

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/55

I RARO I TE MANA O
Under

the Education and Training Act 2020 and
the Education Act 1989.

I TE TAKE O
In the Matter of

a charge referred by the Complaints
Assessment Committee to the New
Zealand Teachers Disciplinary Tribunal

KO
Between

**COMPLAINTS ASSESSMENT
COMMITTEE**
Kaiwhiu | Prosecutor/Referrer

ME
And

CHRISTOPHER MARTIN VALLI
(Registration 329315)
Kaiurupare | Respondent

HEARING: J O'Sullivan (Chair) raua ko K Turketo me R McInerney
(Members). Hearing on papers.
REPRESENTATION: H Smith, Meredith Connell for the CAC
F Renton, PPTA, for the respondent.

DECISION | WHAKATAUNGA

Introduction | Whakataki

[1] This is a clear-cut case of serious misconduct. There is no dispute about the core facts which are contained in an agreed summary. The respondent's conduct spanned a period of more than 18 months across work at two different schools, and is likely to have impacted many students. The conduct of Mr Valli of a serious character and is antithetical to good teaching practice and professional fitness, and the expectation of the public.

[2] He taonga te mokopuna, kia whāngaia, kia tipu, kia rea. Teachers are professionals entrusted with nurturing the education of our most precious taonga, our children. Ideally, teachers instil a love of learning and nurture the education, or try to, in the children they teach. It

is a position of great responsibility, that brings with it authority, influence and power over their students and puts in them in the position of a role model. How teachers speak to our tamariki can have real and lasting consequences which may be as serious or even more serious than physical harm.

[3] The conduct of Mr Valli falls well short of best practice and of the minimum standards of the professionalism expected of teachers. Indeed, we consider that his conduct undermines the values of the profession which are well-known and are clearly articulated in the Code. The way in which the respondent spoke to students in his classroom would likely have been interpreted by students as a message that they were not good enough, did not belong, or were not valued. It is inconsistent with providing a safe environment for learning.

Summary of decision | Whakarāpopoto o te whakataunga

[4] As to the two-limb definition of serious misconduct we are satisfied that:

(a) Firstly, Mr Valli 's conduct:

- i. was more than likely, almost certainly, to have had a negative impact on the students who were on the receiving end of it;
- ii. that it reflected poorly indeed on the respondent's fitness to practice;
- iii. that it was behaviour that brings the profession into disrepute; and

(b) that the conduct is of a character or severity (indeed both) such as to meet the criteria for reporting.

[5] The appropriate penalty is cancellation.

[6] The respondent does not apply for permanent name suppression and the interim non-publication orders previously made have now lapsed.

[7] We have considered granted application for non-publication orders relating to the students referred to in the summary of facts.

Background and Charge | Tāhuhu kōrero me Te Hāmene

[8] A notice of charge was filed by the CAC on 26 October 2022, alleging serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers). The respondent was initially a primary school teacher and moved into secondary teaching in 2019. This matter concerns his conduct in 2019 – 2021 while working as a secondary school teacher. The respondent does not currently hold a practising certificate, his previous practising certificate having expired in January 2023. The respondent has signed a voluntary undertaking not to teach.

[9] The key particulars of the charge allege conduct by the respondent, while working at two high schools in the Marlborough region, over two years between 22 July 2019 and July 2021, first at Queen Charlotte College in 2019 and then at Marlborough Boy's College in 2020-2021.

[10] The allegations include that the respondent swore at/in the presence of students, used inappropriate language, physically removed a phones from two students, made disparaging comments to and/or in the presence of students, and made inappropriate comments towards students. Further, that the respondent failed to advise his employer he was subject to a CAC investigation and engaged in inappropriate conversations with students.

[11] The Education Act 1989 applies to the conduct at Queen Charlotte College, and the Education and Training Act 2020 applies to the conduct at Marlborough Boy's College. There is no dispute that differences between the 1989 and 2020 Acts are of little consequence in the applicable principles or approach in this case.

Agreed summary of facts | Whakarāpopoto whakaae o ngā meka

[12] The agreed summary of facts states:

Background

1. The respondent, Christopher Martin Valli (**Mr Valli**), is a registered teacher. He previously held a subject to confirmation practising certificate, valid until 22 January 2023. He does not currently hold a practising certificate.
2. Mr Valli voluntarily agreed not to teach following the Teaching Council receiving mandatory reports about him from two schools where he had worked as a teacher – Queen Charlotte College (**QCC**), a co-educational high school based in Picton, and Marlborough Boys' College (**MBC**), a boys' high school based in Blenheim.

Conduct while working at Queen Charlotte College

3. Mr Valli worked as a teacher at QCC between 22 July 2019 and 13 December 2019. The following conduct occurred while Mr Valli was working at QCC.

Physically removing mobile phones from students

4. Mr Valli was teaching a class in which [REDACTED] then aged [REDACTED], was a student. [REDACTED] had her mobile phone with her at her desk, where she was seated.
5. Mr Valli told [REDACTED] to put her mobile phone away a number of times, but she refused.
6. Mr Valli came up from behind [REDACTED] attempted to grab at her phone. [REDACTED] picked up her phone before Mr Valli could. Mr Valli grabbed [REDACTED] arms, then the hand in which she was holding the phone. Mr Valli pulled at the phone, causing [REDACTED] to fall from her chair onto the ground. Mr Valli and [REDACTED] tried to pull the phone away from each other.
7. When Mr Valli was able to take the phone from [REDACTED], she began crying and swearing at Mr Valli. [REDACTED] walked out of the class with her phone and reported the incident to another member of staff. Following the incident, [REDACTED] did not return to Mr Valli's class for at least three weeks.
8. On another occasion, Mr Valli was teaching a class, during which the students were undertaking a number of assessments. [REDACTED] had completed one assessment and was waiting for another. Mr Valli permitted [REDACTED] and other students to use their phones in the meantime.
9. Mr Valli became agitated and told students they were now no longer permitted to use their phones. When [REDACTED] challenged Mr Valli about going back on his earlier permission, Mr Valli walked over to her desk and snatched [REDACTED] phone from her hand. The phone dropped to the ground, causing the screen and the case in which the phone was in to break.
10. [REDACTED] stood up and swore at Mr Valli.
11. As this happened, Deputy Principal Brian Jones (**Mr Jones**) walked into the classroom. Mr Valli reported to Mr Jones that [REDACTED] had been defiant by using her phone. [REDACTED] was removed from the class and her parents called to the school to discuss the incident. [REDACTED] was prevented from attending a school-organised camp and netball competition. [REDACTED] exclusion from these activities was emotionally distressing for her.
12. Following the incident [REDACTED] was excused from attending Mr Valli's classes and permitted to work by herself in the library.

Swearing at students and/or in their presence

13. On various occasions when teaching, Mr Valli would swear at or in the presence of students.
14. Students described Mr Valli as having a short fuse and/or mood swings,

quickly becoming aggressive and swearing. This would often occur when students were talking in class or when Mr Valli believed the students were not listening to him, but sometimes students were not sure of the reason.

15. Mr Valli would swear when he had difficulty controlling the class, telling students “[they] effing need to do [their] work”, “can everyone please shut the fuck up”, “get the fuck out of my classroom” and “you’re being a bitch right now”.
16. Mr Valli would also use profanities in his general language, including the words “shit”, “fuck”, “bitch”, “arsehole”, “fag”, “faggot”, “dickhead”. Examples of Mr Valli swearing in this way include saying, “don’t put your shit on my desk”.
17. Students reported feeling scared and uncomfortable as a result of Mr Valli’s swearing and aggressive behaviour.

Making disparaging and/or derogatory comments towards students and/or in their presence

18. Students reported Mr Valli calling them and other students “stupid” and an “idiot”.
19. In response to a student, [REDACTED], struggling to sound out a word, Mr Valli made a comment to the effect that [REDACTED] people were not smart or [were] stupid. Mr Valli’s comment made [REDACTED] feel angry and upset, which she reported to her mother.
20. Mr Valli also made racist comments about Māori and people of other ethnicities.
21. Mr Valli insulted students about their personal circumstances. Mr Valli said to a student whose parents had separated, “your mum and dad don’t live together”.
22. Mr Valli was teaching a class in which an assignment had been set tasking students to write a diary entry personal to themselves. Some of the students did not participate in the assignment as they did not want to share personal information with those they did not know well.
23. Despite the personal nature of the assignment and having earlier committed to students their work would remain confidential, Mr Valli read aloud to the class the work of [REDACTED]. After reading Mr Valli commented “this is why she failed that assignment”. [REDACTED] was upset by this and felt Mr Valli had betrayed her trust.
24. When a student challenged Mr Valli on picking on [REDACTED] Mr Valli responded by sending the student out of the class.
25. Mr Valli insulted students about their learning abilities. Mr Valli was teaching a class in which the students were tasked with a spelling test. One of the students, [REDACTED], did not perform well. Mr Valli responded by swearing at [REDACTED] and describing her spelling as “shit”. Mr Valli said something to the effect of, “we’d think you were dyslexic and dumb”. Mr Valli’s response caused a number of students to laugh, which upset [REDACTED]. She left school and went home, crying.
26. On different occasions, Mr Valli criticised the class of students he was teaching for not answering his question, read aloud and critiqued individual students’

work, and made derogatory comments about the teacher who had previously taught the class, who he had replaced.

27. Mr Valli mocked a student's sexuality by speaking and acting in an effeminate way in the presence of the student.

Making inappropriate comments towards students

28. Mr Valli frequently spoke to the students about his personal life, particularly about his mother passing away from cancer, his subsequent depression and his daughter and himself having diabetes. Mr Valli encouraged students to share their personal lives.
29. Students felt uncomfortable by Mr Valli sharing personal information with them.

QCC investigation and mandatory report

30. On 21 January 2020, the Principal of QCC, Betty Whyte, submitted a mandatory report about Mr Valli to the Teaching Council relating to allegations that Mr Valli had sworn at students and ripped a mobile phone out of a student's hands.
31. The Teaching Council's Triage Committee referred the allegations to a Complaints Assessment Committee (**CAC**) to investigate on 31 January 2020. Further allegations were added to the scope of the CAC's investigation by way of own motion referral in the course of the investigation.
32. On 17 February 2020, Mr Valli was informed that he was under investigation.

Conduct while working at MBC

33. After leaving QCC, Mr Valli began working as a Drama teacher at MBC from January 2020 onwards.

Failure to inform MBC of CAC investigation

34. At no stage while he was working at MBC after being notified that he was the subject of a CAC investigation (in February 2020), did Mr Valli inform MBC of the CAC investigation or QCC's mandatory report.
35. On 9 October 2019, Mr Valli interviewed for a teaching role at MBC. On 15 October 2019, he was offered the position and he began teaching there in January 2020.
36. As noted above, QCC filed a mandatory report with the Teaching Council in January 2020, which was referred to the CAC for investigation.
37. On 17 February 2020, an investigator from the Teaching Council spoke with Mr Valli and advised him about the CAC investigation and the need to inform MBC of the investigation. Mr Valli did not do so.
38. Mr Valli contacted the PPTA shortly after being informed of the investigation and was advised by his representative to inform his employer of the investigation. Mr Valli still did not do so.

39. On 21 August 2020, MBC learnt of the CAC investigation through correspondence from the Teaching Council.

Inappropriate language and conversations with students

40. On various occasions between January 2020 and July 2021, Mr Valli used inappropriate language towards and/or in the presence of students at MBC. He also engaged in inappropriate conversations with students at MBC.
41. On one occasion, Mr Valli told Student A that he was a “waste of space” and a “waste of time”.
42. Mr Valli told Student B to “fuck off”, and said that the student was “fucking him [Mr Valli] off”. Mr Valli told the student “I’ll get you kicked out of Drama for good” and to never come back to any class.
43. Another student reported that Mr Valli swore both at him and at other students, telling them “fuck off” and that they were a “waste of space”.
44. Other students reported that Mr Valli:
- a. Called students “fucking dickheads” and “dickheads”, and that he would get angry over small things;
 - b. Would use the word “shit” a lot when explaining things;
 - c. Would get frustrated at students when they would not listen, and would sometimes say to them, “do not be a dick”;
 - d. Sometimes used the occasional swear word out of frustration or anger;
 - e. On a couple of occasions, told a student “you need to fucking get on with your work”, and told another teacher the student was a “waste of space” and should not be there.
45. Mr Valli criticised student [REDACTED] by mocking the way he spoke. When [REDACTED] told Mr Valli he wanted to switch classes to Māori, Mr Valli commented, “what’s that going to help with, it’s useless” and “what’s that going to help you with in the future, all they do is steal”.
46. Mr Valli criticised another student [REDACTED] commenting how he would not do well in NCEA. Mr Valli would also talk about [REDACTED] personal life in front of class, [REDACTED]
47. Students described Mr Valli as a “hot head”, getting angry over little things.

MBC investigation and mandatory report

48. In June 2020, concerns were raised by teachers and students about the language Mr Valli used towards and around students. Statements were taken from students in September 2020.
49. During MBC’s investigation, Mr Valli acknowledged that he would swear when

teaching (for example, using the words “shit” and “dickhead”, and saying that students were wasting time), but denied saying “fuck” and said that the swearing was not directed at students. He acknowledged his language was inappropriate but said he could learn from his mistake and that it would not happen again.

50. In August 2020, MBC was notified of the QCC mandatory report and ongoing CAC investigation.
51. On 14 January 2021, the Principal of MBC, Jeremy Marshall, submitted a mandatory report to the Teaching Council about Mr Valli.
52. In May 2021, the Council’s Triage Committee referred the further matters which were the subject of the MBC mandatory report to the CAC already investigating the matters referred by QCC.

Teacher’s comments

53. Mr Valli admitted to having taken the phone from [REDACTED] and swearing at her when he did so. In explanation he said [REDACTED] had defied his instructions to [REDACTED] to put the phone away so he grabbed it when she refused to do so.
54. Mr Valli admitted there had been a disagreement about damage caused to [REDACTED] phone. Mr Valli denied taking [REDACTED] phone.
55. Mr Valli has admitted to staff that he had sworn at students, using the words “shit” and “dickhead”.
56. In response to the QCC mandatory report, Mr Valli admitted to swearing at a student but said that he had spoken with the head of departments afterwards and apologised to both the student and the class. In a response to the Teaching Council on 29 July 2021, Mr Valli admitted to swearing at students, describing the occasions on which he had as a reaction to students’ misbehaviour. Mr Valli stated he apologised to students he directed his swearing at.
57. Mr Valli denied making racist comments or disparaging comments directed to students. Mr Valli explained that, while some students were more difficult to manage, he did not hate particular students. However, Mr Valli acknowledged he lacked the skills to address learning difficulties at secondary level.
58. In his response to the Teaching Council on 29 July 2021, Mr Valli accepted sharing personal information with students but denied it was inappropriate or at the frequency alleged. Mr Valli explained the context in which he spoke to students about his mother was on the curriculum topic of role models and that he was trying to develop a rapport and build relationship with his students.
59. In explanation for having not informed MBC of the CAC investigation, Mr Valli reported he was under considerable pressure and distracted by personal circumstances at the time. Further, he was under no obligation to do so and it was for the Teaching Council to inform the school.
60. In respect of the inappropriate language alleged to have been used while teaching at MBC, Mr Valli accepted having used inappropriate language, such as “shit” and “dickhead” but denied using the word “fuck” or swearing directly at

students. Mr Valli explained he used this language to seek cooperation from students, giving the example: “If they are going to be a dickhead, then they are wasting their time and mine”.

61. With respect of the allegations involving ██████, Mr Valli denied mocking or imitating ██████ or making derogatory comments about Māori.
62. With respect to the allegations about ██████, Mr Valli explained he had spoken to ██████ about his literacy and learning after he noticed ██████ was withdrawn and not engaged in class. Mr Valli explained he had contacted ██████ mother, who he knew. Regarding comments made about NCEA, Mr Valli explained this was in the context of a conversation with the class as a whole and he had not intended to make ██████ feel uncomfortable.

Liability: Legal principles and standards | Ngā mātāpono ture me paerewa

Standard of proof

[13] The burden of proving the charge (on the balance of probabilities), falls on the CAC.

Serious misconduct

[14] Serious misconduct is defined in s 10(1) of the 2002 Act¹ as conduct by a teacher: -

- (a) That:
 - (i) adversely affects, or is likely to adversely affect, the well-being 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.

[15] This Tribunal and the courts held in relation to the 1989 Act that the test for serious misconduct is conjunctive, and the test remains so under the 2020 Act.² The conduct must have one of the consequences specified in s 10(a)(i)-(iii) and must also be of a character or severity that meets the Teaching Council’s reporting criteria.

Reporting criteria and the Code

[16] The reporting criteria for serious misconduct are set out in rule 9 of the Teaching Council Rules 2016 and require the employer to report *serious breaches* of the Code of Professional

¹ The same definition was contained in s 378 of the 1989 Act.

² *Teacher Y v Education Council of Aotearoa New Zealand* [2019] NZCA 637 at [67].

Responsibility | Ngā Tikanga Matatika (**Code**). Rule 9 includes (importantly, non-exhaustive) examples of conduct that are of the nature and severity to be a serious breach of the Code. The examples relevantly include Rule 9(1)(a)(b)(e)(g) and/or (k):³

- (a) Rule 9(1)(a) – Using unjustified or unreasonable physical force on a young person.
- (b) Rule 9(1)(b) – Emotional abuse that causes harm or is likely to cause harm to a young person.
- (c) Rule 9(1)(e) – Breaching professional boundaries in respect of a young person with whom the teacher is or was in contact as a result of the teacher’s position as a teacher.
- (d) Rule 9(1)(g) – Acting dishonestly in relation to the teacher’s professional role.
- (e) Rule 9(1)(k) – Conduct that brings, or was likely to bring, the profession into disrepute.

[17] Whether conduct is likely to bring the teaching profession into disrepute for the purposes of either s 10(1)(a)(iii) or rule 9(1)(k) turns on whether “*reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and good standing*” of the teaching profession was lowered by the behaviour of the teacher concerned.⁴ The approach reflects that whether there has been serious misconduct or misconduct simpliciter,⁵ or not, and the severity of any such misconduct is to be assessed by objective standards

[18] The standards of behaviour expected of registered teachers are contained in the Code. The CAC submits that the relevant provisions of the Code are:

- (a) Section 1.3 – Demonstrating a high standard of professional behaviour and integrity.
- (b) Section 1.5 – Contributing to a professional culture that supports and upholds this code.
- (c) Section 2.1 – Working in the best interests of learners by promoting the

³ Teaching Council Rules 2016, rules 9(a), (j) and (k) respectively.

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]. Applied by the Tribunal in *CAC v Teacher C* NZTDT 2020/32 at [39].

⁵ If *any* one of the matters under limb (a) of the definition of serious misconduct are made out, the teacher’s conduct will amount to misconduct, whereas if the conduct also meets limb (b), the conduct will meet the conjunctive test for serious misconduct; *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64]. *Evans v Teachers Disciplinary Tribunal* [2020] NZDC 20062, 8 October 2020, at [42].

wellbeing of learners and protecting them from harm.

- (d) Section 2.2 – Engaging in ethical and professional relationships with learners that respect professional boundaries.
- (e) Section 2.3 – Respecting the diversity of the heritage, language, identity, and culture of all learners.
- (f) Section 2.5 – Promoting inclusive practices to support the needs and abilities of all learners.

[19] The respondent's conduct very obviously falls well short of each of the above standards set out in the Code.

Liability | Whakataunga Herenga – Submissions

CAC submissions | Ngā tāpaetanga a te kaiwhiu

[20] The CAC submitted that the respondents conduct was likely to adversely affect both the physical and emotional wellbeing of the child involved (s 10(1)(a)(i)), reflects adversely on Mr Valli's fitness to be a teacher (s 10(1)(a)(ii)) and The conduct may bring the reputation of the profession into disrepute (s 10(1)(a)(iii)). This is not disputed by the respondent.

Respondent's submissions | Ngā tāpaetanga a te kaiurupare

[21] The respondent responsibly accepted, through the helpful submissions of his representative, that his behaviour amounts to serious misconduct,⁶ and accepts that the conduct both reflects adversely on his fitness to be a teacher and that his actions bring the teaching profession into disrepute. The respondent also admits that his comments were inappropriate and adversely impacted the wellbeing of students.

[22] While the respondent accepts his conduct meets the overall criteria for reporting, he specifically denies that his conduct amounts to "emotional abuse that causes harm or is likely to cause harm to a young person as contemplated by rule 9(1)(b)".

[23] The respondent submits his conduct is more akin the conduct of the teacher in *Webster* than in *Hutana*, as being conduct like in *Webster* that brought the profession into disrepute, but not amounting to psychological abuse as in *Hutana*. We have considered both *Webster* and

⁶ Respondent submissions at 3.1.

Hutana, but ultimately the respondent's conduct is unique to this case, with his behaviour involving seriousness, frequency and repetition of the conduct meted out to a number of students across two different schools.

[24] The examples in rule 9 are non-exhaustive. There is no dispute the conduct meets the character and/or severity test and is serious misconduct. It is not necessary in the circumstances for us to embark on a lengthy discourse as to what "emotional abuse" entails for the purposes of rule 9. It is enough for us to say that we are well satisfied that the nature of the respondent's verbal conduct is of itself sufficiently serious to meet the character and/or severity threshold and is "serious misconduct".

[25] We do however observe that the amendment to rule 9(1)(a)⁷ to refer to emotional abuse rather than psychological abuse, was intended to increase the breadth of application of that example. Emotional abuse could consist of one serious incident, or a repetition or pattern of ongoing behaviours, and the question of what amounts to "emotional abuse" will be a matter of fact and degree in any particular case, taking into account the relevant act(s) or omission(s) and also the context, including the history and relationship between the parties for example, and the impacts of it.

Serious Misconduct – Our Findings

Ā mātou kupu e pā ana ki te whakamātautau i te hīanga nui

[26] Only one of 10(1)(a)(i), (iii) or (iii) needs to be met to satisfy the first limb of the test for serious misconduct, and the burden of proof is on the CAC. We accept that each of these are established by the respondent's admitted conduct.

[27] It is obvious that the conduct both did and was likely to effect in particular the emotional wellbeing of the learners involved, not just those it was directed to but also those who witnessed it. One child was at risk of, that is likely to have been physically adversely effected: she fell to the ground due to the force used to take her mobile phone. We also consider it appropriate to note, with concern, that it is clear to us that the respondent's conduct had actual negative impact on the learning of the students in his classroom. For example, one student left the classroom after an incident, upset, and did not return for at least three weeks. Another student was prevented from attending a school camp and a netball competition and did not return to the

⁷ Rule 9(1)(c) in the Education Council Rules 2016 referred to "psychological abuse" and was replaced, on 19 May 2018, by rule 6 of the Education Council Amendment Rules 2018 (LI 2018/59) to refer to "emotional abuse", amongst other amendments to rule 9.

class after the incident that involved them. Other students were exposed to approaches which were not conducive to learning and were criticised and shamed. Students reported feeling scared and uncomfortable as a result of the respondent's swearing and aggressive behaviour. Mr Valli's racist comments, and insults about particular students' personal lives or learning abilities made students feel, understandably, upset.

[28] It is also abundantly clear that the respondent's conduct reflects adversely on his fitness to be a teacher (s 10(1)(a)(ii)). This was conduct that was antithetical to good teaching practice and fell well short of the standards of professionalism required of teachers. The respondent's explanations were concerning to us and exposed a lack of insight into proper practice. One example is that Mr Valli referred to criticising a student as an attempt to encourage engagement in class. This is obviously neither effective nor appropriate. The respondent's professional background includes working with young primary age students who are vulnerable and we would have expected provided experience and skill encouraging students without such practices. The respondent also referred to oversharing personal information as means of attempting to gain rapport with the students, which is another example of a lack of skill or knowledge regarding effective teaching approaches: teachers can and do establish rapport with their students without resorting to such methods.

[29] Reasonable members of the public expect teachers to protect and promote the wellbeing and interests of the students in their care. The respondent's conduct may, and indeed we consider it is likely to, bring the reputation of the profession into disrepute (s 10(1)(a)(iii)), in the eyes of student, their parents and the community.

[30] We consider the character of the conduct is serious for the reasons set out above and also that the severity of the conduct is at a high level having been repeated and sustained and impacted a number of learners. We agree that the conduct is clearly inconsistent with sections 1.3, 1.5, 2.1, 2.2, 2.3 and 2.5 of the Code, and that the conduct is of a nature that meets several examples set out in rule 9(1), being such that it is of the type it ought to be reported and is of a nature and severity that it represents a serious breach of the Code.

Liability Decision | Ngā kupu mō te Whakataunga Herenga

[31] We find without hesitation that the respondent's conduct amounts to serious misconduct, and although only paragraphs (i), (ii) or (iii) of rule 10(1)(a) need to be met, we find that all three

are here, as well as rule 10(1)(b) as the character and/or severity of the conduct meets the criteria for reporting serious misconduct.

Penalty | Whiu

[32] Section 500 of the 2020 Act and s 404 of the 1989 Act, set out the powers of the Tribunal following a hearing of a charge of serious misconduct.

[33] The Tribunal has previously adopted the penalty principles identified in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand*.⁸ In *CAC v McMillan*, the Tribunal summarised the overlapping purposes of a penalty in professional disciplinary proceedings as the protection of the public, the maintenance of professional standards and accountability, and the maintenance of public confidence in the profession.⁹ It is well-established that the purposes of professional disciplinary proceedings are to ensure public protection, the maintenance of proper professional standards through general and/or specific deterrence, and the maintenance of public confidence in the profession.¹⁰ Each purpose must be addressed in its own right; it may be that a particular case does not give rise to significant protection concerns but that maintenance of proper professional standards requires that certain orders nevertheless be made. The purpose of professional disciplinary proceedings is not to punish the teacher, although achieving the above purposes may mean the outcome is seen as punitive from a teacher's perspective.¹¹ In imposing a penalty, the Tribunal must arrive at an outcome that is fair, reasonable, and proportionate in the circumstances, and the Tribunal should also seek to ensure consistency.

[34] In *Fuli-Makaua*, a case involving "drink driving", the Tribunal commented that cancellation will typically be appropriate in two overlapping categories of case:¹²

- (a) Where the offending is sufficiently serious that no outcome short of deregistration sufficiently reflects the adverse effect on the teacher's fitness to teach, or its tendency to lower the reputation of the profession; and

⁸ *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.

⁹ *CAC v McMillan* NZTDT 2016/52 at [21], citing *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 and *Young v PCC* HC Wellington CIV 2006-485-1002, 1 June 2007.

¹⁰ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1; *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018 at [51].

¹¹ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1; *Patel v Dentists Disciplinary Tribunal* HC Auckland CIV-2007-404-1818, 13 August 2007.

¹² *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018 at [54].

- (b) Where the teacher has not taken adequate rehabilitative steps to address his or her conduct. This may indicate a level of apparent ongoing risk that leaves no option but to deregister.

[35] The CAC referred us to three authorities on penalty: *CAC v Taylor* NZTDT 2019/92, *CAC v Fisher* NZTDT 2018/71 and *CAC v Robinson* NZTDT 2020/39.¹³

[36] In *Taylor* the respondent's conduct took place at a school over the course of one year (2018) and, although Mr Taylor had a prior disciplinary intervention (for drink driving), his conduct lacked the length of duration and persistence in the face of an investigation, that is present here. We have also carefully considered the nature of the comments made in both cases. While the comments made by Mr Taylor included serious sexist and disturbing content and was directed towards students, the current conduct involves both the expression of such concerning views and general inappropriate comments coupled with shaming and the use of inappropriate language to punish students as well. The nature of the conduct by the respondent and its persistence over time is such that we assess the conduct as more serious than in *Taylor*. We also note that in *Taylor* the penalty sought by the CAC was limited to censure and that the Tribunal was not asked to consider cancellation. Given the nature of Mr Taylor's conduct and the serious concerns expressed by the Tribunal regarding his fitness, the outcome might be considered generous.

[37] In *CAC v Fisher*, the teacher, over a one-month period in 2017 engaged in conduct including using inappropriate language including "fuck" and referring to a student as a "little bitch" when she laughed at him, using a sexual hand gesture intimating sexual intercourse, discussing personal, sexual and drug use with students, showing students a photo of cannabis plants on his phone; and making disparaging comments to students presenting speeches as part of an assessment. We consider that this conduct of lesser seriousness both in the content and given the shorter length of the conduct.

[38] In *Robinson* the Tribunal made a finding of serious misconduct in relation to the use of force to pull out a student's earphones, being an unjustified and unreasonable use of force in terms of rule 9(1)(a). the Tribunal recorded that "[h]aving reached for the student's phone, he "pulled hard" on the headphones. The respondent said that he "snatched" it and also that he grasped the earphone at desk level with a view to pulling it out of the phone, but had no further

¹³ This decision was upheld on appeal to the District Court.

purchase to pull it out. He said he let it go and straightening up, he grasped the earphone again about a foot from his ear. This case is relevant particularly as regards the force used to take the mobile phones from students.

CAC submissions / Ngā tāpaetanga a te kaiwhiu

[39] The CAC in their submissions on penalty referred us to the Tribunal decisions referred to above (*CAC v Taylor* NZTDT 2019/92, *CAC v Fisher* NZTDT 2018/71, and *CAC v Robinson* NZTDT 2020/39). The CAC submitted that the respondent's conduct is more serious than in *Fisher* and *Robinson*, and noted that the conduct was less confined than in those cases. The CAC also submitted that the conduct was more serious than in *Taylor* given the greater number of occasions of swearing and inappropriate and derogatory comments, which while not sexual, were of a nature to cause students to be uncomfortable and upset. The CAC submitted that while the respondent has not been previously the subject of disciplinary proceedings (as in *CAC v Taylor*), that he was on notice of the concerns with his behaviour and there was an ongoing investigation into his conduct at Queen Charlotte College when he engaged in a continued pattern of similar conduct at Marlborough Boys' College. Further, that the respondent concealed the fact of the investigation from his new employer.

[40] The CAC submits that the seizure of mobile phones from students by the respondent was more serious than the conduct in *Robinson* and was, unlike that case, repeated. The CAC highlighted as an aggravating the conduct of seizing one student's mobile phone that the respondent did not give a full explanation of the circumstances in which he had seized the mobile phone to the deputy principal, which was likely to have impacted the likelihood and/or extent of discipline received by the student for the incident. The adverse impact on students is evidence, the CAC submits, from their reactions to the conduct.

[41] As to mitigating factors the CAC refers to a lack of prior disciplinary history, the acceptance of responsibility through agreeing a summary of facts, and co-operation with the disciplinary process. The CAC referred to a lack of insight on the part of the respondent, and noted that in his response to the CAC he said about the students that "if they are going to be a dickhead, then they are wasting their time and mine". We agree that this does at least suggest that the respondent failed to, at that juncture, have full insight and used unprofessional language even in the context of an investigation.

Respondent's submissions | Ngā tāpaetanga a te kaiurupare

[42] The respondent submits that there is some insight shown, or that at least the CAC submission that he has not yet shown full insight is overstated.¹⁴ Given the broad scope of the allegations the respondent submits that some dispute was likely over the specific facts and that the respondent had admitted some matters early, signed a voluntary undertaking not to teach, and co-operated with the investigation. We have put to one side the time taken to reach an agreed statement of facts, and proceed on the basis that there is co-operation and an acceptance of the conduct set out in the agreed facts filed.

[43] The respondent also points to the affidavit he has filed, which sets out personal stressors in his life in 2019 and 2020, particularly a marriage breakdown, and that he has undertaken counselling and “biohealing” in order to address his physical and mental health challenges, as well as undertaking a “restorative process” with “students at the school”. The respondent wishes to return to teaching and submits that the appropriate penalty is censure, annotation and conditions on his practicing certificate relating to provision of this decision to future employers.

Discussion | Korororero

[44] This is not a case of a teacher swearing at a student on one or two occasions, on a difficult day. The respondent's conduct continued over a period of two years, even with the intervention of a investigation, and at two schools. The conduct included, amongst other incidents:

- (a) Repeated racist comments about Māori and other ethnicities, including by suggesting [REDACTED] people are stupid and that Māori steal.
- (b) Mocking a student's sexuality by acting and speaking in an effeminate way around them;
- (c) Unprofessional derogatory comments about another teacher;
- (d) Equating a learning disability with stupidity;

¹⁴ Respondent submissions at 4.4.

- (e) Breaching the trust of a learner by reading aloud material that was promised to be confidential, and criticizing the work of the student in front of their peers, seemingly in order to punish or make an example of them.

[45] As well as disgraceful and offensive comments, the respondent also made additional statements that suggest, in addition to a failure of the key competency and requirement to treating students with respect, a disturbing lack of insight into good teaching practices.

[46] One example is when a learner expressed an interest in learning a language (te reo Māori), in addition to racist remarks, he also told the learner it was “useless”. It is mindboggling that any teacher would react this way to a learner expressing interest in learning any language, let alone an official language of Aotearoa New Zealand.

[47] One student, when they did not perform well at a task was sworn at and told words to the effect of “we’d think you were dyslexic and dumb”. Equating a learning disability with being stupid or of low intelligence is incorrect, wrong and appalling. Speaking to any learner this way is shocking. There is no suggestion that student had been diagnosed with dyslexia, but the teacher sent a message to the class and to that student both about his view of his/her abilities, and that those with a learning disability are stupid. This is seriously concerning behaviour in a learning context and can actively discourage those with special learning needs to hide those needs at the expense of their learning, and their future prospects. Dyslexia is well-known to be a common learning disability in Aotearoa, with some estimating that up to 1 in 10 New Zealanders have some form of it.

[48] The pattern of bullying, mocking, criticizing students which is obviously not conducive to their emotional wellbeing or learning. It is also conduct which role-modelled a way of treating others that is not appropriate or acceptable, and risked students in the class also adopting such behaviour, compounding its impacts.

[49] It is also hard to see these types of comments as being merely a manifestation of the teacher struggling with a difficult personal life. Nor is it well explained by a move from primary to secondary teaching. Rather it appears to reflect a concerning set of values held by the respondent and inflicted on his classroom. This is particularly so when such comments are seen in the pattern and context of his conduct as a whole.

[50] The affidavit filed by the respondent contains little if any acknowledgement of the impact his behaviour had on the learners to whom it was directed. While we would expect such an affidavit to be reasonably focused on the rehabilitation and personal circumstances of a teacher, we were disappointed to find no evidence of insight into the impact of his serious misconduct. The respondent deposes that he would be “open to any provisions to allow the opportunity” to get back in the classroom and says “I certainly didn’t always get it right”.¹⁵ That is, in our view, a minimisation or understatement of the seriousness of his behaviour, which fell seriously short of appropriate standards on repeated occasions.

[51] The respondent deposes that he apologised to (some students) “with regards to language used”. This hardly covers his conduct. In assessing all of the material before us we were not left with a sense of real remorse and appreciate for the harmfulness of his conduct. It is not simply the language he used, but the sentiments behind that language that are offensive and unprofessional. Having briefly referred to an apology respondent then deposed that he was “commended” by others for having apologised. There does not appear to have been any apology made to the students at Queen Charlotte College.

[52] It is not clear to us that the respondent fully appreciates the seriousness of his behaviour. If this conduct was out of character for him, then it is surprising it was repeated so often over this extended period, and he should have himself recognised he was stepping well outside of professional behaviour and acted swiftly and comprehensively to ensure that he was well and able to conduct himself appropriately. Professionals have a responsibility to ensure that they are sufficiently well to practice professionally and appropriately.

[53] We have not been provided much detail regarding the counselling and biohealing, what the respondent has learned from that, and no detail as to what the “restorative process” involved. It appears to us that while he engaged in a limited number of EAP counselling sessions, these were more focused on his personal difficulties in terms of his marriage breakdown, and the biohealing on the face of it appears to have been focused on his personal wellness, although it may well have included work on the underlying issues that connect with his misconduct. Even if we took a generous view of the extent and scope of the counselling and “biohealing” engaged in, we are still left underwhelmed by the respondent’s current attitude and insight.

¹⁵ Agreed bundle, at 91.

[54] The respondent suggested that were he to return to teaching that the following “*would help in a return to the classroom*”:

- Implementing behaviour management strategies (ones I used as a primary school teacher through the Incredible Years Teacher programme, promoting students pro school behaviour such as non-verbal cues and task specific praise to those on task etc)
- Being proactive as opposed to reactive when it comes to student's behaviour. Consulting management and or Head of Faculties, if, when necessary and not taking matters into my own hands
- Acknowledging where I have gone wrong and documenting, reflecting as all teachers should do for their own personal and professional growth.
- To continue with my wonderful relationships with students learning which was, is often co-constructed.
- To make learning fun, authentic, contextual and engaging.

[55] The above strategies focus on “behaviour management strategies” for dealing with student conduct but fail to indicate how the respondent would seek to regulate and manage his own behaviour. We do however agree that his conduct suggest issues with competency or teaching skill, noting that in response to the allegations of swearing at students at Marlborough Boys’ College, the respondent said he used swearing to seek cooperation from students.

[56] We are also concerned by the failures by the respondent to disclose the ongoing investigation to his new employer, even after advised to do so by his PPTA representative, and he worked there for some eight months before they became aware of the investigation and allegations. This is inconsistent with the relationship of trust between a teacher and a school, and reflected a lack of insight on the part of the respondent as regards his behaviour and the need for support to protect the students. The approach taken by the respondent meant that more students were impacted by his conduct. It also raised concern for us as to whether the respondent would be likely to comply with any conditions, but ultimately as we considered the least restrictive penalty appropriate is cancellation, so this was not a weighty factor.

[57] We have taken into account that there has been a period where, due to the co-operation of a voluntary undertaking not to teach, the respondent has not been teaching and has had the opportunity to reflect. Ultimately that, and the other matters referred to in his affidavit and the submissions, still remain insufficient for us to stop short of cancellation. We have no confidence that the respondent has the necessary insight to correct his behaviour and are concerned that if

he returns to teaching it would place the emotional wellbeing of students at risk. We are satisfied that cancellation is the least restrictive outcome sufficient to meet the seriousness of the conduct and the purposes and principles of the disciplinary process.

Penalty Decision | Te Whakataunga Whiu

[58] We **order** cancellation of the respondent's registration pursuant to section 404(1)(g) Education Act 1989 and section 500(1)(g) of the Education and Training Act 2020.

Permanent Non-Publication Orders | Ngā Whakahau whakaputanga-kore pūmau

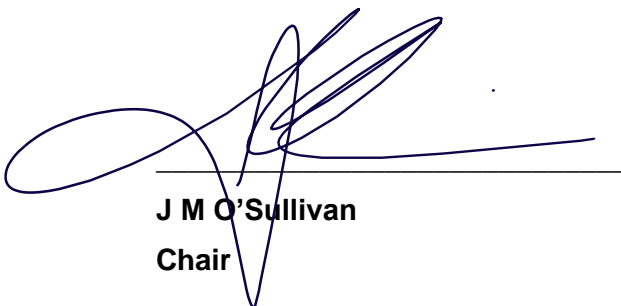
[59] The respondent does not seek name suppression and does not oppose the CAC application for suppression of the identities of the students referred to in the summary of facts. There is no public interest in the individual identities of the students who were mistreated or witnessed the respondent's conduct, and to refer to them would link them to his harmful comments again. We have considered the public interest and the principle of open justice as against the privacy and interests of the young people involved. We consider it is proper to make the order sought by the CAC.

[60] We **order** permanent non-publication of the names of the learners/referred to in the summary of facts and any personal details that may lead to their identification. There will need to be substantial redactions made to the decision before it is published.

Costs | Utu

[61] The CAC submits, and the respondent accepts that 40 percent costs is appropriate having regard to the agreement by the respondent to the summary of facts and that the case proceeded on the papers. This is consistent with usual practice and having reviewed the costs schedules we consider orders at the level of 40 percent to be reasonable.

[62] We **order** the respondent to pay the CAC costs in the amount of \$4,418.20 and to pay Tribunal costs of \$582.00.



J M O'Sullivan
Chair

NOTICE - Right of Appeal under Section 500 of the Education and Training Act 2020

1. A teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
2. The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 500 (section 504(2)).
3. An appeal must be made within 28 days of receipt of written notice of the decision, or any longer period that the District Court allows. 4 Clause 5(2) to (6) of Schedule 3 to the Education and Training Act 2020 applies to every appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by 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).