

NOTE: PERMANENT NON-PUBLICATION ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-66

UNDER | WĀHANGA

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

IN THE MATTER | MŌ TE TAKE

of a charge referred to the
Tribunal

BETWEEN | I WAENGA I A

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

AND | ME

DANIEL JOHN REIZINGER
(Registration 369981)

Kaiurupare / Respondent

Hearing | Nohoanga

13 June 2024 (on the papers)

Representation | Hei Māngai

M Shaw and M Story, Luke Cunningham Clere for the
CAC
J Martin, PPTA for the Respondent

DECISION

23 July 2024

Tribunal Members: James Gurnick (Deputy Chair)
Simon Walker
Demian Shaver

Introduction

[1] The Complaints Assessment Committee (**CAC**) has charged Daniel John Reizinger that he engaged in serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. The particulars of the charge are that, on or around 17 November 2022, the respondent, a registered teacher, of Christchurch:

- (a) grabbed Student A's arm and twisted it behind Student A's back; and/or;
- (b) with Student A's arm twisted behind his back, bent Student A over and/or lowered Student A towards the ground.

[2] The conduct is alleged to separately or cumulatively amount to serious misconduct pursuant to s 10 of the Education and Training Act 2020 (**the Act**) and any or all of r 9(1)(a), (j) and/or (k) of the Teaching Council Rules 2016 (**the Rules**), or alternatively amounts to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to s 500 of the Act.

Summary of facts

[3] The summary of facts is agreed. Relevantly:

- (a) The respondent was a teacher at Hornby High School. On 17 November 2022, a 15-year-old student at the school (Student A) approached the respondent during morning kai time. The respondent was holding a bag of popcorn and standing near a box containing additional popcorn and other food on a table. Student A prodded the respondent on the lower back with two hands, one on each side of the respondent's torso, causing him to turn away from Student A and the box of food. Student A grabbed another bag of popcorn from the box.
- (b) The respondent turned back around and shook his head at Student A. He asked Student A to return the bag of popcorn.
- (c) Student A kept a hold of the popcorn bag and walked past the respondent. As Student A walked past, the respondent grabbed Student A's left arm and twisted it behind Student A's back.
- (d) Once in this hold, the respondent pushed Student A towards the ground. As the incident occurred, Student A heard a "pop" in his shoulder and he yelled out in pain "stop".

- (e) Student A stood up and walked away from the respondent. He grabbed his left shoulder in pain as he walked away to the other side of the room. He stretched out his left arm before taking a seat on a couch.
- (f) Student A was upset and in pain as a result of the incident.

[4] The incident was captured on CCTV which we have seen.

[5] We note that the respondent had resigned from the school prior to the incident. His resignation was effective from 12 December 2022. We understand that the respondent is not currently teaching.

[6] On 18 November 2022, the Teaching Council received a mandatory report filed by the principal of the school which alleged that the respondent had used physical restraint on a student.

Liability – legal principles – serious misconduct

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

- (a) that–
 - (i) adversely affects, or is likely to adversely affect, the well-being or learning of one or more students; or
 - (ii) reflects adversely on the teacher’s fitness to be a teacher; or
 - (iii) may bring the teaching profession into disrepute;

[8] In relation to the impact on the well-being or learning of a student, the Tribunal in *Complaints Assessment Committee v Marsom* stated that:¹

“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.

[9] When considering whether the conduct “reflects adversely on the teacher’s fitness to be a teacher”, the Tribunal has focused on:²

... 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.

¹ *Complaints Assessment Committee v Marsom* [2018] NZTDT 25.

² *Complaints Assessment Committee v Crump* [2019] NZTDT 12.

[10] The Tribunal has consistently adopted the test in *Collie v Nursing Council of New Zealand* when assessing whether the teaching profession has been brought into disrepute:

[28] To discredit is to bring harm to the repute or reputation of the profession. This standard must be an objective standard with the question to be asked by the Council being whether reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and good standard of the nursing profession was lowered by the behaviour of the nurse concerned.

[11] If the conduct meets one of the limbs of the definition of s 10(a) of the Act, it will amount to misconduct simpliciter.

[12] For the Tribunal to make a finding of serious misconduct, the conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.³

Teaching Council Rules 2016 and Code of Professional Responsibility

[13] The criteria for reporting serious misconduct will be engaged where there is "a serious breach of the Code of Professional Responsibility" (**the Code**). Rule 9(1) of the Rules sets out examples of what might constitute a serious breach of the Code.

[14] The CAC submits that the respondent's conduct breached the following subrules:

- (a) using unjustified or unreasonable physical force on a child or young person;
- (j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more; and
- (k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[15] The Code also sets out the high standards for ethical behaviour that are expected of every teacher, and states that the teachers must "respect [their] trusted position in society". Learners, families and whanau, and the wider community, place a significant amount of trust in teachers to guide their children and young people on their learning journey and keep them safe. By acting with integrity and professionalism, teachers and the teaching profession maintain this trust and confidence.

³ Education and Training Act 2020, s 10(b).

[16] Clauses 1.3 and 2.1 of the Code are of relevance in this case:

- (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 well-being of learners and protecting them from harm.

[17] The Code also sets out “Examples in Practice” which provide positive examples of what the principles look like in practice and include behaviours that are unacceptable and breach the Code.⁴ An example of demonstrating a high standard of professional behaviour and integrity, in line with clause 1.3 of the Code, includes:⁵

Behaving in ways that promote a culture of trust, respect and confidence in me as a teacher and in the profession as a whole.

[18] An example of behaviour that is unacceptable and in breach of clause 2.1 of the Code includes:⁶

Inappropriate handling such as physically grabbing, shoving or pushing or using physical force to manage a learner’s behaviour.

Previous authorities

[19] We have had referred to us, and considered, a number of authorities including *Complaints Assessment Committee v Teacher D*,⁷ *Complaints Assessment Committee v Grace*,⁸ *Complaints Assessment Committee v Teacher F*,⁹ and *Complaints Assessment Committee v Usufono*.¹⁰

[20] We do not repeat the facts of each of those cases, save as to say that in all cases the penalty imposed by the Tribunal included censure, annotation and conditions on the respective teachers’ practising certificates. They all involved physical handling of the students in each case where serious misconduct was made out.

⁴ The Code of Professional Responsibility, Examples in Practice (Education Council, Wellington, June 2017).

⁵ At 7.

⁶ At 11.

⁷ *Complaints Assessment Committee v Teacher NZTDT 2020/20*.

⁸ *Complaints Assessment Committee v Grace NZTDT 2017/6*.

⁹ *Complaints Assessment Committee v Teacher FNZTDT 2018/102*.

¹⁰ *Complaints Assessment Committee v Usufono NZTDT 2017/30*.

CAC's submissions

[21] The CAC submits that the respondent's conduct meets each ground in s 10(a) of the Act:

- (a) *Section 10(a)(i)*: The respondent's use of force adversely affected the well-being of Student A. Student A heard a "pop" in his shoulder and yelled out in pain as a result of the force. Following the incident, Student A was upset and in noticeable discomfort.
- (b) *Section 10(a)(ii)*: The respondent's use of force for correction or punishment is a clear departure from the standards expected of a teacher. The CAC submits that this incident was a serious lapse of professional judgement that demonstrated a lack of self-control and adversely reflected on the respondent's fitness to teach. It submits that teachers are expected to be positive role models to students. While noting the incident with which the respondent is charged relates to one incident, it submits that the "rough and tumble" relationship that the respondent allowed to develop with Student A reflected on the respondent's understanding of appropriate boundaries between adults and young people.
- (c) *Section 10(a)(iii)*: Teachers are expected to act professionally in the face of challenging behaviour from young people. Members of the public would be concerned by the use of force to manage the behaviour of the young person.

[22] The CAC also submits that r 9(1)(a), (j) and (k) of the Rules are engaged, such that the second limb of the serious misconduct test is made out. We do not repeat the rules which are set out above. As to penalty, the CAC submits that the primary considerations in professional disciplinary proceedings regarding penalty are those discussed in *Complaints Assessment Committee v McMillan*.¹¹ In brief, the key and overlapping purposes are:

- (a) protection of the public through the provision of a safe learning environment for students;
- (b) maintenance of professional standards; and
- (c) maintenance of the public's confidence in the profession.

¹¹ *Complaints Assessment Committee v McMillan* NZTDT 2016/52 at [16]–[26].

[23] The CAC submits that, in discharging the responsibilities of the public and the profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.¹²

[24] The Tribunal's task is to identify the least restrictive option which meets the seriousness of the case and discharges the Tribunal's obligation to the public and to the profession.

[25] Having regard to the above authorities, the CAC submits the Tribunal can step back from cancellation or suspension, noting the following mitigating factors:

- (a) the respondent made a full admission and accepted responsibility for the incident to the school at an early opportunity;
- (b) while the respondent is relatively new to the teaching profession, he does not have a previous disciplinary history;
- (c) in the respondent's responses during the CAC process, he accepted his conduct and appeared to show genuine remorse and insight into the incident and the consequences of allowing the "rough and tumble" relationship with Student A to develop as it did.

[26] The CAC submits that the penalty should be to order censure and direct annotation of the register and impose conditions on the respondent's future practising certificate.

[27] The CAC seeks an order for final non-publication in respect of Student A.

[28] The CAC submits the respondent should pay 40 per cent of the CAC's costs which is customary in accordance with the Tribunal's Practice Note 1: Costs, given the matter has proceeded on the papers and with agreed facts.

Respondent's submissions

[29] The respondent accepts that his conduct, as set out in the agreed summary of facts, amounts to serious misconduct and submits that the appropriate penalty is censure, annotation for up to two years and the imposition of conditions relating to completing a suitable professional development programme and providing a copy of the Tribunal's decision to any prospective teaching employer for a period of up to two years.

¹² *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [51],

[30] Notwithstanding the respondent's view as to whether his conduct meets the threshold of serious misconduct, the Tribunal is required to undertake its own assessment.

[31] The respondent agrees with the CAC's submissions that he should contribute to 40 per cent of the CAC's costs.

[32] The respondent is not making an application for non-publication.

[33] The respondent submits that if the school is identified, it will increase the likelihood of localised publicity and the real likelihood of Student A being identified.

[34] The respondent supports the school's application in its entirety for non-publication.

Discussion

[35] While we accept there was a degree of rough and tumble associated with the respondent's actions, we accept the CAC's submissions that the respondent's actions meet the threshold of serious misconduct. The use of physical force, even at the relatively low level in this case, is not acceptable. It is clear from the CCTV footage that the respondent adversely affected the well-being of Student A. The student was in clear discomfort as a result of the respondent's actions.

[36] Section 98 of the Act makes it plain that persons must not use force, by way of correction or punishment, towards any student enrolled at a school. As discussed, there was a bit of rough and tumble that went on as between the respondent and the student and that was the relationship that they formed over a period of time. The difficulty with a relationship like that developing is that it can escalate to a point where it becomes more than rough and tumble and a teacher who is stronger and has an imbalance of power, as in this case, can easily overstep the mark. It is an example of the need for teachers to respect physical boundaries with students.

[37] We do not consider that the respondent's actions were intentionally harmful or had any malice. The actions did, however, reflect a physical reprimand in relation to the student taking an additional packet of popcorn. The actions were clearly not appropriate having regard to the level of discomfort displayed by the student following the respondent's actions. In our view, it highlights the need for young and relatively inexperienced teachers to maintain professional boundaries at all times. The danger of any teacher involving themselves in a bit of rough and tumble with students places them in an unenviable position where the physicality can escalate beyond what might be intended as harmless physical contact but quickly turns into contact which may injure a student, as occurred in this case.

[38] There was simply no justification for the respondent reacting in the way he did to the student taking an additional bag of popcorn. He should have exercised verbal strategies to de-escalate the situation. That is why we think the respondent would benefit from further professional development in this area as directed by the Teaching Council.

Penalty

[39] We therefore impose the following penalty:

- (a) the respondent is censured for his conduct;
- (b) an annotation is to be recorded on the public register for a period of two years following the date of this decision; and
- (c) the Teaching Council is directed to impose the following conditions on any future practising certificate issued to the respondent for a period of two years:
 - (i) provide a copy of the Tribunal's decision to his teaching employer;
 - (ii) the respondent is to attend any course required by the Teaching Council in relation to behaviour management and coping strategies when working with children.

Non-publication

[40] The CAC seeks an order for permanent suppression of Student A's name pursuant to s 501(6) of the Act. We grant the order sought.

[41] The school seeks a permanent non-publication order on the basis that potential harm might occur to the family of Student A. Section 501 of the Act provides the Tribunal with jurisdiction to make non-publication orders. The principle of open justice is contained in s 501(3) of the Act. The primary purpose behind the principle of open justice, in a disciplinary context, is the maintenance of public confidence in the profession concerned through the transparent administration of the law.¹³ The school argues that publication of the name of the school risks identifying the student. It submits that the respondent has only taught at the school and Student A is still attending the school.

¹³ *Complaints Assessment Committee v Teacher NZTDT 2016/27*, 27 October 2016 at [66].

[42] We have had regard to the two-step process in *Complaints Assessment Committee v Teacher* in determining the issue of non-publication:¹⁴

The first step, which is the threshold question, requires deliberative judgement on the part of the Tribunal whether, having regard to the various interests identified in the section, it is “proper” to make a suppression order. If it is, then at the second stage the Tribunal may exercise its discretion and make the order sought.

[43] In considering whether to grant a non-publication order in respect of the school, we have had regard to the incident having occurred on 17 November 2022. We have also considered the CCTV footage. It is not apparent that any other students were aware of what the respondent did, and we are not satisfied that there is a risk the student will be identified if the school is identified. We do not consider that the high threshold, as required to be reached for name suppression to be granted, has been met. We therefore reject the school’s application for non-publication.

[44] The respondent does not apply for name suppression. Although he does express some concern that identifying him will risk identifying the student, we do not agree. The respondent has left the school, and he is currently not teaching. There is no name suppression for the respondent.

Costs

[45] The parties being in agreement in relation to costs, the respondent is directed to pay 40 per cent of the CAC’s costs in the amount of \$3,510.86.¹⁵

[46] On the same terms, the respondent is to pay a 40 per cent contribution towards the Tribunal’s costs in the amount of \$582.¹⁶



J S Gurnick
Deputy Chair, New Zealand Teachers
Disciplinary Tribunal

¹⁴ *Complaints Assessment Committee v Teacher*, above n 13.

¹⁵ Total costs \$8,777.16.

¹⁶ Both costs orders are made in accordance with the Tribunal’s Practice Note 1: Costs, 1 April 2022.