

**NON-PUBLICATION ORDERS**

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2023-31**

RARO TE MANA O TE  
UNDER THE

the Education and Training Act 2020  
(**the Act**)

MŌ TE TAKE  
IN THE MATTER OF

of a charge referred to the Tribunal

I WAENGA I A  
BETWEEN

**COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

ME  
AND

**JONATHAN PAUL READ**

Kaiurupare / Respondent

Nohoanga | Hearing  
Hei Māngai | Counsel

8 February 2024, AVL (Teams) On Papers  
L R van der Lem, Luke Cunningham Clere for the  
CAC  
J Brown, NZEI Te Riu Roa for the Respondent

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**DECISION| TE WHAKATAUNGA**

**8 March 2024**

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**Tribunal:** Catherine Garvey (Deputy Chair), Lynette Evans, Rose McInerney

## **Introduction| Te Whakatakinga**

- [1] Jonathan Read (the respondent) is a registered teacher with 11 years' experience, training as a teacher after a career in social work. He does not hold a current practising certificate as he ceased teaching in October 2021 for reasons set out in this decision, but hopes to return to teaching in the future. This charge relates to a single incident on 12 August 2021. By agreement, the matter proceeded by way of a hearing on the papers on 8 February 2024.

## **The Charge**

- [2] At the relevant time the respondent was employed at Hastings Intermediate School (the school).
- [3] A mandatory report to the Teaching Council was made by the Principal of the school on 27 August 2021. The matter was referred a Complaints Assessment Committee (CAC) and the respondent co-operated with the CAC investigation, including attending a meeting on 9 February 2023. The notice of charge was issued on 22 May 2023, asserting serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. The particulars of the charge are:

### **Particulars of the Charge**

1. On 12 August 2021, whilst teaching at Hastings Intermediate School, the teacher:
  - a. Grabbed Student A (aged 13) from behind, between his shoulder and neck, and pushed and/or pulled Student A from one side of Room 4 to the other; and/or
  - b. Made inappropriate comments to Student A, including calling him a "disgusting pig."

## **The Summary of Facts | Te Whakarāpopototanga**

- [4] The Tribunal received a signed Summary of Facts together with written submissions on behalf of the CAC and the respondent. The evidence also included a "Reflective Statement" and another personal document discussing the respondent's history and current situation.
- [5] Details of the incident giving rise to the charge are described in the Summary of Facts as follows:

### The allegation

4. In the afternoon of 12 August 2021, Student A (who was aged 13 and in Year 8) was playing games with his class outside on the concrete courts. While outside he spat on the ground, before being called back inside the classroom by his teacher. Mr Read witnessed him spitting on the ground.
  5. The student was just inside the classroom, waiting to be let go for the day, when Mr Read entered the classroom. The student had his back to Mr Read. Mr Read grabbed the student by his shoulder, just below the neck, and forced him across the classroom towards the back of the room, where he pushed the student forward forcefully.
  6. The student turned around to face Mr Read. Mr Read was visibly angry, pointed at the student, then called him a “disgusting pig” for spitting on the ground. Mr Read continued to berate the student, saying he did not want to walk in his spit.
  7. The student’s teacher witnessed this and interrupted to try and defuse the situation. Mr Read continued making inappropriate comments about the student. This included that the student wearing his hat backwards was “gang related,” There was a school rule prohibiting students wearing caps backward.
  8. The student was upset, tearing up and shaking while this happened.
  9. Mr Read then exited the classroom.
- [6] The matter was reported to the Principal by the classroom teacher who had witnessed the incident and intervened, and Mr Read attended a meeting the following day. He stated that he could not remember the incident but accepted the teacher’s account and wished to apologise to the student. The Summary of Facts goes on to record that following the mandatory report:
11. Mr Read provided a written response to the mandatory report on 2 November 2021. He repeated that he had no recollection of the events, apart from seeing the student spitting on the court, Mr Read said he was horrified when he was told what happened and immediately went on [REDACTED].

[7] The respondent sought [REDACTED]  
[REDACTED]  
[REDACTED]. An impairment report was prepared as part of the CAC investigation (this was not produced). According to the Summary of Facts, this report [REDACTED]  
[REDACTED]  
[REDACTED]

### Discussion – Liability| Ngā Kōreroero Mo Ngā Kawenga

[8] The CAC submitted that the respondent’s conduct amounted to serious misconduct, or alternatively that the threshold for misconduct was met. We have first set out the legal and other guiding principles by which we assess misconduct.

[9] Section 10(1)(a) of the Education and Training Act 2020 (the Act) sets out what have been described as “*three initial gateways into a conduct finding*”<sup>1</sup> being conduct by a teacher that:

- (a) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
- (b) reflects adversely on the teacher’s fitness to be a teacher; or
- (c) may bring the teaching profession into disrepute.

[10] Counsel referred us to *Complaints Assessment Committee v Marsom* as authority for the word “likely” being synonymous with a real, appreciable, substantial or serious risk.<sup>2</sup>

[11] As to whether conduct reflects adversely on the teacher’s fitness, this may be a departure from legal, ethical, pedagogical or professional standards in a way which might be viewed with disapproval, either by a teacher’s peers or by the community.<sup>3</sup>

[12] An assessment of whether the conduct may bring the teaching profession into disrepute requires an objective assessment of whether reasonable members of

<sup>1</sup> *CAC v Teacher S* [2020] NZTDT 45 at [6].

<sup>2</sup> *CAC v Marsom* [2018] NZTDT 25 at footnote 10 and subsequently adopted by the Tribunal in numerous decisions.

<sup>3</sup> *CAC v Crump* [2019] NZTDT 12.

the public who are armed with knowledge of the factual circumstances could reasonably conclude that the good standing of the profession has been lowered.<sup>4</sup>

[13] The test for serious misconduct requires a breach of at least one of the limbs of s 10(1)(a), and a breach of one of the matters set out under r 9 of the Teaching Council Rules 2016. Rule 9(1) provides the circumstances in which an employer must report serious misconduct to the Teaching Council. The charge pleads a breach of:

- (a) r 9(1)(a) which prohibits the use of unjustified or unreasonable force on a child or young person.
- (b) r 9(1)(b) which prohibits emotional abuse that causes harm or is likely to cause harm to a child or young person.
- (c) r 9(1)(k) which refers to an act or omission that brings or is likely to bring the profession into disrepute.

[14] The use of physical force for correction or punishment (that is, corporal punishment) is prohibited under s 98 of the Act. Guidelines issued under s 101 outline safe management of student behaviour, and do not support the use of physical contact to compel, punish or correct ākonga.<sup>5</sup>

[15] The Code of Professional Responsibility sets out guidelines for behaviour, including the need to act in a manner that promotes the wellbeing of learners and protects them from harm, giving inappropriate handling such as grabbing a student as an example of conduct to be avoided.<sup>6</sup>

[16] The Act, Rules and the Code therefore provide a framework for the Tribunal to consider conduct involving the use of force and offensive language. Counsel for the CAC referred us to similar cases involving grabbing or pushing students and the use of derogatory language. These are *Complaints Assessment Committee v D<sup>7</sup>*, *Complaints Assessment Committee v Grace<sup>8</sup>*, *Complaints*

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<sup>4</sup> In reliance on *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

<sup>5</sup> Ministry of Education – Physical Restraint Guidelines, p17.

<sup>6</sup> The Code of Professional Responsibility - Examples in Practice (Education Council, June 2017).

<sup>7</sup> NZTDT 2020/20 – a teacher and a year 10 student engaged in pushing and shoving each other and threatening language when the student tried to leave a classroom before the bell and was grabbed by the teacher by the arm.

<sup>8</sup> NZTDT 2017/6-the teacher held and moved two students while causing them both a “dickhead”.

*Assessment Committee v Hutana*<sup>9</sup> and *Complaints Assessment Committee v Mackey*<sup>10</sup>. We have considered these cases and agree with the CAC's submission to the effect that a distinguishing factor in this case is that the respondent observed the student from a distance to behave in a manner that he did not approve of, but which was not directed at him or another student. It could not be said the behaviour was provocative or disobedient or disruptive.

- [17] Counsel for the respondent concurred with the CAC's submissions on the appropriate legal principles and accepted that the conduct amounts to serious misconduct. The respondent acknowledged the likely humiliation of the student, and the failure by the respondent to self-regulate his behaviour which counsel described as a "*gross over-reaction.*"
- [18] We agree that the particulars of the charge amount to serious misconduct. The respondent reacted angrily using force and derogatory language towards Student A. The intervention of a colleague did not halt his reaction - the Summary of Facts states that he continued to use offensive language towards the student.
- [19] The student's reaction was to become "*upset, tearing up and shaking.*" We find that s 10(1)(a)(i) is met as the student was adversely affected. Given that the class was waiting to be dismissed for the day, it is likely that other students witnessed this behaviour and were also affected.
- [20] The respondent's unprofessional and harmful response to the student's behaviour brings his fitness as a teacher into question. 'Fitness' is not defined by the Act but has been the subject of many decisions by this Tribunal and in other professional disciplinary bodies and the courts. Assurance that a teacher is fit to teach is paramount to ensuring the safety of students, in the first instance. However, we are not required to find that the respondent is in fact not fit to teach. It is frequently the case that a single act or omission will reflect on a teacher's fitness because of the unprofessional, unethical or illegal nature of that conduct. It does not inevitably mean they are, in a more general sense, not fit.

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<sup>9</sup> NZTDT 2018/58 – the teacher used abusive, aggressive language in a classroom towards a student.

<sup>10</sup> NZTDT 2016/60 – the teacher pushed and held a student against a classroom wall while yelling and swearing.

- [21] The Code also assists in guiding what is expected of a teacher in the performance of their professional role, and extends to some aspects of their personal lives. The prohibition on the use of physical force in the Code (and Act) clearly indicate that these are matters relevant to fitness.
- [22] The respondent has provided the Tribunal with evidence [REDACTED]  
[REDACTED]  
The CAC has accepted the respondent's specific evidence of [REDACTED] as a contributing factor. We do have sympathy for the respondent in this regard but find that his conduct towards Student A reflects adversely on his fitness. Teachers are expected to respond professionally to challenging or otherwise inappropriate behaviour, and this entails the use of appropriate language and avoiding the unjustified use of physical force.
- [23] Turning to s 10(1)(a)(ii), we consider that members of the public armed with the relevant facts would be concerned by the conduct, as well as the fact that the respondent could not recall his behaviour. The use of unjustified force and insulting language towards a student reflects adversely on the profession.
- [24] We also consider that the respondent's conduct was in breach of rules 9(1)(a),(b) and (k). The force used to grab the student from behind and propel them across the classroom was unjustified. The phrase "*disgusting pig*" can only have been intended pejoratively. We do not have explicit detail of the further language used by the respondent, but the Summary of Facts indicates it was personalised criticism and capable of causing harm. Our finding under r9(1)(k) reflects our finding under s 10(1)(a)(iii).

### **Discussion - Penalty and Costs| Te Hapa Tautuku me ngā utu**

- [25] Discipline is a statutory mechanism to support the protection of the public, the maintenance of professional standards and public confidence in the teaching profession. Section 500 provides the penalties that the Tribunal may impose upon finding a charge proved. The available penalties range from a censure to cancellation, and we should apply the least restrictive penalty appropriate in the circumstances and one that is proportionate to similar cases. The primary aim is not to punish the teacher, although that is a likely effect. Orders that protect the public such as appropriate conditions may also assist the teacher to

address the conduct that gave rise to the charge, and in this way, there can be a rehabilitative intent to penalty.<sup>11</sup>

[26] It is usual to consider aggravating and mitigating factors when determining an appropriate penalty. Counsel for the CAC submitted that the aggravating features of this case are the humiliation of the student, and that the respondent was unprovoked. In mitigation, the CAC accept that this was a one-off incident and the respondent immediately accepted responsibility and showed remorse.

[27] Counsel for the respondent submitted the following mitigating factors, namely that the respondent:

- (a) readily accepted the conduct even though he did not recall it.
- (b) was horrified and immediately took leave to seek [REDACTED]
- (c) [REDACTED].
- (d) has been open with his current employer. The evidence indicates he is continuing to be open minded to learning and [REDACTED]
- (e) had an otherwise blemish free teaching career.
- (f) has fully participated in the CAC and Tribunal's processes.

[28] The CAC referred to the penalties imposed in four similar cases<sup>12</sup>, and submitted that censure and conditions are appropriate, with the conditions to reflect the issues that make it currently not suitable for the respondent to teach. The CAC also sought annotation of the register.<sup>13</sup> The CAC's proposed conditions (accepted by the respondent) are that the respondent:

- (a) provide the Manager of Professional Responsibility with confirmation from an appropriate medical professional that he is fit to return to teaching, before accepting a teaching position.
- (b) provides a copy of the decision to any prospective employer for two years.
- (c) completes a suitable professional development programme such as the Collaborative Trust's De-escalation Training.

[29] We agree that censure, and conditions reflecting those proposed by the CAC are appropriate. We have not ordered annotation of the register. As the respondent is currently employed in a non-teaching role and does not hold a practising certificate, conditions will be imposed on his future practising certificate and with a view to providing some assurance that he is fit at the time of a return to teaching. Some of the material produced by the respondent in

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<sup>11</sup> Paraphrasing and relying on the well-established principles in *Roberts v Professional Conduct Committee of the Nursing Council* [2012] NZHC 3354 at [44] to [51].

<sup>12</sup> Above nn 7 - 10.

<sup>13</sup> This fact was omitted inadvertently from the decision and it has been corrected to reflect the full submissions made by the CAC, and at [29] the Tribunal's determination.



support of his application for non-publication orders has been of assistance in terms of the nature of conditions to be imposed. That is, as to the current importance of very carefully managing the respondent's workload, and his growing understanding of the [REDACTED]

### **Costs**

[30] Pursuant to s 500 the Tribunal may order costs in favour of any party to the proceeding, and in favour of the Teaching Council to reflect a contribution towards the costs of the proceedings. Costs are otherwise borne by the profession.

[31] Counsel for the CAC referred to the Tribunal's *Practice Note 1: Costs* and sought a contribution of 40% of the CAC costs. The respondent accepted the CAC's approach to costs and indicated that any issue to be raised with quantum would be dealt with by memorandum after the filing of the CAC's finalised schedule of costs. No further memorandum was then filed, so we proceed on the basis that the respondent accepts the CAC's claim is a reasonable one.

[32] The CAC's costs schedule outlines total costs in the sum of \$7,397.90, with a contribution of 40% being \$2,959.16.

[33] It is also reasonable to impose an order for a contribution towards the Tribunal's costs. The fee of the Tribunal currently fixed for papers hearings is \$1455.00, 40% of this being \$582.00.

### **Non-Publication Order| Te Whakaputanga**

[34] The default position under s 501 is that hearings are held in public. The Tribunal may make non-publication orders if it considers it is "proper" to do so, taking into account the interests of any person and balancing this against the public interest. Grounds for an application do not need to meet the "exceptional" circumstances required in court proceedings.

[35] We are required to address whether the risk of harm asserted is a likely

consequence of publicity, based on the evidence before us. We respectfully depart from the two-step test cited in submissions and agree with the now numerous decisions of this Tribunal indicating that the second part of that test, the exercise of discretion, is subsumed by the consideration of whether an order is proper.<sup>14</sup>

[36] The CAC sought suppression of Student A's name in accordance with s 500(6) and r 34(4) of the Teaching Council Rules 2016. We agree that such order is proper. There is no public interest in the student being identified.

[37] Applications for permanent non-publication orders were made by the respondent, and also on behalf of Hastings Intermediate School with a supporting affidavit from the Principal, Lesley Smith.

[38] The respondent's application was made on the following grounds (in summary):

(a) [REDACTED]

(b) he is concerned for the vulnerable clients he works with in his current role at the [REDACTED]

[39] In support of his application the respondent explained some detail of his background as a social worker, before he resigned to care for his wife who was unwell, and their children. He obtained a Post Graduate Diploma in teaching and spent 11 years at Hastings Intermediate School, including seven years as a Team Leader. [REDACTED]

[REDACTED]

[40] A letter dated August 2023 was produced from a [REDACTED]

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[REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] No

comment is made about the likely impact of publication.

[41] The school seeks non-publication orders, which the principal Mr Smith says are desirable to “*mitigate the potential risk of unnecessary prejudice or criticism or undue hardship that shall affect other teaching staff, the reputation of [the] school and the adverse effects on [its] pupils.*” No specific concern was expressed for the student in the charge (who will no longer be enrolled). The affidavit expresses concern that there will be significant media attention, requiring the Board to manage prejudice including a perceived impact on recruitment of students. Mr Smith confirms that the incident in the charge was a one-off, and that the respondent was until that point a respected and valued colleague whose name will inevitably be linked to the school. Mr Smith expresses concern that the effect of publication will be disproportionate to the incident and the time that has elapsed.

[42] The CAC opposes these applications. The CAC submits that there is insufficient evidence to displace the presumption of open justice in favour of the respondent, and that he is not likely to suffer undue hardship following publication. Counsel submitted that this case is distinguishable from *CAC v Teacher NZTDT 2015* (cited by counsel for the respondent) where non-publication order was made on the basis [REDACTED]

[REDACTED] Counsel submits that the evidence here supports improvement in the [REDACTED] and a lack of express evidence regarding the impact of publicity on him. With regard to the respondent’s work, the CAC points to the supportive evidence from [REDACTED] and the employer’s awareness of these proceedings.

[43] As for the school, the CAC submitted that the evidence “*does not demonstrate it is in a particularly vulnerable or different position from any other employer in a*

*similar situation.*”

[44] We start with the school. It is not uncommon for a school to be concerned at the impact of publication arising from the misconduct of one of its staff. In this case we do not consider that the serious impacts referred to in Mr Smith’s affidavit are likely to follow, primarily because the incident was a one-off, it was dealt with appropriately by the school and neither the student nor Mr Read remain part of the student or staff body. We agree with the CAC’s submission that there is nothing out of the ordinary to justify an order.

[45] Turning to Mr Read, [REDACTED]  
[REDACTED] We do not intend to detail the evidence provided given this sensitivity. We have noted that the supporting evidence (as opposed to counsel’s submissions) does not strongly support suppression of the respondent’s name. he is concerned for his current clients, but otherwise muted in terms of the impact of publication on himself. Further, none of the supporting documents filed address the impacts of publication, but appear to be geared at providing accurate evidence of [REDACTED] It is clear that he is valued in his current role and well supported.

[46] Although not an easy exercise, we have determined to decline the application. We consider that the concerns that the respondent has raised for others can be mitigated by suppressing the name of his current employer and the specific nature of the work that he undertakes. We also emphasise that the evidence provides assurance that he practises safely and effectively with an employer who is knowledgeable of [REDACTED] and is capable of incorporating appropriate supports into the workplace.

## **Orders**

[47] Accordingly, we make the following orders:

- (a) Mr Read is censured pursuant to s 500(1)(b) of the Act.
- (b) Conditions are imposed on a future practising certificate issued to Mr Read pursuant to s 500(1)(j) of the Act as follows:
  - (i) That Mr Read obtains evidence from a suitably qualified medical professional as to his fitness to recommence teaching.

- (ii) That Mr Read undertake professional development in behaviour management strategies.
  - (iii) That Mr Read notifies his prospective employer of this decision for a period of two years if he returns to teaching.
- (c) Mr Read is to pay a contribution of 40% of the costs incurred by the CAC in the sum of \$2,959.16 and costs of the Tribunal in the sum of \$582.00 pursuant to sections 500(1)(h) and (i) of the Act.

[48] Non-Publication orders are made with respect to:

- (a) Mr Read's current employer [REDACTED] and identifying details including the nature of the work performed by this organisation.
- (b) [REDACTED] about the respondent contained in the evidence before the Tribunal and in this decision.



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**C Garvey**  
Deputy Chair of the New Zealand Teacher's  
Disciplinary Tribunal

Appeal Notice-Right of Appeal under s 504 Education and Training Act 2020

1. This decision may be appealed by a teacher who the subject of the decision by the Disciplinary Tribunal, or by the Complaints Assessment Committee.
2. Appeals must be made within 28 days after written notice of the decision or any longer period as the court allows.