

NOTE: PERMANENT NON-PUBLICATION ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/30

UNDER | WĀHANGA

Education Act 1989

IN THE MATTER | MŌ TE TAKE

of a charge referred to the
Tribunal

BETWEEN | I WAENGA I A

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**
Kaiwhiu | Prosecutor

AND | ME

TEACHER K
Kaiurupare / Respondent

Hearing | Nohoanga
Tribunal

1 August 2023 and 29 November 2024 (on papers)
James Gurnick (Deputy Chair), Ross Brown, Rose
McInerney

Representation | Hei Māngai

E Mok and J Ah Koy, Meredith Connell, for the CAC
S Mitchell KC for the Respondent

DECISION

17 December 2024

Introduction

[1] The respondent appeared before the Tribunal on 1 August 2023 for a defended hearing in respect of a charge of serious misconduct or conduct otherwise entitling the Tribunal to exercise its disciplinary powers under s 404 of the Education Act 1989 (**the Act**).

[2] Before the hearing began, resolution was reached between the parties. As part of the resolution, the respondent accepted the conduct reflected the particulars 1(a)(i) and 1(a)(ii) of the notice of charge, namely that she called Child B a “cry baby” and that she yelled at students during a class in 2019. The parties agreed that this accepted conduct amounted to misconduct rather than serious misconduct.¹

[3] Since then, the parties attempted, but were unable, to come to final agreement on the summary of facts. Following the filing of each party’s respective proposed summary of facts, the Tribunal met to consider whether a disputed facts hearing was necessary to resolve the disputed facts. In its minute dated 19 August 2024, the Tribunal confirmed that the disputed facts would have no material bearing, both in terms of liability and penalty.

[4] The parties have since conferred and come to an agreed position on penalty and costs. The parties remain in agreement that the accepted conduct constitutes misconduct simpliciter.

The summary of facts

[5] The summary of facts which has been agreed is set out below:

Background

1. The respondent is a registered teacher. Her practicing certificate expired on 27 July 2023. As at the date of this summary of facts (August 2023), Ms K is not employed in the education sector.
2. At all material times, Ms K was employed as a long-term relief teacher for music, dance, and drama from Monday to Thursday, and a Generalist classroom relief teacher on Friday at a primary school in Auckland (**school**).
3. In 2019, Ms K was employed at the school on a one year fixed-term contract.
4. On 29 November 2019, Ms K was placed on paid ‘extended leave’ for the remaining two weeks of the school year.

¹ Serious misconduct involves conduct which not only satisfies the first limb of the statutory definition of serious misconduct but that also engages r 9 of the Teaching Council Rules 2016. Misconduct is conduct which meets any of the criteria in the first limb of the statutory definition but is not of sufficient character or severity to meet the reporting criteria in r 9.

5. Prior to issues being raised with Ms K's practice (as detailed below), Ms K had already secured a position at another school for the 2020 school year.

Circumstances

6. On or about 28 November 2019 at approximately 1.30pm, Ms K was teaching a Year 6 music class (**class**).
7. At 1:30pm nineteen students (two thirds) of the class were sitting on the floor watching the lesson's Key Competency video on the TV. Ten students (including Child B) arrived between two to ten minutes late.
8. Ms K began to place students in different parts of the classroom because they "were being disruptive to the class by loud talking and physical touching, rolling around and annoying each other."

Yelling and calling Child B "crybaby"

9. **Child B**, aged ten years old, came into class a few minutes late. When Child B walked into the class, Ms K was annoyed at the latecomers lingering outside the classroom, and yelled out that the lesson had started, and to Child B running in, asking why he was late. Child B explained to Ms K why he was late and apologised to her.
10. Child B left the class because he was upset. Another classmate joined Child B outside to see if he was okay.
11. After Child B left the class, Ms K told the other children in the class that Child B was a "crybaby", something which other students in the class later relayed to Child B.
12. Child B and his classmate went back to their usual classroom to see their general teacher, [REDACTED] (**Mr [REDACTED]**).
13. Child B told Mr [REDACTED] that Ms K had said some "not nice things" and that he did not want to go back to her class.
14. Mr [REDACTED] asked the Physical Education (**PE**) teacher whether Child B could join the PE class for the remainder of the lesson.
15. Child B stayed with the PE class until the rest of the class joined for their PE lesson, after the music class.

Yelling at students

16. During the class, Ms K was annoyed after twenty minutes of ongoing disruptive behaviour from a group of boys in the class, and became angry and stressed. Ms K yelled at the children.

Intervention by other staff members

17. Mr [REDACTED] became concerned after another child from Ms K's class came to see him. He went to see Deputy Principal, [REDACTED] (**Ms [REDACTED]**). Mr [REDACTED] told Ms [REDACTED] that children had come back to his class distressed and suggested that she go down to the music room to see what was happening.
18. At approximately 1.50pm, Ms [REDACTED] went down to the music room.
19. As Ms [REDACTED] neared the music room, she noticed two or three children standing outside, and with their arms around each other, visibly upset.

20. Ms [REDACTED] asked the children standing outside what was going on. The children replied that Ms K was yelling and saying mean things.
21. Ms [REDACTED] attempted to calm Ms K down and asked Ms K what was going on. Ms K did not calm down and continued yelling at the children while Ms [REDACTED] was in the room.
22. Some children in the class appeared to be upset and were sitting on the ground while Ms K continued yelling. Ms [REDACTED] raised her hands and told Ms K to stop yelling. Ms [REDACTED] then told the children to leave the music room and go back to Mr [REDACTED] class. The children left the music room with Ms [REDACTED] and went back to their usual classroom.
23. When Ms [REDACTED] returned to the music room alone, she subsequently spoke with Ms K and attempted to calm her down. Ms K went into a small office area located inside the classroom.
24. Ms K was angry with Ms [REDACTED] for having sent the children from her class. Ms K told Ms [REDACTED] "you don't have a right to do this to me or make me look stupid in front of the children."
25. Ms [REDACTED] proceeded to tell Ms K "you can't scream at children like that". Ms K began raising her voice again. Ms [REDACTED] again attempted to get Ms K to calm down.
26. Ms [REDACTED] proceeded to speak to Ms K in a calm and quiet manner. Ms K began to cry and explained to Ms [REDACTED] that she did not feel welcome at the school.
27. Ms [REDACTED] stayed with Ms K until near the end of the school day.
28. At approximately 2.30pm, Ms [REDACTED] asked Ms K if she would like to go home to have a rest, as she could see Ms K was stressed. Ms [REDACTED] also suggested that Ms K make an appointment to see [REDACTED] (Ms [REDACTED]), the principal, the following day.
29. Around approximately 2.45pm, Ms [REDACTED] accompanied Ms K to her vehicle. Ms K left the school.
30. At approximately 9.49pm that evening, Ms [REDACTED] received an email from a concerned parent of one of the students from Ms K's class.

School investigation and mandatory report

31. On Friday 29 November 2019, Ms K contacted Ms [REDACTED] via text message to say that she would not be attending work that day.
32. That same day, Ms [REDACTED] met with Ms [REDACTED] regarding what had taken place the day before.
33. Ms [REDACTED] also met with five different students who were in the class, including Child C, to get their version of events. Ms [REDACTED] interviewed students who were not directly involved in any of Ms K's alleged conduct, but were in the class and saw what had happened.
34. Ms [REDACTED] attempted to call Ms K to discuss the incident that had taken place the day before. Ms [REDACTED] was unable to reach Ms K, but she left a voice message on Ms K's mobile phone asking Ms K to call her back. That day, Ms [REDACTED] received written complaints from the parents of children in the music class, including the parent of Child B. Ms [REDACTED] also received messages from concerned parents of other children in the class, whose children had come home and told them how Ms K had acted.

35. On Friday 29 November 2019, Ms [REDACTED] sent Ms K an email informing Ms K of the complaints, and stating that Ms K was being placed on extended leave until the end of the school year. Ms [REDACTED] subsequently clarified with Ms K that she was not dismissed, and it was just leave.
36. On Saturday 30 November 2019, Ms K phoned Ms [REDACTED] to explain her version of events. Ms [REDACTED] took handwritten notes while on the call. Ms [REDACTED] stated to Ms K during the call that her version of events was different to what the students had told her. Ms K stated that she believed the class was “setting her up”. She stated the only thing she did was raise her voice.
37. While on the phone to Ms K, Ms [REDACTED] suggested that it was best for Ms K to take leave for the remaining two weeks of the school year to rest. Ms K agreed with this.
38. Later on that day, Ms [REDACTED] made a mandatory report to the Teaching Council.
39. On 14 March 2020, Ms K provided a written response to the mandatory report submitted by Ms [REDACTED].
40. In September 2020, Ms K was sent a letter inviting her to undergo a voluntary impairment assessment. The purpose of the confidential process is to assist the teacher and investigator to understand whether there are any issues impacting a teacher’s ability to teach competently and safely, and what support the teacher may require. Ms K did not take up the offer to undergo an impairment assessment process.

Teacher’s response to the mandatory report

41. On 14 March 2020, Ms K provided a written response in response to the mandatory report.
42. Ms K acknowledged having raised her voice in her response, both to a group of disruptive students and when Ms [REDACTED] was present.
43. In reflection, Ms K further stated that, in hindsight, she could have used alternative techniques. For example, instead of raising her voice to the group of boys, she could have ignored them altogether, or commenced the class with a physical activity.
44. Ms K denied belittling Child B and calling Child B a “crybaby”.
45. On 30 November, Ms K provided a further written response to the draft investigation report.
46. Ms K stated that she has already provided a full and detailed account in her statements in response to the mandatory report, and that she “[stands] by” what she had said.
47. Ms K stated that she had resigned from her position at another school in Term 3 of 2020 and had no plans to “ever return to teaching”.

[6] There was disagreement regarding whether the respondent had asked the students to calm down and whether she had at one stage continued yelling at the class. Whilst there was some disagreement regarding the wording as to whether yelling caused children to become quite sad and upset, in our view, the wording of the summary in respect of those aspects are not material to the outcome. Whether another teacher entered the room at the time or stood

at the door, the teacher did express that the respondent was yelling at the class. Again, in our view it makes no material difference to the outcome.

Liability

[7] Whilst the parties agree that the respondent's accepted conduct amounts to misconduct, it is still a matter for the Tribunal. Given the Tribunal initially raised concerns as to whether the conduct could amount to serious misconduct, we agree with the parties that the conduct amounts to misconduct *simpliciter* because it only meets the criteria in the first limb of the statutory test for serious misconduct under s 378(1)(a) of the Act. Specifically:

- (a) the respondent's conduct was likely to, and indeed did, adversely affect the emotional well-being of Child B and at least one other student in the class, who became visibly upset as a result of her remark and yelling;
- (b) the conduct reflects adversely on the teacher's fitness to teach because she ought to have appreciated that, by yelling at students in the manner that she did, she would (or would likely) cause them emotional harm;² and
- (c) the respondent's actions risked bringing the profession into disrepute – members of the public would reasonably expect that primary school teachers are capable of dealing with student behaviour in an appropriate manner and to not resort to yelling, even when students are being disruptive.³

Penalty

[8] We agree with the parties that the following orders are appropriate and proportionate in response to the respondent's misconduct. The respondent does not currently hold a practising certificate, so the Teaching Council is directed to impose the following conditions upon any practising certificate the respondent may be issued in the future:⁴

- (a) That the respondent undergoes further professional development relating to behaviour management. It would be appropriate for the respondent to complete such further professional development within three months of being issued a new practising certificate.

² Education Act 1989, s 378(1)(a)(ii).

³ Education Act 1989, s 378(1)(a)(iii).

⁴ Education Act 1989, s 404(1)(j).

- (b) The respondent informs any future employers in the teaching profession about the Tribunal's decision (and provide a copy of it) for a period of 12 months from the date of any new practising certificate being issued.

[9] The above penalty is appropriate having regard to the nature and gravity of the conduct. We note that it was a one-off incident.

Costs

[10] The CAC seeks an order requiring the respondent to pay a contribution towards its costs in the prosecution of this case.⁵ The general starting point for costs where the charge is proved is 50 per cent. Given resolution has been achieved, the CAC seeks an order requiring the respondent to pay only 20 per cent of its reasonable and total costs incurred in the prosecution. The respondent agrees to pay costs in the sum of \$6,480.60, being 20 per cent of the total fees incurred by the CAC. We make such an order.

[11] We also make an order that the respondent pay a contribution to the Tribunal's costs in the amount of \$582, which is a standard award.

Name suppression

[12] The CAC seeks permanent name suppression orders in respect of the names and identifying particulars of the children referred to in the notice of charge and the evidence filed at the hearing.⁶ It also considers it appropriate for the Tribunal to suppress the name and identifying particulars of the school so as to prevent any risk of the children being identified.

[13] The respondent was granted interim name suppression pending the Tribunal issuing its substantive decision. She now applies for permanent name suppression on the basis that publication of her name will have adverse consequences for her mental health. We have been provided evidence to support the respondent's submission.

[14] The CAC remains neutral on the respondent's application. It is acknowledged by the CAC that had the matter been dealt with as part of the CAC process, the outcome would have been confidential to the respondent, the CAC, the school and the respondent's current and potentially prospective employers (if in the teaching field).⁷ On behalf of the respondent, Mr Mitchell KC notes the decisions of *CAC v Teacher* and *CAC v Teacher*, where the Tribunal

⁵ Education Act 1989, s 404(1)(h).


⁶ Education Act 1989, s 405(6).

⁷ The CAC process is confidential to the parties and decisions are not generally subject to publication.

made non-publication orders in circumstances where misconduct was found when the matter had been referred to the Tribunal because the CAC had alleged serious misconduct.⁸

[15] On balance, having regard to the respondent's physical and mental well-being, and the fact that her name would have been confidential to the parties had it been dealt with without referral to the Tribunal, we consider permanent name suppression is appropriate.

[16] For the avoidance of doubt, permanent name suppression orders are made in respect of the name and identifying particulars of the school, identifying particulars of the children referred to in the notice of charge and the evidence filed at the hearing, and the respondent.



J S Gurnick
Deputy Chair, New Zealand
Teachers Disciplinary Tribunal

⁸ CAC v Teacher NZTDT 2022/11; CAC v Teacher NZTDT 2021/59.

NOTICE - Right of Appeal under Section 504 Education and Training Act 2020

1. The teacher who is the subject of a decision by the chairperson or the Disciplinary Tribunal made under section 498(2) or 500 may appeal against that decision to the District Court.
2. The Complaints Assessment Committee may, with the leave of the Teaching Council, appeal to the District Court against a decision of the chairperson or the Disciplinary Tribunal made under section 498(2) or 500.
3. An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
4. Clause 5(2) to (6) of Schedule 3 applies to an appeal under this section as if it were an appeal under clause 5(1) of Schedule 3