

RARO TE MANA O TE
UNDER THE

MŌ TE TAKE
IN THE MATTER OF

I WAENGA I A
BETWEEN

ME
AND

the Education and Training Act 2020
(the Act)

of a charge referred to the Tribunal

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

[REDACTED]

[REDACTED]

(Authorisation [REDACTED])
Kaiurupare | Respondent

Nohoanga | Hearing
Hei Māngai | Appearance

Tribunal

14 April 2024, Papers, AVL (Teams).
A Mitra, Luke Cunningham Clere for the CAC.
[REDACTED], self-represented.

C Garvey (Deputy Chairperson), K Tuhura, D Shaver

DECISION ON LIABILITY, PENALTY AND NON-PUBLICATION

12 MAY 2025

Introduction | Whakataki

[1] The respondent [REDACTED] has been charged by the Complaints Assessment Committee (CAC) with serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers under the Education and Training Act 2020 (the Act). The charge alleges that Ms [REDACTED] engaged in an inappropriate relationship with a student in 2021 and 2022.¹

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¹ Notice of Charge dated 30 October 2024. The charge refers to Student A, who was a student of the respondent in 2021 and a former student in 2022.

- [2] The respondent does not dispute the charge, and the parties reached an Agreed Summary of Facts (the summary of facts).² By consent, the matter was set down for a hearing on the papers on 14 April 2025. The Tribunal received a bundle of documents containing the summary of facts, submissions on behalf of the CAC, email correspondence from the respondent, and an application for non-publication on behalf of Central Regional Health School (CRHS). CRHS was the respondent's employer at the relevant time and operates a number of sites in the North Island.
- [3] For the reasons set out below, the Tribunal found serious misconduct and imposes a penalty of censure and cancellation of the respondent's registration. The Tribunal orders permanent non-publication of the respondent's name and that of her current partner (Student A in the notice of charge), and the name of the CRHS site at which the respondent was employed and its location.

The Notice of Charge

- [4] A mandatory report was made by CHRS to the Teaching Council in June 2022, when the respondent acknowledged that she was in a relationship with Student A. Little information regarding the investigation that followed was included in the evidence before the Tribunal. A notice of charge was eventually laid in October 2024, the particulars of which read as follows:

Particulars of the charge

- 1 The CAC charges that [REDACTED], registered teacher, of [REDACTED]:
 - a. Engaged in an inappropriate relationship with Student A from December 2021 to March 2022, including by (not limited to):
 - i. Having a close relationship with Student A that went beyond that of a teacher-student relationship; and
 - ii. Applying to be Student A's caregiver

and/or

 - b. Engaging in a sexual relationship with Student A that began in March 2022.
- 2 The conduct alleged in paragraph 1(a) and 1(b) separately and cumulatively amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and any or all of rule 9(1)(e) and/or (k) of the Teaching Council Rules 2016.

² Agreed Summary of Facts signed by the respondent [REDACTED] on 11 January 2025 and by counsel on behalf of the Complaints Assessment Committee on 13 January 2025.

The Agreed Summary of Facts

- [5] By way of preliminary comment, in or about June 2022 the respondent acknowledged to her employer that she was involved in a personal relationship with Student A that had become intimate and she was pregnant to Student A at the time. The respondent was on study leave and Student A was no longer enrolled with CRHS at this time. Perhaps because of this early admission, there is scant evidence before the Tribunal to address the respondent's teaching experience including any particular training or requirements for her role at CRHS. The Tribunal also received minimal information regarding the respondent's professional relationship with Student A, and the summary of facts does not describe the extent of classroom contact between them from 2018 to January 2022. Nor does it describe the events that led to the respondent applying to become Student A's caregiver in or about December 2021, and the granting of this application in January 2022.³
- [6] The respondent became fully registered in 2010, and her most recent practising certificate expired in March 2023. The respondent gave a voluntary undertaking not to teach around the time the mandatory report was filed in June 2022, which has remained in place.
- [7] The respondent was employed by CRHS for several years. CRHS operates multiple sites to provide education for young people who are unable to attend mainstream school for reasons of high-need health issues or involvement in the youth justice system. Student A attended the school between the ages of 14 to 17 (from 2018 to 2021). The Tribunal assumes that Student A's attendance was for discrete periods not continuous, as this would be usual. No inappropriate conduct between the respondent and Student A is alleged prior to December 2021.
- [8] With respect to the inappropriate relationship alleged in particular 1(a)(i) of the charge when Student A was aged 17 years, the summary of facts states:⁴
9. [The respondent] gave Student A special treatment and attention. She spent more time with him than other students. [The respondent] and Student A almost always sat together in class. [The respondent] also visited Student A along with other students at the Residence outside of school hours.
 10. On 25 December 2021, [the respondent] visited the Residence with a banoffee pie for her students. When [the respondent] entered the unit, Student A leapt up from the floor where he was lying with other students watching a movie and ran over to hug her. [The respondent] spent up to four hours that day hanging out with the students. She sat next to Student A for most of this time. It was highly unusual for teachers to come in to see students at Christmas.
 11. During January 2022, over the Christmas school holiday period, [the respondent] assisted another teacher to run a Tikanga/Te Reo Māori

³ The Agreed Summary of Facts refers to a social worker contacting the respondent on 7 December 2021 regarding her interest in becoming Student A's caregiver.

⁴ Above n3 at [9]-[11].

programme ...for interested students. The programme ran for two to three days a week until around mid-January. Initially, several students were interested, but only Student A and one other student attended. Student A was the only one to complete the programme. It was unusual for teachers to volunteer to run educational programmes during the Christmas school holidays, especially where the programme was only for a few students.

[9] The summary of facts does not state whether the second teacher remained involved in the programme and present with the respondent and Student A, or what if any oversight the school had of the programme.

[10] In relation to particular 1(a)(ii), Student A's youth justice social worker contacted the respondent to discuss her becoming his caregiver. The caregiver application was initially made jointly by the respondent and her then-husband but was revised so that the respondent was the sole applicant in January 2022. The social worker was aware of the respondent's position as Student A's teacher. The respondent contacted her Assistant Principal who in turn spoke with the Principal of the school and they *"strongly discouraged the application and asked her to seriously consider the possible negative impacts of such a commitment on her and her family's wellbeing."*⁵

[11] In spite of this advice from her senior managers, the respondent persisted with the application. The summary of facts outlines that she provided inaccurate information to the social worker as follows:⁶

On the same day, [the respondent] informed Student A's social worker that she had spoken with the Assistant Principal of CRHS. [The respondent] told the social worker that the Assistant Principal did not have an issue with the application but was going to confirm the school's position with the Principal. Student A's social worker was never subsequently advised whether the Principal had been spoken to and, if so, what their view was on the application.

[12] The respondent's willingness to become Student A's caregiver enabled her to provide a residential address for him and he was then eligible for bail being granted by the court to her address. The caregiver application was processed and approved with urgency on the same date as bail was granted.

[13] With regard to particular 2 of the charge the respondent acknowledges that the sexual relationship commenced in March 2022 when Student A was 17 years old and the respondent was aged 35 years. In or about May 2022, by which time Student A had turned 18, he was placed in a youth justice facility in Auckland. The respondent had become pregnant and attempted to visit the student at which time their relationship was identified and notified to her employer.

[14] The respondent has confirmed that she remains in a relationship with Student A.

⁵ Above n3 at [13].

⁶ Above n3 at [14].

Liability – Principles

[15] Section 10 sets out a conjunctive test for serious misconduct, being 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.

[16] The criteria for reporting serious misconduct are outlined in rule 9 of the Teaching Council Rules 2016 (the Rules). The charge pleads rule 9(1)(e) which read at the relevant time:⁷

Breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher; for example –

- (i) engaging in an inappropriate relationship with the child or young person;
- (ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person.

[17] The Rules define a child or young person to mean a person who is under the age of 16, or importantly who *"is or was at the relevant time a learner at a school..."*. Accordingly, this captures Student A. It is also relevant to note that under the Oranga Tamariki Act 1989 a young person means a person over the age of 14 years but under 18 years (with an extended meaning in some circumstances). That a young person aged over 16 years may be covered by the Rules is consistent with this definition and with the reality that students may continue at school aged 18 years or even older.

[18] The charge also pleads r9(1)(k) which refers to an act or omission that brings or is likely to bring the teaching profession into disrepute. Rule 9(2) makes clear that the relevant conduct may be a single act, or a number of acts forming part of a pattern of behaviour even if considered in isolation they might be considered minor or trivial.

[19] The Code of Professional Responsibility | Ngā Tikanga Matatika (the Code) sets out the standards that are expected of teachers in their professional role and to some

⁷ The Teaching Council Amendment Rules 2023 came into force from 29 July 2023 and r9(1)(e) was amended to revoke the examples given.

extent addresses their private conduct also. Of particular relevance to the present case are:

- (a) clause 1.3 – a teacher will maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.
- (b) clause 2.2 – teachers will work in the best interests of learners by engaging in ethical and professional relationships with learners that respect professional boundaries.

[20] The Examples in Practice published as guidance to the Code are intended to provide practical guidance on behaviour that does, and does not, meet professional standards.⁸ The commentary to clause 2.2 of the Code records that the foundation for the requirement of ethical and professional relationships between teachers and their students is as follows:⁹

- the “*unique position of trust, care and authority*” that teachers hold over their students;
- the teacher-learner relationship is not equal, and there is an inherent power imbalance;
- teachers have a duty of care to ensure that the physical and emotional wellbeing of learners is safeguarded;
- teachers have the responsibility to ensure and maintain professional boundaries with their learners.

[21] Specific examples of conduct that is considered to fall short of meeting these principles includes “*encouraging a learner to develop an inappropriate emotional dependency*” on the teacher. Further examples of an inappropriate relationship are adopting a role that goes beyond the professional role of teacher, and romantic, sexual or intimate relationships with a learner or recent former learner. As the Tribunal said in *CAC v Teacher K*:¹⁰

Maintaining appropriate professional boundaries is a fundamental skill, obligation and professional discipline for all teachers. Teachers who lack the ability to maintain appropriate professional boundaries are likely to step onto a “slippery slope” of tangled relationships with students which ultimately are highly likely to be damaging to students, will be confusing, will set poor role models and may result in even more serious misconduct. Mutual emotional dependency can arise and in the worst cases sexual relationships can develop. Teachers are guides, not friends in the usual sense.

⁸ Our Code: Examples in Practice, Education Council June 2017.

⁹ Above n8, p12.

¹⁰ *Complaints Assessment Committee v Teacher K* NZTDT 2018/7.

- [22] Further guidance as to what might constitute an inappropriate relationship is taken from international guidelines as adopted in earlier decisions of this Tribunal, and we have referred to this in our discussion below.¹¹
- [23] Counsel for the CAC filed detailed written submissions including an analysis of several relevant cases addressing inappropriate relationships between a teacher and student. We detail two of these. In *CAC v Teacher B*¹² the teacher formed an inappropriate relationship at the end of the school year with a Year 13 student whom he had met in his capacity as her teacher. The physical relationship was preceded by social media contact and Teacher B and the student were also observed to spend time together at school events. The school filed a mandatory report following a complaint about the relationship by one of the student's parents. Following discussion of previous cases involving inappropriate relationships, and international guidelines on professional boundaries¹³, the Tribunal confirmed that whether a relationship is inappropriate is a context-specific enquiry. Rule 9(1)(e) simply requires a causal nexus between the teacher and the student's professional relationship and the subsequent personal one.¹⁴ The Tribunal considered the following factors are relevant (in summary):
- (a) the length of time between the conclusion of the teacher-student relationship and the beginning of the intimate relationship. The closer the proximity between the professional and commencement of the personal relationship the more likely it is to be considered inappropriate given the inherent power imbalance that exists.
 - (b) a significant age difference tends to accentuate the power imbalance between a teacher and student.
 - (c) the emotional and social maturity of the student and whether they were vulnerable. In the absence of direct evidence about the student's circumstances, a more general observation may be made based on age and knowledge of the adolescent brain. Any evidence of features that indicate the student's vulnerability will be important.
 - (d) evidence of the nature of the teacher-student relationship including the closeness, dependence, significance and length of the relationship at school.
 - (e) any misconduct by the teacher during the professional relationship with the student.

¹¹ The footnote 2 in the Examples in Practice, p 12 refers to guidance gleaned from the Australasian Teacher Regulatory Authorities (2015) *Managing Professional Boundaries Guidelines for Teachers ATRA*. The principles in these guidelines have been adopted in previous Tribunal decisions.

¹² *Complaints Assessment Committee v Teacher B* [2018] NZTDT 10 (8 July 2019).

¹³ Northern Territory Teacher Registration Board Guidelines on Managing Professional Boundaries, September 2015, also endorsed in *Complaints Assessment Committee v Teacher C* [2016] NZTDT 40.

¹⁴ Above n 12 at [27].

[24] A second and apt example is *CAC v Teacher C*.¹⁵ The student, aged 16, met the teacher, aged 32, at a youth justice residence where she was his homeroom teacher. The student was transferred to prison the following year, where the teacher visited him to provide support initially at the request of the student's mother. While the Tribunal acknowledged that Teacher C's motivation for visiting the student at the outset was not to enter into a relationship, when this did occur, the Tribunal was required to consider whether it was inappropriate. The Tribunal had the benefit of expert evidence from a clinical psychologist employed by the Ministry of Social Development regarding a young person in state care to the effect that such young people are "*in a special category and inherently more vulnerable than others in their age cohort*." Relevant factors likely to exist (one or more) included that the young person was in the criminal justice system, likely had a difficult and potentially traumatic background, had experienced multiple placements, absences from school, a transient lifestyle, and potential mental health or drug or alcohol issues.

[25] The Tribunal also confirmed that¹⁶:

- (a) the long-settled position is that for a teacher to have a sexual relationship with a current student at the school at which they teach is serious misconduct at a high level.
- (b) a relationship does not need to be sexual for it to be improper and to cross professional boundaries.
- (c) there is no blanket prohibition on intimate relationships between teachers and former students.

[26] Teacher C and the student were married some 6 years after their initial meeting, and counsel for the teacher submitted that there were no negative repercussions for the student. The Tribunal however found that the CAC is not required to prove an adverse effect on the student, and that conduct may be unprofessional even without evidence of harm. The Tribunal noted the inherent power imbalance between a teacher and student even when the relationship commenced after the professional one had ended. It was held that the student remained vulnerable when the relationship started, which would have been in his last year of school or shortly after finishing; that the age gap exacerbated the existing power imbalance and that the student's custodial status was likely to have increased his reliance on Teacher C. Cancellation was imposed reflecting the seriousness of the misconduct.

[27] In the present case the respondent did not make submissions as to liability beyond her acceptance of the agreed summary of facts.

Liability - Discussion

[28] We agree that the respondent's actions as described in the summary of facts amounts to serious misconduct. The lack of information regarding the student-

¹⁵ Above n13.

¹⁶ At [188].

teacher relationship prior to December 2021 was unhelpful but the respondent has accepted that the relationship was inappropriate before becoming sexual. We infer that she was intentional in providing additional time and attention to Student A while he was still her student. The nature of the school and the involvement of Oranga Tamariki with Student A and the fact that he was in the youth justice system supports a finding on the balance of probabilities that he had some inherent vulnerability. He was receiving schooling outside of the mainstream with a presumed disrupted educational journey, and he appears to have lacked whānau caregiver options at the end of 2021. In providing extensive support to Student A outside of the school environment, the respondent clearly risked creating emotional as well as financial dependency. We find that s10(1)(a)(i) is engaged in that the conduct was likely to adversely affect Student A.

- [29] With regard to fitness to teach, the respondent showed poor professional judgment when she applied to become Student A's caregiver and entered into a close personal and then intimate relationship with a very recent former student. The respondent was not transparent regarding the views of her senior management team about the caregiver application. The Code is clear in its expectations around professional relationships with students, and respectful and honest relationships between colleagues.
- [30] The respondent's conduct is also of a nature that may (and is likely to) bring disrepute to the teaching profession. This is an objective test whether a member of the public armed with the relevant facts and circumstances would consider the conduct to lower the standing or reputation of the profession.¹⁷ Taking into account the particular circumstances of Student A and the extent to which the respondent breached professional boundaries, we find this test is met. The importance of setting and maintaining appropriate boundaries is arguably greater where students are under state care or otherwise vulnerable such as where they have experienced trauma, educational barriers and/or have other social and familial challenges.
- [31] With regard to the threshold for serious misconduct and a breach of the Rules, for the reasons already given we find that r9(1)(e) is engaged as the respondent's relationship with Student A as pleaded in the charge was inappropriate. While there is no express allegation that the respondent intended to cultivate the relationship for her own purposes when she was Student A's teacher, any overstepping of boundaries that created dependency or otherwise went beyond the respondent's teaching role was fraught. The fact that the caregiver application was made within weeks of the school year ending points to a high level of closeness and dependence having been established during the professional relationship. The fact that the respondent was approved as Student A's caregiver highlights their age difference, their different legal status and the inherent power imbalance that persisted after the professional relationship ended.
- [32] Further, we find that the respondent's decision to enter into a sexual relationship was inappropriate notwithstanding Student A was by then a former student. There was a short period of time between the professional relationship ending and a personal

¹⁷ *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

relationship commencing, with a clear causal nexus between the respondent's role as Student A's teacher and the development of the personal relationship. We have already outlined and do not repeat the further factors that indicate Student A had some vulnerability.

- [33] For the reasons stated above, we also find that the conduct is likely to bring the teaching profession into disrepute, engaging r9(1)(k).

Penalty

- [34] Having found the charge proved the Tribunal may impose a penalty under s500 of the Act. The purpose of penalty is to protect the public, and to set and maintain professional standards. The Tribunal should impose a penalty that is fair, reasonable and proportionate and one that is the least restrictive available in the circumstances. Reference to similar cases is also important to achieve consistency in penalty outcomes, while noting that each case will turn on its own facts.

- [35] Cancellation of registration pursuant to s500(1)(g) of the Act is reserved for the most serious cases, where:¹⁸

(a) the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness or the impact on the reputation of the profession;

(b) the teacher has not demonstrated adequate insight or rehabilitative prospects such that there remains an ongoing risk if they are not deregistered.

- [36] Consistent with the Tribunal's findings in other cases involving a teacher engaging in a sexual relationship with a student or recent former student, the CAC submits that the charge amounts to serious misconduct at a high level warranting cancellation.^{19,20}

- [37] The respondent does not oppose cancellation and advised the Tribunal in writing that she has changed careers and has no intention to return to teaching.

- [38] While, as the CAC submits, there are mitigating features namely the respondent's admission of the charge, cooperation in preparing an agreed summary of facts, and the absence of a prior disciplinary history these are not sufficient to justify a lesser penalty than cancellation. The misconduct is at the high end of the scale of seriousness, and the evidence provides no clear indication of remorse, insight or rehabilitation. The respondent has provided a letter attesting to her attendance at counselling, and the email correspondence indicates that she and her family have

¹⁸ *CAC v Fuli-Makaua* [2017] NZTDT 40.

¹⁹ See for example (as per CAC submissions footnote 20) *CAC v Teacher* NZTDT 2018/41; *CAC v Teacher C* NZTDT 2016/40; *Scully v Complaints Assessment Committee of the New Zealand Teachers Council* Wellington DC CIV 2008 085 000117, 27 February 2008; *CAC v Teacher* NZTDT 2022/03; *CAC v Teacher E* NZTDT 2017/28; *CAC v Brown* NZTDT 2022/35 and *CAC v Teacher B* NZTDT 2018/10.

²⁰ See *CAC v Hedivan* NZTDT 2019/40; *CAC v Teacher F* [2018] NZTDT 32, 2 December 2020.

suffered upheaval, stress and other difficulties in light of her relationship with Student A. However, none of this articulates the respondent's insight into her conduct or indeed any information about Student A's wellbeing.

- [39] In addition to cancellation the Tribunal also considers it appropriate to impose a censure.

Costs

- [40] The Tribunal may make an order for costs in favour of a party and in favour of the Teaching Council for the conduct of the disciplinary proceedings.²¹ The Practice Note on Costs outlines guidance for determining a costs order, with a starting point of a 50% contribution by an unsuccessful party. The general principles are that:

- (a) the profession should not be expected to fund proceedings entirely and a teacher who faces a disciplinary charge are expected to make a reasonable contribution to costs;
- (b) costs are not in the nature of a penalty or intended to punish;
- (c) a teacher has the right to defend themselves in disciplinary proceedings;
- (d) the level of costs should not deter others from defending a charge.

- [41] In cases such as the present where the respondent has agreed a summary of facts and cooperated to efficiently dispose of the proceedings, a reduction to a 40% contribution is common and is sought by the CAC in this case. The CAC's costs' schedule outlines total costs of \$11,199.43 of which 40% is \$4479.78. No issue is raised with the reasonableness of those costs.

- [42] The Teaching Council currently applies a standard fee for hearings conducted on the papers in the sum of \$1455.00, of which 40% is \$582.00.

- [43] The respondent has provided detailed information regarding her financial circumstances in support of a reduction in the amount of costs to be ordered in favour of the CAC. The Tribunal has carefully considered this information and appreciate that the respondent is presently the sole earner for her household, with spending tightly controlled. On the other hand, however, the respondent is not impecunious and earns a reasonable weekly wage. As noted, the profession should not be required to bear the full burden of the cost of proceedings, and where a teacher has some means to make payment then it is proper that they are required to do so. We consider a contribution amounting to 40% is appropriate. In light of the respondent's evidence of her financial circumstances she is encouraged to approach the Teaching Council with regard to a plan for payment of these costs over time.

²¹ Sections 500(1)(h) and (i).

Permanent Non-Publication Orders: Applications

- [44] Applications for permanent non-publication were made by the respondent on her own behalf and for Student A, and by CRHS. The CAC supports non-publication of Student A's name and various other identifying particulars in the evidence but opposes suppression of the respondent's name.
- [45] The starting point is that proceedings of the Tribunal are public, and the names of teachers found guilty of a disciplinary charge may be published. Pursuant to s501(6) of the Act the Tribunal may suppress publication of certain details of a case including the name and identifying particulars of any person if it is of the opinion that it is "proper" to do so, having regard to the private interests of any person and to the public interest. The public interests in publication include:
- (a) openness and transparency of disciplinary proceedings.
 - (b) accountability of the disciplinary process.
 - (c) the public interest in knowing the identity of a teacher charged with a disciplinary offence.
 - (d) the importance of freedom of speech and the right enshrined in s14 of the New Zealand Bill of Rights Act 1990.
 - (e) unfairly impugning other teachers.
- [46] What is "*proper*" does not require exceptional circumstances such as in criminal proceedings. However, it is recognised that a professional person who faces a disciplinary charge is likely to find it difficult to displace the presumption in favour of publication.²² While there is no onus on the applicant to provide evidence to displace the presumption, there must be a factual basis on which to make a non-publication order.²³ In many cases this will require the provision of evidence, such as medical evidence, details of particular employment or family circumstances or some other factor that indicates that harm is likely to follow from publication.
- [47] Starting with Student A, it is usual for the name of a student involved in proceedings to be suppressed reflecting the absence of any public interest in their name being known, and the express requirement to consider a child or young person's privacy under r34. The Rules also require the Tribunal to consider whether an order is proper where evidence of an intimate nature is given. Further, as the respondent has submitted, other information that is personal to Student A forms part of the decision including his history with the youth justice system. Student A's privacy interests clearly outweigh the publication of his name in relation to these proceedings.

²² *Y v Attorney General* CA271/2015; [2016] NZCA 474, at [32].

²³ Above n22 at [36].

- [48] The respondent's application relies on grounds set out in email correspondence to the Tribunal and CAC as follows:²⁴
- (a) to avoid identifying her children and partner (Student A) "*and to ensure their hauora, wellbeing and 'haka-papa are protected and kept safe.*"
 - (b) to avoid details of Student A's past being made public, namely his past involvement with the youth justice system, and any potential impact on his employment prospects, progress, wellbeing and wider whānau.
 - (c) that there has been no consideration given to the respondent's tamariki and the impact of the investigation and disciplinary process on them, noting that they have had to navigate significant issues and changes over the past few years in light of the respondent's relationship with Student A.
 - (d) potential adverse impact on the respondent's ability to work and support her whānau.
 - (e) potential adverse impact on the respondent's wellbeing, by causing "*undue stress.*"
- [49] The respondent filed a letter from her counsellor in support of the application.²⁵ The counsellor refers to providing professional services to the respondent over two years as well as to the respondent's children, and states that "*the absence of name suppression could adversely impact the health and well-being of the children*", referring to potential negative repercussions at school and within the community and wider whānau networks. General reference is also made to potential detriment to the respondent and her partner's mental health arising from publication.
- [50] The CAC opposes the application on the grounds that there is a strong public interest in the respondent being named by virtue of the seriousness of the conduct and the setting in which it occurred. The CAC submits that the Tribunal could prohibit publication of details including the name and location of the youth justice residence, the name of CRHS, the dates of the conduct, the fact of the respondent's pregnancy and the fact that the respondent and Student A remain in a relationship, in order to protect Student A.
- [51] The application for non-publication by CRHS is extensive, seeking an order to cover CRHS' name, the respondent's name, any references to Youth Justice, the relevant

²⁴ Email from the respondent to the Disciplinary Tribunal and to counsel for the CAC dated 20 November 2024.

²⁵ Letter from [REDACTED], 4 November 2024.

residences and to the city where the respondent worked.²⁶ The grounds of the application are:

- (a) damage to the reputation and standing of CRHS within the community by associating it with an incident for which it is not responsible or in relation to which there is any allegation the school acted inappropriately; and
- (b) that publication will cause unnecessary stress and damage to other parties, in particular vulnerable students at CRHS.

[52] The application is supported by an affidavit from the school's principal which describes the particularly vulnerable nature of students served by the school due to having either high health needs or other complex needs, with a requirement that staff be skilled, experienced and highly professional in their conduct. Mr White also refers to the school's actions when the relationship between the respondent and Student A came to attention. The school arranged an independent investigation, culminating in the respondent's dismissal.

[53] The school submits that publication may give rise to a risk of significant harm given the cohort with which the school engages, a loss of trust or confidence from future students and whānau, and reputational risk. It is suggested that publication may dissuade other schools from compliance with mandatory reporting requirements, and that the subject-matter may lead to "*significant conjecture*" with "*click bait reporting*". Finally the school submits that a non-publication order will help preserve the school's independence and its "*mission to provide specialised education without influence from public opinion.*"

Discussion

[54] Starting with Student A, it is usual for the name of a student involved in proceedings to be suppressed reflecting the absence of any public interest in their name being known, and the express requirement to consider a child or young person's privacy under r34. The Rules also require the Tribunal to consider whether an order is proper where evidence of an intimate nature is given. Further, as the respondent has submitted, other information that is personal to Student A forms part of the decision including his history with the youth justice system. Student A's privacy interests clearly outweigh the publication of his name in relation to these proceedings.

[55] For the respondent, we consider that many of the grounds advanced do not reach the threshold to warrant suppression and amount to the ordinary consequences of a serious adverse disciplinary finding. While the fact that the respondent is not teaching might be considered to mean publication is less significant, that is not necessarily the case. As the Tribunal said in *Harmer*²⁷:

²⁶ Application for Non-Publication Order filed on behalf of Central Regional Health School by Duncan Cotterill dated 23 January 2025 and supporting affidavit of Jason White 23 January 2025.

²⁷ *Complaints Assessment Committee v Harmer* NZTDT 2022/56, 4 December 2023 at [132]

...where severe sanctions are imposed such as cancellation or suspension, the Tribunal is entitled to determine that the established serious misconduct is a factor that weighs in favour of the teacher's name. This is not conflating name suppression with the imposition of penalties. Nor is declining to make a non-publication order in circumstances such as these a matter of holding the teacher to account publicly. Rather, where there has been deliberate or dishonest conduct or a pattern of serious errors or behaviours, publication is usually proper to achieve the Tribunal's objectives of protecting the public and maintaining professional standards.

- [56] Further, the Tribunal noted the interest of current and future employers having the right to know about an adverse disciplinary finding:

[147] The public interest in awareness of Ms Harmer's conduct is greater given the gravity of the serious misconduct the Tribunal has found and the fact that her registration is being cancelled. That interest is not confined to the prospect of Ms Harmer returning to work in a professional environment as a teacher but has a wider significance in terms of her suitability to work in a role where her past misconduct may be relevant.

- [57] These factors are relevant to the present case, although we note that while there is some element of dishonesty (regarding the caregiver application) it does not involve the misuse of public funds or misconduct over a period of years

- [58] The Tribunal considered the CAC's submission that Student A's identity could be protected by suppression of the details summarised at [50] above. In our view redacting all of these facts would deprive the published decision of important context. It is appropriate to suppress the name and location of the site where the respondent taught, but we consider the other details should be included. Taking this into account, and the prevailing privacy and wellbeing interests of Student A and the respondent's children, we have determined that it is proper to make an order in favour of the respondent.

- [59] The school's application raised important considerations regarding the vulnerability of its students, but we are not satisfied that it is proper to make the order sought. It is not uncommon in disciplinary proceedings for a school to seek suppression out of concern for its reputation, or because the school considers that it took all appropriate steps in relation to a teacher's misconduct. These are not sufficient grounds for to displace the presumption of open justice. Some 'fall out' for a school will be tolerated as an ordinary consequence of proceedings. We also observe that in the present case the most serious elements of the charge arose after the respondent had finished teaching Student A. When the school was made aware of the respondent's caregiver application, they provided an appropriate caution, and when the relationship came to light it appears that the school acted in a timely and appropriate way.

- [60] The Tribunal accepts that CRHS has a unique position and that retaining the confidence of students and whānau is important. Arguably this makes transparency more, not less desirable. It is also not clear why publication might be likely to interfere with the independence of the school or be likely to cause harm to current students some years after the events outlined in this decision. There is no suggestion of the

involvement of other staff or impropriety with any other students. The school may provide any reassurance it considers appropriate as to its practices, procedures and values to its current and prospective students.

- [61] For the reasons set out above, non-publication orders will be made for the respondent's name and identifying particulars including the name and location of the site at which she was employed at the relevant time, and the name of Student A.²⁸

Orders

- [62] For the reasons set out above the Tribunal makes the following orders pursuant to s500 of the Act:

- (a) Censure pursuant to s500(1)(b).
- (b) Cancellation of registration pursuant to s500(1)(g).
- (c) Costs in favour of the Complaints Assessment Committee in the sum of \$4,479.78 pursuant to s500(1)(h).
- (d) Costs in favour of the Teaching Council in the sum of \$582.00, pursuant to s500(1)(i).

- [63] For the reasons set out above the Tribunal makes the following permanent orders for non-publication pursuant to s501(6) of the Act:

- (a) the name and identifying particulars of Student A.
- (b) the name and identifying particulars of the respondent including her place of residence and the name of the site at which she was employed as a teacher and met Student A.



Catherine Garvey
Deputy Chair of the New Zealand Teacher's Disciplinary Tribunal

²⁸ For completeness the name of the counsellor who provided a letter in support of non-publication will also be suppressed as her location is an identifying particular.