

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

I RARO I TE MANA O TE | UNDER THE

Education and Training Act 2020

MŌ TE TAKE | IN THE MATTER OF

an inquiry by the Tribunal into the conduct of [REDACTED]
[REDACTED] of [REDACTED] Teacher (registration
number [REDACTED])

WHAKATAUNGA HERENGA | LIABILITY DECISION

TE RĀ:

22 September 2023

TE RONGONGA:

In person, 7 and 8 June 2023

PAE TARAPIUNARA:

Rachael Schmidt-McCleave (Deputy Chair), Rose McInerney/Louise
Arndt (Members)

HEI MĀNGAI:

M Djurich (Meredith Connell) for the CAC
J Brown for the respondent

Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee ("CAC") has charged the respondent with serious misconduct under section 10 of the Education and Training Act 2020 (the "Act") after determining that, in accordance with section 497 of the Act, information received from the mandatory report provided by [REDACTED] (the "School") about the respondent's conduct should be considered by the Tribunal.
2. The CAC, in the second amended notice of charge charges that the respondent, a registered teacher in Tauranga, in or around November 2020,¹ kicked or pushed Child A (year 6) with his leg, causing Child A to fall off a hoverboard.
3. The CAC alleges that the charged conduct amounts to serious misconduct under section 10 of the Act, and any or all of Rules 9(1)(a), (b) and/or (k) of the Teaching Council Rules 2016 (the "Rules"), or alternatively amounts to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to section 500 of the Act.
4. The matter was heard in person in Tauranga on 7 and 8 June 2023. The respondent defended the charge.
5. At the conclusion of the hearing, the Tribunal found that the charge had not been established to the requisite standard. This decision sets out the Tribunal's detailed reasons.

Ko te hātepe ture o tono nei – Procedural History and Preliminary Matters

6. A pre-hearing conference was held on 20 February 2023 at which timetabling directions were made, including as to any application for hearsay evidence which was indicated by the CAC might be needed. The Tribunal also ordered interim suppression of the respondent's name and identifying details, and those of Child A, to stay in place until the end of the hearing. Any permanent suppression orders were ordered to be filed in accordance with the timetable directions.
7. On 1 May 2023 a further pre-hearing conference was held. Because the CAC had been unable to secure the cooperation of a child and his family named in the original charge document, the CAC sought to amend the charge. The respondent did not object, and the Tribunal therefore granted leave to the CAC to amend the notice of charge.
8. The CAC also applied for non-publication orders, under section 501(6)(c) of the Act, for two former students of the School ([REDACTED] and [REDACTED]) who were to give evidence

¹ Amendment to date made during hearing.

at the hearing. The respondent did not object. The Tribunal was in fact required, under rule 34(4) of the Rules, to consider whether it was appropriate to make an order under section 501(6). The Tribunal concluded that [REDACTED] and [REDACTED] ages justified an order for permanent suppression of their names and identifying details which outweighed any public interest in transparency and therefore made the permanent order.

9. The Tribunal also granted the CAC's application, under rule 34(3) of the Rules, for [REDACTED] to give his evidence by video link from a different location to the respondent, and to allow support persons (in the form of parents) to be present for both witnesses.

Objection to evidence

10. At the outset of the hearing, the CAC lodged an objection to the proposed evidence of [REDACTED] filed on behalf of the respondent. Ms [REDACTED] is the principal of [REDACTED]. She employed the respondent as a classroom teacher in term four of 2022. Her evidence outlines the steps she took before employing the respondent (after he disclosed to her the investigation that was underway at the School), and her experience of the respondent during his time at [REDACTED] (where he currently teaches).
11. The CAC objected to paragraph 9 of Ms [REDACTED] evidence as an infringement of sections 23-24 of the Evidence Act 2006, being inadmissible opinion evidence. The CAC also made a broader objection to the character evidence contained in Ms [REDACTED] statement, submitting that character evidence about the respondent is irrelevant as to whether the alleged incident in the notice of charge actually took place. Counsel for the CAC submitted that, while that evidence may be relevant to penalty if that becomes necessary, it is not relevant to the current consideration for the Tribunal of liability.
12. In response counsel for the respondent pointed to Rule 36 of the Rules, which gives the Tribunal a wide discretion to allow evidence that may otherwise be inadmissible. The test, she submitted, is whether the Tribunal would find the evidence helpful. She also pointed to examples of opinion evidence in the CAC's evidence, for instance at paragraph 4 of [REDACTED] brief of evidence.
13. Finally, counsel for the respondent submitted that it's a matter of weight to be given to such evidence. This matter has been going on for over two years, and it is pragmatic to put all evidence (including that which might only be relevant to penalty) before the Tribunal.
14. In reply, counsel for the CAC submitted that the CAC did not accept that [REDACTED] evidence constituted opinion evidence and, in any case, his evidence predates the alleged

conduct, whereas that of Ms [REDACTED] post-dates the conduct. The purpose of Ms [REDACTED] evidence is relevant to penalty, and would be appropriate if matters reached that point (and an oral penalty hearing could then be held).

15. The hearing was adjourned briefly so the Tribunal could discuss the application and the arguments made.
16. The Tribunal struck out the final line of paragraph 9 of Ms [REDACTED] brief as being unhelpful opinion evidence, but otherwise utilised its wide discretion under rule 36 to decline the application and allow Ms [REDACTED] evidence to be given. The Tribunal concluded that it is a matter of weight for the Tribunal as to the extent to which it would place relevance on the evidence and, in any case, if matters reached the stage of penalty, it would be relevant.

Te Ture - The Law

17. The disciplinary regime of the Act is focused on “*the safety and welfare of children and young people in the education system and the quality of the institutions and teachers*” (*K v Complaints Assessment Committee of the Teaching Council of Aotearoa New Zealand* [2022] NZHC 307 at [107]). To that end, the Act sets out a process for the mandatory reporting of potential serious misconduct by a registered teacher (section 491), referral of that report to a CAC (section 496) and referral to the Tribunal by the CAC in certain circumstances (section 497).

18. Section 10 of the Act defines serious misconduct:

serious misconduct means conduct by a teacher –

- (a) *that –*
 - (i) *adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or*
 - (ii) *reflects adversely on the teacher’s fitness to be a teacher; or*
 - (iii) *may bring the teaching profession into disrepute; and*
- (b) *that is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct.*

19. The test under section 10 is conjunctive², meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.

² *Teacher Y and Education Council of Aotearoa New Zealand*, [2018], NZTDT 3141, 27 February 2018 at [64] discussing the identical text under section 378 of the 1989 Act.

20. The Tribunal accepts that, if established, the respondent's conduct would fall within the following sub-rules of Rules 9(1):
- (a) Rule 9(1)(a): using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so.
 - (b) Rule 9(1)(k): any act or omission that brings, or is likely to bring, discredit to the profession.
21. The Tribunal accepts that the test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent's behaviour.³
22. The Tribunal considers that the following clauses of the Code of Professional Responsibility are also relevant:
- (a) Clause 1.3: *"I will maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity."*
 - (b) Clause 2.1: *"I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm."*
23. The Code was issued with *"Examples in Practice"*⁴ which provide positive examples of what the principles look like in practice and include behaviours that are unacceptable and breach the Code.
24. An example of demonstrating a high standard of professional behaviour and integrity as required by clause 1.3 is *"behaving in ways that promote a culture of trust, respect and confidence in me as a teacher and in the profession as a whole."* Conduct that damages this trust and confidence breaches clause 1.3.⁵
25. An example of behaviour that does not promote learners' wellbeing and may cause harm is *"inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour."*

Kōrero Taunaki – Analysis of Evidence

CAC's evidence

³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43, 24 March 2017.

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

⁵ At 7.

26. The CAC called five witnesses. In summarising their evidence below, the Tribunal has focussed on the one remaining particular of the charge.

27. [REDACTED] is currently a Year 9 student at Tauranga Boys College. In 2019/2020, he was in Years 5 and 6 at [REDACTED]. The respondent was a teacher at [REDACTED] at the time.

28. With respect to the alleged hoverboard incident which is the remaining particular of the charge, [REDACTED] said as follows:

(a) In his written statement, [REDACTED] said he first spoke to the Vice-Principal of [REDACTED] Miss [REDACTED] about the hoverboard incident sometime after the incident, but still in that same year (2020).

(b) In the interview with the Teaching Council investigator, on 21 March 2023, [REDACTED] said:

“Um, we used to – there was a while there where, um, me and a couple others would ride hoverboards. They’re just things with, like, two wheels and, um, [REDACTED] he was having a turn on one and we⁶ were helping him.

....

And we were going past – along this little pathway thingie on the grass, um, and Mr [REDACTED] came out of a classroom and, ah, kicked the, ah, kicked the hoverboard, um, which made [REDACTED] fell off, ah, fall off. Um....

...Um, [REDACTED] fell off. Ah, I can’t remember if he kicked the hoverboard or if he kicked [REDACTED]. It was....

....

um, it was one of them, but yeah, he kicked [REDACTED] off the hoverboard, um, and [REDACTED] fell over.

...

And I can’t remember if he got hit or not or.....

Ah, well the hoverboard, it’s quite a reactive thing. So as soon as it moves forward, like as soon as it tilts forward, it starts moving.

....

So he would have kicked it and it would have gone backwards and it – and then when he went backwards, um, the hoverboard would have jolted forward, and he fell off.

⁶ Confirmed in the hearing to be either [REDACTED] and [REDACTED], or [REDACTED] and [REDACTED]; see Day 1 Transcript page 16

....

Yeah, ah, I can't remember if he fell backwards or forward. It was – yeah, I mean it was quite a while back now, but, um....

....

he definitely fell off and I know he wasn't very happy about it."

In response to a question from the investigator as to what the respondent did, ██████ said:

"Ah, he started laughing.

....

Um, he kind of laughed and just walked off."

(c) In the hearing, in response to questioning from counsel for the respondent, ██████ said:⁷

"[Q: How did ██████ fall?]

██████: *Well the hoverboard's quite reactive so...if he kicked it that way it would've been backwards.*

[Q: Did he land on his bottom?]

██████: *It was either that or his knees as he could've fallen. It was a long time ago so I'm not one hundred percent sure.*

[Q: Okay, so you can't remember if he fell forward or back?]

██████: *Well if he got pushed backwards then the hoverboard would react so it would've pushed him forward so he could've moved back and forth a little. He would've just lost his balance.*

[Q: Is it fair to say you really can't remember the detail?]

██████: *No, I remember that he definitely fell off.*

[Q: Yeah. But you don't remember if he fell forward or backward?]

██████: *No, I remember that he definitely fell off.*

[Q: Yeah. But you don't remember if he fell forward or backward?]

██████: *No.*

[Q: Do you remember where Mr ██████ was at the time?]

██████: *Yes, he was walking out of Kotare.*

⁷ Transcript Day 1, pages 16 -22.

[Q: Okay, so was he in front of, or behind?]

██████: Front.

[Q: So he was in the front. Thank you. So you were saying that the hoverboard is quite a reactive thing. I just want to help us understand where you think Mr ██████ foot or leg was because you've said here that he kicked the hoverboard. So are you saying that it was with his foot or his leg?]

██████: Yeah I can't remember – all I know is he got kicked towards the bottom of the thing, lost his balance and then fell off.

[Q: So did he land on Mr ██████ at all?]

██████: I can't remember, he might have.

[Q: Because if he fell forward it would be expected that he would fall on Mr ██████. Would that be correct?]

██████: Could've yes.

[Q: But you're not sure?]

██████: I'm not sure it was three years ago.

....

[Q: So if you don't know whether he fell forwards or backwards, is it fair to say that you're actually guessing what happened?]

██████: No, because I know that he definitely fell off but I'm not sure if it – because he could've wobbled back and forth two or three times before he fell off. Because if you lean backwards, the hoverboard moves backwards so....

[Q: But when you say he could have fallen backwards and forwards three or four times, that's a guess isn't it?]

██████: Yes.

...

[Q: So there were no injuries to ██████ after this incident?]

██████: Not sure, he could've hurt one of his shins.

[Q: But you don't know?]

██████: Not sure, it definitely could've led to some bad injuries so..."

██████ also confirmed in oral evidence that he didn't tell his classroom teacher about the alleged incident at the time.⁸

⁸ Transcript, Day 1, page 23.

In response to questioning from the Tribunal during the hearing, ██████ said:⁹

[Q: And so when he put his leg out or kicked, he didn't say anything or – like what was that like?]

██████: *He could've said something like, just something like, don't fall off, laughing about it sort of thing like something a bit snarky but...*"

29. ██████ also gave evidence in his written statement about other alleged behaviour on the part of the respondent, and was questioning on that evidence. The Tribunal considers that evidence to be not relevant to the charge. The respondent's counsel did question ██████ on that evidence, to support an argument that ██████ may have embellished evidence about the hoverboard because of a grudge he held against the respondent. That is not, however, the interpretation the Tribunal gave to the ██████ evidence. Rather, it was the degree of inconsistency, and the lack of detail which led to the Tribunal finding the charge not established (discussed further below).

30. The next CAC witness called was ██████, ██████ is currently a Year 9 student at Tauranga Boys' College. Previously, in 2020, ██████ was a Year 6 Student at ██████ where the respondent was teaching.

31. With respect to the alleged hoverboard incident which is the remaining particular of the charge, ██████ said as follows:

(a) In his written statement, ██████ said the alleged hoverboard incident happened when he was in Year 6 and he first spoke to the Vice-Principal about it sometime after the incident but still in that same year. ██████ said there is nothing more he can say about the incident than what is contained in his interview with the Teaching Council.

(b) In the interview with the Teaching Council investigator, on 15 March 2023, ██████ said:

"And as we got nearer the classroom, Mr ██████ I think, ah, I can't really remember, but pushed him off somehow. And yeah, ██████ fell off and I think he swore at him [sic]. I don't remember what that swear word was, but yeah, and then Mr ██████ just told him to, 'Don't say that', and 'Watch your language.

.....

[Q: And then what did Mr ██████ do?]

⁹ Transcript Day 1, pages 36-41.

██████: Oh he just walked off.”

In response to a question from the investigator as to where ██████ was in relation to the alleged incident, ██████ said:

“Oh I was right next to him.”

- (c) In the hearing, in response to questioning from counsel for the respondent, ██████ said:¹⁰

“[Q: So would he¹¹ fall off the hoverboard fairly often?]

██████: He did but yeah sometimes.

....

[Q: So what was the ground like underneath the hoverboard?]

██████: It was grass.

[Q: Is it quite hard to ride hoverboards on grass?]

██████: I’m pretty sure the hoverboard might’ve been an off-road one which I think would’ve helped. It would’ve made it easier for him to go on grass that it still allowed him to ride on the grass.

....

[Q: So was Mr ██████ in the front or behind ██████ at the time of the incident?]

██████: I think he was just to the side of him...I’m pretty sure to the right of him, I think.

[Q: But you’re not sure?]

██████: Yeah.

[Q: Where were you?]

██████: I think I was standing a bit behind him to the left.

[Q: Did ██████ land on Mr ██████?]

██████: No.

[Q: So did he land on his feet?]

██████: I think he landed on his bottom, I think.

[Q: So do you remember where Mr ██████’ legs or foot were at the time?]

¹⁰ Transcript Day 1, pages 50-55.

¹¹ ██████

██████: I can't remember but I think he may have put his foot out in front of the wheel. I can't remember the....

[Q: But you don't know].

██████: Yeah.

....

[Q: You say there that I can't really remember but he could've pushed him off somehow and ██████ fell off. You go into quite a lot of detail today but you didn't remember it at this time. So is it fair to say that you don't remember the detail that you've given today?]

██████: I do remember.

[Q: So in this area my understanding was it was the main route back to classes so seeing ██████ falling on his bottom would've been quite spectacular. Is that fair to say?]

██████: Yes, but it happened very quickly so it might have been hard to recognise at first.

[Q: But nevertheless, you know, if a teacher came over and kicked a student off their board, and they fell on their bottom, that would be something that people would notice? Is that fair to be said?]

██████: Yeah.

██████ also confirmed in oral evidence that he didn't tell his classroom teacher about the alleged incident at the time.¹²

In response to questioning from the Tribunal during the hearing, ██████ said:¹³

“[Q: How long a period of time was there before you saw Mr ██████ put his foot out between, like when that actually happened and when you first saw Mr ██████ coming towards you?]

██████: I can't remember.

[Q: Like is it a matter of like three or four seconds, or is it more like 15-20 seconds that you could see him coming along and...]

██████: Three or four seconds yeah.

[Q: Okay, and in that time when he was coming towards you boys did he talk to you, like before that happened? Did he say anything?]

██████: Not that I can remember.”

¹² Transcript, Day 1, page 55.

¹³ Transcript Day 1, pages 55-

32. The next witness for the CAC was [REDACTED], an investigator at the Teaching Council. Ms [REDACTED] explained her role requires her to investigate mandatory reports, own motions, complaints made and convictions received by the Council, including the collation of all relevant material relating to a complaint for consideration by a CAC. Ms [REDACTED] was the investigator appointed to look into this matter after another investigator left the Teaching Council on 12 April 2022.
33. Ms [REDACTED] explained how the mandatory report had come to the Council from Mr [REDACTED], the Principal of [REDACTED], after a complaint by a parent. Ms [REDACTED] said that the Teaching Council was advised that the matter had been referred to Orangi Tamariki who had concluded its investigation when it was unable to speak to [REDACTED], the student at the centre of matters contained in the mandatory report received.
34. Ms [REDACTED] provided detail of the responses to her investigation from the respondent and from the School and annexed copies of the relevant documents.
35. Ms [REDACTED] then described how she sent the draft investigation report to the respondent, obtained his responses and then finalised the report and sent it to the CAC. Ms [REDACTED] noted that the respondent denied the hoverboard incident, as had been described by the students and that the respondent said [REDACTED] was not part of the group with the hoverboard.
36. The fourth witness for the CAC was Ms [REDACTED]. Ms [REDACTED] is currently the Deputy Principal of [REDACTED], a position she has held for three and a half years, including when the respondent taught at the school. Ms [REDACTED] stated that she is also in charge of the students' pastoral care.
37. In her written statement, Ms [REDACTED] said that on 26 November 2020 she became aware of the alleged incident involving the hoverboard after receiving an email from [REDACTED] mother. She said she then subsequently interviewed [REDACTED], and two further students who she understood to have either been involved or who had witnessed the incident (she referred to these children as Child B and Child C in her interview notes which she attached to her brief). She confirmed with the benefit of subsequent information provided to her that Child B is [REDACTED] and Child C is [REDACTED].
38. Ms [REDACTED] attached to her written evidence a copy of her interview notes, redacted to remove information not relevant to this charge. The notes read as follows:¹⁴

¹⁴ Exhibiti AH-01 to Ms [REDACTED] brief of evidence.

“Interviewer: Child B can you tell me what happened with the Hoverboard?”

Child A asked for a go on the Hoverboard then we were helping him as we were going back to class. We went past the hill trying to get back to the classroom. Mr ██████ was there and saw Child A and put his foot out and then Child A fell off. I saw it and when Child A fell off he got up and said to Mr ██████ “Piss Off”. Mr ██████ said “Language” then we went into class.

....

Interviewer: Child C can you tell me what happened with the Hoverboard?”

Child C: The bell rang and Child A asked if he could ride the Hoverboard back to his class. Mr ██████ was on the side of the hill walking back to his class. Then Mr ██████ used his foot to kick Child A off the board and it made the board wobble and Child A fell off. He kicked his leg and it wobbled. Child A got up and said “Piss off.” Mr ██████ said “hey language”. Child A said “Well you shouldn’t have done that in the first place”. And Mr ██████ just walked off.”

39. In oral evidence, Ms ██████ confirmed certain points in relation to being made aware of the alleged incident, including confirming that she was not aware of ██████ or the other boys coming to the office to report the incident.¹⁵ She also confirmed that, once she was made aware of the incident, she did not speak to the respondent, but passed it on to the Principal.¹⁶
40. The final witness for the CAC was ██████. Mr ██████ is the Principal of ██████, and knew the respondent when the respondent was a teacher at the school between 22 July 2019 and 6 August 2021.
41. In his written statement, Mr ██████ described receiving the email on 26 November 2020 from ██████ mother about the alleged hoverboard incident and the steps that were subsequently taken by the school, including (ultimately) the submission of the mandatory report to the Teaching Council. Mr ██████ also annexed to his brief correspondent relevant to those steps taken.
42. In oral evidence, Mr ██████ clarified certain points about the layout of the school, including where the incident was alleged to have taken place. He also confirmed that he wasn’t sure whether the incident had been reported to the office at the time.¹⁷ He also could not recall whether he heard any discussion about the alleged incident amongst the staff or students at the time.¹⁸

¹⁵ Transcript, Day 1, page 81.

¹⁶ Transcript, Day 1, page 85.

¹⁷ Transcript, Day 1, page 103.

¹⁸ Transcript, Day 1, page 107.

The respondent's evidence

43. In his written brief of evidence dated 19 May 2023, the respondent gave evidence as to his teaching career to date, including the time spent at [REDACTED] in [REDACTED]

44. The respondent denied the alleged incident with the hoverboard happened. His evidence, at paragraph 2 of his brief, was as follows:

“Some boys at [REDACTED] brought their hoverboards to school. I recall a time where, in an attempt to connect with some of those boys, I was challenged to do a simple back and forth face with one of them. This occurred at [REDACTED] between the turf area and [REDACTED] classrooms, directly next to the staff room and office block before school started. I do not recall the date that this happened. We were laughing together at how dreadful I was at riding the hoverboard. The boys celebrated as I was beaten handsomely. After this, I engaged in conversation with the boys about how to ride them, what they do to maintain balance, how they move forward and backward, and what other things they can do on the boards. They proceeded to show me the answers to my questions. The boys involved with this were [REDACTED] and [REDACTED] and they were proficient at using a hoverboard. [REDACTED] and [REDACTED] were not in this group...”

45. In relation to the alleged particular hoverboard incident, the respondent said (at paragraphs 7 ff of his brief):

“I deny that this ever happened. The first I knew about this allegation was after I was put on discretionary leave on the [REDACTED], 2020. I was then suspended on the [REDACTED] 2020 until the end of my employment at [REDACTED] on the [REDACTED]. This suspension totalled 247 days. I was not working in the school in [REDACTED].¹⁹

I have no recollection of ever seeing [REDACTED], [REDACTED] or [REDACTED] on or using a hoverboard. I have no knowledge of their proficiency on hoverboards.

I am confused from their statements where, when or how I was meant to have kicked, tripped or pushed [REDACTED]....

The field was bumpy, patchy and uneven. In front of [REDACTED] classroom the field was muddy and patchy. If the weather was bad, the field was a bog and was wet with puddles all over. Spring is typically wet and the grass grows fast. Given the bumpiness, muddiness and grass length, a person's ability to ride a hoverboard safely on the field would be greatly inhibited.”

46. In oral evidence, the respondent was adamant the incident didn't happen,²⁰ agreeing with counsel for the CAC that, if it had, it would not be appropriate conduct for a teacher.²¹ The

¹⁹ The charge was subsequently amended to refer to November 2020. This date related to the earlier notice of charge.

²⁰ Transcript, Day 1, page 139 and page 153.

²¹ Transcript, Day 1, page 119.

respondent also confirmed that the hoverboard incident he describes in his brief is a different incident from the one alleged in the notice of charge.²²

47. The other witness called on behalf of the respondent was Ms [REDACTED], whose evidence the Tribunal has commented on above with regard to relevance. In her written brief, Ms [REDACTED] the Principal of [REDACTED], described the steps she took before employing the respondent in term 4 of 2021. The bulk of Ms [REDACTED] evidence relates to her experience of the respondent in his time at her school and thus will only be relevant to questions of penalty and not liability. Because the Tribunal has not found the charge to be established, there is no need for the Tribunal to take Ms [REDACTED] evidence further into account.

Kupu Whakatau – Decision

48. The Tribunal finds the charge to not be established on the balance of probabilities.
49. In reaching this decision, the Tribunal in no way wishes to diminish the evidence of the two students who came forward bravely to the Tribunal to give their evidence and be subjected to questioning from the lawyers and the Tribunal itself. The Tribunal agrees with the CAC submission that the two students had no motivation to lie, and indeed, did not do so.
50. Rather, the Tribunal considers that, likely due to the passage of time, the evidence given was inconsistent, not sufficiently detailed and at times speculative. As such, the Tribunal is unable to conclude that the incident occurred in the manner particularised in the notice of charge.
51. In particular, the Tribunal points to:
- (a) Confusion between the witnesses as to where the alleged incident actually took place.
 - (b) Confusion as to whether [REDACTED] fell off the board, which way he fell and whether he landed on his feet or his bottom.
 - (c) Confusion as to where the respondent was in relation to the alleged incident.
 - (d) Speculative language, such as “would’ve”, “I think”.
 - (e) The lack of detail in the most contemporaneous evidence, that being the notes taken by Ms [REDACTED] a few days after the complaint was received.

²² Transcript, Day 1, page 150.

52. The Tribunal considers that, leaving aside issues of where or when the alleged incident occurred, the evidence of both ██████ and ██████ in their earlier accounts and in their oral evidence, was insufficiently clear as to what actually happened between Mr ██████ leg and the hoverboard or ██████ including whether any physical contact actually occurred.
53. All that being so, the Tribunal is not satisfied that the CAC discharged its onus of proof.

He Rāhui tuku panui – Non-publication

54. The Tribunal makes permanent its interim suppression orders over the name of the school, the names of witnesses, and the names of those children and their parents who either gave evidence or were identified during the hearing.
55. The respondent has also sought an order for permanent non-publication of his name and identifying details. His brief of evidence contained the reasons for that, and these were expanded upon by his counsel in submissions filed after the hearing. The reasons given included the vulnerable health condition of the respondent's wife, and the fact the allegations occurred in relation to a small, rural school.
56. In the circumstances, the CAC appropriately indicated it would abide the order of the Tribunal in relation to permanent suppression for the respondent.
57. Section 501(6)(c) of the Act allows the Tribunal to make an order prohibiting the publication of the name of any person or any particulars that may lead to the identification of any person where they are of the opinion it is proper to do so having regard to the interests of any person (including the privacy of any initiator) and to the public interest.
58. In *CAC v Teacher D NZTDT 2019/34* the Tribunal permanently suppressed the name of a teacher, the school where the allegations occurred and related witnesses when the alleged events occurred in a small rural school, because in naming the school the students would have been identifiable.
59. In the circumstances, the Tribunal has no hesitation in granting a permanent order under section 501 in relation to the respondent.
60. There is, similarly, no issue as to costs given the charge was not established.



Rachael Schmidt-McCleave
Deputy Chair

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

1. This decision may be appealed by the teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Clauses 5(2) to (6) of Schedule 3 applies to every appeal under this section as if it were an appeal under clause 5(1) of Schedule 3.