

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/08

UNDER | WĀHANGA

the Education and Training Act
2020 (**the Act**)

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

TE HANOA (BETTY) KOOPU
(Registration No 193342)
Kaiurupare / Respondent

Hearing | Te Rongonga

29 November 2023 – on the papers

Representation | Hei Māngai

E McCaughan, Kayes Fletcher Walker, for CAC
R Erlbeck, Baywide Community Law, for Respondent

DECISION OF THE TRIBUNAL

Dated 14 December 2023

Tribunal

James Gurnick (Deputy Chair)
Lyn Evans
Kiri Turketo

Introduction

[1] Ms Koopu was first registered in 1996. Her most recent practising certificate expired on 26 July 2022.

[2] The Complaints Assessment Committee (**CAC**) referred this matter to the Tribunal on or about 24 January 2023 in accordance with s 497 of the Education and Training Act 2020 (**the Act**) based on information received from the mandatory report provided by Maungatapu School about the conduct of Ms Koopu that should be considered by the Tribunal. The CAC had charged Ms Koopu with engaging in serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers, in that Ms Koopu, being a registered teacher, on 10 June 2022 twisted or pulled the ears of a student.

[3] The CAC alleges that the conduct amounts to serious misconduct pursuant to s 10 of the Act and any or all of r 9(1)(a) and/or (k) of the Teaching Council Rules 2016 (**Rules**), or alternatively amounts to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to s 500 of the Act.

Facts

[4] The parties have agreed a summary of facts:

Introduction

1. Ms Koopu was first registered in 1996. Her most recent practising certificate expired on 26 July 2022.
2. In June 2022, Ms Koopu was employed as a teacher (kaiako) at Maungatapu School in Tauranga. Maungatapu School is a primary school for children in years 1-6 with a roll of between 450 and 525 students.
3. Ms Koopu resigned from Maungatapu School on 13 June 2022.
4. On 20 June 2022, the Principal of Maungatapu School filed a mandatory report with the Teaching Council regarding Ms Koopu.

Incident: that on 10 June 2022, Ms Koopu twisted or pulled the ears of Child A (aged 5).

5. On 10 June 2022, Ms Koopu twisted or pulled the ears of Child A, who was five years old at the time. She did this once to each ear.
6. Child A did not know why this happened.
7. Child A told his parents about what happened and said it hurt when she pulled his ears.

8. Child A's father subsequently complained to the school about Ms Koopu's conduct.

Teacher's response

9. On 13 June 2022, the Deputy Principal spoke to Ms Koopu about the allegation. Ms Koopu initially denied hurting any children on 10 June 2022.

10. Child A subsequently confirmed to the Deputy Principal that Ms Koopu had pulled his ears twice. When the Deputy Principal spoke to Ms Koopu a second time, Ms Koopu said:

If he said that, I can't confirm or deny. I can't remember. If he is saying that, then it must've happened but I can't recall that ever happening.

I would never hurt anyone's child but I can't remember this incident. All I remember is growling at the kids because they got wet in the rain.

I have had enough, I want to hand in my resignation now.

11. On the same day, Ms Koopu sent an email to the Principal of Maungatapu School offering her resignation. In that email, Ms Koopu said:

I am saddened to receive a complaint from parents of a child in my class to an occurrence that allegedly took place on Friday 10/06/22. As I can't confirm or deny these allegations I am offering my resignation and will relinquish my position as Kaiako in this class immediately.

12. On 27 June 2022, the Teaching Council's Triage Committee contacted Ms Koopu regarding the mandatory report. Ms Koopu responded by email and stated:

Kia ora Sian,

I am responding in writing to our telephone conversation earlier today.

Firstly I cannot recall the incident having taken place. Secondly I cannot confirm or deny the allegations made against me.

Nga mihi,

Betty Koopu

13. On 5 October 2022, the CAC's investigator sent a copy of the draft investigation report to Ms Koopu and her representative.

14. On 10 October 2022, Ms Koopu's representative acknowledged receipt of the draft investigation report. Ms Koopu did not provide any further substantive response to the report.

CAC meeting

15. On 27 October 2022, the CAC met to consider the mandatory report. Ms Koopu was invited but did not attend the meeting.

16. The CAC considered that Ms Koopu's conduct may possibly constitute serious misconduct (as defined in section 10 of the Education and Training Act 2020).

On that basis, the CAC had no option but to refer Ms Koopu's conduct to the Tribunal under s 497(5) of the Education and Training Act 2020.

- [5] On the basis the conduct constitutes "serious misconduct", the CAC seeks:
- (a) censure;
 - (b) annotation of the register (to apply for two years);
 - (c) conditions (to apply for a period of two years to any practising certificate subsequently obtained by Ms Koopu):¹
 - (i) to advise prospective teaching employers of the Tribunal's decision;
 - (ii) before commencing any teaching role, she is to attend any course required by the Teaching Council in relation to behaviour management and coping strategies when working with children.

[6] The CAC seeks an order for permanent suppression of the complainant's name pursuant to s 501(6) of the Act.

The Act

- [7] Section 10 of the Act defines "serious misconduct" as conduct by a teacher:
- (a) that:
 - (i) adversely affects, or is likely to adversely affect, the wellbeing or learning of one 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.

[8] The Court of Appeal has affirmed that the test under s 10 is conjunctive.²

¹ Ms Koopu's most recent practising certificate expired on 26 July 2022.

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

[9] The criteria for reporting serious misconduct are found in the Rules. In this case, the CAC alleges that the relevant rules are:

- (a) rule 9(1)(a) – using unjustified or unreasonable physical force on a child or young person; and/or
- (b) rule 9(1)(k) – an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[10] Whether conduct meets the threshold of “disrepute” under r 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by Ms Koopu’s behaviour.³

Proof of allegations

[11] Given there is an agreed summary of facts, there can be no dispute as to the factual allegations contained in the notice of charge, namely that Ms Koopu, on 10 June 2022, twisted or pulled the ears of a five-year-old student.

[12] While Ms Koopu’s position is that she does not recall the incident, she nevertheless accepts that it must have occurred by agreeing to the summary of facts that has been filed.

CAC’s submissions on liability

[13] Having regard to *CAC v Kaufusi*,⁴ and *CAC v Teacher X*,⁵ the CAC submits that Ms Koopu’s actions constitute serious misconduct for the following reasons:

- (a) her conduct plainly adversely affected the child – he complained to his parents about what had happened and told them that it had hurt;
- (b) pulling a child’s ear clearly reflects adversely on Ms Koopu’s fitness to be a teacher – it is an inappropriate use of force on anybody in Ms Koopu’s position, let alone a five-year-old child;
- (c) Ms Koopu’s conduct may have brought the teaching profession into disrepute;

³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT2016/43, 24 March 2017.

⁴ *CAC v Kaufusi* NZTDT 2019/58, [date].

⁵ *CAC v Teacher X* NZTDT 2021/53.

- (d) in terms of r 9(1)(a), pulling the child's ear clearly amounted to using unjustified or unreasonable physical force; and
- (e) in relation to r 9(1)(k), this was an act "that brings, or is likely to bring, the teaching profession into disrepute.

[14] In *Kaufusi*,⁶ Mr Kaufusi had pulled the ears of two different children. He was observed pulling the ear of a four-year old child in the classroom when the witness was dropping her four-year old son off. The witness noted that Mr Kaufusi pulled the ear hard enough that it appeared that the little boy was hurt.

[15] The witness asked the child if any of the teachers had ever pulled his ear. The child replied that Mr Kaufusi had three or four times because he had not been listening. The Police became involved and issued Mr Kaufusi with a formal written warning for the assaults on two of the children on 23 August 2018. At a Tribunal hearing, Mr Kaufusi confirmed that he had pulled the ears of two boys on separate occasions. The Tribunal found that:

- (a) each incident of ear-pulling was in contravention of s 139A of the Education 1989 (that is, the prohibition against physical force for the purposes of correction or punishment),⁷ and met all three limbs of the definition of serious misconduct in s 378;
- (b) the conduct amounted to "physical abuse" (which was the term used in r 9(1)(a) at the time) and would have also amounted to "unjustified or unreasonable" physical force on a child under the current version of the Rules;
- (c) the Tribunal noted its previous comments in *CAC v Maeva*:⁸

"We agree with the CAC that the incident of ear pulling amounts to serious misconduct. We acknowledge that the student was not physically harmed by this, but that does not make it acceptable. The student might laugh out of embarrassment or bravado. A particular student might be used to rough and tumble or perhaps has experienced similar discipline before. Again, that does not mean it is right. Student A has the same rights as any other child in the classroom to learn without having his ear pulled. Although in this particular case, the degree of force might not have been great, we see it as a demeaning way of treating a student, carrying with it a risk of physical and emotional harm. It has no place in the education of children and young people."

⁶ *CAC v Kaufusi*, above n 4.

⁷ This provision has been re-enacted as s 24 of the Education and Training Act 2020 in relation to ECE facilities.

⁸ *CAC v Maeva* NZTDT2016/374 [date].

[16] The Tribunal also considered that reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by Mr Kaufusi's behaviour. At the time of the Tribunal hearing, Mr Kaufusi was not working as a teacher, as his job had not been kept open for him when he had a period of illness.

[17] The Tribunal made the following orders:

- (a) censure;
- (b) annotation of the register for a period of two years;
- (c) practising conditions (to apply for two years):
 - (i) before he was granted full registration, he was required to do more training or a course in positive behaviour guidance;
 - (ii) he was required to provide a copy of the Tribunal's decision to any current, future or prospective employer; and
 - (iii) he was to inform the Teaching Council of the name of a mentor or supervisor with whom he could talk and receive support.

[18] In *Teacher X*,⁹ the teacher admitted that she had tweaked Child A's left ear and stated that Child A repeatedly refused to co-operate when she was trying to clean him up and he had faeces spread over him, the floor and the toilet. Child A was upset and crying because she would not let him leave the toilet dirty and that he cried and said "ouch, don't pull my ear". The teacher admitted that her actions amounted to serious misconduct and the Tribunal agreed, noting:

- (a) her conduct involved her pulling on the child's ears with sufficient force to make him complain to her that it was hurting and to ask her to stop and she also verbally harshly reprimanded the child;
- (b) s 24 of the Act expressly prohibited the use of corrective or disciplinary force;
- (c) the incident was similar to that in *Kaufusi*, although *Kaufusi* involved two incidents of ear-pulling: the Tribunal was particularly perturbed by the nature of the child's

⁹ *CAC v Teacher X*, above n 5.

statements suggesting that the incident was painful to the child, accompanied as it was by a forceful reprimand.

[19] Again, the Tribunal made the following orders:

- (a) censure;
- (b) annotation of the register for two years;
- (c) imposition of conditions on Teacher X's practising certificate, including:
 - (i) requiring the teacher to inform any future teaching employers of the Tribunal's decision for a period of two years; and
 - (ii) before commencing in a teaching role to attend a training course in behaviour management and coping strategies for working with young children.

[20] The Tribunal suppressed Teacher X's name on the basis that she had proved that she would suffer medical hardship if her name was published.

Respondent's submissions

[21] Ms Koopu acknowledges that the conduct falls within the category of serious misconduct in that it constitutes an unjustified and unreasonable use of force. Counsel for Ms Koopu acknowledges and accepts the approach taken by the CAC in relation to the applicable legal principles and acknowledges that the cases relied upon by the CAC are largely comparable to the facts of the present case.

[22] While Ms Koopu cannot recall the incident, she has never disputed the child's account and has co-operated fully with the CAC in assisting to expedite the proceedings, having accepted the summary of facts.

[23] Counsel for Ms Koopu submits that the Tribunal should impose the least restrictive penalty that can reasonably be imposed in the circumstances.

[24] Counsel for Ms Koopu emphasises Ms Koopu's history of teaching for 26 years with no prior disciplinary record, that she is 74 years old and a superannuitant, she is presently living in a retirement village and has relatively poor health.

[25] While not seeking to offer an excuse, counsel emphasises the fact that Ms Koopu's son suffered a traumatic brain injury only a few months prior to Ms Koopu accepting a teaching position at Maungatapu School and that there were a number of significant stressors on Ms Koopu outside of the classroom. Counsel submits that Ms Koopu acted uncharacteristically and there were a number of background factors at play which likely influenced her otherwise exemplary conduct as a teacher over a 26-year period.

Decision

[26] For the reasons submitted by the CAC above (and admitted by Ms Koopu) we accept that Ms Koopu's conduct amounts to serious misconduct. Whilst the facts are slightly different as compared to *Kaufusi* and *Teacher X*,¹⁰ the cases are very similar.

[27] There can be no justification for using physical force against a child in the circumstances as presented in this case. It is unclear why Ms Koopu twisted or pulled the ears of the child, but the child told his parents about what happened and said it hurt when she pulled his ears. The fact that the child's ears were pulled is not disputed.

Penalty

[28] We accept that the penalty ought to be the same as in previous cases and on that basis impose the following orders:

- (a) censure;
- (b) annotation of the register (to apply for two years);
- (c) conditions (to apply for a period of two years to any practising certificate subsequently obtained by Ms Koopu):
 - (i) to advise prospective teaching employers of the Tribunal decision;
 - (ii) before commencing any teaching role, Ms Koopu is to attend any course required by the Teaching Council in relation to behaviour management and coping strategies when working with children.

¹⁰ *CAC v Kaufusi*, above n 4; *CAC v Teacher X*, above n 5.

[29] It is acknowledged that Ms Koopu is unlikely to return to the teaching profession again in the future and Ms Koopu submits that it is not necessary for the Tribunal to impose any conditions on any practising certificate to be issued to Ms Koopu for that reason.

[30] However, we note that Ms Koopu was 72-73 years old at the time and still teaching and therefore age in and of itself did not prevent her from teaching relatively recently. There is also nothing to prevent Ms Koopu from renewing her practising certificate at a later stage. Without the imposition of conditions, it would mean that her practising certificate would be entirely unencumbered unless the Tribunal imposed conditions.

[31] If, as Ms Koopu says, she is unlikely to ever return to teaching in any capacity, then the conditions will not have any impact. The conditions are necessary in part to deter others and ensure that conduct of this type will be met with a serious sanction that the public considers is a commensurate response to the conduct and to ensure that, should Ms Koopu return to the teaching profession, there are sufficient safeguards in place such that this conduct should not occur again.

Non-publication

[32] The CAC seeks an order for permanent suppression of Child A's name pursuant to s 501(6) of the Act. We grant the order sought.

[33] There being no further applications regarding non-publication, we make no orders for non-publication in relation to Ms Koopu or the school involved.

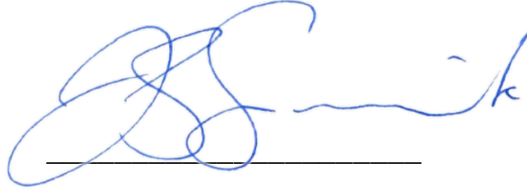
Costs

[34] It is appropriate that Ms Koopu makes a contribution towards the actual and reasonable costs incurred by the CAC in undertaking its investigative and prosecutorial functions.

[35] While the Tribunal's practice note dated 1 April 2022 relating to costs provides a discretion to order costs in the region of 40 per cent where a teacher has admitted a charge and has fully co-operated in bringing the matter to an end in an expedient way, we have been provided with further information relating to Ms Koopu's financial status.

[36] Ms Koopu's sole source of income is her superannuation payments and she is unlikely to return to the workforce in any capacity. On that basis, we are prepared to reduce costs further from the usual 40 per cent. We direct that Ms Koopu contribute 30 per cent of the costs of the CAC in the amount of \$1,175.38.

[37] The Tribunal's costs should be met on the same terms. Ms Koopu is directed to pay \$436.50, being the Tribunal's costs in relation to the proceeding.

A handwritten signature in blue ink, appearing to read 'J S Gurnick', written over a horizontal line.

J S Gurnick
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal