

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2020/53 & 2021/16

IN THE MATTER of the Education Act 1989

AND

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

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND **FIONA CATHERINE JOY SANDS**

Respondent

TRIBUNAL DECISION

9 September 2021

HEARING: Held on 17 August 2021 (by Microsoft Teams)

TRIBUNAL: Ian Murray, Rose McInerney and Nichola Coe

REPRESENTATION: C Paterson and A-R Davies for the CAC
Respondent: self-represented

The charge

1. The Complaints Assessment Committee (CAC) charges that the respondent engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers. There are two charges that have been joined for one hearing.
2. The particulars of the first charge are as follows:

Particulars of the Charge

The CAC charges that **FIONA CATHERINE JOY SANDS**:

- 1) On or around 9 November 2016, by agreement, conditions were imposed on **FIONA CATHERINE JOY SANDS**' practising certificate by the Education Council (as it then was) (**Competence Conditions**).
- 2) The Competence Conditions have remained on Ms Sands' practising certificate since that date.
- 3) The Competence Conditions relevantly include the following conditions:
 - a) Condition 1: Prior to accepting any fixed term or permanent teaching position other than casual day-relief, the teacher must provide her prospective employer with a copy of these conditions. The teacher must provide verification to the (CA) of this within 3 days of accepting the position.
 - b) Condition 2: If already employed as above, the teacher must provide verification that her employer has sighted a copy of the schedule of conditions within 3 days of conditions being imposed.
 - c) Condition 5: If the teacher accepts a fixed term or permanent teaching position, she will be mentored by a teacher holding a full practising certificate and participate in a formal advice and guidance programme established for a period of 20 school weeks (Appendix 1).
 - d) Condition 6: The teacher will provide evidence of her teaching inquiry in relation to PTC 8 by the end of the 20 week advice and guidance programme (see clause 5). The teacher will use evidence from research and her own past practice (and that of colleagues) to plan teaching and learning opportunities aimed at achieving outcomes (Appendix 2).
 - e) Condition 7: The teacher will provide the CA with the following information at the end of each 10 week period covering the 20 school weeks:
 - i. a critique of the first and final two week's planning written by a professional leader/ senior teacher recording feedback and forward and confirming that the teacher is meeting planning requirements and that her teaching and learning programme

- consistently meets ākongā learning needs.
- ii. the mentor's report noting weekly meetings held, topics discussed and progress made using the Practising Teacher Criteria (PTC) focussing on the teacher's development as a classroom teacher and a reflective practitioner and her teaching inquiry progress as applicable.
 - iii. all documentation pertaining to her inquiry
 - iv. records of 2 observations carried out by a senior teacher/ professional leader over a period of time that provide an evaluation of her links from planning to classroom programme and teaching practice.
- f) Condition 8: The teacher will provide the CA with a full evaluation of her teaching practice using the Practising Teacher Criteria, or the equivalent standard in place at the time, by the end of the 20 school week period. This evaluation is to be completed by a pre-approved independent appraiser.
- 4) Ms Sands breached the conditions particularised at paragraph 3 above in that:
- a) In respect of her employment as a teacher at Mangatawhiri School between 20 February 2017 and 9 March 2017, she failed to comply with:
 - i) Condition 1; and/or
 - b) In respect of her employment as a teacher at Mangatangi School from 8 May 2017 to the date of this notice of charge, she failed to comply with:
 - i) Condition 1; and/or
 - ii) Condition 5; and/or
 - iii) Condition 6; and/or
 - iv) Condition 7; and/or
 - v) Condition 8.
- 5) The conduct alleged in paragraph 4, separately or cumulatively, amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and Rule 9(1)(k) of the Teaching Council Rules 2016 (as drafted after the amendments on 19 May 2018) and/or Rule 9(1)(o) of the Teaching Council Rules 2016 (as drafted before the amendments on 19 May 2018) or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.
3. The particulars of the second charge are as follows:

Particulars of the Charge

1 The CAC charges that FIONA CATHERINE JOY SANDS, registered teacher, of Pokeno, on or around 17 February 2020:

- a Failed to declare a matter for which she was currently under investigation as required on a Teaching Council practising certificate renewal form, when she was under investigation by a Complaints Assessment Committee.

Evidence

- 4. Before the hearing, the parties conferred and submitted an Agreed Summary of Facts (ASF), signed by the respondent and by counsel for the CAC. The ASF is set out in full below:

AMENDED AGREED SUMMARY OF FACTS

Introduction

- 1. Fiona Sands (**respondent**) is a registered teacher (registration 188176). Her practising certificate expired on 13 December 2019.
- 2. The respondent is currently teaching full-time at Mangatangi Primary School (**School**).

Background

- 3. In 2016, the respondent went through the Education Council's¹ competence process. On 9 November 2016, the respondent signed an agreement to impose a number of conditions (**Competence Conditions**) on her practising certificate.
- 4. The relevant Competence Conditions were:
 - a. Condition 1: Prior to accepting any fixed term or permanent teaching position other than casual day-relief, the teacher must provide her prospective employer with a copy of these conditions. The teacher must provide verification to the [Competence Assessor] of this within 3 days of accepting the position.
 - b. Condition 2: If already employed as above, the teacher must provide verification that her employer has sighted a copy of the schedule of conditions within 3 days of

conditions being imposed.

- c. Condition 5: If the teacher accepts a fixed term or permanent teaching position, she will be mentored by a teacher holding a full practising certificate and participate in a formal advice and guidance programme established for a period of 20 school weeks (Appendix 1).
- d. Condition 6: The teacher will provide evidence of her teaching inquiry in relation to PTC 8 by the end of the 20 week advice and guidance programme (see clause 5). The teacher will use evidence from research and her own past practice (and that of colleagues) to plan teaching and learning opportunities aimed at achieving outcomes(Appendix 2).
- e. Condition 7: The teacher will provide the CA with the following information at the end of each 10 week period covering the 20 school weeks:
 - i. a critique of the first and final two week's planning written by a professional leader/ senior teacher recording feedback and forward and confirming that the teacher is meeting planning requirements and that her teaching and learning programme consistently meets ākonga learning needs.
 - ii. the mentor's report noting weekly meetings held, topics discussed and progress made using the Practising Teacher Criteria (**PTC**) focussing on the teacher's development as classroom teacher and a reflective practitioner andher teaching inquiry progress as applicable.
 - iii. all documentation pertaining to her inquiry
 - iv. records of 2 observations carried out by a senior teacher/ professional leaderover a period of time that provide an evaluation of her links from planning toclassroom programme and teaching practice.
- f. Condition 8: The teacher will provide the CA with a full evaluation of her teaching practice using the Practising Teacher Criteria, or the equivalent standard in place at the time, by the end of the 20 school week period. This evaluation is to be completedby a pre-approved independent appraiser.

5. A complete copy of the signed Competence Conditions is attached as **Tab 1**.

6. The Competence Conditions have remained on the respondent's practising certificate since 9November 2016.

Failure to comply with Competence Conditions

Mangatawhiri School

7. The respondent worked at Mangatawhiri School from 20 February 2017 to 9 March 2017 on a fixed term, full time contract. The respondent did not comply with the Competence Conditions on her practising certificate during the period of this employment, in that:
- a. Condition 1: The respondent did not provide a copy of the Competence Conditions to her prospective employer and/or she did not provide verification to the Competence Assessor that she had provided a copy of the Competence Conditions to her employer within three days of accepting this position.

Mangatangi School

8. On 8 March 2019, the Teaching Council's payroll datamatch system showed that the respondent had started in a teaching position at Mangatangi School (**the School**) on a full time basis starting from 8 May 2017. The respondent still works at the School now. The respondent did not fulfil the requirements of the Competence Conditions during the period of this employment, in that:
- a. Condition 1: the respondent accepted a full time permanent position at the School and did not provide her prospective employer with a copy of the conditions and/or provide verification to the Competence Assessor that she had provided a copy of the Competence Conditions to her employer within three days of accepting the position at the School; and/or
 - b. Condition 5: the respondent accepted a permanent position at the School and respondent has not been mentored by a teacher, and has not participated in a formal advice and guidance programme for 20 weeks; and/or
 - c. Condition 6: consequently, the respondent has not provided evidence of her teaching inquiry in accordance with PTC 8 during this period; and/or
 - d. Condition 7: the respondent has not provided the Competence Assessor with the information required by her Competence Conditions at the end of any period, or at all; and/or
 - e. Condition 8: the respondent has not provided the Competence Assessor with an evaluation of her teaching practice using the PTC at the end of the 20 school week period.

Committee investigation

9. The Teaching Council became aware of the respondent's non-compliance with the Competence Conditions in March 2019.

10. Staff at the Teaching Council attempted to contact the respondent (by email, letter and voicemail, as well as eventually contacting her Principal) on 15 occasions between 8 March 2019 and 2 June 2020 to discuss the Respondent's compliance with the Competence Conditions. Ms Sands did not respond to any of those communications. . In particular:

- a. On 8 March 2019, a Monitoring and Compliance Advisor (**Advisor**) from the Teaching Council emailed the respondent (at fionacjs3@gmail.com, which was the email address that the respondent had on file at the Teaching Council), setting out the Teaching Council's concerns as to the respondent's non-compliance with the Competence Conditions as described above at paragraphs [7] and [8]. The Advisor sought a response before the matter was referred to the Senior Manager of Professional Responsibility.
- b. On 26 March 2019, the Advisor called the respondent's cellphone and left a voice message regarding the activation of the Competence Conditions
- c. On 9 April 2019, the Advisor emailed the respondent (at fiona@mangatangischool.nz) again seeking a response.
- d. On 30 April 2019, the Teaching Council emailed the respondent at her email addresses fiona@mangatangischool.nz and fionacjs3@gmail.com. These emails attached a letter from the Teaching Council which set out the attempts at contact up to that date, and set out the Teaching Council's concerns regarding the respondent's compliance with the Competence Conditions. This email sought a response by 10 May 2019.
- e. On 26 June 2019, the matter was referred to the Triage Committee and an investigator was assigned to the matter.
- f. On 5 July 2019, the investigator posted and emailed a letter to fionacjs3@gmail.com detailing the allegations to the respondent and sought a response by 19 July 2019.
- g. On 3 September 2019, the investigator called the respondent and left a voice message seeking a response, as well as text messaging her.
- h. On 16 October 2019, the investigator emailed the respondent at fiona@mangatangischool.nz.
- i. On 24 October 2019, the investigator called the School and left a message with the School's receptionist to be passed on to the respondent.
- j. On 20 and 21 February 2020, the investigator left the respondent voicemails seeking that she call back. Also on 20 February 2020, the investigator contacted the Principal of the School and asked that the Principal advise the respondent that the investigator was trying to speak with her.
- k. On 2 April 2020, the investigator followed up with the Principal and asked her to advise the respondent to email the investigator.

- l. On 3 April 2020, the investigator emailed the respondent again.
 - m. On 28 May 2020, the investigator followed up with the Principal and asked if she had discussed the matter with the respondent. The Principal advised she had passed the message on “more than once”.
 - n. On 2 June 2020, the investigator called the Principal again. The Principal advised she had passed the message onto the respondent “countless times”. At that time, the Principal physically passed the phone to the respondent who was nearby.
11. Both fiona@mangatangi.school.nz and fionacjs3@gmail.com were the email addresses that the respondent used at the relevant time. The cellphone number that the Teaching Council contacted was the correct cell-phone number for the respondent at the relevant time.

Failure to declare to Teaching Council that she was under investigation

- 12. The respondent was notified in July 2019 that she was under investigation for breaching the Competence Conditions.
- 13. On 17 February 2020, when applying to renew her Practising Certificate, the respondent declared that she was not under investigation by the Teaching Council. A copy of this declaration form is attached as **Tab 2**.
- 14. The respondent was at that time under investigation by the Teaching Council for breaching the Competence Conditions. The respondent was aware that she was under investigation.

Teacher's comments

- 15. The respondent accepts that she did not fulfil the balance of the requirements of the Competence Conditions on her practising certificate.
 - 16. The respondent accepts that she failed to declare that she was under investigation to the Teaching Council when renewing her practising certificate in February 2020.
 - 17. The respondent stated to the CAC investigator that she mistakenly assumed that being offered a full time permanent position (at the School) and being appraised and having her Principal (at the School) sign her registration application that she thought the investigation around her competence (and the Competence Conditions) were resolved. The respondent states that she is well-supported in her role at the School and is enjoying her position.
5. We must be satisfied that the CAC has proved the charge on the balance of probabilities. It seems abundantly clear from the admissions in the agreed summary of facts that the respondent was aware of the conditions imposed on her. They are

simple and straightforward conditions which placed positive obligations on her. She completely failed to comply with these obligations. If there were any doubt about her knowledge of what was required of her (which we do not think there is) then her actions after the start of the investigation by staff at the Teaching Council removes that doubt. Her complete failure to engage with the investigation reinforces that she was fully aware of her failure to comply.

6. So, we are satisfied that she knowingly breached her conditions and knowingly failed to declare that she was under investigation. As a result, we find the charge and all of the particulars of the charge established.

Serious misconduct

7. We must be satisfied that the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers). Serious misconduct is established by section 378 of the Education Act 1989 (the Act) in combination with Rule 9 of the Teaching Council Rules 2016 (the Rules) which set out the criteria for reporting serious misconduct.

8. Section 378 of the Act provides:

serious misconduct means 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 Education Council's criteria for reporting serious misconduct.*

9. A complicating factor in this case is that the Rules were amended on 19 May 2018. Any conduct that occurred before that date must be charged under the unamended version of the Rules. Any conduct that occurred from that date must be charged under the amended version of the Rules.

10. For the conduct before 19 May 2018, the CAC relies on rules 9(l)(o) of the Rules.

Criteria for reporting serious misconduct

(1) *A teacher's employer must immediately report to the Education Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:*

...

(o) *any act or omission that brings, or is likely to bring, discredit to the profession.*

11. For the conduct after 19 May 2018, the CAC relies on 9(l)(k) of the amended version of the Rules.

Criteria for reporting serious misconduct

(1) *A teacher's employer must immediately report to the Education Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:*

(k) *an act or omission that brings, or is likely to bring, the teaching profession into disrepute.*

Discussion

12. As already noted, we must be satisfied that the respondent's conduct meets one of the definitions of serious misconduct in s 378 of the Act, and also that it is of a character or severity that meets the criteria for reporting serious misconduct contained in Rule 9.
13. Looking first at the criteria in s 378, the one that we must consider is the respondent's fitness to be a teacher. We find that her failure to abide by her conditions show a lack of judgment and also a fundamental lack of respect for her professional obligations. We consider such failures clearly adversely reflects on her fitness to be a teacher.
14. Next, we consider reporting criteria and for this we must consider whether her actions had the tendency to bring the teaching profession into disrepute. The test for deciding whether a teacher's actions are likely to bring their profession into disrepute were discussed in *Collie v Nursing Council of New Zealand*.¹ It is an objective test and requires consideration of whether reasonable members of the public informed of the facts and circumstances, could reasonably conclude that the reputation and good

¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

standing of the profession is lowered by the respondent's actions.

15. We have found that the respondent was fully aware of her obligations placed on her by the conditions that had been imposed but wilfully ignored them. Where a professional regulatory organisation places conditions on a professional, compliance with those conditions is mandatory and not optional. This is because compliance with professional obligations is a hallmark of professional occupations. We have no hesitation in concluding that the respondent's wilful disobedience of her professional obligation was likely to bring the teaching profession into disrepute.²
16. So as a result, we have no hesitation in finding that the conduct satisfies the two necessary parts of the test for serious misconduct. That means she is guilty of serious misconduct.

Penalty

17. In *CAC v McMillan*³ we summarised the role of disciplinary proceedings against teachers as:

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

18. The powers available to us on a finding of serious misconduct are set out in section 404 of the Act. This section provides:

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*

² Applying the test in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

³ NZTDT 2016/52, 23 January 2017, paragraph 23.

- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
- (b) *censure the teacher:*
- (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
- (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
- (e) *annotate the register or the list of authorised persons in a specified manner:*
- (f) *impose a fine on the teacher not exceeding \$3,000:*
- (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
- (h) *require any party to the hearing to pay costs to any other party:*
- (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
- (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*

19. The CAC referred us to broadly comparable cases to assist in identifying the appropriate penalty.
20. In *CAC v Ranapia*⁴ the teacher was acquitted of criminal charges related to scrubbing a child with a pot scrub. The teacher agreed to conditions being placed on her practising certificate. The teacher failed to provide evidence that she had complied with those conditions. The teacher also failed to engage on an ongoing basis with the Teaching Council. As a result, the teacher was referred to the Tribunal for possible serious misconduct.
21. The Tribunal found serious misconduct and commented that the teacher showed a lack of respect for her regulatory body and other teachers. It set a bad example for her students and showed a failure to act in a professional and courteous manner.
22. The teacher was censured, and further conditions were put on her practising certificate for two years. The conditions were equivalent to the ones that had been originally imposed.

⁴ *CAC v Ranapia* NZTDT 2016/53, 7 February 2017

23. The teacher in *CAC v Teacher*⁵ was charged with mistreating a student by reporting her grandparents to CYFs. The charge was referred to the Tribunal. Conditions were imposed on the teacher's practising certificate including to provide the Council with a plan detailing her understanding of professional boundaries, cultural norms and ethical conduct. The teacher failed to comply with these conditions when she acted as a relief teacher and failed to provide her plan. The teacher was referred again to the Tribunal.
24. The Tribunal found serious misconduct. The Tribunal concluded the teacher's failure was "undoubtedly a breach of their obligations as a teacher". The Tribunal concluded that the teacher was ignorant of the extent of her obligations, rather than deliberately flouting them, and so the Tribunal considered it would be too punitive to cancel the teacher's registration. The Tribunal reimposed the existing conditions.

Penalty

25. This case involves competence issues which morph into conduct issues and this fact informs the penalty we ultimately impose.
26. The respondent is still teaching at same school and says that she enjoys teaching there and feels supported. We were surprised that we were not provided with any information from the school or the respondent about her teaching. In particular we were surprised that no lessons appraisal or similar document provided to us. The school and the respondent should have that information available. That type of information would have assisted us in deciding how to dispose of the case but at the end of the day we can only go on the information that we have been provided.
27. The CAC does not argue for cancellation and argues that the appropriate penalty was the imposition of the conditions on the respondent's practising certificate: We agree.
28. The conditions we impose are designed to express our disapproval of the respondent's conduct but also assist her to becoming a more effective teacher. First, we have decided to impose a censure to mark the flagrant disregard for her professional obligations and indicate our disapproval of this type of conduct. This was a sustained failure to comply with obligations she was clearly aware of and then a complete failure to engage with the investigation into her professional failures. This is disrespectful to the Teaching Council and sets a bad example for students.

⁵ *CAC v Teacher* NZTDT 2014/20 29 May 2014

29. We also order annotation of the register with the outcome in this case to provide an enduring record of her failure to comply.

30. Finally, we impose the following conditions:

- a. The respondent must inform current or future employers of this disciplinary proceeding for 24 months following the date of the Tribunal's decision; and
- b. That the respondent must submit her reflections about the Code and Standards and how it applies to her practice to the Manager of Professional Responsibility within three months from the date of the decision

Costs

31. We are conscious that the respondent has not made any submissions on costs, and we do want to provide her with an opportunity to be heard on that issue. So, we are going to make a provisional decision on costs but grant the respondent with leave to make submissions both as to the level of costs and on her financial capacity to pay.

32. The CAC sought a contribution of 40% of its costs under s 404(1)(h). Ordinarily where the defendant engages with the process and the hearing proceeds on the papers (as occurred here) it is usual to order costs in that range of 40%.

33. Provisionally, and subject to any submissions from the respondent, the Tribunal orders the respondent pay 40% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i) of the Act.

34. The Tribunal delegates to the Chairperson authority to determine the quantum of costs and issues the following directions:

- a) Within 10 working days of the date of this decision:
 - i. The Secretary is to provide the Chairperson and the parties a schedule of the Tribunal's costs
 - ii. CAC to file and serve on the respondent a schedule of its costs
- b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the Tribunal or CAC.

35. The Chairperson will then determine the costs to be paid.

Non-publication

36. Presently there is an order prohibiting publication of particulars identifying the respondent.⁶ She seeks that the order is made permanent on the grounds that publication would affect her mental health which could then also impact on her children. She also relies on the effect on the school where she teaches.

General Principles on Non-Publication

37. Section 405(3) provides that hearings of this Tribunal are in public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) provides:

(6) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:

(a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:

(b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:

(c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.

38. In deciding if it is proper to make an order prohibiting publication, we must consider the relevant individual interests as well as the public interest.

39. As we noted in *CAC v Finch*,⁷ we apply a two-stage approach. The first stage involves an assessment of whether the particular consequence is "likely" to follow. This simply means an "appreciable" or "real" risk. If we are so satisfied, our discretion to forbid publication is engaged and we must determine whether it is proper for the presumption in favour of open justice to give way to the personal circumstances on which suppression is sought.

40. There is no onus on the applicant and the question is simply whether the

⁶ See minute dated 2 February 2021.

⁷ *CAC v Finch* NZTDT 2016/11

circumstances justify an exception to the fundamental principle.⁸ In essence we must strike a balance between the open justice considerations and the interests of the party who seeks suppression.⁹

41. Turning to the respondent's grounds for non-publication of her name, the respondent set out her basis for suppression as follows:

I would like to request permanent name suppression on the following grounds:

On the advice of my Doctor I wish to express my concern that the details of the hearing being made public may have the potential to lead to mental health problems for me beyond those that present themselves as part of the hearing process. This concern has also been expressed by my Doctor in the attached letter.

I am concerned that these mental health problems would directly impact my three teenage children, if my ability to cope with everyday life was compromised, as it has been in the past. I am looking for a pathway upwards and onwards - I have no desire to revisit the depths of despair I was in and would not like to imagine the impact of that on my children, they've already lived through that once in their short lives.

I also have concern that these details being made public would have a negative impact on the school where I teach. We are a small rural school, with a tight knit community.

The details of my hearing are mine to own and I would be devastated to think that the school was in any way negatively implicated by this information being made public.

Thank you for your consideration of my request for permanent name suppression.

42. We were provided with a medical report from the respondent's doctor in support of her application for name suppression. The doctor comments:

She has a past history of depression and was treated in 2011. She has been well since and fit to work.

She has had a flare of stress related to work document compliance and I am aware she is facing a disciplinary tribunal hearing.

Due to her past history I think she has a chance of psychological problems associated with the hearing and I would be grateful if she could have permanent name suppression .

I am concerned that her recent inability to make steps forward to resolve issues with the teaching council may be a sign of a lingering low grade depression and I will be following her up regarding this.

⁸ *ASB Bank Ltd v AB* [2010] 3 NZLR 427(HC) at [14].

⁹ *Hart v Standards Committee* (No 1) of the New Zealand Law Society [2012] NZSC4 at [3].

Relevant Tribunal decisions

43. In *Gittins*,⁹ we made the following observations about the effect on the children of teachers who are the subject of a disciplinary finding:

We do not want to see children being used as an automatic shroud over the principle of transparency. Rather, we would encourage teachers to think carefully about the possible effects of their actions on their families, in particular their children. In the present case, we think it unlikely that there will be any significant harm to the respondent's children. Any embarrassment and discomfort is not sufficient to outweigh the public interest in publication.

44. In *CAC v Teacher*¹⁰ we made the following observations:

Without wishing to sound unsympathetic to its sufferers, anxiety (and associated mental conditions) is not an unexpected consequence of a proceeding involving allegations of serious professional misconduct. It is important that the nature and effects of any such condition are carefully scrutinised when it is put forward as a ground for name suppression. A bare assertion that a condition exists, or that it may render an applicant seeking suppression more vulnerable to harm, will not suffice.

45. In *CAC v Taylor*, we have recently comprehensively reviewed the principles for suppression of the name of the school.¹¹ We made the following observations:

29. Where the request for a non-publication order is made by a school or other person involved in the disciplinary proceedings, the threshold can possibly be somewhat relaxed, as the public interest in publication of the name of a teacher who has engaged in professional misconduct, and the protective effects which publication can produce, are not involved. But nevertheless, the underlying and fundamental principle is that of open justice, and the presumption of open justice must be displaced by more than mere assertion.

¹⁰ *CAC v Teacher* NZTDT 2016/27 at [63].

¹¹ *CAC v Taylor* (NZTDT 2019/ 92).

30. In order to justify a conclusion that it is proper to order name suppression for a school there must be some evidence of a real risk that publication will cause real adverse effects which are at least more than speculative. It must be clear that such potential effects are likely to go beyond the normal embarrassment or disruption a school might suffer where one of its teachers is found to have engaged in professional misconduct. A bare assertion by a school, without evidence, that it will suffer beyond the norm will not usually be enough, although that possibility cannot be excluded.

Analysis

46. The essence of our task is to decide whether the likely effect of publication on the respondent, her family or the school is an out of the ordinary or an unforeseen consequence of publication so that it is proper to suppress the respondent's name to protect her family.
47. We are not satisfied that the effect on the respondent and her family is beyond the "expected consequence of a proceeding involving allegations of serious professional misconduct." Nor are we satisfied that the evidence of harm to the school goes beyond the "normal embarrassment or disruption a school might suffer where one of its teachers is found to have engaged in professional misconduct". So, the evidence we have been provided in support of suppression is insufficient. As a result, there are no grounds to displace the presumption in favour of open justice.
48. So that means we are unable make an order under s 405(6) for non-publication of the respondent's name.



Ian Murray
Deputy Chair

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).