

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2019-73**

**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** **TEACHER J**  
**Respondent**

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**DECISION DATED 12 AUGUST 2020**

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Representation: Ms Tahana and Ms Underhill-Sem for the CAC  
Mr Asher and Ms Brown for the respondent

1. The CAC laid a charge of serious misconduct against Teacher J. The alleged conduct concerned his treatment of students, including allegations of verbal abuse and physical restraint.
2. The matter was set down for hearing for 11 August 2020.
3. In accordance with directions made at a pre-hearing conference, the parties filed evidence before the hearing. On 6 August 2020 an Agreed Bundle of Documents was sent to the panel.
4. The CAC evidence was to be from three witnesses:
  - a) Kathy Moy-Low, lead investigator
  - b) Student A, former student

c) Student B, former student.

5. The direct evidence of the allegations was from Student A and Student B The respondent had also filed a brief in response to the allegations.
6. On Friday 7 August 2020 witness summonses were issued for the two former students. At a pre-hearing conference on 10 August it was confirmed that they did not want to give evidence and were not intending to attend the hearing.
7. Ms Tahana obtained further instructions from the CAC and confirmed on the afternoon of 10 August that the complaint would be withdrawn. Arrangements for a hearing in front of a panel of the Tribunal were therefore altered.
8. Because Teacher J was in Wellington, he asked that the matter be formally withdrawn in person. I therefore convened a brief hearing on 11 August without the two teacher panel members. Ms Tahana and Ms Underhill-Sem appeared via Microsoft Teams, while Teacher J appeared in person with his representatives, Mr Asher and Ms Brown.
9. Ms Tahana sought leave to withdraw the complaint against Teacher J. She advised that the two witnesses have confirmed they are unwilling to participate, and in the absence of direct evidence there is an insufficient factual foundation. She said that the student's mother stands by her complaint. It was she who pursued the complaint, but she overlooked the impact on her daughter. She extends her sincere apologies for all involved. She withdraws her consent for her younger daughter to give evidence and she supports her older daughter's decision not to give evidence.
10. Ms Tahana confirmed that the CAC seeks to withdraw the charge and offers no evidence.
11. Mr Asher advised that the respondent intended to seek costs against the CAC.
12. In the absence of any objection from the CAC, Teacher J and some of his supporters spoke. The nature of the issues raised was that the process (from the management of the complaint and investigation to the Tribunal hearing) has been very Pākehā. The process has taken a long time and has caused Teacher J and his whānau and the wider kura community a great deal of stress. I have not attempted to detail their concerns in this decision, which covers the disposal of the charge that was referred to the Tribunal. I have instead directed that a transcript of the hearing be made, including the statements

made in te Reo Māori and a translation into English. That will then be made available to the Teaching Council who are better placed to consider the matters raised.

13. I confirm that leave to withdraw the charge is granted, and the charge was dismissed. The charge cannot be laid again, and that is the end of the matter.
14. There are two outstanding issues: costs and name suppression. These matters will be considered by the panel of the Tribunal.
15. The respondent seeks an order for non-publication of his name and any identifying details, including the name of the kura and any students. He will file any application for costs and name suppression and supporting documentation by **25 August 2020**.
16. The CAC will reply by **8 September 2020**.
17. The respondent has a right of reply by **15 September 2020**.
18. The Tribunal will then convene and deliberate in private and a decision issued.
19. While the CAC will oppose the application for costs, Ms Tahana advised that she would take instructions on the issue of name suppression and if there was no objection, advise the respondent and the Tribunal as soon as possible.
20. I indicated that the Tribunal would be disposed to granting non-publication, but it would nonetheless be helpful if the parties have any legal authorities to support non-publication in circumstances such as these. This is to ensure consistency of approach.



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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).