¹⁴. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in proceedings of this nature. Those factors are:

- (a) What penalty most appropriately protects the public.
- (b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.

¹³ As discussed in *CAC v McMillan* NZTDT 2016/52 at [23].

¹⁴ [2012] NZHC 3354 at [44]-[51].

- (c) Penalties imposed may have a punitive function.
- (d) Where it is appropriate, the Tribunal must consider rehabilitating the professional.¹⁵
- (e) The Tribunal should strive to ensure that any penalty imposed is comparable to penalties imposed in similar circumstances.
- (f) It is important for the Tribunal to assess the practitioner's behaviour against the spectrum of sentencing options that are available. In doing so, the Tribunal must try to ensure that the maximum penalties are reserved for the worst offenders.
- (g) The Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- (h) It is important for the Tribunal to assess whether the penalty it is to impose is fair, reasonable, and proportionate in the circumstances presented to the Tribunal, or not.

[39] In *Fuli-Makau*¹⁶ the Tribunal identified that cancellation of a teacher's registration may be required in two overlapping situations:

- (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.

Evidence relevant to penalty

[40] The Tribunal took into account the following comments and/or matters arising from Judge Earwaker's Ruling in the District Court at Manukau when he discharged Mr Leaupepe without conviction in August 2021:

¹⁵ *CAC v Teacher* NZTDT 2016/55 at [30].

¹⁶ *CAC v Fuli-Makau* NZTDT 2017/40 at [54] citing *CAC v Campbell* NZTDT 2016/35 at [27].

- (a) At that time, Mr Leaupepe indicated that he still wished to pursue a career in teaching.
- (b) The primary aggravating features of the offending were that it involved a breach of trust, and the student victim was vulnerable because of his age.
- (c) The mitigating features included that Mr Leaupepe pleaded guilty at the first opportunity, he showed genuine remorse, he offered to participate in a restorative justice process with the student (which the student declined), he had no previous convictions, and he had offered to pay \$300 reparation to the student.
- (d) According to the student's caregiver, the boy was initially hurt and upset, but had eventually "gotten over it".
- (e) Mr Leaupepe's goal was to become a primary school teacher. Prior to his tertiary studies and obtaining his Bachelor of Education, he had worked as a teacher aide for seven years between 2008 and 2015.
- (f) Mr Leaupepe enjoyed working with children and believed he could make a difference as an educationalist. He came from a family of teachers; his mother was a teacher and seven of nine of his siblings are also teachers.
- (g) Mr Leaupepe also has training as a youth pastor at the Christian College in Blenheim and had done voluntary work in his community.
- (h) Assault on a child is a specified offence for the purposes of section 28 of the Children's Act 2014. If Mr Leaupepe was convicted of a charge of assaulting a child, pursuant to the Children's Act 2014, the Teaching Council would be required cancel his registration as he would be a teacher who has been convicted of a specified offence (unless he obtained an exemption under the Act from the Chief Executive of the Ministry of Social Development. Such an exemption can only be granted if the Chief Executive is satisfied that a person would not pose an undue risk to the safety of children if they were employed or engaged as a teacher).
- (i) Regardless of whether Mr Leaupepe was convicted or not, information about the incident would still likely be available to potential teaching employers via the Police vetting procedure.

- (j) The Judge considered the matter was finely balanced. On the one hand, Mr Leaupepe had attempted to remove a disruptive child from a classroom in a totally inappropriate way, possibly due to Mr Leaupepe's inexperience. On the other hand, the Judge accepted that a conviction would make it much more difficult for Mr Leaupepe to obtain a teaching position in the future.
- (k) Ultimately the Judge decided to discharge Mr Leaupepe and took account of the views of the student who did not oppose a discharge, Mr Leaupepe's willingness to pay \$300 reparation (which the Judge ordered him to pay), his genuine remorse, and the fact that the incident was out of character for Mr Leaupepe.

Submissions for the CAC

- [41] With reference to several previous cases where the Tribunal has considered a teacher's rough handling or mistreatment of students, including *Meads*¹⁷ (a high school teacher who violently shoved a student during a basketball game in an apparent retaliation for that student shoving another student), it was submitted for the CAC that Mr Leaupepe's conduct was extremely serious, involving as it did an assault on a 10-year-old boy who suffered injuries. It was submitted that cancellation of a teacher's registration was arguably the only sufficient response to conduct of that nature.
- [42] The CAC rightly acknowledged, however, that there have been cases where teachers who have committed similar sorts of acts, have been able to continue teaching even when they have been prosecuted criminally. It was recognised that a teacher's response after the conduct has occurred will be relevant in terms of penalty.
- [43] The CAC acknowledged the following matters:
- a. Mr Leaupepe cooperated with the Police investigation, and he pleaded guilty at an early stage. As part of that plea Mr Leaupepe offered to participate in a restorative justice process with the student.
 - b. Judge Earwaker considered that Mr Leaupepe was remorseful.

¹⁷ *CAC v Meads* NZTDT 2021/65.

- c. As of 1 March 2022, Mr Leaupepe advised the CAC that he did not intend to return to teaching¹⁸. The CAC is not certain whether this remains the case.
- d. Mr Leaupepe cooperated with the CAC including by signing an agreed summary of facts¹⁹

[44] It was submitted for the CAC that if the Tribunal considered that cancellation was not required in this case, the appropriate disciplinary response to Ms Leaupepe's established conduct would be censure, annotation of the Register for a period of two years, and conditions to apply to any practising certificate subsequently issued to Mr Leaupepe for a period of two years.

Findings on Penalty

[45] The Tribunal considered the relevant penalty principles including the previous comparable cases, as well as the submissions that were made for the CAC. The mitigating features that were acknowledged by the CAC were taken account of.

[46] The Tribunal considered that Mr Leaupepe's conduct was serious, although at the lower end of the scale of seriousness for assaults on students in the classroom that have been the subject of prior cases. Student Z was only 10 years old and although he was misbehaving, it was Mr Leaupepe who had the position of trust and responsibility and who needed to have responded in an appropriate manner.

[47] That said, there was no suggestion or evidence that Mr Leaupepe's conduct was part of a pattern of inappropriate behaviour. In the criminal proceedings, the Police acknowledged that Mr Leaupepe was simply attempting to remove an unruly child from the classroom, rather than deliberate conduct in the nature of, for example, a blow to the student's face or a slap to the face.²⁰ On the evidence before the Tribunal, it appeared that Mr Leaupepe's act was a one-off momentary loss of control.

[48] The Tribunal considered that Mr Leaupepe's was at a similar level of seriousness as that in *de Kriek*. In her response, Ms de Kriek had accepted she spoke angrily

¹⁸ Agreed Summary of Facts at [9].

¹⁹ Memorandum for the CAC dated 31 March 2023 requesting the in-person hearing scheduled for 15-16 August 2023 to be vacated in favour of a hearing on the papers now that Mr Leaupepe had signed an agreed summary of facts.

²⁰ As was the situation in the case of *Pereira v New Zealand Police* [2019] NZHC 2130.

towards the student, R, and that she pulled him by the collar. She had stated she had seen a psychologist to identify the triggers leading up to the incident and to develop better strategies to prevent it occurring again. In that case, the Tribunal took into account the efforts Ms de Kriek had made to rehabilitate herself after the incident and to try and mitigate the damage from her actions. It also factored in that her employer was highly supportive. For those reasons the Tribunal did not consider that cancellation of Ms de Kriek's registration was necessary or warranted. Instead, the Tribunal made orders of censure, and conditions (to apply for 12 months). The conditions were that the teacher was to provide a copy of the Tribunal's decision to any current or prospective employer, was to practise under the guidance of a mentor approved by the Teaching Council (which may also stipulate the form of mentorship and the provision of mentorship reports or updates) and was required to undertake any professional development programmes that the Teaching Council considered would assist in the area of positive guidance in and outside the classroom (and to provide proof of engagement with that training)).

[49] *Meads* was another comparable case where the Tribunal decided not to cancel the teacher's registration. That was a case where the teacher did not admit the assault (a two-handed shove during a basketball), was found guilty in the District Court, and still did not show any insight or remorse before the Tribunal. The Tribunal was influenced by the fact the matter had involved a single incident at the end of a long teaching career, Mr Meads's employer had allowed him to continue to teach after the incident, and he had resigned and was no longer teaching. The Tribunal was also influenced by the Judge's decision to discharge Mr Meads without conviction, which was considered to reflect the Judge's belief that Mr Meads did not pose such a risk that he ought not be a teacher. The same can be said of Judge Earwaker's decision in respect of Mr Leaupepe.

[1] Taking all relevant matters into account, the Tribunal was satisfied that it was appropriate and necessary to impose a formal penalty. The Tribunal was of the view that there could be no doubt Mr Leaupepe's conduct was of sufficient severity to warrant the imposition of disciplinary penalties to maintain professional standards and protect the public. There is a need also to send a message to members of the teaching profession that misconduct of the nature the Tribunal has found here is serious will likely almost always justify the imposition of a penalty. However, the Tribunal considered that in this case, there needed to be a rehabilitative component of the penalties ordered.

- [2] The Tribunal did not place any significant weight on the fact that Mr Leaupepe had indicated he did not intend to return to teaching. Any teacher who gives such an indication to the Tribunal is not bound by such an indication and could later decide that he or she may return to the profession.
- [3] The Tribunal was concerned that on the day in question, Mr Leaupepe had been placed into a classroom as a relieving teacher, when he had not previously had experience as a practising teacher or had the benefit of guidance and mentoring that a beginning teacher is entitled to. He had prior experience as a teacher-aide. The Tribunal did not consider it fair or reasonable for Mr Leaupepe to shoulder all the blame for what occurred with Student Z, given that situation.
- [4] The Tribunal considered that by signing an agreed summary of facts, this indicates that Mr Leaupepe has a degree of insight into the gravity of his offending.
- [5] The Tribunal wishes to signal to Mr Leaupepe that the Tribunal believes that with appropriate support and professional development, he can be rehabilitated and ought not be lost to the teaching profession, particularly at a time when there is a shortage of Pasifika teachers. He is encouraged to apply for a practising certificate and move forward with a career in the profession.
- [6] In summary, the Tribunal considered that the least restrictive penalty which meets the seriousness of the case and discharges the Tribunal's obligation to the public and the teaching profession is as follows:
- (a) a censure of Mr Leaupepe to express the Tribunal's disapproval of and disquiet about his conduct.
 - (b) Annotation of the Register with this censure for a period of one year; and
 - (c) Conditions on Mr Leaupepe's subsequent practising certificate, to apply for a period of one year.
 - a. Mr Leaupepe must provide a copy of this decision to any prospective and future teaching employers.
 - b. Mr Leaupepe must undertake a professional development course in classroom management and student behaviour management (for example, Positive Behaviour for Learning or the Early Years Programme), within one year of obtaining his practising certificate.

The course is to be approved by the Teaching Council and proof of completion will need to be provided to the Council.

- [7] The Tribunal is not imposing a condition that Mr Leaupepe is to seek the guidance of a Teaching Council-approved mentor. That is because if Mr Leaupepe obtains a practising certificate, he will be a beginning teacher and therefore, will automatically be entitled to support of this nature. Mr Leaupepe will also be required to complete the mandatory online training module “Physical Restraint – Understanding the Rules and Guidelines”, by February 2024. The Tribunal encourages Mr Leaupepe to complete this training module at the earliest opportunity (which may be prior to applying for a practising certificate), however it did not consider it necessary to make an order imposing a condition in relation to this.
- [8] It is noted that the Tribunal considered the two components of the penalty it is imposing, together, to ensure that the overall penalty was assessed against the *Roberts* factors and was a fair and reasonable penalty in all the circumstances.

Costs

- [9] It is usual for an award of costs to be made against a teacher once a charge is established. A teacher who comes before the Tribunal should expect to make a proper contribution towards the reasonable costs that have been incurred, so that the profession does not have to meet all the costs. Costs are not punitive.
- [10] The matter has been able to be heard on the papers which typically attracts a costs order of 40% of the costs and expenses incurred by the CAC and the Tribunal²¹. The CAC submitted that a 40% costs award would be appropriate in this case.
- [11] The CAC’s estimated costs were indicated as being \$3,531.94 and the Tribunal’s costs, \$1455.00 (both excluding GST). Those costs are reasonable, in the Tribunal’s opinion.
- [12] In this case, the Tribunal considered that an order that Mr Leaupepe contribute \$1000.00 towards the CAC’s costs would be appropriate and reasonable (approximately 30%). The Tribunal took into account Mr Leaupepe’s agreement to proceed with a hearing on the papers with the benefit of an agreed summary of facts. It also took into account that if Mr Leaupepe manages to obtain a practising certificate and employment as a teacher, he will receive the salary payable to a

²¹ Costs Schedule filed by Counsel for the CAC on 24 May 2023.

beginning teacher and will be expected to meet the costs of the professional development course the Tribunal is ordering him to complete.

[13] Accordingly, the Tribunal is making an order pursuant to section 404(1)(h) that Mr Leaupepe is to pay the sum of \$1,000.00 to the CAC (including the investigation and prosecution costs)²².

[14] As to the costs of conducting the hearing, the Tribunal is making an order that Mr Leaupepe make a 40% contribution towards those costs, being payment of the sum of \$582.00 to the Teaching Council. This order is made under section 404(1)(i). If Mr Leaupepe wishes to discuss a payment arrangement in respect of these costs, then he should take this up with the Teaching Council, to whom the debt will be due.

Non-publication orders

[15] Mr Leaupepe had the benefit of an interim non-publication order in respect of his name until the interim order lapsed on 31 March 2023 (by which time Mr Leaupepe had not made an application for continuing name suppression)²³. Accordingly, Mr Leaupepe's name can be published in connection with these proceedings.

[16] It is noted that Mr Leaupepe's name was not suppressed in connection with the criminal proceedings in the District Court.

[17] At the pre-hearing conference held in March 2023, an interim order was made suppressing the name and any identifying details of the student (Student Z). That order was made to protect the privacy and wellbeing interests of the student.²⁴ At the hearing the Tribunal considered that it was proper for the student's name to be permanently suppressed (for the same reasons) and an order was made accordingly, under section 405(6) of the Act.

[18] No application for the suppression of the name of Flat Bush Primary School was received by the Tribunal (either from the school itself or from the CAC). The Tribunal did not consider it proper to make a non-publication order in respect of the name of the school. The Tribunal noted that the student involved in the incident on 5 July 2019, based on his age at the time, is unlikely still to be attending the school. The

²² Costs Schedule of the Tribunal for Hearing on the Papers.

²³ Minute of Pre-Hearing Conference held on Thursday, 9 March 2023 at [10]-[12].

²⁴ Minute of Pre-Hearing Conference at [9]

Tribunal did not consider there to be a real risk that publication of the name of the school would lead to the identification of Student Z to those without knowledge of the incident.

Conclusion

[19] The Charge is established. Mr Leaupepe is guilty of serious misconduct.

[20] The Tribunal's formal orders under the Education Act 1989 are:

- (a) Mr Leaupepe is censured, pursuant to section 404(1)(b).
- (b) The Register is to be annotated to note the censure, for one year.
- (c) Pursuant to section 404(1)(j) any subsequent practising certificate obtained by Mr Leaupepe will be subject to the following conditions, for a period of one year:
 - a. Mr Leaupepe is to provide a copy of this decision to any prospective and future teaching employer/s.
 - b. Mr Leaupepe is to undertake a professional development course in student behaviour management and classroom management, within one year of being issued with a practising certificate and provide proof of completion to the Teaching Council.
- (d) Mr Leaupepe is to pay \$1,000.00 to the CAC as a contribution to its costs, pursuant to section 404(1)(h),
- (e) Mr Leaupepe is to pay \$582.00 to the Teaching Council in respect of the costs of conducting the hearing, pursuant to section 404(1)(i).
- (f) There is an order under section 405(6) permanently suppressing from publication the name of Student Z.

Dated at Wellington this 8th day of
September 2023



Jo Hughson
Deputy Chairperson

NOTICE

- 1 A teacher who is the subject of a decision by the Disciplinary Tribunal made under section 404 of the Education Act 1989 may appeal against that decision to the District Court (section 409(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 404 (section 409(2)).
- 3 An appeal must be made within 28 days of receipt of written notice of the decision, or any longer period that the District Court allows.
- 4 Schedule 356(3) to (6) applies to every appeal under section 409 as if it were an appeal under section 356(1).