EDUCATION COUNCIL
NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Te Peeti
NZ Disciplinary Tribunal Decision 2017/32

Teachers are expected to promote the wellbeing of learners and protect them from harm. In this case, a teacher's registration has been cancelled for serious misconduct by using unreasonable physical force against a primary school student.

Yvonne Te Peeti taught at the primary school for nearly 30 years. In this incident she became frustrated that a student with Down Syndrome was not listening to her or following directions. She reacted by grabbing the student's face, pulling her and twisting her nose, and scratching her on her neck. She did not report the incident. Another student who witnessed the incident told the student's mother.

The Education Council Complaints Assessment Committee (CAC) investigated and referred the matter to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

At the Tribunal, Ms Te Peeti accepted the allegations. She explained that she was frustrated by the student not following instructions to clean up the classroom. She acknowledged her conduct to the mother of the student and to the principal.

The Tribunal agreed that the physical force was a clear-cut case of serious misconduct. The Tribunal considered that Ms Te Peeti's conduct, in intentionally applying force for the purposes of correction, was absolutely prohibited by s 139A of the Education Act.

In determining penalty, the Tribunal was concerned that the assault was not an isolated incident, referring to two previous instances investigated by the Board of Trustees, where Ms Te Peeti used physical force against students due to non-compliance. The Tribunal also stated that Ms Te Peeti "demonstrated no insight" into the seriousness of her actions and that she considers herself to be "unfairly targeted."

Noting the specific focus of the Vulnerable Children's Act 2014, the Education Council's obligation to ensure that students are provided with a safe learning environment, the Tribunal referred to the clear link between the safety of students and the fitness of a teacher to teach. The Tribunal was not satisfied that Ms Te Peeti would not pose a risk to students if she was permitted to continue teaching.

On that basis, the Tribunal censured Ms Te Peeti, ordered annotation of the register, cancelled Ms Te Peeti's registration, and ordered her to pay costs.

NZTDT 2017/32

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER	the Education Act 1989
IN THE MATTER	of a charge of serious misconduct referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
BETWEEN	**THE COMPLAINTS ASSESSMENT COMMITTEE** Referrer
AND	**YVONNE HOROHAU TE PEETI** Respondent

DECISION OF TRIBUNAL

Tribunal:	Nicholas Chisnall (Deputy Chair), Susan Ngarimu and Tangi Utikere
Hearing:	On the papers
Decision:	3 April 2018
Counsel:	J M O'Sullivan and D T Moore for the referrer The respondent in person

Introduction

[1] The Complaints Assessment Committee (the CAC) charges Yvonne Te Peeti, the respondent, with serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers under the Education Act 1989 (the Education Act). It alleges that, on 10 November 2016, the respondent used unreasonable force when she:

(a) Grabbed the face of an eight-year-old student (Child A) and pulled her towards her;

(b) Twisted Child A's nose; and

(c) Scratched Child A's neck and caused visible marks to her face.

[2] The respondent accepted the charge and agreed to the matter being dealt with on the papers.

The evidence

[3] The parties prepared and filed an agreed summary of facts and what follows at [4] to [9] is drawn from that.

[4] The respondent is a registered teacher and taught at the primary school where this incident occurred for nearly 30 years.

[5] On 10 November 2016, the respondent was teaching Child A, who has Down Syndrome. The respondent used the force described in the CAC's charge at about 11:30am. Afterwards, Child A cried and remained upset for some time. The facial and neck injuries remained visible for at least four hours after the incident.

[6] Ms Te Peeti stated that she was frustrated with Child A for not following her instructions and she used force to get Child A to listen to her. She reported that Child A had refused to tidy up and had thrown an item at her. The respondent said:

> I wanted us to walk out together, she would not pay attention. I grabbed her face. I twisted her nose … I should have let her be … I was trying to get things organised … get everyone to the hall. I wanted to tidy up the house before we went to the hall … I was frustrated with her non-compliance.

[7] The respondent's behaviour was witnessed by another student, who reported the incident to Child A's mother. The respondent did not tell anyone about what had happened. It was only when she was confronted at the end of the school day, that Ms Te Peeti acknowledged to the principal and to Child A's mother what she had done. Later that day, she wrote a statement about the incident in which she admitted, "I know what I had done was incorrect and very wrong and am deeply apologetic to [Child A] and the … families." However, there is no evidence that the respondent directly apologised to Child A.

[8] Child A's mother made an immediate complaint to police. It was duly investigated, but police decided not to take the matter further, while observing that the respondent's behaviour was unacceptable.

[9] Ms Te Peeti has been the subject of two other disciplinary investigations by the Board of Trustees for using physical force against a student out of frustration due to non-compliance. The first incident occurred on 29 April 2003, and involved the respondent punching a student in the forehead (although she characterised it as a push) when the student failed to follow her instructions. During the second on 10 June 2008, the respondent hit a student on the top of his head and kicked him in the bottom. Again, the trigger described by the respondent was that the student failed to follow her instructions. In both cases, the respondent accepted that she had behaved in the way alleged. In each case, the Board made a finding of serious misconduct and issued the respondent with a final written warning.

Serious misconduct

[10] Section 378 of the Education Act defines "serious misconduct" as behaviour by a teacher that has one or more of three specified outcomes.[1] The test under s 378 is conjunctive.[2] As such, as well as having one or more of the adverse professional effects or consequences described, the conduct concerned must also be of a character and severity that meets the Education

[1] Behaviour that adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; or that reflects adversely on the teacher's fitness to be a teacher; or that may bring the teaching profession into disrepute.
[2] Recently affirmed by the District Court in *Teacher Y v The Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 28 February 2018, at [64].

Council's criteria for reporting serious misconduct, which are found in the Education Council Rules 2016 (the Rules).

[11] In terms of the Rules, the CAC contended that the respondent's use of force against Child A engaged four of the Rules. First, it alleged that it constituted "physical abuse", thus breached r 9(1)(a). Second, the CAC said that the respondent's behaviour amounted to ill-treatment under r 9(1)(f). Third, the CAC relied on r 9(1)(n), which applies to "any act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more". Finally, it referred to r 9(1)(o), which encompasses "any act or omission that brings, or is likely to bring, discredit to the profession".

[12] The respondent did not seek to resist the CAC's assertion that her behaviour constitutes serious misconduct. While the Tribunal is required to reach its own view, we have no hesitation accepting the CAC's assessment is correct.[3]

[13] We start with the first limb of the definition of serious misconduct. The CAC's position is that the respondent's behaviour engaged each of the three criteria in s 378(1). We are satisfied that the respondent's behaviour fulfils the first criterion. The agreed summary describes the fact that Child A was upset for some time after the respondent used force. While the effect might have been transitory, we consider that the respondent's actions had an adverse impact on Child A's wellbeing. Moreover, there is no doubt that the respondent's conduct both reflects adversely on her fitness to teach and is of a nature that brings the teaching profession into disrepute.[4]

[14] Turning to the second limb of the test for serious misconduct, we are satisfied that, first and foremost, the respondent's use of force against Child A constituted "physical abuse" in breach of r 9(1)(a) of the Rules.

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[3] Notwithstanding the parties' agreed position, we have reminded ourselves the burden rests on the CAC to prove the charge, on the balance of probabilities.

[4] On the second criterion, the High Court in *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28], said there is an objective standard for deciding whether behaviour brings discredit to a profession. The question that must be addressed is whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the behaviour of the practitioner concerned. We consider that there is no doubt the respondent's behaviour has that effect.

[15] We have kept in mind the considerations that we discussed in a recent decision during our context-specific assessment of the facts.[5] We accept that the respondent intentionally applied force to Child A for a corrective purpose absolutely prohibited by s 139A of the Education Act, which provides that no teacher may:

> Use force, by way of correction or punishment, towards any student or child enrolled at or attending the school…

[16] This was an assault, with an element of violence, triggered by the respondent's loss of composure when faced with supposedly challenging behaviour on the part of Child A. It should almost go without saying that Child A is an inherently vulnerable child and there was no basis whatsoever for Ms Te Peeti to use force in response to the trivial transgression she described. Also, it is an aggravating factor that the respondent targeted Child A's head. When these features are considered together, we are left in no doubt that the threshold that must be met for an act to amount to physical abuse is reached in the respondent's case.

[17] In summary, this is a clear-cut example of serious misconduct.

Penalty

[18] The primary motivation regarding the establishment of penalty in professional disciplinary proceedings is to ensure that three overlapping purposes are met. These are to protect the public through the provision of a safe learning environment for students, and to maintain both professional standards and the public's confidence in the profession.[6] We are required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.[7]

[19] We must seek to ensure that any penalty we institute is comparable to those imposed upon teachers in similar circumstances, as consistency is the bedrock of fairness. In a recent Tribunal decision, we reviewed the outcomes

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[5] *CAC v Teacher* NZTDT 2016/50, 19 September 2016.
[6] The primary considerations regarding penalty were discussed in *CAC v McMillan* NZTDT 2016/52.
[7] See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

in a series of cases involving the use of physical force by a teacher.[8] However, each case requires a careful assessment of its own facts and seldom will two be identical. That being said, there are factual parallels between Ms Te Peeti's case and NZTDT 2017/1. Both involved a single occasion of physical contact that engaged s 139A of the Education Act. The teacher in NZTDT 2017/1 slapped an eight-year-old child's face. Like the respondent, the teacher acted out of frustration. Also, neither teacher self-reported her misconduct. In NZTDT 2017/1, we concluded that the least restrictive reasonable outcome was censure in combination with conditions. Our decision turned on the fact that the teacher was remorseful and had taken steps to ensure there was no repetition.

[20] Concerningly, the respondent's assault on Child A is not an isolated incident. A clear pattern is discernible when it is considered alongside the 2003 and 2008 incidents. It concerns us that neither previous incident appears to have triggered a mandatory report to the Council. As such, the respondent might consider herself fortunate that this is the first occasion she has been the subject of disciplinary action before the Tribunal. We therefore conclude that the respondent's conduct towards Child A is not out of character.

[21] We received a letter from Ms Te Peeti. A clear theme of the letter is that the respondent considers herself to have been unfairly targeted by the Education Council. She describes the fact that she has been "willing to step up to the crime that I committed (as you see it from your point of view)", but the possibility that she will lose the right to teach constitutes the Council "[spitting] in her face again". Ms Peeti's exclusive focus is on the possibility that she will lose her ability to teach Te Reo Maori to adults. She states:

> I have been learning Te Reo Maori since the age of 10 and continue to develop my language for the survival of our people at home and on our marae. So to hear that I may be banned from teaching my Reo because of my actions to another, has blown my world again.

[22] The respondent posed the following question for the Tribunal:

> **Is there to be no mana left for me, or are you all trying to strip me of the lot. Mana, Mauri, Maori.** Can you do what I have to share to my people into those people who are looking for the Maori language??

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[8] *CAC v Teacher* NZTDT 2017/1.

> Or is this how you deal with criminals as myself. Who's being more courageous?? Me or You??
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> [Emphasis in the original letter]

[23] We are mindful of recent legislative developments that represent Parliament's commitment to reducing the harm to children from those employed or engaged in work that involves regular contact with them,[9] and the obligation on the Education Council to "ensure" that students are provided with a safe learning environment.[10] The specific focus of the Vulnerable Children's Act 2014 (the VCA) is on safety, which mirrors a key factor the Tribunal must consider whenever it decides if a teacher who has engaged in behaviour prohibited by the Rules – whether it took place inside or outside the work environment, and whether or not it attracted a criminal conviction – is fit to remain a member of the profession. As we said in *Mackey*, we accept that the VCA's introduction reinforces the importance of our obligation to closely scrutinise the fitness to teach of any practitioner who faces a disciplinary charge for behaviour of a type that may pose an ongoing risk to students.

[24] With this statutory framework in mind, can we be satisfied that the respondent will not pose a risk to students if we empower her to continue to teach? Unfortunately, we are not.

[25] As we have said in past decisions, in all but those cases involving the most serious examples of serious misconduct,[11] whether cancellation of a teacher's registration is mandated tends to turn on his or her "reflection and remedial steps taken since the event".[12] We consider that the respondent has demonstrated no insight whatsoever regarding the impropriety of her actions towards Child A. Instead, the focus of Ms Te Peeti's letter, which is vitriolic in its tone, is on her self-induced predicament. A potential collateral

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[9] Specifically, s 139A of the Education Act and the Vulnerable Children's Act 2014. We addressed these developments in *CAC v Teacher* NZTDT 2016/50 and *CAC v Mackey* NZTDT 2016/60.
[10] Section 377 of Part 32 of the Education Act, which came into effect on 1 July 2015, which requires the Education Council to "ensure" that students are provided with a safe learning environment.
[11] In *Robertson*, above n 9, the High Court at [50] said that cancellation is reserved for clear-cut examples of the worst kind of serious misconduct. See, too, what we said in *CAC v Campbell* NZTDT 2016/35, at [27].
[12] *CAC v Davies*, above n 6, at [54]. See, too, *CAC v White* NZTDT 2017/29, at [26] and [27].

effect of cancelling the respondent's registration is that she will be unable to teach Te Reo if the position concerned requires her to be a registered teacher under the Education Act.[13] However, the respondent misses the point of cancellation. It is not to punish her by depriving her of the right to teach Te Reo.

[26] The CAC submits that nothing short of cancellation of the respondent's registration will meet the obligations owed to the public and the profession. We agree. Nothing the respondent has said provides us with any confidence that she appreciates the risk she poses to those she teaches. Clearly, the respondent has not developed insight from the warnings she received in 2003 and 2008 that the use of force for a corrective purpose is not an acceptable feature of modern teaching practice. In conclusion, we are satisfied that cancellation of Ms Te Peeti's registration to teach is the least restrictive outcome that can reasonably be imposed in the circumstances.

Non-publication

Suppression of Child A's name

[27] Rule 34(4) of the Rules, unlike its predecessor, does not entitle students affected by misconduct to automatic name suppression. Rather, we are obligated to consider whether it is proper to make an order under s 405(6) of the Education Act in respect to Child A. We consider that it is proper for us to do so, and so order.

Costs

[28] The starting point is for the Tribunal to make an award in favour of the successful party reflecting 50 per cent of its, his or her actual and reasonable costs. However, we order the respondent to make a 40 per cent contribution to the CAC's costs. This is consistent with our recent approach and takes account of Ms Te Peeti's acceptance of responsibility and agreement to the matter being dealt with on the papers. The respondent is ordered to pay $1428.76 to the CAC.

[13] Education Act, Part 31.

[29] The respondent is also ordered to make a 40 per cent contribution to the Tribunal's own costs, which amounts to $458.

Orders

[30] The Tribunal's formal orders under the Education Act are as follows:

(a) The respondent is censured for her serious misconduct pursuant to s 404(1)(b).

(b) The respondent's registration is cancelled under s 404(1)(g).

(c) The register is annotated under s 404(1)(e).

(d) The respondent is to pay $1428.76 to the CAC under s 404(1)(h).

(e) The respondent is to pay a contribution towards the Tribunal's costs in the amount of $458, under s 404(1)(i).

(f) There is an order pursuant to s 405(6)(c) permanently suppressing the name and any details that might identify Child A.

Nicholas Chisnall
Deputy Chair

NOTICE

1 A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 of the Education Act 1989 may appeal to a District Court.

2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.

3 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).