

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL
I TE RŌPŪ WHAKARAUPAPA O AOTEAROA

I RARO I TE MANA O TE | UNDER THE

the Education and Training Act 2020

MŌ TE TAKE | IN THE MATTER OF

of a charge of serious misconduct referred by the
Complaints Assessment Committee to the Tribunal
in relation to the conduct of **PAULINE VIOLET
MURPHY**, Teacher (registration number 185109)

WHAKATAUNGA HERENGA | LIABILITY DECISION

TE RĀ:

2 October 2023

TE RONGONGA:

In person 8-11 May, 2023

PAE TARAIPUUNARA:

Rachael Schmidt-McCleave (Deputy Chair), Nikki Parsons/Simon
Williams (Members)

HEI MĀNGAI:

E Mok (Meredith Connell) for the CAC
P Drummond for the respondent

Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee ("CAC") has charged the respondent with serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers. The details of the charge, as set out in the fourth amended notice of charge, are as follows:

*"1. The CAC charges that **PAULINE VIOLET MURPHY**, registered teacher of Feilding on various occasions between 2010 and April 2021 engaged in any or all of the following conduct while working at Pitter Patter Education Centre (**Centre**):*

- a. *On various occasions, Ms Murphy engaged in and/or encouraged others to engage in inappropriate physical contact towards children at the Centre. Specifically:*
 - i. *One evening in or around 20 January 2015, Ms Murphy grabbed a male child aged around [REDACTED] [sic], [REDACTED] (**Child C**), yanked Child C backwards, and smacked Child C on the hand;*
 - ii. *On an occasion in or around 2015 or 2016, Ms Murphy told a parent of a child at the Centre, [REDACTED] (**Child P**), to give Child P a 'light smack on the bottom' to get Child P to stay in bed at night;*
 - iii. *One morning in or around 2016 or 2017, Ms Murphy made a female child aged around [REDACTED] [REDACTED] (**Child I**), spit out pancakes she was eating and/or scooped pancakes out of Child I's mouth with her finger:*
 - iv. *One morning in or around 2019, Ms Murphy grabbed an unnamed male child, **Child M**, by the shoulders, prised open Child M's mouth while holding him under the arms, and forcibly scraped chips out of Child M's mouth;*
 - v. *In addition to the specific incident referred to above at paragraph 1(a)(ii), on various other occasions between 2010 and 2019, Ms Murphy:*
 1. *Regularly told a staff member, [REDACTED], to give children a smack on the hand if they were misbehaving; and/or*
 2. *On at least one occasion, was overheard by [REDACTED] telling parents to smack their children.*
- b. *On various occasions, Ms Murphy secluded children in a sleep room at the Centre to manage children's behaviour and/or as a form of punishment. Specifically:*
 - i. *On an occasion in around 2016 or 2017, Ms Murphy shut a female child aged around [REDACTED], [REDACTED] (**Child I**) in the sleep room and, as Child I tried to leave the room, pushed her back inside and shut the door, causing Child I's face to be struck by the door;*
 - ii. *On one occasion between around 2017 and around October 2018, Ms Murphy shut an unnamed male child ([REDACTED]), one of her*

██████████), **Child T**, in the sleep room in response to Child T misbehaving;

iii. On or about 10 October 2018, Ms Murphy shut a male child, ██████████ (**Child Z**), in the sleep room in response to Child Z misbehaving;

iv. On at least one other occasion between around 2015 and 2018 (in addition to the incidents referred to at paragraphs 1(b)(i) to 1(b)(iii) above), Ms Murphy was observed by the then ██████████ at the Centre, ██████████, placing children in the sleep room and not allowing them to leave for periods of up to an hour as a form of punishment.

c. On various occasions, Ms Murphy failed to provide appropriate first aid (or ensure appropriate first aid was provided) to children involved in accidents at the Centre. Specifically:

i. On or about 28 June 2017, an ice pack with a rag wrapped around it was used to treat a ██████████ child, ██████████ (**Child N**), who had broken her elbow;

ii. Between January 2016 and October 2018, Ms Murphy did not permit a staff member to take a child with a cut to her head which required stitches, ██████████ (**Child A**), to immediately see a doctor, with Child A's injury being treated with an ice pack;

iii. On or about 16 September 2019, a crush injury to the finger of a male child, ██████████ (**Child F**), was treated with an ice pack which had been wrapped in an old rag

d. In respect of the incidents referred to above at paragraphs 1(c)(i) and 1(c)(iii), Ms Murphy failed to keep and/or failed to ensure accurate incident reports were kept.

e. On various occasions between 2010 and April 2021, Ms Murphy engaged in unprofessional conduct towards other staff at the Centre, including yelling or shouting at them and/or making belittling or demeaning comments towards them, Specifically:

i. On one occasion in 2018, while in the breakroom, Ms Murphy told another staff member, ██████████, that she was too fat to eat KFC;

ii. On another occasion in 2018, Ms Murphy refused to let ██████████ leave the Centre to purchase a new bra after her bra broke, resulting in ██████████ having to work without a bra;

iii. In or around 2017, ██████████ (██████████):

1. observed Ms Murphy make teachers at the Centre scrub the floors on their hands and knees;

2. observed Ms Murphy yelling at a staff member who was late:

iv. *In or around 2019, Ms Murphy threatened not to pay a staff member, [REDACTED], after [REDACTED] brother, whose son went to Pitter Patter, failed to pay his bill*

v. *On one occasion between 2010 and 2018, Ms Murphy told the Centre [REDACTED], [REDACTED] to pick weeds out of the cracks at the front of the driveway to the Centre;*

vi. *On various occasions in the above time period (between 2010 and April 2021), Ms Murphy:*

1. *In respect of [REDACTED] (who was at the Centre between January 2016 and October 2018), threatened [REDACTED] job, told [REDACTED] that she was 'useless' at her job, told [REDACTED] that she was a 'shit' teacher, and/or yelled at [REDACTED] colleagues in [REDACTED] presence;*

2. *In or around 2017, was regularly observed by [REDACTED] yelling and screaming at staff members and/or making unprofessional comments towards them, including calling them useless, incompetent and lazy, and threatening their teaching certificates;*

3. *In respect of [REDACTED] (who was at the Centre in 2018), called her incompetent, and threatened her job;*

4. *In respect of [REDACTED] (who was at the Centre between 2019 and 2019):*

a. *regularly belittled [REDACTED];*

b. *called [REDACTED] (and other teachers in [REDACTED] presence) stupid, incompetent, and useless;*

c. *made comments to [REDACTED] about other staff members' weight; and/or*

d. *threatened [REDACTED] teaching registration.*

f. *On various occasions between around October 2018 and April 2021, Ms Murphy failed to ensure that food being served to children at the Centre met applicable Ministry of Education (Ministry) guidelines, including relating to the storage, preparation, handling, and serving of food, and in terms of food quality and quantity. Specifically:*

i. *in breach of health and safety practices criteria 19 and 20 (HS19, HS20), premises and facilities criterion 16 (PF 16) (issued in accordance with regulation 41) and regulations 45 and/or 46 of the Education (Early Childhood Services) Regulations 2008 (Regulations), the following issues were identified with the Centre's practices in January 2021 following a Ministry audit:*

1. *Vinegar and water were being used to disinfect surfaces off which children were eating their food;*

2. There was no means of monitoring the temperature of the fridge in the infant room (where perishable foods were stored) to ensure it was kept at or below 4°C;

3. Dishes were being washed by hand in water not at 60°C (which was not hygienic);

4. The Centre menu did not provide a nutritionally balanced diet for children (specifically, the menu was high in carbohydrates, food was not varied for different age groups, there were very few vegetables provided, the food types were not varied, and portions viewed were small with only one item provided at lunch time);

5. Records were not being kept that detailed the specific food offered to children throughout the day;

6. Food was being left on the kitchen bench before being served, and food temperature was not being properly checked before being served to infants (teachers were using their hands to check this). Food was also being served on platters rather than individually served (meaning children were touching other food on the plate that they were not eating).

ii. *in breach of HS19, PF 16 and regulations 45 and/or 46 of the Regulations, the following issues were identified with Pitter Patter's practices following a further Ministry inspection in 2021:*

1. *Food being provided to children was not of a sufficient variety, quantity and quality. Children were being provided food made up of less than 75 per cent of health options, Further, the menu did not consider the different developmental needs of all children.*

2. *Food was being stored in a fridge in the infant room at 17°Cm which was above the maximum of 4°C, and not a suitable temperature at which to store perishable food."*

2. The CAC alleged that the conduct above, separately or cumulatively, amounts to serious misconduct pursuant to:

(a) Section 10 of the Education and Training Act 2020;

(b) Any or all of:

(i) rules 9(1)(a), (c), (f), (n) and/or (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (for conduct before 1 July 2016);

- (ii) rules 9(1)(a), (c), (f), (n) and/or (o) of the Education Council Rules 2016 (prior to the 19 May 2018 amendments) (for conduct between 1 July 2016 and 19 May 2018);
 - (iii) rules 9(1)(a), (b), (c), (d), (j) and/or (k) of the Teaching Council Rules 2016 (following the May 2018 amendments) (for conduct after 19 May 2018).
- 3. In the alternative, the CAC alleged that the conduct above, separately or cumulatively, amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Act.
- 4. In summary, the Tribunal has found the following particulars established to the requisite standard:
 - (a) Particulars 1(a)(i), (iii), (iv), (v) (both sub-particulars).
 - (b) Particulars 1(b)(i), (ii), (iii) and (iv).
 - (c) Particular 1(d).
 - (d) Particulars 1(e)(i), (ii), (iii)(1) and (2), (iv), (vi) (all sub-particulars).
 - (e) Particular 1(f) (all particulars).
- 5. The Tribunal considers the above conduct cumulatively amounts to serious misconduct.
- 6. The Tribunal has found the following particulars *not to be established* to the requisite standard:
 - (a) Particular 1(a)(ii).
 - (b) Particular 1(c) (all sub-particulars).
- 7. This decision sets out the Tribunal's detailed reasons. At the outset, it is important to note that the Tribunal does not accept the respondent's claim that she has been the victim of a witch hunt by a small number of disgruntled employees and parents. The Tribunal considers that the extent of the inconsistencies in the evidence, as well as those matters which are incontrovertible given the documentary evidence, mean that the CAC has discharged its onus in relation to those particulars the Tribunal has found to be established. There are matters of credibility for the Tribunal in its assessment of the evidence pertaining to the particulars and the Tribunal considers that the similarities in the

evidence for the CAC point not to some type of collaboration, as the respondent claims but, rather, a degree of consistency because the established events occurred.

Te Ture - The Law

8. This decision refers to the provisions of the 2020 Act but the relevant provisions of the 1989 Act are the same.
9. The disciplinary regime of the Act is focused on “*the safety and welfare of children and young people in the education system and the quality of the institutions and teachers*” (*K v Complaints Assessment Committee of the Teaching Council of Aotearoa New Zealand* [2022] NZHC 307 at [107]). To that end, the 2020 Act (and its predecessor the 1989 Act) sets out a process for the mandatory reporting of potential serious misconduct by a registered teacher (section 491), referral of that report to a CAC (section 496) and referral to the Tribunal by the CAC in certain circumstances (section 497). A matter may be referred to the Tribunal by the CAC at any time. However, it must be referred to the Tribunal by way of a charge when the CAC considers that the matter may possibly constitute serious misconduct (section 401(3)-(5)).
10. Section 10 of the 2020 Act defines serious misconduct:

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.*
11. The test under section 10 is conjunctive¹, meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.
12. What the CAC appropriately describes as these “gateway definitions”², have been refined by the Tribunal in various cases:

¹ *Teacher Y and Education Council of Aotearoa New Zealand*, [2018], NZTDT 3141, 27 February 2018 at [64] discussing the identical text under section 378 of the 1989 Act.

² Paragraph 22 CAC Opening Submissions.

- (a) In relation to the impact on the wellbeing or learning of a student, the Tribunal in *CAC v Marsom* stated that:³

“...real, appreciable, substantial and serious are qualifying adjectives for “likely” and bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.”

- (b) When considering whether the conduct “*reflects adversely on the teacher’s fitness to be a teacher*”, the Tribunal has focused on:⁴

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

- (c) The approach generally taken by the Tribunal to the question of whether conduct is likely to bring the teaching profession into dispute is that set out by the High Court in *Collie v Nursing Council of New Zealand* [2001] NZAR 74, namely to ask whether:

“...reasonable members of the public, informed and with the knowledge of all the factual circumstances, could conclude that the reputation and good standing of the teaching profession was lowered by the behaviour of the teacher concerned.”

13. The Tribunal accepts that, if established, various aspects of the respondent’s conduct would fall within the following sub-rules of Rules 9(1):⁵

- (a) Rule 9(1)(a): using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so.
- (b) Rule 9(1)(b): emotional abuse that causes harm or is likely to cause harm to a child or young person.
- (c) Rule 9(1)(c): neglecting a child or young person.

³ *CAC v Marsom* NZTDT 2018/25 at footnote 10. Subsequently adopted by the Tribunal in *CAC v Teacher S* NZTDT 2020/45 at [7].

⁴ *CAC v Crump* NZTDT 2019/12 at [42].

⁵ The provisions of the 2016 Rules following the May 2018 amendments (for conduct after 19 May 2018). The earlier versions of the Rules contained the same provisions, although the 2004 Rules at Rule 9(1)(c) referred to “*the psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment.*”

- (d) 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 (assault).
 - (e) Rule 9(1)(k): any act or omission that brings, or is likely to bring, discredit to the profession.
14. The Tribunal accepts that the test under Rule 9(1)(k) will be satisfied 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 respondent's behaviour.⁶
15. The Tribunal considers that the following clauses of the Code of Professional Responsibility are also relevant:
- (a) Clause 1.3: *"I will maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity."*
 - (b) Clause 2.1: *"I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm."*
16. The Code was issued with *"Examples in Practice"*⁷ which provide positive examples of what the principles look like in practice and include behaviours that are unacceptable and breach the Code.
17. An example of demonstrating a high standard of professional behaviour and integrity as required by clause 1.3 is *"behaving in ways that promote a culture of trust, respect and confidence in me as a teacher and in the profession as a whole."* Conduct that damages this trust and confidence breaches clause 1.3.⁸
18. An example of behaviour that does not promote learners' wellbeing and may cause harm is *"inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour."*
19. The Tribunal also notes section 139A of the 1989 Act, prohibiting the use of force, by way of correction or punishment, at any early childhood service or registered school, and section 24 of the 2020 Act which provides that a person must not use force by way or

⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43, 24 March 2017.

⁷ *The Code of Professional Responsibility, Examples in Practice* (Education Council, Wellington, June 2017)

⁸ At 7.

correction or punishment toward, or seclude, a child enrolled or attending an early childhood service.

Kōrero Taunaki – Analysis of Evidence

20. The CAC called 11 witnesses, and the respondent gave evidence on her own behalf. This part of the Tribunal's decision considers each particular and the evidence before the Tribunal. The standard of proof for establishing whether each particular is satisfied is the balance of probabilities. The respondent has denied each particular of the charge so the Tribunal's task is to determine whether it is satisfied, on the balance of probabilities that each of the particulars has been established.

Particular 1(a)(i): grabbing Child C, yanking Child C backwards and smacking Child C on the hand

21. For this particular, the CAC largely relied on the evidence of [REDACTED]. In her evidence in chief, [REDACTED] said her kids would often be some of the last left at the Centre as she finished work around 5 pm. She said at the end of the day the respondent would arrange for the cleaner to start at 4 pm and it was common practice for the respondent to make the kids go outside when the cleaner came so that the kids could not mess the Centre up after the cleaner was finished, and so the cleaner did not have to stay longer than required.
22. [REDACTED] said that in January 2015, she witnessed the respondent smack her son, Child C. Child C was around [REDACTED] at the time [REDACTED] said she had come to the Centre to pick him up after work at around 5 pm. She said as she walked into the Centre, Child C was off to the left, playing outside. Other kids were outside too. [REDACTED] said the respondent was also standing outside, just outside the door, with her back to [REDACTED]. [REDACTED] said Child C saw her and went to run inside to her. She saw the respondent grab Child C's hand, yank him backwards and then smack him on his hand once. She heard the respondent say "I told you not to go inside". [REDACTED] described the smack as about a 4 to 5 out of 10 in terms of force, with 10 being the hardest. She said she was standing within 6 or 7 metres of the respondent and Child C, and there were no obstructions so she could see clearly. She saw Child C had a sad face after the alleged incident, and he waited outside for [REDACTED] to go and get him. [REDACTED] demonstrated to the Tribunal where she was standing in relation to the incident with the assistance of a diagram showing the layout of the Centre.
23. [REDACTED] said when she saw the respondent smack Child C, she instantly got a fright. She stepped to the side so the respondent couldn't see her and waited for a few seconds before continuing to walk to get Child C. She does not think the respondent knew that she had

seen her smack Child C because she had her back to [REDACTED]. [REDACTED] was shocked and upset and still processing what she had seen so she didn't say anything to the respondent at that time. She did however message another teacher at the Centre, [REDACTED], via Facebook Messenger on 20 January 2015. [REDACTED] encouraged [REDACTED] to report the incident formally but [REDACTED] felt uncomfortable doing that because she found the respondent to be a confrontational person. When [REDACTED] had tried to raise issues with the respondent in the past the respondent was very argumentative and confrontational. [REDACTED] said Child C continued to attend the Centre because they were unable to pull him out at that time due to financial reasons.

24. The CAC produced the Facebook message exchange [REDACTED] had with [REDACTED] on 20 January 2015. It shows [REDACTED] asking whether the Centre allows kids to be smacked on the hand and, after [REDACTED] confirms that no teachers are allowed to smack even on the hand, [REDACTED] tells [REDACTED] she "just" saw the respondent smack Child C and didn't know [REDACTED] had seen her.
25. Counsel for the respondent showed [REDACTED] a copy of an email sent to the respondent in which [REDACTED] informs the respondent that "with a bit of sadness" her youngest child is leaving the Centre effective May 2019. [REDACTED] responded saying she was just being polite in the email and she didn't tell the respondent that her youngest child was going to another Centre because she was afraid of the confrontation with the respondent that she had witnessed when other parents withdrew their children. In response to it being put to her that she had taken a gift for the respondent, [REDACTED] said she had been raised to show her gratefulness, and the respondent had been flexible with her family, but it didn't change the fact that she didn't agree with all the things that had happened.⁹
26. [REDACTED], an early childhood teacher who worked at the Centre as a Senior Teacher in the infant/toddler space between [REDACTED] and [REDACTED], also gave evidence in relation to this alleged incident. In her evidence in chief, [REDACTED] acknowledged she had never personally witnessed the respondent physically hurt a child but is aware of the complaint from [REDACTED] after receiving the Facebook message discussed above. She explained that she had told [REDACTED] of the complaints process and that the [REDACTED] had decided to let the matter lie.
27. In her evidence, the respondent accepted she would often be at the Centre to lock up at the end of the day and that the [REDACTED] were often the last to pick children up. She also accepted that children would play outside while the cleaner was inside, although she said

⁹ Transcript Day 2, page 28.

that only happened “sometimes”.¹⁰ The respondent did not, however, recall the incident with Child C, and denied that she smacked Child C on the hand and pulled him back. In her brief of evidence, she did state that “[if] the child was going inside the Centre and they should not have been, I may well have intervened to stop the child but it would have been done without yanking or any physical disciplinary consequences to the child”. She claimed [REDACTED] is lying or mistaken about the incident and she would never smack a child and didn’t believe in smacking children.

28. The Tribunal finds this particular established. Although [REDACTED] had some confusion under cross-examination as to whether, when she saw Child C that evening, he was crawling or running, she was otherwise a very firm and credible witness. She described the alleged incident clearly, and made concessions where appropriate, including as to the fact she couldn’t be sure given the length of time whether Child C was crawling or running. At the time, [REDACTED] was close to the alleged incident and has said there were no obstructions.
29. The Tribunal also places weight on the proximity of the Facebook message [REDACTED] sent to [REDACTED] very shortly after she says she witnessed the incident. The respondent has testified that, at this point in time, she considered that she and [REDACTED] had a good relationship. The Tribunal can discern no reason why [REDACTED] would now lie about such an incident, especially given the consistency of what she said in evidence with the Facebook message she sent shortly afterwards. [REDACTED] explanation for why she kept her children with the Centre after the incident was understandable and credible. Her description of the respondent being confrontational was consistent with evidence given by other parents and staff.

Particular 1(a)(ii) telling the parent of a child at the Centre (Child P) to give Child P a light smack on the bottom

30. The CAC’s evidence for this particular relied upon the evidence of [REDACTED]. [REDACTED] in her evidence in chief stated that, in 2016, she was at the Centre during a drop off for her [REDACTED], Child P, who attended the Centre from 2014 (when he was around [REDACTED] [REDACTED]) to 2017. It was 7.30am at the drop off, and the respondent asked [REDACTED] how the previous night had been with Child P. [REDACTED] discussed with the respondent that she had been having some issues getting Child P to stay in his bed at night time, to which the respondent is alleged to have said to [REDACTED] “do you smack [REDACTED]?” and then suggested

¹⁰ Transcript Day 3, page 98.

that [REDACTED] give Child P “a light smack on the bottom”. [REDACTED] said she felt uncomfortable at this suggestion and told the respondent that she needed to go.

31. In response to questioning from counsel for the respondent,¹¹ [REDACTED] confirmed that there was no one else present during the alleged discussion. She also agreed that she is aggrieved with the Centre over a whole range of issues, including as to how toileting issues with Child P were dealt with and issues as to fees. She conceded that she wrote a complaint to management of the Centre,¹² and she didn't mention in that complaint that the respondent had told her to give her son a light smack on the bottom. She also conceded she had written about her concerns in a Facebook post that stretched to five pages, but that she didn't mention anything in that post about the respondent telling her to give her son a light smack on the bottom. She denied, however, that she had made up the conversation with the respondent about the light smack on the bottom comment. She was unable to explain in re-examination why she hadn't included the incident in her long Facebook post.
32. In her evidence, the respondent recalls having a discussion with [REDACTED] regarding Child P getting out of bed repeatedly, but denies advocating giving Child P a “light smack on the bottom”. She said what she did advocate was trying to support and encourage her to put her [REDACTED] back to bed and that she might get early intervention to work in the home with her. She said she would never encourage an adult to hit a child.
33. The Tribunal does not find this particular to be established to the requisite standard. Although the evidence is broadly consistent with evidence given by other witnesses, the Tribunal finds it compelling that [REDACTED] did not mention it in her complaint or in her long Facebook post. The Tribunal does not accept the respondent's submission that [REDACTED] has made the incident up because she has an axe to grind, but does consider that there is insufficient clear evidence to be able to include that the particular is established.

Particular 1(b)(iii) – making Child I spit out pancakes and/or scooping pancakes out of Child I's mouth

34. The CAC's main witness in support of this allegation was [REDACTED], who worked at the Centre as a [REDACTED] between [REDACTED] and [REDACTED]. [REDACTED] in her evidence in chief said she had concerns about the respondent's treatment towards some of the children at the Centre on occasions.

¹¹ Transcript Day 1, pages 24 ff.

¹² Agreed Bundle, page 241.

35. She described that one morning in or around 2016 or 2017, a [REDACTED] toddler Child I (around [REDACTED]) was dropped off at the Centre with hotcakes from McDonalds for breakfast. [REDACTED] said she was in the kitchen at the time, and the Centre is a large open plan layout with the kitchen in the middle. She said she had a clear view of anything that happened at the Centre and that, while Child I's mother was still at the Centre, the respondent told Child I to sit down and eat her hotcakes. [REDACTED] said Child I went and started eating her hotcakes at the table. The kitchen island bench looks directly to the kai tables from a distance of approximately 5 metres to the very end kai table. [REDACTED] said as soon as Child I's mum left, the respondent stormed over to Child I and held her hand out, making Child I spit out what was in her mouth into the respondent's hand. [REDACTED] said the respondent then picked the hotcakes up and threw them down on the kitchen bench where [REDACTED] was and told [REDACTED] "get rid of it". [REDACTED] impression was that the respondent did not approve of what Child I had been given for breakfast. She said Child I was upset after the hotcakes were thrown out but she couldn't recall if she was crying or not.
36. The respondent in her evidence said that she recalled Child I coming in one morning when her mother was not feeling well and she arrived late. She said Child I brought with her some pancakes, which she partially ate. The respondent said when Child I's mum left, Child I stated that [REDACTED] wanted to go and play and did not want any more. The respondent said the balance of the pancakes were put in the fridge and thrown out later that afternoon as Child I had not asked for them. The respondent denied making Child I spit out the pancakes or scooping them out of Child I's mouth. She denied throwing them on the bench or asking [REDACTED] to get rid of them.
37. The Tribunal accepts that this particular is established.
38. The Tribunal found [REDACTED] to be a fair and compelling witness who was very clear about what she remembered. She had no need to embellish her evidence, nor did she make comments about the respondent beyond what she had been called to give evidence on. She did not participate in the Facebook posts about the respondent or the Centre, nor was she part of the Ministry of Education meeting that took place with staff members and members of the public.
39. At the time of the alleged incident, [REDACTED] was only a few metres from the kai tables, and had a clear view of everything that was going on in the Centre. Her evidence was also consistent with other evidence given by witnesses about the respondent's approach to children bringing what the respondent considered junk food to the Centre.

40. Despite the respondent denying in evidence that she held no personal views about children eating junk food, the Tribunal considers that the evidence was consistent enough to show that the respondent did have views about children (and adults) eating what she considered to be unhealthy food (for example, the respondent accepted that she had raised an issue with ██████ about Child P eating a marshmallow, and there was other evidence given about the respondent scraping icing off a birthday cake, scraping chips from a child's mouth, and reprimanding another staff member about eating KFC – see below).

Particular 1(a)(iv) – Prising Child M's mouth open and forcibly scraping chips out of his mouth

41. The CAC's principal evidence for this particular came from ██████ ██████ said in her evidence in chief that, one morning in ██████ (she could not remember precisely which month) she was dropping her youngest ██████ off at the Centre, and another little boy was being dropped off at the same time by his mum. ██████ said the little boy was crying and upset and that, when the boy's mum left, the respondent grabbed him by the shoulders, spun him around and forced his mouth open with her hands. ██████ said the respondent then started to scrape what looked like Burger Rings or Twisties out the boy's mouth and that she was holding his face with one hand, and scraping the food out of his mouth with the other hand. ██████ said the boy's feet remained on the ground while she did that and that, while it was happening, the respondent said something along the lines of *"what stupid bloody parent gives their child Twisties and Burger Rings for breakfast"*. ██████ said the respondent was looking at her at the time and knew she was watching so ██████ reluctantly agreed as she was scared of the respondent. The respondent ultimately spun the little boy back around, pushed him off and told him to go and play. ██████ said the boy was crying throughout the incident and that the respondent's actions were forceful, in that she ripped the kid's mouth open and was scraping food out of his mouth using a cupped hand. She said she did not report this incident to anyone because she was scared of the respondent.
42. Under cross-examination,¹³ ██████ explained she was within a metre of the respondent during the incident, and could see the orange colour of the chips inside Child M's mouth, but could not say exactly what they were because *"they were munched up inside the child's mouth"*.
43. The respondent in her evidence denies this incident ever took place and stated her belief that the incident is made up. She *"categorically"* stated that she would never put her hand in a child's mouth to dispose of food that was in the process of being eaten and she does

¹³ Transcript Day 2, pages 24ff.

not ever recall a child arriving at the Centre with a mouthful of chips, without having a packet. She conceded in cross-examination that scraping chips out of a child's mouth is wholly inappropriate behaviour for a teacher, but emphasised again her view that [REDACTED] was completely making up this interaction.

44. The Tribunal finds this particular to be established. Although there were no independent witnesses to the allegation, as stated previously, the Tribunal found [REDACTED] to be a reliable and considered witness. She maintained under questioning from counsel for the respondent that the incident happened as she described, even conceding she could not name the exact type of chip but noting they were orange in colour. This is a very specific detail, and the Tribunal does not accept [REDACTED] has any reason to make up or embellish this evidence. As stated previously, [REDACTED] reasons for keeping her children at the Centre for so long are understandable and she has no reason to lie, even sending a gift to the Centre when she finally withdrew her youngest son (albeit not giving the respondent the real reason for fear of confrontation). The evidence is also consistent with what was witnessed by [REDACTED] in the previous particular.

Particular 1(a)(v) 1 and 2 – regularly telling a staff member to give children a smack on the hand if they were misbehaving and/or on at least one occasion being overheard telling parents to smack their children

45. The CAC's main evidence for this particular came from [REDACTED]. She said in her evidence in chief that the respondent commonly told staff members to smack children on the hand if they misbehaved, for example if a child was playing with a light switch or a power point, the respondent would say that the children just needed a "good smack" on the hand. [REDACTED] stated that the respondent would also say the same thing to parents of children at the Centre and that she heard her once say to a parent "you just need to give them a good smack".
46. In questioning from counsel for the respondent, [REDACTED] agreed that she and the respondent had had an employment dispute over the updating of [REDACTED] employment agreement and conceded that she had never pursued any formal employment grievance with the respondent, explaining that she just wanted to be done with the Centre and with the respondent. She explained that she had stayed at the Centre as long as she did because it fitted her life, with her children going to school next door and just down the road, and the work hours fitting with her parenting needs. She also denied emphatically that she had made up the allegation about a child needing a good smack if they played with the light switch and described a scenario where children would climb up on a purple couch which had switches at adult level and would play with the switches.

47. In questioning from the Tribunal, ██████████ confirmed that she herself had heard the respondent telling staff members and parents to smack children on the hand if they misbehaved.
48. The respondent in her evidence denied ever telling ██████████ to smack children on their hand if they misbehaved and “*categorically refuted*” that she ever said to a parent, or anybody else, to smack a child. She confirmed this denial in questioning from the CAC, and agreed it was a coincidence that two separate people describe her as either engaging in, or encouraging, very similar behaviour towards children.¹⁴
49. The Tribunal finds both sub-particulars of this particular of the charge to be established. ██████████ was a credible and honest witness. She did not embellish her evidence and made concessions where appropriate. She was also fair to the respondent, acknowledging that she herself had never seen the respondent hit a child, and saying that when she first started at the Centre she thought the respondent “*was a lovely person who was very accommodating with my work hours, as I had small children at the time*” (although ██████████ was of the view that the respondent’s behaviour changed as time went on). Further, ██████████ evidence was consistent with the behaviour that ██████████ described seeing in relation to the first particular.
50. In summary, then, under the sub-particulars of paragraph 1(a) of the charge, the Tribunal has found all but one of the allegations to be established. The Tribunal is of the view that, separately and cumulatively, the established incidents involve conduct that constitutes serious misconduct. This Tribunal has said time and time again that using unnecessary physical force against a child causes, or risks causing harm to children’s physical and emotional wellbeing (for example, see *CAC v Haycock NZTDT 2016/2*, 22 July 2016; *CAC v Mackey NZTDT 2016/60* and many others). Here, the Tribunal heard evidence about children being upset or distressed by the alleged incidents.
51. The Tribunal is also satisfied that such conduct, and conduct encouraging others to use physical discipline, is conduct which reflects adversely on a person’s fitness to teach, and is conduct which brings the profession into disrepute. It breaches the Code, the Education (Early Childhood Services) Regulations 2008 and is prohibited by the Act and its predecessor. Further, without a doubt it is conduct which reasonable members of the public would not expect of a teacher in terms of the *Collie v Nursing Council of NZ* test already mentioned.

¹⁴ Transcript Day 3, page 102.

52. The Tribunal is also satisfied that the established conduct falls foul of rules 9(1)(a) and (f) of the Rules.

Particular 1(b)(i) – (iv) – seclusion in the sleep room as a way to manage children’s behaviour and/or as a form of punishment.

53. The Tribunal has considered these four particulars together because of the similarity in the allegations.

54. The CAC’s main witness for the sleep room allegations in general was [REDACTED]. In her brief of evidence, she described the sleep room and the Tribunal was also shown photos of it, with its doors that could open and shut halfway down. [REDACTED] said she could see the sleep room from where she was in the kitchen and near the kai tables, as there were approximately 2-3 metres between the kai tables and the sleep room.

55. [REDACTED] said that several times between [REDACTED] to [REDACTED], she saw the respondent put children who were misbehaving in the sleep room as a form of punishment and that the children were not allowed out, even for meals. She gave as an example that, if a child had been misbehaving and was put in the sleep room as punishment, if it was morning teatime during the time they were in there, they would not be allowed out to eat.

56. [REDACTED] said that the door to the sleep room could not be locked, but if a child opened the door while they were in there, the respondent would tell them to go back in there and shut the door again. She said sometimes the child would open the door and run out and she would turn a blind eye to this. She said, however, that the respondent told them teachers they had to put the child straight back in the room and that the child was not allowed out until the respondent said so and she would growl at a teacher if they tried to approach the sleep room. She acknowledged it was too long ago for her to remember the [REDACTED]s. [REDACTED] said it wasn’t until she moved to the Centre she is currently at that she found that such seclusion was not allowed.

57. [REDACTED] said children would be left in the sleep room for periods of an hour or sometimes longer, depending how many times they attempted to leave. They would be left in the sleep room longer the more times they tried to leave. She said children would often be distressed and crying, and she could hear banging from the inside the room when a child was put in there as punishment. She recalls Child I and Child P being put in there for punishment as they were regarded by the respondent as naughty kids. [REDACTED] said children would not be able to be supervised by teachers or other staff members while they were in the sleep room as punishment. There was a very small room that allowed vision

into the room but only if you went right up to it (when the doors were closed). [REDACTED] observed the respondent come out from her office sometimes, look at the children through the window and then go back into her office.

58. [REDACTED] said that if there was a misbehaving child already in the sleep room, and another child began to misbehave, the other child would be made to sit on the couch located just outside of the sleep room and was not allowed to get up from the couch until the respondent allowed them too. It was a time-out type punishment and no toys were allowed.
59. This evidence was corroborated by [REDACTED], a teacher at the Centre, whose daughter also attended the Centre and who told her mother that the respondent had shut her in the sleep room because she was laughing too loudly outside the door to that room. [REDACTED] said initially she did not take her daughter's account seriously and did not escalate matters further until the incident with Child Z discussed below.
60. The allegation in particular 1(b)(i) related to Child I being shut in the sleep room on an occasion in or around 2016 or 2017, with Child I trying to leave the room, being pushed back inside the door shut, causing her face to be struck by the door.
61. With regards to Child I, [REDACTED] remembered a specific incident in [REDACTED] around late morning when the respondent shut Child I in the sleep room. [REDACTED] Child I try to leave the room and the respondent push Child I back into the room and slam the door shut, striking the side of Child I's head and leaving her screaming and highly distressed. In cross-examination, she denied making the incident up because she had a subsequent employment dispute about her leave when she left the Centre.
62. The respondent "*vehemently*" denied the incident with Child I in her brief and denied that at any time a child has been forced back into the sleep room and the door then shut on the child. She denied there had ever been any incident with the door or a child being forced into the sleep room. She said the room is used as a sleep room from around 11.30 am in the morning and when it is used as such, there is always a teacher in there for supervision purposes.
63. The main witness for the CAC for particular 1(b)(ii) was from [REDACTED]. [REDACTED], Child Z, was at the Centre in [REDACTED] when [REDACTED] was around [REDACTED] and [REDACTED] [REDACTED] said in her written brief that she normally dropped Child Z off at the Centre around 7.30 am and would pick him up at 4.30 pm.

64. ██████ said in October ██████, she dropped Child Z off at 7.30 am as per usual. When she arrived at the Centre, the respondent, the respondent's daughter and the respondent's ██████ were there (who she thinks were aged around 2 and a half at the time). The respondent was looking after the boys while her daughter was in the office. One of the boys was playing up and not listening to the respondent. ██████ said at this point, the respondent tried to pick her ██████ up and put him in the sleep room. She said the boy tried to fight back, and the respondent managed to pick him up, put him in the sleep room and close the doors behind him. ██████ could hear the boy crying and banging on the doors which were fully closed meaning she could not see into the room. ██████ said about 30 seconds later, the respondent's daughter heard the commotion and came out of the office, opened the doors to the sleep room and let her son out. ██████ then heard the respondent's daughter tell the respondent off for shutting her son in the sleep room. The respondent argued back and said that the boy had not listened to her.
65. ██████ said she did not do anything at the time because she thought it was a family conflict. Under questioning she accepted she had become confused about dates, and hadn't sent a text to ██████ that day as her written brief stated. Rather, the text with ██████ related to the alleged incident with her ██████, Child Z (see below).
66. The respondent in her brief of evidence maintains the incident that ██████ described did not take place. She said she has never locked any child in the sleep room, and she does not ever recall there being an occasion where she had any incident with her ██████ or where her daughter told her off in relation to her interactions or dealings with the ██████. She said she actively avoided picking children up as ██████ described, as she had two hip replacements in November 2016.
67. In relation to particular 1(b)(iii), the CAC relied again on the evidence of ██████, as well as the evidence of ██████.
68. In her written brief, ██████ said when her ██████ was around ██████, she received a text message from ██████ telling her ██████ had witnessed the respondent lock Child Z in the sleep room. At that time, Child Z was unable to speak as ██████ started speaking at ██████. ██████ said she also received a text message from another parent whose child was enrolled at the Centre (she couldn't remember who and she no longer has the message) telling her that she needed to take Child Z out of the Centre as she had also seen the respondent lock him in the sleep room.
69. ██████ said that same day she confronted the respondent about locking Child Z in the sleep room. She said the respondent told her the allegations were "all lies" and said

she would take the informants' names to the Police. After that conversation, [REDACTED] told the respondent she was taking Child Z out of the Centre and they left for the last time.

70. [REDACTED] worked as a teacher in the Under Twos room at the Centre between June [REDACTED] and October [REDACTED]. In her evidence, she described the sleep room and the divided doors. She said that the bottom half of the doors to the sleep room were around a metre high and unless a child was able to climb over the bottom half, they could not get in or out of the sleep rooms when only the top half of the doors were open.
71. [REDACTED] said on an occasion in October [REDACTED], she got to the Centre at around 8 am with her daughter. At that time, she said, the respondent was the only staff member at the Centre and was in the art area just past the kitchen. [REDACTED] said that, as she walked past the sleep room, she saw the bottom half of the doors was closed while the top half was open. She said she saw Child Z in the sleep room jumping up and down in an attempt to see over the bottom half of the doors. She said Child Z was not upset or crying, but was just jumping. She thought Child Z had got in there by himself so she opened the doors and let him out. The respondent then asked her why she had done so, saying she had put Child Z in the sleep room because he was being naughty and not listening to her.
72. [REDACTED] was concerned by what the respondent had told her. She said she told the respondent they had to be with the children at all times and were not allowed to shut them in rooms. She said the respondent told her to mind her own business and not to tell her how to do her job.
73. [REDACTED] said shortly after this incident, she wrote a complaint to the Ministry of Education outlining the sleep room incidents. She did this because she was concerned about the respondent's response to her concerns. She said she was contacted by Ministry of Education Advisor, [REDACTED] on 11 October 2020 and they arranged to speak on the phone where [REDACTED] outlined her concerns. She said she also received an email from Senior Education Advisor, [REDACTED], on 11 October asking her where the sleep room was located. [REDACTED] also sent Child Z's mother a text message (via Facebook Messenger) advising her of the incident involving Child Z. [REDACTED] provided copies of her correspondence with the Ministry and her Facebook message to [REDACTED].
74. In summary, the Tribunal finds all the particulars in (1)(b) to be established save that, for particular (1)(b)(i), the Tribunal is not convinced that the evidence shows that Child I's face was struck by the door. But the Tribunal is otherwise satisfied that the sleep room was used as seclusion for children who were misbehaving:

- (a) The Tribunal accepts the evidence of [REDACTED] as to what she consistently saw, although is not convinced there was damage to Child I's face. The Tribunal rejects any allegation that [REDACTED] was inventing her evidence because of a leave entitlement dispute she had with the respondent. [REDACTED] was clear in what she saw and observed. She confirmed she had subsequently received the leave entitlements she was owed. When asked how she felt about the respondent once she had left, she had no comment. The Tribunal is satisfied that she had no reason to make up what was a quite detailed and considered description of the use of the sleep room as seclusion for punishment, something [REDACTED] could clearly witness and observe given the proximity of the kitchen area to the sleep room.
- (b) The evidence of [REDACTED] is corroborated by that of [REDACTED] who the Tribunal found to also be a very credible witness, despite there being possible discrepancies in timing and who was present at particular times, because of the Centre's sign-in sheet. [REDACTED] remained steadfast under cross-examination that when she saw Child Z he was the only child present she saw.
- (c) The Tribunal accepts the evidence of [REDACTED] as to what she saw in relation to Child T. She remained steadfast in her evidence as to what she observed, and it is entirely understandable that, given Child T was the respondent's [REDACTED], [REDACTED] did not intervene in what she saw as a dispute between family members. She was also fair in stating that before the incidents she described her relationship with the respondent was good, and the pair often talked about the stresses of management and had similar interests in that respect. Any discrepancies in dates around texting are explained, in the Tribunal's view, by the length of time that has passed.
- (d) The Tribunal found [REDACTED] to be a credible and reliable witness. The steps she took immediately after the incident concerning Child Z, including making a report of concern and contacting Child Z's mother, satisfy the Tribunal that the incident took place. Indeed, [REDACTED] gave evidence of how upset [REDACTED] was when the latter raised the incident with her. The Tribunal places no weight on the sign-in sheet, and whether or not Child Z was in fact the only child present at 8 am or not. Regardless of any such discrepancies, the Tribunal found [REDACTED] evidence to be compelling.
- (e) The respondent accepted that she had used the sleep room as a behaviour management tool for one child, [REDACTED] to help with his behavioural problems and in accordance with the instructions of [REDACTED] psychiatrist. However, the respondent also

accepted in cross-examination that using the room in this was contrary to the law and regulations and was inappropriate.

75. Given what we have found to be established in relation to the sleep room, we have no hesitancy in concluding the conduct amounts to serious misconduct. The use of such a room as seclusion for behaviour management purposes is clearly contrary to the law and regulations and obviously has a likely adverse impact on a child's psychological and emotional wellbeing. The conduct also plainly breaches the neglect and ill-treatment criteria of the Rules.
76. As the Tribunal observed in *CAC v Trow* NZTDT 2019/82, 28 July 2020, this type of treatment of children has absolutely no place in teaching. The Tribunal finds this behaviour to be abhorrent and to amount to conduct reflecting adversely on the respondent's fitness to teach and bringing disrepute to the profession.

Particular 1(c)(i) – (iii) – failing to provide appropriate first aid (or ensure appropriate first aid was provided) to children involved in accidents at the Centre

77. This particular of the charge related to three alleged incidents: Child N who had broken [REDACTED] elbow in [REDACTED] and was treated with an ice pack with a rag wrapped around it; Child A who cut [REDACTED] head needing stitches between [REDACTED] and was treated with an ice pack and a staff member not permitted by the respondent to immediately see a doctor, and Child F who was treated with an ice pack which had been wrapped in an old rag after suffering a crush injury to [REDACTED] finger in [REDACTED]
78. The allegation in the charge was that the respondent failed to provide appropriate first aid or ensure appropriate first aid was provided.
79. In respect of Child N, [REDACTED] gave evidence that she was outside supervising the children at the time because the respondent had called a staff meeting inside. She said Child N was playing on a balancing beam, fell off and hurt [REDACTED] elbow. She said to treat it, Child N was only given an icepack wrapped in an old rag, but when Child N returned to the Centre some days later [REDACTED] had broken her elbow and had a cast on [REDACTED] arm. In oral evidence, [REDACTED] described the rag as “just old paint rags, or just bits of material like rags...I think they were like old towelling.”
80. In respect of Child A, [REDACTED], a teacher at the Centre from [REDACTED] [REDACTED] to [REDACTED], [REDACTED] gave evidence that Child A got hurt and split [REDACTED] head open. [REDACTED], [REDACTED] also worked at the Centre and asked the respondent whether she could take Child A to the doctors. The respondent declined the request and told [REDACTED] she

would need to wait until her shift finished so Child A was provided with an ice pack until [REDACTED] and [REDACTED] were able to leave.

81. Under questioning from counsel for the respondent and from the Tribunal, [REDACTED] did acknowledge an error in her brief, because the only record available for Child A recorded a different incident involving Child A. There appeared to be no record at all for a head injury incident involving Child A.
82. The incident involving Child F is described by [REDACTED] mother, [REDACTED], in her evidence. She said in [REDACTED] she received a call telling her to return to the Centre 10 minutes after she had dropped Child F off, as [REDACTED] had hurt [REDACTED]. When she returned to the Centre, she found Child F on another staff member's knee, crying with [REDACTED] jacket covered in blood. She was told that Child F had fallen off a chair and crushed [REDACTED] finger which appeared to be wrapped in an old rag that resembled curtain material (a photo was provided showing this). When [REDACTED] took her [REDACTED] to the doctor, she said the doctor told her the injury was consistent with Child F having [REDACTED] finger crushed in a door frame or window, rather than falling from a chair. She said this was because Child F's left index finger had a deep indent in it but his other fingers were fine. [REDACTED] said she later asked the respondent why a first aid kit had not been used to treat Child F's finger, and the respondent said the rag was sanitary.
83. The respondent responded in her evidence to all three incidents. She said Child N's arm had an ice pack on it and was not wrapped in an old rag as claimed, but was wrapped in a sterilised cloth. She said the Centre complied with HS27 in that all practicable steps were taken to obtain medical assistance for Child N ([REDACTED] father was contacted and had taken Child N to the hospital). The respondent said she did not know at the time the elbow was broken.
84. In respect of Child A, the respondent denied that she did not allow Child A's [REDACTED] to take her to the doctor. She points out that the incident register records another incident near [REDACTED] finishing time so she allowed [REDACTED] to collect hers and Child A's belongings while first aid was administered to Child A, before she was then taken to the doctor. She does not recall Child A returning with stitches to the Centre. The respondent said she would never stop or prevent a person taking a child that required medical attention from obtaining medical treatment as early as possible.
85. Finally, with respect to Child F, the respondent said [REDACTED] had bleeding around the nail after falling from a chair with a metal bar and jamming [REDACTED] finger between the chair and the floor.

She said a sterile cloth was used not an old rag. She said the child's parent was immediately contacted.

86. In respect of the old rags, in her brief and in oral evidence, the respondent said she used cotton offcuts obtained from a fabric shop, which she put through her pressure cooker to sterilise them, folded them and put them into ziplock bags, so that there were sterile cloths available for blood or body fluids.
87. The Tribunal has concluded this particular, with all three sub-particulars within it, has not been established to the requisite standard. The Tribunal considers that the requirements of HS27 of the ECE Regulations were met in that first aid was provided, and parents notified. While the Tribunal holds concerns as to the nature of the rags used and questions why the respondent did not use standard medical supplies, nonetheless the Tribunal accepts the respondent's evidence that the rags were sterile, and ice packs were used on the injuries until they could be appropriately treated. The Tribunal's concerns were not with the immediate first aid provided but, rather, with how accidents were recorded and followed up, which is discussed further below and which did not comply with HS27.

Particular 1(d) – in respect of the 1(c) incidents, the respondent failed to keep and/or failed to ensure accurate incident reports were kept

88. Notwithstanding that the Tribunal found particular 1(c) not to be established, it finds particular 1(d) to be established. The incident reports which were provided in evidence in respect of the above three incidents were not satisfactory and, in the Tribunal's view, did not comply with the requirements of HS27.
89. The respondent noted in her evidence that, in December 2020, a new early childhood Accident & Illness Register was purchased as recommended by the Ministry of Education. The Tribunal emphasises that this is the type of document which it would have expected to have been in use when the incidents the subject of this particular occurred.
90. In respect of Child N, while the accident record describes what happens, there is no follow-up recorded to show that the injury was ultimately diagnosed as a break. There is not a detailed enough description of the incident.
91. In respect of Child A, while the injury recorded appears to have been a different incident to what was described by [REDACTED], there is insufficient detail recorded. There is no recording at all of the incident described by [REDACTED], who was precise in her recollection of it.

92. In respect of Child F, the incident report states an ice pack was used when it is evident both from [REDACTED] evidence, and the photo of Child F, that no ice pack was used. There is also discrepancy in terms of detail as to what actually happened.
93. None of the incident reports demonstrate a clear procedure and follow-up, including a review and implementation of practices as required by HS27 of the ECE Regulations.
94. The Tribunal accepts that improper recording of injuries, without appropriate follow-up and review, in breach of HS27 requirements, is conduct entitling the Tribunal to exercise its powers. Parents entrusting their children to the care of a Centre expect that, while incidents and accidents will happen, appropriate follow-up and learning from those incidents will occur. The Tribunal considers failing to do so is conduct which is likely to bring the teaching profession into disrepute.

Particular 1(e) (i)-(vi) – unprofessional conduct towards other staff, including yelling or shouting at them and/or making belittling or demeaning comments towards them

95. The first sub-particular under this particular alleges that, on one occasion in [REDACTED], while in the breakroom, the respondent told another staff member, [REDACTED] that she was too fat to eat KFC.
96. The CAC's main witness for this allegation was [REDACTED] herself. In her brief of evidence she spoke generally of the bullying way she said she and other staff were treated by the respondent. In her case, she said it started from her first day working at the Centre, continuing over the time she worked there.
97. On the specific incident the subject of particular 1(e)(i), [REDACTED] said she was on her lunch break having her lunch in the break room and was eating KFC. The respondent walked into the break room and told her that she was "too fat to be eating that kind of food". [REDACTED] said she felt upset, cried in the office after the respondent had gone and stopped eating her lunch.
98. The respondent denied this allegation, stating that she would never comment upon what any of her employees were eating and nor would she comment about their body weight. The respondent said that while the Centre had a Healthy Eating Policy and teachers were discouraged from eating fast food or drinking fizzy in front of the children, there was no issue in the staffroom. She claimed to have "no interest" in what the teacher eats or their body weight and would not comment that someone was too fat to eat any type of food.

99. On the specific incident the subject of particular 1(e)(ii), ██████████ again was the main witness. She said that one time the bra she was wearing to work broke and she asked the respondent if she could go to the Warehouse, located 5 minutes from the Centre, to purchase a new one. She said the respondent refused to let her go because the bra “*broke on work time*” and told ██████████ that she had to wait until the end of the day to be able to get a new one because she had already had her lunch break.
100. This evidence was corroborated by ██████████ who recalled ██████████ coming back to the work area in tears. ██████████ said the staff could see ██████████ was self-conscious about having to continue working without a bra on and, for example, she saw her try to cover her breasts when she talked to parents.
101. The respondent denies that she ever had a conversation with ██████████ about any broken bra and, had ██████████ told her that she had broken her bra, she would have agreed to ██████████ going and obtaining a replacement. She said further there is no need to ask for leave for the Centre for a short period of time, as long as there is a genuine reason and the Centre remains in ratio. She said the teacher could record their name, time out, brief explanation and time returned on the pad in the office. She also said there was a sewing kit in the cupboard in her office which could have been used, or ██████████ could have gone to Postie Plus or The Warehouse in her afternoon tea break.
102. In respect of particular 1(e)(iii) 1 and 2, ██████████ gave evidence that she saw the respondent make teachers at the Centre scrub the floors on their hands and knees, and saw the respondent yelling at a staff member who was late.
103. ██████████ said in her brief that the floor scrubbing incident she observed was in ██████████ around Christmas. When she asked the staff member why she was on her hands and knees scrubbing the floor with a cleaning brush with bristles, the staff member said she was doing what the respondent had asked her to do.
104. ██████████ also said one morning in ██████████, she arrived at the Centre to drop off her ██████████ and there were no teachers there to open the door. The respondent came over and opened the door as ██████████ was early and ██████████ had not yet arrived. ██████████ said that once she and the respondent were inside the respondent turned the clock five minutes forward so that it would say the teacher ██████████ was late. When ██████████ arrived, the respondent pointed at the clock and reprimanded ██████████. ██████████ said she observed similar incidents often and remembered staff frequently leaving the Centre.

105. The respondent's explanation of the floor scrubbing incident was that no teachers were made to scrub the floor and as the year concluded, the children's attendance dropped and there was often a surplus of teachers. The floor scrubbing was part of an end of the year clean up which the teachers and the respondent joined in on and "*had a great time*".
106. The respondent denied yelling at any staff member for being late. She remembers the day she had to open up for [REDACTED] because [REDACTED] was a few minutes late, but denies there was any issue.
107. [REDACTED] gave evidence in respect of sub-particular 1(e)(iv). [REDACTED] was employed at the Centre between [REDACTED] and [REDACTED], initially as an unqualified teacher and then as a trainee teacher. For part of the time she was working at the Centre, her nephew was enrolled at the Centre. One time prior to [REDACTED], the respondent approached her at work and asked to speak to her. The respondent then asked [REDACTED] in front of the majority of the other staff members for money to pay [REDACTED] nephew's bill which remained unpaid by [REDACTED] brother. When [REDACTED] said it wasn't her problem and to raise it with her brother, [REDACTED] said the respondent said "*well, if you can't give me the money, I won't be able to pay you*". [REDACTED] was embarrassed and tearful after this incident and rang her mother who subsequently called the respondent, who then apologised to [REDACTED]
108. The respondent recalls the exchange between herself and [REDACTED] and claims she asked for [REDACTED] brother's contact details because his account was overdue and she knew he lived with [REDACTED] family. The respondent refuted the allegation that she told [REDACTED] she wouldn't be able to pay her, stating that she said (to assist [REDACTED] understanding of the need for payments to be made) that it was like [REDACTED] coming to work and not getting paid for it. The respondent denied the conversation took place in front of other staff and maintained it was not unreasonable to raise the issue with [REDACTED]
109. In respect of particular 1(e)(v), [REDACTED] described an incident where the respondent made her pick weeds out of the cracks at the front of the driveway to the Centre and move them to the grass at the back of the section. She said parents who were walking past her asked what she was doing and she replied "*oh, please don't ask*" because it was so embarrassing.
110. The respondent said that, as Mondays were lunchbox days, and [REDACTED] was not needed to prepare food, she had granted [REDACTED] request for odd jobs to keep her hours up. She accepted that [REDACTED] may well have been weeding the drive, as part of

ground maintenance and did not understand why [REDACTED] would have been embarrassed doing weeding, when she asked to do more hours (other than [REDACTED]) and was being paid to carry out this work.

111. In respect of particular 1(e)(vi)(1), [REDACTED] gave evidence that there were other occasions during her time at the Centre that the respondent would bully her or pull her up on minor things in front of other staff (for example, printing things out in colour). She said the respondent would constantly threaten her job, or tell her that she had people in the Ministry of Education or the Teaching Council and she could arrange for them to lose their jobs and registrations. [REDACTED] said she felt scared about these threats and needed the full 40 hours a week of work at the time. She said the conduct made her feel angry and upset to the point where it began to affect her life. She said the respondent would also call her a “shit” teacher and “useless”, including in respect of a specific incident with yoghurt that was two weeks past its best by date and [REDACTED] threw away. She said she told the respondent a couple of times to shove her job, but always came back as she needed the money.
112. The respondent categorically denies [REDACTED] allegations, saying she just would not speak to another human being, let alone a teacher, in this way.
113. In respect of particular 1(e)(vi)(2), [REDACTED] said on many occasions during 2017, she saw the respondent yelling and screaming at staff during drop-off or pick-up time, calling them “useless”, “incompetent” and “lazy”. She also heard the respondent countless times tell staff she could take their teaching certificates off them.
114. The respondent denies these incidents taking place.
115. In respect of particular 1(e)(vi)(3), [REDACTED] describes the respondent threatening her job on a number of occasions every time [REDACTED] questioned certain practices at the Centre, such as marking children absent on the roll. [REDACTED] also spoke in her brief about the respondent telling her about a complaint she had received about a parent. When challenged by [REDACTED] as to details of the complaint, [REDACTED] said the respondent said she was “incompetent” and should not be working at the Centre.
116. In response, the respondent denied these allegations. She said she recalled raising the parent’s complaint with [REDACTED] who did a written reflection on how she could have handled the particular matter better and that was the end of it as far as the respondent was concerned.

117. In respect of particular 1(e)(vi)(4), ██████████ gave evidence about being regularly belittled by the respondent and witnessing her belittling others. She said this occurred by the respondent calling them stupid, incompetent and useless teachers, on a near daily basis, and in front of the children. She said if she or other staff members complained about anything or questioned the respondent, the respondent would threaten them with their jobs or threaten to have their teaching registration taken away, stating “*if you don’t like it then leave*” or “*there are plenty of teachers out there who would be happy to take your job*”.
118. The respondent denied these allegations, stating that she did issue ██████████ with a first written warning in relation to her negative attitude towards the respondent and other staff. She denied threatening ██████████ with any warning.
119. The Tribunal considers particular 1(e) to be established in respect of all allegations within it and prefers the evidence of the witnesses to that of the respondent on these allegations:
- (a) The evidence was consistent amongst the witnesses, and corroborated by what others witnessed, including by witnesses like ██████████ who were not part of the Facebook group commenting on the respondent and the Centre. ██████████, ██████████, ██████████, ██████████, ██████████ and ██████████ all gave evidence about bullying behaviour from the respondent (yelling and screaming and threatening staff with losing their jobs or being reported to the Teaching Council) and staff being called names such as “*stupid*” or “*useless*” that they experienced or witnessed. The Tribunal was particularly troubled by the Minutes of a staff meeting which were produced in evidence which records a threat of a verbal warning “*to all staff about the bitching that is happening*” and reference to “*the lawyer will take action*”.¹⁵ This is not the type of employer response one would expect to see in a positive and supportive working environment and the Tribunal has particular concerns on the manner in which such behaviour was witnessed by, and impacted, the children in the Centre.
- (b) ██████████ gave evidence about remarks the respondent made about a previous staff member, a larger woman named ██████████ who ██████████ remembered the respondent talking to her about because of ██████████ weight.
- (c) The evidence from ██████████ about the KFC and the broken bra was deeply personal and potentially embarrassing evidence. For ██████████ to come to the Tribunal and

¹⁵ Agreed Bundle page 46.

speak about such incidents was brave, and was not something someone would do lightly. She had no reason to make up such specific and potentially shaming evidence. Her embarrassment was evident when she was giving her oral evidence.

- (d) The respondent's attitude to fast food was demonstrated by the allegations already discussed when she forcibly removed fast food from children's mouths and the evidence that she scraped icing from cakes and disapproved of a child eating a marshmallow.
- (e) The respondent's explanations for certain behaviour were bizarre and often unbelievable, an example being that staff enjoyed scrubbing the floor together at Christmas time.
- (f) [REDACTED] was a believable and vulnerable witness who had no reason to make up the story about her brother's bill. The Tribunal finds it unacceptable that an issue like this was raised with a staff member as junior as [REDACTED] and was used as a bullying threat.
- (g) While there might be a genuine request made to a staff member who needed something to do to help with the garden, it seems unnecessary puerile and demeaning to the Tribunal to have someone replant grass (taken from cracks in the concrete) in the Centre's lawn. As [REDACTED] herself said in oral evidence, asking to do odd jobs does not equate to making people undertake ridiculous and demeaning chores.

120. The Tribunal considers this behaviour to constitute serious misconduct. The respondent was in a position of power over her staff who were reliant on her for their job. She exercised all the power in the relationship and it was incumbent upon her, and required as an employer, to treat her staff with dignity and respect. There was also a degree of imbalance of power in the relationship the respondent had with parents, as they were locked into an economic relationship with her, often having no other childcare options, and were therefore loath to voice concerns or push back on belittling behaviour.

121. Teachers have a professional obligation under the Code to engage in "*professional, respectful and collaborative relationships with colleagues*".¹⁶ This is necessary not only for the wellbeing and ora of the children in their care, but also to uphold the mana and dignity of the teaching profession in the eyes of the public. The Tribunal has sanctioned this type

¹⁶ Code, clause 1.2.

of unprofessional behaviour on several occasions in the past (e.g. *CAC v Costello* NZTDT 2020/9, 8 October 2021 and *CAC v Northwood* NZTDT 2016/234, 16 January 2017).

122. The Tribunal sees the decision in *CAC v Ashton* NZTDT 2015/39, 18 May 2017 as particularly pertinent, involving as it did conduct which included threatening teachers with punishment or being fired, humiliating and abusing staff, and making them perform demeaning tasks such as cutting a fern hedge with child's safety scissors.

Particular 1(f) – Issues relating to the storage, preparation, handling and serving of food, and issues of food quality and quantity

123. Regulation 45 of the ECE Regulations, which sets out the premises and facilities standard, requires licensed service providers to:

“(a) to use premises and facilities that, having regard to the number and age range of the children attending the premises, provide sufficient and suitable space for a range of activities, facilities for food preparation, eating, sleeping, storage, toileting, and washing, and sufficient and suitable heating, lighting, noise control, ventilation, and equipment to support –

(i) appropriate curriculum implementation by the service provider; and

(ii) safe and healthy practices by the service provider”

124. PF16 is one of the criteria issued under the above standard and requires Centres to have facilities for the hygienic preparation, storage and/or serving of food and drink that contain:

- (a) a means of keeping perishable food at a temperature at or below 4°C and protected from vermin and insects;
- (b) a means of cooking and/or heating food;
- (c) a means of hygienically washing dishes;
- (d) a sink connected to a hot water supply;
- (e) storage; and
- (f) food preparation surfaces that are impervious to moisture and can be easily maintained in a hygienic condition.

125. Regulation 46, the Health and Safety Practices standard, requires every licensed service provider to, among other things, *“take all reasonable steps to promote the good health and*

safety of children enrolled in the service". This includes requirements relating to food and nutrition and food hygiene (criteria HS19 and HS20). As part of this, services are required to keep a record of all food served and for food to be prepared, served and stored hygienically.

126. The Tribunal finds that the documentary evidence in the Agreed Bundle from the Ministry of Education audit in 2020 and inspections in early 2021 and, ultimately, the cancellation of the Centre's licence in April 2021, establishes this particular in its entirety. This evidence was produced by Ministry witness [REDACTED] and spoken to by [REDACTED]. It shows:
- (a) Vinegar and water was used to disinfect surfaces from which food was being eaten (accepted by the respondent who did not know this was inappropriate).
 - (b) The infant's room did not have a means for food temperature to be monitored.
 - (c) Dishes were being handwashed in temperatures below 60°C.
 - (d) The Centre's food was not nutritionally balanced, lacked variety, lacked vegetables and was high in carbohydrates with small portions.
 - (e) Records were not being kept of the food provided to children throughout the day (a menu was provided but the food offered differed).
 - (f) Food was being left on the kitchen bench before being served and its temperature was not being checked.
127. The Tribunal rejects the somewhat disingenuous and self-serving submission and evidence of the respondent that, at the time of the November 2020 audit, she was not responsible because she was not permitted at the Centre when children were there, and that the then Centre Manager [REDACTED] was responsible for the governance and management of the service. It is clear that the respondent's name remained on the licence and she conceded in evidence that she was still heavily involved in the evenings and when children were not present. It was the respondent's obligation as owner of the Centre and the service provider to ensure the Centre's compliance with the ECE Regulations licensing criteria, including those relating to health and safety, and also to food preparation, premises and storage.
128. The Tribunal considers that these breaches constitute conduct entitling the Tribunal to exercise its powers. The Tribunal does not accept the respondent's submission that to find a breach of standards here would open the flood gates to any Centre subject to an audit finding being subjected to a disciplinary response as well. The Tribunal considers that it was the extent of the failings here, which show a lack of disregard for the standards the

respondent was supposed to operate her Centre under, standards which are in place to reassure the public and parents who have placed their children in her care and under the care of the Centre. The Tribunal likewise does not accept that there are no issues of child safety here. The mere fact these regulations exist is because children's health and safety is at stake and, even if there is no evidence of actual harm, the likelihood existed. The respondent's conduct, in not ensuring compliance with the standards, risked disrepute to the teaching profession, as was the case in *CAC v Sharma* NZTDT 2018/51, 25 March 2019, where the teacher concerned did not comply with sleep check requirements.

129. Given the Tribunal's findings above, the Tribunal therefore invites the parties to make submissions on the appropriate penalties to be imposed under section 500 of the Act:
- (a) The CAC to provide written submissions on the penalty to be imposed, and issues of cost and non-publication within 14 days of receipt of this decision.
 - (b) The respondent to provide submissions in response within 14 days of receipt of the CAC's submissions.
 - (c) Any reply submissions to be filed by the CAC within a further 7 days.

Ngā Whakahau whakaputanga-kore pūmau – Permanent non-publication orders

130. Permanent non-publication of the names and identifying details of the children involved in the various incidents or otherwise referred to in the evidence, and of the CAC's witnesses, is ordered. These are appropriate in respect of the ages and vulnerabilities of the learners and the lack of public interest in knowing the names of the CAC's witnesses, especially given many are the parents of the children involved.
131. The respondent has sought permanent non-publication of her name and the name of the Centre and has filed an affidavit in support of this application, in which she sets out her reasons for such an application, including the social media attention and threats she has received (some of which the Tribunal notes are violent and have warranted her making police complaints and which have impacted on her mental health).
132. The CAC is directed to respond to this application in its submissions on penalty. In the meantime, interim suppression over the respondent's name and identifying details, and the name of the Centre remain in place.

R. L. Schmidt-McCleave

Rachael Schmidt-McCleave
Deputy Chair

NOTICE - Right of Appeal under Section 504 of the Education Act 1989

1. This decision may be appealed by the 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. Clauses 5(2) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under clause 5(1) of Schedule 3.