


BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER the Education Act 1989

IN THE MATTER a charge of serious misconduct referred by the
Complaints Assessment Committee to the
New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT
COMMITTEE**

Referrer

AND 

Respondent

DECISION OF THE TRIBUNAL – 20 June 2023

Tribunal: Hannah Cheeseman (Deputy Chair)
David Spraggs and Rose McInerney (Members)

Hearing: 30 August – 1 September 2022

Representation: E Mok for the referrer
J Brown for the Respondent

1. The Complaints Assessment Committee ("CAC") has charged the Respondent with engaging in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.
2. The CAC alleges that the Respondent is a registered teacher, and that between January and July 2019:
 - a. As Head Teacher, left the kindergarten out of ratio on a number of occasions in breach of the Education (Early Childhood Services) Regulations 2008; and/or
 - b. Was dishonest in her use of sick leave on approximately 16 occasions; and/or
 - c. Breached the privacy of a learner by sending Snapchat photo(s) of said learner to ██████████ son.
3. The hearing of this matter was in Hamilton from 30 August – 1 September 2022.
4. At the conclusion of the evidence the hearing was adjourned for written submissions. These have been received and considered.
5. In its written submissions, the CAC withdrew the particulars of the charge at 2.b. above.
6. On 28 November 2023, the Tribunal released a minute setting out the following findings:
 - a. That the allegation of leaving the kindergarten out of ratio on a number of occasions is proved, as it relates to leaving ██████████ on the floor alone; The Tribunal has determined that this amounts to misconduct, rather than serious misconduct.
 - b. The allegation of leaving the kindergarten out of ratio on other occasions is not proved.
 - c. The allegation that the Respondent breached the privacy of a learner by sending Snapchat images to her son is not proved.
 - d. The allegation in relation to misuse of sick leave is withdrawn.
7. The Tribunal sought, and received, submissions on penalty, costs and any further submissions in support of name suppression. These were received and the Tribunal reconvened to determine penalty, costs and suppression.
8. This decision contains our reasons for the findings set out above, together with our decision and reasons in relation to penalty, costs and suppression.

9. Given the allegation of misuse of sick leave was withdrawn by the CAC following the hearing, we do not canvass the evidence relating to that allegation in this decision. This includes the evidence of [REDACTED], [REDACTED], [REDACTED], much of the evidence of [REDACTED], [REDACTED], [REDACTED] and much of the evidence of [REDACTED].
10. Suffice to say, we consider the decision to withdraw that allegation was appropriate.

THE EVIDENCE

11. The CAC called evidence from five witnesses relating to the allegations of putting the centre out of ratio and sending Snapchat pictures of children. The Respondent called four witnesses in response.

[REDACTED]

12. The first witness for the CAC was [REDACTED] [REDACTED] was an administrator for the [REDACTED] who was working at [REDACTED] (“[REDACTED] or “the centre”) at the time [REDACTED] was Head Teacher.
13. During the relevant period, [REDACTED] was an [REDACTED] r at [REDACTED] but was also working at another centre operated by [REDACTED]. She worked at [REDACTED] every [REDACTED] and [REDACTED] and alternating [REDACTED].
14. [REDACTED] evidence is that she performed the majority of her work in the office area of the centre and her desk faced out one of the big windows to the exterior of the centre.
15. [REDACTED] raised her concerns in relation to [REDACTED] conduct on or about 25 October 2019. However, her allegations cover the period of January to July 2019. The investigation into [REDACTED] behaviour which gave rise to her dismissal and the mandatory report to the CAC arose from [REDACTED] complaint to [REDACTED], [REDACTED] for [REDACTED].
16. [REDACTED] evidence was that on Thursday afternoons, [REDACTED] was rostered to work with an untrained teaching assistant, [REDACTED]. The roll on Thursday afternoons was around 20 children aged between two and five years. [REDACTED] would be working in the office during this time.
17. [REDACTED] evidence was that [REDACTED] would come into the office during that period to do online work but also online shopping. She referred to an example of [REDACTED] showing [REDACTED] a pair of

boots, saying words to the effect, "Look at these nice boots, they would suit you".

18. [REDACTED] was also concerned that [REDACTED] desk was in the corner of the office facing towards a wall and not towards the windows looking outside. [REDACTED] believed that [REDACTED] would only have been able to monitor any of the children from her desk if she were to fully turn her chair around and if children were playing outside near the windows.
19. This is the basis of [REDACTED] concern that [REDACTED] was being left alone to manage a large number of children, in breach of the required teacher to child ratio.
20. [REDACTED] also noted that [REDACTED] would spend her lunch break in the office, and then go to lunch sometime later, out of her normal rostered lunchtime. For example, she noted that [REDACTED] would take a late lunch and then go offsite for more than half an hour, she believed to meet her trainer or go to the gym. By way of example, [REDACTED] said [REDACTED] would leave at 2.00 pm and still not have returned by the time [REDACTED] left the centre at 3.00 pm. Sometimes on these occasions [REDACTED] [REDACTED] would go to the supermarket. [REDACTED] [REDACTED] indicated that [REDACTED] [REDACTED] would sometimes leave the door of the office open when she left the centre, saying that that would mean [REDACTED] counted towards the ratio.
21. In relation to the Snapchat allegations, [REDACTED] evidence was that [REDACTED] had a favourite child, Child F, who was three years old. F would sometimes come into the office or get [REDACTED] to come outside with her. [REDACTED] would sometimes take photos of F on Snapchat. [REDACTED] indicated that this happened at least twice when she was present in the office and she heard [REDACTED] say things such as, "Let me take a photo, I'll send it to my son". She also gave evidence of seeing [REDACTED] pose F and then position the camera to take a photo, saying words to the effect of, "I'm sending this to [REDACTED]". [REDACTED] evidence is that she knew it was Snapchat because [REDACTED] told her it was. She confirmed that she never saw the Snapchat app open on her phone, but that [REDACTED] referenced it several times.
22. [REDACTED] is aware that [REDACTED] has a son named [REDACTED], who was studying in [REDACTED] at time. [REDACTED] also recalls [REDACTED] making video calls to her son, although she doesn't recall how many times that occurred.
23. Under cross-examination, [REDACTED] accepted that [REDACTED] sometimes had her lunch break later than her ordinary rostered time, particularly if she was rostered "non-contact" for the afternoon. [REDACTED]

██████████ also confirmed that ██████████ would arrange cover for lunch breaks and times when she had to speak to parents. ██████████ confirmed that she herself would cover the floor during those times, particularly if other staff were on their lunch breaks. ██████████ evidence was that she was aware of scheduled lunch breaks as she did the paperwork for rostering and payroll.

24. Under cross-examination, ██████████ confirmed it was possible ██████████ was doing online shopping during her lunch break, although it was ██████████ evidence was that it only became an issue when ██████████ was doing those things during her non-contact time. She was clear that the conversation between herself and ██████████ about the boots was not during a lunch break. ██████████ accepted she could not confirm what day the shopping happened, but it was again her evidence that it was during work time rather than a lunch break.
25. Under cross-examination, ██████████ confirmed that on Thursday afternoon there were other teachers in the centre on non-contact time. She accepted that it was possible those teachers were sometimes on the floor on a Thursday afternoon but indicated that that was not usually the case.
26. ██████████ confirmed that she had not raised any of her concerns with ██████████ or with any of the other managers at the centre prior to her discussion with ██████████ in October 2019.
27. Under cross-examination, ██████████ accepted that supermarket shopping was part of ██████████ role, and she accepted that on occasion ██████████ would take a later lunch break, go to the gym and then immediately do the supermarket shopping rather than leaving the centre more than once during the day. She accepted that that would take longer than a standard lunch break and could account for the length of time that ██████████ was away from the centre.
28. Under cross-examination, ██████████ confirmed that all her written material and evidence was prepared later and not contemporaneously, which impacted her ability to recall detail.
29. In response to questions from the Tribunal, ██████████ confirmed that she did not raise these issues with ██████████ directly as she felt very uncomfortable. She didn't think it was fair on ██████████ to be left alone on Thursday afternoons. However, she wished to avoid conflict and that is why she did not raise matters with ██████████. ██████████ confirmed however that there was a shared Education Manager between ██████████ and the other centre she worked at for some of the time that she had held these concerns about ██████████. ██████████

██████████ accepted she could have raised the issues in relation to ██████████ with the Educational Manager at ██████████, but did not do so.

30. Further, in response to questions from the Tribunal, ██████████ indicated she was not fully aware of the concerns or complaints process and indicated she had some personal health issue she was also dealing with at this time.

- ██████████
31. ██████████ is a registered teacher who worked at ██████████ beginning in 2018. She no longer works at ██████████.

32. ██████████ evidence is that on Thursday mornings she was rostered for non-contact time from 8.00 am until 9.30 am. Her evidence was that ██████████ would be in the office during that time also, despite her being rostered on the floor on Thursday mornings. ██████████ stated that this would leave only three teachers with 40 children, which was out of ratio. ██████████ evidence is that during that time ██████████ would be doing personal shopping, and at other times she would be doing learning stories or planning.

33. ██████████ said that she was sometimes rostered on the floor with ██████████ and noted that, "When you work with ██████████ in an area, whether it's inside or outside, you knew you would often be working on your own for periods of time". Her explanation for this was that ██████████ would regularly say she needed to telephone someone or send an email and then leave the floor for a long time. She indicated that she did not feel comfortable to question this practice, however. It was ██████████ evidence that the centre was left out of ratio a couple of times a week due to ██████████ actions.

34. ██████████ evidence was that she worked on the floor until 1.00 pm on Thursday afternoons and that that was her leaving time. ██████████ started work at 1.00 pm and would go straight onto the floor. ██████████ evidence is that she sometimes had to stay late since ██████████ would still be in the office or would be finishing lunch, having gone to The Base, Te Rapa, or Chartwell to buy lunch. ██████████ indicated there were times when other staff members would have to give up some of their non-contact time to cover for ██████████ so she could go home at 1.00 pm. ██████████ view was that ██████████ abused her position as Head Teacher, taking advantage of ██████████ good nature.

35. In relation to Snapchat, ██████████ evidence was that ██████████ would talk to her son over video call while she was at work. ██████████ did not know whether this was via Snapchat or FaceTime or some other video call option, but notes that she recalled seeing ██████████ face on the phone with ██████████ holding the phone and saying

something like, "Look at F", if she had her with her. [REDACTED] recalled one time that F was in the office and recalled [REDACTED] calling [REDACTED] to chat and then bringing F onto the call with him. [REDACTED] had seen photographs of [REDACTED] and met him once or twice when he came into the centre.

36. [REDACTED] did not see the Snapchat app open on [REDACTED] phone, nor did [REDACTED] tell her it was Snapchat. However, she did recall seeing [REDACTED] take photographs of F with her phone.
37. Under cross-examination, [REDACTED] confirmed that the centre was open during her non-contact time at 8.00 am to 9.30 am on Thursday mornings, but she accepted that not all of the children were present first thing in the morning, rather they came in at various times during the morning. [REDACTED] also accepted that on occasion children were sick. [REDACTED] indicated, however, that most children had arrived by 9.00 am.
38. [REDACTED] accepted that if she was in the office on non-contact time, she would not know whether the centre was in ratio or not.
39. [REDACTED] also accepted that Thursday mornings was a suitable time for [REDACTED] to discuss administrative matters with [REDACTED] given that [REDACTED] only worked at the centre certain days of the week.
40. [REDACTED] accepted under cross-examination that as a registered teacher she is bound by the Code of Conduct, including the obligation to put the wellbeing of children ahead of all other matters. She accepted that she could have gone onto the floor herself if she was concerned about the ratio of children to teachers. [REDACTED] also accepted that there were times when there was a fourth teacher available, so the centre was not out of ratio.
41. [REDACTED] confirmed in cross-examination that she did not raise any of her concerns with [REDACTED] or any of [REDACTED] senior management.
42. In response to questions from the Tribunal, [REDACTED] agreed that there was an induction into her work at [REDACTED] and that it included covering the complaints process. [REDACTED] confirmed that the complaints process included reference to the Head Teacher or going above the Head Teacher to the Education Manager. She confirmed that she did not follow this process to raise her concerns in relation to [REDACTED]
43. [REDACTED] confirmed, in response to questions from the Tribunal, that she was not sure what the enrolment numbers were on any day and was not certain that the centre was out of ratio on Thursday mornings.

44. In response to questions from the Tribunal, ██████████ accepted that the environment at the centre was not "the best" during the early months of 2019, and confirmed that there were a number of conversations between staff about ██████████ during the period January to July. When asked why she did not raise any of these issues, ██████████ said, "It felt like little things", and it wasn't until later that she realized the significance of them. However, ██████████ could not remember how often issues of ratio would arise, indicating it was more than once but she could not be more specific.

██████████

45. ██████████ is a registered teacher who has worked at ██████████ since 2010.

46. In relation to the issue of ratios at the centre, ██████████ evidence was that in the mornings there were up to 40 children, requiring four staff on the floor. There were ordinarily two teachers inside and two outside, although that may be adjusted depending on where the majority of the children were playing. It was ██████████ evidence that during the mornings there were periods when ██████████ would not be on the floor as required, but instead would be in the office for anywhere between 10 and 40 minutes. ██████████ indicated this was ongoing from mid 2018 and that she began to notice it at the time when ██████████ was building her house, which she believed ended roughly a year before ██████████ went on sabbatical in mid 2019.

47. ██████████ described ██████████ leaving the floor by saying, "As Head Teacher, I need to do something". However, she would then be online shopping and ██████████ would observe this when she popped into the office for teaching resources or to store personal items. ██████████ recalled seeing shopping websites such as Country Road and Freedom Furniture open on ██████████ laptop during the time that she was building her house. She saw these websites about three times.

48. ██████████ evidence is that when there was an extra teaching assistant assigned to help out, ██████████ would take even more time in the office.

49. ██████████ gave additional evidence that on Thursday afternoons she had an assigned non-contact period from 1.30 pm to 4.30 pm and she spent the majority of this time working in the office. ██████████ was rostered to work with ██████████, an untrained teaching assistant, on Thursday afternoons.

50. However, ██████████ evidence was that ██████████ would be in the office frequently, and while she can't remember exactly when she would come in, she would stay between 20 and 30 minutes at a time.

██████████ indicated that this happened frequently and that while ██████████ ██████████ may have been doing work during those times, it did leave the centre out of ratio.

51. Under cross-examination, ██████████ ██████████ confirmed that the centre opened at 8.00 am and she would usually arrive around 7.50 am. ██████████ ██████████ further confirmed that some children did not arrive until 8.30 am or 9.00 am, and that not all children would be present on any day, accounting for sickness, etc.
52. ██████████ accepted that as Head Teacher ██████████ would have administrative work to do, and she further accepted that the office was the best place to have private conversations with parents. ██████████ accepted that the morning was the best time to do administrative work.
53. When asked about online shopping, ██████████ accepted that on occasion this was during ██████████ breaks, but she was clear that this was not always the case. She indicated that she was sure ██████████ ██████████ wasn't shopping during her morning breaks because they usually had morning tea together at the same time.
54. In relation to Thursday afternoons, ██████████ confirmed under cross-examination that during Thursday afternoons she was on non-contact time and confirmed that there were times when the centre was out of ratio. ██████████ based that belief on the fact that there were only two teachers on the floor on Thursday afternoon, ██████████ and ██████████, so if ██████████ was in the office, off the floor, then ██████████ must have been left alone.
55. ██████████ did accept in cross-examination that there were times when ██████████ legitimately needed cover for a meeting or conversation with parents, and that on those occasions she would come off non-contact time to cover ██████████ on the floor. She further confirmed that on occasion she would come off non-contact time and onto the floor voluntarily, if she heard a child crying or something else that required attention.
56. Under questions from the Tribunal, ██████████ indicated that it was a regular Thursday afternoon occurrence that ██████████ would be in the office for between 5 and 30 minutes at a time. ██████████ indicated that this made her uncomfortable and caused her to lose respect for ██████████ over time. She said that this was disappointing as ██████████ ██████████ had generally been a supportive and good Head Teacher previously.
57. ██████████ was very candid that before the 2018 ERO assessment there was nothing particularly noticeable in terms of ██████████ behaviour, but that things went rapidly downhill in the start of 2019. ██████████ ██████████ said she felt ██████████ was taking advantage of staff,

including [REDACTED], by going to the gym on her non-contact time and doing other personal things that the other staff felt they would not have been allowed to do. [REDACTED] indicated that there were discussions between staff about what was going on, with the increasing frustration and lack of respect that staff felt.

58. Under questioning from the Tribunal, [REDACTED] agreed that non-contact hours are set by the Education Support Manager but if changes were required for the smooth running of the centre, that was possible. [REDACTED] indicated that she would go back onto floor during non-contact if necessary but that she felt she need not volunteer to do so if [REDACTED] was in the office doing something that could have been done at another time. [REDACTED] accepted that she was making judgment calls on whether what [REDACTED] was doing was work-related or not, and she indicated she was more willing to step out and cover if [REDACTED] was legitimately busy.
59. [REDACTED] accepted that in hindsight she should have said something or done something more to address the situation with [REDACTED] specifically.

[REDACTED]

60. [REDACTED] is a registered teacher who is the current Head Teacher at [REDACTED]. [REDACTED] started working at [REDACTED] in June 2013.
61. [REDACTED] evidence is that during the first half of 2019, before [REDACTED] went on leave, [REDACTED] was granted an extra teaching assistant- [REDACTED] - to help as the number of two year olds at the centre was increasing. [REDACTED] evidence was that [REDACTED] would use [REDACTED] as cover to go into the office and do what she would call "Head Teacher work". [REDACTED] evidence is that this happened on many occasions but that "Head Teacher work" was not always work-related, rather [REDACTED] would phone people, pay bills or do online shopping. Further, [REDACTED] would go to the office saying, "I'm going to log a job, back shortly", when she was rostered to be on the floor.
62. In relation to Thursday afternoons, [REDACTED] evidence is that every Thursday from 1.00 pm to 3.30 pm [REDACTED] and [REDACTED] were rostered on the floor together, with up to 20 children aged between two and five years old. [REDACTED] evidence is that [REDACTED] was often in the office during this period, leaving [REDACTED] on the floor by herself and putting the centre out of ratio.
63. This time was also [REDACTED] non-contact time, and she was normally in the office. [REDACTED] evidence is that the amount of time [REDACTED] spent in the office on Thursday afternoons varied and

that the door to the office would usually be closed, because other teachers were in the office on non-contact time and if the door was open, children tended to come in.

64. [REDACTED] evidence was that on [REDACTED] non-contact time she would often leave the centre, saying "I'm going to the gym, I haven't had a lunch break", and this would occur any time between 1.00 pm and 4.00 pm. [REDACTED] would be absent for one to three hours at a time at least once per week, every week. [REDACTED] indicated she would sometimes change into her gym gear at the centre.
65. In relation to Snapchat, [REDACTED] gave evidence that she saw [REDACTED] take Snapchats of F, and sometimes of them together. [REDACTED] did not see the Snapchat app open on [REDACTED] phone. It was [REDACTED] evidence that this occurred over a period of time and there were more than ten photographs taken.
66. [REDACTED] evidence is that [REDACTED] sometimes brought F into the office on Thursday afternoons with her, and F would sit beside [REDACTED] at the desk, and they would joke about her "doing work too". [REDACTED] recalls [REDACTED] Snapchatting photographs of F "working" to her son, [REDACTED]. [REDACTED] evidence is that she knew it was Snapchat because [REDACTED] was the one who showed her Snapchat in the first place. Prior to that, she was not aware of what Snapchat was. [REDACTED] recalls [REDACTED] showing her the app and saying she used it to talk to her son, [REDACTED].
67. [REDACTED] evidence is she heard [REDACTED] say, "I'm going to send [REDACTED] a photo", before taking a photo of F.
68. [REDACTED] knows [REDACTED] as he worked at the centre as an untrained reliever for a short period after his school year had finished. [REDACTED] confirmed he may have been there at the same time as F, but she could not recall whether this was before or after [REDACTED] sent him photographs.
69. Under cross-examination, [REDACTED] confirmed that she would generally arrive at work at about 7.50 am. She confirmed that children would arrive over the first hour or so during the morning and that not all children would attend the centre every day.
70. [REDACTED] accepted that mornings were generally a good time to speak with families, although she noted that as many parents were working, drop-offs were often brief.
71. [REDACTED] was reluctant to agree that administration would more often be done in the mornings, although she accepted that was sometimes the case. [REDACTED] view is that sometimes it was

better to do administration in the afternoons after 3.30 pm when staff were off the floor for non-contact time.

72. [REDACTED] confirmed under cross-examination that her non-contact time was 1.30 pm to 4.30 pm on Thursdays, and that she was in the office during that time with the administrator and one other teacher also on non-contact time. [REDACTED] confirmed that [REDACTED] and [REDACTED] were the only teachers on the floor on Thursday afternoons. [REDACTED] further confirmed that on occasion she would cover the floor if [REDACTED] was required in the office. On occasion, [REDACTED] would do this of her own initiative if [REDACTED] was required in the office.
73. [REDACTED] confirmed that part of the role of Head Teacher was to do grocery shopping and that there was usually no issue with a Head Teacher taking a later lunch break, so long as it was within a range of times. Further, [REDACTED] accepted that it would be "sensible" to do grocery shopping following an offsite lunch break, although she qualified that by noting that it would depend on the timing and how long it would take.
74. Under cross-examination, [REDACTED] did not accept that she couldn't be sure whether a photograph was sent, noting that she witnessed photographs being taken and heard [REDACTED] say she was sending the photo. That said, [REDACTED] did accept that she did not actually see [REDACTED] sending photographs. [REDACTED] confirms that she saw photographs being taken, she heard [REDACTED] say words to the effect of, "I'm sending this to [REDACTED]", but that she had no idea whether a photograph was actually sent, and if one was, which photo was sent.
75. Under questioning from the Tribunal, [REDACTED] confirmed that she did not recall speaking with [REDACTED] about the ratios on Thursday afternoons. She confirmed that she did not speak to [REDACTED] about the ratios but provided no explanation for why she did not raise it. [REDACTED] indicated she may have raised the Snapchat issue with [REDACTED], although could not recall in detail a conversation, and she confirmed that she did not raise this issue with the WKA. [REDACTED] confirmed she didn't raise the issue because [REDACTED] was the Head Teacher and she trusted her. [REDACTED] evidence is that she followed [REDACTED] leadership and she wanted to "do right by her" as a leader.
76. Under questions from the Tribunal, [REDACTED] confirmed that she was aware of the complaints process for the centre. While she didn't know it word for word, she knew broadly what the process entailed. [REDACTED] indicated she had followed some of that process by

talking to [REDACTED] but noted that she "didn't recognise that there was a pattern until too late".

77. [REDACTED] was asked whether, as Head Teacher, there are times when she is called off the floor now, and she confirmed that this doesn't happen often as her hours are significantly different than they were in 2019. [REDACTED] evidence is that she has three non-contact afternoons per week so she knows there is always non-contact time coming up.

78. [REDACTED] was asked by the Tribunal about her description of the centre as having a toxic environment. [REDACTED] indicated that she meant "exactly that", elaborating that staff were feeling unsupported in their roles and not sure of what was happening. [REDACTED] indicated that teachers felt like they were being played off against each other and different teachers were told different things, making them feel uncomfortable. This resulted in a feeling of stress on the floor, staff feeling overwhelmed and increasing anxiety. [REDACTED] also recalled that there were weekly discussions amongst staff about what was going on and about how nice it was to have four teachers on the floor. [REDACTED] evidence is that [REDACTED] then came to speak with her, with the staff, about [REDACTED], indicating that this was an off-the-cuff discussion initially, but then more detailed one-to-one conversations were held.

[REDACTED]

79. [REDACTED] is the [REDACTED] of Waikato Kindergarten Association and has held that role since April 2001. [REDACTED] confirmed that WKA operates [REDACTED] and that [REDACTED] had been employed at [REDACTED] as Head Teacher since 21 July 2014.

80. On 29 July 2019, [REDACTED] was granted leave from her role as Head Teacher to teach at [REDACTED] Primary School until 13 January 2020.

81. The allegations relating to [REDACTED] were first raised with her by [REDACTED] following a conversation with [REDACTED]. This process commenced on 25 October 2019 and was reported to [REDACTED] the following week.

82. [REDACTED] commenced disciplinary investigation into the allegations. Various meetings and correspondence was entered into in the course of the investigation. An investigation report was completed and provided to [REDACTED] on 29 November 2019. [REDACTED] response was received on 12 December 2019 and WKA responded again on 6 December 2019. A meeting was held on 15 January 2020, and on 17 January 2020 [REDACTED] was dismissed on one month's notice.

83. A mandatory report to the Teaching Council was submitted on 22 January 2020.
84. ██████ provided a number of documents to the CAC investigator, which were provided to the Tribunal in the course of the hearing process.
85. ██████ evidence also included a number of documents, including timesheets and rosters. Of relevance was the roster for 22 May 2019, which indicated that ██████ was to be on the floor at 9.25 am. This was compared to a cafe receipt and superette receipt indicating that ██████ was not on the floor at the time she said she was. Under cross-examination, however, ██████ accepted that if ██████ (an untrained aide) was on the floor at 9.25 am on 22 May 2019 (as her written evidence indicated she was) then the centre would be in ratio at that time.
86. ██████ confirmed that there was a formal complaints process in place at the centre and that that process was not followed by any of the staff members.
87. ██████ accepted in cross-examination that registered teachers have an obligation to learners and that that obligation is paramount. However, ██████ also confirmed that there was no disciplinary action taken against any other staff members as "they were so distressed that we didn't take it further".
88. Under cross-examination, ██████ confirmed that there were allegations in relation to Thursday afternoons but there was an inability on any staff member to identify specific times and dates.
89. ██████ further confirmed that no teachers beyond the witnesses called by the CAC were interviewed by her, nor did she speak to F's parents in relation to whether ██████ had consent to take photographs of F. ██████ confirmed that following her finding that F's privacy was breached, this was not raised with F's parents despite the obligations in the Privacy Act.
90. ██████ confirmed, under questions from the Tribunal, that at no stage did she challenge the evidence of the teachers, considering that all three saying the same thing to her was sufficient confirmation of its truth. ██████ evidence was that, "It is a numbers game". ██████ did not accept that there could have been collusion amongst the staff members, despite the delays in the allegations being made and the fact that some meetings in relation to the allegations were joint meetings. ██████ view is that because confidentiality was discussed with staff, she felt collusion was not an issue.

RESPONDENT'S EVIDENCE

91. The Respondent called evidence from five witnesses and gave evidence herself.

██████████

92. ██████████ is currently employed as a teacher at ██████████ Primary ██████████, where she had been, at the date of the hearing, for the past two and a half years. Prior to that, ██████████ was Head Teacher at ██████████

93. ██████████ gave evidence of the ERO review in late 2018, which was a process she found very stressful and time-consuming. ██████████ accepts that she was given some additional non-contact time to complete the ERO documents. However, that was still interrupted and had to be undertaken whilst managing the centre. As these matters largely related to the allegations of use of sick leave, we do not detail them here.

94. That said, ██████████ did give evidence of increased feelings of anxiety and stress going into 2019.

95. In relation to the ratios at the centre, ██████████ denied leaving the centre out of ratio. It was her evidence that if her role as Head Teacher required her to go into the office for a period, she would ask ██████████ or other teachers on non-contact time to cover the floor for her. It was ██████████ evidence that she always communicated what she was doing and how long it was going to take, and if for various reasons it took longer than anticipated, she would check in with staff and communicate what was happening. ██████████ evidence was she took particular care to ensure the kindergarten was in ratio and that teachers moved around continuously as there were many areas that were challenging to supervise due to the layout of the centre. ██████████ did indicate that staff tended to be resistant to going onto the floor during their non-contact time.

96. ██████████ evidence is that she did administrative work first thing in the morning when the number of children on the floor was low, but that she would come onto the floor when the numbers of children had built up to 30. During this time ██████████ would be engaged in speaking with parents, work-related phone calls and other centre-related administration.

97. In relation to the timing of lunch breaks and tea breaks, it was ██████████ evidence that she took these around the operational needs of the centre to ensure that ratios were met. This often resulted in her taking lunch breaks late because she had to deal with any issues with parents arising from the morning session. ██████████ accepts that during her lunch break she would do online shopping, but she denies doing this during work time.

98. [REDACTED] accepts that sometimes on Friday she would go to the gym in her lunch break to have a quick walk or run on the treadmill, and that on these occasions she would do the kindergarten shopping, which included groceries, purchasing craft supplies, and supplies for the guinea pig. In total, this would take one and a half to two hours depending on how far she had to travel and how many work-related jobs she was trying to fit in. [REDACTED] indicated that Friday afternoons were her non-contact time so there were enough teachers on the floor to cover ratios during the time she was away from the centre.
99. [REDACTED] evidence is that all staff and teachers were continuously talking about ratios with her to make sure we were meeting our required daily ratios. If the number of children in the centre was low, they could be in the position to have an extra teacher off the floor to catch up on paperwork, and it was [REDACTED] position that this was shared amongst all permanent teaching staff to support their workloads. [REDACTED] evidence is that no teacher ever expressed concerns about her or anyone having to pop into the office for short periods of time.
100. In relation to the incident on 22 May 2019, where [REDACTED] was noted as being away from the floor at 9.25 am purchasing milk, [REDACTED] evidence is that she was asked to purchase milk by [REDACTED] as there was no trim milk available. [REDACTED] was the only person who used trim milk and its lack of availability often upset her. [REDACTED] was aware that there was an extra teacher, [REDACTED], available on that day so that they would remain in ratio when she went down to the dairy to pick up the milk.
101. In response to [REDACTED] evidence, [REDACTED] noted that [REDACTED] never spoke to her about her concerns and the allegations came as a surprise to her. [REDACTED] disputed that she did online shopping during work time but did accept that she did online shopping in the office during her lunch break. [REDACTED] disputed going to the gym on a Thursday, indicating the only time that this would have happened would be on a Friday, when she had non-contact time in the afternoon.
102. [REDACTED] accepted that sometimes when [REDACTED] left the centre at 3.00 pm on a Thursday she would still be away, noting that these were days when she had a later lunch break between 2.00 and 2.30 pm, then went to the supermarket to purchase groceries for the centre such as milk, coffee, baby wipes, nappies, flour, and other items that were used on a daily basis.

103. ██████ disputed that she ever left the kindergarten counting ██████ as part of the ratio. ██████ was not a teacher, she was administrative staff and could not count towards the centre's ratios.
104. In relation to Snapchat, ██████ disputed that she favoured F but indicated that F was going through a lot of trauma in her life with her mother being unwell and all of the teachers gave F lots of attention to support her wellbeing and belonging at the centre during that time.
105. ██████ did accept that F came into the office during ██████ lunch break or non-contact time on occasion, and that sometimes during her lunch break she would speak to her son in ██████ on WhatsApp, due to the time differences. ██████ evidence is that F knew ██████ because he was employed as a reliever for WKA and taught her when he worked at the kindergarten. F would ask to say hello to ██████ on the phone.
106. However, ██████ denied taking photographs of F and sending them to ██████ on Snapchat. ██████ evidence is that ██████ may have heard her talking about Snapchatting photographs to ██████, which she did regularly, but they were photographs of herself and not photographs of F or any other children from the kindergarten.
107. In relation to ██████ statement about Thursday mornings, ██████ did not accept that she had her own office at ██████, rather there was a shared office with ██████ and any teacher who was on non-contact time. However, ██████ did accept she spoke with ██████ about administrative matters when she arrived at work at around 8.30 am on Thursday mornings. That said, it is ██████ evidence that there were few children rostered to be at the kindergarten between 8.00 am and 8.30 am, usually around ten, which, given there were three teachers rostered, left the centre well within ratios. ██████ reiterated that she always communicated to teachers where she was, and they were aware that she was speaking with ██████ first thing on Thursday mornings.
108. ██████ evidence is that from 8.30 am to 9.30 am the rest of the children started to arrive with their parents, so again there would not have been 40 children onsite until later in the morning. ██████ did not agree that she left ██████ alone when they were on the floor together, indicating that there were issues with ██████ staying in one place often, rather than moving around to supervise children.
109. In relation to Snapchat, ██████ replies to ██████ evidence were at the same as to ██████. Namely, she denied using Snapchat to send photographs of F or any other children to her son.

110. ██████ had similar replies to the evidence of ██████, indicating that she did not at any stage leave the centre out of ratio, and noting that any time she had to leave the floor to do work related to her teacher role, she would communicate that with the person working with her to ensure there was a clear understanding of where she was going.
111. In relation to ██████ allegation that she was buying furniture during the build of her house in 2018, ██████ indicated that the house was completed in December 2015 and most furniture was purchased in 2016, when she was off work with a broken ankle.
112. In relation to Thursday afternoons, ██████ denied leaving ██████ alone on the floor and the centre out of ratio on a regular basis.
113. Again, in relation to ██████ statements, ██████ evidence was largely a repeat of the earlier replies, namely agreeing that she went into the office to complete her administrative role but disagreeing that she was making personal phone calls, paying bills, or doing online shopping.
114. The same applied to Thursday afternoons, where ██████ denied that she left the centre out of ratio by leaving ██████ on the floor on her own.
115. In relation to Snapchat, ██████ disputes that ██████ could have seen her with the Snapchat app open. Again, ██████ denied sending Snapchats of F to her son.
116. Under cross-examination, ██████ accepted that F was a child at ██████, aged around 3. She confirmed that F's mother was quite sick at this time and that she gave F some additional attention as a result. ██████ accepted that she would usually allow F to stay in the office with her on occasions when she was on non-contact, although she did indicate that F should be out on the floor with the other teachers. ██████ accepted having short conversations with F but encouraged her to do drawings and other artwork at the art area.
117. ██████ accepted that she was aware of F's family situation and had a strong relationship with her, perhaps more so than some of the other kids at the centre.
118. Further, ██████ accepted that her son worked at WKA as a reliever. However, he only worked at the centre for a short period, namely the three months he was back from the ██████. ██████ accepted that upholding and protecting the confidentiality and privacy of children was part of the Code of Conduct and central to preventing harm to children. ██████ accepted in cross-examination that there was a policy for obtaining parents' consent to take photographs in

certain circumstances, for example for use in newsletters and Storypark stories. The enrolment form for the centre included an acknowledgement of permission for photographs for promotional purposes.

119. [REDACTED] evidence is that F's parents gave consent to the WhatsApp conversations with [REDACTED] involving F, but she accepted that there was no written record of that consent. [REDACTED] accepted that ordinarily recording consent in writing would be good practice, however she indicated that this conversation arose outside the centre near her car and the conversation took place not long after [REDACTED] went back to [REDACTED]. F asked if [REDACTED] was in the car and she replied that she talked to him on WhatsApp, and asked it would be okay if F did too. [REDACTED] evidence is that F's mother was happy with that.
120. [REDACTED] accepted in cross-examination that she did not get consent to send Snapchats to [REDACTED] but reiterated that she did not send Snapchat photographs of F.
121. [REDACTED] accepted that she did not tell WKA during the disciplinary process that she had consent from F's parents to engage F in the WhatsApp conversations. She confirmed this was only raised in conversation with the CAC, but indicated that was on advice of the employment lawyer she was using at the time. She noted that, "In hindsight, I wish I hadn't listened and that I had raised it earlier".
122. [REDACTED] accepted that if she wanted to take photographs of F and send them to [REDACTED], she would have needed consent in advance. She further accepted that she did send Snapchats of herself to [REDACTED] during the day and that she spoke with him during breaks or non-contact time while he was overseas. However, [REDACTED] did not accept that F was a point of conversation between herself and [REDACTED], noting that her conversations were more about his wellbeing.
123. In relation to the ratio issue, under cross-examination [REDACTED] accepted she had considerable experience as a teacher and had been working in the Head Teacher role for a while. She confirmed that part of that role includes ensuring compliance with the roster for contact and non-contact time and ensuring that appropriate ratios are maintained.
124. [REDACTED] accepted that ensuring ratios are maintained is an important part of her role in order to ensure that children are properly supervised and to prevent them coming to harm. [REDACTED] accepted the ratio of trained to untrained teachers required at least 50% of teaching staff to be trained, and accepted that the ratios included that where there were one to six children, there was one teacher, and

seven to 20 children required two teachers. There was an additional teacher required for every ten children beyond that.

125. When asked in cross-examination about ensuring that she was covered when she went off the floor, ██████████ accepted that she had concerns about how often she had to go off the floor. ██████████ evidence is that she raised that with WKA and was told that she could use ██████████ to cover if it was a brief period. Further, there were ongoing concerns about the layout of the centre and how supervision should be done. For example, there was a change to health and safety processes in relation to the logging of injuries meaning that these now had to be done on a computer. This required a staff member to be off the floor to prepare the reports. The iPad available on the floor couldn't print so the reports had to be transferred to the admin computer and printed from there.
126. Essentially, ██████████ responsibilities required her to comply with the ratios the centre but also with policies and requirements around health and safety, which were often difficult to juggle.
127. The Tribunal put to ██████████ the question of whether she could "hand on heart" say that the centre was never out of ratio. ██████████ was very candid in her response and said that she couldn't say that with absolute commitment.
128. However, ██████████ confirmed that she had competing pressures in terms of health and safety requirements and policies, and the requirements of the centre in relation to ratios. ██████████ evidence is that she raised these many times and was told to use ██████████ or that it wouldn't matter if the centre was out of ratio for very short times.
129. ██████████ evidence was that when it was brought to her attention that this was an issue, during the disciplinary process, she asked for permission to go into ██████████ to find evidence to support her defence that she had logged jobs and videos in relation to the concerns she had raised with centre management. While permission to do that was granted, the laptop, USBs, notebooks and other documents were gone from the centre and had been wiped as a result of updating the centre IT.
130. Under further questioning from the Tribunal, ██████████ accepted that she should have gone to the Ministry of Education about her concerns with ratios and welfare, but she wanted to ensure that she had documentation and proof before making that approach.
131. Under cross-examination, ██████████ accepted that there were some operational requirements, such as logging jobs, that could wait for ██████████ non-contact times. ██████████ ██████████ agreed with that but

indicated that there were some immediate and urgent things that couldn't wait, and indicated that she would never put the centre out of ratio for a non-urgent matter.

132. Again, under cross-examination, [REDACTED] accepted that she cannot be confident that she always met her obligation to keep the centre in ratio.
133. Further, under cross-examination, [REDACTED] accepted that on Thursdays it was often just her and [REDACTED] on the floor. [REDACTED] accepted that there were occasions when she had to leave the floor to carry out other duties and that during that time she was off the floor. That said, [REDACTED] did not accept that she was off the floor for periods of up to 30 minutes without cover, rather indicating that cover was arranged unless she was off the floor for a very short period. [REDACTED] [REDACTED] accepted that on occasion [REDACTED] was used to cover her on the floor, but also accepted that if [REDACTED] was covering her there were two unqualified teachers on the floor, which was a breach of the qualified teacher to unqualified teacher ratio required.

- [REDACTED]
134. [REDACTED] was a regular parent helper at [REDACTED] while her son attended the kindergarten. She was offered a position as Teaching Assistant relieving at [REDACTED] from March 2015 and she worked there until September 2019.
 135. [REDACTED] worked in the afternoons when there was a need for third teacher to keep the kindergarten in ratio. Some terms she would work five afternoons and other terms two afternoons, depending on the roll at the time. [REDACTED] also relieved at the centre if a teacher was sick, had a meeting in or out of the kindergarten, or needed office time. Relief cover was arranged by being asked in person, by telephone or using an app called Jitbug to organise relief cover. [REDACTED] was sometimes asked on the day or up to a week in advance to relieve. Relief time could be for two hours or up to a full day.
 136. It was [REDACTED] evidence that [REDACTED] was always very vigilant at checking how many children were at the kindergarten each day by checking the roll or asking another teacher and therefore knowing how many teachers were required on the floor to keep the centre in ratio. [REDACTED] confirmed [REDACTED] evidence that she would always let somebody know if she needed to take a call in the office and that she had seen [REDACTED] come out of the office to cover for [REDACTED] when she was available. [REDACTED] gave evidence that she relieved for [REDACTED] on several occasions because she had work meetings, often at the kindergarten but other times offsite.

137. [REDACTED] worked with [REDACTED] on several occasions. [REDACTED] [REDACTED] also worked with [REDACTED] and never observed her to be working with inadequate support. Neither does she remember [REDACTED] complaining about [REDACTED] [REDACTED] leaving the floor or other staff expressing concern about [REDACTED] leaving the centre out of ratio.
138. [REDACTED] confirmed she was never spoken to by [REDACTED] or anyone else from WKA about her evidence on these matters.
139. Under cross-examination, [REDACTED] accepted that she did not hold a teaching qualification and that the time she spent at the centre would vary from week to week. [REDACTED] confirmed that she worked with [REDACTED] regularly, but not every week.
140. Under cross-examination, [REDACTED] also confirmed that she was unable to give evidence about ratios on the afternoons that she was not engaged to work at the centre, although she indicated that any afternoon she was not engaged to work there were likely to be less than 20 students because she was employed to cover when there were more than 20. She did, however, accept that when she wasn't there, she clearly couldn't give evidence as to what the ratios were.
141. Under questioning from the Tribunal, [REDACTED] accepted that in the last six months she was teaching at the centre, she noticed a change in the atmosphere. She indicated that she felt there was tension between some of the teachers, that there was a lot of stress from an increase in high-needs students and more two-year-olds putting a lot of stress on the teachers, and that that showed in the environment. [REDACTED] [REDACTED] confirmed that the stress showed in the teachers' attitudes, indicating they were less joyful and warm.
- [REDACTED]
142. [REDACTED] is the principal of [REDACTED] Primary School. She has been teaching for 40 years in a number of capacities.
143. [REDACTED] has been employed at [REDACTED] Primary School since 15 July 2019. She was on a two-term sabbatical from WKA when she commenced her position with [REDACTED]
144. Prior to [REDACTED] starting work, her references, including [REDACTED] [REDACTED] were confirmed and a statement of service at WKA was provided to [REDACTED] on 24 June 2019. A copy of [REDACTED] 2018 to 2019 appraisal, dated 17 July 2019, was provided to [REDACTED], which included very complimentary comments on the recent ERO review at the centre. This document was a formal attestation that the standards of the teaching profession had been met.
145. Prior to appointing [REDACTED], [REDACTED] had no concerns about her suitability, and nothing was disclosed by WKA in documents or

conversations prior to appointment or since appointment. No further contact has been received from WKA.

146. In January 2020, ██████████ asked to meet with ██████████ and informed her that she had left her employment with WKA. She indicated at that point she was keen to continue teaching as a new entrant teacher at ██████████ when new entrant classes were required to open during the year. ██████████ told ██████████ that there were allegations on both sides between her and WKA but she was unable to go into any specifics as there was a personal grievance active at that point. The personal grievance was settled in private and confidential terms.
147. ██████████ confirmed that ██████████ told her that due to the process, the Teaching Council had to be informed by WKA of the ending of her employment.
148. ██████████ confirmed that ██████████ were very satisfied with the teaching performance and professionalism of ██████████ during the fixed-term contract in 2019 and accordingly they had no hesitation in reemploying her for the new entrant class starting in term two 2020.
149. In June 2021, she received an email containing attachments from the Teaching Council of Aotearoa New Zealand indicating that there was a complaint to the Disciplinary Tribunal. The Teaching Council information contained allegations made by WKA that ██████████ left ██████████ out of ratio, dishonestly used sick leave and breached the privacy of a learner by sending images of the learner to her son.
150. ██████████ indicated that ██████████ sick leave usage since she started at ██████████ was within normal range of a primary school teacher and that she had undertaken further investigations due to the issues raised by the Teaching Council. No concerns were indicated by that review.
151. ██████████ indicated that over the years that ██████████ has been on staff at ██████████ in a fixed-term new entrant position, she has been a willing and reflective participant in the performance management processes for teachers. That process consists of quality assurance, checks, and observations of ██████████ by her team leader, as well as a member of the senior leadership team. ██████████ has individual professional goals each year which are linked to her own development and school-wide priorities, and she has completed professional learning visits to observe colleagues and grow her own working knowledge and skills in the primary school setting. On each occasion, all standards for the teaching profession and professional standards have been met.

152. [REDACTED] teacher registration practising certificate, which was due for renewal on 4 February 2021, came through in a timely manner with no additional information as full registration valid until 4 February 2024.
153. [REDACTED] confirmed that [REDACTED] very much value the contribution that [REDACTED] brings to the new entrant classes, having a full background in early childhood education.
154. In oral evidence, [REDACTED] confirmed that as [REDACTED] employer, she felt that [REDACTED] had kept her appropriately informed of the processes and allegations against her, and that she in turn has kept the Board of Trustees informed.
155. Under questioning from the Tribunal, [REDACTED] stated that she didn't accept that [REDACTED] wasn't a good manager. She observed that for anyone to go from a level 4 ERO outcome to a disciplinary process is unusual. She considered that level 4 ERO is an achievement, indicating strong management skills.
156. [REDACTED] [REDACTED] indicated she was most surprised by the lack of communication with [REDACTED] for so long. To go from a good ERO and a good performance appraisal to a disciplinary process immediately was unusual. It was her view that there should have been "a pause" to talk to [REDACTED] and figure out what was going on.
157. Under cross-examination, [REDACTED] confirmed that the reference checking was done in mid-2019 prior to the October 2019 complaint date. Under further cross-examination, [REDACTED] confirmed that she did not observe [REDACTED] at [REDACTED] but that her written communication and policies were strong. She noted that she did not mention problems or weaknesses of her own volition, rather she was answering questions, and confirmed that she has had no issues with [REDACTED] communication at all.
158. [REDACTED] also reiterated that she was surprised that following [REDACTED] dismissal from WKA, no communication was received from WKA.
159. Under questions from the Tribunal, [REDACTED] confirmed that she considers that [REDACTED] has been very honest in her dealings with [REDACTED], indicating that she has been open about the process throughout the investigation and disciplinary process. She noted that, "We have been very impressed with [REDACTED] and her strength of character, her ability to front up and teach our learners with this hanging over her. We will continue to support her in any way that we can."

SUBMISSIONS

160. Both parties filed written submissions following the close of the hearing.
161. We have considered both sets of submissions carefully and don't intend to repeat them here in full.

CAC

162. In short, the CAC submits that:
- a. it withdrew the complaint of misuse of sick leave.
 - b. That the remaining particulars in relation to leaving the centre out of ratio and Snapchatting photographs of F amount to serious misconduct or, in the alternative, misconduct.
163. In relation to ratios, the CAC submits that:
- a. ██████████ was responsible for ensuring that the centre met its ratios and that maintaining proper ratios is particularly important in early childhood services.
 - b. The applicable ratios for groups of children aged two years or older are as follows:
 - i. for groups of between one to six children, one teacher is required to supervise
 - ii. for groups between 7 and 20 children, two teachers are required to supervise.
164. ██████████ was rostered to be on the floor alongside ██████████ on Thursday afternoons during the relevant period in 2019, while other teaching staff were on non-contact time in the office.
165. The kindergarten would generally have up to 20 children attend at the centre on Thursday afternoons, although sometimes there were more.
166. The CAC submits that the witnesses called in support of the charge gave consistent evidence as to ██████████ practice of leaving the floor on Thursday afternoons during her rostered contact time. The result of that was that an unqualified teacher, ██████████, was left on the floor by herself. The CAC submits that the Tribunal can be satisfied on the basis of this evidence that ██████████ was causing the centre to breach its ratio obligations under the ECE Regulations on Thursday afternoons. It is the CAC's submission that this evidence be preferred to the account provided by ██████████.
167. The CAC submits that the witnesses were consistent under cross-examination and under questioning from the Tribunal, and further each confirmed that ██████████ ██████████ was in a position of power and

responsibility which was the reason they felt they could not raise issues with her directly.

168. In relation to the issue of collusion, the CAC's position is there is no credible evidence to support that the staff colluded together to raise allegations. It's the CAC's submission that such a theory does not align with the manner in which issues were raised with WKA, and that this should be discounted.
169. Finally, the CAC notes that a number of matters raised by [REDACTED] and her evidence were not put to the CAC witnesses for comment, for example, the fact that there would be fewer than seven children on Thursday afternoons on occasion or the conversation that [REDACTED] said she had with [REDACTED] at the supermarket. It is the CAC's submission that no or minimal weight should be given to these aspects of her evidence.
170. In relation to the Snapchat photos, the CAC submits that on at least one occasion [REDACTED] took a photo of F and sent it to her son via Snapchat. In support of this submission the CAC relies on the evidence of [REDACTED] that she was using Snapchat during the relevant time to keep in touch with her son, including engaging in Snapchat "streaks", involving photos being exchanged on a daily basis. The CAC also relies on [REDACTED] evidence that while F may have been present during video calls with her son, she did not send him photos of F and that the video calls occurred with F's mother's permission. The CAC submit that it is notable that [REDACTED] did not mention this information in the course of WKA's employment process as part of her responses to the allegation.
171. The CAC acknowledged that there's no physical evidence in support of the allegation, for example, the actual photos of F taken. However, the CAC submits that the Tribunal can and should accept the consistent evidence from the various staff members at the centre that [REDACTED] was taking photos of F on those occasions and sending them to her son.
172. It is the CAC's submission that it is not plausible that all three of these staff members were mistaken or lying about what they observed on these occasions. It is the CAC's submission that their witnesses made appropriate concessions in relation to this topic, which can be contrasted to [REDACTED] evidence, which the CAC submits is not credible. The CAC's view is that [REDACTED] did not make appropriate concessions in relation to the relationship with F and accordingly negative inferences can be drawn in relation to her credibility.
173. In relation to liability, the CAC submits that [REDACTED] conduct meets the test for serious misconduct, or alternatively the test for

misconduct or other conduct entitling the Tribunal to exercise its powers under section 404 of the Act.

174. The CAC submits that leaving the centre out of ratio has obvious potential implications for the wellbeing and learning of students. While the CAC accepts there is no specific evidence of any actual adverse impact on learners, there are obvious risks for child safety and wellbeing in the circumstances where there is a lack of adequate adult supervision. It is that requirement for supervision which underlies the specific licensing requirements in the ECE Regulations which apply to kindergartens and centres.
175. The CAC submits that leaving an unqualified teacher on the floor by herself and thereby failing to ensure the centre remained in ratio is conduct which plainly reflects adversely on [REDACTED] fitness to teach. The CAC submit this is particularly so given [REDACTED] was employed in a management role involving responsibilities for the centre's operational requirements. It is the CAC's submission that as Head Teacher a core part of [REDACTED] role was ensuring the centre was adhering to applicable requirements, including that of maintaining adequate ratios.
176. The CAC submit that this was contrary to [REDACTED] obligations under the Code of Professional Responsibility to:
 - a. promote the wellbeing of learners and protect them from harm (clause 2.1)
 - b. demonstrate a high standard of professional behaviour and integrity (clause 1.3)
 - c. engage in professional, respectful, and collaborative relationships with colleagues (clause 1.2) given an unqualified teacher was left on the floor by herself, placing her in a difficult position.
177. The CAC further submit that this was conduct which risks the profession being brought into disrepute. It is the CAC's submission that reasonable members of the public would expect members of the teaching profession, particularly those in management positions, to ensure learners are adequately supervised and licensing requirements designed to ensure learner safety and wellbeing are complied with.
178. In relation to taking photographs of F and sending them to her son overseas, the CAC submit that this conduct adversely reflects on [REDACTED] fitness to teach and risks the profession being brought into disrepute. It is the CAC's submission that taking photographs of learners without parental permission involves a breach of the learner's privacy and is inappropriate. This was aggravated, in the CAC's

submission, by the fact that the photos were sent to ██████████ son for no purpose directly connected with the centre. The CAC submits that ██████████ actions in this regard involve breaches of clauses 1.3 and 2.1 of the Code as set out above.

179. The CAC submits that in behaving in a way that damages the trust and confidence that learners and their whānau have in the teacher is specified as conduct that will breach clause 1.3 of the Code.
180. In relation to the second limb of the definition of serious misconduct, the CAC relies on rule 9(1)(k) in relation to both aspects of ██████████ conduct. For the reasons set out earlier in the CAC's submissions (and set out above) the CAC submits that ██████████ conduct, in both respects, was likely to or did bring the teaching profession into disrepute.
181. As an alternative, the CAC submits that if the Tribunal does not consider ██████████ conduct was sufficiently serious to engage rule 9(1)(k), then the CAC submits that her actions nevertheless amounted to misconduct and warrant the Tribunal exercising its disciplinary powers given the potential implications of her conduct for child safety and wellbeing (in terms of putting the centre out of ratio in particular) and given the breach of learners' privacy.

Respondent

182. The Respondent submits that the CAC is required to prove the charge on the balance of probability and submits that the evidence of the WKA staff is largely speculative. In support of this submission, the Respondent notes that there is no direct evidence from ██████████ that she was left alone, and there is evidence from ██████████ to suggest that ██████████ was well supported and never complained of being left alone.
183. There was evidence from ██████████ that ██████████ was vigilant about ratios and ensuring that if she needed to go off the floor, cover was organised.
184. ██████████ also observed relationships between staff becoming more fractious after ██████████ went on sabbatical.
185. Thursday afternoons were well staffed with a relatively low number of children at the centre. ██████████ was engaged to cover if the expected roll was over 20 but not when numbers were under 20. Further, after 3.00 pm numbers declined as children were collected.
186. ██████████ evidence is clear in relation to communication with her son in ██████████ and this included F and what consent she obtained for that contact. The respondent emphasises that the CAC witnesses did not see any photos, whether on Snapchat or any other app, being

transmitted to [REDACTED]. The evidence of the CAC witnesses is, in the Respondent's submission, circumstantial and [REDACTED] evidence should be preferred.

187. In relation to ratios, the Respondent submits that the CAC's evidence relies entirely on those people who were in the office on non-contact time on Thursday afternoons to make comment on who was on the floor with [REDACTED] during that time. It is the Respondent's position that those teachers were unable to know precisely who was on the floor given they were on non-contact.
188. The CAC has not provided evidence from [REDACTED] about being left alone on Thursday afternoon, nor have they provided rolls identifying what students were at the centre or when, or what teachers were rostered on Thursday afternoons, including [REDACTED]. Without that data, the Respondent submits it is not possible to confirm that ratios were breached.
189. [REDACTED] evidence that there were times when only one teacher was required to maintain in ratio cannot be discounted entirely as there was evidence to indicate that the numbers of children at the centre did decline after 3.00 pm. Again, the lack of roll data makes this difficult to establish.
190. The Respondent notes that the onus of proving that the centre was left out of ratio remains on the CAC and while they were entitled to use the initial investigation of WKA, it was ultimately the responsibility of the CAC to conduct their own investigation. It is the Respondent's submission that, in the present case, that did not occur. This is demonstrated by the lack of enrolment data or staff rosters for Thursday afternoons.
191. In relation to Snapchat photos, the Respondent notes that [REDACTED] accepts she communicated with her son [REDACTED] via WhatsApp and that these communications included F. [REDACTED] does not accept that she sent images of F via Snapchat. It is the Respondent's submission that [REDACTED] sought permission from F's mother to communicate with [REDACTED] before she did so.
192. The Respondent submits that [REDACTED] evidence should be preferred to the CAC witnesses because she was the only one with actual knowledge of what she did with her phone. The Respondent emphasises that the CAC witnesses did not see [REDACTED] with the Snapchat app open, nor did they see a particular photo or photographs being sent.

ANALYSIS

Relevant Legal Principles

193. Section 378 of the Education Act 1989 (the Act) defines serious misconduct as behaviour by a teacher that:
- a) adversely affects, or is likely to adversely affect, the wellbeing or learning of one or more children; and/or
 - b) reflects adversely on the teacher's fitness to be a teacher; and/or
 - c) may bring the teaching profession into disrepute.
194. The test under section 378 is conjunctive, as section 378(1)(b) of the Act makes clear. Therefore, as well as having one or more of the three adverse professional effects or consequences described, the act or omission concerned must also be of a character and severity that meets the Council's criteria for reporting serious misconduct.
195. The Teaching Council Rules 2016 (the Rules) describe the types of acts or omissions that are of a prima facie character and severity to constitute serious misconduct. The CAC's Notice of Charge referred to breaches of rule 9(1)(g) (in relation the allegations of a breach of sick leave) and/or rule 9(1)(k) (in relation to the remaining allegations) or, alternatively, amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.
196. Rule 9(1)(g) relates to acting dishonestly in relation to the teacher's professional role or committing theft or fraud.
197. Rule 9(1)(k) relates to an act or omission that brings, or is likely to bring, the teaching profession into disrepute.
198. The burden rests on the CAC to prove the charges. While the standard to which it must be proved is the balance of probabilities, we must keep in mind the consequences for the Respondent that will result should we find she has committed serious professional misconduct.¹
199. We have applied what was said by the Supreme Court about the need for disciplinary tribunals to ensure their qualitative assessment of evidence reflects "the seriousness of matters to be proved, and the [professional] consequences [for the practitioner] of proving them".²
200. In a relatively recent High Court decision, *Cole v Professional Conduct Committee of the Nursing Council of New Zealand*³, referring to *Auckland District Law Society v Leary* HC Auck M1471/84, 12 November 1985, His Honour Gendall J said that while the burden rests on the prosecution throughout, in disciplinary proceedings there is an

¹ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

² *Z*, above, at [112].

³ *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, 31 May 2017.

expectation that the practitioner "must be prepared to answer the charge once a prima facie case has been made out".⁴ ██████████ has met this expectation by giving and calling evidence.

201. Another point bears mentioning, and that is that the High Court has cautioned against finding that departure from a profession's code of ethics or practice will automatically constitute professional misconduct. Rather, such codes and standards should be regarded as a guide to be considered by the Tribunal when considering whether, in the circumstances of the case, there has been serious misconduct (or misconduct, for that matter).⁵

Our Factual Findings

202. The CAC's charge alleges that ██████████:
- a. As Head Teacher, left kindergarten out of ratio on a number of occasions in breach of the Education (Early Childhood Services) Regulations 2018; and/or
 - b. Was dishonest in her use of sick leave on approximately 16 occasions; and/or
 - c. Breached the privacy of a learner by sending Snapchat photos of said learner to her son.
203. In submissions following the conclusion of the evidence, the CAC withdrew allegation b.
204. In relation to ratios, we've considered these under two separate headings: firstly, relating to leaving the centre out of ratio on Thursday afternoons, when the CAC alleges that ██████████ was left unsupervised on the floor; and secondly, on other occasions when ██████████ left the centre out of ratio by leaving the centre for periods of time.
205. Based on ██████████ evidence, consistent with the evidence of witnesses called for the CAC, it is clear that on occasions in the early half of 2019, ██████████ was left on her own on the floor for periods of time. Alternatively, ██████████ was assisted by ██████████ on the floor during that time. While ██████████ contribution would have meant the adult to child ratio was not breached, the ratio of qualified to unqualified teachers was breached during those times. We acknowledge the pressures placed upon ██████████ by the competing pressures on her, however, find that leaving the centre out of ratio was unacceptable.
206. In relation to the other allegations of leaving the centre out of ratio, we do not accept that this charge is made out. The evidence of the CAC

⁴ At [36].

⁵ *Staite v Psychologists Board* (1998) 18 FRNZ 18 (HC) at 34 Young J.

witnesses was somewhat vague and lacked sufficient specificity for the times and dates to be checked against staff rosters and the centre roll to confirm whether or not the centre was out of ratio.

207. Most telling is the fact that on the date which was specifically identified, 22 May 2019, the evidence showed that the centre was in fact not out of ratio at a time when the CAC witnesses believed it to be.
208. Accordingly, we are not satisfied on the balance of probabilities that this charge has made out.
209. In making this finding it is important to note that we do not consider the CAC's witnesses, in particular [REDACTED], [REDACTED], [REDACTED], and [REDACTED], to have been untruthful, rather they were asked to comment on events that took place some months prior to them being interviewed. In that circumstance, a lack of specificity and detail is entirely understandable. However, when considering a serious allegation levelled against the against a teacher, specificity and detail is required. Its absence will almost inevitably result in a conclusion that the charge levelled by the CAC is not proved. We also note that this lack of specificity should have been clear to the WKA when undertaking its disciplinary investigation and more importantly to the CAC when investigating the allegations against [REDACTED].
210. In relation to the allegation of use of Snapchat, we note the consistency of the evidence of the CAC's witnesses and must weigh up whether that similarity is the result of discussion and/or collusion between the witnesses, or whether it is simply them recalling the same or similar comments from [REDACTED] independent of one another.
211. By a narrow margin, we consider that this allegation is not made out. The reason for this is that while all of the CAC's witnesses are consistent in their evidence that [REDACTED] was taking photographs of F and made comments to the effect of "I will send this to [REDACTED]" or similar, none of the witnesses report seeing the photographs taken, nor do they recall seeing the photographs within the Snapchat app. None of the witnesses saw the Snapchat app open on [REDACTED] phone at or around the time those comments were made. That, when taken with [REDACTED] firm and clear denial of sending Snapchat photographs or photographs by any means of F to [REDACTED], led us to the conclusion that this charge is also not made out.
212. We balanced this against [REDACTED] evidence that she did, on occasion, include F in WhatsApp or FaceTime phone calls with [REDACTED] when F was in the centre office. There is no evidence to contradict [REDACTED] evidence that she sought and obtained F's parents' consent for F to be involved in those video calls, although obviously it would be best practice to record this consent in writing.

213. Finally, we note [REDACTED] evidence that despite her opinion that the Snapchat photographs had been sent, she did not make a notification under the Privacy Act or advise F's parents of potential breaches of F's privacy as required by the Privacy Act. We do not accept [REDACTED] evidence that this was to prevent distress to F's family as failure to make such a notification is a clear breach of the law, and a desire to avoid distress is not a defence to that failure. We consider that as a factor we can take into account when assessing the likelihood that this incident took place.
214. Again, none of these findings should be taken as a criticism of the CAC witnesses or any indication of their veracity. We acknowledge that the witnesses found giving evidence stressful, particularly having their evidence challenged in the hearing. They are to be commended for making appropriate concessions in relation to their ability to recall detail being compromised by the passage of time. We assessed all witnesses as trying their best to give honest and reliable evidence, but the fact remained that for the most part it was not sufficiently detailed or specific to prove the charges to the required standard.
215. In relation to the charge we have found proved, we note that [REDACTED] ultimately accepted this portion of the charge in her evidence. However, even absent [REDACTED] admissions, we would have found this portion of the charge proved, given the consistency and clear ability of the other witnesses to detail the day of the week and the circumstances in which these incidents arose.
216. We do however acknowledge that it is impossible to tell how often this centre was left out of ratio and how long it was left out of ratio on each occasion. This has weighed into our decision that [REDACTED] conduct on this occasion did not reach the type and severity likely to result in a finding of serious misconduct, and we have substituted a finding of misconduct instead.

LIABILITY

217. We are not satisfied that the respondent's conduct amounts to serious misconduct. While we accept the centre was left out of ratio, there is insufficient evidence to determine how often this happened, and for how long on each occasion. Further there is no evidence of actual harm. Accordingly, we do not consider that [REDACTED] conduct is at the level where the threshold for serious misconduct is met. We consider the respondent's conduct amounts to misconduct.
218. In terms of the test under section 378(1)(a) of the Act, we conclude that while the respondent's actions had the potential to adversely affect the wellbeing or learning of the students, this is at the lower end of the scale, and we are not able to conclude that the necessary

threshold is met. Further, there does not appear to have been any actual harm to any child.

219. We are satisfied that the respondent's actions, cumulatively, cause some concern. However, judged against her background as a teacher for a significant period, with no previous disciplinary concerns, we do not consider that this is a pattern of behaviour that reflects adversely on her fitness to be a teacher. We consider that the inappropriateness of the respondent's conduct should be noted by way of a finding of misconduct and penalties, but that it does not reach the standard of serious misconduct.
220. We do not consider that the respondent's conduct had the potential to bring the teaching profession into disrepute, although any incidents of leaving a centre out of ratio gives pause of thought.
221. The High Court in *Collie v Nursing Council of New Zealand*⁶ confirmed that the test is an objective one. In making its determination, the Tribunal must ask itself whether reasonable members of the public fully informed of the facts of the case could reasonably conclude that the reputation and good standing of the profession has been lowered by the respondent's actions.
222. We conclude that while leaving a centre out of ratio is unacceptable, we are not satisfied that reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and standing of the profession is lowered by the behaviour of the practitioner. Therefore, it does not meet the criterion in r 9(1)(k) or the definition of serious misconduct in paragraph (a)(iii) in s 378.

PENALTY

Submissions

223. The CAC filed submissions in relation to penalty, noting that in its submission, [REDACTED] misconduct was moderately serious, having regard to the following factors:
 - a. [REDACTED], as Head Teacher, was in a position of responsibility and required in her role to ensure that the centre adhered to its legal obligations.
 - b. The conduct was not one-off or isolated, having happened a number of times over some months to a point where it was noticed by a number of staff members.

⁶ *Collie v Nursing Council of New Zealand*, [2001] NZAR74 at [28].

- c. The conduct resulted in an untrained teaching assistant being left on the floor by herself in circumstances where there were practical difficulties in ensuring proper supervision of children when in different areas of the centre.
 - d. There is no direct evidence that children were, in fact, put at risk due to the breach of ratios, however there was potential for this to occur, something of which the Head Teacher ought to have been cognisant.
224. CAC acknowledges that [REDACTED] course of conduct had occurred at a time when she was experiencing difficulties in her mental health, which is a factor that the Tribunal may consider goes some way to explaining her course of conduct. The CAC submits, however, that this factor does not excuse the conduct given it was repeated and taking into account [REDACTED] position of responsibility.
225. In terms of mitigating factors, the CAC accept that [REDACTED] has no prior disciplinary history and has cooperated throughout the course of the disciplinary process. They note that [REDACTED] has fully defended the charge and would not be entitled to credit for having accepted responsibility for her misconduct (for the particular of the charge found proved), and the CAC notes that to date there has been no expression of insight or remorse.
226. Taking into account the nature and circumstances of the misconduct, a CAC submits that the appropriate penalty is as follows:
- a. Censure.
 - b. Annotation of the register for one year;
 - c. A condition on her practising certificate be imposed requiring her to inform prospective and current employers in the teaching profession of the Tribunal's decision for a period of one year. [REDACTED]
[REDACTED] has a full practising certificate valid to February 2024.
227. It is the CAC's submission that these orders would be proportionate to the nature and gravity of [REDACTED] misconduct and will ensure the key purposes of disciplinary proceedings, namely public protection and deterrence, both general and individual, are met.
228. In relation to penalty, the Respondent agrees that an appropriate penalty would be a censure.
- Analysis
229. Having determined this case as one in which we consider exercising our powers, we must now turn to consider what is an appropriate penalty in the circumstances.

230. Section 404 of the Act provides the penalties the Tribunal can impose:

404 Powers of Disciplinary Tribunal

- (1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:
 - (a) any of the things that the Complaints Assessment Committee could have done under section 401(2):
 - (b) censure the teacher:
 - (c) impose conditions on the teacher's practising certificate or authority for a specified period:
 - (d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
 - (e) annotate the register or the list of authorised persons in a specified manner:
 - (f) impose a fine on the teacher not exceeding \$3,000:
 - (g) order that the teacher's registration or authority or practising certificate be cancelled:
 - (h) require any party to the hearing to pay costs to any other party:
 - (i) require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:
 - (j) direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.
- (2) Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).
- (3) A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.

231. In determining penalty, the Tribunal must ensure that three overlapping principles are met. That is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both professional standards and the public's

confidence in the profession.⁷ We referred to the decisions of the superior courts, which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.⁸

232. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers:
- a. Protecting the public;
 - b. Setting the standards for the profession;
 - c. Punishment;
 - d. Rehabilitation;
 - e. Consistency;
 - f. The range of sentencing options;
 - g. Least restrictive;
 - h. Fair, reasonable, and proportionate.
233. We do not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
234. ██████████ has had a significant career in the profession. Up until this incident, she had not previously appeared before the Tribunal and had an unblemished record. We also recognised that by all accounts her actions were out of character at the time and that she was under significant strain and difficulties in terms of her mental health. We agree that ██████████ has a significant contribution to make to the profession, particularly in primary school teaching, and she continues to add value to the lives of the students she teaches in this capacity.
235. Considering the above, pursuant to section 404(1) of Act, we order as follows:
- a. A censure under section 404(1)(b) of the Act.
 - b. Under section 404(1)(c) of the Act the following condition is placed on the Respondent's practising certificate:

⁷ *CAC v McMillan*, NZTDT 2016/52.

⁸ *Z v Dental Complaints Assessment Committee* [2008] NCSC 55, [2009] 1 NZLR 1 at [97] and in *Re a Medical Practitioner* [1959] NZLR 784 at p800 (CA).

- i. for a period of one year from the date of this decision to notify any new employer of the Tribunal's decision if she changes employment within that time.

NON-PUBLICATION

Suppression of Children's Names

236. All of the children referred to in any material provided to the Tribunal and in this decision are entitled to automatic suppression of their names and identifying particulars under rule 32(2)(a) of the New Zealand Teachers Council (Conduct) Rules 2004 (the Conduct Rules), and we so order.⁹

Suppression of the Respondent's Name and that of the Witnesses and Centre

237. ██████████ applied for suppression of her name. The CAC was neutral to the application.

238. The default position is for Tribunal hearings to be conducted in public and the names of teachers who are subject to these proceedings to be published. That open justice principle is now contained in section 405(4) of the Education Act.

239. The Tribunal's powers around non-publication are located at section 405(6) of the Education Act. In brief, it can only make one or more of the orders for non-publication specified in section 405(6)(a) to (c) if it is of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.

240. In *CAC v Teacher*¹⁰ we considered the threshold for non-publication and said that our expectation is that orders suppressing the names of teachers (other than interim orders) will only be made in exceptional circumstances. The test will be satisfied where an individual's interests "demand" such an order. We note, however, that in *CAC v Kippenberger*¹¹ we said in reference to an earlier decision that:

The term 'exceptional' in that passage may overstate the position. But otherwise the approach described in NZTDT 2014/52P is the approach which the Tribunal adopts.

241. As we said recently in *CAC v Finch*,¹² the "exceptional" threshold that must be met in the criminal jurisdiction for suppression of the defendant's name is set at a higher level than that applying in the

⁹ For clarity, we record that the order is formally made pursuant to section 405(6)(c) of the Education Act and rule 32(2)(a) of the Conduct Rules.

¹⁰ *CAC v Teacher*, NZTDT 2014/52P, 9 October 2014.

¹¹ *CAC v Kippenberger* NZTDT 2016/10S, 29 July 2016, at [11].

¹² *CAC v Finch* NZTDT 2016/11 at [14] to [18].

disciplinary context. What this means, as we said in *Kippenberger*, is that a teacher faces a high threshold in order to obtain permanent name suppression, but it is wrong to place a gloss on the term "proper" that imports the standard that must be met in the criminal context. We are of the opinion that, having regard to the interest specified in section 405(6), it is proper to suppress the Respondent's name and, by extension, the name of the witnesses and the centre involved. We accept that there is evidence of [REDACTED] medical conditions and while there is no direct medical evidence of the impact that publication of her name would have on [REDACTED], at the hearing, [REDACTED] gave evidence in relation to the impact on her if her name were published. This largely extended to embarrassment and shame at having been involved in this process. [REDACTED] felt that her team at her current school would be impacted and that the families at her current school would think less of her. Given the impact [REDACTED] mental health had on the behaviour at the centre of these allegations, we consider that publication would create a further risk of harm to her.

242. We are also mindful of the fact that we have only found one particular of the charge proved, and determined that [REDACTED] conduct amounts to misconduct not serious misconduct.
243. Taken together, we consider those two factors makes suppression proper in this case.
244. We order suppression of [REDACTED] name, the names of the witnesses and the centre.

COSTS

245. The CAC seeks an award of costs in the vicinity of 25% to 30% of the Committee and Tribunal's costs. The CAC submits that as a general rule, the starting point for an award of costs is 50% of the Committee's costs where charges are found proved. The level of costs ordered may be increased or reduced from that start point to take into account factors such as the teacher's cooperation (where this has reduced the cost of a proceeding) and ability to pay.
246. The CAC acknowledges the following factors are relevant:
 - a. One particular of the charge (the Snapchat particular) was found not proved, and one particular (the sick leave particular) was withdrawn by the Committee following the conclusion of the hearing.
 - b. One particular of the charge (the breach of ratio requirement) was found proved, albeit to the level of misconduct rather than serious misconduct.

- c. [REDACTED] [REDACTED] cooperated in the course of the disciplinary proceedings. Some facts were admitted, streamlining the issues in dispute to an extent, although the Committee was required to call a number of witnesses.
 - d. A three-day hearing was required, with multiple witnesses for both sides. Detailed closing submissions were filed following the hearing with reference to a hearing transcript that exceeded 400 pages. As reflected in the cost schedule, this has resulted in a considerable level of cost being incurred.
247. The CAC submits that costs in the vicinity of 25% to 30% would appropriately reflect that [REDACTED] has successfully defended some aspects of the charge, while also ensuring that the entire costs of the prosecution are not borne by the profession in circumstances where disciplinary finding has been made against [REDACTED].
248. Respondent submits that [REDACTED] successfully defended most of the allegations against her and while there was an adverse finding made, it was on a much narrower scope than the original allegation.
249. The Respondent further notes that the Teaching Council and CAC uncritically picked up the approach taken by the WKA rather than looking at [REDACTED] [REDACTED] situation with fresh eyes. It is the Respondent's position that had they done this, they may well have put [REDACTED] health at the centre of their inquiry and looked at her situation through an impairment lens rather than a disciplinary focus. That would have likely narrowed the issues before the Tribunal and therefore reduced the costs involved.

Analysis


250. Costs are usually awarded against the Respondent where a charge is upheld. We have not made a finding of serious misconduct, but we have made an adverse finding.
251. We consider that a contribution of 20% is appropriate.
252. That amount recognizes that the CAC is entitled to a contribution to its costs. It was not unreasonable for the CAC to lay a charge of serious misconduct given the obligations in section 401(4) to refer to the Tribunal any matter that "may possibly" constitute serious misconduct. Had all particulars of this charge been proved, we would have found serious misconduct. Accordingly, the CAC's decision to pursue this charge as serious misconduct cannot be criticised.
253. At the same time, the Respondent has been successful on arguing that not all aspects of the charge have been proved and that those aspects which have been proved should amount to misconduct. We order the Respondent to pay:

- a. 20% of the CAC costs under section 404(1)(h), amounting to \$8,861.74; and
- b. 20% of the Tribunal costs under section 404(1)(h), amounting to \$5,399.46.

ORDERS

254. As set out above, the Tribunal's formal orders under the Education Act 1989, are as follows:

- a. The respondent is censured for her misconduct under section 404(1)(b) of the Act.
- b. Under section 404(1)(c) of the Act the following condition is placed on the Respondent's practising certificate:
 - i. for a period of one year from the date of this decision to notify any new employer of the Tribunal's decision if she changes employment within that time.
- c. Under section 405(6) of the Act, non-publication of the names of the respondent, Child F, the witnesses and the centre.
- d. Under section 404(1)(h) that the respondent pay \$8,861.74 being 20% of the CAC costs.
- e. Under section 404(1)(h) that the respondent pay \$5,399.46, being 20% of the Tribunal costs.



Hannah Cheeseman
Deputy Chairperson

NOTICE - Right of Appeal under Section 409 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. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).

NOTE: NON-PUBLICATION ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2021-27

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



Kaiurupare / Respondent

Pae Taraiipunara | Tribunal panel

J M O'Sullivan (Chair)
D Spraggs and R McInerney (Members)

Hei Māngai | Representation

E Mok, Meredith Connell for the CAC.
J Brown, NZEI Te Riu Roa, for the
Respondent.

MINUTE – NON PUBLICATION ORDERS

22 March 2024

[1] The Tribunal issued a decision on liability and penalty on 20 June 2023 following a hearing conducted in Person from 30 August to 1 September 2022. The Tribunal ordered as follows:

- (a) The respondent is censured for her misconduct under section 401(1)(b) of the Act.
- (b) Under section 404(1)(c) of the Act the following condition is placed on the Respondent's practising certificate: For a period of one year from the date of this decision to notify any new employer of the Tribunal's decision if she changes employment within that time.
- (c) Under section 405 (6) of the Act, non-publication of the names of the respondent, Child F, the witnesses and the centre.**

(d) Under section 404(1)(h) that the respondent pay \$8,861.74 being 20% of the CAC costs.

(e) Under section 404(1)(h) that the respondent pay \$5,399.46, being 20% of the Tribunal costs.

[2] On 6 March 2024, the redacted decision was issued to all parties for review prior to the proposed publication date 13 March 2024.

[3] On 12 March, Ms Janette Brown, NZEI, Representative for the Respondent, wrote directly to the Tribunal to acknowledge receipt of the Tribunal's redacted decision and to raise a concern that unredacted details may lead to the identification of the Respondent, whose name had been suppressed.

[4] Ms Brown provided correspondence from the respondent who wrote:

[REDACTED]


[5] The concern raised is that reference to [REDACTED] will identify the respondent. The Respondent considers that the potential publication will have significant adverse outcomes for her within the community. The CAC does not oppose this particular being redacted.

[6] I have been referred this matter as the Deputy Chair who issued the original decision is not sitting. The panel and I have considered the application and have determined that the reference to [REDACTED] ought to be redacted in order to give effect to the intention of the Tribunal's order that the respondent not be identified in the decision. The reference to [REDACTED] is not necessary for the decision to be understood. We consider therefore a direction to redact is in the interests of justice, and for the avoidance of doubt extend our non-publication order as follows:

(a) We **order** that publication of [REDACTED] in reference to the matters in our de-

cisions in relation to this case (including this Minute), is prohibited from publication on a permanent basis.

- (b) We also order non-publication of paragraph [4] of this Minute.



Jamie O'Sullivan

Chair of the New Zealand Teacher's Disciplinary Tribunal