

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2020/30**

**WĀHANGA**  
*Under*

the Education Act 1989

**MŌ TE TAKE**  
*In the matter of*

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

**I WAENGA I A**  
*Between*

**COMPLAINTS ASSESSMENT COMMITTEE**

**ME**  
*And*

**TE KAWE TERENCE RATU**

**Kaiurupare**  
*Respondent*

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**DECISION OF TRIBUNAL**

**10 November 2021**

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**HEARING:** 29 June 2021 (on the papers)

**TRIBUNAL:** Theo Baker (Chair)  
Megan Cassidy, Lyn Evans (Members)

**REPRESENTATION:** Ms Oliver for the CAC  
Mr Ratu represented himself

1. In a Notice of Charge dated 10 February 2021, the Complaints Assessment Committee (**CAC**) charged that Te Kawe Terence Ratu (**the respondent**) had engaged in serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers. There were two charges arising from mandatory reports<sup>1</sup> from two schools. There were 7 allegations arising from his time at [REDACTED] School and 2 from Tokoroa High School. The specific allegations are recorded below in the discussion of the facts.
2. The CAC alleged the conduct in each of the charges separately or cumulatively amounted to serious misconduct under the definition in section 378 of the Education Act 1989 (**the Act**) and Education Act 1989 and any or all of rules 9(1)(a), (c), (f) and/or (o) of the Education Council Rules 2016 (as drafted prior to amendments on 18 May 2018) and/or rules 9(1)(a), (b) and/or (k) of the Teaching Council Rules 2018 (as drafted following the amendments on 18 May 2018), or, alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.

### **Hāpotorā - Summary**

3. Some amendments were made to the charge to align it with the evidence in the Agreed Summary of Facts that had been signed by the respondent. The amendments did not disadvantage the respondent. The amended charge is annexed to this decision.
4. Particulars 1 a), b), d) and f) and particular 2 a) of the amended charge were established and each amounted to serious misconduct.
5. The factual allegations in particulars 1 c), 1 e) and 2 b) were established but the Tribunal did not find the established conduct amounted to serious misconduct.
6. The respondent is censured and his registration is cancelled.
7. Non-publication orders are made as set out in paragraph 104.

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<sup>1</sup> Under section 394 of the Education Act 1989, the employer of a teacher must immediately report to the Teaching Council if it has reason to believe that the teacher has engaged in serious misconduct

### **Korero Taunaki – Evidence**

8. The parties filed an agreed summary of facts (**ASF**). It was agreed that the respondent was provisionally certified at the time of the Teaching Council's (**Council**) first electronic records in 1990 and became fully registered in 1992.

#### *Charge 1*

9. At the beginning of 2018 the respondent began a role as a primary school teacher at [REDACTED] School ([REDACTED]). During his employment there, the school received a number of allegations regarding the respondent's treatment of students.

*Charge 1 (a) On or around 24 February 2018, stood over a Year 4 child (Student A) and put his hand on Student A's shoulder causing Student A to fall backwards while saying something along the lines of, "do you think you are tough?"*

10. The evidence in the ASF was that on one occasion on or about 24 February 2018 Student A, a year 4 student, yelled out during class, "Alright I'll meet you on the back field and we'll sort this out!" to another student. In response, the respondent raised his voice and approached Student A, saying, "Do you think you are tough? All you and [another student] do is bully weaker boys than you."
11. The respondent placed his hand on Student A's shoulder and caused Student A to fall backwards. Student A started crying. The respondent told Student A that he was sick of the bullying going on. Student A walked out of class crying while being comforted by another student.
12. The actions described, sound like the respondent pushed Student A, and so it is unclear why the charge was not that the respondent "pushed Student A". Nonetheless, the factual allegation of the charge is established.

*Charge 1 (b) On or around 30 July 2018, used unreasonable physical force and/or restraint on a Year 4 Child (Student B) which caused Student B's body to hit a wall and/or Mr Ratu and Child 2's nose to bleed;*

13. It was agreed that between January and 31 July 2018 Student B, a year 4 student, was being bullied by another student. Student B picked up a guitar and started chasing the other student. The respondent grabbed Student B's arm, causing him to swing around and hit a wall which caused Student B's nose to bleed.

14. We were told that the respondent was charged with assault on a child in respect of his conduct with Student B.<sup>2</sup> He pleaded guilty and was granted a discharge without conviction on 16 January 2019. The Judge in his sentencing notes referred to the respondent having written a letter of apology and having “attended a MAN-UP programme, religious and a personal physical regime and there is documentation to satisfy the Court in relation to that matter”. There was a \$300 emotional harm reparation.

*Charge 1 (c) On or around 31 July 2018, moved a desk which caused a Year 4 Child (Student B), whose head was going down, to hit the desk;*

15. On a second occasion between January and 31 July 2018, Student B threw books from his desk onto the floor. As the respondent straightened Student B’s desk, Student B leaned forward and hit his head on the desk.
16. The factual allegation is established.

*Charge 1 (d) On or around 31 July 2018, used unreasonable force on a Year 4 child (Student B) by tapping his head with a manila type folder;*

17. The agreed facts are that on another occasion between January and 31 July 2018, the respondent hit Student B on the head with a manila folder. This allegation is established.

*Charge 1 (e) On or around 6 April 2018, when a Year 4 child (Student C) was swinging on a chair, lifted the child up and told her to ‘piss off’;*

18. The facts in support of this charge are that on 6 April 2018 Student C, a year 4 student, was swinging on a chair in the computer room. The respondent approached Student C and lifted her up. There is no mention of his telling her to piss off. The charge is partially established.
19. It is arguable that because the charge reads “and told her to ‘piss off’”, rather than “and/or told her to ‘piss off’”, that the whole particular must fail. We have decided that amending the charge to delete the last 6 words is not unfair to the respondent, given the

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<sup>2</sup> There is more than one particular in the disciplinary charge concerning Student B. We have assumed that the conduct in particular 1(b) of the charge was the behaviour that was referred to the police.

agreed facts. We therefore find that an amended charge of lifting the child up is established.

*Charge 1(f) On or around 25 July 2018, tackled and/or pushed a Year 4 child (Student D) over on concrete causing the child to become upset and didn't apologise;*

20. The agreed facts are that on 25 July 2018 a number of students and the respondent were playing rugby on the field by the swimming pool. During the game the respondent tackled Student D, a year 4 student, over by the field causing Student D to become upset. The respondent did not apologise.
21. According to the ASF, when questioned by the Principal, the respondent said that he only tapped Student D and at the CAC hearing, he said that he was concerned that the older children were tackling the younger children and in tackling Student D, he was "teaching the students a lesson".
22. There was no evidence in the Agreed Facts that the fall was on to concrete. We amend the charge to exclude the words "on concrete". The amended particular is established.

*Charge 1(g) On or around 3 August 2018 grabbed two Year 4 children (Student E and Student F) and pushed them out the door of the computer room.*

23. On 3 August 2018 a number of students, including two year 4 students, Student E and Student F, were swinging on the chairs in the computer room. The respondent grabbed Student E's shoulder and escorted her out the door. The respondent also grabbed Student F's arm around the bicep and escorted him out the door.
24. There was no reason for the respondent to touch the students at all. Although the charge alleges that the respondent "pushed" two students out the door, the agreed facts are that he "escorted" them, while touching Student E's shoulder and with his hand around Student F's bicep. He therefore physically escorted the students out the door. We do not consider that the respondent is prejudiced if we amend the charge accordingly. It is no more serious an allegation. The charge is amended so that particular 1(g) reads:

*On or around 3 August 2018 grabbed two Year 4 children (Student E and Student F) and physically escorted them out the door of the computer room.*

25. The amended particular is established.

*Charge 2*

26. The respondent was dismissed from his employment at [REDACTED] school in October 2018 after he was asked by the Council to sign a voluntary undertaking not to teach. The respondent was charged with assault on a child in relation to the incident involving Student B (outlined above at paragraphs 11 to 16). The respondent pleaded guilty and was granted a discharge without conviction on 16 January 2019.
27. The respondent received an offer of employment from Tokoroa High School, who were aware of the respondent's voluntary undertaking not to teach and the reasons for the agreement.
28. The Council lifted the undertaking on 14 February 2019 on the basis of some agreed conditions of employment. Two further incidents occurred while teaching at Tokoroa High School, as outlined below, and the undertaking not to teach was then reinstated on 16 September 2019.

*Charge 2 (a) On 29 August 2019, pushed a 15 year old student (Student G) then grabbed his arm;*

29. The charge refers to Student G, but according to the ASF, the incident happened on 29 August 2019 with Student H. We have therefore amended Charge 2(a) to refer to Student H.
30. On 29 August 2019, the respondent was in the G Block computer room standing by a table in the centre of the room. Student H, a year 11 male student, was on one of the computers in the room.
31. A verbal dispute developed between the respondent and Student H in relation to Student H not wearing appropriate school uniform. Student H started to remove the inappropriate item of clothing.
32. The respondent then moved towards Student H and pushed him. The respondent moved away from Student H and back towards the centre of the room before returning and grabbing Student H's arm.
33. The factual allegation is established.

*Charge 2 (b) On or around 2 August 2019, took a Year 10 student (Student H) to a speech competition after having been denied permission to do so by Tokoroa High School.*

34. The agreed facts were that on 2 August 2019 the respondent drove Student G, a year 10 female student, to a speech competition. No EOTC form had been completed for the trip and no school permission had been given.
35. The summary did not specify that permission had been denied but we were told that in response to the complaint, the respondent stated he had gone to Student G's home with the intention of telling her that she could not attend the speech competition; however, her parents asked him to take her to the competition and after seeing her at home he "didn't have the heart to leave her behind".
36. The respondent further stated that he thought the school's decision not to allow Student G to attend the competition was "wrong" and he would go with Student G as "individuals" and not part of the school.
37. Therefore, there is sufficient evidence from which to infer that the High School had denied permission. The charge refers to Student H, but the agreed facts refer to Student G. We have amended the charge to refer to Student G, given that is what the respondent has agreed. The particular is therefore established.

*Further agreed facts*

38. The respondent's employment at Tokoroa High School was terminated in September 2019 and the voluntary undertaking not to teach was reinstated. He is not currently employed as a teacher and his practising certificate was due to expire on 29 May 2021.
39. In a written response to the Council on 29 October 2020, Mr Ratu stated that he had never touched Student A and was just trying to tell him that bullying was "not cool".
40. The respondent sent a second response on 3 November 2020 in which he stated that he never had any intention to hurt Student A but recognised that he had used the "wrong words" in interacting with Student A and would have created the impression he was behaving in an aggressive manner. The respondent further stated that he should have followed the behaviour management strategies the school had in place to deal with challenging behaviours and defused the situation with Student A in a "more civil way".
41. In relation to Student B, the respondent said in response to the Principal's investigation, that he overreacted because of his frustrations and concerns for the children's safety. At

- the CAC hearing the respondent stated that he considered he was more strict with Student B than other children because Student B was one of his “mokos”.
42. The respondent did not recall the incident with Student C, but has signed the ASF, accepting the above facts.
43. When questioned by principal [REDACTED], the respondent stated he only tapped Student D. At the CAC hearing, the respondent stated that he was concerned that the older children were tackling the younger children and in tackling Student D, he was “teaching the students a lesson”.
44. At the CAC hearing, the respondent acknowledged he “shoved” students out of the computer suite on occasion.
45. He said that Student H had been swearing at him for three to four months.
46. The respondent further acknowledged he had no defence for his actions and had been under too much pressure.

### **Whanonga he taumaha - Serious misconduct**

47. Section 378 of the Act is an interpretation section. Serious misconduct is defined as follows:
- serious misconduct means conduct by a teacher–***
- (a) *that–*
- (i) *adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;*
  - (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.*
48. The criteria for reporting serious misconduct referred to in section 378 (b) are found in rule 9 of the Teaching Council Rules 2016.
49. The events before 19 May 2018 are covered by rule 9 before amendment. The charge refers to rules 9(1)(a), (c), (f) and (o):



**9 Criteria for reporting serious misconduct**

(1) *For the purposes of section 394 of the Act, an employer of a teacher must immediately report to the Education Council if it has reason to believe that the teacher has engaged in any of the following kinds of serious misconduct:*

(a) *physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):*

...

(c) *psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment:*

...

(f) *neglect or ill-treatment of a child or young person in the teacher's care:*

...

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

50. From 19 May 2018 the following rules applied. The charge refers to (a), (b) and (k):

**9 Criteria for reporting serious misconduct**

(1) *A teacher's employer must immediately report to the Teaching 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:*

(a) *using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:*

(b) *emotional abuse that causes harm or is likely to cause harm to a child or young person:*

...

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

51. We accept the CAC submission that as the criteria in rule 9 now directly engage the Code of Professional Responsibility, the examples of conduct in rules 9(1)(a) to (k) are

of a nature and severity to be a serious breach of the Code.

*CAC submissions*

52. The CAC submitted that the respondent's use of force against Students A, B, C, D, E, F and G:
- (a) was likely to adversely affect students' wellbeing. Along with the respondent's conduct in taking Student H to a speech competition without school permission, his conduct demonstrates a significant disregard for students' safety and wellbeing and undermines public trust and confidence in the teaching profession.
  - (b) Reflects adversely on the respondent's fitness to be a teacher.
  - (c) May bring the teaching profession into disrepute.
53. As for the second part of the test for serious misconduct, the CAC submitted that the respondent's conduct was a serious breach of the Code of Professional Responsibility (**the Code**), and in particular breached the rules under Rule 9 as outlined above:
54. The CAC submitted that the conduct was also a breach of clause 1.3 of the Code:
- Maintaining public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.
55. The CAC noted that the examples in the Code include that a teacher is expected to behave "in ways that promote a culture of trust, respect and confidence". The CAC submitted that the respondent's repeated decision to use inappropriate behaviour management techniques does not promote trust and confidence in the teaching profession or in the respondent himself.
56. It was further submitted that the respondent's conduct in tackling Student D, causing him to become upset and subsequently failing to apologise further fails to demonstrate a high standard of professional behaviour and integrity. Given the substantial size difference between a typical Year 4 child and an adult, there are significant health and safety risks from a teacher tackling a Year 4 child and being tackled by an adult would also likely be a frightening experience for a Year 4 child. The respondent's failure to acknowledge Student D's emotions, including by apologising, is a significant breach of the standards expected of teachers, demonstrating a lack of empathy and care for students. The CAC

submitted this was likely to cause harm to Student D.

57. On the question of the speech competition, the CAC submitted that disregarding school processes and procedures because a teacher personally thinks they are unnecessary risks harm to students. Teachers should comply with school processes and procedures both in order to ensure students' safety and model respect for school authorities. The CAC submitted that the respondent's decision to take Student H to a speech competition without school permission is a breach of clause 2.1 of the code:

Working in the best interests of learners by promoting the wellbeing of learners by protecting them from harm.

58. The CAC further submitted that the respondent's conduct cumulatively and/or separately reflects adversely on the teacher's fitness to teach under section 378, in that it reflects adversely on his professional judgement and his ability to manage his emotions when teaching. His own emotional needs were put before the learning needs of the students. It was submitted that he could have chosen to engage another teacher to assist him in managing their challenging behaviour. Given the number of incidents, it would have been appropriate for the respondent to seek guidance from the leadership of the school regarding the use of appropriate behaviour management techniques. His lack of demonstrated empathy towards Student D and his disregard for school rules and his belief that he knew best as relates to Student G is suggestive of a lack of respect for processes and procedures designed to keep students safe. It is expected that from time to time teachers will experience challenging behaviour from students, and that is not an excuse for retaliation. Teachers' overriding responsibility is to ensure that students' wellbeing and safety is protected.
59. On the question of bringing the profession into disrepute, the Tribunal has consistently adopted the definition of bringing discredit to the profession set down by the High Court under the Nurses Act 1977: that "reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and standing of the profession is lowered by the behaviour of the practitioner".<sup>3</sup>

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<sup>3</sup> The test for bringing discredit to the profession in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

*Korero – discussion*

60. We have been asked to consider whether the conduct in each particular amounts to serious misconduct. Each of the established particulars in Charge 1 involves the use of some force.
61. Under the Code of Professional Responsibility, a teacher’s commitment to learners includes promoting the wellbeing of learners and protecting them from harm, and the purpose of the Teaching Council is to “to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium ...”.
62. In some circumstances, a failure to protect a learner from harm may amount to serious misconduct. Where harm has been inflicted by a teacher, it will almost always lead to such a finding.
63. Section 139A of the Act prohibits the use of force for punishment or correction. As we said in *CAC v Welch* NZTDT2018-4:<sup>4</sup>

*Section 139A makes it clear that a teacher has no unique right to use force. We assume most teachers would not hit another adult if unhappy with their behaviour. A teacher’s position does not legitimise actions that amount to crimes if committed in the community. Therefore teachers must be careful not to abuse the position of authority that they have in a classroom.*

*Particular 1(a) and 1(f)*

64. The incident with Student A as found in particular 1(a) sounds like a push and was accompanied by the words, “Do you think you are tough?” This has the hallmarks of a threat rather than an attempt at corporal punishment, which is prohibited by section 139A. The respondent’s words sound more like the machismo that boys display in the playground. The respondent seems to have thought that he was somehow disciplining Student A for bullying, but the irony is that we view the respondent’s actions as bullying.
65. The same applies to his tackle of Student D (particular (f)). This was not a case of a teacher inadvertently applying too much force in the course of a sports game. The respondent’s explanation was that he wanted to teach the students a lesson. His tackle

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<sup>4</sup> *CAC v Welch* NZTDT2018-4, 23 June 2018

of Student D was because he thought the older students were being a bit rough.

66. In *CAC v Teacher J*, we commented on the use of physical force by a teacher in replicating a student's act (emphasis added):<sup>5</sup>

While force may be justified in certain circumstances to prevent a child from harming him or herself, or others, **mere replication by a teacher of a child's physical act does not form a legitimate preventative measure.**

67. All three of the definitions of serious misconduct in paragraph 378(a) are met. That is, in both instances, it is conduct that is likely to adversely affect the wellbeing of one or more learners, it adversely reflects on the respondent's fitness to be a teacher and it is likely to bring the teaching profession into disrepute.
68. As for the second part of the definition, the first instance must be considered under the former rules before amendment in May 2018. We find that it amounts to "physical abuse" under rule 9(1)(a) as it was enacted, albeit at the lower end of the scale. It is also conduct likely to discredit the profession under the former rule 9(1)(o).
69. Particular 1(f) is covered by the present rules. We are satisfied it involves the unreasonable and unjustified use of force and so breaches the current rule 9(1)(a). We also find it is likely to bring the teaching profession into disrepute.

*Particular 1(b)*

70. The same can be said of particular 1 (b), which involved Student B and occurred after the present rules were enacted. The agreed facts do not give us a clear picture of the degree of force used. All we know is that the respondent grabbed the boy's arm. The boy ended up with a bleeding nose, which was unlikely to have occurred without the respondent's intervention.
71. The respondent has referred to this boy as his moko. Until 2007, parents and guardians were exempted under section 139A. In other words, a teacher could use force on their own child at school for the purposes of correction or punishment, but not other students. That changed with the introduction of the Crimes (Substituted Section 59) Amendment Act 2007 the purpose of which was "to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction." Section 139A was amended accordingly. The fact that a student may be related to a teacher does not lower the expectations of the teacher.

72. The case of *CAC v Karklins*<sup>5</sup> involved inadvertent physical harm as a result of using force. A teacher lost his temper with a misbehaving student. He picked up the primary school student and forcibly removed him from the classroom, depositing him on the floor of the cloak room. The boy was thrashing about and banged his head against the wall. The Tribunal found serious misconduct, conduct likely to bring discredit to the teaching profession<sup>6</sup> under rule 9(1)(o). We found that the harm was an “unfortunate but foreseeable consequence” of his actions. At the time that case was decided, rule 9(1)(a) required a finding of “physical abuse”. That has now been amended to the use of unjustified or unreasonable force. We find that occurred here. The respondent’s treatment of Student B as found in particular 1(b) meets the criteria in rule 9(1)(a) and 9(1)(k) of the present rules. It therefore amounts to serious misconduct.

*Particular 1(c)*

73. Particular 1(c) involved moving a desk and Student B hitting his head on the desk. Without more context, it was not clear to us that there was any intention to harm or discipline Student B. That particular is not upheld as professional misconduct.

*Particular 1(d)*

74. Again with the tapping of Student B’s head with a manila folder, it would have been helpful to have had some more context. A playful tap, while not appropriate, might not meet any of the definitions of serious misconduct. That said, *CAC v Haycock*,<sup>7</sup> involved a light smack to a child’s bottom. This was found to be a form of physical abuse (as found in rule 9(1)(a) at that time) but no penalty was imposed.
75. A more forceful hit of the head is clearly likely to adversely affect the wellbeing or learning of a student, and those around him or her. This has repeatedly been found to meet the definition of serious misconduct.<sup>8</sup> In many cases, the Tribunal has been very critical of touching a child’s head. We view the intentional application of force to the head a very serious matter. As we have said in previous cases, it carries a risk of serious

<sup>5</sup> *CAC v Karklins* NZTDT 2016-38, 3 October 2016

<sup>6</sup> Now amended to conduct likely to bring the teaching profession into disrepute.

<sup>7</sup> *CAC v Haycock* NZTDT 2016/2, 22 July 2016.

<sup>8</sup> For example, *CAC v Ross* NZTDT 2018-19(hit face with a pillow); *CAC v Welch* NZTDT 2018-4, 23 July 2018 (hit face with an exercise book); *CAC v CAC v Teacher* NZTDT 2016-26, 10 November 2016 (hit head 4 times with an empty soft-shelled computer case)

harm.<sup>9</sup> The other reason for avoiding touching a student's head is because the head is considered tapu.

76. The agreed fact is that the respondent "hit" the student's head with a manila folder. The wording of the charge is that he "tapped". We acknowledge that connotes that the degree of force was probably not great, but none the less, we cannot think of any reason to hit a child's head with anything. We find that such an action was likely to adversely affect the wellbeing or learning of a Year 4 boy and that of others in the class. We also find it is the use of unjustified force and so meets the second part of the test for serious misconduct.

*Particular 1(e)*

77. There is no reason to pick up a year 4 child and it is not an appropriate as a means of stopping them from swinging on their chair.
78. Again this is conduct that is likely to adversely affect the wellbeing of the student and an unjustified use of force, under rule 9(1)(a) as it is now drafted. However, this event occurred in April 2018, before the present rules were enacted. We do not have enough detail or context to find that this amounts to physical abuse under rule 9(1)(a) as it was enacted or is conduct likely to bring discredit to the profession under rule 9(1)(o). The test for serious misconduct is not met.

*Particular 1(g)*

79. We have found that the respondent physically escorted Students E and F out of the computer room, by grabbing Student E's shoulder and Student F's arm.
80. It would have been helpful to have had some more context and to understand the degree of force used, but this type of physical handling reflects adversely on the respondent's fitness to be a teacher and is likely to adversely affect the students' wellbeing or learning. It is an unjustified use of force under rule 9(1)(a).
81. Each of these instances amounts to serious misconduct.

*Particular 2(a)*

82. The incidents in Charge 2 occurred at a secondary school. The grabbing of Student H's

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<sup>9</sup> *CAC v Teacher* NZTDT2016-50, 19 September 2016; *CAC v Davies* NZTDT2016-28, 6 September 2017

arm and pushing is conduct likely to adversely affect his wellbeing and that of other students, reflects adversely on the respondent's fitness to be a teacher and *may* bring the teaching profession in disrepute. It is a breach of rule 9(1)(a) and (o). It is the use of unjustified and unreasonable force and is *likely* to bring the teaching profession into disrepute. It amounts to serious misconduct.

*Particular 2(b)*

83. On the question of Student G, the CAC submitted that disregarding school processes and procedures because a teacher personally thinks they are unnecessary risks harm to students and is a breach of clause 2.1 of the code:

Working in the best interests of learners by promoting the wellbeing of learners by protecting them from harm.

84. There are situations in which a failure to follow school policies and procedures might adversely affect a student's wellbeing. The definition in section 378 is that the conduct adversely affects, or is likely to adversely affect, the well-being or learning of one or more students. In *CAC v Albrey* a teacher who "failed in his duty of care to students by failing to properly organise and/or safely supervise a Year 13 Physical Education trip" and did not follow all appropriate procedures for EOTC (Education Outside The Classroom) activities was found guilty of serious misconduct because the conduct reflected adversely on his fitness to be a teacher and was likely to bring discredit to the profession under rule 9(1)(o) as it was then. That teacher's conduct included not only a lack of documentation but driving with three students in the front of a vehicle without wearing seatbelts.
85. In the present case the respondent's decision to override the directive of the school shows a disregard for the school leadership and a lack of judgement. It reflects adversely on his fitness to be a teacher. We are not persuaded that reasonable members of the public would consider the reputation of the teaching profession was lowered by his actions and so rule 9(1)(k) is not met.
86. We have considered whether this amounts to a serious breach of the Code of Professional Responsibility. For the same reasons that we do not think this conduct was likely to adversely affect the well-being or learning of any student, it is not a clear example of a breach of clause 2.1 of the Code. It may have been an example of a failure



to demonstrate a commitment to the teaching profession in that his actions undermined the directions of his professional colleagues. However, the CAC has not argued that it is a breach of clause 1 of the Code. This particular is not upheld as serious misconduct.

*Other breaches of Rule 9*

87. In finding that the respondent's actions were likely to adversely affect a student's wellbeing, we acknowledge that the conduct would have been upsetting for the students. That is not the same as finding emotional abuse under rule 9(1)(b). As we have said in some recent decisions, the fact that a student or learner has been distressed by a teacher's conduct does not mean that the conduct is properly classified as emotional abuse. In *CAC v Teacher NZTDT 2019-69*<sup>10</sup> some students had been upset when tickled by a teacher. We said:

The fact that students were upset by this physical act does not mean that the conduct amounts to emotional abuse. There is merit in Ms Andrews' submission that emotional abuse is designed to humiliate, degrade, undermine and control, which is absent in this case. In our view, the reason for the inclusion of rule (1)(b) is to cover situations that do not involve physical force. In many cases the conduct will be verbal, or it may involve a student being singled out in some way.

88. Although rule 9(1)(d) is referred to in submissions, it is not cited in the charge. The rule reads:

*failing to protect a child or young person due to negligence or misconduct, not including accidental harm:*

89. In any event, the Tribunal is not convinced that these are the types of cases intended to be covered by rule 9(1)(d), we have found the respondent has been the perpetrator of misconduct, rather than failing to protect. We speculate that this rule might be aimed at the conduct of a teacher, who knowing or suspecting that another teacher is engaging in inappropriate conduct with a student fails to speak up; or, as in the case cited above, where a teacher takes children on a school trip without observing all the procedures designed to protect their safety.

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<sup>10</sup> *CAC v Teacher NZTDT 2019-69*, 8 September 2020 (not yet published and subject to interim non-publication orders)

## Whiu - penalty

90. Section 404 of the Act 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:*
- (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 Teaching Council in respect of the costs of conducting the hearing:*
  - (j) *direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.*

### *Legal Principles*

91. In *Roberts v Professional Conduct Committee*<sup>11</sup> his Honour Justice Collins discussed eight relevant factors in determining appropriate penalty under the Health Practitioners Competence Assurance Act. These have been more recently summarised by the Health Practitioners Tribunal in the decision of *Katamat v Professional Conduct Committee* [2019] NZHC 1633:

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<sup>11</sup> *Roberts v Professional Conduct Committee* [2012] NZHC3354 at [44] to [51]

- a. Most appropriately protects the public and deters others;
- b. Facilitates the Tribunal's "important" role in setting professional standards;
- c. Punishes the practitioner;
- d. Allows for the rehabilitation of the practitioner;
- e. Promotes consistency with penalties in similar cases;
- f. Reflects the seriousness of the misconduct;
- g. Is the least restrictive penalty appropriate in the circumstances; and
- h. Looked at overall, is a penalty which is "fair, reasonable, and proportionate in the circumstances".

92. These principles have also been considered in this jurisdiction in decisions such as *CAC v Cook* 2018/50.

*CAC submissions*

93. The CAC submitted that in light of the significant number of incidents, and the respondent's continued use of inappropriate force after being granted a discharge without conviction and while teaching at Tokoroa High School subject to conditions on his practising certificate, cancellation of the respondent's registration is appropriate. It was submitted that notwithstanding the respondent's long career in teaching, he has poor rehabilitative prospects. Although the respondent has acknowledged that some of his conduct was inappropriate, he appears to minimise some of that conduct. For example, the respondent stated that the school's decision not to allow Student G to attend the speech competition was wrong and that he didn't have the heart to leave her behind.

94. The CAC referred to some similar cases, noting that the present case is unusual in light of the substantial number of incidents involved.

- (b) In *CAC v Deans*<sup>12</sup> an experienced teacher was found guilty of common assault under section 9 of the Summary Offences Act and fined \$500. The assault

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<sup>12</sup> *CAC v Deans* NZTDT 2015/66, 1 June 2016

consisted of pushing the complainant with both hands in the chest shoulder area causing him to stumble backwards. In that case a significant aggravating factor was the teacher's continued assertion of innocence and his general refusal to focus on his own failings. The Tribunal censured and cancelled his registration.

- (c) In *CAC v Ormsby*<sup>13</sup> the Tribunal cancelled a teacher's registration for pushing a six year old child's face into a room partitioned wall, causing the child's face to bleed. The conduct was described as "gratuitous, rather than spontaneous, loss of self control".
- (d) In *CAC v Mackey*<sup>14</sup> the teacher pushed a 14 year old student against a wall, held her there and yelled and swore at her. By a "very narrow margin", a lesser penalty than cancellation was imposed, consisting of censure, 18 months' mentoring, completion of any personal development course recommended by the Education Council in the next 12 months and annotation of the Register. The student was not hurt and there was evidence that the teacher had become overwhelmed by the student's behaviour.

### *Respondent's submission*

95. The respondent filed a 12000- word document called "My Life, My Journey" in which he outlined his life to date, including what he described as a rich childhood, with rural, modest upbringing with his loving grandmother and who practised tikanga māori. The respondent also talked about teachings of "The Church of Jesus Christ Of Latter Day Saints". About three quarters through the document the respondent talked briefly about taking the job at [REDACTED], and then the Police turning up at the school, his efforts to get a duty lawyer and losing his wallet. The respondent talked very little about the events in question. He said:

As I told the officer I never judged one child I have taught from day one there is a blank slate we fill that up as we go. They are going to make mistakes I am going to make mistakes. But know that I love you unconditionally and even though you may stuff up most of the time its not my fault , some kids have no food , no lunch unhealthy lunch , stayed up all night playing games no routines , no parents they are looking after themselves. So the last person they need ralling [*sic*] on them is me. They come to

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<sup>13</sup> *CAC v Ormsby* NZTDT 2017/33, 24 October 2018

<sup>14</sup> *CAC v Mackey* NZTDT 2016/60, 24 February 2017

school and expect a safe haven and if I am just like home I fail them. And I have done that over the 30 years but not intentionally. We talked for maybe an hour and this added to the calm I felt that in the darkest period of my life I was not alone. My heavenly Father loves me and is sending good people to help me. He learnt a lot from me in that hour and I learnt a lot from him.

### *Decision*

96. There was nothing in the respondent's document that mitigated the conduct or his current situation. There was no expression of remorse or any indication that he would do anything differently in the future. He did not respond to the submissions made by the CAC or make any comment on an appropriate penalty. He talked about some of his achievements in teaching tamaiti and rangitahi including te reo. He provided no references or supporting documentation.
97. We agree with the CAC that the respondent's registration must be cancelled. The extent of his wrongdoing along with his lack of insight into his behaviour raise serious concerns about his fitness to be a teacher. He has assaulted children, undermined his colleagues and shown no evidence of rehabilitation in the form of meaningful reflection on his aberrant behaviour, professional development, or engagement with colleagues or mentors.
98. In conclusion, the respondent is censured under section 404(1)(b) and his registration is cancelled under section 404(1)(g).
99. The CAC seeks 40% contribution to costs. In light of the fact that the respondent signed an agreed summary of facts and has not put the witnesses through a hearing, we agree that 40% is appropriate. He is ordered to contribute 40% of the CAC costs under section 404(1)(h) and the Tribunal's costs under section 404(1)(i).

### **He Rāhui tuku panui – Non-publication**

100. [REDACTED] school has applied for non-publication of its name on the basis that:
- (a) the school has a roll of [REDACTED], and so the children could be identified.

(b) [REDACTED]  
[REDACTED]  
[REDACTED]

(c) The school is currently under special management and has many fraught relationships. Publication would be “kicking the school while it is down.”

101. The application was supported by a statement from the Commissioner with more detail.

102. CAC is neutral on the question of name suppression for the school. The respondent has made no submission.

#### *Discussion*

103. Consistent with the principle of open justice, section 405(3) provides that hearings of this Tribunal are in public. In the present case, although the hearing of the charge was “on the papers”, rather than in person, it is still a public hearing. Had a member of the public, including the media, attended, relevant information would have been made available.

104. Section 405(3) is subject to the following subsections (4) to (6) which provide:

- (4) *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 hold a hearing or part of a hearing in private.*
- (5) *The Disciplinary Tribunal may, in any case, deliberate in private as to its decision or as to any question arising in the course of a hearing.*
- (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.*

105. It is under s 405(6) that we have considered this application. Therefore, in deciding if it is proper to make an order prohibiting publication, the Tribunal must consider the interests of the school, including the community and the students, as well as the public interest. If we think it is proper, we may make such an order.
106. The principle of open justice<sup>15</sup> exists regardless of any need to protect the public. And there is a presumption in favour of publication. The tenor of s 405 is consistent with section 95(2)(d) of the Health Practitioners Disciplinary Act 2003, which was considered in *Dr A v Director of Proceedings*<sup>16</sup> by Panckhurst J, who said:

*The scheme of the section means, in my view, that the publication of names of persons involved in the hearing is the norm, unless the Tribunal decides it is desirable<sup>17</sup> to do order otherwise. Put another way, the starting point is one of openness and transparency, which might equally be termed a presumption in favour of publication.*

107. In the present case, there are two factors that persuade us that the usual presumption in favour of publication is outweighed. We accept that [REDACTED] school could lead to identification of students. Secondly, where a school has required a Commissioner, it might be described as “broken”. These events occurred in 2018, and it is likely that publication of them could inhibit the rebuilding of the school.
108. Therefore, the Tribunal orders non-publication of:
- (a) The name and location [REDACTED] school
  - (b) The content of paragraph 100(b) above
  - (c) The names of any of the students referred to in the charge.

<sup>15</sup> *CAC v Teacher S NZTDT 2016-69*, referring to *R v Liddell* [1995] 1 NZLR 538 at 546

<sup>16</sup> (High Court, Christchurch, CIV 2005-409-002244, 21 February 2006, Panckhurst J).

<sup>17</sup> The term, “desirable”, as opposed to “proper” is used in the Health Practitioners Competence Assurance Act 2003

109. There is no order for non-publication of the name of the respondent or the other school.



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Theo Baker

Chair



## APPENDIX A – AMENDED PARTICULARS OF CHARGE

1. The CAC charges that **Te Kawe Terence Ratu**, registered teacher, of Hamilton, at [REDACTED]:

- (a) On or around 24 February 2018, stood over a Year 4 child (Student A) and put his hand on Student A's shoulder causing Student A to fall backwards while saying something along the lines of, "do you think you are tough?"
- (b) On or around 30 July 2018, used unreasonable physical force and/or restraint on a Year 4 Child (Student B) which caused Student B's body to hit a wall and/or Mr Ratu and Child 2's nose to bleed;
- (c) On or around 31 July 2018, moved a desk which caused a Year 4 Child (Student B), whose head was going down, to hit the desk;
- (d) On or around 31 July 2018, used unreasonable force on a Year 4 child (Student B) by tapping his head with a manila type folder;
- (e) On or around 6 April 2018, when a Year 4 child (Student C) was swinging on a chair, lifted the child up [deleted];
- (f) On or around 25 July 2018, tackled and/or pushed a Year 4 child (Student D) over [delete] causing the child to become upset and didn't apologise;
- (g) On or around 3 August 2018 grabbed two Year 4 children (Student E and Student F) and physically escorted them out the door of the computer room.

The CAC further charges that at Tokoroa High School Mr Ratu

- (a) On 29 August 2019, pushed a 15 year old student [Student H] then grabbed his arm;
- (b) On or around 2 August 2019, took a Year 10 student [Student G] to a speech competition after having been denied permission to do so by Tokoroa High School.

The conduct alleged in paragraphs 1 and 2 (and subparagraphs), separately or cumulatively, amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and any or all of rules 9(1)(a), (c), (f) and/or (o) of the Education Council Rules 2016 (as drafted prior to amendments on 18 May 2018) and/or rules 9(1)(a), (b) and/or (k) of the Teaching Council Rules 2018 (as drafted following the amendments on 18 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